August 3, 2001

Mr. Joe Patterson
Publications Office
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Patterson:

Enclosed is the edited transcript of remarks provided by Chairman Meserve of the U.S. Nuclear Regulatory Commission at the June 27, 2001 hearing before the House Energy and Commerce Committee's Subcommittee on Energy and Air Quality. Also enclosed are responses to five questions asked at the hearing which we submit for the record. Separately, we are also providing the responses to the Members who requested the material.

Sincerely,

/RA/

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures: As stated

QUESTION 1.

Rep. Barton, page 59, line 1277

What is the Commission's position on taking the Nuclear Waste Fund off-budget?

ANSWER.

The Commission currently receives an annual Congressional appropriation to cover high-level radioactive waste management activities from the Nuclear Waste Fund. The current process ensures that the Commission receives appropriate resources to execute its statutorily mandated responsibilities without burdening licensees. Also, the current process ensures that the Commission receives those funds independent of the U.S. Department of Energy (DOE), which would be the potential license applicant if an application were filed for an NRC license to dispose of high-level waste and spent fuel in a geologic repository. It is the Commission's understanding that these two fundamental attributes (i.e., sufficient funding to fulfill its role and funding obtained independent of DOE) would remain even if the Nuclear Waste Fund were taken off-budget. On that basis has a neutral position.

QUESTION 2 .

Rep. Boucher, Page 63, line 1352

If the Commission is unable under the current Price-Anderson Act to treat multiple modular units at a single site as a single facility for purposes of retrospective assessment, what changes would you recommend in the Act (either the Price-Anderson Act or, more generally, the Atomic Energy Act) to permit this result? Please provide legislative language that you would propose to accomplish this, together with your views from a policy perspective on such legislative language.

ANSWER.

As indicated in our response to Question 1, the Commission believes that Congress should amend the Act if Congress concludes that multiple modular reactor units at a single site should be treated as a single facility for Price-Anderson purposes. The Commission is also of the view that any statutory changes proposed to address this matter should be made within the Price-Anderson provision itself (section 170 of the Atomic Energy Act) so as to limit the potential for unintended impacts of changes on the overall regulatory framework. Redefining the term "facility" exclusively within section 170 in a way different from the way it is used throughout the Atomic Energy Act and legislative histories will have the advantage of not disturbing existing law and implementing rules with respect to non-Price-Anderson issues.

Consistent with this view and in response to the request that we provide legislative language, we have drafted an amendment to section 170 of the Atomic Energy Act that would treat multiple modular units at a single site as a single facility for purposes of the Price-Anderson retrospective assessment. In evaluating whether to pursue such a provision, the Congress might consider the need to trigger the maximum insurance and retrospective assessment provisions against the impact and equity of such requirements on multiple modular units and on existing plants.

If Congress determines that multiple modular units at a single site should be treated as a single facility for purposes of the retrospective assessment, Congress might consider an insert to Section 170b(1), following immediately after the first proviso and before: "Such primary financial protection . . .":

> *And provided further*, That for multiple modular reactors located at a single site, a combination of such reactors (irrespective of whether they are licensed jointly or singly) having a total rated capacity between 100,000 and 950,000 electrical kilowatts shall, exclusively and only for the purposes of this section, be denominated a single facility having a rated capacity of 100,000 electrical kilowatts or more.

This provision would define a range of power levels -- the current threshold of 100 Mwe to an upper limit of 950 Mwe -- for which a combination of multiple modular reactors would be treated as a single facility for the retrospective assessment. We use 100 Mwe as the lower limit

because it is the longstanding threshold power level that Congress established as the level at which Price-Anderson coverage must be provided.

We suggest 950 Mwe as a possible upper limit because it roughly approximates the median power level of the large currently licensed power reactors (55 licensed reactors have rated power levels between 800 and 1105 Mwe). If chosen, 950 Mwe would avoid conflict with the existing retrospective premium assessments in the secondary insurance pool. However, there are many different fairness and equity arguments on this issue and the Commission does not have a view or preference as to the specific limits - that is a policy decision for Congress.

If Congress were to choose to amend Section 170 to treat multiple modular units at a single site as a single facility for purposes of retrospective assessment, there is no doubt that there are other formulations that would achieve the same result.

QUESTION 3.

Rep. Sawyer, page 74, line 1599

Does the concentration of population along a route play a substantial role in the establishment of what a route might be (when considering routes for transportation of high level waste)?

ANSWER.

Population concentrations are factored into the decision regarding a transportation route. However, other considerations are factored into routing decisions as well. The routes for transporting high-level radioactive waste (HLW) are selected by the carrier (i.e., trucking or railroad company) in consultation with the shipper, consistent with the U.S. Department of Transportation (DOT) and/or carrier-specific requirements. Once selected by a carrier, each transportation route is submitted for U.S. Nuclear Regulatory Commission (NRC) approval of its physical protection and security considerations. NRC regulations specify additional measures to be taken in heavily populated areas. NRC's physical protection and security regulations require constant communications capability when transporting HLW through heavily populated areas. In addition, highway shipments of HLW through heavily populated areas are required to be accompanied by an armed escort. Rail shipments of HLW through heavily populated areas are required to be accompanied by two armed escorts.

