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May 24, 2013

The Honorable Ron Wyden  
221 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Lisa Murkowski  
709 Hart Senate Office Building  
Washington, DC 20510

The Honorable Diane Feinstein  
331 Hart Senate Office Building  
Washington, DC 20510

The Honorable Lamar Alexander  
455 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senators Wyden, Murkowski, Feinstein and Alexander:

I am providing comments of the Decommissioning Plant Coalition<sup>1</sup> (DPC) on the bipartisan “Nuclear Waste Discussion Draft,” the “Alexander-Feinstein Alternative Proposal to Nuclear Waste Facility Siting Process Discussion Draft” and associated documents released on April 25. The DPC is deeply appreciative of the effort that you and your staffs have put into developing the noted proposals – intended to implement the recommendations of the Blue Ribbon Commission on America’s Nuclear Future (BRC). Members of the DPC worked closely with the BRC to ensure it understood the unique burdens imposed on permanently shutdown nuclear plants to continue the storage of spent fuel and high level nuclear waste on sites without an operating nuclear generating station.

The DPC believes it is important for the Nation to begin now to develop a consent-based siting process that will lead to the licensing, construction and operation of a pilot consolidated storage facility. Whether or not the Yucca Mountain repository program is restarted – and we believe that the NRC should finish its review and

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<sup>1</sup> Permanently shutdown civilian plants represented by the DPC include: Connecticut Yankee (CT), Dairyland (WI), Humboldt Bay (CA), Maine Yankee (ME), Rancho Seco (CA), Yankee Rowe (MA) and Zion (IL). Other permanently shutdown units include: Big Rock (MI), Crystal River (FL), Kewaunee (WI) and Trojan (OR). A 12<sup>th</sup>, Ft. St. Vrain (CO) is licensed to the DOE.

evaluation of the license application submitted in 2008 – there is a critical role for consolidated storage in an integrated waste management system. A successful demonstration that civilian spent fuel and high level nuclear waste can be safely transported and centrally managed, and that the government can begin to fulfill and satisfy its contractual obligations, allowing these former industrial sites to finally complete decommissioning and be utilized for other purposes, should be viewed as a critical first step in the development of a longer-term, integrated program for managing the ultimate disposal of products in the back end of the nuclear fuel cycle.

As advocated by the BRC, our coalition believes that Congress can best assure the long-term success of the Nation's effort to manage this part of the nuclear fuel cycle if it establishes a single-purpose management entity as a successor to the Department of Energy, vests it with the requisite accountability to stakeholders, provides it with sufficient insulation from electoral politics and grants it access to the necessary financial resources currently flowing into the Nuclear Waste Fund. The Nuclear Energy Institute (NEI) has provided detailed comments on these specific issues and we generally endorse NEI's comments on them.

We appreciate the recognition in the discussion draft that the transportation of radioactive materials has been a success story in the United States (and indeed globally)<sup>2</sup>. The transportation provisions appropriately require:

- all transportation to be conducted in NRC certified packages;
- prior notification of shipments to affected state and tribal jurisdictions;
- the establishment of an assistance program to those jurisdictions that entails public education and training; and
- the provision of resources necessary to acquire response equipment and conduct safety programs.

On matters of principal interest to DPC participants addressed in the discussion drafts, we offer the following comments.

- (1) We support the concept that a priority for use of the pilot consolidated storage facility should be accorded to *permanently shutdown nuclear plants on sites without an operating nuclear generating station*, and emergency deliveries as provided in the existing standard contract.<sup>3</sup>

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<sup>2</sup> According to information compiled for the BRC, approximately 3,200 shipments of spent nuclear fuel from commercial nuclear power plants and research reactors have occurred in the U.S., carrying approximately 3,290 MTU of material. In addition, the BRC noted that there have been more than 800 cask shipments of naval reactor spent nuclear fuel to the Idaho National Laboratory.

