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ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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August 22, 2013

The Honorable Ernest J. Moniz
Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20460

Dear Secretary Moniz:

Thank you for appearing before the Subcommittee on Environment and the Economy on Wednesday, July 31, 2013, to testify at the hearing entitled "Oversight of DOE's Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Thursday, September 5, 2013. Your responses should be e-mailed to the Legislative Clerk in Word format at Nick.Abraham@mail.house.gov and mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member,
Subcommittee on Environment and the Economy

Attachment

The Honorable John Shimkus

1. In your response to my June 28th letter, you attached a table that listed the laws under which you believe each used fuel activity is justified. Some were listed as authorized under the NWPA and others under the Atomic Energy Act of 1954 (AEA). It is clear that, in the NWPA amendments enacted in 1987, Congress directed DOE not to conduct further repository research on sites other than Yucca Mountain.

In its decision on *United States v. Estate of Romani*, the U.S. Supreme Court stated:

“...a specific policy embodied in a later statute should control our construction of the [earlier] statute, even though it ha[s] not been expressly amended.”

- a. Please explain why DOE believes it has the authority to follow some sections of the NWPA and ignore others.
- b. Please explain how DOE’s reliance on the AEA is consistent with the Supreme Court’s decision in *United States v. Estate of Romani*.
2. In your response to my June 28, 2013, letter, you provided a table citing the Nuclear Waste Policy Act (NWPA) as providing the authority for DOE’s interim storage activities. However, DOE’s 2008 “Report to Congress on the Demonstration of the Interim Storage of Spent Nuclear Fuel from Decommissioned Nuclear Power Reactor Sites” states that:

“...Section 141 of the NWPA...authorized the Department to site, construct, and operate a monitored retrievable storage (MRS) facility but restricted the ability of the Department to pursue this option by linking any activity under this section to milestones tied to progress in the development of the Yucca Mountain repository.”

 - a. Given that DOE has shut down the Yucca Mountain program, please explain how you can justify DOE’s interim storage activities as authorized under the NWPA.
 - b. Please explain the rationale for revising DOE’s interpretation of this authority under the NWPA.
 - c. Please list the sizes of the facilities DOE is currently evaluating for both the pilot facility and the “larger” facility.
 - d. Please list the limits on the size of an MRS as stated in the NWPA.
3. Does DOE need to expend any money to support the NRC’s issuance of the complete Safety Evaluation Report?
4. On June 22, 2012, DOE told the Court in *In re Aiken County* that it has approximately \$17 million in unobligated nuclear waste disposal carryover funds, as well as approximately \$8 million in obligated carryover funds, that it could use for the Yucca Mountain licensing proceeding, if the proceeding were ordered resumed. Is that money still available? If not, please detail the purposes for which it was expended.
5. In a previous hearing before this Committee I asked if you were aware of any scientific or technical issues that would prevent Yucca Mountain from being a safe repository. You responded by saying, “This is an NRC decision ultimately to be taken.” Do you believe the people of the United States deserve to know what the NRC concluded in its Safety Evaluation Report? If not, please explain how your response

conforms to President Obama's memorandums on *Transparency and Open Government*, and *Scientific Integrity*.

6. Is there any currently applicable appropriations legislation that specifically prohibits DOE from using general funds for purposes of supporting the license review or proceeding?
7. You indicated in the hearing that DOE staff has met with entities who might be interested in hosting facilities. Please explain the authority under which DOE has engaged in these consent-based activities. Please provide a list of all states, counties, local governments, economic development agencies, or any other organizations that DOE staff has met with to discuss their interest in hosting used fuel facilities.
8. DOE has refused to meet with representatives from Nye County, Nevada, in spite of their formal statement notifying DOE of their consent to host a repository. Please explain how DOE's authority to meet with the entities listed in response to the previous question would not also empower DOE to meet with Nye County representatives.
9. The NWPA authorized the Office of Nuclear Waste Negotiator to pursue consent-based siting. Please describe how your vision of consent-based siting differs from DOE's practical experience and why it would be more likely to yield a positive result, i.e. a repository site.
10. Please describe in detail the results of the consent-based siting process in Great Britain. Please also describe in detail your basis for concluding that a consent-based process would yield a positive result in the U.S.
11. The Waste Isolation Pilot Project in New Mexico is often cited as a successful example of consent-based siting. Please provide a comprehensive list of all administrative actions, citizen suits, injunction requests or other legal challenges to the development or opening of the facility including those initiated by the State of New Mexico, environmental stakeholders, or other plaintiffs or petitioners. The list should a description of the action, the date the action was commenced, the date it was resolved or concluded, and the outcome.
12. Is DOE using tax payer money to fund public opinion polling in any of these potential host states or communities? Are public preference studies different from public opinion polling? If so, please explain.
13. How long will it take the DOE to establish "generic" safety standards for a repository other than Yucca Mountain?
14. Please explain whether you believe that the science done by our national labs in support of the Yucca Mountain license application is sound. Is it possible that a viable safety case for the Yucca Mountain repository was made in the DOE license application? If not, please explain.
15. How long would it take to transfer 70,000 metric tons of spent nuclear fuel from a "larger" interim storage facility to a repository?
16. Please describe why you believe DOE has the authority to use Nuclear Waste Fund money to fund 180c transportation activities for destinations other than Yucca Mountain.
17. Given that DOE has resumed the study of granite formations, have you formally considered certain factors as listed in Section 161(d) of the Nuclear Waste Policy Act? Please provide a list of the states where granite formations are located that might be favorable for repository development and whether each state is impacted by the disqualifying factors listed in Section 161(d).

