



Department of Energy

Washington, DC 20585

October 6, 2006

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce
U. S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On July 19, 2006, Edward F. Sproat III, Director, Office of Civilian Radioactive Waste Management, testified before the Subcommittee on Energy and Air Quality regarding the "DOE's Revised Schedule for Yucca Mountain."

Enclosed are the answers to four questions that were submitted by you and Ranking Member Rick Boucher.

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

Sincerely,

A handwritten signature in cursive script that reads "Jill L. Sigal".

Jill L. Sigal
Assistant Secretary
Congressional and Intergovernmental Affairs

for

Enclosures



QUESTIONS FROM REPRESENTATIVES DINGELL AND BOUCHER

Yucca Mountain Funding Profile

- Q1. In keeping with Director Sproat's commitment at the July 19, 2006 hearing, please provide an updated version of the Department of Energy's (DOE) "Summary of Funding Profile" (see attached answer to Question 4 in DOE's April 26, 2004, letter to Rep. Dingell). Please specify (a) whether or not funds from the corpus of the Nuclear Waste Fund would be needed to provide adequate funding to meet the Department's 2017 target for opening a permanent repository at Yucca Mountain, and (b) in which years such funding would be needed.
- A1. We anticipate having the revised cash flows available to provide to the Committee by the end of CY 2006.

Interim Storage

- Q2. At the July 19 hearing, in addressing the interim storage proposal in section 313 of the FY2007 Senate Energy and Water Development appropriations bill, Director Sproat commented that he did not think "...centralized interim storage is going to buy very much..." if the Administration's Yucca Mountain bill were enacted. Do you agree with this statement?
- A2. Yes. If section 313 were to be pursued in addition to the reforms contained in the Administration's proposed legislation, it is unlikely that such a facility would be available appreciably before the repository. Given this fact, it is unlikely such a facility would permit the Department to significantly accelerate fulfillment of its contractual obligations. Thus it would be unlikely that the cost of developing a separate interim storage facility would be offset by any reduction in potential near-term liability. The Department continues to emphasize that interim storage is a temporary solution and is not a substitute for permanent geologic disposal.

Q3. In an August 2, 2006, letter to Chairman Pete Domenici, the Coalition of Northeastern Governors (CONEG) expressed concern about section 313 of the FY2007 Senate Energy and Water Development appropriations bill, suggesting that it “undermines the federal commitment by diverting these much needed funds away from the intended purpose of creating a safe and adequately designed permanent nuclear waste repository...”.

If section 313 were enacted, would DOE have the resources – both human and financial – to simultaneously develop interim storage facilities and still meet its 2017 target for beginning to accept waste for disposal at the Yucca Mountain repository?

A3. If section 313 of the FY 2007 Senate Energy and Water Development appropriations bill were enacted, without separate and additional funding for interim storage siting, design, licensing, construction and operations and overall funding reform for the Program, the Department would not have sufficient resources, both human and financial, to fulfill the requirements of section 313 and continue with the development of Yucca Mountain on the schedule we have put forth.

Over the years, questions have been raised about the extent of DOE’s ongoing breach of its Standard Contract with various nuclear utilities, and the possibility of further exacerbation of these claims by subsequent Congressional action.

In a 2006 order, a U.S. Court of Federal Claims judge ordered the Government to show cause why DOE’s breach of contract should not result in the Standard Contract between the utilities and DOE being declared void and whether restitution of monies previously paid into the Nuclear Waste Fund was an appropriate remedy. (*Sacramento Municipal Utility District v. U.S.*, U.S. Court of Federal Claims, April 21, 2005.)

In an August 10, 2005, letter to Rep. Dingell, DOE indicated that if Congress were to enact Committee report language (relating to H.R. 2419) directing DOE to develop centralized interim storage, this “could result in Winstar-type breach of contract claims” (reference to *U.S. v. Winstar* (518 U.S. 839, 1996)). The letter also indicated that if such legislation resulted in ‘further delay of acceptance by DOE to some amount of utility fuel, additional delay damages could accrue against the Government.’”

Similarly, in its August 2, 2006, letter, CONEG also commented that section 313 could undermine the Federal Government’s “long standing policy and contractual commitment with the nation’s utilities and with their ratepayers to assume responsibility for high level nuclear waste and to develop a nuclear waste repository.”

Could enactment of section 313 give rise to:

Q4(a). Higher damage claims in ongoing breach of contract lawsuits by utilities who might allege that Congress's new directive that DOE establish interim storage facilities resulted in additional delays in DOE's acceptance of spent fuel?

A4(a). If enactment of 313 resulted in increasing the delay in acceptance of utility spent nuclear fuel, it could increase the utilities' damages claims. On the other hand, if 313 decreased the delay in acceptance of utility spent nuclear fuel, it could decrease the utilities' damages claims.

Q4(b). *Winstar*-type lawsuits alleging a new and separate breach of contract as a result of Congress's requirement that DOE establish interim storage facilities (e.g. additional delay in the DOE's ability to accept spent fuel by some or all utilities, or the de facto subsidization by certain utilities of the construction of additional on site storage capacity)?

A4(b). As the Department indicated in its August 10, 2005, response, it is not clear that enactment of an interim storage program itself would give rise to *Winstar* liability exposure. If such a program's institution further delayed contract performance, that delay could enlarge the Government's exposure; if it accelerated contract performance, that event would reduce the Government's liability exposure.

Q4(c). Claims along the lines of the 2005 U.S. Federal Court of Claims judge's show cause order that the Congress's action voided DOE's Standard Contract with the utilities and that the appropriate remedy is restitution of monies previously paid into the Nuclear Waste Fund?

A4(c). While such claims potentially could be asserted, utilities to date have focused on recovering consequential damages.