



N A R U C
National Association of Regulatory Utility Commissioners

**Responses to Questions for the Record
From
Commissioner Greg R. White
On Behalf Of
The National Association of Regulatory Utility Commissioners
For The Hearing Entitled
“Update on the Current State of Nuclear Waste Management Policy”
Held**

May 15, 2015

The Honorable John Shimkus

- 1. As Congress moves forward to address the logjam associated with nuclear waste management policy, how can we protect the taxpayer to assure that total lifecycle system costs, including transportation, are not increased? What are some key principles to consider?**

Response:

Taxpayer exposure to increased judgment and maintenance costs associated with the federal government’s failure to perform its obligations under the Nuclear Waste Policy Act (NWPA) is contingent on the timing of the removal of the high-level nuclear waste from commercial nuclear generator sites. The sooner the government begins to remove that waste, the sooner the ever-expanding taxpayer-funded liability can be limited. Congress should compel the federal government to begin removing high-level nuclear waste from the commercial plant sites as soon as possible.

NARUC’s most recent policy document on this question establishes as a first principle that “America needs a permanent solution to Nuclear Waste Disposal and urges Congress to assure “[t]he Administration and the Nuclear Regulatory Commission comply with the law ... approving Yucca Mountain as the repository site by completing the licensing process.”¹ That resolution also outlines a few ideas with obvious positive impact endorsed by experts, including:

- Creating a separate organization outside the Department of Energy (DOE) to manage the fund:*

¹ *Resolution Regarding Guiding Principles for Management and Disposal of High-Level Nuclear Waste* (February 6, 2013).

“Whether DOE was unable to achieve its NWPA responsibilities due to mismanagement or to factors beyond its control can be debated, but the [Blue Ribbon Commission] BRC makes a sound case for creating a new organization, outside DOE, with sole responsibility to manage nuclear waste. NARUC supports this concept, which would require legislation. Id.

- *Finding some mechanism to assure that funds collected for disposal is not diverted to other uses. Id.*
- *Considering – on an interim basis only – some consolidated interim storage. Id.*

“Continued storage at permanently shutdown plants is unacceptable because it imposes costs on ratepayers without equivalent benefits and prohibits economic reuse of the site, whereas, relocation and consolidation would likely reduce the government’s liability and improve security. The BRC report cites a study that contends that the savings from consolidated storage for this stranded spent fuel would be enough to pay for the cost of the storage facility.”Id.

I have also listed the following additional ideas for protecting taxpayers from increasing total lifecycle system costs, including transportation. NARUC has not taken a specific position on these proposals:

- *Shift the risk for a certain level of cost overruns to entities other than the electric consumer (and funding sources other than the NWF) and/or set up a process for an independent review of cost overruns;*
- *Require a bidding process on government contract work, specifying a certain level of risk for cost overruns to be borne by the contractor;*
- *Minimize the scope of consolidated interim storage to limit duplicative transportation costs: the government should move to consolidated storage (and later to a permanent repository) only the amount of spent nuclear fuel required to minimize taxpayer liability for ongoing maintenance at shuttered sites, or necessary for other emergency or security purposes.*

2. Currently the Nuclear Waste Fund can only be spent on the repository program. Would NARUC support the use of Nuclear Waste Fund resources to enter into a contract with a private entity for the purpose of consolidated interim storage?

Response:

As noted in the responses to question 1, NARUC has supported the concept that consolidated interim storage is needed, however, with the caveat that the amount, basis of need, and duration should be determined. Consistent with our general support of the BRC recommendations, using the NWF for consolidated interim storage should be authorized only after careful consideration of the costs and benefits involved.

