

Statement of Dr. Kristina M. Johnson
Under Secretary of Energy
U.S. Department of Energy
Before the Committee on the Budget
U.S. House of Representatives
July 27, 2010

Mr. Chairman and Members of the Committee, my name is Kristina M. Johnson, Under Secretary of Energy. I appreciate the invitation to appear before the Committee to discuss issues surrounding the Government's responsibility for the safe management and disposition of nuclear waste.

The Department remains committed to meeting its obligations for disposing of spent nuclear fuel and high-level radioactive waste. To that end, the Secretary, at the direction of the President, has established a Blue Ribbon Commission on America's Nuclear Future chaired by former Congressman Lee Hamilton and General Brent Scowcroft. The Commission is evaluating options and will make recommendations for developing a safe, long-term solution to managing the Nation's used nuclear fuel and nuclear waste. The Blue Ribbon Commission is working expeditiously; it is expected to submit its draft report within a year from now, and its final report six months later.

As you know, the Administration has decided that Yucca Mountain is not an option for a repository for spent nuclear fuel and high-level waste. Consistent with that decision, on March 3, 2010 the Department filed a motion in the Nuclear Regulatory Commission (NRC) licensing proceeding, asking permission to withdraw its license application for a Yucca Mountain repository. On June 29, 2010 the designated NRC Atomic Safety and Licensing Board denied the Department's motion. On June 30, 2010, the Commission invited the participants in the licensing proceeding to submit briefs on whether the Commission should review and affirm or reverse the Board's decision. The NRC has not yet made a ruling. The Department remains confident in its legal authority to withdraw the application.

The Standard Contracts

The Nuclear Waste Policy Act authorizes the Secretary to enter into contracts with commercial nuclear utilities and commercial research reactor operators that own and generate spent nuclear fuel. Under the terms of these contracts, in return for the payment of a fee of 1 mill per kilowatt-hour, the Government was to begin disposing of the spent nuclear fuel starting in 1998.

The fees collected under these standard contracts are deposited in the Nuclear Waste Fund. The Fund currently has a balance of approximately \$25 billion which is invested in U.S. Treasury instruments. The Government receives over \$750 million per year in revenues from on-going nuclear generation, and the Fund averages approximately \$1

billion annual return on its investments. To date, utility contract holders have paid nearly \$18 billion in fees.

It is important to note that the Government's obligation under these contracts is to dispose of the spent fuel; the contracts specify no method of or location for disposal. It is also important to understand that contracts going forward -- to take used fuel from newly built reactors -- contain provisions different from the earlier original contracts under which the Government has been found liable (and which are discussed below).

The Department has in recent years developed a new standard contract for utilities planning to build new commercial reactors. Under these new standard contracts, the Department would not be required to complete disposal of the spent fuel until 20 years after expiration of the operating license and any extensions thereto. Assuming such a reactor became operational in 2020, any liability resulting from the obligation to accept used fuel from that reactor most likely would not come into effect until the end of this century.

Liability under the Original Version of the Standard Contract

Beginning in 1998, most contract holders initiated lawsuits against the Government due to the delay in beginning the acceptance of spent nuclear fuel as required by the contracts. Courts have determined the delay was a partial breach of contract by the Government, and numerous trials have been held to determine the amount of damages to be awarded.

Last year, the Department estimated the liabilities under current law resulting from the delay in beginning waste acceptance (from 1998 to 2020) could be as much as \$13.1 billion. We have not attempted to update that estimate.

As you know, the Department of Justice is in charge of defending these cases. I understand Deputy Assistant Attorney General Hertz will address the status of the litigation.

CONCLUSION

The Department remains committed to meeting its obligations for managing and ultimately disposing of spent nuclear fuel and high-level radioactive waste. The Blue Ribbon Commission provides an opportunity for a dialogue on how best to address this challenging issue, and the Commission's recommendations will provide a basis for working with Congress to revise the national policy. The Department looks forward to an ongoing dialogue with members of Congress, interested stakeholders, and others as alternative waste management approaches are reviewed.

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.