



N A R U C
National Association of Regulatory Utility Commissioners

March 25, 2010

Lieutenant General Brent Scowcroft
Honorable Lee Hamilton
Co-Chairs
Blue Ribbon Commission on
America's Nuclear Future
c/o Timothy A. Frazier
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

Dear Messrs. Scowcroft and Hamilton:

We look forward to working with you as the Blue Ribbon Commission (Commission) undertakes the challenging and essential task of shaping America's nuclear future.

The Commission has been given an important responsibility to help the country recalibrate its course for assuring a solution to a complex technical, societal, and intergenerational problem. We believe that the country is at a pivotal point in which energy policy is being revised with greater concern for energy independence and reduction in carbon emissions. Yet, some express hesitance for pursuing expanded use of nuclear power—which offers essentially zero carbon emissions—because they are concerned that we have not developed an assured answer to the “waste problem.” We hope the Commission can help develop a more certain course toward safe, permanent disposal.

The National Association of Regulatory Utility Commissioners (NARUC) is an association representing the State public utility commissioners who regulate essential utility services, such as electricity, gas, telecommunications, water, and transportation, throughout the country. As regulators, our members are charged with protecting the public and ensuring that rates charged by regulated utilities are fair, just, and reasonable. Our members are elected or appointed commissioners of the public utility commissions in their States, the District of Columbia, U.S. territories, and some local jurisdictions.

NARUC is well positioned to help the Commission understand how federal nuclear waste policy impacts citizens who ultimately bear the cost of the disposal of commercial spent nuclear fuel (SNF). NARUC wishes to emphasize certain key principles for the Commission to consider as it reviews existing nuclear waste policy and formulates its recommendations. For over 27 years, we have observed the troubled attempts by the federal government to implement the policy set forth in the Nuclear Waste Policy Act, as amended. We have participated in this process in order to represent the ratepayers that are served by electric utilities which provide nuclear-generated electricity. The owners of the reactors are the ones who pay the fee of one

mill per kilowatt-hour to the Nuclear Waste Fund (Fund) in the U.S. Treasury, but those costs are passed along to the ratepayers in their electric bill.

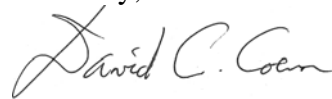
As the NWPA was being formulated, NARUC and member commissions supported the basic principle in the Act that those who have benefitted from nuclear power should bear the costs of the disposal of waste products, based on the “polluters pay” principle. Most State commissions specifically approve those fee payments, and allow the nuclear generators to include these in the rate base. In other States, the costs are passed on to consumers without the need for commission approval. NARUC and State public utility commissioners are active participants who are directly affected by the Fund, and would like to participate in any consideration the Commission may give to changes in the NWPA or different uses for the Fund.

This brings us to the manner in which the Commission will perform its duties. We assume that the Commission will welcome written input from interested parties such as ours and that stakeholders will be permitted an opportunity to give testimony before the Commission in public meetings or hearings. The attached resolution was adopted by NARUC at its most recent meeting. It serves to summarize relevant points to the work of the Commission, but we would also like to augment that with more specific points that we would like to present in testimony before the Commission.

The Advisory Committee Charter for the Commission indicates that subcommittees can be formed. We recommend that the Commission form a financial subcommittee or perhaps a subcommittee on organization and finance. The Nuclear Waste Fund has not functioned as envisioned when the NWPA established it in 1983 and if the Commission is going to recommend a management and disposal strategy it will need to be supported by a more reliable and sustainable financing scheme than the present Fund.

We extend our appreciation to the members of the Commission for their service and wish you well in your task. We look forward to further opportunities to express our views.

Sincerely,

A handwritten signature in cursive script that reads "David C. Coen".