18. Do you believe deep borehole disposal conforms to the NWPAs retrievability requirement? Please provide a list of states that have geologic formations that might be favorable for the development of boreholes.
19. During the hearing you testified that the Administration strongly supports the BRC recommendations. Please explain why the Administration hasn't proposed legislation to implement the recommendations.
20. Section 302(a)(5)(B) of the NWPAs states: "in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel..."

Section 302(a)(6) continues: "The Secretary shall establish in writing criteria setting forth the terms and conditions under which such disposal services shall be made available."

During the hearing, you stated that:

"Again, the one mil per kilowatt hour is not to buy a facility. It's to buy a service. The service as far as the utility is concerned is spent fuel removal."

- a. While a utility's primary concern may be spent fuel removal, please explain how your redefinition of the service as spent fuel removal, rather than disposal:
 - i. Complies with the NWPAs; and
 - ii. Meets your responsibility as Secretary to protect public health and safety by developing a repository for the permanent disposal of spent nuclear fuel and high-level waste.
- b. Given how this redefinition of the service as spent fuel removal de-emphasizes permanent disposal, please describe why such a redefinition will not further increase communities concerns that any interim storage site will become a de facto permanent repository.
- c. Will the removal of spent nuclear fuel from an NRC-licensed site to a separate NRC-licensed site provide any increase in the safety or security of the stored spent fuel? If so, please explain.

The Honorable Gus M. Bilirakis

1. Mr. Secretary, in your testimony you mentioned the considerable cost of the federal government paying utilities for breaching its contract to dispose of used nuclear fuel. The failure of the federal government to fulfill its legal obligations has resulted in dozens of lawsuits and \$2 billion in payments to utilities so far, with the prospect of tens of billions of dollars in payments in the future. In addition, the Department of Justice has spent more than \$188 million through 2011 to litigate these cases. Considering how scarce taxpayer dollars are now, why doesn't the Department enter into fair and reasonable settlements with the utilities to minimize the ongoing costs of litigation?

The Honorable John D. Dingell

1. In 2006, you wrote an article expressing support for Yucca Mountain but in 2011 wrote another article saying that there needs to be an alternative to Yucca Mountain. Do you now believe that Yucca Mountain is no longer an option as a permanent repository? Please provide additional information for the record regarding the viability of Yucca Mountain as a permanent repository.

2. Among the BRC's recommendations is a consent based approach where localities across the country could volunteer to be the site of a new repository. Under the best case scenario, where all units of government, from local to state to federal, agree and there is a site that meets the needs for a repository of this kind, approximately how long and how much do you believe it would cost to go through this process?
3. The BRC report recommends "access to the funds nuclear utility ratepayers are providing for the purpose of nuclear waste management" and you propose non-legislative as well as legislative changes to achieve this goal. Can access to the funds be gained through non-legislative means?
4. In the 2011 article I referenced earlier, you noted that you are strong supporter of nuclear energy, developing new nuclear technologies, and investing in other energy technologies. Based on recent appropriations and the recently passed Energy and Water Appropriations from the House, do you believe your Department has the resources to invest in these new technologies to prevent, as you put it, America being "less competitive in the global technology market?" Would you please provide information for the record on how you intend to keep our country competitive?