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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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ENERGY AND MINERALS
DIVISION

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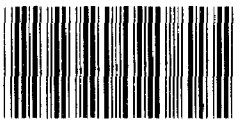

The Honorable Claudine Schneider
House of Representatives

Subject: Update of cost information contained in a previous GAO report on specific aspects of the Clinch River Breeder Reactor Project (EMD-81-112)

Dear Ms. Schneider:

Enclosed is the updated information you requested on a report we issued to Senators Henry Jackson and Howard Baker on June 23, 1977. The report dealt with some specific questions they had at that time on funding for the Clinch River Breeder Reactor Project. Specifically, you requested updated figures for the cost and schedule data we had provided earlier on various licensing scenarios for the Clinch River facility. Enclosure I to this letter provides the information you requested. Also, for your convenience, we have included a copy of our June 23, 1977, report as enclosure II.

In providing you with this information, we wish to emphasize that, as agreed with your office, we relied on the Department of Energy and the Nuclear Regulatory Commission to provide us with the updated information. Further, as also agreed with your office, we did not independently verify or evaluate the data that was presented to us. Consequently, the information we obtained from these agencies form the basis of the updated cost and schedule figures presented in enclosure I.

If you have any questions, or if we can be of any further assistance, please let us know.

Sincerely yours,

James S. Howard

J. Dexter Peach
Director

Enclosures - 2

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ENCLOSURE I

UPDATE OF COST AND SCHEDULE DATA CONTAINED IN A PREVIOUS GAO REPORT ON FUNDING FOR THE CLINCH RIVER FACILITY (B-115398, June 23, 1977)

As part of our June 23, 1977, report, the Energy Research and Development Administration (ERDA)--now part of the Department of Energy (DOE)--provided us with some cost and schedule information for the Clinch River Breeder Reactor Project as it related to three different licensing cases. At the time, the administration was attempting to terminate the Clinch River Project. And then, as now, it was a topic of heated debate within the Congress and between the Congress and the executive branch. Consequently, it was against this backdrop that we asked ERDA officials to provide us with specific cost and schedule data for the Clinch River Project, assuming it would be terminated and then restarted about 4 months later, after the Congress had an opportunity to fully consider whether to go ahead with the entire breeder reactor program. At the time, we used the 4-month lapse as an estimate that would provide an indication of the impact the project termination would have on the Clinch River Project's cost and schedule. Under these circumstances, ERDA provided us with the following information, which is excerpted from page 10 of our June 1977 report:

> "1. Assuming the licensing process could begin where it was stopped, project costs would increase by about $346 million and plant operations would be delayed between 1 and 1-1/2 years. To restart the project where it was terminated in the licensing process, however, probably would require legislation that would, in effect, circumvent some of the normal licensing processes.
>
> "2. Assuming the licensing process would have to begin with a new application, project costs would increase by about $546 million and plant operation would be delayed over 3 years. Neither this assumption nor the first account for the possibility that ERDA may be required by the Nuclear Regulatory Commission (NRC) to locate the plant at a different site if projected plant operation is delayed. Such a relocation appears to be a distinct possibility, based on past NRC proceedings on the Clinch River Project. In fact, the Deputy Director, Division of Site Safety and"

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"Environmental Analysis, NRC, told us that if the CRBRP is delayed for 2 years or more, it would be very difficult, if not impossible, for the NRC staff, in its analysis, to conclude that it is cost beneficial to locate the demonstration reactor at the Clinch River site.

"3. Assuming the plant would have to be relocated, project costs would increase by about $1.1 to $1.3 billion and plant operation would be delayed 5 to 6 years."

