



N A R U C  
National Association of Regulatory Utility Commissioners

October 25, 2011

Honorable Lee Hamilton  
Lieutenant General Brent Scowcroft  
Co-Chairmen  
Blue Ribbon Commission on America's  
Nuclear Future  
1000 Independence Ave. SW  
Washington, DC 20585

**Re: Comments on Draft Report to the Secretary of Energy**

Dear Co-Chairman Hamilton and  
Co-Chairman Scowcroft:

The National Association of Regulatory Utility Commissioners (NARUC) continues to have strong interest in the work of the Blue Ribbon Commission and welcomes the opportunity to comment on the Draft Report to the Secretary of Energy. The document is clearly written and covers a wide spectrum of technical, social, institutional and public policy issues pertaining to the management and disposition of government and commercial high-level radioactive waste.

NARUC has participated in four of the regional BRC public meetings and has appreciated the informal contacts with the high-caliber professional staff who have been helpful in amplifying on aspects of the Draft Report. There is much substance in the Draft Report and our attached comments only cover the highlights. We regret the demise of the civilian radioactive waste management organization within the Department of Energy and the loss of program knowledge as a new implementation organization is contemplated and eventually formed. Meanwhile, the communities await some assurance that spent fuel currently stored at active and former reactor sites will not be there forever and that ratepayers will begin to see some return on their investment. Many have hopes that development of consolidated interim storage can be put on a "fast-track" and that the near-term non-legislative actions in Section 8.3 can be promptly taken, but the history of this program is that little is as easy as it seems. Sooner or later the successful implementation of recommendations of the Commission will require sustained leadership and national resolve. Your final report can summon that resolve.

  
Charles D. Gray  
Executive Director

## National Association of Regulatory Utility Commissioners

### Comments on

### Blue Ribbon Commission on America's Nuclear Future Draft Report to the Secretary of Energy

#### Prior Comments and Correspondence

NARUC has written to the Commission and given testimony at several BRC meetings. These comments may repeat, supplement or refine points previously made. We have found the organization and conduct of the meetings, the quality of reports of the Commission and Subcommittees, supplement issue papers and the archiving of those materials and public comments to be very enlightening and helpful. The Commission has been generous and patient in affording opinions to be heard from a wide spectrum of viewpoints.

#### Summary of NARUC Recommendations

1. That the Yucca Mountain license review be completed.
2. Clarify the scope of consolidated interim storage.
3. That NARUC be represented if a Waste Fund Oversight Commission is formed.
4. That the report be more clear that the Nuclear Waste Fund is proposed to be used to provide consolidated interim storage and that the NWPA be amended.
5. Include recommendations on transition to the new waste management organization.
6. That the repository be a shared government and commercial waste facility unless a comprehensive study with stakeholder participation makes a compelling case for separate disposal.

These are indicated by partial underline in the text and with a **bold** corresponding number.

#### Yucca Mountain

While we understand the Commission's adherence to the guidance you were given by the Secretary of Energy that the BRC is not a siting board and the statement in the draft report that all of your recommendations can and should be implemented regardless of what happens with Yucca Mountain, we believe the Commission should have recommended **1.** that the NRC be required to complete the license review in the interest of science and to inform the search for and development in the new consent-based approach by the new organization. The

termination by the NRC of the license review short of a conclusion leaves unsettled whether or not the site was shown to meet pre- and post-closure regulatory requirements or whether the contentions raised that the site was technically flawed are valid or not.

### **Consent-Based Approach to Siting and Development of Waste Facilities**

There seems to be broad agreement that the “top-down” and heavy-handed manner of choosing a repository site, the intense counter-reaction and the politically-tinged way in which the Yucca Mountain site was declared to be “not a workable option” were sad, wasteful experiences. The social scientists and other witnesses before the BRC spoke of “mistrust” by many who were opposed to the site. Section 6, drawing upon more successful experiences in Finland and Sweden, expresses hope that by embracing the principles and practices of an adaptive, staged management approach to siting and developing nuclear waste facilities, whether geologic repositories or consolidated interim storage, can be more successful. The report advocates the “consultation and cooperation” approach to the extent that it obviates the need for a State-level veto (as is currently in the NWPA and was invoked in the Yucca Mountain case.) We, too, would like to believe that a more respectful and incentivized siting process with the recommendations in the NAS *One Step at a Time* report can lead to a more successful outcome. It will require patience and may seem to take too long, but could yield more durable results.

