

December 19, 2005

Damages in store for nuke utilities Industry sues over the government's failure to open Yucca

By Benjamin Grove – Las Vegas Sun -- Washington Bureau

WASHINGTON -- Next month marks another depressing anniversary for the nation's nuclear power plants: Eight years that the government has not lived up to its promise to construct Yucca Mountain by 1998.

But lawyers for the nation's nuclear utilities say 2006 could be the year they begin reaping billions of dollars in lawsuit damages from the federal government -- spell that taxpayers -- over the broken contract.

"In the majority, if not all, the cases I would expect that the utilities will get significant damages," said Jay Silberg, a Washington lawyer with Shaw Pittman, who is involved with 19 of the 60 lawsuits that utilities have filed against the government since 1998.

Congress had promised a grand opening of a permanent high-level waste repository for the nation's nuclear plants at Yucca by Jan. 31, 1998. But the day came and went as delays continued to plague the proposed dump program.

Energy Department officials now say Yucca could open by 2012, but critics contend Yucca is bogged down indefinitely in a legal, technical and regulatory morass.

Meanwhile, nuclear utilities -- specifically, their electricity customers -- have continued to pay for Yucca. The industry paid for much of the \$8 billion invested in Yucca so far, and much of the nearly \$18 billion that currently sits in a national nuclear waste fund established to pay for the underground repository.

The utilities say the government's failure to open Yucca forces them to pay to store their highly radioactive waste twice -- at their plants, and at Yucca -- with no return on the investment.

And the radioactive garbage is still piling up. Nuclear power plants in the past five decades have accumulated roughly 62,000 tons of spent fuel from their reactors, according to the Nuclear Energy Institute, a trade industry group.

Plants were designed with waste cooling pools to store the material until the government came for it. But many of the pools are full, and plants have had to construct outdoor, above-ground "dry cask" storage facilities for the overflow.

So the industry sued -- 60 lawsuits filed by 57 utilities in 33 states that operate many of the nation's 103 operating nuclear reactors and some decommissioned ones.

It has been a years-long slog through the federal courts, as judges waded through arcane legal issues and the technical specifics of each case.

Three trials involving five utilities -- Yankee Atomic Electric Co., Maine Yankee Atomic Power Co., Connecticut Yankee Atomic Power Co., the Sacramento Municipal Utility District and Tennessee Valley Authority -- have concluded, but judges are not expected to rule until next year, lawyers said.

Another big trial involving Southern Co. is near completion. And four other trials are set to begin in 2006.

The combined "three Yankees" case was tried in the summer of 2004, but the utilities are still waiting for a judge's decision, said the utilities' attorney, Jerry Stouck.

"I expect decisions in the next few months, and if we're right, we're going to see some big numbers coming out of these cases," Stouck said.

The Yankee utilities sought roughly \$100 million each for damages through 2002. The courts have effectively ruled that utilities can only collect damages up through the date of the case. So the utilities plan to continue going back to court seeking more money until Yucca is constructed, the lawyers said.

"Look, the DOE is not performing," Stouck said. "The utilities had to build all these storage facilities -- to me it is a no-brainer. Of course there are going to be damages. At some point, the DOE is going to have to start paying. But until the courts rule, they aren't going to be rushing for the checkbook."

So far, only one utility, Exelon Corp., has reached a settlement with the Justice Department. Exelon in August 2004 won \$300 million for waste storage costs for its 17 nuclear reactors, for the period from 1998 to 2010.

Settlement talks between other utilities and the Justice Department are under way, but government sources would not comment on their status.

Nevada officials have suggested that there is a way out of holding taxpayers liable for waste storage, at least in future years -- by using the money from the waste fund to pay plants for on-site storage.

In effect, Nevada lawmakers last week introduced a bill aimed at accomplishing that goal. The legislation directs the Energy Department to take ownership of the waste as it sits in dry-cask storage at the plants, paid for with money from the waste fund.

But that legislation is a long way from being approved, and the Energy Department has reiterated its commitment to constructing Yucca Mountain.

So the lawsuits steam ahead, with industry estimates of total liability to the government as high as \$56 billion or more. (Yucca itself was estimated to cost \$58 billion.)

That figure is wildly exaggerated, Energy Department officials say. The department estimates damages at just \$2 billion to \$3 billion, a spokesman said.

"Whatever it is," utility lawyer Silberg said, "it's not chump change."

Benjamin Grove can be reached at (202) 662-7436 or at grove@lasvegassun.com.

This article was posted at:
<http://www.lasvegassun.com/sunbin/stories/text/2005/dec/19/519842461.html>