

Testimony of Rob Ervin, President, USW Local 550¹
Before the Subcommittee on Oversight & Investigations
of the Energy & Commerce Committee
U.S. House of Representatives
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in
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My name is Rob Ervin and I have worked at the Paducah Gaseous Diffusion Plant for 17 years. I am currently employed by USEC as an Instrumentation and Controls Technician. In addition to my craft responsibilities, I serve as the President of USW Local 550, which represents over 700 hourly workers involved in production for USEC and Environmental Management program activities for Department of Energy (“DOE”) contractors and subcontractors at the Paducah plant, including Bechtel Jacobs, Swift and Staley, Weskem, and Uranium Disposition Services (the DUF6 disposition project). My home address is 398 Country Club Estates, La Center, KY 42056. Please contact me at 270-442-3668.

At the outset, I would like to recognize the leadership provided by Congressman Ed Whitfield over the many years he has represented our plant. His work covers pension protections in the USEC Privatization Act of 1996, holding oversight hearings on the problems created by privatization, negotiating a Memorandum of Agreement to guarantee operations of the Paducah enrichment plant through the year 2010, and expanding the former worker medical screening program. He helped enact legislation to dispose of a 50-year legacy of depleted uranium hexafluoride (“DUF6”) at Paducah, and served as a lead House sponsor of the Energy Employees Occupational Illness Compensation Program Act (“EEOICPA”). He used his perch

¹ On April 12, 2005, the Paper, Allied-Industrial, Chemical and Energy Workers International Union (PACE) merged with the United Steelworkers of America (USWA) to form the United Steel, Paper, Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Steelworkers International Union or “USW” for short.

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on Energy and Commerce to track DOE's failures in implementing its part of EEOICPA, and then worked with the House Armed Services Committee to transfer the DOE's program over to the Department of Labor in 2004. Most recently he joined on a bipartisan basis with Representative Ted Strickland in enacting legislation to protect the pensions and retiree health care benefits of USEC and Bechtel workers. This list seems long, because there has been a lot accomplished. Our membership thanks him and his staff for these and many other efforts.

Today my testimony will focus on:

- 1) Ensuring that the pension and retiree health care benefit continuity continue undisturbed at the Paducah site for USEC workers who transfer to the DOE's cleanup contractors, and the transition to the new remediation contractor is seamless; and
- 2) Continuing the DOE former worker medical screening program at Paducah.

1. Pension continuity: DOE is not complying with Section 633 of the Energy Policy Act of 2005

Today, workers employed at Paducah have the right to carry pension service credits and vesting in retiree medical benefits from USEC to the cleanup contractors at Paducah and Portsmouth. But DOE wants that to end. No matter the changes to employment arrangements—such as USEC privatization, the shift to an integrating contractor with multiple subcontractors, or the replacement of the Management and Operation contractor--pension and retiree benefit portability has been the rule at the Paducah Gaseous Diffusion Plant ("PGDP") throughout its 50+ year history.

In 1998, Bechtel Jacobs established the Multiple Employer Pension Plan ("MEPP"), a defined benefit plan, to continue the practice of assuring pension portability at a time when employment relationships were changing frequently. The MEPP welcomed USEC employees

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who transitioned to DOE contractors after losing their jobs from the downsizing or closure of a uranium enrichment plant. The MEPP also enhanced employee mobility by allowing workers to move between Bechtel Jacobs and its various tiers of subcontractors performing work for the Environmental Management Program while assuring seamless pension portability.

When DOE issued Requests for Proposals (“RFPs”) for remediation and infrastructure contractors in November 2003 to replace Bechtel-Jacobs (“BJC”) at Portsmouth and Paducah, it narrowed the definition of which workers will be “grandfathered” and therefore eligible to participate or transfer into the MEPP.² USEC workers and those BJC workers above first tier supervision were excluded. These DOE changes undermined the enlightened social policy embodied in the MEPP: to promote and ensure pension/retiree medical portability.