In response to your inquiry, we asked DOE and NRC for more recent data to update the cost and schedule information quoted above. The information these agencies provided us for each of the three licensing cases is as follows:

Case 1. Continue licensing process where it stopped. The current cost estimate for the Clinch River Breeder Reactor plant--$3.197 billion--is based on this licensing assumption. Specifically, the $3.197 billion estimate assumes that the licensing process for the plant will resume where it had stopped in 1977 and that initial plant operation will be achieved by February 1990. However, it should be noted that DOE has built some assumptions into the cost and schedule estimates about the incremental time and effort required by NRC to remobilize its staff and prepare for the public hearing process. Specifically, DOE has assumed that NRC can remobilize its licensing team in about 5 months and that a construction permit could be issued in about 3 years. NRC, however, contends that to pick up the Clinch River licensing process where it stopped and to issue a construction permit in the 3 years now estimated by DOE would probably require a congressional exemption from the provisions of the National Environmental Policy Act.

Case 2. Completely restart the licensing process. According to DOE and NRC it would not be plausible to restart the licensing process for the Clinch River Project since the license application has never been withdrawn. A restart of the licensing process would only be a consideration under a situation where the project was terminated, which it has not been.

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Consequently, no cost and schedule data have been provided for this case.

CASE 3. Relocation of the plant to another site. Under this licensing scenario, DOE has estimated that it would result in about a 43-month delay in the current schedule. That is, the initial start date would be delayed from about February 1990 to about August 1993. The amount of the associated cost increase would depend on which alternate site was chosen. For instance, DOE estimates the following cost increases for three possible sites:

Location	Incremental Cost Increase (millions)
DOE's Hanford Reservation (Washington State)	$1,577
DOE's Idaho National Engineering Laboratory	$1,654
DOE's Savannah River Complex (South Carolina)	$ 824

According to DOE, the 43-month delay is an estimate of the overall schedule delay that would occur if the plant were required to be relocated and includes the additional time required for such activities as enactment of appropriate legislation, gathering site data, and submittal of a Final Environment Statement.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

IN REPLY REFER TO: B-115398

June 23, 1977

The Honorable Howard H. Baker
Ranking Minority Member, Joint
Committee on Atomic Energy
Congress of the United States

Dear Mr. Baker:

This replies to your letter of May 26, 1977, in which you and Vice Chairman Jackson asked that we review deferral number D77-58 transmitted by the President to the Congress on May 18, 1977. By this action the President proposed to defer $31.8 million in budget authority appropriated for the Clinch River Breeder Reactor Project (CRBRP). Because you believe the action taken by the President should have been proposed as a rescission rather than as a deferral of budget authority, you asked that we review this matter to see if it has been correctly classified. You also asked if any actions currently undertaken or proposed by the executive branch toward significant curtailment of the CRBRP exceed or will exceed controlling statutory authorities.

Based on the facts currently available, we conclude that the action proposed to the Congress was correctly classified--it is a deferral of budget authority. However, we will monitor the situation and will promptly report to the Congress any future actions constituting a rescission or deferral under the Impoundment Control Act of 1974.

With respect to the second question, we believe that the Administration's proposed curtailment of CRBRP objective is substantially inconsistent with that set forth in the CRBRP program criteria that were approved, as required by law, by the Joint Committee on Atomic Energy (JCAE). We also believe the curtailed program is not in accord with the statute authorizing the CRBRP. In our view, for these reasons the Energy Research and Development Administration (ERDA) lacks the legal authority to implement the President's plan.

Accordingly, expenditures of Federal funds to fully implement the revised CRBRP program would be improper unless ERDA first obtains the necessary authority to undertake such actions.

Should ERDA proceed to use CRBRP funds to implement the President's proposed plan without having secured such authority, this Office will review the specific actions taken with the objective of taking formal exception to such expenditures.

There follows a detailed discussion of our findings and conclusions.

I. BACKGROUND:

A. Progress to Date.

Before discussing the legal issues raised by your letter, it is appropriate to discuss the history and facts surrounding the project and the effects of the most recent executive branch actions on the CRBRP. In reviewing the President's actions, we met with ERDA and contractor officials both at headquarters and at the project office site.

