

**BEFORE THE
UNITED STATES SENATE**

**COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY**

**TESTIMONY OF THE HONORABLE DAVID A. WRIGHT
PRESIDENT, NATIONAL ASSOCIATION OF REGULATORY UTILITY
COMMISSIONERS
COMMISSIONER, SOUTH CAROLINA PUBLIC SERVICE COMMISSION**

**ON BEHALF OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

ON

**“Recommendations from the Blue Ribbon Commission on America’s Nuclear Future for a
Consent-Based Approach to Siting Nuclear Waste Storage and Management Facilities”**

June 7, 2012



**National Association of
Regulatory Utility Commissioners
1101 Vermont Ave, N.W., Suite 200
Washington, D.C. 20005
Telephone (202) 898-2200, Facsimile (202) 898-2213
Internet Home Page <http://www.naruc.org>**

Good Morning, Chairman Carper, Ranking Member Barrasso, and Subcommittee Members. Thank you for the opportunity to appear before you today.

My name is David Wright. I am a commissioner with the South Carolina Public Service Commission and I serve as President of the National Association of Regulatory Utility Commissioners (NARUC), on whose behalf I am speaking this morning. I appreciate the opportunity to present NARUC's views on the subject of the disposition of spent or used nuclear fuel from commercial nuclear power plants.

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.

NARUC and State utility commissions in 40 States served by nuclear-generated electricity have been involved in the troubled history of nuclear waste disposal since 1983. That is when the utilities, which own the used fuel, were required by the Nuclear Waste Policy Act to enter into contracts with DOE. Those contracts called for payments of fees for nuclear-generated electricity into the Treasury for deposit into the Nuclear Waste Fund to pay for the cost of

disposal of the used fuel beginning in 1998. As you know, that disposal has not happened, but the fee payments continue to be made. Or, as a former Florida utility commissioner summarized the status in 1991, “The government has our money—we have their waste.” It is now over 20 years later and the used fuel remains in indefinite storage at 72 sites in 34 States all across the United States. Utility commissioners care because the utilities pass the cost of the fees to their customers through their electric bill. Because of the government’s failure to move this program forward, customers, through their rates, have had to pay more to cover the cost of re-racking of the utility spent fuel pools to accommodate more spent fuel, more to cover the costs of on-site dry cask storage, and more to cover the costs of increased security and monitoring. All taxpayers, through the Judgment Fund, continue to pay damages for the lawsuits brought to date (damages which already total \$2 billion as of December 2011 according to Table 2 in the Blue Ribbon Commission’s Final Report) and to be responsible for the damages that continue to accrue and will be the subject of future lawsuits.

NARUC followed the slow progress of the civilian radioactive waste management program as it met a variety of setbacks and advances, exacerbated by chronic budget cuts even as the illusion of a multi-billion dollar corpus grew in the Nuclear Waste Fund. A significant milestone was met in 2002 when Congress passed the joint resolution approving Yucca Mountain as the site for the geologic repository, subject to the Department of Energy obtaining a construction license from the Nuclear Regulatory Commission. The next setback was the court remand to the Environmental Protection Agency to revise the regulation setting the radiation standard for the facility. Finally, DOE submitted the license application in June 2008. The NRC

began its review of the 8,000-page application for the first-of-a-kind facility which was expected to take three to four years.

In 2009, the Administration pronounced Yucca Mountain not to be a “workable option” and that it intended to terminate the repository development. In March 2010, DOE asked the NRC’s Atomic Safety Licensing Board for permission to withdraw the application with prejudice. In June of that same year, the ASLB rejected the request, ruling that once a valid license application was submitted under the NWPA, the NRC was required to review and act upon the application. The decision was appealed to the NRC.

While the NRC was disposing of the license matter, the President directed that the Secretary of Energy appoint the Blue Ribbon Commission on America’s Nuclear Future (BRC) to consider and recommend a new strategy; a strategy that soon became a “post-Yucca” strategy.

In 2010, NARUC, and several other parties, petitioned the U.S. Court of Appeals for the District of Columbia Circuit challenging DOE’s authority to withdraw the Yucca Mountain license application, but the case was dismissed because there had been no final agency action by the NRC on the appeal of the Board’s decision rejecting DOE’s request. After lengthy and unnecessary delays, the NRC Chairman ultimately released a decision. The NWPA mandates that once the Yucca Mountain license was submitted the NRC only had three years to complete the review proceedings. Those three years have expired. Currently, the NRC faces a mandamus action to force it to complete the required review in the Court of Appeals. NARUC is one of

several petitioners in that suit. Oral argument was held last month and we are hoping the Court will issue its decision soon, perhaps before Labor Day.

