

Enclosure

Q1: In response to the D.C. Circuit's November 19, 2013, decision, please indicate whether DOE intends to submit to Congress a proposal to change the Nuclear Waste Fund fee to zero or begin complying with the Nuclear Waste Policy Act.

A1: 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 that mandate, and notwithstanding the absence of the determination required to be made pursuant to the Nuclear Waste Policy Act of 1982, as amended (NWPA), 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 filed a petition for rehearing of the case *en banc* by the full D.C. Circuit on the ground that the panel erred. A copy of the fee proposal and the petition for rehearing are enclosed.

Q2: If DOE intends to submit to Congress a proposal to change the Nuclear Waste Fund fee to zero, please provide a date by which it will provide such a proposal.

A2: Consistent with the mandate issued by the D.C. Circuit on December 20, 2013, and notwithstanding the absence of the determination required to be made pursuant to the NWPA, the Department has submitted a proposal to Congress to adjust the current fee to zero, subject to any further judicial decision in this case. As noted above, on January 3, 2014, the Department of Justice filed a petition for rehearing of the case *en banc* by the full D.C. Circuit on the ground that the panel erred. A copy of the fee proposal and the petition for rehearing are enclosed.

Q3: If DOE intends to begin complying with the Nuclear Waste Policy Act:

- a. Please provide a copy of DOE's plan for reestablishing the Office of Civilian Radioactive Waste Management and restarting the repository program complete with a schedule and estimates of the resources necessary to implement the plan.**
- b. Please provide a list of the work activities that DOE has assigned to its contractors to support its effort to begin complying with the Nuclear Waste Policy Act.**

A3: As the Secretary testified on July 31, 2013, DOE will act in accordance with the orders of the Court. On August 13, 2013, the Court issued a writ of mandamus directing the NRC to "promptly continue with the legally mandated licensing process" for the Yucca Mountain application, "unless and until Congress authoritatively says otherwise or there

are no appropriated funds remaining.” *In re Aiken County*, 725 F.3d 255, 267 (D.C. Cir. 2013), *reh’g en banc denied* (Oct. 28, 2013). In response to that decision, on November 18, 2013, the NRC issued an order (1) directing the NRC staff to complete the remaining volumes of the Safety Evaluation Report (“SER”) for Yucca Mountain and (2) asking the Department to complete a supplement to the Environmental Impact Statement (“EIS”) for Yucca Mountain. The NRC’s November 18, 2013, order also indicated that the Department may be asked to assist the NRC staff’s completion of the SER by providing information, support, and documents requested by the staff. As DOE previously indicated, DOE will comply, subject to the availability of funds, with the NRC’s November 18, 2013 order. Since the NRC’s November 18, 2013 order, DOE has taken steps to prepare to respond to requests from the NRC staff and to prepare the EIS supplement requested by the NRC. Specifically, the Department has begun reviewing the technical report provided to the NRC on the groundwater issues in 2009. The Department also is in the process of procuring the services of contractors to help produce the EIS supplement requested by the NRC and has begun drafting a notice of intent to prepare the supplement. In addition, because some support may be needed from Sandia National Laboratories (SNL) on issues to be addressed in the supplement and to respond to questions from the NRC staff, the Office of Nuclear Energy has requested SNL to support this effort. The work authorization for Sandia to provide Yucca licensing support is being revised and a contract modification has been made to the USA/RS contract to enable USA/RS to support answering questions from the NRC staff within available funds appropriated for this purpose. The Department intends to keep the civilian waste management function in the Office of Nuclear Energy.

Q4: Please provide a copy of DOE's plan for completing the supplemental EIS needed to address potential groundwater impacts, including detailed cost and schedule estimates, as directed in the NRC's November 18, 2013, order.

A4: As indicated in **A3** above, the Department intends to prepare the supplemental EIS requested by the NRC in its November 18, 2013, order. Specifically, the Department is planning to issue a Notice of Intent to prepare the supplemental EIS in 2014.

Q5: Please provide an estimate of the resources DOE would need to support completion of the NRC's legally mandated license review including culmination in a final decision. If no current estimate is available, please provide the most recent estimate available.

A5: In FY 2010, the last year in which Congress appropriated funds for a repository at Yucca Mountain, the Administration’s budget request for the Office of Civilian Radioactive Waste Management was \$196,800,000.

