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RPTR YORK

EDTR ROSEN

THE NUCLEAR WASTE FUND: BUDGETARY,
FUNDING, AND SCORING ISSUES
THURSDAY, DECEMBER 3, 2015
House of Representatives,
Subcommittee on Environment and the Economy,
Committee on Energy and Commerce,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:59 a.m., in Room 1100, Longworth House Office Building, Hon. John Shimkus, [chairman of the subcommittee] presiding.

Present: Representatives Shimkus, Harper, Murphy, Latta, Johnson, Bucshon, Flores, Hudson, Tonko, Schrader, Green, and McNerney.

Staff Present: Nick Abraham, Legislative Associate, E&P; Will Batson, Legislative Clerk, E&P, E&E; Jerry Couri, Senior Environmental Policy Advisor; David McCarthy, Chief Counsel, Environment/Economy;

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Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; and Timia Crisp, Minority AAAS Fellow.

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Mr. Shimkus. I am going to ask my colleagues who are here to take seats. And for those here, we want to, first of all, thank the Ways and Means Committee for their allowing us this palatial committee hearing room. We also want to move rapidly, because they are going to call votes real soon. So we want to get this thing started so we can get back here and get to the meat and potatoes of the hearing. So if we can get the door closed too, on the left there. Can we get -- I don't know who is -- where is -- and then I will call the hearing to order and recognize myself 5 minutes for an opening statement.

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

A DOE audit of the fund released just this morning projects its

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total current value is \$34.3 billion, an increase in \$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. And I have paid some of that personally myself.

The repository program was designed to be multigenerational 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

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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 \$1 billion increase over last year, and a \$10 billion, or 50 percent increase since President Obama shuttered the Yucca Mountain project.

In 2014 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 5 years. Recently, the subcommittee received testimony it would take at least 7 to 9 years to just begin transporting

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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 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 hopefully in the future, fix it. Thank you. And I yield to Mr. Tonko for his opening statement.

Mr. Tonko. Thank you, Chair Shimkus, and good morning to our panelists. Thank you all for being here on what has become a very busy week.

We all know the politics behind nuclear waste disposal are

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complicated. So it should come as no surprise that the budgetary and legislative histories are equally complex.

In 1982, Congress passed its Nuclear Waste Policy Act, directing the Department of Energy to remove spent nuclear fuel from commercial nuclear power plants in exchange for certain fees and transport it to a permanent geologic repository, beginning no later than January 31, 1998.

Obviously, that deadline has been missed. Utilities that generate nuclear waste had been paying an ongoing fee of one mil per kilowatt hour of nuclear-generated electricity. These fees were deposited in the Nuclear Waste Fund to cover the cost of the Department of Energy's acceptance, transport, and disposal of civilian nuclear waste. But the fund has not worked as intended. I am sure we will get into the recent history and options moving forward later in this hearing.

More than 60 years after beginning and expanding our use of nuclear materials, nuclear waste disposal remains a difficult and an expensive problem. We will have to deal with 74,000 metric tons of commercial spent fuel, with more being added each and every year. And I agree that we should be looking at all options for nuclear waste disposal in an effort to find the safest and the most cost-effective ways for us as a Nation to move forward. But we must recognize and deal with both the technical and the political challenges of disposing

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of all classes of nuclear waste.

During this Congress, this subcommittee has examined a variety of nuclear waste disposal issues. I'm glad we are able to continue that work today. I thank you all again for your participation in this morning's activities. I look forward to your testimony and further discussion of what is a very important issue. And with that, I yield back, Mr. Chair.

Mr. Shimkus. The gentleman yields back his time.

The chair looks to the majority side. No one is seeking recognition.

Anyone on the minority side?

Seeing none, we want to thank my colleagues for moving expeditiously, and now welcome our witnesses. And we are going to admit your full statements into the record. We will ask you to speak for 5 minutes. And we will hopefully get to questions and answers.

So I will introduce you one at a time. First it will be Mr. David Bearden, who has appeared before the subcommittee numerous times, or the committee as a whole, specialist in environmental policy for the Congressional Research Service. Welcome, and you are recognized for 5 minutes.

**STATEMENTS OF DAVID BEARDEN, SPECIALIST IN ENVIRONMENTAL POLICY,
CONGRESSIONAL RESEARCH SERVICE; KIM P. CAWLEY, CHIEF OF NATURAL AND**

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PHYSICAL RESOURCES COST ESTIMATES UNIT, CONGRESSIONAL BUDGET OFFICE;
AND TRAVIS KAVULLA, COMMISSIONER, MONTANA PUBLIC SERVICE COMMISSION,
PRESIDENT, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

STATEMENT OF DAVID BEARDEN

Mr. Bearden. Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee, my name is David Bearden. I am a specialist in environmental policy for the Congressional Research Service, called CRS. Thank you for inviting me to testify on behalf of the agency. In serving the U.S. Congress on a nonpartisan and objective basis, CRS takes no position on any of the issues examined today. CRS has been asked by the subcommittee to outline the budgetary framework for the management of the Nuclear Waste Fund. CRS also maintains a team of policy analysts and legislative attorneys who have prepared reports on an array of complex issues associated with the Nuclear Waste Fund, and so we remain available to assist the subcommittee and the full committee with broader issues than addressed in my testimony today.

In terms of the statutory framework, as the chairman mentioned at the beginning in his opening remarks, section 302 of the Nuclear Waste Policy Act of 1982 established the Nuclear Waste Fund, financed primarily with the collection of fees from civilian nuclear utilities

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to fund the permanent disposal of their spent or used nuclear fuel and related wastes. As amended, the statute authorizes the Department of Energy, DOE, to develop a deep geologic repository for the disposal of these wastes, subject to licensing by the U.S. Nuclear Regulatory Commission.

The development of a repository and the selection of Yucca Mountain in Nevada for its location have been the subject of various scientific, technical, regulatory, budgetary, legal, and policy debates. The lack of a repository to accept spent or used nuclear fuel has been an ongoing issue. Nuclear utilities have paid fees to finance the Nuclear Waste Fund and entered contracts with the Federal Government for the disposal of their spent or used nuclear fuel by the statutory deadline of January 31, 1998.

Appropriations acts have made monies from the fund available to DOE and the Nuclear Regulatory Commission to support the licensing process, but construction of a repository could not begin until NRC approves the license pursuant to the Nuclear Waste Policy Act. Nuclear utilities have filed damage claims against DOE for partial breach of existing contracts to cover their spent or used nuclear fuel storage costs in the interim while a repository has been unavailable since the statutory deadline lapsed.

The Nuclear Waste Fund is not explicitly authorized to pay damage claims. So the Judgment Fund of the U.S. Treasury, therefore, has been

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the source of Federal funds for the payment of eligible claims. DOE has reported that a total of \$5.3 billion in eligible claims have been paid from the Judgment Fund as of the end of fiscal year 2015.

Now I will just briefly outline the basic budgetary framework of the fund itself and existing law. As authorized in the Nuclear Waste Policy Act, receipts from the nuclear utility fee collections are deposited in the fiscal year they are collected into the U.S. Treasury and credited to the Nuclear Waste Fund as assets available for discretionary appropriations.

The receipts are not treated as a revenue or offsetting collections for discretionary spending, though. They are treated as negative direct spending that has the effect of reducing total Federal direct spending in the fiscal year in which the receipts are collected. The accumulated balance of past collections does not continue to count as a reduction to direct spending in future fiscal years, though, as it would result in the double counting of receipts.

The unappropriated balance of the Nuclear Waste Fund is invested in U.S. Treasury securities that accrue interest credited to the fund that contributes to the total balance available for discretionary appropriation. The assets credited to the Nuclear Waste Fund from the nuclear utility fee collections are a liability to the general fund of the U.S. Treasury to provide these assets once discretionary appropriations are enacted. Regardless of the accumulated balance,

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though, appropriations from the fund remain subject to limitations on annual discretionary spending. And this framework for the fund is not unique within the Federal budget, though. Some other examples include the Harbor Maintenance Trust Fund, the Hazardous Substance Superfund Trust Fund, Leaking Underground Storage Tank Trust Fund, and the Uranium Enrichment Decontamination and Decommissioning Fund.

And in its department-wide financial report for fiscal year 2015, DOE reported a balance in the Nuclear Waste Fund of \$34.3 billion in net investments and related interest combined. And those investments refer to fee collections. There have been no new receipts credited to the fund from nuclear utility fees since the suspension of the collections on May 16, 2014 as a result of litigation challenging the present need for the fees. However, interest has continued to accrue, increasing the balance each year.

So under current law, and existing budgetary procedural requirements, the unappropriated balance of the Nuclear Waste Fund does remain available for appropriation to carry out the purposes of the Nuclear Waste Policy Act, but it is subject to applicable limitations on Federal spending. The budgetary treatment of the receipts does not permit past collections to be applied as an offset to future spending, but other potential budgetary options may be dependent upon amendments or exceptions to current law or existing procedures.

So that concludes the remarks of my prepared statement. Thank

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you for the opportunity to appear before the subcommittee today, and I will be happy to address any questions you may have.

[The prepared statement of Mr. Bearden follows:]

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Mr. Shimkus. Thank you very much. We look forward to answering questions because that was very confusing.

Now, we would like to turn to Mr. Cawley, Chief of Natural and Physical Resources Cost Estimate Unit of the Congressional Budget Office. You are recognized for 5 minutes.

STATEMENT OF KIM P. CAWLEY

Mr. Cawley. Mr. Chairman and members of the committee, thank you for the invitation to present CBO's review of the status of the Nuclear Waste Fund, and to try to explain the budgetary treatment of the fund.

