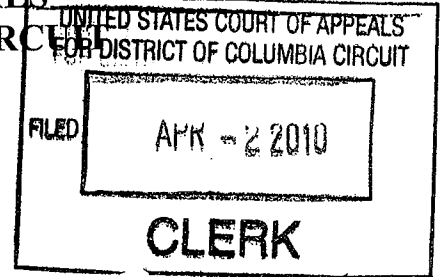


APR - 2 2010



**RECEIVED**

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)  
NATIONAL ASSOCIATION OF )  
REGULATORY UTILITY COMMISSIONERS, )

*Petitioner,* )

v. )

THE UNITED STATES )  
DEPARTMENT OF ENERGY AND )  
THE UNITED STATES OF AMERICA, )

*Respondents,* )  
\_\_\_\_\_ )

Case No. 10-1074

**PETITION FOR REVIEW**

The National Association of Regulatory Utility Commissioners (NARUC) petitions this Court pursuant to Section 119 of the Nuclear Waste Policy Act (NWPA), 42 U.S.C. § 10139, as amended, Section 702 of the Administrative Procedure Act (APA), 5 U.S.C. § 702, and Rule 15(a) of the Federal Rules of Appellate Procedure, to review, remand, or vacate the final decision and action of or failure to act by the Department of Energy (DOE) as set forth in two separate letters. Both letters are dated October 8, 2009.

One is addressed to NARUC and the other is addressed to the Nuclear Energy Institute (NEI). Both DOE letters, and the NARUC and NEI requests they respond to are attached in Exhibit A.

Both DOE final decisions, which are identical except for references to the entity requesting relief, deny requests to (1) suspend the fee paid by ratepayers into the Nuclear Waste Fund (NWF) until there is a clearly defined program for disposal of spent nuclear fuel and high-level radioactive waste, and (2) promptly perform the annual review of the nuclear waste fees as required by NWPA Section 302(a)(4), 42 U.S.C. § 10222(a)(4) to determine whether the fees exceed or fall short of the needs of the long term waste repository program costs given the Administration's express intent to terminate the Yucca Mountain high-level waste repository.<sup>1</sup>

These DOE decisions respond to letter requests sent by NARUC and NEI to Energy Secretary Chu on July 8, 2009.

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<sup>1</sup> See, e.g. U.S. Dep't. of Energy, FY 2010 Congressional Budget Request: Budget Highlights, May 2009 at 46-47: "All funding for development of the Yucca Mountain facility has been eliminated.... The budget request includes the minimal funding needed to explore alternatives for nuclear waste disposal...and to continue participation in the Nuclear Regulatory Commission license application" available at <http://www.cfo.doe.gov/budget/10budget/Content/Highlights/FY2010Highlights.pdf>.

NARUC represents the interests of State public utility commissions that oversee nuclear utility rates including the pass-through cost of the nuclear waste fee. The association has been recognized both by Congress in several statutes<sup>2</sup> and consistently by Article III courts<sup>3</sup> as the proper entity to represent the collective interests of the State utility commissions.

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<sup>2</sup> See 47 U.S.C. § 410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of concern to both the Federal Communications Commission and State regulators with respect to universal service, separations, and related concerns; Cf. 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). Cf. NARUC, et al. v. ICC, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "...Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.).

<sup>3</sup> See, e.g., United States v. Southern Motor Carrier Rate Conference, Inc., 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985) (The Supreme Court noted: "[t]he District Court permitted . . . (NARUC), an organization composed of State agencies, to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commissions of those States in which the defendant rate bureaus operate." 471 U.S. 52, n. 10. See also NARUC v. DOE, 851 F.2d 1424 (D.C. Cir. 1988), where, although standing was not specifically addressed, NARUC was the lead petitioner in a successful appeal involving DOE and the nuclear waste program; Indianapolis Power and Light Co. v. ICC, 587 F.2d 1098 (7th Cir. 1982); Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir. 1976); Compare, NARUC v. Federal Energy Regulatory Commission, 475 F.3d 1277 (D.C. Cir. 2007); NARUC v. Federal Communications Commission, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985).

