

Date: 3 February 2022

To: consentbasedsiting@hq.doe.gov

From: David G. Victor, Dan Stetson, Martha McNicholas

Subject: RFI – Consent-Based Siting and Federal Interim Storage

INTRODUCTION AND CONTACT INFORMATION

The volunteer leadership of the San Onofre Nuclear Generating Station (SONGS) Community Engagement Panel (CEP) respectfully submits this response to the Department of Energy (DOE) Request for Information (RFI) on using a consent-based siting process to identify federal consolidated interim storage (CIS) facilities for commercial spent nuclear fuel (SNF).

In general, all CEP members desire responsible approaches to the prompt removal of spent fuel from SONGS. The CEP is not a decision-making body but rather serves as a conduit of information among the communities surrounding SONGS and the retired plant's co-owners including Southern California Edison (SCE). This response sets forth perspectives on spent fuel disposition from the CEP leadership—Chair David Victor, Vice Chair Dan Stetson, and Secretary Martha McNicholas—and is informed by the diverse views of CEP members on the matter.

Organization: SONGS Community Engagement Panel

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BACKGROUND

The CEP was created in tandem with the retirement of the San Onofre Nuclear Generating Station (SONGS) to provide a two-way conduit of information between the operator of the plant (SCE and the other SONGS co-owners) and the communities affected by the closure. Its 18 volunteer members span local governments, tribal nations, environmental groups, organized labor, business, local schools, academia, emergency responders, Marine Corps Base Camp Pendleton, and the neighboring state park. Importantly, more than half of the CEP members are local elected officials who represent neighboring cities and counties along the Southern California coastline. As elected officials they address, on a regular basis, the issues at stake in the DOE RFI—in particular, matters of consent and informed local choice.

SONGS was permanently retired in 2013 and the CEP was formed in early 2014. The group has convened quarterly public meetings consistently over time, addressing various matters of interest to local communities. Two topics have emerged as keen areas of interest and account for most of the work of the CEP: the safe onsite storage of spent fuel and the prompt relocation of SONGS spent fuel to a licensed offsite facility. On the matter of relocation of SONGS spent fuel the CEP has conducted surveys of its members¹, held extensive public discussions² about a responsible strategy for relocating the spent fuel, articulated what we have learned in a series of strategy documents³, testified at Congressional hearings⁴ and before the DOE⁵, and engaged the relevant state⁶ and local officials⁷.

The federal spent fuel management program was the focus of a 10 February 2022 virtual meeting of the CEP, at which the guest speaker was DOE's Dr. Kimberly Petry, Acting Deputy Assistant Secretary for Spent Fuel and Waste Disposition. The CEP previously convened meetings with expert contributors to the Blue Ribbon Commission Report as well as advisors who supported development of SCE's Strategic Plan for the Relocation of SONGS Spent Nuclear Fuel to an Offsite Storage Facility or a Repository. We have had extensive discussions with the communities that might host consolidated interim storage—including hosting a public meeting at which one of those communities presented its plans for local interim storage in New Mexico—and received updates on a possible permanent repository and also alternative technologies (e.g., deep borehole).

RESPONSE

The CEP leadership is highly encouraged by the DOE's work to restart the federal spent fuel management program, starting with a consent-based approach to siting federal consolidated interim storage facilities for spent fuel from SONGS and other nuclear sites. Following are responses to at least some questions in the three topical areas set forth in the RFI.

1. **Area 1: Consent-Based Siting Process** (*responsive to questions 1, 2, and 3*)

The CEP leadership strongly supports using best practices as it relates to spent fuel disposition, and that starts with what we view as the international best practice of using consent for siting spent fuel facilities. Other countries including Finland, Sweden, and Canada have demonstrated true progress using a consent-based approach; the United States (US) would be well-served to follow a similar process, albeit tailored to our unique socio-political environment. The CEP has discussed, repeatedly, the need to find a solution for spent fuel to alleviate the \$2 million cost per day for onsite storage, reduce the perceived risk to current host communities, and allow for communities that want to host spent fuel gain the benefits that come from that investment and local activity. We are encouraged to see the DOE doing just that—adopting a consent-based process from the outset. Equally important is the DOE's attention to social equity and environmental justice. DOE should pay

¹ Reference attachment A: Survey of CEP on spent fuel 21 July 2015

² Reference attachment B: Letter to CEP on spent fuel update 25 Aug 2015

³ Reference attachment C: CIS advocacy strategy 3 Oct 2016

⁴ Reference attachment D: Victor testimony House Oversight 26 Sept 2017 and attachment E: Stetson testimony Congressional field hearing with appendix 7 June 2019

⁵ Reference attachment F: Stetson testimony DOE consent-based siting 26 April 2016

⁶ Reference attachment G: Letter from CEP to CEC 12 Dec 2016

⁷ Reference attachment H: Victor letter to San Diego Board of Supervisors 11 Sept 2015

particular attention to the communication needs of a broad range of interested communities, tribal nations, and states.

The CEP leadership believes that long-term success must begin with building trust among the DOE and potential host communities for interim storage facilities. It is important for the DOE to demonstrate that it is acting in the best interests of such potential host communities, rather than imposing the spent fuel on an unwilling or disadvantaged community. We recommend that the DOE staff work toward forging a true partnership with interested communities.

DOE staff will do well to actively solicit input from potentially interested communities and work to create an environment in which it is easy for communities to step forward, express some level of interest, and get engaged in the process. DOE should seek input from the full range of stakeholders, including those who have and will bear the costs to site, design, construct, and operate federal consolidated interim storage facilities.

Vitally important to consent is allowing interested communities to define consent, not a third party. Such communities should play the central role in deciding how interest and consent are measured and how to weight a variety of voices. What matters to one community may be very different to another community. Benefits and opportunities for interested communities should be driven by those communities, with the DOE exercising flexibility to consider a wide range of options. DOE should invite local communities to articulate what “consent” means to them. Obviously we must be attentive to the processes by which consent is obtained, but the first word in that process should come from communities themselves—and they should not just declare that consent has been obtained but also the processes by which that was obtained.

The general approach should be one-size-fits-one, not one-size-fits-all.

Public participation should be meaningful and allowed to evolve over time, while also recognizing that universal consent may be impractical. Of key importance should be those stakeholders most closely associated with potential sites. Initial steps should focus on learning more about what it means to serve as a host for this type of facility, not a binary “yes” or “no” commitment at this early stage. Through the process, should potentially interested communities decide to opt out of consideration—for whatever reason—that ought to be viewed as a reasonable outcome that permits the DOE to focus its ongoing efforts with other communities that remain interested in learning more about the prospects of hosting a spent fuel storage facility.

These activities by DOE should be pursued with an eye to their broader impact on the process of making informed consent a reality. DOE is running its publicly funded program that might support one or more local interim storage facilities; in tandem, there are private efforts aimed at the same goal. The more sites arrived at through legitimate processes the better, and the DOE effort should help establish the right norms for other efforts that might have minimal or no DOE engagement.

2. Area 2: Removing Barriers to Meaningful Participation *(responsive to questions 1 and 2)*

The CEP leadership is encouraged to hear that the DOE is contemplating a funding opportunity for interested communities. The ultimate goal should be informed consent.

The pursuit of informed consent logically may require resources that many interested communities, at present, do not possess. Those include regulatory and legal expertise and varied technical expertise. In some cases, communities may be unaware of the opportunities for hosting spent fuel because key documents have not been translated into locally used languages or made available on a platform or in a media that they are familiar with and can access. And where communities are engaged it is of paramount importance to look closely at whether and how the community has engaged voices that are often not well heard or articulated—a mission that overlaps with the objectives of the environmental justice movement. At our meetings, we have heard all of these concerns raised.

3. **Area 3: Interim Storage as Part of a Waste Management System** *(responsive to questions 3 and 4)*

First, the CEP leadership recognizes that DOE staff must work within the confines of authorizing legislation and Congressional appropriations. And, again, we are encouraged by the DOE's new work on interim storage. At the same time, it is vital to expand the program beyond interim storage to other elements of an integrated spent fuel management program. That requires amendments to existing law—the Nuclear Waste Policy Act (NWPA), as amended in 1987—in order to incorporate international best practices and the reality of the current landscape, some 35 years later.

While the DOE may not be positioned to advocate for changes to the NWPA, there are other third-party entities and coalitions that have the interest and the capacity to collaborate on needed changes to federal law. It is important to determine what needs to be amended and when it is needed. For now, in our view, such amendments should address:

- a. Modifying the linkage between interim storage and permanent disposal, such that construction on an interim facility may start in the near term, long before construction authorization for a permanent geologic repository (as required by the NWPA). This modification is not a license for the nation to be reckless about the need for long term disposal but a reflection of the realities today after decades of failure to advance to conclusion one or more permanent disposal facilities.
- b. Authorizing DOE to begin work—perhaps a similar consent-based siting effort—on a repository other than, or in addition to, Yucca Mountain (the single repository authorized by the NWPA).
- c. Formation of an autonomous federal entity with reliable funding that can enjoy continuity across numerous Administrations and Congresses, which can assume full responsibility for the spent fuel program from the DOE (here again, international best practice tells us that such an autonomous structure provides continuity and thereby bolsters confidence).
- d. Inclusion of local government in ongoing risk assessment and emergency preparedness activities in support of interim storage and permanent disposal facilities.

Another issue the DOE should consider in the context of an integrated spent fuel management program is transportation. The CEP looked at transportation planning issues in some depth around 2015-2016. What we learned is that local planning and the engagement of first responders is essential to a viable transportation program requires years of lead time. The DOE should differentiate processes for seeking consent from communities along transportation routes from a consent-based process for host communities.

Considerable experience exists with respect to the provision of specialized training for state, tribal, and local emergency responders to prepare them to support a potential transportation accident with a spent fuel shipment. Training such trusted emergency responders is not only essential but will add strong credibility to the effort. The CEP membership includes officials with direct responsibility for these kinds of local and regional planning activities. DOE should consider whether there are opportunities to expand training beyond currently employed emergency responders, so as to open doors for new employment opportunities in these communities.

Finally, DOE should pay particular attention to the unique needs of decommissioned or decommissioning sites such as SONGS. We are aware the NWPA required the DOE to begin removing spent fuel from nuclear sites in 1998. However, spent fuel remains stored onsite at nuclear sites across the country and is stranded at retired plants including SONGS. The standard contract that governs fuel removal has flexibility regarding the ordering of fuel shipments, and putting a clearer priority on stranded fuel would help make shipping more efficient and also advance the decommissioning of such plants; the land can't be restored for more productive uses until the spent fuel is removed. The CEP leadership encourages the DOE staff to prioritize stranded spent fuel for removal and hold as a second priority the process of removing spent fuel from sites with operating reactors that continue to produce spent fuel.

Thank you for considering our response.

All best regards,

David Victor, CEP Chair

Dan Stetson, CEP Vice Chair

Martha McNicholas, CEP Secretary

Attachments

Survey of CEP on spent fuel 21 July 2015

Letter to CEP on spent fuel update 25 Aug 2015

CIS advocacy strategy 3 Oct 2016

Victor testimony House Oversight 26 Sept 2017

Stetson testimony Congressional field hearing with appendix 7 June 2019

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