

Testimony of David M. Bearden
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Before the House of Representatives Committee on Energy and Commerce,
Subcommittee on Environment and the Economy
Hearing on the Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues
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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 (CRS). Thank you for inviting me to testify on behalf of CRS regarding budgetary, funding, and scoring issues associated with the management of the Nuclear Waste Fund.

In serving the U.S. Congress on a non-partisan and objective basis, CRS takes no position on these issues. CRS has been asked by the Subcommittee today to outline the budgetary framework for the management of the Nuclear Waste Fund. CRS remains available to assist the Subcommittee with these and related issues.

Nuclear Waste Policy Act of 1982

Enacted in the 97th Congress on January 7, 1983, Section 302 of the Nuclear Waste Policy Act of 1982 (P.L. 97-425, 42 U.S.C. 10222) authorized the establishment of the Nuclear Waste Fund. The statute structured it as a “separate” fund in the U.S. Treasury financed primarily with receipts from the collection of fees from nuclear utilities. The fees are authorized to fund the permanent disposal of spent nuclear fuel (or solidified high-level radioactive waste derived from spent nuclear fuel) created from the generation of electricity involving civilian nuclear reactors.

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 (NRC). However, the Nuclear Waste Policy Act does not provide the authority to

expend the receipts collected for this purpose, making the use of the nuclear utility fee collections subject to discretionary appropriation. The receipts credited to the Nuclear Waste Fund from these collections therefore are not available to DOE to develop a repository until appropriated by Congress in subsequent law. Once appropriated, Section 302 of the Nuclear Waste Policy Act authorizes the eligible uses for which these monies may be expended.

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, and policy debates. The lack of a repository to accept spent 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 under the Nuclear Waste Policy Act for the disposal of their spent nuclear fuel by the statutory deadline of January 31, 1998.

Appropriations acts have made monies from the Nuclear Waste Fund available to DOE and NRC 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. If the license were approved, the monies available for construction would depend upon subsequent appropriations.

Nuclear utilities have filed damage claims against DOE for partial breach of existing contracts, to cover their spent nuclear fuel storage costs in the interim while a repository is unavailable. Section 302(d) of the Nuclear Waste Policy Act identifies the eligible uses of appropriations from the Nuclear Waste Fund, and does not explicitly include payment for such damage claims.

The Judgment Fund of the U.S. Treasury has been the source of federal funds for the payment of eligible claims. Pursuant to 31 U.S.C. 1304, the Judgment Fund is a permanent, indefinite appropriation available for payment of final judgments, awards, and compromise settlements

(and interest and costs specified in the judgments) owed by the United States. The Judgment Fund generally is available for payment of eligible claims, if the payment is not otherwise provided by law in separate appropriations.

DOE reports that a total of \$5.3 billion had been paid from the Judgment Fund as of the end of FY2015 for eligible claims filed by nuclear utilities for private interim storage costs.

Budgetary Framework of the Nuclear Waste Fund

Receipts from the nuclear utility fee collections in a fiscal year are deposited into the U.S. Treasury and credited to the Nuclear Waste Fund as assets available for discretionary appropriation by Congress. The receipts are not treated as revenue or offsetting collections for discretionary spending. Receipts from the nuclear utility fee collections to finance the Nuclear Waste Fund are treated within the federal budget as negative direct (i.e., “mandatory”) 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 from the nuclear utility fees does not continue to count as a reduction to direct spending in future fiscal years, or it otherwise would result in the double-counting of receipts collected by the federal government.

The unappropriated balance of the Nuclear Waste Fund is invested in U.S. Treasury securities that accrue interest credited to the Nuclear Waste Fund through an intergovernmental transfer. The interest is an additional source of receipts that contributes to the total balance of the Nuclear Waste Fund available for discretionary appropriation. However, the interest does not serve as an offset to the appropriations because it is an intergovernmental transfer within the federal budget and not a net increase in total federal receipts.

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. This liability to the General Fund constitutes a financial commitment of the federal government to provide the assets credited to the Nuclear Waste Fund, once discretionary appropriations are enacted that would make the monies available for the purposes authorized in the Nuclear Waste Policy Act.

Regardless of the accumulated balance of nuclear utility fee collections and interest credited to the Nuclear Waste Fund, appropriations from the fund remain subject to limitations on annual discretionary spending. These limits are established both statutorily (for example, through the Budget Control Act of 2011, as amended) and procedurally (for example, through congressional budget resolutions and sub-allocations of discretionary spending determined by the House and Senate Committees on Appropriations).

This framework for the Nuclear Waste Fund is not unique within the federal budget. Some examples of other funds invested in U.S. Treasury securities that subject the use of collections to discretionary appropriations and limitations on annual discretionary spending include:

- Harbor Maintenance Trust Fund,
- Hazardous Substance Superfund Trust Fund,
- Leaking Underground Storage Tank Trust Fund, and
- Uranium Enrichment Decontamination and Decommissioning Fund.

Status of Nuclear Waste Fund

As presented in the Office of Management and Budget (OMB) Appendix to the President's FY2016 budget request submitted to Congress in February 2015, the accumulated

unappropriated balance of assets and interest credited to the Nuclear Waste Fund was \$32.4 billion as of the end of FY2014.

This balance of \$32.4 billion is the amount that remained available at that time for appropriation from the Nuclear Waste Fund to carry out the purposes of the Nuclear Waste Policy Act, subject to the applicable limitations on federal spending. Additional interest credited to the Nuclear Waste Fund in FY2015 would increase the balance available for discretionary appropriation. In its Appendix to the President's FY2016 budget request, OMB estimated that \$1.53 billion in interest would accrue in FY2015.

In November 2015, DOE released its department-wide financial report for FY2015. DOE reported a balance in the Nuclear Waste Fund of \$34.3 billion in net "investments and related interest" combined, as of the end of FY2015.

There have been no new receipts credited to the Nuclear Waste Fund from collections of nuclear utility fees since the suspension of the collections on May 16, 2014, as a result of litigation in the U.S. Court of Appeals for the District of Columbia Circuit. This litigation challenged the present need for the fees, considering the status of the licensing process for a repository and the reasonableness of plans and assumptions upon which to estimate the funding needs.

The Administration had included an estimate of \$362 million in nuclear utility fee collections for FY2015 in the President's FY2016 budget request as a "placeholder" in its budget presentation, based on its assumption that the fees "will not remain uncollected indefinitely." These estimated receipts were part of the OMB calculation of the total federal budget deficit in preparing the Administration's total budget estimate for FY2015. Of course, the actual impacts on deficit reduction in FY2015 depend on actual collections, which did not occur during FY2015.

Under current law and existing budgetary procedural requirements, the unappropriated balance of assets and interest credited to the Nuclear Waste Fund over time remains available for appropriation to carry out the purposes of the Nuclear Waste Policy Act, subject to the applicable limitations on federal spending. The budgetary treatment of the receipts in the account does not permit past collections to be applied as an offset to future spending from the Nuclear Waste Fund to avoid the double-counting of receipts. Other potential budgetary options may be dependent upon amendments or exceptions to current law or existing budgetary procedural requirements.

That concludes the remarks of my prepared statement. Thank you for the opportunity to appear before the Subcommittee today. I would be happy to address any questions you may have.