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RPTR BAKER

EDTR SECKMAN

UPDATE ON THE CURRENT STATE OF NUCLEAR
WASTE MANAGEMENT POLICY

FRIDAY, MAY 15, 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 9:00 a.m., in Room 2123, Rayburn House Office Building, Hon. John Shimkus, [chairman of the subcommittee] presiding.

Present: Representatives Shimkus, Harper, Whitfield, Pitts, Murphy, Latta, Johnson, Hudson, Cramer, Tonko, Green, McNerney, and Pallone (ex officio).

Also Present: Representative Newhouse.

Staff Present: Charlotte Baker, Deputy Communications Director; Will Batson, Legislative Clerk; Leighton Brown, Press Assistant; David

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McCarthy, Chief Counsel, Environment/Economy; Chris Sarley, Policy Coordinator, Environment & Economy; Peter Spencer, Professional Staff Member, Oversight; Andy Zack, Professional Staff Member; Christine Brennan, Minority Press Secretary; Caitlin Haberman, Minority Professional Staff Member; and Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment.

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Mr. Shimkus. It is 9:00. We want to start promptly. There is going to be votes sometime early this morning, and we want to get the opening statements through and encourage members to get back afterwards to follow up with questions. I will recognize myself for 5 minutes for an opening statement.

Thank you all for coming to this morning's hearing to receive an update on the status of and outlook for progress on America's nuclear waste management policy. Let me state at the outset that issue of the Nation's nuclear waste management policy is not a partisan issue. The House of Representatives has repeatedly supported Yucca Mountain in an overwhelming and bipartisan manner. Last summer, efforts to abandoned Yucca Mountain were defeated on the House floor with the body voting 4 to 1 in favor of Yucca Mountain. This includes nearly two-thirds of the Chamber's Democrats.

In April, I once again led a bipartisan group of members to see Yucca Mountain site firsthand. The site is an invaluable national asset isolated in the Nevada desert, removed from all population centers, and co-located with the Nevada National Security Site.

Since my previous visit in 2011, the landscape has notably advanced to support the development of a permanent repository. In 2013, the D.C. Court of Appeals ruled that Nuclear Regulatory Commission must continue its review of the Yucca Mountain license application. The court issued a writ of mandamus, a very consequential legal action, and declared it was illegal for the NRC to stop

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consideration of the license. As a result of this decision, the NRC resumed the scientific and technical evaluation of the license known as the Safety and Evaluation Report, or SER. The SER looked at a plethora of potential natural and manmade scenarios which could affect the performance of the facility. In January of this year, the NRC released the fifth and final volume of the SER. The NRC staff determined the facility could meet all safety regulations including that it could safely serve as a repository for up to a million years. Meanwhile, the costs of inaction and delay continue to mount. The courts ruled the Department of Energy's dismantling of the Yucca Mountain project no longer constitute a permanent disposal program. Therefore, the Federal Government could no longer collect the nuclear waste fee, a surcharge paid by consumers of nuclear-generated electricity.

While the fee is no longer being actively collected, the Treasury Department still maintains a balance of nearly \$33 billion in ratepayer money to license, construct, and operate Yucca Mountain. But it isn't just ratepayers who are paying for the consequences of the delay. All American taxpayers, regardless of whether they benefit from commercial nuclear power, are footing the legal bill, and the bill isn't cheap. Last year, the Department of Justice account that pays damages on behalf of the Federal Government, known as the Judgment Fund, paid out over \$900 million in settlements as a consequence of our inability to move forward with Yucca. This accounted for nearly a third of all Federal

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Government legal fees.

We in the Federal Government have an obligation to uphold the law, to dispose of commercial spent nuclear fuel, as well as honor the commitment made to states who host sites to support our nuclear defense activities, including South Carolina, Idaho, and Washington State. Congress needs a willing partner to host a nuclear disposal facility as we currently have with the sites that contributed to the Manhattan Project. I am committed to working with the State and local stakeholders in Nevada, who will engage in a constructive conversation to resolve the current impasse.

Just saying no is not an option. As part of this process, we will look for areas of agreement such as facilitating a benefits package for communities to provide long-term budget stability, strengthen the State's education fund, and identify associated transportation infrastructure benefits. As a host state of a Nevada National Security Site, however, Nevada already is a constructive partner with the Federal Government to protect our National interests. This, by the way, includes storing radioactive waste onsite today.

I look forward to hearing from a broad group of stakeholders today who will highlight the need to finish a repository, as the House Representative supports, as the courts direct, and as the American people deserve.

Thank you, and I now recognize the ranking member, Mr. Tonko, for his opening statement.

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[The prepared statement of Mr. Shimkus follows:]

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Mr. Tonko. Thank you, Mr. Chair. We are here this morning to hear from a fine panel of witnesses about the current state of nuclear waste policy. There are some things that I do not expect will have changed much from the time of our last hearing on this issue. Nuclear facilities across the country continue to generate waste that has yet to be secured in a long-term storage facility. Research and development on waste technologies continues. The law designating a storage facility is unchanged, and today we add to the many oversight hearings the subcommittee has held over the years.

But we still have no real solution, even an interim one, to offer to the witnesses at the table today and the constituencies that they do, indeed, represent. There have been reports by the National Academy of Sciences, the Government Accountability Office, industry and nongovernmental groups, and the President's Blue Ribbon Commission. Ironically, we have a long-term storage facility, and yet we do not. And we do not have interim storage facilities or a policy of establishing them, and yet we do. Essentially the storage facilities at each of the powerplant sites around the country now serve as de facto interim storage facilities.

We need a solution to this situation. It will not be easy, and it will be expensive. But the alternative is also expensive and provides less safety, less security than a functioning, ordered process for dealing with spent fuel. And Mr. Fitz reminds us that we also have to deal with legacy waste from our defense programs.

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I know the chair and others on this committee are resolved to complete the process of opening the Yucca Mountain facility, but the Yucca Mountain facility is not open at this time, and it does not appear it will be open in the near future. In the meantime, spent fuel continues to accumulate, and penalty fees continue to accrue. I continue to believe that it is worth examining additional options for dealing with this waste.

The administration's strategy, based on the work done by the Blue Ribbon Commission in 2012, has challenges and unknowns. Should we pursue a system that includes both interim and long-term storage of waste? If so, how do we proceed? If there are to be interim sites, how many will be needed? How much waste can or should be stored at them, and what time period qualifies as interim? What are the costs, and can we access the necessary funds to the fund established to deal with this problem?

I do not expect to hear definitive answers to these questions this morning, but I do think it is time that we examined all options for moving forward. I think the future for nuclear power is in question if we do not find a way to deal with this issue.

I want to thank all of our witnesses for appearing before the subcommittee today. I look forward to your testimony and to your suggestions on options to move forward on what is a very critical and important issue.

And, with that, Mr. Chair, I yield back.

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[The prepared statement of Mr. Tonko follows:]

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Mr. Shimkus. The gentleman yields back his time. Anyone seeking time on the majority side?

Seeing none, the chair recognizes the ranking member of the full committee, Mr. Pallone, for 5 minutes.

Mr. Pallone. Thank you, Mr. Chairman.