Prior to the recent executive branch actions, the Clinch River Breeder Reactor Demonstration Plant was scheduled to be operational by early 1984 and was to be the nation's first large-scale liquid metal fast breeder reactor (LMFBR) demonstration plant with a 380 megawatt capacity. Presently, design, procurement, and component fabrication for the project are about 25 percent complete, although no site preparation or actual plant construction has yet begun. According to ERDA estimates, the project, if completed, will cost about $2 billion, $270 million of which will be contributed by industry participants. As of May 31, 1977, ERDA had spent about $254 million and industry participants a little over $99 million.

B. Origins and Statutory Basis of the CRBRP.

The CRBRP had its origins in 1969. In that year the Atomic Energy Commission (AEC) was specifically authorized to study the ways in which an LMFBR demonstration project could be designed. Section 106 of Public Law 91-44, approved July 11, 1969, stated:

> "Sec. 106: Liquid Metal Fast Breeder Reactor Demonstration Program--Project Definition Phase.--(a) The Commission is

> hereby authorized to conduct the Project Definition Phase of a Liquid Metal Fast Breeder Reactor Demonstration Program, under cooperative arrangements with reactor manufacturers and others, in accordance with the criteria heretofore submitted to the Joint Committee on Atomic Energy, without regard to the provisions of section 169 of the Atomic Energy Act of 1954, as amended, and authorization of appropriations therefor in the amount of $7,000,000 is included in section 101 of this Act."

One year later the Congress went further in the area of an LMFBR demonstration project and specifically authorized the design, construction, and operation of such a reactor. Section 106 of Public Law 91-273, June 7, 1970, stated:

> "Sec. 106. Liquid Metal Fast Breeder Reactor Demonstration Program--Fourth Round.--(a) The Commission is hereby authorized to enter into a cooperative arrangement with a reactor manufacturer and others for participation in the research and development, design, construction, and operation of a Liquid Metal Fast Breeder Reactor powerplant, in accordance with the criteria heretofore submitted to the Joint Committee on Atomic Energy and referred to in section 106 of Public Law 91-44, without regard to the provisions of section 169 of the Atomic Energy Act of 1954, as amended, and the Commission is further authorized to continue to conduct the Project Definition Phase subsequent to the aforementioned cooperative arrangement. * * *
>
> "(b) Before the Commission enters into any arrangement or amendment thereto under the authority of subsection (a) of this section, the basis for the

> arrangement or amendment thereto which the Commission proposes to execute (including the name of the proposed participating party or parties with whom the arrangement is to be made, a general description of the proposed powerplant, the estimated amount of cost to be incurred by the Commission and by the participating parties, and the general features of the proposed arrangement or amendment) shall be submitted to the Joint Committee on Atomic Energy, and a period of forty-five days shall elapse while Congress is in session (in computing such forty-five days, there shall be excluded the days on which either House is not in session because of adjournment for more than three days): Provided, however, That the Joint Committee, after having received the basis for a proposed arrangement or amendment thereto, may by resolution in writing waive the conditions of, or all or any protion of, such forty-five day period: Provided, further, That such arrangement or amendment shall be entered into in accordance with the basis for the arrangement or amendment submitted as provided herein* * *." (Emphasis added.)

This basic scheme was retained in 1975 when section 106 of the 1970 act was amended by section 103(d) of Public Law 94-187, December 31, 1975:

> "Sec. 106. Liquid Metal Fast Breeder Reactor Demonstration Program--Fourth Round.--(a) The Energy Research and Development Administration (ERDA) is hereby authorized to enter into cooperative arrangements with reactor manufacturers and others for participation in the research and development, design, construction; and operation of a Liquid

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Metal Fast Breeder Reactor powerplant, in accordance with criteria approved by the Joint Committee on Atomic Energy, without regard to the provisions of section 169 of the Atomic Energy Act of 1954, as amended. Appropriations are hereby authorized * * * for the aforementioned cooperative arrangements as shown in the basis for arrangements as submitted in accordance with subsection (b) hereof. * * *

