



REPORT TO THE  
JOINT COMMITTEE  
ON ATOMIC ENERGY  
CONGRESS OF THE UNITED STATES



LM097066

Comments On Energy Research  
And Development Administration's  
Proposed Arrangement For The  
Clinch River Breeder Reactor  
Demonstration Plant Project

BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES

RED-75-361

APR 4 1975

702299

097066

**BLANK**



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

B-164105

CR  
The Honorable John Pastore, Chairman  
Joint Committee on Atomic Energy  
Congress of the United States

TNT 5-100

Dear Mr. Chairman:

This report is in response to your letter of March 14, 1975, asking us to evaluate certain proposed legislation submitted by the Energy Research and Development Administration on March 10, 1975, to the Joint Committee on Atomic Energy. This proposed legislation involves major revisions to the authorization for the Clinch River Breeder Reactor Demonstration (CRBR) plant project along with proposed changes to the existing underlying documents governing the project. 66

We reviewed the proposed legislation and underlying documents submitted to the Joint Committee. Our review focused on changes the Energy Research and Development Administration is proposing to the existing documents. We held discussions with Administration representatives knowledgeable of, and responsible for, preparing the proposed legislation and other documents. The major changes being proposed as well as the concerns we have are described in the enclosure.

Our major observations regarding the proposed legislation and underlying documents are:

--An additional criterion is being added to the arrangement to allow the utility participants to withdraw their support from the project if there is a disagreement over major changes in reference design and specifications. This could allow the utility participants to terminate their involvement over design changes which may be brought about by actions of the Nuclear Regulatory Commission. 67

--The Administration's intent is to assume responsibility for managing the project with a single, integrated Government-utility staffed organization. However, the various documents submitted to the Joint Committee do not clearly delineate the manner in which the project will be managed. Rather, they contain ambiguous and seemingly inconsistent language regarding respon-

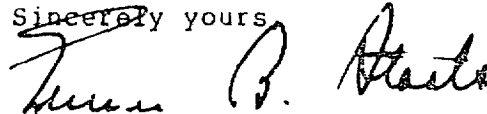
sibilities and management. Although Administration officials believe that the documents are clear, they told us that the documents will be revised to state that the Administration will manage the project.

--Administration officials believe that the Government's share of the total project cost is now authorized under Public Law 91-273 and that the proposed legislation would continue such authorization by virtue of one of the underlying documents lying before the Joint Committee for 45 days, as required by the basic enabling legislation. It is not clear to us that the legislative history authorizing this project supports this view. The Administration believes that the Government's share (\$1.468 billion) of the currently estimated total project cost (\$1.736 billion) is likewise fully authorized by virtue of one of the underlying documents lying before the Joint Committee for 45 days, as required by the basic authorizing legislation. However, the proposed legislation seeks spending authority for only 1 year (plus the 3 month transition period) and the authorization of appropriations as necessary for a 5-year operating period.

Because of time limitations, we did not obtain the Administration's formal comments on this report, but the contents were discussed with Administration representatives during our review and their comments were incorporated where appropriate.

We are sending a copy of this report today to the Vice Chairman of your Committee. We are also sending copies to the Administrator, Energy Research and Development Administration. We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,



Comptroller General  
of the United States

Enclosure

BEST DOCUMENT AVAILABLE

## C O N T E N T S

	<u>Page</u>
Introduction	1
Description of the documents submitted to the Joint Committee	2
Need for ERDA to establish clear management responsibility	4
Funding authorization requested by ERDA through the proposed changes	7
Additional termination criterion	8
Utility liability upon project termination	9
Payment of management fees to reactor manufacturers involved in the CRBR project	10
Access to records clause	11
Request for statutory exemptions	12
Other matters to be considered	14

## ABBREVIATIONS

AEC	Atomic Energy Commission
BRC	Breeder Reactor Corporation
CRBR	Clinch River Breeder Reactor
CE	Commonwealth Edison Company
ERDA	Energy Research and Development Administration
LMFBR	Liquid Metal Fast Breeder Reactor
PMC	Project Management Corporation
TVA	Tennessee Valley Authority

BEST DOCUMENT AVAILABLE

COMMENTS ON ENERGY RESEARCH AND  
DEVELOPMENT ADMINISTRATION'S PROPOSED  
ARRANGEMENT FOR THE CLINCH RIVER  
BREEDER REACTOR DEMONSTRATION PLANT PROJECT

INTRODUCTION

In a letter of March 14, 1975, the Chairman, Joint Committee on Atomic Energy, asked the General Accounting Office to evaluate certain proposed legislation submitted by the Energy Research and Development Administration (ERDA) on March 10, 1975, to the Joint Committee on Atomic Energy. This proposed legislation, with a bill analysis, involves major revisions to the authorization for the Clinch River Breeder Reactor Demonstration (CRBR) plant project along with proposed changes to the existing underlying documents governing the project. These underlying documents are: (1) amended statutory criteria for Fourth Round Arrangements under ERDA's Power Reactor Demonstration Program (Criteria) and (2) revised program justification data arrangement No. 72-106 (Justification Data).

In 1970 the Congress authorized (Public Law 91-273, as amended) the Atomic Energy Commission (AEC)--the predecessor agency to ERDA--to enter into cooperative arrangements with private industry to build and operate the CRBR project. On July 25, 1973, AEC entered into a four-party contract among AEC, the Tennessee Valley Authority (TVA), the Commonwealth Edison Company (CE), and the Project Management Corporation (PMC) to develop and demonstrate successfully a Liquid Metal Fast Breeder Reactor (LMFBR) by 1980. PMC was created in March 1972 to manage the project and administer the contracts for the design, construction, and operation of the plant. PMC is headed by a five-member board of directors: two from TVA, two from CE, and one from the Breeder Reactor Corporation (BRC), which was created at the same time to collect contributions from various electric utilities and to remit the collected funds to PMC to carry out the project.

AEC estimated that \$699 million would be required to design, construct, and operate the project, of which private project participants, primarily utilities, were expected to provide from \$274 to \$294 million, including \$20 to \$40 million from reactor manufacturers. AEC was authorized to contribute a total of about \$422 million, \$92 million of which was to be in direct financial assistance, \$10 million in special nuclear material, and \$320 million in development

---

<sup>1</sup> \$100 million has been authorized of which \$8 million was for the Project Definition Phase of the program.

work from AEC's ongoing LMFBR base program. Base program funds were limited to 50 percent of the then estimated capital cost of the plant. The direct assistance and base program funds were restricted as to what they could be used for. In general, they could not be used for end capital items for the plant.

ERDA's cost estimate for completing the CRBR project is now \$1.736 billion--an increase of more than \$1 billion. Because utility contributions were fixed, ERDA, by contract, accepted the open-end financial risks connected with the project and agreed to seek funds for any cost increase. Because of the large increase in the financial contribution needed from the Government, ERDA has proposed changes in the CRBR arrangement which would enable ERDA, instead of PMC, to direct and manage the project with a single, integrated Government-utility staffed organization.

Through the proposed legislation, amended Criteria, and revised Justification Data, ERDA is also seeking authorization for a single funding category to cover the research and development, engineering, design, construction, testing, and operation of the plant rather than the two funds--CRBR direct assistance funds and base program funds through which it has been participating in the project. The authorization requested would eliminate restrictions on the use of the two separate funds and provide ERDA the required means to support the project.

DESCRIPTION OF THE DOCUMENTS  
SUBMITTED TO THE JOINT COMMITTEE

Section 106(b) of Public Law 91-273, as amended, provides that, before ERDA enters into any arrangement or amendment thereto for participating in the research and development, design, construction, and operation of a liquid metal fast breeder reactor demonstration plant, ERDA must submit the basis for such an arrangement to the Joint Committee on Atomic Energy. The law further provides that the basis for such an arrangement must lie before the Joint Committee for 45 days while the Congress is in session, unless the Joint Committee waives the period. The arrangement and any amendments thereto, subsequently entered into, must be in accordance with that basis. On March 10, 1975, ERDA submitted to

1 "End capital items" are plant and equipment components or hardware items which have identifiable characteristics with a life of at least 1 year, are intended for use in accomplishing the purpose of the plant, and are generally capitalized over their useful life without contemplated disposal.

the Joint Committee the Justification Data, Criteria, and bill analysis to describe the proposed changes to the present arrangement.

