



NUCLEAR ENERGY INSTITUTE

Marvin S. Fertel  
PRESIDENT AND CHIEF EXECUTIVE OFFICER

July 8, 2009

The Honorable Steven Chu  
Secretary of Energy  
U.S. Department of Energy  
Forrestal Building 7A-257  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Re: Performance of Annual Fee Adequacy Analysis and Suspension of Payments to Nuclear Waste Fund

Dear Dr. Chu:

The Nuclear Energy Institute (NEI)<sup>1</sup>, on behalf of the commercial nuclear energy industry, is writing to express its deep concern about the federal government's failure to fully carry out the statutory obligation to implement the nuclear waste policy established almost three decades ago in the Nuclear Waste Policy Act of 1982 (NWPA or Act). In light of the Department of Energy's recent decision to terminate the Yucca Mountain repository project, the industry requests that your required annual fee adequacy review fully account for the impact of that termination on program costs, and that you suspend collection of payments to the Nuclear Waste Fund (Fund).

For several years, the industry has advocated that the government and industry implement an integrated strategy for used fuel management and disposal. That strategy includes on-site storage and private or government-sponsored centralized interim storage; research and development leading to the deployment of recycling technology that is safe, environmentally sound, economic, and enhances worldwide nonproliferation efforts; and ultimate disposal of spent nuclear fuel and high-level radioactive waste in a geologic repository. This strategy represents sound public policy and is wholly consistent with principles espoused by the Administration.

DOE has announced its intention to devise a new used nuclear fuel management strategy by convening a national commission to study and recommend alternative approaches—a laudable and potentially productive undertaking that the nuclear industry supports. However, the NWPA remains the law and it is incumbent on the Department to comply with its mandates. Indeed, you explicitly acknowledged the government's responsibility in your June 1, 2009 response to Senator Inhofe:

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<sup>1</sup> NEI is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

"[W]e remain committed to meeting our obligations for managing and ultimately disposing of spent nuclear fuel and high-level radioactive waste."

As discussed in greater detail below, the NWPA requires the Secretary of Energy annually to review whether the one mill per kilowatt-hour fee collected from utilities will provide revenue sufficient to offset the costs of the DOE used nuclear fuel management program. If the annual review reveals that the Fund's balance is either insufficient or in excess of that needed for the program, a fee adjustment is required. Cessation of the Yucca Mountain repository project activities, other than those limited to licensing, compels precisely that action. And, as the fees ultimately are borne by consumers of electricity from the nation's 104 reactors, equitable considerations also compel such an adjustment.

The NWPA established "a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository . . . ." (NWPA § 111(b)(1).) The original legislation provided a process for the nomination of at least five sites, and subsequent selection of three of those sites for characterization as candidates for a repository. Under the 1987 amendments to the NWPA, however, DOE was instructed to "provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site." (NWPA § 160(a)(1).) DOE was further directed to carry out "appropriate site characterization activities at the Yucca Mountain site," and "only such site characterization activities as the Secretary considers necessary to provide the data required for evaluation of such site for an application to be submitted to the [Nuclear Regulatory] Commission [NRC] for a construction authorization for a repository at such site, and for compliance with the National Environmental Policy Act of 1969." (NWPA §§ 113(a), (c)(1).) Enactment of the 2002 Yucca Mountain Development Act (P. L. No. 107-200, 116 Stat. 735) gave effect to the Presidential recommendation to Congress of Yucca Mountain as the location of the repository and that a license application be submitted to the NRC.

In addition to the direction Congress provided with respect to the programmatic aspects of repository development, the NWPA provides "that the costs of carrying out activities relating to the disposal of...[high level radioactive] waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel." NWPA § 111(b)(4). Payment by the owners and operators of the nation's nuclear power plants for the disposal program is obtained through a one mill per kilowatt-hour fee paid to the federal government and is held in the Nuclear Waste Fund. To date, nuclear utilities, through collections from consumers, have paid or obligated more than \$30 billion to the Fund. The Fund has a current balance of \$22 billion and generates annual interest of just over \$1 billion that is added to the corpus.

The Nuclear Waste Fund fee was established to recoup the government's costs for the program. The statute requires the Secretary to adjust the fee, either upwards or downwards, to achieve full cost recovery of the high level waste repository program. To implement this requirement, the NWPA directs the Secretary annually to review whether collection of the fee will provide sufficient revenues to offset the program costs. (NWPA § 302(a)(4).) That review, the results of which DOE has published in some years in an annual Fee Adequacy Report, necessarily must begin with a determination of the cost of the repository program then in place. Once the comparison between the revenue generated by the fee and the cost of the program has been made, the Secretary is obligated to adjust the fee to ensure the Fund accumulates only the amount necessary to ensure full

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cost recovery, and the fee charged utilities covers only that portion of the program costs attributable to disposal of used nuclear fuel from commercial reactors.

Until recently, the cost of the program reviewed for fee adequacy included the cost of constructing and operating the Yucca Mountain geologic repository. With the passage of the Omnibus Appropriations Act earlier this year, however, funding for Yucca Mountain repository program activities was essentially eliminated, with the exception of that directed to NRC licensing proceedings. More recently, DOE's fiscal 2010 budget request for the Office of Civilian Radioactive Waste Management was submitted to Congress explicitly to implement the Administration's decision to terminate the Yucca Mountain program while developing disposal alternatives.

Although the Department has ceased all of the Yucca Mountain repository program activities except NRC licensing, DOE continues to collect NWF fees at the one mill per kilowatt-hour rate last evaluated in the *Fiscal Year 2007 Civilian Radioactive Waste Management Fee Adequacy Report, July 2008 (DOE/RW-0593)*. This fee continues to be charged to consumers despite the fact that fundamental assumptions underlying that report concerning the repository program no longer apply. Thus, in the absence of the Yucca Mountain repository program, and given that the interest that the NWF accrues is more than enough money to cover the \$196.8 million provided for in fiscal 2010 budget proposal, payments into the Fund should be suspended.

In conclusion, because the assumptions previously used in the Department's fee adequacy analysis are no longer valid, the Nuclear Energy Institute, on behalf of the commercial nuclear energy industry, hereby requests that: (1) you promptly perform the annual review of the adequacy of the Nuclear Waste Fund fee to account for the present status and cost of the program; and (2) because the interest on the corpus of the NWF is more than sufficient to cover current Yucca Mountain program activities, you immediately suspend collection of payments to the NWF.

Thank you for your attention to this important matter. I would appreciate the opportunity to meet with you to discuss DOE's timely resolution of the industry's requests.

Sincerely,



Marvin S. Fertel

cc: The Honorable Dan Poneman  
The Honorable Kristina Johnson  
The Honorable Scott Blake Harris  
Mr. Rod O'Connor  
Mr. Dan Utech