

# **SUBCOMMITTEE QUESTIONS**

SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY  
HOUSE COMMITTEE ON ENERGY AND COMMERCE

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**Hearing on  
Implementing the Nuclear Waste Policy Act – Next Steps**

**Tuesday, September 10, 2013**

***Peter Lyons, Assistant Secretary for Nuclear Energy, DOE  
Allison Macfarlane, Chairman, NRC***

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**The Honorable John Shimkus**

**Question 1:** You testified that “The Commission has also directed NRC offices to gather pertinent budgeting information during this 30 day comment period” referring to the time period for parties to submit comments. When will the staff provide recommendations to the Commission based on the budget information gathered? When will the staff provide recommendations to the Commission based on the comments by the parties?

**Answer:**

The Commission is actively considering the views of the participants, including the NRC staff, and expects to issue a decision soon.

**The Honorable John Shimkus**

**Question 2:** Is NRC examining options for restoring or reimbursing the Nuclear Waste Fund money that was misspent on terminating the Yucca Mountain license review? If so, please provide us a legal memo outlining NRC's conclusions.

**Answer:**

This question raises an issue that is pending before the Commission in its adjudicatory capacity. Therefore, it would be inappropriate for me to comment on this matter.

**The Honorable Phil Gingrey**

**Question 1: What process will the Commission use to approve expenditures from the Nuclear Waste Fund?**

**Answer:**

The NRC is using established processes and procedures for approving expenditures from the Nuclear Waste Fund to ensure that funds are used appropriately. NRC employees record their time in the agency's Human Resources Management System (HRMS). The NRC has established activity codes in HRMS to accurately account for activities that are charged to the Nuclear Waste Fund (NWF). Employees charge their time at quarter-hour intervals to these established activity codes. At the end of each pay period, supervisors are required to review and approve their employees' entries into HRMS for accuracy. The NRC employs internal controls to maintain consistency with the appropriation, appropriations laws, and/or the budget approved by Congress and accomplish the strategic goals set forth in the NRC Strategic Plan. The Commission is monitoring NWF expenditures through regular status reports and will provide a monthly activity and expenditure status report to the NRC oversight and appropriations committees.

**The Honorable Phil Gingrey**

**Question 2:** Please provide a list of the staff who were working on the Safety Evaluation Report in September of 2010 including a total in Full-Time-Equivalents (FTEs) and total salary cost. Please indicate whether they have since retired or left the NRC. If they remain employed at NRC, please indicate which office they are currently assigned to, what project or subject matter they are working on, and whether it is designated as “mission critical”. Please also provide a definition of what the Commission considers to be “mission critical”.

**Answer:**

The cumulative salary costs for NRC staff working only on the Safety Evaluation Report (SER) between September 2008, when the license application was docketed for NRC review, and September 2010, when orderly closure of the review activities began, is \$11.4M, which corresponds to approximately 74 full-time equivalents (FTE). This includes both direct-charged staff hours and indirect charges for managers and support staff. The SER salary figure does not include other related NRC activities supported by Nuclear Waste Fund appropriations, such as adjudication, the hearing facility, and the Licensing Support Network. It also does not include contract support for the SER development from the Center for Nuclear Waste Regulatory Analyses, which has experienced loss in staff since this time period.

During the period of SER development, from September 2008 through September 2010, various NRC staff worked on the SER, depending on the specific tasks and the available resources. During September 2010, 47 NRC professional and technical staff were working on the SER, including both direct-charge staff and indirect-charge managers and support personnel. The attached table shows the staff, by position title at that time, who were actively working on the SER during September 2010 and their current status with the agency.

The Commission is currently determining how the agency will proceed to resume work on the high-level waste licensing process as directed by the court. The agency expects that, as necessary, individuals who continue to be employed by the NRC and currently work on other agency activities will be reassigned in order to resume high-level waste licensing activities. Table 1 lists positions working on Yucca Mountain Safety Evaluation Report in September 2010 who would need to be replaced because they are no longer NRC employees. All personnel in Table 2 are currently working on other assignments within the Office of Nuclear Material Safety and Safeguards (NMSS), the organizational element that would be charged with completing the SER if that is the Commission decision. Personnel listed in Table 3 are working on other assignments in other organizational elements within the NRC.

A project plan completed by the NRC staff would provide the necessary rigor on the position and skill sets needed if staff is directed by the Commission to resume work on the SER.

