

**Testimony on behalf of the
National Association of Regulatory Utility Commissioners**

by

**Greg White
Executive Director
National Association of Regulatory Utility Commissioners**

before the

**United States House
Committee on Energy and Commerce
Subcommittee on Energy, Climate, and Grid Security**

hearing on

**“American Nuclear Energy Expansion: Spent Fuel Policy
and Innovation”**

April 10, 2024



**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
<http://www.naruc.org>**

Testimony Summary
Greg R. White, Executive Director
National Association of Regulatory Utility Commissioners

- Speaking on behalf of the National Association of Regulatory Utility Commissioners whose members have fiduciary responsibilities for electric utility ratepayers and are responsible for ensuring reliable, safe, and affordable utility services in each of the 50 States and the District of Columbia.
- The renewed interest in advanced nuclear technologies for reliable emissions-free electricity generation should spark a genuine commitment on the part of the federal government to finally resolve the nation's nuclear waste disposal problem.
- The nation's ratepayers have paid tens of billions of dollars toward the federal nuclear waste disposal program envisioned in the 1982 Nuclear Waste Policy Act with virtually nothing to show for it. In fact, there currently is no federal nuclear waste disposal program to speak of.
- NARUC had to sue the federal government to stop the continued collection of the nuclear waste disposal fee from ratepayers even after the federal program was shut down.
- NARUC continues to support the concept that beneficiaries of nuclear generated electricity pay for the disposal program, but not without a legitimate program with the full support of the federal government.
- NARUC believes there are steps that can be taken to build a viable and sustainable federal high-level nuclear waste program, including ensuring the Nuclear Waste Fund is managed responsibly and used only for its intended purpose.
- The country needs 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.

Good morning, Chairman Duncan, Ranking Member DeGette, and members of the House Energy and Commerce Subcommittee on Energy, Climate, and Grid Security. Thank you for the opportunity to testify today on the “American Nuclear Energy Expansion: Spent Fuel Policy and Innovation.” My name is Greg White, and I am Executive Director of the National Association of Regulatory Utility Commissioners, known as NARUC.

NARUC is a non-profit organization founded in 1889. Our members are the public utility commissions in all 50 States, District of Columbia, 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. Accordingly, many State Commissioners are excited at the prospect of advanced nuclear technologies that can provide clean, emissions-free electricity generation. Historically, the focus of nuclear generating technologies has always been on its vast potential. In contrast, the focus on the back-end of the nuclear fuel cycle – disposal of spent nuclear fuel or high-level nuclear waste – has been completely inadequate. Therefore, the need for and success of a federal nuclear waste management program is necessarily of keen interest and should be prioritized to properly serve the needs of the nation.

I would like to extend NARUC’s compliments to this Committee leadership both for holding this hearing and presenting the key point. In announcing this hearing, Chairman Duncan, and full Committee Chair Rodgers correctly noted that:

A critical piece of this is making sure the federal government is fulfilling its legal responsibility to provide a path for ultimate disposal of spent nuclear fuel, while assisting in reducing management and cost burdens on taxpayers and ratepayers.”

Unfortunately, the federal government has not fulfilled its responsibilities. The nation’s ratepayers have paid tens of billions of dollars toward the former federal nuclear waste disposal program and the nation’s taxpayers continue to foot the bill for the government’s failure.¹

Right now, there is no federal nuclear waste disposal program to speak of. The program envisioned in the Nuclear Waste Policy Act of 1982 (NWPA) was essentially shut down when after the Yucca Mountain license application was abruptly withdrawn in 2010 and the Office of Civilian Radioactive Waste Management was disbanded shortly thereafter. It has now been 42 years since the NWPA was passed and this February 1st marked 26 years since the U.S. Department

¹ Ratepayers are currently off the hook though contribution through rates, courtesy of NARUC’s successful 2013 lawsuit against DOE to stop the collection of fees to support the program. However, 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.”). Note, according to the Audit Report: The Department of Energy Nuclear Waste Fund’s Fiscal Year 2023 Financial Statement Audit, from the DOE Office of Inspector General Office of Cyber Assessments and Data Analytics, at page 23, (DOE-OIG-24-02 November 2023), \$10.6 billion has been paid out of the judgement fund to date.

of Energy (DOE) defaulted on a “standard contract” with the nation’s reactor operators to begin disposing of spent nuclear fuel as required by the Nuclear Waste Policy Act of 1982 (NWPA).

Both NARUC and its member commissions have dedicated a tremendous amount of time and resources over the past 40 years 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.

In fact, the only component of the NWPA that was implemented on time and as intended was the collection of the fee from nuclear utility ratepayers.

According to the FY2023 Nuclear Waste Fund (NWF) Annual Financial Report Summary, the total income into the NWF is more than \$59 billion. After more than \$11 billion was expended for the program, including expenditures for the first repository, the current program balance is approximately \$48 billion.²

After decades of scientific study and several billion dollars invested in the process, the decision to shut down the Yucca Mountain Licensing project and

² See, *FY 2023: NWF Annual Financial Report Summary* (December 14, 2023, online at <https://www.energy.gov/gc/articles/fy-2023-nwf-annual-financial-report-summary> (Last accessed April 7, 2024)).

illegally dismantle the program – the nation’s one and only permanent repository for high-level spent nuclear fuel *authorized by law* – has the country in the exact same status we occupied 42 years ago in 1982.³

All that remains is the high-level nuclear waste. And the waste of American’s regulatory fees and taxes.

