

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

March 31, 2011

The Honorable Steven Chu
Secretary
Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Secretary Chu:

We appreciate your March 11, 2011, response to our February 24, 2011, letter requesting information regarding your position on Yucca Mountain. We write today to notify you that the Committee on Energy and Commerce and its Subcommittee on Environment and the Economy are investigating the decision making related to efforts to terminate the high-level waste repository program at Yucca Mountain.

At this time, we seek information regarding decisions that were made (a) to withdraw the license application that is currently pending before the Nuclear Regulatory Commission (NRC) for authorization to construct a repository at Yucca Mountain and (b) to terminate Department of Energy (DOE) support for the Yucca Mountain repository program while the withdrawal petition (and related federal litigation) remains unresolved. We also seek all of the information necessary to evaluate DOE's adherence to its statutory obligations and responsibilities under the Nuclear Waste Policy Act of 1982, as amended, and to determine whether DOE is taking actions that will increase the Department's or taxpayer financial liabilities.

Accordingly, pursuant to Rules X and XI of the Rules of the U.S. House of Representatives, we respectfully ask that you provide written responses to the following within two weeks of the date of this letter. We also ask that you follow the instructions for responding to the Committee's document requests, included as an attachment to this letter. The relevant time period for the following requests is November 4, 2008, to the present.

1. Please explain your role, as Secretary of Energy, in the decision to abandon DOE support for the license application and related development of the nuclear waste repository at Yucca Mountain.

- a. List the names, titles, offices and specific roles of individuals, including those within the Office of the Secretary, who participated in the deliberations regarding the decision to terminate the nuclear waste repository at Yucca Mountain.
2. Please provide all documents provided to, or generated by, the Presidential transition team during the period November 4, 2008, through January 20, 2009, concerning or relating to the Yucca Mountain repository development or nuclear waste policy, including all transition documents relating to the DOE Office of Civilian Radioactive Waste Management (OCRWM).
3. Did you sign or authorize anyone else to sign any document approving DOE's withdrawal of the Yucca Mountain license application from the NRC?
 - a. If so, provide each such document and explain the rationale behind the decision to sign each such document. If not, please explain why no such authorization was given.
4. Did you sign or authorize anyone else to sign any document approving the DOE actions (a) to dismantle OCRWM and/or (b) to proceed to defund and dismantle the Yucca Mountain project support site operations and offices?
 - b. If so, provide each such document and explain the rationale behind the decision to sign each such document. If not, please explain why no such authorization was given.
5. What technical, scientific, regulatory, financial, policy, or legal information did you receive for the purpose of assisting or informing your decision making related to Yucca Mountain, including, but not limited to, decisions regarding budgeting for DOE's license application support activities, the elimination of OCRWM, the motion to withdraw the license application from the NRC, or the termination of the Yucca Mountain repository program?
 - a. Please provide all documents relating to such information, including but not limited to action or decision memoranda and documents provided to, or in the possession of, the Secretary, the Deputy Secretary, the Under Secretary, the Administrator of the National Nuclear Security Administration, the Assistant Secretary for Environmental Management, or the DOE General Counsel.
6. Please explain the basis for your decision to eliminate the OCRWM and the relevant legal authority upon which you relied as the basis for your ability to make such a decision. In addition, please explain:
 - a. The approximate date you initiated evaluation of OCRWM;
 - b. Names, titles, offices and specific roles of individuals, including those within the Office of the Secretary, who participated in the deliberations regarding the evaluation and any decisions to eliminate the office;
 - c. When the decision was made to eliminate or otherwise shut down OCRWM;

- d. What the basis was for disbanding and disbursing the functions of OCRWM within other DOE offices;
 - e. What analyses or evaluations were performed to reach, inform, or guide this decision; and
 - f. What the basis was for determining that placement of OCRWM functions in other offices would conform with the statutory requirements and obligations under the Nuclear Waste Policy Act of 1982, as amended.
7. Please provide all documents containing information regarding the elimination, or potential elimination, of OCRWM.
8. Please explain the basis for your decision to withdraw the Yucca Mountain repository license application from the NRC and the relevant legal authority upon which you relied as the basis for your ability to make such a decision. In addition, please explain:
 - a. The approximate date you began the process of evaluating options for the license application withdrawal;
 - b. Names, titles, offices and specific roles of individuals, including those within the Office of the Secretary, who participated in the deliberations regarding the evaluation of those options;
 - c. When the decision to file a motion to withdraw the application was made;
 - d. What the basis was for deciding to move to withdraw the license and why DOE sought to withdraw "with prejudice";
 - e. What analyses or evaluations were performed to reach, inform, or guide this decision; and,
 - f. What analyses or evaluations were performed to assess the long-term legal, financial, and policy implications of license withdrawal, should it succeed.
9. Provide all documents containing analyses or evaluations relating to the withdrawal of the license application from NRC.
10. Please explain the basis for DOE's decision to terminate operations related to the Yucca Mountain repository development, and explain the decision-making process regarding the shut-down and dismantlement of the site and site offices, the layoffs of DOE contractors and employees, and disbursement or disposal of program property, research, and data. Please also provide an explanation of the legal authority upon which you relied as the basis for this decision. In addition, please explain:
 - a. When the decision was made to terminate the program;
 - b. Names, titles, offices and specific roles of individuals, including those within the Office of the Secretary, who were responsible for implementing the decision to terminate the program;
 - c. What the basis was for terminating the program before the motion to withdraw the license application from NRC was granted; and
 - d. What analyses, evaluations, or plans were created or discussed to reach, inform, or guide the decision to terminate the program.

11. Provide all documents relating in any way to DOE's deliberations or discussions regarding the evaluation of the Yucca Mountain program and the decision to terminate the program.
12. Has DOE been using the Nuclear Waste Fund (NWF) to fund operations to terminate DOE operations related to the Yucca Mountain repository?
 - a. If so, please explain why you used the Nuclear Waste Fund (NWF) to fund operations to terminate DOE operations related to the Yucca Mountain repository and the legal authority upon which you relied in order to justify spending NWF funds in such a manner.
 - b. Provide all documents relating to the use of the NWF to terminate Yucca Mountain operations.

The term "DOE" refers to the U.S. Department of Energy and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the DOE. Should you have any questions, you may contact Peter Spencer of the Majority Committee staff at (202) 225-2927.

We appreciate your prompt attention to this request.

Sincerely,



Fred Upton
Chairman



John Shimkus
Chairman
Subcommittee on Environment and the Economy

Attachment

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy