

**Testimony on behalf of the
National Association of Regulatory Utility Commissioners (NARUC)**

by

The Honorable David C. Boyd

**CHAIRMAN, NARUC COMMITTEE ON ELECTRICITY
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before the

**United States Senate
Committee on Energy and Natural Resources**

hearing on

The Nuclear Waste Administration Act of 2013

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Good afternoon Chairman Wyden, Ranking Member Murkowski, and Members of the Committee. My name is David Boyd. I am a Commissioner from the Minnesota Public Utilities Commission and the Chair of the National Association of Regulatory Utility Commissioners (or NARUC) Committee on Electricity. I am honored by the invitation to appear before you today.

NARUC was founded in 1889. Our members include utility commissions in all fifty States, D.C., and U.S. Territories. Like Congress and this Committee, NARUC is bipartisan. I represent a group of in-State experts whose interests are precisely aligned with each Senator in this room. It is unlikely any other stakeholder in this sector cares more about the impact of the current impasse on Yucca Mountain and the continuing build-up of waste in 33 States across the country on the citizens of your States, than the NARUC member residing in your State. Our members remain directly responsible for retail electricity rates and service in each of your States.

As your States' electric utility regulators, we are intimately aware of the rapidly accruing costs on both ratepayers and taxpayers. Because of the program failures, your constituents, either through electric rates or through the taxpayer-funded Judgment fund, have paid billions for re-racking of the utility spent fuel pools to accommodate more spent fuel, expensive on-site dry cask storage, increased security and to characterize the Yucca Mountain repository site. And they continue to pay.

NARUC member commissions in the 40 States served by nuclear-generated electricity have been involved in the troubled history of nuclear waste disposal since 1982. In the intervening thirty-plus years, we have been an integral component of the waste disposal policy debate, testifying frequently, engaging the Blue Ribbon Commission on America's Nuclear Future (BRC) at multiple levels, and suing the federal government to require compliance with the laws (i) mandating review of the Yucca Licenses and (ii) requiring suspension of the electric ratepayer surcharge when the government has effectively dismantled the only currently lawful disposal alternative.

Significantly, this involvement is driven by consensus and bipartisan advocacy resolutions passed by NARUC members. The most recent, passed in February of this year, is appended to this testimony. Since 1994, NARUC has passed 31 resolutions focused solely on this issue. Since 1991, our witnesses have continually testified that “the government has our money—we have their waste.” Fifteen years have lapsed since the 1998 deadline for the Department of Energy (DOE), as mandated by law, to accept waste. Instead of fulfilling their obligations, the federal government has delayed and ultimately stopped all work on the program, even though ratepayers continuing paying for a permanent repository, taxpayers continuing paying for the DOE's inability to dispose of the waste, and States continue storing the government's waste. To put a finer point on it, the government now has even more of our money and the States now have even more of their waste.

I commend each of you for the efforts and tenacity that produced this legislation and for holding this hearing today. Unquestionably, some provisions of S.1240 are significant

improvements over the status quo. However, others seem problematic and could continue or even potentially exacerbate the same problems which plague the current management scheme. In this testimony, I will try to highlight both.

NARUC Principles

There are four substantive positions, which NARUC adopted in the February 2013 resolution, that act as the foundation for my comments: First, we have specifically urged adoption of the BRC recommendations on the creation of a new organization outside of DOE with sole responsibility to manage nuclear waste. Second, NARUC's member commissioners are best positioned to protect ratepayer interests in nuclear waste disposal issues and must be part of the board of directors and any oversight bodies for the new entities. Third, the federal government must improve its dismal record on waste disposal. And, fourth, "the Administration and the Nuclear Regulatory Commission should comply with the law passed in 2002 approving Yucca Mountain as the repository site by completing the licensing process." NARUC's February 2013 resolution also points out that ratepayer costs for permanent disposal should be minimized. Interim storage is not a panacea, and should be used only where necessary and cost-effective. So while NARUC has specifically endorsed some consolidated interim storage, it is crucial that the amount, basis of need and duration of such interim storage is examined and not allowed to divert or delay the progress toward a permanent disposal site. Continued storage at permanently shutdown plants is unacceptable because it imposes costs on ratepayers without equivalent benefits and prohibits economic reuse of the site, whereas, relocation and consolidation would likely reduce the government's liability and improve security. Finally, NARUC joins with others that urge Congress not to adopt any structure that replicates the entire range of well-

recognized problems that stymied progress on both the Yucca Mountain license review and resulted in the wholesale dismantling of the disposal program.

We believe your legislation is, overall, a step in the right direction.

