

June 19, 2013

foreign ownership, control or
domination.

9: 00-12: 00

>> All right it's nine o'clock so we
should be begin. Good morning and
welcome to the nuclear regulatory I'm
Joe Ann Simpson and I'm in the
international project branch in the
region of inspection and report. In
the office of nuclear reactor
regulation. On behalf of NRC I want
to say thank you for taking the time
to attend our meeting today and all of
our presenters for being here. This
public meeting is a discussion on
foreign ownership and controller or
domination of nuclear power plants.
I have a few announcements before we
begin. This is a category three
public meeting. The public is
invited to attend this meeting. We
have a facilitator Sheila, thank you
to help us with the Q and A portion of

the meeting and to be sure we stay true to our agenda time. Please sign the attendance roster. The roster will be part of the official agency record all slides after meeting hand outs are all by the door as well. -- next to the attendance roster and please complete them during the meeting and take them with you and mail back later. There's a meeting summary and all hand outs will be available. In there are attendees on the line we can identify through the go to meeting progress for the purpose of meeting participants. For those of you who are on the bridge line, it is being recorded. If you hear fire alarms please exit the building through the emergency exits and restrooms are located outside this conference room and down the hall toward the cafeteria and an escort is not required. I would like to start out by having everyone at the table introduce themselves before I

introduce our first presenter. I'm
Jo Ann Simpson I'm a financial analyst
at NRR

>> My name is Ho and I'm the Director
of Division of Regional and Inspection
Support at the NRC in the Office of
Nuclear Reactor Regulation

>> I'm Chris Reagan I'm Chief of the
Financial Analysis and International
Projects Branch in the Division of
Regional and Inspection Support at the
NRC.

>> Good morning I'm Beth Mizuno. I'm
in the Office of General Counsel
operating reactors division.

>> John Matthews, Morgan, Lewis, &
Bockius.

>> Paul Murphy Millbank, Tweed, Hadley
and McCloy.

>> Ellen Ginsberg, NEI. I'm with NEI.
Sheila Ray is serving as facilitator.
Good morning Shawn Harwell financial
analyst in NRR.

>> Now, an agenda has been provided

that shows we are scheduled to begin at nine and end at 12 pm. The NRC will give a brief overview and the staff requirements and memorandum, and the existing regulatory framework. Up next we will hear from our five outside stakeholders and there will be two minute, two ten minute question and answer questions as well as the break after the first question answer session. To give the presenters time to complete their presentations please hold your questions until the open discussion period. When speaking please identify yourself and your affiliation and use the microphone so those on the bridge line can hear you. Lastly we have a transcription NIST present so a record of our discussion will be available for future reference. We will be asking the people on the bridge line if they have comments or questions you can talk to Jocelyn in the chat or go

to meeting. I will turn to HO for his comments.

>> HO good morning to our guests at NRC headquarters. I appreciate you taking time to come to the meeting. I want to thank Chris, Shawn, and Beth and Jocelyn and their efforts to coordinate to t meeting. The purpose of the meeting today is to solicit input from the industry and other interested groups on the NRC foreign ownership control or domination or FOCD requirements. The purpose is to really support the staff in preparing a policy paper for the commission.

This meeting will allow it to be a decision making meeting or an opportunity for them to set a diverse set of views for those who ask clarifying questions on different perspectives. Next slide please.

As you may be aware that the commission issued a staff requirements memorandum on March 11, 2013 which

directed the staff to provide a fresh assessment of FOCD. They requested a voting paper by the end of this year.

Next slide. As a general overview we have a regulatory framework already in place for foreign ownership control or domination. That's derived from statutes in the atomic energy act particularly sections 103 and 104 and those are included of our code of regulations. There's also a standard review plan that the NRC staff utilizes in doing its reviews on FOCD and that was issued in June of 1999.

Next slide please. I just want to give a brief overview of the NRC's activities to date in the development of this Commission voting paper. On June 3, 2013 the NRC issued a Federal Register Notice to solicit broad comments on FOCD and the comment period closes on August 2, 2013. I do encourage all of you who have an interest in providing your views

respond to the federal register notice and give us your thoughts on this particular issue by August 2. We are having a public meeting today as part of this effort. We plan to conduct further outreach on their processes related to foreign ownership. Just an example of some of the entities that we had discussion with are committee on foreign investment in the United States or we refer to them as CFIUS and we met with the Department of homeland security and defense security service. We met with the FCC and we are organizing further discussion with the federal aviation administration both have foreign ownership under their purview. That concludes our remarks.

>> Our first speaker will be Paul Murphy and his presentation is from a financing perspective. Paul?

>> First of all and personally and behalf of our firm I would like to

thank the NRC for inviting me to come in and give these remarks today. As a disclaimer we are not representing anybody before the NRC right now that's pressing this issue. However, we have been asked by our clients about this issue and to advise them on what it means? So just the perspective we are coming from as an international law firm we work on nuclear projects all over the world both in the United States and abroad. Primarily from a transactional perspective or project developers or investors or lenders or contractor that is' kind of the perspective we bring, so in preparing these remarks in focusing on what to talk about I thought it would be helpful to give a financing perspective on what these rules mean.

