The original documents are located in Box 58, folder "1976/04/05 - Senator Howard Baker" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

April 3, 1976

MEETING WITH SENATOR BAKER
Monday, April 5, 1976
12:15 p.m. (15 minutes)
The Oval Office

From: Jim Cannon

I. PURPOSE

To seek Senator Baker's active support for your uranium enrichment bill and make clear to him that his lack of support and delayed actions are jeopardizing both the expansion of uranium enrichment capacity and the creation of a private competitive industry.

II. BACKGROUND, PARTICIPANTS AND PRESS PLAN

A. Background: The Administration has provided all witnesses requested, answered all questions asked, and agreed to changes in legislation requested by the Joint Committee on Atominc Energy (JCAE). However, the JCAE has continued to delay action on the Nuclear Fuel Assurance Act you submitted on June 26, 1975.

In early March, Senator Pastore indicated he would have only one more day of hearings for industry witnesses and then would act on the bill before the end of March. The JCAE staff urged UEA to submit a written statement for those hearings rather than appear in person, presumably because of the emotion that has surrounded the UEA proposal.

Senator Baker appeared at the hearings, criticized the failure of UEA to appear in person and expressed his views that the Committee could not act without having testimony from UEA. The JCAE has since set Tuesday, April 6 for UEA testimony.

In short, Senator Baker's opposition and delaying tactics appear to be the principal cause of the

continuing delay. Your staff believes that the bill's chances in the committee are good if Baker were neutral and excellent if he were helpful.

Senator Baker has stated that he would not vote against your bill but neither would he actively support it. He has stated that he would support the bill if you made a firm commitment now to build a government add-on plant regardless of the fate of the private ventures. He has been unwilling to accept the Administration position that an add-on plant is a contingency measure -- to be built only if one or more of the private ventures do not succeed.

Your staff believes that a firm commitment to another government plant -- other than as a contingency measure -- would have the effect of killing the chances of achieving a private competitive uranium enrichment industry because:

- It would represent at least partial capitulation after a long period of Administration insistence (actually since 1970) that industry must have the opportunity to build the next increments of capacity.

- Both foreign and domestic customers would likely lose interest in dealing with private uranium enrichment suppliers if the government were again in the position to sign orders.

- The added uncertainty would almost certainly lead two of the four perspective private firms to withdraw.

Probably the main reason for Senator Baker's insistence on a commitment to another government add-on plant -- even if located at Portsmouth, Ohio -- is that OakRidge would continue to provide the intellectual leadership (R&D, design, etc.) for ERDA's enrichment enterprise. OakRidge would flourish even more if the private enterprise approach failed and future full-scale centrifuge plants were located there.

Even though Chairman Pastore has not been enthusiastic, our current assessment is that he would move to report the bill if Senator Baker would discontinue his opposition and delaying actions. We also believe that all other members of the Committee are likely to support the bill except Senator Case and Congressman Moss.

We have unconfirmed rumors that Senator Baker intends to use the hearings on Tuesday to grill UEA witnesses sharply, try to discourage UEA from continuing, and discourage other members from supporting the bill if UEA continues as a potential enrichment firm.

In view of the above, your advisers believe that Senator Baker must be strongly urged to stop opposing the bill and to drop any plans he has for forcing withdrawal of UEA.

B. Participants. Senator Baker.

C. Press Plan. White House Photographer.

III. TALKING POINTS

. We all agree that more uranium enrichment capacity is needed. The only question is who will finance and own the plants.

. I sent up legislation nearly ten months ago to permit industry to get involved. We have provided all the witnesses requested, answered all the questions asked, and agreed to changes in the bill to give the Congress a full opportunity to accept or reject individual contracts.

. The bill (Nuclear Fuel Assurance Act) can be passed by the Congress without committing to accept any particular contract. Each proposed contract -- including UEA -- will have to stand scrutiny by the JCAE and the Congress on its merits.

. Despite all this, we have had one delay after another.

