

Costly, Interminable Delays Continue for Nuclear Spent-Fuel Storage

Nuclear Waste Strategy Coalition

For Nuclear Waste Strategy Coalition (NWSC) members and others following nuclear waste policy developments, 2012 opened with more promise than usual.

PROMISING PANEL RECOMMENDATIONS AND INTEREST IN BOTH HOUSES

In January, the Blue Ribbon Commission on America's Nuclear Future (BRC), a group of bipartisan experts appointed by Department of Energy (DOE) Secretary Steven Chu, issued a report for consideration by the administration, Congress, and the broad stakeholder community regarding what to do with government and commercial nuclear waste, including used fuel from reactors. The following eight BRC recommendations include a number of reforms that many stakeholders have been urging for about two decades:

1. A new, consent-based approach to siting future nuclear waste management facilities

The **NWSC** is an ad hoc organization representing the collective interests of state utility regulators, consumer advocates, electric utilities, local governments, tribes, and associate members on nuclear waste policy matters. Our primary focus is to protect ratepayer payments into the Nuclear Waste Fund and to support the removal and ultimate disposal of spent nuclear fuel and high-level radioactive waste currently stranded at numerous sites across the nation.

For additional details, please go to www.theNWSC.org or contact NWSC Executive Director Katrina McMurrian by e-mail at katrina@theNWSC.org or by phone at 337.656.8518.

2. A new organization dedicated solely to implementing the waste management program and empowered with the authority and resources to succeed
3. Access to the funds nuclear utility ratepayers are providing for the purpose of nuclear waste management
4. Prompt efforts to develop one or more geologic disposal facilities
5. Prompt efforts to develop one or more consolidated storage facilities
6. Prompt efforts to prepare for the eventual large-scale transport of spent nuclear fuel and high-level waste to consolidated storage and disposal facilities when such facilities become available
7. Support for continued US innovation in nuclear energy technology and for workforce development
8. Active US leadership in international efforts to address safety, waste management, nonproliferation, and security concerns

The NWSC hoped that the BRC report might spur more timely action on nuclear waste policy reform. In fact, it seemed to stimulate significant interest by congressional members, particularly an influential group of four senators—including Senate “authorizers” Chairman Jeff Bingaman (D-NM) and Ranking Member Lisa Murkowski (R-AK) from the Senate Energy & Natural Resources Committee and Senate “appropriators” Chair Dianne Feinstein (D-CA) and Ranking Member Lamar Alexander (R-TN) from the Appropriations Subcommittee on Energy & Water Development. It was reported that these four Senate leaders were working closely together to develop a legislative package,

and hearings focusing on the BRC report and related matters were conducted in these and other Senate committees.

House committees conducted several hearings as well. While seemingly less focused on the BRC recommendations as the preferred model, House support for moving the country's nuclear waste program forward remains steadfast. By August, Bingaman introduced S. 3469, the Nuclear Waste Administration Act of 2012, containing his vision for BRC recommendation implementation. However, it was clear that the three senators that he had been working with were not able to agree with certain bill provisions. Understanding that the bill would not be passed this year, these four senators agreed to its introduction as a vehicle to begin building a legislative record. The hearing before the Senate Energy & Natural Resources Committee was held on September 12, 2012.

DOE's response to the BRC work has been minimal.

In contrast, the DOE's response to the BRC work has been minimal despite (1) the BRC's attempts to highlight short-term actions that could be taken under DOE's existing authority, (2) the BRC co-chairs' December 2011 letter to the president outlining specific steps the administration could take toward funding reform via Fiscal Year 2013 appropriations, and (3) Congress's specific request for a written response from DOE by the end of July 2012. In fact, when Murkowski asked DOE's Assistant Secretary for Nuclear Energy Pete Lyons about the overdue report during the September 12 hearing on the Bingaman bill, Lyons was unable to provide an estimate for completion.

While echoing the call for DOE's report to Congress, the NWSC and other nuclear waste stakeholders clearly have reason to doubt that anything other than court-ordered actions will manifest this year.

While echoing the call for DOE's report to Congress, the NWSC and other nuclear waste

stakeholders clearly have reason to doubt that anything other than court-ordered actions will manifest this year.

IN A STALL FOR MANY YEARS

With passage of the Nuclear Waste Policy Act of 1982 (NWPAs), Congress established our nation's nuclear waste program and created an office within DOE to manage it. The NWPAs also called for DOE to contract with utilities to accept nuclear waste starting in 1998 in return for fees from nuclear power generators. Therefore, consumers who benefit from nuclear power generation have paid and continue to pay a fee to the federal government on their electric bills to dispose of their utility's used nuclear fuel.

A place for disposal was later designated by Congress with passage of amendments to the NWPAs in 1987, and Yucca Mountain, Nevada, was named as the sole site to develop a geologic repository for long-term disposal. Yucca Mountain's designation has resulted in significant pushback from some in Nevada, particularly Senate Majority Leader Harry Reid (D-NV).

Regardless, key milestones were reached in 2002. The Secretary of Energy recommended—and President George W. Bush approved—Yucca Mountain as the only repository; the state of Nevada exercised its state veto in April; and by July, both houses of Congress overrode Nevada's objection and solidified Yucca Mountain as the law of the land. Years later in 2008, DOE submitted its license application to the Nuclear Regulatory Commission (NRC) for the repository at Yucca Mountain.

More recently, appropriations for the Yucca Mountain program have gone from difficult to nonexistent. President Obama's administration zeroed out funding in 2010 for Fiscal Year 2011. Time and time again, efforts by the House to restore funding have failed in the Senate or been disrupted by decisions to pass continuing resolutions instead of budgets. Most recently, for example, House Subcommittee on Environment and the Economy Chairman John Shimkus (R-IL) sponsored an amendment to appropriate additional funds to facilitate more timely completion of the NRC's review of the Yucca Mountain license application. While his

amendment received bipartisan 4-to-1 support on the House floor, Yucca-related funding is ultimately expected to meet its demise in a Senate led by Reid, even when Congress passes a budget.

Appropriations for the Yucca Mountain program have gone from difficult to nonexistent. President Obama's administration zeroed out funding in 2010.

In 2010, the same year that the president acted to stop Yucca Mountain funding, the BRC was formed under his direction, and DOE moved to withdraw the Yucca Mountain license application that had been submitted in 2008. By late 2010, the DOE office charged with overseeing the program was closed, and

the NRC staff had been instructed to stop work on its technical review of the license application by then-Chairman Gregory Jaczko, an action reinforced by an NRC decision in September 2011.

Amounts paid into the NWF total approximately \$750 million a year... added to a balance of over \$26 billion.

Regardless, consumers are still paying into the Nuclear Waste Fund (NWF) to finance a halted program. Today, amounts paid into the NWF total approximately \$750 million a year. To the extent not appropriated to a few remaining program activities (such as program closeout costs), that annual amount is added to a balance of over \$26 billion in

About the NWSC

Formation & Purpose—

The NWSC is a nonpartisan, ad hoc organization formed in late 1993 by three states (Michigan, Minnesota, and Florida) out of their frustration that DOE would not meet the obligations of the 1982 Nuclear Waste Policy Act (NWPA) and contracts between the federal government and utilities to remove and dispose of spent nuclear fuel and high-level radioactive waste from nuclear plants, especially given that ratepayers were paying for those functions to be carried out on their electric bills.

Positions—

In simplest terms, the NWSC supports moving spent nuclear fuel and protecting ratepayer payments into the Nuclear Waste Fund (NWF). We support the Yucca Mountain permanent repository and consolidated interim storage.