As a disclaimer U second disclaimer my mother's side of the family is fully Italian so I grew up sitting at round tables and getting interrupted, so if

any members of the panel have any questions or something I say isn't clear or they would like me to elaborate more. Please interrupt I'm used to it my whole life it's not a problem. Here's an overview of the things I am going to cover. A little bit of background and thoughts going forward as to how to maybe think about this issue. So start out you know what I did on the left hand side was put together the sort of classic list of what are the concerns of financiers. That's both lenders and investors I think we tend to think mostly advice. The top five is the classic top five for nuclear. I put them there for a reason. It doesn't mean to minimize the others on the list. We can talk about them but I think they are fairly well understood. The point here really is when we are talking about the rules on foreign ownership? It really brings into

play two key issues. Now, it ties right back into what we believe is one of the toughest things about getting a nuclear project to commercial operation which is the financing question. It's one of the classic challenges. Whenever you start talking about ownership criteria, that starts to implicate financing issues. The second thing is the classic regulatory over site.

Whenever you go before the regulatory body people are going to get a little bit nervous because the regulator has an important role to play so it sort of takes things out of the project developer's hands a bit before they get that regulatory pronouncement which is critical to the success of the project. Next slide please. So from a financing perspective sort of taking it in pieces what the language policy is first of all. They want it to know it's a good project and on time and on

budget. Very importantly all of the project risks have been identified and allocated so that somebody is managing those risks. They would like to see proven technology if at all possible. They want to see same government commitment and over the course of the history that can even flow depending on where you are. One of the big things is they want a clear regulatory process. Surprisingly for people that may not be thinking about this on a daily basis, lenders in particular, really want the regulator to do its job. They want to see a regulator that is capable, that's involved and is independent and has the authority to act and actually does exercise that authority when appropriate. That's a good thing because lenders can't monitor the job on a daily process. They actually do want it involved. They want is clarity. They want to know how long it's going to take.

They want to know if A then B. If A then question mark that starts to make them nervous. Of course they want to see the classic economics that support financing. From an investor perspective it's all about and then some. For a lot of investors an maybe what we would call a classic equity investor. They are saying this looks like a good investment. Let me put my money into this and I want 12 or 15% rate of return. What they are looking for is I really don't want to be involved during this development period. It's long and no money is coming. This doesn't really attract it so much. What they really need to see when they look at the overall project they have to make sure lenders first get taken care of. On top of it all I need to make my equity return after that. I'm second in line. Anything that's going to make the process more difficult, create

more uncertainty is going to make an equity investor nervous and looking at various opportunities and anything that thinks they can't quantify and predict are going to disfavor that investment. When we look at the history of nuclear power in the United States first of all we have to be honest, on time and on budget isn't one of the strengths of the industry. Nuclear power is kind of a price taker we know that. Right now because of natural gas we are not seeing a lot of nuclear plants built. Obviously we like to see more from the -- regulatory delay has been an issue throughout our nuclear history and this country and other countries as well. So we have to look at these issues very carefully when people are looking at project development and financing because it has been a problem. It doesn't mean the regulator should go away. It's a particular area of

scrutiny. So as lawyers were genetically preprogrammed to site things in any kind of presentation we give. So the next few slides are what we are talking about here. There's no need to read this. This is kind of you know some of the classic rules and the next slide what is the standard of review and here's some of the considerations. No need to go through those point by point but to put them in there for completeness. Next slide. Really when we look at what's on the table what things do we gleam from that especially from the finance perspective? The first thing is if you say anybody can do it or nobody can do it that's really smart. You don't need intelligence people to sit there. You can either say we have no restrictions on foreign ownership or you can say we prohibit foreign ownership. Not very interesting to talk about. It's everything in

between as you read the regulations there's kind of this presumption foreign is bad. You know when you look at it there's a burden that has to be overcome. That doesn't mean any of us agree with that but that's kind of when you interpret the regulations that say hurdle. Obviously there's a concern presumption. We would rather not have foreign ownership. That's how people interpret it. That's not the intent but that starts to become an interpretation. The rules are subjective. It depends on the situation. Lawyers like the use the answer it depends all the time. It's very convenient for us. That's why people hate us. At the same time when you are trying to advice the client it depends, people lose sleep over it. If I do this what will happen? The problem is that with these rules there's so fact dependent, and so situational that it's very hard to

advise clients. We have been asked by people what does this mean? We can't give absolute which we would lining up to be able to do. It's understandable. It's sort of it is what it is. We understand why it's difficult and we wish it were different. It's not necessarily a criticism. It's an acknowledgment this is a difficult issue. It would be nice if it were clear and it would be nice if the rules were bright line rules. That's what we are here to talk about today. One of the questions we have to step back and ask ourselves a lot of the rules that have been written regarding our nuclear industry whether it applies to domestic industry and word who is are exports we were written a different period of time. If we go back to 1974 where in the United States we can build a nuclear plant and not have any foreign suppliers and didn't need

external financing. The nuclear industry was the center of the universe. A lot of this stuff made more sense. The reality is right now you know we can't build a plant totally with U.S. content. We need foreign content. We see that the industry has been much more globalized. We see that there's a challenge with financing. We see that when we deregulated our markets it's made it much harder to develop these projects. We have over a hundred nuclear power plants so it's not like people years ago are that much smarter and we are stupid today and can't figure it out. It's that the circumstances have changed. When we evaluate rules we can't live in the past. We can't say well this worked 30 years ago so it should work today. We have to look at today and say what makes sense? When we think about that there's a number of questions that naturally flow

from that. First is will an investor, will they spend the time to navigate this process or will they say this is too hard. As soon as we get that kind of an answer arguably our domestic industry is hurt. If those are sources of financing available to us more is better than less is the general rule. Does it limit our options?