With Joint Committee approval of the Justification Data, ERDA plans to modify the existing four-party contract to recognize ERDA's assumption of project management control. ERDA officials are presently negotiating with the other three parties--CE, TVA, and PMC--based on the terms of the proposed legislative revisions and subject to any changes made in those revisions. ERDA officials advised us that, and we agree, technically the Joint Committee does not have approval rights over modifications to the four-party contract. However, ERDA plans to work closely with the Joint Committee staff to insure that the modified contract is consistent with the Justification Data. ERDA plans to provide a copy of the modified contract to the Joint Committee after it has been executed.

#### Bill analysis

A bill analysis is a standard document accompanying any proposed legislation. In cases of disagreement over interpretation of legislation, it helps clarify the author's intent. As such, it is an important part of the history of any legislation.

One section of the analysis submitted by ERDA describes the prominent features of the revised management arrangements in the areas of (1) relationship and responsibilities of the parties, (2) financial aspects, and (3) protection of basic interest of the parties. According to ERDA officials, this section has been agreed to and approved by all the major parties involved in managing the project--ERDA, CE, TVA, PMC, and BRC. The parties are using this section as a basis for negotiating a modification to the current four-party contract.

#### Criteria

The Criteria, which is referred to in Public Law 91-273, describes the design requirements and objectives of the LMFBR program. It establishes the basic parameters of the relationship of ERDA to potential contractors and describes the anticipated degree of participation by ERDA, utility companies, and reactor manufacturers in the program. It provides the general framework from which ERDA develops the Justification Data.

The proposed Criteria and legislation include a section which permits ERDA to change the Criteria at any time it considers appropriate and in the best interests of the pro-



ject. ERDA officials said that this does not reflect any change in intent since similar wording is included in the existing criteria.

ERDA officials told us that technically they can change the Criteria without first obtaining Joint Committee approval. However, these officials told us that as a matter of practice they would not make any changes to the Criteria without first notifying the Joint Committee. These officials stated that, in any event, any significant changes in the Criteria would require a change in the Justification Data, which is required to be submitted in advance to the Joint Committee.

#### Justification Data

The Justification Data generally describes the arrangement for carrying out the CRBR project. This document includes the names of the participating parties, the general features of the proposed arrangement, a description of the proposed project, and the amount of the estimated cost to be incurred by ERDA and the participating parties. This document is the "basis for the arrangement" required under Section 106(b) of Public Law 91-273.

#### NEED FOR ERDA TO ESTABLISH CLEAR MANAGEMENT RESPONSIBILITY

In its letter dated March 10, 1975, to the Joint Committee ERDA stated that its proposed changes in project arrangements

"\* \* \* are necessary to clearly delineate the manner in which the Project will be managed in the future, in recognition of the major increase in governmental financial involvement and the need to establish a single-line, integrated project management organization."

In our opinion, the various documents submitted to the Joint Committee do not clearly delineate the manner in which the project will be managed, but rather contain ambiguous and seemingly inconsistent language regarding responsibilities and authorization for management.

Although the broad language proposed authorizes ERDA to enter into "such arrangements as it may deem appropriate" and thus permits ERDA to manage the project, the proposed revised authorization bill does not explicitly provide for management of the project by ERDA.

The Bill analysis states

"\* \* \* ERDA will have management responsibility for the Project commensurate with the large Government investment, but with due recognition of the meaningful participation and involvement of the manufacturing and utility industries through the making available to the Project of policy guidance, technical and management expertise, personnel, facilities and funds."

Other sections of the documents submitted to the Joint Committee indicate that PMC will continue to have a dominant role in project management. For example, the Justification Data states

"PMC will be authorized to manage the project, subject to assignment of management responsibility to ERDA as deemed appropriate by it (ERDA) commensurate with the degree of ERDA's financial participation and risk, and PMC's role will thereupon change from project manager to utility liaison and general project overview."