David C. Coen
President, NARUC

Attachment
cc: Secretary of Energy

Resolution on National Policy for Management and Disposal of Spent Fuel from Commercial Nuclear Power Plants

WHEREAS, The Nuclear Waste Policy Act (NWPA) of 1982 sets national policy that the federal government is responsible for safe, permanent disposal of all government and commercial high-level radioactive waste, including spent nuclear fuel, in a geologic repository beginning in 1998; *and*

WHEREAS, Those who have benefitted from nuclear-generated electricity—reactor owners and ratepayers—under the NWPA were to pay for the commercial share of disposal costs through fees paid to the Nuclear Waste Fund; *and*

WHEREAS, Reactor owners and ratepayers made fee payments since 1983 totaling over \$16 billion to the Fund, which earned another \$13.5 billion in interest, to more than meet the needs of the repository development program, which encountered numerous managerial, financial, legal and political difficulties resulting in failure to meet the 1998 date set in statute and contracts with the reactor owners; *and*

WHEREAS, When the Department of Energy, as disposal program manager, failed to begin waste acceptance in 1998, the reactor owners sued for partial breach of contract for which the Federal Court of Appeals found the government liable; *and*

WHEREAS, DOE and the Justice Department estimate the liability for court-awarded damages and settlements could be as much as \$12.3 billion—if the waste were to be accepted for disposal by 2020; *and*

WHEREAS, The Obama Administration declared its intent to terminate the Yucca Mountain repository development program and instead has appointed the Blue Ribbon Commission on America's Nuclear Future to evaluate alternative disposal strategies and recommend a new direction that does not involve Yucca Mountain; *and*

WHEREAS, NARUC believes current law regarding Yucca Mountain development must be followed, however the Association must prepare itself for the possibility that the Administration may succeed in canceling the repository project; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2010 Winter Committee Meetings in Washington, D.C., expresses its disappointment at having the federal government take 25 years and expend over \$10 billion on Yucca Mountain as the repository site only to have the repository project be proposed to be cancelled before the Nuclear Regulatory Commission made a safety and technical decision on the license application submitted in 2008; *and be it further*

RESOLVED, That NARUC call upon the Secretary of Energy not to withdraw the Yucca Mountain license application from the review process underway at the NRC; *and be it further*

RESOLVED, That NARUC and State utility commissions as stakeholders in the disposal policy on behalf of ratepayers—who continue to bear the ultimate cost of the fee payments to the Fund—should play an active role in representing their views to the Blue Ribbon Commission, drawing upon the multiple NARUC nuclear waste policy resolutions adopted over the past 25 years; *and be it further*

RESOLVED, That NARUC convey to the Commission that any alternative that leaves the spent nuclear fuel at present storage sites indefinitely, whether managed by the owners or by the government, is inconsistent with the NWSA findings of 1982 and would break faith with the communities which host those reactors with the understanding that the spent fuel would be removed by the government; *and be it further*

RESOLVED, That the Commission should seek to determine if there is something about a geological repository generally or Yucca Mountain specifically that makes either a poor choice, suggesting a search should begin for a new repository site; *and be it further*

RESOLVED, That if a new repository program is to be recommended, then a new, more transparent site selection process should be considered, a new organization might be better suited for managing it and a reformed financing means be established that more reliably supports the new disposal strategy instead of subsidizing unrelated government activities; *and be it further*

RESOLVED, That NARUC pro-actively inform the Commission, DOE and the Congress that there are benefits in taking an initial near-term action to provide government or industry-run central interim storage of used nuclear fuel from the nine shutdown reactor sites, since it seems that whatever new disposal or reprocessing strategy is pursued, it will be unlikely to be in operation for another twenty or more years; *and be it further*

RESOLVED, That the federal government and owners of spent nuclear fuel should be encouraged to simplify and make equitable settlements over the ongoing litigation that provides payment for past expenses that the owners should not have to have incurred had DOE provided the “disposal services” agreed in the Standard Contracts; and to develop a regime for forecasting future payments without court-ordered judgments including suspension of Nuclear Waste Fund fee payments unless and until a revised program is agreed upon or the Yucca Mountain Project is fully restarted.

*Sponsored by the Committees on Electricity and Energy Resources and the Environment
Adopted by the NARUC Board of Directors February 17, 2010*