The original documents are located in Box 37, folder "Uranium Enrichment (18)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

[July 1976]

THE WHITE HOUSE
WASHINGTON

TO: JIM CANNON

FROM: GLENN SCHLEEDE kb for gs

SUBJECT: Congressman Harsha

Bill Harsha is happy with Bob Fri's letter on uranium enrichment. Bob followed up the letter with a visit yesterday.

Harsha has contacted other members of the Ohio delegation to seek support for the bill. He has also asked that someone write a floor speech for him to use in support of the bill when it comes up tomorrow. If time permits, I will get one done.

Excellent!!!

[July 1976]

TO: JIM CANNON

HARSHA ---

1. Sequence of events

. Bob Fri was making a "routine" call as part of ERDA's follow-up on the NFAA. He apparently was asking if everything was OK.

. Harsha responded with concerns about where ERDA and the Administration really stood on the Portsmouth plant. Demanded a memo.

. I just now learned that:

- Something was drafted for Seamans' signature and/sent to Harsha on a buck slip from Cantus. a copy of this draft was (I've asked for an immediate copy of this and will bring it to you.)

. Bill Voigt and Cantus then went to see Harsha and he expressed his very strong views; asked about Voigt's statement quoted in the press; and demanded a letter -- preferably from Fri who he said was making policy on this -- stating clearly ERDA's position.

2. Delivery of Letter

. Voigt indicates that Harsha has been wanting to hear from Fri.

. If we can tear Bob Fri away from his other project for a few minutes, it might be worthwhile to have him sign and deliver the letter.

I haven't yet verified the above with Bob Fri but will do so as soon as he comes in.

Glenn.

Nuclear Energy

ACTION

THE WHITE HOUSE

WASHINGTON

July 10, 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 with in 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.

India Presses U.S. on Uranium Supply

By KASTURI RANGAN
Special to The New York Times

BOMBAY, India, July 5—Indian atomic-energy officials, worried over the uncertainty of a regular supply of enriched uranium from the United States for the American-built power plant at Tarapur, near here, are considering alternative sources.

"We cannot afford a breakdown of the plant," said J. C. Shah, chairman of the Atomic Power Commission "We have to consider all possible steps to insure its uninterrupted running.."

He said he hoped the United States would get over the hurdles and resume regular supplies in accordance with a 1963 agreement. His hope was only partly realized when the United States Nuclear Regulatory Commission authorized nine tons of enriched uranium, enough to last six months.

Environmental Objections

The commission had been holding up permission for the shipment since December because of objections raised by a group of environmentalists, who asserted that the Tarapur plant had no safeguards against serious pollution.

Other influential groups have maintained that India, misusing the fuel and know-how provided by the United States, was making a nuclear bomb. India exploded a nuclear device two years ago as "an experiment in peaceful use of nuclear energy."

Indian officials deny that the plutonium, a product of the spent uranium fuel used for the nuclear device, came from Tarapur. They also deny that the plant lacks adequate safeguards against leaks of radioactive fuel. The spent fuel is kept for possible resale to the United States for further processing, but there has been no American move to purchase it although the 1963 agreement provides for such purchases. The Indian officials say they have no plans for processing it themselves to extract the valuable plutonium.

U.S. Embassy Troubled

The delay in the shipment of enriched uranium has caused serious concern among both the Indian officials and the United States Embassy here, which does, not want a major new irritant in already strained but slowly-healing relations. Ambassador William B. Saxbe flew to Washington to- persuade members of the Nuclear Regulatory Commission to authorize the shipment immediately to avoid a breakdown in power production at Tarapur.

Mr. Shah issued a warning late last month that unless the uranium supply arrived without further delay, the plant would have to cut production in August, paralyzing much of the industrial and agricultural activity in Maharashtra and Gujarat States.

The only source of the 21 tons of the fuel India needs annually has been the United States.

Senator Young May Quit

FARGO, N. D., July 10 (UPI) —Senator Milton R. Young, Republican of North Dakota, told North Dakota Republican convention delegates yesterday that there was better than 50-50 chance that he would resign before the end of his term in 1980. The 78-year-old Republican said he was ready to retire two years ago but the challenge issued by those who said he could not win kept him in the race.

John Anderson
Chicago - / 9/12/76

Mel -

What he wants -

Talk to Rhodes -

Talk to RNP -

Rhodes -

Indian - O'Horn

put on to Tuesday 7/27

RNP seemed cooperative.

