

Stephen E. Kuczynski
Chairman, President and
Chief Executive Officer

**Southern Nuclear
Operating Company, Inc.**
40 Inverness Center Parkway
Post Office Box 1295
Birmingham, Alabama 35201

Tel 205.992.6809
Fax 205.992.5989



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VIA HAND DELIVERY & E-MAIL (Will.Batson@mail.house.gov)

ATTN: Will Batson, Legislative Clerk, Committee on Energy and Commerce

The Honorable John Shimkus
Chairman, Subcommittee on Environment and the Economy
U.S. House of Representatives
2125 Rayburn House Office Building
Washington DC 20515

Re: May 15, 2015 Hearing Entitled, "Update on the Current State of Nuclear Waste Management Policy"

Dear Chairman Shimkus:

I was honored to appear before your Subcommittee last month to offer testimony on behalf of Southern Nuclear Operating Company about nuclear waste policy in the United States. Thank you for graciously allowing me the opportunity to present my views on this important area of federal law and policy. Enclosed with this letter are my responses to the additional questions for the record that you provided to me by letter dated June 9, 2015.

Again, thank you for the invitation to participate in the hearing and for your honorable service to our nation.

Sincerely,


Stephen E. Kuczynski

Enclosure

Additional Questions for the Record

Submitted to Stephen E. Kuczynski, Chairman, President and Chief Executive Officer,
Southern Nuclear Operating Company, Inc.,
in relation to the May 15, 2015 Hearing Before the House of Representatives Committee on
Energy & Commerce, Subcommittee on Environment & the Economy

Questions from the Honorable John Shimkus

1. There are currently numerous sites throughout the country which store commercial spent nuclear fuel from shutdown nuclear reactors at just an Independent Spent Fuel Storage Installation (ISFSI). Additionally, there are additional reactor sites which are going through the decommissioning process with more units shutting down in the coming years.

A. How can Congress create a structure to assure these sites can be redeveloped and save taxpayer funding, while treating all spent nuclear fuel in an equitable fashion?

While none of our company's nuclear power plants have been permanently shutdown or decommissioned, and as a result, we have not personally addressed the scenario raised in this question, I have experience with the regulatory structure for decommissioning nuclear reactors and implications for spent nuclear fuel at these sites.

At the outset, I would emphasize that the current NRC regulatory program provides flexibility to safely and efficiently decommission nuclear reactors. In general, the NRC regulations currently allow nuclear power plants to undertake two approaches to decommissioning their facilities: (1) SAFSTOR, also known as "Safe Storage," where a nuclear plant and its main components remain in place until the plant operator selects to transition to full decontamination and closure of the site and all fuel is removed from the reactors and stored safely on site; and (2) DECON, also known as "Decontamination," where the operator removes all of the equipment and materials and proceeds with decontamination and closure of the site in a much shorter time frame. Both approaches have their advantages, but it is important for the program to maintain flexibility which helps to reduce the costs associated with decommissioning. Existing regulations also ensure adequate funding to complete the cleanup and decontamination process safely, completely and efficiently. As NEI has explained: "The nuclear energy industry has proven that it has the technology, resources and expertise to successfully decommission commercial nuclear reactors. A 2013 NRC report found that commercial reactor operators have adequate funds for decommissioning their facilities and that the agency's formula that determines the 'minimum amount of required funding assurance' yields sound results. The decommissioning process is accomplished in a safe, secure and environmentally friendly manner."¹

¹ NEI Fact Sheet, Decommissioning Nuclear Power Plants, available at <http://www.nei.org/master-document-folder/backgrounders/fact-sheets/decommissioning-nuclear-energy-facilities> (last updated August 2014).

Another point to emphasize is that, due to the federal government's ongoing non-compliance with the Nuclear Waste Policy Act (NWPA), spent nuclear fuel is being kept onsite for much longer than the law originally intended. This is true for both operating reactors and decommissioned plants. However, we are concerned about proposals that would require DOE to remove SNF from decommissioned plants before operating plants or otherwise alter the current contractually established priority system for removal of spent fuel. In our view, equitable treatment of SNF removal is accomplished under the existing DOE contracts. In other words, the fair way to address these issues is to ensure that DOE honors the current SNF queue and contractual provisions. To the extent changes in the SNF acceptance priorities are necessary to expedite removal from shutdown plants, existing law and contracts already allow exchanges among SNF contract holders. SNF holders can engage in exchange of acceptance allocations with one another to facilitate removal of SNF at decommissioned plants earlier than would be the case under the oldest fuel first priority, and DOE has authority to support and facilitate these exchanges. In fact, in at least one of the breach of contract cases, the court credited evidence that, in a non-breach world, "exchanges would have occurred at some point, and in some fashion."