While NARUC supports some consolidated interim storage, we would not support use of the NWF for consolidated interim storage without certain conditions. First, NWF resources also should be used to advance work on the Yucca Mountain license

application (using the funds responsibly, of course). We would not support restarting collection of the fee, for example, to fund only consolidated storage when permanent disposal is crucial. Second, NWF resources should be limited to fund consolidation of waste generated by shutdown reactors (and perhaps other waste that must be moved based on security or emergency situations). This second condition should be immutable until an independent analysis demonstrates conclusively that movement of additional waste first to consolidated interim storage and later to permanent disposal is cost-effective and otherwise a justified use of funds collected from electric consumers. Third, new legislation should assure full access to the corpus of the NWF for authorized program activities.

A. If so, how can Congress assure interim storage payments do not impact the long-term adequacy of the Nuclear Waste Fund to support a permanent repository?

Response:

NARUC is on record supporting a routine systematic evaluation of program needs and NWF resources to fund necessary activities, which would certainly include a permanent repository. While the NWF fee (if collection is restarted) can be adjusted over time to meet program needs, it is best to set the fee at a reasonable level as soon as possible to assure intergenerational equity and avoid future spikes in fees due to foreseeable program cost escalations.

Congress may wish to consider establishing a separate fund (such as the Working Capital Fund model in the Senate bill) that would not be subject to the annual appropriations process. If so, the transfer of future accrued interest on the NWF and one time payments to the new Working Capital Fund might be appropriate. NARUC has not taken a specific position on this last proposal.

B. If not, what would be the appropriate funding mechanism?

Response:

N/A

3. The Nuclear Waste Policy Act codified the principle of "linkage," in which an interim storage facility cannot be licensed prior to the licensing of a permanent repository. This concept assures that interim storage facilities will not become a "de facto" permanent repository. Do you agree with this principle?

Response:

NARUC does not have an official position on the issue of linkage between the development of an interim storage facility and the prior licensing of a permanent

repository. Certainly, no policy maker would want interim storage facilities to become de facto repositories or forestall progress in licensing a permanent repository. We have indicated that progress on a permanent disposal site is crucial and that funds should be authorized for interim storage facilities “only after consideration of the costs and benefits involved.”

Although NARUC has a clear position on use of the NWF, our member’s views may vary on consent based interim storage negotiations.

In a consent-based siting scenario, potential consolidated storage facility hosts would assess and manage the risks of becoming de facto permanent facilities. Some argue, if a linkage is necessary, it could therefore be determined as part of the negotiations between the parties to the consent agreement. In any new legislation, Congress may also wish to avoid adding requirements that may prove to be unnecessary barriers to negotiations and positive, timely results. Others believe the linkage is a vital protection need to assure that progress is made on a permanent disposal site.

A. As noted, the current law prohibits the license of an interim site until a repository is licensed. Do you have additional suggestions as to how this process could be modified to provide for concurrent development as part of a nuclear waste management system?

Response:

As noted earlier, NARUC hasn’t taken a specific position on this issue. However, one possibility is to link work on an interim site to progress on the Yucca Mountain license review, *e.g.*, both DOE and the NRC continuing their duties hitting milestones to complete the Yucca Mountain license application review, including seeking annual appropriations and performing activities in a timely and purposeful manner, subject to Congressional oversight and perhaps some independent audit of their activities.

B. What sort of stipulations would be required to assure a permanent repository would be constructed? For example, do you support a maximum capacity limit on a consolidated interim storage site?

Response:

While NARUC has cautioned that the amount, basis of need, and duration for consolidated interim storage should be determined, we are also somewhat hesitant to suggest particular constraints on a site’s flexibility to serve the nation’s future consolidated interim storage needs.

While NARUC has not adopted specific positions on these issues, Congress might wish to consider establishing a maximum capacity limit on a consolidated interim storage site that could be revisited upon submission of an independent analysis (demonstrating efficiency and clear cost savings) to support lifting such a cap. This mechanism may be

useful to better manage use of the NWF or other funding source. While not suggesting a particular limit, NARUC has supported the idea that a consolidated storage site should be authorized to accept at least the current amount of spent fuel from shutdown reactor sites. I believe some additional capacity “buffer” could also prove valuable to provide flexibility to accept spent fuel from future shutdown reactor sites as well as any spent fuel at commercial sites that must be removed due to security or emergency situations.

