The original documents are located in Box 19, folder "Nuclear Fuel Assurance Act: General (5)" of the Loen and Leppert Files at the Gerald R. Ford Presidential Library.

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

JUN 15 1976

Honorable Melvin Price, Vice Chairman
Joint Committee on Atomic Energy
Congress of the United States

Dear Mr. Chairman:

The recent action by the Joint Committee on Atomic Energy in reporting out the proposed Nuclear Fuel Assurance Act is most gratifying. Passage of the Bill will provide the basis for expanding uranium enrichment capacity in the United States so that fuel can be available for domestic needs and so that we can maintain our role as a major supplier of uranium enrichment services needed for the peaceful uses of atomic energy in other countries.

In view of the important responsibilities that would be placed on the Administrator of ERDA by the Nuclear Fuel Assurance Act, we have reviewed carefully the Bill as amended by the JCAE and the accompanying report. We are somewhat concerned that the report might in the future be interpreted to limit the Government's actions in a way that was not intended by the Committee when it approved the Bill. The Administrator has asked me to convey for your consideration our understanding of certain responsibilities of the Administrator of ERDA under the proposed legislation, which responsibilities might prove to be ambiguous if not clarified in the legislative history. If you concur, we would appreciate it if you would comment on these points during Floor consideration of the Bill or, if you desire, use all or part of this letter as a means of clarifying the matter involved.

I should also point out that I am not taking issue with the Bill as amended, or with the report as such; however, I do wish to be certain that the responsibilities of the Administrator under the legislation are not ambiguous.

It is my understanding that the Administrator would be authorized to enter into cooperative arrangements, i.e., contracts, upon their approval by the Congress and subject to the enactment of the necessary appropriations language, with private firms wishing to finance, build, own and operate uranium enrichment plants.

The Government processes and know-how and such machinery and technology as the Government will supply to private firms will be paid for by

private firms through royalties and through charges for materials and equipment. If a private firm is unable to complete an enrichment facility or bring it into commercial operation, the Government would have authority to take over that project to complete the facility, unless there are more economical alternatives for providing the requisite enriching services to customers of that facility, and to assure that services are available when needed. This is most important since the enrichment services will be contracted for and vital to the nuclear power plants that will be designed and in construction. Although the possibility of a takeover is remote, the legislative authority for it should nonetheless be clear.

The cooperative arrangements would, of necessity, contain contractual obligations concerning takeover of the facilities by the Government if the private sector cannot complete them or bring them into commercial operation. Such an undertaking would be authorized by Subparagraph a(5) of Section 45 (which would be added to Chapter 5 of the Atomic Energy Act by Section 2 of the proposed Nuclear Fuel Assurance Act. The Subparagraph also appears on page 16 of the Committee's report.) While this seems quite clear, I want to be certain that the "guarantee" that is referred to several times throughout the report does not restrict the Government's rights and obligations concerning the takeover. It is in the best interest of the Government to be clear that there is nothing to impede or limit its ability to take over a project which a private firm was unable to complete or bring into commercial operation. In addition, while the Government guarantees with respect to a diffusion plant project are expected to expire after a year of operation of the completed plant, the guarantees for centrifuge projects are expected to be somewhat broader in scope and time, reflecting the comparative status of technical and economic knowledge.

The concept of "cannot complete or bring into commercial operation" is not described in the report, although there is some legislative history that indicates that these terms include such factors as the inability to obtain long-term commercial financing or necessary Governmental authorizations to construct or operate the projects. We would construe these terms rather broadly so as not to raise any restrictions on the Government's ability to take over.

I recognize, as set forth in the aforementioned Subparagraph a(5) that the Government's contingent obligation extends only to the equity or the debt that applies to investors or lenders who are citizens of the United States, or corporations or other entities owned or controlled by citizens of the United States.

Obviously, the terms of each proposed cooperative arrangement will be lengthy and cannot be covered in detail in this letter. However, each cooperative arrangement must stand on its own merits and terms, as each will be negotiated by ERDA, and cannot be signed until it has been reviewed and approved by the Congress.

We are most grateful for the valuable contributions that the Joint Committee has made in its action on this Bill and trust that it will provide the basis for prompt action by the full Congress. I hope that the observations and comments in this letter will also be beneficial in advancing the program and assuring our mutual objective of expanding uranium enrichment capacity in the United States.

Sincerely,

James A. Wilderotter

James A. Wilderotter
General Counsel

cc: Honorable John B. Anderson

File

THE WHITE HOUSE

WASHINGTON

June 16, 1976

JUN 15 1976

MEMORANDUM FOR: CHARLIE LEPPERT
BILL KENDALL

FROM: GLENN SCHLEEDE

SUBJECT: NUCLEAR FUEL ASSURANCE ACT

Here is a copy of a letter delivered to Pastore, Baker, Price and Anderson which is designed to clarify legislative history on two key points:

-- The description of guarantees in the JCAE report is not intended to preclude government take over of a private project for certain reasons not concerned with enrichment technology.

-- That the report language is not intended to preclude technology guarantees for centrifuge that are broader in scope and longer in time than is required for diffusion technology.

I understand that one additional point will be covered in a floor colloquy between Congressmen Anderson and Price; i.e., that the JCAE report language concerning the Portsmouth plant being the next increment of capacity is not intended to preclude a private diffusion plant from going ahead and from coming on line ahead of a government add-on.

cc: Max Friedersdorf
Jim Connor
Jim Cannon
Jim Mitchell

Attachment

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

June 15, 1976

Honorable John O. Pastore, Chairman
Joint Committee on Atomic Energy
Congress of the United States

Dear Mr. Chairman:

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The Government processes and know-how and such machinery and technology as the Government will supply to private firms will be paid for by private firms through royalties and through charges for materials and equipment. If a private firm is unable to complete an enrichment facility or bring it into commercial operation, the Government would have authority to take over that project to complete the facility, unless there are more economical alternatives for providing the requisite enriching services to customers of that facility, and to assure that services are available when needed. This is most important since the enrichment services will be contracted for and vital to the nuclear power plants that will be designed and in construction. Although the possibility of a takeover is remote, the legislative authority for it should nonetheless be clear.

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Sincerely,

James A. Wilderotter

James A. Wilderotter
General Counsel

cc: Senator Howard Baker

Oil, Chemical and Atomic Workers International Union

File
Nuclear Fuels Assurance Bill

A. F. GROSPIRON
PRESIDENT

P. O. BOX 2812
PHONE: (303) 893-0811
DENVER, COLORADO 80201

June 21, 1976

To: All Members of the U. S. House of Representatives

Dear House Member:

On behalf of the approximately eight thousand workers in the gaseous diffusion plants represented by my Union, I am writing to urge you to take a strong position against the Nuclear Fuel Assurance Act, H.R. 8401.

We oppose the sections of this bill which would turn over uranium enrichment to private corporations under terms which would be very beneficial to these corporations but deterimental to U. S. taxpayers, to electricity consumers and to the future of the existing Government-owned gaseous diffusions plants.

The present three Government diffusion plants plus the Government additional add-on plant at Portsmouth, Ohio, will provide more than sufficient enriched uranium to fuel the 185 thousand megawatt nuclear power plants which are projected by ERDA to be operating by 1985. (The present number of operating plants is sixty.) The principal object of the bill is to authorize ERDA with the Uranium Enrichment Associates to negotiate a fifth (private) gaseous diffusion plant.

The building of the fifth gaseous diffusion plant by UEA would provide excess capacity. In the first draft of the UEA-ERDA contract, any surplus capacity would be met by curtailing operations at the lower-cost government plants. Other private centrifuge enrichment plants would be covered by the bill but the technology is not yet proved on a commercial scale so that these projects are much further down the road.

The comparative costs of the UEA venture with the Government add-on plant at Portsmouth are clearly brought out by the $3.5 billion estimate for the UEA plant as against $2.5 billion for the Portsmouth add-on. The difference in interest rates is enormous. UEA has stated that they expect the return to investors on the $3.5 billion to run 15% after taxes. This compares with normal U. S. Government bond interest on $2.5 billion for Portsmouth. The high return to UEA investors is expected in spite of the fact that the money of U. S. investors would be fully guaranteed by the Government under the Nuclear Fuel Assurance Act.

As uranium enrichment is highly capital-intensive, the cost per kilogram of UEA enriched uranium would be much higher than that from the Government plants. The prices for Government uranium would have to be raised in order to make UEA uranium commercially competitive. As the cost of uranium enrichment is a substantial fraction of the costs of nuclear power, increasing the price of fuel grade uranium would be another set-back to the program of nuclear power expansion in this country.

My Union notes with dismay that 60% of the ownership of the UEA consortium will be foreign. UEA states that this will not lead to further disclosures of U. S. secret enrichment know-how to foreign interests. The record of the handling of classified knowledge over the past several years hardly reassures us. Once in the hands of foreign powers, control of the classified knowledge is lost and it may readily diffuse to third parties, including non-signers of the nuclear non-proliferation treaty.

The bill states that any contract between UEA and ERDA will require specific approval by Congress at a later date. But the passage of the Nuclear Fuel Assurance Act would, in fact, give the green light to UEA and ERDA to go ahead with the drafting of a contract. Under the terms of the Act, this contract would be clearly disadvantageous to the Government and the public. It is my strong conviction that the time to stop this contract is NOW.

Sincerely yours,

A. F. Grospiron

A. F. Grospiron
President

JUN 25 1976

AMERICAN PUBLIC POWER ASSOCIATION

2600 VIRGINIA AVENUE NW WASHINGTON DC 20037 • 202/333-9200

June 24, 1976

The Honorable William H. Harsha
U. S. House of Representatives
Washington, D. C. 20515

Dear Congressman Harsha:

The American Public Power Association, representing more than 1,400 local publicly-owned electric utilities throughout the country, urges you to support section 4 and to oppose sections 2 and 3 of H.R. 8401, the Nuclear Fuel Assurance Act. Sec. 4 of H.R. 8401, would authorize $255 million for Federal construction and operation of an expansion of an existing Government-owned uranium enrichment facility. We believe such a program would supply fuel for nuclear power plants at the lowest cost to the consumer, prevent monopolization, and protect national interests.

At the association's annual conference last week, APPA members adopted a resolution opposing "Federally-subsidized privately-owned commercial gaseous diffusion plants." Accordingly we urge you to oppose sections 2 and 3 of H.R. 8401 which would provide $8 billion in Government guarantees to private plants. Under the plan proposed in sections 2 and 3, the public would bear the risks while private industry would reap the benefits. It has been estimated that the private enrichment plant would result in an increase in the cost of nuclear fuel by approximately $700 million a year - a cost that consumers would have to pay. The General Accounting Office has termed this concept "excessively generous" and has said, "Its fundamental short-coming is that it shifts most of the risks during construction and proving the plant can operate to the Government."

For your information, I am enclosing the resolution on this subject which was adopted by the membership of our Association at an annual meeting in Anaheim, California, on June 15, 1976.

Sincerely,

Alex Radin

AR:jh
Encl.

URANIUM ENRICHMENT *

WHEREAS, the Federal government currently supplies uranium enrichment servic for nuclear fuel at three gaseous diffusion plants, and

WHEREAS, there is a need for timely construction of additional enrichment capacity to supply fuel for nuclear power plants, and

WHEREAS, such capacity should be provided in a fashion which will assure adequate service, provide the lowest cost to consumers, prevent monopolization, develop new technology, and protect national interests, and

WHEREAS, these objectives could be best achieved through Federal constructi and operation of an "add-on" fourth gaseous diffusion plant, implementation of a centrifuge demonstration program, and research and development projects involvin advanced technologies, and

WHEREAS, a fourth Federal gaseous diffusion plant could be funded by approp ations or by issuance of Federal bonds which would be repaid by revenues from sales;

NOW, THEREFORE, BE IT RESOLVED: that the American Public Power Association urges that Congress (a) authorize and approve financing for a fourth Federal ga diffusion plant, funded by appropriations or through creation of a Federal corpo tion with ability to use its own revenues and to secure capital from public borr as the next immediate source of domestic uranium enrichment service; (b) reject proposals for Federally-subsidized privately-owned commerical gaseous diffusion plants; (c) support demonstration of centrifuge technology through a Federal pro as provided in the Atomic Energy Act; and (d) encourage exploration of other new uranium separation technologies.