→

4 days -

THE WHITE HOUSE

WASHINGTON

July 22, 1976

TO: JIM CANNON

FROM: GLENN SCHLEEDE

This version has been signed off on by Jim Connor, ERDA and by Jim Mitchell for Jim Lynn.

Jim Mitchell does strongly recommend that it be checked with the President because of political considerations. I told him that you were well aware of that situation.

Attachment

HARSHA LETTER

7/23/76

DRAFT LETTER FROM ROBERT FRI TO CONGRESSMAN HARSHA

Dear Mr. Harsha:

I am writing this letter to answer the question 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 in 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,

President's Statement in Columbus, Ohio
May 26, 1975

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 Assistance 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 developments of nuclear weapons.

Finally, the bill and the committee report also authorizes and directs the Energy Research and Development Agency to begin manning and designing for the expansion of the existing uranium enrichment 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 prococurement 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 complementery program at Portsmouth, Ohio.

I will be glad to answer the first question.

MORE

File
Nuclear Energy

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

July 23, 1976

Honorable William H. Harsha
House of Representatives

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Sincerely,

Robert W. Fri
Deputy Administrator

Enclosure

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WASHINGTON, D.C. 20545

July 23, 1976

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

JUL 24 1976

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

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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

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Sincerely,

Robert W. Fri
Deputy Administrator

March 4, 1976

Honorable Brock Adams
House of Representatives
Chairman, Committee on the Budget
Washington, D. C. 20515

Dear Mr. Chairman:

The Administration intends shortly to propose to the Congress additional FY 1976 appropriation language for the Energy Research and Development Administration to implement the pending Nuclear Fuel Assurance Act (the NFAA, H.R. 8401 and S. 2035). Action on this appropriation language is the second vital step in a three-step congressional review and approval process to make it possible for private industrial firms to finance, build, own and operate additional uranium enrichment plants needed by the Nation.

- The first step is enactment of the NFAA which provides ERDA a basis for proceeding with the negotiation of cooperative agreements with private firms that wish to build uranium enrichment plants. (Under the proposed NFAA, cooperative agreements could not be signed until steps 2 and 3 below are completed.)

- The second step is the passage of appropriation language which sets an upper limit on the U.S. Government's liabilities in the unlikely event that it were necessary for the Government to assume the domestic assets and liabilities of firms covered by cooperative agreements. The practical effect of this step is to provide a basis for private firms to obtain necessary debt financing in the commercial capital market. It would permit completion of negotiations between ERDA and private firms.

- The third step is the submission of unsigned cooperative agreements to the Congress for final review and approval.

When this three-step process is completed and cooperative agreements are signed a contingent liability would be assumed by the U.S. Government. This contingent liability could amount to $8 billion. Such an amount would cover the domestic portion (40%) of a large gaseous diffusion plant ($1.6 billion) and three smaller centrifuge plants ($3 billion) as well as provide for contingencies ($3.6 billion) including escalation.

I must emphasize that it is the Administration's firm expectation that none of this contingent liability would result in Federal expenditures for the assumption of private ventures because of the high degree of assurance discussed below, that commercial firms will be successful.

The purpose of this letter is to inform you of our plans and to explain why we do not consider the $8 billion contingent liability to be budget authority under provisions of the Congressional Budget Act of 1974. We want to be sure that your Budget Committee accepts this conclusion so that disagreements do not arise at a later date when they might slow up the Congressional approval of the appropriation language mandated by the NFAA.

By way of additional background, uranium enriching--a service essential to the production of nuclear fuel--is now a fully developed production activity carried out in the U.S. solely by ERDA. This large ERDA production activity could be capable of supplying enrichment services to as much as 329,000 MWe of nuclear generating capacity by the early 30's. This capacity, however, is now fully contracted to domestic and foreign utilities. The pending Nuclear Fuel Assurance Act and the proposed appropriation language are intended to assure that: (1) the next increments of uranium enrichment capacity will be built and operating when needed to supply the growing demand for fuel for nuclear powered electricity generating plants; (2) all future capacity increments will be built, financed and operated by private industry, thus ending the current Government monopoly and drain on the Federal Budget; (3) the Government will receive appropriate compensation for the use of its inventions and discoveries; and (4) all necessary domestic and international controls on nuclear materials and classified technologies will be maintained as they would be if the Government itself were to own the new plants.

The construction of new U.S. uranium enrichment plants required by the year 2000 is estimated to cost $30-50 billion (in 1976 dollars). If the Government had to build these plants, the capital costs of the new plants would by 1985 exceed revenues for these plants by about $9 billion (in 1976 dollars, i.e. escalation is not taken into consideration). Even the construction by the Government of only the next increment of new enrichment capacity would have a major budgetary impact for the next ten years.

In contrast, this financial burden would, under the President's proposal outlined above, be borne by the private sector which is ready and willing to do so. Ideally, industry would assume the entire responsibility for building succeeding increments of capacity. without even the limited assurances provided for in the President's Plan. However, it has not been possible for private firms to obtain the necessary debt financing for such ventures because of the special circumstances involving uranium enrichment which are not commonly faced in the business environments.

Specifically: (1) the very large size of an enrichment project; (2) the use of technologies that are classified; (3) regulatory uncertainties associated with a first of a kind venture; and (4) the current financial difficulties of some of the utilities that would be the customers for uranium enrichment services.

The limited cooperation and temporary assurances contemplated in the NFAA are designed specifically to overcome these obstacles and make the risk that is involved for potential lenders of debt money more nearly comparable with the risk associated with other investment opportunities available to them.

Under the President's proposal outlined above, the Federal Government would incur a contingent liability when a cooperative arrangement is entered into by ERDA pursuant to the Nuclear Fuel Assurance Act. The major Government contingent liability is based on the possible need to acquire the domestic assets and assume liabilities (including debt) of a private enrichment project in the unlikely event that the venture were unable to proceed (Section 2 of the proposed Nuclear Fuel Assurance Act). Again, it must be stressed that we do not expect any expenditure of funds for the assumption of assets and liabilities of a private uranium enrichment venture. We are confident in this view because the technology has been thoroughly demonstrated over the past 30 years and because of the oversight role ERDA will play with respect to these private enrichment firms.

Since it is unlikely that future outlays will be incurred, we believe that the $8 billion to be included in appropriation language should be treated as financial assurances and that the limitation on cooperative arrangements ($8 billion) made by ERDA pursuant to the Nuclear Fuel Assurance Act, should not be considered as new budget authority. We base this interpretation on Section 3(a)(2) and 401(c)(2) of the Congressional Budget Act of 1974 (P.L. 93-344).

Section 3(a)(2) of P.L. 93-344 states:

> "The term "budget authority" means authority provided by law to enter into obligations which <u>will</u> result in immediate or future outlays involving Government funds,.." (emphasis added).

Since the $8 billion to be included in appropriation language pursuant to the NFAA in all likelihood <u>will not</u> result in immediate or future outlays, we believe it does not conform to this definition of budget authority.

In the unlikely event that conditions were to arise in the future where it appeared that contingent liabilities would require liquidation, an appropriate amount of budget authority and outlays would be estimated

in the President's budget for that year. Specifically, the estimate of budget authority would be in the amount of the borrowing from the Treasury needed to cover the necessary liquidation. This is similar to other Federal Programs containing contingent liabilities assumed by the Federal Government (e.g., government insurance programs).

I suggest that it might be desirable for my staff to meet with yours to discuss further the Nuclear Fuel Assurance Act and the appropriations language mandated by the Act. This can be arranged through my office.

I would personally appreciate any comments you may have on this matter.

With best personal regards,

Sincerely yours,

James T. Lynn
Director

K

OFFICE OF MANAGEMENT AND BUDGET

JUL 22 1976

Mr. K. Bruce Meredith
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/ (Sgd.) Dale R. McOmber

Dale R. McOmber
Assistant Director for Budget Review

Distribution:
Enclosures

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.

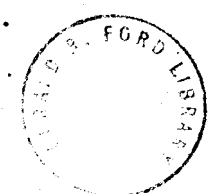
The salient features of the PRDP program were as follows:

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.

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.

THE WHITE HOUSE

WASHINGTON

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

7/26/76

FACT SHEET

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° 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.

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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

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.

Honorable John E. Moss
2354 Rayburn House Office Building
Washington, D. C. 20515

File [7/27/76]
Uranium
Enrichment

Dear John:

Your request for my opinion of H.R. 8401 came to a very concerned citizen.