Section 6.3 refers to the new approach to siting and embraces the stepwise recommendations of the *One Step at a Time* report. We have not researched fully the status of General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories (10 CFR Part 960), but believe that it remains in force, although it was superseded by 10 CFR Part 963 solely for Yucca Mountain. However the preferred recommendations from *One Step at a Time* get adopted into regulation form there will need to be some reconciliation with or wholesale replacement of 10 CFR Part 960.

It would seem that the general siting guidelines should be developed at an early stage before communities with interest in hosting a repository (or consolidated storage facility) will know what the search criteria are. It will interesting to see, for example, if access to rail becomes a mandatory feature. DOE hedged on preference for rail or highway for Yucca Mountain until the draft Environmental Impact Statement stage of that project, leading to a late-stage decision to build several hundred mile rail line for between \$3-5 billion, that conceivably could have been a disqualifier in the site search stage.

We mention that incentives may help gain public acceptance. Section 6.7 discusses how the new waste management organization should be given more authority and flexibility to negotiate benefits agreements. We have some additional views in Appendix A.

## **NOPE**

There is common usage of NIMBY to describe the expressions of opposition to siting of unappealing facilities by would-be neighbors. This can sometimes be as strongly felt by more distant neighbors than by those who live in the immediate vicinity of the proposed site. We take note of the generally supportive stance of Yucca Mountain by Nye County where the repository site is located, yet the strongest opposition came from more-populous Clark County.

In addition to the NIMBY phenomena, the Commission heard from a substantial number of people (at the regional meetings and in bulk mailings to the website) who expressed fear and strong opposition to both geologic repositories, consolidated storage and transportation to either. They don't want any more spent fuel produced and urge that whatever spent fuel exists be placed in hardened on-site storage, apparently indefinitely. This goes beyond NIMBY to NOPE—Not On Planet Earth. We understand the fear, but simply remind all that the NWSA at its essence says that it is *national policy* that spent nuclear fuel (and other HLW) shall be disposed of in a geologic repository. Moreover, since the Commission is recommending a consent-based process to seek and eventually dispose of spent fuel in a repository that may be decades away, we believe there are benefits to developing consolidated interim storage in a more efficient and presumably more secure site even though that will cost more money and will require “double handling” to get it to an interim site rather than shipping directly to a repository.

### **Consolidated Interim Storage**

We don't fully agree with the Commission's statement that elements of the strategy are not new to those who have followed the program over the years. The recommendation that consolidated central or regional interim storage is not new, but this is the first time that it is being proposed to the Federal Government, whether the Department of Energy or a new organization. Heretofore, DOE has resisted efforts to mitigate the burden imposed on used fuel owners by DOE's failure to meet the statutory and contractual obligations to begin waste disposal in 1998. Contending that developing a central interim storage capability was beyond its authority and would be a distraction from concentrating on getting a permanent repository built, the agency acted as though it would prefer to take its chances in court as the utilities inevitably sued and are being awarded damages or making settlement agreements.

We have urged away-from-reactor interim storage since 1994. It is unclear what quantity or criteria for being chosen for consolidated central storage is being recommended by the Commission. We understand and support the need to relocate the stranded spent fuel from the nine decommissioned sites and other decommissioning sites in the coming years, but are skeptical of the claim on page 41 that savings achieved at centralized consolidated facilities would be enough to pay for the facility. We certainly envision economies of scale benefits and security enhancement, but we see a distinction between spending monies collected for disposal from ratepayers to achieve savings in damage payments avoided from the taxpayer-funded Judgment Fund. We don't know the magnitudes involved or the potential need for a fee

increase, that in our view was avoidable had DOE taken more interest in central interim storage twenty years ago. The net effect of the presumed use of the Nuclear Waste Fund to pay for used fuel consolidated storage going forward is to require ratepayers to pay for avoidable costs stemming from DOE's failure to meet the 1998 waste acceptance schedules.