Two documents govern benefit portability at Portsmouth and Paducah:

- 1) **The Bechtel Jacobs Multiple Employer Pension Plan (“MEPP”).** This plan sets forth the definition of “Grandfathered” employees covered under the plan. Grandfathered employees include hourly USEC workers who were covered by a “bargaining unit transition agreement” (“BUTA”). The DOE’s new Infrastructure and Remediation Contractors are required to become participants in the MEPP within 90 days of starting work.
- 2) **The Bargaining Unit Transition Agreement (“BUTA”).** This allows hourly workers to transition from USEC or from DOE’s former contractor, Lockheed Martin Energy Systems over to Bechtel Jacobs and its subcontractors. This agreement, which was approved in February 2000 and is in effect at Paducah today, authorizes “grandfathered” hourly employees to retain their USEC pension service credit and vesting in the retiree medical benefits plan.³

² By way of history, both USEC and many of the DOE cleanup workers were once in the same pension plan: the Lockheed Martin Energy Systems plan. The MEPP and the USEC pension plan were spun out of the Lockheed Martin Plan in the 1998 and 1999, respectively. The MEPP allows USEC workers to rejoin a pension plan which they had previously been part of prior to privatization.

³ The term grandfathered employee means: “(A) The individual was either: (1) an employee of Lockheed Martin Energy Systems, Lockheed Martin Utility Services, or Lockheed Martin Energy Research (collectively, LM) on March 31, 1998; or (2) a bargaining unit member of the Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO (PACE) (at the East Tennessee Technology Park) who was on the LM recall list on March 31, 1998; or (3) a bargaining unit member of the Atomic

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The Bargaining Unit Transition Agreement (Section 8(c)) states:

“For clarification purposes, any employee who transfers from USEC to Bechtel Jacobs or its first or second tier subcontractors, who was employed on the date that this addendum is ratified [February 22, 2000] and formally concluded shall be classified as a “Grandfathered Employee” without regard to the date that he or she transfers from USEC to Bechtel Jacobs or its subcontractors.”

In addition there is a chart in the BUTA which spells out the categories of USEC workers who will be allowed to transfer pension and retiree health care service credit when they move from USEC to Bechtel Jacobs and/or its subcontractors, including:

- 1) Employees whose jobs were transitioned from USEC to Bechtel;
- 2) Employees who voluntarily quit USEC and are employed by Bechtel; and
- 3) Employees who are laid off and receive severance from USEC.

The BUTA states that it is intended to be binding on successor contractors at Paducah.

DOE does not dispute that pension portability has been and is in effect today. However, DOE has put in place the mechanics to eliminate this arrangement on a going forward basis with new contractors, such as Paducah Remediation Services. It has indicated to cleanup and infrastructure contractors that the government will only reimburse a contractor’s pension plan

Trades and Labor Council (ATLC) (at the Oak Ridge National Laboratory or Y-12 Plant), or PACE (at the Portsmouth Gaseous Diffusion Plant or Paducah Gaseous Diffusion Plant) who was either an LM employee, a United States Enrichment Corporation (USEC) employee, or on the LM or USEC recall list on the date of the applicable Bargaining Unit Transition Agreement; and

(B) The individual was either: (1) subsequently employed by the Contractor or its first-tier or second-tier subcontractors for work under the Contract prior to April 1, 2000; or (2) a USEC employee (at the Portsmouth Gaseous Diffusion Plant or Paducah Gaseous Diffusion Plant) who transitions directly to the Contractor or its first-tier or second-tier subcontractors for work under this Contract after March 31, 2000; or (3) a former USEC employee (at the Portsmouth Gaseous Diffusion Plant or Paducah Gaseous Diffusion Plant) who received an involuntary reduction-in-force after March 31, 2000, and is subsequently hired by the Contractor or its first-tier or second-tier subcontractors for work under the Contract before January 1, 2001; or (4) covered by an applicable Bargaining Unit Transition Agreement for which no employment deadline is specified.” (emphasis added)

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contributions for a narrow group of employees: those non-managerial employees of Bechtel Jacobs or its subcontractors who are vested participants in the MEPP at the time of contract transition. Specifically excluded are pension and retiree benefits continuity for USEC hourly workers.

