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Appeals courts orders Energy Dept. to suspend collection of millions paid for nuclear waste

Associated Press

November 19, 2013

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WASHINGTON -- A federal appeals court on Tuesday ordered the Energy Department to suspend collection of about \$750 million in fees annually for the permanent disposal of nuclear waste because the agency had no plans to use the money.

In a sharply worded opinion, the U.S. Court of Appeals for the District of Columbia said the Obama administration failed to provide a good reason why money for the federal Nuclear Waste Fund should continue to be collected.

The appeals court called a DOE analysis of the fee collection "absolutely useless" and compared the agency's arguments to "the old razzle dazzle" offered by a disreputable lawyer in the musical "Chicago."

Nuclear operators have paid more than \$27 billion over the years to help cover the costs of long-term storage and disposal of nuclear waste from the nation's 100 commercial nuclear reactors. With interest, the fund is

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approaching an estimated \$30 billion.

The money has sat idle for decades amid disputes about how to dispose of the waste. The Obama administration has moved to close a nuclear dump planned at Nevada's Yucca Mountain.

A DOE spokeswoman said the department was reviewing the court's opinion.

The Nuclear Energy Institute, an industry group, hailed the ruling.

"Today's decision confirms that the federal government cannot continue to defy Congress' explicit direction to implement a viable program to manage reactor fuel from America's nuclear power plants," said Ellen Ginsberg, the institute's general counsel.

The court ruling "reinforces the fundamental principle that the federal government's obligation is to carry out the law, whether or not the responsible agency or even the president agrees with the underlying policy," Ginsberg said.

The ruling marked the second time in three months the D.C. Appeals Court has rebuked the administration over a continued stalemate on how to store and dispose of nuclear waste. The court ruled in August that the Nuclear Regulatory Commission was "simply flouting the law" when it allowed the Energy Department to abandon the proposed Yucca Mountain waste site in Nevada. The action goes against a federal law designating Yucca Mountain as the nation's nuclear waste repository.

The appeals court at the time ordered the NRC to complete the review of Yucca Mountain and approve or reject the Energy Department's application for the never-completed project 90 miles from Las Vegas. The NRC said this week it has directed its staff to complete work on a key safety report related to Yucca Mountain.

In the opinion issued Tuesday, Senior Judge Laurence H. Silberman said the administration was contradicting itself in arguing that money for the Nuclear Waste Fund should continue to be collected even as the government no longer is pursuing Yucca Mountain as a long-term solution for nuclear waste storage.

The government "cannot have it both ways," Silberman wrote on behalf of a three-judge panel. "It cannot renounce Yucca Mountain and then reasonably use its costs as a proxy" for determining how much money should be paid into the Nuclear Waste Fund.

"The government was hoist on its own petard," Silberman wrote.

A group representing state utility regulators called the ruling great news for nuclear power consumers, who have spent billions to support nuclear waste storage. "Unfortunately all they have to show for their investment is a hole in the Nevada desert," said Charles Gray, executive director of the National Association of Regulatory Utility Commissioners.

Putting aside the political dispute about Yucca Mountain, "nuclear-power ratepayers should not be charged for a program the federal government has closed down," Gray said. "Thankfully, because of today's actions, nuclear-power consumers will no longer have to pay for the government's mishandling of this program."

GAO confirms new protest by B&W-led team on Y-12/Pantex contract award

Frank Munger's Atomic City Underground

November 20, 2013

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B&W-led Nuclear Production Partners has filed another protest on the Y-12/Pantex contract award, adding more intrigue to the long-running battle over a \$22 billion government contract.

Ralph White, the managing associate general counsel for procurement law at the

Government Accountability Office, confirmed that the latest challenge was received this afternoon.

Given the maximum 100-day review period, the GAO is due to rule on the latest protest on or before Feb. 28, White said.

This is the third protest filed by the Babcock & Wilcox team on the Y-12/Pantex contract, which was awarded to Bechtel-led Consolidated Nuclear Security in January and reaffirmed by the National Nuclear Security Administration in a new decision earlier this month.

This apparently will further delay the contractor transition activities at the Y-12 and Pantex nuclear weapons plants. Management of the two plants is being consolidated into one contract in order to gain efficiencies and save money, with the CNS team -- which also includes Lockheed Martin and other partners -- promising to save the government more than \$3 billion over the next decade.

NNSA spokeswoman Keri Fulton this afternoon declined comment on the latest protest.

There was no word whether the third bidder on the Y-12/Pantex contract -- Integrated Nuclear Solutions, led by Jacobs and Fluor -- planned to protest the latest award, but there apparently was nothing filed by later this afternoon.

