

# BLUE RIBBON COMMISSION ON AMERICA'S NUCLEAR FUTURE

November 3, 2011

U.S. Rep. Jeb Hensarling, Co-Chair  
Joint Select Committee  
on Deficit Reduction

U.S. Sen. Patty Murray, Co-Chair  
Joint Select Committee  
on Deficit Reduction

U.S. Sen. Max Baucus  
U.S. Rep. Dave Camp  
U.S. Sen. John Kerry  
U.S. Sen. Rob Portman  
U.S. Rep. Fred Upton

U.S. Rep. Xavier Becerra  
U.S. Rep. James Clyburn  
U.S. Sen. Jon Kyl  
U.S. Sen. Pat Toomey  
U.S. Rep. Chris Van Hollen

Dear Co-Chairs and Members of the Joint Select Committee:

The Blue Ribbon Commission on America's Nuclear Future was established by the Secretary of Energy at the direction of the President 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 believe should be reflected in your Committee's baseline budget projections as you craft a bipartisan plan for reducing the national budget deficit.

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 waste management program back on track. High on our draft list of recommendations are actions that can and should be taken in the near-term to provide assured access to utility waste disposal fees for their intended purpose.

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 rise by about \$500 million per year thereafter until it begins accepting spent fuel for disposal.

We have recommended that the Administration offer to amend the standard nuclear waste contract with nuclear utilities, which it is 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 urgent because they enable key subsequent actions the Commission recommends. Therefore, we have urged the Administration to act promptly to implement these changes (preferably in Fiscal Year 2013).

We respectfully request that the Select Committee reflect these proposed actions in its federal revenue projections. 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. 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.

Our draft proposal was prepared in consultation with former Office of Management and Budget and Congressional budget staff, and 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 both of these organizations and others 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 deficit reduction plans.

With best regards,

A handwritten signature in black ink, appearing to read "Lee H. Hamilton". The signature is fluid and cursive, with the first name being the most prominent.

Lee H. Hamilton  
Co-Chairman

A handwritten signature in black ink, appearing to read "Brent Scowcroft". The signature is cursive and somewhat stylized, with the last name being the most prominent.

Brent Scowcroft  
Co-Chairman