

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

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

March 17, 2016

The Honorable Ernest Moniz
Secretary of Energy
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Secretary Moniz:

This Congress, the Environment and the Economy Subcommittee has examined issues associated with developing a comprehensive solution for used fuel management policy.¹ Meanwhile, the Department of Energy (DOE) has undertaken steps to implement its “*Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste.*”² The Federal government must fulfill statutory obligations as soon as possible. Expediently resuming work on the Yucca Mountain License application would do just that.³

Recently, we asked the Government Accountability Office (GAO) to examine for the Committee what would be necessary for DOE to fulfill its obligation to complete its work on the Yucca Mountain License Application. During your March 2 appearance before the Energy &

¹ Energy and Commerce Subcommittee on Environment and the Economy “Update on the Current State of Nuclear Waste,” May 15, 2015; “Transporting Nuclear Materials: Design, Logistics, and Shipment,” October 1, 2015; “Update on Low-Level Radioactive Waste Disposal Issues,” October 28, 2015; “The Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues,” December 3, 2015.

² The Department of Energy, “*Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste,*” January 11, 2013. Accessible at: <http://www.energy.gov/downloads/strategy-management-and-disposal-used-nuclear-fuel-and-high-level-radioactive-waste>

³ Latourrette, Tom, Thomas Light, Debra Knopman, and James Bartis, “*Managing Spent Nuclear Fuel: Strategy Alternatives and Policy Implications,*” Rand Corporation, 2010. P. 77. Accessible at: http://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND_MG970.pdf

Power Subcommittee you committed to cooperate with the GAO on its project, and we appreciate that.

As part of our process to develop a comprehensive legislative framework, we look forward to hearing from you at a future Committee hearing about what legislative authority the Department needs to implement its "Strategy." We will work with your office to find a mutually agreeable hearing date, following your response to the questions below.

To help inform the Committee's examination of a comprehensive nuclear waste management policy, please respond to the following items by April 14, 2016:

Yucca Mountain Support Activities

1. Please update the status of the active contracts listed in Enclosure 2 of DOE's letter to the Committee, dated August 30, 2013.⁴
2. Will DOE maintain active contracts until Congress takes action to amend the Nuclear Waste Policy Act (NWPA) or until the Department has depleted all funding in the Defense Nuclear Waste Disposal and Nuclear Waste Disposal accounts?
3. The Department's 2013 letter stated "DOE has taken steps to ensure that, while there would be some delay, it could resume the licensing proceeding if so ordered, subject to the availability of funds."⁵ Has DOE maintained the necessary expertise, infrastructure and supporting documentation to restart the Yucca Mountain repository program?

Nuclear Waste Policy Act Compliance

4. The NWPA terminated all site specific activities other than Yucca Mountain.⁶ However, in November, you stated Department "staff is reviewing a proposal to build a temporary storage site in Andrews County, Texas"⁷ and recently you stated Department staff "has already met with private-sector officials on interim storage."⁸

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

⁵ Assistant Secretary Lyons to Subcommittee Chairman Shimkus.

⁶ Nuclear Waste Policy Act, Section 160.

⁷ Boston Globe, "Security, storage concerns linger at closed nuclear sites," David Abel. November 26, 2015. Accessible at: <https://www.bostonglobe.com/metro/2015/11/26/the-long-road-decommissioning-nuclear-power-plant/k5VWUQzLKCIz2VuYs8RhoO/story.html>

⁸ Environment and Energy Daily, "Efforts to break impasse face familiar snag on Hill," March, 2016. Accessible at: <http://www.eenews.net/eedaily/stories/1060033286>

- a) Under what statutory authority does DOE engage in these site specific discussions?
 - b) Please list meetings, including dates and attendees, you and your staff have had with non-Federal stakeholders to discuss siting interim storage facilities.
5. The NWPA requires the Nuclear Regulatory Commission (NRC) to issue a license to construct a permanent, geologic repository at Yucca Mountain prior to the submission of a license for a monitored, retrievable storage facility, or a consolidated interim storage facility. DOE's current "Strategy" states, "The Administration also agrees with the [Blue Ribbon Commission] that a linkage between opening an interim storage facility and progress toward a repository is important so that states and communities that consent to hosting a consolidated interim storage facility do not face the prospect of a *de facto* permanent facility without consent."⁹
- a) How does DOE propose that linkage is adequately established to assure a storage facility does not become a *de facto* permanent facility?
 - b) Has DOE prepared any plans relating to linkage in anticipation of potential statutory direction?

