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July 30, 2013

The Honorable Ron Wyden, Chairman
Senate Energy & Natural Resources Committee
304 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lisa Murkowski, Ranking Member
Senate Energy & Natural Resources Committee
304 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Wyden, Ranking Member Murkowski, and Senate ENR Committee Members:

The Nuclear Waste Strategy Coalition (NWSC)* appreciates your continued commitment to advance the nuclear waste policy debate with introduction of S.1240, the "Nuclear Waste Administration Act of 2013." We offer the following comments for the record.

Upon reviewing the specific changes from the prior "Discussion Draft" to the current bill as introduced, we were pleased to see improvements in a few significant areas (e.g., removal of statutory "linkage" between pilot storage facilities and progress on a repository; and removal of three federal officials as designated appointees to the Nuclear Waste Oversight Board). It is an unusual and appreciated step for Congress to seek comment on draft legislation, and the revised language is responsive to concerns raised by stakeholders in certain areas. However, we must be clear that additional improvements are necessary to truly create a "sustainable, participatory process for managing nuclear waste," as intended by the bill's authors. Respectfully, we outline key areas requiring additional attention below.

Settlement Provision (Sec 406(b)(1))

Because it requires utilities to settle existing lawsuits against the federal government in order to have access to future storage facilities (which utilities will have paid for through nuclear waste fee collections from ratepayers), the NWSC must strongly oppose Section 406(b)(1) and seek its removal. Our members cannot support relinquishing rights to damages owed to utilities and their consumers for repeated and costly government failures. Clearly, settling litigation may result in significant benefits for all affected parties, and the NWSC supports voluntary efforts to negotiate mutually acceptable resolutions. In fact, many contract holders (including NWSC members) have settled claims suits with the Department of Justice (DOJ). Recently, however, the DOJ has insisted contract holders give up unrelated contractual rights as the "price" for settlement; it is that fact, not reluctance by contract holders, that prevents more settlements. While the NWSC appreciates the authors' attempts to protect taxpayers from mounting liabilities associated with the federal government's failure to perform, the approach in this provision is not the solution. A legislative requirement to settle claims in order to get something the government owes under current federal law – removal of used nuclear fuel and high-level radioactive waste from plant sites – is unjust and unnecessary. *Performance remains the key to reducing the federal government's liability.*

Management & Oversight of Nuclear Waste Program (Title II)

As noted previously, the Nuclear Waste Oversight Board proposed in the discussion draft moved in a positive direction in that S.1240 no longer requires the appointment of three designated federal officials to constitute the Oversight Board. Having said that, the bill's proposed duo of a Nuclear Waste Administration and an Oversight Board remain vastly inferior to the single-purpose federal corporation model (such as proposed in companion bills S.3322 and H.R.5979, by Senator Voinovich and Representative Upton, respectively, in 2010) and models that similarly establish a qualified board of directors to govern the entity and select and oversee the chief executive. In multiple studies over several decades, experts (most recently the Blue Ribbon Commission on America's Nuclear Future (BRC)) repeatedly recommend such models to ensure accountability, to reasonably insulate the organization from political interference and excessive turnover, and to develop and implement a focused, integrated program for the transportation, storage, and disposal of nuclear waste. The nuclear waste program cannot continue to be a politically-driven, ineffective process with no assurance that the nation's consumers will receive what they have long been owed; after all, consumers have paid and continue to pay for the designated purpose of nuclear waste disposal in accordance with the Nuclear Waste Policy Act (NWPA) and government contracts with utilities. While we remain extremely supportive of moving the program out of the Department of Energy (DOE), we are concerned that the proposed single administrator model falls short of addressing the problems inherent in the current model and instead transfers them to a new agency. Therefore, the NWSC continues to seek changes that will establish a single-purpose federal corporation or models that similarly establish a qualified board of directors to select and manage the chief executive.

Additionally, key stakeholders who are knowledgeable about the issues and committed to timely, effective solutions in accordance with the law – representatives of the National Association of Regulatory Utility Commissioners (NARUC); the National Association of State Utility Consumer Advocates (NASUCA); tribal, state, and local governments affected by commercial dry cask storage; the Energy Communities Alliance (ECA); and utility contract holders – should serve on the board. While such stakeholders may serve in other advisory capacities as well, they should not be relegated to advisory status only, as their expertise and commitment are needed to ensure the chief executive fulfills his or her duties.

The current language does not ensure that appointments to the bill's Oversight Board include such qualified, knowledgeable, and engaged stakeholders. In fact, despite their valuable expertise and commitment to a timely resolution of these issues, utility contract holders, and those with any financial interest in utility contract holders, are expressly precluded from serving.

There are a variety of ways to provide for valuable stakeholder representation on a board, and we offer two models here for your consideration. First, we submit that Section 3103 of the aforementioned H.R.5979 provides a preferable approach for populating a board of directors. It calls for the President to appoint 9 members, of which at least 3 were to be from stakeholder organizations that were contributing or had contributed to the Nuclear Waste Fund and at least 2 reserved for nominations from State public utility commissions.