I think if we look back over the last 33 years, about \$22 billion has been collected from nuclear power ratepayers, and about one-third of that has been spent on the waste disposal system. Five years ago, the administration found that developing the Yucca Mountain site for the disposal of waste was unworkable, and there has been no significant spending on the site project in recent years.

Last year, as a result of a Federal court order, the Department stopped collecting the nuclear waste fee from electricity ratepayers. Those fees had amounted to about \$750 million a year, and they were stopped because the court found the Department could not demonstrate whether the fee collections were too small or too large relative to the expected life cycle cost of the program.

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Although the government is not collecting the waste fees, and is not spending any of the previous fee collections, the government is incurring another type of cost. Under the contracts the Department of Energy signed after the 1982 Act, we were set to begin accepting waste for disposal 17 years ago. Shortly after the deadline was missed in 1998, utilities filed claims and won judgments for a partial breach of the disposal contracts. At this point, the Federal taxpayers, through the Treasury's Judgment Fund, have paid over \$5 billion to utilities as compensation for the breach. CBO expects that utilities will collect another \$5 billion more in compensation in the coming decade. In the simplest terms, today the government is using taxpayer funds to pay for private storage of waste instead of spending ratepayer fees to permanently dispose of the waste as authorized in the 1982 Act.

I wanted to make a couple of points about the nuclear waste program budget and the enforcement procedures that Congress uses in the congressional budget process.

The fund accounts for both the receipt of fees from utilities, and amounts provided through the annual appropriations process. In addition, interest is credited and it becomes available to be spent for program purposes. In the congressional budget process, there is a distinction made between mandatory spending, that operates under permanent law, and discretionary spending, that flows from annual appropriations acts.

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The waste program has one foot in each of these spending categories. The fee collections are part of the mandatory category, and spending on waste disposal activities is in the discretionary category. To control legislative changes to the budget, the Congress established the pay-as-you-go system for mandatory spending, and currently, discretionary spending is controlled through a system of caps on total spending. As was mentioned, the split mandatory/discretionary treatment of the waste program is not unique in the budget. There are other programs with a similar treatment.

In very practical terms, I think the program's budgetary treatment means two things: First, any future appropriations for the waste program will need to compete for funding along with all other discretionary Federal programs that are controlled by the caps on spending. The unspent balances in the fund cannot be used unless those amounts are appropriated. The collection of those balances in previous years helped to reduce the deficits in those earlier years, but they have no budgetary effect in future years.

Second, if the waste fees are reinstated in the future, they will reduce the deficit. But those mandatory collections cannot be credited to, or directly offset the cost of discretionary appropriations for spending on the program.

I think that is a good point for me to stop talking about the budget, and I would be happy to answer any of your questions.

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[The statement of Mr. Cawley follows:]

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Mr. Shimkus. Thank you very much.

And just for my colleagues, we will finish the opening statements, though they have called votes. We will go to the floor after the opening statements, and then we will return for the question period.

So last but not least, we would like to recognize Travis Kavulla, Commissioner, Montana Public Service Commission, president of the National Association of Regulatory Utility Commissioners. Welcome, and you are recognized for 5 minutes.

STATEMENT OF TRAVIS KAVULLA

Mr. Kavulla. Thank you, Chairman Shimkus. It is a pleasure -- and Ranking Member Tonko, members of the subcommittee, it is a pleasure to be before you today. I am the president of the National Association of Regulatory Utility Commissioners, which has long been involved in this issue from a policymaking and litigation front. NARUC applauds this subcommittee's tenacity and leadership on these issues. Unlike the previous two speakers, we have a full-throated and unambiguous opinion on this matter as well, which I will be happy to share with you today.

NARUC is a nonprofit organization founded in 1889. Our members are the public utility commissions in all 50 States and U.S. territories. We regulate the retail rates and services of electric,

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gas, water, and some telecommunications utilities. NARUC and its State commission members were at the table when the Nuclear Waste Policy Act of 1982 was developed and passed. And at that time and today, State regulators agree that users of electricity from nuclear power plants should pay for the Federal nuclear waste management and disposal program. And the consumers have paid generously into that fund. Since 1982, more than \$40 billion in direct payments and interests have been paid into the Nuclear Waste Fund. And so far, we have very little to show for it, just an \$11 billion hole in the ground, to be exact. The Federal Government missed its statutorily-mandated deadline to start accepting nuclear waste in 1998. In the late 1990s and early 2000s, at least, the program had shown progress, notwithstanding that missed deadline.

However, since that time, efforts to block funding for the geologic disposal of nuclear waste at Yucca Mountain, as well as the Department of Energy's unlawful refusal to consider the project's licensing application, has kept the country in the exact same situation we occupied 28 years ago when Congress decided that Yucca Mountain should be the first site considered for the United States' permanent repository. The repercussions of the administration's failure to take title of nuclear waste and to develop the Yucca Mountain site have been substantial.

Now taxpayers from each of your constituencies, even those whose

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utilities have no stake in nuclear-generated electricity, continue to fund court-awarded damages from the Department of Justice's Judgment Fund for DOE's partial breach of contract.