Possibly. Right? So do we need external financing? Maybe? Okay. And given market conditions does it matter? Is there a line at the door? There's a lot of people saying why do we talk about this? We are not really building live nuclear plants. Why consider changing these rules are ten nuclear plants going to start construction tomorrow if we change this rule? I don't know. If you are talking about rulemaking we have to think perspectively. You know we kind of don't know what the situation is until we examine it further and see

if we are opening these opportunities.

While a critic might come in and say this is a complete waste of time because of shell gas after energy market, nothing is going to change if you make these rule changes why should you bother, and the reality that's probably not the right way to approach rule making. Let's do the right thing and create the opportunity, and see if no one comes to the door that isn't that thing either. We may start getting people come to the table that we didn't have and that maybe a benefit. That's kind of the analysis. When we look abroad I think we can take some points of reference from elsewhere. We have other country that is don't limit foreign ownership. The sale of Verizon in the UK not too long ago. There wasn't anything about foreign ownership rules in the UK. You have stories about the Russians and Chinese being

potential investors on the project in UK. That starts to create a lot of interesting discussion points. Are all people create it had same in our view when it comes to nuclear. Do people start to get nervous if you might have a Chinese or Russian company come anything and saying we want to invest. Let's be honest in this country it might be the case. It certainly made the press in the UK and there were people in the press and in the public dialogue that were saying you know maybe we don't want to -- own a nuclear plant in the UK. Do you open the door for all comers or not as part of the consideration? Taking it to the extreme you see a project like in turkey where it's a build to own operate where they are coming in and doing everything and the Turks seem fine with that. There's precedence abroad for having a completely different position. Whether it's the

Russians, Chinese, French or English or whoever. We have that and they chose this has been done elsewhere. There's some, people are comfortable with it. At the same time we have industries that we have what do you call domestic control where it's the government on utility or in the UAE even though there's a heavy Korean presence. It's still within the control of ABU DAHBI control entity and that will never change, and as the Saudis put together their program they will have ultimate Saudi control.

Again, a lot of these countries use them as strategic assets. Again another approach. There's a wide range out there and that needs to be part of the discussion. I think again when we are looking at what's going on abroad and look at the trends and especially the need for a strategic investor and a need for a lender this is a really hard issue. If we limit

the ability of foreign -- it's a factual matter limiting our financing options. So you put this all together what can you maybe draw from some of these points. I think you know within our own regulatory system you look at the 8-10 process as an example. Say we have to treat all country it is same, no we don't. We have lots of precedent for that in terms of our nuclear exports. You know we have countries on a restricted list. We have countries not on a restricted list and so on. In thinking about how we might view various sources of foreign investment, capitol, call it whatever you want. There is precedent within our structure that is distinguish among countries, so to say we are going to -- we already have. So this is just you know not really piling on at this point. It's consistent with what we have done. Similarly do we view people differently? I mean,

as I said we are not representing anyone before the NRC so we have no stake in the EDF discussion on -- but let's EDF is the largest nuclear operator of plants in the world. Are we really worried that EDF isn't going to operate a plant in the United States well? From a capability perspective? From a reputational perspective? That stuff matters as opposed to Joe's donut shop and nuclear operator coming to the NRC saying we want to do this too? All operators and owners are not created equal. There's a lot of experience out there that we could benefit from. You look at that and you say should we distinguish depending on who it is. If we have someone from possibly a country that we will call friendly, possibly with a long history of nuclear experience, you know, what are we afraid of at that point? From a security perspective let's just say. You get into the

classic criticisms of why you get nervous about foreign ownership.

What about all the operators come from above and they decide not to support the project and all the operators go home. Is that a bad thing. You can impose requirements that over time the operators have to transition from foreign to domestic or they must start with a certain level of domestic operators. You can address this kind of stuff. Similarly you worry about what about the money going abroad. So if they have a decommissioning responsibility and their accounts are held overseas or they don't put sufficient money in their operation and maintenance account to service the plant. We have this operating plant and we have to make sure it's operated and live up to the regulatory operations. Again you can put rules in place to control how accounts are handled and project finance is done

all the time. Remember project finance and nuclear plant. At the same time the idea of controlling the flow of capitol and how money comes in from operations and how it gets parked into accounts. Again, we can create the rules to address some of these concerns if you are talking about foreign ownership and will they exercise the proper stewardship, operational financial et cetera for an asset they operate in the United States. Again, we can control these things. What about reciprocity. If someone walks in the door and say I want to be able to do this in my country in the U.S. With well, what does that country allow us to do. Do they allow foreign ownership or operation or investment in their units will not. You know maybe that becomes one of those distinguishing factors again, do we open a door to a particular country if they don't open the door to

us. All of these things can be thought through. I think the approach needs to be let's look at the various issues not lump them all together and create one rule. Let's address the various concerns whether it's national security, plant safety, operational issues, decommissions.

They are all different issues they all have different answers. So as we think about the rules to create the right tool to apply to that situation it might be different answer depending on the subject. I think that in some of these examples that I have given there are ways to think about the issues to come up with some solutions.