Just last week, another NARUC appeal resulted in a D.C. Circuit remand to the Secretary of Energy requiring DOE to justify the approximately \$750 million it collects annually from the nuclear power industry for waste disposal given that DOE no longer plans to develop a depository at Yucca Mountain and has no existing Congressional sanctioned disposal alternative program. As the Court noted:

Although the Act mandates that the Fund cover the lifetime costs of the civilian disposal program – estimated to last over a hundred years – any excess funds must be returned to the payors. Congress anticipated that costs would be uncertain and could well change as the program progressed, so the Secretary [is] obliged to “annually review the amount of the fees to evaluate whether collection of the fee will provide sufficient revenues to offset the costs as defined in subsection (d).”

The three judge panel specified that the DOE 2010 fee determination was “legally defective” and directed the agency to re-evaluate whether collection of the fee will provide too much or too little revenue to offset costs of the nuclear-waste disposal program – a program which – pending the restart of the Yucca Mountain License review – does not exist. The Court cited, with masterful understatement, DOE’s “disposition to delay” as the basis for retaining jurisdiction of the case and requiring a DOE response within six months.

Notwithstanding our position on the administration’s handling of this issue, NARUC was closely involved in the work of the Blue Ribbon Commission. We wrote letters, gave testimony, provided comments, and attended most of the public meetings. We were impressed with the panel’s distinguished members, their approach to the task, the talented professional staff, and the

sincere interest in public input. We have asked DOE to preserve and maintain access to the Commission website.

As for the recommendations, while we welcome them all, we have the following points:

- Reform of the Nuclear Waste Fund is essential for most of the recommendations to occur.
- Regardless of Yucca Mountain, we need another repository. The lessons of Yucca and the better lessons of Finland, Sweden and WIPP suggest the “consent-based” siting approach may get better results, but will require patience.
- We have long favored consolidated interim storage, but find the Report vague as to quantity, duration, and cost. We are not sure what the effect will be on the fee if the Nuclear Waste Fund is to be used to pay for storage.
- We agree with the concept and benefits of a new federal corporation that can focus solely on the waste management mission, hopefully with a fresh partnership attitude for encouraging the consent-based approach. We look forward to refining the concept in enabling legislation.
- Transportation planning and coordination with States and others cannot begin soon enough.
- We commend the BRC January 2012 report for specifying that the proposed “Consent-Based Approach to siting” future repositories must be “adaptive” in the sense that the “process itself is flexible and produces decisions that are responsive to new information and new technical, social or political developments.” BRC report at 47. Certainly, future siting efforts will have to account for widely divergent demographics/populations as well as unique

proposed repository topologies/geologies. Since “one-size-certainly-does-not-fit-all” in this context, NARUC agrees that flexibility in approach is a necessary prerequisite to future siting initiatives.

Moreover, the time is not right to commit to a reprocessing strategy as an economic proposition, although R&D should continue, as the BRC recommends. Also, we encourage DOE to take steps to seek volunteer host communities to step forward in storage siting without waiting to form the new management organization.

There are two areas where we disagree with the Commission Report:

- The Report says: “Overall, we are confident that our waste management recommendations can be implemented using revenue streams already dedicated for this purpose.” There are no cost estimates to substantiate that belief, which likely also assumes the \$26.7 billion in the Nuclear Waste Fund is assured.
- The Report further says: “We know what we have to do; we know we have to do it, and we even know how to do it.” While we may wish that were true, our assessment is that there are too many people who are content to pass the problem along to future generations and “leave the waste where it is.” It is fitting for the Commission to call for prompt action developing both consolidated interim storage and beginning the search for a new repository, but we may need public education and outreach to help persuade some who seem to favor the “no action” alternative. Continuing to “kick the dry cask down the road” should not be an option.

So, yet another study calls for prompt action, yet despite (on paper) a financing plan, implementation relies on leadership from the Administration and Congress. NARUC stands ready to assist on behalf of the ratepayers who may not realize that they are overpaying for safe waste disposition.