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THE NUCLEAR WASTE FUND: BUDGETARY, FUNDING, AND SCORING ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

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THE NUCLEAR WASTE FUND: BUDGETARY, FUNDING, AND SCORING ISSUES

THURSDAY, DECEMBER 3, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY,
COMMITTEE ON ENERGY AND COMMERCE
Washington, DC.

The subcommittee met, pursuant to call, at 9:59 a.m., in room 1100, Longworth House Office Building, Hon. John Shimkus, (chairman of the subcommittee) presiding.

Present: Representatives Shimkus, Harper, Murphy, Latta, Johnson, Bucshon, Flores, Hudson, Tonko, Schrader, Green, and McNerney.

Staff Present: Nick Abraham, Legislative Associate, Energy and Power; Will Batson, Legislative Clerk, Energy and Power, Environment and the Economy; Jerry Couri, Senior Environmental Policy Advisor; David McCarthy, Chief Counsel, Environment and the Economy; Andy Zach, Professional Staff, Environment and the Economy; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; and Timia Crisp, Minority AAAS Fellow.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. SHIMKUS. I am going to ask my colleagues who are here to take seats. And for those here, we want to, first of all, thank the Ways and Means Committee for their allowing us this palatial committee hearing room. We also want to move rapidly, because they are going to call votes real soon. So we want to get this thing started so we can get back here and get to the meat and potatoes of the hearing.

Good morning, and welcome to today's hearing to examine funding, budgetary, and scoring issues associated with efforts to manage and dispose of our Nation's spent nuclear fuel and high-level radioactive waste. As Congress deals with the yearend budget issues, today's testimony is timely.

This subcommittee is continuing to examine specific challenges managing used fuel and national defense waste. Central to this discussion is providing adequate financial resources for a multigenerational repository program. In 1982, Congress passed the Nuclear Waste Policy Act, deciding commercial nuclear fuel consumers would fund permanent disposal of spent nuclear fuel through a one mil per kilowatt hour tax on nuclear-generated electricity to be paid into the Nuclear Waste Fund, and managed by the Department of Energy.

A DOE audit of the fund released just this morning projects its total current value is $34.3 billion, an increase in $1.4 billion over last year, and an $11 billion increase since 2009. This includes consumer payments, plus an interest calculation. Since the fee was instituted over 30 years ago, ratepayers in my home State of Illinois have contributed more than any other state at over $2.3 billion to the Nuclear Waste Fund. And I have paid some of that personally myself.

The repository program was designed to be a multigenerational effort, which required long-term stability, so funding would be available at the most critical times of the program. The 1982 outlook for nuclear power was more optimistic than today's. That means a shrinking fleet of operating reactors must provide adequate financial resources for a 100-year program. Meanwhile, the budgetary and scoring treatment of the Nuclear Waste Fund is broken. Comprehensive budget reconciliation measures enacted after 1982 counted revenues from the fee as reducing the budget deficit in the fiscal year they were paid. Yet programmatic outlays remained on the discretionary side of the budget ledger and counts against annual budget caps. That means spending on the repository competes every year with other Federal budget priorities, such as maintaining our nuclear defense capability, or building Army Corps water projects.

Today, we will get a better perspective as to how and why these budget changes have complicated the program to permanently dispose of used fuel. The Nuclear Waste Policy Act required the Federal Government to begin accepting fuel from commercial power plants by 1998, and DOE entered into contracts with plant operators to do just that, but DOE was not ready in 1998. As a result, commercial utilities started suing DOE for breach of contract, and the courts sided with the utilities. The damage payments are drawn from a permanent indefinite appropriation known as the Judgment Fund. Payments from the Judgment Fund don't count against total spending caps. So policy makers have little incentive to stop the bleeding.

Three weeks ago, DOE updated its annual cost estimate of liability for failure to fulfill its obligations as required by the Nuclear Waste Policy Act, which will ultimately all be paid from the Judgment Fund. DOE estimates lifetime liability to reach $23.7 billion. This is $1 billion increase over last year, and a $10 billion, or 50 percent increase since President Obama shuttered the Yucca Mountain project.

In 2014 the Federal Government paid out over $900 million from the Judgment Fund while not appropriating any money from the Nuclear Waste Fund for the Nuclear Regulatory Commission and DOE to work on the Yucca Mountain license application. That annual legal payment is nearly three times as much funding as the total amount the NRC needs to complete its review of the Yucca license. DOE's projection is predicated on the ability to begin taking title of commercial spent nuclear fuel in 5 years. Recently, the subcommittee received testimony it would take at least 7 to 9 years to just begin transporting used fuel, regardless when a site is available. It is likely the liability will continue to skyrocket until we get the stalled program back on track.

Budgetary and funding challenges have been further complicated by President Obama's legally dubious decision to walk away from Yucca Mountain. When DOE stopped work on the repository program, the National Association of Regulatory Utility Commissioners filed suit to halt collection of nuclear waste fee. The courts found DOE's required financial projections absolutely useless, and based on pie-in-the-sky analysis. The decision stated the government's argument was flatly unreasonable, and obviously disingenuous. The court directed DOE to halt the annual collection of $750 million from ratepayers, but the payments by taxpayers for DOE's breach of contract continue.

I look forward to hearing from NARUC today about their experience with the Nuclear Waste Fund. I welcome all our witnesses and urge my colleagues to take advantage of their expertise as we prepare to sort this out, and hopefully in the future, fix it. Thank you. And I yield to Mr. Tonko for his opening statement.

[The prepared statement of Mr. Shimkus follows:]

PREPARED STATEMENT OF HON. JOHN SHIMKUS

Good morning and welcome to today's hearing to examine funding, budgetary, and scoring issues associated with efforts to manage and dispose of our nation's spent nuclear fuel and high-level radioactive waste. As Congress deals with year-end budget issues, today's testimony is timely.

This subcommittee is continuing to examine specific challenges managing used fuel and national defense waste. Central to this discussion is providing adequate financial resources for a multigenerational repository program.

In 1982, Congress passed the Nuclear Waste Policy Act, deciding commercial nuclear power consumers would fund permanent disposal of spent nuclear fuel through a one mil per kilowatt hour tax on nuclear generated electricity to be paid in to the Nuclear Waste Fund and managed by the Department of Energy.

A DOE audit of the Fund released just this morning projects its total current value at $34.3 billion, an increase of $1.4 billion over last year, and an $11 billion increase since 2009. This includes consumer payments plus an interest calculation. Since the fee was instituted over 30 years ago, ratepayers in my home State of Illinois have contributed more than any other state at over $2.3 billion to the Nuclear Waste Fund.

The repository program was designed to be a multi-generational effort, which required long-term stability so funding would be available at the most critical times of the program. The 1982 outlook for nuclear power was more optimistic than today's. That means a shrinking fleet of operating reactors must provide adequate financial resources for a 100 year program.

Meanwhile, the budgetary and scoring treatment of the Nuclear Waste Fund is broken. Comprehensive budget reconciliation measures, enacted after 1982, counted revenues from the fee as reducing the budget deficit in the fiscal year they were paid. Yet programmatic outlays remained on the discretionary side of the budget ledger and counts against annual budget caps. That means spending on the repository competes every year with other Federal budget priorities, such as maintaining our nuclear defense capability or building Army Corps water projects. Today we will get a better perspective as to how and why these budget changes have complicated the program to permanently dispose of used fuel.

The Nuclear Waste Policy Act required the Federal government to begin accepting fuel from commercial power plants by 1998, and DOE entered into contracts with plant operators to do just that. But DOE was not ready in 1998. As a result commercial utilities started suing DOE for breach of contract, and the courts sided with the utilities. The damage payments are drawn from a permanent, indefinite appropriation, known as the Judgment Fund. Payments from the Judgment Fund don't count against total spending caps, so policymakers have little incentive to stop the bleeding.

Three weeks ago, DOE updated its annual cost estimate of liability for failure to fulfill its obligations as required by the Nuclear Waste Policy Act, which will ultimately all be paid from the Judgment Fund. DOE estimates lifetime liability to reach $23.7 billion. This is a billion dollar increase over last year, and $10 billion

dollar—or fifty percent—increase since President Obama shuttered the Yucca Mountain program. In 2014 alone, the Federal government paid out over $900 million from the Judgment Fund, while not appropriating any money from the Nuclear Waste Fund for the Nuclear Regulatory Commission and DOE to work on the Yucca Mountain license application. That annual legal payment is nearly three times as much funding as the total amount the NRC needs to complete its review of the Yucca license.

DOE's projection is predicated on the ability to begin taking title of commercial spent nuclear fuel in five years. Recently, the Subcommittee received testimony it would take at least seven to nine years to just to begin transporting used fuel, regardless when a site is available. It is likely the liability will continue to skyrocket until we get the stalled program back on track.

Budgetary and funding challenges have been further complicated by President Obama's legally dubious decision to walk away from Yucca Mountain. When DOE stopped work on the repository program, the National Association of Regulatory Utility Commissioners filed suit to halt collection of the nuclear waste fee. The Courts found DOE's required financial projections "absolutely useless" and based on "pie in the sky" analysis. The decision stated the government's argument was "flatly unreasonable," and "obviously disingenuous."

The Court directed DOE to halt the annual collection of $750 million from ratepayers, but the payments by taxpayers for DOE's breach of contract continue. I look forward to hearing from NARUC today about their experience with the Nuclear Waste Fund.

I welcome all our witnesses and urge my colleagues to take advantage of their expertise as we prepare to sort this out and fix it.

Mr. TONKO. Thank you, Chair Shimkus, and good morning to our panelists. Thank you all for being here on what has become a very busy week.

We all know the politics behind nuclear waste disposal are complicated. So it should come as no surprise that the budgetary and legislative histories are equally complex.

In 1982, Congress passed its Nuclear Waste Policy Act, directing the Department of Energy to remove spent nuclear fuel from commercial nuclear power plants in exchange for certain fees and transport it to a permanent geologic repository, beginning no later than January 31, 1998.

Obviously, that deadline has been missed. Utilities that generate nuclear waste had been paying an ongoing fee of one mil per kilowatt hour of nuclear-generated electricity. These fees were deposited in the Nuclear Waste Fund to cover the cost of the Department of Energy's acceptance, transport, and disposal of civilian nuclear waste. But the fund has not worked as intended. I am sure we will get into the recent history and options moving forward later in this hearing.

More than 60 years after beginning and expanding our use of nuclear materials, nuclear waste disposal remains a difficult and an expensive problem. We will have to deal with 74,000 metric tons of commercial spent fuel, with more being added each and every year. And I agree that we should be looking at all options for nuclear waste disposal in an effort to find the safest and the most cost-effective ways for us as a Nation to move forward. But we must recognize and deal with both the technical and the political challenges of disposing of all classes of nuclear waste.

During this Congress, this subcommittee has examined a variety of nuclear waste disposal issues. I'm glad we are able to continue that work today. I thank you all again for your participation in this morning's activities. I look forward to your testimony and further

discussion of what is a very important issue. And with that, I yield back, Mr. Chair.

Mr. SHIMKUS. The gentleman yields back his time.

The chair looks to the majority side. No one is seeking recognition.

Anyone on the minority side?

Seeing none, we want to thank my colleagues for moving expeditiously, and now welcome our witnesses. And we are going to admit your full statements into the record. We will ask you to speak for 5 minutes. And we will hopefully get to questions and answers.

So I will introduce you one at a time. First it will be Mr. David Bearden, who has appeared before the subcommittee numerous times, or the committee as a whole, specialist in environmental policy for the Congressional Research Service. Welcome, and you are recognized for 5 minutes.

STATEMENTS OF DAVID BEARDEN, SPECIALIST IN ENVIRONMENTAL POLICY, CONGRESSIONAL RESEARCH SERVICE; KIM P. CAWLEY, CHIEF OF NATURAL AND PHYSICAL RESOURCES COST ESTIMATES UNIT, CONGRESSIONAL BUDGET OFFICE; AND TRAVIS KAVULLA, COMMISSIONER, MONTANA PUBLIC SERVICE COMMISSION, PRESIDENT, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

STATEMENT OF DAVID BEARDEN

Mr. BEARDEN. Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee, my name is David Bearden. I am a specialist in environmental policy for the Congressional Research Service, called CRS. Thank you for inviting me to testify on behalf of the agency. In serving the U.S. Congress on a nonpartisan and objective basis, CRS takes no position on any of the issues examined today. CRS has been asked by the subcommittee to outline the budgetary framework for the management of the Nuclear Waste Fund. CRS also maintains a team of policy analysts and legislative attorneys who have prepared reports on an array of complex issues associated with the Nuclear Waste Fund, and so we remain available to assist the subcommittee and the full committee with broader issues than addressed in my testimony today.

In terms of the statutory framework, as the chairman mentioned at the beginning in his opening remarks, section 302 of the Nuclear Waste Policy Act of 1982 established the Nuclear Waste Fund, financed primarily with the collection of fees from civilian nuclear utilities to fund the permanent disposal of their spent or used nuclear fuel and related wastes. As amended, the statute authorizes the Department of Energy, DOE, to develop a deep geologic repository for the disposal of these wastes, subject to licensing by the U.S. Nuclear Regulatory Commission.

The development of a repository and the selection of Yucca Mountain in Nevada for its location have been the subject of various scientific, technical, regulatory, budgetary, legal, and policy debates. The lack of a repository to accept spent or used nuclear fuel has been an ongoing issue. Nuclear utilities have paid fees to finance the Nuclear Waste Fund and entered contracts with the

Federal Government for the disposal of their spent or used nuclear fuel by the statutory deadline of January 31, 1998.

Appropriations acts have made monies from the fund available to DOE and the Nuclear Regulatory Commission to support the licensing process, but construction of a repository could not begin until NRC approves the license pursuant to the Nuclear Waste Policy Act. Nuclear utilities have filed damage claims against DOE for partial breach of existing contracts to cover their spent or used nuclear fuel storage costs in the interim while a repository has been unavailable since the statutory deadline lapsed.

The Nuclear Waste Fund is not explicitly authorized to pay damage claims. So the Judgment Fund of the U.S. Treasury, therefore, has been the source of Federal funds for the payment of eligible claims. DOE has reported that a total of $5.3 billion in eligible claims have been paid from the Judgment Fund as of the end of fiscal year 2015.

Now I will just briefly outline the basic budgetary framework of the fund itself and existing law. As authorized in the Nuclear Waste Policy Act, receipts from the nuclear utility fee collections are deposited in the fiscal year they are collected into the U.S. Treasury and credited to the Nuclear Waste Fund as assets available for discretionary appropriations.

The receipts are not treated as a revenue or offsetting collections for discretionary spending, though. They are treated as negative direct spending that has the effect of reducing total Federal direct spending in the fiscal year in which the receipts are collected. The accumulated balance of past collections does not continue to count as a reduction to direct spending in future fiscal years, though, as it would result in the double counting of receipts.

