

I. Meeting Packet



State of Florida
Public Service Commission
INTERNAL AFFAIRS AGENDA
Tuesday – May 4, 2010
Immediately Following Agenda Conference
Room 140 - Betty Easley Conference Center

1. Approve April 6, 2010, Internal Affairs Meeting Minutes. (Attachment 1)
2. FPSC Draft Talking Points on Transmission Provisions in the Congressional Energy Bills. Guidance is sought. (Attachment 2)
3. Staff Analysis on the FCC's National Broadband Plan: Briefing only. (Attachment 3)
4. Potential FPSC Action in *National Association of Regulatory Utility Commissioners v. U.S. Department of Energy* District of Columbia Circuit Court of Appeals (Case No. 10-1074). Guidance is sought. (Attachment 4)
5. Legislative Update.
6. Other matters, if any.

TD/sa

OUTSIDE PERSONS WISHING TO ADDRESS THE COMMISSION ON
ANY OF THE AGENDAED ITEMS SHOULD CONTACT THE
OFFICE OF THE EXECUTIVE DIRECTOR AT (850) 413-6068.



State of Florida
Public Service Commission
INTERNAL AFFAIRS AGENDA

Tuesday - April 06, 2010

9:45 am – 12:00 pm

Room 140 - Betty Easley Conference Center

COMMISSIONERS PRESENT: Chairman Argenziano (via telephone)
Commissioner Edgar
Commissioner Skop
Commissioner Klement
Commissioner Stevens

STAFF PARTICIPATING: Devlin, Hill, Kiser, Miller, Trapp, Cibula, Harlow, Pennington,

OTHERS PARTICIPATING: Mitchell Ross – FP&L
Paul Lewis – Progress Energy

1. Approve March 16, 2010, Internal Affairs Meeting Minutes.

The minutes were approved.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

2. FPSC Draft Comments in Response to Florida Power & Light's Petition for Declaratory Order in FERC (Federal Energy Regulatory Commission) Docket No. EL 10-43. Guidance is sought.

The Commissioners approved the draft comments adopting Options 2 and 3, with some minor clarifications.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

Minutes of
Internal Affairs Meeting
April 6, 2010
Page Two

3. Nuclear Waste Litigation at the Nuclear Regulatory Commission. Guidance is sought.

The Commissioners approved Option 4 with an emphasis as to the comments made concerning Option 3.

Commissioner Skop discussed the US Court of Appeals case filed by NARUC vs The United States Department of Energy concerning the continued fee paid by ratepayers into the Nuclear Waste Fund and whether the fees exceed or fall short of the needs of the long term waste repository program. A discussion was held concerning continuing to pay into the Nuclear Waste Fund and the possibility of getting the rate payers money returned to them. Staff was directed to look into limited intervention in this docket as well as additional information requested. This issue is to be brought back to the next Internal Affairs Meeting.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

4. Legislative Update.

Staff briefed the Commissioners on Legislative matters of interest.

The Executive Director, General Counsel, and Inspector General were asked to conduct an internal review and to determine if there are procedures that can be put in place to prevent the perception of undue influence by the Commissioners over staff.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens

5. Other matters, if any.

Commissioner Skop discussed the Commission's request to take a position on FERC pre-exemption transmission siting and how that might infringe on State rights. This concerns two versions of Federal legislation, House version, Senate Bill 1462 and companion House Resolution 2454. Staff will get information together regarding these major energy bills and bring information back to the next Internal Affairs.

Commissioners participating: Argenziano, Edgar, Skop, Klement, Stevens



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: April 22, 2010

TO: Timothy J. Devlin, Executive Director

FROM: Cindy B. Miller, Senior Attorney, Office of the General Counsel *em SMC. RLT*
Mark A. Futrell, Public Utilities Supervisor, Division of Regulatory Analysis *MA*
Judy G. Harlow, Senior Analyst, Division of Regulatory Analysis
Tom Ballinger, Division of Regulatory Analysis *JB*

RE: FPSC Draft Talking Points on Transmission Provisions in the Congressional Energy Bills

CRITICAL INFORMATION: Please place on the May 4, 2010 Internal Affairs: Guidance is sought.

At the April 5, 2010, Internal Affairs, staff was asked to review some materials regarding the transmission provisions in current Congressional energy bills. HR 2454, the American Clean Energy and Security Act, passed the U.S. House of Representatives on June 26, 2009. SB 1462, the American Clean Energy Leadership Act, passed the Senate Committee on Energy and Natural Resources on June 17, 2009. The bill has not yet been sent to the floor of the Senate. The transmission provisions are merely a portion of these voluminous bills.

The two bills take different approaches on transmission planning, cost allocation and siting. In addition, a new Senate draft is anticipated to be released April 26. Staff has prepared FPSC talking points which could be used in letters to the Florida delegation and/or discussions with the members or their staffs.

House Bill Provisions

HR 2454 currently provides for a federal policy on electric grid planning that focuses on the need for new transmission capacity to deploy renewable energy as well as the potential for more efficient operation of the current grid through new technology, demand-side management and storage capacity.

It emphasizes a regional transmission planning process. It charges the Federal Energy Regulatory Commission (FERC) with supporting, coordinating, and integrating regional planning efforts. It limits the existing federal back-stop siting authority under section 216 of the Federal Power Act to the Eastern interconnection and to interstate lines and intrastate segments that are integral to a proposed interstate line. Back-stop siting authority is the authority of the

FERC to site transmission in certain situations where a state has not acted within a timeline or has denied the application.¹

The bill does not address transmission cost allocation.

HR 2454 establishes federal back-stop siting authority for the Western interconnection for multistate lines that emerge from the regional planning process with no conflicts between relevant regional plans. The lines must be identified in the plans as needed in significant measure to meet demand for renewable energy. The Eastern interconnection back-stop authority would remain as current law.

The Senate Bill Provisions

SB 1462 establishes the policy that the U.S. transmission infrastructure should be based on goals, such as: support for development of renewable generation; opportunities for reduced emissions; cost savings resulting from reduced congestion; enhanced fuel diversity; reliability benefits; diversification of risk; enhancement of competition; the needs of load serving entities; and the contribution of demand response, energy efficiency and distributed generation.

The bill creates a category of “high-priority national transmission projects” which are overhead or underground transmission facilities that operate at or above 345 kilovolts, very high current conduct or superconducting cable, or a renewable feeder line. These projects may cross multiple utilities, Regional Transmission Organizations, or Independent System Operators. It is unclear whether intrastate facilities may be considered to be high-priority national transmission projects.

It requires the FERC to coordinate development of an interconnection-wide plan that achieves the policy goals, from plans developed by current planning entities. The transmission plan must be updated every three years. FERC must promulgate a rule to embody the policy goals and develop a schedule to implement those policies within one year.

Transmission planning entities must develop regional plans and submit them to FERC within two years. FERC will encourage joint submissions and submission of interconnection-wide plans. FERC may require modification of submitted plans to ensure conformance to planning principles.

FERC must periodically evaluate whether these high-priority national transmission projects in the plan are being developed, and if not, take actions to address those obstacles.

¹ Currently, the law already provides for some back-stop siting. Sec. 1221 of the Energy Policy Act (16 U.S.C. 824p) provides that the FERC may issue permits for construction or modification of electric transmission facilities in a national interests electric transmission corridor if the FERC finds that: a State in which the transmission facilities are to be constructed or modified does not have authority to approve the siting, or consider the interstate benefits; the applicant does not qualify for the proposed project because it does not serve end-use customers; or a state commission has: (1) withheld approval for more than 1 year after the filing of an application or 1 year after the designation of the relevant national interest electric transmission corridor; or (2) the state has conditioned its approval in such a manner that the construction or modification will not significantly reduce transmission congestion in interstate commerce or is not economically feasible. The transmission facilities in Florida have not been designated as national interest electric transmission corridors, so this back-stop siting does not apply at this time.

FERC is required to make recommendations to Congress for further actions or authority needed to ensure development of timely projects.

The bill allows States one year from the time of filing of a proposal to site a high priority national transmission project. Then it gives FERC jurisdiction over siting a high priority national transmission project when States have either been unable to site the facility or have denied the application. FERC's jurisdiction is over facilities 345 kilovolts and above that are included in the transmission plan.

FERC must establish, by rule, appropriate methodologies for allocation of costs of high priority national transmission projects. The cost allocation must be just and reasonable and not unduly discriminatory or preferential.

Letters Regarding the Congressional Bills

The Eastern and Atlantic States Governors' Letter (Attachment A)

This letter, which has not yet been sent, takes a strong position against transmission provisions in the Senate bill and supports the provisions in the House bill. It states that the Senate bill would hurt regional efforts to boost local renewable energy generation, curtail efforts to create clean energy jobs in our states, force ratepayers to bear an unfair economic burden and usurp states' current authority on resource planning and transmission siting. Also, it states that the legislation would "crush development of the country's most significant renewable resource – wind power off the Atlantic coast."

The letter reports that the Senate bill, while intended to benefit distant wind resources on the Great Plains, would seriously undercut onshore and offshore wind energy development planned for the Northeast and mid-Atlantic states.

Specifically, the letter criticizes the provisions that would give the FERC new resource planning and preemptive authority on transmission intended to promote renewable energy in America. "This new authority would override long established state and local decision making on the siting of transmission lines, destabilize the competitive electricity market structures in the East, and require that FERC allocate transmission costs to ratepayers rather than, as would typically be the case, to the generation facility owners and developers who stand to benefit the greatest from the construction of interstate transmission."

The letter states that federal integrated resource planning or siting preemption is not needed to meet renewable energy goals. It opposes "codifying an unfair market advantage in the form of free transmission over thousands of miles to any potential resource." Regional renewable energy projects must not be put at a competitive disadvantage due to subsidies from federal planning or cost allocation determinations.

Support is offered for the House bill framework because it "provides sufficient incentives to develop needed transmission infrastructure, without creating a framework for federal integrated resource planning or transmission subsidization." The House bill encourages regional transmission organization planning. The letter also supports Interior Secretary Salazar's efforts to

promote offshore wind industry by expediting the permitting, providing tax incentives, and assisting regional efforts to build offshore wind infrastructure.

NARUC's Letter (Attachment B)

The March 16, 2010, NARUC letter warns against “any dramatic shift by Congress in the current balance between State and federal jurisdiction over transmission line permitting and cost allocation.” This would undermine the just-initiated interconnection-wide transmission planning efforts. Rather than expedite a State-federal partnership on modernizing the nation’s transmission system, it would instead create gridlock.

NARUC states that while it supports federal action to mitigate climate change, the language in the Senate bill, which may be incorporated into a broader “vehicle,” includes provisions that greatly expand the federal government’s jurisdiction over siting and approving transmission lines. Taking action now to disrupt the existing planning process contravenes the intent of the American Recovery and Reinvestment Act to give the States \$27 million to coordinate transmission planning efforts across the country’s three grids. Each of the 40 states in the Eastern Interconnection are participating in the Eastern Interconnection States Planning Council (EISPC).

If Congress addresses transmission policy, it must leave the States as the primary authority, according to NARUC. It also expresses concerns with a one-size-fits-all cost allocation scheme for the entire country.

NARUC concludes, “No one better than us knows that transmission projects are controversial and expensive; our members deal with this issue every day. But we also know that expanded federal transmission authority will disrupt the current, federally funded efforts being undertaken to find workable solutions that will benefit consumers rather than a small portion of interested stakeholders.”

Northeast and Mid-Atlantic States' Letter from 2009 (Attachment C)

These states warn that while they support the development of wind resources, the current proposals for ratepayer-funded revenue for land-based wind and other generation resources in the Great Plains would have significant negative consequences for their region. They urge regional solutions, and also recommend that Congress create strong federal energy efficiency and renewable energy incentives that are simple, transparent and technology-neutral. Also, the letter supports consideration of new market mechanisms such as regional procurements for renewable energy in the form of long-term power purchase agreements. The letter urges support for availability of onshore wind resources and urges establishing an offshore wind transmission regime.

The letter supports an approach within regional transmission organizations that provides and promotes local renewable resources integration and preserves local oversight and review.

Lastly, it suggests an approach with the federal Investment Tax Credit as a more effective, simpler and technology neutral mechanism for promoting renewable energy development across the country rather than a focus on transmission.

Florida Investor-Owned Utilities' Positions on the Provisions

Progress Energy has supported the principles adopted by the Coalition for Fair Transmission and Planning. (Attachment D) Those principles are:

Transmission Planning Principles

- Any effort to improve transmission planning must build on existing successful, coordinated, open, and transparent regional processes, and be inclusive of all stakeholders.
- Transmission planning must be initiated at the local and regional level based on the needs of the customers who bear the burden and benefits of the decisions driven by the planning processes.
- Transmission must be planned to ensure cost-effective compliance with National Electric Reliability Council (NERC) reliability standards.
- Voluntary interconnection-wide coordination should be a complement to, and not a substitute for, local and regional processes.
- Alternative transmission solutions must be considered as part of the planning process.

