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STATEMENT OF

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DIRECTOR, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION

BEFORE THE

SUBCOMMITTEE ON ENERGY CONSERVATION AND POWER

HOUSE COMMITTEE ON ENERGY AND COMMERCE

ON

THE U.S. URANIUM ENRICHMENT SERVICES PROGRAM

Mr. Chairman and members of the Subcommittee, we appreciate this opportunity to present our views on the status of the U.S. uranium enrichment program. At your request, we previously provided you with a copy of testimony that we prepared for the December 11, 1985, hearing which was postponed until today. I request that our earlier statement also be included in the hearing record.

Our earlier testimony emphasized our consistent position in recent years that the Congress and the executive branch need to reevaluate the basic purpose and structure of the enrichment program. We believe any reevaluation must include

--defining program objectives that take into account the realities of the enrichment market place,

--examining alternatives to full-cost-recovery pricing that provide the Department of Energy (DOE) greater flexibility to compete in today's environment, and

--agreeing on the amount of unrecovered government enrichment costs to be repaid to the Treasury.

Our testimony also pointed out that the government's unrecovered enrichment costs at September 30, 1984, amounted to $7.3 billion.

On January 29, 1986, DOE released a proposed modification of the Uranium Enrichment Services Criteria (criteria), or the rules under which DOE provides uranium enrichment services. DOE's proposal represents a major redirection of program emphasis away from full cost recovery and standard contractual terms to increased emphasis on competition, recovery of less than all of the government's costs, and individually tailored contract terms and conditions. To the extent that these modifications represent the administration's view on the appropriate enrichment program objectives and structure for today's enrichment environment, they are a first step in facilitating the program reevaluation we have consistently called for in earlier reports and testimonies. We do, however, have concerns about:

--the appropriateness of using modifications to the criteria to make major program changes as opposed to a legislative proposal and the related implications for the effectiveness of congressional involvement in the change process.

--areas where the proposed criteria modifications in our view are in conflict with basic statutory requirements, and

--possible limitations on future congressional oversight of the enrichment program if the criteria are adopted.

PERSPECTIVE ON THE ENRICHMENT PROGRAM

Let me again place in perspective the dilemma faced by DOE in managing the enrichment program. Today's uranium enrichment market is considerably different from the one that existed at the time the full-cost-recovery requirement for the U.S. program was established. Lower prospects for growth in the nuclear power industry coupled with foreign competition, the emergence of a secondary market for enriched uranium, and prices that were the highest in the world led to a steady deterioration of the program's competitive position. This environment is described in our December 11, 1985, statement.

To help curtail the continuing deterioration of its market share, DOE has taken a number of initiatives that have affected the repayment of the government's unrecovered enrichment costs. For example, in fiscal year 1984, DOE wrote off $1.2 billion of the remaining unrecovered government costs in the gaseous diffusion enrichment facilities. DOE estimated that this action lowered its enrichment price by about $10 per unit.

As indicated in our past reports and testimonies, some of DOE's initiatives to make the U.S. program competitive conflict with our interpretation of the cost recovery requirement stated in the enrichment program's governing statute--subsection 161(v) of the Atomic Energy Act of 1954, as amended. DOE maintains that the statute provides it discretion to determine which government enrichment costs should be recovered. Our position is that, absent a statute change, DOE does not have the flexibility to unilaterally exclude certain government costs--particularly capital investment costs--from its prices.

Because of the conflict between DOE's initiatives and our interpretation of the act, we have suggested that the executive branch and the Congress need to reevaluate the fundamental purpose and structure of the uranium enrichment program. Recent DOE decisions have intensified this need. For example, DOE decided not to include in its enrichment price, and thus not recover, the government's $2.8 billion in costs associated with the construction of the recently terminated gas centrifuge enrichment facility at Portsmouth, Ohio.

In preparing a criteria change, DOE states its belief that the existing criteria do not provide the basis to compete in today's marketplace. In essence, DOE's proposal represents its current view of the basic objectives of the enrichment program and how it should be structured to compete in today's enrichment market.

With this backdrop, let me briefly elaborate on our concerns with the criteria changes proposed by DOE.

APPROPRIATENESS OF USING A CRITERIA REVISION

In our view, legislation amending the Atomic Energy Act, rather than modification of the criteria, is the correct approach for effecting change in the uranium enrichment program of the scope embodied in DOE's proposed criteria. Moreover, we believe that aspects of the proposed criteria, which I will discuss in more detail in a moment, are in conflict with the program's governing statute.

The proposed criteria would, if implemented, result in a major redirection of the uranium enrichment program involving the writeoff of government assets and basic changes in DOE's approach for determining its costs and for negotiating enrichment services contract terms and prices. However, we are concerned that the process set out in the act for making criteria changes--submitting the changes to authorizing committees of the Congress for 45 days before they take effect--does not provide the Congress with a sufficient opportunity to review changes of this magnitude and explore alternatives to them.

