

Testimony on behalf of the
National Association of Regulatory Utility Commissioners

by

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Chairman, NARUC Subcommittee on Nuclear Issues-Waste Disposal

before the

United States Senate
Committee on Environment and Public Works

hearing on

“S. ____, the Nuclear Waste Policy Amendments Act of 2019”

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Good morning Chairman Barrasso, Ranking Member Carper, and members of the Committee on Environment and Public Works. Thank you for the opportunity to testify today on the “Nuclear Waste Policy Amendments Act of 2019.” My name is Tony O’Donnell, and I am a Commissioner on the Maryland Public Service Commission. I also serve as the Chairman of the National Association of Regulatory Utility Commissioners (NARUC) Subcommittee on Nuclear Issues – Waste Disposal.

At the outset, I want to point out the obvious.

February marked 21 years since the U.S. Department 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).

This discussion draft is a welcome and positive step forward and NARUC applauds Chairman Barrasso and this Committee for bringing it forward and holding this hearing today.

But action is more than 20 years past due. Congress must act now. 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.

NARUC is a non-profit organization founded in 1889. Our members are the public utility commissions in all 50 States, the 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. 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 tremendous resources to ensure that electricity consumers receive the services they have paid for.

In this case, it is clear the ratepayers have not.

NARUC's State Commission members were at the table in the negotiations that led to the NWPA. State regulators have always agreed that ratepayers that benefit from electricity generated by nuclear plants should pay for waste management and disposal, and they have. More than \$40 billion in direct payments and accrued interest languish in the U.S. Nuclear Waste Fund (NWF). Yet so far, ratepayers – and the country – have almost nothing to show for it.

This is a frustration I know many members of this Committee, including Chairman Barrasso, share.

Thirty five years have passed since Congress passed the NWPA. Almost twenty years since the project site - Yucca Mountain (which I have personally visited) - was approved by Congress for licensing in 2002. Since then efforts to block funding to complete the license review, in tandem with the U.S. Department of Energy's illegal refusal to pursue the license application at the NRC under the prior Administration, ground this nation's program to a standstill. A good case can be made that we are in a worse situation on spent nuclear fuel management and disposal than when the NWPA was passed. Today, there is no nuclear waste

program worthy of the name despite over three decades of trying and an investment of over \$11 billion in the Yucca Mountain repository.

In addition to the \$40 plus billion in payments and interest languishing in the NWF, according to a September 2014 DOE audit of the NWF, \$4.5 billion in damages have been paid out of the US Treasury Department's Judgement Fund – which is supported by federal income tax dollars – as a result of federal government inaction. The Judgement Fund payments are taken out of ALL taxpayer's bank accounts (not just those who use nuclear energy.) DOE estimates the total liability for the federal government's disregard for the law will be about \$27 billion, but that estimate includes the ridiculous assumption that DOE can begin to accept used nuclear fuel in 2021. Industry estimates almost double that projection. Even former President Obama's Blue Ribbon Commission (BRC) estimated that every year of delay in accepting used nuclear fuel will increase this liability by approximately \$500 million. All told, we are facing damages in the tens of billions of dollars. The Bipartisan Policy Center estimated that, in 2015, the tab for the federal government's disregard for the law of the land on this issue is significant for each American adult on an annual basis, and that tab has only gone up since then. This only gets worse for your constituents going forward.

First, the consumers paid for the original waste storage at the facilities through their rates. Second, they paid into the NWF, as already mentioned. Third, the consumers paid to rerack, or consolidate, used fuel pools, again through their rates, because the federal government failed to remove the waste by statutory deadline. Finally, they had to pay for on-site, out-of-pool dry cask storage, again through rates, again due to federal failure. The costs of those last two payments is covered by every American taxpayer – as they fund the Judgment Fund disbursements covering damages caused by the federal government's inaction.

NARUC welcomes the “Discussion Draft” as a positive step forward to correct unanticipated, but serious, structure flaws in the nation’s nuclear waste disposal policy framework. We are pleased that it tracks in large measure NARUC-supported legislation (H.R. 3053) that passed the House by an overwhelmingly bipartisan vote of 340 - 72 last Congress.

NARUC has not taken a position on all of the provisions in this draft, but it is obvious that the bulk of the proposals are very likely to result in concrete action towards a permanent repository (and possible consent-based siting of non-federally owned NRC licensed storage facilities).

Electricity consumers have a multibillion dollar investment expended to characterize the Yucca Mountain site. We are very pleased that the draft aggressively addresses the threshold issue of licensing. In Section 501, the draft requires a final Nuclear Regulatory Commission (NRC) decision approving or disapproving the Yucca Mountain License before any additional NWF fees are collected. NARUC’s February 2018 policy resolution¹ continues NARUC’s staunch support for expeditious completion of the license review. We commend the Committee for making progress contingent on some decision on the license.

Concerning what many NARUC members believe to be the most important issue - funding and fees, the draft clearly attempts to fix one major flaw that has severely hampered progress on waste disposal: fee disbursement.

