

BACKGROUND ON INFORMATION-GATHERING ACTIVITIES ASSOCIATED
WITH RE-ESTABLISHING A DEDICATED HEARING FACILITY
FOR CONDUCTING THE YUCCA MOUNTAIN ADJUDICATION

The Commission's July 31, 2017 staff requirements memorandum (SRM) for COMSECY-17-0019 provided authorization and funding (as supplemented by the Commission in November 2017, in the SRM for COMSECY-17-0035) to undertake a high-level survey of the availability of appropriate hearing facility space in Nevada and at NRC headquarters in Rockville.¹ As is explained below, to comply with this Commission directive, a high-level survey of available hearing space was conducted by the Office of Administration, Division of Facilities and Security (ADM/DFS). This survey included federal properties in Nevada and an evaluation of existing space at NRC headquarters buildings in Rockville. Additionally, an evaluation of the use of "virtual courtroom" technology was conducted.

1. High-Level Market Research for Nevada Facilities

Using a set of facility requirements generated by the Atomic Safety and Licensing Board Panel (ASLBP),² ADM/DFS conducted high-level market research on locations in Las Vegas, Nevada, leased or owned by the General Services Administration (GSA) that have the potential for use as a dedicated ASLBP hearing facility. Research was performed on-line as well as by phone with multiple sources at GSA. At the present time, none of the properties currently under GSA control in Las Vegas is suitable for NRC's intended use because they are not large enough to house a dedicated hearing room and related space. GSA also reported that this scenario is unlikely to change in the foreseeable future. Accordingly, the NRC will likely need to seek commercial space through a GSA procurement to satisfy any Nevada-based ASLBP facility requirements. Similar research was performed for potential federal properties in Reno and Pahrump, Nevada, which also yielded no positive results.

For ADM and ASLBP to undertake and participate in a GSA survey of available Nevada commercial space it would require 4 to 6 weeks and require 1020 FTE hours (approximately \$127,500) and \$35,000 in travel funding. The information obtained from such a survey is likely to remain usable for 6 months to a year, depending on activity in the local commercial real estate market.

¹ See Yucca Mountain Project Activities, COMSECY-17-0019 (May 25, 2017) (<https://www.nrc.gov/docs/ML1714/ML17145A253.pdf>); Staff Requirements—COMSECY-17-0019—Yucca Mountain Project Activities (July 31, 2017) (<https://www.nrc.gov/docs/ML1721/ML17212B393.pdf>); Support for [LSNARP] Activities, COMSECY-17-0035 (Nov. 20, 2017) (<https://www.nrc.gov/docs/ML1732/ML17324A393.pdf>); Staff Requirements – COMSECY-17-0035 – Support for [LSNARP] Activities (Nov. 21, 2018) (<https://www.nrc.gov/docs/ML1732/ML17325B321.pdf>).

² The facility requirements, which were based on the specifications for the Las Vegas hearing facility that was decommissioned in 2011, included a building with approximately 9500 square feet for the hearing room; approximately 2200 square feet for conference rooms; approximately 3000 square feet for office space; at least ten secure parking spots; parking in proximity to the building; available accessible parking; building access 24 hours per day/seven days per week; and a central business district location near food, lodging, and public transportation.

2. Existing Space at NRC Headquarters in Rockville

ASLBP and ADM/DFS also explored existing space at NRC headquarters in Rockville. Five potentially usable spaces at headquarters were considered: (1) the ASLBP hearing room on the third floor of the Two White Flint North (TWFN) building; (2) the Advisory Committee on Reactor Safeguards (ACRS) meeting rooms on the TWFN second floor; (3) the Commission hearing room on the first floor of the One White Flint North building; (4) the NRC auditorium on the TWFN P1 level; and (5) Three White Flint North (3WFN) building first floor conference rooms 01-C03 and 01-C05. When evaluating these spaces, the following initial filtering criteria were applied: (1) need for dedicated use of the space for an extended period of time (potentially 2-plus years); (2) ease with which modifications could be made; and (3) availability of adjacent conference space for parties to meet with witnesses, caucus, etc. Using those filtering criteria, the only potentially available spaces that remained are the TWFN ASLBP hearing room and the 3WFN conference space.³

a. ASLBP Hearing Room

As shown in the following diagram, the current configuration of the ASLBP Rockville hearing room supports a maximum of four parties, seating for up to five witnesses at a time, and gallery seating for approximately 70 individuals.⁴ The hearing room also has four adjacent conference rooms.⁵

