

**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON ENERGY AND AIR QUALITY
TESTIMONY OF THE HONORABLE ANNE C. GEORGE
COMMISSIONER, CONNECTICUT DEPARTMENT OF PUBLIC UTILITY
CONTROL
ON BEHALF OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
ON
“Next Steps Toward Permanent Nuclear Waste Disposal”**

July 15, 2008



**National Association of
Regulatory Utility Commissioners
1101 Vermont Ave, N.W., Suite 200
Washington, D.C. 20005
Telephone (202) 898-2200, Facsimile (202) 898-2213
Internet Home Page <http://www.naruc.org>**

Summary of Remarks by
The Honorable Anne C. George
National Association of Regulatory Utility Commissioners
Before the
U.S. House of Representatives
Energy and Commerce Committee, Subcommittee on Energy and Air Quality

- The federal government needs to meet its obligation under the Nuclear Waste Policy Act of 1982, as amended, to accept spent nuclear fuel from utilities and other nuclear generators for safe disposal in a timely manner. The nation's ratepayers have upheld their end of the bargain struck in the Nuclear Waste Policy Act by providing, either directly or through income generated on prior payments, more than \$27 billion for use in constructing a nuclear waste repository
- The Nuclear Waste Fund should only be employed for its intended purpose and that the monies in the Fund should be utilized, along with appropriations from the Department of Defense budget, for the sole purpose of supporting the opening of the Yucca Mountain facility in a timely fashion.
- There is a critical need to address the financial basis for the program that will offer greater certainty than the year-to-year suspense of the current appropriations process.
- NARUC encourages the Department of Energy to seize the initiative in response to a requirement in the FY 2008 Omnibus Appropriations Act to develop a plan for moving spent fuel from decommissioned reactor storage sites for interim storage.
- NARUC urges all parties, especially non-governmental organizations, to improve public understanding of what will be involved in nuclear waste transportation for the repository program and to continue the dialogue between the Department of Energy and hazardous materials transportation planning agencies designated by States and tribal organizations.
- NARUC believes it is a positive step that the matter of the safety and suitability of the proposed repository is before the Nuclear Regulatory Commission, which is the agency designated by law and with the expertise to make those determinations. It goes without saying that NARUC wants the repository to meet safety and health standards.

Good Morning Mr. Chairman, Ranking Member Upton, and Members of the Committee.

My name is Anne George. I am a commissioner of the Connecticut Department of Public Utility Control, which is the agency that regulates utilities in our State. I also am a member of the National Association of Regulatory Utility Commissioners (NARUC) and serve as chair of the Association's Electricity Committee. I am testifying today on behalf of NARUC. I greatly appreciate the opportunity to appear before you this morning. The issues that you are addressing in this hearing are very important to NARUC's membership and my State, and I am grateful to have this opportunity to present our point of view concerning the disposition of spent nuclear fuel currently stored at nuclear power plant sites throughout the country that is intended for ultimate disposal at the Yucca Mountain geologic repository.

I would like to summarize my testimony and have my full statement entered into the record.

NARUC is a quasi-governmental, non-profit organization founded in 1889. Its membership includes the State public utility commissions serving all States and territories. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. Our members regulate the retail rates and services of electric, gas, water, and telephone utilities. We are obligated under the laws of our respective States to ensure the establishment and maintenance of such utility services as may be required by the public convenience and necessity and to ensure that

such services are provided under rates and subject to terms and conditions of service that are just, reasonable, and non-discriminatory.

NARUC's goals in the nuclear waste area are well known and have been stated before this and other Congressional committees on a number of prior occasions. Simply put, the federal government needs to meet its obligation under the Nuclear Waste Policy Act of 1982, as amended, to accept spent nuclear fuel from utilities and other nuclear generators for safe disposal in a timely manner. The nation's ratepayers have upheld their end of the bargain struck in the Nuclear Waste Policy Act by providing, either directly or through income generated on prior payments, more than \$27 billion for use in constructing a nuclear waste repository. Indeed, Connecticut ratepayers have paid \$766 million so far. Additionally, the Nuclear Waste Fund should only be employed for its intended purpose and that the monies in the Fund should be utilized, along with appropriations from the Department of Defense budget, for the sole purpose of supporting the opening of the Yucca Mountain facility in a timely fashion. These basic principles underlying NARUC's approach to the nuclear waste issue provide a solid foundation for future policy decisions concerning the nuclear waste program.

We had anticipated that the Department of Energy would have submitted the license application for construction of the repository at Yucca Mountain within a year or two after the President designated the site in 2002 and Congress approved it by House Joint Resolution 87, but matters got complicated as they always seem to do with this project. In 2004, the U.S. Court of Appeals for the District of Columbia Circuit issued a

remand order to the Environmental Protection Agency to revise its radiation regulation for Yucca Mountain to be based on and consistent with recommendations of the National Academy of Sciences. EPA published a draft revised rule in 2005 for public comment. EPA was then to evaluate the comments received and issue a final rule. Inexplicably, the EPA has still not published the final rule, even after an EPA witness testified in October 2007 that it would be finalized “soon.”