The unappropriated balance of the Nuclear Waste Fund is invested in U.S. Treasury securities that accrue interest credited to the fund that contributes to the total balance available for discretionary appropriation. The assets credited to the Nuclear Waste Fund from the nuclear utility fee collections are a liability to the general fund of the U.S. Treasury to provide these assets once discretionary appropriations are enacted. Regardless of the accumulated balance, though, appropriations from the fund remain subject to limitations on annual discretionary spending. And this framework for the fund is not unique within the Federal budget, though. Some other examples include the Harbor Maintenance Trust Fund, the Hazardous Substance Superfund Trust Fund, Leaking Underground Storage Tank Trust Fund, and the Uranium Enrichment Decontamination and Decommissioning Fund.

And in its department-wide financial report for fiscal year 2015, DOE reported a balance in the Nuclear Waste Fund of $34.3 billion in net investments and related interest combined. And those investments refer to fee collections. There have been no new receipts credited to the fund from nuclear utility fees since the suspension of the collections on May 16, 2014 as a result of litigation challenging the present need for the fees. However, interest has continued to accrue, increasing the balance each year.

So under current law, and existing budgetary procedural requirements, the unappropriated balance of the Nuclear Waste Fund does remain available for appropriation to carry out the purposes of the

Nuclear Waste Policy Act, but it is subject to applicable limitations on Federal spending. The budgetary treatment of the receipts does not permit past collections to be applied as an offset to future spending, but other potential budgetary options may be dependent upon amendments or exceptions to current law or existing procedures.

So that concludes the remarks of my prepared statement. Thank you for the opportunity to appear before the subcommittee today, and I will be happy to address any questions you may have.

[The prepared statement of Mr. Bearden follows:]

Testimony of David M. Bearden
Specialist in Environmental Policy for the Congressional Research Service
Before the House of Representatives Committee on Energy and Commerce,
Subcommittee on Environment and the Economy
Hearing on the Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues
December 3, 2015

Chairman Shimkus, Ranking Member Tonko, and Members of the Subcommittee, my name is David Bearden. I am a Specialist in Environmental Policy for the Congressional Research Service (CRS). Thank you for inviting me to testify on behalf of CRS regarding budgetary, funding, and scoring issues associated with the management of the Nuclear Waste Fund.

In serving the U.S. Congress on a non-partisan and objective basis, CRS takes no position on these issues. CRS has been asked by the Subcommittee today to outline the budgetary framework for the management of the Nuclear Waste Fund. CRS remains available to assist the Subcommittee with these and related issues.

Nuclear Waste Policy Act of 1982

Enacted in the 97th Congress on January 7, 1983, Section 302 of the Nuclear Waste Policy Act of 1982 (P.L. 97-425, 42 U.S.C. 10222) authorized the establishment of the Nuclear Waste Fund. The statute structured it as a "separate" fund in the U.S. Treasury financed primarily with receipts from the collection of fees from nuclear utilities. The fees are authorized to fund the permanent disposal of spent nuclear fuel (or solidified high-level radioactive waste derived from spent nuclear fuel) created from the generation of electricity involving civilian nuclear reactors.

As amended, the statute authorizes the Department of Energy (DOE) to develop a deep geologic repository for the disposal of these wastes, subject to licensing by the U.S. Nuclear Regulatory Commission (NRC). However, the Nuclear Waste Policy Act does not provide the authority to

expend the receipts collected for this purpose, making the use of the nuclear utility fee collections subject to discretionary appropriation. The receipts credited to the Nuclear Waste Fund from these collections therefore are not available to DOE to develop a repository until appropriated by Congress in subsequent law. Once appropriated, Section 302 of the Nuclear Waste Policy Act authorizes the eligible uses for which these monies may be expended.

The development of a repository, and the selection of Yucca Mountain in Nevada for its location, have been the subject of various scientific, technical, regulatory, budgetary, and policy debates. The lack of a repository to accept spent nuclear fuel has been an ongoing issue. Nuclear utilities have paid fees to finance the Nuclear Waste Fund and entered contracts with the federal government under the Nuclear Waste Policy Act for the disposal of their spent nuclear fuel by the statutory deadline of January 31, 1998.

Appropriations acts have made monies from the Nuclear Waste Fund available to DOE and NRC to support the licensing process, but construction of a repository could not begin until NRC approves the license, pursuant to the Nuclear Waste Policy Act. If the license were approved, the monies available for construction would depend upon subsequent appropriations.

Nuclear utilities have filed damage claims against DOE for partial breach of existing contracts, to cover their spent nuclear fuel storage costs in the interim while a repository is unavailable. Section 302(d) of the Nuclear Waste Policy Act identifies the eligible uses of appropriations from the Nuclear Waste Fund, and does not explicitly include payment for such damage claims.

The Judgment Fund of the U.S. Treasury has been the source of federal funds for the payment of eligible claims. Pursuant to 31 U.S.C. 1304, the Judgement Fund is a permanent, indefinite appropriation available for payment of final judgments, awards, and compromise settlements

(and interest and costs specified in the judgments) owed by the United States. The Judgment Fund generally is available for payment of eligible claims, if the payment is not otherwise provided by law in separate appropriations.

DOE reports that a total of $5.3 billion had been paid from the Judgment Fund as of the end of FY2015 for eligible claims filed by nuclear utilities for private interim storage costs.

Budgetary Framework of the Nuclear Waste Fund

Receipts from the nuclear utility fee collections in a fiscal year are deposited into the U.S. Treasury and credited to the Nuclear Waste Fund as assets available for discretionary appropriation by Congress. The receipts are not treated as revenue or offsetting collections for discretionary spending. Receipts from the nuclear utility fee collections to finance the Nuclear Waste Fund are treated within the federal budget as negative direct (i.e., "mandatory") spending that has the effect of reducing total federal direct spending in the fiscal year in which the receipts are collected. The accumulated balance of past collections from the nuclear utility fees does not continue to count as a reduction to direct spending in future fiscal years, or it otherwise would result in the double-counting of receipts collected by the federal government.

The unappropriated balance of the Nuclear Waste Fund is invested in U.S. Treasury securities that accrue interest credited to the Nuclear Waste Fund through an intergovernmental transfer. The interest is an additional source of receipts that contributes to the total balance of the Nuclear Waste Fund available for discretionary appropriation. However, the interest does not serve as an offset to the appropriations because it is an intergovernmental transfer within the federal budget and not a net increase in total federal receipts.

The assets credited to the Nuclear Waste Fund from the nuclear utility fee collections are a liability to the General Fund of the U.S. Treasury. This liability to the General Fund constitutes a financial commitment of the federal government to provide the assets credited to the Nuclear Waste Fund, once discretionary appropriations are enacted that would make the monies available for the purposes authorized in the Nuclear Waste Policy Act.

Regardless of the accumulated balance of nuclear utility fee collections and interest credited to the Nuclear Waste Fund, appropriations from the fund remain subject to limitations on annual discretionary spending. These limits are established both statutorily (for example, through the Budget Control Act of 2011, as amended) and procedurally (for example, through congressional budget resolutions and sub-allocations of discretionary spending determined by the House and Senate Committees on Appropriations).

This framework for the Nuclear Waste Fund is not unique within the federal budget. Some examples of other funds invested in U.S. Treasury securities that subject the use of collections to discretionary appropriations and limitations on annual discretionary spending include:

- Harbor Maintenance Trust Fund,
- Hazardous Substance Superfund Trust Fund,
- Leaking Underground Storage Tank Trust Fund, and
- Uranium Enrichment Decontamination and Decommissioning Fund.

Status of Nuclear Waste Fund

As presented in the Office of Management and Budget (OMB) Appendix to the President's FY2016 budget request submitted to Congress in February 2015, the accumulated

unappropriated balance of assets and interest credited to the Nuclear Waste Fund was $32.4 billion as of the end of FY2014.

This balance of $32.4 billion is the amount that remained available at that time for appropriation from the Nuclear Waste Fund to carry out the purposes of the Nuclear Waste Policy Act, subject to the applicable limitations on federal spending. Additional interest credited to the Nuclear Waste Fund in FY2015 would increase the balance available for discretionary appropriation. In its Appendix to the President's FY2016 budget request, OMB estimated that $1.53 billion in interest would accrue in FY2015.

In November 2015, DOE released its department-wide financial report for FY2015. DOE reported a balance in the Nuclear Waste Fund of $34.3 billion in net "investments and related interest" combined, as of the end of FY2015.

There have been no new receipts credited to the Nuclear Waste Fund from collections of nuclear utility fees since the suspension of the collections on May 16, 2014, as a result of litigation in the U.S. Court of Appeals for the District of Columbia Circuit. This litigation challenged the present need for the fees, considering the status of the licensing process for a repository and the reasonableness of plans and assumptions upon which to estimate the funding needs.

The Administration had included an estimate of $362 million in nuclear utility fee collections for FY2015 in the President's FY2016 budget request as a "placeholder" in its budget presentation, based on its assumption that the fees "will not remain uncollected indefinitely." These estimated receipts were part of the OMB calculation of the total federal budget deficit in preparing the Administration's total budget estimate for FY2015. Of course, the actual impacts on deficit reduction in FY2015 depend on actual collections, which did not occur during FY2015.

Under current law and existing budgetary procedural requirements, the unappropriated balance of assets and interest credited to the Nuclear Waste Fund over time remains available for appropriation to carry out the purposes of the Nuclear Waste Policy Act, subject to the applicable limitations on federal spending. The budgetary treatment of the receipts in the account does not permit past collections to be applied as an offset to future spending from the Nuclear Waste Fund to avoid the double-counting of receipts. Other potential budgetary options may be dependent upon amendments or exceptions to current law or existing budgetary procedural requirements.

That concludes the remarks of my prepared statement. Thank you for the opportunity to appear before the Subcommittee today. I would be happy to address any questions you may have.

Mr. SHIMKUS. Thank you very much. We look forward to answering questions because that was very confusing.

Now, we would like to turn to Mr. Cawley, Chief of Natural and Physical Resources Cost Estimate Unit of the Congressional Budget Office. You are recognized for 5 minutes.

STATEMENT OF KIM P. CAWLEY

Mr. CAWLEY. Mr. Chairman and members of the committee, thank you for the invitation to present CBO's review of the status of the Nuclear Waste Fund, and to try to explain the budgetary treatment of the fund.

I think if we look back over the last 33 years, about $22 billion has been collected from nuclear power ratepayers, and about one-third of that has been spent on the waste disposal system. Five years ago, the administration found that developing the Yucca Mountain site for the disposal of waste was unworkable, and there has been no significant spending on the site project in recent years.

Last year, as a result of a Federal court order, the Department stopped collecting the nuclear waste fee from electricity ratepayers. Those fees had amounted to about $750 million a year, and they were stopped because the court found the Department could not demonstrate whether the fee collections were too small or too large relative to the expected life cycle cost of the program.

Although the government is not collecting the waste fees, and is not spending any of the previous fee collections, the government is incurring another type of cost. Under the contracts the Department of Energy signed after the 1982 Act, we were set to begin accepting waste for disposal 17 years ago. Shortly after the deadline was missed in 1998, utilities filed claims and won judgments for a partial breach of the disposal contracts. At this point, the Federal taxpayers, through the Treasury's Judgment Fund, have paid over $5 billion to utilities as compensation for the breach. CBO expects that utilities will collect another $5 billion more in compensation in the coming decade. In the simplest terms, today the government is using taxpayer funds to pay for private storage of waste instead of spending ratepayer fees to permanently dispose of the waste as authorized in the 1982 Act.

I wanted to make a couple of points about the nuclear waste program budget and the enforcement procedures that Congress uses in the congressional budget process.

The fund accounts for both the receipt of fees from utilities, and amounts provided through the annual appropriations process. In addition, interest is credited and it becomes available to be spent for program purposes. In the congressional budget process, there is a distinction made between mandatory spending, that operates under permanent law, and discretionary spending, that flows from annual appropriations acts.

The waste program has one foot in each of these spending categories. The fee collections are part of the mandatory category, and spending on waste disposal activities is in the discretionary category. To control legislative changes to the budget, the Congress established the pay-as-you-go system for mandatory spending, and currently, discretionary spending is controlled through a system of caps on total spending. As was mentioned, the split mandatory/dis-

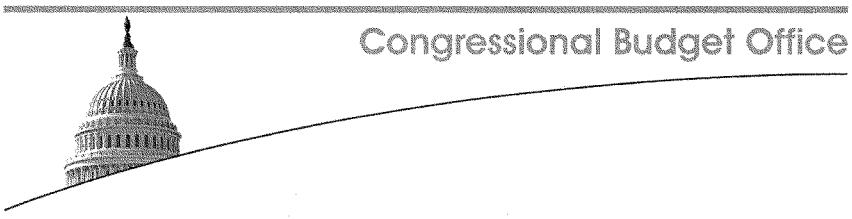
cretionary treatment of the waste program is not unique in the budget. There are other programs with a similar treatment.

In very practical terms, I think the program's budgetary treatment means two things: First, any future appropriations for the waste program will need to compete for funding along with all other discretionary Federal programs that are controlled by the caps on spending. The unspent balances in the fund cannot be used unless those amounts are appropriated. The collection of those balances in previous years helped to reduce the deficits in those earlier years, but they have no budgetary effect in future years.

Second, if the waste fees are reinstated in the future, they will reduce the deficit. But those mandatory collections cannot be credited to, or directly offset the cost of discretionary appropriations for spending on the program.

I think that is a good point for me to stop talking about the budget, and I would be happy to answer any of your questions.

[The statement of Mr. Cawley follows:]



Testimony

The Federal Government's Responsibilities and Liabilities Under the Nuclear Waste Policy Act

Kim Cawley
Chief, Natural and Physical Resources
Cost Estimates Unit

Before the
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
U.S. House of Representatives

December 3, 2015

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Chairman Shimkus, Ranking Member Tonko, and Members of the Committee, I am pleased to provide updated information about the federal government's responsibilities and liabilities under the Nuclear Waste Policy Act of 1982 (NWPA) and the status and budgetary treatment of the Nuclear Waste Fund. Since CBO last testified on this topic five years ago, there have been a number of important developments.[1] I would like to highlight the following:

- Since 2010, the Administration has taken a variety of actions to terminate a project to build a geologic repository for nuclear waste at Yucca Mountain in Nevada—the only site where such waste is authorized to be stored under current law. Although agencies have continued activities related to licensing that facility, the Congress has since provided no new funding to the Department of Energy (DOE) to build it.

- Largely in response to such actions, the National Association of Regulatory Utility Commissioners and the Nuclear Energy Institute filed petitions with the U.S. Court of Appeals for the District of Columbia Circuit to end the federal government's collection of fees paid by nuclear power generators to cover the cost of disposing of civilian nuclear waste.

- In November 2013, that court effectively ordered DOE to suspend collection of annual fees from nuclear power generators. The court found that in DOE's most recent assessment of the adequacy of the fees to cover the lifetime costs of disposal, the department had failed to provide a legally justifiable basis for continuing to collect fees in the absence of an identifiable strategy for waste management. In May 2014, pursuant to the court's order, DOE stopped collecting disposal fees, which had previously totaled roughly $750 million per year.

- DOE is more than 17 years behind schedule in its contractual obligations to remove and dispose of civilian nuclear waste, and it has already incurred significant liabilities for damages related to its partial breach of contracts with electric utilities.[2] The federal government has already paid $5.3 billion in damages to electric utilities, and DOE estimates that its remaining liabilities will total $23.7 billion if legislation and sufficient appropriations are enacted that will enable it to begin to accept waste within the next 10 years. However, if the department's schedule is further delayed, the anticipated costs—which will be borne by taxpayers through spending from the Department of the Treasury's Judgment Fund—will climb.

- DOE is not currently receiving any appropriations to construct facilities for the geologic disposal of nuclear waste. But disposing of civilian nuclear waste will cost a substantial amount over many decades regardless of how the government meets that responsibility. Providing annual appropriations for disposal-related activities in the future would intensify competition for such funding, which, through fiscal year 2021, is subject to caps specified in the Budget Control Act of 2011 as amended by subsequent legislation.

- Because the federal budget records most income on a cash basis, the fees that utilities have already paid have been credited as offsets to federal spending in the years in which they were collected and thus helped to reduce deficits in those years. As a result, although such fees were authorized to be used for nuclear waste disposal, the unexpended balances of those fees cannot offset future appropriations for such activities in estimates of the budgetary effects of those appropriations.

- The amount of nuclear waste that has been generated already exceeds the statutory limit on the volume of waste that can be disposed of in the repository currently authorized by the Nuclear Waste Policy Act. Even if a repository is built at Yucca Mountain, a change in law will ultimately be required to authorize DOE to permanently dispose of all of the waste anticipated to be generated by existing nuclear power plants. Without such a change and without steps that will allow DOE to fulfill its contractual responsibilities to dispose of waste, taxpayers will continue to pay utilities—through settlements and claims awards—to keep storing substantial amounts of waste.

1. See statement for the record by Kim Cawley, Chief, Natural and Physical Resources Cost Estimates Unit, Congressional Budget Office, for the House Committee on the Budget, *The Federal Government's Responsibilities and Liabilities Under the Nuclear Waste Policy Act* (July 27, 2010), www.cbo.gov/publication/21691.

2. DOE's failure to accept waste in accordance with a contractually specified schedule is considered a partial, rather than full, breach of contract. Although DOE remains behind schedule, it has not, at this point, fully breached its contractual obligations to permanently dispose of waste. The partial breach gives aggrieved parties a right to damages related to the delay but does not cause the contract to be cancelled.

The Federal Government's Responsibilities and Liabilities Under the Nuclear Waste Policy Act

The NWPA requires the federal government to take possession of and permanently dispose of spent nuclear fuel generated at civilian nuclear reactors and to dispose of radioactive waste resulting from federal activities in manufacturing nuclear weapons. Under current law, the only solution that the government is authorized to pursue is to permanently dispose of waste at a geologic repository, and Yucca Mountain in Nevada is the only place where such a repository may be located.

Under the NWPA, the federal government, through DOE, faces substantial costs to establish a repository for the nation's nuclear waste. It has also incurred—and partially breached—contractual obligations to remove waste from existing civilian nuclear facilities. The government will also be responsible for disposing of waste from any new facilities built in the future.

Under contracts signed with electric utilities in accordance the NWPA, DOE was scheduled to start removing waste from storage sites at individual power plants for transport to a federal storage or disposal facility by 1998. After the federal government missed its 1998 contractual deadline to start collecting waste, electric utilities began—successfully—to sue the government for resulting damages, which are paid from the Treasury's Judgment Fund.

To date, 35 lawsuits have been settled, 33 cases have been resolved by final judgments, and 19 cases are still pending.[3] Because judicial claims for damages are made retrospectively, many more cases can be expected in the coming decades as utilities seek to recover the costs they have incurred for continuing to store nuclear waste long after they expected it to be removed and sent to a permanent disposal site.

Pursuant to the details of existing settlements and judgments, utilities have so far received $5.3 billion in payments from the Judgment Fund to reimburse those costs that are due to DOE's partial breach of contracts. Such costs are unique to each nuclear power plant and depend on a number of factors, including the age and operating status of the plant as well as the size and configuration of the plant's space available for storing nuclear waste.

Estimates of federal liabilities related to DOE's partial breach of contractual obligations are uncertain and depend critically on when and how the department begins to accept waste and the number of years it takes to eliminate the backlog that will have accrued by that time. The sooner DOE begins to accept and dispose of waste, the sooner federal liabilities can be contained. As long as DOE remains behind schedule, taxpayers will continue to incur liabilities. In CBO's estimation, even if legislative changes proposed by the Administration are enacted and fully implemented and DOE begins to accept waste within the next 10 years, the department will face a backlog that would take more than 20 years to eliminate. During that time, liabilities will continue to accrue.

DOE currently estimates that if certain legislative changes and sufficient appropriations were enacted in the near future, the department could begin to accept waste within the next 10 years, and liabilities (including the $5.3 billion that has already been paid) would ultimately total $29 billion (in 2015 dollars).[4] It is not yet clear how the Administration's decision to terminate the Yucca Mountain repository will affect the federal government's liabilities to electric utilities. If DOE is found at some point to have fully breached its contractual commitments or if acceptance of the waste is further delayed, those liabilities could increase considerably.

According to the nuclear industry, civilian nuclear reactors have already produced more than 74,000 metric tons of nuclear waste—an amount that exceeds the limit specified in the NWPA on the amount of waste authorized to be disposed of in the repository. Ultimately, a change in law would be required to authorize DOE to permanently dispose of all of the waste anticipated to be generated by existing nuclear facilities, regardless of whether a repository is built at Yucca Mountain. Even if such legislation is enacted, federal liabilities will remain substantial, and the federal government will continue to make payments from the Judgment Fund to utilities for many years.

Financing the Costs of Disposing of Nuclear Waste

The NWPA addressed how the disposal of spent nuclear fuel and defense-related waste was to be paid for. Under that act, the costs are to be borne by the parties that

3. Department of Energy, *Fiscal Year 2015 Agency Financial Report*, DOE/CF-0144 (November 2015), http://go.usa.gov/cjftY (5.31 MB).

4. Ibid.

generate nuclear waste. The law authorizes DOE to levy fees on the nuclear power industry to cover the costs for the waste it generates. The law also authorizes appropriations from the Treasury's general fund to pay for disposing of high-level radioactive waste generated by the nation's defense programs.

In 2008, DOE published an estimate of the costs—including those for transportation and project management—associated with geological disposal of civilian and defense-related nuclear waste. At that time, Yucca Mountain was assumed to be the primary repository. In DOE's estimation, the project would cost about $96 billion in 2007 dollars over a period of more than 100 years.[5] DOE has not published an updated estimate of the cost of completing a geologic repository for the nation's nuclear waste since then.

Financing the Costs Associated With Civilian Nuclear Waste

The NWPA established the Nuclear Waste Fund, an accounting mechanism in the federal budget that records cash flows associated with the civilian nuclear waste program. Such cash flows include fees paid by electric utilities and expenditures of amounts appropriated from the fund for programmatic purposes. In addition, because the NWPA authorizes the Secretary of the Treasury to invest the fund's unspent balances in nonmarketable Treasury securities, interest earnings attributable to such investments also accrue to the fund. Interest earnings are intragovernmental transfers and do not create net receipts to the federal government; however, such amounts add to the resources that the NWPA authorizes to be appropriated for the civilian waste disposal program.

Starting in 1983, the NWPA authorized DOE to charge electric utilities annual fees at a rate of 1 mil (0.1 cent) per kilowatt-hour of the electricity they sell that is generated by nuclear power plants. The act also required DOE to periodically review and, if necessary, adjust those fees to ensure that the Nuclear Waste Fund has sufficient resources (including interest) to pay for disposing of utilities' waste. The department did not adjust the 1 mil fee until 2014, when it did so in response to litigation that focused largely on DOE's January 2013 assessment of the adequacy of the fees to cover the costs of disposal. Specifically, in November 2013, the U.S. Court of Appeals for the District of Columbia Circuit ordered DOE to reduce the 1 mil fee to zero, ruling that the department had failed to justify collection of the fee in the absence of an identifiable strategy for waste management. In May 2014, DOE finalized that adjustment and effectively stopped collecting the disposal fees, which had previously totaled about $750 million annually.

In addition to the annual fees, the NWPA established onetime fees to cover the costs of disposing of waste that was generated before the law was enacted. DOE provided utilities with several options for paying that onetime charge, but several utilities have not yet paid the fee, and a significant amount remains uncollected. Receipts from the onetime fees that remain unpaid and that will become due once DOE begins to remove waste currently amount to about $3.1 billion, DOE estimates.[6] Interest accrues on the balances due from those onetime fees until the utilities pay them to the government; therefore, when the fees are paid, the amounts deposited will probably be significantly greater than the current balances due.

From 1983 through the end of fiscal year 2015, a total of $41.9 billion was credited to the Nuclear Waste Fund (see Table 1). That amount includes $21.6 billion in fees paid by the nuclear industry as well as $20.3 billion from intragovernmental transfers of interest credited to the fund. The authority to spend amounts in the fund comes from annual appropriation acts. Cumulative expenditures from the fund during that period totaled about $7.6 billion, mostly for analyses related to the waste disposal program and for DOE's initial design work on the Yucca Mountain facility. Since 2010, no appropriations have been provided for DOE's waste disposal program or the Yucca Mountain project, and less than $40 million has been provided to the Nuclear Regulatory Commission (NRC) and other federal entities for ongoing activities related to nuclear waste disposal. DOE stopped collecting annual fees in May 2014, but intragovernmental transfers of interest continue to add significantly to the fund's balance. In 2015, interest credited to the fund totaled $1.4 billion, bringing the fund's unspent balance to $34.3 billion. CBO estimates that in 2016, less than $50 million will be disbursed from the fund and $1.5 billion in interest will be credited, bringing the fund's end-of-year balance to $35.8 billion.

5. Department of Energy, Office of Civilian Radioactive Waste Management, *Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program, Fiscal Year 2007*, DOE/RW-0591 (July 2008), http://go.usa.gov/cjmtG.

6. Data supplied to the Congressional Budget Office in July 2010 by the Department of Energy.

1

Historical Cash Flows Related to Nuclear Waste Disposal

Billions of Dollars

	Cumulative Totals, 1983 to 2014	Actual, 2015
Nuclear Waste Fund		
Deposits		
Annual fees	20.0	0
One-time fees	1.6	0
Subtotal	21.6	0
Interest credited[a]	18.9	1.4
Total	40.5	1.4
Disbursements	-7.6	*
Balance	**32.9**	**34.3**
Memorandum:		
Spending From General Fund		
Outlays for defense-related activities	3.7	*
Outlays from Judgment Fund for contractual liabilities	4.5	0.8

Source: Department of Energy.

Notes: Amounts are in nominal dollars.

* = less than $50 million

a. Intragovernmental transfers from general revenues.

Financing the Costs Associated With Defense-Related Nuclear Waste

In addition to the amounts appropriated from the fees and interest credited to the Nuclear Waste Fund, the Congress has provided annual appropriations to the nuclear waste program to cover the costs that DOE estimates are related to the disposal of nuclear waste generated by federal defense programs. In 2008, DOE determined that about one-fifth of the total life-cycle costs of the waste disposal program were attributable to that endeavor and that the share of the program's total costs related to defense activities should be paid for with appropriations from the general fund of the Treasury (rather than from the Nuclear Waste Fund).[7] Between 1993 and 2010, the Congress provided about $3.8 billion from the general fund for such costs. Lawmakers have not provided any new funding for the disposal of defense-related waste since 2010, when the Administration began taking steps to halt the Yucca Mountain project.

7. Department of Energy, Office of Civilian Radioactive Waste Management, *Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program, Fiscal Year 2007*, DOE/RW-0591 (July 2008), http://go.usa.gov/cjmtG.

The Budgetary Impact of Activities Related to Nuclear Waste Management

On the basis of underlying statutory provisions of the Nuclear Waste Policy Act, federal cash flows related to the nuclear waste program involve a combination of discretionary spending and mandatory spending. In CBO's baseline projections and legislative cost estimates, budgetary effects in those two categories are subject to different Congressional budget enforcement rules.

The Nuclear Waste Fund is an accounting mechanism that records cash flows associated with the civilian nuclear waste program. Under the NWPA, spending from the fund is not automatically triggered by the collection of fees or transfers of interest earnings but is instead controlled by annual appropriation acts; it is therefore considered discretionary spending. Funding related to the disposal of defense-related nuclear waste is also subject to annual appropriations.

In some cases, discretionary annual appropriations for certain activities may be at least partially offset by related fees. For example, annual appropriation acts that provide

funding for the NRC are credited with fees that the agency collects from regulated entities. In that particular case, the fees collected in any given year are formulaically based on the amount of funding provided; in that sense, the appropriation of funds to the agency effectively triggers the collection of resulting fees, which are therefore considered discretionary and help to offset the agency's gross appropriation.

Nuclear waste fees paid by electric utilities do not, however, offset annual discretionary appropriations; rather, they are credited against mandatory spending, which includes cash flows that are not subject to annual appropriation acts. Such fees are governed by statutory provisions of the NWPA and the terms of contracts with utilities that DOE entered into pursuant to that act. Likewise, ongoing spending for DOE's liabilities stemming from its partial breach of those contracts is classified as mandatory spending because the source of such spending—the Treasury's Judgment Fund—is governed by underlying law that provides permanent, indefinite budget authority for such payments.

Historical Net Budgetary Impact of the Nuclear Waste Fund and Related Activities

The federal budget operates largely on a cash basis—that is, receipts and expenditures are recorded in the year when they occur. In almost every year since the Nuclear Waste Fund was established, fees paid by electric utilities and credited to the fund have exceeded spending; in other words, in most years the net receipts credited to the fund helped to reduce the federal deficit. Since 1983, such net reductions have totaled $14 billion—the cumulative difference between $21.6 billion in fees and $7.6 billion in spending from the fund. (Interest credited to the Nuclear Waste Fund represents intragovernmental transfers; such transactions do not create receipts to the government or directly affect the federal deficit, but they do increase the resources authorized to be used for the nuclear waste program.)

In addition to the $14 billion in cumulative budget savings associated with the Nuclear Waste Fund over the 1983–2015 period, the budget has recorded some spending from the general fund—in particular, a total of $9 billion in outlays for activities related to disposal of defense-related waste ($3.7 billion) and for claims paid from the Judgment Fund ($5.3 billion). Thus, taken as a whole, cash flows related to nuclear waste management since 1983 have, on net, reduced federal deficits by $5 billion. CBO expects, however, that over the next 10 years, ongoing spending from the Judgment Fund for DOE's contractual liabilities will roughly equal that amount.