You know in closing I wanted to just address a little bit about financing, so if you could go to the next slide please. I am not going to go by the next two slides. As I mentioned before there's never been a project financing of a nuclear plant anywhere

in the world. You talk about a classic export project financing. That being said a lot of principles and financing might apply such as controls of accounts. One of the things that if you can jump to the next slide as well. Here are some of the reasons why project financing may not work for nuclear. Next slide please. When you get to the lenders even if you are not going to do a classic project financing where the lenders take security over everything and if there's a default they can step in and take over the asset and that's one of the challenges with nuclear. You don't want a lending stepping in and running a nuclear plant. At the same time it's clear in the regulations that lenders can take security over the asset. In doing so they are subject to all the rules that would apply to the actual owner operator. The point I would just leave you with

is there a question do the lenders ever need to take security over the asset and for people in project finance and you stop breathing for a second when you hear that. It's something that's almost unconscionable to say. At the same time we have done it abroad. If you have strong balance sheets and if you have government guarantees there's other tools to address that, so you know when you distinguish between investor and classic lender, lender activities sometimes starts to make people nervous because of the way lenders can exercise control over the project in terms of financial covenants and control over accounts. Even though they may not take over the asset they can limit what the owner operator does if that operator says I need to do this maintenance and the lenders say, you can have a problem there. The only thing we raise this presence for lenders to not have to do

that. I want to leave you with that thought. One final thought and I think it's really important to remember when you are talking about as spent that is have with the newer technologies a 60 year operating life. Whenever you think about financing you need to think about it from the whole life cycle. There's a very difficult period at the beginning. This develop period where a lot of people aren't interested in playing. It's the most risky period. Once these aspects become operational and go through and come out of the first out age and it show that is the plant works and everything is running well.

History shows in our country as we become very attractive aspects. If you want to think a life cycle approach and look at the debt load at the beginning and cost of capitol. Once I get into operation I can start refinancing. I can go out to capital

markets. I can do all of these things that lower my lifetime cost of capitol on the project. That only work ifs you have people to go to. We have as I said there's evidence that these are an attractive investment. Again, what you would like to do is as a developer of a project is have the widest set of opportunities available to you to create a competitive environment for financing and the more difficult we make that and the less options we are. Is that the natural consequence it's not natural consequence to make that statement. It's fairly obvious. In thinking through these issues these are the consequences of having an unclear sort of murky process. Understandably so. There's a lot that goes into this. There's a lot that a regulatory authority should be reasonably concerned about. At the same time I think sort of benchmarking the rules

with current working conditions an acknowledging hey it's different than it was 30 years ago and understanding that all of these concerns can be addressed in different ways that may actually make it a complicated rule making. Looking at the facts and create more clarify I think it will be helpful from a lender perspective.

With that thank you very much for your time. I am happy to answer your questions.

>> HO: Thank you Paul. I think you provided a lot of perspectives in your area of the world for us to consider. A couple questions what I heard in your presentation I heard you suggesting that rule making is the right thing to do. I know you had mentioned that at this point in time to really acknowledge what the current nuclear energy business environment is today which is very much in a multinational venture. Is that what you are

thinking is right now is that the staff should pursue rule making this area?

>> Paul: I think it's a point of discussion. I think we need to look at when these rules were originally written and say okay what were the conditions. Obviously we had a completely regulated electricity market that created a certain level of freedom of movement for these utilities to develop these projects with not only deregulation and much more active public utility commission that is crawl all over these projects the idea that you can pass everything through like the good ole days doesn't work anymore. It's harder to do these projects than it was years ago. That being said if there's a desire to facilitate nuclear development you have to look at what are the biggest roadblocks, financing is one of them. To the extent that we can source capital from more places you know

again, creating more options is generally a good thing as a starting premise for financing. The question is will then what concerns does that raise and how can we address those particular concerns as opposed to sort of just this overarching rule right now that it's rather broad and unclear.

>> Ho: I appreciate that perspective. I know sort of stating the obvious. The NRC is not a promotional agency of course. Development wouldn't be the underlying basis for any option that we would consider with respect to rule making. I just had a question that also about your firm's portfolio is it strictly nuclear or are there other projects that your firm is involved with related to foreign ownership? I know in the opening we talked about the FAA and FCC also having involvement there. I wonder to any extent I want to know if you have other commentary

are other frameworks might be working well?

>> Paul: We have a global power and energy practice. Project finance is one aspect of that. So more broadly it's power and energy. It's all forms of generation including nuclear. We representing foreign developers in the United States in a number of areas. I think that it's, the issues don't rise at the same level of concern regarding foreign ownership. There are foreign ownership issues when you look at tax issues and various things that have to be managed as far as a project. Because nuclear is unique it comes with its own set of concerns. I think that the idea that foreigners are operating, power generation assets in the United States that seems to be handled okay for the most part. Again, it's a function of where the developers are and where the money is coming from. Doing the proper

diligence of all of that. At the same time the concerns don't rise to the same level as they do nuclear.

>> Hi: Let me just make a general statement here. Obviously, NRC staff here please feel free to ask questions that you deem fit. We had designated talking time. I would like to keep it more fluid. I would invite all the participants to weigh in if there's an opportunities to do so in the dialogue, and not stay too structural we are on a time frame because I want to clear out of the room at noon. I want to offer that and perhaps Sheila you can help us in your facilitation there?

