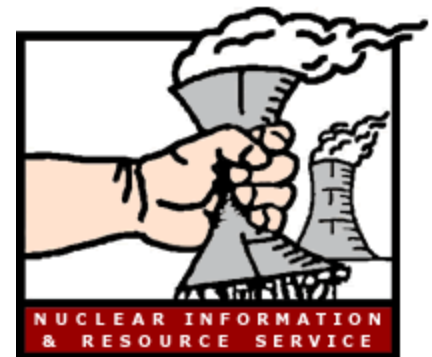


# Foreign ownership, control *or* domination of U.S. nuclear reactors.

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# The Atomic Energy Act is the law

- The Atomic Energy Act states in plain language, “No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.” (emphasis added)
- Section 103(d), 42 USC 2133

# NRC guidance recognizes 100% foreign ownership is illegal

“Where an applicant that is seeking to acquire a 100% interest in the facility is wholly owned by a U.S. company that is wholly owned by a foreign corporation, the applicant will not be eligible for a license, unless the Commission knows that the foreign parent’s stock is “largely” owned by U.S. citizens.”

Final Standard Review Plan on Foreign Ownership, Control and Domination, September 28, 1999

# NRC does not have authority to change the law

- 100% foreign ownership of a U.S. reactor is illegal and will remain so unless and until Congress changes the law.
- There is no distinction in the law between “direct” and “indirect” foreign ownership.
- NRC’s request for comments on FOCD issues “involving up to and including 100 percent indirect foreign ownership” is inappropriate. 100% is illegal in every case.

# “Indirect” foreign ownership is a false construct

In the case of UniStar Nuclear, UniStar is a U.S. corporation 100% owned by Electricite de France.

There is no tangible difference between a “U.S.” corporation 100% owned by a foreign corporation and a foreign corporation. The result is still a foreign-owned, controlled *and* dominated entity.

There are a myriad of potential corporate structures; the NRC must be alert and on-guard to protect against foreign control or domination. The NRC must ensure it has sufficient flexibility and authority to meet the demands of the Atomic Energy Act.

NRC Federal Register notice inappropriately focuses on ownership issues; control/domination are equally important.

- The NRC's Federal Register notice focuses solely on the amount of foreign ownership, as if that were the only issue involved in the FOCD context.
- In fact, the AEA and legislative history indicate that control/domination are equally important. As every business student in the country already knows, either can be achieved with minority ownership, much less 100%.
- It's a three-legged stool—with ownership, control, domination each comprising one essential leg.

Legislative history indicates clear concern about any significant foreign involvement in U.S. reactor projects.

- Original language said no reactor could be owned by foreign interests, and set threshold at 5% ownership.
- Final version dropped 5% threshold and added “control or dominate.”
- Witnesses argued, with no Congressional dissent, that FCC Act should be used as precedent, which set (and still sets) a maximum of 25% foreign ownership.

NRC's current guidance on FOCD issues is overly permissive and has no basis in legislation.

- NRC has bent over backwards—too far backwards—to allow foreign involvement in U.S. reactor projects, contrary to the Atomic Energy Act.
- Foreign ownership above 50% is de facto illegal; the burden is on applicants to show otherwise.
- Intent of AEA is that any significant foreign involvement should be examined and probably rejected.



## Control and/or domination can be achieved with minority ownership

- For publicly-traded corporations, control and domination can be achieved with minority ownership, which is why FCC Act, which AEA was modeled after, wisely limits foreign ownership to 25%.
- Even for privately-held corporations, control and domination can be achieved with minority ownership, or at most 50-50 ownership, depending on other factors.

## Control or domination does not require full ownership—part 2

- In UniStar's case, EDF owned 50%, plus a significant portion of its partner, Constellation Energy. EDF is owned by French government. In addition, reactor was to be provided by French government entity Areva. This was clear FOCD violation, even before EDF owned 100% of the project.

## NRC's guidance does need improvement.

- NRC guidance on FOCD issues should provide clarity and transparency for public and applicants alike.
- Clarity and transparency should include definitions for “control” and “dominate,” which currently are lacking.
- Guidance should make clear that anything over 50% foreign ownership will be considered illegal absent other mitigating factors. Control or domination can occur with less ownership.

## NRC's guidance does need improvement, continued.

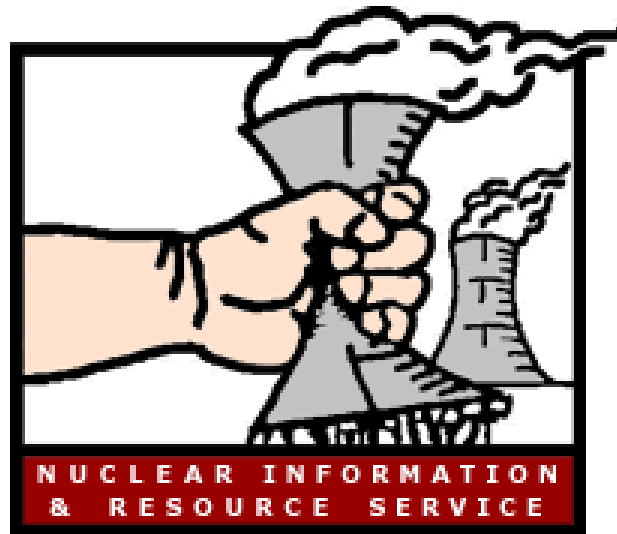
- Corporate structures are frequently not transparent and frequently very complex. The burden must always be on applicants to demonstrate that they do not run afoul of FOCD restrictions; not on intervenors to try to make sense of convoluted corporate structures.
- NRC guidance should reflect that the burden is on applicants. In cases of domestic ownership, this would be no burden.

## Why is FOCD important—part 1?

- Some in industry argue that with increasingly multinational nuclear industry, FOCD issues are no longer important.
- This is not the case. Reason #1: it is the law.
- Reason #2: reactors are licensed for 40 years and routinely receive licenses for 20 years more. There is considerable talk about extra license periods of 20 more years.

## Why is FOCD important—part 2?

- 70 years ago—within the possible lifetime of new reactors--we were at war with two of our closest current allies, Germany and Japan. In fact, we dropped nuclear bombs on one of those nations.
- 40 years ago, we were BFFs with the Shah of Iran, and tried to sell Iran nuclear reactors.
- Does anyone really want China to own, control or dominate nuclear reactors on U.S soil?
- The AEA prohibition on FOCD still makes sense and must be enforced.



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