

**Enclosure 6**

**NRC Public Outreach and Stakeholder Input**

**ADAMS Accession No: ML13301A738**

## **NRC Public Outreach and Stakeholder Input**

As part of the fresh assessment of the foreign "owned, controlled, or dominated" (FOCD) provision of Section 03d. of the Atomic Energy Act (AEA) of 1954, as amended, directed by Staff Requirements Memorandum (SRM)-12-0186, the U.S. Nuclear Regulatory Commission (NRC) staff engaged in public outreach. The staff obtained input from industry representatives, public interest groups, government agencies, and other interested members of the public on issues associated with FOCD of commercial nuclear power plants. On June 3, 2013, the NRC published a request for formal written comments in the *Federal Register* (FR). The NRC received 17 written comments. On June 19, 2013, and August 21, 2013, the NRC hosted Category 3 public meetings in which oral comments were provided. Additionally, the NRC staff contacted several Federal agencies with foreign ownership review responsibilities to obtain information about their regulatory requirements, processes for reviewing foreign ownership, and experiences with implementing mitigation measures. The staff met with the Committee on Foreign Investment in the United States (CFIUS), the U.S. Department of Homeland Security (DHS), the U.S. Department of State (DOS), the Federal Communications Commission (FCC), the Defense Security Service (DSS), and the U.S. Department of Transportation (DOT).

This enclosure includes the location of the collected input in the NRC's Agencywide Documents Access and Management System (ADAMS) by ADAMS Accession numbers. ADAMS can be accessed at [www.nrc.gov](http://www.nrc.gov).

**Written Comments on Foreign Ownership, Control, or Domination**

Below is information regarding the formal written comments received in response to the NRC's request for public comment published in the FR (78 FR 33121).

| <b>Commenter</b>  | <b>Date</b> | <b>ADAMS Accession No.</b> |
|---|-------------|----------------------------|
| Farshid Shahrokhi   | 06/14/2013  | ML13168A400                |
| Unknown Individual  | 06/14/2013  | ML13177A114                |
| R.D. Hall   | 06/14/2013  | ML13177A115                |
| Tammy Vitale  | 06/16/2013  | ML13177A116                |
| Elizabeth Lerer   | 06/19/2013  | ML13177A117                |
| Ann Farr  | 06/19/2013  | ML13177A165                |
| Peter Yelda   | 06/28/2013  | ML13190A009                |
| Marvin Lewis  | 07/02/2013  | ML13190A354                |
| Mark McBurnett on behalf of Nuclear Innovation North America, LLC (NINA)  | 08/02/2013  | ML13220A016                |
| Ellen C. Ginsberg on behalf of Nuclear Energy Institute (NEI)   | 08/02/2013  | ML13219B155                |
| Gregory T. Gibson on behalf of UniStar Nuclear Energy, LLC (UniStar)  | 08/02/2013  | ML13220B032                |
| Unknown Individual on behalf of North American Young Generation in Nuclear (NAYGN)  | 08/01/2013  | ML13220B033                |
| Richard S. DiSalvo on behalf of Toshiba America Nuclear Energy Corporation (TANE)   | 08/01/2013  | ML13220B034                |
| Devin Kelley on behalf of AREVA   | 08/03/2013  | ML13220B035                |
| Michael Mariotte on behalf of Nuclear Information and Resource Service, Beyond Nuclear, Public Citizen, Southern Maryland CARES, and 62 additional public interest groups | 08/02/2013  | ML13234A018                |
| Senator Edward J. Markey  | 08/02/2013  | ML13234A019                |
| Raymond Lutz on behalf of Citizens Oversight Projects   | 09/06/2013  | ML13255A022                |

**Presentations and Oral Comments during Public Meetings on Foreign Ownership, Control, or Domination**

**DATE:** June 19, 2013

**PLACE:** U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852-2738

Below is information regarding the presentations and oral comments provided during the June 19, 2013, Category 3 Public Meeting.

