Energy Communities Alliance
Local concerns. National impact.

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Office of Nuclear Energy
U.S. Department of Energy
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Attention: Alisa Trunzo

Sent Via Email: consentbasedsiting@hq.doe.gov

RE: Energy Communities Alliance Comments on Federal Register Notice – Request For Information: Consent-Based Siting and Federal Interim Storage

As the only association representing local elected officials in DOE's frontline communities currently serving as *de facto* interim storage sites for the government's legacy nuclear defense waste and spent nuclear fuel[1], as communities already hosting demonstrations of advanced nuclear technologies and the government's nuclear-related research, and as communities actively seeking to support future nuclear development, the Energy Communities Alliance (ECA) welcomes the opportunity to provide input on DOE's Request For Information on Consent-Based Siting and Federal Interim Storage.

Upon the release of DOE's Request for Information (RFI) in December 2021, ECA published "A New Path Forward for Nuclear Waste Disposal: DOE Releases RFI for Consent-Based Siting (attached). After reviewing the RFI in more depth we offer these additional comments:

[1] DOE INL is the interim storage site for spent nuclear fuel originally from the Three-Mile Island reactor site. INL site spent nuclear fuel storage installation is a horizontal concrete storage facility.

1. **ECA continues to support all DOE efforts to find a solution for communities storing nuclear high-level waste (HLW) and spent nuclear fuel (SNF)** – defense and commercial (herein referred to as "waste").

The release of the RFI is a positive step in the right direction and ECA supports and will work with DOE to develop a solution for addressing the Country's waste issues.

Some of that waste is stored safely in pools, dry cask storage, and cannisters in use beyond the timeframe originally designed, expected or previously negotiated with state and local governments. For communities hosting DOE's federal facilities, the absence of a disposition path for HLW stands in the way of completing the riskiest environmental cleanup in the Country and mitigating the risks to human health and the environment created by DOE in these communities. In some cases that waste serves as a barrier to site reuse as local governments work to ensure the economic health and growth of their communities.

2. **DOE must prioritize the management and disposal of DOE's HLW as part of any process to develop interim storage facilities – and a permanent geological repository.**

DOE must prioritize the movement of DOE's HLW and SNF from our communities. This is DOE's responsibility. Our frontline communities bear the brunt of the waste created by the development of nuclear weapons and government-sponsored nuclear research. The federal government has shipped to and stored waste in our communities and entered into binding legal agreements to move the HLW from our communities. DOE must demonstrate a commitment to meeting this legal obligation. After 75 years of supporting – and contributing to – the Country's national security mission, these communities cannot be given any impression that the most dangerous waste stored at the sites in their communities will not be addressed as DOE departs from current law and pursues a new path forward.

ECA has testified in the past that the absence of an interim storage facility or permanent geological could directly impact DOE's environmental cleanup mission. In the absence of a disposition path for defense HLW, it will likely be stored on site until a geological repository is available. This

could mean the Office of Environmental Management will need to use cleanup funding for new waste storage buildings rather than on actual cleanup and risk reduction.

ECA suggests as an alternative that the Department reconsider a defense-waste only repository.

3. **There is no one-size-fits-all consent-based siting agreement – there must be flexibility and it must be legally enforceable.**

ECA supports developing a step-wise process for siting interim storage facilities (and a permanent geological repository) based on trust between the parties, sound science, early and ongoing meaningful engagement with potential hosts considered as "partners," and with resources provided to ensure a potential host community can fully understand the risks and benefits of hosting a storage or disposal facility. **Enduring consent requires informed consent.**

However, there is additional information DOE can provide that is unlikely to change based on a specific site. DOE can continue to move forward, building on the momentum created by the RFI, by establishing new site selection data such as acceptable geologies, geography and proximity to population centers to guide interested parties and help them determine if a potential site is eligible to host a storage or disposal facility.

In addition, DOE should provide their perspective on questions including:

- Who within a state should sign a consent-based siting agreement?
- Who will sign on behalf of the federal government?
- How does DOE intend to measure "consent"?
- How will impacted parties be defined and how will input be weighed in the decision?
- What kinds of compensation or incentives are negotiable for a community hosting this mission on behalf of the Country?
- At what point in the consent-based siting process can a potential host state, community or Tribe pull out of the process? At what point are they committed to moving forward?

By creating parameters, DOE can create a more efficient, realistic process that takes into account social, political, technical and environmental limitations from the outset.

4. **All options – federal and private sites – should be considered and more information on any potential federal sites under consideration is necessary.**

Given the well-documented difficult history of siting, DOE should support existing efforts underway to develop interim storage facilities. As noted in comments ECA has previously filed, the Nuclear Regulatory Commission (NRC) has already issued a license or is reviewing license applications for two private facilities and those developers are already engaged with host communities and state governments.

If DOE chooses to focus only on federal sites for new waste storage facilities, ECA, as communities hosting federal sites, needs to know more. Is DOE considering one of our sites already? If so, which one(s)? When does DOE plan to engage with local governments about the potential for a new interim storage facility at their sites? Will it be under a newly negotiated consent-based siting agreement if the federal site already exists? What other federal agency is willing to even discuss nuclear waste storage on its sites?

