



N A R U C  
National Association of Regulatory Utility Commissioners

September 10, 2012

The Honorable Jeff Bingaman  
Chair,  
Committee on Energy and Natural  
Resources  
United States Senate  
Washington, DC 20510

The Honorable Lisa Murkowski  
Ranking Member,  
Committee on Energy and Natural  
Resources  
United States Senate  
Washington, DC 20510

Dear Chairman Bingaman and Ranking Member Murkowski:

The National Association of Regulatory Utility Commissioners (NARUC) would like to submit the following comments regarding the proposed Nuclear Waste Administration Act of 2012, S. 3469.

NARUC and our member State public utility commissioners have been actively engaged in the issue of nuclear waste disposal since the Nuclear Waste Policy Act was enacted in 1983. We followed closely and participated in the work of the Blue Ribbon Commission on America's Nuclear Future and we want to contribute to implementing its recommendations so that the troubled program can get on track.

Our interest in this issue centers around the consumers of nuclear utilities who have been bearing the ultimate cost of fees paid by their utilities for the electricity that is produced from the Nation's 104 nuclear reactors. Those fee payments represent the "grand bargain" set in the Nuclear Waste Policy Act. Under the Act, the federal government is responsible for the safe disposal of both government and commercial nuclear waste, and those who have benefit (i.e. consumers of nuclear power) shall pay for the cost of disposal of waste products. Unfortunately, history has proven that the collection of fees has been the only aspect of the nuclear waste program that began on time and has functioned as designed.

We should note for the record that NARUC is a party to litigation before the Court of Appeals District of Columbia Circuit seeking to require that the Nuclear Regulatory Commission resume

the Yucca Mountain license application review and come to a final determination of whether a repository at Yucca Mountain meets regulatory requirements or not.

The Blue Ribbon Commission on America's Nuclear Future in its January Report to the Secretary of Energy said all of its recommendations "can and should be implemented regardless of what happens to Yucca Mountain." We had expected that the Administration would have provided some indication of whether and how it will implement those recommendations or how it intends to "fulfill the Federal Government's obligations for managing and ultimately disposing of spent nuclear fuel and high-level radioactive waste" as it pledged in 2009.

We commend the leadership of this Committee for your collaborative efforts with members of the Energy and Water Appropriations Subcommittee to produce the proposed "Nuclear Waste Administration Act of 2012," S. 3469, as a legislative vehicle to incorporate key provisions of the BRC Report into a modified Nuclear Waste Policy Act. We have some comments from the standpoint of ratepayers and in some instances in comparison with the BRC recommendations.

You will not be surprised that our primary interest is on fixing the Nuclear Waste Fund. The BRC said it believed that "the success of a revitalized waste management program will depend on making the revenues by the nuclear waste fee and the balance in the NWF available when needed and in the amounts needed to implement the program." The Commission called for reform in two stages:

- Near Term, within existing administrative authority: Modifying existing contracts with utilities such that total fees paid to the Treasury would match the amount appropriated from the NWF in the same year. The balance would be placed in irrevocable trust accounts (escrow) for future payments. The fee revenue would be reclassified as offsetting receipts, subject to concurrence by the Congressional Budget Office and the Budget Committees.
- Congressional action required: The BRC recommended budget autonomy for the new nuclear waste management organization that would require legislation (such as S. 3469) to establish. Specifically, the BRC recommended the legislation include a "defined schedule of payments to transfer the balance of the Fund (the corpus) to the new organization over a reasonable future time period starting 10 years after the organization is established."

We are deeply disappointed that the Administration chose not to move ahead on the near-term action which was so carefully researched by the Blue Ribbon Commission and placed in their hands. We are not experts in federal fiscal rules, but given the importance of resolving this issue, we expected a better effort. This lack of action reminds us of a baseball saying—"You will never get a hit if you don't take a swing."

Thankfully, as it relates to the actions requiring congressional action, , S. 3469 steps up to the plate. The legislation creates an independent agency called the Nuclear Waste Administration that would be given most of the duties and authorities under the NWPA that are presently assigned to the Secretary of Energy. Still, we are concerned about how the program will be managed before legislation is enacted and how transition to the NWA is implemented. For the past two years, about \$770 million in fees have been paid into the Nuclear Waste Fund annually and no money was appropriated for waste disposal. It appears, however, that the money was spent for other purposes and more “IOU’s” were added to the Fund. We are anxious to see if FY 2014 is any different.

Regarding the organizational form and function, we thought the federal corporation proposed by the BRC was well considered. We found the various oversight mechanisms ample, including a role for State utility commissioners to serve in the review of fee adequacy determination.

