

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before Commissioner David A. Wright

In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High Level Waste Repository))	

NEVADA REQUEST THAT COMMISSIONER WRIGHT BE RECUSED

I. Introduction

The State of Nevada respectfully requests that you recuse (disqualify) yourself from participating in any Commission decision pertaining to the Yucca Mountain repository licensing process, including the formal adjudicatory licensing proceeding (should it be restarted). As explained below, your participation in the Yucca Mountain licensing process would violate Nevada's due process right to a neutral and unbiased decision-maker, violate established judicial, statutory, and administrative standards requiring your recusal, and constitute an extraordinary and unwarranted departure from the past practice of NRC Commissioners. In fact, given your past actions and expressions of opinion about the merits of the proposed Yucca Mountain repository, your participation would flout established norms that have been followed throughout the Commission's 43-year history.

Nevada has participated as a party-intervenor in the Yucca Mountain licensing process for over eight years and has never sought the recusal of any Commissioner or administrative judge. It does not take such an action lightly, without careful consideration. However, it must do so now in the extraordinary circumstances that apply, which include your role as an advisor to a party in the Yucca Mountain adjudicatory proceeding, your frequent and long-standing

expressions of opinion that a repository at Yucca Mountain is necessary and will be safe, your criticism of Nevada for daring to oppose the Yucca Mountain repository, and your formation of, and active participation in, at least one organization whose sole focus was the advancement and completion of the Yucca Mountain repository. These circumstances are described in detail below and are supported by the attached affidavit.

II. Timing

Nevada is aware that the adjudicatory proceeding is currently suspended and that it might be argued that the instant request should await the restart of that proceeding, if that ever occurs. However, long-standing Commission precedent holds that recusal requests must be filed promptly after the grounds for recusal become known. *See e.g., Commonwealth Edison Co. (Zion Station Units 1 and 2)*, ALAB-226, 8 AEC 381 (1974). Moreover Nevada might be prejudiced by your participation in Commission decisions before or simultaneous with a restart decision, including a restart decision itself. Finally, Chairman Macfarlane considered and decided a motion for her recusal while the adjudicatory proceeding was suspended. *See* recusal decision dated September 9, 2013 (ML13252A418). Therefore, Nevada believes that filing the instant request now is consistent with Commission practice, prudent and timely.¹

III. Basis for Recusal

A. General Principles

Due process of law requires a neutral and unbiased decision-maker. Indeed, courts consistently characterize provision of a neutral and unbiased decision-maker as one of the core

¹ A hypothetical (but, in Nevada's opinion, unnecessary) motion to the Commission to lift the suspension for the limited purpose of enabling Nevada to file the instant recusal request would be contrary to long-standing Commission practice whereby recusal matters are addressed to and decided by the individual commissioner, not the Commission itself. A Commission decision whether to lift the suspension could determine whether the recusal request should be denied on procedural grounds.

requirements of a system of fair adjudicatory decision-making. *See e.g., Arnett v. Kennedy*, 416 U.S. 134, 171 (1974) (White, J., concurring and dissenting); the principle dates back at least as far as seventeenth century England (*Dr. Bonham's Case*, 77 Eng. Rep. 646, 652 (1610)) and was incorporated into the judicial philosophy of the Founding Fathers (*see e.g., The Federalist No. 10* (James Madison) – “No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time.”

The applicable standards for recusal² of NRC Commissioners are set forth in long-standing Commission case law. The essential point of this case law is that the standards governing recusal of members of the Commission (and administrative judges) are the same as those that apply to federal judges. *Houston Lighting & Power Company (South Texas Project, Units 1 and 2)*, CLI_82-9, 15 NRC 1363, 1365-67) 1982); *Public Service Electric & Gas Company (Hope Creek Generating Station, Unit 1)*, ALAB-759, 19 NRC 13, 21 (1984). These standards are set forth in 28 U.S.C. § 455, authoritative Commission interpretation of 28 U.S.C. § 455, and judicial and NRC adjudicatory decisions. These are explained and applied below.

B. Your Participation on Behalf of a Party in the Yucca Mountain Adjudicatory Proceeding

(1) 28 U.S.C. §455

Section 455 of Title 28 of the United States Code includes a provision (28 U.S.C. § 455 (b) (3)) that requires recusal of a Federal judge whenever “he has served in governmental employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy.” As explained below, you have done precisely this when you not only served as a

² The terms “recusal” and disqualification” mean the same thing.

governmental advisor to the National Association of Regulatory Utility Commissioners (NARUC) concerning its participation as a party in the Yucca Mountain adjudicatory proceeding but also, and in doing so, offered an opinion concerning the merits of an admitted contention.

On March 15, 2010, NARUC filed a petition to intervene as a party in the Yucca Mountain adjudicatory proceeding (ML100740714). That petition, which was subsequently granted by the presiding Construction Authorization Board, was supported by an affidavit you signed in your capacity as a government employee, specifically as Commissioner on the South Carolina Public Service Commission. *See* Wright affidavit (Exhibit 1) and *U.S. Department of Energy (High-Level Waste Repository)*, LBP-10-11, 71 NRC 609, 636-644 (2010). You thereby advised (and supported) NARUC concerning its participation in the Yucca Mountain adjudicatory proceeding in your capacity as a government employee. This requires your recusal under 28 U.S.C. § 455 (b) (3).³

In addition your affidavit supported NARUC's standing to intervene by arguing that the citizens you represent as a member of the South Carolina Public Service Commission would suffer injuries ("widespread contamination of the seventy-two commercial and five DOE sites across the United States, with resulting human health impacts") if the Yucca Mountain repository is not built. *See* Exhibit 1 at page 5; *see also* NARUC Petition at page 9. Both your affidavit, and NARUC's petition which you supported, cite to and rely on the critical conclusion in DOE's analysis of the NEPA No-Action Alternative that not licensing Yucca Mountain would (assuming that no effective institutional controls are in place after 100 years) lead to a situation where spent nuclear fuel and high-level radioactive waste storage facilities sites would begin to

³ The definition of "proceeding" in 28 U.S.C. § 455 (d) (1) makes clear that participation as an advisor in any stage of the litigation would be disqualifying. As applied to the NRC, this means that participation as an advisor in a stage of a proceeding when petitions to intervene are considered would be disqualifying.

deteriorate and radioactive material would be released into the environment, contaminating the local atmosphere, soil, surface water, and groundwater. *See* NARUC's Petition at page 10, quoting with approval from DOE's analysis of the No-Action Alternative in its Final Environmental Impact Statement on Yucca Mountain; *see also* Exhibit 1 at page 6, citing with your apparent approval DOE's analysis of the No-Action Alternative in its 2002 Final Environmental Impact Statement on Yucca Mountain.⁴

Your testimony (affidavit) in this regard contests the merits of Nevada's admitted contention NEV-NEPA-22, which challenges DOE's No-Action Alternative as reliant on scenarios that are not "available, appropriate, [or] reasonable." In particular, NEV-NEPA-22 alleges that the loss of institutional control after 100 years assumed by you in your affidavit (and by DOE in its environmental impact statement) is "remote and speculative." *See* Nevada Petition to Intervene at page 1132 (ML083540096). NEV-NEPA-22 is an especially important NEPA contention because DOE's conclusion that the preferred action under NEPA is construction and operation of the Yucca Mountain repository would be fatally undermined if it is sustained. You thereby not only participated as a material witness and advisor in support of NARUC's intervention but also, in doing so, expressed an opinion concerning the merits of one specific and very important matter in controversy, NEV-NEPA-22. This also requires your recusal under 28 U.S.C. § 455 (b) (3).

⁴ The correct cite for your quote in your affidavit is to page S-83 of the Readers Guide and Summary, where DOE states that "[t]here could be large public health and environmental consequences under the No-Action Alternative if there were no effective institutional control, causing storage facilities and containers to deteriorate and radioactive contaminants from the spent nuclear fuel and high-level radioactive waste to enter the environment. In such circumstances, there would be widespread contamination at the 72 commercial and 5 DOE sites across the United States, with resulting human health impacts." The conclusion here refers to DOE's analysis of No-Action Alternative Scenario 2 which assumes a loss of institutional control after 100 years. *See* page S-75 of the Readers Guide and Summary.

(2) 28 U.S.C. § 455 (b) (2)

Section 455 of Title 28 of the United States Code also includes a provision (28 U.S.C. § 455 (b) (2)) that requires recusal of a Federal judge where “in private practice he served as a lawyer in the matter in controversy. . . .” In *Public Service Electric & Gas Company (Hope Creek Generating Station, Unit 1)*, ALAB-759, 19 NRC 13, 23 (1984), the Atomic Safety and Licensing Appeal Board held in regard to 28 U.S.C. § 455 (b) (2) that “we encounter no difficulty in . . . concluding that, in the instance of an adjudicator versed in a scientific discipline rather than in the law, disqualification is required if he previously provided technical services to one of the parties in connection with the ‘matter in controversy.’”⁵ Therefore a non-lawyer Commissioner is subject to disqualification under 28 U.S.C. § 455 (b) (2) whenever a lawyer would be disqualified under that same provision. Accordingly, former NRC Commissioner Apostolakis recused himself from the Yucca Mountain proceeding because of his prior involvement with Sandia Laboratories, DOE’s lead laboratory for repository systems. *See* Notice of Recusal dated July 15, 2010 (ML101960556).

As established above, you provided advice to NARUC in preparing and filing its contested petition to intervene and, in doing so, also advised and took a position on an admitted contention. Therefore you would be disqualified by 28 U.S.C. § 455 (b) (2) and *Public Service Electric & Gas Company (Hope Creek Generating Station, Unit 1)*, 19 NRC 13, supra, even if your advice to NARUC had been provided in your capacity as a private citizen.

⁵ The Appeal Board, which issued decisions denoted by an “ALAB” number, exercised final NRC adjudicatory decision authority until 1991 when it was abolished and its appellate function was assumed by the Commission itself. Its decisions still carry full precedential weight. *Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site)*, CLI-94-11, 40 NRC 55, 59 note 2 (1994).

(3) Federal Case Law

In *Williams v. Pennsylvania*, 579 U.S. ___, 136 S.Ct. 1899 (2016), the U.S. Supreme Court held that there was an unconstitutional risk of actual bias when a judge had a prior significant, personal involvement in a party's participation in the case. In *Williams*, the judge was disqualified notwithstanding that he never actually appeared on behalf of any party in the criminal proceeding because, in his capacity as a supervisory prosecutor, he had been personally involved in prosecutorial strategy (authorizing the prosecutor in the case to seek the death penalty).

This result is in accord with the above discussion of 28 U.S.C. § 455. Moreover the case law is clear that simply signing an affidavit is disqualifying. *TWA v. CAB*, 254 F.2d 90, 91 (D.C. Cir. 1958) (“The fundamental requirements of fairness in the performance of such [adjudicatory] functions require at least that one who participates in a case on behalf of any party, whether actively or merely formally by being on pleadings or briefs, take no part in the decision of that case by any tribunal on which he may thereafter sit”).⁶

C. Your Frequent and Long-standing Expressions of Opinion that Yucca Mountain is Safe, Your Unqualified Advocacy in Favor of Yucca Mountain, and Your Criticism of Nevada's “Myopic” Opposition to Yucca Mountain

Section 455 of Title 28 of the United States Code also includes a provision (28 U.S.C. § 455 (a)) that requires recusal of a Federal judge whenever “his impartiality might reasonably be questioned.” This requires a showing that would cause “an objective, disinterested observer fully informed of the underlying facts [to] entertain significant doubt that justice would be done absent recusal.” See *Entergy Nuclear Operations (Pilgrim Nuclear Power Station)*, CLI-10-22,

⁶ *TWA v. CAB* was cited with approval in *Am. Cyanamid Co. v. FTC*, 363 F.2d 757,767 (6th Cir. 1966), *American General Ins. Co. v. FTC*, 589 F.2d 462, 463-464 (9th Cir. 1989), and *Amos Treat & Co. v. SEC*, 306 F.2d 260, 264-265 (D.C. Cir. 1962).

72 NRC 202, 206 (2010). Nevada submits that a disinterested observer, fully informed of your frequent and long-standing expressions of opinion that a Yucca Mountain repository is necessary and will be safe, of your unqualified advocacy in favor of a Yucca Mountain repository, and of your characterization of Nevada's opposition to a Yucca Mountain repository as "myopic," would certainly entertain significant doubt that justice would be done absent your recusal.

On or about April 26, 2005, you announced the formation of "The Yucca Mountain Task Force." *See* Exhibit 2. You became the "National Co-chairman" of this Yucca Mountain Task Force and apparently remained so until 2010. Your 2010 affidavit on behalf of NARUC's intervention states that the Task Force was "focused on promoting the expeditious opening of the Yucca Mountain repository in Nevada." *See* Exhibit 1 at page 1 (emphasis added).

Your announcement of the Task Force made passing reference to the need for safety but then you explained that one key activity of the Task Force would be "[p]roviding a fresh new voice to the critical importance of expeditious implementation of the Yucca Mountain program given vital economic, energy and national security considerations – as well as the importance of progress on Yucca Mountain to new nuclear energy plant operation." You also stated similarly that "there are compelling national security, energy security and economic considerations that strongly warrant expeditious completion of the Yucca Mountain project as mandated by the Nuclear Waste Policy Act." You stated further that "I am optimistic about the future of the Yucca Mountain project." Then, in a comment that could only be referring to Nevada, you stated that "I am confident that the National interest is larger than one state's myopic resistance to moving this project forward – and I look forward to bringing this project closer to the goal line in the days and weeks to come." *See* Exhibit 2.

Your Task Force also promptly followed up with a letter to the Chairman of the House Energy and Commerce Committee, dated June 10, 2005, where you stated (as co-sponsor) that “we believe the best candidate for an interim storage or early receipt facility is Yucca Mountain. Clearly this highlights the importance of moving on with tangible progress on the licensing front and with construction of the surface facilities at Yucca Mountain.” *See* Exhibit 3. A “Joint Statement” by you and the Honorable Charles Pray, dated May 25, 2005, says the same. *See* Exhibit 4.

Then, in 2008, when DOE finally submitted the Yucca Mountain license application to the NRC, you issued a statement on behalf of your Task Force which included the unqualified conclusion that the application represented “three decades of sound science and common sense outlasting politics and rhetoric” and an observation that “the fact is that all roads eventually lead to the need for a national repository like Yucca Mountain if we’re going to continue to operate current plants and build a new generation of nuclear energy plants.” In sharp contrast to your previous criticism of Nevada for its “myopic” opposition to a repository at Yucca Mountain, you “commended” various DOE officials and personnel for “setting a schedule and meeting it while surmounting extraordinarily difficult political, fiscal, and legal roadblocks.” *See* Exhibit 5.⁷

Your advocacy for Yucca Mountain did not end with the Yucca Mountain Task Force. Beginning in 2006 you also served as the National Chairman of the “Nuclear Waste Strategy

⁷ These “legal roadblocks” almost certainly included Nevada’s successful judicial challenge to NRC’s and EPA’s licensing standards for Yucca Mountain and Nevada’s successful challenge to DOE’s initial LSN certification. *See NEI v. EPA*, 373 F.3d 1251 (D.C. Cir. 2004) and *U.S. Department of Energy (High-Level Waste Repository) Pre-Application Matters*, LBP-04-20, 60 NRC 300 (2004). Only a committed and zealous advocate for Yucca Mountain would characterize Nevada’s successful endeavors to hold DOE and NRC accountable for compliance with legal requirements as an erection of “legal roadblocks.”