5. **DOE's efforts to site an interim storage facility should move forward in parallel with efforts to site a geological repository.**

It is important to state again that given our experiences as hosts of DOE's federal facilities, where work and the political environment can be difficult and schedules often slide, ECA strongly cautions that in the absence of a legal definition of "interim" or demonstration of progress to develop a geological repository, it will be difficult to find volunteer host communities for a nuclear waste facility or to build public support for it.

However, should a community consider hosting an interim storage facility, ECA recommends that they ensure the definition of "interim" is defined within a legally enforceable consent-based siting agreement.

6. **Continued failure to address the back end of the fuel cycle may inhibit new nuclear development.**

ECA shares renewed bipartisan support for nuclear energy as part of a clean, low-carbon future[2]. In fact, ECA has established a first-of-a-kind initiative to define the role of local governments in supporting the development of the new nuclear technologies. ECA communities are already engaged in critical nuclear research and development underway across the DOE complex – such as advanced nuclear reactors at the Oak Ridge National Laboratory in Tennessee, the production of high-assay low-enriched uranium (HALEU) in Piketon, Ohio; and starting the Versatile Test Reactor, the NRC-approved NuScale small modular reactor and the newly announced Department of Defense mobile nuclear microreactor prototype at Idaho National Laboratory. We are eager to match the strengths and needs of our communities with new nuclear opportunities and ensure the U.S. is a leader in nuclear development around the world.

However, in discussions already underway with economic development entities in our communities, the question of waste is inevitable. The absence of a permanent solution for HLW and SNF undermines for many the myriad benefits advanced nuclear projects present. DOE's failure to include the waste in our communities in the RFI only stands to make that discussion more difficult.

The challenge of siting, constructing and operating a nuclear waste facility in an environment subject to political change has become even clearer in the few months since the RFI was published in the Federal Register. State governments in two states where local consent had been reached on hosting interim storage facilities moved aggressively to prevent these efforts. After signing House Bill 7 last fall banning the storage or disposal of HLW in Texas, Governor Abbott in February joined Texas's petition urging the U.S. Court of Appeals to vacate a federal license for Interim Storage Partners issued by the Nuclear Regulatory Commission (NRC). In New Mexico, just as Holtec is expecting to receive an NRC license this year for a temporary nuclear storage facility,

[2] See more on ECA's New Nuclear Initiative to define the role of local governments in supporting the development of the new nuclear technologies.

state Senate Bill 54 and state House Bill 127 were introduced. Both were defeated, but had they passed, state agencies would have been barred from issuing permits for high-level nuclear waste storage facilities.

Do not let the comment review period create unnecessary delay. We need to avoid these results of stops and starts. ECA again urges DOE to incorporate lessons learned from past efforts to site nuclear waste facilities and define "consent." It is already clear what **not** to do, and recommendations submitted by many respondents over the years (for example, creating a new entity focused solely on managing and disposing of high-level nuclear waste and spent nuclear fuel) have yet to be implemented. This renewed effort needs commitment from DOE to act and a trusted champion in place empowered to act on behalf of the federal government[3] to ensure that.

ECA appreciates the opportunity to comment and looks forward to supporting this engagement effort. We provide responses to specific questions outlined in the RFI in Appendix A. However, as many of the questions are the same as those posed during previous efforts related to siting nuclear waste facilities – and **as ECA positions have not changed** – we refer DOE to the documents attached and linked below:

- ECA Comments to DOE on the Draft Consent-Based Siting Process, April 2017
- ECA Comments to DOE on Designing a Consent-Based Siting Process: Summary of Public Input, October 2016
- ECA Comments to DOE on the Design of a Consent-Based Siting Process, July 2016
- ECA Community Handbook on Nuclear Energy: Understanding Nuclear Energy and Alternatives for the Future, Chapter 2: The Role of Local Governments in Siting, April 2014
- ECA Testimony before the Senate Committee on Energy and Natural Resources Committee on the Nuclear Waste Administration Act of 2013, July 2013
- ECA Comments on Senate Discussion Draft Discussion of Nuclear Waste Legislation, May 2013

[3] Coalition Letter to DOE Requesting DOE Establish an Office Dedicated to Nuclear Waste Management, May 3, 2021

- ECA Testimony to the Senate Committee on Energy and Natural Resources regarding the Nuclear Waste Administration Act of 2012, September 2012

For any questions or for additional information, please contact Kara Colton, ECA's Director of Nuclear Policy, by phone at (703) 864-3520, or by email at kara.colton@energyca.org.

APPENDIX A

QUESTIONS FOR INPUT

As noted, the information provided below is in addition to ECA's previously submitted input on these questions (links provided above) and includes new comments from ECA communities since the release of the RFI in December 2021.