The chairman and ranking member have described very well, I think, the history of some of these problems. So in the interest of cutting it short, I will move on to a few things NARUC views as solutions.

First, access to the billions collected by the Nuclear Waste Fund is essential for any interim or permanent solution to nuclear waste disposal to succeed. Appropriations for the waste disposal program remain under the spending cap applicable to all domestic programs, even though the NWF is self-financed. This forces, as you just heard, spending from the NWF to compete with other spending programs that never have had a dedicated funding stream. This approach is unfair to ratepayers, and inappropriate for a fund designed to finance the extremely protracted life cycle of a capital intensive disposal program.

It makes no sense to treat funds collected specifically to support the disposal of used commercial reactor fuel as discretionary. Over the life of the program, this approach has led to lower appropriations than were requested to accomplish this mission. Reduced funding contributed to project and schedule delays. Inadequate funding can only hamper efficient scheduling and planning, thereby driving up costs. The program must have full access to the revenues generated

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by consumers' fee payments if they resume, as well as to the balance of the NWF. This requires legislative changes to the NWPA.

As related above, the U.S. Government has not lived up to the promises made under the NWPA and subsequent congressional enactments. This is really not a matter of opinion, but of legal record. And of particular relevance is the decision that the chairman cited from the Circuit Court of Appeals regarding the DOE fee collection. I think this sorry history strongly suggests that the management of Federal responsibilities for integrated-used fuel should be more successful if they were assigned to a new organization with a single-minded devotion to the cause of permanently storing used fuel. Congress should charter a new Federal corporation dedicated solely to implementing the nuclear waste management program and empowered with the authority and resources, including direct access to the NWF outside the current appropriations process that is necessary for such a mission to succeed.

Congress would still have oversight over those, but they would be separately dedicated to the use by that organization. If implemented in the near term, these ideas can help create a solid foundation on which to build a viable spent nuclear fuel management program. NARUC is certainly open to the idea of interim solutions where nuclear fuel is stored, but these interim sites cannot be allowed to be mere parking lots in the absence of a permanent storage solution.

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Thank you very much, and I look forward to questions.

[The statement of Mr. Kavulla follows:]

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Mr. Shimkus. Thank you very much.

For my colleagues, there are 7 minutes remaining on the floor to cast our votes. So we will, in a minute, recess. For our panelists, there are seven votes called. That is a good 45 minutes to an hour. So hang around the building, get coffee, and we will be back to delve more deeply into this. We thank you for your time. And with that the hearing -- I am going to recess the hearing.

[Recess.]

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[11:37 a.m.]

Mr. Shimkus. We will call the hearing back in order. Again, apologize for the long delay, but we have to do our job, which is voting on the floor also. Thank you for the opening statements. We will go into the questions. And I will begin. I will recognize myself 5 minutes to start the questioning.

The first one is for Mr. Kavulla. And I know, Mr. Kavulla, you have to leave. I have been informed. So when you have to go, just get up and go. If we are still questioning -- hopefully we will direct the questions that we can to you early enough to get responses, so hence, the first one.

At a recent subcommittee hearing to examine the issues associated with transportation of nuclear materials, expert witnesses testified that pursuing consolidated interim storage for spent nuclear fuel would likely increase life cycle costs as a result of having to ship material more than once. The last DOE life cycle cost analysis for Yucca Mountain estimated total transportation costs to exceed \$20 billion over the associated 70-year national transportation campaign.

You stated your concern with the possibility that consolidated interim storage would increase the financial burden on ratepayers

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without a justifiable return on investment, such as a reduction in payment from the judgment fund. What exactly is necessary to provide assurance that any authorization for consolidated interim storage is in the interest of electric ratepayers?

Mr. Kavulla. Thank you, Mr. Chairman, for that question. I think the answer is that there needs to be unambiguously a cost-benefit analysis done of this. My real concern, on behalf of NARUC, is that we would establish these consolidated storage sites as an interim solution, but then they would become de facto, permanent sites rather than the kind of parking lot that undergirds the concept.

So, you know, there needs to be more costing than has already been done. The sites, at least one of the sites that has raised its hand on a consent basis is one in New Mexico, but they have been very clear in that State that they are unwilling to go forward without the designation of a permanent repository. So I would imagine you would have difficulty of the same type you face in the Yucca Mountain issue with even identifying those interim locations.

So I think, my own personal opinion on this, is that you would need to have a clear linkage between the interim site and the permanent site in the same breadth, acknowledging that it may be a reasonable idea because, realistically, we are decades off of creating a permanent repository, one way or another.

Mr. Shimkus. Thank you very much.

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Now, for Mr. Bearden and Mr. Cawley, in both your testimonies, you reference potential issues of double-counting previous revenue from the nuclear waste fee that has been collected over the previous 30 years. For clarification, if Congress were to appropriate funding from the Nuclear Waste Fund on activities for which it was collected, under our scoring rules, Congress -- I guess my question is, would Congress be increasing the Federal deficit?

