

# Perspectives on Foreign Ownership, Control or Domination Issues and the Global Nuclear Market

NRC Public Meeting on Foreign Ownership of Nuclear Power Plants  
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# Overview

- Why is this issue important?
- Can the NRC comply with Atomic Energy Act section 103 d. and also read it in context?
- Does the AEA prohibit issuing a license to an applicant that is 100 percent indirectly foreign owned?
- What is the basis for the NRC assessment of a negation action plan?
- Should the regulatory framework provide an opportunity to resolve an FOCD issue after issuance of a license?
- Would there be any limits on FOCD grounds?
- Should the guidance in the SRP be updated?

# In Brief...

- Why is this issue important? **FOCD determinations have the potential to stymie new plant development; safety, security and economic benefits are derived from participation by certain foreign entities.**
- Can the NRC comply with the AEA section 103 d. and also read it in context? **Yes.**
- Does the AEA prohibit issuing a license to an applicant that is 100 percent indirectly foreign owned? **No.**
- What should be the bases for the NRC assessment of a negation action plan? **Whether the foreign owner has control over nuclear safety or security, operational decisions, or special nuclear material.**
- Should the regulatory framework provide an opportunity to resolve an FOCD issue after issuance of a license? **Yes.**
- Would there be any limits on FOCD grounds? **Yes.**
- Should the guidance in the SRP be updated? **Yes.**

# FOCD Reviews Should Not Unnecessarily Impede New Nuclear Plant Development or Changes in Ownership

- Application of NRC FOCD requirements is a generic issue affecting all new power reactor licensees and OL transfers involving foreign participation
- To appropriately structure participation in new and existing reactor projects, licensees, applicants, and prospective investors need to know *with reasonable certainty* what levels and types of foreign investment are acceptable and what specific negation actions are required to address FOCD restrictions in the United States

# Benefits of Foreign Participation/Investment in the Commercial Nuclear Sector

- Participation in the U.S. nuclear industry by foreign investors, vendors, and experienced operators provides significant benefits to public health and safety, and the economy
  - Foreign entities can enhance domestic nuclear development and operations, including sharing successful approaches to procurement, construction, and operations
  - Foreign capital provides direct dollars to critical infrastructure and the U.S. economy

# Atomic Energy Act Section 103.d

- 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*. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public. (Emphasis added)

# “Fresh Look” Begins with Legislative History and Early Commission Precedent

- Limited legislative history, but Congress chose not to impose a percentage restriction on foreign ownership in the AEA
- *General Electric Company and Southwest Atomic Energy Assoc. (“SEFOR”)* established an important precedent and continues to provide appropriate guidance
  - The Commission reviewed the legislative history and held that “the words ‘owned, controlled or dominated’ refer to relationships where the ***will of one party is subjugated to the will of another,***” and that Congress intended to prohibit such relationships “where an alien has the power to direct the actions of the licensee” (Emphasis added)

# SEFOR Precedent

- The *SEFOR* decision clarifies that the words “owned, controlled, or dominated” were meant to be read as one integrated concept -- not as separate restrictions
  - The focus was not on ownership *per se*, but on preventing foreign “control or domination” of matters involving nuclear safety and security
  - “[t]he [alien control] limitation should be given an orientation toward safeguarding the national defense and security”
- NRC’s current SRP adopts the *SEFOR* position and directs NRC review to make the FOCD determination “with orientation toward common defense and security”
  - Allows use of Negation Action Plan (NAP)



# FOCD Analysis

- Literal approach: “owned, controlled, or dominated” focuses on “owned” in isolation
- Integrated approach: “owned, controlled, or dominated” are related in the FOCD construct
  - Consistent with legislative history and *SEFOR*
  - Consistent with NRC precedent granting licenses to foreign-owned minority owners
  - Consistent with FOCI treatment under the NISPOM

