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January 27, 2017

Via Email (PrivateISF@hq.doe.gov)

Mr. Andrew Griffith
Deputy Assistant Secretary, Spent Fuel and Waste Disposition
U.S. Department of Energy
Office of Nuclear Energy
1000 Independence Ave., SW
Washington D.C. 20585

Subject: Nuclear Energy Institute's Response to DOE's RFI on Private Initiatives (PIs) to Develop Consolidated SNF Storage Facilities

Dear Deputy Assistant Secretary Griffith:

On behalf of the commercial nuclear industry, the Nuclear Energy Institute, Inc. (NEI)¹ is pleased to comment on the U.S. Department of Energy's Request for Information (RFI) on Private Initiatives (PIs) to Develop Consolidated Interim Storage Facilities (81 Fed. Reg. 74,779 (Oct. 27, 2016)). The Department states the purpose of the RFI is to gather information "regarding private initiatives for making consolidated interim storage facility services available to DOE for spent nuclear fuel storage, whether a pilot-scale or large-scale facility." In its RFI, DOE acknowledges that "PIs represent a potentially promising alternative that can be used either solely or in addition to federal facilities for consolidated interim storage."

NEI agrees with the Department of Energy's characterization that PIs will afford the Department a promising alternative to government-operated facilities and further NEI believes PIs would complement the Department's nuclear waste management system and could provide financial savings for the government. NEI encourages DOE to leverage the significant groundwork that projects underway—such as the Waste Control Specialists Consolidated Interim Storage Facility Project and Holtec International Project—have achieved in their respective communities and states. The Department should not,

¹ NEI is responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory, financial, technical and legislative issues. NEI members include all companies licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major involved in the nuclear energy industry.

NEI Comments on DOE's RFI on PIs

January 27, 2017

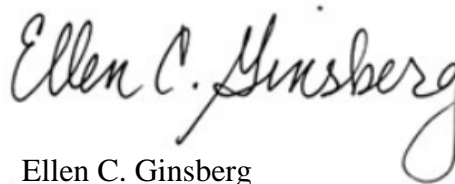
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however, graft a new consent-based siting process onto projects already underway. Doing so would be particularly unfair and provide no measureable benefit. Each state and locality will have a process that is their own and often have special relationships with the PIs in their communities. DOE should focus its efforts on conducting a fair, open, and transparent request for proposal process.

We believe that the Department's efforts to engage with PIs are more likely to attract public and stakeholders support if in parallel, DOE satisfies its legal obligations set forth in the Nuclear Waste Policy Act. NEI supports development of a consolidated interim storage facility, but we also emphasize DOE's continuing responsibility to resolve this long-standing issue. Nuclear utilities and their customers, as well as other stakeholders deserve action.

We thank the Department in advance for its consideration of NEI's comments.

Sincerely,

A handwritten signature in black ink that reads "Ellen C. Ginsberg". The signature is written in a cursive style with a large, looping "g" at the end.

Ellen C. Ginsberg

Attachment

cc: Dr. Grace Bochenek, Interim Acting Secretary, U.S. Department of Energy
Eric J. Fygi, Esq., Deputy General Counsel, U.S. Department of Energy
Margaret Doane, Esq., General Counsel, U.S. Nuclear Regulatory Commission

NEI RESPONSE TO DOE REQUEST FOR INFORMATION ON PRIVATE INITIATIVES TO DEVELOP CONSOLIDATED INTERIM STORAGE FACILITIES

On behalf of the commercial nuclear industry, the Nuclear Energy Institute, Inc. (NEI)¹ is pleased to comment on the U.S. Department of Energy's "Request for Information (RFI) on Private Initiatives to Develop Consolidated Interim Storage Facilities." NEI's responses to the questions posed by the Department of Energy are set forth below.

RFI Question 1: What key factors should be considered to ensure that Private Initiatives (PIs), as part of the overall integrated nuclear waste management system, would provide a workable solution for interim storage of spent nuclear fuel and high-level waste?

Fundamentally, the PI must be able to obtain a license from the NRC, demonstrate it can maintain conformance with the license, and satisfy all other applicable federal, state, and local laws. DOE's responsibility to create an integrated nuclear waste management system requires that it develop certain infrastructure (e.g., transportation infrastructure to move casks to the PI, including hardware, routing, and training) and address legacy issues (e.g., related to the standard contract).

As described in the Department's RFI, DOE acknowledges that PIs are in various stages of development. Current projects include Waste Control Specialists (WCS) Consolidated Interim Storage Facility Project in Andrew's County, Texas and the Holtec International Project (Holtec) in coordination with the Eddy-Lea Energy Alliance in Southeastern New Mexico. These PI projects would complement the Department's nuclear waste management system and can potentially provide financial savings for the government. As such, the Department should expand its effort to work with these companies to maximize progress on development of a consolidated interim storage facility. More specifically, the Department should engage WCS and Holtec as DOE develops its request for proposal.

RFI Question 2: How could a PI benefit:

a. the local community and state or Tribe in which an ISF is sited?

A private consolidated interim storage facility will bring economic growth to the community it serves. Potential benefits include high-skilled jobs, an increase in the tax base, the creation of small businesses, and community investment. However, potential benefits are dependent on the agreements between the state, local community, and the PI. The Department should not intervene in the underlying relationships or seek to approve the agreements negotiated between these entities. Further, DOE should not require the PI to offer particular benefits to the local communities as part of the request for proposal.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory, financial, technical and legislative issues. NEI members include all companies licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel cycle facilities, material licensees, and other organizations and individuals involved in the nuclear energy industry.

b. neighboring communities?