I want to thank you and Ranking Member Tonko for holding this hearing today.

Much has changed since the Nuclear Waste Policy Act became law in 1982, which allowed the Secretary of Energy to remove spent nuclear fuel from commercial nuclear power plants in exchange for fees and transported to a permanent geological repository. But I think the past three decades of the nuclear waste program might be best summed up this way: Lots of change but very little progress.

Unfortunately, the one thing that seems most resistant to change is the program's ongoing failure to the ratepayers, who have paid into the fund. That failure also applies to the taxpayers, who are now having to pay damages through the Judgment Fund administered by DOJ. In New Jersey, we have several operating nuclear reactors that provide carbon-free electricity, and this includes Oyster Creek, the Nation's oldest operating plant, which will soon stop providing power but will continue to provide a home to spent nuclear fuel long into the future unless we can come together on a plan to fix this program.

My point is this: I am not interested in litigating the wisdom of the administration's actions with regard to Yucca Mountain because

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that won't help move waste out of New Jersey, Illinois, New York, Michigan, or anywhere else anytime soon. I am, however, interested in making progress, and I hope this committee will put the ratepayer and taxpayer first and focus on efforts that can be enacted into law and that will move us forward over the next few years. I am encouraged by recent developments on potential consensus sites for interim storage in Texas and New Mexico, and we should look closely at the prospects they offer. That in no way means we should curtail our push for a permanent repository, but I do believe the best path forward is to work to identify steps we can take now to set the stage for real reform on permanent disposal in the future, regardless of where the disposal facility ends up being sited.

Again, thank you for holding this hearing. I look forward to hearing from our witnesses and working with all my colleagues, stakeholders, and the administration to put our Nation's nuclear waste program back on track.

And I would yield the balance of my time to the gentleman from California, Mr. McNerney.

[The prepared statement of Mr. Pallone follows:]

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Mr. McNerney. I want to thank the ranking member, and I thank the chairman of the subcommittee for his work on this issue. Managing nuclear waste is an engineering and a political problem. Based on the work I did as a graduate student for the Nuclear Engineering Department at the University of New Mexico, I believe the engineering problem can be solved safely and satisfactorily.

Experience has shown that in order to find a location with the support of the local community, we are going to need complete transparency and the involvement of the local community in order to be accepted by the local community.

More than \$10 billion has been spent on the Yucca Mountain project, and that money may be wasted because there wasn't the transparency and local involvement that would be required. The current situation we have invites a Fukushima-style disaster to happen in this country because there is so much waste stored in so various locations as we will hear near the Columbia River and other places. So are we going to need a solution? I thank the chairman for his work, and I think we need to work together in a bipartisan way to find a way forward, Mr. Chairman.

And, again, I yield back.

[The prepared statement of McNerney follows:]

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Mr. Shimkus. The gentleman yields back his time.

Before we begin with the opening statements of our guests, I want to just point out that joining us in Congressman Dan Newhouse, a Member from Washington State, who has the honor and the challenge of representing the Hanford DOE site, which I think shows our common interest in moving forward on this.

Thank you for joining us.

I am going to move rapidly so we can get all our process through and hopefully have people return after they call votes.

So first at the panel and will be recognized for 5 minutes, Mr. Andrew Fitz, senior counsel, Office of the Attorney General, State of Washington.

Your full statement has submitted for the record.

You have 5 minutes, sir. Pull that mike a little bit closer if you can. Move your name tag and then make sure the button is pressed on.

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STATEMENTS OF ANDREW FITZ, SENIOR COUNSEL, OFFICE OF THE ATTORNEY GENERAL, STATE OF WASHINGTON; JOSEPHINE PICCONE, DIRECTOR, YUCCA MOUNTAIN DIRECTORATE, NUCLEAR REGULATORY COMMISSION; THE HONORABLE GREG R. WHITE, COMMISSIONER, MICHIGAN PUBLIC SERVICE COMMISSION, ON BEHALF OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, CHAIRMAN, SUBCOMMITTEE ON NUCLEAR ISSUES, WASTE DISPOSAL; STEPHEN KUCZYNSKI, CHAIRMAN, PRESIDENT, AND CHIEF EXECUTIVE OFFICER, SOUTHERN NUCLEAR OPERATING COMPANY; GEOFFREY H. FETTUS, SENIOR ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL; AND EINAR RONNINGEN, MANAGER RANCHO SECO ASSETS, DECOMMISSIONING PLANT COALITION

STATEMENT OF ANDREW FITZ

Mr. Fitz. There we go. On behalf of the State of Washington, Office of the Attorney General, I appreciate the opportunity to be here before you today. Washington State has a keen interest in the development of a permanent repository for high-level radioactive waste and spent nuclear fuel. For nearly eight decades, we have honored our duty to temporarily house nuclear waste as a byproduct of our Nation's defense at the Department of Energy's Hanford Nuclear Reservation.

Waste from Hanford accounts for approximately 63 percent of the defense-generated high-level agency waste projected for disposal at Yucca Mountain. I should point out that our near-term concern is in

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getting this waste out of failing underground single-shell tanks and into a glass form. But our long-term interest is in seeing that all this waste is properly disposed of in a deep geologic repository. That is what led us into litigation over the efforts to abandon Yucca Mountain in 2010. The Federal Government's efforts to abandon Yucca Mountain have ignored and bypassed the careful process Congress set forth in the Nuclear Waste Policy Act for developing a national repository. Washington State has been clear in its legal arguments that if Yucca Mountain is determined to be technically unsuitable in the licensing process, it should not be built. But, absent that determination, the process Congress set forth in law for establishing the repository should be respected and upheld.

In passing the Nuclear Waste Policy Act, Congress recognized that accomplishing the long-term objective of a national repository requires a stepwise approach and a process cemented in law. The House bill report that accompanied the NWPA concluded that, quote, The failure of government to provide a permanent waste disposal facility during more than 30 years of Federal nuclear activities is unmitigated. It criticized prior Federal agency competence in, quote, paper analyses and future plans as failing to provide adequate assurance that disposal facilities would be available when needed.

It noted that two prior attempts to explore potential repository sites had already failed due to intense political pressure, and it noted what it called a solid consensus of special task force and Presidential

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commission recommendations on the need for legislation to solidify a program and keep it on track. In particular, the report noted, quote, it is necessary to provide close congressional control to assure that the political and programmatic errors of our past experience will not be repeated. If it is to stand any chance of success, the process for developing a repository has to necessarily stand and withstand changes to Federal and State administrations and the political tides that accompany them. If you are going to complete a process measured in decades, you cannot be continually second-guessing or switching course partway through, or you will never accomplish the objective.

The thing that keeps you on course is and must be the law. This is at the heart of the NWPA's stepwise prescriptive structure. Critically, Congress reserved for itself the ultimate decision of approving a potential repository site. In the case of Yucca Mountain, Congress exercised that authority when it rejected Nevada's disapproval of the site. And later, when the D.C. Circuit Court of Appeals rejected Nevada's legal challenge to that recommendation to Congress, the court said: Congress has settled the matter, and we no less than the parties are bound by its decision.

