



N A R U C
National Association of Regulatory Utility Commissioners

May 24, 2013

The Honorable Ron Wyden
Chairman
Committee on Energy and Natural
Resources
U.S. Senate
Washington D.C. 20510

The Honorable Lisa Murkowski
Ranking Member
Committee on Energy and Natural
Resources
U.S. Senate
Washington D.C. 20510

The Honorable Dianne Feinstein
Chairman
Committee on Appropriations,
Subcommittee on Energy and
Water Development
U.S. Senate
Washington D.C. 20510

The Honorable Lamar Alexander
Ranking Member
Committee on Health, Education,
Labor and Pensions
U.S. Senate
Washington D.C. 20510

Re: Comments on Discussion Draft of Comprehensive Nuclear Waste Legislation

Dear Chairmen Wyden and Feinstein and Ranking Members Murkowski and Senator Alexander:

These comments are filed on behalf of the National Association of Regulatory Utility Commissioners (NARUC), a one-hundred and twenty-four year old organization representing public utility commissions in all U.S. States and territories charged with oversight of electricity production. NARUC has been actively involved in the national policy and program to permanently dispose of high-level radioactive nuclear waste, including spent nuclear fuel from commercial nuclear plants, with keen interest and frustration since 1982. We continue to strongly support review of the Yucca Mountain License application.

NARUC's comments address the eight questions which you propounded when you released the Discussion Draft on April 25, 2013. There are three substantive positions, which NARUC adopted in a resolution earlier this year, that act as the foundation for NARUC's comments:

First, NARUC has specifically urged adoption of the Blue Ribbon Commission (BRC) recommendations on the creation of a new organization outside of the Department of Energy (DOE) with sole responsibility to manage nuclear waste. Second, NARUC's member commissioners are best positioned to protect ratepayer interests in waste disposal issues and must be part of the board of directors and any oversight bodies for the new entities. Third, the federal government must improve its dismal record on waste disposal. We believe your legislation is, overall, a step in the right direction. Ratepayer

costs for permanent disposal should be minimized. Interim storage is not a panacea. So while NARUC has specifically endorsed some consolidated interim storage, it is crucial the amount, basis of need and duration of such interim storage is examined. 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. However, interim storage should be allowed only where necessary and cost-effective and cannot divert or delay progress on a permanent disposal site.

NARUC also has endorsed changes to the existing funding mechanism. While far from perfect, the new Working Capital Fund (WCF) proposed in the discussion draft is a significant improvement over the current funding mechanism – insofar as it provides direct access, without additional appropriations, to *future* annual fees as they are collected from ratepayers. The scope of permissible activities utilizing those funds needs to be more clearly specified. To expedite review of possible storage and permanent repository sites, the legislation should provide similar unfettered access to the corpus of the fund – or at least a reasonable percentage of the corpus annually. We continue to support inclusion of interest earned on that corpus in the proposed WCF. Pending successful legislation, in the near term, Congress should work with the Administration to implement the BRC's Co-Chairs recommendations to protect future payments from electric consumers by allowing only those fee collections matching Congress' annual appropriations to the nuclear waste program to be deposited into the Nuclear Waste Fund (NWF), with any excess to be held in escrow until needed to fund future appropriations to the program.

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. Our responses to your questions are attached. NARUC and its membership commend you for addressing nuclear waste policy, and we look forward to working with you as this effort moves forward. Should you have additional questions or require further information please do not hesitate to contact me or Chris Mele (202-898-2206, cmele@naruc.org).