* Resolution adopted by the American Public Power Association June 15, 1976

Congress of the United States

House of Representatives

Washington, D.C. 20515

June 23, 1976

Dear Colleague:

We are writing to ask your support for an amendment that would delete several major provisions of H.R. 8401, the Nuclear Fuel Assurance Act, on the calendar for this week.

We are not at all opposed to the purpose of H.R. 8401 -- assuring that we have adequate uranium enrichment capacity to meet our needs through the 1980's. Nor are we opposed to section 4 of this bill, which we feel is the best possible way to accomplish the bill's general purpose -- by constructing a new Federal uranium enrichment facility at Portsmouth, a step which the Joint Committee has long urged. What we are strongly opposed to are those provisions of H.R. 8401 which authorize ERDA to proceed with the so-called "privatization" of uranium enrichment. These provisions would turn over previously secret Government technology to selected corporate ventures; further, they would authorize $8 billion of elaborate Government guarantees and subsidies to shift virtually all the risk in the multi-billion dollar projects from private investors to the taxpayers.

The largest and most expensive private venture that the Administration proposes to guarantee is a gaseous diffusion plant, to be built in Alabama by the UEA consortium. The UEA plant will be at least 60% foreign owned (by interests in France -- not a signer of the Non-proliferation Treaty; West Germany -- which has sold nuclear facilities to non-signers; Iran -- FEA Chief Frank Zarb has written that participation by Iran "would amount to selling Iran energy at $2 a barrel when we are buying it back from them at $12 a barrel"; and Japan). The major U.S. partner of UEA, the Bechtel Corporation, has recently become the target of investigation by State and Federal officials for misconduct of its responsibilities on the Alaska pipeline; Bechtel has also been formally charged by the Justice Department with violating the Anti-Trust Act in connection with its cooperation with the Arab boycott.

Massive guarantees and hidden costs abound in H.R. 8401. Among the hidden costs, for example, is the cost to consumers of making the "private," profit-making concerns competitive with Government facilities: in order to do so the Government will have to raise the prices on its own enriched uranium. The result: higher electricity prices everywhere.

Nearly every independent assessment of the Ford Administration's scheme for privatization of uranium enrichment -- the scheme now embodied in sections 1, 2 and 3 of H.R. 8401 -- has found it objectionable. The GAO has called the Administration plan "unacceptable," because it assures profits to private investors while "shifting most of the risk during construction and proving the plan can operate to Government." A Treasury Department memorandum by the Department's Director of Debt Analysis calls the UEA proposal "window dressing (for) a full Federal guarantee covering all domestic debt financing and the overrun problem." Even ERDA Chief Robert Seamans originally opposed the plans.

If section 4 of H.R. 8401 is passed -- and we hope it will be -- there will be no need to act now on the privatization proposals. With the Portsmouth facility we will have the capacity to fuel 429 reactors, and the FEA currently estimates that we will have only 160 reactors on line by 1985. As Science magazine has recently stated, to build further facilities now would result in a surplus of enriched uranium.

We therefore urge you to support an amendment to be offered by Jonathan Bingham that will strike all but section 4 from H.R. 8401.

Jonathan B. Bingham

Morris Udall

John Moss

Richard L. Ottinger

Clarence Long

John Moakley

Benjamin S. Rosenthal

Pete Stark

Paul Simon

Tom Harkin

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

JUN 28 1976

Mr. George F. Murphy, Jr.
Executive Director
Joint Committee on
Atomic Energy

Dear Mr. Murphy:

In Mr. Fri's absence, I am replying to your June 9, 1976 letter which asks for elaboration on comments concerning an add-on uranium enrichment plant at Portsmouth, Ohio made by the President on May 26 and on those which Mr. Fri made on June 8 in a briefing to the Environmental Study Conference in the Rayburn Building.

The President's comment that a Portsmouth add-on plant would be a "complementary backup system for expanding existing Federal uranium enrichment capacity" was intended to convey the point that the additional enrichment capacity from an add-on plant could be used to fulfill orders already on ERDA's books and to supplement the national stockpile of enriched uranium. Thus the add-on plant would not interfere with the objective of creating competition in the supply of uranium enrichment services, which competition will benefit consumers of electric power produced from nuclear energy. The additional enrichment capacity provided by an add-on plant, instead, could be effectively utilized, through reduction in the tails assay, to achieve better nuclear fuel production economics for the Government plants and to conserve our limited natural uranium resources. (Additional information on the fuel production aspects is presented in the attachment).

To the extent that any additional enrichment capacity beyond that needed to reach this more desirable tails assay level is available, it could be used to increase the national stockpile of enriched uranium -- in the form of separative work units -- thus backing up the commitment that enriched uranium will be available when needed by both domestic and foreign customers.

For the reasons cited above, we would not plan to begin accepting new enrichment service orders based upon capacity that could be provided by an add-on plant. Furthermore, there is no need for ERDA to begin

accepting such new orders. The four private firms that plan to finance, build, own, and operate enrichment plants are already negotiating with prospective foreign and domestic customers, and the order books are open. If ERDA began taking orders now, ERDA would be in direct competition with the four private firms for customers. This could lead potential customers of the private firms to delay in placing orders needed now by the private ventures. If ERDA competition, or the threat of competition, were to cause one or more prospective private enrichers to drop out, an enrichment industry of initially reduced competitiveness would result. The Federal Government would then find itself in the position of having to commit additional billions of dollars to build more enrichment capacity to make up for the capacity that private industry would otherwise finance and provide. Thus, action by ERDA to take additional orders would be directly contrary to one of the major purposes of the NFAA - creation of a private, competitive uranium enrichment industry.

If you have further questions in this matter, we would be glad to discuss them with you.

Sincerely,

Richard W. Roberts

Richard W. Roberts
Assistant Administrator
for Nuclear Energy

Attachment
As stated above

ATTACHMENT

Fuel Production Improvements that Can Result from Add-on Plant Capacity

ERDA's entire enrichment capacity, including the 60% increase in enrichment capaci which will result from the cascade improvement and cascade uprating programs at the existing three Government enrichment plants, has been fully committed since mid-1974 under long-term contracts. ERDA is currently committed by these contract to supplying enrichment services for 211 domestic nuclear power reactors and 154 foreign nuclear power reactors, which will produce a combined total of 328,000 electrical megawatts.

With respect to existing ERDA contracts for uranium enrichment services, recent changes in uranium ore markets have created a situation where nuclear fuel orders would, ideally, be filled with the use of more enrichment capacity so that less natural uranium would be needed. More specifically, fulfillment of ERDA's existin enrichment services contracts would probably require operation of the Government plants at tails assay of about 0.37% U-235 in the absence of the use of plutonium fuel. Even with plutonium recycle, operation at about 0.29% U-235 would be required. Neither of these levels would permit production of nuclear fuel in an economic fashion. Moreover, operation at such levels would be inconsistent with the national objective of conserving our limited natural uranium resources by using them as effectively as possible.

More specifically, based upon our present knowledge of potential uranium concentra production capability, the domestic uranium supply industry may not be in a positi to meet the feed requirements associated with tails assays as high as 0.37% U-235. Attainable production from domestic sources could, in the early 1980's, reach a level of around 33,000 tons of U_3O_8 per year. The feed requirements for ERDA's fully improved and uprated enrichment complex operating at 0.37% U-235 tails assay would be approximately 75,000 tons of U_3O_8 per year, of which approximately 50,000 tons would have to be delivered by domestic customers. Add-on enriching capacity at Portsmouth could be utilized for reduction of the ERDA tails assay and would concomitantly result in a more realistic production requirement for the domestic uranium supply industry. Furthermore, such reduction in tails assay would result in a greater potential for expansion of the use of nuclear energy in the U.S. through more effective use of our limited domestic uranium resources.

This problem has been recognized for some time and was identified in Dr. Seamans' testimony before the JCAE on December 2, 1975. It has been expected that new private domestic capacity, in addition to serving new customers, would also assist existing ERDA customers. This would be accomplished by permitting ERDA customers to plan their requirements for enriching services on the basis of a lower ERDA plant tails assay and of the availability of additional SWU purchases from new private plant capacity. This would be implemented through the so-called variable tails assay option which ERDA will offer to its fixed commitment custome by the mid-1980's (or limited terminations of ERDA customer contracts in favor of new domestic capacity). In all such instances, however, ERDA plants would continue to operate at their normal 28 million SWU capacity, albeit at lower

tails assay, and thus ERDA would continue to receive revenues based on that operating level. It is our understanding that prospective private enrichers are already marketing on the basis of this option to ERDA customers. These marketing efforts are based upon the economic advantages to existing ERDA customers of purchasing more SWU's from new capacity while lowering their total uranium feed requirements.

An ERDA add-on plant with a capacity of 8.75 million SWU's per year would provide the additional SWU capacity to permit existing ERDA customers to be served at a tails assay of about 0.25% U-235 assuming no recycle of plutonium recovered from spent fuel, or about 0.20% U-235 assuming plutonium recycle. Inasmuch as the estimated cost of SWU's from the add-on plant would be substantially higher than from the existing facilities, the use of the add-on plant to improve the operating characteristics of ERDA's three-plant complex through reduction in tails assay would have to be reflected in an increase in the cost per SWU borne by ERDA's existing customers. However, as mentioned previously, this would result in better total nuclear fuel costs.

CHAIRMAN · BARBER B. CONABLE, JR.

Republican Policy Committee
U.S. HOUSE OF REPRESENTATIVES
1620 LONGWORTH BUILDING
WASHINGTON, D.C. 20515
202/225-6168

94th Congress
Second Session

June 23, 1976
Statement #17
H.R. 8401

NUCLEAR FUEL ASSURANCE ACT OF 1976

The Republican Policy Committee strongly favors prompt enactment of H.R. 8401, the Nuclear Fuel Assurance Act of 1976.

Uranium must be "enriched" before it can be used in nuclear power plants. Until recently, the three existing government enrichment facilities could service U.S. needs and still have capacity left over to meet a substantial foreign demand. Since 1974, however, their entire processing capacity has been fully committed under long-term contracts. Consequently, a nuclear fuel log jam curbing additional nuclear power plant construction is likely if more enrichment capacity is not created by 1983.

H.R. 8401 provides a framework for opening up the government monopoly in fuel enrichment to private firms which handle every other phase of nuclear power generation. Because of the tremendous financial investment required, private companies even with access to the government's enrichment technology will not be able to raise the necessary capital unless the federal government guarantees that its technology will work and that it will assume their debts in the unlikely event that a plant's construction is not completed or that it fails to come into operation.

Under H.R. 8401, the Energy Research and Development Administration (ERDA), subject to prior Congressional approval, could contract with private firms to commit the government to up to $8 billion in back-up financial guarantees of U.S. investment, enough for an enrichment plant using the traditional diffusion technology and three plants using the new centrifuge process. The administration does not anticipate that any of this $8 billion will ever actually be charged against the Treasury.

Delaying or failing to develop additional nuclear fuel enrichment capability could cause an eventual shortfall in energy supplies with effects almost as dramatic

as those of the Arab oil embargo. In place of anticipated nuclear power, we would be forced to use so much oil and coal that severe economic repercussions and environmental damage would occur, if indeed the additional oil and coal could be obtained at all.

Insufficient enrichment capacity would mean foregoing the sale of fuel enrichment services to other countries and the substantial revenues ($1.1 billion to date) yielded by these services. Indeed, this foreign market has already begun to erode. Loss of foreign sales also would cause other countries to develop their own enrichment technology and lessen U.S. ability to guard effectively against the proliferation of nuclear weapons and the misuse of nuclear power supplies.

For the government to retain its monopoly on fuel enrichment services would require an estimated $30 billion in federal investment over the next 15 years, an amount hard to squeeze out of an already pinched federal budget. It makes little fiscal sense to saddle the government with costly investment in fuel enrichment services when these processes could be undertaken in the private sector efficiently and at little government cost, when other pressing needs compete for every tax dollar, and when private enrichment services would pay royalties and taxes.

H.R. 8401 is the first step toward public and private sector cooperation in nuclear fuel enrichment. Refusal to enact this bill would be short-sighted and expensive to the government, would jeopardize future energy availability, and would prove that Congress is incapable of making any constructive response to the energy crisis.

H.R. 8401 should be enacted.

