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STATEMENT OF WILLIAM PAUL GORANSON
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ON

THE NUCLEAR ENERGY INNOVATION AND MODERNIZATION ACT (S. 512)

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

MARCH 8, 2017

My name is William Paul Goranson, and I am the Executive Vice President of ISR Operations for Energy Fuels Resources (USA) Inc., with offices in Casper, Wyoming. On behalf of Energy Fuels Resources (USA) Inc. and the Uranium Producers of America (UPA), I am pleased to offer testimony in support of the Nuclear Energy Innovation and Modernization Act, S. 512. We greatly appreciate the leadership of Chairman John Barrasso and Senators Sheldon Whitehouse, Jim Inhofe, Cory Booker, Mike Crapo, Deb Fischer, Shelly Moore Capito, and Joe Manchin for introducing this important legislation. While we support many aspects of this bill, including nuclear industry innovation and advancement, we want to call attention to provisions in Title 3 that are particularly important to the uranium mining and conversion industries. It is imperative that the United States maintain a domestic uranium industry for national security reasons, and the actions of the federal government must encourage the industry and not undermine it. Without a viable long-term domestic uranium industry, the reliability of one-fifth of the U.S. electricity supply could be jeopardized.

SEC. 201 – URANIUM RECOVERY REPORT

We are supportive of this section of the Act. The current license renewal process is unnecessarily burdensome and lengthy. The uranium industry can provide several examples of licensees that have been in "timely" renewal of their licenses for years due to the lengthy administrative review process and the fact that these reviews are not a high priority for the NRC because of the low risk nature of these projects. As directed under this Act, a review of extending the duration of licenses from 10 years to 20 years will be consistent with what is already known - a uranium recovery license is low risk. The extension of the license duration will not elevate risks associated with these licensed activities. Additionally, extending the duration of the licenses will significantly reduce the regulatory agency's burdens caused by the frequency of current renewal periods. This will allow the agency to better utilize and allocate its review resources.

SEC. 202 – PILOT PROGRAM FOR URANIUM RECOVERY FEES

We strongly support this pilot program. Several licensing actions performed by the Commission are ripe for consideration of fee recovery using a flat fee structure. Several Agreement States successfully use a similar approach for all licensing activities, and this provides an efficient regulatory review process. As a licensee, we see several specific activities that would fit the expectations of this program. 1.) The annual review of financial assurance under 10 CFR § 40 Appendix A Criterion 9; 2.) Routine inspection activities; 3.) License renewal applications for source material licensees that are on standby; and 4.) Licenses for facilities that fit within the scope of environmental impacts that were analyzed in the General Environmental Impact Study and supplemental environmental impact studies already issued for Uranium Mills and In Situ Uranium recovery source material licensees.

SEC. 203 – URANIUM TRANSFERS AND SALES

We are pleased the Nuclear Energy Innovation and Modernization Act includes a bipartisan

proposal to bring greater accountability and transparency to Department of Energy's (DOE) management of the excess uranium inventory, and we want to thank Senators Barrasso and Markey for their leadership on similar legislation introduced last Congress. Since 2009, the DOE has sold (or bartered) inventory to pay for agency priorities, particularly the cleanup of legacy federal nuclear sites. We recognize the importance of cleaning up these legacy sites and understand DOE's desire to monetize excess uranium, but DOE's actions have caused great harm to our industry. [1]

We recognize DOE's transfers are not fully responsible for the current adverse market conditions; however, they have made the situation decidedly worse. At the same time our industry is reducing production, shutting in mines, making workforce reductions, and cancelling new projects, the federal government has continued to transfer significant amounts of uranium into an oversupplied market, competing with domestic producers. For context, in 2016, DOE sold more than twice as much uranium as the entire domestic industry produced. DOE sales have accounted for more than 100 percent of the global uncommitted utility demand, meaning there is no room for the domestic producers to compete.

Under the USEC Privatization Act (P.L. 104-134), before making any uranium transfers, the Department must certify the proposed transfers will not have "an adverse material impact on the domestic uranium mining, conversion, or enrichment industry." In our view, DOE has violated this obligation. It is hard for any reasonable person to conclude DOE transfers that exceed twice our domestic uranium production, with prices well below our cost of production, are not having an adverse material impact.

Last year UPA called on DOE to temporarily suspend transfers until market conditions recover. In our view, DOE should not make any transfer when the spot market price is below the average cost of producing uranium in the United States. According to the U.S. Energy Information Administration (EIA), the average total cost for U.S. uranium production was $66.86 per pound in 2015. The average total cost includes exploration, production, restoration, land, plant capital, wellfield capital, regulatory permitting, etc. EIA estimates average production ("cash") costs at $35.44 per pound. With the current uranium spot price near $25, DOE should halt any additional transfers in 2017 and postpone all future transfers until the market recovers.

