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ONE HUNDRED NINTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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March 24, 2005

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The Honorable Joshua B. Bolten
Director
Office of Management and Budget
725 17th Street N.W.
Washington, DC 20503

Dear Director Bolten:

As you know, the Subcommittee on Energy and Air Quality held a hearing on March 10, 2005, on funding options for the Yucca Mountain Repository Program. The Subcommittee heard testimony from Department of Energy (DOE) Deputy Director Ted Garrish describing several financial challenges facing the program and a recommendation for reforming the Nuclear Waste Fund (NWF).

Prior to the hearing, we were granted the courtesy of a technical briefing by Office of Management and Budget (OMB) Deputy Associate Director Mark Weatherly regarding the budgetary ramifications of altering the current treatment of the Nuclear Waste Fund. While this briefing was useful, we were left with several remaining questions that relate more to budget policy than to technical matters. Please respond to the following questions by close of business Friday, April 5, 2005. In addition, it would be helpful if you responded to Mr. Dingell's letters of May 4, 2004, and January 14, 2005, by that date.

- 1) In Mr. Garrish's testimony, he states that allowing "fees to be reclassified from mandatory receipts to discretionary collections is not new or unique," and he cites the Nuclear Regulatory Commission and DOE's power marketing activities as examples. He also states "this change would simply be a technical correction that would bring the funding of the radioactive waste program into line with other practices in the federal budgeting process." He also notes that this is particularly appropriate due to the "fee for service" contractual obligation that is unique to this program. Later in his testimony he states "if the Administration were to unilaterally reclassify the fees through administrative action, it would be a departure from past practice, but does not appear to be prohibited by law."

Despite the President's 2002 recommendation to proceed with developing Yucca Mountain and the Administration's strong support of this project, this situation has not been addressed. Why not?

- 2) If administrative reclassification and legislative reclassification would both be scored by the Congressional Budget Office, instead of treatment as a technical correction, why not proceed with an administrative solution first?
- 3) Last year, there was speculation that the Administration would develop a "Plan B" to address funding issues if a legislative reclassification bill did not pass. Is there a plan for this year?
- 4) If reclassification, or another legislative proposal that meets the objective of reclassification legislation, is not enacted, is the Administration committed to requesting the increases in appropriation levels for the project in FY 2007 and beyond for the project in order to permit the repository to begin operations in 2012 or sooner?
- 5) The corpus of the NWF had a surplus balance of \$15.9 billion at the end of FY 2004. OMB estimates that the surplus will increase by over \$1 billion annually, to a level of \$18.4 billion by the end of FY 2006. Under the Nuclear Waste Policy Act, these funds are intended to pay for the repository program.

How are these funds currently used?

What assurance can you provide this Committee that the funds ultimately will be used for its intended purpose?

- 6) In 2004, the government reached a settlement agreement with Exelon Corporation for \$80 million in FY 2005 and a total of \$300 million to cover damages to date resulting from the Government's failure to meet the contractual deadline of January 1998 for initial fuel acceptance included in the Nuclear Waste Policy Act. Over 50 additional lawsuits from utilities to recover such damages are pending in the courts. DOE estimates that these damages could cost approximately \$500 million per year. The industry estimates that the costs are closer to \$1 billion per year. These costs will grow with further delays in the program.

Is the cost of the Exelon settlement included in the budget? Please explain.

Are the potential additional costs associated with the other suits incorporated in the Administration's budget projections?

- 7) Soon, costs attributable to delays in the project will be greater than the program's funding shortfalls. These mounting costs suggest two courses of action. Either the program can be fully funded and commence operations at the earliest practical date, thereby minimizing costs attributable to delays, or the program can be underfunded while the costs attributable to delays continue to mount. At some point, the cost attributable to delays could outstrip the cost of completing the project. What effort is being made to address this dilemma and reconcile how these two paths should be scored in the budget?

- 8) OMB budget estimates show that the interest earned on the Nuclear Waste Fund in FY 04 was \$1.3 billion. This interest earning is an annual flow of funds that would go a long way toward meeting the funding requirements for the program. In fact, the funding profiles in Mr. Garrish's testimony assume use of a portion of these earnings to fund the program for a number of years beginning in FY 09.

How is income on the balance of the NWF scored for budget purposes?

How would appropriations of money from the NWF be scored for budget purposes?

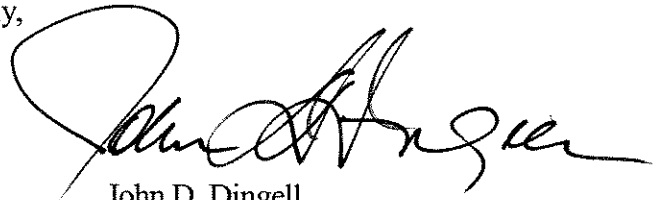
Given the potential impact on the budget of using those annual earnings to fund the project, what if any administrative or legislative actions are necessary to ensure their availability to the program?

In light of the urgent need for DOE to receive the necessary funds to begin operations in 2012, we would like to understand the full measure of the Administration's support for the Yucca Mountain program and what actions it is prepared to take to ensure adequate funding.

Sincerely,



Joe Barton
Chairman



John D. Dingell
Ranking Member