

Murkowski critical of DOE's decision to drop Yucca license application

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Sen. Murkowski Critical of Efforts to Drop Yucca Mountain from List of Options on Nuclear Energy

WASHINGTON, D.C. – U.S. Sen. Lisa Murkowski, R-Alaska, today made the following speech on the Senate floor regarding the U.S. Department of Energy's motion to withdraw the Yucca Mountain license application:

"Mr. President, recently the Department of Energy submitted a motion to the Nuclear Regulatory Commission to withdraw its license application to construct a spent nuclear fuel and high level radioactive waste repository at Yucca Mountain. The latest rationale? Because we need it too much.

"That may seem like a creative interpretation on my part, but at the same time the motion to withdraw was going forward Secretary of Energy Steven Chu noted that due to the revival of the nuclear industry, Yucca Mountain's repository would hit its statutory capacity limit in the next several decades and would not meet future industry needs. So instead of moving forward with a permanent repository that billions of dollars has already been spent on, and simply expanding the arbitrary limit that the law puts on the size of the repository, spent nuclear fuel from commercial nuclear reactors will be stored on-site at over 100 locations across the country for at least... the next several decades. And if we do have the nuclear revival that many of us believe is needed to reduce greenhouse gas emissions and meet our energy needs, the number of on-site storage locations across the country will only increase.

"But Mr. President, not only is the Department of Energy seeking to withdraw its license application – and I am not convinced that they have the authority to do so – they are seeking to withdraw it "with prejudice," making it very difficult if not impossible to resurrect Yucca Mountain as a possible option for spent nuclear fuel and high level radioactive waste regardless of what future scientific and engineering advances may offer and regardless of what the Administration's Blue Ribbon Panel, that is directed to consider all options, may conclude. In fact, the Department of Energy argues in its motion that "scientific and engineering knowledge on issues relevant to disposition of high-level waste and spent nuclear fuel has advanced dramatically over the twenty years since the Yucca Mountain project was initiated." Apparently the Department is also arguing that scientific and engineering knowledge on the same issues will not advance any further over the next several

decades to address issues with the Yucca Mountain site.

"Mr. President, setting the legal issues surrounding the Department's motion to withdraw to the side, I would like to focus for a moment on what stopping work on the Yucca Mountain site will cost the American taxpayer. Under the Nuclear Waste Policy Act of 1982, the federal government has a contractual obligation to collect spent nuclear fuel from individual nuclear power plants starting in 1998. The government has clearly missed that deadline.

"According to the Department of Justice, the federal government has so far paid \$565 million in settlement costs for breaching this contract with utilities. I say so far, because the ultimate cost to the American taxpayer is going to be much, much higher.

"Utility companies have filed 71 cases in federal court alleging that the Department of Energy's delay in taking title to spent nuclear fuel is a breach of contract. Of those 71 lawsuits, 10 have been settled, six were withdrawn and four were fully litigated – resulting in the \$565 million in payments. Of the remaining 51 cases, judgment has been entered in 13 cases, putting Government liability so far for commercial spent nuclear fuel stored on-site between 1998-2007 at \$1.3 billion. And there remains another 38 cases for judgment to be entered into, so the amount of liability for that time frame is likely to increase significantly in the future.

"Keep in mind, this number does not take into account the level of liability for the increasing amount of spent nuclear fuel stored on site from 2008 until the date when a permanent repository is opened, whenever that might be. Nor do the costs include the \$24 million in attorney costs, \$91 million in expert funds, \$39 million in litigation support costs, or the thousands of hours DOE and NRC employees have already expended on this effort.

"The Department of Energy estimates that the potential liability of the federal government to utilities will be \$12.3 billion – if the government starts taking title to the spent fuel by 2020 – just ten years from now. According to the Congressional Budget Office, utility industry reports estimate the claims will total \$50 billion. And both of these estimates were developed before the Administration took steps to withdraw the Yucca application. So we have liability estimates of between \$12 billion and \$50 billion in taxpayer money – if a repository is open and accepting spent fuel in ten years.

"Keep in mind that it took us almost 30 years to get this far on Yucca Mountain. With the current Administration shutting down all work on Yucca, and beginning the search for a solution anew, it seems increasingly likely that the costs will greatly exceed the \$50 billion estimate.