Senate fails again to proceed with defense bill

Ed O'Keefe, The Washington Post

November 20, 2013

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The U.S. Senate failed again Wednesday to move ahead with debate on the annual defense authorization bill, a key measure that sets military

pay and policy.

Senators of both parties are hoping to complete work on the omnibus legislation by the end of the week, before beginning a two-week Thanksgiving recess. Failure to complete work on the bill this week leaves only a few days on the 2013 congressional calendar when the House and Senate will be in town simultaneously to broker a final deal.

"If we don't finish this bill this week, there cannot be a conference report, and then for the first time in 52 years there won't be a defense authorization bill," Sen. Carl Levin (D-Mich.), chairman of the Senate Armed Services Committee, said Wednesday afternoon.

The Senate on Wednesday had been debating two proposed amendments to the bill that would further revamp how the Pentagon handles thousands of estimated cases of assault and rape in the ranks each year. Sens. Kirsten Gillibrand (D-N.Y.) and Claire McCaskill (D-Mo.) spent most of the day leading an emotional discussion of the issue.

Majority Leader Harry M. Reid (D-Nev.) then came to the floor late in the afternoon and sought to move forward with votes on both proposals, but Republicans objected.

On Tuesday, senators voted down competing proposals over what to do with detainees held at the U.S. military detention facility at Guantanamo Bay, Cuba. The impasse once again complicates President Obama's goal of closing the detention facility, but also prevents language from being added to the defense bill that would make it harder to prosecute detainees in the United States or release them overseas.

Debt ceiling deadline pushed back

Burgess S Everett, Politico

November 20, 2013

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Members of Congress received word Wednesday that they will have some breathing room next year on raising the debt limit.

Though Congress agreed in October to hike the nation's borrowing authority through Feb. 7, the Treasury Department's use of extraordinary measures will likely give lawmakers an additional month to haggle over a deal to raise the debt ceiling above \$17.1 trillion, according to the Congressional Budget Office.

Tax refunds and revenue in the spring could push the deadline even further to May or early June, the CBO said.

Such an extension over the debt limit could ease the workload for lawmakers who are staring down a murderers' row of deadlines: A mid-December target to wrap up a bicameral budget conference; a mid-January expiration of government funding; and a February debt limit deadline.

But the longer Congress waits to act, the more the electoral politics of

2014 will come into play, potentially complicating a lift of the debt ceiling that is never easy anyway. Typically, Republicans have attempted to use a debt ceiling hike as a way to win spending cuts or other structural reforms while President Barack Obama warned he will not negotiate over the debt limit.

And a Treasury official said that Congress might have a shorter leash than CBO predicts, anyway.

"There's no indication right now that extraordinary measures would last longer than a month. Due to inherent variability, the numbers can go either way -- and sooner rather than later is probably more likely in this instance, due to the late open of the filing season," the official said.

In October, Congress came just hours within exhausting the United States' borrowing authority before Senate Majority Leader Harry Reid (D-Nev.) and Minority Leader Mitch McConnell (R-Ky.) struck a deal to reopen the government and avoid a potentially catastrophic path toward a debt default.

Citizens celebrate 'true success story' at the Alexander Inn [Manhattan Project History]

Beverly Majors, The Oak Ridger
November 19, 2013

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The famous and not-so-famous have walked the hallowed halls of one of Oak Ridge's most historic buildings and, with the newest efforts to revitalize it, the Alexander Inn will keep its historic qualities.

Those qualities include not only the front porch and its rocking chairs, but also the lasting memories of those who visited Oak Ridge during the Manhattan Project era -- physicists Enrico Fermi and J. Robert Oppenheimer, Major General Leslie Groves and a young senator named John F. Kennedy.

The Inn has sat in near ruins for decades -- but no longer.

On Thursday, city, state and county officials, as well as Oak Ridgers, and others, got a glimpse of what is to be -- the Inn with a new life, a new purpose.

Family Pride Corp. of Lenoir City plans to transform the Manhattan Project-era hotel into a state-of-the-art assisted living facility.

On Thursday, many people saw the beginning of that project when officials held "a formal groundbreaking press conference" to give neighbors and others "a unique opportunity" to see the early results of the rehabilitation process.

Mayor Tom Beehan talked about a photo taken after the war by Ed Westcott -- in Jackson Square -- then the town center

"It was the gathering place," the mayor said, adding the Alexander Inn revitalization will help in the revitalization of Jackson Square, in hopes of again making it a gathering place.