Transmission Cost Allocation Principles

- Costs for new transmission investments required to meet NERC reliability standards must be allocated to the planning area(s) where the investments are required to meet the standards.
- Costs for new transmission investments not otherwise required to meet NERC reliability standards must be allocated to the parties (generation and/or load) in a manner that clearly aligns cost responsibility with cost causation.
- Deference should be provided to consensus regional cost allocation solutions developed through open and collaborative processes.

In general, Progress supports the House language on transmission planning. The Senate language extends FERC's reach and diminishes the utilities' planning ability. On siting, Progress favors the House language. They don't want the FERC to have the additional authority. On cost allocation, they support the House language. They do not want the FERC to have the additional authority and are concerned they will pay for transmission that does not benefit their customers. Also, on transmission back-stop siting, Progress believes no additional authority is needed by FERC.

Tampa Electric Company concurs with NARUC's letter. Tampa Electric has not taken a position on the House and Senate bills. They have worked with EEI and are generally supportive of EEI's comments. On cost allocation, EEI has filed comments regarding variable energy resources (VERs), such as resources powered by wind and solar energy, which state:

- While some uniformity in regulations across regions may be warranted, integration solutions for VERs should be determined primarily on a regional basis. Regions are therefore in a good position to determine how to most effectively integrate VERs into the transmission grid and wholesale electric markets;
- All generation resources should be treated in a non-discriminatory manner in any new integration regulations.
- All costs of VER should be assigned to market participants on a cost-causation basis to ensure that no costs are unfairly assigned to other market participants. Rates applicable to VERs for transmission and ancillary services should reflect the true cost of that service.

Florida Power & Light has not taken a position on the House and Senate bills. However, Florida Power & Light believes that there is a need for effective federal transmission siting for the nation to build out backbone transmission that delivers regional benefits. However, they do not believe that states should be divested of transmission siting authority and believe that states do a good job with certain types of transmission projects, particularly facilities that are built by vertically integrated utilities whose benefits are limited to the siting state, like Florida.

The **Southern Company** (Southern) supports the continued use of "bottom-up" transmission planning processes. In their view, both the Senate and House bills would allow for the continued use of the existing processes, although the Senate bill would allow FERC to order certain modifications to such plans. Southern does not support that aspect of the Senate bill. On cost allocation issues, Southern believes that the costs should be allocated to those causing the costs to be incurred. As to transmission siting, Southern opposes a push to transfer transmission siting authority from the States to FERC. In opposition to this complete transfer, Southern has supported providing additional back-stop siting authority to FERC for the lines to integrate renewables should State authorization not be provided within a year. However, any such additional back-stop siting authority to FERC should also provide a right of first refusal to the incumbent transmission provider to construct any such line.

FPSC Draft Transmission Talking Points

If the FPSC wants to adopt talking points for future letters to the Florida Congressional delegation and/or information provided to interested persons, here are some possible points.

- Florida continues to support the transmission provisions in the HR 2454, which incorporates existing law. These provisions allow FERC to have back-stop authority over interstate transmission siting under limited conditions.

- FERC’s back-stop authority must allow for states to have the first “bite at the apple” over siting and cost allocation for new interstate transmission facilities. States should continue to have the authority to work out siting, as well as cost allocation agreements for facilities that cross state boundaries.
- *Option: The Commission would support a limited expansion of FERC’s backstop siting authority for interstate transmission in the case where a single state or multiple states along a multi-state route denies approval, if FERC (with input from the affected states) finds the project to be in the national interest.*
- Intrastate siting and construction permitting should remain under the exclusive jurisdiction of the states.
- Cost allocation methodologies for new transmission facilities should assign costs to the “cost causer.”
- Florida is a unique region, due to its peninsular nature. Florida’s current transmission planning processes ensure adequate, reliable power for Florida’s ratepayers, and appropriate interregional planning. Therefore, the Commission does not support giving the FERC authority to order modifications to transmission plans that have been approved at the state, regional, and inter-regional levels.
- In general, states should be allowed to work out regional transmission needs prior to the FERC stepping in.

In conclusion, staff seeks guidance regarding actions to take on the transmission provisions in the energy bills. Talking points could be approved for future letters and calls to Congressional staff, the Commission could endorse other letters, the Commission could send its own letter, or the Commission could take no action at this time, and continue actively monitoring the legislation.

Attachments:

- The Eastern and Atlantic States Governors’ Letter (Attachment A)
- The NARUC letter (Attachment B)
- The Northeast and Mid-Atlantic States’ Letter (Attachment C)
- The Coalition for Fair Transmission and Planning Letter (Attachment D)

March XX, 2010

The Honorable Harry Reid
Majority Leader
United States Senate
Washington D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington D.C. 20510

Dear Senator Reid and Senator McConnell:

As Governors representing (XX) states in the Northeast and along the Atlantic Coast, we write to express our continued opposition to the approach to new national transmission policy encompassed in the Senate Energy and Natural Resources Committee-passed American Clean Energy Leadership Act (S. 1462). We believe this legislation would hurt regional efforts to boost local renewable energy generation, curtail efforts to create clean energy jobs in our states, force our ratepayers to bear an unfair economic burden, and usurp states' current authority on resource planning and transmission siting. Far from enabling the most robust response to the challenge of climate change, the legislation would crush development of the country's most significant renewable resource—wind power off the Atlantic coast.

Intended to benefit distant wind resources on the Great Plains, this proposal would seriously undercut onshore and especially offshore wind energy development proposed or planned for Northeast and Mid-Atlantic states. Several of our states already have significant land-based wind projects installed or underway and have established aggressive wind development goals. Moreover, according to DOE's National Renewable Energy Laboratory, the offshore wind energy potential off the Atlantic coast is estimated to be 620,000 megawatts, enough generation to meet the region's total electricity demand.

The transmission approach in S. 1462 threatens to undermine this significant renewable energy potential along the East Coast through a mandated subsidy for distant terrestrial wind resources at a critical time for development and commercialization of our offshore wind potential. S. 1462 would give the Federal Energy Regulatory Commission (FERC) new resource planning and preemptive authority on transmission intended to promote renewable energy in America. This new authority would override long established state and local decision making on the siting of transmission lines, destabilize the competitive electricity market structures in the East, and require that FERC allocate transmission costs to ratepayers, rather than, as would typically be the case, to the generation facility owners and developers who stand to benefit the greatest from the construction of interstate transmission.

In addition, we fail to see the purpose in such a dramatic reorganization of state and federal markets and authorities. In our regions of the country, we are all currently on track to meet, and in some cases exceed, state or potential federal renewable energy standards well into the future. Therefore, federal integrated resource planning or siting preemption simply is not needed to meet our renewable energy goals.

We are opposed to codifying an unfair market advantage in the form of free transmission over thousands of miles to any potential resource. Such a build-out of a national transmission corridor is estimated to cost \$XXX billion, the majority of which would be paid for by East Coast states, averaging an additional cost to ratepayers of \$XXX per year. Resource outcomes need to be disciplined by the requirement that they meet our carbon and renewable goals at the lowest possible cost, based on the delivered price of electricity to retail customers. Regional renewable energy projects including offshore wind projects, which have higher construction costs but lower transmission costs due to their proximity to load, must not be put at a competitive disadvantage due to subsidies from federal planning or cost allocation determinations.

In our view, legislation to promote renewable energy resources on a fair, equitable, and efficient basis should, at a minimum:

- Create strong federal energy efficiency and renewable energy incentives that are simple, transparent, and technology neutral;
- Encourage FERC to support and facilitate robust planning within regional transmission organizations that provides and promotes local renewable resource integration and preserves local oversight and review;
- Support Interior Secretary Salazar's efforts to promote America's offshore wind industry by expediting the permitting of offshore wind projects, provide tax incentives to enable the industry to create clean energy jobs and become cost competitive, and assist regional efforts to build offshore wind infrastructure, including vessels and port facilities.

We support the House passed American Clean Energy and Security Act's (H.R. 2454) framework on transmission because it maintains market competition in electricity markets, encourages collaboration and coordination in cross-regional transmission planning and integration in the eastern interconnection, and provides sufficient incentives to develop needed transmission infrastructure, without creating a framework for federal integrated resource planning or transmission subsidization.

Thank you for your attention to this critical issue.

Sincerely,



N A R U C
National Association of Regulatory Utility Commissioners

March 16, 2010

Sen. Harry Reid
Majority Leader
United States Senate
Office: S-221
Washington, D.C. 20510

Sen. Mitch McConnell
Minority Leader
United States Senate
Office: S-231
Washington, D.C. 20510

Sen. Jeff Bingaman
Chairman
Committee on Energy & Nat. Resources
United States Senate
Office: SH-703
Washington, D.C. 20510

Sen. Lisa Murkowski
Ranking Member
Committee on Energy & Nat. Resources
United States Senate
Office: SH-709
Washington, D.C. 20510

Dear Majority Leader Reid, Senators McConnell, Bingaman, and Murkowski:

On behalf of the National Association of Regulatory Utility Commissioners (NARUC), we are writing to address the various transmission planning, permitting, and cost-allocation proposals pending in Congress. NARUC is the national association representing the State Public Service Commissioners who regulate essential utility services, such as energy, telecommunications, and water. Our members are responsible for assuring reliable utility service at fair, just, and reasonable rates.

NARUC members support the modernization of the country's transmission grid, particularly with regard to carrying additional renewable resources, ensuring reliability, and decreasing congestion. State commissioners have taken a leadership role in working with the federal government, utilities, and stakeholders in the new interconnection-wide transmission planning efforts funded under federal stimulus monies. Our members and sister agencies at the State-level have permitted a record number of new transmission lines in recent years, working to ensure that the lines are needed, provide benefits to those who pay for the lines, and meet environmental laws. Any dramatic shift by Congress in the current balance between State and federal jurisdiction over transmission line permitting and cost allocation will, we believe, undermine significantly the just-initiated interconnection-wide transmission planning efforts, and rather than expedite a State-federal partnership on modernizing the nation's transmission system, it will instead produce gridlock.

Our Association supports federal action to mitigate climate change to remove existing uncertainties that are hampering investment in the nation's utility infrastructure. We recognize that increased access to renewable resources is an important component of any climate policy. However, language in the American Clean Energy Leadership Act of 2009, passed by the Senate Energy and Natural Resources Committee last year and may be incorporated into a broader "vehicle," includes provisions that greatly expand the federal government's jurisdiction over siting

and approving transmission lines. While the bill is substantially improved over earlier versions, we remain unconvinced that additional federal authority over transmission is needed.

The record of State commissions and agencies speaks for itself. In Wisconsin, since 2001, the total value of transmission construction and upgrades that are in-service or approved by the State's Public Service Commission for future construction is approximately \$2.7 billion. In the last three years, the California Public Utilities Commission has approved more than \$4.5 billion of new transmission infrastructure. These lines are being built with the exception of projects that are awaiting federal land-use permits. Arizona's Corporation Commission sited 14 high-voltage transmission projects covering 430 miles and costing \$610 million since 2007. These are just a few of many examples.

Moreover, taking action now to disrupt the existing planning process actually contradicts the congressional intent of the American Recovery and Reinvestment Act (ARRA) of 2009. ARRA directed the U.S. Department of Energy to give the States \$27 million to coordinate transmission planning efforts across the country's three grids—the Eastern Interconnection, the Western Interconnection, and the Electric Reliability Council of Texas (ERCOT). NARUC members and relevant State agencies are already working expeditiously to meet ARRA's requirements by securing the grant funding and creating unprecedented partnerships to conduct this work.

Each of the 40 States in the Eastern Interconnection are participating in the Eastern Interconnection States Planning Council (EISPC). This group has held initial meetings and taken a leadership role in these interconnection-wide transmission studies. This process, along with similar efforts in the West and ERCOT, should be given an opportunity to thrive without being undermined by premature federal action. Congress has already committed substantial taxpayer funds for these projects, so it only makes sense that they be given the opportunity to succeed before changing the rules midstream.

If Congress addresses transmission policy in a larger energy and/or carbon-reduction bill, it must leave the States as the primary authority. Since the purpose of the ARRA transmission planning process is to identify needed transmission expansions that will be endorsed by States and other stakeholders, the States should be given the opportunity to implement those expansions with their permitting authority, rather than legislating a separate, federal approval process that circumvents this process.

We are also concerned about proposed federal legislative language imposing a one-size-fits-all cost-allocation scheme for the entire country. NARUC staunchly opposes such an approach, as the nation's transmission grids are regional in nature. A top-down methodology will not result in the best or most cost-effective grid for the nation. Indeed, a single cost-allocation methodology for the transmission system will strongly influence the grid's design, turning the whole point of a deliberate planning process on its head. Broad new federal cost-allocation authority, even if intended to promote greater usage of renewables and carbon emission reductions, could result in construction of unneeded lines and not necessarily reduce carbon emissions. Again, the stakeholder-driven, State-federal partnership in transmission planning

initiated through ARRA is meant to ensure that careful planning – not cost recovery – drives new transmission.