"(b) Before ERDA enters into any arrangement or amendment thereto under the authority of subsection (a) of this section, the basis for the arrangement or amendment thereto which ERDA proposes to execute (including the name of the proposed participating party or parties with which the arrangement is to be made, a general description of the proposed powerplant, the estimated amount of cost to be incurred by ERDA and by the participating parties, and the general features of the proposed arrangement or amendment) shall be submitted to the Joint Committee on Atomic Energy, and a period of forty-five days shall elapse while Congress is in session (in computing such forty-five days, there shall be excluded the days on which either House is not in session because of adjournment for more than three days): Provided, however, That the Joint Committee, after having received the basis for a proposed arrangement or amendment thereto, may by resolution in writing waive the conditions of all, or any portion of, such forty-five-day period: Provided, further, That such arrangement or amendment shall be entered into in accordance with the basis for the arrangement or amendment submitted as provided herein:* * *" (Emphasis added.)

Pursuant to the 1975 law, ERDA proposed criteria to the JCAE for its approval. On April 29, 1976, the JCAE approved the most recently submitted criteria. Those project criteria appear at page 63 of Modifications in the Proposed Arrangements for the Clinch River Breeder Reactor Demonstration Project, Hearings Before the Joint Committee on Atomic Energy, 94th Cong., 2d Sess., April 14 and 29, 1976 (1976 Hearings).

C. The Present CRBRP Criteria and Contract.

As a result of the JCAE's action of April 29, 1976 (a rollcall vote), the LMFBR demonstration program at the Clinch River site is governed by criteria that call for the design, construction, and operation of an LMFBR plant. These program criteria state that the CRBRP's major objectives are to demonstrate the technology pertaining to, and the reliability, safety, and economics of, LMFBR powerplants in the utility environment. Other objectives are to:

--provide for meaningful identification of areas requiring emphasis in the LMFBR research and development program;

--validate, to the extent practicable, technical and economic data and information pertinent to the total LMFBR program;

--assist in developing an adequate industrial base;

--provide for meaningful utility participation and experience in developing, acquiring, and operating LMFBR plants;

--help assure overall program success; and

--demonstrate and maintain U.S. technological leadership.

The criteria also specifically set forth design requirements and plant objectives stating, among other things, that the plant's first core is to use mixed oxide fuel consisting of uranium and plutonium and that it be designed, fabricated, constructed, tested, operated, and maintained in conformance with established engineering standards and high quality assurance practices.

Pursuant to the JCAE-approved criteria, ERDA entered into a cooperative arrangement with the Project Mangement Corporation (PMC), the Commonwealth Edison Company, and the Tennessee Valley Authority (TVA) on May 4, 1976. That contract recognizes the controlling statutory criteria for the LMFBR. For example, the contract states, pertinently:

> A. Para. 1.1.9: "'Project' means the cooperative effort to design, develop, construct, test and operate the LMFBR Demonstration Plant provided for in the Principal Project Agreements." [See para. 3.1] (Emphasis added.)
>
> B. Para. 3.1: [Principal Project Agreements] "* * * TVA and ERDA will enter into an agreement for the operation of the Demonstration Plant* * *" (Emphasis added.)
>
> C. Para. 4.1: "* * * ERDA shall, pursuant to this contract, manage and carry out the Project [see Para. 1.1.9, above] in an efficient, effective and timely manner consistent with the Principal Project Objectives, and shall use its best efforts to design and build the Demonstration Plant substantially in conformance with the Reference Design.* * *"

D. Recent ERDA Plans and GAO Evaluation.

On May 19, 1977, Mr. Robert W. Fri, Acting Administrator, ERDA, sent to the JCAE notice of ERDA's plans to revise the CRBRP. Mr. Fri stated, inter alia, ERDA's plans for the

> "cancellation of construction, component construction, licensing and commercialization efforts for CRBRP, but completion of systems design;"

This letter clearly recognized that the plan proposed by the President and reflected in the May 18, 1977, deferral message would necessitate revision to the present JCAE-approved CRBRP criteria, and acknowledged that an amendment to the

statutory authorization may be in order if the President's program revision is to be implemented. Mr. Fri stated:

