

Testimony on behalf of the
National Association of Regulatory Utility Commissioners

by

*The Honorable Travis Kavulla
NARUC President
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before the

**United States House of Representatives
Committee on Energy & Commerce
Subcommittee on Environment and the Economy**

hearing on

**THE NUCLEAR WASTE FUND:
Budgetary, Funding, and Scoring Issues**

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Summary

In the following testimony, I make the following points on behalf of the National Association of Regulatory Utility Commissioners:

- America needs, and consumers have paid for, a permanent solution to nuclear waste disposal. It is time for Congress to reaffirm this core principle.
- The Nuclear Waste Fund (NWF) is a self-funded, special-purpose program—and it should be treated as such within the parameters of the federal budgeting and appropriations process.
- Congress should establish an independent body that has the single-minded mission of nuclear waste disposal, and this body should have access, subject to Congressional oversight, to the billions ratepayers have contributed for this purpose.

Good morning Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee on Environment and the Economy. Thank you for the opportunity to testify today on the Nuclear Waste Fund. My name is Travis Kavulla, and I am a Commissioner on the Montana Public Service Commission. I have the honor of serving as the President of the National Association of Regulatory Utility Commissioners (NARUC). NARUC applauds this Committee's tenacity and leadership on these issues.

NARUC is a non-profit organization founded in 1889. Our members are the public utility commissions in all 50 States and the U. S. territories. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. Our members regulate the retail rates and services of electric, gas, water, and telephone utilities. We are obligated under the laws of our respective States to assure the establishment and maintenance of essential utility services as required by public convenience and necessity and to ensure that these services are provided under rates, terms, and conditions of service that are just, reasonable, and non-discriminatory.

State economic utility regulators are responsible for ensuring the safe, reliable, and affordable delivery of essential electric utility service in every State across the country. The success of the federal nuclear waste management program, funded by the consumers of electricity generated from the nation's nuclear power plants, is necessarily of keen interest. Both NARUC and its member commissions have dedicated a tremendous amount of time and resources to ensure that electricity consumers receive the services they have paid for.

NARUC and its State Commission members were at the table when the Nuclear Waste Policy Act of 1982 (NWPA) was developed and passed. At that time, and today, State regulators agree that users of electricity from nuclear power plants should pay for the federal nuclear waste management and disposal program.

And the consumers have paid generously into the fund. Since 1982, more than \$40 billion in direct payments and interest have been paid into the U.S. Nuclear Waste Fund (NWF).¹

Yet for those billions, so far, ratepayers – and the country – have nothing to show for it. The federal government missed its statutorily mandated deadline to start accepting nuclear waste in 1998.² In the 1990s and early 2000s, at least, the program had shown progress, notwithstanding the missed deadline. However, since that time, efforts to block funding for the geologic disposal of nuclear waste at Yucca Mountain, as well as the U.S. Department of Energy’s unlawful refusal to consider the project’s licensing application, has kept the country in the exact same situation we occupied 28 years ago when Congress decided that Yucca Mountain should be the first site considered for the United State’s permanent repository.³

In 2010, after decades of scientific study and an investment of over \$11 billion in the Yucca Mountain repository, the Administration – without any record of public process – unilaterally declared the site “unworkable,” purported to withdraw the Yucca Mountain license application, and began dismantling the program, closing the DOE Office of Civilian Radioactive Waste Management. NARUC was one of many that opposed this attempt and was a petitioner in the

¹ According to the U.S. Department of Energy Office of Inspector General’s, *AUDIT REPORT – Department of Energy’s Nuclear Waste Fund’s Fiscal Year 2014 Financial Statement Audits* (November 2014), at 2, online at: <http://energy.gov/sites/prod/files/2014/12/f19/OAS-FS-15-03.pdf> (*2014 DOE Audit Report*), “[a]s of September 30, 2014, the U.S. Treasury securities held by the Department related to the NWF had a market value of \$39.8 billion.” This necessarily excludes the billions in ratepayer dollars already expended to characterize the Yucca Mountain site.

² In 1996, in *Indiana Michigan v DOE*, the DC Circuit ruled DOE had a duty to begin disposal of nuclear waste no later than January 31, 1998. (Case is online at: <http://caselaw.findlaw.com/us-dc-circuit/1278574.html>).

