



CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 1, 2018

The Honorable Dean Heller
United States Senate
Washington, DC 20510

Dear Senator Heller:

I am responding to your letter of March 27, 2018, seeking clarification on, and amplification of, the Commission's responses to questions that I provided to you by letter dated March 20, 2018. Your request focuses on activities associated with the Yucca Mountain licensing process and, particularly, on activities associated with completion of the administrative adjudication before the NRC that is currently in abeyance.

The NRC's responsibility to review the construction authorization application, should the licensing process be continued to completion, is best viewed in concert with its role as an independent regulatory body. The NRC's role is non-promotional and impartial. Under the Nuclear Waste Policy Act, the agency is charged with issuance of a final decision approving or disapproving the construction authorization application. With respect to the construction authorization application, the agency's planning efforts to date have been (and will continue to be) focused on preparedness for fulfilling that responsibility.

Responses to your follow-up questions, including non-public documents, are enclosed. We respectfully request that these non-public documents be held in confidence with access limited to you and your staff. For additional non-public documents not included in this response, we will work with your staff on how to meet your request. If I may provide further assistance, please contact me or have your staff contact Eugene Dacus, Director of the NRC's Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kristine L. Svinicki".

Kristine L. Svinicki

Enclosure:
As stated

**Responses to Questions
Senator Dean Heller
Letter Dated March 27, 2018**

- 1. As you know, in 2014, the Nuclear Regulatory Commission (NRC) estimated that completing the Yucca Mountain licensing adjudication would cost \$330 million.**
 - a. On what basis did the NRC determine this 2014 cost estimate?**
 - b. Was this estimate based on a detailed analysis by NRC staff? If so, please provide any written documents related to the estimate.**

By way of background, the House Appropriations Committee report accompanying the Fiscal Year 2014 Energy and Water Development Appropriations bill (H.R. 113-135, July 2, 2013) directed that the NRC “report to the Committees on Appropriations of the House of Representatives and the Senate, . . . on its plan to complete the license application with existing resources and proposals to make available additional funds as necessary.” In response, the NRC staff developed the 2014 cost estimate consistent with Commission direction to prepare a budget-level estimate of the resources necessary to complete the Yucca Mountain licensing process, including the adjudicatory hearing. The estimate, characterized as preliminary, was based on historical costs and took into account a number of detailed planning assumptions, although those assumptions were not evaluated in a formal budget process and were expected to be subject to revision in any future formal budget process. The 2014 estimate took into account the need for flexibility in decision-making, particularly in those areas where future Commission decisions might be needed to decide the specific parameters of the proceeding. Finally, the estimate included direct work and a proportional allocation of indirect costs, as well as an allocation for agency overhead costs, consistent with agency budget formulation practices at the time that have since been revised.

We have provided non-public documents related to the estimate. We respectfully request that these non-public documents be held in confidence with access limited to you and your staff. For additional non-public documents not included in this response, we will work with your staff on how to meet your request.

- 2. For fiscal year (FY) 2019, the NRC has requested \$47.7 million to support continuation of the Yucca Mountain licensing proceeding.**
 - a. What portion of this request will be spent on NRC employees, and what portion of it will be spent on contractors?**

The FY 2019 \$47.7 million budget request to support continuation of the Yucca Mountain licensing proceeding includes approximately \$ 23.1 million for NRC employees and \$ 24.6 million for contractors. At this time, however, there is significant uncertainty with respect to when and how this adjudicatory proceeding may resume. Following development of these details, resource allocations between NRC employees and contractors may change.

- b. Does the NRC plan to reassign current NRC staff who would otherwise be terminated as a result of budget cuts in other areas of work?**

Enclosure

No. NRC staff assignments on Yucca Mountain activities will depend on the availability of appropriated resources and direction from the Commission to resume the adjudication. As a general matter, it is anticipated that some qualified NRC staff would be reassigned to support the Yucca Mountain adjudication if it is resumed. Such staff would need to be replaced to ensure that the NRC meets other mission responsibilities, taking into account agency priorities at the time.