There might be some equity concerns among owners who are all paying fees, but some are being relieved of storage of some of their spent fuel which is being moved to consolidated storage to be managed by the waste management organization while others may have to continue to manage spent fuel in on-site storage at their expense. Perhaps the new organization can develop a supplemental fee for services basis applicable to just the customers who are provided storage services.

The Draft Report refers to consolidated central storage having the benefit of "preserving options," to allow advances in technology or other factors to improve the economics of reprocessing. Yet, elsewhere there are statements that suggest the purpose of consolidation is to begin to reduce the government liabilities for its partial breach of contracts with the utilities. The scope (tons of waste) should be made more clear. 2.

We agree with working with the utilities to give first- in- line priority to the used fuel stored at decommissioned sites. The legal analysis by the Commission legal advisor dated October 11, 2011 supports the assumption that DOE has authority within the Standard Contract to deviate from the oldest-fuel-first principle.

The legal analysis also points out a nuanced benefit of consolidated storage in terms of greater flexibility in thermal management for repository loading sequence.

There were repeated expressions of concern by witnesses before the Commission and by the commissioners themselves, that in order to gain public acceptance for consolidated interim storage, there must be credible concurrent progress on permanent disposal facilities. That is expressed as an imperative on page x of the executive summary. It needs to be adopted as a guiding principle for the new organization and by all those who must support it.

## **Permanent Disposal**

The Draft Report says a deep geologic repository is needed for nuclear materials "with a low probability of re-use," and takes the position that regardless of what happens with Yucca Mountain, a second repository site is needed. We agree with the worthy attributes of the proposed "consent-based" approach to siting. Respect for potential host communities must be a cornerstone of an open process. Lessons from the successes in Finland, Sweden and WIPP should be applied as well as the negative experiences of Yucca Mountain. NARUC represents a State-based membership and is very respectful of States' rights issues. When asked how we feel about the role of States in Section 6.6 emphasizing consultation and cooperation in the new approach that the Commission believes would obviate the need for a State-level veto, we agree

that the process would have broken down to such an extent that it should not come to such a legal action. The “opt-out” provision seems to have worked in the Scandinavian examples.

As provided in the Nuclear Waste Policy Act, there should be financial and other benefits that can make siting disposal facilities attractive. We consider it appropriate for the Nuclear Waste Fund to be used to provide financial benefits as an incentive to siting. See Appendix A for further discussion of benefits.

### **New Organization**

While not all the difficulties encountered at Yucca Mountain were due to poor management by the repository program management team assembled and led by DOE, we agree that a new implementing organization is needed (since the Office of Civilian Radioactive Waste Management has essentially been disbanded) along the lines of the proposal in Section 7 of the Draft Report. We look forward to working with a transition organization to develop enabling legislation.

As the representative body of the State commissions who pass along the fees to consumers, NARUC would like to review whatever fee-setting apparatus that the new waste management organization would have, such as a Waste Fund Oversight Commission discussed in Section 7.4.5. NARUC would like to be involved with the commission. While the Draft Report says that FERC should have such a role, based on the 2001 Alternative Means of Financing and Managing (AMFM) report by DOE, it is essential that any oversight body include representation from the State commissions who oversee the pass-through of nuclear waste fees to the consumers . NARUC has maintained a vigilant interest in the Fee Adequacy Assessments conducted by DOE and should continue to have a voice in fee-setting on behalf of ratepayers who bear the ultimate burden of the fees that are paid. The Federal Power Act Section 209 provides for Joint Boards with FERC and the State Commissioners. This may be a model for joint federal and state Waste Fund Oversight. We recommend that this recommendation be modified 3 to provide NARUC a role in fee oversight. This is particularly appropriate since Section 201 of the Federal Power Act denies FERC authority over generation facilities (such as nuclear) in favor of State jurisdiction.

Likewise, NARUC supports the establishment of stakeholder advisory committee and should be invited to have representation on such a body. Many people remarked during the conduct of the BRC that they welcomed the dialogue on waste issues as the Commission heard from various viewpoints. The new organization should continue to have such transparency as it proceeds about getting organized and as it initiates activities. It was easy to see how the frequent lawsuits and the threat of more from the State of Nevada would give DOE personnel working on Yucca Mountain a propensity to withhold information on the project rather than share. Having its organizational roots in the nuclear weapons program, the DOE culture often seemed to operate on a need-to-know basis that did not always welcome transparency. In any case, the new organization should seek out and adopt best practices for stakeholder involvement with a bias for openness.