Consolidated Interim Storage

6. In Fiscal Year (FY) 1998, DOE in anticipation of "potential statutory direction that may include transportation of spent nuclear fuel and high-level waste to a designated interim storage facility,"¹⁰ completed a design and safety analyses for a Centralized Interim Storage Facility (CISF) and submitted a Topical Safety Analysis Report (TSAR) to the NRC for final review on September 1998.¹¹

Additionally, the Yucca Mountain License Application included potential components of a CISF with the Initial Handling Facility, Canister Receipt and Closure Facility, Receipt Facility, and Wet Handling Facility.¹²

On March 4, DOE published a Request for Proposal (RFP) for a generic design and

⁹ DOE, "Strategy."

¹⁰ Department of Energy Inspector General, "Report on 'Audit of the U.S. Department of Energy's Consolidated Financial Statements for Fiscal Years 1998 and 1997,'" February 25, 1999. P. 21. Accessible at: <http://energy.gov/sites/prod/files/igprod/documents/CalendarYear1999/igrpt.pdf>

¹¹ Id.

¹² U.S. Department of Energy, Office of Civilian Radioactive Waste Management, "Yucca Mountain Repository License Application: General Information," DOE/RW-0573, June 2008. Accessible at: <http://pbadupws.nrc.gov/docs/ML0815/ML081560408.pdf>

TSAR for a pilot interim storage facility for spent nuclear waste.¹³

- a) Did DOE consider any components of the 1998 CISF TSAR to inform the RFP?
 - b) Did DOE consider the key design components from the Yucca Mountain License Application prior to issuing the RFP?
 - c) How does DOE's RFP for a TSAR for a pilot interim storage facility differ from the 1998 CISF TSAR or various facilities included as part of the Yucca Mountain License Application?
 - d) How did key findings and recommendations from previous studies of spent nuclear fuel storage facilities inform the Department's decision to issue a new RFP?
7. In 2008, DOE, at the direction of Congress,¹⁴ considered "consolidation of the [spent nuclear fuel (SNF)] from decommissioned reactors either at an existing federal site, at one or more existing operating reactor sites, or at a competitively-selected interim storage site."¹⁵

a) The report found:

"Because most of the ten decommissioned reactors have already incurred costs for their onsite storage facilities, a limited demonstration program to remove the SNF from these sites to an interim storage facility would not significantly change the estimated overall liability of \$11 billion. At the same time, directing the priority acceptance of SNF from the ten decommissioned reactors would likely result in additional litigation from contract holders with operating reactors, as well as in demands for acceptance of their SNF at an interim storage facility."¹⁶

As part of the development of DOE's "Strategy," did the Department reevaluate potential costs and reductions of liability from developing a pilot interim storage facility to accept fuel from decommissioned plants? If so, please provide this assessment.

¹³ U.S. Department of Energy, Solicitation DE-SOL-0008687.

¹⁴ Consolidated Appropriations Act, P.L. 110-161.

¹⁵ U.S. Department of Energy, Office of Civilian Radioactive Waste Management, "Report to Congress on the Demonstration of the Interim Storage of Spent Nuclear Fuel from Decommissioned Nuclear Power Reactor Sites," December 2008. Accessible at:

https://curie.ornl.gov/system/files/documents/167/es_interim_storage_report_120108.pdf

¹⁶ Id. P. 6

- b) The 2008 report estimated the total cost for a consolidated interim storage facility to be \$743 million.¹⁷ Has DOE reevaluated the previous cost assessment as a part of its nuclear waste management strategy? If so, please provide the report.

“Standard Contract” for Nuclear Power Facilities

- 8. The NWPA prohibits the NRC from issuing or renewing a license for a nuclear power reactor unless the utility has entered into a contract, known as the “Standard Contract,” with the Secretary of Energy to dispose of SNF.¹⁸
 - a) The Standard Contract governs the payment of the “nuclear waste fee,” to support the development, licensing, and operation of the permanent repository at Yucca Mountain. In 2013, the D.C. Court of Appeals ordered DOE to halt the collection of the fee due to the lack of a defensible repository program.¹⁹ Has DOE evaluated whether it has the authority to enter into a new Standard Contract in light of the Court’s decision?
 - b) Since the Court ruling, has DOE consulted with NRC whether the Commission can issue or renew a license under the Commission’s authority provided by the Atomic Energy Act? If so, please provide any supporting documentation.
 - c) Has DOE consulted with the Department of Justice (DOJ) as to whether DOE has the authority to enter into a new Standard Contract? If so, please provide DOJ’s legal determination.

