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Committee on Energy and Natural Resources
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Introduction

Good Morning Chairman Murkowski, Ranking Member Manchin and Members of the Committee. I am Wayne Norton, the President and CEO of Yankee Atomic Electric Company with responsibilities for Maine Yankee Atomic Power Company, Connecticut Yankee Atomic Electric Company and Yankee Atomic Power Company -- three single asset companies with permanently shutdown nuclear power plants in New England¹. I am also the Chairman of the Decommissioning Plant Coalition (DPC) Steering Committee, and as such, I appreciate the invitation to appear before you today on behalf of the Coalition² and present our views on options for the interim and long-term storage of spent nuclear fuel and legislation before your Committee – S. 1234, the Nuclear Waste Administration Act.

As the map attached to my testimony demonstrates, the failure of the federal government to make good on the promises encompassed within the Nuclear Waste Policy Act of 1982 (NWPA), and its 1987 amendments, is creating a spent fuel management burden across an increasing number of states and localities. While the spent nuclear fuel and greater-than-class-c waste (SNF/GTCC) at our sites is safely managed in compliance with rigorous NRC regulation and oversight, there is no doubt that the delay in the commencement of federal stewardship in 1998 has created a situation whereby communities across the Nation are the unanticipated home for interim storage sites, sites that cannot now be repurposed for other beneficial uses of value to the community.

In my home region of New England, there are now five sites in four states that are planning the unanticipated and indefinite storage of SNF/GTCC notwithstanding the fact that the electric ratepayers of New England have met their obligation under the

¹ Connecticut Yankee, Yankee Atomic, and Maine Yankee are fully decommissioned nuclear power plants storing spent nuclear fuel and Greater than Class C waste generated during plant operations at their Independent Spent Fuel Storage Installations. The annual cost to operate the three sites is approximately \$30 million. Each Company also has ongoing litigation with the U.S. Department of Energy in the U.S. Court of Federal Claims for monetary damages resulting from the DOE's failure to fulfill its obligations to remove the spent nuclear fuel and Greater than Class C waste from the former plant sites for the years 1998-2016. To date, through the recently completed Phase IV of our litigation, the court has awarded a total of \$575.5 million in damages.

² The Decommissioning Plant Coalition (DPC) was established in 2001 to ensure a coordinated focus on legislative and regulatory issues unique to what was then a relatively small number of plants. Permanently shutdown plants now represented by the DPC include: Connecticut Yankee (CT), Crystal River (FL), Duane Arnold (IA), Humboldt Bay (CA), Kewaunee (WI), LaCrosse (WI), Maine Yankee (ME), Pilgrim (MA), Rancho Seco (CA), San Onofre (CA), Vermont Yankee (VT), Yankee Rowe (MA), and Zion (IL).

Nuclear Waste Policy Act and paid upwards of \$3 billion into the Nuclear Waste Fund.

The taxpayers of New England and elsewhere throughout the United States have also been met with an unanticipated burden from this situation, with current payments of more than \$7.4 billion from the Judgment Fund for the government's partial breach of contract, a liability that DOE estimates could grow to more than \$35 billion – and that figure comes with the assumption that the agency will begin to accept this material for management in the first half of the next decade.³

In the case of the three Yankee plants I represent, the claim for damages now encompasses virtually all costs of our corporate existence, it having been determined by the U.S. Court of Federal Claims that were it not for this failure we would have been able to close the books and go entirely out of business, at all three companies, on or before 2010.

DPC Position Statement

At the beginning of the last Congress, members of the DPC adopted a formal position statement to guide our response to legislative proposals then developing in the Executive Branch and Congress. I've attached that position statement to my testimony and it will contain no surprises to Members who have followed this issue over the years. Simply put, for over a decade we have been advocating for an integrated nuclear waste program that provides the soonest possible solution to removing the SNF/GTCC from our sites and are pleased that many of the forward looking recommendations were captured in the recommendations of the Blue Ribbon Commission on America's Nuclear Future (BRC) and several of the legislative proposals put forward in the past and under consideration today.

Commentary on Selected Legislative Issues

Given that Congress has not funded the current repository program for almost a decade, the current adversarial federal/state relationship with regard to that program, future funding constraints, mounting taxpayer liabilities, and the desire of many communities to gain use of these sites for other purposes, we believe the likely fastest, most effective path to a remedy for the government's default lies with the initiation of a consolidated interim storage facility (CISF) program. Indeed, as suggested by the BRC, S. 1234 calls for the initiation of such a program as part of an active repository siting and licensing effort. Legislation passed by the House in the last Congress and again the subject of discussion also proposes the development of a storage component to the federal SNF/HLW management program, although more limited than contemplated in S. 1234.

³ Office of Inspector General, U.S. Department of Energy, Audit Report DOE-OIG-19-08, November 2018

A few general observations are in order.

As we read the provisions of Section 305 of S. 1234, they–

- ✓ call for the creation of a centralized storage program;
- ✓ direct the program be established by cooperative agreement with a non-Federal entity;
- ✓ stipulate that priority for storage be given to permanently shutdown units; and
- ✓ require the consent of the host State and local governments and affected Native American Tribes.

