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By Electronic Mail

Ms. Jane Marshall
Director, Division of Decommissioning,
Uranium Recovery, and Waste Programs
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
jane.marshall@nrc.gov

Subject: Western Nuclear, Inc. Split Rock Site, NRC Radioactive Materials License No. SUA-0056; Comment on NRC's determination of the Long-Term Care Fee.

Dear Ms. Marshall:

Western Nuclear, Inc. (WNI) appreciates the dialog initiated between the U.S. Nuclear Regulatory Commission (NRC) staff and WNI regarding NRC's pending determination of the long-term care fee (LTCF) required by Criterion 10 of Appendix A to 10 CFR Part 40 for WNI's Split Rock Site in Fremont County, Wyoming. As identified by NRC statements in the public meeting held between NRC, WNI, the U.S. Department of Energy, Office of Legacy Management (DOE/LM), and the Wyoming Department of Environmental Quality (WDEQ) on Tuesday December 14, 2021, WNI understands that NRC is open to input from WNI regarding considerations for determination of the LTCF. Therefore, WNI herein provides comment on the DOE/LM Split Rock, WY, UMTRCA Title II Site Long-Term Surveillance and Maintenance Annual Cost Estimate Summary (DOE, 2021) provided to WNI by NRC, and provides NRC with WNI's position regarding the appropriate basis for the LTCF.

Criterion 10 of Appendix A to 10 CFR Part 40 states, in part:

“Criterion 10—A minimum charge of \$250,000 (1978 dollars) to cover the costs of long-term surveillance must be paid by each mill operator to the general treasury of the United States or to an appropriate State agency prior to the termination of a uranium or thorium mill license. If site surveillance or control requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater than those specified in Criterion 12 (e.g., if fencing is determined to be necessary), variance in funding requirements may be specified by the Commission. In any case, the total charge to cover the costs of long-term surveillance must be such that, with an assumed 1 percent annual real

interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site surveillance.”

WNI’s position is that the LTCF for Split Rock site should be calculated in the same manner as the LTCF for the six uranium mill sites regulated under Title II of the Atomic Energy Act (AEA) of 1954, as amended by Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, that have previously been assessed an LTCF. WNI understands that these six sites, when transferred to the DOE for long-term care, were assessed an LTCF amount roughly equivalent to the minimum charge of \$250,000 (1978 dollars) identified in Criterion 10.

More specifically, WNI understands that these sites were assessed the following LTCF:

- L-Bar (New Mexico) Long-term Surveillance Charge - \$698,194¹
- Edgemont (South Dakota) Long-term Surveillance Charge - \$581,610²
- Arco Bluewater (New Mexico) Long-term Surveillance Charge - \$635,165³
- Maybell West (Colorado) Long-term Surveillance Charge - \$800,173.56⁴
- Sherwood (Washington) Long-term Surveillance Charge - \$666,030.61⁵
- Shirley Basin South (Wyoming) Long-term Surveillance Charge - \$862,614⁶

WNI has reasonably understood and expected throughout the Split Rock decontamination and decommissioning that that the LTCF fee for Split Rock would be calculated in a manner no different than these prior six sites. Moreover, WNI has reviewed the DOE monitoring programs for these sites and finds that several of them (including Bluewater, Sherwood, and Shirley Basin South) have monitoring and inspection programs of comparable scope and frequency as that identified in the Draft Final LTSP for the WNI Split Rock Site. For these reasons, and in view of the fact that the Commission has taken no formal policy action to change the methodology for calculation of these costs, the NRC staff should impose a LTCF for the Split Rock site consistent with the formula specified in Criterion 10 (i.e., a “minimum charge of \$250,000 (1978 dollars”).⁷

¹ Janosko, Gary S., U.S. Nuclear Regulatory Commission, letter to John Trummel, Kennecott Energy Company, September 8, 2004, ADAMS Accession No. ML042580457.

² Holonich, Joseph J., U.S. Nuclear Regulatory Commission, letter to Patrick Carier, Tennessee Valley Authority, June 27, 1996, ADAMS Accession No. ML20113C396.

