



Department of Energy

Washington, DC 20585

June 5, 2014

The Honorable John Shimkus
Chairman
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
U. S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On September 10, 2013, Dr. Peter Lyons, Assistant Secretary for Nuclear Energy, testified regarding "Implementing the Nuclear Waste Policy Act – Next Steps".

Enclosed are the answers to 10 questions that were submitted by Representatives Bob Latta, Bill Johnson, John Dingell and you. Also enclosed are two Inserts that were requested by Representatives John Dingell and Tim Murphy to complete the hearing record.

If we can be of further assistance, please have your staff contact our Congressional Hearing Coordinator, Lillian Owen, at (202) 586-2031.

Sincerely,



Christopher E. Davis
Principal Deputy Assistant Secretary
for Congressional Affairs
Congressional and Intergovernmental Affairs

Enclosures

cc: The Honorable Paul Tonko, Ranking Member



QUESTION FROM CHAIRMAN JOHN SHIMKUS

- Q1. In terms of DOE's activities on spent nuclear fuel and high-level waste disposal, please indicate which activities receive higher priority and leadership focus:
- a. Following the Nuclear Waste Policy Act, complying with the August 13, 2013 Writ of Mandamus by the D.C. Circuit Court, and defending the Yucca Mountain license application; or
 - b. DOE's Strategy for the Management and Disposal of Used Nuclear Fuel and High-level Radioactive Waste which has not been authorized by Congress.

A1. The Department is committed to meeting its obligations to dispose of used nuclear fuel and high-level radioactive waste. All DOE activities regarding the management and disposal of used nuclear fuel and high-level radioactive waste are important and receive the Department's focused attention. As the Department has consistently stated, it will comply fully with the law and will evaluate and determine how to respond to applicable orders from the courts or the NRC. In addition, as previously conveyed to the Subcommittee, we are conducting activities within existing Congressional authorization to plan for the eventual transportation, storage and disposal of spent nuclear fuel and high-level waste. These activities are intended to facilitate the development of an interim storage facility, of a geologic repository and of the supporting transportation infrastructure. These activities are designed to not limit the options of either the Administration or the Congress.

The Administration released its *Strategy for the Management and Disposal of Used Nuclear Fuel and High Level Waste* in January 2013. The Strategy provides the framework for sustainable management and disposal of used nuclear fuel and high-level waste that is founded on consent-based siting, interim storage, geologic disposal, a new entity to manage the program, and

sustainable funding mechanisms. The Administration looks forward to working with Congress to build and implement the principles and elements of this Strategy.

QUESTION FROM CHAIRMAN JOHN SHIMKUS

Q2. Your response to my letter of August 26, 2013, letter listed several active contracts. Please provide a list of the expiration dates for those contracts, whether DOE intends to allow those contracts to expire, and any actions DOE intends to take to extend contracts and preserve DOE's access to those services and expertise.

A2:

Contract	Expiration Date	Planned Actions
USA REPOSITORY SERVICES LLC	March 31, 2014	<ul style="list-style-type: none"> Depending on actions to be undertaken by DOE in response to NRC requests or orders, this contract could be extended, in accordance with applicable law.
SANDIA CORPORATION	March 31, 2014	<ul style="list-style-type: none"> DOE will use the Sandia National Laboratories capabilities through the NNSA contract for that site. DOE will continue to utilize the services of the lab as necessary to support DOE's response to NRC requests or orders.
HUNTON AND WILLIAMS	December 31, 2013	<ul style="list-style-type: none"> Depending on actions to be undertaken by DOE in response to NRC requests or orders, this contract for legal services could be extended, in accordance with applicable law.
BOOZ ALLEN HAMILTON INC.	November 30, 2014	<ul style="list-style-type: none"> This contract for preparation of the Nuclear Waste Fee Adequacy Assessment could be extended in accordance with applicable law.
BROOKFIELD RELOCATION INC.(Travel/PCS)	September 30, 2015	<ul style="list-style-type: none"> This contract to reimburse employees for travel and permanent change of station expenses associated with the closure of the Office of Civilian Radioactive Waste Management could be extended in accordance with applicable law.
OFFICES, BOARDS & DIVISIONS (Fed Prison Ind., Inc.)	November 2015	<ul style="list-style-type: none"> This contract to disposition property associated with the closure of the Office of Civilian Radioactive Waste Management could be extended in accordance with applicable law.
GEOLOGICAL SURVEY, UNITED STATES DEPT OF INTERIOR	N/A	<ul style="list-style-type: none"> Interagency Agreement with USGS.
MORGAN, LEWIS & BOCKIUS LLP	December 31, 2016	<ul style="list-style-type: none"> Depending on actions to be undertaken by DOE in response to NRC requests or orders, this contract for legal services could be extended, in accordance with applicable law.
KPMG L.L.P.	September 2014	<ul style="list-style-type: none"> Auditing services for the Nuclear Waste Fund.

The Department's response to the referenced August 26, 2013 letter included a contract with Jason Associates Corporation as an active contract. In fact, that contract was not active at that time.

QUESTION FROM CHAIRMAN JOHN SHIMKUS

- Q3. Is DOE preparing to assemble a team of personnel and contractor support necessary to defend the license application? If not, why not? If so, please describe the actions underway.
- A3. On August 30, 2013, the Nuclear Regulatory Commission (NRC) issued an order requesting input from the parties to the licensing proceeding as to how the NRC should continue with the licensing process in light of the writ of mandamus from the U.S. Court of Appeals for the D.C. Circuit ordering the NRC to resume its review of the Yucca Mountain license application. As the Department has consistently stated, it will comply with the law and will evaluate and determine how to respond to applicable orders from the courts or the NRC.

QUESTION FROM CHAIRMAN JOHN SHIMKUS

- Q4. When will DOE provide the Committee a detailed estimate of the resources necessary for DOE to resume its program to support completion of the license review?**
- A4. As the Department has consistently stated, it will comply with the law and will evaluate and determine how to respond to applicable orders from the courts or the NRC.**

In FY 2010, the last year in which Congress appropriated funds for a repository at Yucca Mountain, the Administration's budget request for the Office of Civilian Radioactive Waste Management was \$196,800,000.

QUESTION FROM CHAIRMAN JOHN SHIMKUS

Q5. What was the basis for DOE's conclusion that the NWPA funds could be used to shut down the licensing process?

A5. The principles underlying the Department's use of NWPA funds in connection with the orderly closure of the Yucca Mountain Project were addressed in an April 12, 2010 letter from Scott Blake Harris, General Counsel of the Department of Energy, to the Honorable Rodney P. Frelinghuysen, Ranking Member of the Subcommittee on Energy and Water Development, Committee on Appropriations, U.S. House of Representatives. A copy of that letter is enclosed. As stated in that letter, the Subcommittee was apprised of the Department's exercise of authority to reprogram funds for use in the orderly closure of the Yucca Mountain Project, the funds were used consistently with the purpose for which they were appropriated, and the Department's actions with respect to the discontinuation of OCRWM operations and reprogramming of appropriated funds were within its proper authority.

QUESTION FROM CHAIRMAN JOHN SHIMKUS

- Q6. Has DOE examined whether the use of Nuclear Waste Fund money to close down the Yucca Mountain program was a violation of the Purpose Act? If so, please provide a legal memo outlining DOE's conclusions.**
- A6. The reprogrammed funds appropriated from the Nuclear Waste Fund that were used for the orderly closure of the Yucca Mountain Project were used consistently with the purpose for which they were appropriated as more fully explained in the enclosed April 12, 2010 letter.**

QUESTION FROM CHAIRMAN JOHN SHIMKUS

- Q7. Is DOE examining options for restoring or reimbursing the Nuclear Waste Fund money that was misspent on terminating the Yucca Mountain program? If so, please provide us a legal memo outlining DOE's conclusions.
- A7. As more fully explained in the enclosed April 12, 2010 letter, the funding used for the orderly closure of the Yucca Mountain Project was used consistently with the purpose for which they were appropriated. The appropriate Subcommittee was timely apprised of the basis for DOE's actions addressing the reprogramming of appropriated funds for the orderly closure of the Yucca Mountain Project.

