

September 11, 2000

The Honorable Tom Bliley, Chairman
Committee on Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I know that you have a personal interest in the evaluation by the Nuclear Regulatory Commission (NRC) of the financial circumstances of the United States Enrichment Corporation (USEC). I therefore enclose for your information and use a summary paper prepared by the NRC staff (SECY-00-0181) and an underlying report prepared by an NRC contractor (ICF Consulting) that reflect the NRC's examination of the matter.

The NRC staff initiated this review and analysis early this year after USEC's corporate credit rating was downgraded following USEC's announcement of lower financial projections, dividend reductions, and plans to lay off employees at the gaseous diffusion plants (GDPs). USEC's financial situation was an important consideration in the initial issuance of certificates of compliance and the subsequent re-certification of the GDPs. In light of the long-standing agency practice to revisit an issue when a major basis for a prior authorization appears to have changed, the NRC staff decided to re-examine USEC's financial status.

As you know, the Commission customarily focuses on technical issues related to the maintenance of safety at nuclear facilities. The obligation to expand our scrutiny in the case of the GDPs arises from Section 193(f) of the Atomic Energy Act of 1954, as amended. That section provides that the NRC is to consider whether the issuance of a certificate of compliance for the GDPs "would be inimical to . . . [t]he maintenance of a reliable and economical domestic source of enrichment services" before the NRC issues certificates. This requirement was readily satisfied at the time of the initial certification and subsequent re-certification because USEC then enjoyed an investment-grade credit rating.

During the course of the staff's re-examination of USEC's financial status, the Commission was prompted to focus on the question as to how the "maintenance of a reliable and economical domestic source of enrichment services" should be evaluated. The Commission explored this issue in meetings with the NRC staff in June and July of this year, and realized that we would benefit from a further assessment of Congress's intent in the USEC Privatization Act in requiring a finding on the "reliable and economical" matter in connection with the issuance of a certificate. Accordingly, the Commission asked the Office of the General Counsel to examine the statute and the legislative history for insights on the matter.

Guided by this further assessment, we conclude that the “reliable and economical” concern reflected in Section 193(f)(2)(B) is principally directed to the possibility of foreign entities gaining control and undermining U.S. domestic enrichment capabilities in the privatized USEC. That concern is clearly an important consideration that should be addressed at the time of initial privatization or any time there is a proposal to transfer the certificates to a new owner. However, it is not clear that assessments and findings on the “reliable and economical” issue are a recurring obligation that needs to be addressed at the time of routine re-certifications for the GDPs or, indeed, in connection with other events that do not involve a change in ownership.

Moreover, even if the “reliable and economical” assessment were construed more broadly so as to encompass the preservation of domestic enrichment services, the NRC is severely limited in the actions it can take to address the matter. In this context, an NRC action to deny a routine re-certification application or to suspend or revoke an existing certificate of compliance would itself undermine the preservation of domestic capacity as it would shutdown a domestic supply altogether and thus would not serve the postulated broader statutory purpose. Thus, the section 193(f)(2)(B) inquiry, even if construed as a necessary recurring obligation on the part of the Commission, need not require an exhaustive inquiry because leaving the certificate in place furthers the maintenance of economic and reliable enrichment services, while denial, suspension or revocation of the certificate would achieve the opposite result. Consequently, on the basis of this recent review of USEC’s financial situation, we conclude that we should not take action to modify, suspend or revoke the certificates of compliance.

We note that the enclosed financial analysis is narrowly focused and does not deal with such issues as the international supply of, and demand for, enrichment services, or the effects of such considerations on the maintenance of a reliable and economical U.S. enrichment capability. Moreover, the examination in the study of the role of new technology in the preservation of domestic capacity is limited. Nonetheless, although we acknowledge that the enclosed financial analysis could be expanded, we do not believe that any further NRC study of the USEC situation is justified, particularly in view of the fact that NRC is limited in the action it can take to address the maintenance of domestic enrichment services.

We hope that the analysis may be useful to the Congress in its monitoring of the domestic uranium enrichment enterprise. We also intend to provide this information to the Enrichment Oversight Committee, which is chaired by a member of the National Security Council, for the same purpose.

We must emphasize that the enclosed summary paper and report are based to a large degree on proprietary financial information provided by USEC, and the summary paper and report themselves contain sensitive financial information that is to be protected from public disclosure. As you know, the unauthorized release of proprietary sensitive financial information to the public could result in sanctions under the Trade Secrets Act. Accordingly, we respectfully request that you treat the enclosed material as proprietary sensitive financial information that is not for public release.

I hope that you will find the enclosures to be useful. If you have any comments or questions, please contact me.

Sincerely,

/RA/

Richard A. Meserve

Enclosure:
SECY-00-0181 w/attached
ICF Consulting Report

cc w/enclosure:
Representative John D. Dingell

cc w/o enclosure:
Representative Fred Upton
Representative Ron Klink

September 11, 2000

The Honorable Bob Smith, Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

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SECY-00-0181 w/attached
ICF Consulting Report

cc w/enclosure:
Senator Max Baucus

cc w/o enclosure:
Senator George V. Voinovich

September 11, 2000

The Honorable Frank Murkowski, Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

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cc w/enclosure:
Senator Jeff Bingaman

cc w/o enclosure:
Senator Jim Bunning

September 11, 2000

The Honorable Ron Packard, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515

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Richard A. Meserve

Enclosure:
SECY-00-0181 w/attached
ICF Consulting Report

cc w/enclosure:
Representative Peter J. Visclosky

September 11, 2000

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

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cc w/enclosure:
Senator Harry Reid

cc w/o enclosure:
Senator Mitch McConnell

Enclosure withheld from release -- contains proprietary and sensitive
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LIST OF ADDRESSEES

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United States House of Representatives
Washington, D.C. 20515

cc w/enclosure:
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