

Subject: NRC Technical meeting with Western Nuclear, Inc. (WNI), U.S. Department of Energy (DOE), and Wyoming Department of Environmental Quality

Date: October 18, 2021, 10:00 AM to 11:00 AM ET

Re: Prepared Opening Remarks by WNI Counsel Jeff Merrifield
Questions and Concerns Raised by WNI During Public Meeting

Prepared Opening Remarks by WNI Counsel Jeff Merrifield

- Thank you. I am Jeff Merrifield and I am a Partner with Pillsbury Winthrop Shaw Pittman and lead our energy section. I'm here today with my colleague and Partner Tim Walsh. We are outside counsel for Western Nuclear on regulatory matters associated with the cleanup and closure of the Split Rock site in Wyoming.
- Also attending on behalf of Western Nuclear are:
 - Larry Corte, Western Nuclear's President;
 - Toby Wright, of Wright Environmental Services Inc., Western Nuclear's longtime consultant on environmental and remediation issues associated with the Split Rock site;
 - Harley Shaver, WNI's outside counsel on property issues; and
 - Bryce Romig, the Director of Remediation Projects for Freeport McMoRan, which owns Western Nuclear.
- Let me begin by saying that Western Nuclear greatly appreciates the opportunity to have this discussion today. We are looking forward to working closely with the NRC, the Department of Energy, and the State of Wyoming as we all work towards the common goal of successfully transitioning the Split Rock site to the long-term care and management of the site by the Department of Energy.
- I would note that we are at this juncture due to the significant time and money to prepare for this final step in the remediation effort.
- We would like to briefly summarize some of the history of the Split Rock site and the substantial progress Western Nuclear has made to safely and responsibly conduct the decommissioning and environmental remediation of the site and prepare it for this transition to DOE.
- The Western Nuclear Split Rock mill was the first operational uranium mill in the State of Wyoming.

- Uranium milling at the Split Rock site was conducted from 1957 through 1981, when the mill was placed on standby status.
- At its peak, the mill was processing 1,700 tons per day of uranium ore.
- It's important to note that over fifty one percent of the uranium ore milled at the site went to the U.S. government for national defense uses, with the remainder for commercial uses.
- During the site's years of operation, process waste in the form of tailings solids and acidic liquids were discharged to the unlined tailings disposal areas. Suffice it to say that the design and operation of uranium mills of the 1950s and 1960s, in accordance with Atomic Energy Commission standards and practices, did not incorporate the level of environmental protection measures that would be used today.
- After operations ceased at the site, there were obvious radiological and environmental issues to be addressed.
- Western Nuclear recognizes the importance of addressing the long-term restoration and stewardship of the facility and toward that end has expended tremendous financial and technical resources to address the longstanding radiological and other environmental issues at the site.
- Decommissioning and reclamation of the Split Rock mill facility began in 1988 and was completed in 2007, almost 14 years ago, when the final evaporation pond was reclaimed in accordance with the NRC's approved decommissioning plan.
- During this period, mill facilities were decommissioned, and demolished, windblown tailings and contaminated topsoil were removed and placed in the tailings impoundment, the tailings impoundment was dewatered and covered with an appropriate engineered permanent cap, and ground water corrective actions were completed in accordance with applicable federal and state regulations.
- In total, Western Nuclear estimates that over the decades-long period of decommissioning and reclamation, it spent over \$60 million in activities associated with the long-term cleanup of the site and treated nearly 400 million gallons of contaminated groundwater.
- Western Nuclear and its parent companies have always sought to do "the right thing" in their efforts to be responsible stewards for the site, and have attempted to accomplish this cleanup in a manner that is environmentally sound and in accordance with the expectations of the State of Wyoming and the community surrounding the site.
- Western Nuclear has had a great partner in the State of Wyoming, which assumed Agreement State status a few years ago and now has the primary regulatory responsibility for overseeing the cleanup of the site.