This Court has jurisdiction pursuant to NWPA Sec. 119(a)(1), 42 U.S.C. § 10139(a)(1).<sup>4</sup>

Venue is proper in the court pursuant to 42 U.S.C. § 10139(a)(2). Id. NARUC has its principal office of business in this circuit, and in any case, the statute allows an appeal to be lodged before this Court.

The appeal is timely filed within the 180 days specified in NWPA Sec. 119(c), 42 U.S.C. § 10139(c), based upon the October 8, 2009 date of DOE's letters. Id.

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<sup>4</sup> 49 U.S.C. § 10139. "Judicial review of agency actions: (a) Jurisdiction of United States courts of appeals (1) Except for review in the Supreme Court of the United States, the United States courts of appeals shall have original and exclusive jurisdiction over any civil action-- (A) for review of any final decision or action of the Secretary, the President, or the Commission under this part;(B) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this part; (C) challenging the constitutionality of any decision made, or action taken . . . (2) The venue of any proceeding . . . shall be in the judicial circuit in which the petitioner . . . has its principal office, or in the United States Court of Appeals for the District of Columbia. (c) Deadline for commencing action: A civil action for judicial review described under subsection (a)(1) of this section may be brought not later than the 180th day after the date of the decision or action or failure to act involved . ." Downloaded March 31, 2010 from the Government Printing Office site at: <http://frwebgate1.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=058563466570+0+1+0&WAISaction=retrieve>.

DOE is a proper respondent under Rule 15(a) of the Federal Rules of Appellate Procedure.

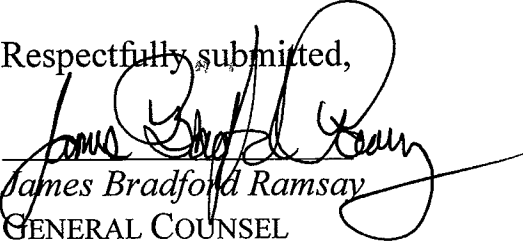
NARUC seeks an order and judgment that portions of these two DOE orders are arbitrary and capricious, 5 U.S.C. §706(2)(A), beyond DOE's jurisdiction, authority or power, 5 U.S.C. §706(2)(C), and/or otherwise not in accordance with law, 5 U.S.C. §706(2)(A). NARUC contends, *inter alia*, the letter orders are facially deficient and lack any record support. This Court should declare the DOE decision, action or failure to act to refuse (a) to reflect the termination of the Yucca Mountain program (as well as the accrued current NWF balance of \$22 billion) in the annual review of the NWF fee,<sup>5</sup> (b) to timely conduct a 2009 fee assessment proceeding, and (c) to suspend collection of the fee, are arbitrary, capricious, and contrary to applicable law.

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<sup>5</sup> The NWF fee was established to recoup the government's costs for the radioactive waste disposal. NWPA § 302(d); 42 U.S.C. § 10222(d). The NWPA set the fee for nuclear electricity generators at 1.0 mil per kilowatt-hour. NWPA § 302(a)(2), 42 U.S.C. § 10222(a)(2). The NWPA directs the Secretary to annually review whether the collection of the fee will provide sufficient revenues to offset the programs costs and to propose a fee adjustment if excess or insufficient revenues are being collected. NWPA § 302(a)(4); 42 U.S.C. § 10222(a)(4).

At a minimum, DOE should be directed to suspend collection of the fee to the NWF pending DOE's compliance with the annual review provision of Section 302 of the NWPA. We also ask the Court to grant such other relief as it deems just and proper.

