

Resolution Regarding Guiding Principles for Management and Disposal of High-Level Nuclear Waste

Whereas members of the National Association of Regulatory Utility Commissioners (“NARUC”) are the State regulatory agencies responsible for the regulation of electric utilities that generate or purchase electric power from nuclear generating plants;

Whereas NARUC’s members have been actively involved in the creation of national policy to permanently dispose of high-level radioactive nuclear waste since before passage of The Nuclear Waste Policy Act of 1982 (“NWPA”);

Whereas the U.S. Department of Energy (“DOE”) has failed to honor its NWPA commitments to, starting in 1998, remove and dispose of radioactive waste currently stored at operating and shutdown reactor sites and federal facilities in 37 States and more than 100 communities;

Whereas the permanently shut down nuclear reactors that exist at 15 sites in 12 States impose costs without equivalent benefits and prohibit economic reuse of the sites;

Whereas the nation’s electric ratepayers have contributed, including interest, over \$40 billion dollars in fees into the Nuclear Waste Fund (“NWF”) to finance waste disposal activities, in addition to paying for storage and security of the utilities’ nuclear waste on-site;

Whereas court decisions and settlement agreements stemming from DOE’s breach of the waste disposal contracts continue to add to the federal liability costing all taxpayers, according to some estimates, an additional \$800 million dollars a year;

Whereas DOE failed to meet the mandate of the NWPA to begin accepting spent nuclear fuel for disposal in 1998, and there is no schedule of when DOE might begin receipt of any spent fuel;

Whereas ratepayers deserve and expect our government to fulfill its obligation now and not at some unknown time in the future;

Whereas it is past time for Congress to appropriate the needed funds to complete licensing of a permanent repository and through rigorous oversight assure that that DOE and the Nuclear Regulatory Commission expeditiously complete review of the Yucca Mountain License;

Whereas the Nuclear Waste Principles adopted by NARUC first in 1994 and revised in 1997, 2000, 2008, and 2013 bear re-examination for continued validity in view of the evolving policy and program activities; *now, therefore be it*

Resolved that the National Association of Regulatory Utility Commissioners, convened at its 2018 Winter Policy Summit in Washington, DC, adopts the following principles to guide NARUC representation with the Administration and Congress:

[1] **America Needs a Permanent Solution to Nuclear Waste Disposal**

- NARUC supports the policy established by Congress in 1982 that the best, long-term solution to isolating nuclear waste from the environment is permanent disposal in a geologic repository.
- Reprocessing of spent fuel is worthy of research, but even if determined to be technically and economically feasible, will not eliminate the need for a permanent repository.
- The Administration and the Nuclear Regulatory Commission (“NRC”) must comply with the 2002 law designating Yucca Mountain as the repository site by completing the licensing process.
- Congress should immediately appropriate adequate funds to complete review of the Yucca Mountain License application.
- Congress should exercise oversight to assure that DOE and the NRC are complying with the NWPA and completing review of the Yucca Mountain License application.
- Congress should exercise oversight to require federal agencies to resume other aspects of the nuclear waste program outlined in the NWPA.
- To maximize the country’s investments and ensure efficient operation, Congress should consider increasing the legal quantity of permissible quantities of spent fuel for the first repository to scientifically supportable levels.

[2] **The Nuclear Waste Fund Must Be Managed Responsibly and Used Only for Its Intended Purposes**

- The NWF must be used only for purposes intended in the NWPA and Congress should not divert the fund to other uses.
- Full access to the corpus of the NWF must be assured to the DOE to permit the agency to achieve repository program goals.
- The DOE, not electric utility ratepayers, must remain accountable for the financial consequences of its failure to begin accepting waste in 1998.
- Under the NWPA, DOE conducts a fee adequacy assessment to show that repository, storage, and benefit expenses of a re-started waste management program can be supported by annual fee revenue, earned interest, and the certainty of the “repayment” of the NWF corpus in full. A NARUC lawsuit suspended this NWF fee in 2014
- Under no conditions should the NWF fee be restarted until the Yucca Mountain License proceeding is complete.
- A new DOE fee adequacy study that demonstrates the need for reinstatement is a necessary pre-requisite for re-starting the NWF fee.
- Any DOE fee assessment must consider if the approximately \$1.5 billion in interest accruing annually on the NWF is adequate to fund projected annual disposal expenditures without reinstatement of a fee.
- The NWF fee should not be reinstated until program expenditures actually exceed annual investment income.
- To avoid misdirecting NWF fees to unrelated government obligations and provide for the gradual return of the corpus of the fund, Congress should mandate that no NWF fees can be collected in a fiscal year that exceed 90 percent of the Congressional appropriations for the fiscal year during which such fees are collected.

[3] **Some Consolidated Interim Storage Is Needed; the Amount, Basis of Need and Duration Should be Determined**

- Current reactor-site spent fuel storage is safe, but retaining spent fuel indefinitely at working reactor sites was never intended and is both inefficient and unacceptable.
- Continued storage at permanently shutdown plants is unacceptable. It imposes costs on ratepayers without equivalent benefits and prohibits economic reuse of the site. Relocation and consolidation may reduce the government's liability and improve security. The *Blue Ribbon Commission on America's Nuclear Future* ("BRC") report cites a study that suggests the savings from consolidated storage for this stranded spent fuel might be enough to pay for the cost of the storage facility.
- The BRC Report recommendations for consolidated interim storage represent a new use for the NWF that should be authorized only after a careful consideration of the costs and benefits involved.
- Any analysis of the cost and benefits of interim storage should consider transportation costs and proximity to possible or likely permanent disposal sites.
- No interim storage should be allowed unless and until the review of the Yucca Mountain License application is underway.
- DOE must honor its contracts with utilities to remove spent fuel so ratepayers will not be charged indefinitely for both onsite storage and NWF fees.
- Congress should reinforce the requirement for DOE to take physical possession of waste, to forestall arguments the agency can simply "take title" of waste where it is currently stored, leave it there indefinitely, and claim it has met its current contractual obligations.

[4] **The Management of Federal Responsibilities for Used Fuel Management Would be More Successful if Assigned to a New Organization with a New Approach to Siting and Better Access to Financing.**

- 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 of DOE, with sole responsibility to manage nuclear waste. NARUC supports this concept, which would require legislation.
- Since the former waste management organization was disbanded in 2010, a new organization is needed (or the old one must be reconstituted) even if responsibility is retained by DOE.
- The new organization should be charged 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.
- The NWPA already has provisions for use of the Nuclear Waste Fund to provide benefits to affected States and localities as an incentive to host a repository that could be amended if a benefits agreement is negotiated that advances the siting process.
- NARUC should follow up on the BRC recommendation that a public utility commissioner be appointed to an oversight board having responsibility to evaluate the adequacy of the fees.

[5] **NARUC Must Be an Active Stakeholder on Nuclear Waste Management and Disposal**

- NARUC can best represent the ratepayer interests through close communications with the DOE and any other federal agencies involved in the nuclear waste program. DOE once funded the NARUC program office in Washington for this purpose and should do so again.

Sponsored by the Committee on Electricity

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