- Howard, I understand, you will support this legislation only if we commit ourselves to build a Government add-on plant. We have looked at this from all angles and there simply isn't any sound economic or technical reason for building another government plant. We don't need to spend more government billions in this area. The time is here to make the move toward private industry.

- A commitment to another Government plant would weaken, if not destroy, the chances of getting industry involved.

- I committed ten months ago to continue efforts needed to permit building a Government-owned plant, but only if private ventures failed. I intend to keep that commitment. I do not intend to change the contingency plan into a firm commitment to build another government plant.

- I understand that you have a number of reasons for wanting more government plants, but I'm asking you to drop your opposition to the bill and to work with me to get this bill out of committee and to the floor.

TALKING POINTS FOR SENATOR BAKER

1. There cannot be an independent add-on. There is no economic or technical reason for the U.S. Government to spend $3 billion or more when private enterprise is ready to spend the money.

2. Agreement must be before Congress before June 21 if it is to be considered this year.

[redacted]

THE WHITE HOUSE
WASHINGTON

For your 12:15 today.

j

THE WHITE HOUSE

WASHINGTON

April 5, 1976

MEMORANDUM FOR: JIM CANNON
JIM CONNOR

FROM: GLENN SCHLEEDE

SUBJECT: Uranium Enrichment - Backup Materials for Meeting with Senator Baker

Just in case the issues should come up, there are attached for your information:

-- Tab A - The latest wording of the legislation agreed upon by the Administration

-- Tab B - Jim Lynn's letter to the Budget Committees which explain:

- The three-step Congressional approval process (NFAA, Appropriations Act, individual contracts).

- The OMB view that the $8 billion in contingent liability under the NFAA is not budget authority.

Attachments

TAB A

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

3/1/76

February 23, 1976

1 copy
file DE-PET

Honorable John O. Pastore, Chairman
Joint Committee on Atomic Energy

Dear Mr. Chairman:

During the course of the Joint Committee's recent hearings on the President's proposed Nuclear Fuel Assurance Act of 1975 (S.2035), you and other members of the Committee expressed concern that the proposed Act did not provide sufficient opportunity for Congressional oversight of cooperative agreements negotiated pursuant to the Act. You proposed that additional Congressional review and approval requirements be included in the Act which would be comparable to those provided for in the case of Agreements for Cooperation in Section 123(d) of the Atomic Energy Act, as amended.

Subsequently, ERDA staff met with JCAE staff to review language that would accomplish this objective. We understand that the proposed language would, in brief, provide that each unsigned cooperative arrangement be submitted for a 60-day period of Congressional consideration. The 60-day period would allow 30 days for JCAE review and recommendations to each House of Congress and also require action within an additional 30-day period by each House in the form of a concurrent resolution of approval or disapproval. A comparative draft of the original and the revised S.2035 showing the revisions is attached.

I am pleased to advise you that the amendments you proposed are acceptable. I would like to commend the JCAE staff for their constructive approach to the development of the revised language. They made an important contribution to the removal of the remaining obstacle to action on this bill which is of great importance to the Nation.

We are looking forward to favorable Committee action on the revised bill at the earliest possible date.

Sincerely,

S/
Robert C. Seamans, Jr.
Administrator

Attachment:
Revised Bill

COMPARATIVE DRAFT

S. 2035, REVISED

To authorize cooperative arrangements with private enterprise for the provision of facilities for the production and enrichment of uranium enriched in the isotope-235, to provide for authorization of contract authority therefor, to provide a procedure for prior congressional review and disapproval of proposed arrangements, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, J. 63-057 That this Act may be cited as the "Nuclear Fuel Assurance Act of 1975".

SEC. 2. Chapter 5 (production of special nuclear material) of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following section.

