AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FUNDING OPTIONS FOR THE YUCCA MOUNTAIN REPOSITORY PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND AIR QUALITY

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

MARCH 10, 2005

Serial No. 109–37

Printed for the use of the Committee on Energy and Commerce

Available via the World Wide Web: http://www.access.gpo.gov/congress/house

U.S. GOVERNMENT PRINTING OFFICE

99–908PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON ENERGY AND COMMERCE

JOE BARTON, Texas, *Chairman*

RALPH M. HALL, Texas
MICHAEL BILIRAKIS, Florida
Vice Chairman
FRED UPTON, Michigan
CLIFF STEARNS, Florida
PAUL E. GILLMOR, Ohio
NATHAN DEAL, Georgia
ED WHITFIELD, Kentucky
CHARLIE NORWOOD, Georgia
BARBARA CUBIN, Wyoming
JOHN SHIMKUS, Illinois
HEATHER WILSON, New Mexico
JOHN B. SHADEGG, Arizona
CHARLES W. "CHIP" PICKERING, Mississippi, *Vice Chairman*
VITO FOSSELLA, New York
ROY BLUNT, Missouri
STEVE BUYER, Indiana
GEORGE RADANOVICH, California
CHARLES F. BASS, New Hampshire
JOSEPH R. PITTS, Pennsylvania
MARY BONO, California
GREG WALDEN, Oregon
LEE TERRY, Nebraska
MIKE FERGUSON, New Jersey
MIKE ROGERS, Michigan
C.L. "BUTCH" OTTER, Idaho
SUE MYRICK, North Carolina
JOHN SULLIVAN, Oklahoma
TIM MURPHY, Pennsylvania
MICHAEL C. BURGESS, Texas
MARSHA BLACKBURN, Tennessee

JOHN D. DINGELL, Michigan
Ranking Member
HENRY A. WAXMAN, California
EDWARD J. MARKEY, Massachusetts
RICK BOUCHER, Virginia
EDOLPHUS TOWNS, New York
FRANK PALLONE, Jr., New Jersey
SHERROD BROWN, Ohio
BART GORDON, Tennessee
BOBBY L. RUSH, Illinois
ANNA G. ESHOO, California
BART STUPAK, Michigan
ELIOT L. ENGEL, New York
ALBERT R. WYNN, Maryland
GENE GREEN, Texas
TED STRICKLAND, Ohio
DIANA DEGETTE, Colorado
LOIS CAPPS, California
MIKE DOYLE, Pennsylvania
TOM ALLEN, Maine
JIM DAVIS, Florida
JAN SCHAKOWSKY, Illinois
HILDA L. SOLIS, California
CHARLES A. GONZALEZ, Texas
JAY INSLEE, Washington
TAMMY BALDWIN, Wisconsin
MIKE ROSS, Arkansas

BUD ALBRIGHT, *Staff Director*
JAMES D. BARNETTE, *Deputy Staff Director and General Counsel*
REID P.F. STUNTZ, *Minority Staff Director and Chief Counsel*

SUBCOMMITTEE ON ENERGY AND AIR QUALITY

RALPH M. HALL, Texas, *Chairman*

MICHAEL BILIRAKIS, Florida
ED WHITFIELD, Kentucky
CHARLIE NORWOOD, Georgia
JOHN SHIMKUS, Illinois
HEATHER WILSON, New Mexico
JOHN B. SHADEGG, Arizona
CHARLES W. "CHIP" PICKERING, Mississippi
VITO FOSSELLA, New York
GEORGE RADANOVICH, California
MARY BONO, California
GREG WALDEN, Oregon
MIKE ROGERS, Michigan
C.L. "BUTCH" OTTER, Idaho
JOHN SULLIVAN, Oklahoma
TIM MURPHY, Pennsylvania
MICHAEL C. BURGESS, Texas
JOE BARTON, Texas, (Ex Officio)

RICK BOUCHER, Virginia
(Ranking Member)
MIKE ROSS, Arkansas
HENRY A. WAXMAN, California
EDWARD J. MARKEY, Massachusetts
ELIOT L. ENGEL, New York
ALBERT R. WYNN, Maryland
GENE GREEN, Texas
TED STRICKLAND, Ohio
LOIS CAPPS, California
MIKE DOYLE, Pennsylvania
TOM ALLEN, Maine
JIM DAVIS, Florida
HILDA L. SOLIS, California
CHARLES A. GONZALEZ, Texas
JOHN D. DINGELL, Michigan, (Ex Officio)

CONTENTS

	Page
Testimony of:	
Berkley, Hon. Shelly, a Representative in Congress from the State of Nevada	3
Garrish, Theodore J., Deputy Director, Office of Strategy and Program Development, Office of Civilian Radioactive Waste Management	20
Garvin, Robert M., Commissioner, Wisconsin Public Service, on Behalf of National Association of Regulatory Utility Commissioners	14
Gibbons, Hon. Jim, a Representative in Congress from the State of Nevada	6
Porter, Hon. Jon C., a Representative in Congress from the State of Nevada	9
Additional materal submitted for the record:	
Bolten, Joshua B., Director, Office of Management and Budget, letter dated March 24, 2005, requesting responses for the record	32

FUNDING OPTIONS FOR THE YUCCA MOUNTAIN REPOSITORY PROGRAM

THURSDAY, MARCH 10, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENERGY AND AIR QUALITY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:56 a.m., in room 2123 of the Rayburn House Office Building, Hon. Ralph M. Hall (chairman) presiding.

Members present: Representatives Hall, Shimkus, Walden, Otter, Burgess, Barton (ex officio), Boucher, and Dingell (ex officio).

Staff present: Mark Menezes, chief counsel for energy and the environment; Kurt Bilas, majority counsel; Annie Caputo, majority counsel; Elizabeth Stack, policy coordinator; Peter Kielty, legislative clerk; Sue Sheridan, senior minority counsel; and Bruce Harris, minority professional staff.

Mr. HALL. Okay. We will come to order. Without objection, the subcommittee will proceed, pursuant to Committee Rule 4E, which allows members the opportunity to defer their opening statements for extra questioning time.

The Chair recognizes himself for an opening statement. First, I would like to thank Ranking Member Rick Boucher, Chairman Barton, and Ranking Member Dingell of the full committee for the help in setting up this hearing.

Yucca Mountain may have to be opened before more nuclear power plants can be built. Considering our country's growing needs for energy, this isn't a program that many of us feel that we can stall any longer. But most importantly, it is an issue of fairness, making sure that our constituents get what they pay for. Today's hearing is an opportunity for us to look at the most serious challenge facing Yucca Mountain, the need for Congress to adequately fund the program.

Over the last 10 years, Yucca Mountain has been under-funded to the tune of over $1 billion. The worst part of this situation is that our Nation's electricity consumers are paying for a service that they aren't receiving. This year alone, consumers will pay approximately $750 million for a disposal facility that is at least 12 years behind schedule. Of that money, only $300 million will actually be spent on the program. Once again, electricity consumers will get an IOU from the government for another $350 million that will be added to the Nuclear Waste Fund balance of $17 billion. Ladies and gentlemen, that is a lot of IOUs.

Inadequate funding leads to inadequate progress on this program. These delays are costing taxpayers approximately $1 billion per year. DOE estimates it will spend in the neighborhood of $500 million each year on storage costs for waste that should be stored in Yucca Mountain by now. Nuclear plants will spend an additional $500 million each storing their spent fuel, a cost for which the government is liable. Each year that we, the Congress, fail to address this issue costs taxpayers an additional $1 billion. That is real money, even by Congress's standards. We need to solve this problem now.

We will begin by hearing the view of our Nevada colleagues, Congresswoman Berkley and Congressman Porter. I don't see Congresswoman Berkley; I do see Congressman Gibbons. Are you going to take Ms. Berkley's place, or will she be here?

Mr. GIBBONS. No one can take her place. I am here as an independent Congressman from the 2nd District in Nevada, sir.

Mr. HALL. I believe you can take anybody's place. We will begin by hearing the views of these colleagues, and next we will hear the views of administration, as presented by Ted Garrish, Acting Director of the Office of Civilian Radioactive Waste Management at DOE. We will also hear from the Honorable Robert Garvin, a commissioner with the Wisconsin Public Service Commission, presenting the views of our Nation's public utility commissions on behalf of NARUC.

This committee has attempted, several times, to solve the funding dilemma. I encourage my colleagues to use this hearing to gain a better understanding of the challenges before us. We should seek guidance on how we might ultimately solve the difficult problem, and we need to ensure that our constituents get what they pay for. We do have a distinguished panel. I presume Mrs. Berkley will be here in a little bit. In the time meantime, we have John Porter, who is in his second term for the 3rd Congressional District. He serves on the House Education and Work Force Committee, the House Transportation Infrastructure Committee, and the Government Reform Committee, where he is a chairman of the Federal Work Force and Agency Organization Subcommittee. He served on city council and later as mayor of Boulder City. He has been a State Senator, and now he is a Congressman. He has been in every sized courthouse there is; you might outtalk him, but you can't outrun him. He is a Marine Corp marathon veteran.

We have Congressman Gibbons, his fifth term, representing Nevada's 2nd Congressional District. Congressman Gibbons serves on the House Resources Committee, the Armed Services Committee, and the Committee on Homeland Security. He was a combat pilot, highly decorated in both the Vietnam and Persian Gulf Wars, a commercial pilot for Western Airline, an exploration geologist, a mining- and water-rights attorney, a State legislator, and probably someday a Governor out there and will help me get tickets to the fights. It wouldn't surprise me at all if he didn't do that.

Congresswoman Shelly Berkley is great lady and a longtime friend of mine. First elected to the U.S. House in 1998, she represents the 1st Congressional District of Nevada, which includes Las Vegas. She is a member of the Committees on Transportation and Infrastructure, International Relations, and Veterans Affairs.

She is a former member of the State legislature and longtime regent for Nevada's university system. She is good addition to this Congress and will be very helpful in this committee hearing.

And we will get underway. Mr. Boucher was called away on an emergency telephone call, and he will be back in a little bit, and when he does, whoever is giving your opening statement, we will let you finish, and then we will hear from him, if he would like, and then we will pick up and go.

Thank you. The Chair recognizes Ms. Berkley.

STATEMENT OF HON. SHELLY BERKLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Ms. BERKLEY. Thank you very much, Mr. Chairman. It is always a pleasure to appear before you. And before I get started, I can assure you I can get you tickets to fights, and I don't have to be Governor. I would like to thank——

Mr. HALL. I assure you I will take them.

Ms. BERKLEY. I would like to thank you and Ranking Member Boucher for allowing me to testify today. I don't think it will be a surprise to anybody, the testimony that I share with you—you know I have been an opponent of the Yucca Mountain Project since its inception and long before I came to the Congress to represent the 1st Congressional District.

Our Nation is facing $550 billion deficits that have left vital programs, such as education, healthcare, and veterans' benefits underfunded. We should be focusing on these important programs because they help the greatest numbers of our citizens, not projects such as that Yucca Mountain Repository, which has already cost billions and has a ballooning price tag, depending on who you talk to, of anywhere from $58 billion to $308 billion. Despite multiple lawsuits challenging the site, unresolved scientific issues, findings establishing that the storage canisters at Yucca Mountain will corrode—and the finding was that they will corrode and release radioactive waste in our groundwater—and enormous terrorist risks that this plan creates if waste is shipped across the Nation, the administration continues to push recklessly ahead with this project. The United States Court of Appeals, the second highest court in the Nation, ruled that the radiation standard for the proposed nuclear waste dump is not based on sound science and will not protect the health and safety of the American people. The court found that the EPA blatantly disregarded the findings of the National Academy of Sciences and that radiation levels will reach their peak in 300,000 years, instead of the 10,000-year radiation standard that was set by EPA. Rather than incorporating the findings of the National Academy of Sciences, when crafting safety guidelines, the Bush Administration ignored the law and knowingly ordered the EPA to draft a radiation standard, not based on science, but an arbitrary period of 10,000 years. The gap between the science and the EPA standard? A mere 290,000 years.

The proposal to reclassify contributions to the Nuclear Waste Trust Fund as offsetting collections is shortsighted and fiscally irresponsible. Not only does this budget gimmick funnel money into a project plagued with problems, it also bypasses budgetary rules

that have been set forth in order to maintain the integrity of our appropriations process.

I remind you, although I am sure I do not have to, that we really seek waivers for funding of critical programs such as the ones I originally mentioned, for education, and healthcare. Then why would we be doing this for the Yucca Mountain Project?

Another plan proposes to move the Yucca Mountain Project off budget. This reckless proposal would dedicate all current and future proceeds of the Nuclear Waste Fund to the Yucca Mountain Project. This project is in a downward spiral. Even members of the nuclear industry are beginning to look for alternative ways of storing the nuclear waste. Throwing more money at this trouble-ridden albatross will not fill the gaps in the science because the science simply isn't there.