Coalition.” *See* Exhibit 1 at page 1.⁸ On July 27, 2010, you testified on behalf of the Coalition (and others) before the House of Representatives Committee on the Budget, stating that “we believe that the license application shows that Yucca Mountain will meet the requirements of the NWPA and regulations.” *See* Exhibit 8 at pp. 44, 46. And, on September 10, 2012, in a formal statement you submitted to the Senate Committee on Energy and Natural Resources, you opined on behalf of the Coalition (and others) that “the proposed Yucca Mountain repository remains the nation’s best hope for ‘promptly’ developing geologic disposal.” *See* Exhibit 9 at p. 70. It is quite apparent that your testimony and statement reflected your personal opinions as well as those of the Coalition.

Earlier, on February 1, 2012, you testified for NARUC before the Subcommittee on Environment and the Economy of the House Committee on Energy and Commerce, noting that NARUC then represented a “pro Yucca position.” *See* Exhibit 10 at p. 137.

It is true that an adjudicatory official like yourself is presumed objective and capable of judging a particular controversy fairly. *E.g., Nuclear Information and Resource Service v. NRC*, 509 F.3d 562 (D.C. Cir. 2007). And it is also true that a casual and isolated public expression of opinion about party, or a party’s expert witness, or an issue in dispute, is not necessarily

⁸ The Nuclear Waste Strategy Coalition” was no stranger to Yucca Mountain. Earlier, on December 7, 2005, the Coalition commented to NRC that “[t]he geologic structure of YM, as the DOE studies have shown, provides more than adequate protection for storage of spent nuclear fuel and high-level radioactive waste. We believe more than 20 years of in-depth scientific research has covered every facet of Yucca Mountain, from hydrology to geology to seismology.” ML053410361. *See* Exhibit 6. And, on April 16, 2008, during your term as Coalition Chairman, the Coalition supported an application for an NTSB certificate of public convenience and necessity, stating that “[t]aking into account DOE’s transportation safety record and its extensive analyses and consideration of safety factors during the studies of the proposed Caliente railroad, the NWSC encourages the Board to grant DOE the Certificate of Public Convenience and Necessity.” *See* Exhibit 7.

disqualifying. *Id.* at 571. But your behavior described above is altogether different and rebuts any presumption of objectivity and fairness.

As indicated above, from 2005 through 2012 you offered no less than six separate public statements of support for the Yucca Mountain repository, including two unqualified opinions that DOE's license application represented "sound science" and demonstrated compliance with the NWPA and NRC regulations, and a gratuitous insult to Nevada for its "myopic" resistance to a Yucca Mountain repository.⁹ Some of these statements and opinions – for example, your testimony that "the license application shows that Yucca Mountain will meet the requirements of the NWPA and regulations" were not offered in a casual or offhand manner, but in very formal proceedings before Congress. *See* Ex. 8 at p. 48. Not once did you acknowledge that legitimate safety and environmental issues had been raised and remained unresolved, as the CAB so found in admitting nearly 300 contentions in the adjudicatory proceeding. Not once did you concede that Nevada's opposition may be based on a good faith concerns for safety and the environment.

Moreover you established and then supported a task force "focused on promoting the expeditious opening of the Yucca Mountain repository in Nevada." *See* Ex. 1 at p. 2, *supra*. It takes extraordinary initiative, careful deliberation, and even passion to establish a task force to advocate for particular cause. This kind of advocacy is wholly inconsistent with your new role as a neutral adjudicatory decision-maker. An objective, disinterested observer fully informed of the facts set forth above would surely entertain significant doubt that justice would be done absent your recusal.

⁹ The number of statements of support would be ten if multiple statements of support in a single Exhibit are counted separately.

IV. Conclusion

Nevada respectfully requests that you recuse (disqualify) yourself from participating in any Commission decision in the Yucca Mountain licensing process, including the formal adjudicatory licensing proceeding (should it be restarted).

V. Consultation

Nevada's counsel certifies that he has made a sincere effort to contact other parties in the proceeding and resolve the issue raised in this request, as required by 10 C.F.R. § 2.323(b), and that the movant's efforts to resolve the issue have been unsuccessful. The responses to counsel's outreach efforts were as follows: Eureka County advised that it does not plan to take a position; Nye County advised that it respectfully declines to support the request; NARUC advised that its participation was limited to opposing DOE's withdrawal motion but that it believes Nevada's request on its face provides no legal basis for recusal under the applicable standards; Aiken County advised that it does not support the planned request; the NRC Staff advised that it takes no position on the proposed filing; South Carolina advised that it does not support the planned request; the Nuclear Energy Institute advised that it takes no position on the proposed filing; the County of Inyo will join Nevada in its request; and California takes no position on Nevada's proposed request.

Respectfully submitted,

(signed electronically)

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Dated: June 7, 2018

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Atomic Safety and Licensing Board

In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High Level Waste Repository))	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *The State of Nevada's Request that Commissioner Wright be Recused*, has been served upon the following persons by email this 7th day of June, 2018:

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Via Email To:
 Dan Schinhofen
 Nye County Commissioner
 dschinhofen@co.nye.nv.us

(signed electronically)
 Susan Montesi

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before Commissioner David A. Wright

In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High Level Waste Repository))	

**AFFIDAVIT OF LAURIE BORSKI
UNDER PENALTY OF PERJURY REGARDING EXHIBITS TO
NEVADA REQUEST THAT COMMISSIONER WRIGHT BE RECUSED**

1. My name is Laurie Borski. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge.
2. I am Paralegal at Egan Fitzpatrick Malsch & Lawrence PLLC, Special Deputy Attorneys General for the State of Nevada in the referenced action. As part of my regular job duties as a paralegal, I was tasked with, and was solely responsible for, correctly identifying and compiling the exhibits attached to Nevada's Motion for Recusal of Commissioner Wright.
3. The exhibits attached thereto were obtained from credible resources that I located, and then downloaded and compiled by me in the course of a regularly conducted business activity of Egan Fitzpatrick Malsch & Lawrence PLLC. The attached exhibits are exact duplicates of records downloaded by me and are true and correct. I did not redact or otherwise alter any of the exhibits.
4. I created the excerpts that constitute Exhibits 1, 8, 9 and 10 from exact duplicates of pleadings and congressional testimony obtained from credible resources, downloaded and

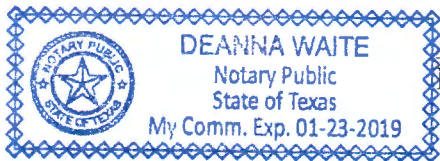
compiled by me in the course of a regularly conducted business activity of Egan Fitzpatrick Malsch & Lawrence PLLC. The excerpts are true and correct copies and were made by me in the course of a regularly conducted activity of Egan Fitzpatrick Malsch & Lawrence PLLC. I did not redact or otherwise alter any of the extracts or the original exhibits from which the extracts were created.

- 5. I declare under penalty of perjury that the foregoing statements are true and correct.
Further, Affiant says not.

Laurie Borski
LAURIE BORSKI

STATE OF TEXAS)
)
COUNTY OF GUADALUPE)

SWORN TO, and SUBSCRIBED before me by LAURIE BORSKI on the 30 day of May, 2018.



Deanna Waite
Notary Public, State of Texas
01/23/2019
My Commission Expires:

Exhibit 1

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:
U.S. DEPARTMENT OF
ENERGY
(High Level Waste Repository)

Docket No. 63-001-HLW
ASLBP NO. 09-892-HLW-CAB04
March 15, 2010

**NATIONAL ASSOCIATION OF REGULATORY UTILITY
COMMISSIONERS**

PETITION TO INTERVENE

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Attorneys for Proposed Intervenor,
National Association of Regulatory
Utility Commissioners

Attachment 1

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:
U.S. DEPARTMENT OF
ENERGY
(High Level Waste Repository)

Docket No. 63-001-HLW
ASLBP NO. 09-892-HLW-CAB04
March 15, 2010

**AFFIDAVIT OF THE HONORABLE DAVID WRIGHT,
NARUC MEMBER COMMISSIONER,
IN SUPPORT OF THE STANDING OF
THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

David Wright, being duly sworn, states as follows:

1. My name is David Wright. I have been a Commissioner on the South Carolina Public Service Commission and a voting member of the National Association of Regulatory Utility Commissioners (NARUC) since March 3, 2004. I am also currently the Chairman of the NARUC's *Nuclear Issues-Waste Management Disposal Subcommittee*, as well as, NARUC's *Washington Action* and *Electricity Committees*. In 2005, I became a National Co-Chairman of the *Yucca Mountain Task Force*, a national group of commissioners, businesses, and independent organizations focused on promoting the expeditious opening of the Yucca Mountain repository in Nevada. In December 2006, I became National Chairman of the *Nuclear Waste Strategy Coalition (NWSC)*. I have served as a representative and board member of NWSC since becoming a commissioner. I have also served as the President of the *Southeastern Association of Regulatory Utility Commissioners*. I receive official mail at: South Carolina Public Service Commission, 101 Executive Center Drive, Columbia, SC 29210.

2. NARUC, founded in 1889, includes as members commissioners at regulatory agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. These State employees are charged with regulating the rates and conditions of service associated with the intrastate operations of electric, natural gas, water, and phone utilities.

3. In February 2010, at its recent winter meetings held in Washington, D.C., NARUC passed a “***Resolution on National Policy for Management and Disposal of Spent Fuel from Commercial Nuclear Power Plants.***” A copy of the resolution is attached. That resolution [1] instructs NARUC to “call upon the Secretary of Energy not to withdraw the Yucca Mountain license application from the review process underway at the NRC,” [2] points out that “NARUC and State utility commissions as stakeholders in the disposal policy on behalf of ratepayers—who continue to bear the ultimate cost of the fee payments to the Fund—should play an active role in representing their views to the Blue Ribbon Commission, drawing upon the multiple NARUC nuclear waste policy resolutions adopted over the past 25 years, and [3] specifically instructs NARUC to “convey to the (Nuclear Regulatory) Commission that any alternative that leaves the spent nuclear fuel at present storage sites indefinitely, whether managed by the owners or by the government, is inconsistent with the NWPA findings of 1982 and would break faith with the communities which host those reactors with the understanding that the spent fuel would be removed by the government.”

4. Like almost all of my fellow NARUC State Commissioners, I am charged by State statute with overseeing the operations of electric utilities operating in my State. For example, this past February, my Commission unanimously approved a request by our State’s largest utility, South

Carolina Electric & Gas (SCE&G), to join with a State-owned utility to build two new nuclear reactors. We approved rate increases to finance SCE&G's \$5.4 billion dollar investment in the new nuclear plant, which will be located just 30 miles north of our State's capital in Columbia. Order No. 2009-104(A) (March 2, 2009) (Docket No. 2008-196-E) Like many of my NARUC colleagues, limiting both the expense and the risks¹ of on-site storage of spent nuclear fuel is a part of my broader regulatory responsibilities under the laws of my State.

5. The Nuclear Waste Policy Act (NWPAct), enacted in 1982, made the federal government responsible for safe and final disposal of such waste. Under the Act, utilities pay fees for disposal through the Nuclear Waste Fund (NWF). *Those fees are passed through to ratepayers.* Although

¹ Safe operation of electric facilities, including nuclear plants, is a key focus of my Commission's oversight. See, e.g., CHAPTER 103 South Carolina Code of Regulations, ARTICLE 3. ELECTRIC SYSTEMS: 26 S.C. Code Ann. Regs. 103-312(2)(D)(e). "The electrical utility shall advise the commission . . . of the name, address and telephone number of the . . . persons, to be contacted in connection with . . . c. Engineering and/or Operations. . . e. Emergencies during non-office hours."; 26 S.C. Code Ann. Regs. 103-313. "Inspection of Utility Plant. - A. Each utility shall . . . provide . . . a statement regarding the condition and adequacy of its plant, equipment, facilities and service . . . [and] . . . keep sufficient records to give evidence of compliance with its inspection programs."; 26 S.C. Code Ann. Regs. 103-315. "A. Each electrical utility shall . . . report . . . each material incident [to] the operation of the electrical utility's property, facilities, or service including, but not limited to: (a) serious injury or death of any person; (b) evacuation; and (c) damage to a customer's or third party's property . . . Such first report shall later be supplemented . . . by a statement of the cause . . . and the measures, if any . . . taken to reduce the risk of similar incidents . . . B. Each electrical utility shall establish . . . procedures for analyzing, reporting, and minimizing the possibilities of any future incidents." 26 S.C. Code Ann. Regs. 103-347. "Each electrical utility . . . shall operate and maintain in a safe, efficient and proper condition all of the facilities and equipment." 26 S.C. Code Ann. Regs. 103-360. "The electric plant . . . shall be constructed, installed, maintained and operated in accordance with good engineering practice to assure, as far as reasonably possible, continuity of service . . . and the safety of persons and property. SubArticle 8 "SAFETY 26 S.C. Code Ann. Regs. 103-390. "As criteria of accepted good safety practice of the electrical utility, the commission shall use the applicable provisions of the standards listed in regulation 103-361." 26 S.C. Code Ann. Regs. 103-391. "A. Each electrical utility shall exercise reasonable care to reduce the hazards to which its employees, its customers and the general public may be subjected. B. The electrical utility shall give reasonable assistance to the ORS in the investigation of the cause of incidents and shall give reasonable assistance to the commission . . . in the determination of suitable means of preventing incidents. C. Each electrical utility shall maintain a summary of all reportable incidents." 26 S.C. Code Ann. Regs. 103-392. "Safety Program. Each electrical utility shall adopt and execute a safety program, fitted to the size and type of its operations. As a minimum, the safety program should: a. Require employees to use suitable . . . equipment in order that they may perform their work in a safe manner. b. Instruct employees in safe methods of performing their work. . . . d. Establish liaison with appropriate public officials . . . in anticipation of a potential emergency. e. Establish an educational program to enable customers and the general public to recognize and report an electrical emergency."(emphasis added) These regulations are available online at: <http://www.scstatehouse.gov/coderegs/c103.htm#103-305>

utilities and their ratepayers continue to pay these charges, the United States Department of Energy (DOE), which manages the disposal program, failed to meet its statutory and contractual obligation to begin waste acceptance in 1998. To date, South Carolina's ratepayers have paid about \$1.2 billion dollars in fees levied pursuant to the NWPA to develop a permanent storage site and *effectively bear both the increased costs and risks of onsite storage*. Cumulatively, ratepayers across the country, protected by my fellow NARUC Commissioners in other States, have contributed about \$17 billion in fees.