## Funding the Waste Management Program

We are pleased that the Draft Report recognizes in Section 8 that the success of a revitalized waste management program depends on a functioning full cost-recovery user fee like the Nuclear Waste Fund was designed to be. The implementing organization needs to have access to fees collected as well as the supposed corpus of prior year accumulated “surplus” and interest that was credited to the Fund. Congress must have an oversight role, but not serve as a brake on progress on waste activities when project funding needs are valid and monies collected for that purpose are squirreled away in the Treasury. The vision in the Draft Report calls for both the fee revenue stream and the corpus of the present Nuclear Waste Fund to eventually be transferred to the new waste management organization.

We are skeptical of the Commission’s statement that, “Overall, we are confident that our recommendations can be implemented using revenue streams already dedicated for this purpose (i.e., the Nuclear Waste Fund and fee.)” First of all, there is no cost estimate for a revitalized disposal program that we are aware of. Second, on a tenuous interpretation that the new consolidated storage program—also of indeterminate scope and cost— the Draft Report apparently assumes such storage can be financed from the Nuclear Waste Fund because it is “incidental to disposal” or Monitored Retrievable Storage. Finally, the Commission’s confidence presumably includes the assumption that the \$25 billion<sup>1</sup> or more that is supposed to be the “balance” in the Nuclear Waste Fund is going to be fully transferred at some future point to the new waste management organization.

We fully agree with the proposed near-term non-legislative action to “reclassify” and change the timing of the Nuclear Waste Fund fee collections as outlined in Section 8.3.1. NARUC sent a letter to the Secretary of Energy (see Appendix B) urging that the proposal be submitted to Congress with the FY 2013 Budget. State utility commissions, already familiar with decommissioning trust funds, can work with the utilities and DOE or a successor waste management organization to set up the irrevocable trust accounts at approved third-party financial institutions in their States.

We also feel that if there is to be a major new initiative to build consolidated central storage for up to a hundred years and the desire is to use the Nuclear Waste Fund for it, the NWPA should be amended (which the Draft Report says is needed anyhow.) **4.** It seems to us that the legal interpretation in the Commission’s legal advisor’s October 11, 2011 analysis is reaching back into an authority that had been attempted and abandoned and “re-purposing” it for a need that did not exist in 1983. Of course, if Congress agrees that consolidated interim storage is

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<sup>1</sup> We are no longer able to get monthly status of the Nuclear Waste Fund from DOE. The most recent report is May 2010.

Monitored Retrievable Storage they can signal that in many ways, including de-coupling construction from the repository licensing.

### **Advanced Reactor and Fuel Cycle Technologies**

We take no position on the closing of the fuel cycle and subjects discussed in that section of the Draft Report, but can understand how the Commission felt that it is premature to reach consensus on closing the fuel cycle. A lot has to do with what extent of replacement of older reactors and further expansion of nuclear energy and the outlook seems cloudy at this time. We agree with the conclusion in the MIT Fuel Cycle Study that the nuclear fuel cycle evolves over a period of decades.

The Draft Report does not suggest it, but we want to be clear in stating that the Nuclear Waste Fund should not be used for reprocessing.

### **Regulatory Matters**

We disagree with the Commission's recommendation that EPA and NRC continue their shared responsibility on repository radiation standards. It seemed to us that EPA took far too long in developing a dose-based standard that covered time spans beyond imagination. We have confidence in the NRC risk-informed performance-based regulatory approach as well as the staff's technical expertise in radiation health physics.

### **Transition**

We find the Draft Report a well-written description of some recommended desired end-states with a new organization to be provided with improved and stable financial resources ready to devise and employ concurrently a consent-based site search for both a central or regional consolidated interim storage capability and a new geologic repository. Aside from a specific recommendation that the DOE Budget Request for FY 2013 include proposed appropriations language to enable the reclassification and timing of fee collections to the Nuclear Waste Fund, there is little discussion of transition to the new policy and formation of a new organization to implement the policy. Maybe DOE is making preparations for implementation, if so it is being done quietly. But since the basic change would remove most responsibilities from DOE, maybe a task force approach should be considered. We are not privy to how the Administration anticipates taking responsibility for gathering stakeholder and public support and eventual cooperation with Congress, but perhaps the Commission should suggest an implementation strategy and timeline when the Final Report is submitted. 5.