Another approach may be to expressly provide for such a 9-member board of directors to include, for example:

- 1 or more state utility commissioners from states with nuclear power generation and/or commercial dry cask storage to be selected by the President from a list of three nominations per slot from NARUC;
- 1 consumer advocate from a state with nuclear power generation and/or commercial dry cask storage to be selected by the President from a list of three nominations from NASUCA;
- 1 or more representatives from tribal, state, or local governments with commercial dry cask storage within their legal boundaries to be selected by the President;
- 1 local government representative from a community that is adjacent to or impacted by DOE activities to be selected by the President from a list of three nominations from the ECA;
- 1 or more utility contract holders to be selected by the President from a list of three nominations per slot from Nuclear Energy Institute;

- 1 representative of an environmental organization that is supportive of constructively solving the nuclear waste issue to be selected by the President; and
- Any others necessary to fill the remaining board slots to be selected via an application process to be established by the board members above.

Either of these approaches, especially when paired with a federal corporation model, is far preferable to the approach for appointments to the bill's Oversight Board. While the Oversight Board section improved from the discussion draft, the bill still fails to (i) provide for a board that selects and manages the chief executive; (ii) ensure key, qualified stakeholder appointments to the board; and (iii) prevent board appointees who are not working toward the safe and timely removal and disposal of nuclear waste from current locations across the country. Populating a board of directors or the bill's proposed Oversight Board with any entity that is not supportive of constructively solving the nuclear waste issue is unacceptable and should be strictly prevented. We stress that regardless of one's position on nuclear power, it is in the country's best interest to resolve this issue in a responsible and timely manner.

Finally, regardless of the model chosen for transferring nuclear waste management functions out of DOE, guidance to facilitate a smooth transition would be helpful. Representative Upton's H.R.5979 called for the President to appoint a "Transition Manager" to oversee this important exercise, and we recommend such a provision for inclusion in S.1240.

Funding Reform (Title IV)

The NWSC strongly supports the bill's provision to ensure that future payments collected by utilities from electric consumers are directed to the new management entity for use in the program via creation of a new Working Capital Fund (WCF) and without reliance on the annual appropriations process. This is a marked improvement over the current state of Nuclear Waste Fund (NWF) operation and is similar to the reforms proposed in the previously referenced companion bills introduced in 2010, S.3322 and H.R.5979.

While S.1240's proposed approach to reform the nuclear waste program's funding mechanism is the most positive aspect of the legislation, it falls short in that it fails to:

- maintain Congressional review of changes in the nuclear waste fee;
- transfer future accrued interest on the NWF to the new WCF;
- transfer future 1-time fee payments to the new WCF; and *most importantly,*
- ensure the NWF corpus will be made available when needed for future program needs without being subject to competing appropriations – a challenging goal but one that could be accomplished with transfers to the new management entity over a reasonable schedule, preferably defined within the legislation.

We understand the complexity in addressing the entire funding problems at once and commend the authors for this positive first step to ensure access to future collections. However, we must continue to argue for all consumer payments into the NWF to be preserved for nuclear waste management and disposal as intended by the NWPA.

Likewise, we support the funding reform measure recommended by BRC Co-Chairs Hamilton and Scowcroft in a December 2011 letter to the President and repeated in their January 2012 report. They delineated near-term steps designed to protect future payments by electric consumers as follows:

We have recommended that your Administration offer to amend the standard nuclear waste contract with nuclear utilities, which you are authorized to do under current law, so that utilities remit only the portion of the annual nuclear waste fee that is appropriated for waste management each year. The rest of the funding would be placed in a trust account, held by a qualified third-party institution, to be available when needed. At the same time, we have recommended that the Office of Management and Budget work with the Congressional budget committees and the Congressional Budget Office to change

the budgetary treatment of annual fee receipts so that these receipts can directly offset appropriations for the waste program.

Unfortunately, this recommendation does not appear to have been pursued by the Administration despite its authority to take action under current law, and no transparent explanation has been offered. We respectfully ask for the consideration that this novel-yet-straightforward approach deserves.

Consent-Based Siting (Title III)

The NWSC sincerely hopes that consent may be achieved in siting future nuclear waste storage and disposal facilities and believes that DOE should be taking actions now to facilitate meaningful host interest. Such efforts should complement (and not compete with) actions to carry out the NWPA, which itself recognized the need for additional nuclear waste facilities and provided for a degree of state and local input into facility siting. In any consent-based siting process, the NWSC emphasizes the need to (i) maintain flexibility so as not to limit creative, effective solutions that may be proposed by potential hosts and negotiated by the parties in consent agreements; and (ii) produce a legally enforceable consent agreement as quickly as possible so that the nation may, in a timely manner, plan for and rely on such facilities. Regarding the former, we thank the authors for restoring a degree of flexibility to potential hosts with two noteworthy changes included in the filed bill: (1) removal of the prior “linkage” provisions pertaining to the pilot storage facility; and (2) removal of the former requirement that the Administrator take into account “undue burdens” on a state in siting process.