Projections of Receipts and Spending Related to the Nuclear Waste Fund

CBO's baseline projections of nuclear waste fees reflect uncertainty about events that could transpire under current law. Utilities are not paying annual fees, and it is widely assumed that they are unlikely to resume paying fees in the absence of clear steps taken toward enabling DOE to begin to accept and dispose of waste. However, notwithstanding the court ruling that required DOE to reduce annual fees to zero, the NWPA provides a mechanism for DOE to reinstate the fees if it can demonstrate—through a new assessment of the adequacy of such fees—that additional collections are warranted to cover the costs of implementing a legally justifiable waste management strategy. Given that possibility—that the Administration could pursue actions, under current law, to reinstate annual fees—CBO's baseline follows the agency's usual practices for projecting spending and receipts related to activities involving uncertain administrative actions. Specifically, CBO estimates the total amounts that would be collected if fees were fully reinstated and includes 50 percent of those amounts in its baseline. Thus, CBO's baseline includes $385 million annually in nuclear waste fees—roughly half the amount that had been collected before utilities ceased payments. The Administration follows similar procedures in preparing baseline projections of nuclear waste fees.[8]

Under current law, no spending is occurring for permanent geologic disposal as authorized under the NWPA. However, CBO's projections of mandatory spending include significant amounts of spending for continued on-site storage of waste at civilian nuclear facilities—in the form of payments from the Judgment Fund related to DOE's contractual liabilities. Because of the timing lag between when such liabilities are incurred and damages are eventually paid, CBO expects that most of the anticipated nuclear waste-related spending from the Judgment Fund over the next 10 years—which CBO estimates will total about $5 billion—is attributable to liabilities that DOE has either already incurred or cannot avoid. As a result, CBO expects that it would be very difficult for

8. See Office of Management and Budget, *Budget of the U.S. Government, Fiscal Year 2016: Appendix* (February 2015), p. 417, www.whitehouse.gov/omb/budget/Appendix.

either the Administration or the Congress to curtail such spending during that period. Programmatic changes or appropriations for DOE to pursue a waste management strategy consistent with the NWPA could constrain the government's liabilities in subsequent years, but without such actions, spending from the Judgment Fund—through which taxpayers effectively pay utilities for on-site storage of nuclear waste—will probably exceed DOE's current $29 billion estimate of the government's aggregate liability and result in continued substantial outlays over many decades.

Long-Term Budget Outlook for Activities Related to Nuclear Waste

The federal government remains responsible for permanently disposing of spent nuclear fuel, a task that will require a significant amount of federal spending over many decades regardless of what actions DOE and the Congress take. The NWPA specified that the parties that generate nuclear waste must bear the costs of disposing of it, but the primary mechanism for financing such costs—the annual fee—is not currently in effect. The opportunity to collect fees for waste generated by existing nuclear power plants will end when they reach the end of their NRC license extension (or the end of their economically useful life) and cease operations—probably in the 2030s and 2040s.

The amount of existing waste already exceeds the amount authorized to be disposed of at the repository currently authorized under the NWPA. The existing nuclear power plants will continue to generate waste, and DOE remains contractually obligated to dispose of such waste. Ultimately, a change in law will be required to authorize DOE to permanently dispose of all of the waste anticipated to be generated by existing nuclear power plants, even if a repository is built at Yucca Mountain. Implementing a permanent storage solution involving federal facilities will require significant increases in funding, and although existing balances of fees in the Nuclear Waste Fund are authorized for such purposes, those fees have already reduced deficits in previous years, and in estimates of the budgetary effects of future legislation, they cannot offset new spending authority that might be enacted. Because no funding is currently being provided, appropriating funds for such activities in the future would intensify competition for annual appropriations, which, through fiscal year 2021, are subject to caps specified in the Budget Control Act of 2011 as amended by subsequent legislation. Meanwhile, in the absence of progress toward allowing DOE to fulfill its contractual obligations, taxpayers will continue to pay utilities—through settlements and claims awards—to store substantial amounts of waste.

This testimony was prepared by Megan Carroll and Kim Cawley with guidance from Theresa Gullo. In keeping with CBO's mandate to provide objective, impartial analysis, this testimony contains no recommendations. Jeffrey Kling and Robert Sunshine reviewed the testimony, Bo Peery edited it, and Jeanine Rees prepared it for publication. An electronic version is available on CBO's website (www.cbo.gov/publication/51035).

Mr. SHIMKUS. Thank you very much.

And just for my colleagues, we will finish the opening statements, though they have called votes. We will go to the floor after the opening statements, and then we will return for the question period.

So last but not least, we would like to recognize Travis Kavulla, Commissioner, Montana Public Service Commission, president of the National Association of Regulatory Utility Commissioners. Welcome, and you are recognized for 5 minutes.

STATEMENT OF TRAVIS KAVULLA

Mr. KAVULLA. Thank you, Chairman Shimkus and Ranking Member Tonko, members of the subcommittee, it is a pleasure to be before you today. I am the president of the National Association of Regulatory Utility Commissioners, which has long been involved in this issue from a policymaking and litigation front. NARUC applauds this subcommittee's tenacity and leadership on these issues. Unlike the previous two speakers, we have a full-throated and unambiguous opinion on this matter as well, which I will be happy to share with you today.

NARUC is a nonprofit organization founded in 1889. Our members are the public utility commissions in all 50 states and U.S. territories. We regulate the retail rates and services of electric, gas, water, and some telecommunications utilities. NARUC and its state commission members were at the table when the Nuclear Waste Policy Act of 1982 was developed and passed. And at that time and today, state regulators agree that users of electricity from nuclear power plants should pay for the Federal nuclear waste management and disposal program. And the consumers have paid generously into that fund. Since 1982, more than $40 billion in direct payments and interests have been paid into the Nuclear Waste Fund. And so far, we have very little to show for it, just an $11 billion hole in the ground, to be exact. The Federal Government missed its statutorily-mandated deadline to start accepting nuclear waste in 1998. In the late 1990s and early 2000s, at least, the program had shown progress, notwithstanding that missed deadline.

However, since that time, efforts to block funding for the geologic disposal of nuclear waste at Yucca Mountain, as well as the Department of Energy's unlawful refusal to consider the project's licensing application, has kept the country in the exact same situation we occupied 28 years ago when Congress decided that Yucca Mountain should be the first site considered for the United States' permanent repository. The repercussions of the administration's failure to take title of nuclear waste and to develop the Yucca Mountain site have been substantial.

Now taxpayers from each of your constituencies, even those whose utilities have no stake in nuclear-generated electricity, continue to fund court-awarded damages from the Department of Justice's Judgment Fund for DOE's partial breach of contract.

The chairman and ranking member have described very well, I think, the history of some of these problems. So in the interest of cutting it short, I will move on to a few things NARUC views as solutions.

First, access to the billions collected by the Nuclear Waste Fund is essential for any interim or permanent solution to nuclear waste disposal to succeed. Appropriations for the waste disposal program remain under the spending cap applicable to all domestic programs, even though the NWF is self-financed. This forces, as you just heard, spending from the NWF to compete with other spending programs that never have had a dedicated funding stream. This approach is unfair to ratepayers, and inappropriate for a fund designed to finance the extremely protracted life cycle of a capital intensive disposal program.

It makes no sense to treat funds collected specifically to support the disposal of used commercial reactor fuel as discretionary. Over the life of the program, this approach has led to lower appropriations than were requested to accomplish this mission. Reduced funding contributed to project and schedule delays. Inadequate funding can only hamper efficient scheduling and planning, thereby driving up costs. The program must have full access to the revenues generated by consumers' fee payments if they resume, as well as to the balance of the NWF. This requires legislative changes to the NWPA.

As related above, the U.S. Government has not lived up to the promises made under the NWPA and subsequent congressional enactments. This is really not a matter of opinion, but of legal record. And of particular relevance is the decision that the chairman cited from the Circuit Court of Appeals regarding the DOE fee collection. I think this sorry history strongly suggests that the management of Federal responsibilities for integrated-used fuel should be more successful if they were assigned to a new organization with a single-minded devotion to the cause of permanently storing used fuel. Congress should charter a new Federal corporation dedicated solely to implementing the nuclear waste management program and empowered with the authority and resources, including direct access to the NWF outside the current appropriations process that is necessary for such a mission to succeed.

Congress would still have oversight over those, but they would be separately dedicated to the use by that organization. If implemented in the near term, these ideas can help create a solid foundation on which to build a viable spent nuclear fuel management program. NARUC is certainly open to the idea of interim solutions where nuclear fuel is stored, but these interim sites cannot be allowed to be mere parking lots in the absence of a permanent storage solution.

Thank you very much, and I look forward to questions.

[The statement of Mr. Kavulla follows:]

Testimony on behalf of the

National Association of Regulatory Utility Commissioners

by

The Honorable Travis Kavulla
NARUC President
Commissioner, Montana Public Service Commission

before the

United States House of Representatives
Committee on Energy & Commerce
Subcommittee on Environment and the Economy

hearing on

THE NUCLEAR WASTE FUND: Budgetary, Funding, and Scoring Issues

December 3, 2015

National Association of Regulatory Utility Commissioners
1101 Vermont Ave, N.W., Suite 200
Washington, D.C. 20005
Telephone (202) 898-2207, Facsimile (202) 898-2213
Internet Home Page http://www.naruc.org

Summary

In the following testimony, I make the following points on behalf of the National Association of Regulatory Utility Commissioners:

- America needs, and consumers have paid for, a permanent solution to nuclear waste disposal. It is time for Congress to reaffirm this core principle.
- The Nuclear Waste Fund (NWF) is a self-funded, special-purpose program—and it should be treated as such within the parameters of the federal budgeting and appropriations process.
- Congress should establish an independent body that has the single-minded mission of nuclear waste disposal, and this body should have access, subject to Congressional oversight, to the billions ratepayers have contributed for this purpose.

Good morning Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee on Environment and the Economy. Thank you for the opportunity to testify today on the Nuclear Waste Fund. My name is Travis Kavulla, and I am a Commissioner on the Montana Public Service Commission. I have the honor of serving as the President of the National Association of Regulatory Utility Commissioners (NARUC). NARUC applauds this Committee's tenacity and leadership on these issues.

NARUC is a non-profit organization founded in 1889. Our members are the public utility commissions in all 50 States and the U. S. 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 essential utility services as required by public convenience and necessity and to ensure that these services are provided under rates, terms, and conditions of service that are just, reasonable, and non-discriminatory.

State economic utility regulators are responsible for ensuring the safe, reliable, and affordable delivery of essential electric utility service in every State across the country. The success of the federal nuclear waste management program, funded by the consumers of electricity generated from the nation's nuclear power plants, is necessarily of keen interest. Both NARUC and its member commissions have dedicated a tremendous amount of time and resources to ensure that electricity consumers receive the services they have paid for.

NARUC and its State Commission members were at the table when the Nuclear Waste Policy Act of 1982 (NWPA) was developed and passed. At that time, and today, State regulators agree that users of electricity from nuclear power plants should pay for the federal nuclear waste management and disposal program.

And the consumers have paid generously into the fund. Since 1982, more than $40 billion in direct payments and interest have been paid into the U.S. Nuclear Waste Fund (NWF).[1]

Yet for those billions, so far, ratepayers – and the country – have nothing to show for it. The federal government missed its statutorily mandated deadline to start accepting nuclear waste in 1998.[2] In the 1990s and early 2000s, at least, the program had shown progress, notwithstanding the missed deadline. However, since that time, efforts to block funding for the geologic disposal of nuclear waste at Yucca Mountain, as well as the U.S. Department of Energy's unlawful refusal to consider the project's licensing application, has kept the country in the exact same situation we occupied 28 years ago when Congress decided that Yucca Mountain should be the first site considered for the United State's permanent repository.[3]

In 2010, after decades of scientific study and an investment of over $11 billion in the Yucca Mountain repository, the Administration – without any record of public process – unilaterally declared the site "unworkable," purported to withdraw the Yucca Mountain license application, and began dismantling the program, closing the DOE Office of Civilian Radioactive Waste Management. NARUC was one of many that opposed this attempt and was a petitioner in the

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[1] According to the U.S. Department of Energy Office of Inspector General's, *AUDIT REPORT – Department of Energy's Nuclear Waste Fund's Fiscal Year 2014 Financial Statement Audits* (November 2014), at 2, online at: http://energy.gov/sites/prod/files/2014/12/f19/OAS-FS-15-03.pdf (*2014 DOE Audit Report*), "[a]s of September 30, 2014, the U.S. Treasury securities held by the Department related to the NWF had a market value of $39.8 billion." This necessarily excludes the billions in ratepayer dollars already expended to characterize the Yucca Mountain site.

[2] In 1996, in *Indiana Michigan v DOE,* the DC Circuit ruled DOE had a duty to begin disposal of nuclear waste no later than January 31, 1998. (Case is online at: http://caselaw.findlaw.com/us-dc-circuit/1278574.html).

[3] In 1987, Congress directed U.S. Department of Energy (DOE) to focus on Yucca Mountain as the permanent repository. Over the next 20 years, DOE completed 5-mile and 2-mile tunnels into the mountain, including more than 180 boreholes to conduct experiments. By 2006, a Senate Environment and Public Works Committee report called Yucca Mountain the "Most Studied Real Estate on the Planet." See, http://www.epw.senate.gov/repwhitepapers/YuccaMountainEPWReport.pdf.

mandamus action that required the Nuclear Regulatory Commission to expend outstanding appropriations on the Yucca Mountain license review.[4]

Today, federal officials continue to "kick the cask" down the road. There is no nuclear waste program worthy of the name, despite the exhaustive studies and billions in ratepayer and taxpayer dollars spent. All that remains is the nuclear waste, which sits on site at nuclear reactors, some of them closed. This is not only uneconomic. It undermines confidence in nuclear power.

The repercussions of the Administration's failure to take title of nuclear waste and to develop the Yucca Mountain site have been substantial. Taxpayers from each of your constituencies, even those whose utilities have no stake in nuclear-generated electricity, continue to fund court-awarded damages from the Department of Justice Judgment Fund for DOE's partial breach of its contracts with electric companies that required DOE to take title to used fuel.

According to a September 2014 audit, $4.5 billion in damages has already been paid as a result of federal government inaction.[5] DOE estimates the total liability for the federal government will be about $27 billion, but that estimate includes the optimistic assumption that the department can begin to accept used nuclear fuel in 2021. *2014 DOE Audit Report*, at 20.[6] Industry estimates almost

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[4] See, *In re: Aiken county, NARUC, et al. v. Nevada*, No 11-1271, which notes: ("Our more modest task is to ensure...agencies comply with the law... Here, the Nuclear Regulatory Commission has continued to violate the law governing the Yucca Mountain licensing process. We therefore grant the petition for a writ of mandamus."), at: https://www.cadc.uscourts.gov/internet/opinions.nsf/BAE0CF34F762EBD985257BC6004DEB18/$file/11-1271-1451347.pdf.