6. Nuclear power supplies electricity to one out of every two homes and businesses in South Carolina. It accounts for 51.2 percent of the State's electricity according to the U.S. Energy Information Administration. There are seven nuclear power plants in South Carolina along with a DOE site near Aiken, South Carolina that houses foreign spent fuel as well as defense high level nuclear waste.²

7. Because nuclear power fuels about 20 percent of the nation's electricity supply, it raises both cost and safety issues for NARUC member State Commissioners across the country, especially for those where nuclear plants are located, *i.e.*, in Arizona, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin. *See*, U.S. Energy

² *See*, *State Profiles*, U.S. Energy Information Administration (Independent Statistics and Analysis) at: http://www.eia.doe.gov/cneaf/nuclear/page/at_a_glance/reactors/states.html (last accessed March 15, 2010) (Lists 31 states that have commercial nuclear reactors, the generation and capacity trends, general locations, and State emissions levels. Profiles updated with 2007 emissions data on November 6, 2009.)

Information Administration, Independent Statistics and Analysis, States with Commercial Nuclear Industries, available online at:

http://www.eia.doe.gov/cneaf/nuclear/page/at_a_glance/reactors/states.html (Accessed March 12, 2010).

8. DOE’s Final Environmental Impact Statement for the Yucca Mountain Geological Repository concludes that not building the repository could result in “widespread contamination of the seventy-two commercial and five DOE sites across the United States, with resulting human health impacts.” (DOE/EIS—0250, Section 2.12).³

9. Continued operation of existing nuclear plants *requires* some *safe* and secure method of disposing of the high level radioactive waste and spent nuclear fuel generated. Effective management and *permanent* disposal of nuclear waste is essential to minimize the life cycle costs of these facilities. The rising expenses of expanding on-site storage while simultaneously funding reactor decommissioning accounts and the long promised DOE centralized waste repository continues to increase the costs of nuclear energy.

10. Many of NARUC’s State commission members scrutinize these costs of electric utilities to ensure ratepayers pay only for expenses that are reasonable and prudent. Utility plans for *interim* on-site storage involve large sums and raise significant financial issues.

³ See, generally, *Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2)*, ALAB-342, 4 NRC 98, 105-6 (1976) (Zone of interests created by the AEA is avoidance of a threat to health and safety of the public). Cf. footnote 1 *supra*.

11. Spent fuel continues to pile up at 73 locations in 35 States at sites that were never intended for long-term storage, and State-regulated utilities (along with numerous State commissions) expend significant resources on related protracted litigation over DOE's non-performance. Ratepayers ultimately bear not only the cost of utility payments to DOE intended to cover the cost of the disposal program *and* the costs of the additional on-site storage required by DOE's refusal to take that waste, but also the costs of the associated protracted litigation over DOE's refusal to take the waste, as well as litigation to block new plants exacerbated by DOE's delay in approving a repository.

12. Delays in the repository program, such as the Department of Energy's (DOE) recent motion to scrap the application for the Yucca Mountain facility that sparked the need for this NARUC intervention, necessarily results in the owners and operators of nuclear power plants having to store greater quantities of used nuclear fuel for longer periods of time, increasing both costs and risks associated with interim storage and also providing additional reasons to delay construction of new plants. Ratepayers in my State (and many other NARUC member States) continue to pay for a national storage "solution", enhanced litigation costs, and the increased costs of interim storage. History suggests if the DOE withdrawal motion is successful, it will effectively set the date the Federal government can finally begin to accept waste back at least 25 years. As State Commissioners, my NARUC colleagues across the country and I have an obvious interest in this proceeding – protecting ratepayers – an interest no other party will adequately represent. There is no question that our respective statutory duties to protect ratepayers are impacted by whatever action the NRC takes on the motion to withdraw.



David Wright

Sworn and subscribed to before me this 15th day of March, 2010

Deborah Eastley Notary Public

My Commission expires: 5-28-2014

Resolution on National Policy for Management and Disposal of Spent Fuel from Commercial Nuclear Power Plants

WHEREAS, The Nuclear Waste Policy Act (NWPA) of 1982 sets national policy that the federal government is responsible for safe, permanent disposal of all government and commercial high-level radioactive waste, including spent nuclear fuel, in a geologic repository beginning in 1998; *and*

WHEREAS, Those who have benefitted from nuclear-generated electricity—reactor owners and ratepayers—under the NWPA were to pay for the commercial share of disposal costs through fees paid to the Nuclear Waste Fund; *and*

WHEREAS, Reactor owners and ratepayers made fee payments since 1983 totaling over \$16 billion to the Fund, which earned another \$13.5 billion in interest, to more than meet the needs of the repository development program, which encountered numerous managerial, financial, legal and political difficulties resulting in failure to meet the 1998 date set in statute and contracts with the reactor owners; *and*

WHEREAS, When the Department of Energy, as disposal program manager, failed to begin waste acceptance in 1998, the reactor owners sued for partial breach of contract for which the Federal Court of Appeals found the government liable; *and*

WHEREAS, DOE and the Justice Department estimate the liability for court-awarded damages and settlements could be as much as \$12.3 billion—if the waste were to be accepted for disposal by 2020; *and*

WHEREAS, The Obama Administration declared its intent to terminate the Yucca Mountain repository development program and instead has appointed the Blue Ribbon Commission on America’s Nuclear Future to evaluate alternative disposal strategies and recommend a new direction that does not involve Yucca Mountain; *and*

WHEREAS, NARUC believes current law regarding Yucca Mountain development must be followed, however the Association must prepare itself for the possibility that the Administration may succeed in canceling the repository project; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2010 Winter Committee Meetings in Washington, D.C., expresses its disappointment at having the federal government take 25 years and expend over \$10 billion on Yucca Mountain as the repository site only to have the repository project be proposed to be cancelled before the Nuclear Regulatory Commission made a safety and technical decision on the license application submitted in 2008; *and be it further*

RESOLVED, That NARUC call upon the Secretary of Energy not to withdraw the Yucca Mountain license application from the review process underway at the NRC; *and be it further*

RESOLVED, That NARUC and State utility commissions as stakeholders in the disposal policy on behalf of ratepayers—who continue to bear the ultimate cost of the fee payments to the Fund—should play an active role in representing their views to the Blue Ribbon Commission, drawing upon the multiple NARUC nuclear waste policy resolutions adopted over the past 25 years; *and be it further*

RESOLVED, That NARUC convey to the Commission that any alternative that leaves the spent nuclear fuel at present storage sites indefinitely, whether managed by the owners or by the government, is inconsistent with the NWPA findings of 1982 and would break faith with the communities which host those reactors with the understanding that the spent fuel would be removed by the government; *and be it further*

RESOLVED, That the Commission should seek to determine if there is something about a geological repository generally or Yucca Mountain specifically that makes either a poor choice, suggesting a search should begin for a new repository site; *and be it further*

RESOLVED, That if a new repository program is to be recommended, then a new, more transparent site selection process should be considered, a new organization might be better suited for managing it and a reformed financing means be established that more reliably supports the new disposal strategy instead of subsidizing unrelated government activities; *and be it further*

RESOLVED, That NARUC pro-actively inform the Commission, DOE and the Congress that there are benefits in taking an initial near-term action to provide government or industry-run central interim storage of used nuclear fuel from the nine shutdown reactor sites, since it seems that whatever new disposal or reprocessing strategy is pursued, it will be unlikely to be in operation for another twenty or more years; *and be it further*

RESOLVED, That the federal government and owners of spent nuclear fuel should be encouraged to simplify and make equitable settlements over the ongoing litigation that provides payment for past expenses that the owners should not have to have incurred had DOE provided the “disposal services” agreed in the Standard Contracts; and to develop a regime for forecasting future payments without court-ordered judgments including suspension of Nuclear Waste Fund fee payments unless and until a revised program is agreed upon or the Yucca Mountain Project is fully restarted.

*Sponsored by the Committees on Electricity and Energy Resources and the Environment
Adopted by the NARUC Board of Directors February 17, 2010*

Exhibit 2

**Statement by David A. Wright
Commissioner South Carolina Public Service Commission
& Chairman Yucca Mountain Task Force**

We are announcing today the formation of The Yucca Mountain Task Force. The Task Force is a joint bipartisan national grassroots initiative of the Nuclear Waste Strategy Coalition, U.S. Transport Council, Nuclear Energy Institute, Prairie Island Community Council, Decommissioning Plant Coalition and other organizations that collectively represent state regulatory authorities, U.S. nuclear utilities and hundreds of businesses with principal operations throughout the United States.

The overriding objective of the Task Force is to accomplish the construction and operation of a safe Federal facility for spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nevada, within the shortest time frame possible -- consistent with public health and safety.

Our principal goals are to galvanize national grassroots support for:

1. Obtaining a comprehensive funding solution for Yucca Mountain licensing and development that ensures both necessary funding and full appropriation of the more than \$750M collected annually from nuclear energy consumers.
2. Facilitating timely development of a final Yucca Mountain radiation standard either administratively or legislatively.
3. Encouraging the DOE to submit a high-quality licensing application to the Nuclear Regulatory Commission in a timely manner.
4. Fostering and encouraging exemplary standards of quality assurance, accountability and integrity in the activities of the Yucca Mountain program.
5. Facilitating a national Yucca Mountain transportation and waste acceptance system.

The key activities of the Task Force will include:

- Re-energizing the national coalition that successfully achieved overwhelming approval in the U.S. House of Representatives and U.S. Senate to proceed with licensing and development of Yucca Mountain consistent with the Nuclear Waste Policy Act, amended.
- Recruiting Task Force Chairs in 41 states whose ratepayers pay into the Nuclear Waste Fund.
- Resolving the longstanding impasse between U.S. House and Senate leaders over fundamental funding and programmatic Yucca Mountain project issues.
- Serving as a national clearinghouse for other like-minded national and state organizations and elected officials.
- Providing a fresh new voice to the critical importance of expeditious implementation of the Yucca Mountain program given vital economic, energy and national security considerations -- as well as the importance of progress on Yucca Mountain to new nuclear energy plant operation.

I am pleased to chair the Task Force, along with Chairman LeRoy Koppendrayner, of the

Minnesota Public Utilities Commission, and Commissioner Robert Garvin of the Wisconsin Public Utility Commission as our vice-chairmen.

It is clear that there are compelling national security, energy security and economic considerations that strongly warrant expeditious completion of the Yucca Mountain project as mandated by the Nuclear Waste Policy Act. Electric utility consumers have invested billions of dollars to this end. Time and time again – in 1982, 1987, 1992 and in 2002 – the Congress has overwhelming reaffirmed its commitment to a national federal facility for spent fuel and high-level radioactive waste.

I am optimistic about the future of the Yucca Mountain project. I believe there is both the collective will and the leadership at the White House, the Department of Energy and the Congress for the enactment of a comprehensive funding fix, promulgation of a final radiation protection standard and successful implementation of licensing and development requirements for this Project. I am confident that the National interest is larger than one state's myopic resistance to moving this project forward – and I look forward to bringing this project closer to the goal line in the days and weeks to come.

Exhibit 3

YMTF

Yucca Mountain Task Force
1666 Connecticut Ave., N.W.
Suite 201
Washington, D.C. 20009
Tel: (202) 332-8155
Fax: (202) 332-8845

June 10, 2005

The Honorable Joe Barton
Chairman
House Energy and Commerce Committee
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the Yucca Mountain Task Force, we are writing to strongly urge expeditious action by the House Committee on Energy and Commerce to pass legislation to provide a comprehensive funding solution for Yucca Mountain licensing and development that ensures both necessary funding and full appropriation of the more than \$750M collected annually from nuclear energy consumers.

The Task Force is a joint initiative of the Nuclear Waste Strategy Coalition, U.S. Transport Council, U.S. Chamber of Commerce, Prairie Island Community Council, Decommissioning Plant Coalition and other organizations that collectively represent state regulatory authorities, hundreds of businesses, and nuclear utilities in the United States.

While the Yucca Mountain program faces complex challenges, there is no more compelling need for the program than long overdue action to provide a fundamental "funding fix" for the program. Chronic underfunding of Executive Branch requests, which characterized the program until recently, have led to more than a billion dollars in under-funding for the program, unnecessarily protracting key licensing and infrastructure development activities. With the program facing significant funding demands in the near future for licensing and construction activities, failure to provide for full appropriation of the more than \$750M collected annually for the Nuclear Waste Fund from nuclear energy consumers, as well as necessary funding from the Defense Nuclear Waste Fund, the program will continue facing multi-year delays, resulting in continued escalating costs for taxpayers.

These considerations are all the more important in light of the House Energy and Water Appropriations report passed by the House on May 24, which directs the Secretary to begin accepting commercial spent fuel for interim storage in fiscal year 2006. While we welcome the focus on the concept of early receipt of spent fuel at a government site given growing national security, energy security and economic considerations, we believe the best candidate for an interim storage or early receipt facility is Yucca Mountain. Clearly this highlights the importance of moving on with tangible progress on the licensing front and with construction of the surface facilities at Yucca Mountain. It also confirms the importance of initiatives and investment furthering accelerated transportation and waste acceptance initiatives.

As a longtime advocate of a national solution for spent fuel and high-level waste disposition, we know you share and understand the urgent need for program funding reform. We greatly appreciate the Committee's support in the past Congress for H.R. 3971 to reclassify fees paid into the Nuclear Waste Fund as offsetting collections and your continuing focus in the current Congress on the need to address this critical national energy security priority, which is pivotal to any new generation of nuclear energy plants. It is our hope that your committee will mark-up legislation to address comprehensive funding reform for the program and seek full House consideration of this measure prior to the August recess.

We look forward to working with you to address this important initiative to provide funding surety for the Congressionally directed, national repository program in the Yucca Mountain program.

Sincerely,



Charles P. Pray
Co-Chairman, YMTF
State of Main, Nuclear Safety Advisor



David A. Wright
Co-Chairman, YMTF
Commissioner, South Carolina Public Service Committee

Cc:

The Honorable Ralph Hall
Chairman
House Subcommittee on Energy and Power

The Honorable David Hobson
Chairman
House Appropriations Subcommittee on Energy and Water Development

Exhibit 4

YUCCA MOUNTAIN TASK FORCE

May 25, 2005

Joint Statement by

Hon. David Wright

Commissioner, South Carolina Public Service Commission

and

Hon. Charles Pray

Nuclear Safety Advisor, State of Maine & Co-Chairman, Yucca Mountain Task Force

Regarding May 12 House Subcommittee on Energy & Water Appropriations action allocating \$661 million for the Yucca Mountain program in FY06, including \$10 million for transporting of spent fuel to an "interim DOE storage facility" and for development of a recycling (reprocessing) "initiative."

We are encouraged that Chairman Hobson and his Committee have appropriated the full funding for Yucca Mountain requested by the President and shown their continuing confidence in a national solution for spent fuel and high-level waste disposition.