Once a repository site is approved under the NWPA, it triggers a mandate for the Department of Energy to submit a construction authorization application to the NRC and an obligation on the NRC to consider Energy's application and issue a final decision approving or disapproving issuance of a construction authorization. Energy

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disregarded these mandates in 2010. It attempted to withdraw from the licensing proceeding based not on any claim that Yucca Mountain is technically unsuitable but on, quote, the Secretary's judgment that Yucca Mountain is not a workable option and that alternatives will better serve the public interest.

The NRC's Atomic Safety and Licensing Board agreed with our argument that the NWPAs plain language and legislative history did not permit the Secretary to withdraw the application. In the words of the board, quote, the NWPAs does not have the give the Secretary the discretion to substitute his policy for the one established by Congress in the NWPAs, that at this point mandates progress towards a merits decision by the Nuclear Regulatory Commission. Energy's application thus remains pending before the NRC today.

As the committee may know, the NRC Chair nevertheless then initiated his own orderly shutdown of the NRC's license review. The shutdown included terminating the NRC staff's technical review, blocking the release of Safety Evaluation Reports and shutting down the NRC's Web-based licensing support network, which was a database for all the documentation regarding the application. Despite having more than \$11 million available in appropriated funds to continue with licensing proceedings, the NRC cited budgetary considerations for its actions, including the political prediction that Congress would not further fund its efforts. It took Washington State and its fellow petitioners bringing a mandamus action and the a court issuing an order

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in August 2013 to reverse this unilateral dismantling.

In a clear blunt order, the Federal Court concluded that the NRC, quote, has declined to continue the statutorily mandated Yucca Mountain licensing process, and that, quote, as things stand, the Commission is simply flouting the law. It rejected the NRC's budgetary arguments and cited the bedrock principle of constitutional law that, quote, the President and Federal agencies may not ignore statutory mandates or prohibitions merely because of policy disagreement with Congress.

Here is where that leaves us. The NRC has now completed and released its Safety Evaluation Report. We have final legal decisions in place that establish the obligation of both Energy and the NRC to continue with the Yucca Mountain licensing process providing the funding is in place to proceed.

I understand there are those who think that Yucca Mountain is technically unsuitable, but the law provides an opportunity to prove that case in the pending NRC hearing. I also understand there are those who think that following the current scheme in the NHPA is unwise, but the method for pursuing that disagreement should be through changing the law, not disregarding it. Ultimately, given the multidecade, multi generational task of developing a nuclear waste repository, we will never have a repository, whether it is at Yucca Mountain or any other site, if the little process for siting and licensing a repository is disregarded, either now or by those who follow us. Thank you and I will be happy to take any questions.

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[The prepared statement of Mr. Fitz follows:]

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Mr. Shimkus. I appreciate it. I know you have traveled long distances and a lot, and I want to make sure you got your full statement in. But we are trying to keep quick.

I would now like to recognize Ms. Josephine Piccone, Director of Yucca Mountain Directorate from the Nuclear Regulatory Commission.

You are welcome, and you are recognized for 5 minutes.

STATEMENT OF JOSEPHINE PICCONE

Ms. Piccone. Thank you. Good morning, Chairman Shimkus, Ranking Member Tonko, and distinguished members of the subcommittee. I am Josephine Piccone, Director of the Nuclear Regulatory Commission's Yucca Mountain Directorate, which is responsible for leading the current review activities associated with the Yucca Mountain construction authorization application.

I appreciate the opportunity to appear before you today to discuss the NRC staff's completion of the Yucca Mountain Safety Evaluation Report. On November 18, 2013, the NRC Commission approved a memorandum and order setting a course of action for the Yucca Mountain licensing process, consistent with the Appeals Court decision on August 2013, and the resources available from previous unexpended appropriations to the NRC from the Nuclear Waste Fund. This course of action included Commission directing the NRC staff to complete the Safety Evaluation Report. We completed the safety evaluation report this past January

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within our cost estimate. I would like to acknowledge our talented review team of more than 40 agency experts in technical fields such as health physics, geology, seismology, hydrology, material sciences, structural engineering, and criticality safety, to name but a few. We also had an excellent legal staff providing valuable support and assistance from the NRC's federally funded research and development center, the Center for Nuclear Waste Regulatory Analyses, in San Antonio, Texas.

The Safety Evaluation Report documents the results of the staff's technical review of DOE's application. The NRC staff finds that DOE has met most but not all of the applicable regulatory requirements. Notably, the NRC staff finds that DOE's design and analysis of the proposed repository complies with the performance objectives and requirements both before and after the repository is closed.

These performance objectives and requirements, which are protective of public health and safety, include the requirements that the repository be composed of multiple barriers, requirements for the repository to meet certain radiation limits for individual protection and human intrusion, and separate standards for protection of groundwater. The staff also finds that DOE has addressed most of the general information, administrative, and programmatic requirements.

There are two specific requirements that DOE has not met that concern ownership of land and water rights. They are discussed in detail in volume 4 of the Safety Evaluation Report. In addition, a

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supplement to DOE's environmental impact statement addressing groundwater issues has not been completed. Therefore, the NRC staff is not recommending issuance of a construction authorization at this time.

Publication of the Safety Evaluation Report is only one of several steps that need to occur before a decision can be made on the construction authorization application. A decision on whether to authorize construction can be made only after a supplement to DOE's environmental impact statement has been prepared, a hearing has been conducted, and the Commission has completed its review of contested and uncontested issues. With regard to the first item, the Commission has directed the NRC staff to develop a supplement to DOE's environmental impact statement covering certain groundwater issues.

The largest and most significant of the remaining steps to be completed before the Commission can reach a decision on whether to grant the construction authorization is the adjudicatory hearing, including consideration of approximately 300 pending contentions and any new or amended contentions. The NRC does not currently have sufficient remaining resources from the Nuclear Waste Fund to complete the hearing. Recently the Commission informed the Congress that it estimated that approximately \$330 million would be needed for the NRC to complete the construction authorization proceeding.

This concludes my formal testimony on the NRC Safety Evaluation Report. I thank you for the opportunity to appear before you, and I

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look forward to continuing to work with you to advance NRC's important safety and security missions. I would be pleased to respond to questions you may have. Thank you.

[The prepared statement of Ms. Piccone follows:]

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Mr. Shimkus. Thank you very much.

Next, we have the Honorable Greg R. White, Commissioner of Michigan Public Service Commission, on behalf of the National Association of Regulatory Utility Commissioners, Chairman of the Subcommittee on Nuclear Issues and Waste Disposal. He has appeared here numerous times.

You are recognized for 5 minutes, and thanks for coming.

STATEMENT OF THE HONORABLE GREG R. WHITE

Mr. White. Thank you very much, Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee.

I want to thank you for this opportunity to testify on the status of the U.S. nuclear waste program. I am Greg White. I serve as commissioner on the Michigan Public Service Commission. I am testifying today on behalf of NARUC, National Association of Regulatory Utility Commissioners.

NARUC is a nonprofit organization. It has been around for over 125 years. Members are the public utility commissions in all 50 States and U.S. territories. We are State economic regulators, and we are responsible for ensuring the safe, reliable, and affordable delivery of essential electric utility service in every state. As a result, the success of this program is critical to the delivery of essential electric services.