Outstanding Yucca Mountain Concerns

Geologic disposal is a critical element of a sustainable used nuclear fuel and high-level radioactive waste management program. While not expressly reaffirming the requirements of the Nuclear Waste Policy Act (NWPA), the Nuclear Waste Administration Act of 2013 does *not* preclude its long-overdue enforcement. The bill should be revised to require action responding to the important statutory requirements to complete the review of the still-pending license for nation's first permanent repository at Yucca Mountain. NWPA is the law and should be enforced. Congress should provide the appropriate funding and direction to both the Nuclear Regulatory Commission (NRC) and the Department of Energy for the completion of the NRC's review of the Yucca Mountain license application for construction authorization. Ratepayers deserve to know whether the billions they've invested in the Yucca Mountain facility resulted in a safe site for the permanent disposal of high-level radioactive waste as years of independent scientific research indicates.

Title II - Management of the Nuclear Waste Program

In Title II, Sections 201-205, the bill sets up a new agency to assume the responsibilities of the Secretary of Energy on siting, licensing, construction and operation of nuclear waste

facilities. An Administrator, Deputy Administrator, and 5 member oversight board are to be appointed by the President, with the advice and consent of the Senate.

This is an improvement over the discussion draft as S.1240 moves the responsibility from DOE, an Executive agency, to an independent agency and it no longer requires the appointment of three federal officials to the Oversight Board. However, the proposed structure is inferior to a single-purpose federal corporation. The BRC recommended a similar approach to ensure accountability, *insulate the organization from political interference* and excessive turnover, and develop and implement a focused, integrated program. NARUC is on record specifically endorsing the adoption of the Blue Ribbon Commission's recommendations. As the BRC report suggests, a new management entity should be created outside of the Department of Energy with the sole purpose of managing the federal government's used nuclear fuel and high-level radioactive waste program. Key attributes of that entity include clear legislative authority, access to needed funding, and insulation from political interference. NARUC endorses a federal corporation model. The structure proposed in S.1240 does not address the political problems that plague the current management scheme – problems that have stymied progress and wasted taxpayer and ratepayer resources. A key aspect of this new “gov-corp” approach would be a Board of Directors that included several of NARUC's members. It would be logical to assign that Board, not the gov-corp, the responsibility to evaluate the adequacy of the Nuclear Waste Fund fees collected from ratepayers.

Title III – Functions

In Title III, S. 1240 outlines the functions of the new agency – which includes in Section 303 a requirement for the Administrator to site, construct and operate a pilot facility for storing priority waste, one or more additional facilities for non-priority waste, and one or more repositories. It outlines a consent-based procedure for siting these new facilities.

NARUC is still carefully evaluating this section of the bill. In our February resolution, we specifically endorse a consent-based approach to siting by requesting that new legislation require, as S. 1240 does, any new waste management organization to “engage with States and local governments in a more collaborative manner that can be guided by a negotiated consent agreement among the involved parties, whether for storage or disposal facilities.”

The resolution also points out that:

[c]ontinued storage at permanently shutdown plants is unacceptable because it imposes costs on ratepayers without equivalent benefits and prohibits economic reuse of the site, whereas, relocation and consolidation would likely reduce the government’s liability and improve security. The BRC report cites a study that contends that the savings from consolidated storage for this stranded spent fuel would be enough to pay for the cost of the storage facility. On an interim basis, only, pending development of full capacity of the permanent repository, it is better to store spent fuel at one (or more) central location(s) than to leave it at reactor sites. DOE and the utilities should pursue any and all such possibilities with a sense of urgency.

Laudably, this section of S.1240 recognizes the need for disposal. However, the recognition is limited. S.1240 should provide strong incentives for the agency to site a permanent disposal facility as soon as possible. While providing a consent-based process for siting additional repositories is positive, the bill’s target date of December 2048 (Section 504(b)(C)) for

such a repository to be operational is not acceptable. The date is taken from the DOE Strategy's proposed repository date. That document provides no support for this "new" target date – which is after all THIRTY FIVE YEARS from now. Such a target date effectively eliminates any sense of urgency necessary to timely compel government action. Moreover, the deadline is so distant that potential hosts for consolidated storage facilities would be justifiably nervous about becoming de facto permanent sites. Congress and the Administration should instead support timely completion of the Yucca Mountain process and call for a more reasonable (and far less distant) date for an additional repository sited under a consent-based approach.

Title IV – Funding and Legal Proceedings

In Title IV, Sections 401-403, the bill sets up a new Working Capital Fund where ratepayer NWF assessments (currently about \$765 million per year) are deposited and available to the agency without further appropriation. It specifies that no fees can be paid into this fund after December 31, 2025 unless the Administrator is operating a nuclear waste facility by that date. The fees already collected in the NWF (about \$28.2 billion as of January 2013) remain subject to appropriation. Significantly, the Administrator must take the costs resulting from S.1240 into account when determining whether insufficient or excess revenues are being collected to ensure cost recovery.