Leadership—

The NWSC is led by the following executive committee:

1. David A. Wright, NWSC chairman, and chairman of the Public Service Commission of South Carolina
2. Renze Hoeksema, NWSC vice chairman, and director of federal affairs for DTE Energy
3. David C. Boyd, commissioner, Minnesota Public Utilities Commission
4. Robert Capstick, director of government affairs for Yankee Atomic Electric Company
5. Greg R. White, commissioner, Michigan Public Service Commission

Members—

Membership includes

- Nine state public utility commissions
- Three consumer advocates
- Eight nuclear-generating utilities
- Other state agencies, local governments, tribal councils, and industry professionals

Value—

The Coalition provides

1. An information source to our members, Congress, federal agencies, and other stakeholders;
2. Outreach on behalf of members to Congress, federal agencies, and the media;
3. An organized and quicker reaction to relevant events;
4. A strong, cohesive message by a diverse membership; and
5. A rare opportunity to work alongside state commissions, consumer advocates, local governments, tribes, utilities, and others toward a common goal.

fees and interest accumulated since the fund's inception that has not been appropriated to the program in prior years. Due to inexplicable federal budget mechanics, this fund is essentially a stack of IOUs.

In return for the fees paid by consumers, the NWPAs and the contracts between the federal government and nuclear generators ensured that the federal government would begin acceptance of used nuclear fuel from plant sites beginning by 1998. Fourteen years later, the government still hasn't begun removal, and even at decommissioned and shut-down units, used fuel lays in wait onsite for pickup. As costs escalate, consumers continue to pay for storage and security at these closed sites.

As costs escalate, consumers continue to pay for storage and security at these closed sites.

Most nuclear utilities had to make expensive work-arounds to contend with the government's failure to honor its contractual obligation. For example, many operating plants incurred additional expenses to re-rack their spent fuel pools and build and maintain onsite dry cask storage. Electric consumers are paying for that too.

STATES AND UTILITIES TAKING FEDERAL DELAYS TO COURT

Armed with the provisions of the NWPAs and the terms of the contracts between the government and nuclear utilities, states and utilities have taken the unusual step of fighting against this costly and patently unfair arrangement in the courts. As judgments are levied against the government for its default, consumers are paying a fourth time—this time along with all taxpayers.

Unfortunately, instead of taking action to reduce the taxpayers' exposure or suspend the fees ultimately paid by ratepayers, certain federal agencies have further delayed fulfilling the requirements of the NWPAs. Therefore, states and others have resorted to litigation, and several cases are before the US Court of Appeals for the DC Circuit. The National Association of Regulatory Utility Commissioners (NARUC) and others have

sued to suspend payment of the fees, and in a June 2012 ruling, the court remanded to DOE for a complete fee adequacy assessment in six months. In addition, states and other petitioners argued for the court to require the NRC to resume its work on the Yucca Mountain license application. In August 2012, the court decided to hold the proceeding in abeyance until no later than December 14, 2012, to provide Congress an opportunity to provide statutory direction. Based on the written opinions of two of the three judges and recent congressional action to pass a continuing resolution, it appears likely that the court will soon order the NRC and DOE to resume the Yucca Mountain licensing process.

It appears likely that the court will soon order the NRC and DOE to resume the Yucca Mountain licensing process.

COURTS MAY PUT PROCESS BACK ON TRACK

As outlined here, the NWSC and other nuclear waste stakeholders have reason to believe that the court will restore some order via rulings this year. The administration still has an opportunity in 2012 to show consumers that the administration wants to restore trust and take achievable, meaningful steps to make good on its promise to accept used nuclear fuel for disposal in return for consumers' payments into the NWF.

The NWSC reiterates that the best way to avoid further delay is for (1) the NRC and DOE to immediately resume work on the Yucca Mountain license application, (2) DOE to submit an action plan to Congress regarding implementation of the BRC recommendations and proceed with supporting actions that are within its current authority, and (3) both houses of Congress to restore funding to complete the licensing process for Yucca Mountain. In addition, the NWSC will work with like-minded organizations and Congress to enact legislation in 2013 to address other key items such as funding reform, an independent waste management organization, and consolidated interim storage. 