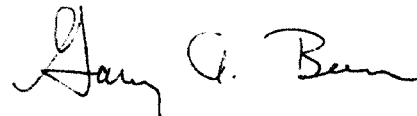
No one better than us knows that transmission projects are controversial and expensive; our members deal with this issue every day. But we also know that expanded federal transmission authority will disrupt the current, federally funded efforts being undertaken to find workable solutions that will benefit consumers rather than a small portion of interested stakeholders. States are successfully finding innovative ways to promote energy efficiency and demand resources to develop both regional and local renewable energy, while focusing clearly on consumer costs. We hope Congress will support these efforts rather than disrupting them in favor of an untried federal scheme.

NARUC looks forward to working with you to address these issues in the 111th Congress.

Sincerely,



David C. Coen
President, NARUC
Member, Vermont Public Service Board



Garry Brown
Chairman, NARUC Committee on
Electricity
Chairman, New York State Public
Service Commission

CC: Members of the U.S. Senate Committee on Energy and Natural Resources



Massachusetts



Rhode Island



Connecticut



Delaware



Maine



Maryland



New Hampshire



New Jersey



New York



Vermont



Virginia

May 11, 2009

The Honorable Harry Reid
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable John Boehner
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Senator Reid, Senator McConnell, Speaker Pelosi, Representative Boehner,

As Governors from Northeast and Mid-Atlantic states, we applaud your support for renewable energy and its role in enhancing clean energy job creation, increasing our energy security and curbing greenhouse gas emissions.

We write to encourage you to support strong new federal policies to promote wind resources. In addition to recognizing the potential for wind resources in the Midwest, we believe that the wind resources of the Eastern seaboard states – both onshore and offshore wind – represent one of our nation's most promising yet underdeveloped source of renewable energy. At the same time, we must express our concern about the significant risks posed by recent proposals regarding transmission that we believe could jeopardize our states' efforts to develop wind resources and inject federal jurisdiction into an area traditionally handled by states and regions.

Significant onshore or offshore wind projects have been proposed or planned for almost all of the Northeast and Mid-Atlantic states. Several of our states already have significant land-based wind projects installed or well underway and have established aggressive wind development goals. Moreover, the waters adjacent to the East Coast hold potential for developing some of the most robust wind energy resources in the world – enough wind potential to meet total U.S. electricity demand, as Interior Secretary Ken Salazar has recently pointed out. Congress should put its full support behind the development of these resources.

Current legislative proposals focused on transmission, in contrast, would designate national corridors for transmission of electricity from the Midwest to the East Coast, with the costs for that transmission allocated to all customers. While we support the development of wind resources for the United States wherever they exist, this ratepayer-funded revenue guarantee for land-based wind and other generation resources in the Great Plains would have significant, negative consequences for our region: it would hinder our efforts to meet regional renewable energy goals with regional resources and would establish financial conditions in our electricity markets that would impede development of the vast wind resources onshore and just off our shores for decades to come. In addition, the legislative proposals for selective federal subsidy for certain land-based wind resources paired with the practice of dispatching the lowest cost available generation resource could result in surplus transmission capacity or artificially inflated energy prices for Midwest renewables being paid by east coast ratepayers. Such an outcome would have negative consequences for consumers, regional energy sufficiency and the environment. Moreover, it is well accepted that local generation is more responsive and effective in solving reliability issues than long distance energy inputs.

Land-based wind energy projects, which have already proven themselves economical in the Northeast, must have the chance to move forward. And while offshore wind installation costs currently exceed those of onshore installations, these resources are much closer to our load centers and research and development efforts focused on reducing costs and improving reliability promise to make offshore wind competitive with Midwest wind farms on a delivered cost of power basis. As regional onshore projects move forward and offshore wind moves into commercialization in the United States, they all must have the opportunity to compete on an even playing field with on-shore, yet remote, sources of power from the Midwest and not be disadvantaged by upfront transmission subsidies.

If transmission is to be addressed in energy legislation at all, we believe Congress should focus its attention on regional solutions. In our regions, this means continuing to pursue planned wind and other renewable resources within our competitive energy markets framework. For offshore wind, this means a new offshore wind transmission backbone to facilitate the interconnection of offshore renewable energy resources to major load centers along the East Coast. Development of this offshore network will require the attention of the Department of Energy, the Minerals Management Service (MMS) and the Federal Energy Regulatory Commission (FERC), as part of an Outer Continental Shelf energy resource development plan.

In our view, legislation to promote renewable energy resources on a fair, equitable, and efficient basis should, at a minimum:

- Create strong federal energy efficiency and renewable energy incentives that are simple, transparent and technology neutral – and capitalize on more than a decade of successful direct experience by many states in developing strong efficiency and renewable energy markets;
- Consider new market mechanisms such as regional procurements for renewable energy in the form of long-term power purchase agreements – again, allowing all renewable generation interests to compete on the basis of total cost of power delivered to load centers;


- Encourage that state and regional planners along the Atlantic coast develop a plan within and across regions to accommodate growing availability of onshore wind resources and to establish an offshore wind transmission regime, including new FERC policies tailored to the special circumstances of offshore wind and expedited siting review for offshore lines in federal waters and their interconnection to coastal load centers with appropriate state involvement.

- Encourage FERC and NERC to support and facilitate robust planning within regional transmission organizations that provides and promotes local renewable resources integration and preserves local oversight and review.

- Evaluate whether expanding the federal Investment Tax Credit would be a more effective, simpler, and technology neutral mechanism for promoting renewable energy development across the country than a focus on transmission, which tends to support remote onshore wind, but disadvantage nearby offshore wind.

Thank you for your attention to this critical issue.

Sincerely,



Governor Deval Patrick
Massachusetts



Governor Donald L. Carcieri
Rhode Island



Governor M. Jodi Rell
Connecticut



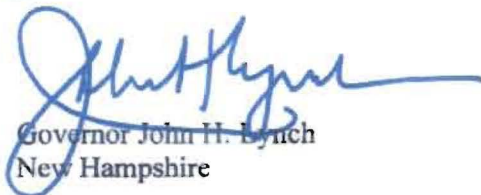
Governor Jack Markell
Delaware



Governor John Baldacci
Maine



Governor Martin O'Malley
Maryland



Governor John H. Lynch
New Hampshire



Governor Jon S. Corzine
New Jersey

David A. Paterson

Governor David A. Paterson
New York

James H. Douglas

Governor James H. Douglas
Vermont

Timothy M. Kaine

Governor Timothy M. Kaine
Virginia

cc: Chairman Jeff Bingaman
Ranking Member Lisa Murkowski
Chairman Henry Waxman
Ranking Member Joe Barton
Secretary Steven Chu
Secretary Ken Salazar
Honorable Carol Browner

February 9, 2010

The Honorable Harry Reid, Majority Leader
The Honorable Mitch McConnell, Minority Leader
United States Senate
Washington, DC 20510

Dear Majority Leader Reid and Minority Leader McConnell:

As you are aware, the American Clean Energy Leadership Act of 2009 (S. 1462) as passed by the Senate Energy & Natural Resources Committee included provisions impacting both inter-regional transmission planning and transmission system expansion cost allocation. We are writing to make clear our support for Congressional direction on these issues within comprehensive energy legislation, but with certain qualifications on the specifics. On transmission planning, we endorse reliance on the voluntary coordination of successful existing local and regional processes. We are concerned, that the current language of S. 1462 will impose a top-down interconnection-wide plan that would fail to meet local and regional needs and would ultimately undermine the goals of the legislation. On cost allocation, we support the language in S. 1462 that allocates costs based on measurable benefits.

With respect to transmission planning, we believe that it is critical to capitalize on existing open and transparent local and regional processes, rather than placing FERC in the role of national transmission planner. Local and regional planning processes take into account the needs of local and regional customers, the local economic impacts of alternatives, and local and regional circumstances that influence transmission plans. Thus, we think the goals of S. 1462 will best be served by deleting language that would allow FERC to approve or modify a submitted interconnection-wide transmission plan that may be inconsistent, or in conflict, with local or regional plans.

With respect to cost allocation, while our organizations strongly support the development of renewable and other clean energy sources, we believe that national policy should not be biased toward building remote generation resources connected to population centers with long, multi-state transmission lines. Since some regions will find better, less costly ways of getting to the cleaner energy future we all desire, including distributed renewable resources at or near the consuming customer, on-shore and off-shore wind closer to the load centers of the East Coast, carbon-free nuclear and hydro generation, as well as demand-side management and increased efficiency, deference should be provided to consensus regional cost allocation solutions developed through open and collaborative processes.

Decisions about when and where to build new resources involve market choices by resource developers and customers. The only way to ensure that these decisions are made in a cost-effective manner is to provide price signals that show the true economic implications of these decisions. If developers and potential customers of the new resources don't have to pay the costs of transmission associated with their decisions, the price signal is lost and distant resources will have an unwarranted price advantage over local alternatives, including conservation investments or distributed renewable resources. It is therefore critical that transmission cost allocation policy place the costs of transmission on the parties (generation and/or load) that create the need for the new investments, rather than socializing transmission costs across a broad area. In addition, parties being asked to contribute to the recovery of costs should have significant input and involvement in the decision-making process.

In summary, without changes to the planning language of S. 1462, the development of transmission may disregard the critical consideration of local and regional customer needs and economics. In addition, we seek to ensure that general principles of economic efficiency are maintained in transmission cost allocation policy. Absent specific language on cost allocation, broad proclamations that "everyone" benefits from any new transmission investment will create unfair market advantages and will lead to the imposition of high transmission costs on consumers who may experience no tangible benefit.

To ensure that production and delivery of low-carbon electricity will occur in the most cost-effective, consumer-friendly manner possible, we urge you to maintain these important principles in your further consideration of S. 1462, and we pledge our willingness to work with you.

Sincerely,

Alliant Energy Corporation
Ameren Corporation
Arizona Public Service Company
CMS Energy Corporation
ConEdison Inc.
Congoleum Corporation
DTE Energy Company

The Honorable Harry Reid, Majority Leader
The Honorable Mitch McConnell, Minority Leader
Page 3

Entergy Corporation
E.ON U.S.
Georgia Transmission Corporation
Imperial Irrigation District
Indianapolis Power and Light Company
JEA
MEAG Power
Northeast Utilities
OUC
Petra Solar
Platte River Power Authority
PPL Corporation
Princeton HealthCare System
Progress Energy Inc.
Public Service Enterprise Group, Inc.
Salt River Project
Santee Cooper
South Carolina Electric & Gas Company
Southern Company
Sta Seal Asphalt
Trap Rock Industries, Inc

cc: The Honorable Jeff Bingaman, Chairman Energy and Natural Resources Committee
The Honorable Lisa Murkowski, Ranking Member, Energy and Natural Resources
Committee

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: April 15, 2010
TO: Timothy J. Devlin, Executive Director
FROM: Division of Regulatory Analysis (Fogleman, Hunter, Miller, Clemence, Shafer)
RE: Summary of the FCC National Broadband Plan
Critical Information: Please place on May 4, 2010 Internal Affairs. Briefing only, no decision required.

On March 16, 2010, the Federal Communications Commission (FCC) released its National Broadband Plan (Plan) as mandated by the American Recovery and Reinvestment Act of 2009 (Recovery Act). The Plan is a comprehensive 376-page document that can be accessed online at: <http://www.broadband.gov/plan/>. While many sections of the Plan are outside the jurisdiction of this commission, the proposals within the Plan address a number of areas that this Commission has commented on in the past such as universal service reform and intercarrier compensation.

In general, the Recovery Act states that the Plan shall seek to ensure all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal. While developing its Plan, the FCC sought comments on numerous aspects of broadband services. The FCC also coordinated with the National Telecommunications and Information Administration to develop achievable specific goals. The goals of the Plan are to:

- Broaden the deployment of broadband technologies;
- Define broadband to include any platform capable of transmitting high-bandwidth services;
- Ensure harmonized regulatory treatment of competing broadband services; and
- Encourage and facilitate an environment that stimulates investment and innovation in broadband technologies and services.

The FCC believes that achieving the specific goals of the plan will have several positive effects on a national level. Ubiquitous, sufficient, affordable broadband availability has the potential to:

- Provide jobs and create economic opportunity;
- Improve healthcare and control costs;
- Provide more educational opportunities and improve educational outcomes;
- Promote energy independence and efficiency;

- Enhance government performance and increase civic engagement; and
- Increase public safety and homeland security.

The Plan is not self-effectuating. Those proposals that are within the purview of the FCC (as opposed to Congress, executive branch agencies, and state and local governments) will likely proceed through the standard rulemaking process where the Commission and other interested parties can comment on specific issues. The FCC has released a schedule of 63 proceedings that it intends to initiate before the end of 2010 relating to recommendations within the Plan.