THE WHITE HOUSE

WASHINGTON

June 28, 1976

JUN 29 1976

MEMORANDUM FOR: JIM CANNON
JIM CONNOR
JIM MITCHELL
CHARLIE LEPPERT
BILL KENDALL

FROM: GLENN SCHLEEDE

SUBJECT: CLARIFYING LEGISLATIVE HISTORY FOR NFAA

Attached is a copy of the letter ERDA recently sent to Senator's Pastore and Baker and Congressmen Price and Anderson in an effort to clarify the legislative history of the Nuclear Fuels Assurance Act with respect to the scope of guarantees and the authority to take over private ventures.

Attachment.

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

June 15, 1976

Honorable John O. Pastore, Chairman
Joint Committee on Atomic Energy
Congress of the United States

Dear Mr. Chairman:

The recent action by the Joint Committee on Atomic Energy in reporting out the proposed Nuclear Fuel Assurance Act is most gratifying. Passage of the Bill will provide the basis for expanding uranium enrichment capacity in the United States so that fuel can be available for domestic needs and so that we can maintain our role as a major supplier of uranium enrichment services needed for the peaceful uses of atomic energy in other countries.

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It is my understanding that the Administrator would be authorized to enter into cooperative arrangements, i.e. contracts, upon their approval by the Congress and subject to the enactment of the necessary appropriations language, with private firms wishing to finance, build, own and operate uranium enrichment plants.

The Government processes and know-how and such machinery and technology as the Government will supply to private firms will be paid for by private firms through royalties and through charges for materials and equipment. If a private firm is unable to complete an enrichment facility or bring it into commercial operation, the Government would have authority to take over that project to complete the facility, unless there are more economical alternatives for providing the requisite enriching services to customers of that facility, and to assure that services are available when needed. This is most important since the enrichment services will be contracted for and vital to the nuclear power plants that will be designed and in construction. Although the possibility of a takeover is remote, the legislative authority for it should nonetheless be clear.

The cooperative arrangements would, of necessity, contain contractual obligations concerning takeover of the facilities by the Government if the private sector cannot complete them or bring them into commercial operation. Such an undertaking would be authorized by Subparagraph a(5) of Section 45 (which would be added to Chapter 5 of the Atomic Energy Act by Section 2 of the proposed Nuclear Fuel Assurance Act. The Subparagraph also appears on page 16 of the Committee's Report.). While this seems quite clear, I want to be certain that the "guarantee" that is referred to several times throughout the report does not restrict the Government's rights and obligations concerning the takeover. It is in the best interest of the Government to be clear that there is nothing to impede or limit its ability to take over a project which a private firm was unable to complete or bring into commercial operation. In addition, while the Government guarantees with respect to a diffusion plant project are expected to expire after a year of operation of the completed plant, the guarantees for centrifuge projects are expected to be somewhat broader in scope and time, reflecting the comparative status of technical and economic knowledge.

The concept of "cannot complete or bring into commercial operation" is not described in the report, although there is some legislative history that indicates that these terms include such factors as the inability to obtain long-term commercial financing or necessary Governmental authorizations to construct or operate the projects. We would construe these terms rather broadly so as not to raise any restrictions on the Government's ability to take over.

I recognize, as set forth in the aforementioned Subparagraph a(5) that the Government's contingent obligation extends only to the equity or the debt that applies to investors or lenders who are citizens of the United States, or corporations or other entities owned or controlled by citizens of the United States.

Obviously the terms of each proposed cooperative arrangement will be lengthy and cannot be covered in detail in this letter. However, each cooperative arrangement must stand on its own merits and terms, as each will be negotiated by ERDA, and cannot be signed until it has been reviewed and approved by the Congress.

We are most grateful for the valuable contributions that the Joint Committee has made in its action on this Bill and trust that it will provide the basis for prompt action by the full Congress. I hope that the observations and comments in this letter will also be beneficial in advancing the program and assuring our mutual objective of expanding uranium enrichment capacity in the United States.

Sincerely,

James A. Wilderotter

James A. Wilderotter
General Counsel

cc: Senator Howard Baker

Identical letter sent to M. Price

FACT SHEET

The Nuclear Fuel Assurance Act

Objectives

- To meet future needs, domestic and international, for enriched uranium fuel for nuclear power reactors from the private sector.
- To end the Government monopoly of uranium enrichment services thus avoiding Federal expenditures for capacity that can be provided by the private sector.
  - With proper licensing, safeguards and export controls.
  - With taxes and royalty payments to the Treasury.
  - With Government controls over sensitive technology, safeguards and exports.
- To provide a complementary expansion of existing Federal uranium enrichment capacity to conserve our limited natural uranium resources and to supplement the national stockpile of enriched uranium.
- To maintain U. S. influence on nuclear proliferation by inhibiting the spread of enrichment plants in other countries.

Features of NFAA

- Two uranium enrichment technologies (gaseous diffusion and gas centrifuge).
- Four private projects proceeding essentially in parallel to maximize prospects for development of competitive industry.
- Temporary Government cooperative arrangements to overcome major obstacles to commercial financing:
  - Lack of commercial experience with classified Government technology.
  - Massive capital requirements.
  - Long term investment pay back.
- Government guarantees that government-developed enrichment technology will work (the Government collects royalties for use of the technology).
- $8 Billion in contact authority covers the Government contingent liability if all private plants were to falter and the Government were to acquire the domestic interest. The prospect of such failure is very remote and no outlays of funds for acquisition of any of these projects is expected. However, even if there were outlays, such costs would ultimately be borne by enrichment services customers, not the taxpayer.
- Foreign investment in private U. S. projects permitted only under conditions which insure U. S. control of projects.
- No foreign access to enrichment technology.
- Owners of private projects will take substantial equity risks in order to participate in the program.
- No Government guarantee of profit.
- Negotiated contractual arrangements must be individually approved by the Congress.

Key Criticisms of Nuclear Fuel Assurance Act and Responses

JUN 29 1976

Criticism	Response
Enactment of NFAA would result in higher costs to the electricity consumer than if the Government built new plants.	All Government capacity has been sold since mid-1974; any new capacity will be more expensive than that now existing. Actual costs of producing enriched fuel from new Government capacity is expected to be as costly as new private capacity. The benefits of private competition under NFAA should reduce future costs.
New enrichment capacity is not needed.	New enrichment capacity should be available for commitment in the very near future to permit domestic utilities the option of considering nuclear power for their new electrical energy needs and to meet foreign policy objectives. Capacity provided by the Government add-on project contemplated in NFAA will assist present Government customers. Capacity for new customers is urgently needed.
Construction of private plants will result in an excess of enrichment capacity.	Private commercial plants will only come into being if there are sufficient firmly committed customers to each plant to justify its construction. Advance contractual commitments from customers will preclude excess capacity.
Operation of Government plants will be curtailed due to the availability of private capacity.	Government plants will continue to operate at capacity to meet firm contractual commitments; physical operation will not be curtailed in any way.
Operation of private plants will cause loss of Government control of sensitive technology and increase the risks of nuclear proliferation.	Government control will be maintained in all respects. No foreign access to technology is provided under NFAA. Risks of proliferation of technology should be reduced under NFAA by maintaining U.S. control over projects providing capacity that may otherwise be constructed in foreign countries using (and spreading) foreign technology.
Private projects will assume no risks and be guaranteed a substantial profit.	Private equity, representing hundreds of millions of dollars for each project, will be at substantial risk. The Government will not guarantee any profit. The full extent of private risks will be specified for each project in proposed ERDA-private party contracts, each of which is subject to the specific approval of Congress before it can be entered into.
The Government should provide all needed new capacity.	Perhaps $25-50 billion or more in Gov't. funding would be required over the next 15-20 years, which would be recouped from each new operating plant only after a lengthy period and which, in the meantime, would unnecessarily distort and restrict the Federal Budget. Nuclear fuel enrichment can and should be provided by the private sector with the temporary Gov't. assurances under the NFAA directed toward creation of a competitive industry.

THE WHITE HOUSE

WASHINGTON

June 29, 1976

JUN 29 1976

MEMORANDUM FOR: JIM CANNON
JIM CONNOR
MAX FRIEDERSDORF
BILL KENDALL
CHARLIE LEPPERT
JIM MITCHELL

FROM: GLENN SCHLEEDE

Attached FYI is a copy of ERDA's response to George Murphy (JCAE) letter concerning:

- what the present meant by the Portsmouth add-on being a "complementary" plant.
- what uses Portsmouth add-on would serve (i.e., Government won't reopen order book).

Attachments.

Congress of the United States

JOINT COMMITTEE ON ATOMIC ENERGY

WASHINGTON, D.C. 20510

June 9, 1976

Mr. Robert Fri
Deputy Administrator
Energy Research and Development
Administration
Washington, D. C. 20545

Dear Mr. Fri:

In a news conference on May 26, 1976, the President indicated that he would ask Congress to appropriate $170 million for FY 1977 to proceed with the design, planning and procurement of long leadtime construction for the Portsmouth plant. The President indicated that this would be a "complementary back-up system for expanding existing Federal uranium enrichment capacity if private ventures are unable to meet on time the needs of U.S. and foreign customers."

Subsequently on June 8, you provided a briefing to the Environmental Study Conference in the Rayburn Building. It is understood that during the briefing you commented to the effect that the add-on plant at Portsmouth would not necessarily "open up the order book", but rather would be used to fulfill existing ERDA conditional enriching contracts, to decrease the tails assay so that less uranium would be used, and to provide back-up enriched material for private enrichment plants.

It would be appreciated if you would advise the Joint Committee at your earliest convenience as to the purposes for which the add-on to the Portsmouth plant would be used and also provide an elaboration on the meaning of the President's May 26, 1976, statement that the add-on at Portsmouth would be "complementary".

Thank you for your assistance in this matter.

Sincerely yours,

George F. Murphy, Jr.
Executive Director

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

JUN 28 1976

Mr. George F. Murphy, Jr.
Executive Director
Joint Committee on
Atomic Energy

Dear Mr. Murphy:

In Mr. Fri's absence, I am replying to your June 9, 1976 letter which asks for elaboration on comments concerning an add-on uranium enrichment plant at Portsmouth, Ohio made by the President on May 26 and on those which Mr. Fri made on June 8 in a briefing to the Environmental Study Conference in the Rayburn Building.

The President's comment that a Portsmouth add-on plant would be a "complementary backup system for expanding existing Federal uranium enrichment capacity" was intended to convey the point that the additional enrichment capacity from an add-on plant could be used to fulfill orders already on ERDA's books and to supplement the national stockpile of enriched uranium. Thus the add-on plant would not interfere with the objective of creating competition in the supply of uranium enrichment services, which competition will benefit consumers of electric power produced from nuclear energy. The additional enrichment capacity provided by an add-on plant, instead, could be effectively utilized, through reduction in the tails assay, to achieve better nuclear fuel production economics for the Government plants and to conserve our limited natural uranium resources. (Additional information on the fuel production aspects is presented in the attachment).

To the extent that any additional enrichment capacity beyond that needed to reach this more desirable tails assay level is available, it could be used to increase the national stockpile of enriched uranium -- in the form of separative work units -- thus backing up the commitment that enriched uranium will be available when needed by both domestic and foreign customers.

For the reasons cited above, we would not plan to begin accepting new enrichment service orders based upon capacity that could be provided by an add-on plant. Furthermore, there is no need for ERDA to begin

accepting such new orders. The four private firms that plan to finance, build, own, and operate enrichment plants are already negotiating with prospective foreign and domestic customers, and the order books are open. If ERDA began taking orders now, ERDA would be in direct competition with the four private firms for customers. This could lead potential customers of the private firms to delay in placing orders needed now by the private ventures. If ERDA competition, or the threat of competition, were to cause one or more prospective private enrichers to drop out, an enrichment industry of initially reduced competitiveness would result. The Federal Government would then find itself in the position of having to commit additional billions of dollars to build more enrichment capacity to make up for the capacity that private industry would otherwise finance and provide. Thus, action by ERDA to take additional orders would be directly contrary to one of the major purposes of the NFAA - creation of a private, competitive uranium enrichment industry.

If you have further questions in this matter, we would be glad to discuss them with you.

