

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE AND TECHNOLOGY

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February 3, 2010

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

Dear Secretary Chu:

We write to you once again to seek further explanation and documentation regarding the Administration's decision to abandon the development of the Yucca Mountain site as a nuclear waste repository. Despite a nearly \$10 billion investment, clear congressional direction and legal obligation, and robust scientific study and oversight, the Administration continues to take unexplained actions that could ultimately sacrifice the project.

In May 2009, we wrote you to reconcile your statements in support for "restarting" nuclear power with Administration actions that risk materially delaying the expansion of nuclear energy in the United States.¹ On June 1, 2009 you responded with a brief letter noting your plan to establish a blue ribbon commission on nuclear waste storage but failing to address any of the issues or questions that we raised.²

Follow up discussion between Committee staff and Department staff confirmed that you consider this letter to be responsive and that the Department does not possess documents related to the decision or our inquiry. If this is indeed true, we find it alarming that your Department made an important decision that could have significant adverse consequences for the nation and the American taxpayer without conducting a comprehensive analysis.

The recent announcement of the Blue Ribbon Commission raises more questions than it answers, as you have declined to comment on the nature of the commission's charter.³

¹ Letter from Reps. Ralph Hall, Joe Barton, Paul Broun, and Greg Walden to Secretary Chu, May 7, 2009 (copy attached).

² Letter from Secretary Chu to Reps. Ralph Hall, Joe Barton, Paul Broun, and Greg Walden, June 1, 2009 (copy attached).

³ Peter Behr, "The Administration puts its own stamp on a possible nuclear revival," ClimateWire, Energy and Environment Publishing, February 2, 2010.

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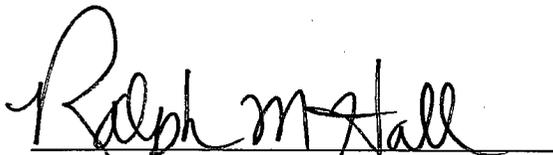
According to the Department's own timeline, the commission won't even issue recommendations until near the end of the Administration's term. This process and timeline highlights the highly illogical nature of terminating the only existing option before assessing potential alternative options, and suggests that political decisions have overridden the need for a systematic and scientific review of all options. Further, the decision to withdraw the Department's Nuclear Regulatory Commission's license application for Yucca Mountain and its concurrent budget proposal to cancel funding for the Office of Civilian Radioactive Waste Management (OCRWM) raises important questions about the legality of these actions with respect to the Nuclear Waste Policy Act (NWPA) of 1982.

While I was pleased to hear that the Administration chose to increase the Department's contribution to the loan guarantee program, the uncertainty surrounding the Blue Ribbon Commission, combined with the Administration's growing record of mixed signals on other aspects of nuclear energy, raises serious questions about the credibility of the Administration's rhetorical support of this nuclear energy. As Secretary of Energy, you have an opportunity to set the record straight and work with Congress to ensure the resurgence of the only energy source capable of providing significant quantities of affordable, safe, carbon-free electricity.

Accordingly, we ask that you provide all documents responsive to our May 7, 2009 letter, as well as respond to the questions we posed at that time. Additionally, please provide an explanation for, and all documents (see attachment) related to, the establishment of the blue ribbon commission on nuclear waste storage. Last, please explain how the administration proposal to cancel funding for OCRWM is consistent with its statutory obligation to provide for radioactive waste storage under the NWPA. Please provide your response by February 16, 2010.

If you or your staff have any questions or needs additional information, please contact either Mr. Tom Hammond or Mr. Dan Byers with the Science and Technology Committee minority staff at (202) 225-6371.

Sincerely,



REP. RALPH HALL
Ranking Member
Committee on Science and Technology



REP. PAUL BROUN, M.D.
Ranking Member
Subcommittee on Investigations
and Oversight
Committee on Science and Technology

Enclosures

cc: The Honorable Bart Gordon, Chairman
Committee on Science and Technology

The Honorable Brad Miller, Chairman
Subcommittee on Investigations and Oversight
Committee on Science and Technology

Congress of the United States
House of Representatives
Washington, D.C. 20515

May 7, 2009

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

Dear Secretary Chu:

On April 22, 2009, you testified before the House Committee on Energy and Commerce in connection with its legislative hearings on the American Clean Energy and Security Act of 2009. During your testimony, you stated that the Administration would support a nuclear title in the climate legislation and that the Administration believes that nuclear power has to be "restarted" and must be part of the future energy mix in this country.

Yet you and the Administration are on record as seeking to abandon construction of a deep-underground repository for the nation's nuclear waste at Yucca Mountain, Nevada. This repository, designated by statute to be located at the Yucca Mountain site and to be the nation's first permanent nuclear waste repository, is essential for the revitalization and expansion of nuclear power in the United States. And after over 25 years of scientific and technical study and Congressional review, there are no other alternative sites provided for under the law.

According to your press spokesperson, you believe "nuclear waste storage at Yucca Mountain is not an option, period." At a House Science and Technology Committee hearing in March, you stated that "conditions changed" with regard to Yucca Mountain and that DOE independently is seeking a blue-ribbon panel to take a "fresh look" at nuclear waste and disposal. And your opposition has been reinforced by the Administration's just released FY 2010 Budget, which states that all Department of Energy (DOE) funding for Yucca Mountain development "has been eliminated," except to allow DOE to respond to the Nuclear Regulatory Commission's (NRC) technical questions related to its current review of the DOE Yucca Mountain license application.

Turning away from Yucca Mountain may have significant adverse consequences for the nation and the American taxpayer. For example, the Federal government's total potential liability from delays in accepting used fuel and nuclear waste could be significantly higher than the past estimates of \$11 billion if Yucca Mountain is no longer an option. The Administration's position that Yucca Mountain is not an option also raises significant regulatory and legal issues that may not only adversely affect the licensing and development of new nuclear plants, but also

may impact existing operating nuclear plants. The position also raises significant issues for the U.S. Navy and DOE sites, including for the Hanford, Savannah River, Idaho and other DOE sites where spent nuclear fuel and/or high-level radioactive waste is currently being stored pending permanent disposal.

We write to reconcile your testimony in support of "restarting" nuclear power in connection with clean energy policy with the Administration's actions that risk materially delaying the expansion of nuclear energy in this nation. In light of current climate policy debates, it is critical that we understand the Administration's actual plans in this regard. We would appreciate your providing responses to the following:

1. What is the scientific or technical basis, if any, for your decision that the proposed Yucca Mountain repository is "not an option"?
2. How does your decision comport with the Department of Energy's (DOE) statutory obligations under the Nuclear Waste Policy Act of 1982, as amended?
3. Under what legal authority would a blue ribbon panel re-evaluate options for nuclear waste disposal be established?
4. With regard to the proposed blue ribbon panel:
 - a. How would the panel be established?
 - b. What would be the process for appointing persons to serve on the panel?
 - c. What would be the composition of the panel?
 - d. What would be the scope of its review?
5. Prior to your public statements that Yucca Mountain repository is "not an option," was any analysis performed of the potential taxpayer liabilities associated with such a decision?
6. Please provide all documents relating to any legal, technical, or scientific analyses that formed the basis for your decision to re-evaluate nuclear waste disposal alternatives to the proposed Yucca Mountain repository, including, but not limited to, evaluations and recommendations that led you to determine that Yucca Mountain was "not an option."
7. What was the process for making your decision that Yucca Mountain repository is "not an option"? Please describe and identify when and with whom you consulted, including, but not limited to, a description and identification of attendees at any public meetings, any Administration meetings, and any consultations with States affected by the decision.
8. In reaching your determination that the Yucca Mountain repository is no longer an option, did you consult with or receive any briefings from the Nuclear Waste Technical Review Board, DOE laboratory directors or personnel, or any DOE scientists or technical personnel who performed work on the Yucca Mountain project? Please describe when

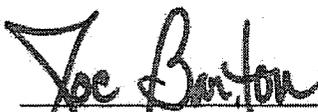
and with whom you consulted, including, but not limited to, a description and identification of attendees at any meetings.