Staff has prepared a more detailed summary of the plan (Attachment A) that focuses on those areas that staff believes may affect states. We have also prepared a brief PowerPoint presentation (Attachment B) highlighting those items that may be of interest to the Commission including universal service and intercarrier compensation reform and Smart Grid initiatives.

cc: Charles H. Hill
S. Curtis Kiser

The FCC National Broadband Plan Summary

Background

On February 13, 2009, Congress passed the American Recovery and Reinvestment Act of 2009 (ARRA or Recovery Act) at the urging of President Obama, who signed it into law four days later. Within the ARRA, the Federal Communications Commission (FCC) was tasked with creating a National Broadband Plan (Plan) by February 17, 2010. The Recovery Act states that the National Broadband Plan shall seek to ensure all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal. The final plan was released March 16, 2010.

During the process of developing a plan, the FCC sought comments on numerous aspects of broadband services. The FCC also coordinated with the National Telecommunications and Information Administration (NTIA) to develop achievable specific goals. The Commission's goals of the plan are to:

- Broaden the deployment of broadband technologies;
- Define broadband to include any platform capable of transmitting high-bandwidth services;
- Ensure harmonized regulatory treatment of competing broadband services; and
- Encourage and facilitate an environment that stimulates investment and innovation in broadband technologies and services.

Themes

General themes found within the Plan include:

- Facilitating the flow of information;
- Removing barriers of time and space; and
- Making data accessible for research, applications, and decision-making, while protecting privacy.

National Purposes

The Plan outlines the following national purposes for broadband:

- Providing jobs and creating economic opportunity;
- Improving healthcare and controlling costs;
- Providing more educational opportunities and improving educational outcomes;
- Promoting energy independence and efficiency;
- Enhancing government performance and increasing civic engagement; and
- Increasing public safety and homeland security.

Chapter 1 Introduction

A thoughtful approach to the development of electricity, telephony, radio and television transformed the United States and, in turn, helped us transform the world. Broadband will be just as transformative. As a result, the role of government is and should remain limited. We must strike the right balance between the public and private sectors. Policies and actions of the plan fall into three categories:

1. Foster innovation and competition in networks, devices and applications;
2. Redirect assets that government controls or influences in order to spur investment and inclusion; and
3. Optimize the use of broadband to help achieve national priorities.

Chapter 2 Goals

The mission of the Broadband Plan is to create a more productive, creative, efficient America in which affordable broadband is available and everyone has the means and skills to use broadband applications. The plan establishes the following six long-term goals to achieve by 2020.

1. At least 100 million U.S. homes should have affordable access to actual download speeds of at least 100 megabits per second and actual upload speeds of at least 50 megabits per second.
2. The United States should lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation.
3. Every American should have affordable access to robust broadband service, and the means and skills to subscribe if they so choose.
4. Every American community should have affordable access to at least 1 gigabit per second broadband service to anchor institutions such as schools, hospitals and government buildings.
5. To ensure the safety of the American people, every first responder should have access to a nationwide, wireless, interoperable broadband public safety network.
6. To ensure that America leads in the clean energy economy, every American should be able to use broadband to track and manage their real-time energy consumption.

Chapter 3 Broadband Ecosystem

In order for broadband to provide practical benefits, three elements must be present: applications, devices, and networks. Each element can and does drive innovation and creativity in the other elements.

- Applications are crucial because the value of the Internet is realized when it delivers useful applications and content to end-users. The development of applications that make government information and services more accessible may also spur increased demand for access and devices.
- Devices attach to networks and run applications. Devices include everything from telephones to complicated medical equipment. As the general availability of access increases the marketability of products that can take advantage of that access increases.
- Networks provide the pathway between applications and devices. Network technologies that have different capabilities, benefits, and costs already exist and expanding access and availability to networks will put new capabilities in the hands of more users. The value of being connected to the network increases as more people and businesses choose to adopt broadband and use applications and devices that the network supports.

Chapter 4 Competition and Investment

The FCC recognizes that the competitive forces that have already sparked innovation in broadband markets need to be nurtured. This plan establishes a process for data collection and proposes several specific actions that will foster competition.

- The FCC and the U.S. Bureau of Labor Statistics should collect more detailed and accurate data on actual availability, penetration, prices, churn, and bundles offered by broadband service providers to consumers and businesses, and should publish analyses of these data.
- The FCC should:
 - Continue its efforts to measure and publish data on actual performance of fixed broadband services;
 - Initiate a rulemaking proceeding to determine performance disclosure requirements for broadband;
 - Develop broadband performance standards for mobile services, multi-unit buildings, and small business users;
 - Ensure that special access rates, terms, and conditions are just and reasonable;
 - Ensure appropriate balance in its copper retirement policies; and

- Clarify interconnection rights and obligations and encourage the shift to IP-to-IP interconnection where efficient.

Chapter 5 Wireless Spectrum

The Plan highlights actions that the FCC, the NTIA and Congress can take to enable more productive uses of spectrum and make more wireless spectrum available for broadband.

- Increase flexibility in spectrum use will lead to spectrum markets, spur innovation and capital formation, and increase consumer welfare and access;
- Ensure greater transparency concerning spectrum allocation and utilization;
- Expand incentives and mechanisms to reallocate or repurpose spectrum;
- Make more spectrum available within the next 10 years; and
- Increase the flexibility, capacity, and cost-effectiveness of spectrum for point-to-point wireless backhaul services.

Chapter 6 Infrastructure

The Plan states that government should take steps to improve utilization of existing infrastructure to ensure that network providers have easier access to poles, conduits, ducts and rights-of-way. The Plan outlines the following positions:

- Infrastructure policies should be adopted that lower the cost of network deployment. The FCC should establish:
 - Rental rates for pole attachments that are as low and close to uniform as possible to promote broadband deployment;
 - A comprehensive timeline for each step of the federal pole attachment access process and reform the process for resolving disputes regarding infrastructure access;
 - A joint task force with state, Tribal and local policymakers to craft guidelines for rates, terms and conditions for access to public rights-of-way.

Chapter 7 Research & Development

Federal investments in research and development (R&D), coupled with that of private firms', have led to the robust broadband environment. Such investments have also made possible the creation of companies that are global leaders in networking, search engines, and other Internet-based businesses. Further research could lead to cost reductions and innovations that could make ubiquitous broadband access more easily attainable. The Plan recommends:

- Congress should consider making the Research and Experimentation tax credit a long-term tax credit to stimulate broadband R&D.
- The National Academy of Sciences and the National Academy of Engineering should develop a research road map to guide federal R&D funding priorities.

Chapters 8 & 9 Universal Service and Intercarrier Compensation

The Plan makes recommendations to ensure that Americans who want broadband services have access to such services. It also examines the barriers many Americans face in adopting broadband such as cost, digital literacy, and relevance.

- The Plan addresses reform of the federal Universal Service Fund (USF). In the first stage (2010–2011), reform would:
 - Improve USF performance and accountability;
 - Create the Connect America Fund (CAF);
 - Create the Mobility Fund;
 - Shift up to \$15.5 billion over the next decade from the current High-Cost program to broadband; and
 - Create a transition plan to eliminate per-minute charges while providing carriers an opportunity for adequate cost recovery, and establish interim solutions to address arbitrage.
- The second stage (2012–2016) calls for the FCC to:
 - Begin making disbursements from the CAF;
 - Broaden the universal service contribution base; and
 - Begin a staged transition of reducing per minute rates for intercarrier compensation.

- In the final stage (2017–2020), the FCC should:
 - Manage the total size of the USF to remain close to its current size (in 2010 dollars) in order to minimize the burden of increasing universal service contributions on consumers;
 - Eliminate the legacy High-Cost program, with all federal government funding to support broadband availability provided through the CAF; and
 - Continue reducing ICC rates by phasing out per-minute rates for the origination and termination of telecommunications traffic.
- To accelerate broadband deployment, the Plan suggests that Congress should consider providing optional public funding to the CAF, such as a few billion dollars per year over a two to three year period.
- The plan calls for the FCC to seek input from state commissions on how to harmonize federal and state efforts to promote broadband availability.
- Federal and state policies should facilitate demand aggregation and use of state, regional and local networks when that is the most cost-efficient solution for anchor institutions to meet their connectivity needs.
- The FCC should expand Lifeline Assistance (Lifeline) and Link-Up America (Link-Up) to make broadband more affordable for low-income households.
 - The FCC and states should require eligible telecommunications carriers (ETCs) to permit Lifeline customers to apply Lifeline discounts to any service or package that includes basic voice service.
 - The FCC should integrate the expanded Lifeline and Link-Up programs with other state and local e-government efforts.
 - The FCC should facilitate pilot programs that will produce information to implement the most efficient and effective long-term broadband support mechanism.

Chapter 10 Health Care

Currently, health care accounts for 17 percent of the U.S. gross domestic product and is predicted to increase to 20 percent by 2020. The broadband plan presents recommendations to leverage broadband and technology to improve health care and lower costs. Recommendations of note include:

- Congress, states, and the Centers for Medicare & Medicaid Services should consider reducing regulatory barriers that inhibit adoption of health IT solutions.
 - States should revise licensing requirements to enable e-care. If states fail to develop reasonable e-care licensing policies over the next 18 months, the plan calls for Congress to consider intervening to ensure that Medicare and Medicaid beneficiaries are not denied the benefits of e-care.
 - Congress and states should consider lifting restrictions that limit broader acceptance of electronic prescribing.

- The FCC should:
 - Replace the existing Internet Access Fund with a Health Care Broadband Access Fund to subsidize network deployment to health care delivery locations where existing networks are insufficient.
 - Authorize participation in the Health Care Broadband Funds by long-term care facilities, offsite administrative offices, data centers, and other similar locations.
 - Congress should consider providing support for for-profit institutions that serve particularly vulnerable populations.
 - Require participating institutions to meet outcome-based performance measures to qualify for Universal Service Fund subsidies.

Chapter 11 Education

Broadband can be an important tool to help educators, parents, and students meet major challenges in education. Broadband-enabled solutions hold tremendous promise to help reverse patterns of low achievement.

- Support and promote online learning:
 - The federal government should increase the supply of digital educational content available online that is compatible with standards established by the U.S. Department of Education.
 - The U.S. Department of Education and other federal agencies should provide support and funding for R&D of online learning systems.
 - The U.S. Department of Education should establish a program to fund the development of innovative broadband-enabled online learning solutions.

- State education systems should adopt digital literacy standards and programs.
- States should expand digital literacy requirements and training programs for teachers.
- In order to modernize educational broadband infrastructure the FCC should:
 - Initiate a rulemaking to set goals for minimum broadband connectivity for schools and libraries and prioritize funds accordingly;
 - Provide E-rate support for internal connections to more schools and libraries;
 - Give schools and libraries more flexibility to purchase the lowest-cost broadband solutions;
 - Initiate a rulemaking to raise the cap on funding for E-rate each year to account for inflation;
 - Initiate a rulemaking to streamline the E-rate application process;
 - Collect and publish more specific, quantifiable, and standardized data about applicants' use of E-rate funds;
 - Initiate a rulemaking to fund wireless connectivity to portable learning devices. Students and educators should be allowed to take these devices off campus so they can continue learning outside school hours; and
 - Congress should consider providing additional public funds to connect all public community colleges with high-speed broadband and maintain that connectivity.

Chapter 12 Energy and the Environment

The use of broadband technologies can enable a smart energy grid that increases efficiency and the use renewable energy sources. The Smart Grid will have the capability to allow interactive energy management for consumers. Smart Grid technology can detect problems and automatically route power around localized outages and can make the grid more resilient to natural disasters and terrorist attacks. Broadband networks are a critical component of Smart Grid technology.

- Existing commercial mobile networks should be hardened to support mission-critical Smart Grid applications.
- Utilities should be able to share the public safety mobile broadband network.

- Utilities should be empowered to construct and operate their own mission-critical broadband networks.
- States should reduce impediments and financial disincentives to using commercial service providers for Smart Grid communications.
 - Commercial wireless networks are often suitable and widely used for many Smart Grid applications such as metering and sensing systems and may provide similar performance at equal or lower total cost.
 - State Regulators should carefully evaluate a utility's network requirements and commercial network alternatives before authorizing a rate of return on private communications systems.
- North American Electric Reliability Corporation (NERC) should clarify its Critical Infrastructure Protection security requirements.
 - NERC is responsible for the reliability of the bulk power system.
 - NERC should provide utilities more explicit guidelines for the use of commercial and other shared networks and clarify if such networks are suitable for grid control communications.
- Congress should enable utilities to use the proposed public safety 700 MHz wireless broadband wireless network.
- The Department of Energy (DOE) should collaborate with the FCC to study the communications requirements of electric utilities.
- The federal government should be granted limited access to utility bills from homes receiving federal energy efficient funds.
- If states fail to develop reasonable policies over the next 18 months, Congress should enact national legislation to cover consumer privacy and the accessibility of energy data.
 - Public Utility Commissions (PUC) should mandate data accessibility as part of Smart Grid rate cases.
 - States should require electric utilities to provide consumers access to and control of their digital energy information.
 - States should consider how third-parties might get access to anonymized datasets for research purposes.
 - Every state PUC should require its regulated investor-owned utilities to provide historical consumption, price and bill data over the Internet by the end of 2010.