The bill analysis states in part that while ERDA would assume the responsibility of managing the Project, it would also

"\* \* \* under contract with PMC, obligate itself (1) to manage and carry out the Project in an efficient and effective manner consistent with Project objectives and (2) to design and build the plant substantially in conformance with the previously approved reference design and specifications."

In addition, the bill analysis states that PMC will administer the utilities' interests in the project, including "approving any proposed major changes in Project scope or deviation from the approved reference design or specifications." ERDA officials told us that the four-party contract will be modified to define major changes as any changes which could reasonably be expected to (1) increase or decrease the estimated project cost by \$25 million or more, (2) increase or decrease the current estimated project schedules by 1 year or more, or (3) otherwise specifically jeopardize the probability of achieving any of the principle project objectives.

The bill analysis and Justification Data state that ERDA could make major deviations to the approved reference design, but that PMC or the other parties (TVA, SRC, and CE) would be entitled to invoke the Project termination procedures solely because they did not agree with the deviation.

The bill analysis states, in part, that

"\* \* \* the present mechanism for reviewing disputed Project decisions would remain with the exception that ERDA would have final decisional authority in Project matters, provided that such decisions are consistent with Project objectives and the contractual rights and obligations of the parties, including the rights of PMC to approve any major change in Project scope or deviation from the reference design or specifications." (Underscoring supplied.)

Although the bill analysis explicitly gives ERDA "final decisional authority," it appears to limit ERDA's right to proceed with the Project work. We were told by an ERDA official that PMC's approval rights are intended to refer only to PMC's right to invoke termination procedures if a major deviation from the approved reference design or specifications is involved. However, since the proposed new termination criterion refers only to a design change and not to a major change in project scope, it appears from this language that ERDA's "final decisional authority" cannot be exercised to effect major changes without PMC approval and that under the threat of invoking termination procedures ERDA could be effectively precluded from proceeding with the project on the basis of a design change with which PMC disagreed. ERDA officials told us, however, that the modification to the four-party contract will explicitly provide that ERDA can proceed with the project work during the course of termination procedures. They also told us that the private participants have agreed to include this provision in the modified contract. In addition to having the right to approve major changes in the scope of the project and to invoke termination proceedings, PMC would also, pursuant to the Justification Data, have the right to "enter into project contract commitments as appropriate." In our view, the provisions regarding management responsibility, including PMC's right to enter into project contract commitments, in the bill analysis and Justification Data are inconsistent. Such inconsistencies suggest to us that ERDA will not be able to exercise the usual management prerogatives in the areas of design and other changes and that it may be subject to restraints in other management areas.

We discussed these inconsistencies with ERDA officials and they told us that, although they believe the documents are clear, ERDA will revise the documents to state that ERDA will manage the project. ERDA officials stated also that the revised four-party contract would clearly state that ERDA will manage the project.

FUNDING AUTHORIZATION  
REQUESTED BY ERDA THROUGH  
THE PROPOSED CHANGES

The proposed legislation, which will amend Section 106(a) of Public Law 91-273, provides the following authorization for the project:

" \* \* \* \$181,500,000 is hereby authorized to be appropriated to the ERDA for continuing the research and development, engineering, design, construction and testing of this demonstration power plant during FY 1976 and the Transition Period (July 1, 1976 - September 30, 1976), all of such sums, including those heretofore authorized, to be available for use in accordance with the hereinabove mentioned criteria as amended, together with such additional appropriations as may be necessary and sufficient for its operation for a period not to exceed 5 years."

In addition to this proposed legislation, an attachment to the Justification Data presents the current estimate of the Government's share (\$1.468 billion) of the total estimated project cost (\$1.736 billion).

ERDA officials expressed their belief that the Government's share of the total project cost is now authorized under Public Law 91-273 and that the proposed legislation would continue such authorization by virtue of the Justification Data lying before the Joint Committee for 45 days, unless the Joint Committee specifically disapproves this action. Thus, ERDA's position is that it was not before, and would not be in the future, required to seek authorization on an annual basis from the Joint Committee but that it could directly seek appropriations. ERDA officials told us that the intent of the proposed legislation is to allocate an amount from the total project funding authorization needed for fiscal year 1976 plus the 3-month transition period.