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I would like to raise a few points and then offer some comments in regards to what we think might be able to be done going forward. NARUC was at the table when the 1982 law was passed, and we agreed that it was appropriate for the consumers to pay for this program. The people who benefit from the generation of electricity from nuclear power plants appropriately should pay for it. And the consumers have paid. I would like to point out that the only milestone in the 1982 act that was ever on time was the signing of the contracts that began the collection of money from the consumers. Since then, more than \$40 billion has been collected in direct payments and in interest that has accrued in the balance. The current status of the program, the same as it was in 1982; we don't have anything moving forward. The program is at a dead stop.

A couple of other points. I also serve as the chairman of an organization called the Nuclear Waste Strategy Coalition that was formed in 1993. It is a group of State commissions, utility, nuclear utilities, consumer advocates, local communities, and we were formed in 1993. I can tell you that, as somebody who was in the room in 1993, we didn't intend or ever expect that we would still be an organization working on this issue in 2015, some 22 years later.

We also proposed way back in 1994, the Nuclear Waste Strategy Coalition, the creation of a single-purpose entity, a public-private corporation chartered by the Congress to manage this program, removing it from the Department of Energy. That was in 1994. The proposal was

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rejected pretty much out of hand. The argument was by moving to that new entity, it could delay the progress on the program by up to a year.

We have been involved in several lawsuits, as you know. They have been explained by Mr. Fitz. Chairman Shimkus, I would like to point out one in particular, the suspension of the Nuclear Waste Fund, which we argued we needed to do. We considered that to be a bittersweet win. It was always our intention to pay for the program, to have the consumers pay for the program. But when there was no program after 2010, we could no longer continue to allow hundreds of millions of dollars to be collected from consumers into a fund that was paying for nothing.

So the Department of Energy has had some plans, I will say "schemes," perhaps. The problem is, is that they really have no credibility. There is no budgets. There is no time frames, other than the proposal that was made in 2013 as a result of the Blue Ribbon Commission's recommendations suggested that the Department would make substantial progress towards a national repository by 2048, some 35 years from that date.

My suggestion is, we seem to have learned nothing in the previous 32 years that led up to that point.

So, in conclusion, NARUC has thoughtfully considered the country's viable options. And we think that to move forward on a nuclear waste program, that we have to see credible substantial progress toward achieving the goal. The first step is to complete the licensing review of the Yucca Mountain license application. We also

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believe that the Nuclear Waste Fund must be managed responsibly and used only for its intended purpose. The management of the Federal responsibilities for integrated-use fuel management would be more successful if it was assigned to a new organization, such as the charter of a new Federal corporation, suggested by the Nuclear Waste Strategy Coalition back in 1994. And, in addition, we believe that there is a need for consolidated interim storage although the amount, basis of need and duration should be determined.

If implemented in the near term, these steps could create a solid foundation on which to build a viable spent nuclear program. I want to thank you for the opportunity to express my views, and I will be very pleased to take questions.

[The prepared statement of Mr. White follows:]

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Mr. Shimkus. Thank you very much.

Next, we will recognize Mr. Stephen Kuczynski, chairman, president, and chief executive officer of the Southern Nuclear Operating Company.

You are recognized for 5 minutes, and welcome.

STATEMENT OF STEPHEN KUCZYNSKI

Mr. Kuczynski. Good morning, Chairman Shimkus, Ranking Member Tonko, and the members of the subcommittee. I also thank you for the opportunity to appear before you today. As stated, my name is Steve Kuczynski. I am the chairman, president, and CEO of the Southern Nuclear Operating Company. We have been in the nuclear power business for over 50 years. Today our fleet of six nuclear reactors at three sites, Plant Hatch and Plant Vogtle in Georgia, and Plant Farley in Alabama, provide approximately 20 percent of the electricity used in those States. We are also building two new state-of-the-art nuclear units at Plant Vogtle.

It is an honor for me to appear before the subcommittee to discuss nuclear waste policy in general. Essential to this discussion is, of course, the need for a permanent repository. It is critical that the Federal Government meet its contractual obligation to take title to the Nation's spent fuel inventory. It is appropriate for the subcommittee to explore ways to get the statutorily mandated spent

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nuclear fuel disposal program back on track. I look forward to discussing these and other issues with you today.

Let me begin with a brief discussion about our company's spent fuel program. Currently we have 2,300 fuel assemblies and spent fuel pools at Plant Farley, another 930 assemblies in dry casks. At Plant Hatch, we have approximately 5,000 assemblies in the pools with 4,150 in dry casks. At Plant Vogtle, we have 2,600 assemblies in the pools and 480 in dry casks.

First thing I want to emphasize is that we have safe, reliable, onsite options to store spent fuel at our nuclear plants for the duration of our plant licenses and the expected life of the plants. Spent fuel pools and dry cask storage installations are regulated and approved by the NRC under very comprehensive safety, security, and environmental regulations. But these temporary measures should not be viewed as de facto permanent solutions to the spent fuel disposal issue.

Under both law and contract, disposal of spent fuel is an obligation of the Federal Government. My written testimony explains in some more detail how this came to be. I won't repeat that history here, other than to say that the Nuclear Waste Policy Act directed the Energy Secretary to enter into contracts with the Nation's nuclear utilities. Those contracts provided that, in return for payment of the fees into the Nuclear Waste Fund, the government will take title to nuclear powerplant owner spent fuel for permanent storage at the

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Nation's repository beginning in 1998.

Industry was effectively mandated to enter into these contracts. Under these contracts, Alabama Power has paid over \$399 million into the Nuclear Waste Fund for Plant Farley, and Georgia Power has paid over \$400 million for Plant Hatch and \$445 million for plant Vogtle. Those are real dollars obtained from electricity customers in our States on the basis of spent fuel contracts with the Federal Government. 1998 came and went. Seventeen years later, the Federal Government still has not begun to perform its end of the contracts. My written testimony explains nuclear powerplant owners have been forced to make other onsite arrangements to store our spent fuel temporarily at great expense to our companies.

The industry has mitigated these losses to some degree by recovering monetary judgments from the Federal Government on the basis of partial breach of contract claims. These recoveries have been limited so far to the cost for storage facilities made necessary by the government's breach. The Government Accountability Office has estimated that, in total, across the industry, Federal Government's liability for breach of the spent fuel contracts will exceed \$21 billion by 2071.

That is a brief summary of the current situation, but the news is not all negative. There is increasing confidence that the Nation's nuclear waste disposal program is getting back on track. With recent court rulings requiring further action on the Yucca license application

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and the NRC's recent reports finding Yucca Mountain to be safe. The Nation has come too far and invested too much to abandon the Yucca Mountain repository now.

In closing, I applaud the subcommittee for taking keen interest and tackling this complex and challenging problem. The good news, it is not an insurmountable issue. Indeed, from a technical, safety, financial, and legal perspective, the path forward is manageable and understood. In many respects, the key challenges are political and the domain of Congress to address.

