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David Wright, Chairman  
Vice Chairman, SC Public Service Commission

Renze Hoeksema, Vice Chairman  
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David Boyd, Membership  
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Robert Capstick, Finance  
Director of Government Affairs, Yankee Atomic/Connecticut Yankee

Greg White, Communications  
Commissioner, MI Public Service Commission



July 8, 2011

The Honorable Edward Whitfield  
Chairman  
Subcommittee on Energy and Power  
House Energy and Commerce Committee  
United States House of Representatives  
Washington, D.C. 20515

The Honorable John Shimkus  
Chairman  
Subcommittee Environment and Economy  
House Energy and Commerce Committee  
United States House of Representatives  
Washington, D.C. 20515

**Letter sent by facsimile**

The Honorable Bobby Rush  
Ranking Member  
Subcommittee on Energy and Power  
House Energy and Commerce Committee  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Gene Green  
Ranking Member  
Subcommittee Environment and Economy  
House Energy and Commerce Committee  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairmen Whitfield and Shimkus and Ranking Members Rush and Green:

Taking on and investigating a public policy issue, the termination of the nuclear waste disposal program (Program) by the Department of Energy (DOE) without Congressional approval, and investigating the Nuclear Regulatory Commission (NRC) lack of compliance with its statutory mandate, to resume the Yucca Mountain license application, is the right thing to do. If not now, then when?

While the Department of Energy (DOE) systematically dismantled the Office of Civilian Radioactive Waste Management, it continues to collect fees from the nation's rate payers. The Program is self-sustained through the Nuclear Waste Fund (NWF), funded by the rate payers from 41 states, estimated to be paying more than \$770 million annually through their electric bills. With interest credits, the Fund earns annually more than \$1.1 billion.

During the June investigations, Chairman Shimkus questioned how the funds that were appropriated from the NWF through the fiscal year (FY) 11 Continuing Resolutions (CRs) were spent since DOE terminated the Program. The last Summary of Program Financial and Budget Information report issued by DOE was January 31, 2010. Consequently, we are uninformed of the amount of current annual fees collected and paid into the NWF and who has received funds from the NWF in the FY 11 CRs. In past years, the DOE updated and issued this document on a regular basis showing NWF fees receipts, including interest earned, and the Program's expenditure.

To add insult to injury, DOE has rejected requests by state utility regulators and local utility companies to voluntarily suspend the collection of fees since it has closed down the Yucca Mountain project. The nation's rate payers have already invested \$15 billion for the scientific research and technology studies carried out at the Yucca Mountain site, and have paid more than \$37 billion, including interest, into the NWF, with nothing in return. These same rate payers will now be funding indefinite on-site storage facilities that are scattered throughout this nation if the DOE and NRC continue to play politics over policy.

The DOE's failure to fulfill its statutory and contractual obligations and Congress' failure to carry out its mandate under the 1982 Nuclear Waste Policy Act, (NWPA), is burdening U.S. tax payers with additional liabilities currently estimated as high as \$50 billion. Seventy-one breach-of-contract claims have been filed against the DOE since 1998, already resulting in more than \$1.2 billion in damages awards from the Judgment Fund. This amount does not include the more than \$190 million in litigation expenses the Department of Justice is incurring to defend these cases. Moreover, these estimates do not include the additional \$500 million to \$1 billion a year in damages if spent nuclear fuel and high-level radioactive waste is still stranded at commercial nuclear plant sites after 2020.

These investigations that are being conducted by the Subcommittees are an opportunity to resolve problems in the foreseeable future and an opportunity to do something good for our nation. They provide a clear picture of Chairman Jaczko's actions to subvert the NRC Commissioners votes that they may have already taken on the Atomic Safety License Board's June 29, 2010 unanimous decision, rejecting the DOE's request to withdraw with prejudice its Yucca Mountain license application, and to withhold public disclosure of the Safety Evaluation Report (SER), Volume 3, that contains 30 years of technical, scientific and environmental work carried out at the Yucca Mountain permanent repository.