"Today, we celebrate the rebirth of the Alexander Inn," Beehan said, calling the new assisted living facility "a place to age in place."

Sue Cange, deputy manager for the Department of Energy-Oak Ridge Office of Environmental Management, talked about the Memorandum of Agreement with the Department of Energy that led to a \$500,000 grant to East Tennessee Preservation Alliance for the purchase the K-25 site (\$350,000) and partial stabilization (\$150,000) of the Alexander Inn.

According to Cange, in November 2011 DOE convened stakeholders for the demolition of the East Tennessee Technology Park, which was historically known as K-25, where uranium was processed for the Manhattan Project. DOE had to offset the loss of the building by creating a comprehensive mitigation package to ensure the building's legacy will survive beyond the demolition.

The MOA process included input from the National Park Service, the Tennessee Historical Commission, National Trust for Historic Preservation, the city of Oak Ridge, Oak Ridge Heritage Preservation Association (ORHPA), as well as others in an effort to put Oak Ridge and its historic sites into the Manhattan Project National Park. Those sites are to include the Alexander Inn.

"If the National Park legislation passes, the Alexander Inn will be a significant part of history," Cange said.

Patrick McIntyre, executive director of the Tennessee Historical Commission, said jokingly that the Alexander Inn "had all the history and none of the radiation."

According to McIntyre, the MOA calls for the Alexander Inn to be restored within a certain timeframe and according to the Secretary of Interior's Standards for Rehabilitation. Those standards ensure that the historic integrity of the building is maintained. Additionally, ETPA will hold a preservation easement to protect the building forever.

McIntyre said he traveled with city officials and others to Hanford, Wash., to talk about the project and mentioned the importance of the late city historian Bill Wilcox's contribution to the project. Wilcox died earlier this year.

"Bill is with us today and is a part of this, too," McIntyre said. "This is a true success story."

Ethiel Garlington, director of Preservation Field Services for East Tennessee Preservation Alliance, also addressed the group Thursday, thanking all the people and agencies involved in the revitalization plan but said the "stars" of the show are Rick Dover and his team from Family Pride.

"I've never worked on a building so beloved," Dover said.

Dover said once completed, the Alexander Inn will be open to the public, not just the residents.

"We plan to have regular social events here," he said.

Nuclear regulator predicts delays, cuts

Julian Hattem, The Hill

November 19, 2013

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Budget cuts and financial challenges will likely cause the Nuclear Regulatory Commission to cut back and delay some of its services, Chairwoman Allison Macfarlane said on Tuesday.

In remarks to a nuclear power conference in Atlanta, Ga., Macfarlane said that the 16-day government shutdown in October was only the "most recent and most problematic" outside finance challenge. Across-the-board cuts from sequestration and Congress's reliance on a series of short-term budget measures have also contributed to uncertainty at the agency, she said, according to prepared remarks.

Macfarlane told the conference that "the combination of well-grounded immediate priorities and constrained and unpredictable annual budgeting means that important longer-term work simply isn't going to get done.

"In some cases, it could mean additional delays - in others, it means certain activities may be temporarily suspended. And I know that this will continue to have impacts across the industry."

The agency used its rainy day fund to keep staffers on the job for all but four workdays of the shutdown, but the outage nonetheless cost the agency more than \$10 million, Macfarlane said. The shutdown contributed to delays in issuing regulations developed in the wake of the disaster at the Fukushima Daiichi site in Japan, among other efforts.

"For an agency that prides itself on careful, yet timely analysis and responsiveness to our licensees and members of the public, this was troubling," she said.

In order to avert another shutdown and a new round of budget cuts caused by sequestration, Congress would need to agree on a broad budget deal by Jan. 15.

Macfarlane said that the agency is already preparing for the possibility that legislators fail to reach that consensus.

"We're doing a careful assessment of how we performed before, during and after the shutdown because, unfortunately, we may find ourselves in the same position in January," she said.

Fifty Years of Laying Down the Law on Things Nuclear

Nuclear Regulatory Commission

November 20, 2013

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Fifty years ago, the U.S. was performing its first nuclear test at the Nevada Test Site, the Beach Boys introduced "surfin' " music, and three prisoners supposedly became the first and last to ever successfully escape from the prison on Alcatraz. And the first Atomic Safety and Licensing Board (ASLB) was created, and presided over a hearing on a proposed new nuclear reactor.

ASLBs independently review the NRC's actions to ensure they follow not only U.S. law, including the Atomic Energy Act and the National Environmental Policy Act, but also existing agency regulations and past precedent. A Board's rulings can make the NRC staff reconsider technical and legal conclusions they may have reached on a matter, and can even mean denial of license applications or amendments. Board decisions, though, can be appealed to the five-member Commission.

