

Testimony on behalf of the
National Association of Regulatory Utility Commissioners

by

The Honorable Greg R. White
Commissioner, Michigan Public Service Commission
Chairman, NARUC Subcommittee on Nuclear Issues-Waste Disposal

before the

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

hearing on

UPDATE ON THE CURRENT STATUS OF NUCLEAR WASTE MANAGEMENT POLICY

MAY 15, 2015



National Association of Regulatory Utility Commissioners
1101 Vermont Ave, N.W., Suite 200
Washington, D.C. 20005
Telephone (202) 898-2207, Facsimile (202) 898-2213
Internet Home Page <http://www.naruc.org>

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Summary of Testimony
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- NARUC has played an active role in federal nuclear waste management from the beginning. We were at the table for the discussions that lead to the Nuclear Waste Policy Act of 1982. We agreed that ratepayers should contribute to the Nuclear Waste Fund to support the federal waste disposal program.
- Consumers of electricity generated by nuclear plants have paid more than \$40 billion to support the licensing of the Yucca Mountain facility. The obligation to pay for the lack of a repository continues to burden taxpayers via the judgment fund. Yet, in the current circumstance, there is nothing to show for the money poured into the program.
- The efforts to shut down the Yucca Mountain Licensing project—the nation’s only permanent repository for high-level spent nuclear fuel *authorized by law*—puts the country in the exact same status we occupied 33 years. So far, Yucca Mountain represents a \$15 billion investment, decades of scientific study, and - since the recent decision to “kick the cask” down the road again – a wasted (but hopefully only delayed) opportunity that can only increase the final costs of disposal.
- In the current circumstances, it is clear the U.S. still lacks a nuclear waste program, but the accumulation of waste continues.
- NARUC endorses a permanent solution, beginning with first completing licensing review for Yucca Mountain, along with shifting the management of, and providing direct access to funds from, the Nuclear Waste Fund. Developing an interim storage plan with these prerequisites could save ratepayer dollars. We are anxious to work with Congress to quickly adjust and more tightly focus the program.

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 state of the United States' Nuclear Waste Management Policy. My name is Greg White, and I am a Commissioner on the Michigan Public Service Commission. I have the honor of serving as Chair of the National Association of Regulatory Utility Commissioners (NARUC) Subcommittee on Nuclear Issues – Waste Disposal. My testimony today is on behalf of NARUC and will focus on the perspectives of State utility regulators.

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. Therefore, the success of the federal nuclear waste

management program, which is paid for 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.

State regulators agreed that users of electricity that is generated at the nation's nuclear power plants should pay for the federal nuclear waste management and disposal program.

And the consumers have since paid and paid and continue to pay.¹

Since 1982, more than \$40 billion in direct payments and interest have been paid into the U.S. Nuclear Waste Fund.²

¹ Ratepayers may be temporarily off the hook, courtesy of NARUC's lawsuit against DOE, but the American taxpayer is still liable for DOE's failure to accept waste for storage. *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. (Those payments are being made from the Department of the Treasury's Judgment Fund.) ...DOE currently estimates that payments to utilities pursuant to such settlements will total at least \$7 billion . . . more if the program's schedule continues to slip. Regardless of whether or when the government opens the planned repository, those payments are likely to continue for several decades."); *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>. ("We've been telling you about [Harry Reid](#)'s bargain . . . to kill the Yucca Mountain nuclear waste site in Nevada in return for all but shutting down the Senate. It turns out the deal is even more expensive than that. That's clear from a Monday report by the National Law Journal, which reviewed federal payouts *in 2014* to resolve litigation against the government. The Energy Department was the biggest spender, accounting for nearly one-third (\$929 million) of the \$3 billion the feds forked over in verdicts or settlements.")

And for all of those billions of dollars, so far, the ratepayers have nothing to show for it. Under the current state of the nuclear waste management program, we have absolutely nothing to show for this vast collection of ratepayer's money.

The efforts to shut down the Yucca Mountain Licensing project—the nation's one and only permanent repository for high-level spent nuclear fuel *authorized by law*—puts the country in the exact same status we occupied 33 years ago in 1982. Federal officials continue to “kick the cask” down the road—eliminating any impetus for real progress on the waste problem.

After decades of scientific study and an investment of over \$15 billion dollars in the Yucca Mountain geologic repository,³ the Administration, claiming simply that the site is not “practical,” has unsuccessfully attempted to withdraw the Yucca Mountain license and illegally dismantled the program to oversee the project through completion.⁴

² 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>, “[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.