Sincerely,

Richard W. Roberts
Assistant Administrator
for Nuclear Energy

Attachment
As stated above

ATTACHMENT

Fuel Production Improvements that Can Result from Add-on Plant Capacity

ERDA's entire enrichment capacity, including the 60% increase in enrichment capacity which will result from the cascade improvement and cascade uprating programs at the existing three Government enrichment plants, has been fully committed since mid-1974 under long-term contracts. ERDA is currently committed by these contracts to supplying enrichment services for 211 domestic nuclear power reactors and 154 foreign nuclear power reactors, which will produce a combined total of 328,000 electrical megawatts.

With respect to existing ERDA contracts for uranium enrichment services, recent changes in uranium ore markets have created a situation where nuclear fuel orders would, ideally, be filled with the use of more enrichment capacity so that less natural uranium would be needed. More specifically, fulfillment of ERDA's existing enrichment services contracts would probably require operation of the Government plants at tails assay of about 0.37% U-235 in the absence of the use of plutonium fuel. Even with plutonium recycle, operation at about 0.29% U-235 would be required. Neither of these levels would permit production of nuclear fuel in an economic fashion. Moreover, operation at such levels would be inconsistent with the national objective of conserving our limited natural uranium resources by using them as effectively as possible.

More specifically, based upon our present knowledge of potential uranium concentrat production capability, the domestic uranium supply industry may not be in a positio to meet the feed requirements associated with tails assays as high as 0.37% U-235. Attainable production from domestic sources could, in the early 1980's, reach a level of around 33,000 tons of U_3O_8 per year. The feed requirements for ERDA's fully improved and uprated enrichment complex operating at 0.37% U-235 tails assay would be approximately 75,000 tons of U_3O_8 per year, of which approximately 50,000 tons would have to be delivered by domestic customers. Add-on enriching capacity at Portsmouth could be utilized for reduction of the ERDA tails assay and would concomitantly result in a more realistic production requirement for the domestic uranium supply industry. Furthermore, such reduction in tails assay would result in a greater potential for expansion of the use of nuclear energy in the U.S. through more effective use of our limited domestic uranium resources.

This problem has been recognized for some time and was identified in Dr. Seamans' testimony before the JCAE on December 2, 1975. It has been expected that new private domestic capacity, in addition to serving new customers, would also assist existing ERDA customers. This would be accomplished by permitting ERDA customers to plan their requirements for enriching services on the basis of a lower ERDA plant tails assay and of the availability of additional SWU purchases from new private plant capacity. This would be implemented through the so-called variable tails assay option which ERDA will offer to its fixed commitment customers by the mid-1980's (or limited terminations of ERDA customer contracts in favor of new domestic capacity). In all such instances, however, ERDA plants would continue to operate at their normal 28 million SWU capacity, albeit at lower

tails assay, and thus ERDA would continue to receive revenues based on that operating level. It is our understanding that prospective private enrichers are already marketing on the basis of this option to ERDA customers. These marketing efforts are based upon the economic advantages to existing ERDA customers of purchasing more SWU's from new capacity while lowering their total uranium feed requirements.

An ERDA add-on plant with a capacity of 8.75 million SWU's per year would provide the additional SWU capacity to permit existing ERDA customers to be served at a tails assay of about 0.25% U-235 assuming no recycle of plutonium recovered from spent fuel, or about 0.20% U-235 assuming plutonium recycle. Inasmuch as the estimated cost of SWU's from the add-on plant would be substantially higher than from the existing facilities, the use of the add-on plant to improve the operating characteristics of ERDA's three-plant complex through reduction in tails assay would have to be reflected in an increase in the cost per SWU borne by ERDA's existing customers. However, as mentioned previously, this would result in better total nuclear fuel costs.

THE WHITE HOUSE

WASHINGTON

ACTION

FILE

July 10, 1976

JUL 12 1976

MEMORANDUM FOR: JIM CANNON
JIM CONNOR
JACK MARSH
MAX FRIEDERSDORF

FROM: GLENN SCHLEEDE

SUBJECT: NUCLEAR FUELS ASSURANCE ACT

Charlie Leppert called me last night after he talked with John Anderson. He suggested that I get word to all of you early this morning on the NFAA problem.

Briefly, if we do not get this bill passed during the week of the 19th it may not be possible to enter into contracts with private ventures before April 1977. By then one or more of the private firms may decide to give up.

The reasons for my gloomy predictions are as follows:

- assuming adjoinment on October 2, I understand that there are only 45 legislative days remaining. This total would be changed only if the session goes beyond October 2 or if the Congress comes back after the general election.

  -- 20 between the current recess and the Republican Convention.
  -- 5 in August before the Labor Day recess.
  -- 20 after the Labor Day recess.

- the NFAA provides for 60 legislative days for Congressional review and approval by concurrent resolution for each contract. That review period breaks down as follows:

  -- the JCAE must submit recommendations and proposed resolution for approval or disapproval to each House of the Congress within 30 days of receiving the contracts.

  -- the resolutions must become pending business within each House within 25 days thereafter.

-- there must be a vote within 5 days after that.

. Any chance for getting the contracts approved this year already depends on getting each House to shorten the 60 day review period. As a practical matter this means shortening the 25 and 5 day periods. Undoubtedly, the JCAE will need all 30 days. There has been some indication from Tip O'Neill that he would push such an approach.

. Contracts are not yet ready to go for approval and negotiations are lagging principally because of the lack of any movement for the bill since the JCAE reported it out on May 14. If we have the bill passed in both Houses by the end of the first week after recess (July 23) and the contracts delivered by the second week (July 30), we would have left a total of 35 legislative days in which to get Congressional approval.

. Assuming we can't get contracts approved during the current session of Congress, they could not submit until the new Congress -- probably around January 20. 60 legislative days into the new Congress takes us well into April 1977.

John Anderson

John Anderson is crucial to the bill in the House as I indicated before. He has asked Congressman Price to delay consideration of the bill until the second week after the current recess. Congressman Price responded that he had had a call from the President that he couldn't please everybody and they would have to proceed with the bill.

Leppert tells me the bill is on the schedule for House consideration during the week of July 19 but that it is well down on the list, suggesting no action before Thursday or Friday (July 22-23).

The specific dates when Anderson will be in the Far East are in some dispute:

. Anderson's office indicates that he would be back on the evening of the 20th if he does not go to China and that he would be back on the night of the 27th or 28th if he does go to China.

. Congressman Anderson told Leppert last night he plans to be back on either the 23rd or 24th. Charlie believes, however, that once Anderson gets in the Far East the length of his stay is likely to be extended -- making the original prediction of the 27th or 28th more valid than the 23rd or 24th.

Anderson is going to the Far East with his wife and son at the invitation of the University of Tapei. He leaves Rockford very early on Monday July 12. His tel # is 815-399-3647.

Other Points

The longer the delays, the more proposed amendments that are piling up. There are at least 6 on the House side now, including amendments to:

- strip out everything but the add-on plant.
- prohibit any foreign investment.

You should also note that we must still get an aporopriations bill through to provide the $8 billion to cover contingency liabilities. Our arrangement to have this included in the ERDA appropriations bill (Public Works) fell apart totally because the Congress did not act on the NFAA in June.

Recommendations

- Very strong urging including the President call, if necessary, to Congressman Anderson that he return on the 20th.

- If this fails, attempt to go ahead in the House without Anderson, but this is risky.

- Presidential calls to Senator's Mansfield, Scott, Pastore, Baker and others urging that the bill be taken up in the Senate during the first week after the recess (You should note, however, that Senator Pastore has indicated he wants House action completed first.)

- That we notify the President that there is a real risk that private contracts can't go ahead until April 1977.

SUBSEQUENT CONVERSATIONS ON SATURDAY MORNING:

- With Jim Connor: After running over above with him, Jim suggested (a) remote possibility of using an offer of Government transportation to get Anderson back, (b) trying to go ahead with the bill without Anderson, and (c) having Charlie Leppert explore this latter point with Anderson.

- With Charlie Leppert: He tried to reach Anderson but couldn't. Anderson's wife said: "you mean that somebody still thinks that the bill will come up before the 27th or 28th?" Charlie suggests that Max try to get through to Anderson.

- With OMB staff: Joe Evins has asked ERDA to get word to the President that, if the President vetoes the Public Works Appropriation Bill, he (Evins) will sit on the $8 billion appropriations language for the NFAA when it is sent up.

cc: Leppert
Kendall
Jim Lynn

TALKING POINTS FOR CONVERSATION WITH JOHN ANDERSON

-- I understand we have a real problem on the scheduling of the Nuclear Fuel Assurance Act (NFAA). As you know the President called Mel Price and urged him to get the bill passed as soon as possible and I understand that Tip O'Neill and Mel are now committed to get the bill up early in the week of July 19.

-- Time is crucial for us because we still have to get through the Senate before we can send up the contracts with the four private firms for Congressional approval.

-- Because of promises made by Tip O'Neill, we think there is a good chance of getting the contracts through this session in less than 60 days (by getting the contracts brought to the floor soon after the Joint Committee on Atomic Energy (JCAE) completes its 30-day review).

-- If we lose another week, this greatly diminishes the chances of getting contracts approved and may mean that we would be held up until the next session of Congress. By then, one of two of the private firms that want to build plants might even give up.

-- You are so crucial to the success of this bill that it is hard to think of having it come up without you leading the fight. But I understand that you might stay an extra week in the Far East and that you would not be back in town until the week of the 26th.

-- Is there any possibility you could come back sooner so that we could avoid the additional delay?

Other points worth noting to Anderson:

- The NFAA would provide the first opportunity to get the U.S. back in the market of supplying enriched uranium to foreign customers -- which is crucial to our non-proliferation efforts. The President is aware of his(Anderson's) strong interest in acting on non-proliferation problems and notes that this is another reason for moving the NFAA.

THE WHITE HOUSE

WASHINGTON

JUL 20 1976

July 20, 1976

MEMORANDUM FOR: CHARLIE LEPPERT
BILL KENDALL

FROM: GLENN SCHLEEDE

SUBJECT: BILLS TO IMPROVE NUCLEAR LICENSING PROCESS

In response to your request there is attached a brief fact sheet on S. 3286 and H.R. 13512.

Briefly, these bills would be highly acceptable substitutes for the bill originally submitted by the NRC and endorsed by the Administration.

Anything you can do to get the Joint Committee to move on this one and get it fast would be appreciated.

cc: Jim Cannon
Jim Mitchell

Attachment

FACT SHEET

S. 3286 and H.R. 13512, Identical Bills to Improve the Nuclear Licensing Process

Sponsors

S. 3286 and H.R. 13512 are identical bills sponsored by seven Members of the Joint Committee on Atomic Energy and intended to shorten and improve the licensing process for nuclear facilities.

What the Bills Would Do

. The bill would require NRC to:

- assure expeditious reactor siting and licensing hearings consistent with the public safety,
- exclude from further consideration any issue which has either already been decided or which could have been raised by intervenors and decided in previous proceedings, and
- coordinate planning and scheduling of siting and licensing procedures with state agencies.

. The bill would authorize NRC to:

- issue separate and early site reviews and approvals even though construction of a facility is not immediately anticipated,
- allow an applicant to do limited construction activities if there is reasonable assurance that there are no unresolved public health and safety issues,
- eliminate mandatory construction permit and/or operating license hearings by the Commission unless there exists a factual dispute about a significant matter, and
- issue an interim operating license before the required hearings are completed, if the NRC finds early operation of the facility to be in the public interest.

Administration Position

. The Administration:

- urges the Joint Committee on Atomic Energy to expedite its review and to report out the bills for full congressional action in this session,
- supports enactment of S. 3286 and H.R. 13512.

. The bill has many of the same basic features and objectives as a bill (S. 1717 and H.R. 7002) submitted in 1975 by the Nuclear Regulatory Commission which was endorsed by the Administration.

JUL 22 1976

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

July 21, 1976

URGENT

MEMORANDUM FOR: Glenn Schleede
Domestic Council

FROM: H. Hollister Cantus
Director of Congressional Relations

SUBJECT: N.F.A.A. -- A CHANCE TO LOSE THE WHOLE BALLGAME

This memo will confirm the position which ERDA has relayed to the White House through the Domestic Council, Legislative Affairs, and others, that Representative Bill Harsha has demanded a letter which unequivocally states the Administration's commitment to proceed with the Portsmouth add-on (with or without a private enrichment plant) or he will be forced to urge the Ohio delegation and the House to vote against the NFAA except for the add-on provisions and that, without such a letter, his ultimatum has a relatively high degree of success potential.