It is not clear to us that the Government's share of the total project cost is now or will continue to be authorized by virtue of the Justification Data lying before the Joint Committee for 45 days, unless rejected. The history of the legislation authorizing the project does not, in our view, clearly support the conclusion that ERDA's total project cost can be authorized in this manner. We believe it important to point out, however, that ERDA believes it now has and will continue to have authorization for the total Government cost of project participation, even

though the proposed revision to the legislation does not include this amount.

In our view the Joint Committee should clarify (1) whether pursuant to section 106(b) of Public Law 91-273, as amended, ERDA can obtain authorization for the total estimated cost of the project by virtue of the Justification Data lying before the Joint Committee for 45 days and (2) whether the proposed legislation would authorize appropriations for fiscal year 1976 and the transition period or rather allocate for that period sums already authorized.

According to ERDA officials, the language in the bill for authorizing appropriations as necessary for a 5-year demonstration period was included to be consistent with the manner in which the project was originally authorized and to provide a clear indication to the Congress and the utility participants that it is intended that the plant operate once it is built and that funds could be anticipated to be appropriated in the future for such purpose. ERDA officials believe that without this indication the utility participants not only could but might very well, invoke the termination procedures and end their involvement in the project.

#### ADDITIONAL TERMINATION CRITERION

The existing four-party contract permits the project participants to begin termination proceedings if one or more of specified termination criteria are met. A provision in the proposed Justification Data would add another termination criterion, which is a failure by the project participants to agree on significant changes in the currently approved reference design. According to ERDA officials, this criterion is being added because the utility participants want to insure that the project will either be built in accordance with the current design or have an option to withdraw.

In this regard, a currently unresolved issue is whether the CRBR is designed so that it can acceptably accommodate the consequences of a core disruptive accident. The Nuclear Regulatory Commission believes that such an accident, although unlikely, is within the realm of possibility and should be provided for in the design of the CRBR. Accommodation of a core disruptive accident, according to the Nuclear Regulatory Commission, may necessitate additional features, such as a

core catcher<sup>1</sup> The current reference design does not have a provision for a core catcher. ERDA has started work on an alternate CRBR design which includes a core catcher in the event that ongoing research and development fails to show that a core catcher is not needed.

There are very strong indications that the utility participants are opposed to including a core catcher in the CRBR design. If Nuclear Regulatory Commission rulings bring about a requirement for a core catcher to be added to the CRBR design, the proposed additional termination criterion would permit the utility companies to begin termination proceedings.

ERDA officials told us that if a core catcher must be added to the CRBR it would not necessarily render the LMFBR concept uneconomical. However, ERDA is proposing to permit the private project participants the option to begin termination proceedings if there is a major deviation in project design, which the core catcher would be. Termination of utility participation in the CRBR would lead to termination of the four-party contract. ERDA could continue with the project without the utilities. However, if ERDA did not, the viability of the LMFBR concept would not be demonstrated in this country. The possible consequences of a decision by the Nuclear Regulatory Commission that could make a core catcher necessary could place tremendous pressure on this regulatory agency in arriving at a decision.

Moreover, the basis for permitting termination of private participation in the project, with its potential consequences, for a design change that (1) is brought about by a decision of the Nuclear Regulatory Commission over which ERDA, of course, has no control and (2) would make the CRBR plant licenseable--which is a major objective of the CRBR project--is unclear to us. It may be desirable for the Joint Committee to pursue with ERDA the need for this additional termination criterion.

#### UTILITY LIABILITY UPON PROJECT TERMINATION

The utilities' total pledges of more than \$250 million are to be collected and remitted for project use in 10 annual \$25 million installments.

<sup>1</sup>A core catcher is a device located below or within the reactor vessel which, in the event of a core disruptive accident, will spread out the core debris. This would prevent material from reforming into a mass capable of a chain reaction and prevent core residue from melting through the bottom of the reactor.