Likewise with neighboring communities, any indirect benefit received will depend on any agreements between the PI and neighboring communities.

RFI Question 3: What type of involvement if any should the Department or other federal agency consider having with the PI and the community regarding organizational, structural, and contractual frameworks and why?

As previously stated, NEI believes the Department should not be involved in establishing relationships or negotiating agreements between the community, state, and the PI. Given that there are two PIs projects underway, the Department should not intercede with those communities or impose a new consent-based siting process affecting those projects. As we have noted in previous comments, that would be particularly unfair and provide no measureable benefit.²

Since DOE will be the PI's customer, DOE will negotiate the terms of the storage agreement with the PI. DOE must not, however, use those negotiations to dictate how the PI should be organized or structured, nor how the PI should interact with the state, host community, or neighboring communities.

The Department of Energy should not define roles for other agencies. Each federal agency has its own statutory authority and regulatory provisions and procedures that define their roles and responsibilities. For example, the NRC as the licensing entity has statutory and regulatory responsibilities that will guide its participation in licensing a PI to construct and operate a consolidated interim storage facility.³

DOE also should work with utilities to address standard contract mechanisms, including spent nuclear fuel acceptance rates, allocations, and payment. Doing so is important to the ultimate success of private centralized interim storage and should be considered as this process proceeds.

RFI Question 4: What are the benefits and drawbacks of a PI, compared to a federally financed capital project resulting in a government-owned contractor-operated (GOCO) interim storage facility?

A PI can offer several beneficial features compared to a GOCO. A PI is more likely to be independent from and unconstrained by the political environment, have greater incentive to meet schedules, and be motivated to contain costs. For these reasons, PIs can more efficiently develop a facility as illustrated by the fact that Holtec and WCS have both made significant progress. WCS has submitted a license application for NRC review, and both have community support and a site selected.

² See generally *NEI Response to Department of Energy's Invitation for Public Comment to Inform the Design of a Consent-Based Siting Process for Nuclear Waste Storage and Disposal Facilities*, (80 Fed. Reg. 79,872 (Dec. 23, 2015)), submitted July 29, 2016.

³ *Id.* at 6 n.10.

RFI Question 5: What assurances to the Government do you think would be appropriate, to ensure that SNF stored at a private ISF, would be managed effectively so as to contain costs to the Government?

Used fuel stored at a PI facility can be managed safely and securely in accordance with an NRC license. Regardless of the PI or location chosen, NEI believes the necessary assurances required from all parties can be formalized in the contract. The contract will set out rights and responsibilities, cost, and schedule terms, and other necessary features for the facility and associated program. Compliance with the terms of the contract should ensure that the project will be well-managed and will contain costs.

RFI Question 6: What possibilities are there with respect to business models for a PI, and what are the benefits and disadvantages of those models?

The Department of Energy should not require the PI to implement any specific business model. As each model has relative benefits and disadvantages, there may be several that can serve the intended purpose. As a customer of the PI, the Department can outline in the request for proposal the costs and services needed, and thereafter can evaluate whether the features of the business model and plan for operation will satisfy the cost and performance criteria.

RFI Question 7: How could a PI manage liabilities that might arise during the storage period?

It is unclear to what liabilities the Department of Energy refers. The NRC will license the facility, and the industry believes business issues and other liabilities may be addressed through negotiations with the PI.

RFI Question 8: What state/local/tribal authorizations/approvals would be needed?

Authorizations, if necessary, from the state, local, or tribal communities are likely to vary from location to location. The Department should not require any new approval process with or authorization from a state, local, or tribal community as a term of the contract if there has already been agreement to host a facility.

RFI Question 9: How can the Government continue to explore or implement the PI concept in a fair, open and transparent manner going forward?

The government should let each PI and the community in which they seek to operate create and implement a workable process. The government should focus its resources on conducting a fair, transparent, and open request for proposal process and contract development process.⁴ As DOE continues to explore the PI concept, it is important that it develop mechanisms needed for an operational PI system (e.g., developing appropriate transportation infrastructure).

⁴ See *id.* at 1-10.

RFI Question 10: What, if any, supporting agreements might be expected between the Government and the host state/tribe/local community associated with a PI?

The PI, state, and local communities will take the lead on executing any necessary agreements. Because each community is different, the answer to this question will involve a case specific determination. As previously stated, the Department of Energy will be the customer and should focus its resources on issuing an appropriate request for proposal and contract.

RFI Question 11: What other considerations should be taken into account?

We believe that the Department's efforts to engage the PIs are more likely to attract public and stakeholder support if, in parallel, with this effort, DOE meets its legal obligation as established by the Nuclear Waste Policy Act (NWPA). Action to move forward with PIs does not and cannot substitute for compliance with the NWPA. NEI supports development of a consolidated interim storage facility, but would emphasize DOE's continuing responsibility to nuclear utilities and their customers, as well as other stakeholders as prescribed in the NWPA.

RFI Question 12: Are there any alternative approaches to developing non-federally-owned facilities that might be proposed (e.g. how projects would be financed, anticipated regulatory and legal issues, etc.). If so, what are they, are there proposed solution, and how would the above questions be answered with respect to such approaches?

There are likely to be many alternative approaches to developing a non-federal facility. PIs should be encouraged to propose whatever approach they believe will best serve the Department's objectives with respect to funding, construction, and operation of a consolidated interim waste storage facility.