DOE “Strategy for the Management and Disposal of Used Nuclear Fuel”

- 9. DOE’s “Strategy” calls for a pilot interim storage facility to be opened and receiving nuclear fuel from shut-down reactor sites by 2021. In August 2015, the Department announced the procurement of the railcars to ship SNF, which would be available in seven to nine years.
 - a) How does DOE reconcile the conflicting timeline associated with railcar procurement and the operation of a pilot interim storage facility?
 - b) DOE Inspector General’s (DOE IG) audit of liability associated with SNF is predicated on the assumptions from implementation of the Department’s “Strategy.” In the most recent audit, did DOE inform the IG about the expected procurement timeframe, as stated last year?

¹⁷ Id. P. 14

¹⁸ NWPA, Sec 302.

¹⁹ United States Court of Appeals for the D.C. Circuit, No. 11-1066 “National Association of Regulatory Utility Commissioners v. United States Department of Energy,” November 19, 2013.

Nuclear Waste Fund and Budget Requirements

10. On February 12, 2016, the National Association of Regulatory Utility Commissioners (NARUC), Nuclear Waste Strategy Coalition (NWSC), and Nuclear Energy Institute (NEI) requested the Department provide an “accurate and clear annual report of the [Nuclear Waste Fund] status to the nation’s electric consumers and taxpayers.”²⁰ Will you commit to issuing this financial management report prior to the end of the year?
11. It is reported the cost estimate to implement DOE’s strategy is \$4.5 billion over the next ten years.²¹ Has DOE examined the impact of this cost on the adequacy of the NWF for constructing a permanent repository?

Disposal of Defense High-Level Radioactive Waste

12. Last year, the Committee wrote you seeking additional information regarding DOE’s decision to decouple SNF from high-level radioactive waste (HLW) generated from atomic energy defense activities.²² Since then, has the Department conducted further cost estimates or analysis of a repository to dispose of only defense waste?
13. Recently, the Pierce County (ND) Commission unanimously voted to shut down DOE’s project to test a deep borehole to dispose of nuclear waste.²³ At your appearance before the Committee on March 2, you stated that this award was to support a science experiment, not a consent-based facility. However, as demonstrated by the Pierce County Commission, the science experiment still needed the consent of local stakeholders. By contrast, the NWPAA codified a siting process for a nuclear facility that this Administration abandoned.
 - a) How will the Pierce County moratorium on deep borehole drilling impact DOE’s program to dispose of defense HLW?
 - b) Did DOE communicate with state and local stakeholders from the State of North Dakota or Pierce County prior to announcing the award?

²⁰ Letter from Travis Kavulla, Sarah Hoffmann, and Marvin Fertel to Secretary Moniz, February 12, 2016. Accessible at: <http://thenwsc.org/naruc-nei-and-nwsc-letter-to-department-of-energy/>

²¹ Marshall, Christa; Hannah Hess, and Geof Koss, “*Spending request would rev up ‘Mission Innovation’*,” Energy and Environment Greenwire, February 9, 2016. Accessible at: <http://www.eenews.net/greenwire/2016/02/09/stories/1060032084>

²² Letter from Energy and Commerce Committee Chairman Fred Upton and Ranking Member Frank Pallone to Secretary of Energy Ernest Moniz, April 14, 2015.

²³ Donavan, Lauren, “*Borehole project for exploring nuclear waste disposal shut down*,” Grand Forks Herald, March 1, 2016. Accessible at: <http://www.grandforksherald.com/news/region/3959967-borehole-project-exploring-nuclear-waste-disposal-shut-down>

- c) Please provide all letters of support from state, local, and tribal stakeholders which accompanied all applications for DOE Request for Proposal for Deep Borehole Field Test.²⁴

Transportation of Spent Nuclear Fuel

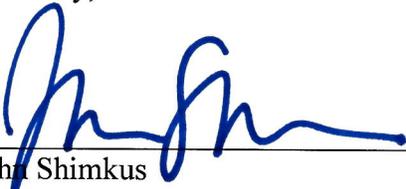
14. The Subcommittee received testimony that DOE should provide technical assistance and funding to States for emergency response training, authorized by Section 180(c) of the NWPA.²⁵ How is DOE engaging with State organizations to assure that emergency responders are adequately prepared to transport fuel at the earliest timeframe? Please list funding disbursed by DOE under Section 180(c) in the last three fiscal years.

If you have any questions regarding this letter, please contact Andy Zach of the committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



John Shimkus
Chairman
Subcommittee on Environment
and the Economy

Cc: The Honorable Frank J. Pallone, Jr., Ranking Member

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

²⁴ U.S. Department of Energy, Solicitation DE-SOL-0008071

²⁵ Subcommittee on Environment and the Economy hearing, October 1, 2015.