

Testimony on behalf of the
National Association of Regulatory Utility Commissioners

by

The Honorable Anthony J. O'Donnell
Commissioner, Maryland Public Service Commission
Chairman, NARUC Subcommittee on Nuclear Issues-Waste Disposal

before the

United States House of Representatives
Committee on Energy & Commerce
Subcommittee on Environment

hearing on

**“H.R. ___, the Nuclear Waste Policy Amendments Act of
2017”**

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**Summary for Testimony of the Honorable Anthony J. O'Donnell
On Behalf of
The National Association of Regulatory Utility Commissioners**

NARUC supports the policy direction the Discussion Draft is taking. There are some minor changes, noted below, that we would like to see made, however, this draft is very positive.

The draft legislation requires a final Nuclear Regulatory Commission (NRC) decision approving or disapproving Yucca Mountain License before other major provisions can be implemented. NARUC strongly supports expeditious completion of the license review. We commend the Committee for making progress on the program contingent on some decision on the license.

We are extremely pleased that the discussion draft in § 503 (at pages 41-42) addresses how the current funds in the Nuclear Waste Fund will be disbursed. The draft specifies that certain percentages of the amounts in the waste fund on the date of enactment must be available to the Secretary on certain trigger dates. The specification at page 41 line 11 that those funds be made available “without further appropriations” is an excellent way to assure both confidence and progress in the program.

The total of the percentages in revised § 503 must assure all the funds (and any subsequent accrued interest) are disbursed. The funds “in the waste fund on the date of enactment” will continue to accrue interest after the first trigger date. That means by the fourth trigger date there will be some funds remaining that would not be covered by including a percentage in all four provisions. To correct this problem, NARUC respectfully suggests, the fourth “trigger” should specify something like: “An amount equal to any remaining funds not previously disbursed of the amounts in the Waste Fund on the date of enactment, plus any accrued interest on those funds.” This is a good approach. However, NARUC members will need to see the actual percentages prior to providing unqualified support for § 503.

The discussion draft’s revised mechanism in § 503, at page 42, lines 10-13, assures any fees collected going forward are immediately available to the Secretary for waste related activities without additional appropriations. If the NWF fee is restarted, this provision is absolutely crucial.

With regard to restarting the fee collection, § 501 at page 38, lines 9-18, that expressly link any restart of the NWF fee to a final NRC decision on licensing a repository is the right approach.

The legislation would benefit from a specification, that, as part of the annual assessment of the need for/level of any fee, the Secretary include an analysis of whether the annual interest on the corpus is sufficient to cover the projected outlays for the repository and any other required disbursements.

In section § 602 of the draft the Director of the Office of Civilian Radioactive Waste Management is given a 5-year term, the Subcommittee may wish to consider increasing the term length to provide greater stability in the program across administrations.

NARUC supports the idea of a cost-benefit analysis as a pre-requisite for any interim storage facility.

One area that has raised definite concerns is § 301’s discussion of the requirements for DOE to take title to waste. The discussion draft should clarify/define what constitutes “delivery and acceptance”. The definition must assure that DOE cannot simply “take title” of waste where it is currently being stored and claim they have met their contractual obligations. Additionally, the definition must make clear that any transfer of title to DOE includes removing the waste to a different NRC licensed storage facility.

Good morning Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee on Environment. Thank you for the opportunity to testify today on the “Nuclear Waste Policy Amendments Act of 2017.” My name is Tony O’Donnell, and I am a Commissioner on the Maryland Public Service Commission. I also serve as the Chairman of the National Association of Regulatory Utility Commissioners (NARUC) Subcommittee on Nuclear Issues – Waste Disposal.

NARUC is a non-profit organization founded in 1889. Our members are the public utility commissions in all 50 States and the U. S. 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 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. The success of the federal nuclear waste management program, funded 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 tremendous resources to ensure that electricity consumers receive the services they have paid for.

NARUC and its State Commission members were at the table in the negotiations that led to the Nuclear Waste Policy Act of 1982 (NWPA). State

regulators have always agreed that ratepayers that benefit from electricity generated by nuclear plants should pay for waste management and disposal, and they have. Since 1982, more than \$40 billion in direct payments and interest have been paid into the U.S. Nuclear Waste Fund (NWF). Yet so far, ratepayers – and the country – have almost nothing to show for it.

This is a frustration I know many members of this Subcommittee, including Chairman Shimkus, share.

The federal government missed the statutory deadline to start accepting nuclear waste in 1998. In 2002, the project site – Yucca Mountain, was approved by Congress, but since then efforts to block funding to complete the Yucca Mountain license review, in tandem with the U.S. Department of Energy’s illegal refusal to pursue the license application at the NRC, stymied progress. Today, the United States is in the same situation we occupied 30 years ago when Congress decided Yucca Mountain should be the first site considered for a permanent repository.

NARUC applauds this Subcommittee’s tenacity and leadership on this issue. We welcome the “Discussion Draft” released last week as a very positive step forward to correct unanticipated, but serious, structure flaws in the nation’s nuclear waste disposal policy framework.