> "At the direction of the President, and in compliance with Section 106(b) of Public Law 91-273, as amended, ERDA herewith submits the enclosed amended program justification data reflecting discontinuance of the CRBRP Project, except for completion of systems design so as to help identify engineering problems that will have to be solved in developing alternative types of reactors. The statutory criteria will likewise require commensurate revision.
>
> "Appropriate negotiations will, of course, have to be undertaken and concluded with the other Project participants, with the objective of implementing the proposed action concerning the Project, and the cooperative arrangement amended accordingly. In addition, amendatory legislation with respect to the basic enabling authorization for the CRBRP Project may be in order.
>
> "For the prescribed statutory period during which this revised basis of arrangement is required to lie before the Joint Committee, new obligations for the Project will be kept to a minimum consistent with prudent Project management. A deferral (No. D77-58) is being reported for the $31.8 million of CRBRP Project budget authority that will not be available during this period. Following such period ERDA will proceed with appropriate implementing actions." (Emphasis added.)

In an attachment to his letter, Mr. Fri discussed the existing four-party contractual agreement and those contract amendments that would have to be made in order to limit

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LMFBR activities to systems design efforts. Systems design (roughly 60 percent of the total design work) would, under the President's proposal, be completed. Pursuant to this proposal, ERDA has reduced its fiscal year 1978 budget request from $208.7 million to $162 million. The funds requested would be used to continue systems design activities; to terminate detailed design, licensing, procurement, and construction activities; and to settle claims, primarily those anticipated from the termination actions.

Thus far, we have found no evidence indicating that project activity has been significantly slowed down as a result of the executive branch's proposed change in program objectives. To date, we have found no procurement actions that have been delayed or cancelled and ERDA officials told us there were none. However, the project office in Tennessee, at the direction of ERDA headquarters, recently submitted a list of 10 scheduled procurements to ERDA headquarters for approval. According to an ERDA procurement official, the proposed procurement actions involve contracts by Westinghouse, the lead reactor manufacturer, with its subcontractors. The amount involved in these procurements is about $9.8 million. (Should ERDA decide to prevent award of any of the subcontracts it may develop that further questions will exist regarding such actions in light of the Impoundment Control Act of 1974, discussed below.)

We compared the proposed changes on the Clinch River LMFBR project as submitted by ERDA to the JCAE on May 19, 1977, with the existing criteria. As part of this comparison, we discussed the criteria with the General Manager of PMC (the contract party that represents the utility participants in the project) on a line-by-line basis to pinpoint the specific program changes that would result from the President's actions. Based on our examination, we confirm that ERDA's proposal of May 19, 1977, represents a notice of its intention to proceed with the CRBRP in a way that will result in a program that does not fulfill major objectives of the existing JCAE-approved statutory criteria; nor the object of the authorization itself--to operate an LMFBR demonstration plant.

We asked ERDA officials to give us their estimate of the additional costs that would be incurred assuming ERDA terminated the project, except for systems design, on or about July 26, 1977, and the Congress subsequently provided the

funds to continue the project on December 1, 1977. We chose a December 1, 1977, date because it allows the Congress an opportunity to consider fully whether to go ahead with LMFBR efforts and the associated funding. Although it is uncertain when the Congress will make its decision on the project, and how quickly or completely ERDA may implement the proposed discontinuance of the program, we believe that the December date provides a good indication of the impact a project termination will have prior to Congress having an opportunity to fully consider the matter.

ERDA provided us with cost and schedule information using three assumptions:

1. Assuming the licensing process could begin where it was stopped, project costs would increase by about $346 million and plant operations would be delayed between 1 and 1-1/2 years. To restart the project where it was terminated in the licensing process, however, probably would require legislation that would, in effect, circumvent some of the normal licensing processes.