B. What are the proper potential mechanisms to address stranded sites?

In the nuclear context, the term "stranded sites" has come to refer to nuclear power plant sites that have been permanently shutdown but continue to store spent nuclear fuel. Continued fuel storage at these decommissioned sites imposes increased costs on the site owners/operators as they are forced to build and maintain on-site fuel storage. It also delays eventual use of the site for other purposes. We applaud the Subcommittee for looking at this issue, and believe steps can be taken to help address these challenges. In our view, the primary mechanism to address these concerns is to bring the federal government into compliance with the Nuclear Waste Policy Act, which will ensure that spent fuel is removed from all nuclear sites at the earliest possible opportunity consistent with existing DOE contracts and spent fuel removal prioritization. The exchange mechanism described above would allow accelerated removal of spent fuel from stranded sites.

My written testimony noted that, as a general matter, we support a long-term centralized storage solution. Further, we believe it would be appropriate to site such a facility at Yucca Mountain, either as part of an initial repository license or in a separate facility. We are not opposed to additional storage sites (including interim storage sites), but we continue to support the principle—embodied in the existing NWPA—that the Nuclear Waste Fund (NWF) may be used to fund interim storage sites only after a permanent repository is licensed. Moreover, if an interim storage site is established, the federal government should be required to take permanent title to the spent nuclear fuel at the time of removal from the owner/operator's site.

2. As Congress moves forward to address the logjam associated with nuclear waste management policy, how can we protect the taxpayer to assure that total lifecycle system costs, including transportation, are not increased? What are some key principles to consider?

The ongoing failure of the federal government to comply with the Nuclear Waste Policy Act has created an enormous queue of facilities awaiting removal of spent nuclear fuel. Importantly, the existing contracts between the federal government and the nuclear companies establish a spent fuel prioritization system that will allow for the timely, systematic, and appropriate removal of spent fuel if and when the federal government complies with the law. Delays in compliance are clearly increasing costs for all involved. Thus, the first way to protect the taxpayer and electricity customers is to bring the federal government into compliance with the NWPA by completing the Yucca licensing process and establishing an operational repository. In this regard, completing the Yucca repository is clearly the most cost efficient approach. According to a recent GAO report, the Yucca repository could be completed in 15 years while interim sites would take at least 20 years and a different permanent repository would take at least 40 years.² Completing the Yucca repository would also eliminate the additional costs imposed on nuclear power plants associated with the temporary on-site storage of spent nuclear fuel. Continued delay only increases the cost to the government of repository development and on site storage liability.

As your question suggests, another way to minimize costs and protect the taxpayer is to limit transportation costs associated with the removal and relocation of spent nuclear fuel. Transportation efficiency is one reason why I believe an interim storage facility at Yucca Mountain would make more sense than establishing an interim storage facility at other locations. Of course, no other transportation costs would need to be incurred for spent nuclear fuel that is permanently stored at Yucca Mountain.

Governmental efficiencies could also help, which is one reason why we are opposed to de-linking permanent disposal of civilian and defense-related nuclear waste. We support the decision in 1985 to establish a permanent repository for both civilian and defense nuclear waste. This would seem to be the most efficient approach. We would encourage this Subcommittee to fully vet any de-linking proposals to ensure that it advances the objective of establishing an operational permanent repository for civilian nuclear waste and brings the country into compliance with the existing spent fuel contracts and the Nuclear Waste Policy Act. Other ways to improve efficiencies in the repository siting process could include streamlining the NEPA environmental review process for interim storage sites and the supplemental reports required for the Yucca repository.

² See U.S. GOV'T ACCOUNTABILITY OFFICE, REP. NO. GAO/RCED-15-141, SPENT NUCLEAR FUEL MANAGEMENT: OUTREACH NEEDED TO HELP GAIN PUBLIC ACCEPTANCE FOR FEDERAL ACTIVITIES THAT ADDRESS LIABILITY, at 16 (2014).