<sup>3</sup> Clearly, there are other materials for which consolidated storage could be an appropriate management response and the discussion draft identifies some of them. We would be concerned, however, that the potential "unknowns" in the universe of material that a future Secretary of Energy might want the new management entity to store prior to disposal (in addition to civilian spent nuclear fuel from the defined class of permanently shutdown reactors) could unduly complicate

- (2) While we appreciate that a settlement of ongoing contractual disputes with the Department of Energy will be a part of any program that actually removes fuel from our sites, we have serious reservations and concerns about Congress' ability to unilaterally mandate a settlement as a condition of access to a consolidated storage facility created, at least in part, to relieve the government of existing contractual liabilities. Contract holders, having paid into the Nuclear Waste Fund in full accordance with the terms of their contract, should be entitled to access to these facilities without being forced to settle already existing contract breach claims on terms imposed by the Department of Justice.
- (3) We do not believe that statutory siting guidelines should include a host of subjective criteria nor should the statute contain an explicit linkage between consolidated storage and ultimate disposal. The only guideline that should matter is the ability of a site to satisfy applicable licensing criteria. Other matters should be left to the negotiation between the local and state governments, Indian Tribes and the federal government. This would include matters such as whether a proposed facility was "an undue burden," whether its operation would "conflict with a compliance agreement" or a "statutory prohibition" and whether a consent agreement should require the removal of material from a storage facility if a repository is not operational by a date certain. That flexibility is already built into the legislation in the proposed section 304(f).
- (4) The definition of material covered by contractual obligations should be clarified to avoid the creation of another orphan category of nuclear material. Specifically, Greater-Than-Class-C (GTCC) waste should be explicitly included in the removal and disposal obligation, as has often been decided by the federal courts that have considered the issue under the existing contracts.<sup>4</sup>

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discussions and negotiations with potentially willing host communities, states and Tribes who will be in need of a full understanding of the potential uses of the pilot facility and associated licensing and other technical issues. Particularly in light of the fact that the discussion draft provides for a 24-month study on the issue of co-mingling, opening up the class of material that could be received at the pilot facility too broadly could cause unnecessary delay in arriving at a consent agreement for this first management facility.

<sup>4</sup> The Nuclear Waste Policy Act defines high-level nuclear waste to include "other highly radioactive material that the Commission [NRC] consistent with existing law, determines by rule requires permanent isolation." This definition is adopted by the discussion draft. The NRC adopted a regulation (10 CFR 61.55), urged on it by the DOE, that says GTCC waste "must be disposed of in a geologic repository as defined in part 60 or 63 of this chapter unless proposals for disposal of such of such waste in a disposal site licensed pursuant to this part are approved by the Commission." DOE has repeatedly pointed to the option to repository disposal provided by the NRC regulation in an effort to avoid responsibility for the disposal of GTCC waste, which is an exceedingly small fraction of the material at permanently shutdown nuclear sites.

(5) We appreciate your recognition that permanently shutdown reactors no longer produce more spent fuel and associated nuclear generation revenues and have thus fulfilled their obligations under the Nuclear Waste Policy Act, consistent with the Standard Contract. It is our understanding that the discussion draft does not permit the successor agency to levy new fees against these facilities as part of its campaign to take title and remove the spent nuclear fuel and high level nuclear waste from these sites to the pilot consolidated storage (and eventually repository) facility. We applaud that treatment.

(6) As contract holders who have been involved in litigation against the Department of Energy for its failure to timely perform the acceptance of spent fuel and high level nuclear waste in accordance with the terms of that contract, we certainly appreciate the sentiment behind the proposed section 401(e). Clearly, if the program in 2025 is at a standstill, such as today, contract holders should be entitled to withhold further payments into the new Working Capital Fund. However, we would be concerned about a scenario where substantial progress is being made in the development of a consolidated storage facility, but unforeseen delay had prevented it from becoming "operational." In that instance, the legislation should make clear that unexpended balances in the Nuclear Waste Fund should be used in the interim to complete development of the consolidated storage facility(ies) under construction and begin their operation.

In closing, let me again reiterate the appreciation of our coalition for the priority that the four of you have placed on addressing the spent nuclear fuel and high level nuclear waste issue. We pledge to work with you in support of your efforts and would be pleased with an opportunity to testify should you hold hearings on the matter during the course of your deliberations.

Sincerely,



Wayne Norton  
President and CEO, Connecticut Yankee and Yankee Rowe  
CNO, Maine Yankee  
Chairman, Decommissioning Plant Coalition