Nonetheless, this funding level -- which is well short of the approximately \$770 million collected annually by the federal government from electricity consumers -- also underscores the urgent need for program funding reform, particularly with billion dollar outlays contemplated in the near future.

We also welcome the Committee's focus on the concept of early receipt of spent fuel at a government site given growing national security, energy security and economic considerations. We believe the best candidate for an interim storage or early receipt facility is Yucca Mountain. Clearly, this highlights the importance of moving on with tangible progress on the licensing front and with construction of the surface facilities at Yucca Mountain. It also confirms the importance of initiatives and investment furthering accelerated transportation and waste acceptance readiness.

Exhibit 5

**STATEMENT BY
THE HONORABLE DAVID WRIGHT
COMMISSIONER
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
&
CO-CHAIR, YUCCA MOUNTAIN TASK FORCE**

The submittal of the Yucca Mountain license application to the Nuclear Regulatory Commission clears a long-awaited, crucial hurdle for the Yucca Mountain project

It is certainly a welcome development for South Carolina electricity consumers and their counterparts in over 40 states who have contributed to the Nuclear Waste Fund and the 39 states, including South Carolina, which shoulder the burden of storing spent fuel and high-level waste indefinitely.

By any measure, the LA represents a significant milestone for energy self-reliance, economic competitiveness and environmental progress, as well as national security, given the importance of nuclear energy to the United States and the need to address both our ongoing Nuclear Navy requirements and the Cold War legacy.

This is a classic case of the tortoise prevailing over the hare – and three decades of sound science and common sense outlasting politics and rhetoric.

Regardless of whether you favor continued on-site interim storage, central storage or recycling, the fact is that all roads eventually lead to the need for a national repository like Yucca Mountain if we're going to continue to operate current plants and build a new generation of nuclear energy plants.

Given the significance of the LA submittal – and the progress that it represents – we hope the Congress will work to ensure full funding for the program's FY09 request and take action to enact long overdue and needed appropriations reform to facilitate DOE's licensing defense and development of long-lead, non-license-related infrastructure such as the Nevada rail line.

Energy Secretary Bodman, OCRWM Director Ward Sproat and his team is to be commended for setting a schedule and meeting it while surmounting extraordinarily difficult political, fiscal and legal roadblocks.

###

Exhibit 6

DOCKET NUMBER
PROPOSED RULE PR 63
(70FR53313)

Executive Committee Officers:
LeRoy Koppendruyer, Chair
Chairman, MN Public Utilities Commission
Renze Hoeksema, Vice Chair
Director of Federal Affairs, DTE Energy
David Wright, Membership
Commissioner, SC Public Service Commission
Robert Capstick, Finance
Director of Government Affairs, Yankee Atomic/Connecticut Yankee
J. Terry Deason, Communications
Commissioner, FL Public Service Commission



DOCKETED
USNRC

BEFORE THE
U.S. NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C.

December 7, 2005 (7:28am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

IN THE MATTER OF)
)
IMPLEMENTATION OF A DOSE STANDARD)
AFTER 10,000 YEARS.)

RIN 3150-AH68

9

REPLY TO COMMENTS OF THE NUCLEAR WASTE STRATEGY COALITION

ABOUT THE NWSC

The Nuclear Waste Strategy Coalition (NWSC) is an ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members representing 46 member organizations in 26 states. The NWSC was formed in 1993 out of frustration at the lack of progress the Department of Energy (DOE) had made in developing a permanent repository for spent nuclear fuel and high-level radioactive waste, as well as Congress's failure to sufficiently fund the nuclear waste disposal program (Program). The mission and purpose of the NWSC is to seek on behalf of the ratepayers of the United States:

- 1) The removal of commercial spent nuclear fuel from temporary dry cask storage facilities scattered across the nation.
- 2) The authorization of a temporary, centralized commercial spent nuclear fuel storage facility.
- 3) The reclassification of the annual funds paid by the nation's ratepayers into the Nuclear Waste Fund (NWF) as offsetting collections so that the DOE fulfills its statutory and contractual obligations.
- 4) The augmentation of transportation planning and regulations to facilitate transportation systems.
- 5) The capping of the NWF payments at the present one-tenth of a cent per kilowatt-hour by the U.S. Congress.
- 6) The operation of the permanent repository as soon as feasibly possible.

DISCUSSION

Yucca Mountain (YM) is probably the most scientifically studied piece of real estate in history. The DOE's efforts to evaluate other sites over the years and the process leading to a decision supporting YM, as the desired site has been painstaking. Nine sites in six states were studied as potential repository sites: Vacherie Dome, LA; Cypress Creek Dome, MS; Richton Dome, MS; Yucca Mountain, NV; Deaf Smith County, TX; Swisher County, TX; Davis Canyon, UT; Lavender Canyon, UT; and the Hanford Site, WA. In 1986, DOE chose five sites for further study. Yucca Mountain was named as the first choice. In 1987, Congress amended the Nuclear

Template = SECY-067

SECY-02

NWSC Reply Comments to the NRC
Page Two - December 7, 2005

Waste Policy Act of 1982 (NWPA) and directed the DOE to focus on Yucca Mountain. In the Energy Policy Act of 1992 (EnPA), Congress reinforced its intent that YM remain the exclusive focus of the nation's repository program. This Act also directed the U.S. Environmental Protection Agency (EPA) to issue new public health and safety standards for the protection of the public from releases of radioactive materials stored or disposed of in a repository at the YM site. The Nuclear Regulatory Commission (NRC) was directed to modify its technical requirements to be consistent with the EPA's new standard and the National Academy of Sciences (NAS) findings and recommendations. The EPA issued radiation standards in 2001 to protect the public health from hazardous material for 10,000 years.

Responding to legal challenges by the State of Nevada, environmental and public groups, the U.S. Court of Appeals for the D.C. Circuit, ruled that the EPA's original standard did not conform to those recommendations made by the NAS as Congress mandated in the EnPA. In July 2004, the Court upheld most of the challenges to the EPA's Part 197 rules, but the Court found that the 10,000-year compliance period selected by the EPA violated Section 801 of the EnPA, because it was not "based upon and consistent with" the 1995 recommendations made by the NAS in its report, *Technical Bases for Yucca Mountain Standards*. The NAS recommended that compliance with the standard be measured at the peak risk, "within the limits imposed by the long-term stability of the geologic environment, which is on the order of one million years." The Academy also noted, calculations for YM show that "peak risks might occur tens-to-hundreds-of-thousands of years or even farther into the future." Consequently, on August 9, 2005, the EPA proposed a draft rule, 40 CFR Part 197, to amend its public health and environmental radiation protection standard for YM, Nevada, extending protection to one million-years for the permanent repository at YM. Under the new one million years standard people living close to the facility would not receive total radiation higher than natural levels people live with routinely in other areas of the country.

For the first 10,000 years, the proposed standard:

- Retain the original 15 millirem of radiation exposure per year individual protection standard.
- Ensure that people living near YM are protected to the same level as those living near the Waste Isolation Pilot Project, New Mexico, currently the only facility that stores materials that are toxic forever.
- Retains the 4-millirem ground water protection standard to be consistent with the Agency's national policy.

From 10,000 years up to one million years, the proposed standard:

- Set the individual protection standard at a dose limit of 350 millirems per year.
- Limit the maximum radiation from the permanent facility so that people living close to YM for a lifetime during the one million year time frame will not receive total radiation any higher than natural levels people currently receive in other areas of the country.

The revision of the EPA radiation standard for the permanent repository requires the DOE to conduct analyses covering one million years to assess the potential effects of natural processes or disruptive events that could affect the YM operations. Some of these include:

- Earthquake that could affect the facility tunnels and breakdown of the waste containers.
- Volcanic activity that could affect the waste containers directly or cause releases of radionuclides to the environment.

NWSC Reply Comments to the NRC
Page Three - December 7, 2005

- Climate change that could cause increased water flow through the facility.
- Corrosion process that could cause breakdown of the waste containers.

IMPACT OF FURTHER DELAY

Based on a site-suitability criteria specific to YM, in a final environmental impact statement, the Secretary of Energy concluded that the YM facility is, "likely to meet application radiation protection standards." Based on these findings, the Secretary recommended the Yucca Mountain site to the President for the development of the nation's deep geological repository. On February 15, 2002, President Bush made a recommendation to the U.S. Congress to develop the Yucca Mountain site as the nation's geologic repository for high-level radioactive waste and spent nuclear fuel. In July 2002, Congress overwhelmingly passed a joint Resolution that overrode the State of Nevada's objections and approved the YM site.

The YM permanent repository has successfully met numerous challenges in the Courts by the State of Nevada and environmental groups to delay the Program. These delays are annually costing the nation's ratepayers tens of millions of dollars in their electric bill. Since 1983, the nation's electric consumers have paid more than \$25 billion, including interest, into the NWF, that now contains an unused balance of more than \$17 billion for the DOE to license, construct, operate and monitor a repository for spent nuclear fuel and high-level nuclear waste from commercial nuclear power plants across the nation. The nation's ratepayers pay annually \$750 million into the NWF and only a portion of the annual funding is allocated to the Program. A DOE contractor has estimated that continued delays would escalate costs by approximately \$1 billion per year for the civilian and defense nuclear waste disposal programs. Consequently, the prompt establishment of a reasonable and safe radiation protection standard is extremely important to members of the NWSC.

CONCLUSION

As the EPA stated in its July proposed ruling, it is difficult to accurately predict what conditions will be like beyond 10,000 years. The geologic structure of YM, as the DOE studies have shown, provides more than adequate protection for storage of spent nuclear fuel and high-level radioactive waste. We believe more than 20 years of in-depth scientific research has covered every facet of Yucca Mountain, from hydrology to geology to seismology. The one million-year EPA proposed rule is unprecedented since other hazardous disposal facilities such as the Waste Isolation Pilot Project and other sites, are regulated to a 10,000-year radiation standard.

The NWSC believes the revised EPA radiation standard has adequately met the Court's ruling and protects the public health and safety. Therefore, we encourage the Nuclear Regulatory Commission to expeditiously amend its rule to 10 CFR Part 63 to coincide with the EPA's proposed radiation standard for doses that could occur after the 10,000 years but within the period of geologic stability.

Respectfully submitted,



LeRoy Koppendraye,
Chairman, Minnesota Public Utilities Commission, and
Chairman, Nuclear Waste Strategy Coalition

December 7, 2005

Exhibit 7

Executive Committee Officers

David Wright, Chairman
Commissioner, SC Public Service Commission

Renze Hoeksema, Vice Chairman
Director of Federal Affairs, DTE Energy

Leroy Koppendrayner, Membership
Chairman, MN Public Utilities Commission

Robert Capstick, Finance
Director of Government Affairs, Yankee Atomic/Connecticut Yankee

Katrina McMurrian, Communications
Commissioner, FL Public Service Commission

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NWSC
Nuclear Waste Strategy Coalition

April 16, 2008

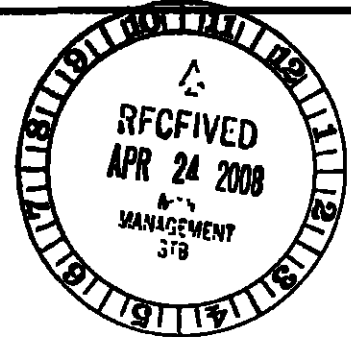
The Secretary
Surface Transportation Board
395 E Street, S W
Washington, D C. 20423-0001

Re Finance Docket No 35106

Dear Madam or Sir

The members of the Nuclear Waste Strategy Coalition (NWSC) thank the Surface Transportation Board (Board) for the opportunity to provide comments on the above referenced docket regarding the Department of Energy's (DOE) application for a Certificate of Public Convenience and Necessity to construct and operate approximately 300 miles of new rail line connecting existing rail line near Caliente, Nevada, to a proposed geologic repository at Yucca Mountain, Nevada. The NWSC believes the extensive documentation and analyses that DOE provided in its application will allow the Board to conduct a thorough review and make a timely decision, and we encourage the Board to grant DOE the Certificate of Public Convenience and Necessity.

In October 2007, the DOE, with the Board as a cooperating agency, prepared the *Draft Supplemental Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High Level Radioactive Waste at Yucca Mountain, Nye County, Nevada – Nevada Rail Transportation Corridor*, DOE/EIS-0250F-S2D ("Draft Nevada Rail Corridor SEIS") and *Draft Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada*, DOE/EIS-0369D ("Draft Rail Alignment EIS"). This two-part document assessed the environmental impacts of the proposed rail line in accordance with DOE's obligations under the National Environmental Policy Act regarding the transportation of spent nuclear fuel (SNF) and high-level radioactive waste (HLRW) in Nevada. The DOE also analyzed a number of options concerning the transport of SNF and HLRW to the proposed repository at Yucca Mountain, one of which is the Shared-Used Option that allows commercial shippers the use of the rail line to ship general freight.



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The NWSC does not object to the Shared-Use Option, since commercial railcars would be hauled with trains that are separate from trains carrying SNF and HLRW, but could be hauled with trains carrying other repository-related materials such as construction materials, water and fuel. Based on a study of potential commercial users, DOE estimates that approximately eight one-way commercial trains could run per week along the Caliente rail alignment. Further, trains carrying SNF and HLRW would have priority over trains carrying commercial material during the operations phase. A Shared-Use Option could also provide economic benefits to the community and surrounding area. Other countries such as France successfully use the shared-use system without any incidents.

DOE also considered several suggestions to new alternative segments, added some alternative segments and adjusted or eliminated some alternative segments to the proposed rail line due to comments received during its scoping period between April and June 2004. Some commenters expressed concern over the environment, land use issues, air quality, socioeconomics, health and safety. Consequently, extensive analyses were conducted to encompass these issues.

Some commenters expressed support, while others expressed opposition, for public or commercial use of the proposed rail line. DOE therefore analyzed a Shared-Use Option. Various commenters suggested best management practices and mitigation of impacts associated with the construction and operation of the railroad on livestock, waterways and washes, and mining, for example. Consequently, DOE developed a series of mitigation measures to avoid, minimize, rectify, reduce and/or compensate for potential impacts, such as limiting fencing on public lands to those areas where grazing permittees might request it for livestock safety, temporary pipelines, local mining and other aspects during the construction period. The DOE analyses further indicated that there would be no disproportionately high and adverse human health or environmental impacts to minority or low-income populations from railroad construction and operations along the Caliente rail alignment.

The Draft Rail Alignment EIS also took into consideration other scenarios such as impacts to the environment in case of accidents ranging from small to large in scale, land use and ownership, air quality and climate, groundwater resources, socioeconomics in relation to population, housing, employment and income, and sabotage in case of terrorist attacks.