Regulatory matters were not the only cause for delay. DOE revised its spent fuel handling scheme for the repository to reduce handling operations and, as we understood it, save billions of dollars for facilities costs by adapting an all-in-one transportation, aging (storage) and disposal canister system. This required significant redesign and cost estimate revisions that DOE said would improve safety and would likely be welcomed by the Nuclear Regulatory Commission when they reviewed the license application.

And, as is almost customary, Congress continued its practice of cutting the repository program budget, as well as causing uncertainty by failing to pass an appropriations bill on time and having program officials contend with a series of continuing resolutions. In the current fiscal year the Omnibus Appropriations Act cut \$108 million from the program after the fiscal year was three months along. This required the program director to issue layoff notices to project staff employees and contractor personnel just as they were at the critical stage of compiling the license application.

On June 3, 2008, the Secretary of Energy made the announcement that the Yucca Mountain construction license application was complete and formally transmitted to the NRC. He and the Director of the Office of Civilian Radioactive Waste Management, Edward “Ward” Sproat, III, who led the government-contractor team that prepared the application, expressed confidence that the application meets all of the NRC and EPA regulatory requirements. The officials said the Department would be ready to defend it during the three- to four-year review period. NARUC commends DOE for their work on this project of unprecedented scale.

With the application filed at the NRC, the question arises of “what’s next?” Of all the challenges this project faces, be they technical, regulatory, political, environmental or legal, we feel there is a critical need to address the financial basis for the program that will offer greater certainty than the year-to-year suspense of the current appropriations process. The Nuclear Waste Policy Act created a well-designed Nuclear Waste Fund that was intended to collect fees based on generation of electricity from nuclear sources sufficient to pay for the safe disposal of commercial spent fuel in a geologic repository. The Defense budget would pay the share of disposal costs for the government-managed high-level radioactive waste. Many people refer to the Nuclear Waste Fund as a trust fund, but as members of this Committee know, it is not managed like a trust fund. We often feel that the only part of the Nuclear Waste Fund that is operating as designed is the fee collection. Since June of 1983, utilities have been sending their fee payments into the Treasury. From there, there is no correlation between revenue and disbursements for the repository program. Our Washington staff tells me that the fee revenue is collected as

“mandatory receipts,” but the appropriations are authorized as part of the “discretionary” part of the federal budget and there is no connection between revenue and appropriations.

The Committee may have more current information on the status of the Nuclear Waste Fund, but here is what the Department of Energy shows on its web site for the end of Fiscal Year 2007:

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| Total fee payments, cumulative since 1983 | \$15.5 billion |
| Investment returns credited to the Fund | 11.6 billion |
| Total income through FY 2007 | 27.2 billion |
| Total disbursements | 6.9 billion |
| Nuclear Waste Fund balance | 20.3 billion |

Let us look at an annual summary, looking at FY 2008:

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| Forecast fee payments | \$ 0.766 billion |
| Investment returns | 1.1 billion |
| Total income | 1.8 billion |
| Appropriations | 0.187 billion |
| Forecast of ending NWF balance (September 30, 2008) | 21.5 billion |

So, the perception of ratepayers who have paid into the Nuclear Waste Fund is this: The Fund, set up by Congress for the sole purpose of disposal of commercial spent nuclear fuel, is growing at a rate of more than one billion dollars per year—earning more in interest than total fee payments—yet, the repository program has chronically been

reduced by Congress from the budget request to the point where in a critical period for preparing the license application, the repository program director had to lay off highly-skilled government and contractor personnel who were contributing to the documentation that will demonstrate that the repository will meet the requirements of the regulations of the NRC. I would not expect a private party seeking a license from the NRC to have to contend with such turmoil.

The situation could be even worse: there is some question on whether the \$20 billion in the Fund is really there. As I understand it, the Fund balance consists of various Treasury bills, notes and bonds that constitute an investment by the Fund, which even earns returns that are also added to the Fund. But, until a future Congress decides to appropriate some of those funds, they remain practically inaccessible

We appreciate past attempts by the Energy and Commerce Committee to reform the way in which appropriations are made from the Nuclear Waste Fund. We also appreciate that the Administration has twice proposed a legislative remedy through the *Nuclear Fuel Management and Disposal Act*. Unfortunately, no action was taken on the bill, probably because other provisions in the bill are intended to enable development of the Yucca Mountain repository and conventional wisdom seems to be that no such bill will be considered in the Senate.

Absent action by Congress to approve the modest proposal to reclassify mandatory Nuclear Waste Fund receipts as discretionary, the nuclear waste program

director was unable to propose an FY 2009 budget request for the repository program that matched the cash flow forecast he presented to this Committee in March 2007. The forecast for FY 2009 “requirements” to enable repository waste acceptance beginning in 2017 was for \$1.14 billion. Instead, the actual budget request was “level funded” with the FY 2008 *request* of \$247.3 million from the Fund (and another \$247.4 million from the Defense Nuclear Waste Disposal account). Office of Civilian Radioactive Nuclear Management Director Sproat told both House and Senate Appropriations Subcommittees this spring that, “Funding at current levels in future years will not be adequate to support design and the necessary concurrent capital purchases for repository construction, transportation infrastructure, and transportation and disposal casks. The development of a credible schedule for the Program is highly dependent upon a steady and reliable funding stream.” As you know, Mr. Sproat has stopped forecasting important milestones for the repository because of uncertainty over availability of financial resources.