9. Have you shared your rationale for determining that the Yucca Mountain repository is "not an option" with the Nuclear Waste Technical Review Board or the Nuclear Regulatory Commission?
10. Have you or your staff prepared any analyses of the potential impact that failing to pursue the Yucca Mountain repository may have on the construction of new nuclear plants, which are essential to providing clean and reliable energy in the future? If so, please provide any such analyses.
11. How do you believe the Administration's decision to scale back the Yucca Mountain project will affect DOE's responsibility to develop, construct, and operate repositories for disposal of spent nuclear fuel and high-level radioactive waste under the Nuclear Waste Policy Act of 1982, the Nuclear Waste Policy Amendments Act of 1987, and the Energy Policy Act of 1992?
12. If a repository at Yucca Mountain is not pursued, what does the Administration propose to do with the billions of dollars that have been collected from ratepayers for the Nuclear Waste Fund?

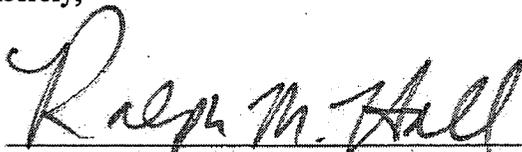
Please provide the written responses and documents requested by no later than two weeks from the date of this letter. We would respectfully request, if the Department withholds any documents or information in response to this letter, that a Vaughan Index or log of the withheld items be attached to the response. The index should list the applicable question number, a description of the withheld item (including date of the item), the nature of the privilege or legal basis for the withholding, and a legal citation for the withholding claim.

Should you have any questions please contact Mr. Peter Spencer of the Minority Energy and Commerce Committee staff at (202) 225-3641, and Ms. Elizabeth Chapel or Mr. Tom Hammond of the Minority Science and Technology Committee staff at (202) 225-6371.

Sincerely,



Joe Barton
Ranking Member
Committee on Energy and Commerce



Ralph M. Hall
Ranking Member
Committee on Science and Technology



Greg Waddell
Ranking Member
Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce



Paul C. Broun
Ranking Member
Subcommittee on Investigations
and Oversight
Committee on Science and Technology

Enclosure

cc: The Honorable Henry Waxman, Chairman
Committee on Energy and Commerce

The Honorable Bart Stupak, Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce

The Honorable Bart Gordon, Chairman
Committee on Science and Technology

The Honorable Brad Miller, Chairman
Subcommittee on Investigations and Oversight
Committee on Science and Technology



The Secretary of Energy

Washington, D.C. 20585

June 1, 2009

The Honorable Ralph M. Hall
Ranking Member
Committee on Science and Technology
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Hall:

Thank you for your May 7, 2009, letter regarding Yucca Mountain.

As you note in your letter, the Administration is committed to pursuing alternatives to Yucca Mountain. However, we remain committed to meeting our obligations for managing and ultimately disposing of spent nuclear fuel and high-level radioactive waste.

Your letter raises a range of complex questions about Yucca Mountain and the Administration's plans to develop alternatives. I believe that we need to proceed with the development of alternatives in a deliberate and thorough fashion that takes into account these complexities – which include technical, safety, legal, economic and other factors.

To that end, the Administration intends to convene a "blue-ribbon" panel of experts to evaluate alternative approaches for meeting the Federal responsibility to manage and ultimately dispose of spent nuclear fuel and high-level radioactive waste from both commercial and defense activities. This panel will provide the opportunity for a full public dialogue on how best to address this challenging issue and will provide recommendations that may form the basis for working with Congress to revise the statutory framework for managing and disposing of spent nuclear fuel and high-level radioactive waste.

As we begin to restart the nuclear industry in the United States, the time is right to reexamine our options and plans for managing the back end of the fuel cycle. Options for storage, recycling, and geologic disposal of spent nuclear fuel and high-level radioactive waste all deserve careful consideration, with an eye towards development of an updated management framework. The Administration looks forward to ongoing dialogue with members of Congress, interested stakeholders, and others as we review options for alternatives to Yucca Mountain in the months ahead.

If you have any questions, please contact me or Ms. Betty A. Nolan, Senior Advisor, Office of Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Chu".

Steven Chu



Printed with soy ink on recycled paper

ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
2. The terms "relating," "relate," or "regarding" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.