



Department of Energy

Washington, DC 20585

January 6, 2014

The Honorable Fred Upton
Chairman
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Upton:

Thank you for your letter of December 11, 2013, regarding the recent decision by the Court of Appeals for the D.C. Circuit regarding the waste fee and the order of the Nuclear Regulatory Commission (NRC) regarding resumption of the licensing activities for the Yucca Mountain Project. Secretary Moniz asked me to respond to your letter.

On November 19, the U.S. Court of Appeals for the D.C. Circuit issued a decision in the case brought by the National Association of Regulatory Utility Commissioners and others regarding collection of the Nuclear Waste Fund fee. On December 20, 2013, the D.C. Circuit granted the petitioners' request to expedite issuance of the mandate and issued the mandate in the same case. Consistent with the Court's mandate, and notwithstanding the absence of the determination required to be made pursuant to the Nuclear Waste Policy Act of 1982, as amended, the Department has submitted a proposal to Congress to adjust the current fee to zero, subject to any further judicial decision in this case. On January 3, 2014, the Department of Justice, on behalf of the Department of Energy, filed a petition seeking rehearing *en banc* of the D.C. Circuit's panel decision on the ground that the panel erred. A copy of the fee proposal and the petition for rehearing are enclosed.

On November 18, the Nuclear Regulatory Commission issued an order for resuming licensing activities consistent with the mandamus decision of the U.S. Court of Appeals for the D.C. Circuit. The NRC order requested that the Department of Energy complete the groundwater supplement to the environmental impact statement and provide the NRC staff with documents in DOE's Licensing Support Network collection as needed. The order also asked that the Department provide any information or support requested by the NRC staff to facilitate timely completion and issuance of the remaining volumes of the Yucca Mountain Safety Evaluation Report. The Department will honor these requests using existing Nuclear Waste Fund carryover balances.

This Department continues to believe that any workable solution for the final disposition of used fuel and nuclear waste must be based not only on sound science but also on achieving public acceptance at the local, state and tribal level. The Department believes a



This Department continues to believe that any workable solution for the final disposition of used fuel and nuclear waste must be based not only on sound science but also on achieving public acceptance at the local, state and tribal level. The Department believes a consent-based solution to long-term management of used fuel and high-level radioactive waste, similar to that recommended by the Blue Ribbon Commission and incorporated in the Administration's Strategy, has the potential to meet the country's national and energy security needs, to gain the necessary public acceptance, and to accommodate the increased needs of a future that includes expanded nuclear power deployment. I remain ready and willing to engage with both chambers of Congress to move forward.

Our answers to your questions are enclosed. Should you have any questions, please contact me or Christopher Davis of the Office of Congressional and Intergovernmental Affairs at 202-586-5450.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Lyons", written in a cursive style.

Peter B. Lyons

Assistant Secretary for Nuclear Energy

Enclosures

Cc: The Honorable Henry Waxman, Ranking Member

The Honorable John Shimkus, Chairman
Subcommittee on Environment and the Economy

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