Despite my retirement from the Congress, my interest in this country's energy situation, and particularly in the nuclear option, has not diminished. I have kept in touch with events.

Naturally, I have watched, and been saddened by the present and previous Administration's complete neglect of the need to increase the capacity of our uranium enrichment complex. I say "naturally" because for half a decade preceeding my retirement I spearheaded Congressional prodding to try to get the Nixon and Ford Administrations to agree to a reasonable program for adequate augmentation of our enrichment facilities to meet clearly foreseeable needs. I was unsuccessful. I was also compelled to mount a Congressional challenge to the announced intention of the Nixon Administration to "sell" the Government's enrichment facilities to private industry. That challenge was successful.

Now, the present Administration has resurrected the same basic intention, dressed up in new attire. While continuing to stall all initiatives to face up to our need for adequate add-on capacity to the Government's gaseous diffusion complex, the Ford people have come up with a new attempt to give a selected business combine a firm and monopolistic grip on the future supply and pricing of fuel for nuclear powerplants.

H.R. 8401 is bad legislation from every rational standpoint, save one. The sole exception is the acknowledgement in section 4 that ERDA must initiate the design and construction of the much needed expansion of its gaseous diffusion complex. This mandatory go-ahead, however, should be separated from the rest of H.R. 8401 which is wholly undeserving of Congressional support.

When I reviewed H.R. 8401, one of the first thoughts that entered my mind was that the bill might possibly be the worst piece of legislation that I could recall ever emerging from the Joint Committee on Atomic Energy. My recollection is less than perfect because it encompasses a busy, 30-year span of Joint Committee activity, but the thought can't be too far from the mark.

Both the form and the substance of H.R. 8401 are far below any acceptable standard. In the three decades following the Atomic Energy Act of 1946, there has not been a single amendment to that Act so devoid of legislative policy content in regard to desired objectives, authorized forms of Government assistance, and appropriate conditions or restrictions. Also in those 30 years, it was not thought necessary or desirable to incorporate in any amendment a condition requiring that authorized major commitments by the AEC or ERDA that would carry out the objective of the legislation be made subject to activation or abortion by some subsequent final action by the Congress.

I have always been a champion of a strong Congress and of the philosophy that Congress should exercise its full range of Constitutional prerogatives. But a built-in condition of final yea or nay by the Congress that would control the whole effectuation of a statute -- as in H.R. 8401 -- exceeds the fullest range of the Constitutional powers assigned to the Congress. Also of great importance, this feature of H.R. 8401 cannot compensate for the absence of Congressionally prescribed policy guidelines and directions to delineate the nature, scope, and dimensions of the Federal purpose and involvement.

To put it simply, the bill is an unsigned blank check to the Administration to make any sort of deal it wishes and then to submit the proposed arrangement for Congressional consideration and possible approval. The extraordinary insufficiency of legislative policy content in the bill, let alone that the measure is a move in the wrong direction, rules out any thought that the bill could be put in any proper shape by the elimination of the Constitutionally vulnerable condition of final Congressional approval.

It is disturbing to observe the flip-flops of the present Administration on this Constitutional issue. They occur frequently. A small fraction of President Ford's extensive record of vetos is based on his declaration that the Congress must stay within its Constitutionally chartered domain and not intrude into the President's panapoly of powers. I will not review the record now. But I cannot resist pointing

to the fact that in President Ford's press conference on May 26, he conveniently made no mention of any Constitutional problem when he said he would support H.R. 8401 whereas only a few weeks later Dr. Seamans wrote the Chairman of the Joint Committee to advise that the "Administration strongly objects ... as clearly unconstitutional" to a requirement in Section 3 of H.R. 13350 (ERDA's FY 1977 Authorization bill) for specific approval by the Joint Committee of any proposed pricing changes for enrichment services to be provided by ERDA pursuant to this section. Would the Administration have felt compelled to object if the approval called for in Section 3 of H.R. 13350 was that of the Congress rather than the Joint Committee? One can only guess from the inconsistent record to date. Sometimes the Administration stands on the Constitutional charter, sometimes principle is muted for the sake of expediency.

In the attachment to this letter, I have highlighted the major deficiencies of the bill.