[5] See, e.g., *Statement of Kim Cawley, Chief, Natural and Physical Resources Cost Estimates Unit, The Federal Government's Liabilities Under the Nuclear Waste Policy Act, before the Committee on the Budget, U.S. House of Representatives* (October 7, 2007), online at: http://www.cbo.gov/sites/default/files/10-04-nuclearwaste.pdf. ("In the absence of a federal underground repository to accept nuclear waste for storage, taxpayers... pay—in the form of legal settlements with utilities—for a decentralized waste storage system at sites around the country.");

[6] See footnote 1, supra; See also, *Harry Reid's Nuclear Taxpayer Waste, The legal bills for killing Yucca Mountain are billions and climbing,* Wall Street Journal (April 6, 2015), at: http://www.wsj.com/articles/harry-reids-nuclear-taxpayer-waste-1428362176.

double that projection. *Id.* Even the President's Blue Ribbon Commission estimated that every year of delay in accepting used nuclear fuel will increase this liability by approximately $500 million. *Blue Ribbon Commission on America's Nuclear Future Report to the Secretary (BRC Report)* at 80.[7]

The 31 States with retired[8] and operating nuclear reactors have an even greater incentive to press for some reform in how the federal program is funded.[9] There are currently over 74,000 metric tons of commercial spent fuel at reactor sites in the US. America's nuclear power reactors continue to produce roughly 2,000 tons of waste every year.[10] Each of those States has contributed millions to the corpus of the Nuclear Waste Fund (NWF). [11]

Access to the billions collected by the NWF is essential for any interim or permanent solution to nuclear waste disposal to succeed. As the BRC Report acknowledged, at 74:

> [F]or the waste management program to succeed, the nuclear waste funding mechanism must be allowed to work as intended so that the ability to implement the waste program is not subject to unrelated federal budget constraints.

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[7] Available online at: http://energy.gov/sites/prod/files/2013/04/f0/brc_finalreport_jan2012.pdf

[8] At least nine States have sites without an operating reactor that still are the current storage site for used nuclear fuel. California (Humboldt Bay, Rancho Seco, San Onofre) Colorado (Ft. St. Vrain) Connecticut (Connecticut Yankee) Florida (Crystal River) Illinois (Zion) Maine (Maine Yankee*) Massachusetts (Yankee Rowe*) Michigan (Big Rock Point) Oregon (Trojan) Vermont (Vermont Yankee) and Wisconsin (LaCrosse, Kewaunee) Compare NRC's Locations of Power Reactor Sites undergoing Decommissioning (June 26, 2015), online at: http://www.nrc.gov/info-finder/decommissioning/power-reactor/

[9] As of August 2015, the NRC oversees 99 licensed commercial nuclear power reactors operating at 61 sites in 30 States. NRC's Information Digest, 2015–2016 (NUREG-1350, Volume 27) (August 2015), at 3, available online at: http://pbadupws.nrc.gov/docs/ML1525/ML15254A456.pdf

[10] See NEI's "Onsite Storage of Nuclear Waste", online at: http://nei.org/Knowledge-Center/Nuclear-Statistics/On-Site-Storage-of-Nuclear-Waste.

[11] See Appendix A for a breakdown by State of payments in millions of dollars.

Congress holds the keys to make that progress happen. This hearing is a good start. The budgeting and appropriations process for the waste disposal program must change. Currently, appropriations from the NWF are considered as part of the total federal government budgeting process – not as allocation of the funds collected in the NWF.

That means any appropriations will score and increase the deficit. Appropriations for the waste disposal program remain under the spending cap applicable to all domestic programs, even though the NWF is self-financed.

This forces spending from the NWF to compete with other spending programs that never had a dedicated funding stream. This approach is unfair to ratepayers and inappropriate for fund designed to finance the extremely protracted life-cycle of a capital intensive disposal program. It makes no sense to treat funds collected specifically to support the disposal of used commercial reactor fuel as discretionary. Over the life of the program, this approach necessarily led to lower appropriations than were requested. *BRC Report* at 72. Reduced funding contributed to project and schedule delays (and obviously undermined the Yucca Mountain license review process.) Inadequate funding can only hamper efficient scheduling and planning thereby driving up costs.

NARUC's has considered the country's viable options. In a recent 2013 resolution,[12] NARUC focused in part on the NWF. Specifically, we stated that the NWF must be managed responsibly and used only for its intended purpose. The program must have full access to the revenues generated by consumers' fee

[12] See *Resolution Regarding Guiding Principles for Management and Disposal of High-Level Nuclear Waste* (February 6, 2013), available online at: http://www.naruc.org/Resolutions/Resolution%20Regarding%20Guiding%20Principles%20for%20Management%20and%20Disposal%20of%20High.docx

payments, if they resume,[13] and to the balance of the NWF. This requires legislative changes to the NWPA.

As related above, the U.S. government has not lived up to the promises made under the NWPA and subsequent Congressional enactments. This is not a matter of opinion, but of legal record, and of particular relevance to any discussion of the NWF is the November 2013 D.C. Circuit decision granting NARUC's request that the DOE suspend collection of the NWF fees.[14] The NWPA required electricity ratepayers to fund a one mil (one tenth of a cent) per kilowatt-hour fee to fund the NWF. Under the NWPA, the Secretary of Energy is obligated to evaluate whether collection of the fee will provide sufficient revenues to offset programs costs. In response to a suit filed by NARUC and the Nuclear Energy Institute (NEI), the United States Court of Appeals for the D.C. Circuit reasoned that the Secretary was not only responsible for reviewing the fee's adequacy, but also had an affirmative obligation to conduct an *annual* fee analysis. The court examined the last DOE fee assessment and found the Secretary's "determination" legally inadequate. The court identified many flaws in the DOE analysis. Among other things, it specified that the Administration could not logically deem Yucca Mountain unworkable and in the same sentence utilize it as a proxy to estimate the fee. The court chose, however, to remand and give the Secretary six months to comply with the NWPA by producing a revised fee assessment.

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[13] There is some question as to whether or when the fee should be restarted. After all, the NWF corpus generates over $1 billion each year in investment income. A July 2008 Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program, Fiscal year 2007 (DOE/RW-0591), available online at: http://pbadupws.nrc.gov/docs/ML0927/ML092710177.pdf, suggests, albeit in 2007 dollars, in Appendix B, Table B-1 "Annual Cost Profile" that the most that would be required for the program in any one year is $1.3 billion. Indeed, in the history of the program, *BRC Report* at 72, Congress has never appropriated more than 590 million in any one year to the program.

[14] See, *National Association of Regulatory Utility Commissioners v. DOE*, Case No. 11-1066 (Nov. 19, 2013), at: http://www.cadc.uscourts.gov/internet/opinions.nsf/2708C01ECFE3109F85257C280053406E/$file/11-1066-1466796.pdf.

On January 16, 2013, DOE released its updated fee adequacy analysis. NARUC and NEI immediately filed a motion to reopen the proceeding. The court determined the updated assessment was also flawed. Ultimately, on November 19, 2013, in a sharply worded opinion, the court ordered DOE to request Congress set the fee to zero, rejecting its request for yet another chance to "redo" the assessment as "so obviously disingenuous that we have no confidence another remand would serve any purpose." The decision compares DOE's analysis to the musical "Chicago," where the lawyer sings "give them the old razzle dazzle." DOE's last gasp request for both rehearing and rehearing *en banc* was denied on March 18, 2014. The fee was suspended shortly thereafter.

This sorry history strongly suggests that the management of federal responsibilities for integrated used fuel management should be more successful if assigned to a new organization with a single-minded devotion to the cause of permanently storing used fuel. Congress should charter a new federal corporation dedicated solely to implementing the nuclear waste management program and empowered with the authority and resources – including direct access to the NWF outside the current appropriations process – that is necessary for such a mission to succeed.

If implemented in the near term, these ideas can help create a solid foundation on which to build a viable spent nuclear fuel management program. NARUC is open to the idea of interim solutions where nuclear fuel is stored, rather than at reactor sites, at one or more central locations, pending the final development of a permanent repository. However, this approach must not become the same kind of accidentally long-term approach that on-reactor-site storage has become, due to the Administration's unwillingness or inability to permit Yucca Mountain. The United States needs, and consumers have paid for, a permanent storage solution – and nothing less.

Thank you again for the opportunity to be part of this critical discussion.

APPENDIX A

NEI Chart (April 2015) at: http://www.nei.org/www.nei.org/files/51/51e0beb9-e913-4429-9958-85aec23f43b7.htm

Payments Associated by Each State Are Based on Its Nuclear Plant Generation

State	Metric Tons of Uranium	Nuclear Waste Fund Contributions ($ M)
Alabama	3,570	962.1
Arizona	2,210	697.2
Arkansas	1,440	375.0
California	3,320	977.0
Colorado	30	0.2
Connecticut	2,180	467.7
Florida	3,220	903.6
Georgia	2,870	863.6
Idaho	130	0.0
Illinois	9,630	2,307.1
Iowa	500	141.2
Kansas	690	228.9
Louisiana	1,380	411.9
Maine	540	69.1
Maryland	1,470	432.9
Massachusetts	690	191.0
Michigan	2,820	844.1
Minnesota	1,310	456.7
Mississippi	940	253.5
Missouri	750	247.6
Nebraska	920	305.3
New Hampshire	620	201.8
New Jersey	2,840	782.5
New York	3,950	1,027.8
North Carolina	3,570	1,050.9
Ohio	1,240	386.0
Oregon	350	79.6
Pennsylvania	6,870	1,976.6
South Carolina	4,420	1,524.4
Tennessee	1,810	605.0
Texas	2,430	815.2
Vermont	710	121.3
Virginia	2,680	852.9
Washington	710	201.5
Wisconsin	1,460	423.9
Other	NA	7.6
Total	74,260	21,192.4

Notes:

Idaho is holding used fuel from Three Mile Island 2.

Used Fuel Data is rounded to the nearest ten and is as of December 2014, Nuclear Waste Fund Contributions as of December 31, 2014.

DOE suspended collection of the Nuclear Waste Fund fee in May 2014. Sources: Gutherman Technical Services; Department of Energy

Mr. SHIMKUS. Thank you very much.

For my colleagues, there are 7 minutes remaining on the floor to cast our votes. So we will, in a minute, recess. For our panelists, there are seven votes called. That is a good 45 minutes to an hour. So hang around the building, get coffee, and we will be back to delve more deeply into this. We thank you for your time. And with that I am going to recess the hearing.

[Recess.]

Mr. SHIMKUS. We will call the hearing back in order. Again, apologize for the long delay, but we have to do our job, which is voting on the floor also. Thank you for the opening statements. We will go into the questions. And I will begin. I will recognize myself 5 minutes to start the questioning.

The first one is for Mr. Kavulla. And I know, Mr. Kavulla, you have to leave. I have been informed. So when you have to go, just get up and go. Hopefully we will direct the questions that we can to you early enough to get responses, so hence, the first one.

At a recent subcommittee hearing to examine the issues associated with transportation of nuclear materials, expert witnesses testified that pursuing consolidated interim storage for spent nuclear fuel would likely increase life cycle costs as a result of having to ship material more than once. The last DOE life cycle cost analysis for Yucca Mountain estimated total transportation costs to exceed $20 billion over the associated 70-year national transportation campaign.

You stated your concern with the possibility that consolidated interim storage would increase the financial burden on ratepayers without a justifiable return on investment, such as a reduction in payment from the judgment fund. What exactly is necessary to provide assurance that any authorization for consolidated interim storage is in the interest of electric ratepayers?

Mr. KAVULLA. Thank you, Mr. Chairman, for that question. I think the answer is that there needs to be unambiguously a cost-benefit analysis done of this. My real concern, on behalf of NARUC, is that we would establish these consolidated storage sites as an interim solution, but then they would become de facto, permanent sites rather than the kind of parking lot that undergirds the concept.

So there needs to be more costing than has already been done. The sites, at least one of the sites that has raised its hand on a consent basis is one in New Mexico, but they have been very clear in that state that they are unwilling to go forward without the designation of a permanent repository. So I would imagine you would have difficulty of the same type you face in the Yucca Mountain issue with even identifying those interim locations.

So I think, my own personal opinion on this, is that you would need to have a clear linkage between the interim site and the permanent site in the same breadth, acknowledging that it may be a reasonable idea because, realistically, we are decades off of creating a permanent repository, one way or another.

Mr. SHIMKUS. Thank you very much.

Now, for Mr. Bearden and Mr. Cawley, in both your testimonies, you reference potential issues of double-counting previous revenue from the nuclear waste fee that has been collected over the pre-

vious 30 years. For clarification, if Congress were to appropriate funding from the Nuclear Waste Fund on activities for which it was collected, under our scoring rules, I guess my question is, would Congress be increasing the Federal deficit?

Mr. CAWLEY. Right. If next year, Congress were to appropriate $100 million from the Nuclear Waste Fund, that would add to the deficit in that year.

Mr. SHIMKUS. Mr. Bearden, would you agree?

Mr. BEARDEN. Well, most certainly I would agree with CBO in how they would score any impacts on the deficit. If funding were appropriated out of the Nuclear Waste Fund, within the discretionary spending caps, it would be part of that discretionary spending total and the effects it would have on the deficit.

Mr. SHIMKUS. What exactly, then, is accounted for in the Nuclear Waste Fund audit release this morning by the Department of Energy inspector general?

Mr. BEARDEN. I am not quite sure I understand your question. What is accounted for?

Mr. SHIMKUS. Yes. Obviously, the audit was released today, so what are they accounting for in the release for that audit in their numbers?

Mr. BEARDEN. Well, their numbers are reflecting what is the total balance of investments, which are the nuclear utility fee collections and the interest combined. That is available for discretionary appropriation, that $34.3 billion figure, by the end of fiscal year 2015. How Congress can use that money and the amounts each year are going to depend on the priorities when the discretionary spending caps.

Mr. SHIMKUS. Great. Let me just finish up with Mr. Kavulla. NARUC's previous testimony suggested that Congress could structure payments from the utilities into an escrow account which would not be provided to the Federal Government until funding is appropriated by Congress. Please describe how this would protect the ratepayers?

Mr. KAVULLA. So in the other witnesses' testimony, Mr. Chairman, you heard examples of funds that work in the way this one does. It's NARUC's testimony that this budget approach for something like the disposal of nuclear waste really doesn't make sense when you are talking about a life cycle of many, many decades, possibly in excess of a century. It shouldn't be subject to annual appropriation decisions by Congress.

The idea of an escrow account would be to maintain congressional oversight and authority over spending, even while making clear that the funding went into a fund available, for instance, by an independent body charged with oversight exclusively of used waste disposal. There are other examples of funds that are similar to this. The universal service fund that USEC administers is similar, special purpose fund that is subject in congressional oversight, but which is not subject to an annual appropriation.

Mr. SHIMKUS. Great. Thank you. My time has expired.