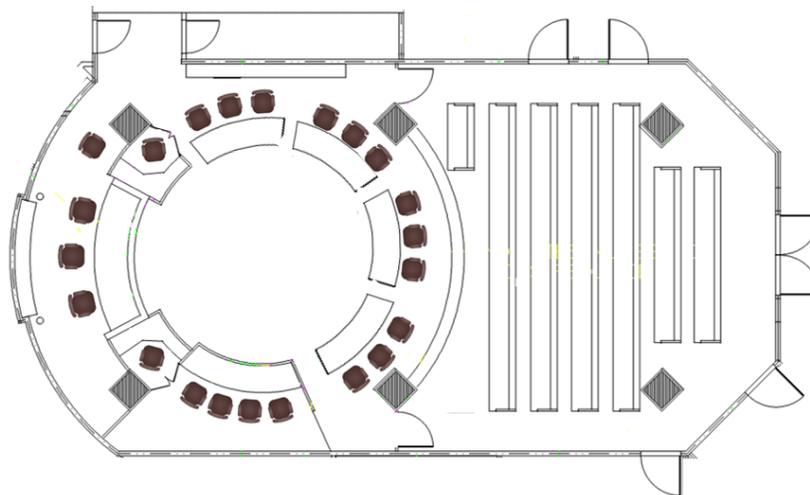


Figure 1 - ASLBP Hearing Room - Current Configuration

Multiple reconfiguration options were considered. As shown in the following two diagrams, removal of the fixed wooden benches could provide additional seating for four to eleven parties. However, as seating is added for hearing participants, the available seating for members of the public or participant support staff decreases. Although it would be possible to broadcast the

³ While the 3WFN conference space now is used on a regular basis, the dedicated use of this space is offset by the potential availability of the Commission hearing room and the auditorium.

⁴ Diagrams in this document are not to scale and only are intended to provide a conceptual depiction of available space configurations.

⁵ One conference room is used by ASLBP as the judges' chambers.

hearing to other locations within the NRC headquarters complex (e.g., NRC auditorium) for viewing by members of the public, this “overflow” capability would be subject to the availability of such locations for extended periods of time.