"SEC. 45. COOPERATIVE ARRANGEMENTS FOR PRIVATE PROJECTS TO PROVIDE URANIUM ENRICHMENT SERVICES.—

"a. The Administrator of Energy Research and Development ~~Administration~~ is authorized, subject to the prior congressional review procedure set forth in subsection b. of this section without regard to the provisions of section 169 of this Act, to enter into cooperative arrangements with any person or persons for such periods of time as the Administrator of ~~the Energy Research and Development Administration~~ may deem necessary or desirable for the purpose providing such Government

cooperation and assurances as the Administrator may deem appropriate and necessary to encourage the development of a competitive private uranium enrichment industry and to facilitate the design, construction, ownership, and operation by private enterprise of facilities for the production and enrichment of uranium enriched in the isotope-235 in such amounts as will contribute to the common defense and security and encourage development and utilization of atomic energy to the maximum extent consistent with the common defense and security and with the health and safety of the public; including, inter alia, in the discretion of the Administrator,

"(1) furnishing technical assistance, information, inventions and discoveries, enriching services, materials, and equipment on the basis of recovery of costs and appropriate royalties for the use thereof;

"(2) providing warranties for materials and equipment furnished;

"(3) providing facility performance assurances;

"(4) purchasing enriching services;

"(5) undertaking to acquire the assets or interest of such person, or any of such persons, in an enrichment facility, and to assume obligations and liabilities (including debt) of such person, or any of such persons, arising out of the design, construction, ownership, or operation for a defined period of such enrichment facility in the

event such person or persons cannot complete that enrichment facility or bring it into commercial operation: Provided, That any undertaking, pursuant to this subsection (5), to acquire equity or pay off debt, shall apply only to ~~individuals~~ investors or lenders who are citizens of the United States, or ~~to any~~ are a corporation or other entity organized for a common business purpose, which is owned or effectively controlled by citizens of the United States; and

"(6) determining to modify, complete, and operate that enrichment facility as a Government facility or to dispose of the facility at any time, as the interest of the Government may appear, subject to the other provisions of this Act.

"b. ~~Before the Administrator enters into any arrangement or amendment thereto under the authority of this section, or before the Administrator determines to modify, or complete and operate any facility or to dispose thereof, the basis for the proposed arrangement or amendment thereto which the Administrator proposes~~

to execute (including the name of the proposed participating person or persons with whom the arrangement is to be made; a general description of the proposed facility; the estimate amount of cost to be incurred by the participating person or persons; the incentives imposed by the agreement on the person or persons to complete the facility as planned and operate it successfully for a defined-period; and the general features of the proposed arrangement or amendment); or the plan for such modification, completion, operation, or disposal by the Administrator, as appropriate, 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) unless the Joint Committee by resolution in writing waives the conditions of, or all or any portion of, such forty five day period. Provided, however, That any such arrangement or amendment thereto, or such plan, shall be entered into in accordance with the basis for the arrangement or plan, as appropriate, submitted as provided herein".

"b. The Administrator shall not enter into any arrangement or amendment thereto under the authority of this section, modify, or complete and operate any facility or dispose thereof, until the proposed arrangement or amendment thereto which the Administrator proposes to execute, or the plan for such modification, completion, operation or disposal by the Administrator, as appropriate, has been submitted to the Joint Committee on Atomic Energy, and a period of sixty days has elapsed while Congress is in session without passage by the Congress of a concurrent resolution stating in substance that it does not favor such proposed arrangement or amendment or plan for such modification, completion, operation, or disposal (in computing such sixty days, there shall be excluded the days on which either House is not in session because of adjournment for more than three days).": Provided, That prior to the elapse of the first thirty days of any such sixty-day period the Joint Committee shall submit a report to the Congress of its views and recommendations respecting the proposed arrangement, amendment or plan and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed arrangement, amendment or plan. Any such concurrent

resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) within twenty-five days and shall be voted on within five calendar days thereafter, unless such House shall otherwise determine.

