

November 19, 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 October 2013 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 describes the NRC actions that were taken in October 2013 to address the remand by the U.S. Court of Appeals for the District of Columbia Circuit in, *In re Aiken County* regarding the licensing process for the Department of Energy's Yucca Mountain license application.

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

Sincerely,

*/RA/*

Allison M. Macfarlane

Enclosure: [As stated](#)

cc: Representative Henry A. Waxman

---

<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 House of Representatives  
Washington, DC 20515  
cc: Representative Bobby L. Rush

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

The Honorable Mike Simpson  
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 October 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 Allison 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**

Commission attorneys responded to a request by Nye County that the Chairman recuse herself from the Yucca Mountain licensing process. On October 22, 2013, the D.C. Circuit Court denied the petitioners' request for a preliminary injunction and their petition for a writ of mandamus, although the remainder of the case is still pending. The cost of this defense has been charged to the Nuclear Waste Fund.

The Commission is now considering all input received from the participants in response to their August 30, 2013 Order, as well as NRC staff's cost estimates, on the various activities that might compose the agency's response to the court's decision.

Commission staff is providing legal advice to the Commission concerning the preparation of an adjudicatory decision identifying a path forward for the licensing process. The work associated with this legal advice, and the cost of preparing this report, is being charged to the Nuclear Waste Fund.

Enclosure

### **Nuclear Waste Fund Expenditures**

During this period, the NRC obligated \$92,227 of Nuclear Waste Funds on its actions in direct response to the court's decision, including \$22,976 for Federal Court litigation costs. Cumulative obligations since the August 13, 2013, U.S. Court of Appeals decision are \$143,734. Total unobligated Nuclear Waste Funds remaining as of October 31, 2013, are \$10,912,290.

As noted in last month's status report, \$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. NRC is working to accelerate the deobligation of these funds.