

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
**COMMITTEE ON ENERGY AND COMMERCE**  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
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**MEMORANDUM**

**December 2, 2015**

**To: Subcommittee on Environment and the Economy Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Hearing entitled “The Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues”**

On Thursday, December 3, 2015, at 10:00 a.m. in room 1100 of the Longworth House Office Building, the Subcommittee on Environment and the Economy will hold a hearing entitled “The Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues.”

**I. BACKGROUND ON NUCLEAR WASTE FUND AND FEES**

In 1982, Congress passed the Nuclear Waste Policy Act (NWPAA) directing the Department of Energy (DOE) to remove spent nuclear fuel (SNF) from commercial nuclear power plants, in exchange for certain fees, and transport it to a permanent geologic repository beginning no later than January 31, 1998. Additionally, the law provides for the disposal of high-level radioactive waste (HLW) resulting from defense-related activities.

Pursuant to Sec. 302 of the NWPAA, the Secretary of Energy entered into contracts with generators of SNF and HLW for the purpose of taking title to, transporting and disposing of that waste. In return, electric utilities began to pay an ongoing fee of 1.0 mil per kilowatt-hour of nuclear-generated electricity, as well as a one-time fee intended to account for waste generated prior to the law’s enactment. These fees are deposited in the Nuclear Waste Fund, the purpose of which is to cover the cost of DOE’s acceptance, transport and disposal of civilian nuclear waste. According to the most recent audit report available from DOE, deposits to the Fund – together with the Defense Nuclear Waste Disposal Appropriation (DNWDA) established to cover the costs of HLW disposal - totaled approximately \$25.4 billion at the end of FY 2014.<sup>1</sup> Additional revenue has been derived primarily from investment of those funds in US Treasury Securities

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<sup>1</sup> U.S. Department of Energy, Office of Inspector General, *Department of Energy’s Nuclear Waste Fund’s Fiscal Year 2014 Financial Statement Audit*, OAS-FS-15-03 (Nov. 2014) (online at [www.energy.gov/sites/prod/files/2014/12/f19/OAS-FS-15-03.pdf](http://www.energy.gov/sites/prod/files/2014/12/f19/OAS-FS-15-03.pdf)).

and, once those interest earnings and the cumulative spending of \$11.4 billion to date are accounted for, the Fund totaled approximately \$36 billion.<sup>2</sup>

Although the sponsors of the NWPA intended the Nuclear Waste Fund to be “off budget” and not subject to the appropriations process, the Fund has not functioned as intended. As a result, appropriations from the Waste Fund have scored as expenditures for budget purposes and created a disincentive for appropriating money sufficient to meet the schedule obligations included in the NWPA.<sup>3</sup>

## II. LAWSUITS, JUDGMENTS AND RECENT DEVELOPMENTS

The lack of appropriations to the program contributed in large part to DOE’s failure to fulfill its contractual obligations with utilities by the statute’s 1998 deadline. That failure resulted in successful lawsuits against DOE by utilities and, to date, “approximately \$5.3 billion has been paid out of the Judgment Fund for settlements and judgments to contract holders.”<sup>4</sup> In fact, in 2014, about one-third of all Federal payments from the Judgment Fund were made to settle breach-of-contract claims relating to spent nuclear fuel.<sup>5</sup> DOE estimates the total liability to be as much as \$23.7 billion,<sup>6</sup> assuming that DOE starts accepting spent nuclear fuel in 2021. The Judgment Fund is a permanent, indefinite appropriation to the Department of the Treasury to pay court judgments against the Federal government. DOE’s failures have therefore undermined the desired “closed loop” policy of having the disposal program funded solely by the beneficiaries of nuclear energy contracts.

Within the first year of his Administration, President Obama indicated that development of the Yucca Mountain site was unworkable. Soon after, the National Association of Regulatory Utility Commissioners (NARUC) sued DOE to halt the collection of the fee. In 2013, the U.S. Court of Appeals for the District of Columbia sided with NARUC, finding that the Department's 2013 fee adequacy report was “arbitrary and capricious.”<sup>7</sup> In 2014, DOE suspended collection of the fee, in response to a mandate from the court.

On January 29, 2010, the President directed the Secretary of Energy to establish a Blue Ribbon Commission (BRC) to “conduct a comprehensive review of policies for managing the

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<sup>2</sup> *Id.*

<sup>3</sup> Blue Ribbon Commission on America’s Nuclear Future, *Report to the Secretary of Energy*, p. 71 (Jan. 26, 2012).

<sup>4</sup> Department of Energy, *Fiscal Year 2015 Agency Financial Report* (Nov. 16, 2015) (online at [www.energy.gov/sites/prod/files/2015/11/f27/DOE\\_FY2015\\_AFR.pdf](http://www.energy.gov/sites/prod/files/2015/11/f27/DOE_FY2015_AFR.pdf)).

<sup>5</sup> National Law Journal, *Judgment Fund: Energy Department Pays Out the Most – Again*, (Apr. 6, 2015) (online at [www.nationallawjournal.com/id=1202722657674/Judgment-Fund-Energy-Department-Pays-Out-the-Most-mdash-Again?slreturn=20151023162227](http://www.nationallawjournal.com/id=1202722657674/Judgment-Fund-Energy-Department-Pays-Out-the-Most-mdash-Again?slreturn=20151023162227)).

<sup>6</sup> Department of Energy, *Fiscal Year 2015 Agency Financial Report*, (Nov. 16, 2015) (online at [www.energy.gov/sites/prod/files/2015/11/f27/DOE\\_FY2015\\_AFR.pdf](http://www.energy.gov/sites/prod/files/2015/11/f27/DOE_FY2015_AFR.pdf)).

<sup>7</sup> *Id.*

back end of the nuclear fuel cycle, including all alternatives for the [...] disposal of [...] used nuclear fuel and nuclear waste.”<sup>8</sup> The BRC recommended creating a new organization to execute the waste management implementation process.

Subsequently, DOE commissioned a RAND Corporation study of potential organizational alternatives.<sup>9</sup> The study concluded that a federal government corporation or an independent government agency are promising models. DOE has committed to work with Congress to enact the necessary legislation to create a new management and disposal organization and establish a stable funding structure for the organization.

#### **IV. WITNESSES**

**David Bearden**

Specialist in Environmental Policy  
Congressional Research Service

**Kim P. Cawley**

Chief of Natural and Physical Resources Cost Estimates Unit  
Congressional Budget Office

**Travis Kavulla**

Commissioner  
Montana Public Service Commission;  
President  
National Association of Regulatory Utility Commissioners.

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<sup>8</sup> President Barack Obama, *Memorandum for the Secretary Of Energy* (Jan. 29, 2010) (online at [www.whitehouse.gov/the-press-office/presidential-memorandum-blue-ribbon-commission-americas-nuclear-future](http://www.whitehouse.gov/the-press-office/presidential-memorandum-blue-ribbon-commission-americas-nuclear-future)).

<sup>9</sup> RAND Corporation, *Choosing a New Organization for Management and Disposition of Commercial and Defense High-Level Radioactive Materials* (2012) (online at [www.rand.org/pubs/monographs/MG1230.html](http://www.rand.org/pubs/monographs/MG1230.html)).