"At a time when we are already racking up trillions of dollars in debt for future generations, the Administration has freely chosen to incur additional future taxpayer liability in terms of tens of billions of dollars by withdrawing the Yucca

Mountain repository license application, because, in the words of Secretary Chu, "the statutory limit of Yucca Mountain would have been used up in the next several decades."

"So all Americans are on the hook for tens of billions of dollars because the federal government is in breach of its contract to take title to spent nuclear fuel. But it gets even better for those Americans whose utility gets some of its electricity from a nuclear power plant; you get to pay twice.

"In return for the federal government taking title to commercial spent nuclear fuel, the Nuclear Waste Policy Act established a Nuclear Waste Fund to provide for the construction of a spent nuclear fuel and high-level radioactive waste repository. Utilities that operate nuclear power reactors are charged a fee by the Secretary of Energy that is deposited into the Waste Fund. The cost of that fee is passed on from the utility to the consumer. The utilities, and hence their customers, contribute between \$750 million and \$800 million into the Waste Fund each year. As of September 30, 2009, payments and interest credited to the fund total just over \$30 billion.

"That is a substantial amount of money. However, there are restrictions on what those funds can be used for. Funds from the Nuclear Waste Fund may only be expended for the construction of a facility expressly authorized by the Nuclear Waste Policy Act or subsequent legislation. The only facility that matches that description is Yucca Mountain, yet the Obama Administration has shut down the work on Yucca and filed a motion to withdraw its license application.

"So what happens to the money in the Nuclear Waste Fund since it cannot be spent on anything other than the construction of the Yucca Mountain repository? Well, the Nuclear Waste Policy Act directs the Secretary of Energy to adjust the fee paid by the utilities if the amount collected is insufficient or in excess of the amount needed to meet the costs of the construction of the repository. It's hard to see how the \$24 billion balance in the fund is not sufficient to pay for work on a facility where no more work will ever occur. Utilities have suggested that the fee be dispensed with, but Secretary Chu said the collection will continue. So some ratepayers will continue to pay a higher electricity bill to contribute to a Fund that no longer serves a purpose, at least until the Courts rule otherwise.

"If, or perhaps, when, the Courts order the reduction of the fee, and the refund of the balances already paid into the fund, you can add the loss of over \$750 million in income to the federal government per year, and well as the refund of the \$30 billion already collected, to the taxpayer's debt.

"I have focused on the impact stopping work at Yucca Mountain will have on commercial operations and the individual taxpayer, but the license application withdrawal will also impact those 13 states that host federal sites that hold high level radioactive waste from the production of nuclear weapons dating back to the Manhattan Project – mostly notably Hanford, Washington; Savannah River, South Carolina; and the National Engineering and Environmental Laboratory in Idaho.

Just as utilities have sued the federal government for a breach of contract, the decision to terminate Yucca could open the door to a lawsuit from a state like Idaho, which has a court-approved agreement with the Department of Energy to remove nuclear waste from the state by 2035.

"I am also concerned that in the Administration's haste to suspend the work on Yucca Mountain, valuable scientific data will be lost. For example, as the Sustainable Fuel Cycle Task Force noted, long-term corrosion samples contain decades of information that is irreplaceable. To quote the Task Force, "[s]cientific information developed at considerable cost in the Yucca Mountain program should be preserved to assist in future repository development, wherever that may be." I call upon the Administration to preserve the data that has been collected so far. I support moving forward with the Yucca Mountain license application, but if the motion to withdraw the application is successful the knowledge and data achieved so far in the process will be valuable for future repository siting needs.

"So Mr. President, taxpayers are on the hook for tens of billions of dollars. Some are paying twice for a repository that is being taken off the table. States are left with federal holding sites that contain high level radioactive waste. Valuable scientific data is at risk of being lost forever. And all the Administration can offer in return is a two-year delay while a panel studies the issue and offers a report.

"It is encouraging to hear the Administration voice its support for the development of additional nuclear power and back those words with a request for greater loan guarantee funding. But in order to have support for new nuclear at a national level, there must be support among the communities which host existing nuclear power plants. I am increasingly concerned that until we can resolve what to do with the back-end of the nuclear fuel cycle, local support for nuclear will erode as questions about how long the spent fuel will be stored on-site persist.

"With the withdrawal of the Yucca Mountain license application, we are back to square one and the American taxpayer will continue to pay the cost – without receiving any answers."

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