

**BEFORE THE  
UNITED STATES SENATE**

**COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS**

**TESTIMONY OF THE HONORABLE JAMES Y. KERR, II  
COMMISSIONER, NORTH CAROLINA UTILITIES COMMISSION  
ON BEHALF OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

**ON**

**“Examination of the Licensing Process for the Yucca Mountain Repository”**

**October 31, 2007**



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Good morning Madame Chairman, Ranking Member Inhofe, Members of this Committee, and distinguished panelists. Thank you for holding this important hearing on one of the most critical issues facing our Nation's energy policy.

My name is Jim Kerr. I am a member of the North Carolina Utilities Commission (NCUC). I also serve as the President of the National Association of Regulatory Utility Commissioners (NARUC), and I am testifying today on behalf of that organization. In addition, my testimony reflects the views of the NCUC. On behalf of NARUC and the NCUC, I very much appreciate the opportunity to appear before you this morning.

I ask that my testimony be made a part of the record and I will summarize our views.

NARUC is a quasi-governmental, non-profit organization founded in 1889. Our membership includes the State public utility commissions serving all States and territories. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. Our members regulate the retail rates and services of electric, gas, water, and telephone utilities. We are obligated under the laws of our respective States to ensure the establishment and maintenance of such utility services as may be required by the public convenience and necessity and to ensure that such services are provided under rates and subject to terms and conditions of service that are just, reasonable, and non-discriminatory.

Madame Chairman and Members of this Committee, NARUC's interest in this matter is simple. State utility regulators and the Nation's ratepayers more than 25 years ago bought into the basic agreement underlining the Nuclear Waste Policy Act of 1982:

- The federal government is responsible for safe, permanent disposal of commercial spent nuclear fuel (and other government nuclear waste); and,
- Utilities which produced the spent fuel in making electricity and—most importantly, their ratepayers—would pay a fee to cover disposal costs.

To date, the ratepayers and utilities have faithfully upheld their end of the bargain—paying more than \$27 billion in fees and interest into the Nuclear Waste Fund. For your information, I have attached a listing of payments (page 6) into that fund for ratepayers in each State, for inclusion in the record of this hearing. These ratepayers have little to show for their “investment” as, by law, waste disposal was to have begun in 1998 and current Department of Energy schedules indicate such disposal will not occur before 2017. Unless Congress acts to allow full access to annual fee revenue for this program, even that date is not realistic.

As Congress is well aware, the federal government entered into contracts based on that 1998 acceptance schedule and federal courts have found DOE to be liable for waste-acceptance delay costs which DOE estimates could be \$7 billion or more. This all means that, right now, ratepayers are currently *paying twice* for spent fuel storage: they pay the utilities for their disposal fee payments, *and* they pay for storage of the waste that was to have been removed by now. Moreover, we find it unfair that while Congress

appropriates a small fraction of the Nuclear Waste Fund annual fee revenue to the repository program, the balance of that revenue is used for other unrelated government activities while, in effect, accumulating \$20 billion in “IOUs” in the Fund.

Madame Chair and Members of this Committee, the ratepayers of this country did not choose the site for this repository. Congress did that in 1987 and affirmed the suitability of Yucca Mountain by joint resolution in 2002. DOE seems at long last to be on the verge of submitting a license application to the Nuclear Regulatory Commission (NRC), the independent agency given the responsibility under the Nuclear Waste Policy Act to carefully examine the safety and other technical merits of the proposed facility. We understand the NRC will conduct its review process with public scrutiny and over a three- to four-year period. We are aware of and fully support the right of the State of Nevada to raise contentions in the review process. State utility regulators do not have the skills or charter to evaluate the repository plans; we wish that others would withhold judgment until they see the application.

President Jimmy Carter said over 25 years ago that resolving civilian waste management problems shall not be deferred to future generations. Those who oppose building a repository at Yucca Mountain (the only site Congress directed be evaluated for this purpose), when asked what alternative they would propose, all seem to support variations of leaving it where it is, which was never the intent when these reactors were permitted nor does it heed President Carter’s charge. If the repository solution is abandoned, what do we tell the communities adjoining the 72 reactor sites in 35 States

where the spent fuel is stored today? What do the utilities seeking to invest in new nuclear power plants tell their prospective neighbors? What do we tell the ratepayers that have already invested more than \$27 billion? When will they get a refund?

There is another issue to consider in the context of this hearing. Madame Chair, your committee is moving forward on legislation that would place limits on the growth of carbon emissions. For States and regions such as the Southeast, where I am from, there is a definite need for nuclear generation to be part of a diversified generation strategy if we are to be serious about limiting the growth of carbon emissions. If Congress decides to place limits on carbon-emitting generation, then nuclear generation, renewables, energy efficiency, and conservation must all be part of the solution. This means that the question of nuclear waste must be resolved.