# Reconciling the AEA and 100 percent Indirect Ownership

- Under *SEFOR*, AEA should be interpreted to focus on the requirement that no license be granted unless applicant is a U.S. entity
  - **Subjugation of will** is the operative concept for FOCD review
  - Statute does not prohibit 100 percent indirect foreign ownership
  - Key inquiry is whether there is/can be **control or domination through rights and powers**
- SRP allows more than 50 percent ownership and arguably up to 99 percent; same logic extends to 100 percent ownership so long as foreign *control* is mitigated

# Commission Should Establish Graded Approach

- Home country of ultimate owner should be heavily considered and should be basis for significantly reducing NAP requirements
  - Foreign entities engaged in the global nuclear market from nations that support international safety and safeguards protocols pose little or no risk to any aspect of U.S. national security
  - Nations presumed to present proliferation or other national security concerns are listed as embargoed or restricted destinations in 10 CFR 110.28 and 110.29
- There is NO basis to assume
  - Foreign owners or investors would inappropriately exert influence that would circumvent negation measures
  - U.S. citizens at management levels and below would violate commitments and U.S. laws due to foreign owner influence (e.g., licensed operators)
  - Licensee programs designed to detect, among other issues, inappropriate foreign influence (QA, Employee Concerns programs, corrective action programs) will be ineffective
  - NRC's extensive oversight of plant operations/safety indicators would fail
  - CFIUS would abdicate its responsibility

## SRP 3.2

# Guidance on Applying Basic Limitations

- Add statements to more directly recognize context in which FOCD limitations would apply
  - Nuclear industry is global
  - Nuclear technology information is protected by international safeguards (e.g., Nuclear Suppliers Group Guidelines, treaties including the Treaty on the Non-Proliferation of Nuclear Weapons)
  - Participation in the U.S. nuclear industry by foreign investors, vendors, and experienced operators provides significant benefits
    - Experience can promote public health and safety
    - Foreign capital provides direct benefits to the domestic economy

## SRP 3.2

# Guidance on Applying Basic Limitations

- Clarify that FOCD analysis is based on totality of the circumstances
  - The Commission has long emphasized the need to “take into consideration the many aspects of corporate existence and activity,” and that “[t]he ability to restrict or inhibit compliance with security and other regulations of the [Commission], and the capacity to control the use of nuclear fuel and to dispose of special nuclear material generated in the reactor, would be of greatest significance.”
- Integrated approach should focus on indicia of control of nuclear operations with orientation to national security concerns

## SRP 3.2

# Guidance on Applying Basic Limitations

- Establish “safe harbor” or presumption
  - Foreign entity engaged in the global nuclear market from nation that supports international safety and safeguards protocols and that indirectly owns up to 100 percent of a licensee
  - Foreign entity owning less than 10 percent of nuclear operator (absent special voting rights)
  - Foreign entity owns 100 percent of non-operating owner that holds less than a 50 percent interest in the nuclear plant
  - Foreign entity owns or finances the nuclear plant where the foreign entity is also the reactor vendor

## SRP 3.2

### Guidance on Applying Basic Limitations

- Ownership may be one indicator of potential control, but is not dispositive
  - Delete language suggesting 100 percent indirect foreign ownership is prohibited
  - Clarify that ownership **alone** does not confer control over nuclear safety and security matters, and related issues can be mitigated through a negation action plan
    - Clarify that ownership of outstanding shares of a licensee must be interpreted in light of the corporate governance structure
  - Clarify that foreign debt financing does not pose FOCD concerns if no special control rights are conferred

## SRP 3.2

# Guidance on Applying Basic Limitations

- Confirm the use of a license condition as part of a Part 50 or 52 license
  - Provide for issuance of a license with conditions establishing objectively verifiable criteria that will be implemented to address potential foreign ownership, control, or domination issues prior to activities with safety, security, or proliferation implications (e.g., certain construction activities, receipt of special nuclear material, initial plant operation)



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