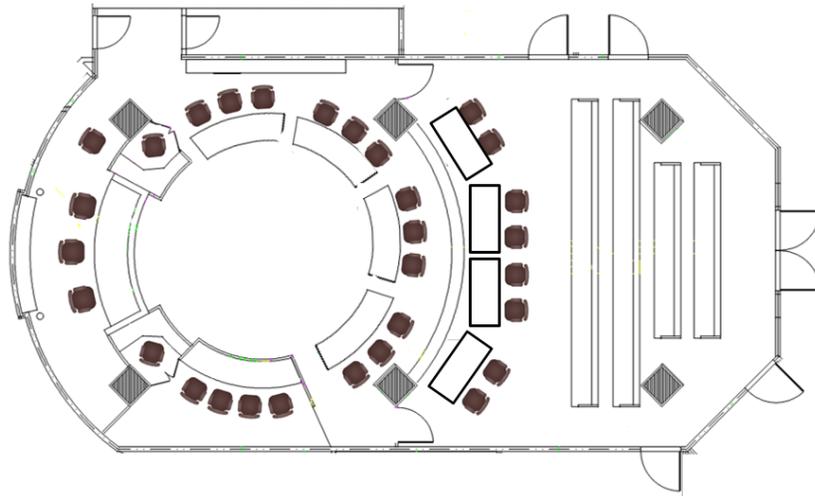


Figure 2 - ASLBP Hearing Room - Four Additional Parties

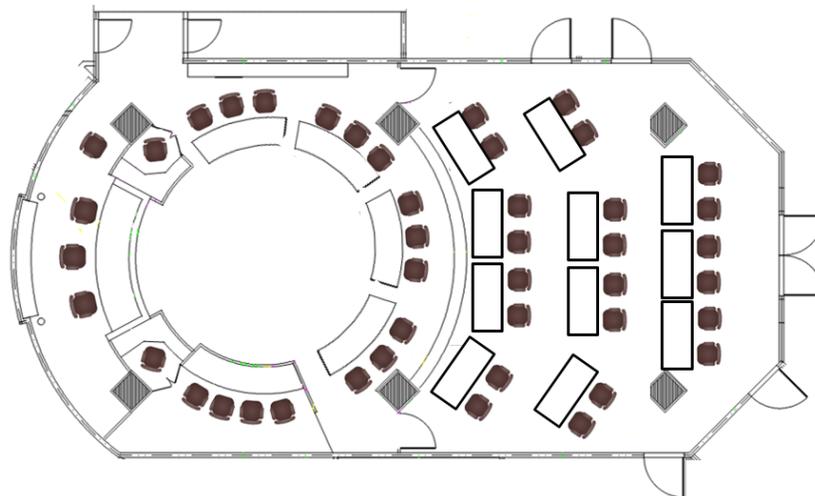


Figure 3 - ASLBP Hearing Room - 11 Additional Parties

b. 3WFN Conference Space

The conference space in 3WFN offers the most flexibility, but its use also offers some uncertainty. As GSA leases the space and NRC occupies that space via an occupancy agreement through November 2027, the following discussion assumes that the 3WFN conference space would be dedicated to ASLBP’s use when needed, as opposed to other agency priorities.

As is shown in Figure 4 below, the 3WFN conference space as currently configured would be large enough to house all of the participants to the proceeding, but with limited or no seating for members of the public or participant support staff. There are also two nearby conference rooms that could be divided to create four conference rooms.

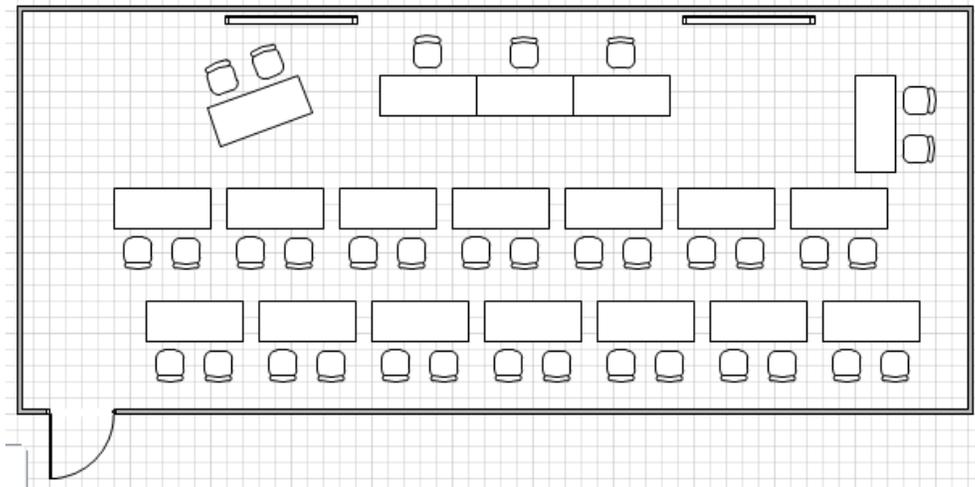


Figure 4 - 3WFN with No Modifications

ADM/DFS explored renovations to the space as shown in Figure 5.

