

## Murray Slams Yucca Mountain Withdrawal As 'Irresponsible'

BY GEORGE LOBSENZ

Using tough words that signal a growing political mess for the Obama administration, a senior Senate Democrat told Energy Secretary Steven Chu Thursday that it was "irresponsible" for his agency to seek to permanently withdraw its application to the Nuclear Regulatory Commission for a license to build the proposed Yucca Mountain nuclear waste repository in Nevada.

The blistering criticism from a "very dismayed" Sen. Patty Murray (Wash.), whose home state hosts DOE's heavily contaminated Hanford nuclear site, came only hours after the department late Wednesday filed its withdrawal request with the Atomic Safety and Licensing Board (ASLB), a panel of NRC administrative law judges that has been considering DOE's application since 2008.

Murray's remarks, delivered face-to-face with Chu at a hearing called by the Senate energy and water appropriations subcommittee on DOE's proposed 2011 budget, were not surprising given that her state filed with NRC Wednesday seeking to intervene in the case against DOE's request.

Consistent with the arguments made in Washington's petition to NRC, Murray said DOE's action would leave her state indefinitely holding the bag on huge quantities of high-level nuclear waste at Hanford that is supposed to go to Yucca Mountain.

But while Murray—who ranks fourth in the Senate Democratic leadership—generally has been a staunch ally of the Obama administration on many issues, she pulled no punches in telling Chu that he had failed to make a convincing scientific case—or any discernible case—in arguing that Yucca Mountain ought to be abandoned because there are better, unspecified alternatives for disposing of the nation's nuclear waste.

"I've read your statement [on the Yucca Mountain withdrawal]," she told Chu. "I have to say there is really something missing. What seems to be missing is the why."

Chu responded that the problems with Yucca were due to "an unfolding of issues" over many years of evaluation of the site. Among other things, he cited evidence of water seepage through Yucca, which he said would require expensive titanium shielding on waste canisters to prevent long-term groundwater contamination. Chu also said the site was not geologically stable, in contrast to other potential sites, such as underground salt domes.

Given such issues, Chu said of the Yucca site: "You begin to wonder if you are pouring good money after bad."

Further, he said in convening a blue-ribbon panel to look at alternatives to Yucca, the administration has a reasonable "path forward" toward meeting its responsibility to take spent nuclear fuel from utilities and radioactive waste from DOE sites now threatening nearby communities.

"The Department of Energy has a legal obligation to take that material, and we take that responsibility very seriously," he said.

However, Murray said that by turning its back on Yucca without any other disposal alternative, DOE was shirking its moral obligation to clean up its legacy waste sites.

She also pointedly asked the secretary whether DOE had consulted on the Yucca issue with affected communities near Hanford or other DOE nuclear sites storing large amounts of radioactive waste left over from past nuclear weapons production.

"No, we didn't, but we take our responsibility seriously," he said.

But Murray did not appear to buy it.

"Without a repository, these sites and communities...have really been left in limbo," she said. "This is really disturbing for me"

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"I just think it's irresponsible to discontinue the Yucca Mountain program altogether."

Murray's strong words indicate the administration will face increasingly loud bipartisan opposition to its Yucca policy in Congress, where virtually all Republicans have condemned the DOE's decision to junk the repository project.

While Obama has pledged to bring scientific integrity to all government decisions, many critics say Obama's action on Yucca is an obvious political favor to Senate Majority Leader Harry Reid (D-Nev.), who is in a tough re-election fight and who Wednesday issued a statement taking substantial credit for the death of the project.

As for its withdrawal request, DOE faces a long, tough road at NRC that is likely to last months—and could extend for years if it goes to the courts.

In addition to Washington officials, South Carolina, which hosts DOE's heavily contaminated Savannah River Site, and the Nuclear Energy Institute, which represents nuclear utilities, will oppose the department's request.

A major wild card in the proceedings is NRC staff, which likely will file on its view of DOE's responsibilities under the Nuclear Waste Policy Act (NWPA), which required the department to file the Yucca application if it found Yucca was a suitable site for long-term nuclear waste disposal. The Bush administration found Yucca was suitable and Congress effectively ratified that decision, leading to the filing of the construction application.

However, DOE in its withdrawal petition argues that while the NWPA clearly required DOE to file an application, the law is silent on whether the department has authority to withdraw it. And DOE said that in the absence of statutory language on that issue, it has discretion to withdraw an application for a project it feels is not in the public interest.

But Washington in its brief to NRC said that was not the case given that Congress had clearly set a national policy to establish a repository at Yucca Mountain.

"Through the NWPA, Congress has made the policy choice for the nation that deep geologic disposal is the appropriate method for disposing of high-level radioactive waste and spent nuclear fuel," the state said "In 2002, Congress made a further policy choice for the nation by designating Yucca Mountain as the nation's repository site for such disposal."

The state also said the clear language of the NWPA left DOE with no discretion to permanently withdraw the Yucca application.

"Under Section 114(b) of the NWPA, Congress has commanded that the [DOE] secretary ' *shall submit* to the commission an application for a construction authorization for a repository at [Yucca Mountain]'.... Section 114(d) further provides that '[t]he commission *shall consider* an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications' and ' *shall issue a final decision approving or disapproving the issuance of a construction authorization* within a prescribed timeframe," the state said.

"Taken together, these provisions of Section 114 commit both DOE and NRC to follow through with the construction authorization application process until a decision on the merits is reached by NRC. The specific commands of both provisions leave no room for agency discretion on the matter. As a result, DOE is without authority to withdraw its application with prejudice, and the NRC is without discretion to grant such withdrawal."