

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

February 29, 2016

The Honorable Gene Dodaro  
Comptroller General  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

Dear Mr. Dodaro:

Nuclear power, currently generating about 20 percent of total U.S. power output, is vital to a diverse energy portfolio. However, recent announcements that some reactors will enter the decommissioning process prior to the expiration of their operating licenses and ongoing legal challenges to the Nuclear Regulatory Commission's (NRC) "continued storage rule,"<sup>1</sup> make it urgent to reconstitute the Federal nuclear waste disposal program as established in the Nuclear Waste Policy Act (NWPA). In the meantime, the DOE Inspector General calculates the cost for the Federal government's inability to fulfill its statutory obligation to accept commercial spent nuclear fuel at over one billion dollars per year.<sup>2</sup>

On August 13, 2013, the U.S. Court of Appeals for the D. C. Circuit ordered the NRC to resume its review of the Yucca Mountain license application (LA).<sup>3</sup> On August 30, then-Assistant Secretary for Nuclear Energy Peter Lyons affirmed DOE would comply with the law and support the NRC's review of the Yucca Mountain license application should that review be recommended, subject to the availability of funds.<sup>4</sup> DOE listed ten active contracts to be utilized in support of the license review.

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<sup>1</sup> State of New York, Et Al; Prairie Island Indian Community; Beyond Nuclear, Inc., Et Al.; and Natural Resources Defense Council, Inc., and Commonwealth of Massachusetts v. United State Nuclear Regulatory Commission and the United States of America, and Nuclear Energy Institute. No. 14-1210, consolidated with Nos. 14-1212, 14-1216, 14-1217.

<sup>2</sup> Department of Energy Office of Inspector General, "Audit Report: Department of Energy Nuclear Waste Fund's Fiscal Year 2015 Financial Statement Audit," OAI-FS-16-03, December 2015. Accessible at: <http://energy.gov/sites/prod/files/2015/12/f27/OAI-FS-16-03.pdf>

<sup>3</sup> United States Court of Appeals for the D.C. Circuit, No. 11-1271 "In Re: Aiken County, Et Al.," August 13, 2013.

<sup>4</sup> Letter from Assistant Secretary for Nuclear Energy Peter B. Lyons to Subcommittee on Environment and the Economy Chairman John Shimkus, August 30, 2013.

Since the August 2013 court decision, DOE has maintained a balance of funding to support the Yucca Mountain LA. As of December 31, 2015, DOE had approximately \$19.5 million in unobligated balances in the Defense Nuclear Waste Disposal and Nuclear Waste Disposal accounts.<sup>6</sup>

Should Congress appropriate additional funding to complete the Yucca Mountain LA DOE must comply with the court order and defend the LA during the NRC's review process. In doing so, DOE would have to utilize contract support and have an organization to manage the activities.<sup>7</sup>

To help the committee assess the needs of DOE's nuclear waste repository program, we ask that GAO address the following:

1. Does DOE have a restart plan to complete the review of the Yucca Mountain LA? If so, does the plan comply with all aspects of the NWPA? If not, what are the gaps?
2. What is the current status and availability of the contracts and contractors to support the licensing and program restart?
3. What specific contracting and DOE personnel remain to assist in the completion of the LA?
4. Do the contractor(s) have sufficient funding available for timely and effective restart of their needed functions? If so, are funds adequate to enable completion of the LA review process? If not, what funding is needed and what are the cost and schedule estimates for funding?
5. What plans or instructions are in place to find, and use, the Yucca Mountain records which were archived during the shutdown process?
6. Does the NRC have the necessary expertise and organization in place to complete its review of the Yucca Mountain LA?

Thank you for your prompt attention to this request. Please work with Peter Spencer and Andy Zach of the committee majority staff at (202) 225-2927 on the specifics of your examination.

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<sup>5</sup> The NRC is currently complying with the court order by completing the Supplemental Environmental Impact Statement on potential groundwater impacts from Yucca Mountain.

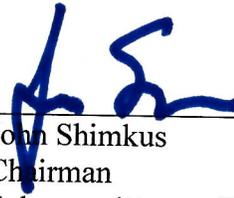
<sup>6</sup> Letter from Acting Assistant Secretary for Nuclear Energy John Kotek to Subcommittee on Environment and the Economy Chairman John Shimkus, February 23, 2016.

<sup>7</sup> In 2010, the Administration dismantled the Office of Civilian Radioactive Waste Management, which was established as a part of the Nuclear Waste Policy Act to lead the development of a nuclear waste repository.

Sincerely,



Fred Upton  
Chairman



John Shimkus  
Chairman  
Subcommittee on Environment and  
the Economy

cc: Frank Pallone  
Ranking Member

Paul Tonko  
Ranking Member  
Subcommittee on Environment and the Economy