It is my understanding that the draft of such a letter, oft amended, rests in the halls of the EOB and White House.

You are aware of my long-standing concern that the NFAA might cause the left and right to coalesce against the bill -- some for anti-nuclear reasons, some for anti-privatization reasons and some for anti-loan guarantee reasons. I must take this opportunity to raise that warning flag again. Should the Ohio delegation remove its support for NFAA, I am convinced the measure, as presently formulated, will fail.

It is requested that all possible effort be expended to expedite the Harsha letter so that he has it in hand prior to House consideration of the bill which may come as early as tomorrow, depending on the return of John Anderson.

cc: Mr. Leppert ✓
Mr. Voigt
Dr. Conners
Mr. Stradinger

URGENT

K

JUL 22 1976

Mr. H. Bruce Maredith
Assistant Director for Budget Priorities
Committee on the Budget
House of Representatives - Room 214
Washington, D. C. 20515

Dear Bruce:

Pursuant to our recent discussion regarding the pending Nuclear Fuel Assurance bill and the President's program to expand the uranium enrichment capacity of the United States, I have had prepared additional material in response to the questions which arose at our meeting. Enclosed are three papers providing information on these questions.

Enclosure A describes the authority under the proposed Nuclear Fuel Assurance Act which we are seeking in order to enter into contracts for cooperative arrangements with private uranium enrichment projects. Enclosure B is a more detailed description of the contingent nature of the liabilities of the Federal Government under the NFAA. Enclosure C describes examples of other "cooperative programs" which have been established by previous legislation and which are being, or have been, pursued by the Atomic Energy Commission or ERDA.

I hope this information will meet your needs. Please feel free to call me with any further questions.

Sincerely yours,

/s/ (Signed) Dale R. McOmber

Dale R. McOmber
Assistant Director for Budget Review

Distribution:
Enclosures

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Authority to Enter into Contracts for Cooperative Arrangements under the Proposed Nuclear Fuel Assurance Act

The proposed Nuclear Fuel Assurance Act (H.R. 8401) provides for authorization of contract authority in section 1. This is amplified further in section 3 whereby the Administrator of ERDA is "authorized to enter into contracts for cooperative arrangements..."

Budget Treatment of these Contracts.

The purpose of the assurances to be provided by ERDA under the cooperative arrangements is to enable private industry to obtain the necessary financing from non-government sources to establish a competitive private uranium enrichment industry. The approval by the ERDA Administrator of a cooperative arrangement is a contract in the strict legal sense, but it is a contract that requires Federal payments for acquisition or "takeover" of a private project only in the event of some future contingency. Such contracts are not recorded as "obligations" in accounts of record under existing GAO rules.

The Congressional Budget Act identifies contract authority as "authority to enter into contracts under which the United States is obligated to make outlays, the budget authority for which is not provided in advance in appropriation acts:..." Further, section 3(a)(2) of the same act states, "The term 'budget authority' means authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds..." (emphasis added)

Thus the term contract authority used in the context of budget authority requires that there be future outlays. The authority provided in NFAA established contingent liabilities with respect to Government acquisition of private projects which may or may not result in outlays. Therefore, authority to enter into contracts, as provided in NFAA, does not mean the same thing as the contract authority described and defined in the Congressional Budget Act and should not be construed as budget authority.

Defining Contingent Liabilities as Budget Authority.

If there should be a requirement to treat the $8 billion contingent liability under the Nuclear Fuel Assurance Act as budget authority, then serious questions of consistency are raised:

- Should all future contingent liabilities authorized by the Congress be assumed to be covered by budget authority regardless of the form in which the contingent liability is authorized?

- Similarly, should all past contingent liabilities be assumed to have been covered by budget authority and therefore carried in accounting and budget records as unobligated balances?

Approximately $1.7 trillion in contingent liabilities was outstanding on June 30, 1975 mostly in the form of guarantees or insurance to private lenders against loss.

Perspectives on the Handling of Funding for Liabilities

The Congress has handled funding for these liabilities in a variety of ways. These may be illustrated by the following:

1. In some cases, contingent liabilities are funded only to the extent that losses are realized or expected to be realized, as we expect to present the contingent liabilities associated with the NFAA:

a. New Communities Program (Page 417, Appendix):

The unfunded contingent liability as of June 30, 1975 was $273.5 million to guarantee loans issued by developers of new communities. Authority to fund defaults is for borrowing from the Treasury as needed without further actions by the Congress.

b. Student Loan Insurance Fund (Page 354, 1977 Appendix):

The unfunded contingent liability as of 1975 was $5.4 billion. The 1977 budget included an appropriation of $197.6 million to pay defaulted loans. This represented the difference between premium receipts, loan, and interest payments, and the claims payable in that year. Authorization is available for the appropriation of funds necessary for the adequacy of the fund. Authorization is also available for the Commissioner of Education to borrow from the Treasury without further action by the Congress if amounts in the fund are insufficient.

2. In other cases, contingent liabilities are partially funded. Sometimes the partial funding is provided as a specific amount:

Federal Deposit Insurance Corporation (Page 724, 1977 Appendix):

$3 billion in borrowing authority was provided to supplement the resources of the insurance fund. The insurance reserve is $7.1 billion. The outstanding contingent liability, as represented by the total amounts deposited in savings in member banks up to $40 thousand per account, is $549 billion.

3. In other cases, the partial funding is determined by a specific proportion of the contingent amount.

Export-Import Bank of the United States (Page 916, 1977 Appendix):

The amount of authorized funding is specified by law at 25% of the total contingency for guaranteed loans ($4 billion outstanding on June 30, 1975) obtained by borrowing from the

Treasury without further action by the Congress. However, the Congress sets an annual limit on program activity including 25% of net new authorization.

4. Sometimes the partial funding derives from authority for borrowing from Treasury and from various payments into a revolving fund without further action by Congress.

National Food Insurance Fund (Page 419, 1977 Appendix):

The outstanding contingent liability as of June 30, 1975 was $13.7 billion. Permanent borrowing authority of up to $1 billion was available.

Conclusion.

The proposed $8 billion is authority to enter into contracts for cooperative arrangements is, in our view, simply a limitation on the amount of contingent liability for takeover that could be created by the arrangements. Like many other authorities that provide for contingent liabilities, this authority permits such liabilities to be incurred but does not in and of itself provide funding, i.e., either appropriations or borrowing authority. Rather the authority permits agreements that may result in the future need for funds. At the time such a need materializes, borrowing from the Treasury is authorized to provide the necessary funds. Under normal rules, budget authority would be recorded at that time.

The Nature of the Contingent Liabilities to The Federal Government under the Pending Nuclear Fuel Assurance Act

Section 2 of the Nuclear Fuel Assurance Act (NFAA) authorizes the administrator of ERDA to enter into cooperative arrangements for the purpose of providing Government cooperation and temporary assurances to private uranium enrichment firms in order to permit them to finance, build, own and operate uranium enrichment facilities. These cooperative arrangements would permit ERDA (1) to provide technology services, materials and equipment, (2) to commit the U.S. Government to assume the assets and liabilities of the private enrichment ventures in the unlikely event that they were to fail, and (3) to purchase for subsequent resale limited amounts of enrichment services from private enrichers under certain circumstances.

The following items describe in detail these activities authorized in Section 2(a) of the NFAA in order to demonstrate the contingent nature of the liabilities of the Federal Government which could be assumed under the NFAA.

1. "Furnishing technical assistance, information, inventions and discoveries, enriching services, materials and equipment on the basis of recovery of cost and appropriate royalties for the use thereof;"

   - This provision authorizes ERDA to furnish to potential private uranium enrichers the enrichment technologies developed by the U.S. Government over the last 35 years and to charge an appropriate royalty for the use of these technologies. There are no outlays associated with this authorization. In fact, the royalties paid by the enrichment firms would increase revenues to the U.S. Government by $50-60 million/yr from the four proposed private projects by the late 1980's.

   - This provision also authorizes ERDA to sell technical assistance and certain materials and equipment that would be needed by these private enrichers e.g. barrier material, compressor seals, etc. These purchases would be paid for in advance by the private enrichers; consequently, they would result in no U.S. Government outlays.

   - This provision further authorizes ERDA to sell enriching services from ERDA's existing plants or from ERDA's enrichment stockpile to private firms should the private enrichment ventures need additional enrichment services to meet their customer demands in the start-up and early phases of plant operation. These enrichment services (in the form of Separative Work Units (SWUs)) would be paid for by the private enrichers on delivery, thus generating revenues to the Federal Government and reducing outlays. The

details of these enrichment sales arrangements and the limits on availability (both as to time and amounts) of the enrichment services which would be available to private enrichers will be described in detail in the contract between ERDA and each enricher. These contracts will be submitted for congressional approval pursuant to Section 2 of the NFAA.

2. "Providing warranties for materials and equipment furnished."

- This authorizes ERDA to assure that the materials and equipment provided by the U.S. Government on a full cost recovery basis to private enrichment projects will perform as specified. These warranties involve no net Federal Government outlays. In the remote event that these materials and equipment do not perform as specified, ERDA would have the opportunity to correct the defects in them. The costs of correcting any defects in these materials and equipment would be paid for by ERDA. However, it should be noted that the ERDA charge for materials and equipment will include an insurance premium factor associated with providing the warranty.

- This provision constitutes a contingent liability to the U.S. Government amounting to the costs involved in correcting any defects. It is not anticipated that any such defects in materials or equipment would develop due to the extensive experience ERDA has had producing and using such materials and equipment.

3. "Providing facilities performance assurances."

- This provision authorizes ERDA to provide private enrichment firms assurances that their enrichment facilities will operate as predicted if designed to ERDA's specifications. This assurance constitutes a liability to the Federal Government which is contingent on these facilities not performing as predicted. In the unlikely event that this contingent event came to pass, e.g. a plant did not operate, the U.S. Government would take over the assets and liabilities of the project as authorized in Section 2(a)(5) of the NFAA and described below.

4. "Purchasing enrichment services."

- Under the cooperative arrangements ERDA could contract to purchase enrichment services (or sell them as provided for in Section 2(a)(1) mentioned above) depending upon certain future needs of the enrichment projects. Originally this authority was intended to accommodate plant start-up and customer loading problems. As the negotiations with the centrifuge enrichers have progressed it has become apparent that a specific purchase arrangement would be needed to permit these plants to start operations prior to the time of delivery to potential

enrichment customers. This early plant start-up is necessary to assure an orderly construction and capacity build-up of the relatively new centrifuge process, so that the capacity is proven and reliable when customers become dependent on their services.

- These purchases of enriching services would, by the provisions of these contracts, be subject to future authorization and appropriation actions of the Congress. Thus, these purchases would, if approved by the President and the Congress, appear as budget authority and outlays in the years in which they occur. If the funds are not provided for these purchases, ERDA would have to take over the centrifuge projects affected. The $8 billion covers this latter contingency but not the purchase of the enrichment services.

- The enrichment services thus purchased from the private centrifuge enrichment projects would constitute a very valuable and resalable asset. ERDA could either sell the enriched uranium thus obtained or stockpile it for future sales.

5. "Undertaking to acquire the assets or interest of such persons, or any of such persons, in an enrichment facility, and to assume obligations and liabilities (including debt) of such person, or any such persons, arising out of the design, construction, ownership, or operation for a defined period of such enrichment facility in the event such person or persons cannot complete that enrichment or bring it into commercial operation..."

- This provision authorizes ERDA to take over a private enrichment enterprise if that enterprise cannot be completed due to the failure of a Government-supplied technology or design or due to any occurrences (to be spelled out definitively in each contract) that prevent the private enterprise from achieving commercial operation. This take-over provision is clearly a contingent liability since it hinges on the occurrence in the future of very unexpected events. In essence, this provision assures the lenders of capital to a private enrichment enterprise that the enrichment facility will be completed, that it will operate and, thus that it will be able to produce revenues and repay its debts. As this provision relates to debt holders, it is very much akin to a loan guarantee. However, this provision also could provide for some repayment of equity - the amount to be determined by the owner's degree of responsibility for the failure of the enrichment venture - if, and only if, the Government elected to complete the project after the take-over.