Recognizing there would be problems and obstacles to the program, NARUC established a “Subcommittee on Nuclear Issues – Waste Disposal” in 1984 to closely monitor the activities of the program. In 1989, NARUC 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.

³ 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. On March 15, 2010, NARUC filed before the NRC’s Atomic Safety and Licensing Board (ASLB), along with numerous others, to oppose a DOE motion to withdraw the Yucca Mountain License application, contending that dismissal “will significantly undermine the government’s ability to fulfill its outstanding obligation to take possession and dispose of the nation’s spent nuclear fuel and high-level nuclear waste.” The ASLB denied DOE’s motion in June of 2010 and the NRC left in place. Subsequently, NARUC filed a mandamus action in U.S. Court of Appeals for the District of Columbia Circuit, which ruled August 13, 2013, that the NRC must continue work on the Yucca Mountain license application as long as funding was available. The NRC used the existing appropriated funds to complete the Yucca Mountain safety evaluation report (SER). Volume 3, released October 16, 2014, concluded DOE’s Yucca Mountain repository design complies with safety and environmental standards. The final two SER volumes were released January 29, 2015.

We fought the inaction on the Yucca Mountain application by 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.⁴ The NRC had to continue until Congressionally appropriated funds were expended.

Later that year, in November 2013, the courts granted our request that the DOE suspend collection of the Nuclear Waste Fund fees.⁵

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 multi-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.

⁴ 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) (Last accessed April 7, 2024).

⁵ 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) (Last accessed April 7, 2024).

The fact is ratepayers and taxpayers pay more because of government inaction. Spent nuclear fuel, and high-level nuclear waste continues to accumulate at plant sites, but not without cost. Every year of inaction costs your constituents, the American taxpayers, between 500 and 800 million dollars from the federal coffers in legal judgement payments. That works out to about 2 million dollars each and every day. At some retired plant sites, the land cannot be reclaimed because waste remains stored on-site awaiting disposal in a permanent repository.

So far, solutions and additional structural proposals to make the government waste disposal program more efficient have been the topic of discussions now for literally decades. Indeed, this committee played a crucial role in the last Congressional step forward in the 115th Congress when the House passed NARUC-supported legislation (HR 3053) by an overwhelmingly bipartisan vote of 340 – 72 in 2018.

It is past time for Congress to refocus on the task at hand. Some have suggested kick-starting interim storage solutions, and NARUC is on record supporting that idea subject to very specific conditions, e.g., progress on a permanent depository and a full analysis of the costs. However, given the government's dismal track record in this area, siting interim facilities faces the same resistance as siting a permanent repository.

The country needs 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 has thoughtfully considered the country's viable options. To move forward with a successful U.S nuclear waste management program – in our most recent resolution, we outlined the obvious steps to put the nation's nuclear waste program back on firm footing:

- [1] The first step must be for Congress to fund and oversee DOE and the NRC's completion of the licensing review for the Yucca Mountain repository project.**

America needs a permanent solution to nuclear waste disposal, we need to see credible, substantial progress toward achieving this goal. Congress selected Yucca Mountain as a permanent disposal site in 1987. Exhaustive legal and scientific scrutiny confirmed the site meets NRC's and EPA's stringent safety and environmental rules. If completing the license review remains viable, the project would need adequate and sustained Congressional appropriations.

Reprocessing of spent fuel is worth considering. However, even if determined to be technically and economically feasible, reprocessing will not eliminate the need for a permanent repository.

- [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 (NWF). Under no condition should the NWF fee be restarted until the Yucca Mountain License proceeding is complete. A new DOE fee adequacy study that demonstrates the need for reinstatement is also a necessary pre-requisite to re-starting the fee. That DOE fee assessment should not proceed to re-initiating a fee as long as program

expenditures actually exceed annual interest accruing on the corpus of the the Nuclear Waste fund. To avoid misdirecting NWF fees to unrelated government obligations and provide for the gradual return of the corpus of the fund, Congress should mandate that no NWF fees can be collected in a fiscal year that exceed 90 percent of the Congressional appropriations for the fiscal year during which such fees are collected.

[3] If progress is made on licensing a permanent repository, it should be much easier to site Consolidated Interim Storage.

Current reactor-site spent fuel storage is safe, but retaining spent fuel indefinitely at working reactor sites was never intended and is both inefficient and unacceptable. Leaving spent fuel at an inactive plant increases costs on ratepayers without equivalent benefits and prohibits economic reuse of the site. However, use of NWF's for such interim storage should be authorized only after [1] a careful consideration of the costs and benefits involved, including transportation costs and proximity to possible or likely permanent disposal sites, and [2] review of the Yucca Mountain License application is underway.

[4] Congress should consider assigning management for used fuel management to a new organization with better access to financing.

Whether DOE has been unable to achieve its NWPA responsibilities due to mismanagement or to factors beyond its control can be debated, but the BRC report makes a sound case for creating a new organization, outside of DOE, with sole responsibility to manage nuclear waste. NARUC generally supports this concept, which would require legislation. Since the former waste management organization was disbanded in 2010, a new organization is needed (or the old one must be

reconstituted) even if responsibility is retained by DOE. The new organization should be charged to engage with States and local governments in a more collaborative manner that can be guided by a negotiated consent agreement among the involved parties, whether for storage or disposal facilities. The NWPA already has provisions for use of the Nuclear Waste Fund to provide benefits to affected States and localities as an incentive to host a repository that could be amended if a benefits agreement is negotiated that advances the siting process.

NARUC can best represent the ratepayer interests through close communications with the DOE and any other new federal agency involved in the nuclear waste program.

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 answer any questions at this time.