

BLUE RIBBON COMMISSION ON AMERICA'S NUCLEAR FUTURE

December 12, 2011

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

At your direction, the Secretary of Energy established the Blue Ribbon Commission on America's Nuclear Future to review policies for managing the back end of the nuclear fuel cycle and recommend a new strategy. We are pleased to be serving as Co-Chairmen of the Commission, and we are writing to you to highlight an important action we strongly believe should be reflected in your Fiscal Year 2013 baseline budget projections.

In our draft report to the Secretary, issued in July of this year, the Commission recommends several actions that should be taken to get the nuclear waste management program back on track. High on our list of recommendations are actions that can and should be taken soon to provide assured access to utility waste disposal fees for their intended purpose. Unless action is taken in the near-term to fix the way these fees are treated in the federal budget, the nuclear waste strategy we recommend cannot succeed.

Funds for the disposal of spent nuclear fuel from commercial power reactors are collected regularly through the assessment of a nuclear waste fee on nuclear-generated electricity as a *quid pro quo* payment in exchange for the federal government's contractual commitment to begin accepting commercial spent fuel for disposal beginning by January 31, 1998. These fee payments, which total approximately \$750 million per year, go to the government's Nuclear Waste Fund, which was established for the sole purpose of covering the cost of disposing of civilian nuclear waste and ensuring that the waste program would not have to compete with other funding priorities.

As we have learned through our investigation, the Nuclear Waste Fund does not work as intended. A series of Executive Branch and Congressional actions has made annual fee revenues and the unspent \$26 billion balance in the Fund effectively inaccessible to the nuclear waste management program. Instead, the waste program must compete for federal funding each year and is therefore subject to exactly the budget constraints and uncertainties that the Fund was created to avoid. This situation must be remedied to allow the program to succeed.

In the meantime, with the federal government having failed to meet its contractual obligation to begin receiving spent fuel beginning in 1998, nuclear utilities have successfully sued the government for failure to perform and are receiving damage payments from the federal Judgment Fund. The government estimates its liability will grow to \$16 billion by 2020 and will increase by several hundred million dollars per year thereafter until it begins accepting spent fuel for disposal.

We have recommended that your Administration offer to amend the standard nuclear waste contract with nuclear utilities, which you are authorized to do under current law, so that utilities remit only the portion of the annual nuclear waste fee that is appropriated for waste management each year. The rest of the funding would be placed in a trust account, held by a qualified third-party institution, to be available when needed. At the same time, we have recommended that the Office of Management and Budget work with the Congressional budget committees and the Congressional Budget Office to change the budgetary treatment of annual fee receipts so that these receipts can directly offset appropriations for the waste program.

These actions are vital to enabling key subsequent actions the Commission recommends. Therefore, we respectfully request that you act promptly to implement these changes in your Fiscal Year 2013 budget proposal. We have heard repeatedly from those following our work that they expect our recommendations to lead to prompt action on the nuclear waste issue; we firmly believe that implementing our funding recommendations is an essential first step.

We recognize that our recommendations, if adopted, would mean the nuclear waste fee receipts could no longer be counted against the federal budget deficit and that the result will be a negative impact of approximately \$750 million on annual budget calculations. We appreciate that any budgetary actions that increase the size of the deficit are especially difficult to take in the present fiscal climate. However, it is clear that the federal government is contractually bound to use these funds to provide for ultimate disposal of spent nuclear fuel. In our view, a failure to correct the funding problem does the federal budget no favors in a context where taxpayers remain liable for mounting damages, compensated through the Judgment Fund, for the federal government's continued inability to deliver on its waste management obligations.

In preparing our draft proposal we consulted with former Office of Management and Budget and Congressional budget staff, and our proposal enjoys the support of both the National Association of Regulatory Utility Commissioners, representing the ratepayers, and the Nuclear Energy Institute, representing the nuclear utilities. We should note that the federal government's failure to deliver on its statutory obligations with respect to commercial spent fuel disposal has prompted these organizations to pursue legal action against the government aimed at suspending entirely the collection of fees until such time as a new waste management plan for the country has been finalized.

We believe our recommended actions are essential to the future success of the nuclear waste management program and we urge you to reflect our recommendations in your Fiscal Year 2013 budget proposal.

With best regards,

A handwritten signature in black ink, appearing to read "Lee H. Hamilton". The signature is fluid and cursive, with a large initial "L" and "H".

Lee H. Hamilton
Co-Chairman

A handwritten signature in black ink, appearing to read "Brent Scowcroft". The signature is cursive and somewhat stylized, with a large initial "B".

Brent Scowcroft
Co-Chairman

cc: Secretary Steven Chu