

Summary of Remarks by
The Honorable Laura Chappelle
National Association of Regulatory Utility Commissioners
Before the
U.S. House of Representatives
Energy and Commerce Committee Subcommittee on Energy and Air Quality

- NARUC supports the President’s decision to approve the site at Yucca Mountain for the geologic repository.
- Analyses show that a repository at Yucca Mountain can be designed, built, operated, monitored and eventually sealed while meeting all statutory and regulatory requirements to protect public health and the environment. While the scientific research about Yucca Mountain continues, enough is known at this point to support the site designation today.
- Transportation of nuclear material is not new and the public is largely unaware of that there has been an excellent safety record of transportation of nuclear materials over the past 30 years.
- Unless the government finds a way to dispose of spent nuclear fuel, some nuclear plants may need to shut down if they are unable to meet their license requirements to store used fuel in pool or dry storage. That will have heavy financial, environmental or energy supply consequences – probably all three. And it likely rules out any utility being willing to invest in a new nuclear plant.
- Most importantly, we represent ratepayers in 41 States who have, in good faith, paid over \$17 billion into the Nuclear Waste Fund (including interest) and have little to show for it. Worse, they have also had to pay utilities that had to bear additional on-site waste storage expenses when DOE missed the 1998 date to begin removing the fuel. In my State of Michigan, ratepayers have paid over \$430 million into the Fund and I have to explain to them that it will be at least another eight years before they see the return on that investment. In fact, among the States, we often ask, “Why, after DOE failed to meet its contracted 1998 deadline, are we still paying that fee?”
- The so-called “PECO Alternative” is NOT an alternative.
- Reform the Nuclear Waste Fund so it is fully available for its intended purpose.

Mr. Chairman and Members of the Subcommittee:

Good Morning. My name is Laura Chappelle. I am the Chairman of the Michigan Public Service Commission. I am here today on behalf of the National Association of Regulatory Utility Commissioners, commonly known as NARUC, and the Michigan Public Service Commission. I greatly appreciate the opportunity to appear before the Subcommittee on Energy and Air Quality and I respectfully request that NARUC's written statement be included in today's hearing record as if fully read.

NARUC is a quasi-governmental, nonprofit organization founded in 1889. Its membership includes the State public utility commissions for 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. Each State Commission and my Commission have the obligation under State law to ensure the establishment and maintenance of such energy utility services as may be required by the public convenience and necessity, and to ensure that such services are provided at

rates and conditions that are just, reasonable and nondiscriminatory for all consumers.

NARUC has had a direct stakeholder interest in the civilian radioactive waste management program ever since the Nuclear Waste Policy Act of 1982 (NWPA) established that the federal government is responsible for safe, permanent disposal of high-level radioactive waste and spent nuclear fuel from commercial nuclear reactors, as well as making certain that the utilities pay their share of these disposal costs. The primary reason for NARUC's interest is that the fees paid by nuclear utilities to the Nuclear Waste Fund (NWF) are passed along to ratepayers through their electric bills. We would submit that passing the costs of the NWF on to the ratepayers has been the only aspect of the NWPA to begin on schedule.

We strongly support the President's decision to approve the site at Yucca Mountain for the geologic repository. It is a historic milestone for this troubled program and it is legally and scientifically sound.

I say "troubled" because, as the Subcommittee members know well, there have been a series of technical, political, legal and financial hurdles

that have had the cumulative effect of delay to the point where, even under the most optimistic schedule, nuclear waste will not begin to be emplaced in the repository until 2010 – twelve years after the mandate set in the NWPA.

The Department of Energy (DOE) has spent over four billion dollars studying the site at Yucca Mountain for suitability for repository use, in what I have heard described as the most studied piece of real estate on earth. On behalf of NARUC and the State of Michigan, we praise the dedication and professionalism of the inter-disciplinary public and private sector team of scientists who have worked on this unprecedented venture and upon whose analytic investigations the President can rely upon with confidence.

The science is right. Analyses by the DOE team show that a repository at Yucca Mountain can be designed, built, operated, monitored and eventually sealed while meeting all statutory and regulatory requirements to protect public health and the environment. Principle among those requirements is the radiation standards established by the Environmental Protection Agency. While the scientific research about Yucca Mountain continues, more than enough is known at this point to support the site designation today.

