

Statement of Edward F. Sproat III
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Office of Civilian Radioactive Waste Management
U.S. Department of Energy
Before the Committee on the Budget
U.S. House of Representatives
October 4, 2007

Mr. Chairman and Members of the Committee, I am Edward F. Sproat III, Director of the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM). I appreciate the invitation to appear before the Committee to discuss the funding and liability issues associated with the development and operation of the Yucca Mountain repository. Your request to address the Government's financial position and future cash flows that impact the budget allows me the opportunity to discuss the much needed funding reform for the Program. Funding reform is vital to the Government's ability to build the repository and minimize the Government's existing liability.

I want to state my appreciation for the staff at the Department of Justice who have worked tirelessly on the 67 cases filed against the Government by the holders of the Standard Contract. I believe Mr. Hertz will address your questions regarding the lawsuits and payments from the Judgment Fund.

Minimizing the Government's liability associated with the unmet contractual obligations to move spent nuclear fuel from nuclear plant sites is one of the four strategic objectives for the Program that I set when I was confirmed. In the simplest of terms, the best way to reduce the Government's liability is to complete the Yucca Mountain repository and begin the acceptance of spent nuclear fuel from the Nation's nuclear reactor sites. Meeting the other three strategic objectives and fixing the broken funding mechanism for this Program is how the Government is to expedite the acceptance of spent nuclear fuel. The other three strategic objectives are to:

- Submit a high-quality and docketable License Application to the Nuclear Regulatory Commission (NRC) no later than June 30, 2008;
- Design, staff, and train the OCRWM organization such that it has the skills and culture needed to design, license, and manage the construction and operation of the Yucca Mountain Project with safety, quality, and cost effectiveness; and
- Develop and begin implementation of a comprehensive national transportation plan that accommodates State, local and Tribal concerns and input to the greatest extent practicable.

STATUS OF THE PROGRAM

In support of meeting these objectives, I am confident that in FY 2008 we will:

- Certify the Licensing Support Network in accordance with NRC requirements and regulations;
- Complete the Repository Supplemental Environmental Impact Statement;
- Submit the License Application for construction authorization to NRC by June, 2008 and begin its defense;
- Design the Transportation, Aging and Disposal canisters to be used by the industry to package and ship spent nuclear fuel to the repository;
- Deliver the report to Congress required by the Nuclear Waste Policy Act on the need for a second repository; and
- Resolve comments and issue the final environment impact statement for the Nevada Rail Line which is required to transport spent nuclear fuel to the repository.

FUTURE FUNDING - THE NEED FOR FUNDING REFORM

To have confidence in any milestones after 2008, it is imperative that the funding process for the Program allows the Nuclear Waste Fund and the annual receipts from the nuclear waste generators to be used for their intended purpose. The Nuclear Waste Policy Act established the requirement that the generators of spent nuclear fuel must pay for its disposal costs. As a result, the Nuclear Waste Fund was created and is funded by a 1 mil per kilowatt-hour fee on all nuclear generation in this country. As of today, the Fund has a balance of approximately \$20.7 billion which is invested in U.S. Treasury instruments. The Government receives approximately \$750 million per year in revenues from on-going nuclear generation and the Fund averages about 5.5 percent annual return on its investments. The Secretary of Energy has the responsibility to annually assess the adequacy of the fee and is authorized to adjust it as necessary.

At the present time, due to technical scoring requirements, the Department cannot receive appropriations from the Nuclear Waste Fund equal to its annual receipts, interest, or corpus for their intended purpose without a significant recorded negative impact on the Federal budget deficit. The monies collected are counted as mandatory receipts in the budgetary process, and spending from the Nuclear Waste Fund is scored against discretionary funding caps for the appropriations process. The Administration proposed fixing this problem by reclassifying mandatory Nuclear Waste Fund fees as discretionary, in an amount equal to appropriations from the Fund for authorized waste disposal activities. Funding for the Program would still have to be requested by the President and appropriated by the Congress from the Nuclear Waste Fund.

The projected budget authority needed through repository construction is well above current and historic levels, and the current funding levels are insufficient to build the repository and the transportation system. If the Program is funded at its current levels without fixing the current funding mechanism, the shortfall in the funding needed would

be between \$1.0 billion and \$1.5 billion per year. This funding shortfall will not allow the placement of the design and construction contracts for the repository or the transportation systems. In short, DOE will not be able to execute its responsibilities under the Nuclear Waste Policy Act and will not be able to set a date for meeting its contractual obligations. Government liability will continue to grow with no apparent limit.

In order for the Government to meet its obligations under the Nuclear Waste Policy Act, the funding mechanism for this Program must be designed to provide the following to DOE:

- Appropriations of amounts sufficient to allow funding of long term engineering, construction and procurement contracts; and,
- Authority to collect and utilize the fees from the nuclear waste generators for the management of spent fuel as required by the Nuclear Waste Policy Act and made available in the year they are received.

Funding from the annual Nuclear Waste Fund fees alone at the current 1 mil per kilowatt-hour level will not be sufficient to fund the Program at the required levels. The Administration will address the Program's funding needs in the context of developing the President's annual budget.

LIABILITY COSTS

Litigation settlements or damages are not paid from the Yucca Mountain Program appropriations. Rather, damages or settlement payments to utilities for the Department's delay are paid from the Judgment Fund, which is a permanent indefinite appropriation funded by taxpayer dollars. In 2002, the U.S Court of Appeals for the 11th Circuit ruled that the Department was not authorized under the Nuclear Waste Policy Act to spend Nuclear Waste Fund monies on settlement agreements aimed at compensating utilities for onsite storage costs.

The estimated current potential liability is approximately \$7.0 billion which is predicated on the Department beginning operations at Yucca Mountain in 2017. Delaying the opening of the repository to 2020 could cost taxpayers as much as an additional \$4 billion from the Judgment Fund to pay damages.

PROGRAM COSTS

The Program has spent \$11 billion in 2000 constant dollars since 1983. The 2001 total life cycle cost estimate for the Program was \$57.5 billion in 2000 constant dollars, which included costs already incurred. The Program is expected to release a revised total system life cycle cost estimate shortly. The estimate will include the costs for accepting approximately 30 percent more spent nuclear fuel into the system and will estimate costs

through the repository's closing in year 2133. Based on our recently completed Program schedule and cost estimate, annual funding will be needed at levels 2 to 3 times the current appropriations starting in FY 2009. If the requested fixes to the funding process are not put into place, DOE will not be able to set a credible opening date for the repository and Government liability will continue to grow.

Therefore, I respectfully urge the Congress to consider that it is in the taxpayers' best interest to provide funding reform to expedite the procurement activities, engineering and construction of the repository and the associated transportation systems. It will limit the taxpayer's burden of billions of dollars in liability and stop the waste of Nuclear Waste Fund dollars by delays due to inadequate funding.

Thank you for this opportunity to discuss these issues, and I would be pleased to answer any questions the Committee may have at this time.