Sincerely,



Charles D. Gray
Executive Director

NARUC Response to Question 1

Question 1: *Should the Administrator take into account, when considering candidate storage facility sites, the extent to which a storage facility would: (a) unduly burden a State in which significant volumes of defense wastes are stored or transuranic wastes are disposed of; or (b) conflict with a compliance agreement requiring the removal of nuclear waste from a site or a statutory prohibition on the storage or disposal of nuclear waste at a site? Alternatively, should the State and other non-federal parties seeking to site a candidate storage facility be allowed to determine whether they are unduly burdened? Should the final consent agreement, which would be sent to Congress for ratification, contain an authorizing provision to amend any conflicting compliance agreement or statutory prohibition?*

NARUC RESPONSE: Any proposed site should meet safety requirements, obtain Nuclear Regulatory Commission approval and gain acceptance by the host community and State. With a properly structured and administered program, which allows for proper incentives and compensation for host communities, communities will step forward with site hosting proposals. A community which would consider itself unduly burdened by a storage or disposal site, or which concludes that a compliance agreement should remain in force, presumably would not step forward, at least not without specifically addressing issues of undue burden and compliance in any proposal. It seems logical that such factors will be raised and negotiated as part of the process of any consent based agreement on a site. Your proposed legislation seems to contemplate such a bottoms-up approach. A stated purpose is to "provide a consensual process for siting nuclear waste facilities" and section 304 emphasizes in (a)(1) that the process "shall" allow "affected communities to decide whether and on what terms, the affected communities will host a nuclear waste facility." Section 304 goes on to require State, local, or Tribal governmental leadership approval before a site is eligible for review. The legislation should allow the parties to implement amendments to a compliance agreement.

NARUC Response to Question 2

QUESTION 2: *Should the bill establish a linkage between progress on development of a repository and progress on development of a storage facility? If so, is the linkage proposed in section 306 of the bill appropriate, too strong, or too loose? If a linkage is needed, should it be determined as part of the negotiations between the state and federal governments and included in the consent agreement rather than in the bill?*

NARUC RESPONSE: NARUC supports the national policy established by Congress in 1982 in the NWPA that the best, long-term solution to isolating nuclear waste from the environment is permanent disposal in a geologic repository. We have urged the Administration and the Nuclear Regulatory Commission to comply with the law passed in 2002 approving Yucca Mountain as the repository site by completing the licensing process. It is crucial that the licensing of any repository not divert or delay progress on the licensing of a permanent disposal site. Efforts to develop a geologic repository and efforts to develop an interim storage facility must proceed simultaneously, not sequentially. This principle is well stated in Section 306 (a) of the current bill. NARUC has not taken a position on how the relationship between progress on a repository and on an interim storage facility should be maintained – but some linkage may be necessary.

NARUC Response to Question 3

QUESTION 3: *Should the bill establish separate storage and disposal programs with clearly defined requirements for each, with any linkage negotiated in the consent agreement between the federal and non-federal parties, to allow the two program to run on separate, but parallel tracks, as proposed in the alternative section 305 (which would replace section 304(b)-(g) of the draft bill)?*

NARUC RESPONSE: Pursuit of storage and repository solutions should be on parallel paths. Storage activity can proceed much more readily using existing technology, a well-defined regulatory regime and moderate funding than developing a geologic repository. While in a perfect world, a new entity would be formed and put in charge of disposal, under the NWPA, DOE continues to have the responsibility to accept spent nuclear fuel for disposal and DOE has argued it can “lay the groundwork” for consolidated storage using existing authority while Congress considers the Discussion Draft. The BRC recommendations, the DOE January 2013 Strategy, and the Discussion Draft all seem to have a common vision for a Pilot Facility for priority waste – to handle the spent nuclear fuel now stranded at decommissioned reactor sites and possibly some “emergency” delivery not yet identified but a possible future contingency. A substantial majority of experts testified to the BRC that consolidating that cohort on a priority basis makes sense on all sorts of levels, not the least of which was in gaining public confidence that the Government could actually “do something” on nuclear waste. For almost four years little has been done directly related to the disposal of nuclear waste. There has been no budget request for three years and even the FY 2014 Budget request asks for just \$24 million from the Nuclear Waste Fund. If there are plans for staffing a core nucleus to manage the program pending the determination to shift the program to a Nuclear Waste Administration such plans have not been shared with stakeholders. It would seem to be worthwhile for the Discussion Draft sponsors to remind the Secretary that DOE remains responsible for duties under the Act until they are transferred to the Administrator per Sec. 301. A DOE caretaker nucleus staff should be doing something concrete during this interregnum. Some obvious examples that are definitely allowed by current law include re-establishing cooperative agreements with State-based stakeholder groups like NARUC and NCSL.