I was just going to end by saying, mandatory receipts, discretionary spending with possible deficit implications. That is why it is very confusing for us.

And I recognize Mr. Tonko for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair.

And, Mr. Cawley, you called the Nuclear Waste Fund an accounting mechanism. Is it a trust fund as we think of trust funds in a traditional sense?

Mr. CAWLEY. It is categorized in the budget as a special fund. Like other funds in the Federal budget, they are used to account for moneys. The Treasury manages all of the cash on a unified basis, so when we want to spend money that has accumulated in these funds, that requires new spending.

Mr. TONKO. Let me ask this then: The funding collected has already been used to offset past Federal deficits, so moving forward, that money would need to be appropriated as discretionary funding from the current fiscal year at that time. Do I have that right?

Mr. CAWLEY. That is right. Yes.

Mr. TONKO. OK. So from CBO's perspective, despite the collection of fees in the past, would a change in the law that would allow the waste disposal process to resume score and score significantly?

Mr. CAWLEY. I guess I am not sure what the change in the law would be, but in the simplest terms, allowing the waste program to go forward could be just the appropriation of X million dollars, and that would be costed along with all other discretionary appropriations in that year, presumably under the cap that controls all discretionary appropriations in that year.

Mr. TONKO. And, Mr. Bearden, are there other programs that use this accounting mechanism that are being appropriated discretionary funding annually based on a user fee paid to the Treasury?

Mr. BEARDEN. Yes, some of the examples that I provided in my testimony with discretionary funding are the Superfund Trust Fund, Leaking Underground Storage Tank Trust Fund, Uranium Enrichment Decontamination and Decommissioning Fund, those are other examples.

Mr. TONKO. Have these funds been as troubled with their accounting mechanism?

Mr. BEARDEN. Each of them has had their own set of issues and viewpoints. For example, the Leaking Underground Storage Tank Trust Fund receipts accumulated at a faster pace than Congress appropriated, under the discretionary process leading to a higher balance than moneys going out. That is an example of an issue with that particular fund. That has dedicated receipts, but the use of it is subject to discretionary appropriations.

Mr. TONKO. Thank you.

Let me toss out a hypothetical, and it would include either this or a future administration reevaluating Yucca Mountain, or Congress changing the law about the location of a permanent geologic repository for the uses of nuclear waste fund fees. Do you believe the Secretary of Energy, under existing authorities, could begin reassessing fees, which have been stopped since May of 2014?

Mr. CAWLEY. We think the fees could conceivably be charged again under administrative changes, absent a change in law. The court found, in our view, that DOE had not done a fee adequacy study correctly because it couldn't demonstrate if these fees were sufficient to pay the life cycle cost. Presumably, that study could be redone in a different way, and demonstrate to the court that

these fees either are sufficient or are insufficient to pay for the life cycle cost of the program.

In the original Act, DOE has the authority to administratively change the fee, present that proposed change to the Congress, and if Congress doesn't act, the fee change goes forward.

Mr. TONKO. And are there concerns with the existing contracts, with utilities that might make this more difficult?

Mr. CAWLEY. Might make a change to the fee difficult or a——

Mr. TONKO. Yes. Or the assessing of the fees or——

Mr. CAWLEY. I can't think of any.

Mr. TONKO. OK. And, Mr. Bearden, can you explain the process for changing this fee. There is analysis by the Secretary of Energy that determined the appropriate fee, but then it must be submitted to Congress, I believe, for adjustment. Is that——

Mr. BEARDEN. Yes, for review. Is that what you are asking?

Mr. TONKO. Yes.

Mr. BEARDEN. Yes. There is a process of a review for that.

Mr. TONKO. Thank you.

And, Mr. Kavulla, the industry estimates $50 billion in damages for utilities with DOE contracts. DOE's total liability estimate is $29 billion. Can you explain this discrepancy.

Mr. KAVULLA. Mr. Congressman, I really cannot speak for the industry on this point. I do know that DOE had suggested a number, I believe, that was nearly $20 billion in size. I am not sure of the $9 billion exposure, but it is true what you have said; in my testimony, there is a citation to an industry estimate of about $50 billion.

I think the bottom line here is that there is a large amount of exposure, and whatever the ultimate liability may be, there is a collection of $750 million annually with a lot of unresolved claims that are still pending.

Mr. TONKO. Thank you.

My time is up, so I yield back.

Mr. SHIMKUS. I thank my colleague and friend, and I turn to Congressman Johnson from Ohio for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman. And thank you, gentlemen, for joining us today.

Mr. Bearden, in addition to finding a disposal pathway for commercial spent nuclear fuel, the Nuclear Waste Policy Act required a determination regarding a management of the nuclear waste from atomic defense activities. What was the anticipated disposal path for that material?

Mr. BEARDEN. Well, there are possible pathways of disposal for that material, including a separate repository or a consolidated repository, and the administration had issued its finding of moving forward with planning for a separate repository for defense waste, if that is what you are referring to.

Mr. JOHNSON. OK. So what would it mean for defense accounts if we choose to pursue an entirely new disposal pathway for this type of material?

Mr. BEARDEN. Well, any disposal facility for defense nuclear waste would be subject to appropriation by Congress to have the resources available for certain.

Mr. JOHNSON. OK. Mr. Cawley, would that funding be subject to the current caps on defense spending under the Budget Control Act and, therefore, compete with other defense account activities as well?

Mr. CAWLEY. Sounds like it would, yes.

Mr. JOHNSON. I am sorry?

Mr. CAWLEY. It sounds like it would, yes.

Mr. JOHNSON. OK. All right. You know, the Department of Energy recently found that its estimated liabilities for failure to accept commercial spent nuclear fuel is over $23 billion. That is an annual increase over $1 billion. This estimate, of course, is predicated on achieving the Department's strategy on used fuel management, and their ability to begin accepting title to stranded spent nuclear fuel in 5 years.

So, Mr. Cawley and Mr. Bearden, will you describe how the development and operation of a pilot interim storage as the administration proposes would impact the overall estimated liability? And you can choose who goes first. I don't care.

Mr. CAWLEY. I have heard the Department's estimate of their liability of some $23, $24 billion described as depending on their implementation of their strategy which would have a storage facility during the next 10 years.

Mr. JOHNSON. So it is safe to say that it is significant?

Mr. CAWLEY. Yes.

Mr. JOHNSON. OK. Mr. Bearden, do you have a comment on that?

Mr. BEARDEN. Well, as with any strategy of any administration, it would depend ultimately on implementation and the assumptions that it would be made for that, for that to result in the outcomes that they are estimating. And certainly, that involves a lot of complexities, and CRS would be happy to work with the committee to discuss those issues and challenges with you at your convenience.

Mr. JOHNSON. OK. What portion of DOE's projected liability is tied to only the dozen sites that are completely decommissioned, absent removal of the spent nuclear fuel? Either of you want to comment on that?

Mr. CAWLEY. I don't have a specific answer to that question, but I do know that under the original contracts, at this point, DOE was to have removed approximately 40,000 metric tons of waste out of the some 72,000 metric tons of waste that exists. It doesn't address specifically the spent fuel at the facilities that have closed. Some of that, no doubt, should have been removed by this time.

Mr. JOHNSON. Can you take that question for the record, please, and do some research on that and get back to us?

Mr. CAWLEY. Certainly.

Mr. JOHNSON. OK. Thank you.

Mr. Bearden, the Nuclear Waste Policy Act included a number of provisions to provide financial assistance to State-affected local and tribal governments. Will you please describe what this funding was intended to support?

Mr. BEARDEN. There is a range of funding authorized subject to appropriation from the Nuclear Waste Fund for affected units of local government, states, and tribes. Some of that is for oversight during the licensing process and other assistance, and some of the

totals of that have been approximately $520 million, at least at the end of fiscal year 2009 that I am familiar with, and so, that assistance partly is to go for the oversight and the licensing process.

Mr. JOHNSON. Are you aware of how much funding has previously been directed to the State of Nevada and local and tribal governments?

Mr. BEARDEN. I do not have that figure with me today, but I would be happy to provide that as a follow-up response for the record.

Mr. JOHNSON. Mr. Kavulla, your organization is on record supporting reasonable economic benefits and incentives for host states and communities. Would you like to discuss very briefly—because my time is expired—the nature of those benefits and the role of Federal-State partnerships?

Mr. KAVULLA. Congressman, I would be happy to follow up in more detail, but briefly, we acknowledge that this is liability for a State to take on. We agree that there needs to be some concessions made for units of local government to take them on. But those need to be tied to, frankly, the scope of the responsibilities they are shouldering, and not, I think, just to give away that would ultimately be placed on the consuming rate-paying public——

Mr. JOHNSON. OK. My time has expired. Would you provide an expanded answer to that?

Mr. KAVULLA. I would be happy to.

Mr. JOHNSON. Mr. Chairman, I yield back.

Mr. SHIMKUS. The gentleman yields back.

We now recognize Mr. Green from Texas for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I am trying to get used to this Ways and Means Committee room. You think we could take some of our jurisdiction when we leave that they took from us over the years?

But anyway, I want to welcome our colleagues from the agencies.

The success of our Nation's nuclear waste management program is dependent on making fees raised from the Nuclear Waste Fund available as needed for construction, transportation, and storage of high-level nuclear waste. This is not the case currently. Congressional action, after the enactment of Nuclear Waste Policy Act, has sharply limited the ability of responsible agencies to access the funds to study, construct a storage facility, be it interim or permanent.

As the committee of jurisdiction, we must begin to process affixing this broken system, uphold the Federal Government's contractual obligations to the ratepayers, and ensure a clear path for the prompt licensing and construction of permanent storage facility.

Mr. Cawley, what is the current amount of money in the Nuclear Waste Fund?

Mr. CAWLEY. Current balance is shown on table 1 in my prepared testimony. It is about $34 billion.

Mr. GREEN. Pardon? $34 million or billion?

Mr. CAWLEY. Billion.

Mr. GREEN. OK. How much of the money has the Federal Government currently paid in damages to the electric utilities for failing to take the title of civilian nuclear waste by the required date?

Mr. CAWLEY. So far, we have paid approximately $5.3 billion. In the coming decade, we expect it will be about $5 billion more.

Mr. GREEN. You note in your testimony, several utilities have not paid their one-time fee into the Nuclear Waste Fund. Does CBO know how much these outstanding one-time fees are valued at?

Mr. CAWLEY. One-time fees currently have a value of about $1.6 billion.

Mr. GREEN. Is the Department of Energy currently doing anything to collect those outstanding fees from the utilities?

Mr. CAWLEY. The one-time fees was an option given to utilities back at the beginning of the Act, and they are due when their first delivery of waste to a repository is made.

Mr. GREEN. Mr. Kavulla, is our Nation's current system for high-level nuclear waste working for the people of your state?

Mr. KAVULLA. Well, Congressman, no. Montana has no nuclear waste and shouldn't be paying, frankly, for any of this. And the irony of the Federal policy is that through the damages awarded against DOE, even taxpayers of those States who have no connection with nuclear-generated electricity are, nonetheless, paying for this problem.

Mr. GREEN. As a supporter of nuclear energy and expansion, and coming from Texas where we are trying to look at a midlevel waste facility in West Texas that obviously we need—and if you want nuclear power, we have to have some place, whether it be the temporary storage on site, the interim storage, or ultimately the long-term storage, but I can't say we have the solution, because there is no country in the world that has long-term storage.

You know, France, who generates a great deal of their electricity from nuclear. Sweden, actually, has a big hole in the ground. But I asked how they afforded that, and they said, well, what they would call their local jurisdiction, it was a prototype, but they agreed they would never put anything in there. So, everybody wants their electricity turned on but we don't know where to put the nuclear waste.

Do you believe the ratepayers in Montana and other states represented by NARUC have confidence in the Federal Government and Congress to fix the current system?

Mr. KAVULLA. Well, I have confidence, I hope, Congressman, that your subcommittee will do something about this.

Mr. GREEN. I wish I had confidence we would fix it.

Mr. Bearden, in the last 50 seconds, how are PAYGO requirements created under the enactment of the NWPA impacting the Energy Department's access to funds currently in the Nuclear Waste Fund?

Mr. BEARDEN. Well, the access to those funds is dependent on the appropriations under the discretionary process, so it is the discretionary spending limits that are affecting the availability of moneys that Congress can prioritize each year out of the Nuclear Waste Fund.

Mr. GREEN. Has the Budget Control Act of 2011 limited the Federal Government's access to the money in the Nuclear Waste Fund?

Mr. BEARDEN. To the extent that there are caps on overall discretionary spending, that pressure that is on all discretionary spend-

ing and is also on appropriations that would come from the Nuclear Waste Fund.

Mr. GREEN. If Congress were to create a single-purpose, independent corporation for nuclear waste storage, how would Congress continue to ensure the strong oversight by such an entity?

Mr. BEARDEN. That would depend on the legislation that sets up the agency roles, and how that may be overseen and what the nature of that entity is, so it would not be possible to answer that without knowing all those details.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. SHIMKUS. Gentleman yields back his time.

And just for a point of information, last month, Finland's government became the first to approve construction on such a long-term storage—Finland—a deep underground repository after more than 30 years of efforts to find a suitable site. So maybe someday, Mr. Green. Maybe someday.

The chair now recognizes the gentleman from Mississippi for 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman.

And thanks to each of you, and for your knowledge and expertise on what is, overall, a very intriguing and challenging issue on how we go forward and what we are going to do. So thank you for your testimony.

And, Mr. Cawley, and I will probably ask you, I will direct this toward you. When the Department of Energy instituted the nuclear waste fee in the 1980s, it had to account for the cost to dispose the spent nuclear fuel generated prior to the passage of the Nuclear Waste Policy Act. And certainly, as you know, they did this by providing utilities the option to pay a one-time fee upfront or defer payment.

And I know, Mr. Bearden, you have discussed some of these issues on the structure and current value.

Mr. Cawley, with CBO's cash-basis scoring process, can you explain, how does CBO account for this one-time fee that is yet to be collected?

Mr. CAWLEY. So the one-time fee with the current value of approximately $1.6 billion is due upon delivery of the first amount of waste from the couple of utilities that chose that option. It hasn't affected the deficits in the past. It will affect deficits in the future if we receive that money. We don't really have an outlook for receiving that money, certainly in the next couple of years.

Mr. HARPER. Gotcha. As we have heard in some of today's testimony, when Congress appropriates funding by using the Nuclear Waste Fund authorization, it does not result in the overall increase in the amount of discretionary spending.

Mr. Cawley, does it make a difference for CBO scoring purposes whether or not the appropriation from the Nuclear Waste Fund, regardless of the specific nuclear waste management activity?

Mr. CAWLEY. I am not sure I got the question, but——

Mr. HARPER. Well, let me just ask this: This concept, would that concept apply for CBO's scoring of activities to support consolidated interim storage?

