

**BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON THE ENVIRONMENT AND THE ECONOMY
TESTIMONY OF THE HONORABLE GREG R. WHITE
ON BEHALF OF THE
THE MICHIGAN PUBLIC SERVICE COMMISSION
AND
THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
ON
“Department of Energy’s Role in Managing Civilian Radioactive Waste”**

June 1, 2011



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COMMISSIONER GREG WHITE

“THE ROLE OF DOE IN MANAGING CIVILIAN RADIOACTIVE WASTE”

TESTIMONY SUMMARY

- Here on behalf of ratepayers who have paid over \$31 billion in fees and interest for disposal of commercial nuclear waste who have gotten little in return
- We want the government to fulfill the Nuclear Waste Policy Act and the contracts with nuclear utilities to remove spent fuel from reactor sites
- DOE faced a myriad of obstacles, technical, regulatory, managerial, legal and political in trying to develop a repository
- Overall, I rate DOE’s performance C minus, despite finally submitting the license application to the NRC in 2008
- Disappointed when DOE reversed course and sought to withdraw the application in 2010
- Although Yucca was not found unsuitable, we await the recommendations of the Blue Ribbon Commission on America’s Nuclear Future
- Two likely recommendations that we find attractive in concept
 - Need more stable financing and assured access to the Nuclear Waste Fund
 - Create a new, single-purpose organization to manage nuclear waste

Chairman Shimkus, Ranking Member Green, and Members of the Committee,

Good Morning.

My name is Greg White. I serve on the Michigan Public Service Commission. I am here representing the Public Service Commission, Michigan ratepayers, and the National Association of Regulatory Utility Commissioners (NARUC.) I appreciate the opportunity to appear before the Committee and ask that my written statement be included in the record.

NARUC is a quasi-governmental, non-profit organization founded in 1889. Our membership includes the public utility commissions serving all States and 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 such utility services as may be required by the public convenience and necessity and to assure that such services are provided under rates and subject to terms and conditions of service that are just, reasonable and non-discriminatory.

I have been involved with the issue of disposal of "spent" (used) nuclear fuel from commercial reactors since shortly after the Nuclear Waste Policy Act (NWPA) set the basic national policy in 1983, that:

- The federal government is responsible for the safe, permanent disposal of government and commercial nuclear waste in a geologic repository, and
- The customers that benefit from the electricity generated from nuclear power will pay the commercial share of disposal costs through payments of fees made by the generating utilities to the Treasury

The fee payments to the Nuclear Waste Fund were to begin in June 1983 and they did. In fact, the collection of the fees from ratepayers, via the utilities for payment into the Nuclear Waste Fund is the only component of this program that has ever worked as intended.

The repository that was sited at Yucca Mountain, Nevada was to begin waste deposits by January, 1998 and they did not. As you know, it has yet to be licensed.

There was a long list of technical, financial, legal and political factors that the repository program encountered as the Department of Energy (DOE) tried to execute the program as guided by the NWPA. As for the role of DOE in managing civilian radioactive waste, the agency never got to manage any civilian radioactive waste as it was supposed to beginning in 1998 in accordance with the Nuclear Waste Policy Act and contracts with the owners of spent fuel. Everything else was preliminary and the path was a difficult one. It took over 20 years for EPA to get a final radiation standard. There were numerous lawsuits and Congress routinely cut the budget. Overall, I would give DOE a grade of C minus. It would have been lower were it not for the effective leadership of the last Senate-confirmed program director, Ward Sproat, who brought discipline and focus by submitting the repository license application to the NRC.

We have arrived at point where we are told by the Administration that Yucca Mountain is “not a workable option,” and since the 1987 Amendment that truncated the site selection process to further evaluate only Yucca Mountain, there is no “Plan B.”

When the Department of Energy submitted an 8,000 page license application to build the repository at Yucca Mountain to the Nuclear Regulatory Commission in June 2008, we knew it could take 3-4 years to carefully review the safety and other aspects for this first-of-a-kind facility. We were not prepared to learn that after more than 20 years of study and nearly \$15 billion spent that a different Secretary of Energy would withdraw the license application with prejudice in March 2010. There was no indication that the site is unsafe or the application is flawed. Instead, the motion to withdraw cited only that Yucca Mountain is considered “not a workable option.” On June 29, 2010 the Atomic Safety Licensing Board of the NRC denied the motion saying the law requires the Board to review an application and that DOE does not have authority to withdraw the application, since Congress had approved the site in a joint resolution in 2002. The ASLB decision is subject to automatic appeal by the NRC commissioners and this Committee has made inquiries into that matter.

This question has also been brought to the United States Court of Appeals for the District of Columbia Circuit.

The Department of Energy took other steps to terminate the Yucca Mountain project that are documented in the April report of the Government Accountability Office, including for all intents and purposes, disbanding the Office of Civilian Radioactive Waste Management that had managed the program to that point. Like others, we have questioned the legal and administrative authority of the DOE to disband this office.

Finally, DOE requested no appropriations for the waste program for Fiscal Year 2011 or FY 2012, except for support for the Blue Ribbon Commission on America's Nuclear Future. Yet, when the Nuclear Energy Institute and the National Association of Regulatory Utility Commissioners (NARUC) suggested that the Secretary of Energy suspend fee payments by utilities to the Nuclear Waste Fund in 2009, that was denied with an unconvincing pronouncement that "all fees are essential." That position was consistent with a Statement of Administration Policy issued by the Office of Management and Budget, but did not show support from the annual fee adequacy review the NWPA requires.

NARUC and NEI appealed the decision to the United States Court of Appeals for the D.C. Circuit, which is pending.