- These performance assurances and take over provisions do not continue through the life of an enrichment facility. They terminate shortly after operation of the plant has been demonstrated. In the case of

the gaseous diffusion plant this occurs one year after the initial operation of the plant. All Federal Government assurances terminate at that point in time. All risks after that point are assumed by the private enrichers.

6. "Determining to modify, complete and operate that enrichment facility as a Government facility or to dispose of the facility at any time, as the interest of the Government may appear, subject to other provisions of this act."

° This provision permits ERDA discretion over what it will do with an enrichment facility that has been taken over, depending upon the costs of various alternatives. A determination of what should be done with a facility under these circumstances would be made at the time of the take over. ERDA has agreed that it would complete the facility taken over unless it were more economical to provide capacity needed to meet its inherited obligations in some other way. Any funds required to implement that decision would be subject to the usual authorization and appropriation processes for the years the funds are needed.

Examples of Other Programs Involving Authorization to Enter into Cooperative Arrangements

The Cooperative Power Reactor Demonstration Program

This program was initiated by the Atomic Energy Commission (AEC) in 1955 to demonstrate the commercial usefulness of nuclear power plants. The program involved cooperative arrangements between AEC and nuclear power equipment manufacturers (or electric utilities, both private and public) for the development, design, construction, and operation of nuclear power plants using technology developed in part by the U.S. Government. The power reactor demonstration program (PRDP) went through four phases or "rounds" over a period of more than 15 years during which AEC, by making limited "seed money" available to private industry, stimulated and facilitated the construction by industry with private funds of a substantial number of nuclear power plants which have constituted a central and indispendable element in the commercialization of nuclear power in the U.S. The last project under the PRDP proper is the Fort St. Vrain high temperature gas reactor of the Public Service Company of Colorado in Denver.

The arrangements for the Clinch River Breeder Reactor (CRBR), which will demonstrate the fast breeder technology, is sufficiently different from the PRDP projects to warrant exclusion from this analysis.

The salient features of the PRDP program were as follows:

1. Typically the Congress appropriated funds in a lump sum for each of the four phases or "rounds." These lump sums were subsequently divided into the amounts needed to support particular projects and the detailed cooperative arrangements were submitted to the Joint Committee on Atomic Energy for its scrutiny before becoming effective.

2. The appropriated funds were used primarily to enable the equipment manufacturer or electric utility to conduct AEC-approved pre-construction research and development (and some design work) in support of the particular project in hand. The amounts made available for this purpose by AEC typically fell in the range of $5 to $25 million per project, although the last project (Fort St. Vrain) involved about $10 million.

3. In addition to appropriation of funds, the Congress authorized the waiver of established charges for the loan of nuclear fuels, then owned exclusively by the Federal Government, up to a specified amount. These fuel charge waiver authorizations were likewise allocated by AEC to individual projects. These waivers resulted in reduced revenues rather than new outlays.

4. In a few cases AEC agreed to perform R&D with the AEC laboratories up to a particular amount for the contractor involved.

5. One of the four phases or "rounds" was confined to cooperative arrangements with public utilities as distinguished from investor-owned utilities. This was the most costly round because it involved the outright construction of the power reactor proper by AEC, while the public utility provided the turbo generator.

6. Except in the phase described above in item 5, the private industry partner was responsible for all cost overruns.

Cooperative Agreements for Fossil Programs

One of the older cooperative agreements is with the American Gas Association in support of ERDA's fossil energy development activities. This agreement, entered into in 1971, provides for joint planning and funding of research activities directed towards the production of pipeline quality gaseous fuels from coal. The Powerton project with Commonwealth Edison which is now under consideration, is an example of a cooperative program in pursuit of a specific task or project. This program is concerned with the design, construction, operation, and evaluation of a combined cycle power generating system as another research effort for utilizing domestic resources in an environmentally acceptable manner.

Congress of the United States

House of Representatives

Washington, D.C. 20515

July 22, 1976

Dear Colleague:

Sometime soon the House is expected to vote on H.R. 8401, the Nuclear Fuel Assurance Act of 1976 (NFAA). We urge you to vote against this bill.

We support the entry of private enterprise into the uranium enrichment business, however, we oppose the Nuclear Fuel Assurance Act. Although the Act permits private companies to enter the uranium enrichment business for the first time, it does it under a series of government guarantees and subsidies which will remove the chief benefit of private entry into any endeavor--economic risk. It is economic risk that makes private enterprise more efficient than government enterprise.

The bill removes financial risk in at least two ways:

First, it empowers ERDA to acquire the assets and assume obligations and liabilities of the private enrichers if the enterprise does not succeed in coming into commercial operation.

Second, it empowers ERDA to purchase the enrichment services of these private enterprises if market demand does not exist.

These extensive government assurances make it difficult to understand how this bill can be characterized as allowing private enterprise to enter the uranium enrichment business.

Compounding the bill's failure to establish free enterprise in the uranium enrichment business is the bill's expansion of the government owned uranium enrichment facilities.

Title 4 of the bill authorizes and directs ERDA to begin work on a government owned enrichment facility in Portsmouth, Ohio. Thus a bill which purports to allow the private enterprise into uranium enrichment, actually is a vehicle for expanding government control and ownership of the uranium enrichment business.

Finally, we urge our colleagues to examine closely the precedents they are setting in this bill. This bill essentially establishes $8 billion in loan guarantees for uranium enrichment companies. The Synthetic Fuels Bill provides $4 billion in loan guarantees. Who's next? As the Wall Street Journal recently argued in its editorial against the Synthetic Fuels Bill:

> Once the government gets involved in directly allocating capital to energy, a long line of capital starved industries will be close behind.

In this legislation and other loan guarantee programs the government is asking us to believe that a bureaucrat is better able to spot a profit opportunity than a private businessman. We don't believe it.

We urge you to closely examine this legislation and the precedents it establishes. We urge you to join us in opposing its enactment.

Jim Broyhill
JAMES T. BROYHILL

ANDY JACOBS, JR.

Ron Paul
RON PAUL

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

July 23, 1976

Honorable William H. Harsha
House of Representatives

Dear Mr. Harsha:

I am writing this letter to answer the questions you raised concerning the possibility of concurrent construction of a Portsmouth add-on gaseous diffusion plant and the proposed private UEA gaseous diffusion plant.

As you know, the President stated in Columbus, Ohio, on May 26 that he would accept the Nuclear Fuel Assurance Act reported on May 14 by the Joint Committee on Atomic Energy. Among its provisions, that bill authorizes and directs ERDA to initiate construction design and planning, construction and operation activities for expansion of an existing uranium enrichment facility. The JCAE report makes clear that the expansion would be at the Portsmouth, Ohio plant. An excerpt of the transcript of the President's statement in Columbus is attached as part of this letter.

The President also stated in Columbus that he would ask the Congress to appropriate necessary funding for FY 1977 for the complementary program at Portsmouth, including funding for design, planning and procurement of long lead-time construction. On June 4, the President requested $178.8 million for fiscal 1977, and this amount has been approved by the Congress.

In recent discussions with my staff, you asked about a newspaper article in which our Mr. Voigt was quoted as saying "the Portsmouth add-on plant and the UEA plant cannot be constructed simultaneously." I can certainly understand your concern and want to be sure that you have from me ERDA's latest and best assessment of our capability to handle two gaseous diffusion enrichment projects, a government-owned add-on plant at Portsmouth and the proposed privately owned plant in Alabama.

I would like to make clear that I believe it is possible to proceed successfully with both plants in the same time frame.

Our assessments indicate that the principal problems in proceeding with two plants at once relate to the adequacy of some resources that will be needed, principally experienced design personnel, production of compressors, and capacity to produce barrier required for the plants. We believe the situation is manageable as long as there is sufficient advance planning and management coordination to assure proper sequencing of demands on available resources. There are limits on the number of people who are capable of designing critical aspects of gaseous diffusion plants, but ERDA has such people within its organization at Oak Ridge and Portsmouth.

As you know, conceptual design work for an add-on plant has been underway since 1973. More detailed design work is being carried out with the $12.6 million requested by the President on May 5, 1976, and approved by the Congress for the last part of FY 1976 and the Transition Quarter. Invitations for the first two architect-engineering design packages for the Portsmouth add-on were issued in January and March, 1976 and ERDA HQ approval of the selection of contractors is now underway. We anticipate proceeding with additional design packages soon. The $178.8 million requested by the President and approved by the Congress in the 1977 Public Works Appropriations Bill includes funds for continuing design work for a Portsmouth add-on.

The manufacture of compressors will be handled by private industry, and we believe that the requirements can be worked out so that both plants can proceed in the same time frame.

Since the production of barrier is a highly classified process, the only capacity available is an ERDA-owned plant at Oak Ridge. The plant was recently expanded and is now providing the barrier requirements for the improvement of ERDA's existing plants, including Portsmouth. That job will be finished in time so that the plant would be able to produce barrier for both a government add-on plant and a privately owned diffusion plant.

We have concluded that it would not be necessary to delay work on either plant since the critical engineering work could be sequenced. ERDA has the capacity to integrate and manage the planning and scheduling so that uranium enrichment capacity would be available in time to meet the demand for nuclear fuel and to conserve our natural uranium resources.

We are now proceeding to the extent practical, pending action on the Nuclear Fuel Assurance Act. Early enactment of this bill is imperative to assure that we can proceed much more vigorously to provide the additional uranium enrichment capacity that the country needs so urgently.

In sum, it is possible to proceed successfully with both a Portsmouth add-on diffusion plant and the proposed private plant in the same time frame. If there is additional information we can provide, please let me know.

Sincerely,

Robert W. Fri
Deputy Administrator

Enclosure

One other item of significant importance. Last June I proposed to the Congress legislation that would establish a major new private industry in America providing the enriched fuel for nuclear power reactors. My proposal, the Nuclear Fuel Assurance Act would make it possible for the United States to maintain its leadership as the world supplier of uranium enrichment services for the peaceful use of nuclear power.

The Joint Committee on Atomic Energy in the Congress has made some modifications on my proposal and approved it. I have reviewed the changes in the bill and concluded that I will support it. The bill meets five fundamental objectives, which I stated a year ago:

First, an act to meet the future needs, domestic as well as international, for this essential energy source;

It would end the governmental monopoly on supplying enriched uranium for nuclear power plants;

Three, establish a procedure whereby private enterprise can bring into commercial use the techniques created by Federal research and development with proper licensing, safeguards and export controls;

With the payment of royalty and taxes by private enterprise to the United States Treasury;

Provided also in the bill is a complimentery back-up system for expanding existing Federal uranium enrichment capacity if private ventures are unable to meet on time the needs of U.S. and foreign customers;

Last, assist in controlling nuclear proliferation by persuading other nations to accept international safeguards and forego development of nuclear weapons.

Finally, the bill and the committee report also authorize and direct the Energy Research and Development Agency to begin planning and designing for the expansion of the existing uranium enrichment plant at Portsmouth, Ohio.

As soon as Congress passes the Nuclear Fuel Assurance Act, I will ask the Congress to appropriate $170 million for fiscal year 1977 to proceed with the design, planning and the procurement of long lead time construction for the Portsmouth plant. This, I think, is a good program, and I hope the Congress acts so that I can request of the Congress the necessary funding for the complimentery program at Portsmouth, Ohio.

I will be glad to answer the first question.

THE WHITE HOUSE
WASHINGTON

JUL 26 1976

July 24, 1976

TO: CHARLIE LEPPERT

FROM: GLENN SCHLEEDE

FYI

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

JUL 24 1970

Honorable John O. Pastore, Chairman
Joint Committee on Atomic Energy
Congress of the United States

Dear Mr. Chairman:

This is to advise you that we have been informed that some prospective lenders to and investors in contemplated private enrichment projects under the proposed Nuclear Fuel Assurance Act (S. 2035) will request an opinion of the Attorney General of the United States as to the constitutionality of the proposed legislation. Their concern appears to arise from the provision of the bill which precludes the execution of any arrangement until the proposed arrangement has been submitted to the Joint Committee on Atomic Energy and a period of 60 days elapsed while Congress is in session with passage by the Congress of a concurrent resolution stating in substance that it does favor such proposed arrangement.

I am advised that the Department of Justice is of the opinion that an amendment to S. 2035 requiring a joint rather than a concurrent resolution will remove any doubt as to the validity of any arrangement approved and executed pursuant to that mechanism.

