

**Opening Statement of the Honorable John Shimkus
Subcommittee on Environment and the Economy
Hearing on “The Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues”
December 3, 2015**

(As Prepared for Delivery)

Good morning and welcome to today’s hearing to examine funding, budgetary and scoring issues associated with efforts to manage and dispose of our nation’s spent nuclear fuel and high-level radioactive waste. As Congress deals with year-end budget issues, today’s testimony is timely.

This Subcommittee is continuing to examine specific challenges managing used fuel and national defense waste. Central to this discussion is providing adequate financial resources for a multi-generational repository program.

In 1982, Congress passed the Nuclear Waste Policy Act, deciding commercial nuclear power consumers would fund permanent disposal of spent nuclear fuel through a one mil per kilowatt hour tax on nuclear generated electricity to be paid in to the Nuclear Waste Fund and managed by the Department of Energy.

A DOE audit of the Fund released just this morning projects its total current value at \$34.3 billion, an increase of \$1.4 billion over last year, and an \$11 billion increase since 2009. This includes consumer payments plus an interest calculation. Since the fee was instituted over 30 years ago, ratepayers in my home State of Illinois have contributed more than any other state at over \$2.3 billion to the Nuclear Waste Fund.

The repository program was designed to be a multi-generational effort, which required long-term stability so funding would be available at the most critical times of the program. The 1982 outlook for nuclear power was more optimistic than today’s. That means a shrinking fleet of operating reactors must provide adequate financial resources for a 100 year program.

Meanwhile, the budgetary and scoring treatment of the Nuclear Waste Fund is broken. Comprehensive budget reconciliation measures, enacted after 1982, counted revenues from the fee as reducing the budget deficit in the fiscal year they were paid. Yet programmatic outlays remained on the discretionary side of the budget ledger and counts against annual budget caps. That means spending on the repository competes every year with other Federal budget priorities, such as maintaining our nuclear defense capability or building Army Corps water projects. Today we will get a better perspective as to how and why these budget changes have complicated the program to permanently dispose of used fuel.

The Nuclear Waste Policy Act required the Federal government to begin accepting fuel from commercial power plants by 1998, and DOE entered into contracts with plant operators to do just that. But DOE was not ready in 1998. As a result commercial utilities started suing DOE for breach of contract, and the courts sided with the utilities. The damage payments are drawn from a permanent, indefinite appropriation, known as the Judgment Fund. Payments from the Judgment Fund don’t count against total spending caps, so policymakers have little incentive to stop the bleeding.

Three weeks ago, DOE updated its annual cost estimate of liability for failure to fulfill its obligations as required by the Nuclear Waste Policy Act, which will ultimately all be paid from the Judgment Fund. DOE estimates lifetime liability to reach \$23.7 billion. This is a billion dollar increase over last year, and \$10 billion dollar - or fifty percent- increase since President Obama shuttered the Yucca Mountain program. In 2014 alone, the Federal government paid out over \$900 million from the Judgment Fund, while not appropriating any money from the Nuclear Waste Fund for the Nuclear Regulatory Commission and DOE

to work on the Yucca Mountain license application. That annual legal payment is nearly three times as much funding as the total amount the NRC needs to complete its review of the Yucca license.

DOE's projection is predicated on the ability to begin taking title of commercial spent nuclear fuel in five years. Recently, the Subcommittee received testimony it would take at least seven to nine years to just to begin transporting used fuel, regardless when a site is available. It is likely the liability will continue to skyrocket until we get the stalled program back on track.

Budgetary and funding challenges have been further complicated by President Obama's legally dubious decision to walk away from Yucca Mountain. When DOE stopped work on the repository program, the National Association of Regulatory Utility Commissioners filed suit to halt collection of the nuclear waste fee. The Courts found DOE's required financial projections "absolutely useless" and based on "pie in the sky" analysis. The decision stated the government's argument was "flatly unreasonable," and "obviously disingenuous."

The Court directed DOE to halt the annual collection of \$750 million from ratepayers, but the payments by taxpayers for DOE's breach of contract continue. I look forward to hearing from NARUC today about their experience with the Nuclear Waste Fund.

I welcome all our witnesses and urge my colleagues to take advantage of their expertise as we prepare to sort this out and fix it.

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