2. Assuming the licensing process would have to begin with a new application, project costs would increase by about $546 million and plant operation would be delayed over 3 years. Neither this assumption nor the first acccount for the possibility that ERDA may be required by the Nuclear Regulatory Commission (NRC) to locate the plant at a different site if projected plant operation is delayed. Such a relocation appears to be a distinct possiblity based on past NRC proceedings on the Clinch River Project. In fact, the Deputy Director, Division of Site Safety and Environmental Analysis, NRC, told us that if the CRBRP is delayed for 2 years or more, it would be very difficult, if not impossible, for the NRC staff, in its analysis, to conclude that it is cost beneficial to locate the demonstration reactor at the Clinch River site.

3. Assuming the plant would have to be relocated, project costs would increase by about $1.1 to $1.3 billion and plant operation would be delayed 5 to 6 years.

Although we did not have the opportunity to evaluate ERDA's estimates in detail, we believe they provide a reasonable indication of the magnitude of the costs and extent of schedule slippages that might occur if the project were terminated on July 26, 1977, and the Congress decided to restart it at a a later date. By comparison, if ERDA were to delay project termination until December 1, 1977, by honoring ongoing contracts but not entering into additional contracts not essential to ongoing work, the estimated costs would be increased by about $61 million.

Based on the information set out above, it would seem that terminating the project prior to congressional deliberations could make restarting the project so costly as to outweigh its benefit. Thus, in effect, the executive branch, if it is successful in promptly implementing its present plan, may well have made a major policy decision unilaterally through administrative procedures which should have been made through the legislative process. The documentation we have examined discloses no intention on the part of the executive branch to proceed with completion of an LMFBR demonstration plant at Clinch River in the future.

II. THE IMPOUNDMENT CONTROL ACT OF 1974:

Under the Impoundment Control Act of 1974 (Act), title X of Public Law 93-344, 88 Stat. 332, July 12, 1974, 31 U.S.C. 1400, et seq., there are two types of impoundments--deferrals and rescissions. The distinction between the two categories is the duration of a proposed withholding of budget authority: a deferral is a proposal to withdraw temporarily budget authority from availability for obligation; a rescission is a request to cancel, i.e., rescind, previously appropriated funds--in other words, a permanent withdrawal of budget authority.

In both categories of withholdings there exists a common characteristic--impoundment. While the term "impoundment" is not defined by the Act, we have operated under the view that an impoundment is any type of executive action or inaction that effectively thwarts the obligation or expenditure of budget authority. This does not mean, however, that impoundments always exist when budget authority is not used to implement all authorized activities.

The Act is concerned with the rescission or deferral of budget authority, not the rescission or deferral of programs. Thus, a lump-sum appropriation for programs A, B, and C used to carry out only program C would not necessarily indicate the existence of impoundments regarding programs A and B. So long as all budgetary resources were used for program C, no impoundment would occur even though activities A and B remained unfunded.

Consistent with this construction of the Act, sections 1012(b) and 1013(b) of the Act, 31 U.S.C. 1402(b) and 1403(b), respectively, provide that when proposed rescissions and deferrals are rejected the impounded budget authority must be "made available for obligation." If this is not done the Comptroller General is authorized to bring suit to compel the cessation of the withholding. 31 U.S.C. 1406. In this connection, the requirements of the Act clearly are to mandate the release of withheld funds. Significantly, no mention is made in the Act with respect to the uses to which the released funds are put. The Comptroller General can only seek, and the court can only grant, an order compelling the President to release the funds. Neither the Comptroller General nor the courts are authorized under the Act to constrain the executive branch in the way the funds are to be used once released.

Concerning the CRBRP, we have determined that, except for the $31.8 million held in reserve for deferral D77-58, all funds have been made available for obligation for either incurring or liquidating obligations associated with the project. Regarding the $31.8 million proposed for deferral, these funds also are planned for use. That available funding is being and will be used is the critical determination under the Act. In this light, we must presently conclude that no evidence suggests an intention not to utilize (i.e., a rescission) the $31.8 million in the future. Thus, we are satisfied that the deferral has been properly classified. However, should we later determine that the executive branch has altered its plans for the use of the $31.8 million and has decided that a portion of the funds will not be used at all, we will, at that time, take the necessary action to reclassify the impoundment to a rescission.