- The Federal Energy Regulatory Commission (FERC) should adopt consumer digital data accessibility and control standards as a model for the states.
- DOE should consider consumer data accessibility policies when evaluating Smart Grid grant applications, report on state's progress toward enacting consumer data accessibility, and develop best practice guidance for states.
 - The federal government should promote consumer access to digital energy information.
 - DOE should provide updates on the progress of each state in enacting consumer data accessibility policies.
- The FCC should continue to utilize Broadband.gov as a public resource for broadband information. Going forward, this website should serve as a source for tracking the implementation of the plan. It should also serve as a consumer resource for information about broadband.

Chapter 13 Economic Opportunity

Broadband is becoming a prerequisite to economic opportunity for individuals, small businesses, and communities. Those without broadband and the skills to use broadband-enabled technologies are becoming more isolated from the modern American economy. The broadband plan recognizes this and makes several recommendations including:

- The government should develop a public-private partnership to provide technology training and tools for small disadvantaged businesses and small and medium enterprise in low-income areas.
- Congress should consider additional funds for the Economic Development Administration to bolster entrepreneurial development programs with broadband tools and training.
- Congress should consider eliminating tax and regulatory barriers to telework.
 - Many teleworkers live in a different state from where their firm is located. This can result in double taxation issues that discourage telework.
- The federal government should develop regional and community broadband benchmarks for use as a central component within economic development planning and programs.
- The National Science Foundation should use its technology transfer grants to spur regional innovation and development as well as greater collaboration across universities.

Chapter 14 Government Performance

The federal government can use broadband to increase the efficiency of its own internal operations. It can also use its size and purchasing power to help state and local governments and communities deploy more broadband capability.

- When feasible, Congress should consider allowing state and local governments to get lower service prices by participating in federal contracts for communications services.
- Federal government agencies and departments should utilize broadband technologies to:
 - Serve as anchor tenants for unserved and underserved communities;
 - Enhance internal government efficiency;
 - Strengthen cyber security; and
 - Improve the delivery of government services online.
- The Office of Management and Budget (OMB) and the Federal Chief Information Officer's Council should develop a single, secure enterprise-wide authentication protocol that enables online service delivery.
- The Executive Branch should establish MyPersonalData.gov as a mechanism that allows citizens to request their personal data held by government agencies.

Chapter 15 Civic Engagement

Broadband can enable government to share unmediated information more easily with the American people. It can also empower citizens to engage their government with new broadband-enabled tools.

- The primary legal documents of the federal government should be free and accessible to the public on digital platforms.
- Government should make its processes more transparent and conducive to participation by the American people.
 - All government meetings, public hearings, and town hall meetings should be broadcast online and archived.
 - Congress should allow the public to track and comment on proposed legislation online.

- Closed-captioning should be available to increase accessibility for people with disabilities.
- Congress should increase funding to public media for broadband-based distribution and content.
- The federal government should create and fund Video.gov to publish digital video archival material.
- Congress should amend the Copyright Act to allow public and broadcast media to contribute their archival content to a national online archive.
- Government must improve the quality and number of points at which the American public can contact their government.
- The Executive Branch and independent agencies should expand opportunities for Americans with expertise in technological innovation to serve in the federal government.
- By bringing elections into the digital age, government can increase efficiency, promote greater civic participation, and extend the ability to vote to more Americans.
- Federal, local, and state stakeholders should work together to address issues such as electronic voter registration, voting records portability, common standards that facilitate data exchanges across state borders, and automatic updates of voter address information.
- All states should follow the example of Arizona, Kansas, and Washington and permit online voter registration.
- The Department of Defense should develop an Internet-based project that enables members of the military serving overseas to vote online.

Chapter 16 Public Safety

The country needs a public safety broadband network that allows first responders to communicate with one another. The public safety community should be able to roam and obtain priority access on other commercial broadband networks. The plan recommends:

- Creation of a public safety broadband network;
- Identification of the number and location of public safety broadband wireless infrastructure and devices should be catalogued;
- Ensuring that broadband satellite service is part of any emergency preparedness program; and
- Preservation of broadband communications during emergencies.

- The FCC should:
 - Issue a cyber security roadmap;
 - Expand its outage reporting requirements to broadband service providers;
 - Create a cyber security information reporting system with input from the Department of Homeland Security; and
 - Explore standards for broadband communications reliability and resiliency.
- Next Generation 911 (NG911) will integrate new capabilities such as texting, photos, video, and email with existing E911 capabilities and will also integrate all entities involved in emergency response to improve the speed and quality of response.
 - Broadband will make it possible for Public Safety Answering Points (PSAPs) to push and pull video, images, medical information, environmental sensor transmissions, and other data through shared databases and networks.
 - Users will be able to transmit voice, text, or images to PSAPs from a variety of broadband capable devices.
- The National Highway Traffic Safety Administration should prepare a report to identify the costs of deploying a nationwide NG911 system and obtain funding from Congress.
- Congress should enact a federal NG911 regulatory framework. The legislation should recognize existing state authority but require states to remove regulatory roadblocks to NG911 development.
 - The legislation should give the FCC the authority to implement a NG911 federal regulatory framework, eliminate outdated 911 regulations at the federal level and preempt inconsistent state regulations.
- The Executive Branch should clarify agency roles on the implementation and maintenance of a next-generation alert warning system.

Chapter 17 Implementation and Benchmarks

Implementation of the National Broadband Plan requires a long-term commitment to measuring progress and adjusting programs and policies to improve performance. It requires periodic assessments of where the country stands in broadband deployment, adoption, and utilization; in competition across networks, devices, and applications; and in how effectively national priorities embrace the power of broadband. The plan recommends:

- The Executive Branch should create a Broadband Strategy Council to coordinate the implementation of National Broadband Plan recommendations.
 - The responsibility for broadband-related government policy and programs is spread across many federal agencies as well as state, Tribal, and local governments. Successful implementation of the recommendations in this plan will intensify the need for coordination among these actors.

- The FCC should publish or develop:
 - A timetable of proceedings to implement plan recommendations within its authority.
 - An evaluation of plan progress and effectiveness as part of the annual Section 706 Advanced Services Inquiry, including:
 - How many people and businesses have access to broadband;
 - How many subscribe;
 - What speeds consumers actually experience;
 - How much they pay; and
 - How people are using broadband.
 - A Broadband Data Depository to give researchers and the public better access to the FCC's data.



The National Broadband Plan

Highlights Specific to Commission Interests

Division of Regulatory Analysis
Special Studies

FCC Goals to Achieve by 2020

1. At least 100 million U.S. homes should have affordable access to 100 mbps download speed and 50 mbps upload speed.
2. The U.S. should have the fastest and most extensive wireless networks of any nation.
3. Every American should have access to affordable broadband service and the means and skills to subscribe.
4. Every U.S. community should have affordable access of at least 1 gigabit per second to anchor institutions.
5. Every first responder should have access to a nationwide, wireless, interoperable broadband public safety network.
6. Every American should be able to use broadband to track and manage their real-time energy consumption.

Competition, Investment, & Infrastructure

- The FCC recognizes that competitive forces need to be nurtured. The Plan establishes a process for data collection and proposes specific actions that will foster competition.
 - The FCC should ensure that special access rates, terms, and conditions are just and reasonable.
- The Plan states that government should take steps to improve utilization of existing infrastructure to ensure that network providers have easier access to poles, conduits, ducts and rights-of-way.
 - The FCC should establish rental rates for pole attachments that are low and as close to uniform as possible.

Universal Service Fund (USF) & Intercarrier Compensation (ICC) – Three Stages of Reform

- Stage One (2010-2011)

- Improve USF performance and accountability;
- Create the Connect America Fund (CAF);
- Create the Mobility Fund;
- Shift up to \$15.1 billion over the next decade from the current High-Cost program to broadband; and
- Create a transition plan to eliminate per-minute intercarrier compensation charges while providing carriers an opportunity for adequate cost recovery, and establish interim solutions to address arbitrage.

Universal Service Fund (USF) & Intercarrier Compensation (ICC) – Three Stages of Reform

- Stage Two (2012-2016)

- Begin making disbursements from the CAF;
- Broaden the universal service contribution base; and
- Begin a staged transition of reducing per minute rates for intercarrier compensation.

- Stage Three (2017-2020)

- Manage the size of the USF to remain close to its current size reducing the burden of contributions on consumers by broadening the contribution base;
- Eliminate the High-Cost program with all support provided through CAF; and
- Continue reducing ICC rates by phasing out per-minute charges for origination and termination of telecommunications traffic.

Universal Service Fund & Intercarrier Compensation

- The Plan suggests that Congress should consider providing optional public funding to the CAF, such as a few billion dollars per year over a two-to three-year period.
- The Plan calls for the FCC to seek input from state commissions that have successful broadband deployment programs on how to coordinate federal and state efforts to promote broadband availability.
- Federal and state policies should facilitate demand aggregation and the use of state, regional and local networks when determined to be the most cost-efficient solution for anchor institutions to meet their connectivity needs.

Lifeline Assistance & Link-Up America

- The FCC should expand Lifeline and Link-Up to make broadband more affordable for low-income households.
 - The FCC and states should require eligible telecommunications carriers (ETCs) to permit Lifeline customers to apply Lifeline discounts to any service or package that includes basic voice service.
 - The FCC should integrate the expanded Lifeline and Link-Up programs with other state and local e-government efforts.
 - The FCC should facilitate pilot programs that will produce information necessary to implement the most efficient and effective long-term broadband support mechanism.



Education & E-rate

- Initiate a rulemaking to raise the cap on funding for E-rate each year to account for inflation;
- Initiate a rulemaking to set goals for minimum broadband connectivity for schools and libraries and prioritize funds accordingly;
- Provide E-rate support for internal connections (Internet-connected workstations) to more schools and libraries; and
- Initiate a rulemaking to streamline the E-rate application process.



Energy & the Environment

- States should reduce impediments and financial disincentives to using commercial service providers for Smart Grid communications.
 - Commercial wireless networks can be widely used for many Smart Grid applications such as metering, and sensing systems and may provide similar performance at equal or lower total costs.
 - State regulators should carefully evaluate a utility's network requirements and commercial network alternatives before authorizing a rate of return on private communications systems.



Energy & the Environment

- If states fail to develop reasonable policies over the next 18 months, Congress should enact national legislation to cover consumer privacy and the accessibility of energy data.
 - Public Utility Commissions (PUCs) should mandate data accessibility as part of Smart Grid rate cases.
 - States should require electric utilities to provide consumers access to and control of their digital energy information.
 - States should consider how third-parties might get access to anonymized datasets for research purposes.
 - Every state PUC should require its regulated investor-owned utilities to provide historical consumption, price and bill data over the Internet by the end of 2010.

Economic Opportunity & Government Performance

- The federal government should develop regional and community broadband benchmarks for use as a central component within economic development planning and programs.
- When feasible, Congress should consider allowing state and local governments to get lower service prices by participating in federal contracts for communications services.

Civic Engagement & Public Safety

- All government meetings, public hearings, and town hall meetings should be broadcast online and archived.
- Congress should enact a federal Next Generation 911 (NG911) regulatory framework that includes texting and video capabilities.
 - The legislation should recognize existing state authority but require states to remove regulatory roadblocks to NG911 development.
 - The legislation should give the FCC the authority to implement a NG911 federal regulatory framework, eliminate outdated 911 regulations at the federal level and preempt inconsistent state regulations.