### **Shared or Separate Disposal**

We have accepted as a given that the repository planned for Yucca Mountain was to include DOE and commercial fuel together that most of us were unaware that separate facilities had once been considered. A search of the files uncovered a 1986 resolution in which we had a since-settled dispute with DOE over the government-commercial repository cost allocation. The Disposal Subcommittee raises the question anew citing that some witnesses have suggested that a defense-only repository be considered. Our reaction is that we would like to have proponents of such an approach indicate what benefits prompt a reconsideration. We favor the joint facility as a national need and not some favor for the nuclear industry. We would likely object if a separate repository were to be chosen and it resulted in:

- a. Further delay in disposal of commercial spent fuel
- b. Higher cost for a commercial repository than a joint one

The public does not have information on the allocation of costs in a shared repository. The appropriations from the Nuclear Waste Fund and the Defense Nuclear Waste appropriation seem to vary without any predictable pattern in any given year. We are unaware of whether there is or may have been an agreement within DOE guiding the allocation between these two funding sources. The 2007 Fee Adequacy Assessment said that the defense share used in the 2007 Total System Life Cycle Cost report was 19.6 percent. Yet, in the Assessment, DOE did a sensitivity analysis with 15, 20, 25 and 30 percent, which suggests the allocation is not fixed.

Since there will be many other factors that get re-evaluated as the proposed nuclear waste management strategy is adopted (or modified or not) perhaps a comprehensive review of all factors to be considered in a decision on shared or separate repositories. **6.**

## Appendix A

### **Benefits and Compensation**

The issue of benefits to States, tribes and local governments where nuclear waste facilities may be located has been raised in deliberations of the Commission, especially as an incentive for gaining the consent of the communities affected by the siting of repository or consolidated storage facilities. There was often mention by people in testimony of benefits without recognition that Subtitle F of the NWPA has provisions for benefits agreements with the State of Nevada concerning a repository or with a State or Indian tribe concerning a monitored retrievable storage facility. Section 171 even set monetary amounts for annual payments for different stages of development of each type of facility. The dollar levels have not been adjusted for inflation since 1983, so they may not seem very enticing today.

The State of Nevada, of course, vowed to oppose the development of Yucca Mountain for a repository and rejected any benefits agreements. There never was a MRS facility that reached the stage where benefits agreements were considered. Since there is an implied interpretation by the Commission that the consolidated interim storage is a form of MRS facility, presumably the benefits provisions would also apply. Since Nevada alone is eligible for a repository-related benefits agreement, amended legislation would be needed to authorize benefits for other States. The principle has been established that this form of benefits is an appropriate use of the Nuclear Waste Fund.

There are other forms of benefits that were contemplated in the 1987 Amendment to NWPA—specific to Yucca Mountain—under Subtitle G, but called for DOE to assess potential impacts of locating a repository there and report to Congress which should “be dealt with by the Federal Government, which should be dealt with by the State with State resources... and which should be a joint Federal-State responsibility.” The report called for an analysis of authorities available to mitigate those impacts and the appropriate sources of funds, without a hint that the sources were limited to the Nuclear Waste Fund. Listed were 14 categories of potential impacts ranging from programs for alcohol abuse to railways, for which there are other federal appropriations.

Nye County, the host county for Yucca Mountain, in 2002 presented to DOE its Community Protection Plan in the event Yucca Mountain was developed as a repository. It enumerated some of the anticipated burdens of the repository. Anyone familiar with that 18,146 sq. mi. county (third largest in the lower 48) with 44,000 population, knows that it is not readily equipped to absorb the highly specialized facility. The plan is noteworthy in that it is not simply a request for money. Rather, it is a thoughtful listing of a variety of impacts and potential mitigation that might relieve the burden. It even appeals to potential “win-win” situations in

which DOE might share benefits. For example, most workers during the site investigation phase of the repository lived in the Las Vegas Valley and traveled 90 miles each way in a DOE-provided bus. If DOE and Nye County could cooperate on developing housing, schools etc. future workers could live closer to where they work. Likewise, the project would require medical facilities for the project workforce, yet Nye County has minimal medical capacity.