Under the current Justification Data, if the project terminates, the utilities would pay 50 percent of the obligations incurred on the project up to the limit of the utilities' total pledges. Consequently, if the project terminated in 1976, for example, the utility pledges to be collected in 1977 and later could have been collected and used to pay project obligations up to and including termination. Also, utility pledges could be used as collateral for project loans.

Under the proposed Justification Data, only those utility pledges collected and due in the year the project terminates would be used to pay project obligations. In addition, utility pledges would not be available for use as collateral for project loans.

According to ERDA officials, these proposed changes are viewed by ERDA and the private participants in the project as necessary revisions to reflect the proposed management structure.

PAYMENT OF MANAGEMENT FEES TO  
REACTOR MANUFACTURERS INVOLVED  
IN THE CRBR PROJECT

Three reactor manufacturers are involved in the CRBR project. Westinghouse Electric Corporation is the lead reactor manufacturer and General Electric Corporation and Atomic International--a division of Rockwell International--are subcontractors to Westinghouse. Under the current arrangements, management fees (profit) can be paid to all three CRBR reactor manufacturers for work financed under the base program or by utility contributions. However, management fees cannot be paid to the lead reactor manufacturer out of the \$92 million in direct assistance funds. ERDA officials told us that the reason for this is twofold:

- AEC traditionally had not paid fees to reactor manufacturers in cooperative demonstration programs.

- AEC had anticipated, under the existing Criteria, awarding a contract to one reactor manufacturer who would have overall management responsibility for the CRBR project. That manufacturer would have a decided advantage over the remainder of the nuclear industry. AEC concluded, then, that the selected reactor manufacturer should not be entitled to a fee over and above the benefit he would receive by virtue of his participation in the program.

ERDA now proposes, through a change in the Criteria, to pay the CRBR reactor manufacturers appropriate management fees for all work performed for the project. ERDA contends that a fee is now defensible because the situation anticipated by the original Criteria did not materialize. An exclusive cooperative management relationship with a single reactor manufacturer was not realized and a general involvement of the three major reactor manufacturers in the CRBR project has evolved. As such, ERDA officials believe that it would be unrealistic and unreasonable to expect these manufacturers to commit themselves to such an extensive program simply for reimbursement of costs.

Payment of fees for work  
already performed

The proposed Criteria, says ERDA, would give ERDA the authority to negotiate and pay fees for work already performed. The ERDA officials said that they do not intend to pay fees to the lead reactor manufacturer but do intend to pay fees to the two major program subcontractors for work already performed. ERDA has already negotiated fees with the two major subcontractors, assuming affirmative action of the Joint Committee on the proposed legislation and other documents.

ERDA officials said that the lead reactor manufacturer, by virtue of its lead management role, probably has benefited more from the past arrangement than the subcontractors and therefore should not be entitled to a fee for work already performed. We pointed out to ERDA officials that the lead reactor manufacturer will continue in a lead management role in the future. ERDA officials said that they recognized this and indicated that any future negotiated fixed fees with the lead reactor manufacturer would be negotiated so as to reflect their degree of benefit.

ACCESS TO RECORDS CLAUSE

The PMC contracts with Westinghouse as lead reactor manufacturer and Burns & Roe as architect-engineer stipulate that the Comptroller General (or his duly authorized representative) shall have access to the pertinent records of Westinghouse and Burns & Roe. Moreover, the original contracts required both Westinghouse and Burns & Roe to insert in their subcontracts a Comptroller General examination of records clause. However, in late March 1975, the Westinghouse and Burns & Roe contracts were amended by PMC to delete the requirement for a Comptroller General access clause. ERDA explained that this was done because General Electric--a prospective subcontractor to Burns & Roe--refused to include this access to records clause in any contract it executes.



with Burns & Roe. There is no statutory requirement to include an examination of records clause in a second-tier subcontract such as the one between Burns & Roe and General Electric.

In August 1974, a letter of intent to purchase a turbine generator was signed by PMC and General Electric. On March 31, 1975, Burns & Roe awarded a fixed-price contract to General Electric, as a second-tier subcontractor, for a turbine generator for the CRBR. This contract did not contain clauses permitting either ERDA or the Comptroller General access to General Electric's records.

