

WebMemo



Published by The Heritage Foundation

No. 2811
February 23, 2010

President's Yucca Policy Inconsistent with Nuclear Rhetoric

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President Barack Obama's proposals on nuclear energy do little to back up his pro-nuclear rhetoric. Most worrisome is his effort to terminate the Yucca Mountain nuclear waste repository project.

His budget provides no funding for Yucca construction activities, and the Department of Energy (DOE) has filed a motion to permanently withdraw its application to the Nuclear Regulatory Commission (NRC) to construct the repository. Such action not only flouts existing statute but threatens to end America's nuclear renaissance before it even begins.

Flouts Congressional Prerogative and Existing Statute. According to the Nuclear Waste Policy Act (NWPA) of 1982, as amended,¹ the federal government was obliged to begin collecting nuclear waste by 1998. According to the Yucca Mountain Development Act of 2002,² Yucca Mountain was to be the waste repository. Despite having collected over \$30 billion in waste disposal fees from electricity ratepayers and spending \$10 billion on Yucca development, no waste has been collected.

This has put the federal government in partial breach of contract even before the President decided to ignore existing statute and terminate the Yucca program. With over 60 suits already filed, the federal government has paid out \$214 million in settlements. Without Yucca Mountain or any backup plan, this taxpayer liability will amount to over \$12.3 billion through 2020 and \$500 million annually thereafter.³ Terminating the program without regard to existing statute exacerbates these

problems, and communities are already beginning to investigate the feasibility of pursuing additional legal actions.⁴

What About Waste Confidence? To license a new reactor (or to maintain operations at existing reactors) the federal government must reasonably demonstrate that it can fulfill its waste disposal obligations under the NWPA. So long as Yucca Mountain was moving forward, this proposition was supportable.

However, the President has said that he intends to withdraw the DOE's Yucca application with prejudice (meaning that the application cannot be resubmitted, thus effectively killing the program forever). This could cast doubt on the DOE's ability to meet its waste disposal requirements, especially since there is no backup plan to dispose of nuclear waste. If the DOE is legally challenged and courts rule that these concerns are legitimate, they not only could delay the issuance of permits to build new reactors but could call into question the legitimacy of operating licenses at existing plants.

The Administration's Yucca policy signals once again that the government cannot be a trusted partner. It demonstrates one of the fun-

This paper, in its entirety, can be found at:
www.heritage.org/Research/EnergyandEnvironment/wm2811.cfm

Produced by the Thomas A. Roe Institute
for Economic Policy Studies

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
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damental deficiencies of the American approach to nuclear energy.

Because the federal government is responsible for waste management, an activity on which the nuclear business depends, the future of the industry is essentially subject to the political whims of Washington. This introduces significant unpredictability, which, when combined with up-front capital costs that reach \$6–8 billion, makes nuclear energy a high-risk investment. Instead of reducing that risk through the application of sound economics, this dynamic forces the nuclear industry to seek favor in Washington and taxpayer support through programs such as loan guarantees.

A More Appropriate Yucca Policy. If the Administration wants to oppose Yucca Mountain, it should not evade congressional authority, enacted statute, or the established regulatory process. To terminate the Yucca project legitimately, the Administration should seek to overturn current policy through legislative initiative. Until then, the Administration should:

- *Allow the NRC to continue its license review.* The NRC's September 2008 docketing of the DOE's application to construct the repository at Yucca Mountain started a three-year, two-track review process.⁵ One track will determine the technical merits of the facility. Over 100 technical experts are reviewing the application. The other track consists of hearings where parties can challenge the Yucca project. Nothing in the NWPA authorizes the President or the Secretary of Energy to stop this process. Besides, given that a geologic repository will eventually be needed, the application process will provide the NRC, DOE, and the nuclear industry valuable information to inform future decision-making.
- *Submit a report to Congress detailing Yucca review data if the application is withdrawn.* Once the Yucca application is withdrawn, all work related to the application review would stop. Unless captured, information generated during the process could be lost. DOE's General Council has stated that it will preserve data consistent with federal law. This, however, is insufficient. The NRC should submit to Congress a report in a timely fashion that includes all internal NRC staff documents, background information, and work in progress. This will not only ensure that the valuable information gathered during the review is documented, but it will allow the public to better understand the legitimacy (or lack thereof) of the President's decision to terminate the Yucca program.
- *Transfer the permit to construct Yucca Mountain to a third party.* If the NRC issues the permit, Congress and the Administration should seek avenues to make the license available to a third party, such as a private sector non-profit or even the state of Nevada. The new license holder could then negotiate a workable solution that would fully represent the interests of all parties. This process of negotiation was absent from the original decision to name Yucca the waste repository site. If no workable path forward is developed, then Yucca dies on Nevada's terms. If an agreement could be reached, then Nevada could enjoy the many economic benefits of hosting such a facility. Either way, the people of Nevada would determine Yucca's destiny.
- *Use the Blue Ribbon Commission on America's Nuclear Future to inform a final decision on Yucca Mountain.* While the text of the presidential memorandum establishing the commission pru-

1. Nuclear Waste Policy Act, Public Law 97-425.
2. H.J. Res. 87, January 23, 2002, at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_bills&docid=f:hj87enr.txt.pdf (February 23, 2010).
3. U.S. Government Accountability Office, "Nuclear Waste Management: Key Attributes, Challenges and Costs for the Yucca Mountain Repository and Two Potential Alternatives," November 2009, at <http://www.gao.gov/new.items/d1048.pdf> (February 17, 2010).
4. Associated Press, "SC Leaders May Sue If Nevada Nuke Waste Dump Ditched," IndependentMail.com, February 16, 2010, at <http://www.independentmail.com/news/2010/feb/16/sc-leaders-may-sue-if-nevada-nuke-waste-dump-ditch> (February 22, 2010).
5. U.S. Nuclear Regulatory Commission, "Fact Sheet on Licensing Yucca Mountain," April 2009, at <http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/fs-yucca-license-review.html> (February 18, 2010).

dently directs commissioners to consider all alternatives without specifically excluding Yucca, the President's actions to terminate the program clearly communicate otherwise. Taking Yucca off the table erodes the credibility of both the commission and the President's ultimate decision. Using the commission's determination to inform his decision making would allow the President to make a more cogent argument against the project. If he and Secretary of Energy Steven Chu are confident in their pronouncements that there are better ways to manage nuclear waste, then they should not fear what the commission may find.

- **Stop collecting the nuclear waste fee and return Yucca investment to ratepayers.** The federal government has collected over \$30 billion (including interest) from electricity ratepayers to dispose of nuclear waste. Given the lack of clarity on how the federal government is going to fulfill its nuclear waste obligations and its past failures, the fee, which amounts to about \$750 million annually, should be immediately suspended. If

the DOE successfully withdraws the Yucca application with prejudice, the federal government should return the approximately \$10 billion that it has spent on Yucca-related activities to the utilities that are currently safely managing the nuclear waste. The electricity ratepayers of America should not have to pay for a service that will not be provided to them.

Quit the Nuclear Doublespeak. The President's positive remarks about nuclear energy in the U.S. are encouraging, but if his words are not supported with sound policy, then nuclear energy could face a tumultuous future. Because of the long-term implications of the President's Yucca decision, the Administration needs to be completely transparent. This Administration could make groundbreaking strides for nuclear energy if it handles the situation deftly.

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