Mr. Cawley. Right. If next year, Congress were to appropriate \$100 million from the Nuclear Waste Fund, that would add to the deficit in that year.

Mr. Shimkus. Mr. Bearden, would you agree?

Mr. Bearden. Well, most certainly I would agree with CBO in how they would score any impacts on the deficit. If funding were appropriated out of the Nuclear Waste Fund, within the discretionary spending caps, it would be part of that discretionary spending total and the effects it would have on the deficit.

Mr. Shimkus. What exactly, then, is accounted for in the Nuclear Waste Fund audit release this morning by the Department of Energy inspector general?

Mr. Bearden. I am not quite sure I understand your question. What is accounted for?

Mr. Shimkus. Yeah. Obviously, you know, the audit was released today, so what are they accounting for in the release for that audit

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in their numbers?

Mr. Bearden. Well, their numbers are reflecting what is the total balance of investments, which are the nuclear utility fee collections and the interest combined. That is available for discretionary appropriation, that \$34.3 billion figure, by the end of fiscal year 2015. How Congress can use that money and the amounts each year are going to depend on the priorities when the discretionary spending caps.

Mr. Shimkus. Great. Let me just finish up with Mr. Kavulla. NARUC's previous testimony suggested that Congress could structure payments from the utilities into an escrow account which would not be provided to the Federal Government until funding is appropriated by Congress. Please describe how this would protect the ratepayers?

Mr. Kavulla. So in the other witnesses' testimony, Mr. Chairman, you heard examples of funds that work in the way this one does. It's NARUC's testimony that this budget approach for something like the disposal of nuclear waste really doesn't make sense when you are talking about a life cycle of many, many decades, possibly in excess of a century. It shouldn't be subject to annual appropriation decisions by Congress.

The idea of an escrow account would be to maintain congressional oversight and authority over spending, even while making clear that the funding went into a fund available, for instance, by an independent

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body charged with oversight exclusively of used waste disposal. There are other examples of funds that are similar to this. The universal service fund that USEC administers is similar, special purpose fund that is subject in congressional oversight, but which is not subject to an annual appropriation.

Mr. Shimkus. Great. Thank you. My time has expired.

I was just going to end by saying, mandatory receipts, discretionary spending with possible deficit implications. That is why it is very confusing for us.

And I recognize Mr. Tonko for 5 minutes.

Mr. Tonko. Thank you, Mr. Chair.

And, Mr. Cawley, you called the Nuclear Waste Fund an accounting mechanism. Is it a trust fund as we think of trust funds in a traditional sense?

Mr. Cawley. It is categorized in the budget as a special fund. Like other funds in the Federal budget, they are used to account for moneys. The Treasury manages all of the cash on a unified basis, so when we want to spend money that has accumulated in these funds, that requires new spending.

Mr. Tonko. Let me ask this then: The funding collected has already been used to offset past Federal deficits, so moving forward, that money would need to be appropriated as discretionary funding from the current fiscal year at that time. Do I have that right?

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Mr. Cawley. That is right. Yes.

Mr. Tonko. Okay. So from CBO's perspective, despite the collection of fees in the past, would a change in the law that would allow the waste disposal process to resume score and score significantly?

Mr. Cawley. I guess I am not sure what the change in the law would be, but in the simplest terms, allowing the waste program to go forward could be just the appropriation of X million dollars, and that would be costed along with all other discretionary appropriations in that year, presumably under the cap that controls all discretionary appropriations in that year.

Mr. Tonko. And, Mr. Bearden, are there other programs that use this accounting mechanism that are being appropriated discretionary funding annually based on a user fee paid to the Treasury?

Mr. Bearden. Yes, some of the examples that I provided in my testimony with the Superfund Trust Fund, Leaking Underground Storage Tank Trust Fund, Uranium Enrichment Decontamination and Decommissioning Fund, those are other --

Mr. Tonko. Have these funds been as troubled with their accounting mechanism?

Mr. Bearden. Each of them has had their own set of issues and viewpoints. For example, Leaking Underground Storage Tank Trust Fund, the receipts accumulated at a faster pace than Congress appropriated,

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and the discretionary process leading to a higher balance than moneys going out. That is an example of an issue with that particular fund. That has dedicated receipts, but the use of it is subject to discretionary appropriations.

Mr. Tonko. Thank you.

Let me toss out a hypothetical, and it would include either this or a future administration reevaluating Yucca Mountain, or Congress changing the law about the location of a permanent geologic repository for the uses of nuclear waste fund fees. Do you believe the Secretary of Energy, under existing authorities, could begin reassessing fees, which have been stopped since May of 2014?

Mr. Cawley. We think the fees could conceivably be charged again under administrative changes, absent a change in law. The court found, in our view, that DOE had not done a fee adequacy study correctly because it couldn't demonstrate if these fees were sufficient to pay the life cycle cost. Presumably, that study could be redone in a different way, and demonstrate to the court that these fees either are sufficient or are insufficient to pay for the life cycle cost of the program.

