



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

OFFICE OF GENERAL COUNSEL

B-207463

October 30, 1985

The Honorable John S. Herrington
The Secretary of Energy

Dear Mr. Secretary:

We have received a request from Chairman Edward J. Markey, Subcommittee on Energy Conservation and Power, House Committee on Energy and Commerce, on a number of issues relating to the Department of Energy's (Energy) uranium enrichment program. We would appreciate receiving the Department's views on these matters.

First, it is our understanding that as of June 1985 Energy has decided (1) not to use any portion of the gas centrifuge enrichment plant (GCEP) that had been under construction at Portsmouth, Ohio, but had not been placed in operation, and (2) to take the gaseous diffusion plant at Oak Ridge, Tennessee, out of operation and place it on standby only. The Subcommittee is concerned that Energy may not recover in the price charged for uranium enrichment services the Government's investment in GCEP and the Government's undepreciated investment in the Oak Ridge facility. As you know, subsection 161(v) of the Atomic Energy Act, as amended, 42 U.S.C. § 2201(v), requires Energy to price its uranium enrichment services so as to recover over a reasonable period of time the costs to the Government of providing enrichment services. In addition, GAO's legal decision of December 27, 1984 (B-207463), concluded that Energy's writing-off of \$1.2 billion of the Government's investment in the gaseous diffusion plants without including the amount of this cost in the formula for computing the 1985 unit price and future prices violated the cost recovery requirements of 42 U.S.C. § 2201(v). Accordingly,

1. How much money, including (but separately listing) interest costs to the Government, has been invested in the incomplete GCEP facility? How much investment, including CIP and CUP improvements, remains undepreciated in the Oak Ridge facility? Please explain how these two figures were derived. In addition, is the latter figure affected by the \$1.2 billion write-off of undepreciated, unused production capacity, whose exclusion from the costs included in the uranium enrichment pricing formula was challenged in GAO's December 27, 1984 decision?

2. What impact would Energy's plans/actions mentioned above with respect to GCEP and/or its Oak Ridge facility have on Energy's pricing for uranium enrichment services? For example, how does Energy plan to treat these plans/actions with respect to its pricing of uranium enrichment services now and in the future? Does the \$125/SWU price planned for 1986 recover any portion of the investment in GCEP or any portion of the remaining undepreciated investment in the Oak Ridge facility? If so, how much?
3. In our report entitled "Information on Repayment of the Government's Uranium Enrichment Program Costs and Audits of That Program's Financial Statements" (GAO/RCED-84-190), dated August 10, 1984, we reported that as of September 30, 1983, there was about \$6 billion in unrecovered Government costs in this program. In 1984, Energy wrote-off \$1.2 billion of this unrecovered cost. If Energy implements its June 1985 Business Strategy for this program, it may write-off \$3.5 billion of the Government's investment in GCEP. What is Energy's legal basis for demonstrating that it has recovered the Government's costs as required by subsection 161(v) of the Atomic Energy Act, as amended, 42 U.S.C. § 2201(v), when nearly \$5 billion (\$1.2 plus \$3.5 billion) of the \$6 billion in unrecovered costs may not be included in current and future enrichment prices? In addition, do not write-offs constitute program losses, which are in conflict with the program's statutory cost recovery requirement?
4. If Energy does not intend to recover through the price of enrichment services the investment in GCEP or its undepreciated investment in the Oak Ridge facility, please provide any legal bases Energy may have for such position(s) that might distinguish the GCEP and/or Oak Ridge situations from the write-off of \$1.2 billion in undepreciated, unused production capacity not included in Energy's prices in view of the cost recovery requirement of 42 U.S.C. § 2201(v) and GAO's December 22, 1984 decision.
5. What impact would Energy's plans with respect to GCEP and/or its Oak Ridge facility have on any anticipated repayments by Energy to the Treasury that may be required in the future for the uranium enrichment program? Include in your response any resulting difference in dollar amounts in anticipated repayments to the Treasury.

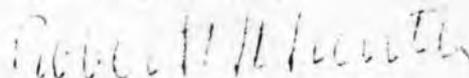
6. Please identify and explain the development of the total amount of outstanding Government investment in the uranium enrichment program.

Secondly, Energy has recently amended its Utility Services Contract to permit utilities to purchase 30 percent of contracted needs at an incentive price of \$90/SWU.

1. In light of existing law, the Amended Order (dated September 19, 1985) of the U.S. District Court of Colorado in Western Nuclear, Inc. v. Huffman (Civil Action No. 84-C-2315), and GAO's decision of December 27, 1984 (B-207463), what administrative procedures did Energy follow before entering into these amendments? If Energy did not amend the uranium enrichment services criteria to provide for a two-tier pricing system or did not comply with the procedures of the Administrative Procedure Act, please provide any legal bases that would distinguish this situation from the issuing of the Utility Services Contract in the first place.
2. As you know, Energy is required by subsection 161(v) of the Atomic Energy Act, as amended, 42 U.S.C. § 2201(v), to recover the costs to the Government for the uranium enrichment program through the prices charged enrichment customers, but may not make a profit. If \$135/SWU was in fact the price at which both these objectives were satisfied, please explain how these statutory requirements will be satisfied with the \$90/SWU incentive price program recently incorporated into contracts.

In view of the congressional interest in these issues, we would appreciate a response as soon as possible and at least by November 15, 1985. A copy of GAO's December 27, 1984, opinion is enclosed for your convenience. Any questions may be addressed to Richard Springer (275-5544) of this Office, and please advise him of the name and telephone number of your contact in the Department on this matter.

Sincerely yours,



Robert H. Hunter
Assistant General Counsel

Enclosure