In conclusion, such an amendment would remove this potential issue and continue to assure the desired Congressional oversight and affirmative proposals.

Sincerely,

Robert W. Fri
Deputy Administrator

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

JUL 24 1976

Honorable Melvin Price, Vice Chairman
Joint Committee on Atomic Energy
Congress of the United States

Dear Mr. Price:

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Sincerely,

Robert W. Fri
Deputy Administrator

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

JUL 24 1976

Mr. George F. Murphy, Jr.
Executive Director
Joint Committee on
Atomic Energy

Dear Mr. Murphy:

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Sincerely,

Robert W. Fri
Deputy Administrator

7/26/76

FACT SHEET

NUCLEAR FUEL ASSURANCE ACT (H.R. 8401 AND S. 2035)

What the Bill Provides

° Authorizes ERDA to enter into cooperative arrangements with private firms wishing to finance, build, own and operate uranium enrichment facilities -- subject to:
- passage of the necessary appropriations act; and
- congressional review and approval of each cooperative arrangement.

° Arrangements can provide for temporary assurances and cooperation such as:
- making Government-owned technology available and warranting that it will work -- for which industry pays royalties to the Federal Treasury.
- selling and providing warranties on certain materials and equipment available only from the Government -- on a full cost recovery basis.
- technology assistance -- on a full cost recovery basis.
- purchase of enrichment services from private producers or selling such services to producers from the Government stockpile to accommodate plant start up and loading problems.
- assumption of domestic assets and project liabilities in the unlikely event a project falters -- up to a limit of $8 billion for all covered projects. (Expenditure of any of the $8 billion to assume assets and liabilities is unlikely.)

° Authorizes and directs ERDA to initiate construction planning and design, construction and operation for expansion of an existing Government-owned uranium enrichment facility; and authorizes the appropriation of $255 million to begin work on such a project.

Why Legislation is Needed

° To increase the United States' capacity to produce enriched uranium to fuel domestic and foreign nuclear power plants. Existing capacity (including current expansion) has been fully committed since July 1974.

° To retain U.S. leadership as a world supplier of uranium enrichment services and technology for the peaceful uses of nuclear power -- and thus strengthen the U.S. ability to require rigid safeguards to control proliferation.

° To begin the transition to a private competitive uranium enrichment industry -- ending the Government monopoly and avoiding the need for Federal expenditures for capacity that can be provided by the private sector. (It would cost the

Federal Government between $10 and $12 billion (in 1976 dollars) to build the four plants which could be provided by the private sector under the NFAA.)

° To overcome -- through limited and temporary Government assurances and cooperation -- present obstacles to obtaining financing from normal commercial sources (e.g., banks, insurance companies, retirement funds). Principal obstacles are:
  - lack of commercial experience with the classified technology,
  - large size of the capital investment required for each plant,
  - long time before investment is paid back.

° To provide a complementary expansion of existing Government-owned uranium enrichment capacity -- which will help conserve limited natural uranium resources and supplement the national stockpile of enriched uranium.

How the Bill Would Be Implemented

° ERDA would -- subject to congressional approval of each contract -- enter into cooperative arrangements with private firms wishing to finance, build, own and operate enrichment plants. (Four private firms have submitted proposals and negotiations are underway.)

° ERDA would simultaneously proceed with planning and other activity necessary to the construction of an add-on Government plant.

° Foreign investment in private U.S. projects would be permitted only under conditions which insure U.S. control of projects.

° No foreign access to enrichment technology would be permitted.

° Owners of private projects will take substantial equity risks in order to participate in the program.

° No Government guarantee of profit.

° Private plants will be subject to licensing by the independent Nuclear Regulatory Commission (NRC) which must consider safety, environmental, safeguards and anti-trust matters and must also assure that projects are and will remain under the control of U.S. citizens.

7/26/76

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7/27/76

RESPONSES TO COMMON CRITICISMS OF THE NUCLEAR FUEL ASSURANCE ACT (NFAA) S. 2035; H.R. 8401

CRITICISM	RESPONSE
Need for Capacity	
New capacity to enrich uranium for nuclear power plants is not needed.	All available capacity in the U.S. (Government-owned plants) including current expansion, has been fully committed for the life of the plants since July 1974. Commitments to new capacity are needed now so that fuel will be available in the mid-1980s for nuclear power hear and abroad
No new capacity is needed beyond the Government-owned add-on plant provided for in NFAA.	Capacity provided by an add-on plant would permit ERDA to reduce the drain on U.S. natural uranium supplies when meeting its enrichment service contracts, and contributes to the national stockpile. Additional uranium enrichment capacity is needed to serve customers who are now or will be seeking to place orders.
Construction of privately financed plants will result in excess capacity.	Privately-financed plants will come into being only if there are sufficient firmly-committed customers for each plant to justify its construction. The necessity for private firms to have firmly committed contracts before risking their capital and other resources will preclude building of excess capacity.
Operation of Government plants will be curtailed due to availability of private capacity.	Government-owned plants will continue to operate at full capacity to meet commitments aready made. Operation will not be cut back.
Costs to Consumers	
Enrichment services from private plants will be more costly than from Government-owned plants.	The price of service from any new capacity will be higher than from existing capacity, most of which were built years ago. Costs of producing enriched fuel from new Government-owned capacity will be as costly and possibly more costly than from new privately-financed capacity. Competition permitted under the NFAA should reduce future costs from private enrichment plants.

CRITICISM	RESPONSE
Government Rather than Private	
The Government should provide all needed new capacity.	From 9 to 12 plants roughly equivalent in capacity to each of the 3 existing Government-owned plants must be committed to over the next 15-20 years. If the Government financed them, the taxpayers will have to put up between $20-50 billion - which would not be recovered for many years. . Uranium enrichment is the type of commercial/industrial process normally performed by private industry. There is no need for Government to do so when the private sector is ready and willing to do it - with only limited, temporary assurances and cooperation from the Government. The private sector can provide the required financing - making it unnecessary for the Government to spend the required $25-50 billion.
Control of Technology	
Privately-financed plants will mean loss of Government control over sensitive technology.	Government controls over technology will be maintained. No foreign access to technology is provided under NFAA. In fact, under existing law and NFAA, projects must remain under the control of U.S. citizens.
Proliferation	
Building additional uranium enrichment capacity will contribute to proliferation.	The opposite is true. Maintaining its position as a leading and competitive supplier of nuclear fuel and equipment for peaceful purposes will permit the U.S. to require stringent safeguards, thus furthering our non-proliferation objectives. Availability of reliable fuel supplies from the U.S. reduces the need for other nations to develop uranium enrichment technology and build plants.
Enactment of NFAA would yield responsibility for U.S. nuclear export policies to multinational corporations and encourage mass nuclear exports.	Government control of U.S. nuclear exports will not be affected by the NFAA. Firms that finance, build, own and operate plants under the provisions of NFAA and Congressionally approved contracts will still be subject to export controls. Exports will be subject to stringent safeguards requirements provided for in

CRITICISM	RESPONSE
	Bilateral Agreements for Cooperation between the U.S. Government and Governments of foreign customers (such agreements also require Congressional approval).
Private Sector Risk	
Private projects will assume no risk and be guaranteed a substantial profit.	Private equity, representing hundreds of millions of dollars for each project, will be at substantial risk. The Government will not guarantee any profit. The extent of private risk will be made clear for each project in contracts between ERDA and private firms. Under NFAA, such contracts cannot be signed unless they are approved by the Congress, so there will be additional opportunity to evaluate the risks.

7/27/76

ADMINISTRATION POSITION ON PROPOSED AMENDMENTS TO THE NUCLEAR FUEL ASSURANCE ACT (NFAA), H.R.8401

Bingham amendment, to strike all provisions of the NFAA except those relating to the add-on facility at Portsmouth.

ERDA opposes this amendment because the amendment would negate the main thrust of the bill, which is to meet nuclear fuel requirements by establishing a private, competitive enrichment industry. Establishment of such an industry would serve the national interest for the following reasons:

1. It would avoid unnecessary further expansion of the public sector at the expense of the private sector in a situation where the activity involved is essentially commercial/industrial, not governmental in nature.

2. It would broaden and diversify the Nation's supply base for uranium enrichment.

3. It would secure the advantages of a competitive private industry, which could be expected over the long term to produce technology improvements and cost savings to the consumer.

4. It would avoid additional burdens on the Federal budget, particularly in a time of great budgetary stringency. Specifically, it would cost the taxpayers between $10-12 billion (in 1976 dollars) for just the four plants which could be built by the private sector under the NFAA. In total, it would avoid $25 to $50 billion (in 1976 dollars) in additional Federal outlays over the next 15-20 years, and such outlays would be recovered only after a lengthy period.

5. It would avoid the danger that continued Federal monopoly in enrichment would lead to an unprecedented degree of Federal control over the supply of electric energy as reliance on nuclear power increases.

Bingham amendment, to preclude execution of any contracts under the NFAA until March 20, 1977.

ERDA opposes this amendment for the following reasons:

1. The U.S. has not taken any additional orders for uranium enrichment, domestic or foriegn, since the summer of 1974. A commitment to additional capacity is urgently needed in order to meet the needs which have emerged since that time, and to permit domestic utilities to firmly commit to nuclear power projects based on contracts with new domestic enrichers. A delay until March 20, 1977, would not be in the national interest.

2. Due to long lead-times in the construction of uranium enrichment facilities, commitments to build new capacity need to be made far in advance (8-10 years) of project demand for enrichment services.

3. The prospect of a delay until next spring would impair the momentum of ERDA's current negotiations with four private firms that wish to finance, build, own and operate enrichment plants.

4. A delay until next spring is not needed to protect congressional concerns. Under terms of the NFAA each proposed contract with a private firm would have to be submitted to the Congress by ERDA for review and approval before it could be signed.

Congressman Moss amendment, to restrict foreign investment participation under the NFAA.

ERDA opposes this amendment for the following reasons:

1. Investment restriction is not necessary to protect the national interest because foreign control will be contractually limited to 45% control regardless of extent of financial interest. Moreover, NRC must, as a condition of granting and maintaining a license for construction and operation of enrichment plants, determine that each project is now owned, controlled or dominated by an alien, foreign corporation or foreign government.

2. U.S. government guarantees provided by NFAA would be confined to protection of domestic investment.

3. Foreign access to classified uranium enrichment technology is not authorized by NFAA and is precluded by the Atomic Energy Act of 1954.

4. Foreign investment in domestic enrichment projects is beneficial because:

a. foreign capital reduces demands on domestic capital market, and

b. foreign capital invested in domestic projects should reduce the likelihood of investment of those funds for the development of enrichment technology or the building of enrichment plants in foreign countries.

Long amendment, to eliminate the $8 billion authorization and the Congressional contract review procedure in NFAA, and to require that contract authority for each contract not exceed such sums as may from time to time be authorized and appropriated.

ERDA opposes the elimination of the $8 billion authorization and the requirement that contract authority for each arrangement may not exceed such sums as may from time to time be authorized and appropriated, for the following reasons:

1. By eliminating the $8 billion authorization, the amendment would impede or seriously impair ERDA's ability to bring to a conculsion negotiations on several cooperative arrangements with a view to establishing a competitive industry.

2. The requirement for separate authorization and appropriation action for each cooperative arrangement would inevitably delay the process for selection by the Executive Branch and approval (or rejection) by the Congress of particular cooperative arrangements, thus further postponing the time at which new private enterprises are established and placed in a position to take orders and meet the ongoing demands, both domestic and foreign, for enrichment services.

3. Such delays would have an adverse impact on the ability of domestic utilities to commit to nuclear power to meet the domestic energy crisis.

4. Such a delay would likewise have an adverse impact upon meeting foreign policy objectives in the energy area.

5. The requirement that authorization and appropriation for each cooperative arrangement be provided separately by the Congress is not necessary because the NFAA as reported out provides adequately for separate and specific congressional review and approve each cooperative arrangement.

The pattern established by the NFAA, authorizing a lump sum to cover a number of cooperative arrangements would provide a more logical and balanced framework for launching a private uranium enrichment industry than would be proposed requirement for separate authorization and appropriation actions.

Myers amendment, to require all ERDA employees with duties under NFAA to file an annual report of all financial interests in an applicant for or recipient of financial assistance, which would be available to the public.