If DOE continues transfers at the current rate and market conditions do not recover, the domestic industry may not survive. According to EIA, only 2.9 million pounds of uranium were produced in the U.S. during 2016. The United States now imports more than 93 percent of the uranium needed to fuel our nuclear reactors, putting 20 percent of our electricity supply at risk to foreign supply disruptions. Rather than compete with our industry and drive down prices, DOE should be looking at what steps it can take to support our industry and ensure we have a stable, domestic uranium supply.

Before DOE transfers any more of their inventory, UPA encourages DOE to conduct a full review

[1] The Department's position that its barter transfers are not the "driver" of market conditions to justify its increased disposition of excess uranium inventories was rejected by Judge Reggie Walton in Converdyn v. Moniz 68 F Supp. 3rd (2014). Whether the Department's transfers are "the driver" of market conditions is not the inquiry set forth in Section 2297h-10(d).

of the barter program. This should include identifying ways to minimize the impact of any future transfers on the domestic industry and examining whether prior DOE transfers have violated the miscellaneous receipts statute (31 U.S.C. § 3302(b)). According to the Government Accountability Office, DOE's barter program is in violation of the miscellaneous receipts statute because the value of uranium DOE transfers is not deposited into the Treasury. We encourage the DOE to investigate the application of the statute to these barter transfers.

The UPA has also encouraged DOE and the National Nuclear Security Agency (NNSA) to consider revising the current practice of downblending High Enriched Uranium (HEU) to commercial grade Low Enriched Uranium (LEU) below 5 percent U-235. Instead, DOE-NNSA should be downblending HEU to levels between 5-19.75 percent LEU for research and advanced reactor fuel. This would be supportive of U.S. non-proliferation policy as well as eliminate the adverse material impact the uranium, conversion and enrichment components contained in the DOE LEU below 5 percent are having on the commercial market.

The UPA strongly supports the inclusion of Section 203 dealing with DOE uranium transfers and sales. Section 203 will help bring greater accountability and transparency to the management of DOE inventory and will place limits on the amount of material DOE may transfer in a given year.

The legislation will require DOE to issue a new 10-year management plan for the federal excess uranium inventory, including steps the Secretary will take to minimize the impact on the domestic industry and maximize taxpayer value for this asset. Importantly, the legislation would require the DOE to issue a proposed management plan for public review and comment similar to the regular rulemaking process. In the past, DOE issued management plans with minimal public input, and in 2013, DOE determined it would manage the inventory without any public input. Requiring DOE to develop a new management plan is an important step to reforming this program and one the UPA strongly supports.

Despite our concerns about the DOE inventory and legitimate questions about whether DOE's current program is legal, the industry has always been willing to engage in a collaborative dialogue with DOE and other stakeholders. In fact, in 2008, the industry, utilities, and DOE developed a consensus-based approach to cap annual transfers to no more than 10 percent of domestic reactor requirements – about 5 million pounds per year. Unfortunately, DOE exceeded the cap in 2009 and never looked back. The UPA strongly supports the provisions in Section 203 to place a statutory cap on the amount of material DOE can transfer in any given year, subject to a Secretarial Determination that the proposed transfers would not have an adverse material impact on the domestic uranium, conversion, or enrichment industry.

The legislation will also ensure the Secretarial Determination process is more rigorous and subject to a public process. Although DOE issued a request for information in advance of its most recent Determination, DOE only solicited comments on the factors the agency should consider in its pending determination, rather than take comment on a draft Determination. Under the legislation, DOE would be required to release a draft Secretarial Determination for public review and comment before it could be finalized. This additional step will help ensure there is more meaningful public input and will allow stakeholders to better evaluate the impact of a specific proposal.

DEFINING STANDARDS OF GENERAL APPLICATION

As this legislation moves forward, we encourage the Committee to consider adding a provision to clarify the regulatory responsibilities of the Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) for uranium recovery. Under the current framework, EPA sets generally applicable standards and the NRC is charged with developing the specific implementation standards. Yet, there is no definition in the Atomic Energy Act (43 U.S.C. 2014) of generally applicable standards, which has created confusion and conflict between the EPA and NRC. This is evidenced by EPA's recent proposed rulemaking revising 40 CFR § Part 192, and the concerns expressed by the NRC General Counsel that EPA's proposal went well beyond setting general standards. Clearly defining standards of general application, without reducing any oversight of the industry, would help clarify the roles and responsibilities of EPA and NRC, reduce regulatory conflict, and provide for a more effective regulatory framework.

Respectfully submitted,

William Paul Goranson