3. The Eddy Lea Energy Alliance recently proposed constructing an interim storage facility in Southeastern New Mexico. New Mexico Senator Martin Heinrich said, "I cannot support establishing an interim storage facility until we are sure that there will be a path forward to permanent disposal."

A. Is the lack of progress on Yucca Mountain hampering our ability to move forward on interim storage?

Yes, the lack of progress on a permanent repository at Yucca Mountain is, as a practical and legal matter, hindering interim storage. As a practical matter, potential host sites for interim storage are concerned about allowing spent fuel to be moved to their communities until they have assurances that a permanent repository will be operational. And, as a legal matter, the NWPA already provides that the NWF may be used to fund interim storage sites only after a permanent repository is licensed. As your Subcommittee considers this issue, we would encourage you to ensure that any legislation addressing these matters keeps this important principle in place.

B. Would an expeditious review of the Yucca License application provide more certainty for interim storage stakeholders?

Yes, approval of the Yucca license would provide more certainty for those pursuing interim storage solutions. Completion of the Yucca licensing process would be a significant step forward in complying with the NWPA. All nuclear fuel stakeholders, including those interested in promoting interim storage, would benefit from the completion of the Yucca license process. We would support ways to ensure that the Yucca license process is completed in as timely a manner as possible. Legislation addressing the land and water rights necessary for the Yucca repository would be one way to facilitate completion of the Yucca license, as would measures aimed at facilitating completion of any necessary environmental reports. Of course, now that it has been more than seven years since the Yucca license application was filed, the current review process has clearly not been expeditious.

4. Since its inception, the Nuclear Waste fee has been set at one mil, or one tenth of a penny, per kilowatt hour of electricity generated from nuclear energy. This has funded the ratepayer's contribution to Yucca Mountain to-date, with \$33 billion in the NWF administered by the Treasury Department. As Congress considers legislation relating to our nuclear waste management system, it is important to have the funding for the program align with the corresponding activities. How can Congress assure that the Nuclear Waste fee adequately provides for a repository program, while not imposing additional costs on electric consumers?

As this Subcommittee takes a close look at the fee and its appropriate uses, I would highlight several issues for your consideration.

First, collection of the fee should be restored only after the federal government comes into compliance with the NWPA. The D.C. Circuit recently ordered DOE to cease collecting the 1.0 mil annual fee, and in response, DOE set the fee to zero effective May 16, 2014. My

understanding of the court decision is that the nuclear waste fee cannot be reinstated until DOE proposes a rate that it can demonstrate is commensurate with DOE's activities toward developing a permanent waste removal and disposal solution. Given that Yucca Mountain has been statutorily designated as the site of the permanent repository, a viable plan and demonstrable progress for the licensing and development of the repository there would seem to be prerequisite to any reinstatement of the fee. This is primarily a question for the federal courts to resolve, although Congress could certainly address the issue via legislation.

Second, the existing fund balance, which currently exceeds \$30 billion, should be drawn down significantly before the fee is reinstated. It would be inappropriate to begin collecting fees when the current balance is more than adequate to cover likely costs over the near-term.

Third, we believe Congress can protect electricity customers by limiting nuclear waste fee dollars to the sole purpose of removal and disposal of SNF. Congress should protect against efforts to divert NWF fee dollars to unrelated purposes and provide access to those funds to the repository program. But we are not absolutely opposed to allowing some appropriate new uses of the NWF. For example, it may be appropriate for Congress to use NWF dollars to support creation of a federal corporation with responsibility for SNF storage and disposal, consistent with the recommendation of the Blue Ribbon Commission. This new corporation should have access to the NWF without the need for further congressional appropriations, although subject to ongoing congressional oversight and in a manner consistent with the existing NWPA. Likewise, it could be appropriate to use NWF dollars to support enhanced incentives for the State of Nevada. This is an area of opportunity, as noted in a recent editorial by Nevada Congressman Crescent Hardy and a separate editorial by Chairman Shimkus. We would support reasonable incentives for the State of Nevada to help facilitate completion of Yucca Mountain and to compensate the state for costs it incurs on the basis of hosting this site. Regarding funds for those incentives, if reasonable in scope and tied directly to facilitating construction and operation of a permanent repository, we would support using funds from the NWF for those purposes.

Finally, we strongly believe in the need to reform the funding process to ensure available access to the NWF for appropriate uses and in an efficient, reliable manner.