NARUC adopted a resolution (attached) recognizing Nye County and said that disposal of nuclear waste should not pose an undue burden on the surrounding jurisdictions and that the federal government should provide assistance.

It is noted that at times the word “compensation” is used interchangeably with benefits. Both seem to fall under the heading of providing incentives, benefits—such as the Nye County example—refer to specific needs while compensation seems more like a payment without restrictions. Perhaps it makes little difference.

On a somewhat related matter, Sec. 180(c) provides for technical assistance and funds from the Nuclear Waste Fund for training of public safety officials involved with radioactive waste shipments for a repository or an MRS.

Section 6.7 of the Draft Report recommends that the *responsibilities* of the new waste management organization include “promoting the social and economic well-being of communities affected by waste management facilities.” It is further recommended that the benefits provided by the current NWPA, such as discussed above, be modified and expanded to give the new organization greater flexibility to promote economic development. The section closes with a note that Congress may have a continued role in providing benefits and compensation when they are beyond the organization’s authority and could require legislation.

We are supportive of the new organization being able and motivated to help the communities in the vicinity of waste facilities see benefits that offset real or perceived negative aspects of the new enterprise being proposed, but there must be a reminder to all that the *central task* for the new *single-purpose* organization is to develop central storage and repositories, page viii of the Draft Report, which may result in some benefits as a cost of doing business but not without limits. The new organization should have enough autonomy and flexibility to negotiate in the context of particular sites.

***Resolution Regarding Transportation and Other Community Impacts Associated with a  
Geologic Repository at Yucca Mountain, Nevada***

**WHEREAS**, The Nuclear Waste Policy Act of 1982 requires the federal government to be responsible for the safe, permanent disposal of commercial spent nuclear fuel and government high-level radioactive waste in a geologic repository; and

**WHEREAS**, The President has recommended and Congress has approved Yucca Mountain as the site for the geologic repository, subject to obtaining a license from the Nuclear Regulatory Commission; and

**WHEREAS**, Nye County, the host county immediately adjoining the Yucca Mountain site is geographically large but sparsely populated and may lack the resources to absorb the near-term project impacts, if the repository is built; and

**WHEREAS**, Nye County has assessed the impacts on its county in a Community Protection Plan and can articulate its assistance needs; and

**WHEREAS**, The Department of Energy has focused its resources on evaluating the suitability of Yucca Mountain, it has done so with the assumption that there will be ample time to plan and provide safe transportation from the existing storage sites to the site; and

**WHEREAS**, Transportation infrastructure, both rail and highways within Nevada is limited, especially in the rugged and sparsely developed areas near the site; and

**WHEREAS**, There are other impacts associated with the repository that may likewise overwhelm local resources; now therefore be it

**RESOLVED**, That the National Association of Regulatory Utility Commissioners (NARUC) convened in its 2002 Annual Convention in Chicago, Illinois believes the safe, permanent disposal of nuclear waste should not pose an undue burden on the region directly adjoining the repository; and be it further

**RESOLVED**, The federal government should provide financial and other assistance to communities, such as Nye County, most directly impacted by development of a repository development at Yucca Mountain; and be it further

**RESOLVED**, The Department of Energy should coordinate with all State, tribal and local governments in planning nuclear waste transportation modes, routes and schedules along potential corridors between existing storage locations and Yucca Mountain.

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Sponsored by the Committee on Electricity

Recommended by the NARUC Board of Directors November 12, 2002

Adopted by the NARUC Convention November 12, 2002



N A R U C  
National Association of Regulatory Utility Commissioners

October 19, 2011

Honorable Steven Chu  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., SW  
Washington, D.C. 20585

Appendix B

**Re: Proposal on Nuclear Waste Fund Reform**

Dear Secretary Chu:

We urge you to initiate action with the Office of Management and Budget aimed at including whatever is needed with the FY 2013 Budget Request for the Department of Energy that would lead to implementation of the proposal contained in the Draft Report of the Blue Ribbon Commission on America's Nuclear Future (BRC) to revise the way in which fees to the Nuclear Waste Fund (Fund) are classified and paid. Gaining congressional concurrence for modification to existing Standard Contracts is indicated in the Draft Report as being within your administrative authority although it is likely that the Budget Committees and the Congressional Budget Office (CBO) will want to review the reclassification of the fee receipts as a companion change.