| <b>Presentation Title</b>  | <b>Presenter</b>  | <b>ADAMS Accession No.</b> |
|--|---|----------------------------|
| Foreign Ownership, Control, or Domination Public Meeting                                       | Ho Nieh (NRC), Director – NRR/DIRS<br>Jo Ann Simpson (NRC), Financial Analyst - NRR/DIRS/IFIB | ML13171A337                |
| Considerations from a Financing Perspective  | Paul Murphy, Special Counsel – Milbank, Tweed, Hadley & McCloy LLP                            | ML13169A118                |
| Mitigation of Foreign Ownership, Control, & Influence; The Experience Under the NISPOM         | Christopher Brewster, Special Counsel – Stroock & Stroock & Lavan LLP                         | ML13169A416                |
| Foreign Ownership, Control, or Domination of U.S. Nuclear Reactors                             | Michael Mariotte, Executive Director - Nuclear Information and Resource Service               | ML13169A180                |
| Perspectives on Foreign Ownership, Control, or Domination Issues and the Global Nuclear Market | Ellen Ginsberg, Vice President, General Counsel, and Secretary – Nuclear Energy Institute     | ML13170A231                |
| Focusing the FOCD Restriction on National Security   | John Matthews, Partner – Morgan, Lewis & Bockius LLP  | ML13169A096                |

| Meeting Summary Documentation   | Author  | ADAMS Accession No.                  |
|---|---|--------------------------------------|
| Summary of Category 3 Public Meeting on Foreign Ownership, Control, or Domination | Jo Ann Simpson (NRC), Financial Analyst – NRR/DIRS/IFIB | ML13189A325<br>ML13190A268 (Package) |
| Transcript of Foreign Ownership, Control, or Domination Public Meeting            | Tara Stromberg, CART Transcriber                        | ML13184A091                          |

DATE: August 21, 2013

PLACE: Webinar

Below is information regarding the presentation and oral comments provided during the August 21, 2013, Category 3 Public Meeting.

| Presentation Title                                | Presenter   | ADAMS Accession No. |
|---|---|---------------------|
| Foreign Ownership, Control, or Domination Webinar | Ho Nieh (NRC), Director – NRR/DIRS<br>Jo Ann Simpson (NRC), Financial Analyst - NRR/DIRS/IFIB | ML13233A129         |

| Meeting Summary Documentation   | Author  | ADAMS Accession No.                  |
|---|---|--------------------------------------|
| Summary of Category 3 Public Meeting Webinar on Foreign Ownership, Control, or Domination | Jo Ann Simpson (NRC), Financial Analyst – NRR/DIRS/IFIB | ML13248A261<br>ML13248A254 (Package) |
| Transcript of Foreign Ownership, Control, or Domination Public Meeting                    | Transcriber   | ML13239A242                          |

Below is information regarding the NRC outreach to other Federal agencies.

| Federal Agency                               | Date       | ADAMS Accession No. of Meeting Summary |
|--|------------|--|
| DOS  | 05/29/2013 | ML13162A645                            |
| CFIUS  | 05/30/2013 | ML13176A408                            |
| DHS  | 05/30/2013 | ML13176A396                            |
| FCC  | 06/04/2013 | ML13219B158                            |
| DSS (part of the U.S. Department of Defense) | 06/11/2013 | ML13260A166                            |
| DOT  | 09/13/2013 | ML13260A187                            |

### **Summary of the Input Received from Nongovernmental Organizations**

Two sets of comments were received from nongovernmental organizations (NGOs), one of which was submitted on behalf of 66 NGOs. Generally, the NGOs argued against any increase in the amount of permissible foreign ownership. Instead, the NGOs argued that the NRC should impose an upper limit for foreign ownership (e.g., 25 percent or 33 percent). The NGOs supported additional clarification of review criteria but questioned the NRC's legal authority to unilaterally change its procedures absent Congressional action. One NGO commenter argued that, because Section 103d. uses the term "or" rather than "and," the AEA precludes the NRC from creating exceptions to Section 103d. for indirect foreign ownership, from qualifying or modifying the meaning of the statutory term "owned," from deferring the resolution of FOCD issues until after license issuance, and from interpreting the FOCD provision as an "integrated" concept. The NGOs further asserted that the statutory provision "owned, controlled, or dominated" represents three prohibitions that need to be evaluated independently of one another and that the Commission should not issue a license if any one of these three elements—foreign ownership, foreign control, or foreign domination—is present.

The NGOs recommended updating the NRC guidance on FOCD: (1) to provide standards to determine control or domination (2) to provide that both "direct" and "indirect" FOCD are prohibited, (3) to address the use of shell companies and other attempts to evade NRC regulations, (4) to impose an upper limit for foreign ownership, and (5) to require negation action plans in cases of foreign ownership below this limit.

### **Summary of the Input Received from Industry Representatives**

Comments submitted by various industry representatives (NEI, NINA, UniStar, NAYGN, TANE, AREVA) were supportive of changes to the NRC's FOCD policy and guidance. These commenters argued that the NRC's interpretation of the FOCD provision has become more restrictive, creating regulatory uncertainty and precluding substantial foreign participation in U.S. nuclear power plant development and reactor operations. They believe that foreign investment and participation in the U.S. nuclear power industry is beneficial and can bring operating experience and safety enhancements to the U.S.