NARUC Response to Question 4

QUESTION 4: *To what extent should the siting and consensus approval process for spent fuel storage facilities differ from that for the repository? Should the Administrator be required to conduct sufficient site-specific research (referred to as "characterization" in the bill) on candidate storage sites to determine if they are suitable for storing nuclear waste or only on candidate repository sites to determine if they are suitable for geologic disposal of nuclear waste? Should the Administrator be required to hold public hearings both before and after site characterization (as required by current law in the case of the Yucca Mountain site) or only before site characterization?*

NARUC RESPONSE: Site characterization for storage ought to be easier than for a repository given that we in effect already have multiple interim storage facilities in operation currently due to the federal government's failure to follow current law and accept waste for permanent disposal. If the CEO/Administrator conducts proper education and outreach, any consent based siting process will be greatly enhanced. This would also make the public hearings, which ought to be conducted for both repository AND storage, less contentious.

NARUC Response to Question 5

QUESTION 5: *Should the siting process in section 304 of the draft bill be streamlined? If so, how?*

NARUC RESPONSE: NARUC has not taken a specific position on section 304, but it seems obvious the new management entity must do early and continued outreach and education with potential host communities where benefits, as well as potential implications and/or challenges, of hosting a facility – be that storage, repository or pilot – can be explained and discussed. This outreach and education should continue throughout the process and must include efforts to support communities, States, and Tribes to help them in developing and identifying potential sites for consideration. The outreach and education process developed and implemented will be among the most critical components of the siting process.

NARUC Response to Question 6

QUESTION 6: *Should the new entity be governed by a single administrator or by a board of directors? (a) If by a single administrator, should the administrator serve for a fixed term? If so, how long should the term of service be? Should the legislation prescribe qualifications for the administrator? If so, what should be the selection criteria? (b) If by a board of directors, how many people should comprise the board and how should they be selected?*

NARUC RESPONSE: Earlier this year, NARUC passed a resolution that takes a strong position that the management of nuclear waste should be given to a new organization. The NWPA entrusted nuclear waste management to the U.S. Department of Energy, under the guidance of the Secretary of Energy. As NARUC's February 2013 resolution puts it:

Whether DOE was unable to achieve its NWPA responsibilities due to mismanagement or to factors beyond its control can be debated, but the 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.

It's far from clear that the new organizational structure proposed in the draft legislation improves significantly over the current circumstance. For example, the proposal that the Administrator of the newly-created government agency be responsible to an Oversight Board comprised of officials from other government agencies seems very likely to exacerbate the problems which plagued the management of nuclear waste under the current structure.

To be effective, the entity responsible for a comprehensive approach to the nuclear waste management program must be an independent entity (e.g., a Federally-chartered corporation, as recommended by the BRC) with broad authority and responsibilities that can be trusted by all stakeholders. An independent government corporation can still be accountable to the President and the Congress. The terms for members to the Board and any chief executive office hired by the board should, to use the words of General Scowcroft and Dr. Meserve "extend[] longer than the political cycle."

NARUC, as an organization, has not taken a specific position on the details solicited in this question, but it does appear that a stable board with seven to no more than nine members – with staggered and at least 7 year terms, along with a chief executive officer/administrator with an extended term is an appropriate starting point. A longer fixed term for the executive officer/administrator – one that spans multiple administrations perhaps 10-14 years or more - would enhance the stability and political insulation of the position.

