

Despite Yucca Shutdown, DOE Sees Need for Fees

Ratepayers of nuclear utilities will continue to pay into the Nuclear Waste Fund despite the likely termination of the proposed Yucca Mountain spent-nuclear fuel repository, the U.S. Department of Energy determined.

In a Oct. 18, 2010, Nuclear Waste Fund fee adequacy review, DOE concluded that it found no evidence that the charge, currently 1/10-cent per kWh, should be altered or postponed. The review, made public this week, is required by the Nuclear Waste Policy Act (NWPAct) of 1982.

The fee is assessed to nuclear power companies and passed through to their consumers. To date, ratepayers have paid approximately \$24 billion into the fund since the fee was initiated in the early 1980s.

“This review concludes that there is no reasonable evidentiary basis to conclude that the current fee is generating either insufficient or excess funds,” DOE said. “In such circumstances, the statutory framework and legislative intent support maintenance of the fee at the amount specified in the NWPAct.”

NARUC and the Nuclear Energy Institute are suing DOE for continuing to impose the fee while the agency is also working to permanently shut down the Yucca Mountain repository (see April 9, 2010, issue, page 4). DOE earlier this year asked the Nuclear Regulatory Commission for permission to withdraw the pending licensing application, claiming that Yucca is not a workable option.

Although reiterating its belief that Yucca Mountain is no longer viable, DOE maintained that the Nuclear Waste Fund fee should still be charged at its current rate because it is required under law. The agency claims that it must assess the fee because the Nuclear Waste Policy Act requires it to come up with a permanent solution for disposing of spent-nuclear fuel and high-level waste.

Energy Secretary Steven Chu has formed the Blue Ribbon Commission on America’s Nuclear Future to propose storage options, and the agency noted that nothing in the NWPAct specifies that Yucca Mountain must be the storage site. Instead, the law requires DOE to take title to the waste and ultimately dispose of it. “[T]he statutory and contractual language is clear that the obligations to collect and pay the waste fee are ongoing and tied to DOE’s obligation to take and dispose of [the waste], but not to the Yucca Mountain project,” DOE said. “Those statutory and contractual obligations remain in place today.” DOE’s findings, though, ignore the reality that it was Congress, not DOE, who selected Yucca Mountain as the proposed repository, and that under the NWPAct, the NRC must determine whether the site is suitable, NARUC said in response.

“The Administration has effectively both terminated and dismantled the Yucca Mountain program,” NARUC said. “But ratepayers are still paying for it. That’s why NARUC sued DOE seeking to force it to either provide the required justification for this fee or to suspend it. DOE’s ‘Fee Adequacy Assessment’ is a regurgitation of its arguments in our lawsuit. Specifically, by articulating its current view that the Yucca project is ‘not workable,’ the Administration is essentially conceding that there is no factual basis for any

fee assessment in the first place. Yet, citing a congressional requirement for an annual assessment, the Administration contends that it has unlimited discretion to maintain a fee, even though it cannot be justified. This reasoning is tortuous as best. We expect the Court will have no difficulty spotting the obvious and glaring flaws in the Department's reasoning."

Oral arguments in the case are scheduled for early December