

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371

www.science.house.gov

April 26, 2017

The Honorable Rick Perry
Secretary of Energy
U.S. Department of Energy
1000 Independence Ave., SW
Washington, D.C. ZIP 20585

Dear Secretary Perry,

I am writing to you today to request information related to program management at the Department of Energy's Advanced Research Project Agency-Energy (ARPA-E).

I have received reports that ARPA-E is currently subject to a "no contract action" order which prevents the program from taking any action to distribute and manage FY2016 or prior year funds as directed by law. It has been reported to me that as a part of this order, requests for routine no cost extensions of contracts are also not being considered by the agency. These are routinely used tools for effective program management, and ceasing consideration of them seems highly questionable and nonsensical. Recent press accounts corroborate these reports, stating that ARPA-E "has started withholding money on grants already approved."¹

Taken together with the President's recent budget request that proposes to eliminate ARPA-E, these reports appear to suggest that the Administration is attempting to shut down the agency without Congressional authorization. Such an action would be both ill-advised and potentially illegal.

FY2016 appropriations have already been made, by law, for ARPA-E to fulfill its mission. Moreover, well over \$100 million has been sent to ARPA-E for FY2017 under the terms of the current Continuing Resolution funding the Federal Government. Congress has provided these monies to the Department of Energy for the expressed purpose of fulfilling ARPA-E's mission as prescribed by law. Diversion or impoundment of this money would be contrary to law. My understanding is that upwards of \$40 million

¹ Darius Dixon, "DOE freezes funds for ARPA-E projects," *Politico*, April 20, 2017, accessed here: <https://www.politicopro.com/energy/whiteboard/2017/04/sources-does-has-frozen-funds-for-arpa-e-awardees-086521>

of FY2016 monies remain unobligated despite project awardees having already been selected and in many cases publicly announced for receipt of those dedicated funds.

The Congressional Budget and Impoundment Control Act of 1974, as amended, requires Federal Agencies to devote lawfully directed appropriations to the programs to which they are dedicated.² Congress specifically passed the Congressional Budget and Impoundment Control Act of 1974 because of frustration that President Richard Nixon had impounded congressionally appropriated funds for federal agencies.³ Moreover, the courts have declared that agencies may not attempt to thwart the intent of Congress by withholding or impounding funds intended for a specific purpose.⁴ If the Department of Energy has subjected ARPA-E to a “no contract action” which has this effect, the Department could be in violation of the law.

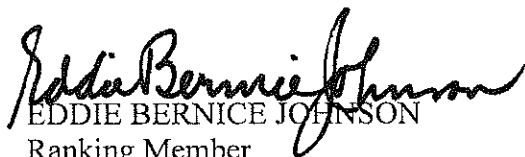
I sincerely hope that these reports are inaccurate. ARPA-E is a vital program to help our country lead the world in next generation energy technologies. As you yourself stated in a recent tweet, “[i]nnovators like the ones supported by our ARPA-E program are key to advancing America’s energy economy.” I couldn’t agree more.

In light of these reports, my Committee staff reached out to Department of Energy officials to determine if such a “no contract action” order was in effect. They received a reply only that the Department was engaged in a “full review of all department programs, policies, and taxpayer funded grants.” This non-response provides no guidance as to what specific actions your Department has or has not taken at ARPA-E.

Please respond to this letter by May 3, 2017. I would like to know whether ARPA-E is currently subject to a “no contract action” or similar action, and if so, what the parameters are of such an action. If such an action has indeed been taken at ARPA-E, I hope that you will take immediate action to ensure that the Department of Energy is complying with Congressional intent in the distribution of funds to ARPA-E pursuant to the Impoundment Control Act and other applicable laws.

Thank you for your attention to this matter.

Sincerely,


EDDIE BERNICE JOHNSON

Ranking Member
Committee on Science, Space, and Technology

² 2 U.S.C. § 681 et seq.

³ “Historical Highlights: Congressional Budget and Impoundment Control Act of 1974,” Office of the Historian, U.S. House of Representatives, accessed here: <http://history.house.gov/Historical-Highlights/1951-2000/Congressional-Budget-and-Impoundment-Control-Act-of-1974/>

⁴ See *Train v. City of New York*, 420 U.S. 35, 1975.