³ In 1987, Congress directed U.S. Department of Energy (DOE) to focus on Yucca Mountain as the permanent repository. Over the next 20 years, DOE completed 5-mile and 2-mile tunnels into the mountain, including more than 180 boreholes to conduct experiments. By 2006, a Senate Environment and Public Works Committee report called Yucca Mountain the “Most Studied Real Estate on the Planet.” See, <http://www.epw.senate.gov/repwhitepapers/YuccaMountainEPWReport.pdf>.

mandamus action that required the Nuclear Regulatory Commission to expend outstanding appropriations on the Yucca Mountain license review.⁴

Today, federal officials continue to “kick the cask” down the road. There is no nuclear waste program worthy of the name, despite the exhaustive studies and billions in ratepayer and taxpayer dollars spent. All that remains is the nuclear waste, which sits on site at nuclear reactors, some of them closed. This is not only uneconomic. It undermines confidence in nuclear power.

The repercussions of the Administration’s failure to take title of nuclear waste and to develop the Yucca Mountain site have been substantial. Taxpayers from each of your constituencies, even those whose utilities have no stake in nuclear-generated electricity, continue to fund court-awarded damages from the Department of Justice Judgment Fund for DOE’s partial breach of its contracts with electric companies that required DOE to take title to used fuel.

According to a September 2014 audit, \$4.5 billion in damages has already been paid as a result of federal government inaction.⁵ DOE estimates the total liability for the federal government will be about \$27 billion, but that estimate includes the optimistic assumption that the department can begin to accept used nuclear fuel in 2021. *2014 DOE Audit Report*, at 20.⁶ Industry estimates almost

⁴ See, *In re: Aiken county, NARUC, et al. v. Nevada*, No 11-1271, which notes: (“Our more modest task is to ensure...agencies comply with the law... Here, the Nuclear Regulatory Commission has continued to violate the law governing the Yucca Mountain licensing process. We therefore grant the petition for a writ of mandamus.”), at: [https://www.cade.uscourts.gov/internet/opinions.nsf/BAE0CF34F762EBD985257BC6004DEB18/\\$file/11-1271-1451347.pdf](https://www.cade.uscourts.gov/internet/opinions.nsf/BAE0CF34F762EBD985257BC6004DEB18/$file/11-1271-1451347.pdf).

⁵ See, e.g., *Statement of Kim Cawley, Chief, Natural and Physical Resources Cost Estimates Unit, The Federal Government’s Liabilities Under the Nuclear Waste Policy Act, before the Committee on the Budget, U.S. House of Representatives* (October 7, 2007), online at: <http://www.cbo.gov/sites/default/files/10-04-nuclearwaste.pdf>. (“In the absence of a federal underground repository to accept nuclear waste for storage, taxpayers... pay—in the form of legal settlements with utilities—for a decentralized waste storage system at sites around the country.”);

⁶ See footnote 1, *supra*; See also, *Harry Reid’s Nuclear Taxpayer Waste, The legal bills for killing Yucca Mountain are billions and climbing*, Wall Street Journal (April 6, 2015), at: <http://www.wsj.com/articles/harry-reids-nuclear-taxpayer-waste-1428362176>.

double that projection. *Id.* Even the President's Blue Ribbon Commission estimated that every year of delay in accepting used nuclear fuel will increase this liability by approximately \$500 million. *Blue Ribbon Commission on America's Nuclear Future Report to the Secretary (BRC Report)* at 80.⁷

The 31 States with retired⁸ and operating nuclear reactors have an even greater incentive to press for some reform in how the federal program is funded.⁹ There are currently over 74,000 metric tons of commercial spent fuel at reactor sites in the US. America's nuclear power reactors continue to produce roughly 2,000 tons of waste every year.¹⁰ Each of those States has contributed millions to the corpus of the Nuclear Waste Fund (NWF).¹¹

Access to the billions collected by the NWF is essential for any interim or permanent solution to nuclear waste disposal to succeed. As the BRC Report acknowledged, at 74:

[F]or the waste management program to succeed, the nuclear waste funding mechanism must be allowed to work as intended so that the ability to implement the waste program is not subject to unrelated federal budget constraints.