In addition we are monitoring the executive branch's handling of the $9.8 million involved in the award of subcontracts currently being reviewed by ERDA. If we decide

that ERDA's actions regarding the use of these funds or any other CRBRP funds indicate the existence of further budgetary withholdings, we will promptly report the matter to the Congress.

III. PROPRIETY OF THE REVISED CRBRP PLANS:

The President's plans to curtail substantially the scope of the LMFBR program at the Clinch River site raise a number of questions that focus upon the legislation that authorized the project. Our analysis of the statutes setting forth the LMFBR activities of AEC and later ERDA is that they authorize the AEC (ERDA) to embark only on clearly delineated lines of effort. In 1969 the effort was to define what ultimately might comprise an LMFBR demonstration project cooperative arrangement. With enactment of the 1970 and 1975 legislation, AEC (ERDA) was authorized to enter into agreements for the research and development, design, construction, and operation of such a reactor.

We conclude that ERDA's proposed expenditure of funds for the curtailed LMFBR program is an intention to expend funds for unauthorized purposes. The most recent (1975) revisions of section 106 of the CRBRP authorization, quoted above, introduced the requirement of JCAE approval of LMFBR program criteria. We believe subsection 106(a) incorporates by reference into the statute itself the program criteria submitted to and approved by the JCAE. In our view, and we know of no other that contradicts it, the approved program criteria and the major objectives set forth therein are as much a part of subsection 106(a) as if they were explicitly stated in the statutory language itself. Thus, the currently approved program criteria, and of course the statute itself, establish the CRBRP's ultimate objective--to successfully complete, operate, and demonstrate the usefulness of an LMFBR powerplant.

Subsection 106(b) provides for a 45-day period of waiting during which time the basis or description of a proposed amendment to the cooperative arrangement must lie before the JCAE. This delay, prior to ERDA's executing the amendment it proposes, affords the JCAE and others time to express views on the specific means by which ERDA would accomplish the statutory objective of the program. We believe the proposed amendments contemplated by subsection 106(b) are only those the execution of which lead to fulfilling this goal.

This construction of section 106 is supported both by the language of the statute and by its legislative history. Subsection (b) of section 106 provides not only that the basis or description of the amendment shall lie before the JCAE for 45 days, but also that the amended cooperative agreement ERDA is authorized to execute after the 45-day period is to be entered into "under the authority of subsection (a) of this section." Subsection (a) authorized ERDA to enter into cooperative agreements only in accordance with the statutorily approved program criteria. Those criteria, effectively a part of the statute itself, contemplate the eventual operation of an LMFBR powerplant. Therefore, ERDA's authority to initiate the running of the 45-day period after which it may proceed to implement its plans to amend the cooperative agreement, is constrained to offering to the JCAE a basis or description of amendments that are compatible with the objectives of the program criteria and of course the harmonious objective of the authorization act--operating an LMFBR demonstration plant.

Our construction of section 106 is supported as well by discussions of the JCAE. For example, during debate on the most recently submitted project criteria, the following exchange took place between Representative Moss and Mr. William Parler, Committee Counsel, JCAE:

> "Representative Moss. If there is a conflict between the contract [the cooperative arrangement] provisions and the criteria, which controls?
>
> "Mr. Parler. The criteria and the justification data which the committee [JCAE] approved.
>
> "Representative Moss. In other words, at all times that becomes the dominant factor in interpreting any contract [for the CRBRP]? It must be consistent at all times with the criteria?
>
> "Mr. Parler. That is my opinion, Mr. Moss; Yes, sir." 1976 Hearings, page 4.

Moreover, on April 29, 1976, Mr. Parler said:

> "* * * If the Committee [JCAE] disapproves the criteria, ERDA cannot proceed with implementation of the modification to the contract." 1976 Hearings, page 521.