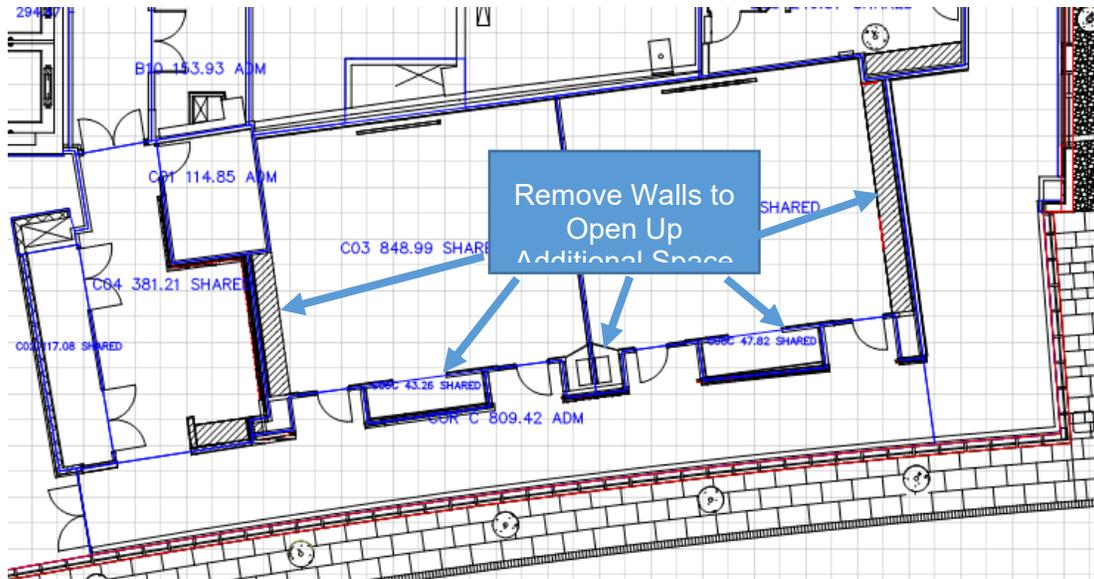


Figure 5 - 3WFN Possible Renovations

By removing those walls, additional space would be made available for 50 to 75 members of the public or participant support staff as shown in Figure 6. The estimated cost to renovate this space and then return the space to its original configuration is approximately \$1.8 million.