In our February resolution, NARUC pointed out that:

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.

¹ *Resolution Regarding Guiding Principles for Management and Disposal of High-Level Nuclear Waste* (February 2018), online at: <https://pubs.naruc.org/pub/DF7BD644-ADF8-0E04-C123-AF1D951F363E>.

NARUC welcomes the draft's incorporation, in Section 501, of this requirement.

We are also pleased that the Discussion Draft in Section 504 addresses the ongoing problems of adequate appropriations for a nuclear waste disposal program and budgetary scoring. However, Congress could improve this legislation by appending the text of Section 504 of H.R. 3053 as introduced in the House on June 26, 2017.² As introduced, Section 504 of H.R. 3053 assured that certain percentages of the amounts in the waste fund on the date of enactment must be available to the Secretary on certain trigger dates. The provision that those funds be made available “without further appropriations” was an excellent way to assure both confidence and progress in the program. That section also assured any fees collected going forward are immediately available to the Secretary for waste related activities without additional appropriations. If the NWF fee is restarted, this provision is crucial.

² [Section 504 of H.R. 3053 as introduced in the House on June 26, 2017](#): Availability of certain amounts. Section 302 of the Nuclear Waste Policy Act of 1982 ([42 U.S.C. 10222](#)) is amended by adding at the end the following: (f) Availability of certain amounts.— (1) IN GENERAL.—Notwithstanding any other provision of this section, for the purposes described in subsection (d) that are specified in subparagraphs (A) through (E) of this paragraph, the following amounts from the Waste Fund shall be available to the Secretary without further appropriation:

(A) An amount equal to 1 percent of 2017 Waste Fund amounts, on the date on which high-level radioactive waste or spent nuclear fuel is received at the Yucca Mountain site, and in each of the 25 years thereafter, for costs associated with construction and operation of a repository or facilities at the Yucca Mountain site.

(B) An amount equal to 1 percent of 2017 Waste Fund amounts, on the date on which high-level radioactive waste or spent nuclear fuel is received at the Yucca Mountain site, to make payments under a benefits agreement entered into under section 170 with the State of Nevada concerning a repository.

(C) An amount equal to 0.1 percent of 2017 Waste Fund amounts, on the date that is one year after the date on which high-level radioactive waste or spent nuclear fuel is received at the Yucca Mountain site, and in each year thereafter until closure of the repository, to make payments under a benefits agreement entered into under section 170 with the State of Nevada concerning a repository.

(D) An amount equal to 20 percent of 2017 Waste Fund amounts, on the date on which monitoring of the repository during the decommissioning period commences, for waste package and drip shield fabrication activities.

(E) An amount equal to the amount of any fee collected pursuant to subsection (a)(3) after the date of enactment of the Nuclear Waste Policy Amendments Act of 2017, on the date on which such fee is collected, for costs associated with construction and operation of a repository or facilities at the Yucca Mountain site.

(2) 2017 WASTE FUND AMOUNTS.—For purposes of this subsection, the term ‘2017 Waste Fund amounts’ means the amounts in the Waste Fund on the date of enactment.

Laudably, the discussion draft language does contain some fiscally responsible mechanisms. It assures DOE continues to complete a fee adequacy study to demonstrate the need for additional revenues to support the program before re-instituting a NWF fee that must be borne by ratepayers. Any properly conducted assessment of the need for additional revenues should first consider if the approximately \$1.5 billion in interest accruing annually on the NWF is adequate to fund projected annual disposal expenditures without reinstatement of a fee. After all, it makes little sense for the Secretary to reinstate the NWF fee unless and until program expenditures actually exceed annual investment income. If the Discussion Draft's Section 501 amendments to 42 U.S.C. §10222(a)(4) make this clarification, it would strengthen the bill and increase confidence in the program.

This discussion draft also provides a pathway for interim storage of nuclear waste. Significantly, it also links use of such a facility to a finding that a final permanent repository decision "is imminent."

NARUC's 2018 resolution also endorses both concepts – suggesting that "continued storage at permanently shut-down plants is unacceptable" and that "no interim storage should be allowed unless and until the review of the Yucca Mountain License application is underway."

NARUC also supports the idea of a cost-benefit analysis as a pre-requisite for progress on interim storage facilities. The draft could be improved by including, as a fiscally prudent prerequisite to any approval of an interim facility, an evaluation of the costs and benefits of a particular interim storage site that specifically considers the transportation costs and proximity to possible or likely permanent disposal sites.

NARUC has also joined others in seeking a different management structure for the program. The Draft also makes some progress on this point in section 604 by making the Director of the Office of Civilian Radioactive Waste Management "responsible for carrying out the functions of the Secretary under this Act" and

giving that Director a 5-year term. NARUC has not spoken directly to this framework by resolution, but the Committee may wish to consider increasing the term length to provide greater stability in the program across administrations.

Mr. Chairman, thank you for inviting me here today to testify on behalf of NARUC. We are pleased you have provided legislative language in draft form and we look forward to working with you, your staff and the other members and staff on this Committee as the drafting of this legislation continues.