Respectfully submitted,



*James Bradford Ramsay*  
GENERAL COUNSEL

(JRAMSAY@NARUC.ORG) PHONE: 202.898.2207

*Robin Lunt*

ASSISTANT GENERAL COUNSEL

(RLUNT@NARUC.ORG) PHONE: 202-898-1350

NATIONAL ASSOCIATION OF REGULATORY  
UTILITY COMMISSIONERS  
1101 VERMONT AVE., N.W., SUITE 200  
WASHINGTON, D.C. 20005  
(FAX) 202-384-1554

Dated: April 2, 2010

## RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, the National Association of Regulatory Utility Commissioners (NARUC) respectfully submits this disclosure statement. NARUC is a quasi-governmental nonprofit organization founded in 1889 and incorporated in the District of Columbia. NARUC is a "trade association" as that term is defined in Rule 26.1(b). NARUC has no parent company. No publicly held company has any ownership interest in NARUC. NARUC represents those government officials in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands, charged with the duty of regulating, *inter alia*, the regulated electric utilities within their respective borders.

Respectfully submitted,



*James Bradford Ramsay*

GENERAL COUNSEL

*Robin Lunt*

ASSISTANT GENERAL COUNSEL

NATIONAL ASSOCIATION OF REGULATORY

UTILITY COMMISSIONERS

1101 VERMONT AVE., N. W., SUITE 200

WASHINGTON, D.C. 20005

Dated: April 2, 2010

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

\_\_\_\_\_  
\_\_\_\_\_  
NATIONAL ASSOCIATION OF )  
REGULATORY UTILITY COMMISSIONERS, )

*Petitioner,* )

v. )

Case No. \_\_\_\_\_

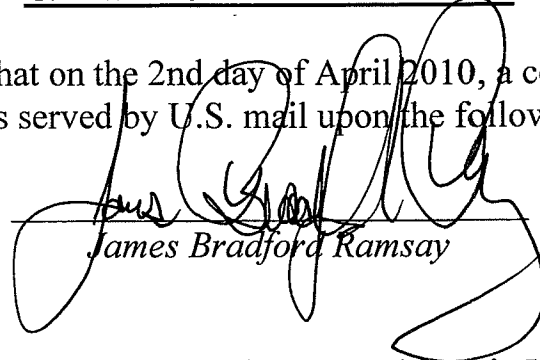
THE UNITED STATES )  
DEPARTMENT OF ENERGY AND )  
THE UNITED STATES OF AMERICA, )

*Respondents,* )

\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of April 2010, a copy of the foregoing Petition for Review was served by U.S. mail upon the following persons:

  
James Bradford Ramsay

Scott Blake Harris  
General Counsel  
Office of the General Counsel  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, D.C. 20585

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Ellen C. Ginsberg  
General Counsel  
Nuclear Energy Institute  
1776 I Street, NW, Suite 400  
Washington, D.C. 20006-3708

# Exhibit A

**Letter from DOE to  
NARUC  
October 8, 2009**



## 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 (NWPAA), 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 NWPAA 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."

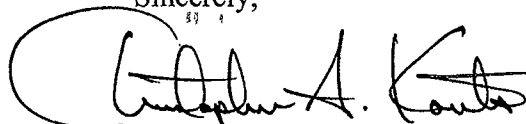
The Department of Energy has consistently determined that the current fee of 1/10-cent per kilowatt hour is adequate to cover the total system life cycle costs of disposing of the commercial spent nuclear fuel and high-level radioactive waste, using the assumptions in place at the time; and, in accordance 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".

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

**Letter from NARUC  
to DOE  
July 8, 2009**



N A R U C  
National Association of Regulatory Utility Commissioners

Frederick F. Butler, *President*  
New Jersey Board of Public Utilities

David C. Coen, *First Vice President*  
Vermont Public Service Board

Tony Clark, *Second Vice President*  
North Dakota Public Service Commission

Charles E. Box, *Treasurer*  
Illinois Commerce Commission

Charles D. Gray, *Executive Director*  
Washington, DC Office

July 8, 2009

69 4

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

Dear Secretary Chu:

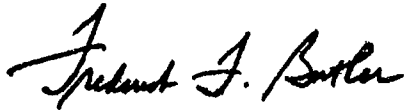
The National Association of Regulatory Utility Commissioners (NARUC) supports the request by the Nuclear Energy Institute (NEI) to suspend the fees paid by nuclear utilities to the Nuclear Waste Fund. With the declared intention of the President to terminate the Yucca Mountain repository, despite the 2002 Joint Resolution (P.L. 107-200) approving that site subject to successfully obtaining a license from the Nuclear Regulatory Commission, there is no clearly defined program for disposal of spent nuclear fuel and high-level radioactive waste. Therefore, there is no basis to assess the adequacy of fees that continue to be paid into the Nuclear Waste Fund.