A key development since the release of the BRC report and the initial drafting of this section is the advanced state of two private applications now before the NRC for CISFs. The current NRC staff schedule calls for completion of both the safety and environmental issues addressed in the both applications by the late summer, early fall of next year. The advancements associated with the licensing of these facilities should be considered in authorizing legislation going forward to help ensure that there is no duplicative work and/or the second guessing of NRC licensing determinations relative to active CISF applications or license holders should they, as one would assume, respond to a future request for proposals (RFP) called for in S. 1234.

Other legislation modeled after the bill that passed the House last session raise a couple of other issues in its tailoring of current law provisions dealing with the once discarded concept of “monitored retrievable storage” (MRS). Those proposals, while authorizing the Secretary of Energy to immediately initiate work that could lead to the licensing and construction of a pilot MRS facility, prohibit the movement of any spent nuclear fuel to the site until a final determination has been made on the current Yucca Mountain license application or such a decision is determined imminent.

Given the most optimistic and realistic timeline we’ve heard for such to occur, it is clear to us that an MRS or CISF license will likely be granted well before then and this provision could long delay efforts to begin removing for storage the material now stored across the country at a number of our shutdown plants. We have also questioned whether subsequent volume restrictions on the amount of material that may be stored at such a facility, depending on various circumstances related to the repository program, are overly stringent and would wind up resulting in the government picking winners and losers among the shutdown plants.

We appreciate the argument that some form of formal linkage between a repository and storage program is necessary to ensure that any interim storage site does not become a *de facto* permanent site. We would simply note that as long as an interim storage program is consent based, the issue of linkage, if an issue with the

respective State or local government, will be raised in the context of those consent discussions without the need for a statutory requirement.

We also call attention to section 406 of S. 1234, which we read as requiring the settlement of all claims for the government's existing and ongoing breach of contract as a condition precedent for any agreement by the government to take title to and store SNF and HLW at a CIS facility. A number of companies, including my own, have discussed settlement with the government about its breach, but because of the government's uncompromising settlement conditions, have had to resort to continuing litigation that we continue to win and recover virtually all our damages claims. It would be unfortunate if the Congress were to empower the Executive Branch with the authority to provide a remedy to its breach, but on a "take it or leave it" basis.

We applaud the attention given to transportation planning in section 309 of S. 1234. One of the DPC policy provisions highlights the need for DOE to request and receive funding from Congress to reinvigorate the state and tribal regional planning effort called for by Section 180 of existing law. Such planning efforts, begun sooner rather than later, will be critical to the early initiation of a consolidated storage program.

We also suggest that DOE receive direction and funding from Congress to advance and complete assessments that began a few years ago to visit shutdown sites, conduct an inventory of infrastructure needs to actually move SNF and GTCC material from those sites and develop budget requests that would allow necessary work to begin for that eventuality. This work will be a necessary adjunct to the eventual movement of this material from all sites.

Our policy position regarding funding reform might touch on the most critical element of any legislative effort meant to bring renewed focus to the Nation's SNF/HLW management program. The best intentioned efforts to create a path forward for either or both a repository and a centralized interim storage program will likely be met with halting implementation at best unless the sponsoring agency is granted timely access to necessary resources. The unfortunate current reality that receipts into the Nuclear Waste Fund (NWF) are categorized as mandatory receipts and outflows to the program are treated as discretionary spending helped lead to constant underfunding of every annual program request since at least enactment of the 1987 NWPA Amendments. It is doubtful that any entity would have been successful in meeting statutory or even internal programmatic milestones as a result. Simply put, this situation needs to be rectified moving forward under any scenario.

As we read the provision Title IV of S. 1234 there is an effort to correct this problem going forward, through the establishment of a new Working Capital Fund made available to the Administrator immediately for implementation purposes, but it vests in Congress the right through annual legislation to limit what might otherwise be planned for and perhaps more importantly leaves behind approximately \$40

billion in the current NWF. In a similar vein, legislation modeled on last session's House bill attempts to address the issue moving forward by, in essence, creating a "user fee" type accounting of annual appropriations, but also leaves annual spending decisions to the Congress and to that extent raises issues as to access to the current balance of the NWF.

We appreciate the desire of Congress to provide useful oversight of this program through the appropriation process, but we would urge you to consider the proper balance between necessary oversight and the needs of any enterprise conducting an intergenerational program to have ready and sustainable access to necessary capital.

Along with many other national organizations, the DPC has repeatedly called out the need for urgent action by Congress to establish an integrated national nuclear waste program. Continued Congressional inaction is now costing American taxpayers \$2.2 million dollars a day and the ratepayers of New England and this nation deserve to see the tens of billions of dollars already collected from them used for their intended purpose.

Conclusion

Madam Chairman and ranking Member Manchin and Members of the Committee, the DPC deeply appreciates your interest in this issue, we are encouraged by your legislative initiative and the attention you have brought through the conduct of this hearing. We stand ready to work with you to enact meaningful reform to the Nation's spent fuel and high-level nuclear waste management program.

Thank you for the opportunity to testify today, and I will be glad to answer any questions.