⁷ Available online at: http://energy.gov/sites/prod/files/2013/04/f0/brc_finalreport_jan2012.pdf

⁸ At least nine States have sites without an operating reactor that still are the current storage site for used nuclear fuel. California (Humboldt Bay, Rancho Seco, San Onofre) Colorado (Ft. St. Vrain) Connecticut (Connecticut Yankee) Florida (Crystal River) Illinois (Zion) Maine (Maine Yankee*) Massachusetts (Yankee Rowe*) Michigan (Big Rock Point) Oregon (Trojan) Vermont (Vermont Yankee) and Wisconsin (LaCrosse, Kewaunee) Compare NRC's Locations of Power Reactor Sites undergoing Decommissioning (June 26, 2015), online at: <http://www.nrc.gov/info-finder/decommissioning/power-reactor/>

⁹ As of August 2015, the NRC oversees 99 licensed commercial nuclear power reactors operating at 61 sites in 30 States. NRC's Information Digest, 2015–2016 (NUREG-1350, Volume 27) (August 2015), at 3, available online at: <http://pbadupws.nrc.gov/docs/ML1525/ML15254A456.pdf>

¹⁰ See NEI's "Onsite Storage of Nuclear Waste", online at: <http://nei.org/Knowledge-Center/Nuclear-Statistics/On-Site-Storage-of-Nuclear-Waste>.

¹¹ See Appendix A for a breakdown by State of payments in millions of dollars.

Congress holds the keys to make that progress happen. This hearing is a good start. The budgeting and appropriations process for the waste disposal program must change. Currently, appropriations from the NWF are considered as part of the total federal government budgeting process – not as allocation of the funds collected in the NWF.

That means any appropriations will score and increase the deficit. Appropriations for the waste disposal program remain under the spending cap applicable to all domestic programs, even though the NWF is self-financed.

This forces spending from the NWF to compete with other spending programs that never had a dedicated funding stream. This approach is unfair to ratepayers and inappropriate for fund designed to finance the extremely protracted life-cycle of a capital intensive disposal program. It makes no sense to treat funds collected specifically to support the disposal of used commercial reactor fuel as discretionary. Over the life of the program, this approach necessarily led to lower appropriations than were requested. *BRC Report* at 72. Reduced funding contributed to project and schedule delays (and obviously undermined the Yucca Mountain license review process.) Inadequate funding can only hamper efficient scheduling and planning thereby driving up costs.

NARUC's has considered the country's viable options. In a recent 2013 resolution,¹² NARUC focused in part on the NWF. Specifically, we stated that the NWF must be managed responsibly and used only for its intended purpose. The program must have full access to the revenues generated by consumers' fee

¹² See *Resolution Regarding Guiding Principles for Management and Disposal of High-Level Nuclear Waste* (February 6, 2013), available online at: <http://www.naruc.org/Resolutions/Resolution%20Regarding%20Guiding%20Principles%20for%20Management%20and%20Disposal%20of%20High.docx>

payments, if they resume,¹³ and to the balance of the NWF. This requires legislative changes to the NWPA.

As related above, the U.S. government has not lived up to the promises made under the NWPA and subsequent Congressional enactments. This is not a matter of opinion, but of legal record, and of particular relevance to any discussion of the NWF is the November 2013 D.C. Circuit decision granting NARUC's request that the DOE suspend collection of the NWF fees.¹⁴ The NWPA required electricity ratepayers to fund a one mil (one tenth of a cent) per kilowatt-hour fee to fund the NWF. Under the NWPA, the Secretary of Energy is obligated to evaluate whether collection of the fee will provide sufficient revenues to offset programs costs. In response to a suit filed by NARUC and the Nuclear Energy Institute (NEI), the United States Court of Appeals for the D.C. Circuit reasoned that the Secretary was not only responsible for reviewing the fee's adequacy, but also had an affirmative obligation to conduct an *annual* fee analysis. The court examined the last DOE fee assessment and found the Secretary's "determination" legally inadequate. The court identified many flaws in the DOE analysis. Among other things, it specified that the Administration could not logically deem Yucca Mountain unworkable and in the same sentence utilize it as a proxy to estimate the fee. The court chose, however, to remand and give the Secretary six months to comply with the NWPA by producing a revised fee assessment.