Storage Facilities (Section 305)

To make progress in the removal of used nuclear fuel and high-level radioactive waste, the NWSC supports pursuing consolidated storage with priority for shutdown reactor fuel on a parallel track with current and future pursuit of permanent disposal facilities. We are pleased that the provisions pertaining to pilot storage facilities for priority waste now contain no applicable linkage provisions that limit a potential host’s ability to negotiate contract terms as appropriate. Regarding the bill’s provisions for additional storage facilities for nonpriority waste, details regarding scope, timeline, and cost-effectiveness remain unsupported and unclear. Therefore, the new management entity should be directed to timely develop only those additional storage facilities deemed necessary and cost-effective following extensive analysis and stakeholder input. Finally, while we continue to believe statutory linkage is unnecessary, the linkage pertaining to additional storage facilities is an improvement over the linkage provisions in the discussion draft.

Repositories (Section 306)

Recognizing a need for disposal under any scenario, actions to support the prompt removal of used nuclear fuel and high-level radioactive waste must include establishing a permanent disposal facility as soon as possible. The bill should, but does not, reaffirm the need to carry out the important statutory requirements pertaining to the nation’s first permanent repository at Yucca Mountain. The NWPA is the law of the land and should be enforced, and the critical next step is the completion of the Nuclear Regulatory Commission’s (NRC) independent and well-advanced review of the Yucca Mountain license application that was submitted by DOE in 2008. Specifically, we request Congressional leadership in (i) appropriating the necessary funds to facilitate timely completion of the licensing process; and (ii) requesting a specific plan from DOE and NRC for completing the licensing process, including identification of the resources required, particularly in light of pending action by the US Court of Appeals for the DC Circuit. Whether or not a consent-based process for future disposal facilities is enacted and successful, the Yucca Mountain repository was designated by Congress and merits the scientific review begun years ago and required by law. Given the approximately \$35 billion (including interest) paid by electric consumers for the purpose of such disposal, it is time for the NRC to provide answers to the public.

We agree with the bill’s removal of the 70,000 MTU limit imposed on the Yucca Mountain repository in the NWPA, but we recognize that it may be appropriate for the new management entity to begin efforts to site a second repository.

While providing a consent-based process for siting additional repositories is in itself positive, the bill's target date of December 2048 for such a repository to be operational provides no sense of urgency. It simply mirrors the DOE Strategy's proposed repository date, which is unsupported and so distant that potential hosts for consolidated storage facilities would be justifiably nervous about becoming de facto permanent sites. It would be a far better signal to such potential hosts and to the public for Congress and the Administration to support (i) timely completion of the Yucca Mountain process; and (ii) a more reasonable target date for an additional repository sited under a consent-based approach. In addition to the often-stated reasons for a permanent repository, some states are precluded from using nuclear as a generation source until a repository is operational, and thus, from pursuing an all-of-the-above energy strategy as recommended by the Administration.

Finally, the regulatory structure with respect to any new repository should be properly defined. To place a new repository other than Yucca Mountain into operation, the country needs workable generic repository public health and safety standards. Unfortunately, none exist today. With no generic standards in place, it is not clear how a repository siting process can move forward. Even in the best case scenario, experience indicates it will take the better part of a decade to promulgate such standards. Therefore, the new management entity should promote the prompt development of modern, workable repository health and safety standards applicable on a generic basis to any repository other than Yucca Mountain.

Transportation (Section 309)

DOE or the new management entity should facilitate the construction and operation of infrastructure and systems necessary to transport commercial used nuclear fuel and high-level radioactive material (as required in the NWPA) in existing and future NRC-licensed canisters to consolidated storage and permanent disposal facilities as appropriate. We were pleased to see that the bill reaffirms the need for technical assistance and funding for the training of public safety officials in local communities and tribes that are affected by used nuclear fuel and high-level radioactive waste transportation.

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Thank you for the opportunity to submit these comments and for the time and attention you have devoted to these critical issues of national importance. Your continued leadership is needed – to facilitate the removal of used nuclear fuel and high-level radioactive waste from existing and decommissioned reactor sites across the country and to protect millions of electric consumers and all taxpayers. The NWSC stands ready to work with you and your Congressional colleagues, the Administration, and DOE to advance meaningful nuclear waste policy reform.

Sincerely,



David C. Boyd
Chairman, Nuclear Waste Strategy Coalition
Commissioner, Minnesota Public Utilities Commission

**The NWSC is an ad hoc organization representing the collective interests of member state utility regulators, consumer advocates, tribal governments, local governments, electric utilities, and other government and industry experts on nuclear waste policy matters. Its primary focus is to protect electric consumer payments into the Nuclear Waste Fund and to support the removal and ultimate disposal of used nuclear fuel and high-level radioactive waste currently stranded at numerous sites across the country.*