



CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 20, 2018

The Honorable Dean Heller
United States Senate
Washington, DC 20510

Dear Senator Heller:

I have received your letter dated March 12, 2018, which poses several questions regarding licensing activities associated with the Yucca Mountain construction authorization application. By way of background, in 2013 the U.S. Court of Appeals for the District of Columbia Circuit in *In re Aiken County* directed the NRC to "promptly continue with the legally mandated licensing process" for the Department of Energy's application to construct a geologic repository for high-level waste at Yucca Mountain, Nevada. Since then, the NRC has been taking steps to comply with the court's direction. Responses to your specific questions are enclosed.

Please feel free to contact me or have your staff contact Eugene Dacus, Director of the Office of Congressional Affairs, at (301) 415-1776 if you have questions or need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kristine L. Svinicki".

Kristine L. Svinicki

Enclosure:
As stated

**Response to Request for Information
Senator Dean Heller
Letter of March 12, 2018**

- 1. The NRC's FY 2019 budget request represents an almost 60 percent increase over the \$30 million requested in the FY 2018 budget. The Commission's FY 2019 Congressional Budget Justification provides no explanation for this increase, and no estimate of the total amount NRC would require to complete the restarted proceeding. According to a 2017 Government Accountability Office (GAO) report, the Commission has previously stated that it would require \$330 million and up to five years to resume and complete the Yucca Mountain licensing adjudication.**
 - a. Has the Commission's estimate of the time and expense required to complete the proceeding changed since publication of the GAO report last year?**

No. The Commission has not updated the estimate of time and expense required to complete the proceeding since publication of the April 2017 GAO report, titled "Resuming Licensing of the Yucca Mountain Repository Would Require Rebuilding Capacity at DOE and NRC, Among Other Key Steps" (GAO-17-340). As noted in that report, the \$330 million estimate was generated in 2014, has not been updated since, and could be higher today. The \$47.7 million figure in the FY 2019 budget request supports continuation of the licensing proceeding in FY 2019, including support to, and potential restart of, the administrative adjudication. The FY 2019 estimate differs from FY 2018 because it assumes receipt of funds at the beginning of FY 2019, whereas the FY 2018 budget assumed receipt of funds three to six months into the fiscal year.

- 2. Before authorizing construction of the Yucca Mountain project, NRC rules require a hearing to determine whether the DOE's application is in the public interest. In making this determination, thousands of technical documents and stakeholder concerns will need to be reviewed and dealt with. In addition to the roughly 3.6 million relevant documents that were included in the NRC's Licensing Support Network (LSN), countless other documents have been submitted to the NRC Secretary and held in storage over the past nearly seven years. Beginning in 2013, these documents were uploaded to the NRC's Agencywide Documents Access and Management System (ADAMS) to help facilitate work on the Safety Evaluation Report. NRC has subsequently developed a proposal for making the LSN documents publicly available through ADAMS, and two weeks ago NRC convened a meeting of the LSN Advisory Review Panel in Rockville, MD, to obtain stakeholder input regarding the proposal.**
 - a. Where are these documents housed currently?**
 - b. How would concerned stakeholders gain access to documents relevant to the proceeding?**

As noted in your question, shortly before the Yucca Mountain adjudication was suspended, the participants in the adjudication (other than the NRC Staff, whose materials already were in ADAMS) provided their LSN document collections to the Office of the Secretary for preservation and potential future inclusion in ADAMS. In August 2016, the NRC made all of

Enclosure

the participants' LSN collections (including the Staff's LSN material already housed in ADAMS) publicly available in an external ADAMS LSN library. The collections continue to be housed in that library, which can be accessed via the NRC's website, at <https://www.nrc.gov/reading-rm/lisn/index.html>.

c. Does the NRC FY 2019 budget request include financial resources to support stakeholder participation in future meetings of the LSN Advisory Review Panel?

No. This request includes, among other things, resources for reinstatement and maintenance of the LSN or a functionally equivalent system. As the LSN Advisory Review Panel Chairman explained in a November 7, 2017, letter to Mr. Robert Halstead, Executive Director, Agency for Nuclear Projects, Office of the Governor, State of Nevada, the NRC does not compensate LSN Advisory Review Panel member entities, or their representatives, for participation or travel expenses in LSN Advisory Review Panel meetings.

3. Before the adjudication proceeding was suspended in September 2011, the NRC's Atomic Safety and Licensing Board Panel had admitted approximately 300 technical and legal contentions. Decisions on these contentions, as well as those related to a potential future DOE application to possess high-level nuclear waste at Yucca Mountain, would have to be issued for this project to move forward.

a. Are you still committed to holding "limited appearance" hearings in Las Vegas where concerned stakeholders could make oral statements regarding the proposed Yucca Mountain repository as well as submit written testimony for the record?

The NRC's procedural rules (at 10 C.F.R. § 2.315(a)) address the opportunity for such statements. In particular, a person who is not a party to an adjudication may, at the discretion of the presiding officer, make oral or written limited appearance statements. Although these statements are not considered testimony or evidence in the proceeding, because they may aid the Board and the parties in their consideration of the issues involved in the adjudication, they are placed on the docket of the proceeding. If the Yucca Mountain adjudication is re-commenced, whether and how any oral limited appearance sessions would be conducted will be left to the discretion of the presiding officer. Historically, however, such sessions have been conducted in the vicinity of the proposed facility to facilitate participation of interested members of the community.

b. Do you intend to decide any contentions by holding virtual hearings whereby concerned stakeholders will appear before remote adjudicatory boards located in Rockville or elsewhere?

It has been the NRC's policy that evidentiary hearings on the merits of admitted contentions are held, to the extent practicable, in the general vicinity of the proposed facility—the agency's procedural rules, for example, provide (at 10 C.F.R. § 2.312(b)) that "the time and place of hearing will be fixed with due regard for the convenience of the parties or their representatives, the nature of the proceeding and the public interest." Prehearing conferences and oral arguments regarding major aspects of a proceeding often are

conducted near the facility as well. In SRM-COMSECY-17-0019 (July 31, 2017), the Commission authorized the Atomic Safety and Licensing Board Panel to perform a high-level survey of potential Nevada hearing venue sites and to begin limited research concerning the possible procurement of Nevada hearing facility space. This hearing venue assessment also is to include an evaluation of "virtual courtroom" technology and existing facilities in Rockville, MD for "any stage" of the resumed proceeding. If the Yucca Mountain administrative adjudication is re-commenced, then the Commission will make a decision on a hearing venue (or venues) based on input from the Panel and, consistent with the rule cited above, input from the participants in the adjudication.