QUESTION 3. 2

For transportation by public highway, carriers are required to select routes that reduce the time in transit. To facilitate selection of a route that reduces time in transit, DOT regulations specify the use of "preferred routes," meaning the U.S. interstate highway system and related city bypasses. States may designate alternate preferred routes to supplement the DOT prescribed interstate highway system or to provide suitable alternatives to the interstate highway system. States use DOT guidance to evaluate and establish alternatives, and one of several primary route comparison factors is the contribution of population density to risk. Thus, for highway transport, the States may consider population density in route selection.

For railway transportation, population density does not play a significant role in selection among possible routes. There are limited routing choices for rail transportation and often mainline railroad tracks travel between and through urban-industrial areas; however, rail lines are private property and generally are farther removed from the public than highways. For transportation by railroad, route selection relies on industry practices (there are no DOT regulations for selecting from among rail route alternatives). Generally, railroad routing practice is to maximize mileage between interchanges with forwarding railroads. Future transport of HLW cargo by railroad may not follow this practice depending on such factors as the special needs of the shipper, effects on other rail commerce, use of single-purpose trains, and special clearance requirements (if any) for railcars loaded with HLW. DOT regulations require rail carriers to forward each shipment of hazardous material, including HLW, promptly (i.e., on the next available train) and within 48 hours after acceptance.

QUESTION 3. 2

QUESTION 4.

Rep. Sawyer, page 75, line 1625

I am concerned about the additional costs, however, particularly communities along the route, in terms of training and equipment for safety forces, upgrading road standards, traffic management requirements, and the increase in risk and potential decrease in property values along identified regular routes. Would Price-Anderson come into this at all?

ANSWER.

No. Price-Anderson is only triggered in the event of a nuclear incident. There are no provisions in the Act to pay for assistance for costs undertaken by communities for planning purposes.

QUESTION 5.

Rep. Strickland, page 83, line 1839

Would you please supply me [Mr. Strickland] with any reference within the Congressional discussion, debate or within the act itself that would verify or justify such a conclusion [that "the statute was chiefly looking at foreign ownership issues"?

ANSWER.

On April 26, 1996, President Clinton signed into law H.R. 3019 (Public Law No. 104-134), legislation which provided FY 1996 appropriations to a number of Federal agencies. Included within this legislation is a sub chapter entitled the “USEC Privatization Act.” Section 31I6 of this Act amended several provisions of the AEA including section 193 by adding the following:

> (f) LIMITATION.--No license or certificate of compliance may be issued to the United States Enrichment Corporation or its successor under this section or sections 53, 63, or 1701, if the Commission determines that--
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> > (1) the Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(2) the issuance of such a license or certificate of compliance would be inimical to--

(A) the common defense and security of the United States; or

(B) the maintenance of a reliable and economical domestic source of enrichment services.

The evolution of section 193(f) indicates that the intent behind the provision was to guard against attempts by foreign corporations or governments to acquire control of the GDPs and subsequently take actions to undermine the U.S. enrichment capability.

The substance of Section 193(f) was initially proposed in a draft bill submitted by the Administration providing comments on S. 755, a bill to provide for USEC privatization. The Administration's comments included the following provision as a new section entitled, "Section 1704 Foreign Ownership Limitation," in Chapter 27 of the AEA:

> No license or certificate of compliance may be issued to the Corporation under Sections 53, 63, 193, or 1701 if, in the opinion of the Nuclear Regulatory Commission, the issuance of such a license or certificate of compliance to the Corporation would be inimical to the common defense and security of the United States due to the nature and extent of the ownership, control or domination of the corporation by a foreign corporation

or a foreign government or any other relevant factors or circumstances.[1] (Emphasis added)

The Administration's bill included the following codification change to the AEA as section 193(f):

(f) LIMITATION–No license or certificate of compliance may be issued to the United States Enrichment Corporation or its successor under this section or sections 53, 63, or 1701, if in the opinion of the Commission, the issuance of such a license or certificate of compliance--

(I) would be inimical to the common defense and security of the United States; or

(ii) would be inimical to the maintenance of a reliable and economical domestic source of enrichment services because of the nature and extent of the ownership, control, or domination of the Corporation by a foreign corporation or a foreign government or any other relevant factors or circumstances.[2] (Emphasis added)

[1]S. Rpt. 104-173, at 50 (1995) (June 19,1995, Letter from William H. Timbers, Jr. enclosing draft bill).

