

Resolution Regarding DOE Default of Obligations under the Nuclear Waste Policy Act of 1982, as Amended

WHEREAS, The U.S. Court of Appeals in July 1996 ruled in *Indiana Michigan Power Co., et al v Dept. of Energy*, 88 F3d 1272, 1276-1277 (1996) that the Nuclear Waste Policy Act (NWPA) “creates an obligation in DOE, reciprocal to the utility's obligation to pay, to start disposing of the SNF [Spent Nuclear Fuel] no later than January 31, 1998” and that the statutory obligation to commence disposing of SNF no later than January 31, 1998, is “without qualification or condition”; *and*

WHEREAS, The U.S. Court of Appeals in November 1997 in *Northern States Power Co., et al v Dept. of Energy*, 128 F3d 754 (D.C. Cir. 1997), reaffirmed DOE's unconditional obligation to begin to dispose of spent nuclear fuel by the statutory and contractual deadline, and found that utility and State petitioners had a clear right to relief, that DOE had a clear duty to act, and that petitioners should pursue “potentially adequate remedies” under the Standard Contract to address DOE's avoidable delay; *and*

WHEREAS, In February 1998, both the State Petitioners and Utility Petitioners in Northern States have filed motions in the U.S. Court of Appeals to enforce the Court's decisions in *Indiana Michigan* and *Northern States*, due to DOE's failure to undertake any action to comply with its obligations and its claimed authority to use funds from the Nuclear Waste Fund, or from prospective fee collections or increases, to underwrite the costs or damages arising from its failure to comply; *and*

WHEREAS, The costs and damages to utilities and ratepayers, and State and local governments, arising from DOE's failure to comply with its obligations, may be substantial, and include but are not limited to the following increased costs: on-site spent fuel pool expansion or dry-cask storage; long-term security and monitoring of numerous non-centralized storage sites; State and local government expenses for protection of public health and safety, decommissioning costs, loss of generating facilities due to, in part or in whole, spent nuclear fuel remaining onsite; loss of revenue from failure to vacate property useful for other purposes, and unnecessarily higher energy costs impacting State and local economies and utility competitive positions; *and*

WHEREAS, DOE has taken no action to indicate when and where it will begin accepting commercial spent nuclear fuel and high-level nuclear waste although it is accepting certain foreign and domestic spent nuclear fuel; *and*

WHEREAS, The NARUC has joined in the State petitions and motions filed in the U.S. Court of Appeals to protect ratepayers and to require DOE to comply with its obligations; *now, therefore, be it*

RESOLVED, That the Executive Committee of the National Association of Regulatory Utility Commissioners (“NARUC”), convened at its 1998 Winter Meetings in Washington, D.C. reiterates that DOE's failure to store or dispose of spent nuclear fuel in

accordance with its statutory and contractual obligations and DOE's refusal to protect electric ratepayers is unacceptable; *and be it further*

RESOLVED, That the NARUC strongly urges:

- a. DOE should be required to formulate a plan to, and should commence to, store or dispose commercial SNF promptly;
- b. All fees paid by utilities to the Nuclear Waste Fund after January 31, 1998 should be deposited in interest accruing escrow accounts subject to the jurisdictional authority of the appropriate State or Federal regulators until DOE complies with its obligations to commence the disposal of commercial spent fuel; and
- c. DOE should be prohibited from using the Nuclear Waste Fund or prospective fee collections for paying costs or damages incurred by utilities, ratepayers, and by State and local governments, as a result of DOE's failure to comply with its obligations; any costs or damages should be paid from a Federal judgment fund.

Sponsored by the Committee on Electricity
Adopted March 4, 1998