The Department of Energy forecasts that \$769 million in fees will be paid into the Fund during the present FY 2009 and Congress appropriated \$145.4 million to the civilian radioactive waste management program. With another \$1,172 million in investment returns being projected to be credited to the Fund in the same period, DOE reports forecast a balance in the Fund at the end of FY 2009 of \$23.7 billion. In light of the Fund investment returns of over a billion dollars being forecast, it is more than sufficient to use the Fund balance to fund the \$98.4 million request in the FY 2010 Budget.

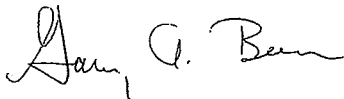
Our public utility commissioners find it extremely difficult to explain to ratepayers in States where their utilities provide nuclear-generated electricity that their electric bill includes pass-through of the Nuclear Waste Fund fees being paid to the Government for nuclear waste disposal that was to have begun in 1998. Now the fee payments continue to be paid even though no one can say for certain what the money will eventually be used for. If we are going to pause to reconsider disposal options, we feel it is also appropriate to pause the fee payments.

On a related matter, NARUC is preparing to provide our views to the blue-ribbon commission on developing a disposal strategy. We will emphasize the need for fundamental reform of the management of the Nuclear Waste Fund. We believe that financing nuclear waste disposal is as necessary to a successful nuclear waste disposal strategy as the technical and policy considerations. The Nuclear Waste Fund that was envisioned in the Nuclear Waste Policy Act has not functioned as intended and may be better protected if it were managed in a substantially different way. There needs to be much more transparency on the management of the Fund. In the meantime, we see no reason to collect fees when only 12 percent of the amount collected will be put to its intended use and no one knows how or when the spent fuel will be disposed of or perhaps be reprocessed at some distant time for unknown costs.

Thank you for attention to this matter. We would be pleased to discuss the industry proposal with you or your staff.



Frederick F. Butler  
President



Garry A. Brown  
Chairman  
Committee on Electricity



David A. Wright  
Chairman  
Subcommittee on Nuclear  
Issues-Waste Disposal

**Letter from NEI  
to DOE  
July 8, 2009**



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.<sup>47</sup> 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

The Honorable Steven Chu

July 8, 2009

Page 3

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.

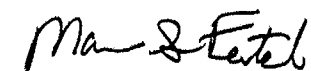
Until recently, the cost of the program reviewed for fee adequacy included the cost of constructing and operating the Yucca Mountain geologic repository. With the passage of the Omnibus Appropriations Act earlier this year, however, funding for Yucca Mountain repository program activities was essentially 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

**Letter from DOE to  
NEI  
October 8, 2009**



QA: NA

## Department of Energy

Washington, DC 20585

October 8, 2009

Mr. Marvin Fertel  
President and Chief Executive Officer  
Nuclear Energy Institute  
1776 I Street, NW  
Suite 400  
Washington, D.C. 20006-3708

Dear Mr. Fertel:

This letter is in response to your letter dated July 8, 2009, to Secretary Chu regarding the need for an updated fee adequacy analysis and 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 (NWPAct), 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 NWPAct 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."

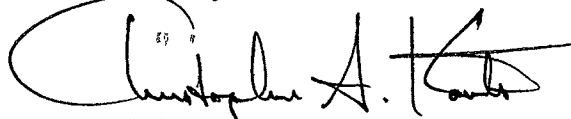
The Department of Energy has consistently determined that the current fee of 1/10-cent per kilowatt hour is adequate to cover the total system life cycle costs of disposing of the commercial spent nuclear fuel and high-level radioactive waste, using the assumptions in place at the time; and, in accordance 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 nuclear industry 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 stylized with a large, looping initial "C" and a long horizontal stroke at the end.

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