In the original Act, DOE has the authority to administratively change the fee, present that proposed change to the Congress, and if Congress doesn't act, the fee change goes forward.

Mr. Tonko. And are there concerns with the existing contracts, with utilities that might make this more difficult?

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Mr. Cawley. Might make a change to the fee difficult or a --

Mr. Tonko. Uh-huh. Or the assessing of the fees or --

Mr. Cawley. I can't think of any.

Mr. Tonko. Okay. And, Mr. Bearden, can you explain the process for changing this fee. There is analysis by the Secretary of Energy that determined the appropriate fee, but then it must be submitted to Congress, I believe, for adjustment. Is that --

Mr. Bearden. Yes, for review. Is that what you are asking?

Mr. Tonko. Yes.

Mr. Bearden. Yes. There is a process of a review for that.

Mr. Tonko. Thank you.

And, Mr. Kavulla, the industry estimates \$50 billion in damages for utilities with DOE contracts. DOE's total liability estimate is \$29 billion. Can you explain this discrepancy.

Mr. Kavulla. Mr. Congressman, I really cannot speak for the industry on this point. I do know that DOE had suggested a number, I believe, that was nearly \$20 billion in size. I am not sure of the \$9 billion exposure, but it is true what you have said; in my testimony, there is a citation to an industry estimate of about \$50 billion.

I think the bottom line here is that there is a large amount of exposure, and whatever the ultimate liability may be, there is a collection of \$750 million annually with a lot of unresolved claims that are still pending.

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Mr. Tonko. Thank you.

My time is up, so I yield back.

Mr. Shimkus. I thank my colleague and friend, and I turn to Congressman Johnson from Ohio for 5 minutes.

Mr. Johnson. Thank you, Mr. Chairman. And thank you, gentlemen, for joining us today.

Mr. Bearden, in addition to finding a disposal pathway for commercial spent nuclear fuel, the Nuclear Waste Policy Act required a determination regarding a management of the nuclear waste from atomic defense activities. What was the anticipated disposal path for that material?

Mr. Bearden. Well, there are possible pathways of disposal for that material, including a separate repository or a consolidated repository, and the administration had issued its finding of moving forward with planning for a separate repository for defense waste, if that is what you are referring to.

Mr. Johnson. Okay. So what would it mean for defense accounts if we choose to pursue an entirely new disposal pathway for this type of material?

Mr. Bearden. Well, any disposal facility for defense nuclear waste would be subject to appropriation by Congress to have the resources available for certain.

Mr. Johnson. Okay. Mr. Cawley, would that funding be subject

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to the current caps on defense spending under the Budget Control Act and, therefore, compete with other defense account activities as well?

Mr. Cawley. Sounds like it would, yes.

Mr. Johnson. I am sorry?

Mr. Cawley. It sounds like it would, yes.

Mr. Johnson. Okay. All right. You know, the Department of Energy recently found that its estimated liabilities for failure to accept commercial spent nuclear fuel is over \$23 billion. That is an annual increase over \$1 billion. This estimate, of course, is predicated on achieving the Department's strategy on used fuel management, and their ability to begin accepting title to stranded spent nuclear fuel in 5 years.

So, Mr. Cawley and Mr. Bearden, will you describe how the development and operation of a pilot interim storage as the administration proposes would impact the overall estimated liability? And you can choose who goes first. I don't care.

Mr. Cawley. I have heard the Department's estimate of their liability of some \$23, \$24 billion described as depending on their implementation of their strategy which would have a storage facility during the next 10 years.

Mr. Johnson. So it is safe to say that it is significant?

Mr. Cawley. Yes.

Mr. Johnson. Okay. Mr. Bearden, do you have a comment on that?

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Mr. Bearden. Well, as with any strategy of any administration, it would depend ultimately on implementation and the assumptions that it would be made for that, for that to result in the outcomes that they are estimating. And certainly, that involves a lot of complexities, and CRS would be happy to work with the committee to discuss those issues and challenges with you at your convenience.

Mr. Johnson. Okay. What portion of DOE's projected liability is tied to only the dozen sites that are completely decommissioned, absent removal of the spent nuclear fuel? Either of you want to comment on that?

Mr. Cawley. I don't have a specific answer to that question, but I do know that under the original contracts, at this point, DOE was to have removed approximately 40,000 metric tons of waste out of the some 72,000 metric tons of waste that exists. It doesn't address specifically the spent fuel at the facilities that have closed. Some of that, no doubt, should have been removed by this time.

Mr. Johnson. Can you take that question for the record, please, and do some research on that and get back to us?

Mr. Cawley. Certainly.

Mr. Johnson. Okay. Thank you.

Mr. Bearden, the Nuclear Waste Policy Act included a number of provisions to provide financial assistance to State-affected local and tribal governments. Will you please describe what this funding was

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intended to support?