In meeting with ERDA representatives on the President's plans to revise the CRBRP objective, we discussed the agency's reading of section 106. ERDA views subsection 106(b) as a requirement that it begin to implement its plans for proposed amendments, after the expiration of the 45-day period during which the bases for those amendments will have laid before the JCAE, irrespective of whether such action supports or destroys the objective of the authorization act. And, because subsection (a) of section 106 does not provide explicit time periods for either ERDA's submitting or the JCAE's approving new program criteria, subsection (a) "defers" to subsection (b). Thus, ERDA believes that its letter of May 19, 1977, was in compliance with the statutory mechanism of subsection (b) and it will, at the end of the 45-day period that began May 19, 1977, trigger both the necessary authority and the obligation to implement its revised plans to curtail the CRBRP. ERDA officials did not disagree that ERDA presently has no authority to revise the document representing the cooperative arrangement in ways that are inconsistent with existing statutory criteria, but apparently believe ERDA may effectively implement its plans without at the same time constructively revising the cooperative arrangement, an arrangement that calls for accomplishment, not termination, of the CRBRP.

In sum, ERDA views section 106 as conferring authority to begin implementing the cancellation of portions of the CRBRP 45 days after appropriate notice to the JCAE, but also requires that before ERDA formally modifies its contractual document it obtain from the JCAE approval of ERDA's proposed new program.

The practical consequences of ERDA's construction of the law deny the JCAE oversight of the LMFBR so long as the agency does not enter into a fully executed amendment of the formal contractual document. Such construction disregards the wide-ranging and very concrete changes that must be wrought upon the operation of the approved LMFBR program before implementation of the President's plan. ERDA apparently professes to read the relevant statutory language as indicative of congressional disinterest in whether ERDA unilaterally proceeds to change the statutory objective of the program. The simplest reading of

that language is to the contrary--that Congress has a strong interest in maintaining the program objective fully in accord with criteria approved by a committee of Congress. ERDA assumes, we think without a sound basis, that the actions it takes preparatory to abandoning the program it has commenced will not be tantamount to an amendment of the cooperative agreement that represents the commitment to go forward with the original program, and therefore that the actual changes, however dramatic, need not be of concern to the JCAE. This view limits the Committee's role to deciding whether to acquiesce in ERDA's subsequent recommendation to change the statutory criteria after ERDA's actions to change the statutory objective are already effectively accomplished, and appropriated funds are already obligated for the purpose of discontinuing instead of fulfilling the program objective of the statutory criteria.

We cannot agree the law was intended to so operate. Our view, as we have stated, is that before ERDA can invoke the authority of subsection (b) to implement new plans that depart in any significant way from the major program objectives of the statutorily approved criteria, it must first, under subsection (a), secure JCAE approval of new criteria. Since we believe section 106(b) contemplates amendments the thrust of which is to fulfill the major objectives of the statutory criteria, we must also conclude that, because the May 19, 1977, proposal does not so accord with the criteria, it did not trigger the 45-day mechanism of section 106(b).

Moreover, while the JCAE's authority to approve criteria is broad, the statute under which the President is acting authorizes only efforts leading to the construction and operation of a reactor. Thus, the President would be compelled to obtain amendatory legislation to section 106 to authorize only the limited and different objective of LMFBR systems design, and to repeal those parts of the statute that speak to efforts beyond such activities.

The legal effect of this conclusion is that the status of the CRBRP remains unchanged, except for the current $31.8 million deferral now before the Congress. Federal funds may not be expended to implement the President's plan of curtailing the program, without appropriate change in the authorization statute and the program criteria.

To implement the President's plan without such necessary authority would be in violation of law since such expenditures would be for purposes inconsistent with those for which the appropriations were made. In this regard, 31 U.S.C. 628 provides:

> "Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others." (Emphasis added.)

We hope the foregoing responds to your questions. A similar letter today is being sent to Vice Chairman Jackson.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States