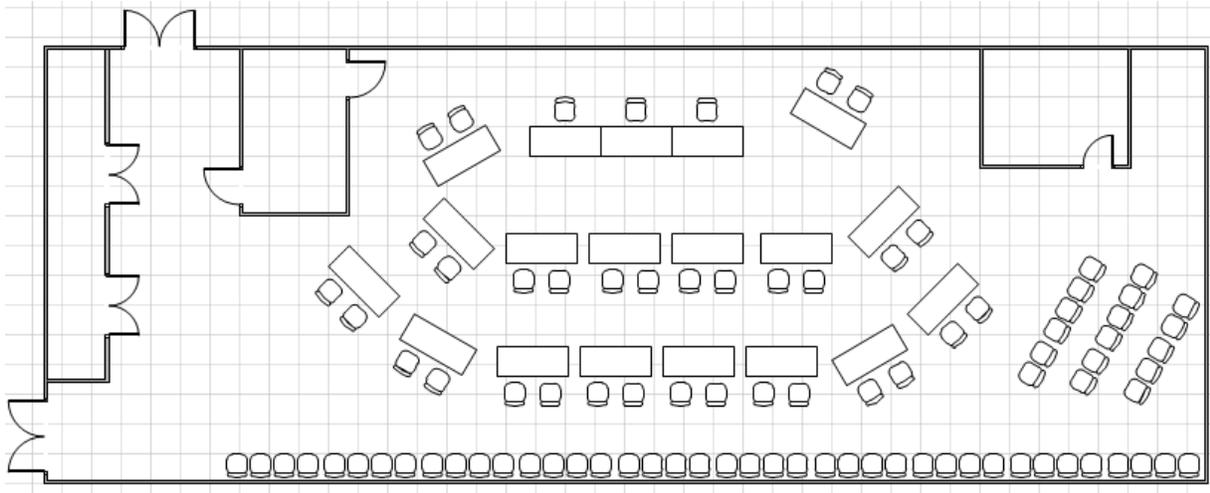


Figure 6 - 3WFN Expanded

4. Hearing Space Considerations

While renovation costs are a concern, given possible schedule limitations for the proceeding,⁶ the most significant factor in obtaining and configuring usable space is time.⁷ Assuming that existing GSA-leased federal space in the Las Vegas area became available, it is estimated that at least 18 months would be required before the NRC could procure and configure that space so it could be used for adjudicatory sessions.⁸ If GSA-leased or -owned space is not available and the search were expanded to include commercial space, it is estimated that as much as 24 months would be needed before pre-hearing or evidentiary hearing sessions could begin in a

⁶ Given the status of the adjudication when the HLW proceeding was suspended in 2011, under the aggressive schedule set forth by section 114(d) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10134(d), as reflected in 10 C.F.R. Part 2, app. D, if the adjudication is conducted consistent with the Appendix D schedule, for example, the Commission would have approximately 30 months from the date the proceeding is restarted to complete the adjudicatory process and make a final determination regarding issuance of a construction authorization for the Yucca Mountain facility.

⁷ The estimated cost to build a hearing facility similar in size to the original Las Vegas facility would be approximately \$9.9 million for the first-year lease, tenant improvements, furniture, travel, and information technology/audio-visual (IT/AV) installation, with annual recurring costs estimated to be \$1.9 million for rent and IT/AV operations and maintenance costs and \$1.2 million for security. If the ASLBP hearing room were modified to serve as the main Yucca Mountain hearing facility, modification costs are estimated at \$100,000 with no recurring costs.

⁸ The effort associated with leasing space, whether federal or commercial, involves a number of activities that have variable completion time frames, but are generally required as part of any attempt at leasing space. These activities include, but are not limited to, the identification of space requirements and lease terms, market surveys, development of an occupancy agreement with GSA, solicitation, evaluation of offers and negotiations, a lease award, development of a scope of work for buildout, design drawings, buildout construction, installation of furniture and IT infrastructure, and finally occupancy.

dedicated hearing facility.⁹ Similar constraints apply to non-NRC space in Rockville.¹⁰ In contrast, reconfiguration of the ASLBP hearing room or the 3WFN first-floor space would take around 12 months to complete.¹¹

Another alternative to procuring a full-fledged hearing facility in Nevada would be the creation of a dedicated satellite location (or locations) in Nevada to be used in conjunction with “virtual courtroom” technology in Rockville, as discussed below. A satellite location could be outfitted with remote connectivity and audio-visual technology to permit active participation between that venue and the ASLBP Rockville hearing room. A satellite room could be configured to have a witness location, 4 to 8 attorney tables, and seating for a reasonable number of litigant support staff and members of the public. The video between the Rockville and Nevada rooms could be configured in such a way to display multiple fixed video feeds permitting each location to view more than one camera angle at a time. It is estimated that between 12 and 24 months would be required to have a satellite space available. The time required for this effort will depend on the availability of space, either federal or commercial, and the physical state of that space (i.e., is it essentially move-in ready or will extensive renovations be required).¹²

⁹ In the interim period, ASLBP would likely conduct any Nevada pre-hearing or evidentiary hearing sessions in rented space. It is estimated that renting space in the Las Vegas area will cost between \$50,000 and \$110,000 per week with an additional \$25,000 in initial security equipment costs and \$25,000 per week for security personnel. While having a dedicated hearing facility available as soon as possible will be a material aid to the timely conduct of the adjudication, it becomes particularly critical in conducting the evidentiary hearings for the proceeding, which are anticipated to require many months of nearly consecutive hearing days by one or more licensing boards.

¹⁰ Although there may be other federal or commercial space in the vicinity of the agency’s headquarters campus that might be suitable for a dedicated HLW hearing facility, as is the case with a potential Nevada facility, the volatility of the Rockville-area real estate market creates a very limited shelf life for any space survey information that might be obtained. Additionally, procuring and building out other federal or commercial space in the Rockville area is likely to involve cost and timing considerations similar to those involved with a Nevada-based facility.