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>.

⁴ DOE, the President, and Congress approved Yucca Mountain in 2002 after a very public deliberative process that included public meetings and requests for public comment. There is no record of any public process in advance of the Administration's 2010 decision to terminate the license proceedings.

Currently, there is no nuclear waste program, despite the exhaustive studies and billions in ratepayer and taxpayer dollars spent. All that remains is the nuclear waste. And the waste of American's regulatory fees and taxes.

And in the face of this static federal policy, spent nuclear fuel, and high-level nuclear waste continues to accumulate at plant sites. At some retired plant sites, the land cannot be reclaimed because waste remains stored on-site awaiting disposal in a permanent repository.

NARUC has been active on this issue since the beginning—33 years and counting.

Recognizing there would be problems and obstacles to the program, NARUC established a “Subcommittee on Nuclear Issues – Waste Disposal” in 1984.

A few years later, we created an office dedicated to tracking the federal nuclear waste management program.

We have participated in numerous lawsuits against the U.S. Department of Energy (DOE), consistently seeking better performance and greater accountability from the federal government while protecting the interests of electricity consumers.

The first of these lawsuits was in 1995, where we successfully countered the DOE's contention that they were not even obligated to take the nuclear waste from the plants by January 31, 1998.

More recently, we fought the inaction of DOE and the U.S. Nuclear Regulatory Commission (NRC) in the courts, and again the courts have responded with judgments agreeing with our positions.

NARUC argued that NRC was in violation of the law when it suspended its review of the Yucca Mountain license application, and in August 2013, the court agreed with us.⁵

Later that year, in November 2013, the courts granted our request that the DOE suspend collection of the Nuclear Waste Fund fees.⁶

On the latter, I consider the court's decision to be bittersweet. As noted previously, NARUC has always agreed with and supported the arrangement whereby the consumers of electricity paid for the nuclear waste management and disposal program under the auspices of the NWPA.

However, when the Administration threw out a \$15 billion dollar investment along with 30 years of work towards a repository, and replaced it with nothing, we had no choice but to seek to cut funding for a program that no longer existed.

⁵ See, *In Re: Aiken Count, et al.*, which notes: ("Our more modest task is to ensure...agencies comply with the law as it has been set by Congress. 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: [http://www.cadc.uscourts.gov/internet/opinions.nsf/BAE0CF34F762EBD985257BC6004DEB18/\\$file/11-1271-1451347.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/BAE0CF34F762EBD985257BC6004DEB18/$file/11-1271-1451347.pdf)

⁶ See, *National Association of Regulatory Utility Commissioners v. DOE*, Case No. 11-1066 (Nov. 19, 2013), at: [http://www.cadc.uscourts.gov/internet/opinions.nsf/2708C01ECFE3109F85257C280053406E/\\$file/11-1066-1466796.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/2708C01ECFE3109F85257C280053406E/$file/11-1066-1466796.pdf).

Of late, our considerable efforts have produced little more than frustration. However, we continue to believe that there are opportunities to forge ahead with a nuclear waste management program that can achieve success. But we need the Congress and the Administration to work on near-term actions to give consumers of electricity from nuclear power plants the nuclear waste management program they paid for and deserve.

NARUC's has thoughtfully considered the country's viable options. To move forward with a successful U.S nuclear waste management program:

- 1) America needs a permanent solution to nuclear waste disposal, and we need to see credible, substantial progress toward achieving this goal. The first step must be to complete the licensing review for the Yucca Mountain repository project.
- 2) The Nuclear Waste Fund must be managed responsibly and used only for its intended purpose. The program must have access to the revenues generated by consumers' fee payments, once they resume, and to the balance of the Nuclear Waste Fund.
- 3) The management of federal responsibilities for integrated used fuel management should be more successful if assigned to a new organization. Congress should charter a new federal corporation

dedicated solely to implementing the nuclear waste management program and empowered with the authority and resources needed to succeed.

- 4) Some consolidated interim storage is needed, although the amount, basis of need, and duration should be determined. A program to develop one or more interim storage facilities at volunteer sites makes good sense, with priority given to the used fuel from decommissioned reactors.

If implemented in the near term, these steps create a solid foundation on which to build a viable spent nuclear fuel management program.

Thank you again for the opportunity to express these views. I would be pleased to take any questions at this time.