Let me finish with three final thoughts for you to consider. First and number one, the Nation should move forward with the permanent repository at Yucca Mountain. I believe that is clear. Two, Congress should reform the funding mechanisms for these programs to ensure access to the Nuclear Waste Fund for appropriate uses. The key challenge has been the program relies on appropriations which has been subject to the ebbs and flows of politics. And, three, Congress needs to protect the investment of electricity customers around the country who have collectively paid billions of dollars to the Federal government to dispose of the Nation's spent fuel inventory.

Thank you, Chairman Shimkus, for allowing me to appear before you here today and the subcommittee. I look forward to your questions.

[The prepared statement of Mr. Kuczynski follows:]

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Mr. Shimkus. Thank you.

Next I would like to recognize Mr. Geoffrey Fettus, Senior Attorney from the Natural Resources Defense Council.

You are recognized for 5 minutes, and welcome.

STATEMENT OF GEOFFREY H. FETTUS

Mr. Fettus. Thank you, Chairman Shimkus and Ranking Member Tonko, and distinguished members of the subcommittee for having me today and allowing me to provide the Natural Resources Defense Council's views on this matter.

Let me get right to two key issues at hand, the proposed Yucca Mountain repository and interim storage away from reactor sites. We are concerned Congress is on a trajectory to make two misguided decisions that run directly counter to the bipartisan set of recommendations found in President Obama's Blue Ribbon Commission for America's Nuclear Future.

First, with respect to Yucca -- and I will note that Nevada is not here -- it is clear some members believe the proposed Yucca site is a safe place to bury spent nuclear fuel and that the project can be revived now that Senator Reid is retiring. Reasonable people can disagree. Respectfully, those ideas are not accurate. Efforts to restart the failed process face an uphill climb of massive technical and institutional challenges, years of litigation, and a complete lack

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of meaningful State consent. Simply, Yucca Mountain leaks profusely. Licensing depends on, at this point, a fictional set of drip shields. And the State is joined across party lines to litigate the matter for as long as it takes.

This is on top of the history where, in an effort to preserve what turned out to be an unworkable site, in the mid-1980s, the Energy Department, they abandoned its technical siting guidelines used to select Yucca. In the early 2000's, EPA gerrymandered the site boundaries in an effort to ensure that radiation doses at the edge of the regulated area miles away would be acceptable. And then DOE proposed that hundreds of years into the future, the agency would spend billions more to introduce titanium drip shields to prevent the early corrosion of the waste containers.

Along the way, Congress worked on the site selection process by simply selecting Yucca and then demanding EPA's regulations be consistent with the views of the National Academy of Sciences. This effort subsequently backfired when a bipartisan panel of the D.C. Circuit unanimously found that EPA's rule was not, in fact, consistent with the views of the National Academy of Sciences.

Restarting the Yucca fight, respectfully, Mr. Chairman, is not the way to go nor is the right way to proceed with the current flurry of premature interim storage plants. Here Congress could be poised to delink interim storage of spent fuel from the requirement to first establish an acceptable final geologic site. Wise leaders with a

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history of reaching across the aisle, like Jeff Bingaman of New Mexico, who was the first and last to introduce potentially workable legislation consistent with the BRC recommendations warned against such tactics for decades. The American public and each of the States -- and I think this is where we all agree -- not just the industry that has the special deal of the Federal Government assuming its waste burden, has the right to expect a permanent, thoughtful solution to our nuclear waste dilemma. Simply expediting an interim storage site for Texas or for New Mexico or some other yet-to-be-named State, without doing the work of crafting a comprehensive bill that can finally get the repository program off the Yucca treadmill and back on track will most likely lead to double the transportation risks, even more extended above-ground storage of highly radioactive waste with no permanent disposal and deeply misguided efforts to shift that waste to Yucca or WIPP when the political stars, not the scientific stars, align. This approach passes the risk to future generations and is destined to arrive in the same quagmire we are sitting in now. It simply doesn't solve the problem.

Instead of proceeding in this fashion, in my written statement I have outlined an approach that NRDC believes is workable and can regain the widespread public and, most important, State support necessary. The elements of this approach are: One, recognized that repositories must remain the focus of any legislative effort; two, create a coherent legislative framework -- and this is most

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important -- before commencing any geologic repository or interim storage site development processes; three, arrive at a consent-based approach for nuclear waste storage via a fundamental change in law; four, address the storage or interim storage in a phased approach consistent with the careful architecture of former Senator Bingaman's S. 3469, which was introduced in 2012; and, five, exclude delaying, proliferation, driving, and polarizing closed fuel cycle and processing options from this effort.

This is one area where we certainly agree hopefully with every member of the subcommittee. The history of the Federal nuclear waste program has been dismal, but decades from now, others will face the precise predicament we find ourselves in today unless Congress revamps how nuclear waste is regulated and allows for meaningful State oversight. Otherwise, we are doomed to repeat this cycle until a future Congress gets it right.

Thank you again for this opportunity, and I am happy to answer any questions.

[The prepared statement of Mr. Fettus follows:]

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Mr. Shimkus. Thank you.

Now, last but not least, Mr. Ronningen, manager of Rancho Seco Assets, Decommissioning Plant Coalition.

You are recognized for 5 minutes.

STATEMENT OF EINAR RONNINGEN

Mr. Ronningen. Good morning. I am Einar Ronningen, manager of the Rancho Seco Nuclear Facilities for the Sacramento Municipal Utility District, known as SMUD. And I am here today on behalf of the Decommissioning Plant Coalition.

The DPC is comprised of companies whose sites have ceased all commercial nuclear-generating operations. Our members own 10 facilities in the States of California, Connecticut, Illinois, Maine, Massachusetts, Michigan, Vermont, and Wisconsin. We appreciate this opportunity to provide our perspective on the status of U.S. nuclear waste management policy.

SMUD's Rancho Seco nuclear-generating station ceased commercial operation in 1989, but there remains an 11-acre independent spent fuel storage installation containing 22 dual-purpose canisters licensed for the dry storage and transportation of used nuclear fuel and greater than Class C waste ultimately destined for disposal by the DOE. As is the case with other utilities, SMUD has successfully litigated a partial breach of contract claim against the DOE to recover the costs

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incurred in our management of this material. To date, SMUD has won judgments in the U.S. Court of Claims totalling \$73 million. These damage awards have been paid by taxpayers out of a permanent appropriations account in the Treasury called the Judgment Fund. Industry-wide taxpayer liabilities for the government's failure to perform under the contracts in a timely manner are approaching \$4.5 billion, and DOE estimates that its liability will reach almost \$13 billion by 2020, increasing annually by \$500 million per year if it does not find a way to begin satisfying its obligation by 2022.

From the outset, the DPC has been supportive of Yucca Mountain, and in the early years of our organization, we worked with Congress in urging DOE to prepare a sound license application, address the transportation infrastructure requirements, and otherwise take steps to prepare for the movement of this material from our sites on a priority basis.

Nonetheless and without repeating the oft-reported historical details, Mr. Chairman, let me just state the obvious. Although the spent fuel at all our utility sites is and will be safely managed for as long as it takes, right now U.S. nuclear waste management policy is broken.

The DPC sincerely appreciates the efforts you have made, Mr. Chairman, to reinvigorate the debate over the future of Yucca Mountain, and we were heartened by the finding of the NRC staff in their Safety Evaluation Report that the application demonstrates the ability of the

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site to meet all post-closure requirements of that agency. But we note that the staff also found that it could not yet recommend the issuance of a construction authorization due to several findings, including the lack of institutional control of the site and access to water rights necessary for the construction and operation of the facility, issues that will require the enactment of further legislation. The need for further legislation, the continued opposition by significant leaders in the State of Nevada, the dismantlement of the Office of Civilian Radioactive Waste Management at DOE, the technical licensing challenges filed by opponents of the project, and the track record of DOE in completing one-of-a-kind facilities on time and within budgets, combined with the level of financial resources that need to be appropriated by Congress in a constrained fiscal environment to license, construct, and operate the proposed repository, lead us to the uneasy conclusion that the uncertainties of when Yucca Mountain would be open are not likely to be overcome in timeframes that meet the equity interests of our host communities. It is because of our members' commitments to our host communities to resolve the current stalemate in U.S. nuclear waste policy as expeditiously as possible that we urge this committee to support the legislation that would not only take steps to get the Nation's geologic repository program back on track but also authorize the establishment of an voluntary incentive-based siting program that would lead to the licensing of a consolidated interim storage facility and to initiate a pilot program

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to remove the material from our sites on a priority basis.

We are pleased that two potential storage projects have been announced by capable private sector companies in the past four months. These could offer DOE the means to meet its contractual obligations.

Mr. Chairman, and members of the subcommittee, a pilot storage program that prioritizes the removal of material from permanently shutdown sites that is responsive to private sector initiatives, can be accomplished with reasonable support from the Nuclear Waste Fund without any impact on the repository program. The pilot would demonstrate the ability of the Federal Government to plan and execute their responsibilities for waste acceptance and transportation under the standard contract, relieve the taxpayer of the obligation to continue paying Judgment Fund damages, and allow these sites to be repurposed for useful purposes.

We applaud your steadfast interest in a vibrant repository program, and we urge you to look favorably on the passage of legislation establishing a consolidated interim storage program that takes advantage of these new opportunities to remove used fuel and greater than Class C waste from those facilities where commercial reactor operations have permanently ceased.

Thank you for the opportunity, and we look forward to questions you may have.

[The prepared statement of Mr. Ronningen follows:]

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Mr. Shimkus. Thank you. You did a great job, so I appreciate the testimony.

And I will recognize myself 5 minutes for the first round of questions.

With the finish of the Safety and Evaluation Report, we now move to the next step, which is the license application. A very simple question, and as much as possible I would like to get a yes-or-no answer because it is just based upon the license application. After 30 years of scientific evaluation and \$15 billion spent on the project, we are still waiting for the final determination about the suitability of Yucca Mountain to serve as a permanent geological repository. Just going down the witness table, I would like to ask each one of you if you believe that the NRC should finish this process and issue a final decision.

Mr. Fitz. As long as it is legally mandated under the Nuclear Waste Policy Act, the answer is yes.

Mr. Shimkus. Thank you, Ms. Piccone.

Ms. Piccone. It is dependent on congressional action and appropriations to the Agency.

Mr. Shimkus. But having the appropriated money, the NRC would finish the application process.

Ms. Piccone. Yes.

Mr. Shimkus. Mr. White.

Mr. White. Yes, and --

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Mr. Shimkus. That is good enough for me.

Mr. Kuczynski.

Mr. Kuczynski. Yes, unanimous.

Mr. Shimkus. Mr. Fettus.

Mr. Fettus. No.

Mr. Shimkus. So you don't believe that if there is appropriated money, that the Federal Government should not follow the law? You are testifying right now that we should not follow the law?

Mr. Fettus. Mr. Chairman, that is --

Mr. Shimkus. I am going to go -- Mr. Ronningen. I am reclaiming my time. Mr. Ronningen.

Mr. Ronningen. Yes.

Mr. Shimkus. Thank you very much.

Mr. Fitz, your testimony provided an excellent description of the D.C. Court of Appeals ruling on the Aiken County case. If Congress provides additional funding to DOE and the NRC to complete the Yucca Mountain license, as the House of Representatives passed recently, would the writ of mandamus extend to the new funding and require action on the license?

Mr. Fitz. I think if you take the D.C. Circuit mandamus decision in concert with the Atomic Safety and Licensing Board's decision that denied withdrawal to the Department of Energy, those two together indicate that the proceeding should move forward, that it is legally mandated, and that both entities, the Department of Energy and the NRC,

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are obliged to complete the process.

Mr. Shimkus. They are obliged to complete the process. That is what you are testifying?

Mr. Fitz. That is what I am testifying.

Mr. Shimkus. And I think, following the previous testimony, both then Secretary Chu and Secretary Moniz, have both testified, given that scenario, they would be mandated to comply. And we have the records to support that statement.

Mr. Kuczynski, your testimony discusses possible support for increased incentives for the State of Nevada. Would you please describe what sort of incentives could be included for a community?

Mr. Kuczynski. First of all, we support the permanent repository, but we also support reasonable incentives to help construct the facility for Nevada. That has been our consistent testimony. Barney Beasley testified here in 2006 the exact same point, and our position has not changed.

Mr. Shimkus. What could some of those be?

Mr. Kuczynski. Infrastructure, education, anything that allows the process to move forward to continue the licensing process and the actual construction of the facility.

Mr. Shimkus. Commissioner White, do you agree that we should and could support these types of incentives?

Mr. White. Yes, they make sense. It is entirely appropriate for a community that may be hosting this facility to receive some kind of

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incentive benefits, yes.

Mr. Shimkus. Thank you very much.

Based upon time, I am going to yield back and recognize my Ranking Member, Mr. Tonko, for 5 minutes.

Mr. Tonko. Thank you, Mr. Chair.

And, again, welcome to our panelists. Dr. Piccone, the Nuclear Regulatory Commission has a policy in the form of the Waste Confidence Rule that, as I understand it, links the licensing of nuclear reactors to the availability of safe storage and, more importantly, permanent disposal capability for nuclear waste. Can you briefly explain what that means in practical terms for the licensing any of our nuclear reactors?

Ms. Piccone. I am sorry, Mr. Tonko. I don't have that information, but I can go back to staff and get that for the record for you.

Mr. Tonko. Are there any on the panel that would want to speak to the waste confidence rule?

Mr. Kuczynski.

Mr. Kuczynski. Yes, I think it is more appropriate today to call it about the continued storage rule where the NRC has revised the Waste Confidence Rule that they reviewed the storage of spent fuel at our facilities for a variety of scenarios, and the conclusion was, from a safety, environmental, security standpoint, that we can store onsite for significant lengths of time.

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Mr. Tonko. Thank you. And, Dr. Piccone, under a best-case scenario, what is a minimum time to complete NRC's process and issue a construction license?

Ms. Piccone. There are three things that are necessary for a decision to be made. One is the completion of the supplement to the environmental impact statement, then the adjudicatory hearing, and then the Commission to make a decision on the contested and uncontested issues. It is hard to speculate on the length of time it would take for the adjudicatory proceeding. There are approximately 300 contentions and maybe additional new contentions or amended contentions. The adjudicatory hearing is suspended right now, and there is no schedule for hearing.