The Department has an exemplary safety record in the shipping of commercial and naval nuclear fuel, and it has proven that it can safely transport SNF and HLRW from DOE research facilities and nuclear plant sites across the nation. For instance, more than 3,000 shipments of SNF from nuclear power plants, government research facilities, universities and industrial facilities have crossed the United States, "without a single death or injury due to the radioactive nature of the cargo."¹ Shipments include 719 containers from the Naval Nuclear Propulsion program between 1957 and 1999, and 2,426 highway shipments and 301 railway shipments from the U.S. nuclear industry between 1964 and 1997. Since 1996, shipments of SNF have been safely transported to the United States from 41 countries to the DOE facilities,² again, without a single death or injury. Furthermore, the DOE has safely and successfully received 6,432 transuranic waste shipments at the Waste Isolation Pilot Plant in New Mexico as of April 14, 2008.³

**NWSC Letter to the Surface Transportation Board
Page Three - April 16, 2008**

Taking into account DOE's transportation safety record and its extensive analyses and consideration of safety factors during the studies of the proposed Caliente railroad, the NWSC encourages the Board to grant DOE the Certificate of Public Convenience and Necessity

The NWSC is comprised of state regulators, state attorneys general, nuclear electric utilities and associate members working together to hold the Federal government accountable for its statutory and contractual obligation to move spent nuclear fuel and high-level radio radioactive waste from active and decommissioned nuclear power plants across the nation to a permanent repository. The NWSC has participants from 46 organizations in 26 states.

Respectfully submitted,



**David Wright
Commissioner, South Carolina Public Service Commission, and
Chairman, Nuclear Waste Strategy Coalition**

**C Mr Ward Sproat, Director, DOE/OCRWM
Mr Gary Lanthrum, Director, DOE/Office of Logistics Management
Bradley Levine, Esq., Assistant General Counsel for Civilian Nuclear Program, DOE**

¹ National Conference of State Legislatures' Report, January 2000

² U S Department of Energy Report to the Committees on Appropriations, January 2001

³ U S DOE/Waste Isolation Pilot Plant Shipment Figures, March 2007

Exhibit 8

BUDGET IMPLICATIONS OF CLOSING YUCCA MOUNTAIN

HEARING

BEFORE THE

COMMITTEE ON THE BUDGET HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, JULY 27, 2010

Serial No. 111-30

Printed for the use of the Committee on the Budget



Available on the Internet:

<http://www.gpoaccess.gov/congress/house/budget/index.html>

U.S. GOVERNMENT PRINTING OFFICE

57-736 PDF

WASHINGTON : 2010

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Ms. JOHNSON. Stepping back again, you know, I understand what you are saying about, well, forty years from now we have a different view of what is going on. You know, let me see if I can put it in the way that there has been extraordinary progress over the last thirty years with regard to computation. With regard to our knowledge about the basic materials, and with regard to transuranic waste, high level waste, low level waste. And I think given that right now, when we are considering restarting, and we are restarting, and this administration has signaled its strong interest in restarting the civilian nuclear energy program, that it gives us a chance to take a year and six months from now to step back and say, "Let us find a better solution with broad support."

Mr. SIMPSON. That will end up in a geological repository?

Ms. JOHNSON. Again, I do not want to preclude what the Blue Ribbon Commission might recommend.

Mr. SIMPSON. Well, if they can find something else, that would be wonderful. But nobody believes they will, and nobody believes that is possible. That ultimately there is going to be a pile of gunk that has to go somewhere.

Chairman SPRATT. Mr. Scott has a further question.

Mr. SCOTT. Just to follow up on the time table for the Blue Ribbon Commission, you said in a year to year and a half you would get a recommendation. And then I guess at that point we will, they are not a siting committee, so at that point we will start looking for a site? As the gentleman from Idaho just mentioned. It has taken us, what, twenty or thirty years to get to this point with Yucca Mountain. Once we start, why would we not expect it to take twenty or thirty years with whatever site is picked, fighting tooth and nail against it, delaying, and doing everything they can, filing suit? Why should we think it would not take another thirty years to get to where we are now?

Ms. JOHNSON. Right. Thank you very much for the question. In the charter 3-E, the Blue Ribbon Commission is being asked to recommend not only methods and ways to manage the back end of the fuel cycle but also for options for decision making processes and management of disposal. So, there is also a process they will be recommending as well as recommendations for how to manage the back end of the fuel cycle. And I have full confidence in the Blue Ribbon Commission to recommend processes and procedures that can be accomplished in a reasonable period of time.

Mr. SCOTT. Thank you.

Chairman SPRATT. Thank you. And to our panel, Dr. Johnson, Mr. Harris, Mr. Hertz, thank you very much for your patience, your forbearance, and for your forthright answers to our questions. We appreciate your coming here to participate in this hearing.

Ms. JOHNSON. Thank you.

Chairman SPRATT. Thank you very much indeed.

Mr. HERTZ. Thank you, Mr. Chairman.

Chairman SPRATT. Our next witness is Mr. David A. Wright, who is the Vice Chairman of the Public Service Commission of South Carolina. Mr. Wright, welcome indeed. Thank you very much for your participation in this hearing. As you may have noted, we have made your statement and the other statements part of the record so that you can summarize them as you see fit. But you may also

take your time and review thoroughly what you have presented for us. And we very much appreciate your coming. The floor is yours.

**STATEMENT OF DAVID A. WRIGHT, VICE CHAIRMAN,
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

Mr. WRIGHT. Good morning, Mr. Chairman. I guess it is still morning. And members of the Committee, my name is David Wright, and I am Vice Chairman of the South Carolina Public Service Commission. In addition to that, I am past Chairman and current member of the Subcommittee on Nuclear Issues and Waste Disposal, and a member of the Full Electricity Committee of the National Association of Regulatory Utility Commissioners. And I also serve as Chairman of the Nuclear Waste Strategy Coalition.

The issues that you are addressing today are very important to South Carolina and any state that is home to commercial spent nuclear fuel or the nation's defense waste. I am grateful to have this opportunity to represent and share our views concerning the disposition of spent nuclear fuel, currently stored at nuclear power plant sites that is intended for ultimate disposal at the Yucca Mountain Geological Repository.

By way of the Nuclear Waste Policy Act of 1982, the federal government became responsible for disposal of high level radioactive waste, including spent or used nuclear fuel from commercial reactors. Utilities, ratepayers, and regulators had the expectation from the NWPA that the Department of Energy would begin initial waste acceptance and disposal in the properly licensed and constructed repository by January 31, 1998. Utility ratepayers have paid and continue to pay for the disposal cost of the material. To date, ratepayers in states that receive power from commercial nuclear utilities have paid over \$17 billion into the Nuclear Waste Fund. Including allocated interest, the Nuclear Waste Fund today totals almost \$35 billion, but only a fraction of the money collected from ratepayers has actually been spent on the developing of the Yucca Mountain repository. The ratepayers in South Carolina, Mr. Chairman, have paid nearly \$1.3 billion into the Nuclear Waste Fund, or more than \$2.3 billion when interest is included.

State public utility commissions, like mine, are one of the stakeholders on the disposition of used nuclear fuel from commercial reactors because the fees paid to the Nuclear Waste Fund by the current caretakers of the used fuel, that would be electric utilities, are passed onto ratepayers who are supplied with electricity from nuclear power generation.

When the Director of the Office of Civilian Radioactive Waste Management within the Department of Energy submitted the Yucca Mountain repository license application in June of 2008, it was a comprehensive document. The eight thousand page document was the culmination of over twenty-five years of exhaustive investigation of the site. Like others, I expected the NRC to conduct a rigorous review and conduct an open, fair, and inclusive adjudicatory process. The filing of the license application was an important step, because it appeared to take the application out of the political arena and put it under a full blown court review that would be based on science, not politics.

Since 1998, when DOE failed to meet its obligation to begin waste acceptance for disposal, organizations that I and my state are a part of have simply asked that the government fulfill its part of the bargain and remove the spent fuel per the standard contract, since the utilities and ratepayers continue to pay for services not performed. That remains our position, as we believe that the license application shows that Yucca Mountain will meet the requirements of the NWPA and regulations. If Yucca Mountain cannot be licensed through the NRC process, or is licensed but not built, we interpret NWPA as still requiring DOE to develop and dispose of spent nuclear fuel in a geologic repository. Therefore, unless the law is repealed or amended to direct otherwise, Congress is the only body that can authorize DOE to conduct a site search for another suitable repository site.

This is particularly costly, and most locations where the fuel pool cooling storage capacity at the reactor sites has long since been filled. In addition, the older fuel in the spent fuel pools is being removed and placed in concrete and steel containers called "dry cask" that are stored outside in concrete vaults. More than 62,000 metric tons of uranium is currently stored in pools or dry cask storage at nuclear plant sites in the United States. This amount increases with each refueling cycle, which generally occurs about every eighteen months. License applications for at least twenty-four new nuclear units have been submitted to the Nuclear Regulatory Commission. The amount of spent nuclear fuel to be stored will increase as new units are constructed and old units are relicensed, usually for an additional twenty years, as is happening with numerous reactors.

Nearly 3,800 metric tons of uranium is stored at four nuclear plant sites in South Carolina, Mr. Chairman, which are home to seven reactors as you know. Two nuclear units at the V.C. Summer Nuclear Station in Jenkinsville, South Carolina, have been approved by the South Carolina Public Service Commission and are awaiting license approval by the NRC. License applications for another two units near Gaffney, South Carolina, have been submitted to the NRC but not to the South Carolina Public Service Commission.

This nation will need more base load electric generation as the population grows and the economy recovers. Some areas, such as the Southeast in general, and South Carolina in particular, need for base load generation is needed in the near future. Renewable energy, conservation, and efficiency help to lessen the amount of base load generation needed but cannot entirely eliminate that need. The climate and health impacts of burning coal have forced utilities to depend upon gas fired and nuclear plants to meet the need for new base load generation. Without a solution to the storage of spent nuclear fuel, meaning a permanent repository, state regulators may be hesitant to approve the construction of new nuclear units, and utilities may be hesitant to construct new nuclear units, even if the NRC approves the license applications. Such circumstances could result in reduced electric reliability, brown outs, and increased costs of electricity as gas fired generation would be the only option, and its price would increase as the demand for natural gas increases, all else being equal.

Federal courts have already ruled that the federal government is liable for the added storage costs past the dates agreed in original contracts with spent fuel utilities. The Department of Energy already faces at least \$1.5 billion in court judgments and legal expenses resulting from failure to meet the government's obligations. In 2009, when DOE had a plan to begin waste acceptance and disposal at Yucca Mountain by 2017, DOE officials estimated that the liability for sixty-five cases could reach \$12.3 billion, growing further by at least \$500 million for each additional year of delay. DOE pays these court determined liabilities from the Judgment Fund.

What is really happening is this: because of the federal government's failure to construct a permanent repository, ratepayers are paying up to four times for ongoing spent fuel storage and future disposal. And that does not include decommissioning funds. First ratepayers are paying into the Nuclear Waste Fund for storage at the deep geologic repository at Yucca Mountain. Second, because of the initial delay, ratepayers have to pay through rates to expand and rerack their existing cooling pools in order to accommodate more waste. Third, ratepayers are continuing to pay through rates to keep the waste stored at the existing plant sites in dry cask storage. And finally, all taxpayers, not just ratepayers, are paying through taxes for judgments and settlements through the Judgment Fund.

Congress should suspend collection of the nuclear waste fees until further notice and refund the Nuclear Waste Fund money to ratepayers if Yucca is not built. Not counting defense waste, over 62,000 metric tons of spent fuel is stored in seventy-two operating and shut down reactor sites in thirty-four states. Individuals and organizations opposed to nuclear power will raise questions or even voice fears over safety and security at some of these storage facilities. Although the utilities and NRC contend that storage is safe and secure, it still costs ratepayers big money to implement individualized security programs for each of these locations around the country. How can this be more efficient, safe, secure, or cost effective than having all spent nuclear fuel and defense waste at one secure deep geologic location?

Recently, there has been great interest in reprocessing, or recycling as some call it, of spent nuclear fuel. The organizations that I am a member of, including NARUC, have supported research into reprocessing and recycling and share the views that, if there will be substantial global nuclear power expansion, there will probably become a time when uranium becomes more scarce and expensive, and closing the fuel cycle will become necessary. But no matter the future course of this country, whether we reprocess, or recycle, or maintain the status quo, a geologic repository is still needed for defense related, high level radioactive waste that has already been reprocessed, or cannot be reprocessed, and the residue from any future reprocessing program.

Finally, the states of Idaho and South Carolina, and maybe Washington as was mentioned a while ago, all have agreements with the federal government with a date certain to move defense waste out of their respective states. There are penalties, they are substantial, for the government's failure to comply. And that is just

another way that the taxpayer, all taxpayers not just ratepayers, are going to pay for the government's failure.

Thank you for the time today, and I appreciate being here. And I will answer any questions that you may have.

[The prepared statement of David A. Wright follows:]

PREPARED STATEMENT OF DAVID WRIGHT,
SOUTH CAROLINA PUBLIC SERVICE COMMISSIONER

Good Morning, Mr. Chairman and Members of the Committee.

My name is David Wright and I am a legislatively elected commissioner and current Vice-Chairman of the South Carolina Public Service Commission. In addition to that, I am the past Chairman and current member of the Subcommittee on Nuclear Issues and Waste Disposal, and a member of the full Electricity Committee of the National Association of Regulatory Utility Commissioners, most often referred to as NARUC. I also serve as Chairman of the Nuclear Waste Strategy Coalition (NWSC).

The issues that you are addressing in this hearing are very important to South Carolina and any other state that is the home to commercial spent nuclear fuel, or the nation's defense waste. I am grateful to have this opportunity to represent and share our views concerning the disposition of spent nuclear fuel currently stored at nuclear power plant sites that is intended for ultimate disposal at the Yucca Mountain geologic repository.

I believe it's important to know how we got to where we are today, because it has led to the positions the organizations I represent currently hold.

By way of the Nuclear Waste Policy Act of 1982 (NWPA), the federal government became responsible for disposal of high-level radioactive waste—including spent or used nuclear fuel from commercial reactors. Utilities, ratepayers and regulators had the expectation from the NWPA that the Department of Energy (DOE) would begin initial waste acceptance and disposal in the properly licensed and constructed repository by January 31, 1998, as the law and contracts signed with owners of spent fuel required.

Utility ratepayers have paid, and continue to pay, for the disposal costs of the material. To date, ratepayers in states that receive power from commercial nuclear utilities have paid over \$17 billion dollars into the Nuclear Waste Fund (NWF). Including allocated interest, the NWF today totals almost \$35 billion, but only a fraction of the money collected from ratepayers has actually been spent on developing the Yucca Mountain repository. The ratepayers in South Carolina have paid nearly \$1.3 billion into the NWF, or more than \$2.3 billion when interest is included.

State public utilities commissions, like mine, are one of the stakeholders on the disposition of used nuclear fuel from commercial reactors because the fees paid to the Nuclear Waste Fund by the current caretakers of the used fuel, the electric utilities, are passed on to the ratepayers who are supplied with electricity from nuclear power generation.

When the Director of the Office of Civilian Radioactive Waste Management (OCRWM) within the Department of Energy (DOE) submitted the Yucca Mountain repository license application (LA) in June 2008 it was a comprehensive document. The 8,000-page document was the culmination of over 25 years of exhaustive investigation of the site.

