Congress of the United States
Washington, DC 20515

January 19, 2005

The Honorable Spencer Abraham
Secretary
Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Secretary Abraham:

As you know, one of the most important priorities for the Department of Energy (DOE) is ensuring that the program to build a nuclear waste repository at Yucca Mountain, Nevada, receives sufficient funding. I was disappointed with the Administration's inadequate budget request for FY 2005, and have reiterated my concerns in a recent letter to Director Bolten of the Office of Management and Budget (attached).

In addition, I remain concerned that the balance in the Nuclear Waste Fund (the Fund) will be subject to severe budget pressures. I share the concerns of state regulators that ratepayer contributions in excess of annual appropriations will be counted towards deficit reduction, and consequently there will be pressure to divert the Fund from its intended purpose.

In order to provide Members with an accurate picture of the program's future funding stream, please provide an update of the table titled "Summary of Funding Profile" included in your April 26, 2004, letter to me by no later than Wednesday, February 9, 2005.

I appreciate your cooperation in this matter. If you have any questions, please contact me or have your staff contact Sue Sheridan or Bruce Harris with the Committee Democratic staff at (202) 226-3400.

Sincerely,

JOHN D. DINGELL
RANKING MEMBER

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

Attachment

Congress of the United States
Washington, DC 20515

January 14, 2005

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

Dear Director Bolten:

It has been eight months since I wrote to you raising questions about funding for the Department of Energy's (DOE) program to license and construct a repository at Yucca Mountain pursuant to the Nuclear Waste Policy Act of 1982. That letter remains unanswered, a state of affairs that makes it difficult for me and other Members to determine how best to be helpful in securing the necessary resources for this important program.

Because the President will soon submit a budget proposal for FY 2006, it seems an appropriate time to again raise the questions I posed in that letter, as well as inquire about the Administration's future plans for the program. Please respond to the following questions by no later than Friday, January 28, 2004:

(1) Does the Administration support H.R. 3981, a bill that would "reclassify" receipts from annual fees paid into the Nuclear Waste Fund (the Fund) as offsetting collections for budget purposes?

As indicated in the attached May 4, 2004, letter, I am concerned that this proposal is insufficient to ensure adequate funding for the repository program. I also am concerned that, while its enactment might decrease funding competition with other DOE programs, the provision would effectively increase deficit spending at a time when the country can ill afford to do so by masking overall spending.

If, however, the Administration still believes this fee "reclassification" would benefit the program, it is reasonable for Congress to know whether or not legislation is the sole means to achieve it. Does the Office of Management and Budget have authority to accomplish the objectives of H.R. 3981 (as introduced in the 108th Congress) through administrative action?

(2) As you know, there is serious concern among state utility regulators that the balance in the Fund is effectively held hostage to other budget priorities, and as a result will not be made available to DOE to support license application and other program needs. Regulators and utilities are concerned that the ratepayers, whose contributions comprise the Fund, may be asked to contribute far more money for far longer into the future than otherwise would be necessary.

In my letter of last May, I called upon the Administration to develop a plan for ensuring that the entire Fund will be used for its intended purpose. Does the Administration now have a plan to ensure that the balance in the Fund (currently about $16 billion) will be available to support DOE's Yucca Mountain program?

(3) In the May letter, I suggested that until the issue of how to safeguard the then $14 billion balance in the Fund is resolved, consideration should be given to suspending further payments into the Fund. In fact, it appears that the section 302(a)(4) Act would permit the Secretary of Energy to take this step, through a reduction in the annual 1 mil per kilowatt-hour fee. Would the Administration support this policy?

(4) During the last Congress, the Administration undertook unsuccessfully to achieve adequate funding for Yucca Mountain by linking a relatively low budget request and the legislative proposal in H.R. 3981 to reclassify the fee for budget purposes. Though Congress ultimately appropriated $577 million to the program for FY 2005, a substantially higher number than the Administration's budget request of $131 million, this amount was substantially lower than the $880 million DOE stated was necessary to keep the program on track.

