



NRC000101

Eagle Rock Enrichment Facility Mandatory Hearing

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NRC Staff Presentation Topic 2a
Foreign Ownership and Control



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Foreign Ownership

July 23, 2009 Commission Order For Areva EREF

- Issued as notice of receipt of application, notice of hearing, and provided additional direction and procedures
- Section VI of the Order provides direction to staff for licensing uranium enrichment facilities
- Includes specific direction on foreign ownership
- AES license application is governed by Sections 53 and 63 of the Atomic Energy Act (AEA).
- Issues of foreign involvement shall be determined pursuant to Section 57 and 69, not Sections 103, 104, or 193(f).



Foreign Ownership Statutory Framework

Sections 57 and 69 of the AEA

- Sections 57 and 69 of the AEA require, among other things, an affirmative finding by the Commission that issuance of a license for the Eagle Rock Enrichment Facility (EREF) will not be “inimical to the common defense and security.”



Foreign Ownership Statutory Framework cont.

Section 103 of the AEA (applicable to Reactors)

- 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.



Foreign Ownership Regulatory Framework

- Part 50 Power Reactors
- Part 70 Fuel Cycle, including enrichment facilities
- Part 95 Facility Security Clearance



Foreign Ownership and Control: Power Reactor Facilities

10 CFR Part 50 & 52

- The requirements of 10 CFR 50.38, 50.33, and 50.80 implement the AEA foreign ownership, control and domination (FOCD) restrictions for both licensees and applicants for an operating license.
- FOCD broadly defined as “a foreign interest which has the “power,” direct or indirect...to direct or decide matters affecting the management or operations of the applicant.”
- Staff reviews are conducted on a case by case basis using Standard Review Plan on Foreign Ownership, Control, or Domination.
- SRP prohibits 100% foreign ownership, however neither the Act nor SRP establish any other percentage threshold prohibition.



Foreign Ownership and Control: Power Reactor Facilities Cont.

10 CFR Part 52

- **Per the SRP, the licensee may submit a negation action plan describing measures that will be taken to mitigate FOCD.**
- **Example negation action plan measures:**
 1. **Senior managers must be U.S. citizens**
 2. **Voting requirements which exclude foreign directors**
 3. **Formation of a Nuclear Advisory Committee with U.S. Directors maintaining oversight of safety and security**
- **FOCD issues generally require multiple license conditions.**



Foreign Ownership and Control: Enrichment Facilities

10 CFR Part 70

- 10 CFR 70.31(d): “No license will be issued by the Commission to any person within the United States if the Commission finds that the issuance of such license would be inimical to common defense and security...”
- 10 CFR 40.32(d): “The issuance of the license will not be inimical to common defense and security...”
- 10 CFR 70.22(a)(1) requires information on the control or ownership by any alien, foreign corporation, or foreign government.
- 10 CFR 70.40 “Ineligibility of certain applicants” is specific to a license issued to the United States Enrichment Corporation (USEC) and prohibits issuance of a license to USEC (or its successor) if it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.



Foreign Ownership and Control: Enrichment Facilities Cont.

- 10 CFR 70.22(m) requires that the application contain a description of the security program to protect against unauthorized disclosure of classified matter, in accordance with Part 95.
- 10 CFR Part 95 contain provisions to protect against unauthorized disclosure of classified matter and the requirements for obtaining a facility security clearance.
- AES submitted a request for facility clearance for classified information under 10 CFR Part 95.



Foreign Ownership and Control: Enrichment Facilities Cont.

10 CFR Part 95

- 10 CFR Section 95.17 “Processing facility clearance” requires a determination that granting of a facility clearance would not be inconsistent with the national interest, including a finding that the facility is not under foreign ownership, control, or influence (FOCI) to such a degree that a determination cannot be made.
- Thus, FOCI factors are reviewed as part of the facility clearance process.
- In reviewing the license application, the NRC staff has determined that the requirement for FOCI mitigation should be waived for AES (SER, Section 1.2.3.2).



Conclusions

- The AES application review is governed by Sections 53 and 63 of the AEA, and not section 103, 104, or 193(f).
- 10 CFR 70.31 and 10 CFR 40.32 codify the requirements of Sections 57 and 69 of the AEA that the issuance of a license not be inimical to the common defense and security.
- For AES, staff considered FOCI under 10 CFR Part 95 and determined that the requirement for FOCI mitigation should be waived (SER, Section 1.2.3.2).



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