The time is right. Yucca Mountain is the right place. While we can never have perfect information, it is hard to imagine a better site. We know there are questions that remain to be addressed to the fullest extent required to support a license approval by the Nuclear Regulatory Commission, but extensive findings support the President's decision to advance toward that next step. Secretary of Energy Abraham put it in the right context in his site recommendation when he observed that Yucca Mountain has been studied for a longer amount of time than it took to plan and complete the moon landing. Let us move on.

First and foremost, let us continue to focus on sound scientific facts surrounding the site designation, not the fear campaign being conducted in particular, on the subject of nuclear waste transportation. It ignores the excellent safety record of transportation of nuclear materials over the past 30 years. Each of those shipments, and all future shipments to Yucca Mountain, are and will be carefully planned and conducted under NRC, as well as other federal and State agency regulatory oversight. The public is largely unaware of that record, however, and is often predisposed to believe

the worst about anything nuclear. The public may not realize, that despite claims of “100,000 shipments through 43 States and many large cities over 40 years,” DOE has yet to choose either the mode (truck or rail) of shipments or any of the routes. In the Final Environmental Impact Statement for Yucca Mountain, DOE states a “preference for the mostly rail scenario,” which would involve more like 11,000 shipments over 24 years. If the “mostly truck” alternative is more feasible, it would involve 53,300 shipments over the same period. We join others in urging that DOE consult with federal, State, tribal and local governments – as DOE has said it will – to coordinate these important decisions so that all will be prepared to ensure that the past safety record is sustained or exceeded. DOE is working today with the transuranic shipments to the Waste Isolation Pilot Plant (WIPP) in New Mexico and we believe that States and local governments, with the assistance to public safety officials provided for in Section 180 of the NWPA, can be prepared so that waste can be safely moved to Yucca Mountain.

In Michigan, we have been preparing for the eventual shipment of spent nuclear fuel from the plant sites for a number of years, and we believe

that this material can be safely shipped, beginning tomorrow, if the opportunity arose.

The Secretary of Energy's Site Recommendation to the President is compelling. While NARUC did not join the flurry of press releases that were unleashed the day the report was out, because we chose to read the recommendation first, we did issue a release praising the recommendation and the President's acceptance of it the following Monday. The Secretary carefully examined the statutory and regulatory requirements and summarized the analyses, derived from a plethora of supporting technical documents. As a result of this exhaustive examination of the data, the Secretary presented the conclusion that the scientific basis exists to meet the requirements. Additionally, he developed and added the five "compelling national interests" that are found in the recommendation. It is often lost in the discussions of this subject, for example, that a geologic repository would still be needed for defense-related materials even if there never were nuclear power plants. Secretary Abraham is to be commended for the diligence with which he applied his own evaluation of the site qualifications and need, including addressing the arguments against recommending the site.

We support the President's decision to accept the recommendation. He is aware of the likely criticism and expected reactions from those who either oppose anything to do with nuclear energy or the actions taken by Congress in 1987 to designate a single site to examine for suitability. In our opinion, President Bush has the sound science basis to support the decision he has made.

I would like to return to what I mentioned at the outset of my remarks. NARUC and its members have a direct interest in the disposal of spent fuel from commercial power plants for two reasons:

1. Unless the government finds a way to dispose of spent nuclear fuel, some nuclear plants may need to shut down if they are unable to meet their license requirements to store used fuel in pool or dry storage. That will have heavy financial, environmental or energy supply consequences – probably all three. And it likely rules out any utility being willing to invest in a new nuclear plant.