Timetable to Implement Plan Recommendations

Proposed 2010 Key Broadband Action Agenda Items*

	Q2 2010 (CY)	Q3 2010 (CY)	Q4 2010 (CY)
Promote World-Leading Mobile Broadband Infrastructure and Innovation	Mobile Roaming Order and FNPRM (WTB)	AWS Bands Analysis (WTB, OET)	AWS Potential Order (WTB, OET)
		D Block Order/NPRM (WTB, PSHSB) [Also in Public Safety]	Secondary Markets Internal Review (WTB)
	Launch Strategic Spectrum Plan and Triennial Assessment (WTB, OET, OSP)	Spectrum Sharing/Wireless Backhaul NPRM/NOI (WTB, OET)	Spectrum Dashboard 2.0 (WTB, OET, PSHSB, MB, IB)
	2.3 GHz WCS/SDARS Order (OET, WTB, IB)	Oppor. Use of Spectrum NPRM (OET, WTB, IB, MB, PSHSB)	Recommendation re: Contiguous Unlicensed Spectrum Proceeding (OET, WTB)
		TV White Spaces Opinion & Order (OET, MB, WTB)	Experimental Licensing NPRM (OET)
		MSS NPRM (OET, IB, WTB)	
Accelerate Universal Broadband Access and Adoption		Broadcast TV Spectrum Innovation NPRM (OET, MB, WTB)	
	USF Reform NPRM and NOI (WCB, WTB)		Mobility Fund NPRM (WTB, WCB)
	Lifeline/Low-Income Joint Board Referral Order (WCB, WTB)	Hearing Aid Compat. Second Report & Order/FNPRM (WTB, OET, CGB)	Spectrum on Tribal Lands NPRM (WTB, CGB)
	E-Rate FY2011 NPRM (WCB)		E-Rate FY2011 Order (WCB)
	USF Merger Commitments Order (WCB, WTB)	Rural Health Care Reform NPRM (WCB)	USF Transformation NPRM (WCB, WTB)
	Lifeline Pilot Roundtable (WCB, WTB)	Lifeline Flexibility NPRM (WCB, WTB)	Intercarrier Compensation NPRM (WCB, WTB)
	FCC/FDA Workshop and PN on Converged Devices (OET)	Establish Accessibility and Innovation Forum (CGB, WCB, WTB)	USF Contributions NPRM (WCB, WTB)
	Launch FCC Office of Native American Affairs (CGB)	Real-Time Text NOI (CGB, WCB, WTB, OET)	Real-Time Text NPRM (CGB, WCB, WTB, OET)
FCC-Native Nations Broadband Task Force (CGB)		Internet Video and Device Accessibility NOI (CGB, WCB, WTB, MB)	
Foster Competition and Maximize Consumer Benefits Across the Broadband Ecosystem	Mobile Wireless Competition Report (WTB, OSP)	Interconnection Clarification Order (WCB)	
	Pole Attachments Order and FNPRM (WCB)	Rights-of-Way Task Force (CGB, WCB)	Small Business Broadband & Wholesale Comp. NOI (WCB)
	Small Business Broadband & Wholesale Comp. PN (WCB)		
		Special Access Workshop (WCB, WTB, OSP)	Special Access NPRM (WCB, WTB, OSP)
	CableCARD NPRM (MB, OET)		
	Smart Video Devices NOI (MB, OET)		Smart Video Devices NPRM (MB, OET)
	Launch Tech. Adv. Grp. on Speed & Perf. (CGB, OET, WCB)		Transparency & Disclosure NPRM (CGB, WCB, WTB, OET)
Launch Speed and Performance Measurement Program (CGB, WTB, WCB, OET)		Broadband Data NPRM (WCB, WTB, OSP)	
Advance Robust and Secure Public Safety Communications Networks		Public Safety Roaming & Priority Access NPRM (WTB, PSHSB)	NG 911 NOI (PSHSB, OET, WCB, WTB)
		D Block Order/NPRM (WTB, PSHSB) [Also in Mobile]	Back-Up Power NOI (PSHSB, OET, WTB)
		700 MHz Waiver Petitions (PSHSB, WTB, OET)	Serv. Outage & Homeland Security NPRM (PSHSB, OET, WCB, WTB, IB)
	ERIC Public Safety Interoperability Order (PSHSB)	700 MHz Public Safety Order/FNPRM (PSHSB, WTB, OET)	
	Cybersecurity Certification NOI (PSHSB, WTB, OET, WCB)	Location Accuracy FNPRM (PSHSB, OET, WTB)	
	Survivability NOI (PSHSB, OET, WTB, WCB)		
	Serv. Outage & Homeland Security Workshop (PSHSB, OET, WCB, WTB, IB)		

Wireless Telecommunications Bureau (WTB)
 Wireline Competition Bureau (WCB)
 Office of Engineering and Technology (OET)
 Media Bureau (MB)
 Consumer & Governmental Affairs Bureau (CGB)
 Public Safety & Homeland Security Bureau (PSHSB)

* This document reflects only proposed FCC actions, not those of other government agencies, and is not exhaustive of all 2010 FCC actions. The location and timing of actions in this document represents a series of targets that may be adjusted to respond to changing conditions as appropriate; items that span quarters are expected to occur late in the earlier quarter, or early in the later quarter. Does not include initiatives discussed in Agenda from Q1 2010 and earlier (E-rate Community Use Order, Rural Health Care Pilot Program Extension Order, Spectrum Dashboard Beta, and Tower Siting Declaratory Ruling).

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: April 22, 2010

TO: Timothy J. Devlin, Executive Director

FROM: Cindy B. Miller, Senior Attorney, Office of the General Counsel *CM*
Samantha M. Cibula, Attorney Supervisor, Office of the General Counsel *S.M.C.*
Mark A. Futrell, Public Utilities Supervisor, Division of Regulatory Analysis *MAF*
Judy G. Harlow, Senior Analyst, Division of Regulatory Analysis *JGH*

RE: Potential FPSC Action in *National Association of Regulatory Utility Commissioners v. U.S. Department of Energy*, D.C. Circuit Court of Appeals (Case No. 10-1074).

Critical Information: Please place on May 4, 2010 Internal Affairs. Guidance is sought.

At the April 6, 2010, Internal Affairs, staff was directed to bring information back to Internal Affairs regarding possible FPSC participation in *National Association of Regulatory Utility Commissioners v. U.S. Department of Energy*, Case No. 10-1074, currently pending in the D.C. Circuit Court of Appeals.¹ Specifically, the Commission requested staff to address possible amicus participation in the case, whether others have intervened in the matter, possible ramifications of the Commission's participation, and whether the D.C. Circuit would allow for the Commission's participation.

Background

- Pursuant to the Nuclear Waste Policy Act of 1982 (NWPA), the federal government made commitments to centralize the long-term management of high-level nuclear waste, including the establishment of a permanent waste repository.
- The 1987 amendments to the NWPA designated Yucca Mountain, Nevada, as the sole option for a long-term storage site. The Yucca Mountain site was reaffirmed by Congress in 2002. In June 2008, the Department of Energy (DOE) filed an application before the Nuclear Regulatory Commission (NRC) for authorization to construct a national high-level nuclear waste repository at Yucca Mountain.

¹ Also, at the April 6, 2010, Internal Affairs, the Commission voted to file an amicus brief in the case pending before the Nuclear Regulatory Atomic Safety and Licensing Board (Board). However, on that same day, the Board suspended action on that case, pending further developments in the related actions in the United States Court of Appeals for the D.C. Circuit. The Court stated that "will likely yield quicker and more authoritative resolution of most if not all relevant legal issues than if the board were to address them without waiting for the court's guidance."

- The NWPA also established a statutory deadline for the U.S. Department of Energy (DOE) to dispose of nuclear waste, including spent nuclear fuel, by January 31, 1998.
- The NWPA established the Nuclear Waste Fund to finance a national repository and required fees to be assessed to the bills of consumers of energy produced by nuclear generating plants.
- Beginning in 1983, Nuclear Waste Fees were assessed to consumer electric bills of approximately \$1 for every megawatt-hour of energy produced by nuclear generation.
- Since 1983, the nation's electric ratepayers have paid over \$33 billion into the Nuclear Waste Fund for the development of a national waste repository.
- Florida's ratepayers have paid a total of \$787.6 million into the Nuclear Waste Fund. When interest is taken into account, the federal government's liability to Florida's Ratepayers totals over \$1.4 billion. In 2009 alone, Florida's ratepayers paid over \$25 million into the Nuclear Waste Fund.
- In June 2008, the DOE filed with the NRC an application for authorization to construct a national high-level nuclear waste repository at Yucca Mountain, Nevada.
- On March 3, 2010, DOE filed a motion with the NRC to withdraw the application for the repository with prejudice.
- In response to DOE's actions to terminate the Yucca Mountain project, on April 2, 2010, NARUC filed a petition in the D.C. Circuit Court of Appeals. NARUC urges that, at a minimum, DOE should be directed to suspend collection of the Nuclear Waste Fee pending DOE's compliance with the required annual review of the sufficiency of the fees to cover costs of developing a repository.

D.C. Circuit Court Proceeding

The National Association of Regulatory Utility Commissioners (NARUC) filed a petition in the D.C. Circuit Court of Appeals on April 2, 2010. The basis of the court action is two Department of Energy (DOE) letters. The DOE letters are in response to NARUC's and the Nuclear Energy Institute's (NEI) requests to DOE to: (1) suspend the fee paid by ratepayers into the Nuclear Waste Fund (NWF) until there is a clearly defined program for disposal of spent nuclear fuel and high-level radioactive waste; and (2) promptly perform the annual review of the nuclear waste fees as required by the Nuclear Waste Policy Act (NWPA) to determine whether the fees exceed or fall short of the needs of the long term waste repository program costs given the Administration's express intent to terminate the Yucca Mountain high-level waste repository.

NARUC's petition takes issue with DOE's refusal in the letters to: (1) reflect the termination of the Yucca Mountain program (as well as the accrued current NWF balance of \$22 billion) in the

annual review of the NWF fee; (2) timely conduct a 2009 fee assessment proceeding; and (3) suspend collection of the fee. For these reasons, NARUC states that the Court should find DOE's decision to be arbitrary, capricious and contrary to law.

NARUC urges that, at a minimum, DOE should be directed to suspend collection of the fee to the NWF pending DOE's compliance with the annual review provision of Section 302 of the NWPA. NARUC asks the Court to review, remand, or vacate DOE's decision. A copy of NARUC's petition is appended as Attachment A.

The NEI also filed an action in the D.C. Circuit Court in response to DOE's letters. The Court consolidated NEI's and NARUC's cases on April 8, 2010. There have been no interveners in the cases thus far.

Staff contacted the Georgia Public Service Commission, based on guidance from Internal Affairs, to ascertain if they have taken any independent action. They have not done so. They were considering filing in the case before the Nuclear Regulatory Commission, which was suspended on April 6, 2010. In addition, staff contacted the Attorney General's Office and the Office of Public Counsel about possible participation. They indicated they were considering the matter.

Possible Amicus Filing

An amicus filing is referred to as a "friend of the court" filing. An organization that is not a party to a given litigation is allowed to advise a court on a matter of law in the case. Staff believes that an amicus filing would enable the Commission to state its concerns, without the expense and resources that may be required to participate as a full party in the proceeding.

The Forum

The filing of an amicus brief is an option before the D.C. Circuit Court. Pursuant to Circuit Court Rule 29, a governmental entity must submit a notice of intent to file an amicus brief. Staff must seek leave of the Court or consent of the parties to the proceeding to file.

Possible Consequences of Filing an Amicus Filing

A possible concern about participating in any action taken to freeze or discontinue contributions to the Nuclear Waste Fund is that such action not result in the abandonment of the DOE's commitment. Florida has three existing nuclear facilities in operation, and Florida's two largest investor-owned utilities have plans to construct four new nuclear units in the state. The continued long-term operation of the existing units and the ultimate construction of these facilities may be dependent on a firm commitment by the U.S. Congress and the DOE to adequately address the disposal of radioactive waste generated from these facilities. However, these petitions have already been filed and the participation by the FPSC does not alter that fact.

Possible Content of an Amicus Filing

If the Commission wishes to file an amicus brief, we suggest the following points that could be included in it:

- The FPSC shares NARUC's concerns that ratepayers are continuing to pay nuclear waste fees, while the federal government's obligation of taking spent nuclear fuel will be pushed even further into the future. The interest alone of the Nuclear Waste Fund far exceeds recent annual expenditures under the Nuclear Waste Disposal Program.
- The FPSC continues to believe, however, that any reduction in the nuclear waste fees should not relieve the federal government of its obligation to accept the nuclear waste from Florida's nuclear facilities.
- The FPSC is concerned that any action to reduce the nuclear waste fees should not jeopardize existing units' operations and future nuclear development in Florida. The FPSC has already certified the need for four additional nuclear generating units to be developed by Florida's two largest investor-owned utilities. The FPSC recognizes that these planned nuclear units, along with continued reliance on existing units, meet a reliability need for capacity and will increase the diversity of Florida's fuel mix.
- Ultimate construction of these facilities is highly dependent on a firm commitment by the U.S. Congress and DOE to adequately address the disposal of radioactive waste generated from these facilities. Without a plan for handling the waste, a degree of risk is introduced into construction of these units.

Conclusion

Staff seeks the Commission's guidance as to whether the Commission wishes to participate in the D.C. Circuit Court proceeding. If the Commission wishes to participate, staff recommends that the Commission file an amicus brief.

Attachment A – NARUC Petition for Review

FILE COPY

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

APR - 2 2010

UNITED STATES COURT OF APPEALS FOR DISTRICT OF COLUMBIA CIRCUIT	
FILED	APR - 2 2010
CLERK	

RECEIVED

NATIONAL ASSOCIATION OF
REGULATORY UTILITY COMMISSIONERS,)

Petitioner,)

v.)

THE UNITED STATES)
DEPARTMENT OF ENERGY AND)
THE UNITED STATES OF AMERICA,)

Respondents,)
_____)

Case No. 10-1074

PETITION FOR REVIEW

The National Association of Regulatory Utility Commissioners (NARUC) petitions this Court pursuant to Section 119 of the Nuclear Waste Policy Act (NWPA), 42 U.S.C. § 10139, as amended, Section 702 of the Administrative Procedure Act (APA), 5 U.S.C. § 702, and Rule 15(a) of the Federal Rules of Appellate Procedure, to review, remand, or vacate the final decision and action of or failure to act by the Department of Energy (DOE) as set forth in two separate letters. Both letters are dated October 8, 2009.