As for other matters, we encourage the Department of Energy to seize the initiative in response to a requirement in the FY 2008 Omnibus Appropriations Act to develop a plan for moving spent fuel from decommissioned reactor storage sites. We have one such site in East Haddam in Connecticut. NARUC has discussed the subject with DOE staff and find them cautious about getting involved in interim storage. They are concerned that such a project could be a diversion of limited resources to the detriment of the repository program. They also point out that DOE lacks authority to provide interim storage. Securing authorization can be one of the elements to the plan, provided the Department can show it is worthwhile. We think it is. DOE seems not to be

looking at the situation from the point of view of the communities that surround these nearly decommissioned sites. But for the removal of the spent fuel, the sites can be decommissioned and reclaimed for other beneficial uses. We also feel that preparing for and moving the spent fuel would help improve public confidence that this material can be and is moved safely. We don't know what it will cost to create an interim storage facility and move spent fuel to it, but since DOE and the taxpayers will eventually be liable for those costs, it makes sense to price out the costs and benefits of doing so.

Finally, nuclear-waste transportation may seem like a tangential item until you analyze why many people are apprehensive and easily moved to be fearful of nuclear waste disposal. Many people are fearful of the perceived risk of transportation of spent fuel and other high-level radioactive material. They may not realize that the material is only shipped in robust shielded containers that are licensed by the NRC. They are usually unaware of the excellent safety record of past shipments. We have observed at public hearings and in media coverage considerable emphasis placed on transportation "impacts." Let us be honest and recognize that there are quite a few organizations and individuals who present their own version of the possible risks with a tendency to portray a plausible, if unlikely, worst case scenario. We also can observe that there are people who simply do not trust either the nuclear industry or DOE on this subject.

When there are disputes over facts and myths of controversial topics such as this, it is useful to call upon an organization with the skills and objectivity to analyze and present an assessment that can serve to inform the public. That was done when a

Committee on Transportation of Radioactive Waste from the National Research Council of the National Academies of Science conducted a study of the subject and published its report, *Going the Distance*, in 2006. The report says, “The committee could identify no fundamental technical barriers to the safe transport of spent fuel and high-level radioactive waste in the United States. However, there are a number of social and institutional challenges to the successful initial implementation of large-quantity shipping programs that will require expeditious resolution.” The NAS committee drew the distinction between health and safety risks and social risks. While the “radiological risks are well understood and are generally low,” the report concludes the social risks pose important challenges and suggests some proactive ways to characterize, communicate and manage the social risks.

The NAS report also endorses DOE’s plan to ship spent fuel and high-level waste by mostly rail using dedicated trains. There seems to be broad consensus among stakeholders that rail shipments (which can carry more payload and thus be fewer in number) are preferred over highway shipments. Here again we come back to highlighting the importance of reform of the Nuclear Waste Fund appropriations process: there is presently no rail access to the repository site. DOE proposes to build a rail line connecting the site to the mainline in the eastern part of the State. It could cost \$2.5 billion and take at least five years to build through some rugged and remote sections. When the repository program director provided the cash flow requirements forecast in March of 2007 to this Subcommittee, it included \$237 million for Nevada transportation infrastructure, which I believe encompasses detailed engineering and design of the 300

mile line. Instead, under the level-funded budget, the FY 09 Budget requests just \$20 million for all transportation-related activities. What that tells me, unless the program gains access to the annual fee revenue and eventually the Nuclear Waste Fund corpus, that the rail connection to the repository is unlikely to be operational by the time the repository is ready to receive waste. This means that much of the initial shipments in Nevada will be by truck or that the repository operations will be further delayed until the rail link is complete. With all the public attention focused on the initial shipments, there is bound to be anxiety expressed over the highway shipments, considering that many stakeholders and the government itself preferred shipments by rail.

Conclusion

In conclusion, we are pleased that the matter of the safety and suitability of the proposed repository is before the Nuclear Regulatory Commission, which is the agency designated by law and with the expertise to make those determinations. It goes without saying that NARUC wants the repository to meet safety and health standards.

We urge the Congress to reform the Nuclear Waste Fund appropriations process so that the fees being collected from utilities and their customers can be available for their intended purpose.

We encourage the Department of Energy to take a positive approach toward taking the spent nuclear fuel from the decommissioned reactor storage sites to an interim

storage facility so that the decommissioning can be completed and the sites turned back to productive uses.

We urge all parties, especially non-governmental organizations, to improve public understanding of what will be involved in nuclear waste transportation for the repository program and to continue the dialogue between the Department of Energy and hazardous materials transportation planning agencies designated by States and tribal organizations.

If DOE plans to ship most spent fuel and other waste by “mostly rail,” Congress needs to commit to providing the financial resources to enabling the construction of the missing rail link to the repository site.

Thank you for the opportunity to testify. I look forward to your questions.