>> I could comment on the rule making question. I think we have a fundamental issue here and that is that there's a statutory requirement. So a rule making can't change the statutory requirement, so if we want to change the statutory requirement we

have to go to Congress. However, the commission has historically gone back into the 1960's has interpreted the statute as allowing the certain amount of flexibility, and the commission is in the position to do that. Short of pursuing the rule making I think the focus ought to be on the commission readdressing the meaning of the statute, the purpose of the statute and clarifying how the staff is going to administer it. The statute rather than we really can't change 50.38 it is what it is. It mimics the statute. So it's really the implementation and the guidance, and I think that's where the commission can help us. That's where the staff can help the commission by putting some options and issues before the commission to give some clearer guidance. We can get the kind of clarity that Paul is talking about that the marketplace really needs.

>> Thanks John. I agree with what you are saying with respect to the connective tissue between the 50.38 words and the statute. I think there's a range of options including a legislative change and that again involved a number of different steps that go beyond our agency. Thank you for that. I appreciate your comment there.

>> I wanted to pick up on one or two of Paul's points with which we agree. I think it's an important point to which to begin. That is it does seem to the industry, and I will get to this in my presentation that there is a negative perspective with respect to foreign investment. Going to your promotional point it's important that the agency maintain its oversight rule, but by the same token it shouldn't be picking winners and losers and if in effect coming up with an approach. Does that then I think

the agency needs to look long and hard at whether it's perspective is unnecessarily negative in that regard, so that's a point I wanted to make. The other point is Paul made a point about decommissions funds and whether or not that would be subject to foreign ownership and where the money was coming from. I think we need to be very clear in today's discussion about where the FOCD restrictions run and how far they run.

The agency has got extensive regulatory framework in place. It's not something that escapes notice when there's questions regarding decommissions funding. So that really I think is a separate issue. I just wanted to clarify. I think it's dangerous to mix those two and cloud the issue before the staff at this point.

>> Just to follow up on the first point that Ellen made. I think as we work

overseas, and I do a lot of work at the IAEA as well. The NRC is viewed. I'm not sucking up here. (laughter) the NRC is viewed as the premier regulator. The biggest one and the longest one and the most experienced one. I think from an expert perspective that leadership is very important. You talk about the way NRC doesn't have a promotional. There's what the law says and what your mission is there's the practical reality of how people perceive things out there. And NRC guidance and NRC experience is valued through tout world. Now what does that mean? Well, if the rest of the world is doing something very different okay. We are the United States and we should do what's right for us. However, if we are out of touch with the entire rest of the nuclear industry elsewhere we should think about that. You know I'm not saying change anything but we should

think about that. The NRC is a valued asset for our nuclear industry in terms of everything we are trying to do elsewhere. In terms of the leadership that as a foreign policy matter to the United States we want to see countries do this stuff the rights way. With the NRC outreach programs we can influence behavior elsewhere. At the same time if we are living in 1974 does that start calling into question if I'm country XYZ am I going to start calling the Russians for help as opposed to the American's for help. That's reality. As we look at these things the one thing I would encourage is for the agency to look at what's being done elsewhere. Make the right decision for what's right for the United States but not in the vacuum of not looking at what's going on in the rest of the world.

>> I agree. One thing I made note of in your presentation of examples

happening internationally. It doesn't appear to be consistent across the board. Some countries are more lean I can't and your countries as others want to have more exclusive national over site of their nuclear energy programs. I do think your comments is well taken it should be the commission should have a sense of what's happening as well. I do think one of the things that's happening and we are getting into foreign policy and discussion there it's not a decision that's reserved for the NRC by itself and it involved discussions with other Departments and agency z as well.

What I sort of seen so far is other parts of government is doing quite a bit more and I think that may come up later on in our dialogue here. Any other questions before we move onto the next presenter?

>> Thank you.

>> All right. Keeping with our agenda

our next presenter is Chris Brewster,
and he will be discussing mitigation
of foreign ownership control and
influence and the experience under the
MNISPOM.

>> Thank you. I'm with the law firm
of Strook, Strook and Levan. I have
over 20 years of experience in working
with litigation and the litigation of
foreign ownership control, and
foreign influence matters before and
not only the Department of defense,
but also the Department of Energy in
the national nuclear administration
and other members of our firm have
experience going back 30 years
including the creation of the first
special security agreement with the
Defense Department. Probably over a
hundred, 150 transitions before the
committee on foreign investment in the
United States including several
mitigation agreements. What I'm
going to talk about today is really the

experience before the Department of Defense and the experience of defense security service view from the perspective of the contractor. That is far and away the vast majority of cases considered in the national security sector. The taking off point for discussion I think -- and this is the first slide. In the national industrial security program operating manual is the statement the affirmative statement that foreign investment can play an important role in maintaining the vitality of the U.S. industrial base. It is the policy of the United States government to allow foreign investment consistent with the national security interests of the United States and the foreign ownership control and influence policy for U.S. companies that hold facility security clearances is intended to facilitate foreign investment by ensuring that

foreign firms cannot undermine U.S. security and export control to be an unauthorized access to critical technology, classified information, and special classes of classified information. So the purpose of the MNISPOM is to facility foreign investment based upon a finding by the defense Department and I think that encourages well by Congress that foreign investment is an important component in boosting the strength of the U.S. defense industrial base.

