

**Statement of  
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**Before the**

**Committee on Oversight and Government Reform  
Subcommittee on the Interior  
United States House of Representatives**

**The Department of Energy's Uranium Transfers**

**April 22, 2015**

Thank you Chairman Lummis, Ranking Member Lawrence, and members of the Committee; I appreciate the opportunity to be here today to discuss the Department of Energy's (DOE) transfers of uranium, the majority of which are used for accelerated cleanup of DOE sites and the down-blending of highly-enriched uranium.

**DOE Uranium Transfers**

The Department holds inventories of uranium in various forms and qualities, including highly enriched uranium (HEU), low-enriched uranium (LEU), natural uranium (NU), and depleted uranium that are currently held as excess and not dedicated to national security missions. The Department's uranium comes from various sources including governmental weapons programs, from its own former enrichment activities, and from inventories of Russian-origin natural uranium it was directed by Congress to purchase.

Among the chief uses of the excess uranium in recent years, DOE barter excess uranium to fund work under two crucial DOE programs: the environmental clean-up of the gaseous diffusion plant ("GDP") at Portsmouth, Ohio and the down-blending of HEU to eliminate excess weapon-grade HEU, which occurs at Erwin, Tennessee. For each program, DOE transfers uranium from its inventory in exchange for services provided by a contractor—Fluor-B&W Portsmouth ("FBP") for cleanup services at Portsmouth and WesDyne for down-blending of HEU.

USEC Inc. (USEC)—now known as Centrus Energy Corp.—the lessee of the DOE GDP at Portsmouth, Ohio, ceased enrichment operations at Portsmouth in 2001 and initiated the process to return the facilities to DOE. The Department, however, was unable to accept the return of that GDP and contracted with USEC for it to place the facility in cold standby status and provide surveillance and maintenance ("S&M") until the Department could accept return of

the facility. In 2009, in anticipation of awarding the decontamination and decommissioning (D&D) contract, DOE modified USEC's S&M contract to include accelerated cleanup services in exchange for uranium. In 2011, DOE entered into a contract with FBP to cleanup environmental contamination at Portsmouth. Since the D&D contract was awarded to FBP, DOE has been making quarterly transfers of uranium in exchange for a portion of the services provided under the D&D contract.

NNSA down-blends HEU that is no longer needed for national security to LEU, which effectively transforms possibly weapons-usable HEU into LEU that is suitable for use in civilian nuclear power reactors. NNSA contracts with WesDyne to perform the down-blending work. In exchange for these services, DOE transfers a certain amount of the resulting LEU to the contractor. That program, which began with an initial contract in 2008, continues today.

### **DOE's Statutory Authority and Requirements for Uranium Sales and Transfers**

DOE manages its excess uranium inventory in accordance with the Atomic Energy Act of 1954 (42 U.S.C. § 2011 et seq., "AEA") and other applicable laws. Specifically, Title I, Chapters 6–7 and 14, of the AEA authorize DOE to transfer special nuclear material and source material. Low-enriched uranium (LEU) and natural uranium are types of special nuclear material and source material, respectively.

The USEC Privatization Act (Pub. L. 104-134, 42 U.S.C. § 2297h et seq.) places certain limitations on DOE's authority to transfer uranium from its excess uranium inventory. Specifically, under section 3112(d) of the USEC Privatization Act (42 U.S.C. § 2297h-10(d)), DOE may not make certain transfers of natural or low-enriched uranium until:

- 1) The President determines that the material is not necessary for national security needs,
- 2) The Secretary determines that the sale of the material will not have an adverse material impact on the domestic uranium mining, conversion, or enrichment industry, taking into account the sales of uranium under the Russian HEU Agreement and the Suspension Agreement, and
- 3) The price paid to the Secretary will not be less than the fair market value of the material.

42 U.S.C. § 2297h-10(d)(2)(B).

The validity of any determination under this section is limited to no more than two calendar years subsequent to the determination. See Section 306(a) of Division D, Title III of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235).

### **2013 Uranium Management Plan**

In March 2008, the Energy Secretary issued a Policy Statement outlining a framework within which DOE intended to make decisions concerning use and disposition of its excess uranium

inventory. The Policy Statement observed that DOE's excess uranium inventory "is a valuable commodity both in terms of monetary value and the role it could play in achieving vital Departmental missions and maintaining a healthy domestic nuclear infrastructure," and it laid out certain principles for managing the inventory prudently to achieve those values. One of those principles was the notion that the Department would, "[t]o the extent practicable . . . manage its excess uranium inventories in a manner that is consistent with and supportive of the maintenance of a strong domestic nuclear industry." The Policy Statement further stated that "as a general matter, the introduction into the domestic market of uranium from Departmental inventories in amounts that do not exceed ten percent of the total annual fuel requirements of all licensed nuclear power plants should not have an adverse material impact on the domestic uranium industry."

Based on this Policy Statement, in December 2008 DOE released its Excess Uranium Inventory Management Plan providing a comprehensive inventory of its excess uranium and details about DOE's preliminary plans for future management of its excess uranium inventory ("2008 Plan").

The 2008 Plan contemplated transfers of LEU for DOE's HEU down-blending program, sale of portions of its Russian-origin UF<sub>6</sub> inventory or enrichment of the material for addition to DOE's inventory as LEU, sale of its off-specification non-UF<sub>6</sub> natural uranium inventory, and the potential sale of higher assay portions of its depleted uranium inventory. DOE noted that it planned to update the 2008 Plan periodically to reflect new and evolving information, policies and programs.

