

WESTERN NUCLEAR, INC.

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By Electronic Mail

Mr. John Lubinski
Director, Office of Nuclear Materials Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
John.Lubinski@nrc.gov

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

- References: (1) January 25, 2022 Letter from Western Nuclear, Inc. to NRC Regarding the Western Nuclear Inc. Split Rock Site Long-Term Care Fee (Accession No. ML22026A092)**
- (2) September 2021 Department of Energy Office of Legacy Management Annual Cost Estimate for Long-Term Surveillance and Maintenance at the Split Rock Site (Accession No. ML21277A128)**
- (3) November 2021 Preliminary Final Long-Term Surveillance Plan for the Split Rock, Wyoming UMTRCA Title II Disposal Site, Jeffrey City, Wyoming (Accession No. ML21323A184)**
- (4) November 30, 2021 NRC Schedule for the Transitioning of the Western Nuclear, Inc. (WNI) Split Rock Site to the U.S. Department of Energy (DOE) for Long Term Care (Accession No. ML21335A005)**

Dear Mr. Lubinski:

On behalf of Western Nuclear Inc. (WNI), I am writing to provide the Nuclear Regulatory Commission (NRC) with additional input regarding WNI's perspective on the NRC's

determination of the Long-Term Care Fee (LTCF) for the WNI Split Rock Site. In this letter, WNI requests that the NRC staff consider this additional input in its determination of the Split Rock LTCF. WNI also acknowledges that the NRC Office of General Counsel will provide WNI counsel with information on the options and processes for any challenge to the LTCF that WNI may pursue.

Additional Input Regarding the LTCF

In the above-referenced letter dated January 25, 2022 (**Reference No. 1**), WNI provided the NRC with WNI's position regarding the appropriate basis for the LTCF. Specifically, WNI explained that the Split Rock LTCF 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 were assessed an LTCF amount roughly equivalent to the minimum charge of \$250,000 (1978 dollars) identified in 10 C.F.R. Part 40, Appendix A, Criterion 10, or approximately \$1.1 million (2022 dollars).

In **Reference No. 2**, the Department of Energy (DOE) Office of Legacy Management (LM) provided to the NRC its annual cost estimate summary for long-term surveillance and maintenance activities at the Split Rock site. If the NRC staff chooses to take approach different from the one set forth in Criterion 10 to determine the LTCF, such as by using the DOE annual cost estimate contained in **Reference No. 2** as the basis for developing the LTCF, then WNI provides the following information to the NRC on DOE's annual cost estimate.

First, the DOE Annual Cost Estimate Summary (**Reference No. 2**) inappropriately includes costs for activities that have no nexus to radiological health and safety, or are part of DOE's internal management processes, and thus should not be used as a basis for calculating the LTCF. 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. In fact, during the public meeting held on December 14, 2021, the DOE conceded that its annual cost estimate included costs that had no nexus to radiological safety, including noxious weed control, and that DOE did not expect the NRC-determined LTCF to cover all such costs identified in DOE's annual cost estimate. Further, the increment of labor effort and costs for the Site Management Task attributable to coordination, oversight and management of those tasks without a nexus to radiological health and safety should be deducted from this line item amount.

Second, any DOE costs associated with travel to and from the Split Rock Site for inspections and sampling should be reduced to reflect the DOE historic practice of coordinating site activities at multiple sites in a particular region. The Split Rock site is located relatively near several other UMTRCA Title II sites in Wyoming (currently Shirley Basin South, pending transfer to DOE are American Nuclear Corporation [ANC], Bear Creek, Lucky MC, Gas Hills, Shirley Basin North, Highlands and Sweetwater) and South Dakota (Edgemont), as well as two current UMTRCA Title I Sites (Spook and Riverton). Therefore, the estimated labor and travel costs for DOE sampling and inspection personnel to travel to and from the DOE offices in Grand Junction, Colorado, (which can be a greater cost than the actual cost of performing the inspections) should

be reduced by more than half to reflect that such costs would be shared across multiple sites and should not be the sole burden of Wester Nuclear.