Access to Annual Assessments: NARUC, obviously, has a strong interest in how the Nuclear Waste Fund functions. We will have an equally strong interest in how any Working Capital Fund will function. The federal government has collected billions from ratepayers and in return has given them a very expensive hole in the ground that the government is blocking any access to. While not a perfect solution, S.1240's annual direct funding option is a tremendous improvement over the current system. Ideally, S.1240 should assure "full access to the corpus of the

Nuclear Waste Fund” limited to supporting “achievement of repository program milestones” without additional appropriations. However, the guarantee that the putative entity, hopefully a gov-corp, will have access to fees on a going-forward basis is one way around the pressures inherent in the appropriations process. Still, this provision could be improved by also requiring the transfer of future accrued interest on the Nuclear Waste Fund and one time payments to the new Working Capital Fund.

Linkage to “Nuclear Waste Facilities” vs. a Repository: NARUC has not taken position on the specifics of any linkage requiring action on a repository. However, the requirement to require cut-off of assessments in 2025 is an improvement over the current procedure. It should, however, be amended to specify a working repository instead of just “nuclear waste facilities.” That would provide strong incentives to expedite the repository siting process.

Evaluation of the Adequacy of Ratepayer Assessments: As noted earlier, the assessment of the adequacy of the fees should be conducted by a Board that includes State commission members, not by the Administrator. Moreover, the requirement on ratepayers to not only fund a new agency but all the costs resulting from S.1240 is inappropriate. For example, our February resolution specifies that: “The DOE, not electric utility ratepayers, must be accountable for the financial consequences of its failure to begin accepting waste in 1998.” Section 406(b)(1)) of S.1240 requires utilities to settle existing lawsuits against the federal government to have access to future storage facilities. This effectively shifts the current government liability for non-performance (via the taxpayer funded Judgment fund) to electric ratepayers. NARUC has not endorsed and likely will not endorse such an approach. Performance remains the key to reducing

the federal government's liability. Moreover, the specification in Section 308(c) that the portion of the cost of developing, constructing, and operating the repository or storage facilities attributable to defense wastes "shall be allocated to the Federal Government and paid by the Federal Government into the Working Capital Fund," is a welcome and necessary component of any disposal plan.

NARUC's Resolution also specifies that 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." It is far from clear that the broad storage plans outlined in S.1240 reflect such considerations. These interim storage costs are needed only because the government has failed to permanently dispose waste in a working repository. At the same time, it appears an interim storage facility to concentrate waste currently stored at shuttered facilities may be appropriate. The BRC report cites a study that contends the savings from consolidated storage for this stranded spent fuel would be enough to pay for the cost of the storage facility.

We continue to closely examine S.1240 and discuss various provisions with other stakeholders. NARUC commends all of you for your efforts to break the current logjam on nuclear waste policy. We will help any way we can.

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

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) has been actively involved in the national policy and program to permanently dispose of high-level radioactive nuclear waste, including spent nuclear fuel from commercial nuclear plants, with keen interest and frustration since 1982; *and*

WHEREAS, The Nuclear Waste Policy Act of 1982 (NWPA) established that the U.S. Department of Energy (DOE) shall enter into contracts to dispose of spent nuclear fuel from commercial nuclear plants in return for the payment of fees by the generators or owners of such spent fuel; *and*

WHEREAS, Utility companies serving customers with electricity generated from civilian nuclear reactors hold those contracts, pay the fees and pass the cost of such fees on to ratepayers at the current level of approximately \$750 million per year in deposits to the Nuclear Waste Fund; *and*

WHEREAS, The Nuclear Waste Fund is a separate fund established in the U.S. Treasury to finance radioactive waste disposal activities and fee deposits, plus interest earnings, since 1982 less appropriations leave a balance of \$28.8 billion as of October 2012; *and*

WHEREAS, What DOE considers to be adequate revenue is being collected for waste disposal, but only a small fraction gets appropriated each year; *and*

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

WHEREAS, Court decisions and settlement agreements stemming from DOE's breach of the waste disposal contracts continue to add to the federal liability that DOE estimates will reach \$22.3 billion by 2017; *and*

WHEREAS, Costs to the federal government, and hence, U.S. taxpayers, due to liability for partial breach of contract suits, increase by approximately \$500 million from the Judgment Fund for each additional year after 2017 that DOE fails to begin accepting spent fuel for disposal; *and*