Mr. Bearden. There is a range of funding authorized subject to appropriation from the Nuclear Waste Fund for affected units of local government, States, and tribes. Some of that is for oversight during the licensing process and other assistance, and some of the totals of that have been approximately \$520 million, at least at the end of fiscal year 2009 that I am familiar with, and so, that assistance part is to go for the oversight and the licensing process.

Mr. Johnson. Are you aware of how much funding has previously been directed to the State of Nevada and local and tribal governments?

Mr. Bearden. I do not have that figure with me today, but I would be happy to provide that as a follow-up response for the record.

Mr. Johnson. Mr. Kavulla, your organization is on record supporting reasonable economic benefits and incentives for host States and communities. Would you like to discuss very briefly -- because my time is expired -- the nature of those benefits and the role of Federal-State partnerships?

Mr. Kavulla. Congressman, I would be happy to follow up in more detail, but briefly, we acknowledge that this is liability for a State to take on. We agree that there needs to be some concessions made for units of local government to take them on. But those need to be tied to, frankly, the scope of the responsibilities they are shouldering, and not, I think, just to give away that would ultimately be placed

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on the consuming rate-paying public --

Mr. Johnson. Okay. My time has expired. Would you provide an expanded answer to that?

Mr. Kavulla. I would be happy to.

Mr. Johnson. Mr. Chairman, I yield back.

Mr. Shimkus. The gentleman yields back.

We now recognize Mr. Green from Texas for 5 minutes.

Mr. Green. Thank you, Mr. Chairman. I am trying to get used to this Ways and Means Committee room. You think we could take some of our jurisdiction when we leave that they took from us over the years?

But anyway, I want to welcome our colleagues from the agencies.

The success of our Nation's nuclear waste management program is dependent on making fees raised from the Nuclear Waste Fund available as needed for construction, transportation, and storage of high-level nuclear waste. This is not the case currently. Congressional action, after the enactment of Nuclear Waste Policy Act, has sharply limited the ability of responsible agencies to access the funds to study, construct a storage facility, be it interim or permanent.

As the committee of jurisdiction, we must begin to process affixing this broken system, uphold the Federal Government's contractual obligations to the ratepayers, and ensure a clear path for the prompt licensing and construction of permanent storage facility.

Mr. Cawley, what is the current amount of money in the Nuclear

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Waste Fund?

Mr. Cawley. Current balance is shown on table 1 in my prepared testimony. It is about \$34 billion.

Mr. Green. Pardon? \$34 million or billion?

Mr. Cawley. Billion.

Mr. Green. Okay. How much of the money has the Federal Government currently paid in damages to the electric utilities for failing to take the title of civilian nuclear waste by the required date?

Mr. Cawley. So far, we have paid approximately \$5.3 billion. In the coming decade, we expect it will be about \$5 billion more.

Mr. Green. You note in your testimony, several utilities have not paid their one-time fee into the Nuclear Waste Fund. Does CBO know how much these outstanding one-time fees are valued at?

Mr. Cawley. One-time fees currently have a value of about \$1.6 billion.

Mr. Green. Is the Department of Energy currently doing anything to collect those outstanding fees from the utilities?

Mr. Cawley. The one-time fees was an option given to utilities back at the beginning of the Act, and they are due when their first delivery of waste to a repository is made.

Mr. Green. Mr. Kavulla, is our Nation's current system for high-level nuclear waste working for the people of your State?

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Mr. Kavulla. Well, Congressman, no. Montana has no nuclear waste and shouldn't be paying, frankly, for any of this. And the irony of the Federal policy is that through the damages awarded against DOE, even taxpayers of those States who have no connection with nuclear-generated electricity are, nonetheless, paying for this problem.

Mr. Green. As a supporter of nuclear energy and expansion, and coming from Texas where we are trying to look at a midlevel waste facility in West Texas that obviously we need -- and if you want nuclear power, we have to have some place, whether it be the temporary storage on site, the interim storage, or ultimately the long-term storage, but I can't say we have the solution, because there is no country in the world that has long-term storage.

You know, France, who generates a great deal of their electricity from nuclear. Sweden, actually, has a big hole in the ground. But I asked how they afforded that, and they said, well, what they would call their local jurisdiction, it was a prototype, but they agreed they would never put anything in there. So, you know, everybody wants their electricity turned on but we don't know where to put the nuclear waste.

Do you believe the ratepayers in Montana and other States represented by NARUC have confidence in the Federal Government and Congress to fix the current system?

Mr. Kavulla. Well, I have confidence, I hope, Congressman, that

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your subcommittee will do something about this.

Mr. Green. I wish I had confidence we would fix it.

Mr. Bearden, in the last 50 seconds, how are PAYGO requirements created under the enactment of the NWPA impacting the Energy Department's access to funds currently in the Nuclear Waste Fund?