- In September of 2020, the Wyoming Department of Environmental Quality issued the Completion Review Report, or “CRR”, to document the State’s basis for finding that decommissioning and reclamation have been acceptably completed and for proposing license termination for the site, as required to transfer the site to the long-term care and management by the Department of Energy.
- The CRR is a comprehensive and impressive record that documents all of the efforts that have been undertaken by WNI, the NRC, DOE, and Wyoming to ensure the Split Rock site has met applicable requirements for license termination.
- WNI greatly appreciates the diligence the State has employed in its efforts to collaborate on the environmental planning and remediation process. We also appreciate the work the NRC staff conducted to review the process prior to Wyoming becoming an agreement state.
- While we have engaged in a constructive process with the NRC, and while we appreciate the commitment and hard work the Agency staff have made to this process, we would note that the recent engagement of the NRC has not been transparent to us, and we continue to be concerned about the amount of time the Agency has taken in its activities associated with the site.
- Given all the work undertaken over the last several decades, cleanup at the site is complete and Western Nuclear believes, consistent with Federal and State law, the time is ripe to proceed with transfer of the site to its long-term custodian, the DOE, as set forth in the Uranium Mill Tailings Radiation Control Act of 1978 (“UMTRCA”)
- I want to emphasize again Western Nuclear’s commitment to do what is right for the site, but we would like to proceed toward closure
- We now have an opportunity to move forward with license termination and transfer to DOE as quickly and as responsibly as possible, with all parties being treated fairly.
- From Western Nuclear’s perspective, fairness includes not letting process get in the way of all of the cleanup that has been achieved.
- We do have some questions and concerns that we would like to raise with the NRC and DOE today.
- Before we get to the specific questions, I want to emphasize, on behalf of Western Nuclear, that we have a great opportunity here to achieve a great success story for all involved.
- We have a long term plan that is protective of the environment, and that plan has been thirty years and tens of millions of dollars in the making.

- But over the past several months, Western Nuclear has heard that new and unprecedented regulatory processes might be deployed at this late stage, and that those processes might further delay the already long overdue license termination and site transfer.
- We understand that the NRC is conducting an environmental assessment for the Split Rock Long Term Surveillance Plan, even though to the best of Western Nuclear's knowledge, no such assessment has previously been conducted for other uranium mill sites that have previously gone through the NRC process.
- So, Western Nuclear is very interested to understand the status of the NRC's assessment and when a finding of no significant impact is expected to be issued.
- Western Nuclear has also heard that the NRC Staff may propose to prepare a SECY paper on the Long Term Management Charge, which is the fee the licensee Western Nuclear will have to pay to DOE for costs associated with the long term surveillance of the site. Western Nuclear also understands that work on the proposed SECY paper is not planned to begin until early next year, and is estimated to take a year to complete, if not longer.
- Western Nuclear would like to better understand if this supposed SECY paper will have any impact on the Split Rock long term management charge, and if so, why?
- If our understanding is correct that the staff may recommend a change in how the long-term management charge is calculated or imposed, we would like to have a better understanding of the basis for this recommendation and why the Split Rock Site, which is at the very late stage of the cleanup process, has been selected for this policy change.
- Given the vast sum that the company has expended to clean up the site over the period of three decades, as I previously stated we are very concerned that the financial assumptions that went into those efforts could be adversely affected by this potential late-stage decision.
- For its part, Western Nuclear would like to quickly close out its role at Split Rock by transferring the site to DOE, accompanied with a fee structure that is consistent with prior charges, is reflective of the significant investment the company has made in environmental remediation and decommissioning, and is fair.
- In sum, Western Nuclear greatly appreciates this opportunity to discuss the status of the Split Rock site license termination, and all of the diligent efforts the NRC, the DOE, and Wyoming are taking to ensure that process is successfully completed. It is our sense that the community and the people of Wyoming want to see closure on this issue, and we hope, together, that we can achieve that end quickly.
- Western Nuclear will also ensure that its interests are protected in these proceedings, and that the long term stewardship of the Split Rock site is assured in the most expeditious means feasible.

- Thank you for your time today, and as stated we are prepared with some questions and would like to ask them at the appropriate time.