SEC. 3. The Administrator of ~~the~~ Energy Research and Development ~~Administration~~ is hereby authorized to enter into contracts for cooperative arrangements; without fiscal year limitation, pursuant to section 45 of the Atomic Energy Act of 1954, as amended, in an amount not to exceed in the aggregate $8,000,000,000 ~~as may be approved in an appropriation Act~~ but in no event to exceed the amount provided therefor in a prior appropriation Act: Provided, That the timing, interest rate, and other terms and conditions of any notes, bonds, or other similar obligations secured by any such arrangements shall be subject to the approval of the Administrator with the concurrence of the Secretary of the Treasury. In the event that liquidation of part or all of any financial obligations incurred under such cooperative arrangements should become necessary, the Administrator ~~of the Energy Research and Development Administration~~ is authorized to issue to the Secretary of the Treasury notes or other obligations up to the levels of contract authority approved in an appropriation Act pursuant to the first sentence of this section in such form and denomination, bearing such maturity and subject to such terms and conditions as may be prescribed by the Administrator with the

approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturity at the time of issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. There are authorized to be appropriated to the Administrator such sums as may be necessary to pay the principal and interest on the notes or obligations issued by him to the Secretary of the Treasury.

SEC. 4. The Administrator of the Energy Research and Development Administration is hereby authorized to initiate construction planning and design activities for expansion of an existing uranium enrichment facility. There is are hereby authorized to be appropriated such sums as may be necessary for this purpose.

TAB B

PY-5/1

MAR 5 - 1976

Honorable Edmund S. Muskie
United States Senate
Chairman, Committee on the Budget
Washington, D. C. 20510

Dear Mr. Chairman:

The Administration intends shortly to propose to the Congress additional FY 1976 appropriation language for the Energy Research and Development Administration to implement the pending Nuclear Fuel Assurance Act (the NFAA, H.R. 9401 and S. 2035). Action on this appropriation language is the second vital step in a three-step congressional review and approval process to make it possible for private industrial firms to finance, build, own and operate additional uranium enrichment plants needed by the Nation.

- The first step is enactment of the NFAA which provides ERDA a basis for proceeding with the negotiation of cooperative agreements with private firms that wish to build uranium enrichment plants. (Under the proposed NFAA, cooperative agreements could not be signed until steps 2 and 3 below are completed.)

- The second step is the passage of appropriation language which sets an upper limit on the U.S. Government's liabilities in the unlikely event that it were necessary for the Government to assume the domestic assets and liabilities of firms covered by cooperative agreements. The practical effect of this step is to provide a basis for private firms to obtain necessary debt financing in the commercial capital market. It would permit completion of negotiations between ERDA and private firms.

- The third step is the submission of unsigned cooperative agreements to the Congress for final review and approval.

When this three-step process is completed and cooperative agreements are signed a contingent liability would be assumed by the U.S. Government. This contingent liability could amount to $8 billion. Such an amount would cover the domestic portion (40%) of a large gaseous diffusion plant ($1.5 billion) and three smaller centrifuge plants ($3 billion) as well as provide for contingencies ($3.6 billion) including escalation.

I must emphasize that it is the Administration's firm expectation that none of this contingent liability would result in Federal expenditures for the assumption of private ventures because of the high degree of assurance discussed below, that commercial firms will be successful.

The purpose of this letter is to inform you of our plans and to explain why we do not consider the $8 billion contingent liability to be budget authority under provisions of the Congressional Budget Act of 1974. We want to be sure that your Budget Committee accepts this conclusion so that disagreements do not arise at a later date when they might slow up the Congressional approval of the appropriation language mandated by the NFAA.

By way of additional background, uranium enriching--a service essential to the production of nuclear fuel--is now a fully developed production activity carried out in the U.S. solely by ERDA. This large ERDA production activity could be capable of supplying enrichment services to as much as 329,000 MWe of nuclear generating capacity by the early 80's. This capacity, however, is now fully contracted to domestic and foreign utilities. The pending Nuclear Fuel Assurance Act and the proposed appropriation language are intended to assure that: (1) the next increments of uranium enrichment capacity will be built and operating when needed to supply the growing demand for fuel for nuclear powered electricity generating plants; (2) all future capacity increments will be built, financed and operated by private industry, thus ending the current Government monopoly and drain on the Federal Budget; (3) the Government will receive appropriate compensation for the use of its inventions and discoveries; and (4) all necessary domestic and international controls on nuclear materials and classified technologies will be maintained as they would be if the Government itself were to own the new plants.