In July 2013, the Secretary issued a revised Excess Uranium Inventory Management Plan ("2013 Plan"), based on an updated inventory of the Department's uranium as of December 31, 2012. The 2013 Plan identified DOE uranium inventories that had entered the market since the 2008 Plan and transactions that were ongoing or being considered by DOE through 2018. The 2013 Plan went on to state that the May 2012 Determination "effectively sets forth uranium transfers being considered during the time span of this Plan." The May 2012 Determination covered transfers of 2,400 metric tonnes of natural uranium for clean-up services at Portsmouth and LEU equivalent to 400 metric tonnes of natural uranium for down-blending.

The 2013 Plan reaffirmed the Department's goals of maintaining sufficient inventories to meet DOE needs, transacting "in a transparent and competitive manner," and managing inventories in a manner "consistent with and supportive of the maintenance of a strong domestic uranium industry." The 2013 Plan also announced that DOE could achieve these goals without use of the ten percent guideline established in the 2008 Policy and Plan.

### **2014 Secretarial Determination**

On May 15, 2014, the Secretary determined that sales or transfers of a total of 2,705 metric tonnes uranium per calendar year would not have an adverse material impact on the domestic

uranium mining, conversion, or enrichment industry (“2014 Secretarial Determination”). To inform the May 2014 Secretarial Determination—as it had for a number of previous determinations—DOE contracted Energy Resources International, Inc. (ERI), a uranium market consultancy, with assessing the potential effects on the domestic uranium mining, conversion, and enrichment industries from DOE’s proposed volume of uranium transfers. In addition to its review and consideration of the report prepared by ERI (2014 ERI Report), DOE held in-person meetings and accepted written communications regarding the transfers from several entities that expressed an interest in DOE’s proposed uranium transactions. This input included substantive feedback on the report ERI had prepared to inform the 2012 determination. DOE staff in the Office of Nuclear Energy (“NE”) then prepared a separate analysis based on these and other inputs and recommended a course of action to the Secretary.

The NE analysis and the 2014 ERI Report were submitted to the Secretary for his review under a Memorandum to the Secretary, presenting the matter for his consideration. After reviewing this information and recommendations, the Secretary signed the 2014 Secretarial Determination.

### **Ongoing Activities**

DOE currently plans to issue a new Secretarial Determination covering continued transfers of uranium for cleanup services at the Portsmouth GDP and for down-blending of HEU to LEU. As a preparatory step, DOE sought information from the public through a Request for Information (RFI) published in the Federal Register on December 8, 2014. In that RFI, DOE sought comment from the public about the effects of continued uranium transfers on the domestic uranium industries and recommendations about factors it should consider in assessing whether a given set of transfers would have an adverse material impact on the domestic uranium industries.

DOE also contracted ERI with preparing an additional analysis of DOE transfers (“2015 ERI Report”). On March 18, 2015, DOE issued a Notice of Issues for Public Comment (NIPC) announcing the availability for public review the comments received from the public in response to the RFI and the 2015 ERI Report. The comment period for the NIPC closed on April 6, 2015. DOE received a number of submissions, and the Department is currently evaluating the comments received.

### **Conclusion**

Because departmental staff are still reviewing comments and preparing recommendations for the Secretary, I will be unable to comment today on issues that are presently being addressed in our pending proceedings. However, I can speak to how DOE exercises its statutory authority or the process we have recently undertaken to solicit public comment.

In conclusion, Madam Chairman, I would like to emphasize that DOE is committed to managing its uranium inventories in compliance with all statutory requirements and in a manner that is

consistent with and supportive of the maintenance of a healthy domestic nuclear industry, while performing its important missions.

## John F. Kotek

### Biography

John Kotek was appointed in January 2015 to the position of Principal Deputy Assistant Secretary for the Office of Nuclear Energy. The Office is responsible for conducting research on current and future nuclear energy systems, maintaining the government's nuclear energy research infrastructure, establishing a path forward for the nation's spent nuclear fuel and high-level nuclear waste management program, and a host of other national priorities.

Prior to his appointment as Principal Deputy Assistant Secretary, John was the Managing Partner of the Boise office of Gallatin Public Affairs, a public affairs and strategic communications consulting company. John advised energy, natural resources and other clients facing complex communication and government relations challenges.

From 2010-2012, John served as Staff Director to the Blue Ribbon Commission on America's Nuclear Future, which recommended a new strategy for managing nuclear waste in the United States. John led the development of the Commission's final report to the Secretary of Energy, engaged in regular communications with Congressional and White House staff, and served as media spokesperson.

From 2003-2006, John was Deputy Manager of the U.S. Department of Energy's (DOE's) Idaho Operations Office. In that role he was responsible for development and management of the Idaho National Laboratory contract and interface with the INL cleanup effort.

Before joining DOE in July 2003, John worked for Argonne National Laboratory as the Generation IV and Nuclear-Hydrogen Programs Manager. He directed Argonne's participation in the *Generation IV* technology roadmapping project, an international effort focused on evaluating and developing the next-generation of nuclear energy systems.

In 2002, John was the American Nuclear Society's Glenn T. Seaborg Congressional Fellow. John served in the Office of Senator Jeff Bingaman (D-NM), Chairman of the Senate Energy and Natural Resources Committee.

John started his career with DOE's Office of Nuclear Energy, Science and Technology. He held several positions during his nine years with DOE-NE, including Associate Director for Technology, Associate Director for Management and Administration, and Chief of Staff.

John holds a Bachelor of Science in Nuclear Engineering from the University of Illinois and a Master of Business Administration from the University of Maryland. He lives in Boise, Idaho with his wife Denise and their three children.