¹³ There is some question as to whether or when the fee should be restarted. After all, the NWF corpus generates over \$1 billion each year in investment income. A July 2008 Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program, Fiscal year 2007 (DOE/RW-0591), available online at: <http://pbadupws.nrc.gov/docs/ML0927/ML092710177.pdf>, suggests, albeit in 2007 dollars, in Appendix B, Table B-1 "Annual Cost Profile" that the most that would be required for the program in any one year is \$1.3 billion. Indeed, in the history of the program, *BRC Report* at 72, Congress has never appropriated more than 590 million in any one year to the program.

¹⁴ See, *National Association of Regulatory Utility Commissioners v. DOE*, Case No. 11-1066 (Nov. 19, 2013), at: [http://www.cade.uscourts.gov/internet/opinions.nsf/2708C01ECFE3109F85257C280053406E/\\$file/11-1066-1466796.pdf](http://www.cade.uscourts.gov/internet/opinions.nsf/2708C01ECFE3109F85257C280053406E/$file/11-1066-1466796.pdf).

On January 16, 2013, DOE released its updated fee adequacy analysis. NARUC and NEI immediately filed a motion to reopen the proceeding. The court determined the updated assessment was also flawed. Ultimately, on November 19, 2013, in a sharply worded opinion, the court ordered DOE to request Congress set the fee to zero, rejecting its request for yet another chance to “redo” the assessment as “so obviously disingenuous that we have no confidence another remand would serve any purpose.” The decision compares DOE’s analysis to the musical “Chicago,” where the lawyer sings “give them the old razzle dazzle.” DOE’s last gasp request for both rehearing and rehearing *en banc* was denied on March 18, 2014. The fee was suspended shortly thereafter.

This sorry history strongly suggests that the management of federal responsibilities for integrated used fuel management should be more successful if assigned to a new organization with a single-minded devotion to the cause of permanently storing used fuel. Congress should charter a new federal corporation dedicated solely to implementing the nuclear waste management program and empowered with the authority and resources – including direct access to the NWF outside the current appropriations process – that is necessary for such a mission to succeed.

If implemented in the near term, these ideas can help create a solid foundation on which to build a viable spent nuclear fuel management program. NARUC is open to the idea of interim solutions where nuclear fuel is stored, rather than at reactor sites, at one or more central locations, pending the final development of a permanent repository. However, this approach must not become the same kind of accidentally long-term approach that on-reactor-site storage has become, due to the Administration’s unwillingness or inability to permit Yucca Mountain. The United States needs, and consumers have paid for, a permanent storage solution – and nothing less.

Thank you again for the opportunity to be part of this critical discussion.

APPENDIX A

NEI Chart (April 2015) at: <http://www.nei.org/www.nei.org/files/51/51e0beb9-e913-4429-9958-85aec23f43b7.htm>

Payments Associated by Each State Are Based on Its Nuclear Plant Generation

State	Metric Tons of Uranium	Nuclear Waste Fund Contributions (\$ M)
Alabama	3,570	962.1
Arizona	2,210	697.2
Arkansas	1,440	375.0
California	3,320	977.0
Colorado	30	0.2
Connecticut	2,180	467.7
Florida	3,220	903.6
Georgia	2,870	863.6
Idaho	130	0.0
Illinois	9,630	2,307.1
Iowa	500	141.2
Kansas	690	228.9
Louisiana	1,380	411.9
Maine	540	69.1
Maryland	1,470	432.9
Massachusetts	690	191.0
Michigan	2,820	844.1
Minnesota	1,310	456.7
Mississippi	940	253.5
Missouri	750	247.6
Nebraska	920	305.3
New Hampshire	620	201.8
New Jersey	2,840	782.5
New York	3,950	1,027.8
North Carolina	3,570	1,050.9
Ohio	1,240	386.0
Oregon	350	79.6
Pennsylvania	6,870	1,976.6
South Carolina	4,420	1,524.4
Tennessee	1,810	605.0
Texas	2,430	815.2
Vermont	710	121.3
Virginia	2,680	852.9
Washington	710	201.5
Wisconsin	1,460	423.9
Other	NA	7.6
Total	74,260	21,192.4

Notes:

Idaho is holding used fuel from Three Mile Island 2.

Used Fuel Data is rounded to the nearest ten and is as of December 2014, Nuclear Waste Fund Contributions as of December 31, 2014.

DOE suspended collection of the Nuclear Waste Fund fee in May 2014. Sources: Gutherman Technical Services; Department of Energy