C. Do you support economic benefits and incentives for states and communities that offer to host an interim storage site?

Response:

Yes, within reason, and we likewise have generally supported economic benefits and incentives for States and communities that host a permanent repository (including at Yucca Mountain).

4. The Eddy Lea Energy Alliance recently proposed constructing an interim storage facility in Southeastern New Mexico. New Mexico Senator Martin Heinrich said, "I cannot support establishing an interim storage facility until we are sure that there will be a path forward to permanent disposal."

A. Is the lack of progress on Yucca Mountain hampering our ability to move forward on interim storage?

Response:

It would appear that it at least is hampering the ability to site an interim storage facility in the State of New Mexico that is consent-based (if consent is defined to require consent by the state’s US Senators in addition to the consent of the local community and perhaps state government and tribal government authorities). At the same time, the lack of progress on Yucca Mountain or any other permanent solution to the commercial nuclear waste disposal problem is also a driver of calls for consolidated interim storage – at least with respect to the shutdown reactors – by our organization and others.

B. Would an expeditious review of the Yucca License application provide more certainty for interim storage stakeholders?

Response:

Absolutely. Continuing the review process will make it easier to find States willing to host an interim repository.

5. The DC Court of Appeals ruled that the collection of the Nuclear Waste Fund fee is illegal following DOE’s dismantlement of a nuclear waste management program. What steps would need to happen for NARUC to support restarting collection of the fee?

Response:

NARUC, as the organization with the most direct fiduciary responsibility for electricity ratepayer/consumer payments into the NWF, logically should be a key participant in any negotiations to restart collections of a NWF fee. NARUC has not specifically addressed this question by resolution. However, based on existing NARUC positions, I suspect the association's pre-requisites for re-initiating the fee, will include requiring the federal government to fully restart the Yucca Mountain license application review and assuring both the NRC and DOE (or statutorily authorized successor agency) fulfill their designated roles in good faith. The federal government should also begin reconstituting OCRWM per the NWPA and Congress should pass a law that includes the Blue Ribbon Commission's-recommended escrow approach to stop further misuse of NWF monies and assure stable funding for the program. In a letter to the President before their January 2012 report, which contained the same recommendation, the BRC Co-Chairs delineated near-term steps to protect future payments by electric consumers. They called for only those fee collections matching Congress' annual appropriations to the nuclear waste program to be deposited into the NWF, with any excess to be held in escrow until needed to fund future appropriations to the program. Unfortunately, those recommendations have not been pursued.

6. **Since its inception, the Nuclear Waste fee has been set at one mil, or one tenth of a penny, per kilowatt hour of electricity generated from nuclear energy. This has funded the ratepayer's contribution to Yucca Mountain to-date, with \$33 billion in the Nuclear Waste Fund administered by the Treasury Department. As Congress considers legislation relating to our nuclear waste management system, it is important to have the funding for the program align with the corresponding activities. How can Congress assure that the Nuclear Waste fee adequately provides for a repository program, while not imposing additional costs on electric consumers?**

Response:

It is critical that the current funding mechanism be modified so that NWF fee collections can no longer be used to offset other unrelated federal government obligations. If the nuclear waste program has full access to the funds previously collected (the corpus) as well as future collections if the fee is restarted, that will go a long way toward meeting future program needs. As stated previously, there will still be a need for regular evaluation of program requirements, which would certainly include a permanent repository, as well as NWF resources to fund program activities. While the NWF fee (if collection is restarted) can be adjusted to meet program needs, it is best to set the fee at a reasonable level quickly to assure intergenerational equity and avoid future fee spikes due to program cost escalation. Since there is no real federal program, there is no logical basis for recommending any specific fee amount at this time. Certainly, there is no justification for re-initiating the fee at any level in excess of the initial one-mill fee specified by Congress.