[2]S. Rpt. 104-173, at 54 (1995)

QUESTION 5. 4

S. 755, as reported by the Senate Committee on Energy and Natural Resources, included the Administration's proposed codification of an amendment to section 193 of the AEA.[3] The Committee's report to accompany S. 755 discusses the provision in a section entitled "Limitations on Foreign Ownership." It noted that:

> S. 755, as introduced, contains a provision providing the Nuclear Regulatory Commission with the authority to deny a license or certificate of compliance if the "issuance of such a license or certificate of compliance to the corporation would be inimical to the common defense and security of the United States due to the nature and extent of the ownership, control or domination of the Corporation by a foreign corporation or foreign government or any other relevant factors or circumstances" (emphasis added).
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> The Committee substitute, in section 17(a)(2) includes the "common defense and security" requirement while adding that the NRC may also deny a license or certificate of compliance if doing so would be "inimical to the maintenance of a reliable and economical domestic source of enrichment services due to the nature and extent of the ownership, control or domination of the Corporation by a foreign corporation or a foreign government or any other relevant factors or circumstances. This provision was added to guard against the possibility of a

[3]S. Rpt. 104-173, at 11 (1995).

> foreign uranium enrichment company acquiring the Corporation with the intent of operating it in a manner inconsistent with its maintenance as an ongoing uranium enrichment concern."[4]

The report further states that no certificate or license should be issued:

> if in the opinion of the NRC the issuance of such a license or certificate of compliance would be inimical to the common defense and security of the United States or would be inimical to the maintenance of a reliable and economical domestic source of enrichment services because of the nature and extent of the ownership, control, or domination of the Corporation by a foreign corporation or a foreign government or any other relevant factors or circumstances. Id. at 31. (Emphasis added).

The language contained in S.755, to provide for a USEC Privatization Act, was merged into S.1357, a bill to provide for a Balanced Budget Reconciliation Act of 1995 which passed the Senate on October 27, 1995.[5] S.1357 included the language reported out on S.755. On the

[4]S. Rpt. 104-173, at 19-20 (1995) (emphasis in original).

[5] 141 Cong. Rec. S16096 (October 27, 1995)

next day, the Senate then inserted S.1357 into H.R. 2491 which was the House bill for the same budget act. [6]

The House bill also contained language for a section 193(f). Its version provided language addressing common defense and security and foreign ownership and control, but not language addressing a reliable and economical domestic source of enrichment.[7] The intent of the House bill was to ensure that enrichment activities would be subject to the same foreign ownership limitations as any other nuclear production or utilization facility and that the interpretation of section 193(f) be consistent with interpretations of similar language in sections 103 and 104 of the AEA.[8]

Following the conference on the two bills, the Congress enacted the language that is in the current statute. The Conference report stated that it was adopting the Senate version with minor changes. While a few provisions were discussed, there was no discussion relevant to the

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[6] 141 Cong. Rec. S16159 (October 28,1995)

[7] H.R. 2491 as enrolled by the House on October 27, 1995 contained the following language:

> If the privatization of the United States Enrichment Corporation results in the corporation being-
> (1) owned, controlled, or dominated by a foreign corporation or a Foreign government, or
> (2) otherwise inimical to the common defense or security of the United States,
> any license held by the Corporation under sections 53 and 63 shall be terminated.

[8] House Report 104-86, at 20 (1995) on H.R. 1216, a bill to establish the USEC Privatization Act, which was incorporated into H.R. 2491.

section 193 provision.[9] Thus, there is no indication that the language in the conference version of H.R. 2491-- separating the concept of a reliable and economical domestic source of enrichment from the common defense and security -- was intended to change the intent described in Senate Report 104-173 which was to guard against the possibility of a foreign uranium enrichment company acquiring the Corporation with the intent of operating it in a manner inconsistent with its maintenance as an ongoing uranium enrichment concern.

On December 6, 1995, the President vetoed the Balanced Budget Reconciliation Act of 1995 for reasons unrelated to its enrichment provisions.

Thereafter, on January 26, 1996, Mr. Murkowski submitted a substitute amendment to S.755. In introducing this legislation, he stated that this bill "is virtually identical to USEC privatization language contained in the Budget Reconciliation measure passed earlier by the Senate." As to section 193(f), it contained the same language that the President had earlier vetoed as part of the Balanced Budget Reconciliation Act of 1995. Thereafter, the substitute language of S.755 was incorporated into the legislation that was enacted into the USEC Privatization Act as Public Law 104-134(April 26, 1996). There was no further discussion that addressed section 193(f).

[9] H. Rpt. 104-350, at 1015 (1995).

In sum, as there were no floor discussions in either the House or Senate pertaining to section 193(f), the only relevant legislative history is contained in Senate Report 104-173. Again, that Report states that:

> This provision was added to guard against the possibility of a foreign uranium enrichment company acquiring the Corporation with the intent of operating it in a manner inconsistent with its maintenance as an ongoing uranium enrichment concern.