

October 23, 2013

The Honorable Fred Upton  
Chairman, Committee on Energy  
and Commerce  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the Commission<sup>1</sup>, I am transmitting the first monthly status report on the U.S. Nuclear Regulatory Commission (NRC) activities and expenditure of unobligated carryover funds appropriated from the Nuclear Waste Fund. This report covers the period from August 13, 2013 (the date of the decision by the U.S. Court of Appeals for the District of Columbia Circuit) through September 30, 2013. It describes the NRC actions that were taken during this period to continue the licensing process for the Department of Energy's Yucca Mountain license application.

Please feel free to contact me or Rebecca Schmidt, Director of Congressional Affairs, at (301) 415-1776 if you have questions or need more information.

Sincerely,

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Allison M. Macfarlane

[Enclosure: As stated](#)

cc: Representative Henry A. Waxman

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<sup>1</sup> Commissioner George Apostolakis did not participate.

Identical letter sent to:

The Honorable Fred Upton  
Chairman, Committee on Energy  
and Commerce  
United States House of Representatives  
Washington, DC 20515  
cc: Representative Henry A. Waxman

The Honorable John Shimkus  
Chairman, Subcommittee on Environment  
and the Economy  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, DC 20515  
cc: Representative Paul Tonko

The Honorable Barbara Boxer  
Chairman, Committee on Environment  
and Public Works  
United States Senate  
Washington, DC 20510  
cc: Senator David Vitter

The Honorable Thomas R. Carper  
Chairman, Subcommittee on Clean Air  
and Nuclear Safety  
Committee on Environment  
and Public Works  
United States Senate  
Washington, DC 20510  
cc: Senator Jeff Sessions

The Honorable Ed Whitfield  
Chairman, Subcommittee on Energy  
and Power  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, DC 20515  
cc: Representative Bobby L. Rush

The Honorable Harold Rogers  
Chairman, Committee on Appropriations  
United States House of Representatives  
Washington, DC 20515  
cc: Representative Nita Lowey

The Honorable Rodney Frelinghuysen  
Chairman, Subcommittee on Energy  
and Water Development  
Committee on Appropriations  
United States House of Representatives  
Washington, DC 20515  
cc: Representative Marcy Kaptur

The Honorable Dianne Feinstein  
Chairman, Subcommittee on Energy  
and Water Development  
Committee on Appropriations  
United States Senate  
Washington, DC 20510  
cc: Senator Lamar Alexander

**Monthly Status Report to Congress  
Activities Related to the Yucca Mountain Licensing Action  
Report for the Period August 13, 2013–September 30, 2013**

**Background**

The U.S. Nuclear Regulatory Commission (NRC) is an independent regulatory agency whose mission is to license and regulate the Nation's civilian use of radioactive materials, to protect public health and safety, to promote the common defense and security, and to protect the environment. Under the Nuclear Waste Policy Act, the U.S. Department of Energy (DOE) is responsible for developing and submitting to the NRC a license application for the construction of a geologic repository for high-level waste at Yucca Mountain, in Nye County, Nevada. The NRC is responsible for reviewing the application and determining whether to issue a construction authorization to the DOE. The DOE submitted its license application to the NRC on June 3, 2008, and the NRC accepted the application for review on September 8, 2008. The focus of the NRC's review is on whether the DOE has demonstrated that it can construct and operate a repository safely and in compliance with NRC regulations.

On March 3, 2010, the DOE filed a motion to withdraw its license application, which the Atomic Safety and Licensing Board denied on June 29, 2010. The Atomic Safety and Licensing Board suspended the adjudicatory proceeding on September 30, 2011.

On August 13, 2013, a panel of the U.S. Court of Appeals for the District of Columbia Circuit issued its decision directing the NRC to "promptly continue with the legally mandated licensing process" for the DOE's application to construct a geologic repository for high-level waste at Yucca Mountain. On September 10, 2013, Chairman Macfarlane testified before the House Environment and the Economy Subcommittee of the Energy and Commerce Committee that the NRC promptly began taking steps to comply with the court's direction following the issuance of the decision.

**Activities Completed**

On August 30, 2013, the Commission issued an Order inviting participants to the high-level waste repository adjudicatory proceeding to provide the Commission with their views on how the NRC should continue with the licensing process. The responses from the participants, including the NRC staff, were filed by September 30, 2013. The Commission also directed the NRC staff to gather pertinent cost estimate information during this same period. The costs to conduct these activities were not assessed against the Nuclear Waste Fund.

**Activities Underway**

After reviewing the input from the participants to the proceeding and informed by the cost and schedule estimates provided by the NRC staff, the Commission will deliberate and determine the various activities that might compose the agency's response to the court's decision, including activities related to:

- Completion of the Safety Evaluation Report;
- Completion of the supplement to the Yucca Mountain Environmental Impact Statement;

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- Adjudication;
- Reconstituting the Licensing Support Network; and
- Potential restart of external litigation against the NRC.

The cost to conduct this next phase of the Commission's consideration of the response to the court's order will be charged to the Nuclear Waste Fund.

### **Nuclear Waste Fund Expenditures**

During this period, the NRC spent \$51,507 of Nuclear Waste Funds on its actions in direct response to the court's decision. Total unobligated Nuclear Waste Funds remaining as of September 30, 2013, are \$11,004,517.

An additional \$2,493,290 of previously appropriated Nuclear Waste Funds remain unexpended but obligated on contracts with the NRC-sponsored Center for Nuclear Waste Regulatory Analyses (CNWRA). Closeout audits of CNWRA contracts were already underway when the court's decision was issued, but the timing of completion of these audits by the Defense Contract Audit Agency is uncertain. If the closeout audits are completed in a timely manner, these Nuclear Waste Funds could be made available for ongoing NRC activities in response to the court's decision. The total amount will be reduced, however, by the assessment of any final contract closeout costs. The NRC will continue to keep the Committee apprised of the status of any deobligation of these funds in future status reports.