One is addressed to NARUC and the other is addressed to the Nuclear Energy Institute (NEI). Both DOE letters, and the NARUC and NEI requests they respond to are attached in Exhibit A.

Both DOE final decisions, which are identical except for references to the entity requesting relief, deny requests to (1) suspend the fee paid by ratepayers into the Nuclear Waste Fund (NWF) until there is a clearly defined program for disposal of spent nuclear fuel and high-level radioactive waste, and (2) promptly perform the annual review of the nuclear waste fees as required by NWPA Section 302(a)(4), 42 U.S.C. § 10222(a)(4) to determine whether the fees exceed or fall short of the needs of the long term waste repository program costs given the Administration's express intent to terminate the Yucca Mountain high-level waste repository.¹

These DOE decisions respond to letter requests sent by NARUC and NEI to Energy Secretary Chu on July 8, 2009.

¹ See, e.g. U.S. Dep't. of Energy, FY 2010 Congressional Budget Request: Budget Highlights, May 2009 at 46-47: "All funding for development of the Yucca Mountain facility has been eliminated.... The budget request includes the minimal funding needed to explore alternatives for nuclear waste disposal...and to continue participation in the Nuclear Regulatory Commission license application" available at <http://www.cfo.doe.gov/budget/10budget/Content/Highlights/FY2010Highlights.pdf>.

NARUC represents the interests of State public utility commissions that oversee nuclear utility rates including the pass-through cost of the nuclear waste fee. The association has been recognized both by Congress in several statutes² and consistently by Article III courts³ as the proper entity to represent the collective interests of the State utility commissions.

² See 47 U.S.C. § 410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of concern to both the Federal Communications Commission and State regulators with respect to universal service, separations, and related concerns; Cf. 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). Cf. NARUC, et al. v. ICC, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "...Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.).

³ See, e.g., United States v. Southern Motor Carrier Rate Conference, Inc., 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985) (The Supreme Court noted: "[t]he District Court permitted . . . (NARUC), an organization composed of State agencies, to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commissions of those States in which the defendant rate bureaus operate." 471 U.S. 52, n. 10. See also NARUC v. DOE, 851 F.2d 1424 (D.C. Cir. 1988), where, although standing was not specifically addressed, NARUC was the lead petitioner in a successful appeal involving DOE and the nuclear waste program; Indianapolis Power and Light Co. v. ICC, 587 F.2d 1098 (7th Cir. 1982); Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir. 1976); Compare, NARUC v. Federal Energy Regulatory Commission, 475 F.3d 1277 (D.C. Cir. 2007); NARUC v. Federal Communications Commission, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985).

This Court has jurisdiction pursuant to NWPA Sec. 119(a)(1), 42 U.S.C. § 10139(a)(1).⁴

Venue is proper in the court pursuant to 42 U.S.C. § 10139(a)(2). Id. NARUC has its principal office of business in this circuit, and in any case, the statute allows an appeal to be lodged before this Court.

The appeal is timely filed within the 180 days specified in NWPA Sec. 119(c), 42 U.S.C. § 10139(c), based upon the October 8, 2009 date of DOE's letters. Id.

⁴ 49 U.S.C. § 10139. "Judicial review of agency actions: (a) Jurisdiction of United States courts of appeals (1) Except for review in the Supreme Court of the United States, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action-- (A) for review of any final decision or action of the Secretary, the President, or the Commission under this part;(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this part; (C) challenging the constitutionality of any decision made, or action taken . . . (2) The venue of any proceeding . . . shall be in the judicial circuit in which the petitioner . . . has its principal office, or in the United States Court of Appeals for the District of Columbia. (c) Deadline for commencing action: A civil action for judicial review described under subsection (a)(1) of this section may be brought not later than the 180th day after the date of the decision or action or failure to act involved . ." Downloaded March 31, 2010 from the Government Printing Office site at: <http://frwebgate1.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=058563466570+0+1+0&WAISaction=retrieve>.

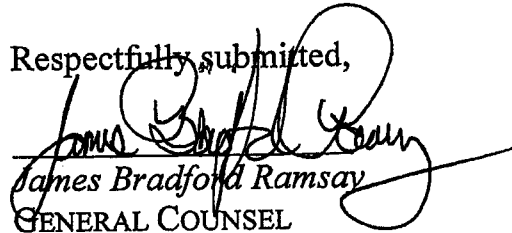
DOE is a proper respondent under Rule 15(a) of the Federal Rules of Appellate Procedure.

NARUC seeks an order and judgment that portions of these two DOE orders are arbitrary and capricious, 5 U.S.C. §706(2)(A), beyond DOE's jurisdiction, authority or power, 5 U.S.C. §706(2)(C), and/or otherwise not in accordance with law, 5 U.S.C. §706(2)(A). NARUC contends, *inter alia*, the letter orders are facially deficient and lack any record support. This Court should declare the DOE decision, action or failure to act to refuse (a) to reflect the termination of the Yucca Mountain program (as well as the accrued current NWF balance of \$22 billion) in the annual review of the NWF fee,⁵ (b) to timely conduct a 2009 fee assessment proceeding, and (c) to suspend collection of the fee, are arbitrary, capricious, and contrary to applicable law.

⁵ The NWF fee was established to recoup the government's costs for the radioactive waste disposal. NWPA § 302(d); 42 U.S.C. § 10222(d). The NWPA set the fee for nuclear electricity generators at 1.0 mil per kilowatt-hour. NWPA § 302(a)(2), 42 U.S.C. § 10222(a)(2). The NWPA directs the Secretary to annually review whether the collection of the fee will provide sufficient revenues to offset the programs costs and to propose a fee adjustment if excess or insufficient revenues are being collected. NWPA § 302(a)(4); 42 U.S.C. § 10222(a)(4).

At a minimum, DOE should be directed to suspend collection of the fee to the NWF pending DOE's compliance with the annual review provision of Section 302 of the NWPA. We also ask the Court to grant such other relief as it deems just and proper.

Respectfully submitted,



James Bradford Ramsay
GENERAL COUNSEL

(JRAMSAY@NARUC.ORG) PHONE: 202.898.2207

Robin Lunt

ASSISTANT GENERAL COUNSEL

(RLUNT@NARUC.ORG) PHONE: 202-898-1350

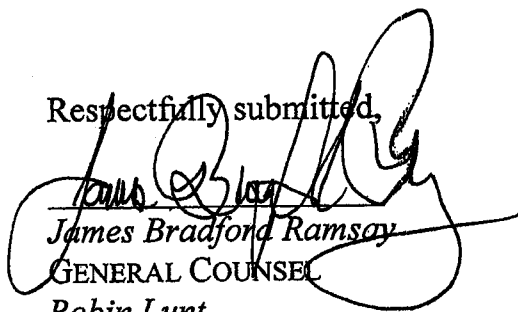
NATIONAL ASSOCIATION OF REGULATORY
UTILITY COMMISSIONERS
1101 VERMONT AVE., N.W., SUITE 200
WASHINGTON, D.C. 20005
(FAX) 202-384-1554

Dated: April 2, 2010

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, the National Association of Regulatory Utility Commissioners (NARUC) respectfully submits this disclosure statement. NARUC is a quasi-governmental nonprofit organization founded in 1889 and incorporated in the District of Columbia. NARUC is a "trade association" as that term is defined in Rule 26.1(b). NARUC has no parent company. No publicly held company has any ownership interest in NARUC. NARUC represents those government officials in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, charged with the duty of regulating, *inter alia*, the regulated electric utilities within their respective borders.

Respectfully submitted,



James Bradford Ramsay

GENERAL COUNSEL

Robin Lunt

ASSISTANT GENERAL COUNSEL

NATIONAL ASSOCIATION OF REGULATORY

UTILITY COMMISSIONERS

1101 VERMONT AVE., N.W., SUITE 200

WASHINGTON, D.C. 20005

Dated: April 2, 2010

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

NATIONAL ASSOCIATION OF)
REGULATORY UTILITY COMMISSIONERS,)

Petitioner,)

v.)

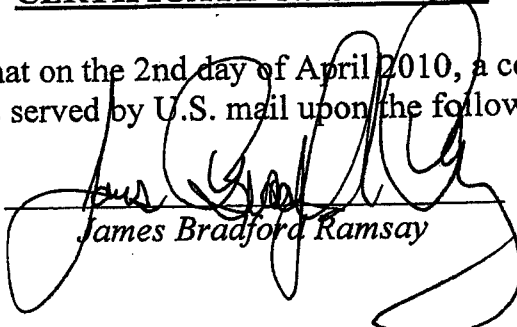
THE UNITED STATES)
DEPARTMENT OF ENERGY AND)
THE UNITED STATES OF AMERICA,)

Respondents,)

Case No. _____

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of April 2010, a copy of the foregoing Petition for Review was served by U.S. mail upon the following persons:


James Bradford Ramsay

Scott Blake Harris
General Counsel
Office of the General Counsel
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Ellen C. Ginsberg
General Counsel
Nuclear Energy Institute
1776 I Street, NW, Suite 400
Washington, D.C. 20006-3708

49 4

Exhibit A

19 4

**Letter from DOE to
NARUC
October 8, 2009**

**Department of Energy**

Washington, DC 20585

October 8, 2009

Mr. Frederick F. Butler
President
National Association of Regulatory
Utility Commissioners
1101 Vermont Avenue, NW
Suite 200
Washington, D.C. 20005

Dear Mr. Butler:

This letter is in response to your letter dated July 8, 2009, to Secretary Chu regarding your recommendation to suspend payments to the Nuclear Waste Fund. As Acting Director for the Office of Civilian Radioactive Waste Management, the Secretary has requested I respond to your letter.

Section 302 of the Nuclear Waste Policy Act of 1982, as amended (NWPAct), authorizes the Secretary of Energy to enter into a contract "with any person who generates or holds title to high-level radioactive waste or spent nuclear fuel of domestic origin for the acceptance of title and subsequent transportation and disposal of such waste or spent nuclear fuel"; that section further provides that in return for the payment of fees by the contract holder, the Federal Government will dispose of the contract holder's spent nuclear fuel and high-level radioactive waste. Additionally, that section requires that the fee and interest yield sufficient funds to offset the Government's expenditures in carrying out these responsibilities. These fees are deposited in the Nuclear Waste Fund in the U.S. Treasury. The current balance in the Nuclear Waste Fund is approximately \$23 billion.

Section 302 of the NWPAct also requires the Secretary of Energy to review annually the amount of the fee to determine whether projected fee collections will provide sufficient revenues to offset overall Program costs. The disposition of spent nuclear fuel is to be a full-cost recovery program. If the Secretary of Energy "determines that either insufficient or excess revenues are being collected" in order to cover the costs, the Secretary must "propose an adjustment to the Fee to ensure full cost recovery."

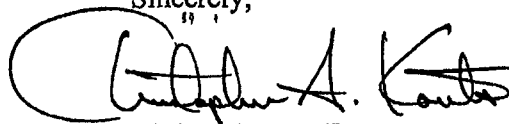
The Department of Energy has consistently determined that the current fee of 1/10-cent per kilowatt hour is adequate to cover the total system life cycle costs of disposing of the commercial spent nuclear fuel and high-level radioactive waste, using the assumptions in place at the time; and, in accordance with the Act, the fee will continue to be reviewed annually. On July 27, 2009, in response to Senate Energy and Water Appropriations language in H.R. 3183 related to suspension of collection of the fee, the Administration issued a Statement of Administration Policy stating that all of the fees collected in the



Nuclear Waste Fund are essential to meet the obligations of the Federal Government for managing and ultimately disposing of spent nuclear fuel and high-level radioactive waste.

We fully appreciate your perspective on this issue, and the Department will certainly take into consideration the views of the National Association of Regulatory Utility Commissioners as the policy process unfolds regarding how the Department should meet its contractual obligations to the nuclear industry for the management of spent nuclear fuel. If you have any questions and would like to discuss this matter further, please call me at 202-586-6850.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher A. Kouts". The signature is written in a cursive style with a large, prominent initial "C".

Christopher A. Kouts
Acting Director
Office of Civilian Radioactive
Waste Management

**Letter from NARUC
to DOE
July 8, 2009**



N A R U C
National Association of Regulatory Utility Commissioners

Frederick F. Butler, *President*
New Jersey Board of Public Utilities

David C. Coen, *First Vice President*
Vermont Public Service Board

Tony Clark, *Second Vice President*
North Dakota Public Service Commission

Charles E. Box, *Treasurer*
Illinois Commerce Commission

Charles D. Gray, *Executive Director*
Washington, DC Office

July 8, 2009

The Honorable Steven Chu
Secretary of Energy
U. S. Department of Energy
Forrestal Building 7A-257
1000 Independence Ave. S.W.
Washington, D.C. 20585

Dear Secretary Chu:

The National Association of Regulatory Utility Commissioners (NARUC) supports the request by the Nuclear Energy Institute (NEI) to suspend the fees paid by nuclear utilities to the Nuclear Waste Fund. With the declared intention of the President to terminate the Yucca Mountain repository, despite the 2002 Joint Resolution (P.L. 107-200) approving that site subject to successfully obtaining a license from the Nuclear Regulatory Commission, there is no clearly defined program for disposal of spent nuclear fuel and high-level radioactive waste. Therefore, there is no basis to assess the adequacy of fees that continue to be paid into the Nuclear Waste Fund.