Area 1: Consent-Based Siting Process

1. **How should the Department build considerations of social equity and environmental justice into a consent-based siting process?**

   DOE should ensure considerations of social equity and environmental justice are part of designing a future consent-based siting process, especially given the multi-decade (if not generational) timeframe for a nuclear waste facility. However, DOE should work with a potential host community to determine how "social equity" and "environmental justice" will be defined and evaluated. DOE should also provide resources and various avenues to ensure citizens in any potential host community have multiple opportunities to be informed, provide input and participate in public meetings.

   DOE should also look at social equity and environmental justice impacts in the host communities chosen by the federal government decades ago that still host DOE's nuclear missions today. Our communities trusted that DOE would follow the law, and per the Nuclear Waste Policy Act (NWPA), the HLW and SNF would be disposed of at a geologic repository at Yucca Mountain. Now the NWPA must be amended, there is no disposition path for this waste, and high-level defense nuclear waste is not part of the RFI. DOE should consider that failing to address legacy defense waste may create social equity and environmental justice issues in existing host communities, and could perhaps undermine the confidence that a future host community can trust DOE to prioritize the sites that host federal nuclear waste missions over time.

   One suggestion to address the long-term health, viability and resiliency of both existing and future host communities is to prioritize them for other cross-cutting Department-wide efforts

like place-based initiatives, energy jobs creation, clean energy demonstrations or building the supply chain. This can serve as an incentive to a host community, it can ensure future economic development opportunities for that community with benefits to the State and/or region, and can foster collaboration between DOE and host communities on shared goals over time.

2. **What role should Tribal, State and local governments and officials play in determining consent for a community to host a federal interim storage site?**

   A successful consent-based siting agreement will need Tribal, State and local government support, and will need to reflect the values, priorities and concerns of each. But consent should ultimately be determined by those most directly impacted by hosting a nuclear waste facility, with the local government best positioned to negotiate on behalf of a host community and a Governor on behalf of the State.

   It would be helpful, however, to hear more from DOE on who the "necessary parties" are that will be required to sign a legally enforceable consent-based siting agreement – not only at the local, State or Tribal level, but also on behalf of the federal government.

4. **What are barriers or impediments to successful siting of federal interim storage facilities using a consent-based siting process and how could they be addressed?**

   A challenge thus far has been defining "impacted parties" to avoid siting issues like those around Yucca Mountain. DOE may want to consider proximity to the nuclear waste facility and Nuclear Regulatory Commission siting criteria for reactors to determine how best to "weigh" input from varied stakeholders.

5. **How should the Department work with local communities to establish reasonable expectations and plans concerning the duration of storage at federal facilities?**

   As ECA has previously commented, DOE can help local communities establish reasonable expectations by providing more guidance on what an interim storage facility requires (amount of land, type of geology, etc.), the timeline and outlook for pursuing a permanent geological repository, and potential incentives (for example, co-location of another DOE facility, funding

for infrastructure or education, a new lab mission, etc.). The more information DOE can provide to potential hosts at the outset, the more informed the decision-making process will be, and the more a local government will be able to gauge whether "consent" can actually be reached in a given community before expending limited resources to build support with Tribes and the State.

ECA is similarly advising local governments in potential host communities to begin now to realistically consider the terms – such as limits on acceptable volumes of waste, financial incentives, oversight requirements, funding or training to ensure emergency response capabilities at the state and/or local level and legal assurances – under which they will consent to host an interim storage facility to jump start any discussion with DOE, as well.

Area 2: Removing Barriers to Meaningful Participation

2. **What resources might be needed to ensure potentially interested communities have adequate opportunities for information sharing, expert assistance, and meaningful participation in the consent-based siting process?**

   ECA appreciated that under the previous consent-based siting initiative DOE acknowledged that informed participation will require providing financial and technical resources to communities to enable effective participation and informed decision-making. As ECA has stated many times, informed consent can only be reached if affected local governments and their communities fully understand the benefits and risks that are associated with siting, constructing, operating and hosting a nuclear waste storage facility. Funding must be provided to support outreach and education programs that allow local governments to hire their own third-party experts to undertake independent analyses, to develop educational materials tailored to their specific community, and to create opportunities for public comment. ECA also supports DOE's prior suggestions that funding could be provided to help potential hosts with community planning, economic development or visioning exercises to determine how hosting an interim storage facility works with their/the State's longer-term objectives.

Area 3: Interim Storage as Part of a Waste Management System

2. **What are the possible benefits or drawbacks to co-locating multiple facilities within the waste management system or co-locating waste management facilities with manufacturing facilities, research and development infrastructure, or clean energy technologies?**

   ECA believes co-location can be an incentive for host communities looking to ensure future viability and resiliency. This can also demonstrate DOE's commitment to and interest in supporting the community's vision over time.

3. **To what extent should development of an interim storage facility relate to progress on establishing a permanent repository?**

   While the terms of hosting an interim storage facility in the absence of progress on a permanent repository is ultimately up to a potential host community, ECA believes that in the absence of a plan for pursuing permanent geologic disposal for HLW and SNF and without a legal definition of "interim" (although a potential host could choose to set it as part of any consent-based siting agreement), it will be far more difficult to find interested communities or build public support for it.