According to ERDA officials, there are only two contractors in the United States which have the capability to supply the turbine generator, and both submitted offers which were negotiated to an acceptable price. Also, according to ERDA officials, commercial components of both contractors refused to include access to records clauses in their contracts. Accordingly, there will be no opportunity for determining, on the basis of contractor records, whether the most reasonable price was negotiated.

#### REQUEST FOR STATUTORY EXEMPTIONS

The proposed legislation would authorize ERDA "to utilize personnel, facilities and funds" of reactor manufacturers, utilities, and others "without regard to any contrary provisions of law." ERDA officials told us that this provision is designed in part to permit industry and Government personnel to work together in a single, integrated management organization without regard to existing legal restrictions on the Government's use of contractor personnel.

ERDA officials told us that they expect this single, integrated organization to have a staff of about 100 people. No restrictions or limitations have been established in any of the documents submitted to the Joint Committee on the number of staff of this organization that could be affiliated with the utilities. The bill analysis indicates that the three-member project steering committee (consisting of a representative from CE, TVA, and ERDA) will have the right to identify key positions in this integrated organization for individuals from MC. The documents submitted to the Joint Committee do not specify how disagreements would be resolved among the project steering committee members on this right. Also, these documents are silent as to the affiliation of the head of this organization.

ERDA's Director of Reactor Research told us that the individual heading up the project organization could be an

ERDA employee. He also told us that, if there are any disagreements, ERDA intends to make all final decisions regarding key positions in the organization and that non-Government individuals would be used in various parts of the integrated organization. Personnel from the utilities, he said, are expected to be in the policy decision chain only in those areas relating to the non-nuclear portion of the plant.

With respect to ERDA's request to utilize the funds and facilities of reactor manufacturers, utilities, and others without regard to any contrary provisions of law, an ERDA official told us that it is ERDA's intent to obtain, through this revised section of the authorization, the flexibility to use funds and facilities contributed by the private sector in any manner it considers in the best interest of the Project.

Under 5 U.S.C. 2105(a), as that section has been interpreted by GAO and the courts, contractual arrangements pursuant to which non-Government personnel performing Governmental functions are subject to supervision of Federal employees are regarded as creating an employer-employee relationship regardless of the actual intent of the parties. Therefore, to the extent that industry personnel would be directly supervised by ERDA employees under the proposed integrated organization, such personnel would be regarded as temporary Government employees. As such, in the absence of the proposed statutory exemption, they would be subject to a wide range of personnel laws dealing with such areas as appointment, classification, promotion, leave, travel, non-discrimination, and conflict of interest. Even if ERDA is able to establish the integrated management team in such a way so that the industry personnel are regarded as independent contractors rather than as Government employees, the proposed statutory language would still exempt the arrangement from laws pertaining to public contracts (e.g., minimum health and safety standards, non-discrimination, etc.) that would otherwise be applicable.

We are concerned over the broad language of the proposed legislation. ERDA has not explained why it would be desirable to have a blanket exemption from all personnel laws, as opposed to certain specified ones, or from all laws applicable to ERDA contracts. On the basis of ERDA's explanation of its intentions regarding the integrated organization it does not appear to us that an all-encompassing exemption from existing statutory requirements is warranted. We believe ERDA should be required to include in its supporting documents a clear statement of its plans with respect to this matter together with the specific legislative exemptions deemed necessary by ERDA to enter into the proposed revised arrangement.

Furthermore, we believe that clarification is needed as to the affiliation of the head of the proposed integrated organization and as to the rights of both ERDA and this head to control and staff this organization.

OTHER MATTERS TO BE  
CONSIDERED

The proposed Justification Data does not clearly identify the basis for determining

- the price that TVA will pay for the energy produced by the CRBR plant during the demonstration phase,
- the value of the CRBR plant which TVA will have an option to buy from ERDA after the demonstration period is over,
- the procedures for resolving disagreements among the four parties, and
- the rights of ERDA to inspect contractor records during the demonstration-operation phase of the project.

ERDA officials told us that those provisions of the four-party contract which specify the basis for determining the above items will not be changed as a result of the modifications to the four-party contract.

BEST DOCUMENT AVAILABLE