Having seen extended vacancies in the senior DOE waste program manager’s position caused by lengthy confirmation delays in the Senate during the Yucca period, we find the BRC federal corporation a well suited approach. This is because having presidentially appointed directors select the CEO better protects the position and provides greater program stability than the politically-appointed Administrator/Deputy Administrator positions the NWA legislation would.

Moreover, the bill does not heed the clear call for financial reform made by the BRC and it may impede the startup of the new organization. The Administration (so far) chooses to avoid a rejection of the near-term fee reclassification, so let us express some apprehension over how a Nuclear Waste Administration might be difficult to form if it cannot attract top-tier talent because of concerns over its financial stability. Potential applicants for the NWA Administrator position do want to see a secure financial foundation underlying the NWA or other organization.

Additionally, we are puzzled by the appearance of different degrees of financial autonomy for the new Administration:

- In Sec. 301 the NWA is given authority for the “collection, adjustment, deposition and use of fees” to accomplish waste functions, yet
- Sec. 401 (c) says funds deposited in the Working Capital Account “shall be immediately be available... to carry out the functions of the Administrator, except to the extent limited in annual authorization or appropriation Acts.”

The Working Capital Fund seems to offer improved access to the fee revenue, which should be an improvement over the present arrangement. An even better strengthening of the NWA financial support, though, would have the interest earned on the balance in the Nuclear Waste

Fund deposited in the Working Capital Fund. In recent years, that interest has been over \$1 billion a year.

The bill gives no indication on any disposition schedule like the BRC suggested; leaving some doubt about when and under what conditions the “corpus,” reportedly over \$26 billion now, will be made available for the purpose it was collected. No one is saying there is a need to use that money now, but every calculation of the sufficiency of the fees rests on the assumption that 100 percent of past fees paid is available to the waste activities program, including interest. It seems ironic, then, that Section 403 provides direction that the NWA is to assume that sufficient funds will be appropriated to the NWA to cover the cost of defense waste disposal, yet there is no counterpart assurance that past fee revenue collected and supposedly held in the Nuclear Waste Fund will also be appropriated.

We agree with the shift to a more co-equal “consent-based” approach to siting nuclear waste facilities. We hope that the implementing organization is given latitude to be adaptive to the circumstances of the States and localities involved. There are opportunities to employ the principles recommended by the BRC in pursuit of a consolidated interim storage facility for spent nuclear fuel from the decommissioned reactor storage sites. Successful development of such a facility—whether by DOE or a new organization—would demonstrate that the government can safely transport and store spent nuclear fuel while pursuing a geologic repository. There are a number of cost estimates for building such a facility. One done by DOE in 2007 indicated a facility for the decommissioned sites could be built and operated for 15 years for the same amount of fees paid by all reactors in a single year.

The bill includes many other important elements that we are not addressing here. Importantly, we want to continue to work with DOE until a new organization is formed and functional. We must be realistic about just how quickly we can move forward, even if Congress passes a bill. Issues such as the radiation standards, siting guidelines and development of a mission plan within a year, will take time. Indeed, just building a nucleus staff and creating a new organization will take time.

As we stand at the threshold of dramatic sequestration reductions in federal agency budgets, there may be resistance to creating a new federal agency for any purpose. We considered it unfortunate that the Administration took credit in the FY 2010 Budget for termination of the Yucca Mountain *program*, rather than recognizing that the Administration—we believe—meant to cancel the Yucca Mountain *project* and to reset the development of the program at a different site or sites. We regret the disbanding of a residual staff within the Department of Energy that could tend to disposal affairs during the BRC deliberation and to aid in the establishment of a new waste management organization.

In conclusion, NARUC appreciates the leadership in creating this bill—a positive step—although we remain apprehensive about “limits” on annual fees and worried over the corpus.

The best media summation comes from July 4 *New York Times*: “If nuclear power is to have a future in this country, politicians, scientists, and industry leaders need to commit to finding a solution instead of just hoping everything will somehow work out.” The BRC expressed much the same appeal in its Report, as its members “believe it is long past time for the government to make good on its commitments to the American people to provide for the safe disposal of nuclear waste.”

Sincerely,

A handwritten signature in black ink, appearing to read "D.A. Wright". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

David A. Wright  
NARUC President  
Vice Chairman  
South Carolina Public Service Commission

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*NARUC is a quasi-governmental, non-profit organization founded in 1889. Our membership includes the State public utility commissions serving all States and 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 ensure the establishment and maintenance of such utility services as may be required by the public convenience and necessity and to ensure that such services are provided under rates and subject to terms and conditions of service that are just, reasonable, and non-discriminatory.*