

**WRITTEN TESTIMONY
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UNITED STATES NUCLEAR REGULATORY COMMISSION**

TO THE

**COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND AIR QUALITY
UNITED STATES HOUSE OF REPRESENTATIVES
CONCERNING THE PROPOSED HIGH-LEVEL WASTE REPOSITORY AT
YUCCA MOUNTAIN, NV**

Introduction

Mr. Chairman and Members of the Committee, I am honored to appear before you today to discuss the process the U.S. Nuclear Regulatory Commission (NRC) is using to review the license application submitted by the U.S. Department of Energy (DOE) for a high-level waste repository at Yucca Mountain, in Nevada. Because of the NRC's licensing and adjudicatory role in the national repository program, the NRC takes no position at this time on whether a permanent geologic repository can be built or operated safely at Yucca Mountain. That remains to be determined after our review of DOE's application. I want to assure you, Mr. Chairman, that we will base our decision whether to authorize construction of a repository on NRC's comprehensive and independent safety review, and on consideration of the results of a full and impartial adjudicatory hearing.

NRC's High-Level Waste Regulatory Role

The NRC developed and maintains its high-level waste regulatory program, consistent with its responsibilities under the Nuclear Waste Policy Act of 1982, as amended (NWPA), and the Energy Policy Act of 1992. This legislation specified an integrated approach and a long-range plan for safe storage, transport, and disposal of spent nuclear fuel and high-level waste. It prescribes the respective roles and responsibilities of the NRC, the DOE and the U.S.

Environmental Protection Agency (EPA) in the nation's High-Level Waste program. The Congress assigned NRC the regulatory authority to issue technical criteria to be used in judging an application and, ultimately, to determine whether to authorize construction of a geologic repository at Yucca Mountain after evaluating whether a DOE license application complies with applicable standards and regulations. If NRC approves construction of the repository and if DOE builds it, DOE would need to seek and ultimately receive approval from NRC in order to receive radioactive waste.

NRC's Receipt of DOE's License Application

NRC received DOE's application for the proposed repository at Yucca Mountain on June 3, 2008. On June 19-20, 2008, NRC met publicly with DOE. At this public meeting, DOE staff members presented the application and responded to questions from the NRC staff, Affected Units of Local Government, the State of Nevada, and the public about the organization of the application and its supporting documents.

NRC Must Decide Whether To Accept DOE's Application For Review

Before NRC staff could begin its full safety review, however, we must first decide if we can accept DOE's application for review. NRC's review process is depicted in Exhibit 1. NRC will decide whether the application contains the information required by the regulations and whether that information is sufficient for the staff to commence a detailed technical review. We must also decide whether to adopt DOE's Environmental Impact Statement (EIS) as supplemented. If the NRC staff finds that the application does not pass this initial acceptance review, which may take up to 90 days from receipt, we would return the application to DOE. If, on the other hand, the NRC staff finds that we are able to accept the application for review, we would docket the application, begin our formal safety review, and publish a Notice of Docketing in the *Federal Register*. At that time, the NRC staff would decide whether to: a) adopt the EIS,

b) adopt the EIS in part, and require further supplementation, or c) not adopt the EIS without further supplementation. A Notice of Hearing would also offer interested persons the opportunity to file petitions to intervene and request a hearing.

NRC's Evaluation of DOE's License Application

Should the DOE application be docketed, the NRC staff is qualified and prepared to conduct a detailed, independent technical review of the application. Supporting NRC in this effort is NRC's conflict-of-interest free, federally-funded research and development center at Southwest Research Institute, the Center for Nuclear Waste Regulatory Analyses. In our review, the NRC staff would examine the license application to determine if DOE has shown that the proposed repository would protect people and the environment, in compliance with NRC's requirements. As part of this examination, and, if necessary, the NRC staff would require DOE to provide additional information. The NRC staff also has the tools, expertise, and ability to perform its own independent confirmatory analyses, as needed. Once the NRC staff completes its comprehensive review, we would document the conclusions in a Safety Evaluation Report (SER).

The NRC would, as noted previously, provide the opportunity for public hearings on DOE's application that would follow well-established rules and procedures. More than 3.6 million documents related to the hearing have already been made available to the potential parties and the public via the NRC's Licensing Support Network. The decisions will be impartial and based on a record of evidence. NRC would decide whether to authorize construction of the proposed repository by objectively reviewing information submitted, by making decisions on contested matters based on the record before it, and by maintaining an open, public adjudicatory process.

As the applicant, DOE would bear the burden of proving its safety and licensing case before the Atomic Safety and Licensing Board during any hearing. The Atomic Safety and

Licensing Board serves as the independent adjudicatory arm of the NRC. Parties may seek review of the Board's decisions from the Commission. The NRC staff would present its own independent views and opinions in support of its technical analyses and SER insofar as those views and opinions bear on the issues placed in controversy in any hearing. This ensures the Atomic Safety and Licensing Board and the Commission would have the benefit of the NRC staff's technical and regulatory expertise in their decision making processes.

Consistent with NWPA Section 114(d), the NRC anticipates that it will reach a decision on whether to authorize construction of a repository within 3 years of docketing the application with the possibility of an additional 12 months to complete the review. This schedule is premised on Congress providing sufficient appropriations from the Nuclear Waste Fund for NRC to conduct its review.

NRC Is Prepared To Implement Final EPA Standards for Yucca Mountain

Under the NWPA, NRC was also directed to establish safety and licensing regulations consistent with standards for Yucca Mountain set by EPA. EPA standards and conforming NRC regulations for Yucca Mountain were published in 2001. Both were challenged in court, and, in 2004, both were upheld on all but one issue: the EPA's specification and NRC's adoption of a 10,000-year compliance period. In 2005, EPA proposed additional standards that would apply for a million years. NRC stands ready to conform our regulations to final EPA standards when they are published.

Without these final additional EPA standards, the NRC staff believes that it could begin to review portions of the DOE license application, assuming that we docket it. However, the Commission has before it a petition from the State of Nevada to reject DOE's application on several grounds, including the absence of EPA's final standards. In any event, we could not reach any decision whether to deny or grant DOE authorization to construct a repository without these standards in place.

Summary

The DOE bears the responsibility for demonstrating that regulatory and licensing requirements are met to protect public health and safety and the environment. If DOE's application is accepted by the NRC for review, the NRC, independently, must then assess and find that such a demonstration has been made before we could decide whether or not to authorize construction of the proposed geologic repository. NRC's ability to reach this important decision in a timely manner depends on: a) EPA's issuance of final environmental standards to which NRC can conform its regulations, b) timely and high quality response from DOE to potential NRC requests for additional information, and c) sufficient resources for the NRC to conduct its technical review and carry out the public hearing process. I can assure you that the NRC is committed to conducting a full and impartial review of the DOE application.

I want to thank you for the opportunity to discuss NRC's licensing review process for the proposed repository. I look forward to answering any questions you may have.