Mr. CAWLEY. If work on a consolidated interim storage were authorized, and there were appropriation out of the waste fund for

that, or out of the general fund for that, that would be scored as additional discretionary spending. And, again, presumably, that spending would come under current caps.

Mr. SHIMKUS. Would the gentleman yield?

Mr. HARPER. Yes.

Mr. SHIMKUS. But the authority to spend discretionary dollars in an interim plan would take a change in the current law?

Mr. CAWLEY. That is my understanding.

Mr. SHIMKUS. OK. Thank you.

Mr. HARPER. Mr. Cawley, therefore, is it correct that proposed legislation to authorize the development of a consolidated interim storage proposal would potentially be treated the same, whether or not the activities are authorized to be supported from the Nuclear Waste Fund?

Mr. CAWLEY. Spending funds from the general fund versus an appropriation out of the Nuclear Waste Fund would both have a cost.

Mr. HARPER. Mr. Kavulla, if I could ask you this: Your testimony calls for the establishment of an independent body to manage nuclear waste disposal. If Congress cedes its authority under the appropriations process, how can Congress maintain control over such an entity to assure it is fulfilling its legal obligations intended under the law and in the taxpayer interest?

Mr. KAVULLA. Congressman, let me answer the question this way: Under the appropriations process currently, you have oversight jurisdiction over the DOE and the NRC, and your jurisdiction has been flouted, candidly. So I think NARUC's recommendation is to establish not only oversight of whatever appropriation you escrow or give under the control of such a body, but, also, positive timelines and steps to that body so that you are not essentially ruling by the power of the purse through negations of agency acts, but directing an agency, this new independent body, to do specific things that are enforceable by entities, like NARUC and courts of law, so that no administration in the future can, again, act to drag its feet on this important question.

Mr. HARPER. Thanks to each of you. My time is almost expired so I will yield back.

Mr. SHIMKUS. Gentleman's time—he actually turns the balance of his time.

Seeing no other members and knowing that people have other places to go, we want to thank you for your time. And the record will be open for a couple days should other members want to submit. We would ask that you would turn those in a timely manner. And thank you, again, for your time.

And with that, I will adjourn the hearing.

[Whereupon, at 12:05p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. FRED UPTON

When President Obama took office in 2009, the national debt had just surpassed ten trillion dollars. Now, as we approach the final year of the Obama administration, that number will soon eclipse nineteen trillion dollars. This long-term financial burden will be passed along to our children and grandchildren. I was proud to be a partner in a bipartisan solution to reduce Medicare's long term liability by three trillion dollars when Congress fixed the Medicare Sustainable Growth Rate formula.

Now, I look forward to finding a bipartisan solution to reduce skyrocketing long-term liabilities in another important policy area, our nation's nuclear waste management policy.

For over thirty years, ratepayers, including my constituents back in Michigan who rely on clean nuclear power, paid a tax on electricity generated from commercial nuclear power plants to study, license, and construct a permanent repository for spent fuel. When the current administration decided the Yucca Mountain project was "unworkable," and illegally moved to withdraw its license application, it attempted to abandon a thirty-year, $15 billion investment. In 2013, the D.C. Court of Appeals rightly suspended the federal government's collection of the nuclear waste fee, reasoning that the absence of a repository program meant DOE could not collect the tax. It is time for consumers to get what they paid for: a decision whether Yucca Mountain can be licensed by the Nuclear Regulatory Commission. If that decision is yes, the Department of Energy should proceed with construction of the facility.

But the ratepayer's financial support is only one aspect of the funding story. This spring, Secretary Moniz announced a significant departure from the bipartisan, 30-year nuclear waste management policy in which both defense waste and commercial spent nuclear fuel are jointly disposed in a permanent repository located at Yucca Mountain, Nevada.

DOE is now seeking to redirect defense material, which has long been destined for Yucca Mountain along with commercial spent nuclear fuel. Ranking member Pallone and I wrote to Secretary Moniz to express our concerns about this decision. Central to our concerns is the potential budgetary impact of walking away from the scientific and technical work that was already completed, paid from our national security accounts, and starting over in a new location. The federal government has already spent $3.7 billion in defense funding to develop the Yucca Mountain site. With turmoil in the Middle East and threats on our homeland, that money would be better spent addressing these major and immediate national security concerns instead of grasping in the short term for a new shiny object.

I appreciate the testimony from the experts today about budget, funding and scoring issues with a nuclear waste management program.

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Thank you Mr. Chairman. Safe disposal of spent fuel from our nation's nuclear reactors is an important issue in the realm of our country's energy future. We must find a long term solution to the issue of nuclear waste and how to finance its safe storage.

Today's hearing focuses on the Nuclear Waste Fund and its budgetary, funding and scoring issues. Although the fund was intended to be "off budget," appropriations from the fund have scored as expenditures and lead to insufficient funds being made available to meet the needs of the program. As our country pursues interim storage solutions—and ultimately a permanent repository for spent nuclear fuel—it is critical that we ensure the funds necessary to safely transport and store this material are available. And we must work to identify steps we can take now to set the stage for real reform on permanent disposal in the future, regardless of where the disposal facility ends up being sited.

Whenever we have a discussion about the Nuclear Waste Fund and the safe disposal of spent nuclear fuel, it is also critical for us to consider ratepayers because they have paid billions of dollars into the fund and received very little in return. We also need to consider taxpayers who now find themselves paying for the failures of the program. We need to be focusing on efforts that can be enacted into law and that will move us forward over the next few years.

I am very interested in hearing from our witnesses today about the challenges and state of play regarding the Nuclear Waste Fund and our efforts to safely store spent nuclear fuel.

Thank you for holding this hearing, and I yield back the balance of my time.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225-2927
Minority (202) 225-3641

January 7, 2016

Mr. David Bearden
Specialist in Environmental Policy
Congressional Research Service
Library of Congress
101 Independence Avenue, S.E.
Washington, DC 20540-7210

Dear Mr. Bearden:

Thank you for appearing before the Subcommittee on Environment and the Economy on Thursday, December 3, 2015, to testify at the hearing entitled "The Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Thursday, January 21, 2016. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Will.Batson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment

MEMORANDUM January 21, 2016

To: House Committee on Energy and Commerce
Subcommittee on Environment and the Economy
Attention: Will Batson

From: David M. Bearden, Specialist in Environmental Policy, 7-2390

Subject: **Responses to Questions for the Record of a Hearing held by the Subcommittee on Environment and the Economy, House Committee on Energy and Commerce, December 3, 2015, "Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues"**

This memorandum responds to the questions you submitted for the record of a hearing held by the Subcommittee on Environment and the Economy of the House Committee on Energy and Commerce on December 3, 2015, at which I testified on behalf of the Congressional Research Service (CRS). The hearing examined budgetary, funding, and scoring issues for the Nuclear Waste Fund.

I have prepared the following responses to the questions you submitted to CRS for the hearing record. Each question and response is presented separately below in the same order as outlined in the letter from Chairman Shimkus that you forwarded to me on January 7, 2016.

Question

Much of the discussion regarding the nature of the Nuclear Waste Fund assumes that the funding for a used fuel management program is in a "lockbox" in a Treasury Department account waiting to be spent by the Department of Energy. Is this assumption accurate?

Response

Although some may use the term "lockbox" to describe certain accounts of the U.S. Treasury in terms of the accounts being dedicated to the funding of specific purposes, the statutes that authorize these accounts do not refer to them using this term. Section 302 of the Nuclear Waste Policy Act authorized the Nuclear Waste Fund as a "separate fund" of the U.S. Treasury.[1] Congress did not use the term "lockbox" in the language of the statute.

As discussed in the CRS testimony, the Nuclear Waste Fund is financed with receipts from the collection of fees from nuclear utilities, and interest accrued on the unobligated balance of receipts credited to the fund that are invested in U.S. Treasury securities. The fees are authorized to fund the permanent disposal of "spent" or used nuclear fuel (or solidified high-level radioactive waste derived from spent nuclear fuel)

[1] 42 U.S.C. §10222.

created from the generation of electricity involving civilian nuclear reactors, and various supporting activities including assistance to affected states, local governments, and tribes.[2]

The Nuclear Waste Fund is one of numerous separate or special fund accounts of the U.S. Treasury financed with receipts collected for specific purposes. These accounts function similarly to trust fund accounts, although they are not categorized within the federal budget as trust funds per se. As observed by the U.S. General Accounting Office (GAO, later renamed the Government Accountability Office) in the Third edition of the *Principles of Federal Appropriations Law*,

> Special fund accounts are established to record receipts collected from a specific source and earmarked by law for a specific purpose or program...As a general proposition, special funds operate like statutorily designated trust fund accounts with little substantive difference other than that the authorizing legislation does not designate them as trust funds...The Nuclear Waste Fund, 42 U.S.C. § 10222(c), is an example.[3]

The Anti-Deficiency Act generally provides that no federal department or agency may obligate federal funds absent an appropriation or in excess of an appropriation, regardless of whether the account financing the appropriation is a trust fund or special fund account dedicated to a specific purpose.[4] Receipts credited to some federal trust fund and special fund accounts are authorized as permanent (i.e., mandatory) appropriations available directly for obligation to carry out their dedicated purposes, whereas others are subject to discretionary spending under annual appropriations acts.

The Nuclear Waste Policy Act did not authorize permanent appropriations to carry out the purposes of the statute. Section 6 explicitly provides that the authority of the statute to "incur indebtedness, or enter into contracts, obligating amounts to be expended by the Federal Government shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts."[5]

The availability of receipts credited to the Nuclear Waste Fund to carry out the purposes authorized in the Nuclear Waste Policy Act therefore is subject to annual appropriations acts, and applicable limitations on federal spending. Consequently, receipts credited to the Nuclear Waste Fund are not available to the Department of Energy to obligate for the authorized uses of the fund until the receipts are appropriated, regardless of the accumulated balance.

Question

Will you clarify the differing nature of the authorized cap of the Nuclear Waste Fund relative to what's actually available to appropriate?

Response

The Nuclear Waste Policy Act did not establish a specific cap on receipts from the collection of nuclear utility fees to finance the Nuclear Waste Fund, nor on appropriations of these receipts credited to the fund. The statute establishes criteria for determining the amount of the fees. The level of appropriations is dependent upon receipts credited to the fund that are made available to the Department of Energy in annual appropriations acts, subject to limitations on total federal spending.

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[2] For further discussion of the authorized uses of the Nuclear Waste Fund and related issues, see CRS Report RL33461, *Civilian Nuclear Waste Disposal*, by Mark Holt.

[3] U.S. General Accounting Office, Office of the General Counsel, *Principles of Federal Appropriations Law*, Third Edition, Volume III, September 2008, GAO-08-978SP, available on the GAO website: http://www.gao.gov/products/GAO-08-978SP.

[4] 31 U.S.C. §1341.

[5] 42 U.S.C. §10105.

Limitations on Fee Collections

Section 302(a) of the Nuclear Waste Policy Act authorizes the collection of nuclear utility fees at a specific rate of "1.0 mil per kilowatt-hour" (equivalent to 1/10 of one cent per kilowatt-hour), up to a total amount that would be "sufficient to offset expenditures" for the authorized uses of the Nuclear Waste Fund.[6] As stated in the CRS testimony, the Department of Energy suspended the collections of nuclear utility fees on May 16, 2014, as a result of litigation in the U.S. Court of Appeals for the District of Columbia Circuit. This litigation challenged the present need for the fees, considering the status of the licensing process for a repository and the reasonableness of plans and assumptions upon which to estimate the funding needs.[7]

However, the fees are not capped. Collection of the fees potentially may resume if an adequate method were developed to estimate the funding needs to carry out the purposes of the Nuclear Waste Fund. As authorized in Section 302(a)(4) of the Nuclear Waste Policy Act, resumption of the collection of the fees would be subject to a congressional review process.

Limitations on Annual Appropriations

Appropriations of receipts credited to the Nuclear Waste Fund are subject to limitations on federal spending established both in statute and through congressional procedures. For example, the Budget Control Act of 2011 (BCA, P.L. 112-25) established caps on discretionary spending through FY2021.[8] Recently, the Bipartisan Budget Act of 2015 (P.L. 114-74), enacted on November 2, 2015, increased the caps on discretionary spending for FY2016 and FY2017.[9] Procedurally, congressional budget resolutions also limit total discretionary spending. In addition, each annual appropriations bill is limited by the sub-allocations made by the House and Senate Committees on Appropriations.

Appropriations from the Nuclear Waste Fund have been provided through the annual appropriations bill for Energy and Water Development and Related Agencies that includes funding for the Department of Energy. The accumulated balance of receipts credited to the Nuclear Waste Fund remains available for appropriation among the competing funding priorities within the cap on total discretionary spending and the sub-allocation for Energy and Water Development and Related Agencies each fiscal year.

As noted in the CRS testimony, the Department of Energy reported a balance of $34.3 billion in net investments and interest combined in the Nuclear Waste Fund, as of the end of FY2015.[10] Enacted December 18, 2015, the Consolidated Appropriations Act, 2016 (P.L. 114-113, H.R. 2029) appropriated $3.6 million from the Nuclear Waste Fund for the Nuclear Waste Technical Review Board, and did not include any appropriations derived from the Nuclear Waste Fund for other nuclear energy activities.[11]

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[6] 42 U.S.C. §10222(a).

[7] For a discussion of litigation related to the Nuclear Waste Fund, see CRS Report R44151, *Yucca Mountain: Legal Developments Relating to the Designated Nuclear Waste Repository*, by Todd Garvey and Alexandra M. Wyatt.

[8] The BCA also authorizes sequestration of mandatory appropriations to control federal spending. See CRS Report R42506, *The Budget Control Act of 2011 as Amended: Budgetary Effects*, by Grant A. Driessen and Marc Labonte.

[9] P.L. 114-74 also altered various other parameters of the federal budget. See CRS Insight IN10389, *Bipartisan Budget Act of 2015: Adjustments to the Budget Control Act of 2011*, by Grant A. Driessen.

[10] U.S. Department of Energy, Office of Inspector General, Office of Audits and Inspections, *Audit Report: Department of Energy Nuclear Waste Fund's Fiscal Year 2015 Financial Statement Audit*, OAI-FS-16-03, December 2015, available on the Department of Energy website: http://www.energy.gov/sites/prod/files/2015/12/f27/OAI-FS-16-03.pdf.

[11] The explanatory statement accompanying H.R. 2029 indicated that the agreement on the final bill "includes no funding derived from the Nuclear Waste Fund" for nuclear energy activities. See *Congressional Record*, Vol. 161, No. 184, Book II, December 17, 2015, p. H10103.

Question

Your testimony describes a permanent, indefinite appropriation known as the Judgment Fund to pay legal claims against the federal government. Will you please clarify why claims resulting from the federal government's breach of contract with utilities are paid for out of the Judgment Fund instead of the Nuclear Waste Fund?