It is an open question as to what links there may be between “solving the waste problem” before considering investing in new or even replacement nuclear reactors. In the “nuclear world,” where safety and reliability are cardinal principles, it seems ironic that the major element of unreliability facing the U.S. nuclear industry seems to be whether the federal government will provide the disposal “services” promised in law and contracts.

In conclusion, the ratepayers have been patient through the years of delay for this program and can probably wait for the NRC to carefully review a well-presented license application. But, in order for the NRC to review the license, the Department of Energy

needs to execute their plan to submit the high-quality application they have pledged to do. Further delay only adds to the government liability, which will be paid out of the federal government Judgment Fund, not the Nuclear Waste Fund. This means that all taxpayers will bear this financial burden.

Ratepayers and neighbors of 104 reactors look for the utilities and the NRC to assure them that the spent fuel is safely and securely stored where it is today. NARUC intends to continue to press Congress to manage the ratepayers' investment in the Nuclear Waste Fund as it was intended in the Nuclear Waste Policy Act and to put a stop to the diversion of fee revenue to other unrelated uses.

Thank you for this opportunity to present our views. I look forward to answering any questions you have.

**NUCLEAR WASTE FUND  
RATEPAYER PAYMENTS BY STATE  
THROUGH 6-30-07 (MILLIONS OF DOLLARS)**

STATE	PAYMENTS 1 mill/kwh, One Time+Int	RETURN ON INVESTMENTS as of 9/30/06	TOTAL (PAY+RETURN)	DEBT*	FUND ASSETS** (TOTAL +DEBT)
AL	477.5	307.2	784.7	0	784.7
AR	302.6	194.6	497.2	167.8	665.0
AZ	225.2	144.9	370.1	0	370.1
CA	896.0	576.4	1472.4	0	1472.4
CO	0.2	0.1	0.3	0	0.3
CT	257.8	165.8	423.6	343.0	766.6
DE	40.2	25.9	66.1	0	66.1
FL	754.8	485.5	1240.3	0	1240.3
GA	586.0	376.9	962.9	0	962.9
IA	217.2	139.7	356.9	43.3	400.2
IL	1587.1	1020.9	2608.0	930.7	3538.7
IN	216.5	139.3	355.8	220	575.8
KS	115.3	74.2	189.5	0	189.5
KY	126.8	81.6	208.4	0	208.4
LA	274.2	176.4	450.6	0	450.6
MA	309.2	198.9	508.1	156.3	664.4
MD	343.5	221.0	564.5	0	564.5
ME	47.2	30.4	77.6	111.8	189.4
MI	262.8	169.0	431.8	189.5	621.3
MN	286.3	184.2	470.5	0	470.5
MO	216.9	139.5	356.4	5.1	361.5
MS	141.7	91.1	232.8	0	232.8
NC	1340.5	862.3	2202.8	0	2202.8
ND	15.9	10.2	26.1	0	26.1
NE	168.8	108.6	277.4	0	277.4
NH	68.7	44.2	112.9	22.8	135.7
NJ	624.5	401.7	1026.2	188.2	1214.4
NM	65.5	42.1	107.6	0	107.6
NY	717.5	461.5	1179.0	483.5	1662.5
OH	392.2	252.3	644.5	31.2	675.7
OR	75.1	48.3	123.4	0	123.4
PA	1173.2	754.7	1927.9	63.6	1991.5
RI	4.7	3.0	7.7	5.8	13.5
SC	600.6	386.3	986.9	0	986.9
SD	5.7	3.7	9.4	0	9.4
TN	468.4	301.3	769.7	0	769.7
TX	652.7	419.9	1072.6	0	1072.6
VA	616.2	396.4	1012.6	0	1012.6
VT	87.8	56.5	144.3	135.5	279.8
WA	145.5	93.6	239.1	0	239.1
WI	383.6	246.8	630.4	0	630.4

<b>SUBTOTAL</b>	<b>15292.1</b>	<b>9836.9</b>	<b>25129.0</b>	<b>3098.1</b>	<b>28227.1</b>
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<b>FEDERAL</b>	<b>19.8</b>	<b>12.7</b>	<b>32.5</b>	<b>0</b>	<b>32.5</b>
<b>INDUSTRY</b>	<b>16.8</b>	<b>10.8</b>	<b>27.6</b>	<b>0</b>	<b>27.6</b>

<b>TOTAL</b>	<b>15328.7</b>	<b>9860.4</b>	<b>25189.1</b>	<b>3098.1</b>	<b>28287.2</b>
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\*Funds owed for fuel burned before 1983 but not yet paid by utilities (as allowed by DOE contract)

\*\*before withdrawals for expenditures by DOE

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