³ Holonich, Joseph J., U.S. Nuclear Regulatory Commission, letter to Joseph Virgona, U.S. Department of Energy, August 29, 1997, ADAMS Accession Nos. ML103410026, ML20217Q983.

⁴ McConnell, Keith I., U.S. Nuclear Regulatory Commission, letter to Raymond Plienness, Department of Energy, March 11, 2010, ADAMS Accession No. ML100570213.

⁵ Ting, Philip, U.S. Nuclear Regulatory Commission, letter to Arthur Kleinrath, U.S. Department of Energy, March 9, 2001, ADAMS Accession No. ML010800340.

⁶ Owens, Mark R., Pathfinder Mines Corporation, letter to Keith McConnell, U.S. Nuclear Regulatory Commission, October 1, 2013, ADAMS Accession Nos. ML13282A267, ML13277A017.

⁷ Should the NRC staff make a determination that the surveillance costs at the WNI Split Rock site are substantially different than those at previous Title II licensees and, as a result, seek to impose an LTCF greater than called for in Criterion 10 cover the surveillance costs, WNI expects that the NRC staff will provide a sound basis for such determination.

WNI has reviewed the DOE/LM Split Rock, WY, UMTRCA Title II Site Long-Term Surveillance and Maintenance Annual Cost Estimate Summary dated September 16, 2021. To the extent that the NRC is considering a policy change that would depart from the longstanding precedent summarized above for future sites, WNI provides the following input on the DOE cost estimate for the NRC's consideration regarding DOE's proposed Long-Term Surveillance Charge.

WNI has identified three primary issues with DOE/LM's cost estimate summary. First, DOE's cost estimate summary includes costs for activities that are not the responsibility of the owner, either because they do not have a nexus to radiological health and safety, or are part of DOE's internal management processes. These activities include annual noxious weed control, rangeland health assessments to be performed every three years, and periodic monitoring program evaluations performed once after 17 years and every 12 years thereafter. Should the NRC staff seek a policy change for LTCF fees, WNI suggests that NRC exclude these types of activities and associated costs from the basis for determining the LTCF for future sites.

Second, DOE should coordinate its inspections for former Title II sites on a regional basis. For example, for a future decommissioned site in Wyoming, travel could be consolidated with other local sites in the region (currently Shirley Basin South, pending are American Nuclear Corporation [ANC], Bear Creek, Lucky MC, Gas Hills, Shirley Basin North, Highlands and Sweetwater) and South Dakota (Edgemont). Therefore, DOE's costs for labor and associated travel to and from the area should not be at the sole expense of any single owner. Any consideration for such expenses for a single site should be decreased (if not zeroed out) considering that expense would be shared, in part, by other sites.

Third, future DOE cost estimates should include sufficient detail to permit (a) the future owner to have sufficient understanding of the reasonableness of the cost basis; and (b) the NRC to reasonably calculate the long-term care fee (LTCF). Absent sufficient detail and transparency in DOE's cost estimates, a future owner will not be able to understand NRC's basis for establishing the LTCF amount. Applicable agency guidance requires appropriate detail and transparency.⁸ Therefore, to the extent that the NRC staff intends to seek a Commission blessed policy change to use the DOE cost estimate summary to impose an LTCF higher than what would be imposed under the formula provided in Criterion 10, WNI would suggest that the NRC obtain from DOE additional specificity and particularity in its proposed cost estimates for that future site.

⁸ See NRC RIS 2011-11, Regarding Long-Term Surveillance Charge for Conventional or Heap Leach Uranium Recovery Facilities Licensed under 10 CFR Part 40 (Sept. 29, 2011).

WNI appreciates the opportunity to provide this input into your ongoing LTCF evaluation and review processes. Should you have any questions for WNI, please do not hesitate to contact me at lcorte@fmi.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Corte', is centered within a light blue rectangular box.

Lawrence J. Corte

Cc: Ashley Roberts, Deputy Director, Division of Decommissioning,
Uranium Recovery, and Waste Programs