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ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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May 4, 2004

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BUD ALBRIGHT, STAFF DIRECTOR

The Honorable Joshua B. Bolten
Director
Office of Management and Budget
725 - 17th Street, N.W.
Washington, D.C. 20503

Dear Director Bolten:

As you know, the Subcommittee on Energy and Power held a legislative hearing on March 25, 2004, on the Department of Energy's (DOE) program to license and construct a repository at Yucca Mountain pursuant to its authority under the Nuclear Waste Policy Act of 1982 (the Act).

At the hearing, DOE Undersecretary of Energy Robert Card testified in support of the Administration's legislative proposal concerning future contributions to the Nuclear Waste Fund (the Fund). Mr. Card described this approach, as embodied in H.R. 3981 (introduced by Chairman Barton by request on March 17, 2004) as follows:

"Specifically, under the Administration's proposal, the amount of receipts from annual fees would be credited as offsetting collections. The amount credited as offsetting collections would still be subject to approval in an appropriations act, but could be appropriated without reducing the funding that would be available for other federal programs."

For some time, I have been concerned that money contributed by ratepayers to the Fund is overly vulnerable to budgetary pressures. As a consequence, even if DOE receives a license from the Nuclear Regulatory Commission (NRC) to construct and operate the repository, without reform, adequate funding may not be available. I commend the Administration for recognizing this problem, although I believe that a more comprehensive solution is needed to protect the \$14 billion currently in the Fund. Moreover, it appears that the Administration's proposed solution will increase the deficit, at a time when deficits already are ballooning.

In order to assist members in evaluating H.R. 3981, please respond to the following:

First, given the limited number of legislative days left in the session, the prospects for enacting funding legislation this year are slim. This raises the question whether any non-legislative alternatives exist to help ensure adequate funding. It recently has come to my attention that some believe that OMB could take administrative action to achieve the same purposes as the Administration's legislative proposal. Does OMB currently have authority to accomplish the objectives of H.R. 3981 through administrative action? If so, please describe such authority, including the conditions under which it could be exercised and any limitations thereto.

Second, I am also interested in how the \$14 billion currently in the Fund might be protected. Four years ago we were in surplus, with large surpluses forecast for the decade. Under that scenario, it appeared that the full Fund would be available to the repository program when needed, consistent with the intent of the Act. Since then, we have seen a budget surplus turned into an enormous deficit. It appears that tax cuts which have gone mostly to very wealthy individuals have been financed by various trust funds, including Social Security, Medicare, and the Nuclear Waste Fund, which were paid for by workers and, in the last instance, by electricity consumers. I call upon you to develop a plan for returning the Fund to its designated use. Perhaps the fee should be suspended while the \$14 billion is expended on its intended purpose. At the same time, I ask you to propose necessary offsets so this revenue loss will not increase a deficit which is already too high.

In light of the urgency of ensuring that DOE have sufficient funding to fulfill its responsibilities under the Act, and the importance of Members of Congress having a full understanding of various options for achieving that goal, I would appreciate your response no later than Tuesday, May 11, 2004.

Sincerely,



JOHN D. DINGELL
RANKING MEMBER

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce