



N A R U C
National Association of Regulatory Utility Commissioners

March 2, 2010

The Honorable Steven Chu
Secretary of Energy
U.S. Dept. of Energy
1000 Independence Ave., SW
Washington, DC 20585

Re: Withdrawal of License Application for Yucca Mountain

Dear Secretary Chu:

We urge you to reconsider the plan, outlined in the Department of Energy's (DOE) February 1, 2010 motion, to withdraw the Yucca Mountain license application from the Nuclear Regulatory Commission's (NRC) review. There has been no determination that the statutorily-mandated Yucca Mountain repository does not meet the applicable regulatory requirements of the Environmental Protection Agency (EPA) or the NRC. The decision to withdraw appears to be premised solely on an unsupported Administration pronouncement that the approach developed over the past 20 years "has not proven effective." At best, this decision is premature. Certainly it is a waste of the billions already invested studying Yucca Mountain. The NRC license review process is designed to scrutinize the license application and determine, based on the facts presented, if the site meets the statutory requirements for a geological repository. While some may contend that the license application is flawed, NRC must have the opportunity to evaluate the application in full. Even DOE has implicitly recognized that, assuming the Yucca Mountain Repository Project is ultimately rejected, the NRC review will yield valuable lessons that would be transferable to future projects. Indeed, that seemed to be the reason for the inclusion of support for the license review in the FY 2010 DOE budget.

The National Association of Regulatory Utility Commissioners (NARUC) represents State utility commissioners who are tasked with ensuring, among other things, that electricity rates are just and reasonable. Since the Nuclear Waste Policy Act (NWPA) was enacted in 1982, State ratepayers serve by our members, along with reactor owners, have paid more than \$16 billion dollars into the Nuclear Waste Fund to support the process of reviewing a permanent repository.

NARUC supported DOE in the 2002 Congressional debate that resulted in the sanctioning of Yucca Mountain as the site for the geologic repository under the NWPA. Other than the radiation standard remand to EPA, we were pleased when the courts upheld the actions taken by the government in approving that siting decision. It took the government too long to prepare the application for submission: the six years from 2002 until 2008. However, one benefit of that lengthy and very expensive process is that the agency provided a high-quality license application based on significant studies and a strong record. If not withdrawn, that license application will certainly provide the NRC reasonable assurance that the facility can be

built and operated while meeting all the regulatory protections for the health and safety of the workforce and the public.

During our February 2010 meetings in Washington, D.C., NARUC adopted the attached resolution to distill the Association's policy positions as we prepare to engage with the Blue Ribbon Commission on America's nuclear future. The resolution specifically expresses disappointment with the possible termination of the Yucca Mountain repository and asks that we call upon you not to withdraw the license application.

Sincerely,

A handwritten signature in cursive script that reads "David C. Coen".

David C. Coen
President, NARUC

Attachment

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 NWSA 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*