

## Department of Energy

Washington, DC 20585

October 8, 2009

Mr. Frederick F. Butler  
President  
National Association of Regulatory  
Utility Commissioners  
1101 Vermont Avenue, NW  
Suite 200  
Washington, D.C. 20005

Dear Mr. Butler:

This letter is in response to your letter dated July 8, 2009, to Secretary Chu regarding your recommendation to suspend payments to the Nuclear Waste Fund. As Acting Director for the Office of Civilian Radioactive Waste Management, the Secretary has requested I respond to your letter.

Section 302 of the Nuclear Waste Policy Act of 1982, as amended (NWPA), authorizes the Secretary of Energy to enter into a contract "with any person who generates or holds title to high-level radioactive waste or spent nuclear fuel of domestic origin for the acceptance of title and subsequent transportation and disposal of such waste or spent nuclear fuel"; that section further provides that in return for the payment of fees by the contract holder, the Federal Government will dispose of the contract holder's spent nuclear fuel and high-level radioactive waste. Additionally, that section requires that the fee and interest yield sufficient funds to offset the Government's expenditures in carrying out these responsibilities. These fees are deposited in the Nuclear Waste Fund in the U.S. Treasury. The current balance in the Nuclear Waste Fund is approximately \$23 billion.

Section 302 of the NWPA also requires the Secretary of Energy to review annually the amount of the fee to determine whether projected fee collections will provide sufficient revenues to offset overall Program costs. The disposition of spent nuclear fuel is to be a full-cost recovery program. If the Secretary of Energy "determines that either insufficient or excess revenues are being collected" in order to cover the costs, the Secretary must "propose an adjustment to the Fee to ensure full cost recovery."

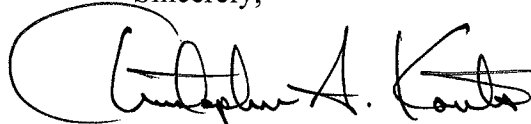
The Department of Energy has consistently determined that the current fee of 1/10-cent per kilowatt hour is adequate to cover the total system life cycle costs of disposing of the commercial spent nuclear fuel and high-level radioactive waste, using the assumptions in place at the time; and, in accordance with the Act, the fee will continue to be reviewed annually. On July 27, 2009, in response to Senate Energy and Water Appropriations language in H.R. 3183 related to suspension of collection of the fee, the Administration issued a Statement of Administration Policy stating that all of the fees collected in the



Nuclear Waste Fund are essential to meet the obligations of the Federal Government for managing and ultimately disposing of spent nuclear fuel and high-level radioactive waste.

We fully appreciate your perspective on this issue, and the Department will certainly take into consideration the views of the National Association of Regulatory Utility Commissioners as the policy process unfolds regarding how the Department should meet its contractual obligations to the nuclear industry for the management of spent nuclear fuel. If you have any questions and would like to discuss this matter further, please call me at 202-586-6850.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher A. Kouts". The signature is written in a cursive style with a large, prominent initial "C" on the left.

Christopher A. Kouts  
Acting Director  
Office of Civilian Radioactive  
Waste Management