



The Secretary of Energy
Washington, DC 20585

October 2, 2017

The Honorable John Shimkus
Chairman, Subcommittee on Environment
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your continued leadership in ensuring the responsible management of the Nuclear Waste Fund (NWF). I look forward to working with you to ensure that the NWF can be used for its intended purpose, which is to fund the disposal of commercial spent nuclear fuel under the Nuclear Waste Policy Act of 1982, as amended (NWPAct). This letter is in response to your August 21, 2017, letter requesting information regarding the Secretary's authority related to the Nuclear Waste Fund fee and how that fee is scored.

1. If OMB and CBO projections were accurate, what is the estimated total NWF receipts collected since Secretary Moniz set the fee to zero in 2014?

Answer: If the projection had actually occurred, approximately \$1.4 billion would have been collected since Secretary Moniz set the fee to zero effective May 16, 2014.

Specifically, past projections of estimated total NWF receipts under section 302(a)(2) of the NWPAct would be as follows:

Fiscal Year (FY) 2017:	\$388 million ¹
FY 2016:	\$386 million ²
FY 2015:	\$362 million ³
FY 2014:	\$274 million ⁴

Total: \$1.41 billion

¹ <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/doe.pdf> (Budget of the U.S. Government, Fiscal Year 2018, DOE App. at 393).

² <https://www.gpo.gov/fdsys/pkg/BUDGET-2017-APP/pdf/BUDGET-2017-APP-1-10.pdf> (Budget of the U.S. Government, Fiscal Year 2017, DOE App. at 421).

³ <https://www.gpo.gov/fdsys/pkg/BUDGET-2016-APP/pdf/BUDGET-2016-APP-1-10.pdf> (Budget of the U.S. Government, Fiscal Year 2016, DOE App. at 417).

⁴ The Budget of the U.S. Government, Fiscal Year 2015 (FY15 Budget), estimated that \$724 million in fees would be collected for all of FY14, which ran from October 1, 2013 to September 30, 2014.

<https://www.gpo.gov/fdsys/pkg/BUDGET-2015-APP/pdf/BUDGET-2015-APP-1-9.pdf> (FY15 Budget, DOE App. at 407). Secretary Moniz set the fee to zero on May 16, 2014. Therefore, the projected collections for May 16, 2014 and the remaining 137 days of FY14 is assumed to be $138/365 * \$724 \text{ million} = \274 million .



- 2. To date, what is the actual level of NWF receipts collected since Secretary Moniz set the fee to zero in 2014?**

Answer: The actual level of NWF receipts under section 302(a)(2) of the NWP, for the ongoing fee for electricity generated and sold, collected since Secretary Moniz set the fee to zero in 2014 is \$0.

- 3. Absent Congressional action on either new authorization legislation or appropriations, what action can DOE take administratively that would result in resumption of the collection of NWF fees?**

Answer: The NWP provides a statutory mechanism for reinstating the fee;⁵ however, DOE's ability to use that mechanism must be consistent with the 2013 decision by the U.S. Court of Appeals for the D.C. Circuit in *NARUC v. DOE*.⁶ In that decision, the court ordered the Secretary to set the fee at zero "until such a time as either the Secretary chooses to comply with the Act as it is currently written, or until Congress enacts an alternative waste management plan."⁷ Under the NWP mechanism for resumption of the collection of the fee under section 302(a)(2) of the NWP, DOE must conduct a fee adequacy evaluation before submitting a proposal to Congress for an adjustment to the fee.⁸ Congressional appropriations are required before the program can be revived and any fee evaluations can occur.

- 4. The current scorekeeping guidelines, as reported in OMB Circular No. A-11, were originally put in place as part of the legislative history accompanying the enactment of the Budget Enforcement Act of 1990 (BEA). The BEA authorities expired in 2002. Since 2002, in how many instances has OMB administratively reclassified budget accounts from mandatory to discretionary or vice versa?**

Answer: DOE is deferring this question to the Office of Management and Budget and has not yet received a response. We will answer this question as soon as we receive a response from OMB.

- 5. If Congress acts, either through authorization legislation or appropriations to re-establish the DOE nuclear waste program, thus enabling the resumption of the collection of NWF fees at some time in the future, does the Administration have authority to classify the resumption of the collection of fees as an offsetting collection to discretionary spending?**

⁵ Nuclear Waste Policy Act of 1982 (NWP), Pub. L. No. 97-425, tit. III, § 302(a)(4) (1982).

⁶ *NARUC v. DOE*, 736 F.3d 517 (D.C. Cir. 2013) ("NARUC II").

⁷ *Id.* at 521.

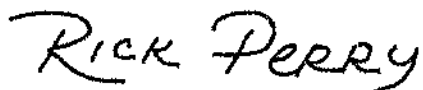
⁸ See NWP § 302(a)(4); see also *NARUC v. DOE*, 680 F.3d 819, 824 (D.C. Cir. 2012) ("NARUC I") (the NWP "oblig[es] the Secretary 'to evaluate whether the collection of the fee will provide sufficient revenues' to offset program costs.") (quoting NWP § 302(a)(4)).

Answer: DOE is deferring this question to the Office of Management and Budget and has not yet received a response. We will answer this question as soon as we receive a response from OMB.

Mr. Chairman, I want to again express my thanks for your support in helping to revive the Nation's nuclear program. To date, over \$21 billion has been collected from American ratepayers towards that disposal program, and I look forward to working with you to ensure that future collections and expenditures occur in a responsible manner. On a personal note, as I continue to travel the Country, and observe firsthand the communities impacted by the lack of a disposal program, I become even more convinced about our moral obligation to reach a solution to this dilemma.

Should you have any questions or need additional information concerning this matter, please contact Mr. Marty Dannenfelser, in the Office of Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

A handwritten signature in black ink that reads "Rick Perry". The signature is written in a cursive, slightly slanted style.

Rick Perry

cc: The Honorable Jeff Sessions, Attorney General
U.S. Department of Justice

The Honorable Frank Pallone, Jr., Ranking Member
Committee on Energy and Commerce

The Honorable Paul Tonko, Ranking Member
Subcommittee on Environment