In response to concerns about the DOE's Request for Proposals, Representatives Whitfield, Strickland and Portman, as well as Senators Bunning, McConnell, DeWine and Voinovich asked DOE to ensure that USEC workers could keep their pension transfer rights as DOE changed contractors. Mr. Whitfield sent then-Secretary of Energy Abraham a December 18, 2003 letter expressing concerns about the loss of pension continuity. Senators McConnell and Bunning followed with a December 19, 2003 letter. These concerns were raised in a field hearing before the Senate Energy Committee held here in Paducah on December 8, 2003.

After the RFPs were issued, meetings ensued with senior DOE officials, questions were asked at Congressional hearings, and letters were written without a satisfactory response. DOE received a detailed briefing showing there would be a negligible economic impact to the government from permitting USEC workers to retain pension continuity when they transfer into the MEPP. A so-called "carve out" provision in the pension plan provides that the DOE contractors are only responsible for a *pro rata* allocation of liability based on an employee's years of service with the cleanup contractors. USEC is liable for the balance. This means workers will receive 2 pension checks instead of one. However, since earned benefits are effectively back loaded in later years as workers' earnings increase, it is important to keep pension service credit intact between contractors.

In the Spring of 2005, DOE had already announced the award of new contracts in

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Portsmouth and Paducah, but the pension portability issues were not resolved. Representatives Whitfield and Strickland attached an amendment during markup to the Energy Policy Act of 2005 (H.R. 6). This provision codifies the benefit continuity arrangements at Portsmouth and Paducah that were in effect on April 1, 2005 (the date coincides with the committee's deliberations) and ensures that USEC workers will be eligible to participate in or transfer into the MEPP and its related retiree medical benefit plan.

As signed by the President on August 8, 2005, Section 633 of the Energy Policy Act of 2005 (P.L.109-58) states:

To the extent appropriations are provided in advance for this purpose or are otherwise available, not later than 30 days after the date of enactment of this paragraph, the Secretary shall take such actions as are necessary to ensure that any employee who--

(A) is involved in providing infrastructure or environmental remediation services at the Portsmouth, Ohio, or the Paducah, Kentucky, Gaseous Diffusion Plant;

(B) has been an employee of the Department of Energy's predecessor management and integrating contractor (or its first or second tier subcontractors), or of the Corporation⁴, at the Portsmouth, Ohio, or the Paducah, Kentucky, facility; and

(C) was eligible as of April 1, 2005, to participate in or transfer into the Multiple Employer Pension Plan or the associated multiple employer retiree health care benefit plans, as defined in those plans, shall continue to be eligible to participate in or transfer into such pension or health care benefit plans. (emphasis added)

This legislation obligates the Secretary of Energy to ensure that pension and retiree benefits rights that were in place on April 1, 2005 for USEC and DOE contractor workers will continue to be in place for workers at Portsmouth and Paducah who will be performing DOE cleanup work.

DOE vigorously lobbied against this pension provision during the House-Senate

⁴ The term "or of the Corporation" specifically refers to USEC (post privatization) in the USEC Privatization Act of 1996.

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conference during July, 2005. Having lost the legislative fight, DOE rewrote the legislation through a September 13, 2005 implementation plan which excludes USEC workers (*see*: Attachment "A").

DOE's plan states that employees eligible to participate in the MEPP are only those "who were participating in the MEPP (both vested and non-vested) on April 1, 2005." This implementation plan means that universe of employees who will be able to participate in the MEPP and the related health insurance plan is much narrower than Congress had specified in Section 633. It reads coverage for USEC workers right out of the law.

