May 9, 2012

Mark Langer, Clerk
U.S. Court of Appeals, D.C. Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue N.W.
Washington, D.C. 20001

RE: In Re Aiken County
U.S. COA, D.C. Circuit No. 11-1271

During oral argument on May 2, 2012, the Court raised questions as to what funds are currently available to the Department of Energy (DOE) to participate in the NRC’s Yucca Mountain licensing process. See Oral Argument Transcript (May 2, 2012) page 8, line 15 through page 9, line 1; page 73, line 24 through page 74, line 16. Pursuant to Fed. R. App. P. 28(j) and Circuit Rule 28(f), Petitioners submit the attached letter dated May 2, 2012, from Peter Lyons, DOE Assistant Secretary for Nuclear Energy, to United States Representatives Fred Upton and John Shimkus, as a supplemental authority, together with the March 22, 2012 letter to which it responds.

According to the May 2 letter, as of February 2010, DOE has $60.6 million in appropriated, but unexpended, funds to “carry out the requirements of the Nuclear Waste Policy Act.” Of that amount, DOE represents that $18 million are “unobligated.” DOE represents that the remaining balance of $42.6 million are “obligated against existing contracts and unavailable to support new obligations.” Petitioners believe at least some of these existing contracts relate to supporting DOE’s participation in the NRC’s licensing process.

Sincerely,

s/ Andrew A. Fitz

ANDREW A. FITZ
Senior Counsel
(360) 586-6752

AAF:dmm
Enclosures
cc: All Parties of Record
March 22, 2012

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

Dear Secretary Chu:

We write to follow up on your testimony before a hearing of the Energy and Power Subcommittee this past March 8, 2012.

During that hearing, Chairman of the Environment and the Economy Subcommittee John Shimkus asked you whether the Department of Energy (DOE) had the resources to pursue the Yucca Mountain application before the Nuclear Regulatory Commission (NRC), should the U.S. Court of Appeals (D.C. Circuit) order the application to be pursued. You replied that “if the federal court orders us to do so, we will do so.” When asked to describe the funding resources, you testified that you would provide to the Committee details of the resources that could be made available.

In connection with this request for resource information, we ask that you respond to the following by March 30, 2012:

1. What is the total funding that could be made available this current fiscal year for support of the NRC license application to construct a repository at Yucca Mountain?
   
a. Please provide details of the particular accounts in which these funds are held.

b. Please provide current uncosted obligations and current unobligated funds, including funds held in the Chief Financial Officer’s reserves, which could be made available for application support.
2. In DOE’s January 2012 Report on Uncosted Balances for Fiscal Year Ended September 30, 2010, the uncosted (or unspent) obligations available at the end of FY 2010, when DOE zeroed out its funding for the Yucca Mountain Program, amounted to a total of $71.2 million (split between the Nuclear Waste Fund and Defense Nuclear Waste Disposal accounts).

   a. What uncosted obligations in these accounts were available at the end of FY 2011 and are available at present in these accounts?

   b. Explain, to the extent these amounts differ from those available at the end of FY 2010, how the funds were expended; what, if any, funds were deobligated; and what happened to any such deobligated funds?

Thank you for promptly attending to our requests. Should you have any questions, please do not hesitate to contact Peter Spencer of the Majority Committee staff at (202) 225-2927.

Sincerely,

Fred Upton
Chairman

John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Henry A. Waxman, Ranking Member
The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy
May 2, 2012

Dear Chairmen Upton and Shimkus:

Thank you for your March 22, 2012, letter requesting information on the funding resources available to the Department of Energy (DOE) for licensing activities related to the Yucca Mountain Project. Secretary Chu has asked that I respond on his behalf.

First, I would like to emphasize that DOE is committed to meeting its obligation to dispose of used nuclear fuel and high-level waste. At the direction of President Obama, Secretary Chu chartered the Blue Ribbon Commission on America's Nuclear Future to make recommendations about the best approaches to dealing with the challenges of the back end of the nuclear fuel cycle. The Commission’s report, released earlier this year, will inform the Administration’s work with Congress to define a responsible and achievable path forward to manage our nation’s used nuclear fuel and nuclear waste.