It will not change the fact that Yucca Mountain is prone to regular seismic activity and threatened by volcanic activity. It will not change the fact that it is impossible to safely transport 77,000 tons of radioactive waste across the United States, across 43 States and 360 Congressional Districts for the next 30 to 40 years. Nuclear waste shipments will pass within miles of our homes, our places of worship, our schools, and our neighborhoods.

To guarantee such a massive amount of funding without proper oversight is an invitation for waste and abuse. With looming deficits, we must ensure that every dime of taxpayers' money is spent responsibly.

Instead of walling off funds from the Nuclear Waste Disposal Program, we should be investing in alternative methods to safely dispose of high-level radioactive waste, including dry-cast storage onsite.

We should also be endowing programs for the research and development of cleaner forms of energy, such as renewables, not problem-ridden projects like the Yucca Mountain Project that creates potential risks to all of our communities.

Yucca Mountain is unprecedented in its scope and nature, as well as the potential harmful consequences on the health and safety of millions of Americans. A project of this magnitude must undergo Congressional scrutiny at every stage in order to ensure the safety of our public.

The Department of Energy has consistently changed regulations and reduced standards in order to railroad Nevadans and push the Yucca Mountain Project through. These funding proposals are just another example of changing the rules to accelerate a project that lacks sound science.

Funds for Yucca Mountain should have to compete with our need to expand clean-energy sources. At a time when energy markets are volatile and the cost of gas is skyrocketing, our Nation must scrutinize every dollar spent on the Yucca Mountain Project. We should invest our resources to strengthen and diversify clean-energy sources, not invest billions in the nuclear-energy technology, a 20th Century energy solution to a 21st Century world problem that has a deadly byproduct and a deadly consequence.

Congess should also be using the same vigor to fill the gaps in funding for education, healthcare, and veterans programs. Given the overwhelming needs in our Nation and the limited resources at

our disposal, it makes absolutely no sense to give special treatment to the Yucca Mountain Project at the expense of millions of Americans.

I urge the members of the subcommittee to reject any proposal that would skirt the appropriations process, reduce necessary Congressional oversight, and limit our authority and power as Congresspeople to oversee a most important project in this Nation. Thank you very much for your very kind attention.

[The prepared statement of Hon. Shelly Berkley follows:]

PREPARED STATEMENT OF HON. SHELLEY BERKLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

I would like to thank Chairman Hall and Ranking Member Boucher for allowing me to testify today.

Our nation is facing $550 billion deficits that have left vital programs, such as education, health care, and veterans benefits underfunded. We should be focusing on these important programs because they help the greatest number of people. Not projects, such as the Yucca Mountain repository, which has already cost billions and has a ballooning pricetag of $58 billion to $308 billion.

Despite multiple lawsuits challenging the site, unresolved scientific issues, findings establishing that the storage canisters at Yucca Mountain will corrode and release radioactive waste into our groundwater, and enormous terrorist risks this plan creates if waste is shipped across the nation, the Administration continues to push recklessly ahead with this project.

The U.S. Court of Appeals—the second highest court in the nation, ruled that the radiation standard for the proposed nuclear waste dump is not based on sound science and will not protect the health and safety of the American people.

The Court found that the Environmental Protection Agency blatantly disregarded the findings of the National Academy of Sciences (NAS) that radiation levels will reach their peak in 300,000 years, and instead set a 10,000 year radiation standard. Rather than incorporating the findings of the NAS when crafting safety guidelines, the Bush Administration ignored the law and knowingly ordered EPA to draft a radiation standard based not on science, but an arbitrary period of 10,000 years.

The gap between the science and the EPA standard? A mere 290,000 years!

The proposal to reclassify contributions to the Nuclear Waste Trust Fund as offsetting collections is shortsighted and fiscally irresponsible. Not only does this budget gimmick funnel money into a project plagued with problems, it also bypasses budgetary rules that have been set forth in order to maintain the integrity of our appropriations process.

I remind you that we rarely seek waivers for the funding of critical programs, such as the ones I mentioned before—education and healthcare, as we are doing for the Yucca Mountain Project.

Another plan proposes to move the Yucca Mountain Project off-budget. This reckless proposal would dedicate all current and future proceeds of the Nuclear Waste Fund to the Yucca Mountain Project. This project is in a downward spiral, and throwing more money at this problem-ridden albatross will not fill the gaps in the science, because the science is not there. It will not change the fact that Yucca Mountain is prone to regular seismic activity and threatened by volcanic activity.

It will also not change the fact that it is impossible to safely transport 77,000 tons of radioactive waste across the United States through 43 states, and perhaps as many as 360 Congressional districts, for the next 30 to 40 years. Nuclear waste shipments will pass within miles of our homes, places of worship, schools, and hospitals.

To guarantee such a massive amount of funding without proper oversight is an invitation for waste and abuse. With looming deficits, we must ensure that every dime of taxpayer money is spent responsibly.

Instead of walling off funds from the Nuclear Waste Disposal Program, we should be investing in alternative methods to safely dispose of high level radioactive waste.

We should also be endowing programs for the research and development of cleaner forms of energy, such as renewables, not problem-ridden projects like Yucca Mountain that create potential risks to our communities.

Yucca Mountain is unprecedented in its scope and nature, as well as the potential harmful consequences on the health and safety of millions of Americans. A project of this magnitude must undergo congressional scrutiny at every stage in order to ensure the safety of our public.

The Department of Energy has consistently changed regulations and reduced standards in order to railroad Nevadans and push the Yucca Mountain Project through. These funding proposals are just another example of changing the rules to accelerate a project that lacks sound science.

Funds for Yucca Mountain should have to compete with our need to expand clean energy sources. At a time when energy markets are volatile and the cost of gas is skyrocketing, our nation must scrutinize every dollar spent on the Yucca Mountain Project. We should invest our resources to strengthen and diversify clean energy sources, not invest billions in nuclear energy technology, a 20th Century energy solution in a 21st Century world that has a deadly byproduct.

Congress should also be using the same vigor to fill the gaps in funding for education, health care and veterans programs. Given the overwhelming needs in our nation and the limited resources at our disposal, it makes absolutely no sense to give special treatment to the Yucca Mountain Project at the expense of millions of Americans.

I urge the Members of the Subcommittee to reject any proposal that would skirt the appropriations process and reduce necessary congressional oversight.

Mr. HALL. Thank you very much. The Chair recognizes Mr. Gibbons.

STATEMENT OF HON. JIM GIBBONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. GIBBONS. Thank you very much, Chairman Hall, Mr. Boucher, members of the committee. Thank you for giving me an opportunity to also testify on this very important issue.

I can completely understand the emotional draw that it has for everyone in this country, but this has also been a very emotional issue for Nevada. It is one of the utmost concerns to me and to many of the constituents that I have, because Yucca Mountain is in the 2nd Congressional District of Nevada. I represent every county in Nevada, including Nye County, which includes Yucca Mountain, as I said earlier. As you probably know, I mean strong opposition to Yucca Mountain. It is an unsafe and unsuitable solution to our nuclear waste problem. However, today, I would like to focus my testimony, not on the scientific flaws, but more likely on the flawed fiscal responsibility that has been associated with this program.

Under no circumstances, Mr. Chairman, should the funding for Yucca Mountain Project be taken off budget or removed from the tight fiscal control of Congress. Currently the nuclear-power industry pays into the Nuclear Waste Trust Fund based on their kilowatt per hour production. As of November 2004, these payments have totaled close to $23 billion. Now, these payments are then designated toward the construction of the Yucca Mountain Waste Repository; however, these payments are not directly diverted toward to this ill-advised project, but instead require strict, yearly Congressional appropriation. Similar to other government trust funds, the balance of the trust fund is used for other purposes.

Over the past few years, many of our fellow colleagues have proposed changing the classification of this trust fund and essentially allowing all of these moneys to be used for construction of Yucca Mountain. While many proponents of the Yucca Mountain Project have applauded this effort, as Members of Congress and stewards of fiscal responsibility, we should soundly reject the proposal to take it off budget.

With the current budget deficit growing out of our control, it is imperative that Congress maintain more control of government

spending, not less. If this proposal is adopted, Congress will no longer have strict oversight of the current trust fund balance, totaling close to $17 billion. This is approximately $17 billion that has already been used for debt reduction and will now no longer be under the watchful eye of Congress.

This does not even include the future receipts of the trust fund, with an estimated $1.6 billion being collected in fiscal year 2005, alone.

In a time when Republicans are on the Hill demanding Congressional oversight on spending, I think it is hypocritical to make more spending not subject to strict, yearly Congressional oversight. I understand that some will argue that taking the Yucca Mountain Project off budget is not technically shifting the funding into a mandatory funding and that the program will still require yearly Congressional oversight. However, I challenge the committee to explain how taking the Yucca Mountain plan off budget does not have the same effect as a mandatory account.

I challenge you to explain how such a proposal will not create unnecessary incentives for appropriators to allocate the entire trust fund. In addition, a recent decision in the Federal Appeals Courts ordered that the Federal Government needs to develop a plan to protect the public against radiation released beyond the 10,000 year standard. As a result of the Court's decision, the Environmental Protection Agency must now promulgate a new safety standard that that can show compliance well beyond the 10,000-year mark, more like 100,000 years.

Now, these are Congressional mandated safety standards which the Department of Energy cannot realistically meet. It is the permitting issue, and not funding, that pose a greater challenge to the future construction of Yucca Mountain. It would be completely irresponsible for Congress to give the Department of Energy a check for approximately $17 billion for this project when it is all but certain that the DOE may never open it and certainly cannot meet the strict safety standards that Congress have previously set.

Simply put, taking the Yucca Mountain Project off budget is bad policy and a poor precedent for Congress to set. If Congress is willing to give the Department of Energy complete control of this trust fund without any Congressional oversight, what message does that send to other constituents throughout this Nation? Constituents expect us to hold the line on irresponsible government spending and reign in the growing budget deficit. Removing billions of dollars from our oversight is not an appropriate or responsible budgetary decision.

Mr. Chairman, I want to thank you for the time and the opportunity to testify before your committee today, and I would ask unanimous consent that a complete, written copy of my remarks be entered into the record.

[The prepared statement of Hon. Jim Gibbons follows:]

PREPARED STATEMENT OF HON. JIM GIBBONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. Chairman, thank you for giving me the opportunity to testify on this important issue.

This is an issue that has always been of the utmost concern to me and to many of my constituents. I represent every county in Nevada, including Nye County which includes the Yucca Mountain waste repository.

As you all probably know I am in strong opposition to Yucca Mountain. It is an unsafe and unsuitable solution to our nuclear waste problem.

However, today, I would like to focus my testimony not on the scientific flaws with the project but on fiscal responsibility. Under no circumstances should the funding for the Yucca Mountain Project be taken off-budget or removed from the tight fiscal control of Congress.

Currently, the nuclear power industry pays into the Nuclear Waste Trust fund based on their Kilo watt per hour power production. As of November 2004, these payments have totaled close to 23 billion dollars. These payments are then designated towards the construction of the Yucca Mountain waste repository. However, these payments are not directly diverted to this ill-advised project, but instead require strict yearly congressional appropriations. Similar to other government trust funds, the balance of the trust fund is put back into the general Treasury account and used to pay off our national debt.

Over the past few years, many of our fellow colleagues have proposed changing the classification of this trust fund and essentially allowing all these monies to be directly used for construction of Yucca Mountain. While many proponents of the Yucca Mountain project have applauded this effort, as Members of Congress and stewards of fiscal responsibility, we should soundly reject this proposal. With the current budget deficit growing out of our control, it is imperative that Congress maintain more control of government spending, not less.

If this proposal is adopted, then Congress will no longer have strict oversight of the current trust fund balance B totaling close to 17 billion dollars! This is approximately 17 billion dollars that has already been used for debt reduction, and will now no longer be under the watchful eye of Congress. This does not even include the future receipts of the trust fund, with an estimated $1.6 billion being collected in FY 2005 alone. In a time when Republicans on the hill are demanding Congressional oversight on spending, it is hypocritical to then make more spending not subject to strict yearly congressional oversight.

I understand that some will argue that taking the Yucca Mountain project off-budget is not technically shifting the funding into a mandatory program and that the program will still require yearly congressional oversight. However, I challenge the committee to explain how taking the Yucca Mountain project off-budget does not have the same affect as a mandatory account. I challenge you to explain how such a proposal will not create unnecessary incentives for appropriators to allocate the entire trust fund?

In addition, a recent decision in the federal appeals court ordered that the federal government needs to develop a plan to protect the public against radiation releases beyond the proposed 10,000 years. As a result of the court's decision, the Environmental Protection Agency (EPA) must now promulgate a new safety standard that can show compliance well beyond 10,000 years.

These are congressional mandated safety standards which the Department of Energy cannot realistically met. It is this permitting issue—and not funding—that pose a greater challenge to the future construction of Yucca Mountain.