Before closing, I must mention the two fine reports by Elmer B. Staats, the exceptionally able and dedicated Comptroller General of the United States, on the Administration's proposal for assistance to private uranium enrichment groups. One is dated October 31, 1975, the other May 10, 1976. They are instructive, perspectively accurate, and essentially sound of judgment. I hope the Members of Congress take the time to examine those reports before voting on H.R. 8401.

This letter is motivated by my deep concern regarding the policies by which the maximum benefits of atomic energy may be brought to the taxpayers of this country. I hope my views and the attached detailed analysis are helpful.

Sincerely,

Chet

Chet Holifield

DATE: July 27, 1976

TO: John Moss

FROM: Chet Holifield

SUBJECT: MAJOR DEFICIENCIES OF H.R. 8401

I. Free Enterprise or Special Favoritism

To have followed the history of H.R. 8401 is to be aware that many months ago the Administration started negotiations with only one particular entity, an organization controlled by the Bechtel Corporation and Goodyear Tire and Rubber Company, for the provision of a privately-owned diffusion plant. The exact terms and conditions the Administration was willing to adopt as a reasonable basis for negotiating an arrangement for facilitating a private commercial operation in gaseous diffusion enrichment were apparently revealed only to this private organization. There was no advance solicitation of proposals and screening of the private sector in relation to objectively-formulated criteria reflecting the Government's need and preferences conducive to a fair selection process.

Should H.R. 8401 become law and ERDA submit the proposed arrangement it has been negotiating for the commercial gaseous diffusion plant, Congress would have to be troubled by the consideration that others, if given the opportunity on a fair and reasonable basis, might well have offered the Government a better deal.

Additionally, the details of the proposal by the Bechtel combine indicate the strong likelihood that the arrangement ERDA would submit for Congressional approval will place essentially all monetary risks on the Government and create the sort of risk-free situation for the private owners that is no more illustrative of the free enterprise system than the complete absence of competition.

II. The Government's Role in Gaseous Diffusion Enrichment

The Government's monopolistic role to date in uranium enrichment has worked very well. The supply for the civilian sector has been well-handled and reasonably priced. The Government's costs are being recovered, and the price of uranium fuel has had the stabilizing benefit of a known, relatively-unfluctuating cost factor for the important enrichment step.

Until the free enterprise system truly indicates its willingness to enter this field of uranium enrichment, the Government should continue with its present role on the basis of full-cost recovery, increasing its facilities as required by the anticipated demand for services.

It may be, perhaps, that uranium enrichment by the private, free enterprise sector will occur first through the use of gas centrifuge technology--soon to be demonstrated by the Government--rather than the diffusion process that has been in use for several decades. Beneficial operation of the free enterprise system will determine the course of such business trends and events. The cozy, paternalistic presence of the Government in a surety or risk protector role, even if extended to more than one entity, can only distort free enterprise and betray the taxpayers.

III. Coverage of Both Cooperative Arrangements for Gas Centrifuge Projects and the Administration's Proposed Arrangments for a Privately-Owned Gaseous Diffusion Enrichment Plant

For many years, under the Atomic Energy Act, demonstration projects have been entered into pursuant to Congressoinal authorization included as part of AEC's (ERDA's) normal authorization acts. Demonstration projects, by definition in the Atomic Energy Act, are the end phase of the R & D spectrum, and are envisioned in Section 31 of the Act. H.R. 8401 is not needed for any such demonstration projects. It is clear to me, and as far as I know no one disputes, that cooperative projects for the demonstration of centrifuge facilities are quite in

that this area of development was deliberately thrust into H.R. 8401 to give the bill the appearance of desirable legislation.

In the 30 years of its existence, the Atomic Energy Act was never amended to authorize federal assistance to a commercial project that was beyond the demonstration stage. The Administration's proposed arrangement for the privately-owned gaseous diffusion enrichment plant would, for the first time, involve assistance under the Atomic Energy Act (as amended by H.R. 8401) for a straight commercial, non-R & D, project. As the Comptroller General accurately points out in his October 31, 1975, Report (Examination of the Administration's Proposal For Government Assistance to Private U.E. Groups) the gaseous diffusion facility that the private entrepreneuers would build would be a "last-of-a-kind" plant, copying the process and hardware the Government has been operating for several decades.

Federal support of a privately-owned commercial plant for non-R & D reasons has been wisely avoided by the Atomic Energy Act up to this time. That legislative policy remains a sound one and should be continued.