The construction of new U.S. uranium enrichment plants required by the year 2000 is estimated to cost $30-50 billion (in 1976 dollars). If the Government had to build these plants, the capital costs of the new plants would by 1985 exceed revenues for these plants by about $9 billion (in 1976 dollars, i.e. escallation is not taken into consideration). Even the construction by the Government of only the next increment of new enrichment capacity would have a major budgetary impact for the next ten years.

In contrast, this financial burden would, under the President's proposal outlined above, be borne by the private sector which is ready and willing to do so. Ideally, industry would assume the entire responsibility for building succeeding increments of capacity. without even the limited assurances provided for in the President's Plan. However, it has not been possible for private firms to obtain the necessary debt financing for such ventures because of the special circumstances involving uranium enrichment which are not commonly faced in the business environments.

Specifically: (1) the very large size of an enrichment project; (2) the use of technologies that are classified; (3) regulatory uncertainties associated with a first of a kind venture; and (4) the current financial difficulties of some of the utilities that would be the customers for uranium enrichment services.

The limited cooperation and temporary assurances contemplated in the NFAA are designed specifically to overcome these obstacles and make the risk that is involved for potential lenders of debt money more nearly comparable with the risk associated with other investment opportunities available to them.

Under the President's proposal outlined above, the Federal Government would incur a contingent liability when a cooperative arrangement is entered into by ERDA pursuant to the Nuclear Fuel Assurance Act. The major Government contingent liability is based on the possible need to acquire the domestic assets and assume liabilities (including debt) of a private enrichment project in the unlikely event that the venture were unable to proceed (Section 2 of the proposed Nuclear Fuel Assurance Act). Again, it must be stressed that we do not expect any expenditure of funds for the assumption of assets and liabilities of a private uranium enrichment venture. We are confident in this view because the technology has been thoroughly demonstrated over the past 30 years and because of the oversight role ERDA will play with respect to these private enrichment firms.

Since it is unlikely that future outlays will be incurred, we believe that the $0 billion to be included in appropriation language should be treated as financial assurances and that the limitation on cooperative arrangements ($3 billion) made by ERDA pursuant to the Nuclear Fuel Assurance Act, should not be considered as new budget authority. We base this interpretation on Section 3(a)(2) and 401(c)(2) of the Congressional Budget Act of 1974 (P.L. 93-344).

Section 3(a)(2) of P.L. 93-344 states:

> "The term 'budget authority' means authority provided by law to enter into obligations which <u>will</u> result in immediate or future outlays involving Government funds...". (emphasis added).

Since the $3 billion to be included in appropriation language pursuant to the NFAA in all likelihood <u>will not</u> result in immediate or future outlays, we believe it does not conform to this definition of budget authority.

In the unlikely event that conditions were to arise in the future where it appeared that contingent liabilities would require liquidation, an appropriate amount of budget authority and outlays would be estimated

in the President's budget for that year. Specifically, the estimate of budget authority would be in the amount of the borrowing from the Treasury needed to cover the necessary liquidation. This is similar to other Federal Programs containing contingent liabilities assumed by the Federal Government (e.g., government insurance programs).

I suggest that it might be desirable for my staff to meet with yours to discuss further the Nuclear Fuel Assurance Act and the appropriations language mandated by the Act. This can be arranged through my office.

I would personally appreciate any comments you may have on this matter.

With best personal regards,

Sincerely yours,

(Signed) Jim

James T. Lynn
Director

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Official File - DO Records
Director's Chron
Director
Deputy Director
Mr. Mitchell
Mr. Loweth
Mr. Taft
Mr. Kearney
Rtn. Room 8002
Chron
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