2. Most importantly, we represent ratepayers in 41 States who have, in good faith, paid over \$19 billion into the Nuclear Waste Fund (including interest) and have little to show for it. The \$19 billion consists of \$17 billion that has been paid by the utilities into Federal Nuclear Waste Fund, and a little more than \$2 billion in debt to the Fund that some utilities have elected to hold until a future date. Under any circumstances, the utility ratepayers that are represented by NARUC's members have paid the fees required to pay for this program. Worse, they have also had to pay utilities that had to bear additional on-site waste storage expenses when DOE missed the 1998 date to begin removing the fuel. In my State of Michigan, ratepayers have paid over \$430 million into the Fund and I have to explain to them that it will be at least another eight years before they see any return on that investment. In fact, among the States, we often ask, "Why, after DOE failed to meet its contracted 1998 deadline, are we still paying that fee?"

Therefore, it is a matter of equity to those who are paying for this program that we move forward to the next step. Let the technical and legal experts of the Nuclear Regulatory Commission make the decision that really

counts, whether to issue a construction license for the repository. That is the role the NWPA assigns to the independent Commission which bears the mission to protect the public health, safety, and the environment for all nuclear activities in this country, in a rigorous and adjudicative public process.

The equity is pretty simple. When you make an obligation, you honor it or you face the consequences. Since the Nuclear Waste Policy Act set the policy that the disposal of the Nation's high-level radioactive waste must be the Federal Government's responsibility, the utilities can hardly switch to another removal agent. Similarly, the electric utility ratepayers or consumers have upheld their part of the deal. The money has been paid to the utilities to pay the Federal Government to pay for the program. Given the sound scientific basis for the Secretary and President's decisions to recommend the site, it is now time for the U.S. Congress to do the right thing, honor its commitment and move this program to the next step of the license application process.

A final issue I would like to address is the so-called "PECO Alternative." In his notice of disapproval for the repository, Nevada

Governor Kenny Guinn asserts that there is a “viable alternative to Yucca Mountain” by which he refers to the example of a settlement agreement reached between PECO Energy and the Department of Energy (DOE) over expenses already incurred by PECO at its Peach Bottom Nuclear Plant. Those expenses have already been incurred and were due solely to DOE’s failure to meet the NWPA mandate to begin accepting commercial spent nuclear fuel in 1998 and as contractually bound with PECO. Governor Guinn has misinterpreted the stopgap measure to recover costs of waste acceptance delay as a substitute for geologic disposal. In short the “PECO Alternative” is not an alternative at all.

The Nuclear Waste Policy Act sets national policy for geologic disposal as the permanent solution for all high-level radioactive waste disposal. It does not allow for temporary on-site storage costs to be paid from the Nuclear Waste Fund, which is why several utilities are suing DOE over the Peach Bottom settlement. The settlement agreement basically allows the utility to forgo required payments to the Nuclear Waste Fund up until the amount agreed in the settlement. This has the effect of diverting NWF payments that are intended for permanent disposal to cover on-site storage costs that are due solely to the government’s ongoing failure to begin

waste acceptance. If all utilities were to enter into similar settlements, there would be no revenue flowing to the NWF and the repository could never be built. Moreover, for those plants already shut down there are no payments to credit against the storage costs.

Leaving spent fuel at current commercial and government storage sites indefinitely is not the solution to the waste disposal problem that the NWPA contemplated, over twenty years ago, by geologic disposal at a suitable site. The PECO settlement does not provide for geologic disposal nor has the Peach Bottom site or any of the other 71 reactor locations been studied for suitability for indefinite storage. The Yucca Mountain Environmental Impact Statement did a comparison of leaving nuclear waste at 77 commercial and government sites for the same 10,000 year period of isolation from the human environment as the geologic repository and found that two variations of the “No Action” approach were either going to cost \$5 trillion dollars or have intolerable human and environmental consequences, depending on what assumptions were made about regulatory compliance for the sites once the reactors reach the end of their productive operating lives. There is no need for Congress to “explore” the PECO approach: the

Environmental Impact Statement has already done that and the financial or environmental consequences are simply unacceptable.

In conclusion, NARUC has been frustrated in the past with all the delays, but we are encouraged that the President has recommended that the program move forward and we urge the Congress to enable that.

Thank you for this opportunity to present our views. We would like to come back at a future point to lend our support to the goal that the Subcommittee tried to achieve through H.R. 4 last year, to reform the Nuclear Waste Fund so it is fully available for its intended purpose. Without such reform the repository may never be built, even if approved.