Like others, I expected the NRC to conduct a rigorous review and conduct an open, fair and inclusive adjudicatory process. The filing of the license application was an important step, because it appeared to take the application out of the political arena and put it under a full-blown court review that would be based on science, not politics.

Since 1998, when DOE failed to meet its statutory and contractual obligation to begin waste acceptance for disposal, organizations that I and my state are a part of have simply asked that the government fulfill its part of the NWPA disposal bargain and remove the spent fuel per the Standard Contract since the utilities and ratepayers continue to pay for services not performed. That remains our position, as we believe that the license application shows that Yucca Mountain will meet the requirements of the NWPA and regulations.

If Yucca Mountain cannot be licensed through the NRC process, or is licensed but not built, we interpret NWPA as still requiring DOE to develop and dispose of spent nuclear fuel in a geologic repository. Therefore, unless the law is repealed or amended to direct otherwise, Congress is the only body that can authorize DOE to conduct a site search for another suitable repository site.

This is particularly costly in most locations where the fuel pool cooling storage capacity at the reactor sites has long since been filled. In addition, the older fuel in the spent fuel pools is being removed and placed in concrete and steel containers—called dry casks—that are stored outside in concrete vaults.

More than 62,000 metric tons of uranium is currently stored in pools or dry cask storage at nuclear plant sites in the United States. This amount increases with each refueling cycle, which generally occurs about every 18 months. License applications for at least 24 new nuclear units have been submitted to the Nuclear Regulatory Commission (NRC). The amount of spent nuclear fuel to be stored will increase as new units are constructed and old units are re-licensed, usually for an additional 20 years, as is happening with numerous reactors.

Nearly 3,800 metric tons of Uranium is stored at four nuclear plant sites in South Carolina, which are home to seven reactors. Two new nuclear units at the VC Summer Nuclear Station in Jenkinsville, SC have been approved by the South Carolina Public Service Commission and are awaiting license approval by the NRC. License applications for another two nuclear units near Gaffney, SC have been submitted to the NRC, but not to the South Carolina Public Service Commission.

This nation will need more base load electric generation as the population grows and the economy recovers. Some areas, such as the southeast in general and South Carolina in particular, need more base load generation in the near future. Renewable energy, conservation, and efficiency help to lessen the amount of base load generation needed, but cannot entirely eliminate that need. The climate and health impacts of burning coal have forced utilities to depend upon gas-fired and nuclear plants to meet the need for new base load generation. Without a solution to the storage of spent nuclear fuel, meaning a permanent repository, state regulators may be hesitant to approve the construction of new nuclear units and utilities may be hesitant to construct new nuclear units even if the NRC approves the license applications. Such circumstances could result in reduced electric reliability, brown outs, and increased cost of electricity as gas-fired generation would be the only option and its price would increase as the demand for natural gas increases, all else being equal.

Federal courts have already ruled that the federal government is liable for the added storage costs past the dates agreed in original contracts with spent fuel utilities. The Department of Energy already faces at least \$1.5 billion in court judgments and legal expenses resulting from failure to meet the government's obligations. In 2009—when DOE had a plan to begin waste acceptance and disposal at Yucca Mountain by 2017—DOE officials estimated that the liability for 65 cases could reach \$12.3 billion, growing further by at least \$500 million for each additional year of delay. DOE pays these court-determined liabilities from the Judgment Fund.

What is really happening is this—Because of the federal government's failure to construct a permanent repository, ratepayers are paying up to four times for ongoing spent fuel storage and future disposal—and that does not include decommissioning funds. First, ratepayers are paying into the NWF for storage at the deep geologic repository at Yucca Mountain; second, because of the initial delay, ratepayers have to pay through rates to expand and re-rack their existing cooling pools in order to accommodate more waste; third, ratepayers are continuing to pay through rates to keep the waste stored at the existing plant sites in dry cast storage; and finally, all taxpayers—not just ratepayers—are paying through taxes for judgments and settlements through the Judgment Fund.

Not counting defense waste, over 62 thousand metric tones of spent fuel is stored in 72 operating and shutdown reactor sites in 34 States. Individuals or organizations opposed to nuclear power will raise questions, or even voice fears, over safety and security at some of these storage facilities. Although the utilities and the NRC contend that storage is safe and secure, it still costs ratepayers big money to implement individualized security programs for each of these locations around the country. As the Office of Homeland Security increases security requirements, the cost for security programs at the plant sites will increase.

How can this be more efficient, safe, secure or cost effective than having all spent nuclear fuel and defense waste at one secure, deep, geologic location?

Recently, there has been great interest in the reprocessing, or recycling as some call it, of spent nuclear fuel. The organizations I am a member of, including NARUC, have supported research into reprocessing and recycling and shares the view that, if there will be substantial global nuclear power expansion, there will probably come a time when uranium becomes more scarce and expensive and closing the fuel cycle will become necessary.

No matter the future course of this country—whether we reprocess, recycle, or maintain the status quo—a geologic repository is still going to be needed for de-

fense-related high-level radioactive waste that has already been reprocessed or cannot be reprocessed, and, the residue from any future reprocessing program for commercial spent nuclear fuel.

Finally, the states of Idaho and South Carolina, and maybe Washington, as well, have agreements with the federal government with a date certain to move defense waste out of their respective states. There are significant financial penalties to the federal government in the agreements for failure to comply—which is yet another way that all taxpayers, not just ratepayers, will have to pay compensation for the government's failure to build the site at Yucca Mountain.

Thank you for the opportunity to testify before you today. I look forward to your questions. I will also be happy to provide written answers to further questions, should you have any I am unable to answer today or for which you would like me to provide answers at a later date.

Chairman SPRATT. South Carolina has a particular interest in this because we have defense waste generated at the Savannah River Site as well as bomb grade materials that are being brought onto site to be processed into a fuel that can be burned in commercial reactors.

Mr. WRIGHT. Yes, sir.

Chairman SPRATT. Are you comfortable with the, would you explain to the Committee the liquidated damages which we have in law in the event that the waste accepted in South Carolina is not timely processed and removed from the site?

Mr. WRIGHT. Are you talking about from Savannah River Site?

Chairman SPRATT. Yes, sir.

Mr. WRIGHT. Well, the South Carolina Commission, Mr. Chairman, does not regulate or control SRS. So, I am not really, I guess, confident or comfortable answering the question because I do not know exactly how much that would be. But I would be more than happy to go home and get that answer for you, and get that written and submit that.

Chairman SPRATT. If you do that, submit it for the record. Before we agreed to accept the bomb grade material in particular for reprocessing into fuel we stipulated with the Department of Energy that if they failed to perform this in a reasonable period of time, and we provided more than what was anticipated, then there would be damages payable to the State of South Carolina for the delay. Rather than having to prove the actual damages, we would be entitled to liquidated damages in a very substantial amount.

Mr. WRIGHT. Yes, sir.

Chairman SPRATT. The purpose being to encourage the Department of Energy to do what it was telling us it was going to do.

Mr. WRIGHT. Yes, sir. And my understanding, just from the periphery of things where the defense waste in those states are concerned, I believe that Idaho's date is the closest date. And using that as a model, I know that, I believe they are substantial, almost per day costs.

Chairman SPRATT. Does the State have concerns that the dry cask storage and the alternative expedients that are being considered are adequate from a safety standpoint?

Mr. WRIGHT. Mr. Chairman, it is my understanding and belief, because we are told and nobody really has disputed it in proceedings, that in order to get a license for a nuclear reactor you have got to prove that the fuel can be safely stored on site. But having said that, the deal that was cut with the federal government, and the utilities, and the ratepayers of this country were, we

are going to charge you one-tenth of a cent per kilowatt hour, and we are going to dispose of your waste in return for that. And it has been twenty-eight years, and that has not happened yet.

Chairman SPRATT. I have a few more questions, but let me turn to the members who are here now and let me give them an opportunity. Mr. Simpson?

Mr. SIMPSON. Thank you, Mr. Chairman. And thank you, Mr. Wright, for being here. Do not hold me to this, but it seems like Idaho's agreement with the federal government, the penalty is like \$60,000 a day.

Mr. WRIGHT. That is the number that comes to mind.

Mr. SIMPSON. And I think we were fairly cheap. I think South Carolina did a lot better job of negotiating. I think they were upwards of a million bucks a day or something for—

Mr. WRIGHT. It very well could be. But I would like to research that for the Chairman to be accurate.

Mr. SIMPSON. Yeah. But you mentioned waste confidence. In order to build a new reactor, we have to have waste confidence. They have to show that there is going to be a path forward to disposal of the waste. How are we going to do that? How are we going to license any new reactors, or power plants, nuclear power plants, if we cannot meet that waste confidence rule of where the waste is going to go?

Mr. WRIGHT. Well, I do believe it is going to become issues in proceedings. Because the proceedings that have gone forward so far have been with the understanding that there was going to be a repository built. You know, that change has just been a recent announcement, as things go, especially in the Yucca Mountain process.

Mr. SIMPSON. Yeah. As I understand, it may fall on Congress to have to legislate waste confidence. Which I do not think was the original intent, but that is what they are talking about now.

Mr. WRIGHT. Well, and that is my understanding, that Congress. I think under any scenario Congress has to take the lead and has to act on this.

Mr. SIMPSON. Right. Should we suspend the taxes being paid by the ratepayers that use nuclear power? The tenth of a cent per kilowatt hour that they are paying? I was looking at the amounts. Most people look at that and say, "What is a tenth of a cent?" I think in New York it was, like, \$81 million a year the ratepayers pay there that could stay in their economy. And at least suspend it until we decide where we are headed with this? Because we have got \$24 billion, I think it is, sitting in that fund right now.

Mr. WRIGHT. Well, there is, quite honestly, and my personal opinion is I think it ought to be considered and done, yes, sir. But there is litigation that is going forward now where that very issue is concerned. And NARUC is involved in that.

Mr. SIMPSON. Could you tell me in general, what are the, what is the status of the storage pools, the capacity that currently exists at nuclear power plants around the country? Are they getting full, or—

Mr. WRIGHT. Yes, sir. And I believe, and I have that document I think with me. But the Nuclear Energy Institute does have a document that I can supply to the Committee that does show the reac-

tors, and who is, whose pools are full and are now in dry cask, and those that are nearing being full and considering dry cask storage.

Mr. SIMPSON. Okay. I thank you for being here. This is a dilemma that we are going to have to face somehow.

Mr. WRIGHT. Yes, sir.

Mr. SIMPSON. But it is a problem we need to address and solve.

Mr. WRIGHT. Yes, sir.

Mr. SIMPSON. I appreciate it. Thank you.

Chairman SPRATT. Mr. Scott, do you have questions?

Mr. SCOTT. Yes?

Chairman SPRATT. Do you have questions?

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Wright, the federal government has made a motion to withdraw its application for Yucca Mountain. What do public service commissioners outside of Nevada think of that?

Mr. WRIGHT. Well, they are not real happy about it, I can tell you that. I mean, a lot of us, and I can speak specifically to my committee, the Subcommittee on Nuclear Issues and Waste Disposal, which is made up of commissioners. And then, you know, not just my committee, but those that have defense waste in the states around the country, or even get power from across state lines. They may not have a reactor but they do pay into the fund. They do not understand the "with prejudice" thing at all. And one, we feel, commissioners do feel, especially the ones that have been involved in this issue, feel like there was a knife taken to us. Because we were encouraging working alongside the Department of Energy and pushing forward trying to get a license application submitted so that we could move forward and get the process started, and consider the science of Yucca Mountain. If science proves it is not workable, then it is not, and then the Congress can do what they want. But the commissioners, we were supportive of that and we were all working toward encouraging Congress to move forward with funding to make sure the license app could be defended, and then it is like they turned on us.

Mr. SCOTT. Have the commissioners expressed an opinion as to whether or not the federal government has the legal authority to withdraw the application?

Mr. WRIGHT. We do not believe that they do. And I can tell you, you know, in South Carolina we are part of that lawsuit process. You know, the bottom line is, you know, we have your waste, and you have our money.

Mr. SCOTT. Now, there is a concept of total life cycle costs, when you try to charge for electricity, for example, charge for power, that you want to charge the total life cycle costs, not just the annual little costs. Because if there is a balloon, like disposal costs at the end, you want to have collected that going through. If you do not know what you are going to do for disposal, how do you set a reasonable cost for consumers for their electricity?

Mr. WRIGHT. Well, I mean, one-tenth of a cent is one-tenth of a cent. That is what we are, that is what we are——

Mr. SCOTT. That is what you——

Mr. WRIGHT. The utilities are obligated to charge that to the ratepayer.

Mr. SCOTT. And the federal government is obligated to take the disposed waste, so that is your end cost?

Mr. WRIGHT. That is what you would think, yes.

Mr. SCOTT. Okay. Now, if they—

Mr. WRIGHT. But, but, taxpayers are having to pay, and ratepayers, through the Judgment Fund to settle these suits, too.

Mr. SCOTT. And if they are paying to settle these lawsuits and have this ongoing expense of litigation, is that cost of litigation, is that cost passed on to the ratepayers in South Carolina? I mean, somebody has got to pay the cost of the litigation, if—

Mr. WRIGHT. Well, and in our State it is the State of South Carolina, the City of Aiken, that are involved in the litigation, so ratepayers would not be involved in that. There is not a utility in my state that is suing. Now, they are suing for the Judgment Fund for failure, and there have been settlements, I believe with Duke and with SCE&G. So, there have been settlements out of the Judgment Fund, but that does not come from the Nuclear Waste Fund.

Mr. SCOTT. If we are not going to use Yucca Mountain, if Yucca Mountain is as we heard “off the table,” when would you expect us to have a site designated, open, and working?

Mr. WRIGHT. Well, it is my position personally, and others too, but I am going to speak for myself right now. The Nuclear Waste Policy Act is pretty clear on that. Congress selected the site and went through a long process, and Yucca was selected at the end. And that is the law of the land.

Mr. SCOTT. And if we start—

Mr. WRIGHT. And Congress has to change that.

Mr. SCOTT. If we start from scratch, and start looking all over from scratch, how long do you think it would take to get to where we are now?

Mr. WRIGHT. I would probably, my son would probably have great-grandchildren. I really have no idea.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman SPRATT. Mr. Etheridge?

Mr. ETHERIDGE. Thank you, Mr. Chairman. Thank you, Commissioner Wright, for being here today. I guess just like our southern neighbor, North Carolina taxpayers are, they have invested significantly in nuclear plants, are in the process of adding to that.

Mr. WRIGHT. Yes, sir.

Mr. ETHERIDGE. Or in the process of trying to do that. And we have been paying, trying to move toward building a more sustainable energy future, as I said earlier. And we rank, I think, probably fifth, or certainly in the top five, in the money invested in the Nuclear Waste Fund, somewhere in the neighborhood of, short of \$900 million. You stated in your testimony that ratepayers pay four times—

Mr. WRIGHT. Yes, sir.