For FY 2006, does the Administration plan to continue its former policy of coupling a low budget request for Yucca Mountain with a legislative request along the lines of H.R. 3981? I would observe that such a strategy is unlikely to be any more successful this year than last. Regardless, this course of action will not address the need to restore the balance in the Fund to its intended purpose, or help limit deficit spending.

In conclusion, I underscore my continuing support for the Yucca Mountain project, as well as my hope that the program will be adequately funded with DOE soon in a position to submit a license application to the Nuclear Regulatory Commission. I stand ready to support policies, including any needed legislation, that respond to the concerns I have raised.

Thank you for your assistance in this matter. If further information is required, please have your staff contact Sue Sheridan, Senior Minority Counsel with the Committee, at (202) 226-3400.

Sincerely,

JOHN D. DINGELL
RANKING MEMBER

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

Attachment

ONE HUNDRED EIGHTH CONGRESS

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

JOE BARTON, TEXAS
CHAIRMAN

May 4, 2004

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

Dear Director Bolten:

As you know, the Subcommittee on Energy and Power held a legislative hearing on March 25, 2004, on the Department of Energy's (DOE) program to license and construct a repository at Yucca Mountain pursuant to its authority under the Nuclear Waste Policy Act of 1982 (the Act).

At the hearing, DOE Undersecretary of Energy Robert Card testified in support of the Administration's legislative proposal concerning future contributions to the Nuclear Waste Fund (the Fund). Mr. Card described this approach, as embodied in H.R. 3981 (introduced by Chairman Barton by request on March 17, 2004) as follows:

> "Specifically, under the Administration's proposal, the amount of receipts from annual fees would be credited as offsetting collections. The amount credited as offsetting collections would still be subject to approval in an appropriations act, but could be appropriated without reducing the funding that would be available for other federal programs."

For some time, I have been concerned that money contributed by ratepayers to the Fund is overly vulnerable to budgetary pressures. As a consequence, even if DOE receives a license from the Nuclear Regulatory Commission (NRC) to construct and operate the repository, without reform, adequate funding may not be available. I commend the Administration for recognizing this problem, although I believe that a more comprehensive solution is needed to protect the $14 billion currently in the Fund. Moreover, it appears that the Administration's proposed solution will increase the deficit, at a time when deficits already are ballooning.

In order to assist members in evaluating H.R. 3981, please respond to the following:

First, given the limited number of legislative days left in the session, the prospects for enacting funding legislation this year are slim. This raises the question whether any non-legislative alternatives exist to help ensure adequate funding. It recently has come to my attention that some believe that OMB could take administrative action to achieve the same purposes as the Administration's legislative proposal. Does OMB currently have authority to accomplish the objectives of H.R. 3981 through administrative action? If so, please describe such authority, including the conditions under which it could be exercised and any limitations thereto.

Second, I am also interested in how the $14 billion currently in the Fund might be protected. Four years ago we were in surplus, with large surpluses forecast for the decade. Under that scenario, it appeared that the full Fund would be available to the repository program when needed, consistent with the intent of the Act. Since then, we have seen a budget surplus turned into an enormous deficit. It appears that tax cuts which have gone mostly to very wealthy individuals have been financed by various trust funds, including Social Security, Medicare, and the Nuclear Waste Fund, which were paid for by workers and, in the last instance, by electricity consumers. I call upon you to develop a plan for returning the Fund to its designated use. Perhaps the fee should be suspended while the $14 billion is expended on its intended purpose. At the same time, I ask you to propose necessary offsets so this revenue loss will not increase a deficit which is already too high.

In light of the urgency of ensuring that DOE have sufficient funding to fulfill its responsibilities under the Act, and the importance of Members of Congress having a full understanding of various options for achieving that goal, I would appreciate your response no later than Tuesday, May 11, 2004.

Sincerely,

JOHN D. DINGELL
RANKING MEMBER

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce