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Nuclear Energy Practice

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Strategic Keys to Licensing Uranium Recovery Facilities

Earlier this year, the Nuclear Regulatory Commission (“NRC”) held a Uranium Recovery Workshop at its headquarters in Rockville, Maryland. The purpose of the workshop was to provide a forum for the NRC staff to describe its licensing and regulatory programs. Importantly, in our view, the workshop highlighted the challenges facing the uranium industry in the coming years.

The uranium mining industry’s ability to capture the rising price of uranium and achieve commercially successful production hinges on the NRC’s ability to meet the aggressive licensing goals of the industry. The NRC will only be able to meet these goals if (1) applicants prepare comprehensive and organized applications, and (2) the NRC is able to provide a stable and predictable regulatory environment. These objectives, in turn, can only be realized if the agency has in place adequate resources, and applicants understand and assertively manage the licensing process, including efficient and timely conduct of any hearing.

Resources and Budgeting

The NRC expects to receive between seven and 14 applications for an In Situ Leach (“ISL”) and conventional uranium mills in the next two to three years. This level of activity far exceeds that anticipated by the agency as recently as two years ago. Although the NRC has recently attempted to ramp up its budget to meet the industry’s growing needs (*e.g.*, requesting more than a doubling of staff for FY 2008), years of declining interest in the domestic uranium industry have taken a toll. As a result, the NRC may be forced to prioritize its resources, perhaps reviewing only the most complete and highest-quality applications. Indeed, the NRC emphasized that it would review applications not necessarily in the order received, but in the order in which the NRC accepted applications for docketing. To this end, the NRC indicated that it would be conducting a 90-day “key” technical issue review instead of the typical 30-day “acceptance” review to reject applications that lack the requisite detail or technical information. This tollgate approach to the NRC’s licensing review only serves to emphasize the need for applicants to understand the NRC’s unique licensing processes.

NRC Licensing Process

Broadly speaking, a license application for an ISL or conventional uranium mine consists of two primary reviews: a safety review and an environmental review. The safety portion of the application should contain the technical and geotechnical information needed to support a determination that the project does not pose a risk to public health and safety, while the applicant’s environmental report will be used to support the agency’s review required by the National Environmental Policy Act (“NEPA”).

On the safety side, the NRC will review an application against its guidance documents, such as NUREG-1569, “Standard Review Plan for In Situ Leach Uranium Extraction License Applications.” The length (and cost) of the NRC’s review is driven by the number of Requests for Additional Information (“RAIs”) that the NRC must send to the applicant. In our view, the best way to optimize the NRC’s safety review is to submit a complete and high-quality application at the outset and endeavor to respond quickly to RAIs.

On the environmental side, the NRC has indicated that it intends to prepare a full Environmental Impact Statement (“EIS”) for both ISL and conventional uranium mills. The environmental review is likely to be the critical path for license issuance, with the agency predicting 18-24 months to prepare the EIS. However, the agency also cautioned that for ISL applications, at least one year of background water quality monitoring is needed to support a calculation of “background” for remediation purposes. We believe that the NRC should be able to prepare an EIS more quickly, though it will require discipline on the part of the NRC and an applicant. The NRC recently announced that it will be preparing a Generic Environmental Impact Statement for ISL mining, which should further streamline licensing reviews.

The biggest wildcard in the licensing process is the NRC’s public hearing process. Although the NRC will not publish a Notice of Opportunity to Request a Hearing for uranium recovery license applications, the agency will publish the receipt of such an application on its website. Potential intervenors (*e.g.*, local environmental or anti-nuclear groups) can request a hearing and submit proposed contentions alleging deficiencies in the application. If the NRC receives a request for a hearing, it will designate a presiding officer (*i.e.*, an independent “judicial body” comprised of either a single judge or a three-judge panel chosen from the NRC’s Atomic Safety and Licensing Board panel) to decide whether to grant a hearing. If contentions are admitted, a trial-like hearing will be held under the agency’s rules of practice in 10 C.F.R. Part 2, Subpart L. As the tortured history of the Hydro

Resources ISL licensing proceeding suggests, a hearing, if granted, can lead to considerable delay (and cost). As a result, every effort should be taken to reduce the risk of admitted contentions.

Strategic Keys to Success

To be successful — that is, to minimize the time and the cost of the NRC licensing process and to maximize the NRC resources available to review an application — ISL and conventional uranium mill applicants must consistently and effectively manage the NRC’s licensing process. To this end, we offer the following strategic keys:

- Develop a clear licensing schedule with the NRC prior to submission that includes specific milestones for key actions (*e.g.*, DEIS, RAIs, EIS, SER, etc.).
- Submit a complete and high-quality application.
- Avoid common pitfalls that have plagued prior uranium recovery license applications and licensing reviews.
- Anticipate and strongly confront petitions to intervene immediately to reduce the risk of a hearing.

Though the NRC may strive for a stable predictable process, in practice, predictability does not come easily.

Winston & Strawn’s Nuclear Regulatory Practice

Winston & Strawn’s nuclear regulatory practice has been engaged in virtually every aspect of nuclear regulation for 30 years. Our nuclear regulatory practice has the experience needed to achieve early success in the areas described above, paying dividends in both time and cost. Our attorneys include a former NRC commissioner and a hydrogeologist who has experience in ISL adjudication/litigation that is matched by only a few practitioners. In short, we offer strategic advice and counsel that can simplify the licensing process and help achieve the predictability that underlies commercial success.

If you would like to learn more about streamlining the NRC’s review of ISL or conventional uranium mill applications or if you simply want more information about the NRC’s public hearing processes, please contact one of the Winston & Strawn attorneys listed below:

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