



December 1, 2015

TO: Members, Subcommittee on Environment and the Economy

FROM: Committee Majority Staff

RE: Hearing entitled “The Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues.”

I. INTRODUCTION

On Thursday, December 3, 2015, at 10:00 a.m. in 1100 Longworth House Office Building, the Subcommittee on Environment and the Economy will hold a hearing entitled “The Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues.”

II. WITNESSES

- David Bearden, Specialist in Environmental Policy, Congressional Research Service;
- Kim P. Cawley, Chief of Natural and Physical Resources Cost Estimates Unit, Congressional Budget Office; and
- Travis Kavulla, Commissioner, Montana Public Service Commission, President, National Association of Regulatory Utility Commissioners.

III. BACKGROUND

Section 302 of the Nuclear Waste Policy Act (NWPA)¹ established the Nuclear Waste Fund (NWF) to fund radioactive waste disposal activities authorized by the NWPA including:

1. identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, monitored retrievable storage (MRS) facility, or test and evaluation facility constructed under the NWPA;
2. conducting of nongeneric research, development, and demonstration activities under the NWPA;
3. administrative costs of the radioactive waste disposal program;
4. any costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in a repository, to be stored in a MRS site, or to be used in a test and evaluation facility;

¹ Nuclear Waste Policy Act, 42 USC 10101.

5. costs associated with the acquisition, design, modification, replacement, operation, and construction of facilities at a repository site, a MRS site, or a test and evaluation facility site and necessary or incident to such repository, MRS facility, or test and evaluation facility; and,
6. providing assistance to States, units of general local government and Indian tribes in Sections 116, 118, and 219 of the NWPA.²

The NWF was designed to be a “pay for service” fee on those who benefit from nuclear generated electricity. Congress set the initial fee at one mil, or one tenth of one cent, per kilowatt hour of electricity generated from a commercial nuclear power plant. The law also required the Secretary of Energy to annually review the level of funding and determine if the fee is adequate to fund the lifecycle cost of the repository program and adjust the fee accordingly; however, the fee remained at one mil for the duration of its collection.

While the NWF is the authorized funding cap for used fuel management activities, the NWPA requires Congress to annually appropriate funding from the NWF. To provide adequate funding for a multi-generational repository program, the NWPA authorized excess funding to be invested in maturities at the Department of Treasury, which accrue interest. The overall value of the NWF is annually tracked in a required audit. The current balance of the NWF is approximately \$34.3 billion, including approximately \$1.4 billion in interest accrued last fiscal year.³ The NWF credit of interest is an intragovernmental transfer of interest and does not create net receipts to the Federal government.

The Blue Ribbon Commission on America’s Nuclear Future summarizes how historical changes to the budget process have complicated how the NWF is managed and how used fuel activities are supported in the appropriations process:

The Layering of Budget Constraints on the Nuclear Waste Fund

Since the establishment of the NWF in 1982, Congress enacted several budget control acts that dramatically reduced the funding flexibility originally envisioned in the NWPA:

- The Balanced Budget and Emergency Deficit Control Act of 1985, also known as Gramm-Rudman-Hollings (GRH), made the NWF subject to a government-wide deficit-reduction process. In implementing GRH, the Office of Management and Budget (OMB) “split” the NWF; fee receipts were placed on the “mandatory” side of the budget (dealing with activities controlled by permanent laws rather than annual appropriations), where they are treated like tax

² Id.

³ Department of Energy Office of Inspector General, “*Audit Report: Department of Energy’s Nuclear Waste Fund’s Fiscal Year 2015 Financial Statement Audit*,” November 2015.

revenues and used to offset mandatory spending; while expenditures were placed on the “discretionary” side (dealing with activities controlled by annual appropriation acts), where they are subject to the deficit reduction process.

- The 1987 amendments to GRH placed appropriations from the NWF under the spending cap applicable to all domestic discretionary programs, even though the NWF was self-financed. This had the effect of forcing spending for the NWF to compete with other spending programs, which did not have dedicated funding sources. As a result, OMB also dropped its historical practice of setting separate budget planning targets for the NWF, forcing it to compete against other DOE programs within a single DOE budget target for domestic discretionary spending.
- The Budget Enforcement Act of 1990 (BEA) set new caps on discretionary spending and established new pay-as-you-go (PAYGO) requirements to ensure that the net effects of legislative changes affecting mandatory spending were budget neutral.
- In the Conference Report accompanying the Omnibus Budget Reconciliation Act of 1990, spending from the NWF was included in domestic discretionary appropriation accounts for fiscal year (FY) 1991, and was therefore subject to the spending cap set in the BEA.
- The 1997 Amendments to the Balanced Budget Act extended caps on discretionary spending and PAYGO requirements for mandatory spending accounts through FY 2002.

This layering of budget requirements seriously eroded the NWF’s funding capability in two ways:

- It imposed annual spending and revenue controls on a fund that was designed to finance a 125-year program on a life-cycle cost basis; and
- It made the NWF dysfunctional by creating separate and unrelated rules applicable to the revenue and spending components of the Fund.

The overall effect, in short, has been to prevent the NWF from being used for its intended purpose. Under PAYGO requirements, increased funding for the waste management program must be offset by cuts in other programs within the annual appropriations caps. The original NWPA requirement for annual appropriations from the NWF was intended to ensure that Congress retained control over the program; its purpose was never to limit the funding needed to implement the program.⁴

Following President Obama's decision that Yucca Mountain was "unworkable," the National Association of Regulatory Utility Commissioners (NARUC) sued Department of Energy (DOE) to halt the collection of the fee. In 2013, the U.S. Court of Appeals for the District of Columbia sided with NARUC and determined there was no longer a rational basis to collect the fee. In 2014, DOE suspended collection of the fee.

While expenditures from the NWF are part of the appropriations process and are reflected in the overall budgetary caps, the Federal government payments to utilities as a result of the Department's failure to develop Yucca Mountain by 1998 are funded out of the Judgment Fund. The Judgment Fund is a permanent, indefinite appropriation to the Department of the Treasury to pay court judgments against the Federal government. Payments out of the Judgment Fund are not counted against the budgetary caps on the appropriations bills. In 2014, approximately one third of all Federal payments from the Judgment Fund, \$929 million, were to settle breach-of-contract claims relating to spent nuclear fuel.⁵ DOE estimates the total liability to be \$23.7 billion⁶ if the Administration's strategy on used fuel management is implemented and DOE starts accepting spent nuclear fuel in 2021.

IV. ISSUES

The following issues may be examined at the hearing:

- historical issues associated with the establishment and implementation of the Nuclear Waste Fund;
- budgetary treatment of the nuclear waste fee and appropriations of the Nuclear Waste Fund; and
- options to improve the life cycle funding of a used fuel management system.

⁴ Blue Ribbon Commission on America's Nuclear Future, "Report to the Secretary of Energy," January 2012. Accessible at: http://energy.gov/sites/prod/files/2013/04/f0/brc_finalreport_jan2012.pdf.

⁵ National Law Journal, "Judgement Fund: Energy Department Pays Out the Most – Again," April 6, 2015. Accessible at: <http://www.nationallawjournal.com/id=1202722657674/Judgment-Fund-Energy-Department-Pays-Out-the-Most--Again?slreturn=20151023162227>.

⁶ Department of Energy, "Fiscal Year 2015 Agency Financial Report," November 16, 2015. Accessible at: http://www.energy.gov/sites/prod/files/2015/11/f27/DOE_FY2015_AFR.pdf.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Andy Zach or David McCarthy of the Committee staff at (202) 225-2927.