Mr. Tonko. Well, given those conditions, do we not need an interim policy of some sort?

Ms. Piccone. An interim policy?

Mr. Tonko. Interim storage.

Ms. Piccone. Well, the waste is being stored right now safely at nuclear power plants.

Mr. Tonko. But should there be an improved or more conclusive or predictable process if this interim is challenged on the given situations that we have today?

Ms. Piccone. I think that is a national policy decision, sir, and not NRC.

Mr. Tonko. Mr. Fettus, your organization sued NRC against the

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2010 revision of the Waste Confidence Rule, as did New Jersey and several other States. Can you explain why you did that and where things stand today from your perspective?

Mr. Fettus. Thank you, Mr. Tonko.

Yes we did. And we were successful in front of a bipartisan panel of the D.C. Circuit with the decision in 2012. The reason why we sued was the lack of a basis for the NRC's judgment that there would be confidence that there is a long-term disposal option on the table. And, importantly, the problem was not necessarily that Yucca Mountain does not exist. The problem is that there was no NEPA review supporting, supporting, the NRC's decision. The NRC has conducted a NEPA review, and they have finalized it, and we have challenged that current review once again in the United States Court of Appeals, and that litigation is pending. The issue there is whether or not, at least as far as we are concerned, whether or not the NRC complied with the D.C. Circuit's explicit directions in the 2012 decision and whether or not the NEPA review complies with the law. And the NEPA review is the National Environmental Policy Act and the environmental impact statement that needs to inform its decision on whether or not there is confidence to store the waste in the interim time up to the final disposal.

Mr. Tonko. Thank you.

With that, I yield back.

Mr. Shimkus. The gentleman yields back his time.

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The chair now recognizes Mr. Harper from Mississippi for 5 minutes of questions.

Mr. Harper. Thank you, Mr. Chairman.

And thanks to each of you for being here and making this effort on such an important issue.

Mr. Fitz, if I could talk to you for a moment, the Department of Energy recently announced its intention to initiate a new permanent repository program for nuclear material generated from National defense activities. As you are aware, Washington State holds about two-thirds of all defense material at the Hanford site. Did DOE consult with the State of Washington prior to making this announcement?

Mr. Fitz. Thank you for the question. I am not aware of the consultation. I can't say that it did not occur, but it is not within my personal knowledge, and I can say personally that the announcement caught me by surprise.

Mr. Harper. Were you advised of anyone that told you, yeah, they told us about it, or you just can't rule it out because you are not privy to it.

Mr. Fitz. It is the latter, or both I should say. I have not heard of any mention of consultation, and I can't rule it out.

Mr. Harper. Does Washington believe this new policy would help the Federal Government fulfill its responsibilities under the Tri-Party Agreement between DOE, the Environmental Protection Agency, and the State of Washington?

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Mr. Fitz. There is not a deadline in the Tri-Party Agreement for actually disposing of waste. There is a deadline for getting waste treated, which right now I think is in question with waste treatment plant delays. As to the wisdom of splitting off the defense stream from commercial waste, I would say a couple of things. First, our position has been consistent that as long as the law requires moving forward with the Nuclear Waste Policy Act process for licensing Yucca Mountain, that should be respected. I can speak to what I understand to be my clients' policy position that pragmatically if there is another way to get waste disposed of more quickly, they are open to that, but I would echo what Mr. Fettus said -- or, I am sorry, Mr. White said about DOE's schemes that don't have certainty or budget as a substitute for what right now is the legal process.

Mr. Harper. One last area. I understand that the high-level tank waste at Hanford is to be vitrified into large logs that are engineered to be disposed in Yucca Mountain. If DOE pursues a defense-only repository, what will happen with the vitrified waste logs from Hartford, and would this delay the shipment of material out of Washington State?

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[9:58 a.m.]

Mr. Fitz. I think that is an unknown, and that is a concern for Washington.

Mr. Harper. Thank you very much.

I yield back in the interest of time.

Mr. Shimkus. Gentleman yields back his time. We think we have got -- with the votes that are just called -- we think we have got 15 or 20 minutes left. We will try to quickly get to everybody. And then we will decide how to deal with the panel.

The chair recognizes the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. McNerney. Thank you, Mr. Chairman.

It is interesting testimony. And I appreciate you all coming down here today.

Mr. Shimkus. Jerry, pull your mike up to you so that people --

Mr. McNerney. [Inaudible] explain those --

Ms. Piccione. Yes, as discussed in detail in volume 4 of the Safety Evaluation Report, the geologic repository operations area, or the GROA, which is part of the repository, must be located on lands that are either acquired and under the jurisdiction and control of DOE or permanently withdrawn and reserved for its use. The land on which

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the repository operations area will be located must also be free and clear of significant encumbrances, such as mining rights deeds, rights of way, or other legal rights.

In its application, DOE explained that it submitted a land withdrawal legislation to Congress in 2007. Congress did not enact that bill. And DOE has not completed any other land acquisition process. Therefore, NRC staff concludes that DOE has not acquired the lands needed for the repository operations area nor have any necessary lands been permanently withdrawn and reserved for DOE's use. In addition, because DOE has not completed a land withdrawal or other acquisition process, DOE has not demonstrated that the land would be free and clear of significant encumbrances.

Mr. McNerney. [Inaudible] that is an issue for the Congress to deal with, is that right?

Ms. Piccone. What is what DOE submitted in their application. That is what NRC reviewed. DOE could submit additional information identifying other mechanisms and NRC would then review those as well.

Mr. McNerney. Mr. Ronningen, thank you for coming. A little part of my district is in [inaudible] territory. So I appreciate what you are doing. You mentioned that there were two private entities that announced sites in the last 4 months. Could you expand on that a little bit?

Mr. Ronningen. Yes, sir. The Lee Eddy Group in New Mexico has approached the industry to develop centralized interim storage. And

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the WCS, Waste Control Specialists, in Texas has also come forward to announce that they wish to develop centralized interim storage.

Mr. McNerney. Those are both [inaudible]

Mr. Ronningen. Right. They would be consolidated interim storage, not repositories.

Mr. McNerney. Is there any possibility there would be local support for those projects?

Mr. Ronningen. They are already working on that.

In the case of Waste Control Specialists, a couple years ago they were successful in garnering local support for a low-level waste facility. And they wish to expand that to consolidate interim storage. And, again, the Lee Eddy Group has been working with local community members to get that approval from their constituents.

Mr. McNerney. Thank you.

Mr. White, you also mentioned the need for public-private partnerships. What do you have in mind exactly for that?

Mr. White. A single-purpose entity that would be solely responsible for the management of the program. One of the problems with the Department of Energy's management is that they are a large organization, rather unwieldy. This program tends to be one of the minor focuses of the Department. We need an agency or, again, a public-private corporation that would have the authority and the focus to simply work on this issue alone.

Mr. McNerney. Thank you, Mr. Chairman.

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I yield back my time.

Mr. Shimkus. Thank you very much for yielding back.

The chair now recognizes the gentleman from Kentucky, Mr. Whitfield, for 5 minutes.