In effect, this process requires the Congress to either accept DOE's proposed criteria modifications or to pass legislation prohibiting DOE from implementing them. Thus, for all practical purposes, DOE's use of a criteria revision to change basic program objectives serves to limit effective congressional participation in the reevaluation of the uranium enrichment program.

LEGALITY OF THE PROPOSED CRITERIA

There are three provisions in the proposed criteria that conflict with the statutory requirements governing the enrichment program. In addition, with respect to one other provision, we are concerned whether DOE can satisfy the requirements of the act. Pursuant to your request, we are providing a legal analysis of the proposed criteria which discusses these areas in detail.

First, the act requires DOE to recover the government's costs of providing enrichment services over a reasonable period of time. The proposed criteria, on the other hand, state that DOE

will collect and repay to the Treasury about $3.5 billion of what DOE estimates is $7.5 billion in unrecovered government costs as of the end of fiscal year 1985. The remaining $4 billion, which basically consists of the investment in the gas centrifuge project and most of the undepreciated portion of the gaseous diffusion plants, would not be recovered. As we advised you in our December 27, 1984, legal opinion, a criteria change by itself does not provide, in our view, sufficient legal grounds for not recovering government enrichment costs from customers.

Second, the proposal defines costs to be recovered through charges for enrichment services as "appropriate government costs to the extent they reasonably relate to providing enrichment services to civilian customers." This permits DOE to determine that some government enrichment costs are not appropriate for recovery. Thus, it is inconsistent with the full cost recovery requirement now embodied in the Atomic Energy Act.

Third, the act requires DOE to set out in written criteria the terms and conditions under which it will provide enrichment services. In establishing this requirement, congressional committee reports stated that the "general features of standard contracts for uranium enrichment services" were to be set forth in the criteria. DOE's proposed criteria, however, do not do this. Rather, it permits the department to tailor each contract to the customer's needs, which could, in effect, eliminate the standardization which Congress intended.

Finally, the act requires DOE to establish prices for domestic customers on a nondiscriminatory basis. In this regard,

DOE's proposed criteria state that it will not discriminate. However, the criteria also provides that DOE will negotiate prices and other contract terms and conditions with individual customers. Traditionally, one basic price has been available to all customers with the same contract type. Therefore, we have reservations whether the requirement of the act can be satisfied in practice if the criteria are implemented.

EFFECT ON CONGRESSIONAL OVERSIGHT

Over the years congressional oversight has been an important part of the uranium enrichment program. While DOE's proposed criteria, if implemented, would obviously not preclude congressional oversight, the proposal as written makes oversight difficult. The proposed criteria have been written in a manner that provide DOE maximum flexibility to operate the enrichment program, and they have few feedback provisions or accountability measures.

As I discussed earlier, for example, DOE would negotiate contract terms and prices on a customer-by-customer basis, prices would no longer be directly tied to recovery of the government's enrichment costs, and DOE would reserve to itself the prerogative of determining what government costs are appropriate for recovery through its prices.

Given this flexibility, benchmarks that have been useful in the past to monitor the program, such as a clear definition of what costs should be recovered, how prices will be determined, and the general approach to contract terms, would be removed.

Moreover, it is entirely possible that DOE would never again have to propose criteria changes and lay them before the Congress for review.

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In closing, Mr. Chairman, let me make several points. DOE's proposed criteria revision does serve a useful purpose in that it places in the public record DOE's objectives for the program, the flexibility it believes is needed to allow it to compete in the world marketplace, and a clear position on the amount of unrecovered government costs that it plans to recover from future program revenues. We have consistently stated that these issues need to be considered in any reevaluation of the uranium enrichment program.

As our testimony today states, we believe that program changes involving such a major redirection of the uranium enrichment program should be accomplished by legislative changes with criteria subsequently developed that flow logically from and are consistent with the legislation. In our testimony, we have highlighted areas where we believe the proposed criteria are in conflict with existing legislation and could possibly limit effective congressional oversight.

The criteria, of course, may be revised as DOE goes through its rulemaking process. Also, Congress may act based on concerns it has with the criteria. If DOE continues on its present course and completes its rulemaking process and allows the criteria as revised to lay before the Congress for 45 days, and if the Congress, having been made aware of DOE's criteria revisions and

our concerns, takes no action to require change of the criteria, it would be difficult for GAO to raise objections about future DOE actions that are consistent with the revised criteria, absent further legislative direction by the Congress.

Mr. Chairman, this concludes my prepared remarks. I will be happy to respond to any questions at this time.

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