Mr. ETHERIDGE [continuing]. For waste—

Mr. WRIGHT. Not counting decommissioning funds.

Mr. ETHERIDGE [continuing]. Yeah, for waste disposal. I would be interested in you expanding for the record how that affects the average homeowner’s bill each month, or a business consumer each month.

Mr. WRIGHT. Well, every utility, nuclear utility, has to come before commissioners for a rate proceeding, especially when they are looking at raising rates. Not too many of them will come to reduce rates, but you know, we welcome that when they do. But people are becoming more and more aware about the cost that they are having to pay for, whether it is to store the waste on site, the Nuclear Waste Fund fee, the security for the location where the waste is stored. And so, they see the multiple hits and they are starting to catch onto it, okay? For a long time they did not catch onto it. A lot of times even the staff of members of Congress did not know about it. But they are becoming more educated about it. And so, the more that it is talked about and they see it, I think, and especially in tough economic times. And it is more aggravated now because the cost of commodities, coal, natural gas, all those things that we are looking for, base load needs, are going up. And so at some point, along with taxes. So, at some point the customer and the consumer, ratepayer, taxpayer, they are all at some point a ratepayer and a taxpayer for sure, enough is enough. And they will, you know, it is going to get more difficult.

Mr. ETHERIDGE. So, but what are the four times they pay?

Mr. WRIGHT. The four times they pay?

Mr. ETHERIDGE. Yes.

Mr. WRIGHT. They pay to the Nuclear Waste Fund.

Mr. ETHERIDGE. Right.

Mr. WRIGHT. Okay? The one-tenth of a cent. Then they are paying into the fund, or through rates they are paying to enlarge their cooling pools to rerack, to expand to keep more waste. Then they are taking the waste that has filled the pool, okay? And they have got it, and it has been there for five years or longer. They are taking it out of the pool so they can put other waste in there to cool it. And then they are putting that in dry cask storage, and they are having to pay to store that on site. And then the fourth time that they are paying is, again is not just a ratepayer but a taxpayer, through the Judgment Fund to settle these lawsuits.

Mr. ETHERIDGE. Thank you, Mr. Chairman. I yield back.

Chairman SPRATT. And for all of these additional steps, the reracking and so forth, is that cost being sought and recovered in the litigation against the Department of Energy?

Mr. WRIGHT. I am not exactly sure how that is all, I heard Mr. Harris try to explain that. Or maybe it was the gentleman over here, Mr. Hertz, and I was a little bit confused about that. But I do know that when the expansions are made at the nuclear facilities, that the ratepayer is paying that recovery cost there. I know that.

Chairman SPRATT. And if this issue is not resolved within, say, the next ten years, will it be necessary for the nuclear plants in South Carolina to expand their pools for the placement of the casks with nuclear waste?

Mr. WRIGHT. That is a good question, Mr. Chairman. I know that if they are full, they just continue to put it in dry cask storage. I do not know that they would enlarge the pools anywhere. But the new, you know, you have got the new plants that are going to be coming on line, two of them for sure, in, I think in 2016 and 2017, something like that, at the—

Chairman SPRATT. That is my next question. Despite this issue, Duke, Progress Energy, and SCANA, three of Carolina's utilities, are still pushing forward with plans for new reactors.

Mr. WRIGHT. Well, the only two that have been through a rate proceeding, have been approved, are the two at V.C. Summer that are through SCANA, through SCE&G. The other plants have not come before us, but there has been paperwork filed at the NRC. But there has not been a proceeding before the State. So what they are going to do, I could not tell you what the utilities' future for Duke or Progress are. But SCANA moved forward. But when SCANA moved forward, Yucca was still the end site, the geologic repository.

Chairman SPRATT. We have several different engineering groups that have kind of merged efforts for several different providers, several different power companies. In order not to reinvent the wheel, they are working together on technology and design of new facilities. And in addition, of course, we have others in the State working on the creation of MOX fuel out of bomb grade materials.

Mr. WRIGHT. Yes, sir.

Chairman SPRATT. Have we had any layoffs or significant job losses as a result of the decisions by DOE to close Yucca Mountain?

Mr. WRIGHT. I believe there has been some impact at SRS. I am not, I can get that for you. But I believe there has been some impact, but how much I do not have knowledge of that.

Chairman SPRATT. It was my information that one group in particular in the Fort Mill area of the State, near Charlotte, closed down an office due to the fact that this decision—

Mr. WRIGHT. Yes, sir. I am sure that has happened. But to quantify it, I could not tell you how many people or, you know, what the economic impact is. Although I can certainly get that, because the City of Aiken would give me that information.

Chairman SPRATT. If you get it and submit it for the record, we would appreciate it.

Mr. WRIGHT. Yes, sir. I would be glad to do that.

Chairman SPRATT. Any other questions of the witness? Thank you very much, Mr. Wright, for coming today. And I would ask unanimous consent that members who did not have the opportunity to ask questions be given seven days in order to submit questions for the record. Thank you very much, Mr. Wright, and the hearing is adjourned.

[The prepared statement of Mr. Connolly follows:]

PREPARED STATEMENT OF HON. GERALD E. CONNOLLY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman, thank you for holding this hearing on the budgetary implications of the plan to close Yucca Mountain as a nuclear waste repository. I look forward to a discussion of the financial issues surrounding the storage of our nation's growing stock of spent nuclear fuel and other radioactive waste.

Nuclear and radioactive waste is an unfortunate byproduct of our nation's 104 nuclear reactors and power plants, hospital waste, industrial waste, federal nuclear weapons programs, and other domestic sources. Nuclear power currently generates roughly 20 percent of the nation's electricity. Most of the waste from these reactors is stored on the individual sites at this time. There is more than 56,000 metric tons of waste stored around the country at 121 different sites. In my own state of Virginia, more than 30 percent of our electricity is generated by two plants at North Anna and Surry. More than 2,000 metric tons of waste from the four reactors at those plants is stored on site in the Commonwealth.

Exhibit 9

THE NUCLEAR WASTE ADMINISTRATION ACT

HEARING BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

TO

RECEIVE TESTIMONY ON S. 3469, THE NUCLEAR WASTE
ADMINISTRATION ACT OF 2012

SEPTEMBER 12, 2012



Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

76-685 PDF

WASHINGTON : 2013

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APPENDIX II

Additional Material Submitted for the Record

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,
September 10, 2012.

Hon. JEFF BINGAMAN,
Chair, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.
Hon. LISA MURKOWSKI,
*Ranking Member, Committee on Energy and Natural Resources, U.S. Senate, Wash-
ington, DC.*

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 rev-

enue 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 NWA 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,

DAVID A. WRIGHT,

NARUC President, Vice Chairman, South Carolina Public Service Commission.

STATEMENT OF THE ENERGY COMMUNITIES ALLIANCE

Chairman Bingaman, Ranking Member Murkowski and Members of the Committee, we thank you for accepting our written testimony on S.3469, a bill to establish a new organization to manage nuclear waste, provide a consensual process for siting nuclear waste facilities, ensure adequate funding for managing nuclear waste, and for other purposes. We would also like to thank the sponsor of this bill: Senator Jeff Bingaman (D-NM). The Energy Communities Alliance (ECA) is the association of local governments that are adjacent to or impacted by Department of Energy (DOE) nuclear activities. Our members are either neighbors or hosts of DOE and National Nuclear Security Administration (NNSA) sites that currently produce or formerly produced defense nuclear waste, sites that store and process defense nuclear waste, and the sites that may potentially host a future interim storage facility, reprocessing facility or geologic repository.

Founded in 1992, ECA is the only association to bring together and provide a central voice for local elected and appointed officials on DOE issues. Our sites are the sender and receiver sites for nuclear waste, and potential hosts for nuclear waste interim storage, recycling and disposal facilities. We believe that local governments have a critical role to play in any waste discussion, and we have stated this position many times in our testimony before the Blue Ribbon Commission on America’s Nuclear Future (BRC). We applaud the efforts of this legislation to ensure that local governments are involved in waste decisions from the beginning.

Our communities are most interested in the disposal of defense waste currently stored at many of our sites. As you consider this legislation, we ask you to take into account the impact these decisions will have on our communities. We would like to offer the following recommendations and comments on S.3469:

- Congress and the Administration Need to Re-Engage Communities on HLW Issues
- ECA Supports the Inclusion of Local Governments in the Decision-Making Process

ation. Many states may opt not to view storage as any sort of burden due to incentives, road payments and job creation opportunities. If the determination of burden vs. benefit is strictly left up to the individual state, such language could be productive.

However, opponents of a specific storage site may interpret such language to mean that states that currently have nuclear waste facilities would not be eligible for storage because “they have already done their share” when it comes to the nation’s nuclear waste needs. This is again a determination that should be made by each individual state rather than having the federal government decide. An incentive-based interim storage plan could be quite lucrative for an interested state—the federal government should avoid any language that might be somehow used, through misinterpretation, to punish states already involved in the nuclear waste process by making them less eligible for a desired facility.

Furthermore, many of the states with existing nuclear waste facilities (including transuranic) are likely to be some of the nation’s best locations for future storage due to geographic and geologic considerations, existing trained workforce availability, and regional socio-political understanding of nuclear waste issues. A misinterpretation of the “unduly burden” line could be used to eliminate many of the nation’s best possible locations for interim storage.

Senators, we ask that you look to our nation’s recent past at some of the mistakes made during the formation of the Nuclear Waste Policy Act (and amendments). There were unique provisions, for example, placed in the NWPA forbidding certain types of future study of specific types of geology. Those type of misplaced, self-serving laws are still causing our nation legal difficulties today. When in doubt, we believe the best path forward in any legislation aiming to capture the spirit of the BRC’s recommendations is to leave interpretations up to individual states and to avoid any federal language that might obstruct this process.

In summary, our recommendations to the proposed bill, as it currently stands, are as follows:

1. Delink interim storage from repository development.
2. Establish language allowing for defense high level waste to be stored in an interim storage facility.
3. Remove the bill’s “unduly burden” language as it applies to states with TRU waste or defense waste to avoid probable misinterpretation.

We remain inspired by the bi-partisan, sincere efforts the four of you have displayed in putting together our nation’s nuclear plan. We believe this bill, once complete, may well create a responsible national stewardship plan that will withstand the test of time. Our organization thanks you all again for your contributions to solving our nation’s nuclear waste crisis and your decades of service to this great nation.

STATEMENT OF DAVID A. WRIGHT, CHAIRMAN, SOUTH CAROLINA PUBLIC SERVICE
COMMISSION, NUCLEAR WASTE STRATEGY COALITION

Dear Chairman Bingaman & Ranking Member Murkowski:

The Nuclear Waste Strategy Coalition (NWSC) thanks the Senate Energy & Natural Resources Committee for convening a hearing on important issues pertaining to nuclear waste disposal and submits the following comments regarding S. 3469, the Nuclear Waste Administration Act of 2012. Described by its sponsor as a bill to implement the recommendations of the Blue Ribbon Commission on America’s Nuclear Future (BRC), S. 3469 and the related September 12th hearing provide an opportunity to begin building a record for future Congressional action on the BRC and other approaches to best meet the needs of our country with respect to nuclear waste policy reform.

The BRC report contained many recommendations that our members have long supported, including funding reform to protect consumers’ continuing fee payments and the Nuclear Waste Fund (NWF) balance; prompt development of consolidated interim storage and geologic disposal; and an independent waste management organization with the authority and resources to succeed.

Although not addressed by the BRC, the proposed Yucca Mountain repository remains the nation’s best hope for “promptly” developing geologic disposal. The Department of Energy (DOE) and the Nuclear Regulatory Commission (NRC) should resume the Yucca Mountain licensing process both as a requirement of law and as a matter of respect to taxpayers and electricity customers who have invested billions of dollars in the license application. The NWSC supports Yucca Mountain and the BRC recommendations, and we emphasize these are not mutually exclusive posi-

tions. Nothing in the BRC report precludes resumption of work on Yucca Mountain. In fact, the BRC recommendations may be viewed as complementary steps to address needs in the interim and over the longer-term. Specifically, consolidated interim storage is needed until a repository is opened, and an additional repository—perhaps sited using a consent-based process—will be needed under existing law.

With that context, the NWSC provides feedback regarding certain provisions of S. 3469:

Independent Waste Management Organization

Following years of budget cuts, management turnover, and missed deadlines, our members wholeheartedly support the BRC recommendation for a new, single-purpose organization to develop and implement a focused, integrated program for the transportation, storage, and disposal of nuclear waste. Such an organization could be structured numerous ways. We prefer models that ensure accountability but reasonably insulate the organization from political interference and excessive turnover in key positions. Additionally, stakeholders should serve in some type of oversight or advisory capacity. The proposed Nuclear Waste Administration in S. 3469 is lacking with respect to some of the key elements noted here. While not endorsing any one model at this point, we prefer the government-owned corporation model as recommended by the BRC over models that set up government agencies with both politically-appointed leadership and oversight boards that tend to change with every administration. Finally, regardless of the model chosen for transferring nuclear waste management functions out of DOE, guidance to facilitate a smooth transition would be helpful.

Funding Reform

Consistent with the BRC recommendations, the Administration, with Congressional support, needs to fix the funding for the nuclear waste program. The BRC eloquently stated the importance of reforming the existing funding mechanism as follows:

The success of a revitalized nuclear waste management program will depend on making the revenues generated by the nuclear waste fee and the balance in the NWF available when needed and in the amounts needed to implement the program.

In a letter to the President over a month before their report was issued, the BRC Co-Chairs delineated near-term steps for timely actions that the current unsustainable situation warrants. Unfortunately, those recommendations have not been followed. As for S. 3469's creation of a new Working Capital Fund, we commend the effort to stop future raiding of consumer payments intended for the program. However, access to the Working Capital Fund would be subject to appropriations, potentially limiting the Administrator's ability to carry out necessary program activities. Also, we support NARUC's suggestion to strengthen financial support of the new organization by transferring the interest earned on the NWF balance to the new Working Capital Fund. Finally, we would like assurance that the balance in the NWF will be made available when program needs dictate.

Consolidated Interim Storage

Consolidated interim storage (CIS) should be authorized and funded as a safe, cost-effective option for managing spent nuclear fuel and high-level radioactive waste from decommissioned and operating plants. While a permanent facility is being licensed and constructed, one or more CIS facilities would permit the federal government to begin meeting its obligations and reduce taxpayer liabilities associated with the government's delay. As such, we support the BRC call for prompt efforts to develop CIS with used nuclear fuel from the decommissioned reactor sites "first in line" for transfer. We were delighted to see that approach in the Senate appropriations language introduced earlier this year, and we suggest that comprehensive reform proposals such as S. 3469 expressly include language to ensure that CIS is authorized.

Although well-intentioned, the linkage between CIS and progress on a permanent disposal facility in S. 3469 prevents site-specific flexibility and does not need to be legislatively mandated. Recognizing a need for disposal under any scenario, the country must promptly site and construct a permanent disposal facility, and we urge Congressional efforts to properly fund the repository program accordingly. That would best ensure that current dry cask storage and future CIS facilities do not become de facto permanent disposal facilities. At the same time, we need authorization and appropriations for CIS that affords as much flexibility as possible. In a consent-based siting scenario, potential CIS facility host communities would be empow-

ered to assess and manage the risks of becoming de facto permanent facilities, and they will undoubtedly do so.

