



Department of Energy
Washington, DC 20585

March 31, 2005

Mr. Roy P. Zimmerman, Director
U.S. Nuclear Regulatory Commission
Office of Nuclear Security and Incident Response
Mail Stop: T-4D-22A
11545 Rockville Pike
Rockville, Maryland 20852

Dear Mr. Zimmerman:

Under the operational agreement between the Department of Energy and the Nuclear Regulatory Commission (NRC) for review of Foreign Ownership, Control, or Influence (FOCI) cases my office has completed its review of the pertinent data concerning FOCI issues associated with the granting of a license to the Uranium Enrichment Corporation (URENCO)/Louisiana Energy Services, L.P. (LES) for the construction and operation of a uranium enrichment facility within the United States (U.S.). This review was conducted based on our joint responsibilities for the protection of Restricted Data (RD) and National Security under the Atomic Energy Act (AEA), other U.S. laws, executive orders, and policies and the terms stipulated by the Agreement between the United States of America and the Governments of the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland regarding the establishment, construction, and operation of a uranium enrichment installation in the U.S., known as the Phase III Agreement.

The classified information and technology that will be used in the design, construction, and operation of this facility of foreign origin. However, once this information and technology is introduced into the U.S., portions of it will become classified as RD under the terms of the AEA. This then necessitates the review and mitigation of FOCI issues under the requirements of the National Industrial Security Program. FOCI reviews and mitigations are conducted to prevent the unauthorized dissemination of information and technology created and classified by the U.S. Government.

In evaluating this case, the following facts were established:

- URENCO and LES, by the very nature of their origin, are foreign controlled companies.
- The information and technology that will be classified as RD are already owned and controlled by the other governments and companies associated with URENCO/LES.



- This information and technology is only being classified under U.S. law by the virtue of its being introduced into the U.S.
- All of the parties associated with URENCO and LES agree that little, if any, new RD should be created as a result of the LES facility.
- The Phase III Agreement establishes protocols to be followed if "new RD" is created at the LES facility that would prevent "new RD" from being disseminated to URENCO.
- The governments that are ultimately responsible for URENCO/LES are parties to the Nuclear Non-Proliferation Treaty.
- The signatories to the Treaty of Almelo, which established URENCO, have agreed to abide by the safeguards requirements established by the International Atomic Energy Agency.

Based on the above facts, any additional FOCI mitigation measures placed on URENCO and LES would provide no additional benefit to the National Security of the U.S.

Therefore, I recommend that the NRC waive the requirement for FOCI mitigation associated with the granting of a nuclear facility license to URENCO/LES. I further recommend that this waiver be re-examined should it be necessary to share nonfacility specific information classified under U.S. Law as National Security Information with URENCO, LES, or any sub-contractors or limited partners of URENCO and LES.

If you have any questions on this matter, please feel free to contact me.

Sincerely,

Marshall O. Combs
 Marshall O. Combs
 Director, Office of Security
 Office of Security and Safety
 Performance Assurance

- cc: G. Podonsky, SP-1
 E. Fygi, GC-1
 W. Magwood, NE-1
 L. Wilcher, SO-20
 A. Weston-Dawkes, SO-10.2