This is taken, it's in determining whether a company is under foreign ownership or control it's worth reading. It's whenever a foreign interest has the power direct or indirect whether or not exercised or whether or not exercisable through the ownership of securities by contractual arrangements or other means to direct or decide matters effecting operations in that company

in a manner that may result in unauthorized access to classified information or adversely affect the classified contracts. What the defense Department is looking at is how does the foreign ownership effect control and performance of classified contracts? How does it present the risk of unauthorized access to classified information or controlled information? This is reinforced throughout the N IDX O M where they note that the primary consideration is the safeguarding of classified information and that when a determination has been made that there is no need for a clearance, the requirement for mitigation goes away.

Now, let's go to the next slide. It's fair to say as we evaluate FOCI cases we look at it as a risk based system. I know it's a term that the NRC uses. I am not speaking in the term of art that the NRC uses, but rather talking

about a threat assessment. As I noted earlier first the requirement for mitigation is only when a facility security clearance is required. No mitigation is required unless they require a facility security clearance. Again, all of this is tied back to the impact of foreign ownership on the performance of classified contracts and programs.

You can turn to the next slide.

>> HO: I want to make a comment and I have a question buried in here as well. You can assume that the folks at the table here have at least a basic understanding of the FOCI operations and you can peruse with the slides you have here. We met with FOCI division operation a couple weeks ago. They went through the detail there is. The one thing if you could include in your remarks would be any parallels you see with sort of what your experience is with FOCI and kind of what we are doing

at FOCD. I know we are using a little bit of different terms here. As I was walking out of a meeting with the Department of defense. I am looking at it with the diagrams and overlapping circles. It seems like we are talking about the same things. I mentioned earlier that I think the other Departments and agencies are perhaps doing a lot more in this area than the NRC is with respect to monitoring the activities of some of the mitigation. I think it would be very helpful for the NRC staff at the table to point out any major deltas between your experience and sort of what we have in place here and also any similarities.

>> I will be happy to do that. Of course our experience is focused in the defense sectors and so you know what I'm going to be here is exclusively from that experience. My sense is that a lot because we have now

decades of experience in the defense sectors with the programs. It's possible from this I think for that experience to inform how the NRC approaches these issues. One thing that is probably you know worth taking into account is that these cases involve majority control situations. I will talk about that in more detail in a moment. Right on through to one hundred percent ownership including foreign government ownership. There's no ownership situation that's taken off the table completely. There's never a situation. Put it aside there may be policy considerations that would lead the Defense Department to say for example that you know we know that a Chinese owned company is not going to get a facility security clearance. When you put aside those factor that is come into play you are going to find that what they are looking at is to the

numerous factors taken into account to see how that can be mitigated as to allow for continued performance of the classified contracts without undue risks. This slide here talks about the factors in this DSS under scores. In evaluating not only what the company is under FOCI, but also what is the appropriate form of FOCI mitigation. They are looking at factors like what's the economics of government -- cyber security issues for example. Records for engagement and enforcement in unauthorized technology transfer. The sensitivity of the information which shall be accessed. They are more concerned as you might imagine if their company has a top secret clearance than it is as they have a secret clearance.

>> Thank you for your question and response. I would like to remind everyone to state your name for the

transcription and also for the webinar and chat. Thank you.

>> In I event you can see what these issues are here. The point is that there's a matrix of issues, no one of which is controlling. These are considered in the aggregate as part of the evaluation. There is no entitlement to a security clearance I know you know this. There's no entitlement to a mitigation plan.

It's impossible for the agency to say we don't see how FOCI can mitigate here. It is possible for the agency to consider a broad matrix and a wide range of options as they look at these cases. Let's move to the next slide.

The majority control cases range we are talking here situations typically ownership over 50% running on through to one hundred percent ownership.

This will say you read it the voting trust is one of the options. The voting trust is extra ordinarily rare.

I think I have seen one of these in 20 years. The proximity agreement is more common but is still uncommon. Control by independent proxy holders with the consent of the defense Department if that's the case. And they do still allow for a limited reservation of rights. They still do allow for consultation with the proxy holders. They still do allow for direct communication with management and the foreign owner under the over site of the proxy holders all of whom who also serve as directors of the company. The special security agreement which is the most common allow it is foreign owner direct representation on the board of the company. Provided there's outside director that is are also appointed who are independent, who are chosen by the shareholder with the consent of the United States government. There are restrictions on removal as you

might imagine. I think the key factor in looking at the different forms of FOCI and mitigation in majority control cases is that special security agreements require national interest determinations for access to proscribed information. This is an access limitation that is imposed only in the SSA cases. It's not imposed on the voting trust or the proxy. It is a special determination and in this regard may depart from what the NRC practices. The NID's require the agency finding and by agency I mean the agency that is the contracting agency. The award is consistent with the U.S. national security. That standard has evolved over time. I have been talking to you back in 1996 for example we would have been talking about a multi part test that was applied in national interest determinations including an evaluation of the availabilities of U.S. controlled

competition and why a U.S. controlled company should not be awarded the contract. That has changed over time. It's become more and more liberal if you will. So that today the standard that is supplied is a determination of the word is consistent with the U.S. national security. Let's move to the next slide. It's also worth noting that in cases where there's a minority. The defense security service does not go typically in all of some very rare cases will not go to the special security agreement. Rather they use the security controlled agreement. That can involve cases where there's 10-12-15% minority ownership. The key factor is can they put someone on the board. If they can put someone on the board than DSS is going to want to counter balance that with an outside record. There's no access limitations in these minority control