The original Atomic Energy Act in 1954 called for a single, legally-trained "hearing examiner" - today we'd say "administrative law judge" - to preside over legal and technical challenges to nuclear licensing and regulation. Later, when Congress amended the law in August 1962, the NRC's predecessor agency was able to use, instead, an approach that more appropriately addressed the relevant legal, scientific and regulatory issues -- three-member Atomic Safety and Licensing Boards that included one or more judges with scientific expertise.

The revised law's section 191 generally calls for a Board to have two technical members and a chairman "qualified in the conduct of administrative proceedings," a legislative term-of-art for "lawyer." The Atomic Energy Commission initially staffed these Licensing Boards using a pool of four attorneys (three of whom were already hearing examiners) and 11 technical specialists in areas including physics, nuclear engineering and nuclear chemistry.

The Board approach was put into practice in November 1962, for the Power Reactor Development Corp. case involving the Michigan-based Fermi I reactor. A week later the AEC appointed another Board to handle an uncontested construction permit case for a proposed Babcock and Wilcox test reactor near Lynchburg, Va. The Babcock and Wilcox Board conducted the first ASLB evidentiary hearing in Lynchburg on Dec. 10, 1962, and issued the first Board initial decision on Jan. 14, 1963.

In April 1967, the AEC created a process by which individuals from a panel of judges are assigned to particular Boards. Today's NRC refers cases to the ASLB Panel's chairman, who selects judges from among the Commission-appointed pool of full-time and part-time members. All told, between November 1962 and today, these special judges have presided over some 900 cases, covering not only issuing and renewing nuclear power reactors licenses, but also nuclear fuel cycle issues such as uranium enrichment.

The Boards' work also examines licensing various medical, academic, and industrial uses of nuclear materials, as well as high and low-level nuclear waste disposal facilities (such as dry cask spent fuel storage); reactor and materials site decommissioning; and cases involving enforcement orders and civil penalties.

As ASLBs have presided over all these cases, the Panel's pool of experts has expanded beyond law, nuclear engineering, and physics. Over the years, Board members have had expertise in such disciplines as health physics, medicine, chemistry, marine and land biology, ecology and environmental science, oceanography, geology and geophysics, economics, and mechanical, civil, sanitary, and environmental engineering. The five-member NRC Commission appoints both the full-time and part-time Panel members for their technical and legal expertise.

Survey: OMB's 2015 budget targets difficult to meet

Sean Reilly, Federal Times
November 20, 2013

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Federal agency budget officers are struggling to meet White House orders to spell out fresh spending cuts and combat program overlap in their fiscal 2015 budget submissions, the findings of a new survey suggest.

Out of 145 budget professionals who responded to the online survey by consultant Grant Thornton, 39 percent said it will be "difficult but doable" to identify spending cuts as much as 10 percent below a benchmark for this year, while another 28 percent said that "there is nothing left to cut" in the wake of earlier reductions.

Similarly, 46 percent said it will be "somewhat difficult" to find ways to reduce program "fragmentation, overlap and duplication" as instructed by the Office of Management and Budget; 25 percent rated the odds as "very difficult."

The unscientific survey was carried out by Grant Thornton in collaboration with the American Association for Budget and Program Analysis (AABPA); it is slated for official release Wednesday at an association breakfast at George Washington University in Washington.

In a May memo, OMB Director Sylvia Burwell told agencies to follow two scenarios in crafting their 2015 budget submissions: Pinpoint specific reductions that would add up to a 5 percent cut in discretionary spending below what OMB proposed giving them for 2015 in its budget request released this April and then spell out additional cuts amounting to a 10 percent reduction below the same threshold.

Agencies' proposals will give President Obama the options needed "to make the hard choices necessary to adhere to the [Budget Control Act's] discretionary funding levels, invest in priority areas, and focus on programs that work," Burwell wrote.

For the first, time, agencies are also supposed to add a separate section recommending how to deal with overlap and fragmentation in their programs. Those recommendations should also address Government Accountability Office suggestions in the same area, Burwell said.

Complicating agencies' 2015 budget planning is that they are operating under a stop-gap continuing resolution that keeps spending at fiscal 2013 post-sequester levels. That CR expires in mid-January, or less than three weeks before the Obama administration is supposed to release its 2015 budget request. A House-Senate committee is working to come up with a full-year 2014 spending deal by mid-December. Assuming that the panel reaches agreement, it could also head off a second sequester likely to take effect in January.