QUESTION FROM REPRESENTATIVE BOB LATTA

Q1. Please explain the basis for your refusal to commit that DOE will neither attempt to slow or obstruct the resumption or pace of the license review.

A1. As we have consistently said, the Department will comply with the law and evaluate and determine how to respond to orders by the courts or the NRC.. The Department does not intend to slow or obstruct any aspect of the process.

QUESTION FROM REPRESENTATIVE BILL JOHNSON

A1. Will DOE, as the applicant in the Yucca Mountain license proceeding, once again advocate in favor of NRC granting construction authorization?

As the Department has consistently stated, it will comply with the law and evaluate and determine how to respond to orders by the courts or the NRC.

QUESTION FROM REPRESENTATIVE JOHN DINGELL

Q1. A D.C. Circuit Court decision in 2012 ordered DOE to reevaluate the fee assessment. Since the Yucca Mountain facility has not moved forward in recent years and there is statutorily no alternative site for a permanent high-level waste repository, has DOE considered whether it should continue to assess the fee?

A1. The Department of Energy's *Nuclear Waste Fund Fee Adequacy Assessment Report*, published and submitted to the U.S. Court of Appeals for the D.C. Circuit in January 2013, supports the need for continued collection of the fee. The obligation to take possession and dispose of used nuclear fuel from commercial contract holders remains, and the fees collected and interest earned are intended to offset the costs of performing our statutory and contractual obligations. As the Department has consistently stated, it will comply with the law and evaluate and determine how to respond to orders by the courts.

953 complete the work on the reports? Would you please answer
954 yes or no?

955 Ms. {Macfarlane.} As referenced earlier in previous
956 testimony, we said that it would cost to 6.5 million to
957 complete the SER--

958 Mr. {Dingell.} So the answer is--

959 Ms. {Macfarlane.} --but we have asked our staff to
960 update that number.

961 Mr. {Dingell.} Would you submit us a statement of the
962 status of those funds, please?

963 Now, Mr. Lyons, is DOE collecting fees into the Nuclear
964 Waste Fund? Yes or no?

965 Mr. {Lyons.} Yes, the funds continue to be--

966 Mr. {Dingell.} Thank you. The D.C. Circuit Court
967 decision in 2012 ordered DOE to reevaluate the fee
968 assessment. Since Yucca Mountain facility has not moved
969 forward in recent years and there is still no statutorily
970 alternative site for a permanent high-level waste repository,
971 has DOE considered whether it should continue to assess the
972 fee? Please answer yes or no.

973 Mr. {Lyons.} Mr. Dingell, as Secretary Moniz discussed
974 when he was with this subcommittee, the fees continue to be
975 collected because they--

976 Mr. {Dingell.} So--

977 Mr. {Lyons.} --reference a service of disposal of the
978 used fuel.

979 Mr. {Dingell.} Is that a yes or no, sir? My time is
980 very limited. Please, yes or no? To the question, yes or
981 no?

982 Mr. {Lyons.} Again, these--

983 Mr. {Dingell.} Okay. Would you please submit
984 additional information on that matter for purposes of the
985 record?

986 Now, because the Federal Government has not upheld its
987 responsibility to provide a permanent high-level nuclear
988 waste repository, it is my understanding that orders of
989 nuclear facilities are suing the Federal Government for
990 compensation to store waste on sites and locations across the
991 country. According to the February 2012 report by CRS, there
992 has been over \$2 billion in awards and settlements as a
993 result of these claims. These payments come from the
994 judgment funded by taxpayers' dollars. The Department of
995 Justice has spent approximately 200 million defending the
996 government against these claims.