It would be completely irresponsible for Congress to give the Department of Energy a check for approximately 17 billion dollars for this project, when it is all but certain that the DOE may never open it and certainly cannot meet the strict safety standards set by Congress.

Simply put, taking the Yucca Mountain project off-budget is bad policy, and a poor precedent for Congress to set. If Congress is willing to give the Department of Energy complete control of this trust fund, without any congressional oversight, what message does that send to our constituents throughout this nation? Constituents expect us to hold the line on irresponsible government spending and rein in the growing budget deficit. Removing billions of dollars from our oversight is not an appropriate or responsible budgetary decision.

Thank you for your time and the opportunity to testifying before your committee today.

Mr. HALL. Without objection, and I thank you. And I would say this, before I recognize Mr. Porter, that while there are some differences of opinion with some of your testimony, I note that you have always done it with a professional approach, fiercely battling for your folks and with class. I appreciate that. Mr. Porter, you are recognized, sir.

STATEMENT OF HON. JON C. PORTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. PORTER. Thank you, Mr. Chairman and Mr. Boucher for affording me the opportunity to testify today.

As I am sure you can imagine, the Yucca Mountain issue remains an intensely personal issue to myself and my fellow Nevadans. I have been in public office for over 20 years of my life, and throughout those 20 years, I have fought on behalf of Southern Nevadans on many issues. In looking back over this period of time, one issue stands tall above the rest. This is a push-button issue for Nevadans, and that is Yucca Mountain. Therefore, Mr. Chairman, I am here today to express my vehement opposition to this project on behalf of my constituents in Southern Nevada.

Throughout the fight against Yucca Mountain, one thing seems to be proven time and time again: Yucca Mountain has yet to be proven safe as a repository to dump our Nation's high-level nuclear waste. Since 1987, when Yucca Mountain was named the only site to be considered further, billions upon billions of dollars have been spent on this ill-fated project. Study after study proves that Yucca Mountain is not as solid as information as we have provided before.

Earthquakes, water percolation, transportation, and radiological safety standards have plagued the Yucca Mountain Project, yet we continue this fight year after year.

I wish we knew in 1987 what we know today. Located only 90 miles from Las Vegas, and even closer to the quickly growing community of Pahrump, Nevada, Yucca Mountain is becoming more and more of a threat to the health and safety of Southern Nevadans as well as to millions of Americans with every day that it is being considered our Nation's nuclear waste repository.

The Yucca Mountain Project will directly impact 44 States and many major metropolitan areas, including Chicago, Toledo, Los Angeles, Dallas, Pittsburgh, and Denver, as the millions of shipments of high-level nuclear waste would be trucked and shipped and sent by train through these communities.

Mr. Chairman, I disagree with Yucca Mountain on many different fronts, but the reason for this hearing today is to talk about the funding options that are before you. Last year, funding for Yucca Mountain was cut significantly. This year, the Energy Department's top nuclear manager publicly acknowledged that Yucca is falling behind schedule. This is frustrating for proponents for Yucca Mountain, causing them to look toward other solutions to put Yucca Mountain back on track.

One of the options that has been mentioned frequently is taking some more of the funds generated under the Nuclear Waste Fund to help pay for Yucca Mountain. Although to some, this approach may seem like a short-term solution to funding issues surrounding Yucca Mountain, I have a firm belief that this would equate to basically giving its proponents a blank check to complete the construction of this project putting all Americans at risk, not just Nevadans.

As you know, Mr. Chairman, the transportation and storage of high-level nuclear waste is not an issue to ignore, especially in the post-September 11 world. Shipping 77,000 metric tons of dangerous, radioactive nuclear waste by removing it from reactor sites

around the country and putting it on trucks, trains, barges, and moving it through cities and towns and waterways across America is a dangerous scheme, and we as a Congress cannot afford any missteps along the way.

Now is definitely not the time to lessen managerial oversight of this project. With all of the problems currently looming over Yucca Mountain, we as Members of Congress cannot lessen our oversight over a project when we have not seen the final safety standards.

Mr. Chairman, the American people deserve better. The American people deserve more from us than wasting our time throwing billions of dollars in project that has spent too long already at the public trough. For this reason, on behalf of the people of Nevada, I insist that this body maintain its oversight authority over such potentially dangerous projects. Taking an item off budget is reserved for issues of national interest, far surpassing the completion of Yucca Mountain. Just because the project may not be on track does not mean that we, as Members, should try to force it to move any faster, putting all Americans at risk. This also sets a dangerous precedent for all projects across the country that do not meet an arbitrary master plan. Any budgetary gimmicks like this are dangerous and cannot be allowed.

Mr. Chairman, last year, I testified before the committee regarding this same issue, and my message remains the same: We are all here to represent millions of people from across the country. These constituents have instilled their faith in each of us to make pretty tough decisions to protect not only their interests and their tax dollars, but their health and safety as well. In attempting to find other ways to fund Yucca Mountain, whose interests are being served, the health and safety of our constituents, or is it the balance sheets of the nuclear utility companies?

Mr. Chairman, I thank you again for this opportunity, and I ask that you look closely at what decisions can be made that may impact all of these families, children, schools, churches, and businesses across the country if we give up that oversight that we have had as a U.S. Congress. Thank you, Mr. Chairman.

[The prepared statement of Hon. Jon C. Porter follows:]

PREPARED STATEMENT OF HON. JON PORTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. Chairman, thank you for providing me the opportunity to testify today. As I am sure you can imagine, the Yucca Mountain issue remains an intensely personal issue to myself and to my fellow Nevadans as well.

I have been in public office for over twenty years of my life. Throughout these twenty years, I have fought on behalf of Southern Nevadans on many issues. In looking back, one issue stands tall above the rest as THE "push-button" issue for Nevadans—Yucca Mountain. Therefore, Mr. Chairman, I am here today to express my vehement opposition to this project on behalf of my constituents in Southern Nevada.

Throughout the fight against Yucca Mountain, one thing seems to be proven time and time again—Yucca Mountain has yet to be proven a safe repository to dump our nations' high-level nuclear waste. Since 1987, when Yucca Mountain was named the only site to be considered further, billions upon billions of dollars have been spent on this ill-fated project, only to have study after study prove that Yucca is not the solid formation it was once thought to be. Earthquakes, water percolation, transportation and radiological safety standards have plagued the Yucca Mountain project, yet we continue this fight year after year. I wish we knew in 1987 what we know now.

Located only 80 miles from Las Vegas, and even closer to the quickly-growing city of Pahrump, Yucca Mountain is becoming more and more of a threat to the health and safety of Southern Nevadans, as well as the millions of Americans, with every day that it is being considered as our nation's nuclear waste repository. The Yucca Mountain project will directly impact 44 states and many major metropolitan areas, including Chicago, Toledo, Los Angeles, Dallas, Pittsburg, and Denver, as millions of shipments of high-level nuclear waste is trucked, shipped, and sent by train through these areas.

Mr. Chairman, I disagree with Yucca Mountain on many different fronts, but the reason for this hearing today is to talk about funding options. Last year, funding for Yucca Mountain was cut significantly. This year, the Energy Department's top nuclear manager has publicly acknowledged that Yucca is falling behind schedule. This has frustrated proponents of Yucca Mountain, causing them to look toward other "solutions" to put Yucca Mountain back on track. One of the options that has been mentioned frequently is taking some of the funds generated under the Nuclear Waste Fund to help pay for Yucca Mountain.

Although, to some, this approach may seem like a short-term solution to the funding issues surrounding Yucca Mountain, I am of the firm belief that giving its proponents a "blank check" to complete the construction of this project will end up putting all Americans at risk. As you know, the transportation and storage of high-level nuclear waste is not an issue to ignore, especially in a post September 11th world. Shipping 77,000 metric tons of dangerous radioactive nuclear waste by removing it from reactor sites around the country, and putting it on trucks, trains and barges, and moving it through cities, towns and waterways across America is a dangerous scheme and we, as Congress, cannot afford any missteps along the way.

Now is definitely not the time to lessen managerial oversight over this project, and with all of the problems currently looming over the Yucca Mountain, we as Members of Congress, cannot lessen our oversight over a project that we have not even seen final safety standards on. The American people deserve more from us than wasting our time throwing billions of dollars at a project that has spent too long already at the public trough.

For this reason, I, on behalf of the people of Nevada, insist that this body maintain its oversight authority over such potentially dangerous projects. Taking an item off-budget is reserved for issues of national interest that far surpass the completion of Yucca Mountain. Just because the project may not be as "on track" as it should be does not mean that we, as Members, should try to force it to move any faster. This also sets a dangerous precedent for all projects across the country that do not meet an arbitrary master plan. Any budgetary gimmicks like this are dangerous and cannot be allowed.

Mr. Chairman, last year I testified before the Subcommittee on Energy and Water Quality regarding this same issue, and my message remains the same: We are all here to represent millions of people from across the country. These constituents have instilled their faith in each of us to make tough decisions to protect not only their interests and tax dollars, but their health and safety as well. In attempting to find other ways to fund Yucca Mountain, whose interests are being served, the health and safety of our constituents, or the balance sheets of the nuclear utility companies?

Again, Mr. Chairman, thank you for the opportunity to testify today. I will continue to join the other members of Nevada's delegation in representing the overwhelming majority of Nevadans who oppose Yucca Mountain, and I would be happy to answer any questions the panel may have.

Mr. HALL. You used exactly your 5 minutes, not even 1 second over.

Mr. PORTER. Thank you.

Mr. HALL. Perfect timing and I thank you for it. The Chair is going to recognize the ranking member, the very venerable, longtime chairman of this committee, Mr. Dingell, for an opening statement.

Mr. DINGELL. Mr. Chairman, thank you for your courtesy, and thank you for this hearing on an issue that is very important, not only in terms of energy policy, but also in terms of consumer protection and deficit spending.

The need to put Yucca Mountain on a sound financial footing is an issue which you and Chairman Barton and I have been able to

work together on in the past. I look forward, again, to doing so in this Congress.

As I have outlined before, I have three major funding concerns. First, we need to determine whether the Department of Energy $651 million request for the 2006 fiscal year is adequate to meet the program's near-term needs. Second, we need to secure sufficient long-term funding for the project by insulating the $16 billion balance in the Nuclear Waste Trust Fund from competing pressures. That translates, Mr. Chairman, to saying that we would protect it against the grubby hands of the Appropriations Committee, the Budget Committee, and the Office of Management and Budget, all of whom will spend this money for purposes quite different than those for which the Congress designed the Fund. Finally, we need to protect taxpayers' future payments to the fund from being siphoned off by the budgeters and being spent on unrelated programs, and see that they are spent on that which the Congress has said they should be spent.

Some of these challenges may require legislation; some may not. The administration's budget suggests that futures payments to the fund should be "reclassified" for purposes of budget treatment in order to alleviate certain pressures on program funding.

That doesn't sound very good to me, and I would observe that it probably means that they are talking about seeing to it that those funds are dissipated in some curious way which might satisfy somebody else's intentions other than this committee and the Congress.

Some believe that the Office of Management and Budget already has the authority to accomplish this action by administrative means; however, we have to regret that the good people at OMB have been too busy to answer the letters I sent them in May 2004 and January 2005 posing this question. Perhaps this indicates that Yucca Mountain is not an important matter in the eyes of those in the administration. I hope that that is not the case. Clearly, they are not being forthcoming in dealing with the Congress or vigorous in terms of protecting the public interest with regard to these funds.

The reclassification approach, however, appears to have drawbacks. It does not address the need to take the balance of the Fund off budget as this committee voted to do in two prior Congresses. It does nothing to secure the adequate annual appropriations for the Yucca Mountain Project as direct spending could. It does not ensure that future contributions by ratepayers are fully dedicated to this project rather than unrelated budgetary priorities, as adopting a user-fee concept might, nor does it limit the amount of money flowing irretrievably into the Waste Fund, as would lowering the bill fee to collect only the amount needed for the annual spending could.

Finally, it appears that some reclassification bills have the subtle effect of masking increased deficit spending. I recognize, of course, that all of the proposals have limitations, either practical or political. It will do nothing for the program or for consumer, however, for the Congress to aim low, to settle only for gimmicks and gimcracks when we should be considering broad reform that might actually get the job done and put the nuclear waste of this country

into a safe and proper repository and see to it that the public moneys are spent in a proper fashion, in accord with what the Congress said they should be spent for.

I will close with the hope that these will be reviewed as constructive suggestions by the administration. I confess I have small hope of that. Nuclear waste legislation is enacted only once in a blue moon. Without clear leadership and support from the executive branch, Congress can do little more than nibble at the edges of the serious funding that this program faces.