IV. The Foreign Connection

I happen to believe that, all things considered, it is much more advisable for the U.S. to be in the position of a supplier of enrichment services for foreign use than not to be. But it does not make any sense for the U.S. to become involved as a sort of guarantor in a private deal that offers foreign investors an assured 60 percent of product in return for their substantial investment in the domestic plant.

Requirements of the Atomic Energy Act, that H.R. 8401 would not amend, wisely make it practically impossible to assure foreign buyers that quantities of enriched uranium products would be routinely exported. The Act provides for certain procedures and Governmental approvals that cannot be dealt with at one swoop in context of the arrangment the Bechtel combine has indicated it plans to make with its foreign associates. ERDA (as well as other Executive agencies) has certain statutory responsibilities in regard to proposed exports of special nuclear material and other related matters that may well conflict with any express or inferential guarantee on its part that the private assurance of exports of percentages of product will necessarily be effectuated.

Also there are certain Federal licensing conditions that must be satisfied under the Atomic Energy Act. The involvement of ERDA as a contracting party to the private arrangement could inject a note of conflicting interests.

For example, the private plant would be subject to licensing by NRC. However, under presently-applicable law, if ERDA were to take over ownership of the plant, such licensing would not be required.

As part of the licensing requirements of the privately-owned facility, no construction permit or operating license may be given by NRC to a corporation or other entity if the NRC "believes or has reason to believe it is controlled, or dominated by an alien foreign corporation or a foreign government." This is a finding that NRC would have to make after it carefully reviewed all of the rights and privileges of the foreign investors, and ERDA's involvement in the arrangment on behalf of the Administration could well serve to inject some undue pressure on NRC. And should ERDA take over the plant as a non-licensed operation, this statutory requirement could be bypassed.

V. Certain Congressional Problems

Without regard to any Constitutional questions, certain acute problems for the Congress would be invited by the blanket authorization for the Administration to make any arrangement it desired provided it was then approved by the Congress.

To begin with, the timing of the legislation is such that it is being considered by both Houses after the negotiations with the Bechtel combine have apparently been concluded. There is clearly no logical reason why the essential details of the proposed arrangment should not be made available to the Congress before a legislative judgment is made concerning

the need for and the precise contents of the bill. Passage of the bill in the dark when illumination is available only serves to put such Congressional action in an unfavorable light, and later to add embarrassment should Congress decide not to approve the submitted arrangement.

Another problem exists in the intricacy of the provisions of the new subsection 45b describing the Congressional consideration and approval process. It is not clear whether Congress must approve a submitted arrangment within the 60-day period in order for the commitment to become effective, or whether Congress, at its election, can take a longer period to act favorably. Such a period of time may not be adequate to examine complex or artfully-drafted commitments with sufficient care. Also, in the same period the Administration may deliberately have ERDA submit all or several of its proposed arrangments for gas centrifuge demonstration projects at the same time the proposed commitment with the Bechtel combine for the diffusion plant is submitted. Insufficient time for consideration can as easily lead to approval as disapproval.

Still another problem exists in the wording of subsection 45b in regard to what the submittal must consist of. There is some indication that the Administration considers the language of the bill to require the submittal of ERDA's proposed agreement with the Bechtel combine but not the agreement with the foreign investors, to which ERDA may or may not be a party. Prudent contracting procedure would dictate that ERDA should also be a party to the agreement with the foreign associates because the meaning and interpretations of that commitment (as understood by the parties thereto) will be a principal component of the entire arrangment. For example, if the domestic entrepreneuers default and the Government takes over the construction and operation of the plant, many of the rights of the foreign associates would probably survive and have an effect on the Government's prerogatives.

But whether or not ERDA is a party to the commitment with the foreign associates, it would be of first-rank importance for the Congress to have the opportunity to review their contract rights and obligations as part of the entire arrangment.

In addition to the foregoing considerations, various provisions of the Atomic Energy Act call for Congressional review of certain proposed nuclear exports. It could be a source of embarrassment for the Congress were it, on the one hand, to give its blanket approval to an arrangment that would promise foreign entities 60 percent of the uranium enrichment product and then later, from time to time, express its disapproval of or prevent specifically-proposed exports of the special nuclear material.

Private commercial deals and governmental functions (of both the Executive Branch and the legislative), like oil and water, don't mix properly.