

March 19, 2001

The Honorable Ted Strickland
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Strickland:

I have received your letter of March 14, 2001, in which you express concerns about the maintenance of a reliable and economical domestic source of enrichment services in view of the United States Enrichment Corporation's (USEC's) plans to shut down enrichment operations at the Portsmouth Gaseous Diffusion Plant (GDP). You urge that the NRC postpone or condition issuance of an enrichment upgrade amendment to the certificate for the separate Paducah GDP while issues related to the shut down of Portsmouth and the maintenance of a reliable and economical source of enrichment services are examined.

Your letter expressed a concern that the NRC may be abrogating its responsibility with regard to maintenance of a reliable and economical domestic enrichment capability and questioned the Commission's interpretation of its obligations under the Privatization Act. We recognize and respect your views. The Commission has been advised, however, that the "reliable and economic" 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. Moreover, the Commission understands that the principal focus of its "reliable and economical" review responsibility is on issuance of the certificates for the GDPs to a new owner. The statute provides: "No license or certificate of compliance may be issued to the United States Enrichment Corporation or its successor . . . if the Commission determines that . . . the issuance of such a license or certificate of compliance would be inimical to . . . the maintenance of a reliable and economical domestic source of enrichment services. 42 U.S.C. §193(f) (emphasis added). Thus, the existence of a recurring obligation to consider "reliable and economical" matters (e.g., at the time of a recertification or an amendment to a certificate) is unclear.

Nonetheless, we have considered your suggestion that the NRC condition the issuance of an enrichment upgrade amendment for Paducah on USEC's maintaining the Portsmouth facility in a "warm standby" condition. We would note, first, that the Paducah enrichment upgrade amendment is a matter that is entirely separate from, and unrelated to, the status of the Portsmouth GDP. The Paducah amendment does not provide a basis for NRC action directed to the operation of an entirely different facility. Thus, we believe that it would be inappropriate to condition the Paducah amendment on USEC's maintaining a particular operational status at Portsmouth.

Second, the amendment for Paducah will increase the levels of enrichment authorized for that facility. In this circumstance, the amendment itself can be viewed as enhancing reliable and economical domestic enrichment capabilities. Although the Paducah amendment in question will not authorize enrichment levels comparable to those already authorized for Portsmouth, it clearly increases Paducah's capabilities.

Third, we are advised by the staff that there are no serious concerns with the technical matters you have raised. In particular, you note that the Department of Energy (DOE) has expressed a concern about Paducah's "managing the content of lighter isotopes in order to meet commercial fuel specifications." The NRC staff advises us that this concern relates to USEC's ability to remove lighter weight isotopes from cylinders containing enriched material in order to meet commercial fuel specifications. The staff has indicated that USEC has, and will retain and maintain, the processes and capability to deal with the lighter isotopes, and thus should be able to meet commercial fuel specifications.

You also note that Paducah is likely to use feed cylinders with approximately 3% enriched material from Portsmouth as input to its process to produce higher assay material, and that this approach will not result in a valid demonstration of Paducah's reliability or capability in producing the higher assay material. The NRC staff advises that Paducah has always been certified to produce up to 2.7% enriched material, which could serve as the initial feed material for the higher assay production process, and there is nothing in the amendment that will compromise this capability. The staff also was aware of the fact that, for the higher assay process, Paducah plans to refeed material into its cascade, thereby increasing the number of stages available for enrichment. The staff evaluated the safety aspects of the design and operational changes needed to support this process and concluded that the operation could be performed safely.

In any event, NRC is aware that USEC is considering feeding enriched material from the Portsmouth plant into the Paducah cascade following approval from the NRC to operate at a higher assay. The staff has indicated that any safety issues associated with this refeed operation are bounded by the analyses NRC has performed in the enrichment upgrade amendment review. The source of the initial lower assay feed -- Portsmouth or Paducah -- should not adversely affect the Paducah higher assay process or detract from the demonstration of the capability to enrich to higher levels.

Finally, we understand that Portsmouth's operational status is being considered by Department of Energy. In this regard, we note that Secretary of Energy Spencer Abraham announced earlier this month that DOE would provide \$125.7 million to maintain Portsmouth in a standby condition. We understand that this is intended to preserve the Portsmouth capability while Paducah implements the enrichment upgrade amendment. We thus understand that the Secretary has made a judgment as to how best to preserve domestic enrichment capability.

In summary, for the reasons discussed above, we do not believe that there is a basis to delay the issuance of that amendment or condition the amendment on USEC's maintaining Portsmouth in a "warm standby" status. The Commission appreciates your interest in this

matter and values the information and insights you have provided. Indeed, I particularly appreciate the time that you have spent discussing this matter with me. I hope that this information is helpful to you. If you need additional information, please contact me.

Sincerely,

/RA/

Richard A. Meserve

cc: The Honorable John D. Dingell
The Honorable W.J. "Billy" Tauzin
The Honorable Joe Barton
The Honorable Ed Whitfield
Mr. Bill Magwood, Office of Nuclear
Energy, DOE

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Committee on Energy and Commerce
United States House of Representatives
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