In my letter of January 14, 2005 to the OMB, I asked for the administration's positions on various legislative and administrative options. I know the folks over there are very busy, but it would be helpful if they would pause long enough to give us a response on a matter very important to our current legislative considerations and purposes of this hearing. Alternatively, perhaps, the testimony of Mr. Garrish of DOE would be able to enlighten us on this regard. I would suggest that we should ask him questions since administration officials have a noticeable allergy and reluctance to appearing here to discuss these matters with us.

I thank you for holding this hearing. Let us hope we can get to the bottom of this thing, that we have some cooperation from the administration. I hope that that will be so. The hopes are small. Thank you, Mr. Chairman.

Mr. HALL. Mr. Dingell, we thank you.

Are there other gentlemen who would usurp the chairman's time by making another statement? Or would you like to have your statement put in the record? Does anybody want to be recognized for 5 minutes? Okay. Well, I was joking. We will hear from any of you, if you want to, or if you would like, put it in the record. Okay, the Chair hears none.

All right. At this time, we are honored to hear from Ranking Member Boucher, the gentleman from Virginia.

Mr. BOUCHER. Well, thank you very much, Mr. Chairman. I do have a brief statement this afternoon.

I very much appreciate your convening this hearing on the subject of status of funding relating to the Yucca Mountain Nuclear Waste Repository. The Nuclear Waste Policy Act of 1982 gives the Federal Government the responsibility of providing a facility for the permanent disposal of nuclear waste. As stipulated by the Act, nuclear generators of electricity are responsible for the cost of both permanent disposal and interim storage at utility reactor sites. The cost of storage and disposal of nuclear waste are funded by an assessment charged to customers who received electricity generated by nuclear power. These fees are collected and then placed in the Nuclear Waste Fund and are administered by the Department of Energy. DOE has recently abandoned its most recent 2010 target for opening the depository at Yucca Mountain and then also missed the target of December 2004 to file a license application for the Yucca Mountain facility.

Approximately $6 billion has been spent on the program to date and more than $16 billion remains in the Nuclear Waste Fund. However, moneys assigned to the fund have been used for other purposes in previous years, and the program, now, has to compete for funding with other unrelated DOE programs. The fund needs

to be altered in order to ensure that ratepayer contributions are applied for the purpose intended and that the Yucca Mountain receives the funding that it needs in order to proceed in a timely manner.

Our witnesses today will comment on the need to alter the fund in order to ensure that the program moves forward. I, personally, support appropriate changes to the fund's structure that would ensure adequate moneys for the program and direct future collections to the furtherance of the Yucca Mountain program. Potentially, the interest on the existing fund balance should also be so protected and directed to program activities. And perhaps, we should be concerning ourselves with the principle that is the fund, the more than $16 billion currently residing in that fund, which we hope would be made available in a timely way for program use.

And I look forward to hearing from our witnesses their thoughts on the steps we should be taking to achieve these goals. Thank you very much, Mr. Chairman.

Mr. HALL. Thank you, Mr. Boucher.

The second panel, please, come forward. We will have Mr. Theodore J. Garrish, Deputy Director, Office of Strategy and Program Development, Office of Civilian Radioactive Waste Management with the Department of Energy. And we have Honorable Robert M. Garvin, Commissioner, Wisconsin Public Service. He is testifying on behalf of the National Association of Regulatory Utility Commissioners. Gentlemen, we recognize you.

At this time, Mr. Garvin, we recognize you for 5 minutes. You are not relegated to that; you may use less time than that if you would like, or if you run over, we will be considerate. Thank you. We recognize you.

STATEMENTS OF ROBERT M. GARVIN, COMMISSIONER, WISCONSIN PUBLIC SERVICE, ON BEHALF OF NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS; AND THEODORE J. GARRISH, DEPUTY DIRECTOR, OFFICE OF STRATEGY AND PROGRAM DEVELOPMENT, OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT

Mr. GARVIN. I am new to this. Thank you very much, Mr. Chairman. My name is Robert Garvin. I am a member of the Public Service Commission of Wisconsin. I also serve as Chairman of NARUC's subcommittee on nuclear issues. I am testifying today on behalf on NARUC. I very much appreciate the opportunity to appear before you today, and I would ask that my full testimony be submitted into this record.

I will briefly summarize our views. NARUC's goal for the Civilian Radioactive Waste Management program is for the Federal Government to meet its statutory and contractual obligations to accept commercial spent nuclear fuel now stored at 72 locations across this country and to safely dispose of that waste. While we had wanted that process to begin in 1998, as the law in contract signed with nuclear utilities required, further delay now seems likely. The ratepayers we represent have done their part by paying, through their utilities, over $24 billion in fees and interest over the past 2 decades. Despite Congressional approval of Yucca Mountain in 2002, meeting the 2010 latest waste-disposal target date is not

certain because the license-review process for the Yucca facility has yet to begin.

While certain litigation by the State of Nevada has been resolved, more litigation seems likely. And the biggest obstacle may be that funding available for the repository program may be inadequate to meet the necessary schedule.

While money should not be a hindrance to the repository program, it has been, as a growing gap between fee revenue and interest earned and annual appropriations. The repository budget has been cut for the past decade, while revenue continues to flow in, leaving a $16 billion in the Nuclear Waste Fund that is basically inaccessible for its intended purpose.

We believe a critical aspect of completing the Yucca project is for Congress to reform the process by which moneys from the Nuclear Waste Fund are made available for the program. There are a number of acceptable ways for the current funding problems to be resolved, so long as, the imbalance between revenue and annual appropriations is brought to an end, and the legislative change allows nuclear waste disposal to become a reality.

The costs of delay are significant to the government and utility customers. It is estimated by DOE to be $½ billion for every year past 2010 for just the government waste. The cost of commercial waste, for which DOE is also liable, is surely that much, if not more, and it was mentioned today $500 billion a year. As a State regulator from a State that relies on nuclear energy as a critical base-load resource, we have seen firsthand how delays in Yucca are costing consumers.

In the case of WE Energies, we regulators have authorized the utility to spend approximately $50 million for interim storage facilities and dry-cast storage at its Point Beach facilities for the past decade. In addition, if it is relicensed, there will be even more dollars spent for interim facilities. In the case of another investor-owned utility, Wisconsin Public Service Corporation, they have not had to invest in dry-cast storage to date because the original facility was sized to host two plants. It may be required to take measures to enlarge the storage facility, and it has at the Kiwani Pool, and this is another interim measure, and dry-cast facilities may be required if they seek relicensure.

Dairyland is a small facility on the banks of the Mississippi River that has been retired for over 15 years, yet Dairyland customers continue to incur costs for the storage of spent nuclear fuel there. In fact, Dairyland is one of the groups of nuclear operators, or former operators, who are actively pursing a privately run central storage facility. All of these real and potential expenditures are in addition to the $350 million of principle paid through September 2005 that Wisconsin ratepayers pay into the fund.

In summary, the lack of certainty over waste disposal places a cloud over future nuclear generation in a very volatile energy marketplace. The Nation needs to move forward to assure the availability of safe, permanent disposal of nuclear waste without further delay. We urge Congress to act on effective reform of management of the Nuclear Waste Fund. Thank you for giving me the opportunity to appear before your committee, Mr. Chairman, and I am available for questions.

[The prepared statement of Hon. Robert Garvin follows:]

PREPARED STATEMENT OF ROBERT GARVIN, COMMISSIONER, PUBLIC SERVICE COMMISSION OF WISCONSIN

My name is Robert Garvin. I am a commissioner at the Public Service Commission of Wisconsin (PSCW). I have served in that capacity for four years. I also serve as the Chairman of the Subcommittee on Nuclear Issues and Waste Disposal of the Electricity Committee of the National Association of Regulatory Utility Commissioners (NARUC). As Chairman of the NARUC Subcommittee that focuses directly on the issues that are the subject of today's hearing, I am testifying today on behalf of that organization. In addition, my testimony reflects the views of the PSCW. On behalf of NARUC and the PSCW, I very much appreciate the opportunity to appear before you this morning. The issues that you are addressing in this oversight hearing are very important to NARUC's membership and my State, and I am grateful to have this opportunity to present our point of view concerning the progress of the Yucca Mountain project.

NARUC is a quasi-governmental, non-profit organization founded in 1889. Its membership includes the State public utility commissions serving all States and territories. NARUC's mission is to serve the public interest by improving the quality and effectiveness of public utility regulation. NARUC's members regulate the retail rates and services of electric, gas, water, and telephone utilities. We are obligated under the laws of our respective States to ensure the establishment and maintenance of such utility services as may be required by the public convenience and necessity and to ensure that such services are provided under rates and subject to terms and conditions of service that are just, reasonable, and non-discriminatory.

NARUC's goals in the nuclear waste area are well known and have been stated before this and other Congressional committees on a number of prior occasions. NARUC believes that the federal government needs to meet its obligation under the Nuclear Waste Policy Act of 1982, as amended, to accept spent nuclear fuel from utilities and other nuclear generators in a timely manner. NARUC further believes that the nation's ratepayers have upheld their end of the bargain struck in the Nuclear Waste Policy Act by providing, either directly or through income generated on prior payments, over $24 billion for use in constructing a nuclear waste repository. Finally, NARUC believes that the Nuclear Waste Fund should only be employed for its intended purpose and that the monies in the Nuclear Waste Fund should be utilized, along with appropriations from the Department of Defense budget, for the sole purpose of supporting the opening of the Yucca Mountain facility in a timely fashion. The basic principles underlying NARUC's approach to the nuclear waste issue provide a solid foundation for future policy decisions concerning the nuclear waste program.

The process of attempting to open a geologic repository for the storage of high-level radioactive waste, including spent nuclear fuel, has been a protracted one. As you know, the Nuclear Waste Policy Act contemplated that the proposed repository would begin to accept waste in 1998. Instead, over six years later, the Department of Energy (DOE) is still engaged in the process of attempting to license, construct, and open the proposed repository. In the meantime, the customers of the nation's nuclear facilities continue to pay the required one mill per kilowatt hour fee that is intended to finance the proposed repository while, at the same time, continuing to bear the cost of on-site waste storage as well. The nation's debt to these customers is long past due. Moreover, the Administration indicated in its FY 2003 budget request that it will cost $500 million annually to manage government high-level radioactive waste at Department of Energy sites in the event that waste acceptance at the proposed Yucca Mountain facility is delayed past the previously scheduled 2010 opening date.

Finally, the federal courts have decided that the Department of Energy has breached its statutory and contractual obligation to take spent nuclear fuel by the date specified in the Nuclear Waste Policy Act, thereby subjecting the nation's taxpayers to significant damage liabilities that have yet to be quantified and that will continue to increase with the passage of time. In evaluating the potential impact of these liabilities on the federal budget, it is important to remember that the United States Court of Appeals for the Eleventh Circuit has determined that monies from the Nuclear Waste Fund may not be used to pay any damages ultimately awarded to the nuclear industry for breach of the Department of Energy's obligation to take nuclear waste beginning in 1998.

While there is no agreed-upon estimate of the government's liability for the added storage costs for commercial spent fuel that will result from further delay in waste acceptance at Yucca Mountain. Nonetheless, we can safely assume that the cost of

delay relating to commercial spent nuclear fuel is several times the cost of delay identified for government material since there is nine times more commercial waste than governmental waste. These factors make it even more imperative to prevent further delay in opening the Yucca Mountain facility.

The decision by the President and Congress to proceed with the development of the Yucca Mountain facility in 2002 was gratifying to NARUC and its members. The recommendation of the Yucca Mountain site by Secretary Abraham, the President's decision to concur in the Secretary's recommendation, and the Congress' decision to override Governor Guinn's veto brought much needed attention to the nuclear waste disposal issue. Despite this attention to these issues, the passage of the Congressional resolution reaffirming the federal government's commitment to the development of the Yucca Mountain facility does not end the need for Congressional supervision of and commitment to this program.

In other words, the adoption of the 2002 Congressional resolution should certainly not lead to complacency on the part of any branch of the federal government. The timely opening of the Yucca Mountain facility is not, as this committee well knows, a fait accompli. Although there is some current uncertainty over the date for the submission of the repository license application, given the necessity for Environmental Protection Agency to revise its radiation protection rule for the repository to comply with a court decision announced last summer, the Department of Energy has expressed its intention to submit the license application by the end of this year. Frankly, from NARUC's perspective, the biggest obstacle to the beginning of waste acceptance at the proposed repository in accordance with the Department of Energy's current schedule is the risk of inadequate funding during the next few years.

As a result, NARUC believes that it is vitally important for Congress to take certain specific steps on an expedited basis to ensure that the Yucca Mountain facility opens without additional delay. Most importantly, Congress should make adequate funds available for the licensing, construction, and operation of the proposed facility. Unless adequate money is appropriated for the Yucca Mountain project, the proposed facility will not open in accordance with any schedule that is ultimately adopted. This will result in increased costs to the federal government, the nuclear industry, and the customers of the nation's nuclear generators. Therefore, I repeat, the most important issue for Congress to address in connection with the nuclear waste program at this time is ensuring that adequate monies are appropriated for the Yucca Mountain project.

The history of funding for the Yucca Mountain program is and has been a source of concern to NARUC and its members. Over the past decade, fee revenue has continued to flow into the Nuclear Waste Fund at an ever-increasing level, a pattern that reflects improving nuclear industry productivity. Earnings on the balance in the Nuclear Waste Fund have grown to the point where they have exceeded fee revenue in most years. In the face of this increase in the amount of available resources, annual appropriations have consistently been reduced from the amount requested by the present and past Administrations throughout the last decade.

Although over $24 billion dollars has been collected for the Nuclear Waste Fund from ratepayers to date, only about $7 billion has been expended from the fund to support the repository program. This reduces the likelihood that important milestones associated with the repository program will be met, the most important of which is the date upon which nuclear waste begins moving to the repository for storage. Furthermore, spent nuclear fuel continues to accumulate in 72 locations that were never intended to be indefinite storage facilities. Despite the Nuclear Regulatory Commission's and the nuclear industry's confidence that the present practice of storing spent fuel at reactor sites is safe, NARUC agrees with former Secretary Abraham that permanent storage of nuclear waste at the Yucca Mountain repository would be more secure than on-site storage. NARUC also agrees with former Secretary Abraham that the prospect of further delay in opening the Yucca Mountain facility raises a serious homeland security issue.

The history of the budget process relating to the Civilian Radioactive Waste Management program suggests that there is a risk that past funding problems will continue in the future. The budget struggles for this program over the past several years have resulted in hundreds of millions of dollars in cumulative budget reductions. Further, each year that the program operates under a continuing resolution the DOE program managers are hesitant to make spending plans and commitments in the beginning of those years. Last year, because the Administration assumed that budget reclassification legislation would be enacted in the same year it was proposed, it requested "zero" appropriations from the Nuclear Waste Fund for FY 2006, resulting in the House Appropriations Committee proposing only $131 million from the Defense Nuclear Waste Fund as the total appropriation for that year. Except for the Senate's failure to mark up the Energy and Water Appropriation bill and

the enactment of a continuing resolution funding the nuclear waste program at the $577 million amount approved for the previous year, the repository program might have faced fiscal calamity.

These funding difficulties need not persist. There is an obvious solution to the funding problem. The government can sustain the required level of spending for the repository program by using the very funding mechanism contemplated in the Nuclear Waste Policy Act. The $16 billion balance in the Nuclear Waste Fund, which continues to grow every year, provides more than enough money to permit the Department of Energy to maintain the current schedule, assuming that these monies are actually made available for use in the program. The real problem lies in developing an approach to funding the Yucca Mountain program that ensures that the monies paid in to the Nuclear Waste Fund by the nation's electric ratepayers are actually devoted to the purposes for which that fund was created. The best way to achieve that result is for Congress to reform the process by which monies from the Nuclear Waste Fund are appropriated for repository program activities.

As we understand it, the existing budget rules applicable to the Yucca Mountain program make no distinction between monies appropriated from the Nuclear Waste Fund and other general funds available to the Department of Energy as a whole. As a result, any increase in the amount appropriated for the program from the Nuclear Waste Fund currently must be offset by decreases in expenditures for other Department of Energy programs despite the fact that the nuclear waste program is the only Department of Energy program that can be lawfully appropriately paid for from the Nuclear Waste Fund. Although the existence of such a limitation might constitute sound budgetary policy in the event that all Department of Energy programs were supported through general appropriations, such a limitation seems overly restrictive given the Nuclear Waste Fund's status as a special fund containing monies contributed by a specific group of Americans for use in a particular way. As a result, NARUC believes that the key to timely completion of the Yucca Mountain project is for Congress to reform the process by which the monies from the Nuclear Waste Fund are made available for use in connection with the repository program.

The manner in which the mechanics of the appropriations process operate is, of course, a matter committed to the sound judgment of Congress and not to an association of State regulators. There are probably a number of acceptable ways for the current problem to be resolved, ranging from modification of the existing budget rules to making the needed reforms to the Nuclear Waste Fund. At this point, we are willing to support a range of alternative methods for reforming the appropriations process as long as the imbalance between the amount of revenue entering the Nuclear Waste Fund and the amount of monies actually expended from the fund in support of the repository program ends.

Any reform, however structured, should ensure that future annual appropriations are limited by the needs of the program rather than the amount appropriated in the past, particularly given that past appropriations were barely adequate for the study period and are totally inadequate for the licensing, construction, and waste transportation phases that lie ahead. There is no question about the appropriateness of measures to assure that monies from the Nuclear Waste Fund are spent wisely. Those measures, however, should not thwart the entire purpose of the Yucca Mountain program. Assuming that Congress believes that it should cap expenditures from the Nuclear Waste Fund for budget oversight reasons, such expenditures should only be capped at the sum of fee revenues and earnings on the balance of the fund received in a particular year.

As we understand it, expected program needs, even in peak years, should not exceed the total that would be available under the application of such a formula. The Department of Energy projects that $1.5 billion will be added to the Nuclear Waste Fund each year during the remainder of this decade and that the Department of Defense budget will provide additional appropriations each year toward the repository program. For these reasons, there is no question that the amount of money flowing into the Nuclear Waste Fund, coupled with adequate support from the Department of Defense budget, will suffice to pay for needed work on the Yucca Mountain program over the next several years as we near initial repository operations.

Any reform proposal should also provide that increased expenditures from the Nuclear Waste Fund for support of the repository program would not necessarily result in the reduction of other Department of Energy expenditures. That is because the funds used to support those other programs come from a different source that is not directly tied to the programs in question. A failure to reform the process by which monies from the Nuclear Waste Fund are appropriated for use in the repository program will condemn the Yucca Mountain program to additional years of fiscal uncertainty and undermine the progress made by the 2002 decision to approve the Administration's recommendation that the program go forward.

NARUC was encouraged by the action taken by this subcommittee and the Energy and Commerce Committee in developing and approving H.R. 3981 during the last Congress. Unfortunately, that bill was not taken to the floor nor acted upon in the Senate. Nonetheless, the idea of reform was advanced and we are encouraged that the effort could be renewed this year. We were gratified by Chairman Barton's announcement last month that he intended to introduce similar legislation again this year. At its Winter Committee Meetings held nearly a month ago, NARUC adopted a resolution, a copy of which is attached to this testimony. This resolution urges enactment of legislation that has the effect of reforming the budgetary process in order to ensure the timely availability of sufficient funds to enable initial waste acceptance at the repository in 2010 or whatever revised date DOE is currently considers appropriate for initial waste acceptance.

The larger question of future access to the so-called "balance" in the Nuclear Waste Fund is certainly important, but it is not as time sensitive as fixing the annual appropriations process. We also suspect that tapping into that $16 billion balance will pose some difficulty for Congress because that money has already been used for other purposes so that the existing $16 billion fund balance is an "I.O.U." that a future Congress will have to honor with dollars that can actually be spent. We hope that our suspicions are unfounded and would welcome an explanation that alleviates our concern.

We are equally uneasy about the "investment returns" that are credited to the Fund. The investment return for FY 2004 totaled $1.3 billion, almost double the $732 million in fees collected from utilities during the same period. It is frustrating to see abundant resources reported as reserved for the nuclear waste program, while also seeing annual appropriations that are consistently less than the amount requested in the Budget because of the absence of sufficient funds for the year. While NARUC would like nothing more than to be assured that the Nuclear Waste Fund can be managed exactly as the Nuclear Waste Policy Act envisioned, it is our sense that coupling such a revision in the relevant appropriations rules with legislation similar to H.R. 3981, which has a near-term horizon through 2010, could put enactment of the more immediate reform at risk by trying to do too much at once, even though we would be delighted if it could be done. In other words, NARUC's highest priority is a practical near-term solution to the most pressing problem faced by the nuclear waste program.

The nuclear waste program is of immense national importance. Having overcome the political hurdle inherent in the vote on the joint resolution in 2002 to move forward with the Yucca Mountain process, the Congress should focus on ensuring that the means to complete the process of licensing, constructing, and operating the repository are made available to the Department of Energy. Nuclear energy is an inevitable component of both our country's energy present and its energy future. Congress recognized that fact when it enacted the Nuclear Waste Policy Act two decades ago. Congress reaffirmed that determination when it voted to proceed with the repository program in 2002. The nation needs to move forward to assure the availability of a safe, permanent nuclear waste disposal site for future generations without further delay.

The nation's electric ratepayers have been paying for a nuclear waste repository for over twenty years. It is past time for the ratepayers to get what they have paid for. The best way for Congress to assure that this result occurs is to reform the process of funding the repository program so that monies from the Nuclear Waste Fund are more readily available for use connection with the Yucca Mountain facility. We urge this committee and other relevant committees to make reforming the use of the Nuclear Waste Fund a priority in this Congress, to identify a way to provide stable financing for the program using the ample revenue stream that is available for the purpose, and to enact any legislation necessary to implement that decision.

Thank you for this opportunity to testify. I look forward to your questions.

RESOLUTION SUPPORTING REFORM OF THE NUCLEAR WASTE FUND

WHEREAS, In 1982 the Nuclear Waste Policy Act established policy that the Federal government is responsible for safe, permanent disposal of all high-level radioactive waste, including spent nuclear fuel from commercial power reactors; *and*

WHEREAS, Since 1983 ratepayers in States using nuclear-generated electricity have paid over $23 billion in fees and interest, via their electric utility bills, to the Nuclear Waste Fund (NWF) in the U.S. Treasury in what was to have been a self-financed waste disposal program; *and*

WHEREAS, Congress historically has only appropriated a small fraction of the amount of revenue going into the NWF to develop the waste repository—resulting

in a balance in the Fund, now over $16 billion, which must be available to meet future disposal program needs; *and*

WHEREAS, the Department of Energy, as recently as 2004, estimated annual appropriations will need to average $1.3 billion from 2005-2010 to enable construction, waste package procurement and transportation to meet the goal of initial waste acceptance in 2010—12 years past the date set in 1982; *and*

WHEREAS, Previous attempts to address the gap between NWF revenue and annual appropriations have been either embroiled in nuclear waste politics or faced other insurmountable obstacles; *and*

WHEREAS, the National Commission on Energy Policy, in its 2004 report *Ending the Energy Stalemate* in its policy recommendations for nuclear energy, says the "Administration and Congress should act immediately to reform the budget treatment of the Nuclear Waste Fund;" *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its February 2005 Winter Meetings in Washington, D.C., urges that the Department of Energy again propose legislation to reclassify fees paid by utilities to the Nuclear Waste Fund as discretionary offsetting collections equal to the annual appropriations from the Fund or by other means that achieves the result of having appropriations match Fund revenue, *and be it further*

RESOLVED, That NARUC urges the 109th Congress enact legislation this year that would enable total fee payments into the Nuclear Waste Fund to be fully available as annual appropriations to finance the civilian radioactive waste management program funding needs each year, with any shortfall made up from the Defense budget, or the existing balance in the Fund.

Sponsored by the Committee on Electricity
Adopted by the NARUC Board of Directors February 16, 2005

Mr. SHIMKUS [presiding]. Great. Thank you.

Now, we would like to recognize Mr. Theodore J. Garrish, Deputy Director, Office of Strategy and Program Development, Office of Civilian Radioactive Waste Management, Department of Energy. Welcome, sir. Your full statement is in the record, and you have 5 minutes to summarize.

STATEMENT OF THEODORE J. GARRISH

Mr. GARRISH. Mr. Chairman, member of the subcommittee, I appreciate the opportunity to testify today on the need for a stable and efficient long-term funding for the program, to implement our Nation's radioactive waste management policy. I appreciate especially the subcommittee's recognition of importance of this problem in program and the tremendous support you have provided for us in the past.

As you know, the mission of the program is to safely dispose of spend nuclear fuel and high-level radioactive waste resulting from the Nation's commercial nuclear energy industry and atomic defense activities, and it is vital to our national interest. Some people believe that the department's ability to fulfill its mission is in question, and they would suggest that the program is unable to move forward. I would like to take this opportunity, if I could, to tell the subcommittee that the program is well situated and has never been in a better position to do its job. Today, we are in excellent shape for the future and are moving ahead step by step toward development of a repository at Yucca Mountain.

Let me tell you why I am optimistic about the program. First, we have an approved site for the repository. The Court of Appeals affirmed the actions taken by the administration to select Yucca Mountain, and we do have site for the first time. Second, we have a draft of the entire license application, nearly 5,000 pages, which

is being refined and will be ready to submit to the NRC by the end of this year. Third, the transportation program in Nevada and throughout the country is moving forward in earnest. The EIS is well underway, and the date for completion is in site. And finally, the administration continues its strong support of this program as we move forward.

We are making progress on this vital mission, but let me say that the current challenge is not so much technical as it is financial. There is sufficient money in the Nuclear Waste Fund, but the question is whether or not we will have access to the fund when we need it. The essence of this problem is simple. We had a deal between ratepayers and the Department of Energy—they paid the fee for us to take the waste. And the concept was that this was supposed to be self-financing. The ratepayers have paid $22 billion thus far, and there is $16 billion in the fund; but access to the fund is limited because of the budget process. We must compete for funds against other DOE programs, even if the money is in the fund. The conclusion is that we will never get the job done at the historical appropriation levels.

Thus, the subject today is how to overcome this dilemma. You ask a number of questions in your letter of invitation. You ask about the funding profile, the administration's recommendation, the challenges facing the program, and the potential liabilities. Let me cover each of those for you.

First is the 10-year funding profile. The 10-year funding profile is attached to my testimony, and as you can see, the estimate in 2004 was between $9 and $10.5 billion to have the repository operating. As you are aware, the Department is reevaluating the program's out-year schedule due to the court decision regarding EPA and the lack of funding legislation. However, I am providing these two 10-year funding profiles that are illustrative of preliminary planning estimates. These profiles are based on a number of assumptions and must be viewed as tools for discussion rather than as project timetables.

One scenario has a 2012 start date. The other assumes a 2015 start date. Both profiles depict several years, during construction, where funding requirements will exceed $1.5 billion. These higher dollars funding levels are 2 or 3 times the annual funding the program has historically received. Over the last 10 years, appropriations have ranged between $315 million and $577 million. This contrast between historic funding levels and the substantially higher levels that would be needed for construction brings home the point that something must be done to ensure that we will receive appropriations above historic levels. The provisions for funding and fee collection in the Nuclear Waste Policy Act were intended to ensure that adequate funds were available when needed. This approach worked until 1991, when the budgetary laws were changed to the current situation, where receipts are included on the mandatory side of the budget and appropriations are on the discretionary side. As a result, instead of having full access to the Fund, the Nuclear Waste Office must compete against other DOE priorities to receive adequate funds. That is a critical issue which must be solved. Originally, the Nuclear Waste Fund was conceived to be self-financing and the funds available. Both the Congress and the admin-

istration have been aware of this problem for a number of years and have expressed the need for funding reform to solve the problem.

Your second question was the administration's recommendation for a solution. We believe that a solution that would satisfy this problem is one that would support reclassification of fees paid by ratepayers and deposited by utilities into the Nuclear Waste Fund, making them discretionary fees, and allowing them to be used as offsetting collections. This allows their use to offset the increased appropriations needed. This approach has been recommended several times in the past, and we believe it is a viable solution.

I appreciate your recognition of this problem. In past sessions, you have been very supportive in solving the issue in similar ways, and Congressman Shimkus has a bill to that effect in the last Congress.

The third question you asked is what are the consequences if we don't act? And I think this is really the important question that I would like to emphasize. You asked for me to describe the challenges that funding shortfalls would impose on the repository program in coming years. My answer is as follows: without full access to the Nuclear Waste Fund, either through appropriations or reclassification, I believe the program can complete the license process and continue as it has in the past, but we will not have sufficient funds to construct the repository, nor will we be able to construct the Nevada railroad, nor acquire the equipment to transport the materials to the facility in a timely fashion. Nuclear waste will remain at sites near communities and water supplies around the country, and we will not have finished the job of cleaning up the cold war legacy. Therefore, we have reached a crossroad. We have made substantial investment in a repository, to date, and we have positive results, and now we must finish the job.

While the fee income continues to flow into the Nuclear Waste Fund, there is a continuing expectation and obligation that we will use this money to finish the job and dispose of waste in manner directed by the Congress in the Nuclear Waste Policy Act.

Your last question, you ask what are the liabilities if we fail to act? I believe that a number of witnesses have already testified, and you have seen the numbers, that the estimate is between—$2 and $3 billion total liabilities through 2010, and the rate now for liability will be approximately $500 million per year for the utility lawsuits. About 60 are pending currently.

Before I conclude my remarks, I would just like to address one other issue. Many people have been concerned in the past over the corpus of the Nuclear Waste Fund and whether that corpus will be available when it is needed. I know there is significant concern over this issue; however, I believe that the Nuclear Waste Fund is adequately protected by the provisions of the Nuclear Waste Policy Act and the cases related thereto. Section 302(D) of the Act states that expenditures from the Fund can only be used as stated in the Act. A 2002 court case, Alabama Power v. DOE, affirmed that the Nuclear Waste Fund can only be used for these purposes. In my judgment, both the law and the Alabama Case provide protection for the fund's future use, and the corpus can only be used for the purposes enumerated in the Act.

I conclude with one important thought: the utility ratepayers have paid the government for disposal services agreed upon in their contracts with the government. There is a balance of $16 billion in the U.S. Treasury of ratepayer fees paid with interest and $750 million per year coming into the fund. Failure to provide a stable mechanism for access to these funds is inconsistent with the intent of the Act and 20 years of public policy on this issue. The estimates of billions of dollars that taxpayers will pay in damages should compel a solution. The administration is prepared to work with the Congress on coming up with an appropriate way to deal with this problem, and I thank you for your interest in this vital program and look forward to your questions. Thank you.

[The prepared statement of Theodore J. Garrish follows:]

PREPARED STATEMENT OF THEODORE J. GARRISH, DEPUTY DIRECTOR, OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT, U.S. DEPARTMENT OF ENERGY

Mr. Chairman and members of the Committee, I am Ted Garrish, Deputy Director of the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM). I appreciate the opportunity to testify about the need for stable and sufficient long term funding for the Department of Energy's program to implement our Nation's radioactive waste management policy, as established by the Nuclear Waste Policy Act of 1982, as amended.

The mission of the Program—to safely dispose of spent nuclear fuel and high-level radioactive waste resulting from the Nation's commercial nuclear power and atomic energy defense activities—is vital to our national interest. The success of the program is necessary to protect public health and safety and the environment, to maintain our energy options and national security, to allow the cleanup of former weapons production sites, to continue operation of our nuclear powered naval vessels, and to advance our international non-proliferation goals. The implementation of the Nation's radioactive waste management policy will consolidate spent nuclear fuel and high-level waste from 125 sites in 39 states at a single secure, remote location in an arid desert, far from cities, schools and water supplies.

The Administration and Congress recognized these important national benefits and supported the Department's geologic repository program when the Congress voted to pass the joint resolution approving the Yucca Mountain site for a repository and the President signed that resolution into law in 2002. With the site approval, the program's focus shifted from scientific study to the design, licensing and construction of a repository. As you are aware, to accomplish these objectives substantial funding is necessary.

I am here today to discuss your concerns regarding the long-term financial viability of the program. Specifically you requested I discuss 1) the funding profile for the repository program for the next ten years; 2) the need for reforming the Nuclear Waste Fund to ensure proper availability of funds to support the project; 3) the challenges facing the repository program due to funding shortfalls; and 4) the potential liability facing the federal government due to pending lawsuits.

THE FUNDING PROFILE [1] FOR THE NEXT TEN YEARS

The Department's 2004 estimate for the total amount of funds that are needed for the program from Fiscal Year 2005 through the opening of the repository was between $9 and $10.5 billion. As you are aware, the Department is re-evaluating the program's out-year schedule due to the Court's decision regarding the EPA standard and the lack of funding legislation. As you requested, I am providing ten-year funding profiles that are only preliminary planning estimates, subject to revision. These estimates do not represent final policy decisions that have yet to be made by the Administration. It should be noted that, if stable and adequate funding is not provided each year, the program's schedule and costs will be significantly impacted. Attached to this testimony are charts of the program's preliminary esti-

[1] These "Total Program" funding profiles are for illustrative purposes assuming a 2012 or 2015 date for the start of repository operations and are based on several critical assumptions, such as, Total Program funding, the EPA radiation protection standard is in-place by December 2005, and the start of construction of various non-nuclear items, such as the Nevada rail line before receipt of NRC construction authorization. Many of these policy decisions have not yet been made and as such these profiles do not represent any decisions regarding Administration policy.

mated ten-year funding profiles for both 2012 and 2015 assumed start dates for repository operations.

RECOMMENDATION FOR REFORMING THE NUCLEAR WASTE FUND TO ENSURE FUNDS

To meet the demand for increased funding the Administration has recommended alternative funding proposals for the Program in the last three Presidential Budgets and supports legislation to enact a proposal to reclassify receipts to the Nuclear Waste Fund as discretionary offsetting collections. The Administration remains committed to pursuing an alternative funding mechanism for the repository program and I hope further discussions on the issues raised today can result in progress on this important and necessary measure.

The Nuclear Waste Funding Problem

Since 1983, a quarterly fee has been and continues to be paid by utilities who produce nuclear electricity to fund the development of a repository for disposal of their spent nuclear fuel. According to Section 302(d) of the Nuclear Waste Policy Act, the money is to be collected for one purpose and one purpose only—performance of "nuclear wastedisposal activities" through the development and operation of a repository. In actuality, much of the fees collected to date sit unused in the Nuclear Waste Fund. The current procedure used to score Nuclear Waste Fund revenues does not encourage the appropriation of the full amount of the fees received annually because the receipts do not directly offset the appropriation for the repository program.

The Department has entered into legally binding contractual agreements mandated by Congress in the Nuclear Waste Policy Act with the nuclear utilities to accept their spent nuclear fuel on a specific schedule. The Department is legislatively required to begin accepting the spent fuel for disposal beginning by January 31, 1998, and these contracts with the utilities reflect that schedule in exchange for utilities' payment of the fee. The fact that fees are a *quid pro quo* payment in advance for a contractually required service to be performed by the federal government—a legal obligation affirmed by the federal courts—sets it apart from most other federal user charges and taxes and justifies special consideration in the budget process.

The fees are deposited into the Nuclear Waste Fund and intended to be used to pay the full cost of developing and operating the facilities needed to meet the federal government's commitment to conduct nuclear waste disposal activities mandated by the Nuclear Waste Policy Act. The Nuclear Waste Fund was established to ensure that the Department of Energy's commercial spent fuel disposal program would have the funds it needed, as it needed them, to get the job done, and also to ensure that the federal taxpayer did not pay for this waste disposal program.

The utilities and their ratepayers have been keeping their part of the bargain since 1983. Unfortunately, the federal appropriations process is increasingly constraining the ability of the federal government to do its share. Because the fee revenues are classified as mandatory receipts under budget control legislation, they are treated just like general tax revenues and deposited into the federal treasury, resulting in no incentive for the Congress to use the full amount of annual receipts. As far as the millions of utility ratepayers are concerned, the fee appears to be just one more federal tax rather than a payment to ensure the delivery of a contracted service.

Over the last ten years, ratepayers of nuclear utilities have averaged annual payments into the Fund of about $636 million, while annual appropriations from the Fund have averaged $198 million. The total unspent balance in the Fund with interest is over $16 billion. Until recently, the repository program's requirements were substantially below the annual fee revenues. However, that situation is changing. Beginning in FY 2007, program requirements are projected to equal or exceed projected income from the fee. To ensure that the waste fee revenues are fully available for their contractually required purpose, a new approach is necessary.

Administration Position

The program needs stable and sufficient long term funding to implement our Nation's radioactive waste management policy. The Administration believes that the fees currently paid by utilities to finance the repository should be treated as offsetting collections against the appropriation from the Nuclear Waste Fund. The amount credited as offsetting collections should not exceed the amount appropriated for the repository.

This approach would allow Nuclear Waste Fund revenues received from utility contract holders in a given year, up to the amount appropriated for that year's nuclear waste disposal activities, to be reclassified from mandatory receipts to discre-

tionary collections and available to directly offset appropriations from the Nuclear Waste Fund. The amount credited as offsetting collections would be subject to appropriations made in an Appropriation Act. Appropriations up to the amount of receipts could be provided without reducing the funding available for other federal programs.This approach outlined in the 2005 Budget to allow fee revenues to be reclassified from mandatory receipts to discretionary collections is not new or unique. In fact, the trend in the federal budget has been to offset against outlays in many areas. Many other federal activities that generate user charges are treated this way already. A few examples are the Nuclear Regulatory Commission, and the Department of Energy's major power marketing activities. This change would simply be a technical correction that would bring the funding of the radioactive waste program into line with other practices in the federal budgeting process. It is particularly appropriate that revenues from the Nuclear Waste Fund be made available as needed because, as stated previously, it is one of the few cases in which the federal government is, by law, contractually obligated to performthe service for which the fee is being paid.

Reclassification of the fees does not reduce Congressional control of the program's budget in any way. The Administration will still need to request and the Congress will still have to appropriate the funds, as required by the Nuclear Waste Policy Act.

Questions have been raised as to whether the Office of Management and Budget has authority to reclassify the fees through administrative action. It is my understanding that, if the Administration were to unilaterally reclassify the fees through administrative action, it would be a departure from past practice but does not appear to be prohibited by law. Nonetheless, if the Administration were to reclassify the fees unilaterally, it is my understanding that the Budget Committees and the Congressional Budget Office would have to make the same change. Absent the Budget Committees' concurrence with such an administrative action, the administrative fee reclassification would not be reflected in congressional scoring of appropriations actions.