- c. What portion of the FY 2019 request would be spent on reconstituting the Licensing Support Network (LSN)?**
- d. What portion of the FY 2019 request would be spent on re-establishing an NRC hearing facility in Nevada?**

The FY 2019 budget request does not allot a specific amount to either reconstitution of the LSN (or a suitable replacement system) or to re-establishing an NRC hearing facility in Nevada. Both of these matters are subject to Commission decisions that have not yet been made.

Following the D.C. Circuit's direction to the NRC in the case *In re Aiken County* to continue with the licensing process for the Yucca Mountain application, the Commission sought the views of participants in the adjudication as to how the agency should continue with that process. In response, a number of participants made requests relevant to the adjudication. The Commission declined to resume the adjudication or to decide issues associated with the adjudication, including, in particular, issues associated with the LSN, such as how the system might be configured and any potential revisions to the LSN regulations in Title 10 of the *Code of Federal Regulations* Part 2. The Commission stated that these issues would be decided, taking into account the views of the adjudicatory participants, at the time the adjudication is re-commenced. See CLI-13-8, 78 NRC 219, 233-34. The Commission also will take into account input received from the activities of the LSN Advisory Review Panel. Similarly, the Commission will make a decision on a hearing venue (or venues) based on input from the Atomic Safety and Licensing Board Panel and from the adjudicatory participants. Budget allocations following those Commission decisions would reflect planned spending for the approved courses of action.

- 3. At the LSN Advisory Review Panel meeting, there was considerable discussion of the pros and cons of adopting a cloud-based system.**
 - a. How will the NRC determine if the Office of Management and Budget directive regarding "Cloud First" solutions for new Federal government information technology projects applies to reconstitution of the LSN?**
 - b. If the NRC moves to adopt a cloud-based LSN collection, will the current Agencywide Documents Access and Management System LSN collection be maintained as a backup system?**

These issues are among those that will be considered by the Commission as part of its larger decision regarding reconstitution of the LSN or a suitable replacement system in the event the administrative adjudication is re-commenced. Such a decision would be made consistent with federal procurement and information technology guidelines.

4. I appreciate your recognition that the historical practice of the NRC has been to hold hearings and oral limited appearance sessions in the general vicinity of the proposed facility.

a. Please provide a detailed report on all NRC staff activities undertaken to assess hearing venue options in Nevada, as directed by the Commission in SRM-COMSECY-17-0019 (July 2017).

With respect to the hearing space assessment, the NRC has conducted preliminary high-level market research focused solely on properties currently leased or owned by the General Services Administration in targeted locations in Nevada that might be suitable for use as a hearing venue. Specifically, this initial look included Las Vegas, Reno, and Pahrump. This research revealed that currently none of the Federal properties in these locations are suitable for NRC's intended use because they are not large enough to house a hearing room and attendant space. Should resources become available, the NRC could consider other venues in Nevada and recheck with these initial properties to see if availability changes with the passage of time. The Commission also directed agency staff to perform an evaluation of "virtual courtroom" technology and existing facilities in Rockville, Maryland. This evaluation is ongoing.

b. If the Yucca Mountain administrative adjudication is recommenced, will you commit to procuring and utilizing one or more hearing facilities in Nevada?

The agency has a longstanding practice of holding hearings and associated sessions in the vicinity of the proposed facility. Indeed, in the Yucca Mountain proceeding, the NRC established a dedicated hearing facility in Las Vegas, which was subsequently dismantled as a result of budget limitations at the time the adjudication was suspended. If the administrative adjudication is restarted and appropriations are received, the Commission anticipates receiving information from agency staff addressing the logistics of establishing a dedicated hearing facility; the use of "virtual courtroom" technology; the use of existing facilities in Rockville, Maryland; or a mixture of these approaches.