



CHAIRMAN

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

May 3, 2018

The Honorable Dean Heller
United States Senate
Washington, DC 20510

Dear Senator Heller:

I am responding to your letter of April 20, 2018, in which you pose questions associated with the Yucca Mountain adjudicatory process. Responses to your questions are enclosed. If I may provide further assistance, please contact me or have your staff contact Eugene Dacus, Director of the Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

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

Kristine L. Svinicki

Enclosure:
As stated

**Responses to Questions
Senator Dean Heller
Letter Dated April 20, 2018**

- 1. In your response to question 3(a), you stated: “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.” Has a presiding officer ever refused to allow any oral limited appearance sessions to take place in furtherance of an adjudication?**

The NRC is not aware of any instance in which a presiding officer has declined a request by an interested member of the public to conduct an oral limited appearance session.

- 2. Should oral or written limited appearance statements be allowed, you indicate that “these statements are not considered testimony or evidence in the proceeding.” Pursuant to NRC procedural rules and precedent, what weight is given to these statements?**

Limited appearance statements are not considered testimony or evidence in the proceeding and therefore carry no evidentiary weight under the NRC’s procedural rules. Limited appearance statements nonetheless may help the presiding officer and the parties in their consideration of the issues in the proceeding. For example, an issue raised by a limited appearance statement could form the basis for questions posed by the presiding officer to the parties on an issue in litigation.

- 3. You went on to say in your answer to Question 3(b) that “evidentiary hearings on the merits of admitted contentions are held, to the extent practicable, in the general vicinity of the proposed facility.”**

When would it not be practicable to hold hearings in the general vicinity of a proposed facility?

Is the term “general vicinity” defined in statute or regulation? If not, based on NRC precedent or historical practice, what constitutes “general vicinity”?

The term “general vicinity” is not defined in statute or regulation. Historically, the NRC has sought to hold portions of proceedings before the Atomic Safety and Licensing Boards as near as is practicable to the location of the proposed nuclear facility or where the material at issue will be processed or used. The specific location is guided by pragmatic considerations (e.g., availability of appropriate hearing venues, hotel space, internet connectivity, expected weather, ease of access to the location via airport/automobile, budget, availability of party representatives, and security).

- 4. In your answer to Question 3(b), you also state that, consistent with SRM-COMSECY-17-0019 (July 31, 2017), virtual courtroom technology and existing facilities in Rockville, MD, are being evaluated for use in “any stage” of the resumed [Yucca Mountain] proceeding.**

Enclosure

When would the nature of a proceeding outweigh the convenience of the parties and the public interest and dictate that the proceeding be held virtually or at existing facilities in Rockville?

Are there certain stages of a proceeding where this balancing of interests clearly weighs in favor of virtual or remote proceedings?

As technology has improved, licensing boards are increasingly using remote sessions, such as telephone conferences, as a cost-effective and timely way to interact with adjudicatory parties in a public setting to address a variety of procedural and other matters. With regard to the use of "virtual courtroom" technology in the Yucca Mountain administrative adjudication, if appropriations are received and the adjudication is restarted, the Commission anticipates receiving information from agency staff addressing the logistics of establishing a dedicated hearing facility; the use of "virtual courtroom" technology; the use of existing facilities in Rockville, Maryland; or a mixture of these approaches.