We got our first hint two weeks ago of where the Blue Ribbon Commission may be heading:

- They are not challenging their instructions that Yucca is off the table

- At least one repository is needed but the commission won't site it or any other facilities it may recommend
- Reprocessing needs R&D and decades before it might be in use
- To keep options open and to reduce liability the Commission will likely recommend central interim storage, initially for the stranded fuel from decommissioned sites
- A new, single-purpose organization should be created to manage all aspects of used fuel
- The new organization should have assured access to the Nuclear Waste Fund fees as well as the corpus

We can only speculate how much time and money it will take the U.S. to be ready to accept used fuel for disposal—if it is other than Yucca—but it is likely to be decades. It seems essential, then, that we seek out and develop one or more central interim storage facilities to take used fuel from the nine sites where the reactors are shutdown and property cannot be decommissioned and returned to other productive uses because the waste remains, such as at the former Big Rock Point plant in Michigan. There will be other reactors that will be reaching the end of their service life and there may be net savings to the Government if DOE is able to finally accepting more spent fuel and closing the partial breach of contract.

While we await the final recommendations of the Commission, I will repeat what I told the Commission when I testified in May of last year. Regardless of what storage, transportation or disposal solutions the Commission may recommend, they will need certain and reliable financing

support. The GAO report¹ puts it this way, “Consistent Policy, Funding and Leadership are Important in Any Waste Management Effort.” If the Nuclear Waste Fund is going to be the means of implementing a re-vitalized waste program, whether by DOE or a new organization, the Fund needs to be reformed to serve the purpose it was created for, to enable the users of nuclear power to pay for the disposal of the waste it produces. Yucca Mountain did not fail for lack of the utilities and their ratepayers making the payments into the Nuclear Waste Fund, which exceed \$31 billion, with interest.

Looking through the GAO report, I am saddened for the signs of lack of care and motivation to follow government procedures on disposition of property as the report describes. The lessons learned on the overall program should be mined by the Blue Ribbon Commission, the successor organization that will manage the new program going forward and the Congress. I agree with the Matters for Consideration by Congress in the report:

- A more predictable funding mechanism would enhance future waste management
- An independent organization, outside DOE, could be more effective in siting and developing a permanent repository

Thank you for this opportunity to express these views.

¹Commercial Nuclear Waste: Effects of a Termination of the Yucca Mountain Repository Program and Lessons Learned, U.S. Government Accountability Office, GAO-11-229, April 2011

NUCLEAR WASTE FUND
RATEPAYER PAYMENTS BY STATE
THROUGH 9-30-10 (MILLIONS OF DOLLARS)

STATE	PAYMENTS	RETURN ON	TOTAL	DEBT*	FUND ASSETS**
	1 mill/kwh, One Time+Int	INVESTMENTS as of 9/30/10	(PAY+RETURN)		(TOTAL + DEBT)
AL	533.9	425.7	959.6	0.0	959.6
AR	358.2	285.6	643.8	175.6	819.4
AZ	266.3	212.4	478.7	0.0	478.7
CA	1,020.3	813.6	1,833.9	0.0	1,833.9
CO	0.2	0.2	0.4	0.0	0.4
CT	295.9	236.0	531.9	358.5	890.4
DE	46.6	37.2	83.8	0.0	83.8
FL	842.4	671.8	1,514.2	0.0	1,514.2
GA	685.5	546.6	1,232.1	0.0	1,232.1
IA	249.4	198.9	448.3	45.1	493.4
IL	1,880.1	1,499.2	3,379.3	972.6	4,351.9
IN	252.1	201.0	453.1	229.9	683.0
KS	133.3	106.3	239.6	0.0	239.6
KY	152.1	121.3	273.4	0.0	273.4
LA	324.2	258.5	582.7	0.0	582.7
MA	356.1	284.0	640.1	163.4	803.5
MD	390.6	311.5	702.1	0.0	702.1
ME	48.5	38.7	87.2	116.9	204.1
MI	314.2	250.6	564.8	198.2	763.0
MN	316.6	252.5	569.1	0.0	569.1
MO	250.7	199.9	450.6	5.1	455.7
MS	161.7	128.9	290.6	0.0	290.6
NC	1,538.0	1,226.4	2,764.4	0.0	2,764.4
ND	18.0	14.4	32.4	0.0	32.4
NE	190.0	151.5	341.5	0.0	341.5
NH	82.2	65.5	147.7	23.8	171.5
NJ	732.3	584.0	1,316.3	196.8	1,513.1
NM	77.4	61.7	139.1	0.0	139.1
NY	850.8	678.4	1,529.2	505.3	2,034.5
OH	461.9	368.3	830.2	32.6	862.8
OR	75.1	59.9	135.0	0.0	135.0
PA	1,378.3	1,099.1	2,477.4	66.6	2,544.0
RI	5.3	4.2	9.5	6.1	15.6
SC	689.4	549.7	1,239.1	0.0	1,239.1
SD	7.1	5.7	12.8	0.0	12.8
TN	580.1	462.6	1,042.7	0.0	1,042.7
TX	801.1	638.8	1,439.9	0.0	1,439.9
VA	698.9	557.3	1,256.2	0.0	1,256.2
VT	100.2	79.9	180.1	141.6	321.7
WA	170.6	136.0	306.6	0.0	306.6
WI	428.2	341.5	769.7	0.0	769.7
SUBTOTAL	17,763.8	14,165.3	31,929.1	3,238.1	35,167.2
FEDERAL	19.8	15.8	35.6	0.0	35.6
INDUSTRY	16.8	13.4	30.2	0.0	30.2
TOTAL	17,800.4	14,194.5	31,994.9	3,238.1	35,233.0

* Funds owed for fuel burned before 1983 but not yet paid by utilities (as allowed by DOE contract)

** before withdrawals for expenditures by DOE

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