The July 1, 2011, U.S. Court of Appeals for the District Circuit decision points out that the NWPA requires the NRC to comply with its statutory mandate to resume the review of the Yucca Mountain license application. In case Chairman Jaczko does not comply with the Court's decision, we hope that one of your Committees will release the **SER that was signed off by the NRC's General Counsel**. Such an action will indicate Congress' resolve to ensure that the statutory requirements set forth in the NWPA, are being adhered to regardless of adverse actions that are being carried out by the DOE and NRC Chairman Jaczko.

Such actions being carried out both by the DOE and NRC are imprudent and are costing the nation's electric ratepayers and taxpayers even more money given the Administration has no "**Plan B**," except to strand spent nuclear fuel and high level radioactive waste at 121 commercial, decommissioned and defense sites in 39 states for an indefinite period, and to create a Blue Ribbon Commission (BRC).

As you are aware, Secretary of Energy Chu provided direction to the BRC that Yucca Mountain is "off the table" – despite the fact that the BRC's charter contains no such restriction. There is clearly no justification for Secretary Chu's admonition other than politics and the desire on the part of the current Administration to avoid further embarrassment over its actions. The intent to cancel the Yucca Mountain Project and the manner in which it was carried out have done considerable harm to our country and will continue to adversely affect us.

We find it ironic, that while Secretary Chu was a Director at Livermore Berkeley National Laboratory, he signed an August 2008 report which stated ... "*confidence can be achieved by continuing the licensing of a geologic repository at Yucca Mountain and enabling the continued interim storage of used nuclear fuel in dry casks and fuel pools.*" Therefore, the attempt to terminate the Yucca Mountain Project is over "political policy" rather than "scientific findings and the rule of law."

The technical merit of the Yucca Mountain site is an issue for the NRC to determine, and it is not an issue the BRC should address. However, the BRC has an obligation to consider all option, including Yucca Mountain, for the storage and disposal of spent nuclear fuel and high-level radioactive waste. The way the Yucca Mountain Project was systematically dismantled by the Administration, and the way Congress failed to address its' own legislation is further evidence that the BRC needs consider Yucca Mountain as an option. The storage and disposal of spent nuclear fuel and high-level radioactive waste and its implications on future project(s) are fundamental issues that must be considered, and dealt with, by the BRC. Doing anything less would be an abrogation of their responsibility to the American people, who have paid \$5 million from the NWF to ensure the BRC's review is "comprehensive, open and inclusive."

We were encouraged that Nye County, Nevada, officials were included in the June hearings. It is stated on a regular basis that communities and stakeholders, particularly those in Nevada, oppose the Yucca Mountain project. To the contrary, this project is supported and welcomed by several local communities surrounding the Yucca Mountain Project in Nevada.

The NWSC is a diverse and an ad hoc group of state utility regulators, state attorneys general, electric utilities and associate members representing 45 member organizations in 32 states. The primary focus by the NWSC is to ensure that DOE and Congress carry out the principles outlined in the 1982 Nuclear Waste Policy Act, as amended – protect ratepayer payments made into the Nuclear Waste Fund; ensure that the nuclear waste disposal program is appropriately funded on an annual basis; and the removal of spent nuclear fuel and high-level radioactive waste currently stranded at 121 commercial, defense and decommissioned sites in 39 states.

Respectfully yours,



David Wright  
Commissioner, South Carolina Public Service Commission, and  
Chairman, Nuclear Waste Strategy Coalition

- C: The President of the United States.  
The Honorable John Boehner, The Speaker of the House of Representatives.  
The Honorable Steven Chu, Secretary of Energy.  
United States Senate.  
Governors with stranded SNF and HLRW in their state.  
The House Appropriations Committee.  
The House Energy and Commerce Committee.  
The Honorable Darrell Issa, Chairman, House Oversight and Government Reform Committee.  
The Honorable Peter Lyons, Assistance Secretary for Nuclear Energy, Department of Energy.  
Mr. David Zabransky, Acting Principal Director, DOE/OCRWM.