¹¹ The post-HLW adjudication restart build-out time for the 3WFN first-floor space could be shortened by some three to four months if ADM/DFS were authorized to expend \$130,000 in currently available NWF monies to obtain a set of preliminary architectural drawings for reconfiguring that space to create a hearing room with adjoining judicial and party conference space. In light of the limited remaining amount of NWF monies currently available, however, as is noted in the COMSECY-18-0015, at 7–8, we recommend implementation priority be given to the LSN Library enhancements discussed in Enclosure C.

¹² It is estimated that a facility of between 1500 and 2500 square feet would be sufficient for a satellite location. As is the case with the time for construction, cost likewise depends on the physical state of that space (i.e., is it essentially move-in ready or will extensive renovations be required), with estimated initial costs for a satellite facility at between \$750,000 and \$1.5 million, with recurring costs estimated between \$300,000 and \$400,000.

5. “Virtual Courtroom” Technology

Although some might suggest it is not as effective as in-person interaction,¹³ ASLBP has evaluated the use of “virtual courtroom” technology and has found it to be a viable option. ASLBP currently utilizes audio conferencing extensively for prehearing conferences and, on occasion, for oral arguments regarding contention admissibility or other issues. Also, on limited occasions to address considerations such as witness health concerns or scheduling constraints, ASLBP has allowed witness testimony via audio conference. In addition, ASLBP has successfully utilized video conference technology in the form of both traditional point-to-point video conferencing and web-based video conferencing using GoToMeeting for oral arguments and, on a limited basis, evidentiary hearings. These technologies have been shown to be efficient, reliable, and offer significant cost savings by eliminating the cost and time associated with travel and, depending on the circumstances, venue procurement.

Further, the February 2018 Licensing Support Network Advisory Review Panel (LSNARP) meeting, which was conducted in the existing 3WFN first floor conference space discussed above, combined the use of in-person attendance by LSNARP members and the public, LSNARP member participation by audio conference or GoToMeeting, and public participation by audio conference or GoToWebinar. The combination of these technologies for the LSNARP meeting demonstrated that different remote participation technologies can be combined to provide flexible participation options.

It also should be noted that ASLBP utilized “virtual courtroom” technology to some extent when the high-level waste (HLW) proceeding was active. Proceedings that were held in the Las Vegas hearing facility were web streamed for public viewing and routinely broadcast back to the ASLBP Rockville hearing room by way of point-to-point video conferencing to allow participation by some Washington, D.C.-based counsel. Additionally, audio conference capabilities were available.

If the HLW adjudication were to resume, ASLBP likely would offer multiple remote connectivity options for party participation and public access. These options could be available regardless of the location of the hearing facility, but would be dependent on the available infrastructure of the hearing facility location and continued agency support for web conferencing technologies (e.g., GoToMeeting). In particular, as is standard practice for all ASLBP telephonic prehearing conferences, a listen-only audio conference line would be made available to the public, and all HLW adjudication sessions would be available for public viewing either by use of the agency’s web streaming contract or through a web conference capability such as GoToWebinar or Skype Meeting Broadcast.¹⁴ Moreover, should circumstances warrant, participants would have the option to participate using an audio conference line or a web conference capability such as GoToMeeting or Skype for Business.

¹³ In-person interaction affords a hearing participant an opportunity to better gauge facial expressions and body language of the person speaking, considerations in judging witness credibility as well as the reactions of others in the room. There is also less likelihood of miscommunication that might occur due to audio or video quality issues. That being said, as is noted above, ASLBP’s experience using such an approach in pre-hearing conferences and evidentiary hearings has been successful.

¹⁴ GoToWebinar and Skype Meeting Broadcast offer “outbound-only” audio/video content, as does webcasting. Webcasting is billed per event and permits unlimited viewers. In contrast, while products such as GoToWebinar and Skype Meeting Broadcast offer “unlimited” use under an annual license, the actual number of viewers per event through these outlets is limited to several hundred.