Mr. Bearden. Well, the access to those funds is dependent on the appropriations of the discretionary process, so it is the discretionary spending limits that are affecting the availability of moneys that Congress can prioritize each year out of the Nuclear Waste Fund.

Mr. Green. Has the Budget Control Act of 2011 limited the Federal Government's access to the money in the Nuclear Waste Fund?

Mr. Bearden. To the extent that there are caps on overall discretionary spending, that pressure that is on all discretionary spending is also on appropriations that would come from the Nuclear Waste Fund.

Mr. Green. If Congress were to create a single-purpose, independent corporation for nuclear waste storage, how would Congress continue to ensure the strong oversight by such an entity?

Mr. Bearden. That would depend on the legislation that sets up agency rules, and how that may be overseen and what the nature of that entity is, so it would not be possible to answer that without knowing all those details.

Mr. Green. Thank you, Mr. Chairman.

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Mr. Shimkus. Gentleman yields back his time.

And just for a point of information, last month, Finland's government became the first to approve construction on such a long-term storage -- Finland -- a deep underground repository after more than 30 years of efforts to find a suitable site. So maybe someday, Mr. Green. Maybe someday.

The chair now recognizes the gentleman from Mississippi for 5 minutes.

Mr. Harper. Thank you, Mr. Chairman.

And thanks to each of you, and for your knowledge and expertise on what is, overall, a very intriguing and challenging issue on how we go forward and what we are going to do. So thank you for your testimony.

And, Mr. Cawley, and I will probably ask you, I will direct this towards you. When the Department of Energy instituted the nuclear waste fee in the 1980s, it had to account for the cost to dispose the spent nuclear fuel generated prior to the passage of the Nuclear Waste Policy Act. And certainly, as you know, they did this by providing utilities the option to pay a one-time fee upfront or defer payment.

And I know, Mr. Bearden, you have discussed some of these issues on the structure and current value.

Mr. Cawley, with CBO's cash-basis scoring process, can you explain, how does CBO account for this one-time fee that is yet to be

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collected?

Mr. Cawley. So the one-time fee with the current value of approximately \$1.6 billion is due upon delivery of the first amount of waste from the couple of utilities that chose that option. It hasn't affected the deficits in the past. It will affect deficits in the future if we receive that money. We don't really have an outlook for receiving that money, certainly in the next couple of years.

Mr. Harper. Gotcha. You know, as we have heard in some of today's testimony, when Congress appropriates funding by using the Nuclear Waste Fund authorization, you know, it does not result in the overall increase in the amount of discretionary spending.

Mr. Cawley, does it make a difference for CBO scoring purposes whether or not the appropriation from the Nuclear Waste Fund, regardless of the specific nuclear waste management activity?

Mr. Cawley. I am not sure I got the question, but --

Mr. Harper. Well, let me just ask this: This concept, would that concept apply for CBO's scoring of activities to support consolidated interim storage?

Mr. Cawley. If work on a consolidated interim storage were authorized, and there were appropriation out of the waste fund for that, or out of the general fund for that, that would be scored as additional discretionary spending. And, again, presumably, that spending would come under current caps.

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Mr. Shimkus. Would the gentleman yield?

Mr. Harper. Yes.

Mr. Shimkus. But the authority to spend discretionary dollars in an interim plan would take a change in the current law?

Mr. Cawley. That is my understanding.

Mr. Shimkus. Okay. Thank you.

Mr. Harper. Mr. Cawley, therefore, is it correct that proposed legislation to authorize the development of a consolidated interim storage proposal would potentially be treated the same, whether or not the activities are authorized to be supported from the Nuclear Waste Fund?

Mr. Cawley. In general, funds spending versus appropriation out of the Nuclear Waste Fund, they both cost, yes.

Mr. Harper. Mr. Kavulla, if I could ask you this: You know, your testimony calls for the establishment of an independent body to manage nuclear waste disposal. If Congress cedes its authority under the appropriations process, how can Congress maintain control over such an entity to assure it is fulfilling its legal obligations intended under the law and in the taxpayer interest?

Mr. Kavulla. Congressman, let me answer the question this way: Under the appropriations process currently, you have oversight jurisdiction over the DOE and the NRC, and your jurisdiction has been flouted, candidly. So I think NARUC's recommendation is to establish

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not only oversight of whatever appropriation you escrow or give under the control of such a body, but, also, positive timelines and steps to that body so that you are not essentially ruling by the power of the purse through negations of agency acts, but directing an agency, this new independent body, to do specific things that are enforceable by entities, like NARUC and courts of law, so that no administration in the future can, again, act to drag its feet on this important question.

Mr. Harper. Thanks to each of you. My time is almost expired so I will yield back.

Mr. Shimkus. Gentleman's time -- he actually turns the balance of his time.

Seeing no other members and knowing that people have other places to go, we want to thank you for your time. And the record will be open for a couple days should other members want to submit. We would ask that you would turn those in a timely manner. And thank you, again, for your time.

And with that, I will adjourn the hearing.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]