I believe a new approach would help assure stable and sufficient funding so the program to can build and operate a repository for the Nation.

CHALLENGES FACING THE REPOSITORY PROGRAM DUE TO FUNDING SHORTFALLS

Without a change to the funding mechanism, program funding shortfalls are likely. Such shortfalls, in turn, will cause significant delays in repository construction and eventual operations, will limit progress, and will threaten the very existence of the repository.

Everyone loses if this funding problem is not solved. Since 1995 both the Administration and Congress have been aware of the constraints the budget process imposes on the Nuclear Waste Fund. Both Branches have expressed the need for funding reform.

If a change is not made, the government will be forced to spend billions of additional dollars in added liability costs without solving the waste problem, since the repository will be extremely difficult to open in any near-term timeframe. Nuclear waste will remain at sites near communities and water supplies throughout the country, and we will not have finished the job of cleaning up the Cold War legacy at defense sites.

POTENTIAL LIABILITY DUE TO PENDING LAWSUITS

The government's need for a funding change for the repository program, unlike many other Federal programs, is driven by the highly unusual contractual arrangement required by the Nuclear Waste Policy Act. Whenever the Federal government, pursuant to an explicit statutory requirement, makes a legally binding contractual commitment to perform a well-defined service in exchange for payments that cover the costs of that service, it should treat those payments in a way that ensures that they are used for the statutorily-specified contracted purpose.

The Federal government is contractually obligated to perform the service for which Nuclear Waste Fund fees are paid. About 60 lawsuits are pending in the U.S. Court of Federal Claims for damages for failure of the government in 1998 to meet that obligation. The Court of Appeals has already established liability in some of the cases. The passage of legislation to help assure adequate funding for the waste program would send a strong signal to the ratepayers and utilities that the Federal government is indeed serious about meeting its obligations.

The Department has estimated that the damages due commercial utilities for the Department's delay in accepting waste in 1998 could be approximately $2-$3 billion, if the Department began operations in 2010. Without funding legislation and a deci-

sion on the EPA standard, each year of delay after 2010 could cost the government an additional $500 million in damages.

Some argue that because of federal budget constraints, now is not the time to increase appropriations for the waste program, much less to make changes in the budgetary treatment of the waste fee. If past decisions are any guide, federal courts are not likely to accept funding limitations as an excuse for failure to meet contractual obligations.

STATUS OF THE PROGRAM

Now, let me focus on current program activities. Recently, there have been comments that the Program has serious problems. On the contrary, the Program is well situated for the future. We are moving ahead deliberately, step-by-step, toward development of a geologic repository at Yucca Mountain. Here are some of the reasons why this Program is poised for success:

- We have an approved site for the geologic repository. Congress approved the Yucca Mountain site in Nye County, Nevada for development as a repository in 2002. Lawsuits have affirmed the constitutionality of the process; therefore, we have a location for the development of a repository site.
- We have a draft of the entire license application in the process of refinement. We are making improvements to the analysis and presentation of information, with the objective of completing preparation of a high quality license application by the end of this calendar year.
- Transportation activities have begun in earnest. We issued Records of Decision for both transportation mode and the rail line corridor through Nevada. We are currently preparing an Environmental Impact Statement for the specific rail alignment within that corridor. Institutional activities to include the States as partners have also begun.
- We are requesting the full funding amount necessary to complete those tasks we can reasonably accomplish in FY 2006. The Department will continue to request annual funding appropriate to meet project requirements.
- The Administration continues its strong support of the Program as we move forward with its implementation.

This program does, however, face challenges involving parties outside the Department that I would like to note.

First, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Environmental Protection Agency's Yucca Mountain radiation protection standard with regard to its 10,000 year regulatory compliance period. EPA is currently working to revise its Yucca Mountain radiation standard to conform to the court's direction. We remain optimistic that EPA's work in promulgating the standard will be contemporaneous with our work on the license application and that both will be ready by the latter part of the year.

The second challenge is being addressed today—the need for sufficient and stable longterm funding for the Program. Currently, there is no incentive in the budget scoring process for Congress to appropriate the full Administration request and to use all of the Nuclear Waste Fund fee receipts to construct the Yucca Mountain repository.

Despite these challenges, the Program is fundamentally on sound footing and we are poised to make significant progress in the coming year.

Consistent with Departmental and Program objectives, the Yucca Mountain Project's main focus in FY 2005 is on improving and completing the license application. The required elements of design, performance assessment, safety analyses, and technical data in the license application must be sufficient for the NRC to conduct an independent review and reach a decision to issue a construction authorization. The application must demonstrate that the repository can be constructed and operated and that the health and safety of the public will be protected.

CONCLUSION

We are committed to the goal of beginning to receive and transport spent nuclear fuel and high-level waste to an NRC-licensed repository. Toward that end, our objective is to complete a high-quality license application and have it ready to submit to the NRC in December of this year.

The Administration believes that the fees currently paid to the government by utilities to finance the repository should be treated as offsetting collections against the appropriation from the Nuclear Waste Fund. We will continue to work within the Administration and with our Congressional counterparts to provide the funding needed to meet Yucca Mountain's programmatic requirements.

I appreciate the efforts of the Committee to explore ways to properly align the Nuclear Waste fees with the expenditures for Yucca Mountain. We appreciate your holding this hearing to address the Program's need for stable and sufficient long-term funding.

This concludes my prepared statement. I will be pleased to respond to any questions the Committee may have.

DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT
TEN-YEAR FUNDING PROFILES

2012 START OF OPERATIONS
(dollars in thousands)

	FY 2006 Request	FY 2007 Request	FY 2008 Request	FY 2009 Request	FY 2010 Request	FY 2011 Request	FY 2012 Request	SUBTOTAL	FY 2013 Request	FY 2014 Request	FY 2015 Request	TOTAL
Total Program Requirements	$ 651,447	$ 1,019,503	$ 1,169,740	$ 1,616,000	$ 1,804,000	$ 1,911,000	$ 1,520,000	**$ 9,691,690**	$ 1,090,000	$ 850,000	$ 850,000	**$ 12,481,690**
Funding From:												
Nuclear Waste Fund Fee Income	$ 300,000	$ 519,503	$ 619,740	$ 765,000	$ 766,000	$ 767,000	$ 769,000	**$ 4,506,243**	$ 772,000	$ 620,000	$ 620,000	**$ 6,518,243**
Nuclear Waste Fund Corpus - Interest	$ -	$ -	$ -	$ 301,000	$ 488,000	$ 594,000	$ 201,000	**$ 1,584,000**	$ 38,000	$ -	$ -	**$ 1,622,000**
Defense Nuclear Waste	$ 351,447	$ 500,000	$ 550,000	$ 550,000	$ 550,000	$ 550,000	$ 550,000	**$ 3,601,447**	$ 280,000	$ 230,000	$ 230,000	**$ 4,341,447**
Total Funding	**$ 651,447**	**$ 1,019,503**	**$ 1,169,740**	**$ 1,616,000**	**$ 1,804,000**	**$ 1,911,000**	**$ 1,520,000**	**$ 9,691,690**	**$ 1,090,000**	**$ 850,000**	**$ 850,000**	**$ 12,481,690**

2015 START OF OPERATIONS
(dollars in thousands)

	FY 2006 Request	FY 2007 Request	FY 2008 Request	FY 2009 Request	FY 2010 Request	FY 2011 Request	FY 2012 Request	FY 2013 Request	FY 2014 Request	FY 2015 Request	TOTAL
Total Program Requirements	$ 651,334	$ 1,019,503	$ 1,169,740	$ 1,391,000	$ 1,404,000	$ 1,711,000	$ 1,695,000	$ 1,365,000	$ 1,175,000	$ 1,060,000	**$ 12,641,577**
Funding From:											
Nuclear Waste Fund Fee Income	$ 300,000	$ 519,503	$ 619,740	$ 765,000	$ 766,000	$ 767,000	$ 769,000	$ 772,000	$ 774,000	$ 778,000	**$ 6,830,243**
Nuclear Waste Fund Corpus - Interest	$ -	$ -	$ -	$ 76,000	$ 88,000	$ 394,000	$ 376,000	$ 313,000	$ 171,000	$ 52,000	**$ 1,470,000**
Defense Nuclear Waste	$ 351,334	$ 500,000	$ 550,000	$ 550,000	$ 550,000	$ 550,000	$ 550,000	$ 280,000	$ 230,000	$ 230,000	**$ 4,341,334**
Total Funding	**$ 651,334**	**$ 1,019,503**	**$ 1,169,740**	**$ 1,391,000**	**$ 1,404,000**	**$ 1,711,000**	**$ 1,695,000**	**$ 1,365,000**	**$ 1,175,000**	**$ 1,060,000**	**$ 12,641,577**

These "Total Program" funding profiles are for illustrative purposes assuming a 2012 or 2015 date for the start of repository operations and are based on several critical assumptions, such as, Total Program funding, the EPA radiation protection standard is in-place by December 2005, and the start of construction of various non-nuclear items, such as the Nevada rail line before receipt of NRC construction authorization. Many of these policy decisions have not yet been made and as such these profiles do not represent any decisions regarding Administration policy.

Mr. SHIMKUS. Thank you for your testimony. And as a former high school teacher, we have got some young high school students back there, and it is probably an interesting—probably a little boring. But when I taught high school, in the civics books was the discussion of Yucca Mountain, which would have been 20 years ago. And for the students out there, the basic premise is this: we have agreed to take high-level nuclear waste and put it at Yucca Mountain, underneath a mountain in the desert. And the question we are debating now is how do we pay for current construction of the facility. And it deals with budgets and all of these other issues, and we tried to address that last year—we did get derailed last year on the process, hence the legislation and movement, and hence this hearing.

You did, at the end, Mr. Garrish, at the end of your statement, talk about the litigation aspects a little bit, so my questions kind of follows along with some of your comments there. In 2004, the government reached a settlement agreement with Exelon Corporation for $80 million in fiscal year 2005 and a total of $300 million

to cover damages to date, resulting from the government's failure to meet the contractual deadline of January 1998 for initial fuel acceptance included in the Nuclear Waste Policy Act. Over 50 additional lawsuits from utilities to cover such damages are pending in the court. DOE estimates that these damages could cost approximately $500 million per year. The industry estimates that the costs are closer to $1 billion per year. These costs will grow with further delays in the program. Is the cost of the Exelon settlement included in the budget? And if it is, where is it located?

Mr. GARRISH. No, Mr. Chairman. The cost for the Exelon settlement is paid for out of the Judgment Fund. Now, that is included, ultimately, in the budget, but it is not included in the same fashion that you are suggesting.

Mr. SHIMKUS. Correct. Thank you. Are the potential additional costs associated with other suits incorporated in the administration's budget projections?

Mr. GARRISH. There are no projections for future liabilities in government projections. In other words, the judgment fund does not contain those projections for reasons related to litigation strategy.

Mr. SHIMKUS. So we need to resolve this issue so that these litigations do not continue in the future?

Mr. GARRISH. I think that is an important point. When you are paying $500 million-plus for your utility litigation and there are increased costs in the same range related to the defense waste, and DOE must store those wastes or make other provisions you are looking at $1 billion a year in costs for failure to complete the job. It would seem to me that a good bargain at this stage would be to finish the job and do it right, eliminate the damages, and move forward.

Mr. SHIMKUS. And I can't speak for the industries, but they may be less intent on pursuing their lawsuits if we are showing good-faith efforts in moving forward and developing the repository and receipt of the promised high-level nuclear waste.

Mr. GARRISH. Well, I have to say I think their lawyers are very aggressively pursuing these cases, so that may be true, but I am not sure that that is evident in the courts.

Mr. SHIMKUS. The OMB budget estimates show that the interests earned on the Nuclear Waste Fund in fiscal year 2004 was $1.3 billion. How is that income scored in the budget?

Mr. GARRISH. I am not sure it is that high, but I believe that it is at least $750 million.

How is it scored? It is scored like a mandatory receipt, so it goes immediately into the fund. In other words, that treatment is exactly the same as the treatment for the fee.

Mr. SHIMKUS. For the fee? For it is going—it is added to the fund——

Mr. GARRISH. That is correct.

Mr. SHIMKUS. [continuing] whether it is $700 or $1.3 billion.

Mr. GARRISH. Yes.

Mr. SHIMKUS. If we would move on—if my numbers are correct or your numbers are correct, and if we moved on addressing the interested earned as being directed to the Yucca Mountain, that would obviously give us a stream of funds that would be well re-

ceived if not—we would probably, in some instances, as your testimony stated, need in excess, if it is $700 million. And if it is $1.3, it is probably in some of the worst-case scenarios for dollars it needs in a year to move to recede.