NARUC has not taken a position on all of the new provisions in the bill, but it is obvious that literally all of the new proposals are very likely to result in concrete action towards a permanent repository (and possible consent-based siting of non-federally owned NRC licensed storage facilities).

Electricity consumers have a multibillion dollar investment expended to characterize the Yucca Mountain site. We are very pleased that the draft aggressively addresses the threshold issue of licensing. The draft requires a final Nuclear Regulatory Commission (NRC) decision approving or disapproving Yucca Mountain License before other major provisions can be implemented. NARUC strongly supports expeditious completion of the license review. We commend the Committee for making progress contingent on some decision on the license.

Concerning what many NARUC members believe to be the most important issue - funding and fees, the draft clearly fixes one major flaw that has severely hampered progress on waste disposal: fee disbursement.

We are extremely pleased that the discussion draft in § 503 (at pages 41-42) amends §10222(f) to specify how the current funds in the Nuclear Waste Fund will be disbursed. The draft specifies that certain percentages of the amounts in the waste fund on the date of enactment must be available to the Secretary on certain trigger dates.

The specification at page 41 line 11 that those funds be made available “without further appropriations” is an excellent way to assure both confidence and progress in the program.

Obviously, the total of the percentages in revised § 10222(f)(1), (2), (3) and (4) must assure all the funds (and any subsequent accrued interest) are disbursed. However, the funds “in the waste fund on the date of enactment” will continue to accrue interest after the first trigger date. That means by the fourth trigger date there will be some funds remaining that would not be covered by including a percentage

in all four provisions. To correct this problem, NARUC respectfully suggests, the fourth “trigger” should specify something like: “An amount equal to any remaining funds not previously disbursed of the amounts in the Waste Fund on the date of enactment, plus any accrued interest on those funds.” This is a good approach. However, NARUC members will need to see the actual percentages prior to providing unqualified support for § 503.

The discussion draft’s revised mechanism in § 10222(f)(5), at page 42, lines 10-13, assures any fees collected going forward are immediately available to the Secretary for waste related activities without additional appropriations.

If the NWF fee is restarted, this provision is absolutely crucial.

With regard to restarting the fee collection, as I stated earlier, the § 501 amendment of § 10222(1)(4)(B)(ii)(I) at page 38, lines 9-18, to expressly link any restart of the NWF fee to a final NRC decision on licensing a repository is the right approach.

NARUC has not taken a position on the timing or need to restart fee assessments. Some have pointed out that the current federal interest payments on the NWF corpus appear to be adequate to cover any yearly funding requirements. In any case, the legislation would benefit from a specification, that, as part of the annual assessment of the need for/level of any fee, the Secretary include an analysis of whether the annual interest on the corpus is sufficient to cover the projected outlays for the repository and any other required disbursements.

NARUC has joined others in seeking a different management structure for the program. The Draft also makes some progress on this point in the § 602 amendments to § 10224(b) at 44-45 by making the Director of the Office of Civilian Radioactive Waste Management “responsible for carrying out the functions of the Secretary under this Act” and giving that Director a 5-year term. NARUC has not spoken directly to this framework, but the Subcommittee may wish to consider increasing the term length to provide greater stability in the program across administrations.

NARUC also supports the idea of a cost-benefit analysis as a pre-requisite for any interim storage facility. The draft reflects that approach somewhat in § 102’s amendments to § 10162 (c)(2)’s requirement to change the prioritization of the type of waste included in a non-federally licensed storage facility “if the Secretary determines that it will be faster and less expensive to site, construct, and operate a facility authorized under subsection (b)(1), in comparison to a facility authorized under subsection (b)(2).” See discussion draft at page 6, lines 21-26. The Subcommittee should consider whether such a finding should also preclude the actual construction of such facilities, rather than just reducing the priority of moving DOE-owned civilian waste to a non-federally licensed storage facility.

NARUC is still studying the draft, but one area that has raised definite concerns is § 301’s amendment of § 10143’s discussion of the requirements for DOE to take title to waste.

That section, at pages 27-28, as amended would read:

Delivery and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for repository or monitored retrievable storage facility shall constitute a transfer to the Secretary of title to such waste or spent fuel.

The discussion draft should clarify/define what constitutes “delivery and acceptance”. The definition must assure that DOE cannot simply “take title” of waste where it is currently being stored and claim they have met their contractual obligations. The definition must make clear that any transfer of title to DOE includes removing the waste to a different NRC licensed storage facility. DOE should not be permitted or have the ability to “fulfill” its obligation in this way. Electricity consumers have lived up to their part of the deal, the federal government ought to as well.

We are still reviewing this draft and may have additional suggestions, but overall, it is a much welcome step forward. Mr. Chairman, thank you for inviting me here today to testify on behalf of NARUC. We are pleased you have provided legislative language in draft form and we look forward to working with you, your staff and the other members and staff on this Subcommittee as the drafting of this legislation continues.