

**DOE CONSENT BASED SITING HEARING**

**PHOENIX—JUNE 23**

**Statement by Jeff Bingaman**

**Former U.S. Senator (N.M)**

The history of our efforts to dispose of high-level nuclear waste has not been a model of enlightened policy making or policy implementation. I congratulate **Secretary Moniz** on his efforts to find a path forward. And I thank **John Kotek**, the Assistant Secretary for Nuclear Energy, for inviting me to participate in today's hearing.

The **1982 Nuclear Waste Policy Act** attempted to settle a long running debate about whether we should pursue permanent disposal of spent fuel in one or more geologic repositories or, on the other hand, opt for above-ground storage, with a view toward future reprocessing of the spent fuel. The decision at that time was to pursue permanent disposal.

The 1982 Act also provided that the federal government would be responsible for permanently disposing of utilities' spent power plant fuel. It directed DOE to enter into contracts with utilities to dispose of their spent fuel starting by January 31, 1998. And, in order to pay for the cost of the permanent disposal, the Act established a fee of 1/10<sup>th</sup> of 1 cent (1 mill) on each kilowatt-hour of electricity produced and sold by utilities from nuclear power. Under the 1982 Act, utilities remained responsible for storing their spent fuel until the 1998 date when the federal government was expected to start accepting that waste in a permanent repository.

The initial plan was to build two repositories, one in the East and one in the West, and to study 3 candidate sites for each of the 2 repositories. As everyone here knows, things did not go as planned. The cost estimates for studying all of these candidate sites grew dramatically and in 1986 the Reagan Administration suspended efforts to pursue a repository in the East. This, of course, outraged the 3 western states (Washington, Texas and Nevada) which were still being considered as the site for a Western repository.

In what now can be seen clearly as a flawed effort to put the waste program back on track, Congress amended the Nuclear Waste Policy Act in December, 1987. These amendments officially **terminated** the planned repository in the East and also **terminated** the science based evaluation of multiple sites. **It ended** consideration of the Hanford, Washington and Texas sites and **directed** DOE to consider **only** Yucca Mountain as the site for the **sole** repository.

Rather than recounting all the steps and missteps that occurred in the years following the 1987 amendments, I will jump ahead 23 years, to 2010 and pick up the story there.

### **Blue Ribbon Commission**

In 2010 Secretary Chu appointed a Blue Ribbon Commission chaired by General Scowcroft and former Representative Lee Hamilton to come up with a new plan for managing nuclear waste. That Commission report was issued in January, 2012. It recommended three basic things:

1. Taking the nuclear waste program away from DOE and placing it in a new government corporation, modeled after the Tennessee Valley Authority;
2. Establishing a new siting process that would require states and communities to consent to siting nuclear waste facilities within their borders; and
3. Continuing to strive for **permanent** disposal of nuclear waste in a geologic repository **chosen on the basis of science based criteria**, but at the same time, developing interim storage facilities where waste could be stored until a repository is ready.

### **Actions of Congress**

The response to these recommendations in the Congress has been mixed.

----In the House many republicans opposed the Blue Ribbon Commission approach and instead insisted that the Yucca Mountain program be restarted.

--In the Senate there has been at least some level of support for the Commission recommendations.

In the spring of 2012, working with Senators Murkowski, Feinstein and Alexander, I attempted to draft a **bipartisan bill** to implement the Commission recommendations. We had agreement on most elements of the bill but I strongly believed we needed to “link” progress on constructing and moving waste to interim storage facilities, to progress on developing a **permanent repository**. In my view this was important in order to avoid **a de facto abandonment**

**of the effort** to construct a permanent repository. Unless there was a requirement for progress to be made on a **permanent repository**, it would be all too easy to just construct interim storage sites. The “linkage” between the effort to establish a permanent repository, and the effort to build and use interim storage sites was something the other Senators would not agree to, so I ended up introducing my own version of a bill in the summer of 2012 without cosponsors.

After I left the Senate and Senator Wyden became chair of the Energy Committee in 2013 he agreed to weaken this linkage provision between storage and disposal facilities and, with that change he was able to introduce a revised version of the earlier bill with Senators Murkowski, Feinstein and Alexander as cosponsors.

There were various objections to the bill as introduced. In spite of that, it was reintroduced (as S. 854) in the current Congress. My latest information is that progress on the legislation is now stalled for a variety of reasons.

### **Action in the Courts**

While progress in dealing with the issue of nuclear waste has been stalled in the Congress, the Courts have been active on some aspects of the issue.

--Specifically, since DOE has been unable to accept waste in a repository (since there is no repository), utilities have sued for breach of contract to hold the government responsible for the cost of continuing to store the waste at the nuclear power plants where it was generated. Utilities have won those suits. As of November, 2014 DOE reported that the federal government had paid industry

\$4.5 billion in damages and that it projected future liabilities of about \$22.6 billion. These damages are paid from the Treasury Department's Judgment Fund, not from the Nuclear Waste Fund. --Also, in 2015 the U.S. Court of Appeals for the DC Circuit ordered the Secretary of Energy to stop collecting the nuclear waste fee which has been seen as the source of funds to build and operate a permanent waste repository.

## **CONCLUSION**

In conclusion I want to mention two ways in which the political dynamics related to this set of issues have changed, and unfortunately I fear they have changed for the worse.

**First**, I believe that many of the utilities most directly involved with the issue see the finding of a solution to this problem of storage and disposal of nuclear waste as less urgent than it once was. They feel less urgency about the issue because much of the financial burden they earlier faced has been relieved by recent court decisions. The cost of continued storage of this waste on site is now being paid for by the U.S. taxpayer, and that is expected to continue.

Also, the D.C. Circuit Court decision I mentioned earlier suspended the requirement on utilities to make payments into the Nuclear Waste Fund.

The effect of these court decisions has been to relieve the pressure on utilities to push for a near term solution to the problem.

**The other major change** in dynamics is that there is less commitment in Washington to finding a **permanent solution** to the nuclear waste problem. In 1982 when the Nuclear Waste Policy Act was passed there was a consensus that the country needed to give priority to finding a **permanent geologic repository** for high-level nuclear waste. That has obviously proven very difficult to do. Today some who favor moving high level nuclear waste from it's present locations seem satisfied to settle for an interim storage solution, rather than a permanent repository. The obvious effect of this is to leave the problem of permanent disposal of high-level nuclear waste to future generations. My strong belief is that Congress and the country made the right decision in 1982 when the Nuclear Waste Policy Act committed us to pursue **permanent disposal** of nuclear waste. We should insist on progress in finding a permanent repository as a part of any plan to construct and use interim storage facilities.

Neither of these changes in the dynamics surrounding the subject is helpful as we try to find a solution to this problem. The increased difficulty of the task makes this set of hearings on the subject of consent based siting, all the more important.

Thank you again for inviting me to participate.