Third, DOE's Annual Cost Estimate Summary (**Reference No. 2**) includes costs for activities that would not occur annually, resulting in an annual cost estimate that is inappropriately inflated. A more accurate cost accounting approach would be to use a time-phased estimate of costs, and then calculate the present value of the discounted cash flow (using the 1% discount rate prescribed in Criterion 10). The present value of all costs that are not incurred at the same amount annually should be calculated based on the projected year(s) in which they are estimated to accrue. Accordingly, the present value of the Site Inspections, Groundwater and Surface Water Monitoring, and Maintenance activities identified in the DOE annual cost estimate should be calculated considering their projected time-phased performance, as detailed below:

- **Site Inspections:** The Site inspections specified in the Preliminary Final Long Term Surveillance Plan (PFLTSP) (**Reference No. 3**) involves walking or driving a series of unspecified traverses in four Inspection Areas. The DOE Annual Cost Estimate Summary (**Reference No. 2**) indicates that the labor effort for inspections is to be one day each year except for every fifth year when the labor effort is to be two days. The number of staff for each inspection is not identified in either the DOE Annual Cost Estimate Summary or in the PFLTSP. Because the labor effort is not uniform each year, the costs for this task should be assessed on a time-phased basis.
- **Groundwater & Surface Water Monitoring:** These costs are only incurred annually for the first five years and every three years thereafter. The number of staff for each inspection is not identified in the DOE Annual Cost Estimate Summary or in the PFLTSP. Because the labor effort is not uniform each year, the costs for this task should be assessed on a time-phased basis.
- **Maintenance (Replace Pumps-every 20 years, Wells-every 30 years, Fencing-every 50 years):** These costs are not incurred annually at the same amount, and many of the costs are delayed for many years after site transfer. The number of staff for each inspection is not identified in the DOE Annual Cost Estimate Summary or in the PFLTSP. Annualizing these costs artificially inflates the present value of these future expenditures.
- **Annual Noxious Weed Control, Rangeland Health Assessments, Periodic Program Evaluation:** As discussed above, this cost should not be the responsibility of WNI.

Fourth, WNI finds that DOE's cost basis provided to date lacks adequate detail and transparency to allow WNI a sufficient understanding of the reasonableness of its cost basis, and for the NRC staff to independently verify the estimate and to reasonably calculate a LTCF. For example, the number of staff needed to perform each task is not identified, the labor hours are annualized and not identified by task, and the other direct costs (ODC) are not presented as individual costs. As the party obligated to pay the LTCF, WNI is entitled to understand NRC's and DOE's basis for the LTCF amount, which requires reasonably sufficient detail and transparency of the cost basis used to develop the LTCF.

Therefore, should NRC choose to rely, in part or in whole, on the DOE Annual Cost Estimate Summary to calculate the LTCF (rather than adhere to its consistent, prior practice of setting the LTCF at the minimum charge specified in Criterion 10), WNI respectfully requests that the NRC ask DOE to identify total ODC and total costs for each of the specific task activity costs identified in its Annual Cost Estimate Summary (**Reference No. 2**). WNI believes that the additional detail can be provided by DOE/LM without jeopardizing the proprietary rate information of DOE's contractor. This additional detail will not only provide transparency for WNI, but is also essential for the NRC to independently verify and accurately determine the LTCF amount using general accounting practices.

Discussion on LTCF Challenge Process

According to **Reference No. 4**, on May 5, 2022, the NRC staff is scheduled to inform WNI of its determination for the LTCF. WNI understands that the NRC staff has conferred with the NRC Office of General Counsel (OGC) on the process to be followed should WNI disagree with, or seek to challenge, the NRC staff's LTCF determination. WNI also understands that OGC will be available for a counsel-to-counsel meeting within the next couple of weeks to discuss the process/options for challenging the LTCF determination. WNI appreciates this opportunity to have this discussion with OGC, and requests that it be coordinated with WNI's counsel in this matter, Messrs. Jeffrey Merrifield (jeff.merrifield@pillsburylaw.com) and Timothy Walsh (timothy.walsh@pillsburylaw.com) of the law firm Pillsbury Winthrop Shaw Pittman, LLP.

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,



Lawrence J. Corte

Cc:

The Honorable Christopher T. Hanson, Chairman, NRC
The Honorable Jeff Baran, Commissioner, NRC
The Honorable David A. Wright, Commissioner, NRC
Dan Dorman, Executive Director for Operations, NRC
Catherine Haney, Deputy Executive Director for Materials, Waste, Research
State, tribal, Compliance, Administration, and Human Capital Programs, NRC
Jane Marshall, Director, Division of Decommissioning, Uranium Recovery,

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Ashley Roberts, Deputy Director, Division of Decommissioning, Uranium Recovery,
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