Mr. GARRISH. Well, I don't believe that we have addressed the interest question. Thus far we have only addressed the fee part of the Waste Fund. That would be a matter that we would have to continue to examine.

Mr. SHIMKUS. Well, what actions would be required from us or you to address those earnings on the interest earned?

Mr. GARRISH. Well, I think that the earnings have the same problem as the fee; in other words, it goes into the fund. We still have to figure out a way in the budget process to either classify them differently or to figure out some way to get the appropriations out of the fund.

Mr. SHIMKUS. Great. Thank you. That is all the questions I have. I now turn to my colleague Mr. Boucher from Virginia.

Mr. BOUCHER. Thank you very much, Mr. Chairman. Mr. Garrish, Mr. Garvin, thank you for your comments here today.

Mr. Garrish, I understand that the Department of Energy missed its original target of December 2004 to file for a Yucca Mountain license with the NRC. Why did you miss the target and when do you intend to apply now?

Mr. GARRISH. Okay. There were two reasons for that, and the principal reason was that on July 9 the Court of Appeals vacated the EPA's radiation standard and directed the EPA to have it remanded and to resubmit it back through the process. As a result, there was no standard in place for us to judge the license application by.

Now, we are in the process of completing our license application. The EPA is in the process of the completing of its promulgation of the standard, and they have indicated that they will have something published in draft form sometime, either late Spring or early Summer. The Department is anticipating that we will proceed with the development of our license application to have it ready to submit by the end of this year, and we are assuming that our work will be contemporaneous with EPA, although that is an issue that they will have to determine when it is appropriate to finally publish. But the principal reason why we did not file a license application was the remand of that standard. There was a second reason that is related to the licensing support network, which is a discovery issue. We have to provide to the NRC a complete set of all of the documentation that we will rely on, all of the documentation that does not support our case, and all of the scientific materials have to be put into an electronic form and made available to the public. A board of the commission determined that there were some archival records which we had not included in that collection, which required us—to be made available at the same time with the certification. As a result, we cannot file our license application until 6 months after this licensing support network is certified. So as a result of having our certification overturned, we have to complete the certification process; and once that is done, then we have to wait an additional 6 months before we are able to actually do our filing. We anticipate that it will be completed by this Summer

and we will have our licensing-support network in place and certified.

Mr. BOUCHER. And so you anticipate, now, filing the end of this year, so you are essentially losing a year on the process?

Mr. GARRISH. Well, we are intending to file. We will have our work completed.

Mr. BOUCHER. All right.

Mr. GARRISH. And in other words, I think the concept is we want to wait for the Environmental Protection Agency to complete its work. We are hopeful that they will be able to do that.

Mr. BOUCHER. Okay.

Mr. GARRISH. We will have our part of this done.

Mr. BOUCHER. Okay. Thank you.

As I perceive your testimony, you are recommending that we address the budget problems we are having with accessing the fund by administrative means, by having the Office of Management and Budget reclassify these fees, administratively. However, that is only an effective remedy assuming the concurrence of the Congressional Budget Office and assuming the concurrence of the budget committees in the House and in the Senate, and that is part of where we are having our current difficulties. So how effective do you think this remedy you are recommending is going to be at the end of the day? Do you have any reason to suggest to us that will be more effective than the status quo?

Mr. GARRISH. Now, Mr. Boucher, maybe I gave the wrong impression. I don't believe that we are suggesting that we would administratively reclassify. I am suggesting that a reclassification needs to be undertaken, and the one way that that can be accomplished is through legislation.

Mr. BOUCHER. Are you recommending the legislation? I perceived you were suggesting that OMB accomplish this reclassification, administratively. Am I incorrect in that understanding?

Mr. GARRISH. Yes, sir.

Mr. BOUCHER. Okay. So you are recommending legislation for that?

Mr. GARRISH. I believe in order to be fully effective—if this is done administratively, there are number of bodies that have to concur, or else the——

Mr. BOUCHER. Understood. And so you are actually recommending that we accomplish this reclassification, legislatively?

Mr. GARRISH. Yes, sir.

Mr. BOUCHER. That gives me a great deal of more confidence. Do you have an outline of the legislation that you would recommend to us?

Mr. GARRISH. Well, I believe what we supported last year and what was introduced and what Mr. Shimkus supported, I believe that we——

Mr. BOUCHER. That would be the same thing?

Mr. GARRISH. The same basic ideas. We would support the same sorts of concepts. We would like to talk those through with you to see if we can get some agreement, and we could move something along.

Mr. BOUCHER. That is very helpful. Thank you very much. Thank you, Mr. Chairman.

Mr. SHIMKUS. Thank you. I would like to address additional questions to Mr. Garvin, if I may.

In this debate—of course, Illinois being a high nuclear state, we don't have a Federal onsite location for high-level nuclear waste, which means they are located onsite. With DOE's schedule for Yucca Mountain slipping yet again, what reactions do you anticipate from public utility commissioners around the country?

Mr. GARVIN. Well, right now, if you are a regulator, it is a tough time to be in our seats because of the rising energy costs. And by not addressing this issue, ultimately, it is going to cause greater pressure on customer's bills, which is what our concern is.

We have three active units in Wisconsin. One is inactive, like I mentioned in my testimony. But it is a major deal. These are large, rate-based facilities that have significant capital costs, and by coming up with these type of interim, dry-cast storage, that is just another, additional, added cost to service on top of the current dilemma, which is customers paying into this fund, but not getting any return out of it. So it exacerbates it.

Mr. SHIMKUS. Do you know of any commissions that are considering withholding Nuclear Waste Fund payments and placing it into an escrow account?

Mr. GARVIN. Well, we discussed that at our winter meeting last month, here in Washington, with two lawyers who gave us sort of the pros and cons of that, of how aggressive you want to be. I think the legal answer is, first, State commissions are not parties to those contracts. And I think there is a little reluctance—and I want to speak for the industry on some of the operators to actually do that because they could be deemed in breach of their license. There is that right. And there is all of the other litigation consequences that go with there. So there is discussion. It seems like the simple thing to do from a practical purpose, but legally, people are a little gun-shy to do that.

Mr. SHIMKUS. And finally, have any commissions considered denying recovery by utilities of costs associated with additional onsite storage of spent fuel as a result of DOE's delay?

Mr. GARVIN. Not that I am aware of. We have, just through regular construction authorization, authorized the construction of those facilities. And then once a State commission authorizes those type of activities, it is generally deemed as a prudent expenditure and will be included in the rates.

Mr. SHIMKUS. Great. Thank you. Mr. Boucher, do you have any additional questions? Seeing no other members, I will call this hearing adjourned. Thank you very much.

[Whereupon, at 3:57 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

As of November 29, 2005, the Office of Management and Budget has provided no response to this letter.

RALPH M. HALL, TEXAS
MICHAEL BILIRAKIS, FLORIDA
VICE CHAIRMAN
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
PAUL E. GILLMOR, OHIO
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
CHARLIE NORWOOD, GEORGIA
BARBARA CUBIN, WYOMING
JOHN SHIMKUS, ILLINOIS
HEATHER WILSON, NEW MEXICO
JOHN B. SHADEGG, ARIZONA
CHARLES W. "CHIP" PICKERING, MISSISSIPPI
VICE CHAIRMAN
VITO FOSSELLA, NEW YORK
ROY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
CHARLES F. BASS, NEW HAMPSHIRE
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE FERGUSON, NEW JERSEY
MIKE ROGERS, MICHIGAN
C.L. "BUTCH" OTTER, IDAHO
SUE MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE

BUD ALBRIGHT, STAFF DIRECTOR

ONE HUNDRED NINTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOE BARTON, TEXAS
CHAIRMAN

JOHN D. DINGELL, MICHIGAN
RANKING MEMBER
HENRY A. WAXMAN, CALIFORNIA
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
EDOLPHUS TOWNS, NEW YORK
FRANK PALLONE, JR., NEW JERSEY
SHERROD BROWN, OHIO
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
ALBERT R. WYNN, MARYLAND
GENE GREEN, TEXAS
TED STRICKLAND, OHIO
DIANA DEGETTE, COLORADO
LOIS CAPPS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
TOM ALLEN, MAINE
JIM DAVIS, FLORIDA
JAN SCHAKOWSKY, ILLINOIS
HILDA L. SOLIS, CALIFORNIA
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE ROSS, ARKANSAS

March 24, 2005

The Honorable Joshua B. Bolten
Director
Office of Management and Budget
725 17th Street N.W.
Washington, DC 20503

Dear Director Bolten:

As you know, the Subcommittee on Energy and Air Quality held a hearing on March 10, 2005, on funding options for the Yucca Mountain Repository Program. The Subcommittee heard testimony from Department of Energy (DOE) Deputy Director Ted Garrish describing several financial challenges facing the program and a recommendation for reforming the Nuclear Waste Fund (NWF).

Prior to the hearing, we were granted the courtesy of a technical briefing by Office of Management and Budget (OMB) Deputy Associate Director Mark Weatherly regarding the budgetary ramifications of altering the current treatment of the Nuclear Waste Fund. While this briefing was useful, we were left with several remaining questions that relate more to budget policy than to technical matters. Please respond to the following questions by close of business Friday, April 5, 2005. In addition, it would be helpful if you responded to Mr. Dingell's letters of May 4, 2004, and January 14, 2005, by that date.

1) In Mr. Garrish's testimony, he states that allowing "fees to be reclassified from mandatory receipts to discretionary collections is not new or unique," and he cites the Nuclear Regulatory Commission and DOE's power marketing activities as examples. He also states "this change would simply be a technical correction that would bring the funding of the radioactive waste program into line with other practices in the federal budgeting process." He also notes that this is particularly appropriate due to the "fee for service" contractual obligation that is unique to this program. Later in his testimony he states "if the Administration were to unilaterally reclassify the fees through administrative action, it would be a departure from past practice, but does not appear to be prohibited by law."

   Despite the President's 2002 recommendation to proceed with developing Yucca Mountain and the Administration's strong support of this project, this situation has not been addressed. Why not?

2) If administrative reclassification and legislative reclassification would both be scored by the Congressional Budget Office, instead of treatment as a technical correction, why not proceed with an administrative solution first?

3) Last year, there was speculation that the Administration would develop a "Plan B" to address funding issues if a legislative reclassification bill did not pass. Is there a plan for this year?

4) If reclassification, or another legislative proposal that meets the objective of reclassification legislation, is not enacted, is the Administration committed to requesting the increases in appropriation levels for the project in FY 2007 and beyond for the project in order to permit the repository to begin operations in 2012 or sooner?

5) The corpus of the NWF had a surplus balance of $15.9 billion at the end of FY 2004. OMB estimates that the surplus will increase by over $1 billion annually, to a level of $18.4 billion by the end of FY 2006. Under the Nuclear Waste Policy Act, these funds are intended to pay for the repository program.

   How are these funds currently used?

   What assurance can you provide this Committee that the funds ultimately will be used for its intended purpose?

6) In 2004, the government reached a settlement agreement with Exelon Corporation for $80 million in FY 2005 and a total of $300 million to cover damages to date resulting from the Government's failure to meet the contractual deadline of January 1998 for initial fuel acceptance included in the Nuclear Waste Policy Act. Over 50 additional lawsuits from utilities to recover such damages are pending in the courts. DOE estimates that these damages could cost approximately $500 million per year. The industry estimates that the costs are closer to $1 billion per year. These costs will grow with further delays in the program.

   Is the cost of the Exelon settlement included in the budget? Please explain.

   Are the potential additional costs associated with the other suits incorporated in the Administration's budget projections?

7) Soon, costs attributable to delays in the project will be greater than the program's funding shortfalls. These mounting costs suggest two courses of action. Either the program can be fully funded and commence operations at the earliest practical date, thereby minimizing costs attributable to delays, or the program can be underfunded while the costs attributable to delays continue to mount. At some point, the cost attributable to delays could outstrip the cost of completing the project. What effort is being made to address this dilemma and reconcile how these two paths should be scored in the budget?

8) OMB budget estimates show that the interest earned on the Nuclear Waste Fund in FY 04 was $1.3 billion. This interest earning is an annual flow of funds that would go a long way toward meeting the funding requirements for the program. In fact, the funding profiles in Mr. Garrish's testimony assume use of a portion of these earnings to fund the program for a number of years beginning in FY 09.

   How is income on the balance of the NWF scored for budget purposes?

   How would appropriations of money from the NWF be scored for budget purposes?

   Given the potential impact on the budget of using those annual earnings to fund the project, what if any administrative or legislative actions are necessary to ensure their availability to the program?

In light of the urgent need for DOE to receive the necessary funds to begin operations in 2012, we would like to understand the full measure of the Administration's support for the Yucca Mountain program and what actions it is prepared to take to ensure adequate funding.

Sincerely,

Joe Barton
Chairman

John D. Dingell
Ranking Member