**Table 1: NRC Staff Working on Yucca Mountain Safety Evaluation Report in September 2010 Who Would Need to Be Replaced**

<b>Position Title</b>	<b>Current Status</b>
1. Geochemist	No longer with NRC
2. Materials Engineer	No longer with NRC
3. Project Manager	No longer with NRC
4. Senior Geologist	No longer with NRC
5. Senior Hydrogeologist	No longer with NRC
6. Senior Project Manager	No longer with NRC
7. Senior Project Manager	No longer with NRC
8. Senior Project Manager (Inspections)	No longer with NRC

**Table 2: NRC Staff Working on Yucca Mountain Safety Evaluation Report in September 2010 Whose Current Duties Would Need to Be Backfilled**

<b>Position Title</b>	<b>Current Status<sup>1</sup></b>
1. Branch Chief	NMSS
2. Branch Chief	NMSS
3. Branch Chief (acting)	NMSS
4. Center Deputy Program Manager	NMSS
5. Criticality Engineer	NMSS
6. Deputy Division Director	NMSS
7. Materials Engineer	NMSS
8. Materials Engineer	NMSS
9. Nuclear Engineer	NMSS
10. Office Director	NMSS
11. Program Analyst	NMSS
12. Program Assistant	NMSS
13. Project Manager	NMSS
14. Senior Advisor, Performance Assessment	NMSS
15. Senior Geologist	NMSS
16. Senior Geotechnical Engineer	NMSS
17. Senior Geotechnical Engineer	NMSS
18. Senior Hydro-geologist	NMSS
19. Senior Material Engineer	NMSS
20. Senior Project Manager	NMSS
21. Senior Project Manager	NMSS
22. Senior Project Manager	NMSS
23. Senior Seismologist	NMSS
24. Senior Systems Performance Analyst	NMSS
25. Systems Performance Analyst	NMSS

**Table 3: NRC Staff Working on Yucca Mountain Safety Evaluation Report in September 2010 Who Would Need to Be Transferred with Reassigned Duties**

<b>Position Title</b>	<b>Current Status<sup>1</sup></b>
1. Senior Onsite Licensing Representative	FSME
2. Senior Advisor, Science	NRO
3. Branch Chief (acting)	NRR
4. Deputy Division Director	NRR
5. Deputy Office Director	NRR
6. Division Director	NRR
7. Technical Assistant	NRR
8. Assistant General Counsel	OGC
9. Attorney	OGC
10. Attorney	OGC
11. Branch Chief	OGC
12. Senior Systems Performance Analyst	RES
13. Branch Chief	RIV
14. Senior Onsite Licensing Representative	RIV

**<sup>1</sup> NRC Office Abbreviations:**

NMSS – Office of Nuclear Material Safety and Safeguards

NRO – Office of New Reactors

NRR -- Office of Nuclear Reactor Regulation

FSME – Office of Federal and State Materials and Environmental Management Programs

OIS – Office of Information Services

OGC – Office of the General Counsel

RES – Office of Nuclear Regulatory Research

RIV – Region IV

**The Honorable Phil Gingrey**

**Question 3: Before deciding to request comments from the parties by Sept. 30, were Commissioners provided with a cost estimate for collecting and analyzing those comments? What was the estimated cost? Aside from recommending a comment period, what other options did the staff provide to the Commission? What was the staff's justification for seeking comments?**

**Answer:**

The Commission determined that given the limited funding available (an amount insufficient to complete the entire licensing process) it was necessary and appropriate to solicit the views of proceeding participants before determining a path forward for the proceeding. Review of the information provided by the participants and the NRC staff is assisting the Commission in determining how best to use the available funds and ensures that all affected parties have an opportunity to be heard.

Nuclear Waste Fund money has not and will not be spent on planning efforts for resumption of the licensing proceeding. However, Nuclear Waste Fund money is being used, consistent with appropriations law and historical practice, in order to address matters in the adjudicatory portion of the proceeding and federal court litigation.

**The Honorable Robert E. Latta**

**Question 1: Are all Licensing Support Network documents available electronically to the licensing proceeding parties and the public via NRC's ADAMS system?**

**Answer:**

No. Pursuant to the directive of the Licensing Board, there is a large quantity of information (approximately 8 terabytes) that is maintained by the Office of the Secretary and does not reside in ADAMS, the NRC's electronic document management system. This includes the documentary material that the various parties, other than the NRC staff, have made available on the Licensing Support Network (LSN). Public information that the staff made available on the LSN is already available through ADAMS.

**The Honorable Robert E. Latta**

**Question 2:** Is it true that the licensing proceeding could resume without activation of the Licensing Support Network and be conducted “as a large paper case” as indicated by an NRC attorney in May 12, 2012, oral argument for the Aiken County case?

**Answer:**

This question raises an issue that is currently before the Commission in its adjudicatory capacity. Therefore, it would be inappropriate for me to comment on this matter.