- Q6. In Assistant Secretary Peter Lyons’ monthly report on the Nuclear Waste Fund expenditures dated December 2, 2013, he indicates \$593,000 was spent on four separate activities. Please provide an itemized list of how much was spent on each activity and estimates of monthly spending on each category for the next two years.**
- a. Please provide a long-term estimate of pension liability associated with retired Yucca Mountain workers.**
 - b. Please indicate how many of the existing retired Yucca Mountain workers were incentivized to retire early as part of DOE’s effort to shut down the Yucca Mountain program.**
 - c. Please provide a list of the criteria DOE uses to determine if a retiree’s pension benefits should be charged to the Nuclear Waste Fund rather than other DOE pension funds.**

A6. In the monthly report submitted to the Subcommittee on December 2, 2013, four activities were listed. As noted in the monthly report, the total spent in September 2013 was approximately \$593,000 from fiscal year 2010 and prior balances from the Nuclear Waste Disposal and Defense Nuclear Waste Disposal appropriations accounts. Distribution of spending across the activities is as follows:

Activity	Amount
<ul style="list-style-type: none"> • Development and submission of input to the Nuclear Regulatory Commission in response to the Commission’s request for viewpoints on how to proceed in the Yucca Mountain licensing process. 	\$0 No contract dollars were expended and current staff costs are paid for through Office of Nuclear Energy Program Direction accounts.
<ul style="list-style-type: none"> • Payment of obligations to the pensions fund for retired Yucca Mountain workers. 	\$206,000 This amount includes costs for contract closeout activities
<ul style="list-style-type: none"> • Administration of the Nuclear Waste Fund, including the Fee Adequacy Assessment and financial audits. 	\$121,000
<ul style="list-style-type: none"> • Maintenance of Yucca Mountain Project records and technical and scientific information. 	\$206,000

The remaining \$60,000 was spent by the Department of Justice to assist in the review of proposed settlements in ongoing partial breach of contract litigation stemming from the delay in taking delivery of spent nuclear fuel in 1998.

DOE currently estimates its long-term liability under the contract for reimbursing the contractor for costs for the defined benefit pension plan to be \$21.6 million. The current market value of the pension trust fund is \$22.6 million.

As operations on the Yucca Mountain Project contracted, the contractor offered a variety of incentives in order to reduce the size of its work force and better align it with the Department's changing mission requirements. The Department does not have control over what incentives the contractor as a private company offers to its employees; the Department only has control over the costs for which it reimburses the contractor. It has been nearly ten years since the Department has reimbursed contractors for the costs of retirement incentives that increase liabilities under the contractor pension plans. The Yucca Mountain Project contractor did not request – nor did DOE reimburse – costs for enhanced early retirement incentives.

Federal pension law requires the sponsor of a defined benefit pension plan – in this case the Yucca Mountain management and operations contractor – to contribute a minimum amount every year into a private pension trust to defray the costs of the plan. The contractor invoices the DOE program office for reimbursement of those costs. Pension benefits are paid to retirees from that pension trust. DOE does not hold any pension funds. The costs for reimbursement of the contributions made to the pension plan by the contractor are an allowable contract expense under the Department's contract pursuant to the Federal Acquisition Regulations. Under the Yucca Mountain Project, funding for the management and operations contract came from Nuclear Waste Disposal (derived from the Nuclear Waste Fund) and Defense Nuclear Waste Disposal appropriated funds. The contractor received funding from both accounts for its reimbursable expenses, including pension contributions. These pension costs were eligible for reimbursement only under the Yucca Mountain Project and not through any other DOE management and operations contract.

- Q7: In keeping with the DOE's administration of the Nuclear Waste Fund mentioned in the December 2, 2013, monthly report and the fact that the DOE continues to collect Nuclear Waste Fund fees for the time being, please explain why the DOE ceased preparation of the OCRWM monthly reports on the status of Nuclear Waste fund collections in 2010.**
- a. When does the DOE plan to resume production and public release of such reports so that the public can determine how much a particular state's electric consumers are paying and have historically paid into the Nuclear Waste Fund?**
 - b. Please explain how DOE tracks the date and amount of spent fuel discharge by each standard contract holder and how this information is made publicly available**

c. Please explain how the decision to cease making this information publicly available comports with the DOE's commitment to openness and transparency.

A7: Although under no legal obligation to do so, the Office of Civilian Radioactive Waste Management prepared charts graphically displaying how much a particular state's contract holders had paid into the Nuclear Waste Fund. These charts were updated periodically in response to inquiries and were included on the OCRWM website. Due to a lack of requests to update these charts and to conserve limited resources, the Department has not updated these charts since 2009.

The Nuclear Waste Fund receives fees each month from contract holders, which are invested in U.S. Treasury bonds. The Department continues to produce monthly reports of the status of the Nuclear Waste Fund's portfolio by bond number. The Department also annually prepares a financial report of the Nuclear Waste Fund and conducts an annual audit by the Office of Inspector General. The 2013 annual report was just completed and will be available on the DOE Office of Inspector General web link at: <http://energy.gov/ig/listings/consolidated-financial-statements>.

In addition, the Department periodically collects data on the amount of spent fuel discharged by each standard contract holder via the Department's Energy Information Administration (EIA) RW-859 Nuclear Fuel Data Survey. The last collection of the discharge data was performed in 2004 and covered discharges through December 31, 2002. The Department is in the process of updating the data (survey is now known as GC-859) and has sent inquiries to the contract holders. The data should be available in the fall of 2014. Once the information is fully reviewed and compiled by the Department, data requests may be submitted to EIA and some summary information is generally made available on the EIA website.