WHEREAS, The decommissioned nuclear reactors that exist at nine sites in eight States impose costs on ratepayers without equivalent benefits and prohibit economic reuse of the sites; *and*

WHEREAS, So far, over eighty percent of operating reactors have been relicensed or are pending relicensing by the Nuclear Regulatory Commission, adding 20 years to the commercial service life of each reactor; *and*

WHEREAS, Comprehensive nuclear waste legislation intended to put the troubled program back on track has been introduced in Congress many times, but has not been enacted; *and*

WHEREAS, The most abrupt change in direction for the disposal program came in 2009 when President Obama decided building a repository at Yucca Mountain was not a “workable option” and took actions to terminate the project there despite the fact that the repository at Yucca Mountain was approved by law; *and*

WHEREAS, The Secretary of Energy appointed the Blue Ribbon Commission on America’s Nuclear Future (BRC) which reviewed the waste situation and made its recommendations to the Secretary in early 2012; *and*

WHEREAS, The Nuclear Waste Principles adopted by NARUC first in 1994 and revised in 1997, 2000 and 2008, bear re-examination for continued validity in view of the evolving policy and program activities, and the Subcommittee on Nuclear Issues-Waste Disposal having conducted such a review in 2012; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2013 Winter Committee Meeting in Washington D.C., adopts the following principles to guide NARUC representation with the Administration and Congress:

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

- NARUC supports the national policy established by Congress in 1982 in the NWPAA that the best, long-term solution to isolating nuclear waste from the environment is permanent disposal in a geologic repository.
- Reprocessing of spent fuel is worthy of research, but even if determined to be technically and economically feasible, will not eliminate the need for a permanent repository.
- The Administration and the Nuclear Regulatory Commission should comply with the law passed in 2002 approving Yucca Mountain as the repository site by completing the licensing process.

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

- The imbalance between Nuclear Waste Fund collections and appropriations must be corrected. In today’s fiscal climate, it will be a challenge to re-start funding a waste program that has had zero funding the past three years even though “dedicated” fee revenue continues to flow steadily to the Fund.
- Full access to the corpus of the Nuclear Waste Fund must be assured to the DOE to support achievement of repository program milestones.

- The DOE, not electric utility ratepayers, must be accountable for the financial consequences of its failure to begin accepting waste in 1998.
- One of the tasks for DOE in 2013 is to conduct a fee adequacy assessment that can credibly show that repository, storage, and benefit expenses of the re-started waste management program can be supported by annual fee revenue, earned interest, and the certainty of the “repayment” of the Waste Fund corpus in full.
- The 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.

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

- Current reactor-site spent fuel storage is safe but quantities to be stored have exceeded or will soon reach existing capacity limits. Retaining spent fuel indefinitely at reactor sites was never intended and is unacceptable.
- Continued storage at permanently shutdown plants is unacceptable because it imposes costs on ratepayers without equivalent benefits and prohibits economic reuse of the site, whereas, relocation and consolidation would likely reduce the government’s liability and improve security. The BRC report cites a study that contends that the savings from consolidated storage for this stranded spent fuel would be enough to pay for the cost of the storage facility.
- On an interim basis, only, pending development of full capacity of the permanent repository, it is better to store spent fuel at one (or more) central location(s) than to leave it at reactor sites. DOE and the utilities should pursue any and all such possibilities with a sense of urgency.
- 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.
- Proposals to have DOE assume responsibility (“take title”) for spent fuel at reactor sites and continue to store it on-site indefinitely should not be implemented.
- DOE must honor its contracts with utilities to remove spent fuel so ratepayers will not be charged for both onsite storage and Nuclear Waste Fund fees indefinitely.

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

- Whether DOE was unable to achieve its NWPA responsibilities due to mismanagement or to factors beyond its control can be debated, but the BRC makes a sound case for creating a new organization, outside DOE, with sole responsibility to manage nuclear waste. NARUC supports this concept, which would require legislation.
- Since the former waste management organization was disbanded in 2010, a new organization would be needed even if responsibility is retained by DOE.
- The new organization should be charged to engage with States and local governments in a more collaborative manner that can be guided by a negotiated consent agreement among the involved parties, whether for storage or disposal facilities.
- The NWPA already has provisions for use of the Nuclear Waste Fund to provide benefits to affected States and localities as an incentive to host a repository that could be amended if a benefits agreement is negotiated that advances the siting process.
- NARUC should follow up on the BRC recommendation that a public utility commissioner be appointed to an oversight board having responsibility to evaluate the adequacy of the fees.

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

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

Sponsored by the Committee on Electricity

Adopted by the NARUC Board of Directors, February 6, 2013