**The Honorable Robert E. Latta**

**Question 3: You testified that the Licensing Support Network “would have to be reconstituted as part of moving forward.” Does this mean the Commission has made a decision in regard to “Nye County’s Motion for Lifting of Suspension of Yucca Mountain Licensing Proceeding, Scheduling of Immediate Case Management Conference, and Issuance of Related Administration Orders” filed with the Atomic Safety and Licensing Board’s Construction Advisory Board on August 23, 2013?**

**Answer:**

No, the Commission has not made a decision on Nye County’s motion. We are currently reviewing Nye County’s motion, as well as the comments submitted by the proceeding participants and the NRC Staff on September 30, and pertinent budget information gathered by the NRC Staff, to determine the path forward in the licensing process.

**The Honorable Greg Harper**

**Question 1: Does your Sept. 9, 2013, decision represent final agency action in response to “Nye County’s Motion for Recusal/Disqualification of NRC Commissioner Allison M. Macfarlane and Point and Authorities in Support of Motion” date August 23, 2013?**

**Answer:**

I carefully reviewed Nye County’s Motion for Recusal/Disqualification and denied it. I do not intend to revisit the matter. Therefore, it is the last action to be taken on the motion. However, for purposes of review under the Nuclear Waste Policy Act, there is reason to doubt that the decision represents a “final decision or action.” Nye County sought review of the Chairman’s decision both as a petition for review and as a petition for a writ of mandamus (as well as a request for a preliminary injunction) before the D.C. Circuit. On October 22, 2013, the court issued an order denying Nye County’s requests for both mandamus and injunctive relief. The Court’s order contemplates additional proceedings on the petition for review, but there is reason to doubt that the recusal decision is properly reviewable under the NWPA at this stage of the proceeding.

**The Honorable Greg Harper**

**Question 2: Have you reviewed the NRC Inspector General's June 6, 2011 report "NRC Chairman's Unilateral Decision to Terminate NRC's Review of DOE Yucca Mountain Repository License Application (OIG Case No. 11-05)"?**

**Answer:**

No, as I testified on September 10, 2013, I have not read the NRC Inspector General's June 6, 2011 report.

**The Honorable Greg Harper**

**Question 3: Have you reviewed Angela Coggins' current role in the Office of the General Counsel? If so, please explain what ability she would have in that role to influence actions related to the Yucca Mountain license review. Please describe any actions you plan to take to mitigate how this situation creates the appearance that you are unable to be impartial.**

**Answer:**

It is not appropriate for me to discuss in a public forum internal personnel matters involving career NRC staff. The NRC follows Office of Government Ethics requirements and guidance on conflict of interest matters. Career NRC staff assigned to Commission offices routinely return to staff offices in areas of their expertise.

**The Honorable John D. Dingell**

**Question 1:** According to the recent ruling by the D.C. Circuit Court and testimony you've given to this Subcommittee, the NRC has approximately \$11 million of funding for the licensing review process. Since you last testified before this Subcommittee in February, has the NRC spent any of those funds? Please clarify how much and how those funds were spent.

**Answer:**

As of September 30, 2013, approximately \$52,000 has been expended from the Nuclear Waste Fund. The expenditure is associated with NRC staff labor hours needed to implement the court's order.

**The Honorable John D. Dingell**

**Question 2:** I understand the NRC has an open comment period soliciting feedback on how the Commission should move forward in light of the D.C. Court's recent decision. One major step in the process is the completion of the Safety Evaluation Reports. One of the five volumes has already been completed and it is my understanding that technical evaluation reports were completed for three of the four remaining volumes.

- a. **Does the NRC have staff in place that is qualified to take these technical evaluations and complete the safety evaluations with the appropriate recommendations?**

**Answer:**

The NRC and its principal contractor, the Center for Nuclear Waste Regulatory Analyses (CNWRA), have qualified staff who could work on completing the Safety Evaluation Reports (SER), provided that the Commission chooses to direct the NRC staff to complete the SER. The NRC staff stated in its September 30, 2013, response to the Commission's August 30, 2013 order that these staff are currently working on other agency activities and would need to be reassigned in order to complete the SER. The staff further stated that it would need to replace staff that have retired or otherwise left the NRC or CNWRA. The Commission is reviewing the views submitted by the parties to the proceeding, as well those it received from NRC staff, and will decide the path forward in the licensing process.

- b. **If NRC were to only focus on the completion of the Safety Evaluation Reports, do you believe you have enough funds to complete work on the Reports?**

**Answer:**

As noted above in the response to question 2a, parties to the high-level waste adjudicatory proceeding, including the NRC staff, provided views about how to proceed with the licensing process. The NRC staff's views indicated that the staff currently estimates that the SER can likely be completed with available funds and a focused effort. Until the Commission completes its deliberations and determines a path forward in the licensing process, it is premature for me to provide views regarding potential SER completion costs.