Representatives Whitfield and Strickland challenged that interpretation in an October 3, 2005 letter to DOE. A January 12, 2006, DOE response contends that USEC workers at Portsmouth and Paducah will not have a right to transfer their pension benefits with them when employed by new DOE contractors, if the DOE contractors they go to work for were not previously parties to a BUTA on April 1, 2005.

This analysis ignores the purpose of the law, which was to ensure pension continuity for the new contractors being hired by the DOE, who, by definition, could never have been signatories to the Bargaining Unit Transition Agreements before they were hired. DOE has chosen to overlook the language which confers a clear cut obligation by the Secretary of Energy to continue benefit eligibility. Section 633 states:

"the Secretary shall implement such actions as are necessary to ensure that any employee who ... [was eligible to participate or transfer into the MEPP and related retiree plans on April 1, 2005] ... shall continue to be eligible to participate in or transfer into such pension or health care benefit plans."

This language is clear: DOE has a forward looking obligation to continue pension

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continuity for all employees who had certain rights on April 1, 2005. This could be accomplished by DOE allowing its new contractors to become signatories to the BUTA and ensuring that employer contributions to the benefit plans will be deemed an allowable cost. Nowhere does Section 633 require that new contractors had to already have been signatories to a BUTA back on April 1, 2005. Even if a strained reading of the law could be construed this way, Congress never intended such an illogical result, because it knew that new contractors would begin work at Portsmouth and Paducah sometime after June 2005 and could not have been signatories at a site where they had never worked before.

Using this erroneous reading of the law, DOE recently advised that USEC workers who transfer to the Paducah “infrastructure” contractor, Swift and Staley, will be able to bring their pension service credit with them, because Swift and Staley (coincidentally) was a signatory to the bargaining unit transition agreement on April 1, 2005--as a former subcontractor to Bechtel Jacobs. Swift and Staley was unable to confirm this change in DOE’s position. DOE has, heretofore, barred the transfer of pension service credit to Swift and Staley for USEC workers.

DOE’s position is that USEC employees cannot bring their service credit with them to Paducah Remediation Services, the new Paducah “remediation” contractor, because Paducah Remediation Services was not a signatory to the BUTA. This disparate treatment arises out of DOE’s misplaced reading of the law, wherein they link pension continuity to whether a given DOE contractor participated in the BUTA on April 1, 2005, rather than to the plain language in 633 which links pension continuity to the universe of employees who had the eligibility to participate in or transfer into these multi employer benefit plans on April 1, 2005.

DOE wants to reduce the number of workers in its contractors’ defined benefits plans as

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part of a national pension agenda. While cutting off employees from defined benefit plans is an unfortunate trend in the private sector, it is not the government's job to second guess Congressional directives to continue such benefits. Using a groundless legal position which overlooks the Secretary's legal obligation in Section 633, DOE is determined to reduce their legacy pension costs by taking it out of the pocket of workers.

As much as we all want the Paducah plant to remain competitive in the enrichment business, we are mindful of the economic challenges presented by rising electricity costs and the development of lower cost centrifuge technology. In the short term, as USEC workers seek to fill available openings with the cleanup contractors, the loss in pension continuity is a concern—though the number of workers impacted will not be large. However, the possibility of further downsizing, coupled with the potential for future DOE decommissioning jobs, makes pension continuity at Paducah an imperative for a much larger number of workers and a precedent that should not be tampered with.

If DOE is not prepared to comply with Section 633, Congress may need to take further steps to enforce compliance. Without pension continuity assured for USEC workers, we believe it will be difficult to ensure a seamless transition to the new remediation contractor.

2. DOE Former Worker Medical Screening Program at Paducah

The DOE's former worker medical screening program, which is run by a Queens College-USW consortium, has screened 2,597 workers at Paducah between May 1, 1999 and December 31, 2005. The "basic" screening program was expanded in November 2000-- after the discovery of unmonitored worker exposures to transuranics at the gaseous diffusion plants-- to

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include an Early Lung Cancer Screening Program and allowed current workers to participate. Using a low-dose CT spiral scanner on a mobile unit traveling between Portsmouth, Paducah and Oak Ridge, 1,620 individuals have received early lung scans in Paducah and 5,829 at the three gaseous diffusion plants. Follow up scans have been provided where suspicious lung nodules are found.