ERDA favors the broad objectives of the Myers amendment and has no objection to disclosure by ERDA employees of their financial interests within the accepted framework for preventing conflicts of interest within the Executive Branch. However, ERDA is opposed to the Myers amendment as such for the following reasons:

1. ERDA already has a comprehensive reporting and control system regarding the financial interests of its employees, established under E.O. 11222, to prevent conflicts. The Myers reporting requirement would duplicate existing requirements to a large extent.

2. The Myers amendment would single out particular ERDA employees -- i.e., those involved in the administration of the NFAA -- for special scrutiny and treatment. This could create a false impression that those ERDA staff members involved with NFAA have special conflict-of-interest problems and cannot be trusted. Changes of the type covered by the Myers amendment, if desired by the Congress, should be adopted in a comprehensive way rather than single out particular programs and thus potentially resulting in a piecemeal and inconsistent approach.

3. No other Executive Branch agency (excluding regulatory agencies) has specific conflict-of-interest reporting requirements imposed by statute.

4. Enactment of the Myers amendment would subject an employee to criminal penalties for mere failure to report a financial interest, even where the interest is in the amount which has been exempted from the conflict-of-interest statutes (18 USC 208) as inconsequential.

5. The public availability of the financial reports under the Myers amendment is contrary to policy underlying the Privacy Act, which protects the legitimate rights to privacy of individuals.

FOR IMMEDIATE RELEASE

JULY 27, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TEXT OF A LETTER FROM THE
PRPRESIDENT TO THE HONORABLE
JOHN B. ANDERSON

July 27, 1976

Dear John:

Recently, you have expressed your view that greater attention is needed to a number of important nuclear policy matters, including nuclear exports and fuel reprocessing. You have also suggested the possibility of using domestic reprocessing facilities to serve both domestic and foreign needs and to further worldwide efforts to control proliferation.

The matters you have identified are of continuing importance to this Administration and we have taken a number of steps to deal with them, all with the objective of providing safe, clean, economic and properly safeguarded nuclear power here and abroad. We are looking forward to more progress. For example, the passage of the Nuclear Fuel Assurance Act will be an important step toward the expansion of capacity in the United States to produce enriched uranium for nuclear power plants. This will help us maintain the influence associated with the U.S. role as a leading world supplier of nuclear fuel and equipment for peaceful purposes and thus contribute substantially to our non-proliferation objectives.

In addition, the departments and agencies have been examining additional options within their areas of responsibility that might contribute further to the achievement of our nuclear policy objectives. For example, we have been working with foreign nuclear suppliers and customers to strengthen controls against the diversion of nuclear materials. We are also proceeding with actions to resolve remaining questions with respect to domestic reprocessing and nuclear waste management.

Because nuclear policy issues are of such great importance, I believe they should be treated comprehensively. Accordingly, I have recently directed that a special concerted review be undertaken of our various nuclear policy objectives and options, particularly with respect to exports, reprocessing and waste management. In view of your special interest, I wanted you to know of this decision. The review will involve both domestic and international aspects. All Federal departments and agencies, as well as the policy groups in the Executive Office, that have responsibilities relating to nuclear policy will be involved in the review.

Mr. Robert W. Fri, who normally serves as Deputy Administrator of the Energy Research and Development Administration, has agreed to accept the responsibility for full-time leadership of the review effort. Mr. Fri's appointment to this temporary duty reflects my intent that special attention be given to this comprehensive review of nuclear policy issues.

more

I expect that the review group will complete the principal part of its work by early fall. If the group concludes that additional actions are warranted, I will review those recommendations carefully and, where appropriate, will follow up with proposals to the Congress.

I look forward to working with you as the review progresses.

GERALD R. FORD

The Honorable John B. Anderson
U.S. House of Representatives
Washington, D.C. 20515

# # # #

Jim:
See if JC
has copies for
our files.
Cleo.

THE WHITE HOUSE

WASHINGTON

[redacted]

July 27, 1976

MEMORANDUM FOR: BOB FRI
CHARLIE LEPPERT
JIM CONNOR

FROM: GLENN SCHLEEDE

SUBJECT: NUCLEAR FUEL ASSURANCE ACT

Enclosed are copies of the three papers that have been prepared for use in connection with House floor action on the NFAA. They include:

- Two-page Fact Sheet
- Three-page Responses to Common Criticisms of NFAA
- Administration position -- with justification -- on the five amendments that have been announced thus far by House members.

Distribution:
- Leppert (150 cys of each)
- Fri (5 cys of each)
- Connor (3 cys of each)

cc: Jim Cannon
Bill Kendall
Jim Mitchell

For Charlie's
9 A.M.
7/28/76
Meeting

Congress of the United States

House of Representatives

Washington, D.C. 20515

July 27, 1976

Dear Republican Colleague:

The House will be taking up the Nuclear Fuel Assurance Act of 1976 this week. This note is to bring to your attention several important matters that are related to the bill and urge that all Republicans stand strongly behind this Administration bill.

In our opinion, we as Republicans cannot be cavalier about the Federal Government continuing to maintain its enriching monopoly. Over the next 15 years we will have to authorize and appropriate more than $30 billion to provide sufficient nuclear fuel for a moderate growth in nuclear generated electricity. During that same time, ERDA will be hoping to have available some $50-$75 billion for their R&D into alternative energy systems. How the Federal Government, and the Congress in particular, are going to be able to justify $2 billion every year for enriching plants when that money could be forthcoming from the private sector while at the same time requesting some $5 billion or more per year for energy R&D is a question that deserves serious consideration by all of us.

There are, at this time, no significant impediments to transferring this fiscal burden to the private sector other than the need for the government to provide short term warranties and assurances that the technology will work. We furthermore are convinced that this legislation provides a useful model for transferring government developed technology to the private sector. The bill is intended to assure that the government faces minimum risk while requiring private industry to continue to assume normal business risks.

It should also be pointed out that there are substantial differences between this bill and the SYNFUEL program.

- The NFAA is designed to transfer to the private sector an already proven technology. For 30 years it has functioned well in the government's hands. Thus there should be every confidence that it will work equally well in the private sector.

(over please)

- **No price supports are needed. Nuclear fuel will be completely un subsidized by the government.**

- **There are no unresolved safety and environmental considerations with this process.**

- **Government will receive raoyalties and taxes. Any technical assistance is provided with full cost recovery to the government.**

- **This is a move towards ending government involvement in a commercial/ industrial activity that is normally provided by private industry, permitting growth in the private sector rather than in the federal government.**

Again, we urge your support of this vital piece of legislation.

John J. Rhodes

JOHN J. RHODES

John B. Anderson

JOHN B. ANDERSON

JUL 29 1976

ENERGY RESEARCH AND
DEVELOPMENT ADMINISTRATION

July 29, 1976

Office of
Congressional Relations

NOTE TO CHARLIE LEPPERT

URGENT

Per your request.

To save time the major points are:

1. The MUF is not lost from Govt control.

2. Most of it is NOT weapons-grade material.

3. Most of it occurs because we cannot measure the sub-atomic particles buried in waste disposal grounds.

4. Most of the GAO-reported security dieficiencies were ones we have discovered and interim or final corrections had already begun and are now done.

H. Hollister Cantus

RUSH

The Energy Research and Development Administration (ERDA) said today that a General Accounting Office (GAO) report, and a Congressional staff summary of it give an erroneous impression of the current safeguards and security of our Government-owned nuclear facilities.

The staff summary was issued by the Subcommittee on Energy and Environment of the House Committee on Small Business, based on the GAO report entitled "Shortcomings in the Systems Used to Control and Protect Highly Dangerous Nuclear Materials - ERDA."

ERDA emphasized that —

- o Safeguarding of Special Nuclear Material (SNM), whether for national defense related programs or energy programs, is given high priority attention by ERDA and is considered to be one of the agency's most important responsibilities.

- o All significant quantities of ERDA weapons-grade SNM are contained inside protected and alarmed areas patrolled by armed guards in continuous communication with a command center capable of responding in force to any threat.

- o Of the so-called Material Unaccounted For (MUF), the vast majority cannot be used to make a nuclear weapon. Low enriched nuclear fuel produced by ERDA for commercial power reactors, for example, cannot be used to fabricate a nuclear bomb.

- o There is no evidence of theft or diversion of any significant quantities of SNM and, based on a continuing analysis of MUF, ERDA is convinced that no significant quantities of SNM have ever been diverted.

- o An intensive effort has been made and numerous actions taken to further improve the safeguarding of such materials at ERDA facilities. ERDA has accelerated improvement programs which were given major emphasis by ERDA's predecessor, the Atomic Energy Commission (AEC), from the early 1970's.

Material Unaccounted For is not considered to be evidence that the material is actually missing. Rather, MUF is attributable primarily to measurement inaccuracies in the special nuclear materials stored in tanks or buried, including low level contaminated wastes such as rags, clothing and pieces of worn out equipment, and uncertainties in measuring the SNM remaining in the pipes, ducts and machinery in the processing facilities.

The remedial actions cited in the GAO report dated July 22, 1976, have been given top priority in the past and continue as a major ERDA effort. In doing this, ERDA employs an integrated balances safeguards system that utilizes physical protection of the material and material control, in addition to the cited material accountability system, as measures to detect and prevent any attempt to steal SNM.

ERDA is constantly improving its SNM measurement abilities. Ever-decreasing differences between its book and physical inventories are being achieved. It also is important to note that cumulative MUF discussed in the GAO report and staff summary covers a 27-year period. The major proportion of that MUF is low-enriched material not of weapons grade.

Control of nuclear materials, including the use of personnel cleared as reliable and trustworthy, and physical security systems have existed since the early days of the AEC. However, as a result of concern over terrorist action, the AEC issued greatly strengthened security requirements beginning in the early 1970's. The GAO report emphasizes the AEC requested,in 1974, a supplemental FY 1975 appropriation for up-grading its facilities safeguards system that was not granted, and that ERDA, a few months after formation, requested supplemental appropriations for FY 1976 that were granted only in part. It endorses ERDA's efforts to improve the safeguarding of SNM.

The first of such funds as were appropriated for this up-grading became available in late calendar year 1975. Even before that time, AEC and ERDA reprogrammed $8 M to remedy the more critical deficiencies its own review had identified. Additional funds were reprogrammed in the latter part of FY 1976 to cover items for which funding was not included in the reduced FY 1976 appropriation. Sizeable additional funds are in the Authorization and Approriations Acts for FY 1977.

ERDA believes the present safeguards system is effective, even though it recognizes that there are additional steps to be taken and intends to take those steps as rapidly as funds are available. However, contrary to the GAO report and the staff summary, these deficiencies were recognized for the most part before the GAO accomplished its on-site visits and the majority of the deficiencies have already been corrected by final or interim measures.

The GAO unclassified digest of the report is attached.

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THE WHITE HOUSE

WASHINGTON

SEP 2 1976

September 1, 1976

MEMORANDUM FOR: JIM CANNON
JIM CONNOR

FROM: GLENN SCHLEEDE

SUBJECT: CONGRESSIONAL INTERPRETATION OF THE CONTINGENT LIABILITIES IN THE NFAA

Attached for your information. We will have to watch this very carefully in the Conference.

cc: Charlie Leppert
Bill Kendall

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DATE August 31, 1976
REPLY TO ATTN OF SET:NEB
Joseph P. Kearney

SUBJECT: Congressional Interpretation of the Contingent Liabilities in the NFAA

James L. Mitchell
Glenn Schleede
Hugh Loweth

The Senate Budget Committee has acted on the Second Concurrent Resolution for FY 1977 and addressed the question of how to score the contingent liabilities contained in the NFAA. The Committee has decided:

- To accept the OMB position that the contingent liabilities ($8 billion) in the NFAA should not be counted as budget authority.

- Not to score any budget authority in the Second Concurrent Resolution for the NFAA contingent liabilities.

We now must assure that this position is not altered on the Senate floor.

If you recall the House Budget Committee determined that these contingent liabilities are budget authority and then scored only $4 billion in their version of the Second Concurrent Resolution. Consequently, this issue of how to score these contingent liabilities will be a major issue to be resolved in conference. Our efforts should be oriented around guaranteeing a favorable outcome from that conference on the Second Concurrent Resolution.