997 Now, Madam Chairman, I urge NRC to focus on the
998 completion of the Safety Evaluation Reports. Should the
999 reports determine that the Yucca Mountain facility is
1000 appropriate, hopefully opponents will allow the process to

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The Department of Energy's *Nuclear Waste Fund Fee Adequacy Assessment Report*, published and submitted to the U.S. Court of Appeals for the D.C. Circuit in January 2013, supports the need for continued collection of the fee. The obligation to take possession and dispose of used nuclear fuel from commercial contract holders remains, and the fees collected and interest earned are intended to offset the costs of performing our statutory and contractual obligations. As the Department has consistently stated, it will comply with the law and evaluate and determine how to respond to orders by the courts.

1721 Resolution was the last time NRC and DOE received funding for
1722 the license review. Am I correct on that, Ms. Macfarlane?

1723 Ms. {Macfarlane.} I am sorry, the fiscal year--

1724 Mr. {Murphy.} The fiscal year 2011 Continuing
1725 Resolution was the last time NRC and DOE received funding for
1726 license review--

1727 Ms. {Macfarlane.} Yes.

1728 Mr. {Murphy.} --am I correct, Mr. Lyons, is that true
1729 as well?

1730 Ms. {Macfarlane.} I do believe that is correct.

1731 Mr. {Murphy.} And the purpose of that funding was to
1732 carry out the purposes of the Nuclear Waste Policy Act, am I
1733 correct?

1734 Ms. {Macfarlane.} Sorry?

1735 Mr. {Murphy.} The purpose of that funding was to carry
1736 out the purposes of the Nuclear Waste Policy Act?

1737 Ms. {Macfarlane.} Yes.

1738 Mr. {Murphy.} Am I correct?

1739 Ms. {Macfarlane.} Certainly.

1740 Mr. {Murphy.} And, Dr. Lyons, but DOE used that money
1741 for the opposite purpose, to shut down the Yucca Mountain
1742 program in an attempt to withdraw the license application, am
1743 I correct?

1744 Mr. {Lyons.} The fiscal year 2010 funding was used for

1745 shutdown of the program, yes.

1746 Mr. {Murphy.} All right. And, Dr. Macfarlane, the NRC
1747 also used that money to suspend the license review, correct?

1748 Ms. {Macfarlane.} Correct.

1749 Mr. {Murphy.} And, Dr. Lyons, how much money from the
1750 Nuclear Waste Fund did DOE spend to shut down the program?

1751 Mr. {Lyons.} I would prefer to give you a precise
1752 number. It was around 130 million but we can give it to you
1753 precisely in writing.

1754 Mr. {Murphy.} I have 138 million. I just wanted to be
1755 sure but let me know the precise number.

1756 Chairman Macfarlane, how much money from the Nuclear
1757 Waste Fund did NRC spend to suspend the license review?

1758 Ms. {Macfarlane.} I believe it was 7.4 million.

1759 Mr. {Murphy.} Okay. I thought it was a little bit
1760 more. Could you double-check the number, please?

1761 Ms. {Macfarlane.} I can certainly double-check the
1762 number.

1763 Mr. {Murphy.} So, to both of you, together your two
1764 agencies have spent, by my calculations, a little bit under
1765 \$150 million of electricity consumers' money shutting down a
1766 license review that the court has now said you have to
1767 complete. So electricity consumers throughout this country
1768 paid for you to conduct the license review, not to scuttle

COMMITTEE: HOUSE ENERGY AND COMMERCE

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WITNESS: PETER LYONS
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As of September 30, 2013, the Department has spent approximately \$163.1 million on the shutdown of the Yucca Mountain project and the closure of the Office of Civilian Radioactive Waste Management. Of this total, \$77.3 million were from the Nuclear Waste Fund with the remainder paid from appropriations for defense nuclear waste disposal activities.