Logically, the CEO/administrator should at a minimum have senior executive management experience in large complex organizations with expertise in the nuclear industry and strong financial management skills. It is imperative the day-to-day operations of this new entity be shielded from political pressures and that the CEO/Administrator, and others leading the day-to-day operations be held accountable for their action or inaction. The organizational structure of the new management entity must facilitate the removal of a CEO or other senior management that are ineffective or not performing their statutory duties, *i.e.*, for cause. Therefore, the CEO/administrator should not be appointed by the President but rather hired by the board. For the same reason, any Deputy position in the new entity should not be a presidential appointee. This will further shield the new entity from political pressures.

Electricity ratepayers are funding the bulk of the government's permanent disposal operations. Given that State Utility Commissioners are intimately concerned with disposal and related cost issues, at least a third of any board (3 for a nine member board, 2 for a seven member board) should be, at the time of their nomination, serving State Commissioners nominated by NARUC only from States with working nuclear power plants or commercial/defense waste slated for permanent disposal by the federal government. If they leave public service for a position with another stakeholder group on waste disposal issues, NARUC should be allowed to nominate a replacement to finish out that term. Board members should receive reasonable compensation for any required travel/hotel expenses. Moreover, as with other corporations, Board members should be compensated equitably for their part-time service. Candidates for other appointments could be proposed by other broad-based representative stakeholder groups, e.g., the National Academy of Sciences and the Nuclear Energy Institute.

NARUC Response to Question 7

QUESTION 7: *The Blue Ribbon Commission recommended establishment of both a board of directors for management oversight (whose "primary role ... is not to represent all stakeholder views, but rather to carry out fiduciary responsibilities for management oversight") and "a larger and more widely representative stakeholder advisory committee." The draft bill responds to these recommendations, first, by establishing a Nuclear Waste Oversight Board of senior federal officials and, second, by authorizing the Administrator to establish advisory committees. Should the Oversight Board and advisory committee be combined into a single body to perform both management oversight and stakeholder representation functions? Should the focus and membership of any advisory committees be established in the legislation or left to the Administrator?*

NARUC RESPONSE: NARUC endorses the Board of Directors approach outlined in our response to question 6. If the Board is properly constituted - and empowered, there is no need for a separate advisory body. Governance should be achieved primarily through a board of directors, not via the oversight board outlined in the bill. Congress and the Administration will retain a vital role in ensuring proper oversight and the long-term success and of a new management entity, but the oversight board as structured in the discussion draft is unnecessary and duplicative. The establishment of any stakeholder advisory committee, in addition to a board of directors, should be the responsibility of the new management entity. The legislation should encourage the use of advisory committees on specific topics, e.g., specific storage or repository sites, transportation of waste, etc.

NARUC Response to Question 8

QUESTION 8: *Dr. Meserve testified in 2012 that representatives of stakeholders and public utility commissioners should be added to the Nuclear Waste Oversight Board. Would these additions make the Board better able to carry out its fiduciary oversight mission effectively?*

NARUC Response: NARUC, obviously, has a strong interest in how the Nuclear Waste Fund functions. We will have an equally strong interest in how the Working Capital Fund will function, as it has been proposed in the discussion draft. We have continued to be deeply troubled that the federal government has collected billions of dollars from ratepayers and in return has given the ratepayers a hole in the ground that remains unused. The federal government continues to collect the fee and at the same time the current Administration closed down the program for which the fees are still being collected.

As discussed in the response to Question 6, the new management entity should be governed, not by an oversight board, but rather by an empowered board of directors that includes NARUC-nominated representation from public utility commissioners. The federal officials designated for the oversight board are subject to political turnover, these political appointees should not effectively dominate board actions. Therefore, a broader membership outside of government would help enhance membership stability and continuity. However, if the oversight board structure in section 205 is retained, it can, as Dr. Meserve testified, only benefit from the inclusion of State public service commissioners. Regardless of the governance structure, we believe that ratepayer interests ought to be formally represented and that the legislation provide for NARUC nominated representation.