Additionally, the bill's requirement that utilities settle their lawsuits against the federal government in order to be permitted to use a CIS facility would seem to perpetuate the untenable situation of prolonged on-site dry cask storage and mounting federal government liability. We need not remind Congress about which entity has not met its obligations under the law and per its contracts with utilities. The federal government still has a roadmap for avoiding future liability via performance.

Consent-Based Siting

With respect to consent-based siting processes, the NWSC emphasizes the need for flexibility so as not to limit creative and effective solutions that may be proposed by potential host communities. With that in mind, we agree that is important to have an enforceable agreement at some point.

While many of the BRC recommendations require legislative solutions, DOE should take action immediately to advance BRC near-term recommendations under existing authority. Until that happens, DOE should be held accountable to deliver a plan that reflects a sense of urgency, outlines specific actions, and takes ownership for the country's high level radioactive waste. Therefore, we urge you to remind DOE of the Senate's interest in receiving the implementation plan.

In addition, it appears likely that the court will soon order the NRC and DOE to resume the Yucca Mountain licensing process. DOE and NRC should have executable plans in place to do so. We urge you to request a specific plan, including the resources required for completing the licensing process, from DOE and NRC.

Thank you for your leadership in initiating the dialogue pertaining to certain BRC recommendations. The NWSC stands ready to work with you and your Congressional colleagues, the Administration, and DOE to advance meaningful nuclear waste policy reform. Please let us know if you would like to discuss further.

NATIONAL CONFERENCE OF STATE LEGISLATURES,
Washington, DC, September 14, 2012.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, 304 Dirksen Senate Building, Washington, DC.

Hon. LISA MURKOWSKI,
Ranking Member, Committee on Energy and Natural Resources, U.S. Senate, 304 Dirksen Senate Building, Washington, DC.

Re: Nuclear Waste Administration Act of 2012 (S. 3469)

DEAR CHAIRMAN BINGAMAN AND RANKING MEMBER MURKOWSKI,

On behalf of the National Conference of State Legislatures (NCSL), I applaud this committee for moving the debate concerning America's nuclear energy issues forward by building on the recommendations for a new national radioactive waste management strategy made by the Blue Ribbon Commission on America's Nuclear Future (BRC) in its final report issued on January 26, 2012.

NCSL is the bi-partisan national organization representing the 50 state legislatures and the legislatures of our nation's commonwealths, territories and the District of Columbia. NCSL has a long history of working on nuclear energy issues. Specifically, NCSL's Nuclear Legislative Working Group, of which I am the chair, is comprised of state legislators from across the country who discuss issues surrounding nuclear energy including the safe handling, storage and transportation of waste. This long-standing group meets twice a year and also helps to form NCSL policy directives on this and other topics. I am also a member of NCSL's Executive Committee and serve on NCSL's Energy Supply Task Force. The task force explores current energy policies in the United States and makes recommendations for changes to current NCSL policy related to energy issues.

NCSL has adopted two applicable policies on these topics, Radioactive Waste Management Policy Directive and National Energy Policy Directive, which have been submitted as attachments to these written remarks. These two policies serve as the foundation for these remarks and our support of congressional efforts to find a solution to nuclear waste management in the U.S. including:

- development and licensing of a high-level waste/used nuclear fuel permanent disposal facility;
- establishment of consolidated interim storage facilities at technically and scientifically suitable sites;

Exhibit 10

RECOMMENDATIONS OF THE BLUE RIBBON
COMMISSION ON AMERICA'S NUCLEAR FUTURE

HEARING
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT AND THE
ECONOMY
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

FEBRUARY 1, 2012

Serial No. 112-109



Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PRINTING OFFICE

75-441 PDF

WASHINGTON : 2012

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Mr. SHIMKUS. And now I would like to recognize Mr. Wright for 5 minutes, sir.

STATEMENT OF DAVID A. WRIGHT

Mr. WRIGHT. Thank you. Good afternoon, Chairman, Ranking Member Green.

Mr. SHIMKUS. Your microphone.

Mr. WRIGHT. It is on, I believe, I will pull it closer. My name is David Wright, and I am a commissioner with the South Carolina Public Service Commission, and I serve as president of the National Association of Regulatory Utility Commissioners on whose behalf I am speaking today. NARUC and State utility commissions in 40 States served by nuclear generated electricity have been involved in the troubled history of nuclear waste disposal since 1983. That is when the utilities, which own the fuel, were required by the Nuclear Waste Policy Act, to enter into contracts with DOE. Those contracts called for payments of fees for nuclear-generated electricity to the Treasury for deposit into the nuclear waste fund to pay for the cost of disposal of used fuel beginning in 1998.

Disposal has not happened, but the fee payments continue to be made. Or as a former Florida utility commissioner summarized the status in 1991, the government has our money, we have their waste. It is now 20-plus years later, and we still have the government's waste.

Utilities passed the cost of the fees to their customers through their electric bill. In addition, and because of the government's failure to open Yucca, customers, through their rates, have had to pay additional amounts to cover the cost of reracking utility spent fuel pools to accommodate more spent fuel. And have had to pay for on-site dry cask storage as well as the increased security required there.

Moreover, all taxpayers, through the judgment fund, have had to pay damages for the lawsuits brought to date as well as those to come. In 2009, the administration pronounced Yucca Mountain not a workable option, and that it intended to terminate the repository development there, a position contrary to the law of the land. In March 2010, DOE asked the NRC's Atomic Safety Licensing Board for permission to withdraw the application with prejudice. In June, the ASLB rejected the request. The decision was appealed to the NRC. While the NRC was disposing of the license matter the President directed that the Secretary of Energy appoint the Blue Ribbon Commission on America's nuclear future to consider and recommend a new strategy, a strategy that soon became evident would be a post-Yucca strategy.

In 2010, NARUC and several other parties petitioned the Court of Appeals under the NWPA, to challenge DOE's authority to withdraw the Yucca Mountain license application, but the case dismissed because there had been no final agency action by the NRC on the appeal of the board's decision rejecting DOE's request. The NWPA mandates that once the Yucca Mountain license was submitted. The NRC had only 3 years to complete the review proceedings, those 3 years have expired. Currently, the NRC faces a mandamus action to force it to complete the required review in the U.S. Court of Appeals for the District of Columbia circuit. NARUC

is one of several petitioners in that suit. Our reply briefs were filed last Friday.

Notwithstanding, our pro Yucca position, NARUC was closely involved in the work of the BRC, we wrote letters, gave testimony, provided comments to the subcommittee and attended the public meetings. As for the recommendations, we have the following points: 1, reform with nuclear waste fund is, essential; 2, regardless of Yucca Mountain, we will need another new repository. The lessons of Yucca and others suggest the consent-based siting approach may get better reports but will require patients; 3, we have long favored consolidated and home storage on a parallel track with Yucca, but find the report vague as to quantity, duration and cost as well as what the effect will be on the fee if the nuclear waste fund is to be used to pay for storage; 4, we agree with the concept and benefits of a new Federal corporation that can focus solely on the waste management mission; 5, transportation planning and coordination with States and others cannot begin soon enough.

There are two areas where we disagree with the Commission report. A, the report says, "Overall we are confident that our waste management recommendations can be implemented using revenue streams already dedicated for this purpose." There are no cost estimates to substantiate that belief, which likely also assumes the \$26.7 billion under the nuclear waste fund is assured; B, the report further says, "We know what we have to do, we know we have to do it, and we even know how to do it." While we may wish that were true, our assessment is that there were too many people who are content to pass the problem along to future generations and leave the waste where it is. Continuing to kick the dry cask down the road should not be an option.

So yet another study calls for prompt action, yet despite on paper a financing plan, implementation relies on leadership from the administration and the Congress. NARUC stands ready to assist on behalf of ratepayers who may not even realize it, but they are already paying for safe waste disposition. Thank you for listening.

[The prepared statement of Mr. Wright follows:]

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT

TESTIMONY OF THE HONORABLE DAVID A. WRIGHT
PRESIDENT, NATIONAL ASSOCIATION OF REGULATORY UTILITY
COMMISSIONERS
COMMISSIONER, SOUTH CAROLINA PUBLIC SERVICE COMMISSION

ON BEHALF OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

ON

“Recommendations of the Blue Ribbon Commission on America’s Nuclear Future”

February 1, 2012



National Association of
Regulatory Utility Commissioners
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**Summary for Testimony of the Honorable David A. Wright
On Behalf of
The National Association of Regulatory Utility Commissioners**

- The NRC has stopped the review of the Yucca Mountain license application. We are currently in litigation challenging the basis for not letting the process run to a conclusive result.
- NARUC welcomes the Blue Ribbon Commission Report.
- We support all of the recommendations.
- We place highest priority on fixing the Nuclear Waste Fund so that fees collected are available for purposes intended—disposing of used nuclear fuel.
- The Commission reaffirmed that we still need a new repository regardless of what happens with Yucca.
- We support consolidated interim storage but find the Report vague as to quantity, duration and cost. We encourage seeking volunteer sites.
- Implementation requires leadership from the Administration and Congress. NARUC stands ready to help and represent ratepayers.

Good Morning, Chairman Shimkus, Ranking Member Green, and Subcommittee Members. Thank you for the opportunity to appear before you today.

My name is David Wright. I am a commissioner with the South Carolina Public Service Commission and I serve as president of the National Association of Regulatory Utility Commissioners (NARUC), on whose behalf I am speaking this morning. I appreciate the opportunity to present NARUC's views on the subject of disposition of spent or used nuclear fuel from commercial nuclear power plants.

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

NARUC and State utility commissions in forty States served by nuclear-generated electricity have been involved in the troubled history of nuclear waste disposal since 1983. That is when the utilities, which own the used fuel, were required by the Nuclear Waste Policy Act to enter into contracts with DOE. Those contracts called for payments of fees for nuclear-generated electricity to the Treasury for deposit into the Nuclear Waste Fund to pay for the cost of disposal

of the used fuel beginning in 1998. As you know, that disposal has not happened, but the fee payments continue to be made. Or, as a former Florida utility commissioner summarized the status in 1991, “The government has our money—we have their waste.” It is now 20-plus years later and we still have the government’s waste. Utility commissioners care because the utilities pass the cost of the fees to their customers through their electric bill. In addition, and because of the government’s failure to open Yucca, customers, through their rates, have had to pay additional amounts to cover the cost of re-racking of the utility spent fuel pools to accommodate more spent fuel, and have had to pay for on-site dry cask storage as well as the increased security required there. Moreover, all taxpayers, through the Judgment Fund, have had to pay damages for the lawsuits brought to date as well as those to come.

We followed the slow progress of the civilian radioactive waste management program as it met a variety of setbacks and advances, exacerbated by chronic budget cuts even as the illusion of a multi-billion dollar corpus grew in the Nuclear Waste Fund. A significant milestone was met in 2002 when Congress passed the joint resolution approving Yucca Mountain as the site for the geologic repository, subject to the Department of Energy obtaining a construction license from the Nuclear Regulatory Commission. The next setback was the court remand to the Environmental Protection Agency to revise the regulation setting the radiation standard for the facility. Finally, DOE submitted the license application in June 2008. The NRC began its review of the 8,000-page application for the first-of-a-kind facility which was expected to take three to four years.

In 2009, the Administration pronounced Yucca Mountain not to be a “workable option” and that it intended to terminate the repository development there. In March 2010, DOE asked the NRC’s Atomic Safety Licensing Board for permission to withdraw the application with prejudice. In June, the ASLB rejected the request, ruling that once a valid license application was submitted under the NWPA, the NRC was required to review and act upon the application. The decision was appealed to the NRC.

While the NRC was disposing of the license matter, the President directed that the Secretary of Energy appoint the Blue Ribbon Commission on America’s Nuclear Future (BRC) to consider and recommend a new strategy; a strategy that soon became evident would be a “post-Yucca” strategy.

In 2010, NARUC, and several other parties, petitioned the Court of Appeals under the NWPA to challenge DOE’s authority to withdraw the Yucca Mountain license application, but the case was dismissed because there had been no final agency action by the NRC on the appeal of the Board’s decision rejecting DOE’s request. After lengthy and unnecessary delays, the NRC Chairman ultimately released a decision. The NWPA mandates that once the Yucca Mountain license was submitted the NRC only had three years to complete the review proceedings. Those three years have expired. Currently, the NRC faces a mandamus action to force it to complete the required review in the United States Court of Appeals for the District of Columbia Circuit. NARUC is one of several petitioners in that suit. Our reply briefs were just filed last Friday.

Notwithstanding our position on Yucca, NARUC was closely involved in the work of the BRC. We wrote letters, gave testimony, provided comments on the Subcommittee, and attended most of the public meetings. We were impressed with the distinguished members, their approach to the task, the talented professional staff, and the sincere interest in public input. We have asked DOE to preserve and maintain access to the Commission website.

As for the recommendations, while we welcome them all, we have the following points:

1. Reform of the Nuclear Waste Fund is essential for most of the others to occur.
2. Regardless of Yucca Mountain, we need another repository. The lessons of Yucca and the better lessons of Finland, Sweden and WIPP suggest the “consent-based” siting approach may get better results, but will require patience.
3. We have long favored consolidated interim storage, but find the Report vague as to quantity, duration, and cost. We are not sure what the effect will be on the fee if the Nuclear Waste Fund is to be used to pay for storage.
4. We agree with the concept and benefits of a new federal corporation that can focus solely on the waste management mission, hopefully with a fresh partnership attitude for encouraging the consent-based approach. We look forward to refining the concept in enabling legislation.
5. Transportation planning and coordination with States and others cannot begin soon enough.

We would add that the time is not right to commit to a reprocessing strategy, although R&D should continue, as the BRC recommends. Also, we encourage DOE to take steps to seek volunteer host communities to step forward in storage siting without waiting to form the new management organization.

There are two areas where we disagree with the Commission Report:

1. The Report says: "Overall, we are confident that our waste management recommendations can be implemented using revenue streams already dedicated for this purpose." There are no cost estimates to substantiate that belief, which likely also assumes the \$26.7 billion in the Nuclear Waste Fund is assured.
2. The Report further says: "We know what we have to do; we know we have to do it, and we even know how to do it." While we may wish that were true, our assessment is that there are too many people who are content to pass the problem along to future generations and "leave the waste where it is." It is fitting for the Commission to call for prompt action developing both consolidated interim storage and beginning the search for a new repository, but we may need public education and outreach to help persuade some who seem to favor the "no action" alternative. Continuing to "kick the dry cask down the road" should not be an option.

So, yet another study calls for prompt action, yet despite (on paper) a financing plan, implementation relies on leadership from the Administration and Congress. NARUC stands ready to assist on behalf of the ratepayers who may not realize that they are paying for safe waste disposition.