The report of the Blue Ribbon Commission on America’s Nuclear Future is a critical step toward finding a sustainable approach to disposing used nuclear fuel and nuclear waste. The Commission’s report finds that a consent-based approach and a superb safety record can lead to the successful development and operation of a geologic repository for nuclear waste disposal that is fully supported by the local community. As part of the Administration’s commitment to restarting the nuclear industry in America, we will work with Congress and stakeholders to pursue better, consent-based alternatives for the disposition of used nuclear materials and wastes.

As of the end of February 2012, $60.6 million of the funds appropriated to DOE to carry out the requirements of the Nuclear Waste Policy Act (NWPA) remained unexpended. Of this amount, $42.6 million are obligated against existing contracts and are unavailable to support new obligations. The remaining $18.0 million is unobligated as of February, 2012. The funds are held in the following accounts:
Funds Available for Obligation to New NWPA Activities, February 2012

Nuclear Waste Disposal: $ 8.8 million  
Defense Nuclear Waste Disposal: $ 9.2 million  
Total Available: $18.0 million

The Department continues to expend funds to carry out ongoing responsibilities under the NWPA such as financial oversight of the Nuclear Waste Fund and the ongoing closeout of activities and contracts at the Yucca Mountain Project. The remaining unobligated balances listed above will be used to fund these ongoing requirements and any other activities the Department undertakes consistent with the NWPA.

At the end of FY 2010, $123.1 million remained unexpended of the funds appropriated to the Department of Energy to carry out the requirements of the Nuclear Waste Policy Act. Of this amount, $10.9 million were held by the Department, $40.0 million were unobligated, and $72.2 million were uncoded obligations.

$50.6 million of these dollars were costed during FY 2011, leaving a total balance of $72.6 million at the beginning of FY 2012. So far this fiscal year, through February, an additional $11.8 million has been costed, resulting in the unexpended balance of $60.6 million described above.

Of the $62.4 million costed from the beginning of FY 2011 through February 2012, $19.5 million was for Federal program direction; $11.8 million was for financial assistance to local governments and communities; $6.2 million was for contract closeout related to the license application; $16.2 million was for Yucca Mountain closeout activities, including $3.1 million for post-closure safety analysis; and $8.7 million was for various program support activities, including information management and nuclear waste fund audits.

If we can be of further assistance, please feel free to contact me or Mr. Christopher Davis, Deputy Assistant Secretary for House Affairs, at (202) 586-5450.

Sincerely,

[Signature]

Peter B. Lyons  
Assistant Secretary  
for Nuclear Energy
CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May 2012, a copy of the foregoing was filed using the CM/ECF system which will serve the same on all parties of record as follows:

Mullins, Charles charles.mullins@nrc.gov

Nestor, Christopher R. christopher.nestor@klgates.com, dottie.messimer@klgates.com, klgateseservice@klgates.com

Andersen, Robert Michael randersen@clarkhill.com

Cordes, John F., Jr. John.Cordes@nrc.gov

Ramsay, James Bradford jramsay@naruc.org

Hartman, Barry M. barry.hartman@klgates.com, klgateseservice@klgates.com

Lunt, Robin Kimlin Jensen rlunt@naruc.org

Gottshall, Thomas Rush tgotshall@hsblawfirm.com, lgantt@hsblawfirm.com, bvaldes@hsblawfirm.com

Woodington, Kenneth Paul kwoodington@dml-law.com, sstafford@dml-law.com, jangus@dml-law.com, nbouknight@dml-law.com

Bowers, Todd R. todb@atg.wa.gov, TORSeaEF@atg.wa.gov, aaronz@atg.wa.gov, taliaz@atg.wa.gov, jenniferd4@atg.wa.gov

Fitz, Andrew Arthur andyf@atg.wa.gov, ecyolyef@atg.wa.gov, dianam@atg.wa.gov
I further certify that, a copy of the foregoing was served on the following via first class U.S. Mail:

Mr. Burns, Stephen Gilbert  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
One White Flint North  
Rockville, MD 20852  

DATED this 9th day of May 2012, in Olympia, Washington.

______________________________  
Andrew A. Fitz  
Senior Counsel  
(360) 586-6752