

**BEFORE THE  
UNITED STATES SENATE**

**COMMITTEE ON ENERGY AND NATURAL RESOURCES**

**STATEMENT FOR THE RECORD OF  
THE HONORABLE EDWARD S. FINLEY, CHAIRMAN  
NORTH CAROLINA UTILITIES COMMISSION**

**ON BEHALF OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

**REGARDING**

**“The hearing to receive testimony on the back-end of the nuclear fuel cycle and related  
legislation, including S. 854, the Nuclear Waste Administration Act of 2015 ”**

**August 4, 2015**



**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>**

Chairman Murkowski, Ranking Member Cantwell, and Members of the Committee on Energy and Natural Resources, my name is Edward S. Finley, Jr. I am Chairman of the North Carolina Utilities Commission and Co-Vice Chair of the National Association of Regulatory Utility Commissioners (NARUC) Committee on Electricity. I am honored to provide this statement for the Committee's consideration and respectfully request it be entered into the record as if read.

NARUC is a non-profit organization founded in 1889. NARUC's members are the public utility commissions in all 50 States, the District of Columbia, and the U. S. territories. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. The Association's members regulate the retail rates and services of electric, gas, water, and telephone utilities. State regulators are obligated under the laws of their respective States to assure the establishment and maintenance of essential utility services as required by public convenience and necessity and to ensure that these services are provided under rates, terms, and conditions of service that are just, reasonable, and non-discriminatory.

State economic utility regulators are responsible for ensuring the safe, reliable, and affordable delivery of essential electric utility service in every State across the country. Therefore, the success of the federal nuclear waste management program, which is paid for by the consumers of electricity generated from the nation's nuclear power plants, is necessarily of keen interest. Both NARUC and its member commissions have dedicated a tremendous amount of time and resources to ensure that electricity consumers receive the services they pay for through the utilities' rates.

NARUC and its State Commission members were at the table when the Nuclear Waste Policy Act of 1982 (NWPA) was developed and passed.

State regulators agreed that users of electricity that is generated at the nation's nuclear power plants should pay for the federal nuclear waste management and disposal program.

Since passage of the NWPA, consumers have paid and paid and continue to pay.<sup>1</sup> Indeed, since 1982, ratepayers have provided more than \$40 billion in payments and interest to the U.S. Nuclear Waste Fund.<sup>2</sup> And for all of those billions of dollars, so far, the ratepayers have received nothing.

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<sup>1</sup> Ratepayers may be temporarily off the hook, courtesy of NARUC's lawsuit against DOE, but the American taxpayer is still liable for DOE's failure to accept waste for storage. *See, e.g., Statement of Kim Cawley, Chief, Natural and Physical Resources Cost Estimates Unit, The Federal Government's Liabilities Under the Nuclear Waste Policy Act, before the Committee on the Budget, U.S. House of Representatives* (October 7, 2007), online at: <http://www.cbo.gov/sites/default/files/10-04-nuclearwaste.pdf>. ("In the absence of a federal underground repository to accept nuclear waste for storage, taxpayers... pay—in the form of legal settlements with utilities—for a decentralized waste storage system at sites around the country. (Those payments are being made from the Department of the Treasury's Judgment Fund.) ...DOE currently estimates that payments to utilities pursuant to such settlements will total at least \$7 billion . . . more if the program's schedule continues to slip. Regardless of whether or when the government opens the planned repository, those payments are likely to continue for several decades."); *See also, Harry Reid's Nuclear Taxpayer Waste, The legal bills for killing Yucca Mountain are billions and climbing*, Wall Street Journal (April 6, 2015), at: <http://www.wsj.com/articles/harry-reids-nuclear-taxpayer-waste-1428362176>. ("We've been telling you about [Harry Reid's](#) bargain . . . to kill the Yucca Mountain nuclear waste site in Nevada in return for all but shutting down the Senate. It turns out the deal is even more expensive than that. That's clear from a Monday report by the National Law Journal, which reviewed federal payouts *in 2014* to resolve litigation against the government. The Energy Department was the biggest spender, accounting for nearly one-third (\$929 million) of the \$3 billion the feds forked over in verdicts or settlements.")

<sup>2</sup> According to the U.S. Department of Energy Office of Inspector General's, *AUDIT REPORT – Department of Energy's Nuclear Waste Fund's Fiscal Year 2014 Financial Statement Audits* (November 2014), at 2, online at: <http://energy.gov/sites/prod/files/2014/12/f19/OAS-FS-15-03.pdf>, "[a]s of September 30, 2014, the U.S. Treasury securities held by the Department related to the NWF had a market value of \$39.8 billion." This necessarily excludes the billions in ratepayer dollars already expended to characterize the Yucca Mountain site.

Based on Nuclear Energy Institute data through December 31, 2014, North Carolina customers have paid in directly to the Nuclear Waste Fund \$1.9651 billion of the nearly \$43 billion, including interest, paid into the Nuclear Waste Fund through the end of 2014. That represents nearly \$400 for every retail electric customer or more than \$460 for every residential customer or nearly \$200 for every citizen in North Carolina.

The efforts to shut down the Yucca Mountain Licensing project—the nation’s one and only permanent repository for high-level spent nuclear fuel *authorized by law*—puts the country in the exact same position it occupied 33 years ago in 1982. Federal officials continue to “kick the cask” down the road—eliminating any impetus for real progress on the waste problem.

After decades of scientific study and an investment of over \$15 billion in the Yucca Mountain repository,<sup>3</sup> the Administration, claiming simply that the site is not practical, attempted to withdraw the Yucca Mountain license and illegally dismantled the program to oversee the project through to completion.<sup>4</sup>

Because of the program failures, Congress’ constituents, either through electric rates or through the taxpayer-funded Judgment Fund, have paid billions of dollars for re-racking of the utility spent fuel pools to accommodate more spent fuel, to fund expensive on-site dry cask

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<sup>3</sup> In 1987, Congress directed U.S. Department of Energy (DOE) to focus on Yucca Mountain as the permanent repository. Over the next 20 years, DOE completed 5-mile and 2-mile tunnels into the mountain, including more than 180 boreholes to conduct experiments. By 2006, a Senate Environment and Public Works Committee report called Yucca Mountain the “Most Studied Real Estate on the Planet.” See, <http://www.epw.senate.gov/repwhitepapers/YuccaMountainEPWReport.pdf>.

<sup>4</sup> DOE, the President, and Congress approved Yucca Mountain in 2002 after a very public deliberative process that included public meetings and requests for public comment. There is no record of any public process in advance of the Administration’s 2010 decision to terminate the license proceedings.

storage, to increase security, and to vet the Yucca Mountain repository site. And they continue to pay.

Despite the exhaustive studies and billions in ratepayer and taxpayer dollars spent, there is no nuclear waste program.

American's regulatory fees and taxes have been wasted, and the spent nuclear fuel and high-level nuclear waste continue to accumulate at dispersed locations without a plan for storage at a central repository. At some sites where the nuclear plants have been permanently retired, the land cannot be reclaimed because waste remains stored there awaiting disposal in a permanent repository.

NARUC has participated in numerous lawsuits against the U.S. Department of Energy (DOE), consistently seeking better performance and greater accountability. The first of these lawsuits was in 1995, where NARUC successfully countered the DOE's contention that the department was not even obligated to take the nuclear waste from the plants by January 31, 1998.

More recently, NARUC fought the inaction of DOE and the U.S. Nuclear Regulatory Commission (NRC) in the courts, and again the courts responded with judgments vindicating NARUC positions. NARUC argued that NRC was in violation of the law when it suspended its review of the Yucca Mountain license application, and in August 2013, the court agreed.<sup>5</sup> Later

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<sup>5</sup> See, *In Re: Aiken Count, et al.*, which notes: ("Our more modest task is to ensure...agencies comply with the law as it has been set by Congress. Here, the Nuclear Regulatory Commission has continued to violate the law governing the Yucca Mountain licensing process. We therefore grant the petition for a writ of mandamus."), at:

that year, in November 2013, the courts granted NARUC's request that the DOE suspend collection of the Nuclear Waste Fund fees.<sup>6</sup>

With respect to the suspension of the collection of the fees, the court's action was bittersweet. NARUC has always supported the bargain requiring consumers of electricity to pay for the NWPAs nuclear waste management and disposal program. However, when the Administration threw out a \$15 billion investment along with 30 years of work towards a repository, and replaced it with nothing, NARUC had no choice but to seek to cut funding for a program that no longer existed.

NARUC's considerable efforts have produced little more than frustration. However, NARUC continues to believe that opportunities exist to move forward with a nuclear waste management program that can achieve success. NARUC urges the Congress and the Administration to work on near-term actions to give consumers of electricity the nuclear waste management program they paid for and deserve.

NARUC has thoughtfully considered the country's viable options to move forward with a successful U.S nuclear waste management program:

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[http://www.cadc.uscourts.gov/internet/opinions.nsf/BAE0CF34F762EBD985257BC6004DEB18/\\$file/11-1271-1451347.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/BAE0CF34F762EBD985257BC6004DEB18/$file/11-1271-1451347.pdf)

<sup>6</sup> See, *National Association of Regulatory Utility Commissioners v. DOE*, Case No. 11-1066 (Nov. 19, 2013), at: [http://www.cadc.uscourts.gov/internet/opinions.nsf/2708C01ECFE3109F85257C280053406E/\\$file/11-1066-1466796.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/2708C01ECFE3109F85257C280053406E/$file/11-1066-1466796.pdf).

- 1) America needs a permanent solution to nuclear waste disposal, and there must be credible, substantial progress toward achieving this goal. The first step must be to complete the licensing review for the Yucca Mountain repository project.
- 2) The Nuclear Waste Fund must be managed responsibly and used only for its intended purpose. The program must have access to the revenues generated by consumers' fee payments, once they resume, and access to the balance of the Nuclear Waste Fund.
- 3) The management of federal responsibilities for integrated used fuel management should be more successful if assigned to a new organization. Congress should charter a new federal corporation dedicated solely to implementing the nuclear waste management program and empower this corporation with the authority and resources it needs to succeed.
- 4) Some consolidated interim storage is needed, although the basis for the need must be defined, and the quantity of storage must be stated and the length of time interim storage is to be permitted must be set forth. A program to develop one or more interim storage facilities at volunteer sites makes good sense, with priority given to the used fuel from decommissioned reactors.

If implemented in the near term, these steps create a solid foundation on which to build a viable spent nuclear fuel management program.

NARUC commends each of you for the efforts and tenacity that produced this legislation and for holding this hearing today. Unquestionably, some provisions of S. 854 are significant improvements over the status quo. However, others seem problematic and could continue or

even potentially exacerbate the same problems that plague the current management scheme. In this statement, I will try to highlight both.

### **NARUC Principles**

There are four substantive positions, which NARUC adopted in a February 2013 resolution, that serve as the foundation for my comments: First, NARUC has specifically urged adoption of the Blue Ribbon Commission (BRC) recommendations on the creation of a new organization outside of DOE with sole responsibility to manage nuclear waste. Second, NARUC's member commissioners are best positioned to protect ratepayer interests in nuclear waste disposal issues and must serve as members on the board of directors as well as any bodies established to oversee the new entities. Third, the federal government must improve its dismal record on waste disposal. And, fourth, "the Administration and the Nuclear Regulatory Commission should comply with the law passed in 2002 approving Yucca Mountain as the repository site by completing the licensing process."

NARUC's February 2013 resolution also urges that ratepayer costs for permanent disposal should be minimized. Interim storage is not a panacea and should be used only where necessary and cost-effective. So while NARUC has specifically endorsed some consolidated interim storage, it is crucial that the basis for the need be defined and the quantity of storage be stated and interim storage not be allowed to divert or delay the progress toward a permanent disposal site. Relocation and consolidation of spent fuel at interim storage facilities would likely reduce the government's liability and improve security. However, continued storage at nuclear plants that have been permanently shut down is unacceptable because it imposes costs on

ratepayers without equivalent benefits and prohibits economic reuse of the site. Finally, NARUC joins with others that urge Congress not to adopt any structure that replicates the entire range of well-recognized problems that stymied progress on both the Yucca Mountain license review and resulted in the wholesale dismantling of the disposal program.

NARUC believes S. 854 overall is a step in the right direction.

### **Outstanding Yucca Mountain Concerns**

Geologic disposal is a critical element of a sustainable used nuclear fuel and high-level radioactive waste management program. While not expressly reaffirming the requirements of the Nuclear Waste Policy Act (NWPA), the Nuclear Waste Administration Act of 2015 does *not* preclude its long-overdue enforcement. S. 854 should be revised to require completion of the review of the license for the Yucca Mountains, the nation's first permanent repository. The statutory requirements to complete the review are still in place and the license is still pending. NWPA is the law and the federal commission and department to which it is directed should enforce it. Congress should provide the appropriate funding and direction to both the Nuclear Regulatory Commission (NRC) and the Department of Energy for the completion of the NRC's review of the Yucca Mountain license application for construction authorization. Years of independent scientific research indicate that the Yucca Mountain facility is a safe site for the permanent disposal of high-level radioactive waste. Ratepayers deserve to know whether the billions of dollars they have invested in the research and investigative efforts supporting this conclusion will result in establishing Yucca Mountain as a site for the permanent disposal of the high-level radioactive waste.

## **Title II – Nuclear Waste Administration**

In Title II, Sections 201-205, the bill sets up a new agency to assume the responsibilities of the Secretary of Energy on siting, licensing, construction and operation of nuclear waste facilities. An Administrator, Deputy Administrator, and a five-member oversight board are to be appointed by the President, with the advice and consent of the Senate.

This proposed structure is inferior to a single-purpose federal corporation. The BRC recommended an approach similar to a single-purpose corporation to ensure accountability, *insulate the organization from political interference* and excessive turnover, and develop and implement a focused, integrated program. NARUC is on record expressly endorsing the adoption of the BRC's recommendations. As the BRC report suggests, a new management entity should be created outside of the Department of Energy with the sole purpose of managing the federal government's used nuclear fuel and high-level radioactive waste program. Key attributes of that entity include clear legislative authority, access to needed funding, and insulation from political interference. NARUC endorses a federal corporation model. The structure proposed in S. 854 does not address the political problems that plague the current management scheme – problems that have stymied progress and wasted taxpayer and ratepayer resources. A key aspect of this new “gov-corp” approach would be a Board of Directors that includes several of NARUC's members. NARUC recommends that the responsibility to evaluate the adequacy of the Nuclear Waste Fund fees collected from ratepayers should be assigned to the Board, not the gov-corp.

### **Title III – Functions**

In Title III, S. 854 outlines the functions of the new agency – which includes in Section 303 a requirement for the Administrator to site, construct and operate a pilot facility for storing priority waste, one or more additional facilities for non-priority waste, and one or more permanent repositories. Section 304 outlines a consent-based procedure for siting these new facilities.

NARUC has specifically endorsed a consent-based approach to siting by requesting that new legislation require, as S. 854 does, any new waste management organization to engage with States and local governments in a more collaborative manner that can be guided by a negotiated consent agreement among the involved parties, whether for storage or disposal facilities.

Laudably, this Title of S. 854 recognizes the need for disposal. However, the recognition is limited. S. 854 should provide strong incentives for the agency to site a permanent disposal facility as soon as possible. Although NARUC supports a consent-based process for siting additional repositories, the bill's target date of December 2048 (Section 504(b)(C)) for such a repository to be operational is not acceptable. The 2048 date is the DOE Strategy's proposed repository date. That document provides no support for this "new" target date – which is, after all, THIRTY THREE YEARS from now. Such a target date effectively eliminates any sense of urgency, which is necessary to compel timely government action. Moreover, the deadline is so far into the future that potential hosts for consolidated storage facilities would be justifiably nervous about providing *de facto* permanent sites. Congress and the Administration should

instead support timely completion of the Yucca Mountain process and call for a more reasonable (and far less distant) date for an additional repository sited under a consent-based approach.

#### **Title IV – Funding and Legal Proceedings**

In Title IV, Sections 401-403, the bill sets up a new Working Capital Fund where ratepayer NWF assessments (these totaled about \$765 million per year prior to the Court ruling that the monies could no longer be collected) are deposited and made available to the agency without further appropriation. These sections specify that no fees can be paid into this fund after December 31, 2025, unless the Administrator is operating a nuclear waste facility by that date. The fees already collected in the NWF remain subject to appropriation. Significantly, under the bill the Administrator must take the costs resulting from S. 854 into account when determining whether insufficient or excess revenues are being collected to ensure cost recovery.

NARUC, obviously, has a strong interest in how the Nuclear Waste Fund functions. NARUC will have an equally strong interest in how any Working Capital Fund will function. The federal government has collected billions of dollars from ratepayers and in return has given them a very expensive hole in the ground. And the government is blocking any access to the hole. Although not a perfect solution, S. 854's annual direct funding option is a tremendous improvement over the current system. Ideally, S. 854 should assure full access to the corpus of the Nuclear Waste Fund, and use of the corpus should be limited to supporting achievement of repository program milestones without additional appropriations. However, the guarantee that the putative entity, hopefully a gov-corp, will have access to fees on a going-forward basis is one way around the pressures inherent in the appropriations process. Still, this provision could be

improved by also requiring the transfer of future accrued interest on the Nuclear Waste Fund and one time payments to the new Working Capital Fund.

NARUC has not taken position on the specifics of whether assessments should be cut-off if a repository is not in place by an identified date. However, the requirement to cut-off assessments in 2025 is an improvement over the current procedure. Moreover, S. 854 should be amended to specify a working repository instead of just “nuclear waste facilities.” That would provide strong incentives to expedite the repository siting process.

As noted earlier, the assessment of the adequacy of the fees should be conducted by a Board that includes State commission members, not by the Administrator. Moreover, the requirement on ratepayers to not only fund a new agency but also to fund all the costs resulting from S. 854 is inappropriate. NARUC stresses that DOE, not electric utility ratepayers, must be accountable for the financial consequences of DOE’s failure to begin accepting waste in 1998. Section 406(b)(1) of S. 854 requires utilities to settle existing lawsuits against the federal government to have access to future storage facilities. This effectively shifts the current government liability for non-performance (via the taxpayer funded Judgment Fund) to electric ratepayers. NARUC has not endorsed, and likely will not endorse, such an approach. Performance remains the key to reducing the federal government’s liability. Moreover, the specification in Section 308(c) that the portion of the cost of developing, constructing, and operating the repository or storage facilities attributable to defense wastes “shall be allocated to the Federal Government and paid by the Federal Government into the Working Capital Fund,” is a welcomed and necessary component of any disposal plan.

NARUC Resolution also specifies that the “BRC Report recommendations for consolidated interim storage represent a new use for the Nuclear Waste Fund that should be authorized only after consideration of the costs and benefits involved.” It is far from clear that the broad storage plans outlined in S. 854 reflect such considerations. These interim storage costs are needed only because the government has failed to permanently dispose of waste in a working repository. At the same time, it appears an interim storage facility to consolidate waste currently stored at shuttered facilities may be appropriate. The BRC report cites a study that contends the savings from consolidated storage for this stranded spent fuel would be enough to pay for the cost of the storage facility.

NARUC commends all of you for your efforts to break the current logjam on nuclear waste policy. We will help any way we can. Thank you for your consideration.