Mr. Whitfield. Thank you very much, Mr. Chairman.

And thank you all for joining us today.

Mr. Kuczynski, when I go to the [inaudible] talk about nuclear waste. And we talk about the almost \$20 trillion of Federal debt that we are approaching in this country. And, in 1982 I think, Congress passed the Nuclear Waste Policy Act. And I think in 1987, Congress identified Yucca Mountain --

Mr. Shimkus. Ed, make sure you talk loud. I don't think your microphone is working anymore. And I think we have lost them on the panel except for the chairman. I wonder how that happened.

Mr. Whitfield. Anyway, so Congress identified Yucca Mountain as the permanent spot. And then we started spending large sums of taxpayer dollars in preparing Yucca Mountain. And I don't know the exact figure, but I understand it was roughly \$10 billion or \$12 billion in preparation. And then, in 2010, the Obama administration made a decision that they were not going to pursue the licensing process. And then a lawsuit was filed by various groups saying that the NRC and DOE were violating the law. And the petitioners or plaintiffs won that lawsuit. And, at some point in there, the Federal Government could not meet its legal obligation to take possession of this waste and move

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it to Yucca Mountain or a permanent site. And so another lawsuit was filed on that, and now there are judgments against the Federal Government for that. So, the amount of dollars the taxpayers have been paying out, and we still don't have a permanent site. And now this administration is saying that we need a separate site for military nuclear waste.

And it is so frustrating because Congress made a decision a long time ago under Federal law to do this. And I understand our process of filing lawsuits, and we all have the right to do that. But, I mean, don't you think that taxpayers have a right to just be totally upset about this process and the fact that -- I mean, I am sure that you would like to see Yucca Mountain open as well. But am I being inaccurate in what I am saying here? I may have a few factual points that are not correct. But, philosophically, the American people are being taken to the cleaners on this. And it is a statement that Congress has clearly said that we want it to be at Yucca Mountain. Am I wrong on this?

Mr. Kuczynski. No. We share your frustration. I think you are accurate in almost everything you have said. And there are downsides, the longer this is prolonged, the more expensive it is for taxpayers and utility rate customers. The science has been completed. The NRC has ruled, utilized that \$12 billion to \$15 billion to use the best experts we have in our country. NRC is seen as the gold standard and that ought to mean something. So, from a science standpoint, the Yucca

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Mountain facility, obviously a couple more hurdles, but it is set to be a repository. And that is the best way to serve the interests of taxpayers and customers across this country.

Mr. Whitfield. Well, personally, I think it is very frustrating that the Obama administration is doing everything that they can do to create obstacles.

And I would just like to publicly thank the chairman of this subcommittee, John Shimkus, because he has been a real leader in trying to make sure that the intent of Congress is pursued and followed through on this. And so many of us want to help him in any way that we can to complete this project and get it behind us. We have spent enough time and money on this in my humble opinion.

Mr. Kuczynski. In our view of the process back in the 1980s, under the Nuclear Waste Policy Act, there are provisions for local communities and States to take part in that process. They did take part. Congress overrode those objections. And we ought to follow the law.

Mr. Whitfield. I yield back.

Mr. Shimkus. The gentleman yields back his time.

The chair now recognizes -- and we are fine on time, Gene -- 5 minutes for questions. And if you want to come down here and use this mike, you can.

Mr. Green. I think I can probably talk without it.

Mr. Shimkus. Now it is working.

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Mr. Green. I was out at Yucca Mountain, what, 4 years ago with the chair. I didn't go on the last trip you did because, coming from Texas, I was actually on an offshore oil rig. When I was out there, we met with all the county officials where Yucca Mountain is. And it seemed like, to an elected official, in the counties around Yucca Mountain, they all supported the use of the permanent repository. But my first question was, has any country in the world developed a long-term nuclear storage? Because I know Sweden, I went there one time, and they had a prototype of a hole in the ground. And, of course, they joked that Sweden is nothing but granite, so you can put anything down there. But has any country developed a long-term nuclear storage?

Mr. Fettus. The only operating geological repository was in the United States, which is the WIPP facility in southeastern New Mexico for transuranic waste or trace amounts of plutonium for defense, transuranic waste. And it is currently shut down after an accident in February of 2014.

Mr. Green. Okay. My big concern, though, is the interim storage because of what is happening. And, by the way, Mr. Kuczynski, I congratulate Southern Company because I am a supporter of expansion of nuclear power. And you have the first expansion in decades to be able to do it because if you are worried about carbon, nuclear power is a solution. Now, we need to deal with the storage capacity, both long term and interim. But my question is about the interim storage. Are there safety concerns about storing the spent nuclear facilities

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on the locations they are now?

Mr. Kuczynski. No. We have constructed our spent fuel pools and our dry cask storage facilities. They meet strict environmental, safety, security requirements. And recent studies have shown both of safe for the foreseeable future. And that was a basis of the continued storage rule.

Mr. Green. What is the cost for the Department of Energy's failure to take title of that spent fuel? Have you all estimated that?

Mr. Kuczynski. I can give you some ballparks, you know, every cask that we load on the dry cask I would just say it is about \$2 million. And we have about 100 of them in our system. We plan to do about 25 of them a year going forward. So that is ballpark. And we do not recover all of those funds through litigation. In fact --

Mr. Green. I assume you have to go, the ratepayers are actually paying for that?

Mr. Kuczynski. Absolutely.

Mr. Green. Would opening an interim storage facility help relieve many of those storage concerns, nuclear, and I assume the other companies around the world, around the country anyway?

Mr. Kuczynski. The interim storage?

Mr. Green. Yeah.

Mr. Kuczynski. I think that is an avenue that this committee ought to look at. Our position is the long-term repository is the method. The statutory limit of, I think, the capacity is not

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necessarily technically based. I think we ought to pursue all storage at Yucca. Interim at Yucca would make more sense to me than interim storage at other facilities. Each time you build something new and then have to continue to move, it makes it more expensive for everybody.

Mr. Green. Well, obviously, we need to develop a long-term storage. But I would also like to see on a lot of the companies, including the south Texas project that I supported back as a State legislator in the 1970s, I would like to see expansion there. But we do need to have long-term storage. And, ultimately, I think we ought to take responsibility as a Federal Government for the interim storage in locations that are around the country. Maybe they are not all like what Southern Company does or Sacramento or someplace else. But I think it is our responsibility. We need to deal with it.

Mr. Kuczynski. In general, we are not opposed. However, I think the law states that licensing of the long-term facility is first priority and then interim is after that.

Mr. Green. Okay. Mr. Chairman, I will yield back my time. Thank you for the hearing.

Mr. Shimkus. The gentleman yields back his time.

We have 45 seconds before the votes are closed on the floor. I really want to appreciate and thank my colleagues for being really precise and attempting to be to the point.

After consultation with the minority, we have agreed to adjourn in a minute. So we won't come back for additional questions. We want

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to thank you for your testimony.

I want to remind you that the hearing record is open for 10 business days, so you may get questions submitted for the record. If you would then reply to us in that case, we would appreciate it.

With that, again, thank you very much. And the hearing is adjourned.

[Whereupon, at 10:12 a.m., the subcommittee was adjourned.]