This near-term non-legislative action is detailed in Section 8.3.1 of the BRC Draft Report. The purpose of the changes is to restore the functioning of the Fund to its original intent in the Nuclear Waste Policy Act (NWPA) to finance the disposal of commercial spent or used nuclear fuel. Regardless of whether the responsibilities for implementation of the civilian radioactive waste management program are retained within DOE or transferred to a new, single-purpose federal corporation, as recommended in the Draft Report, we believe that in order to implement the used fuel management and disposal strategies, these near-term changes will be necessary.

The proposal would have the effect, in our view, of safeguarding the fees for used fuel disposal and other related activities, which will occur in the future. The details would have to be agreed among the parties to the Standard Contract, but the essence of the BRC proposal is to have the *total* annual fee payments from all owners which pay into the Fund match the amount Congress appropriates in the same year. The balance of the fee payments owed under the electricity-sold formulation would be placed in an irrevocable trust account at an approved third party institution, much in the fashion of an escrow account. This is similar to a proposal made by

former Secretary Peña in 1998. The owners rejected that proposal at the time because they could not accept some of the terms and conditions, which may not remain as an impediment.

We recognize that Congress has become accustomed to, in effect, “borrowing” from the fee revenue surplus to amounts appropriated each year and using those funds for other unrelated government programs or to credit the surplus to make the federal debt appear slightly less than it really is. Congress may not welcome the loss of this revenue stream. Submitting the proposed change to Congress would present a pivotal choice of commitment to solving the nuclear waste problem or continuing to divert the fee revenue for other purposes.

The proposal to reclassify the fee revenue as offsetting collections is not new. The *Alternative Means of Financing and Managing the Civilian Radioactive Waste Management Program* report prepared by DOE for Congress in 2001 includes this as its first recommendation:

**1. Adopt a near-term funding mechanism for the President’s FY 2003 budget**

There was an attempt to gain approval of the reclassification that was mishandled by reducing the appropriations request to zero on the assumption that Congress would authorize the change in the same legislative cycle. It would seem to us outside of the federal government that the Legislative Branch and the Executive Branch should be capable of working out a solution that returns the Nuclear Waste Fund to serving the purpose under the NWPA of having those who produce electricity for the Nation from nuclear power pay for the safe disposal of the waste generated as a byproduct of production. From the beginning (of the NWPA and the contracts for disposal services) it is our understanding that the used fuel owners have been more than willing to pay the expected cost of that disposal, but when it became apparent that the schedules set in statute and in their contracts were not going to be met the sentiment was captured well by the Blue Ribbon Commission in the Draft Report:

“In fact, there is a growing sense of outrage that the only aspect of the waste management program that has been implemented in full and on schedule is the part that involves collection of fees for a contractually required service that the federal government has never managed to deliver.”

So, after another ten years have passed, another report proposes that someone cut the fiscal Gordian knot to enable the Nuclear Waste Fund to function as intended in legislation nearly thirty years ago. We have no doubt there are reasons that the fiscal gatekeepers will find to not reclassify the fees as offsetting receipts, but there must be a champion to persevere in support of the purpose set forth in the Nuclear Waste Policy Act. For, as the Draft Report says:

“Simply put, we know what we have to do, we know we have to do it, and we even know how to do it.”

We would add that whatever organization that is going to be responsible for implementing a revitalized nuclear waste strategy also will eventually need access to the money that has been and continues to be paid for disposal or nothing will get done and the government and taxpayer liability will continue to grow.

Thank you for your attention on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Clark". The signature is fluid and cursive, with a prominent loop at the end.

NARUC President  
Chairman, North Dakota  
Public Service Commission

Copy to:

Co-Chairman Hamilton  
Co-Chairman Scowcroft