Questions and Concerns Raised by WNI During Public Meeting

- Proposed NRC Staff SECY Paper on Long Term Management Charge (LTMC) for Uranium Mill Sites
 - What is the scope of this SECY Paper?
 - Is the SECY paper directly related to the Split Rock site?
 - What is its schedule for development and completion?
 - Will this SECY paper have any impact on the timing for the determination of the Split Rock LTMC?
 - WNI believes, at this late stage, an attempt to unilaterally delay the Split Rock decommissioning/license termination process based on processes not previously imposed on other decommissioned uranium mill sites is patently unfair to WNI.
 - WNI lacks understanding and clarity as to why existing regulatory precedent is not being applied to Split Rock.
 - If there is a Commission directive to change how the NRC determines the LTMC? If so, WNI is not aware of such a directive.
 - Any further, unilateral delay in the license termination process is arguably a de facto stay of the administrative proceedings and is subject to review under the Administrative Procedure Act.
 - WNI questions why any change in the LTMC fee determination policy is not being concurrently addressed through a notice of proposed rulemaking.
 - If the unilateral delay continues, WNI could seek standing for formal Commission review regarding the proposed LTMC.

- Environmental Assessment for Split Rock Long Term Surveillance Plan (LTSP)
 - Earlier this year, WNI learned that the NRC was conducting an Environmental Assessment (EA) for the Split Rock LTSP. To the best of WNI's knowledge, the NRC has not conducted an EA for its review of an LTSP for the prior sites that have gone through this process.
 - Given past practices, WNI would like to understand the regulatory and legal basis the NRC staff is using for this apparent change.
 - In addition, WNI would like to know the current status of the environmental assessment and when the Finding of No Significant Impact will be issued.

- Long Term Maintenance Charge (LTMC) Basis of Estimate
 - How does the NRC calculate the LTMC?
 - How is the DOE estimate of proposed annual surveillance costs used to calculate the LTMC?
 - How does DOE determine the "annual" cost when many of the tasks are performed at different labor efforts for different periods throughout the entire monitoring period?
 - Is the NRC planning/intending to do anything different than it has in the past with the previous six Title II Sites that have gone through this process?
 - WNI's understanding is that all six previous Title II Site LTMC amounts have been set to \$250k in 1978 dollars escalated to present, per the statute.
 - Why is the Split Rock site being treated differently?

- Land Transfer
 - The Draft Warrantee Deed is essentially ready. Can the Split Rock property transfer to DOE occur in 2021, and the remaining LTMC and license termination follow that action?

- Noxious Weed Control
 - The DOE annual cost estimate includes costs for noxious weed control. What are the Federal requirements that mandate that WNI fund noxious weed control?
 - WNI would be interested in the possibility of establishing a noxious weed control program with Wyoming in advance of property transfer and grandfather this program as outside of the LTMC Basis of Estimate. Is the NRC open to considering this option?

- Reduction of Wells Needed for Monitoring
 - WNI is contemplating obtaining approval from Wyoming to revise WNI's existing groundwater monitoring program, which would remain sufficient to adequately conduct such monitoring for the site while reducing the number of wells needed. This could occur prior to NRC's final approval of the LTSP and final concurrence of the CRR.
 - If WNI pursued and Wyoming approved such an action, would this adversely impact the schedule for termination (e.g., require re-evaluation or additional documentation in the CRR)?

- Section 106 Consultation
 - What is the status of the Section 106 Consultation Process?
 - What is NRC's approach to FONSI & formal CRR concurrence timing if affected stakeholders responses are not timely? How do you intend to close this out?

- Administration, Transparency, and Communication
 - WNI would like to see an improvement in communications consistent with the NRC's goals of being a transparent and predictable regulator. WNI would hope that all of the parties (WNI, Wyoming, DOE, and the NRC) could work toward a more responsive and transparent process to address reasonable WNI and Wyoming information requests. We believe that more timely responses to requests (addressed in the administrative record) would assist in the prompt and effective closure of the site and achieve project success. We recognize that the Agency has a history of being committed to openness and transparency in its regulatory activities and WNI is hopeful that going forward, we can work toward closeout of these issues in an open and transparent manner.