The industry representatives argued that the NRC should interpret the statutory provision "owned, controlled, or dominated," to focus on national security. Thus, they argued that 100 percent indirect foreign ownership should not be automatically prohibited unless such ownership would be contrary to national security. They proposed that the NRC distinguish between direct and indirect foreign owners, since the implications of an indirect foreign owner for foreign control or domination may be less than the implications for a direct foreign owner or foreign applicant.

The industry representatives proposed using the National Industrial Security Program Operating Manual (NISPOM) as a model for FOCD reviews and recommended that the NRC consider the practical effect of adopting an approach to FOCD that deviates significantly from the U.S. national policy that is incorporated in the NISPOM. The industry also proposed that the NRC apply a "graded approach" based on the foreign entity's home country and recognize that

foreign debt financing is not a national security concern absent the foreign lender being given special control rights, or being from a country of concern (e.g., Iran or North Korea).

In addition, industry commenters suggested the use of license conditions to make a positive FOCD finding at the time of licensing. They asserted that these license conditions should be objectively verifiable and should resolve FOCD issues through the use of negation action plans tailored to ensure the protection of national security. The industry commenters argued that this would provide needed certainty for investors.

The industry commenters also suggested that the NRC consider whether the foreign entity is a member of the Nuclear Suppliers Group (NSG) when evaluating the requirements to negate foreign control. The industry proposed that the NRC revise the FOCD Standard Review Plan to include a graded scale with a presumption of "no control." This means that no mitigation would be required where the situation involved no national security concerns or involved no control over special nuclear material, where a foreign party possesses less than 10 percent of the voting control, or where a foreign entity owns less than 20 percent, files a Schedule 13G with the Security Exchange Commission, and is not an embargoed or restricted destination country. The industry also proposed that no negation action plan would be needed if the foreign entity holds less than 50 percent voting control of an owner-licensee that does not have operating authority, provided that the foreign entity is from an NSG country. One industry commenter stated that the NRC should accept a positive supportive finding by appropriate Federal bodies, such as CIFIUS and DOS, that a proposed negation action plan can mitigate FOCD in situations of greater than 50 percent and up to and including 100 percent foreign ownership. The industry commenter also asserted that the NRC inspection and enforcement program would cover issues relevant to FOCD in Inspection Procedure (IP) 88005, "Management Organization and Controls."<sup>1</sup>

Another industry commenter stated that the NRC's current FOCD guidance and almost 50 years of NRC precedent and practice have properly interpreted and applied the AEA's FOCD provision as a mandate to ensure that foreign commercial involvement in U.S. nuclear power projects does not hinder nuclear safety, security, and reliability or compliance with NRC orders, regulations, and other requirements put in place to help achieve those ends and that FOCD guidance that further codifies this substantial body of NRC precedent and practice should be the goal of the current fresh assessment. The industry commenter concluded that such a codification would help restore regulatory certainty in an area that the commenter believes has been eroded by apparent departures in recent combined license decisions.

### **Summary of the Input Received from Members of Congress**

On August 2, 2013, a letter was received from U.S. Senator Edward J. Markey in response to the *Federal Register* Notice request for public comment. Senator Markey expressed concern with the NRC's consideration of changes to its interpretation of the FOCD provision. He stated that the NRC should continue to maintain strict and strong restrictions on foreign ownership,

<sup>1</sup> IP 88005 addresses facility organization, procedure controls, internal reviews and audits, plant safety committees, and program management for operational safety, radiation protection, fire protection, nuclear criticality safety, and quality assurance programs for all fuel cycle facilities. (ADAMS Accession No. ML061800401).

noting that nuclear weapons programs in several countries, including India and Pakistan, began through access to civilian nuclear technology. Senator Markey also argued that the current NRC approach to FOCD is inconsistent with the approach taken by the Federal Communications Commission and the Federal Aviation Administration.

Senator Markey further argued that the FOCD provision cannot be overridden by Commission rulemaking and that proposals to loosen the foreign ownership restriction would violate the law, are in conflict with both the text and legislative history of the guiding statutes of the Commission, and should not be made, absent Congressional direction.

Senator Markey also stated that the NRC should promulgate rules that prohibit an entity from possessing a nuclear power plant license if foreign entities own or control more than 25 percent of the voting interest of that entity.