The low dose CT Spiral Scan is 4 times more likely than a chest X-ray to detect cancer at an early stage, and has been very popular with workers. So far, the program has identified 44 cancers using the CT scan. Eighty-one percent (81%) of these cancers were detected at Stage I, when the cancers are most operable and the chances of saving a life is the greatest. Preliminary results published by Cornell indicate that if lung cancers are detected at Stage I, there is a curability rate of more than 90%. This compares with a survival rate of 5%-15% for those whose lung cancers are detected at Stage III. The results from the Queens-USW medical screening program are being shared with the International Early Lung Cancer Program (www.IELCAP.org).

As participation has started to wane at the GDPs, DOE has asked that the early lung cancer screening program ramp down in February 2006. For most individuals, early lung cancer screening will not be available after June 1, 2006. Current and former gaseous diffusion plant workers are being sent notices advising them that this their last chance for free early lung cancer screening. However, beginning June 1, DOE has budgeted resources for outreach and the continuation of the basic medical screening program for approximately 125 participants/year for the next two years (as compared with 321 in 2005.)

Historically, the Energy and Water Appropriations Act has contained language for the

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medical screening program as part of the budget for DOE's Office of Environment, Safety and Health (Defense), and a provision may be required in FY 07 to continue this program.

Conclusion

The Department of Energy is in violation of Section 633 of the Energy Policy Act of 2005 with respect to assuring pension and retiree health care benefit continuity for USEC hourly workers. If DOE is not going to comply with Section 633, then Congress may need to take further steps to ensure compliance. We hope that DOE has not made it a routine practice to require two acts of Congress to implement a given Congressional direction, as it did with the DUF6 project. Absent a resolution of this issue, it will be difficult to manage a seamless transition from Bechtel Jacobs to the new contractor at Paducah.

DOE's former worker medical screening program is going to be operating with a smaller footprint for the next two years beginning June 1, 2006. Historically, appropriations legislation has secured funding for screening at the gaseous diffusion plants, and a provision may be required for FY 07.

Attachment "A"
(September 13, 2005 Implementation Plan)

**DOE Implementation of Section 633
of the Energy Policy Act of 2005**

- Bechtel Jacobs Company (BJC) will continue to administer the Multiple Employer Pension Plan (MEPP) and the Multiple Employer Retiree Health Care Benefit Plan (MEWA) (the "Plans") for employees of the new infrastructure and environmental remediation contractors at the Portsmouth, Ohio, and the Paducah, Kentucky, Gaseous Diffusion Plant sites who are eligible to participate in the Plans as of April 1, 2005.
- Employees of either BJC or its first-tier and second-tier subcontractors who were participating in the MEPP (both vested and non-vested) on April 1, 2005, will continue to be eligible to participate in the MEPP, provided that they: (1) are employed by one of the new infrastructure or environmental remediation contractors; and (2) continue to meet the criteria for the definition of a "Grandfathered Employee" in the MEPP.
- Employees of either BJC or its first-tier and second-tier subcontractors who were participating in the MEWA on April 1, 2005, will continue to be eligible to participate in the MEWA provided that they: (1) are employed by one of the new infrastructure or environmental remediation contractors, and (2) continue to meet the criteria for the definition of a "Grandfathered Employee" in the MEWA.
- BJC has submitted draft language to amend the MEPP and MEWA to the Contracting Officers for the new contracts for approval of the language and the costs associated with amending the Plans. The proposed amendments provide for the new contractors' participation as Plan sponsors. DOE is reviewing the language of the proposed amendments to ensure that employees eligible to participate in the Plans as of April 1, 2005, retain their eligibility. DOE anticipates approval of the draft language in the near future.