Response

The Judgment Fund of the U.S. Treasury is a permanent, indefinite appropriation available to pay eligible claims owed by the United States for which payment is "not otherwise authorized by law" in separate appropriations.[12] If no separate appropriation is provided, payment from the Judgment Fund is authorized for *final* judgments, awards, compromise settlements, and interest and costs specified in the judgments, owed by the United States. The Judgment Fund only can be used for the payment of claims that are final, meaning the monetary award cannot be changed or overturned.[13]

The Nuclear Waste Policy Act authorizes the use of appropriations from the Nuclear Waste Fund for specific "radioactive waste disposal activities" and does not refer to the payment of eligible damage claims for the private costs of interim storage of "spent" or used nuclear fuel incurred by utilities. As specified in Section 302(d) of the statute, eligible radiation disposal activities include:

- identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, monitored, retrievable storage facility or test and evaluation facility;
- conducting nongeneric research, development, and demonstration activities;
- administrative costs of the radioactive waste disposal program;
- costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in a repository, to be stored in a monitored, retrievable storage site or to be used in a test and evaluation facility;
- costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at a repository site, a monitored, retrievable storage site or a test and evaluation facility site and necessary or incident to such repository, monitored, retrievable storage facility or test and evaluation facility; and
- assistance to affected states, local governments, and Indian tribes.[14]

Absent the authorized use of the Nuclear Waste Fund or another account of the U.S. Treasury, the Judgment Fund has been the source of federal funds to pay eligible damage claims owed by the United States for private interim storage costs incurred by nuclear utilities. As noted in the CRS testimony, the Department of Energy reports that a total of $5.3 billion had been paid from the Judgment Fund as of the end of FY2015 for eligible damage claims filed by nuclear utilities, and estimates a remaining liability of $23.7 billion for future claims as nuclear utilities continue to incur interim storage costs.[15]

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[12] 31 U.S.C. § 1304.

[13] For further discussion of the eligible uses of the Judgment Fund, see CRS Report R42835, *The Judgment Fund: History, Administration, and Common Usage*, by Vivian S. Chu and Brian T. Yeh.

[14] 42 U.S.C. §10222(d).

[15] U.S. Department of Energy, Office of Inspector General, Office of Audits and Inspections, *Audit Report: Department of Energy Nuclear Waste Fund's Fiscal Year 2015 Financial Statement Audit*, OAI-FS-16-03, December 2015, pp. 20-21.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225-2927
Minority (202) 225-3641

January 7, 2015

Mr. Kim Cawley
Chief of Natural and Physical Resources Cost Estimates Unit
Congressional Budget Office
D Street, S.W.
Washington, DC 20515

Dear Mr. Cawley:

Thank you for appearing before the Subcommittee on Environment and the Economy on Thursday, December 3, 2015, to testify at the hearing entitled "The Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Thursday, January 21, 2016. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Will.Batson@mail.house.gov.

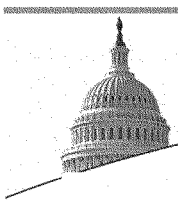
Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment



Congressional Budget Office

FEBRUARY 4, 2016

Answers to Questions for the Record Following a Hearing on the Nuclear Waste Fund Conducted by the Subcommittee on Environment and the Economy of the House Committee on Energy and Commerce

On December 3, 2015, the Subcommittee on Environment and the Economy of the House Committee on Energy and Commerce convened a hearing at which Kim Cawley, Chief of the Congressional Budget Office's Natural and Physical Resources Cost Estimates Unit, testified about the federal government's responsibilities and liabilities under the Nuclear Waste Policy Act. After the hearing, Chairman Shimkus and Congressman Murphy submitted questions for the record. This document provides CBO's answers.

Chairman Shimkus

Question. When the Department of Energy instituted the Nuclear Waste fee in the 1980s, it had to account for the cost to dispose of spent nuclear fuel generated prior to the passage of the Nuclear Waste Policy Act (NWPA). They did this by providing utilities the option to pay a onetime fee up front or defer payment. What is the current projected value of this onetime fee that has yet to be collected? How does CBO account for this outstanding fee using its cash basis scoring rules?

Answer. According to the Department of Energy (DOE), as of December 2015, the value of outstanding fees was $2.8 billion—$800 million in principal and $2 billion in interest.[1]

The NWPA established onetime fees to cover the costs of disposing of waste that was generated before the law was enacted. DOE provided utilities with options for paying that onetime charge, including the option to defer payment (in which case interest accrues on the outstanding fee). As of October 1, 2015, receipts from the onetime fees that remained unpaid and would become due once the agency began to remove waste amounted to about $3.1 billion, DOE estimated.[2] (That estimate reflects DOE's assessment of amounts due under the specific terms of contracts with individual utilities; CBO did not calculate its own estimate.) In November 2015, one utility made a payment totaling $309 million, lowering the outstanding

1. Information provided to the Congressional Budget Office by the Department of Energy in January 2016.

2. Department of Energy, *Fiscal Year 2015 Agency Financial Report*, DOE/CF-0144 (November 2015), http://go.usa.gov/cjfcY (PDF, 5.31 MB).

balance.[3] According to DOE, the current balance represents outstanding fees associated with 24 nuclear reactors owned by six different utilities. Interest accrues on the balances due from those onetime fees until the utilities pay them to the government; therefore, when the fees are paid, the amounts deposited will probably be significantly greater than the current balances due.

CBO's baseline projections for the 2016–2026 period do not include any further payments of onetime fees because CBO does not anticipate that the six utilities will pay them in the next 10 years. The federal budget records receipts from the onetime fees at the time they are collected. Although individual utilities can elect to pay them at any time, CBO does not expect most utilities to pay them until DOE begins to remove waste, and it does not expect DOE to start that process during the 10-year period covered by CBO's baseline projections. Under the NWPA, spending for the permanent geological disposal of nuclear waste is discretionary—that is, it is subject to annual appropriation acts—and lawmakers have not provided any new funding for such disposal since 2010. Even if the Congress provided such funding, CBO estimates that it would take DOE at least 10 years to complete the facilities necessary to enable it to begin to accept waste.

Congressman Murphy

Question. Mr. Cawley, will you please describe how CBO treats the $1.1 billion in "interest" that is accounted for in DOE's audit of the Nuclear Waste Fund which was released on December 3? Does that "interest" actually increase the federal government's resources to fulfill the obligations of the NWPA?

Answer. The Nuclear Waste Fund is an accounting mechanism in the federal budget that records the cash flows associated with the civilian nuclear waste program. The NWPA authorizes the Secretary of the Treasury to invest unspent balances of the fund in nonmarketable Treasury securities. According to DOE, nearly $1.4 billion in intragovernmental interest was credited to the fund in fiscal year 2015, bringing the fund's unspent balance to $34.3 billion.[4] In 2016, CBO estimates, an additional $1.5 billion in interest earnings will be credited to the fund, bringing the fund's end-of-year balance to $35.8 billion. Those interest payments are recorded in the budget (and in CBO's projections) as outlays of the Treasury and as receipts to the Nuclear Waste Fund; they therefore have no net effect on the budget.

Because the interest earnings attributable to such investments are intragovernmental transfers, they do not generate additional resources to fulfill the government's obligations under the NWPA. However, such amounts add to the sums that the NWPA authorizes to be appropriated for the civilian waste disposal program.

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3. Information provided to the Congressional Budget Office by the Department of Energy in January 2016. See also Bureau of the Fiscal Service, Department of the Treasury, *Monthly Treasury Statement of Receipts and Outlays of the United States Government for Fiscal Year 2016 Through November 30, 2015, and Other Periods* (January 2016), http://go.usa.gov/cEx3e (PDF, 612 KB).

4. Department of Energy, Office of Inspector General, Office of Audits and Inspections, *Department of Energy Nuclear Waste Fund's Fiscal Year 2015 Financial Statement Audit,* Audit Report OAI-FS-16-03 (December 2015), http://go.usa.gov/cEx5G.

Question. How does the Congressional Budget Office treat the Judgment Fund in the context of the federal budget?

Answer. CBO's baseline projections for mandatory spending reflect the agency's best estimate of anticipated spending from the Judgment Fund over the next 10 years. For a given year, CBO generally assumes that overall spending from the fund will remain in line with the average amount of spending recorded in recent years. Currently, CBO projects such spending will total about $30 billion over the next 10 years, including about $5 billion in spending related to DOE's contractual liabilities to nuclear utilities.

The Judgment Fund is a permanent, indefinite appropriation from the Treasury that is available to pay claims and final judgments against the United States that cannot legally be paid from any other existing appropriation. The fund has no fiscal year limitations, and there is no need for the Congress to appropriate money to replenish it. The fund provides the authority for the government to pay for most court judgments and settlement agreements entered into by the Department of Justice to resolve actual or imminent lawsuits against the federal government—including those related to DOE's partial breach of its contractual obligations to permanently dispose of civilian nuclear waste.

Because spending from the Judgment Fund is governed by permanent authorizing law and is not contingent on annual appropriation acts, it is classified as mandatory (or direct) spending in the federal budget. Annual spending from the fund adds to overall budget deficits. Generally, agencies are not required to reimburse the Judgment Fund for payments made on their behalf unless the Congress appropriates money specifically for that purpose. Over the past five years, spending from the fund has averaged about $3 billion annually, ranging from about $1 billion in 2010 to $5.5 billion in 2013.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225-2927
Minority (202) 225-3641

January 7, 2015

Mr. Travis Kavulla
President
National Association of Regulatory Commissioners
1101 Vermont Avenue, N.W., Suite 200
Washington, DC 20005

Dear Mr. Kavulla:

Thank you for appearing before the Subcommittee on Environment and the Economy on Thursday, December 3, 2015, to testify at the hearing entitled "The Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Thursday, January 21, 2016. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Will.Batson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachments

N A R U C

National Association of Regulatory Utility Commissioners

Responses to Questions for the Record

From

Travis Kavulla
NARUC President
Commissioner, Montana Public Service Commission

On Behalf Of
The National Association of Regulatory Utility Commissioners
For The Hearing

Before the House Energy & Commerce Committee
Subcommittee on Environment and the Economy

Entitled
"The Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues"

Held December 3, 2015

From Congressman John Shimkus

At a May Environment and the Economy Subcommittee hearing, Greg White, then with the Michigan Public Service Commission and now NARUC's Executive Director, stated consolidated interim storage proposals must be fully vetted from a cost perspective to determine whether it would actually reduce the long-term financial burden on the ratepayers you represent. To your knowledge, has there been a thorough and credible lifecycle analysis that would support an interim storage facility? What sort of factors would be part of a study?

There has not been such a study, in my opinion. The most comprehensive study I could find is somewhat dated and was commissioned by the Blue Ribbon Commission on America's Nuclear Future (BRC). It is titled Spent Nuclear Fuel Management: How Centralized Interim Storage Can Expand Options and Reduce Costs, by Hamal, Carey and Ring (May 16, 2011) and is available online at: http://cybercemetery.unt.edu/archive/brc/20120620222955/http://brc.gov/sites/default/files/documents/centralized_interim_storage_of_snf.pdf. Page 14 of this analysis lists eight other "studies" completed between 1985 and 2010.

NARUC has not taken a position on the merits of any of these studies.

I have been unable to locate more recent studies. Of course, none incorporate possible/probable interim storage scenarios/sites that have emerged in the last two or three years. Moreover, even a cursory review of the BRC study suggests some additional analysis might be appropriate.

For example, on page 54, the BRC Study, referencing the costs of duplicative transportation associated with interim storage, concedes the obvious: "There will be substantial cost savings if the centralized facility can be located at the permanent repository. If a modest delay could make the difference to assure this location, it probably would be worthwhile from a cost perspective." The study also concedes that (i) estimates of the actual overall transportation costs associated with a new facility "are very uncertain" (page 37) and (ii) uncertainties with transportation costs might create differences in possible savings that consolidated storage (under the listed conditions) might provide – specifying that if "transportation costs are very high (driving up the relative cost of centralized storage when fuel has to be moved twice), future decision makers could modify the centralized [interim] storage option. They need not stay on a high-cost path." Id. at page 17.

I do not have a comprehensive list of the specific factors that must be covered in any updated study. Certainly, the BRC study raises many of the crucial issues that must be considered. Some issues would benefit from additional analysis – including an examination of a range of updated transportation scenarios, as well as a determination of the "amount, basis of need, and duration" for any interim storage. See, NARUC's February 6, 2013 Resolution Regarding Guiding Principles for Management and Disposal of High-Level Nuclear Waste, online at: http://www.naruc.org/Resolutions/Resolution%20Regarding%20Guiding%20Principles%20for%20Management%20and%20Disposal%20of%20High.docx.

Logically, to take this path, Congress would want to be certain there is an enforceable timeline as well as unavoidable requirements to assure completion of a permanent disposal site. Any other approach is irresponsible. Without some reasonable projection on when and where permanent disposal sites may open, it will be impossible to provide any useful projection of the likely costs of interim storage. Even the Blue Ribbon Report, at xii, specifies that "efforts to develop consolidated storage must not hamper efforts to move forward with the development of disposal capacity. To allay the concerns of states and communities that a consolidated storage facility might become a *de facto* disposal site, a program to establish consolidated storage must be accompanied by a parallel disposal program that is effective, focused, and making discernible progress in the eyes of key stakeholders and the public." {emphasis added}

The conclusions, beginning on page 55, of the BRC study do not sugar coat the difficulty of the analysis or its use as a decision making tool. It clearly "involves complicated issues and tremendous uncertainty." Ratepayers should not bear additional costs unnecessarily just to shift the costs of interim storage from one federal billfold (the judgment fund) to another (the NWF or other federal funding). The NWF targets a permanent repository. NARUC is on record in a 2013 resolution as specifying that "[t]he Nuclear Waste Fund must be used only for purposes intended in the Nuclear Waste Policy Act and Congress should not divert the fund to other uses." The same resolution also specifies: "The BRC Report recommendations for consolidated interim storage represent a new use for the Nuclear Waste Fund that should be authorized only after consideration of the costs and benefits involved."

From Congressman Bill Johnson

Your organization is on record supporting reasonable economic benefits and incentives for host States and communities. Would you explain the nature of those benefits and the role of Federal-State partnerships?

Like Congress, NARUC as an association cannot define particular level of benefits (and burdens) as "reasonable" without examining specific proposals. Context matters. The nature and scope of the various benefits are constrained by social and political context, as well as the needs and requirements of host communities. It appears that at least some in States like Nevada and Texas are willing to consider such proposals. The range of incentives that might be included is wide.

One report from 2010, captioned International Benchmarking of Community Benefits related to Facilities for Radioactive Waste Management (Commissioned by EDRAM – the International Association for Environmentally Safe Disposal of Radioactive Materials – online at: http://www.edram.info/uploads/media/2010-01_EDRAM_Com_Benefits_Final_ENG_.pdf, lists actual (and expected) benefits to communities of local disposal facilities. NARUC in no way endorses this white paper. However, it does raise as one possible "economic benefit" extra "funds for local-socio-economic development."

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