The Department of Energy forecasts that \$769 million in fees will be paid into the Fund during the present FY 2009 and Congress appropriated \$145.4 million to the civilian radioactive waste management program. With another \$1,172 million in investment returns being projected to be credited to the Fund in the same period, DOE reports forecast a balance in the Fund at the end of FY 2009 of \$23.7 billion. In light of the Fund investment returns of over a billion dollars being forecast, it is more than sufficient to use the Fund balance to fund the \$98.4 million request in the FY 2010 Budget.

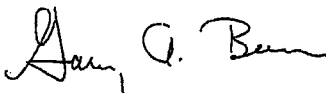
Our public utility commissioners find it extremely difficult to explain to ratepayers in States where their utilities provide nuclear-generated electricity that their electric bill includes pass-through of the Nuclear Waste Fund fees being paid to the Government for nuclear waste disposal that was to have begun in 1998. Now the fee payments continue to be paid even though no one can say for certain what the money will eventually be used for. If we are going to pause to reconsider disposal options, we feel it is also appropriate to pause the fee payments.

On a related matter, NARUC is preparing to provide our views to the blue-ribbon commission on developing a disposal strategy. We will emphasize the need for fundamental reform of the management of the Nuclear Waste Fund. We believe that financing nuclear waste disposal is as necessary to a successful nuclear waste disposal strategy as the technical and policy considerations. The Nuclear Waste Fund that was envisioned in the Nuclear Waste Policy Act has not functioned as intended and may be better protected if it were managed in a substantially different way. There needs to be much more transparency on the management of the Fund. In the meantime, we see no reason to collect fees when only 12 percent of the amount collected will be put to its intended use and no one knows how or when the spent fuel will be disposed of or perhaps be reprocessed at some distant time for unknown costs.

Thank you for attention to this matter. We would be pleased to discuss the industry proposal with you or your staff.



Frederick F. Butler
President



Garry A. Brown
Chairman
Committee on Electricity



David A. Wright
Chairman
Subcommittee on Nuclear
Issues-Waste Disposal

0 1

**Letter from NEI
to DOE
July 8, 2009**



NUCLEAR ENERGY INSTITUTE

Marvin S. Fertel
PRESIDENT AND CHIEF EXECUTIVE OFFICER

July 8, 2009

The Honorable Steven Chu
Secretary of Energy
U.S. Department of Energy
Forrestal Building 7A-257
1000 Independence Avenue, S.W.
Washington, DC 20585

Re: Performance of Annual Fee Adequacy Analysis and Suspension of Payments to Nuclear Waste Fund

Dear Dr. Chu:

The Nuclear Energy Institute (NEI)¹, on behalf of the commercial nuclear energy industry, is writing to express its deep concern about the federal government's failure to fully carry out the statutory obligation to implement the nuclear waste policy established almost three decades ago in the Nuclear Waste Policy Act of 1982 (NWPA or Act). In light of the Department of Energy's recent decision to terminate the Yucca Mountain repository project, the industry requests that your required annual fee adequacy review fully account for the impact of that termination on program costs, and that you suspend collection of payments to the Nuclear Waste Fund (Fund).

For several years, the industry has advocated that the government and industry implement an integrated strategy for used fuel management and disposal. That strategy includes on-site storage and private or government-sponsored centralized interim storage; research and development leading to the deployment of recycling technology that is safe, environmentally sound, economic, and enhances worldwide nonproliferation efforts; and ultimate disposal of spent nuclear fuel and high-level radioactive waste in a geologic repository. This strategy represents sound public policy and is wholly consistent with principles espoused by the Administration.

DOE has announced its intention to devise a new used nuclear fuel management strategy by convening a national commission to study and recommend alternative approaches—a laudable and potentially productive undertaking that the nuclear industry supports. However, the NWPA remains the law and it is incumbent on the Department to comply with its mandates. Indeed, you explicitly acknowledged the government's responsibility in your June 1, 2009 response to Senator Inhofe:

¹ NEI is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

The Honorable Steven Chu

July 8, 2009

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"[W]e remain committed to meeting our obligations for managing and ultimately disposing of spent nuclear fuel and high-level radioactive waste."

As discussed in greater detail below, the NWPA requires the Secretary of Energy annually to review whether the one mill per kilowatt-hour fee collected from utilities will provide revenue sufficient to offset the costs of the DOE used nuclear fuel management program. If the annual review reveals that the Fund's balance is either insufficient or in excess of that needed for the program, a fee adjustment is required. Cessation of the Yucca Mountain repository project activities, other than those limited to licensing, compels precisely that action.⁴¹ And, as the fees ultimately are borne by consumers of electricity from the nation's 104 reactors, equitable considerations also compel such an adjustment.

The NWPA established "a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository" (NWPA § 111(b)(1).) The original legislation provided a process for the nomination of at least five sites, and subsequent selection of three of those sites for characterization as candidates for a repository. Under the 1987 amendments to the NWPA, however, DOE was instructed to "provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site." (NWPA § 160(a)(1).) DOE was further directed to carry out "appropriate site characterization activities at the Yucca Mountain site," and "only such site characterization activities as the Secretary considers necessary to provide the data required for evaluation of such site for an application to be submitted to the [Nuclear Regulatory] Commission [NRC] for a construction authorization for a repository at such site, and for compliance with the National Environmental Policy Act of 1969." (NWPA §§ 113(a), (c)(1).) Enactment of the 2002 Yucca Mountain Development Act (P. L. No. 107-200, 116 Stat. 735) gave effect to the Presidential recommendation to Congress of Yucca Mountain as the location of the repository and that a license application be submitted to the NRC.

In addition to the direction Congress provided with respect to the programmatic aspects of repository development, the NWPA provides "that the costs of carrying out activities relating to the disposal of...[high level radioactive] waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel." NWPA § 111(b)(4). Payment by the owners and operators of the nation's nuclear power plants for the disposal program is obtained through a one mill per kilowatt-hour fee paid to the federal government and is held in the Nuclear Waste Fund. To date, nuclear utilities, through collections from consumers, have paid or obligated more than \$30 billion to the Fund. The Fund has a current balance of \$22 billion and generates annual interest of just over \$1 billion that is added to the corpus.

The Nuclear Waste Fund fee was established to recoup the government's costs for the program. The statute requires the Secretary to adjust the fee, either upwards or downwards, to achieve full cost recovery of the high level waste repository program. To implement this requirement, the NWPA directs the Secretary annually to review whether collection of the fee will provide sufficient revenues to offset the program costs. (NWPA § 302(a)(4).) That review, the results of which DOE has published in some years in an annual Fee Adequacy Report, necessarily must begin with a determination of the cost of the repository program then in place. Once the comparison between the revenue generated by the fee and the cost of the program has been made, the Secretary is obligated to adjust the fee to ensure the Fund accumulates only the amount necessary to ensure full

The Honorable Steven Chu
July 8, 2009
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cost recovery, and the fee charged utilities covers only that portion of the program costs attributable to disposal of used nuclear fuel from commercial reactors.

Until recently, the cost of the program reviewed for fee adequacy included the cost of constructing and operating the Yucca Mountain geologic repository. With the passage of the Omnibus Appropriations Act earlier this year, however, funding for Yucca Mountain repository program activities was essentially eliminated, with the exception of that directed to NRC licensing proceedings. More recently, DOE's fiscal 2010 budget request for the Office of Civilian Radioactive Waste Management was submitted to Congress explicitly to implement the Administration's decision to terminate the Yucca Mountain program while developing disposal alternatives.

Although the Department has ceased all of the Yucca Mountain repository program activities except NRC licensing, DOE continues to collect NWF fees at the one mill per kilowatt-hour rate last evaluated in the *Fiscal Year 2007 Civilian Radioactive Waste Management Fee Adequacy Report, July 2008 (DOE/RW-0593)*. This fee continues to be charged to consumers despite the fact that fundamental assumptions underlying that report concerning the repository program no longer apply. Thus, in the absence of the Yucca Mountain repository program, and given that the interest that the NWF accrues is more than enough money to cover the \$196.8 million provided for in fiscal 2010 budget proposal, payments into the Fund should be suspended.

In conclusion, because the assumptions previously used in the Department's fee adequacy analysis are no longer valid, the Nuclear Energy Institute, on behalf of the commercial nuclear energy industry, hereby requests that: (1) you promptly perform the annual review of the adequacy of the Nuclear Waste Fund fee to account for the present status and cost of the program; and (2) because the interest on the corpus of the NWF is more than sufficient to cover current Yucca Mountain program activities, you immediately suspend collection of payments to the NWF.

Thank you for your attention to this important matter. I would appreciate the opportunity to meet with you to discuss DOE's timely resolution of the industry's requests.

Sincerely,



Marvin S. Fertel

cc: The Honorable Dan Poneman
The Honorable Kristina Johnson
The Honorable Scott Blake Harris
Mr. Rod O'Connor
Mr. Dan Utech

Letter from DOE to
NEI
October 8, 2009



Department of Energy

Washington, DC 20585

October 8, 2009

Mr. Marvin Fertel
 President and Chief Executive Officer
 Nuclear Energy Institute
 1776 I Street, NW
 Suite 400
 Washington, D.C. 20006-3708

Dear Mr. Fertel:

This letter is in response to your letter dated July 8, 2009, to Secretary Chu regarding the need for an updated fee adequacy analysis and your recommendation to suspend payments to the Nuclear Waste Fund. As Acting Director for the Office of Civilian Radioactive Waste Management, the Secretary has requested I respond to your letter.

Section 302 of the Nuclear Waste Policy Act of 1982, as amended (NWPAA), authorizes the Secretary of Energy to enter into a contract "with any person who generates or holds title to high-level radioactive waste or spent nuclear fuel of domestic origin for the acceptance of title and subsequent transportation and disposal of such waste or spent nuclear fuel"; that section further provides that in return for the payment of fees by the contract holder, the Federal Government will dispose of the contract holder's spent nuclear fuel and high-level radioactive waste. Additionally, that section requires that the fee and interest yield sufficient funds to offset the Government's expenditures in carrying out these responsibilities. These fees are deposited in the Nuclear Waste Fund in the U.S. Treasury. The current balance in the Nuclear Waste Fund is approximately \$23 billion.

Section 302 of the NWPAA also requires the Secretary of Energy to review annually the amount of the fee to determine whether projected fee collections will provide sufficient revenues to offset overall Program costs. The disposition of spent nuclear fuel is to be a full-cost recovery program. If the Secretary of Energy "determines that either insufficient or excess revenues are being collected" in order to cover the costs, the Secretary must "propose an adjustment to the Fee to ensure full cost recovery."

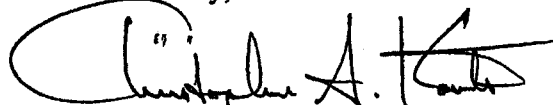
The Department of Energy has consistently determined that the current fee of 1/10-cent per kilowatt hour is adequate to cover the total system life cycle costs of disposing of the commercial spent nuclear fuel and high-level radioactive waste, using the assumptions in place at the time; and, in accordance with the Act, the fee will continue to be reviewed annually. On July 27, 2009, in response to Senate Energy and Water Appropriations language in H.R. 3183 related to suspension of collection of the fee, the Administration issued a Statement of Administration Policy stating that all of the fees collected in the



Nuclear Waste Fund are essential to meet the obligations of the Federal Government for managing and ultimately disposing of spent nuclear fuel and high-level radioactive waste.

We fully appreciate your perspective on this issue, and the Department will certainly take into consideration the views of the nuclear industry as the policy process unfolds regarding how the Department should meet its contractual obligations to the nuclear industry for the management of spent nuclear fuel. If you have any questions and would like to discuss this matter further, please call me at 202-586-6850.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher A. Kouts". The signature is stylized with a large, looped initial "C" and a long horizontal stroke at the end.

Christopher A. Kouts
Acting Director
Office of Civilian Radioactive
Waste Management

II. Outside Persons Who Wish to Address the Commission at Internal Affairs

***OUTSIDE PERSONS WHO WISH
TO ADDRESS THE COMMISSION AT***

***INTERNAL AFFAIRS
May 4, 2010***

<u>Speaker</u>	<u>Representing</u>	<u>Item #</u>
Gary Livingston Andy Tunnell	Gulf Power Company	2
Joe McGlothlin	Office of Public Counsel	4

III. Supplemental Materials Provided During Internal Affairs

NOTE: The records reflect that there were no supplemental materials provided to the Commission during this Internal Affairs meeting.