cases. If there's a significant minority interest that is either through ownership or through some contractual rights or whatever it might be. It does not translate to board representation, then FOCI will be mitigated through a simple board resolution which is an acknowledgment by the board that foreign ownership is present and restrictions on access by foreign persons. Finally, I will address this quickly there's also some called a limited facility security clearance. In this no formal FOCI mitigation is required. It is extra ordinarily rare. I have seen it used and I have used it in cases where there is a very strong interest on the part of the U.S. government and working with the company, but usually the level or the amount of foreign, I'm sorry of cleared work is too small to justify encumbering the entire company. All of these agreements

require the establishment of a government security committee which is a board level committee. I think there's analogous features in the NRC world and safety committees and things of this character. The government security committee is comprised exclusively of cleared U.S. citizen directors. That's the outside directors plus the officer directors. It's important to know that the outside directors when they are chosen frequently are retired military, former senior government officials. If a company has extensive experience or contractors in the intelligence community it maybe someone out of the intelligence community. If it's the Navy retired admirals Navy officials, et cetera. The point being that the role of this GSC is to be the eyes and ears of the United States government at this company. These directors have a fiduciary obligation to the

shareholder. They also have an obligation to the United States government to ensure that the security agreement is properly implemented, classified information is protected and that export controlled information is protected. They have to certify to that when they sign up, but as they sign a formal certification acknowledged to the U.S. government they have to renew that every year. Let's go to the next slide. I will just digress this quickly that when you have these programs in place what comes with it are a series of other procedures and requirements. Visitation plans that will require outside director approval for meetings with particularly senior officials of the foreign owner, communications plans involving correspondence with the affiliates. Shared administrative services are reviewed, technology

control plan needs to be in place, U.S. government approval is required. All of these are require bid the virtue of security agreement which is tied to the protection classified programs and what's important to note is that the defense Department looks to the government security to implement these procedures and to administer these procedures on a case by case basis with direct reference to the risk profile for that company. So for example the company that does not possess classified information is going to have a much more liberal plan than a company that possesses top secret. We will move to the next slide. It's notable that some of the largest U.S. government contractors are parties to FOCI mitigation plans. We listed some here. Some of these companies are now such substantial government contractors I think they are foreign. Debt and equity has

become less and less significant over time. Over to the next slide. All in all we think there are probably more than 300 companies that are operating under one or more of these plans.

There's roughly 30 proxy agreements. 100 special security agreements 25 security control agreements and over 150 board resolutions. Those board resolutions are almost always going to be in cases where we are talking about minority investment or more attenuated investment. We will move to the next slide. As we evaluate or look at the NIPSON and how it's implemented. There are certain core values that are worth noting. I mentioned facilitating investments as one of them. The DSS and its counterpart at the NSA, and at the Department of Energy will look to the service agencies as their clients. So they are trying to be responsive to their clients. They are not looking

to be an impediment to the ability of intelligence community or the Air Force or whatever it is to work with these government contractors. They are looking to make it work by putting appropriate mitigation measures in place. I mentioned that they are looking to protect classified and export information. Protecting performance and ensuring transparency that is that they know what the level of foreign involvement is at the company. There is an awareness of that so that there are no surprises.

As I mentioned that the government security committee is on hand to monitor that. And the government and the one value that is so integral that I didn't think to put on the slide is that U.S. citizen control is key to all of these programs. So the lessons from the NIPSOM experience is designed and intended to protect classified contracts and programs. It's not a

perfect model for NRC. I do think it may help inform the review. The DSS is doing a case by case review. It's not a one size fits all program. We have now decades of experience if works and includes now some of the biggest defense Department contractors and what we here repeatedly from the auditors who come back is that because of the requirements that are imposed on these company's it enhances compliance across the board. There's a compliance culture that exists with these companies that frankly in many cases goes beyond even the U.S. controlled counter parts. The last note or the last slide please is that and I took this quote from bill snider who is then the chairman of the defense science board. A statement that foreign domicile firms are adding value to the U.S. defense program by bringing investment and advanced

technology to the defense market that expands and strengthens the defense industrial base resident in the U.S. We have had meetings sometimes with the defense security service where we have run into bumps or hurdles as we are trying to address regulatory concerns. They will say to us if you think that this is truly important go to your customer and get the customer to talk to us. Because we listen to the customer. And we do that. Very often the biggest advocate that we had within the defense Department is the intelligence community, the Navy, the Air Force because they want that technology. They want that ability to have access to the expertise and the experience that a lot of these foreign company's can bring to bear if they can be allowed to put these programs together which we have been able to do now for several decades. Thank you.

>> HO: Thank you very much Chris. I

thought your remarks were enlightening for me. I think it brought more clarity to issues we discussed. I had a couple of general questions and maybe comments as well. I will say to the participants and also the members of the public that are with us you should not infer that any options are already identified or any things that we are asking are options we are thinking about. We haven't made up our minds yet. We are in the process of collecting information. So please as we ask this, the NRC asks questions you should not infer these are options we are perusing. We are in the information gathering phase. With respect to a couple of things you mentioned here on your slide you said the N IDX O M and the FOCI views are not the perfect model for the NRC. When I look at the framework as a place for doing these things and I understand the primary objective is to

provide access to classified information and when you look at the NRC standard review plan for our foreign ownership control that's not our focus it's classified. It does say that the review should be done with an orientation toward national security. I will also say that I'm a lot more of an engineer. This is an area that's fairly new to me and it's a little bit hard to wrap my brain around it when I look at the NRC safety mission and one of the things we are interested in this standard review plan is to look for foreign ownership to the effect that it could impact the safe management operations of the facility, but I see those things kind of blur together quite frankly. This isn't just me talking with respect to national security interest and the ownership components and how that might influence not only the security perspective but also the safe

operations of the facility. I guess I am going to put something out there with respect to this model if you will. I do see some elements from what I have heard in your discussion and in my meeting with DSS that you know to me it almost seems like we are sort of scratching the same itch here. So maybe I would ask you to elaborate more on that comment that it's not the perfect model.

>> Chris Brewster: The reason I said that is what you have to take into account is DSS as it is implementing these programs as I say, looking at it on a case by case basis. I think it's fair for the NRC to say what is the single most important consideration that we have. Let's say that it's safety that's most important consideration. That the policy, programs and procedure that is are put in place are oriented toward that. That you know there may well be lessons

here and I think there are for having requirements for U.S. citizens over site of what is important to the NRC. What's important to the defense Department is classified information, classified contracts. So that government security committee is given a lot of latitude as to how they are going to oversee and administer these programs. Now, do you need at the same time the whole matrix of controls that are put in place? Maybe not. I do think that there are definitely lessons here afford you can look at it as a menu as to which you can pick and choose.

>> I had a comment on that. I think one of the most important one of the important lessons you can draw from this experience is the risk based approach and threat assessment. I think the NRC needs to look at the FOCD restriction. What's the threat that it's trying to mitigate against? The

threat is diversion of the nuclear technology, and diversion of special nuclear material that's why the statutory prohibition exists. That interpretation of that statutory prohibition with the atomic energy commission interpreting it. If you do a threat assessment and you look at what, who's the foreign investor. So central bank of North Korea is a foreign investor, there's a threat there. There's a diversion of Nuclear technology and an issue of diversion. And these kinds of mechanisms make sense. The foreign investor is British energy. British energy already has the nuclear technology. It already has access to special nuclear material. The amount of mitigation you need to do to comply with statute ought to be minimal because the threat is minimal. EDF does not need to come to America. It does not need to come to America to

gain access to special nuclear material. The kind of mitigation measures ought to be minimal to combine with the statute. It's a threat assessment that's critical to that evaluation.

>> HO: Thanks for your perspective John. In embarking we got the commission memorandum. I think we had discussions amongst ourselves that there is a security component here. As I can share with you in some of the discussions I had with our team here and the other agencies really the discussions are very much centered on the national security. It's interesting. The last question I had Chris is you mentioned that a transparency somewhere in your slide here. I think you know it's familiar to many people here and perhaps that the NRC wants to be as open as possible. When you are dealing with national security issue there is'

limits on how open you can be. Can you give us a sense on how transparent this process is to a member of the public with respect to determination in this area?

>> The transparency that I speak to is a transparency from the company to the defense Department and not to the public at large. In fact the defense Department jealousy guards, a contractor for example is prohibited from marketing it's company based upon the fact that it has a special security agreement in place. It can't leverage that for market value. It certainly is a consideration in the contracting process. The transparency that I speak to is really the ability of the defense Department, and it's oversight function to know what's going on within the company and the relationship it has to the foreign --

>> That's what I thought you would say.

>> If I can remind everyone to state your name. I'm Sheila. I think we need to move onto public comments.

Feel free to use the microphone if there's any public comments?

>> Hello. Thank you for allowing me to come to speak today. I have had a few comments on what I have heard so far. My name is Mark Vosper private citizen. I am very concerned with what I hear so far. A very slippery slope we are going down here. I will comment on some of the comments that have been made by the gentleman here today. First, I am concerned with the fact that it sounds as though the NRC in some respect has made its mind up already on pursuing this and I would urge them not to do so. John Matthews I believe no one is stating their name so correct me if I'm wrong here. He made the comment that the NRC is in a position to enter a new rule making process. They are also in a position

to not pursue a new rule making process. I believe that the rule that is are in place now were in place for a very good reason. They have been in place since 1954. They have kept this country safe since 1954. I believe that here in the wake of the FUKISHIMA disaster I am looking at the possibility of deregulation in a time when we should be regulating. We should be regulating more not less. I think that we are looking right now at a situation where a foreign owned nuke is in a disaster situation still not under control. We are looking to open up to foreign owned nukes on American soil. Very dangerous and a slippery slope. I would like to address something else that Chris Brewster said, I believe. I don't quite understand why U.S. citizen control is key to this? Can you explain that for me?

>> Sure. All companies that have

security clearances are required to have U.S. citizen chairman, and the CEO and key management personnel all need to be U.S. citizens. The board of directors of the company if it is a company that's controlled by a foreign shareholder has to be dominated by U.S. citizen directors. So the -- in the SSA situation the directors may include for example two foreign appointed directors who may or may not be foreign citizens. They may be U.S. citizens from another affiliated company. The number of outside directors must exceed the number of the foreign directors, and then also there are officer directors of the company who are on the board who are U.S. citizens and cleared. If the company is operating under a proxy agreement then all of the directors are cleared U.S. citizens and there's no foreign participation on the board at all.

>> Thank you. I understand the way it sounds to me is that I'm going to be a straight talker here. It sounds like a numbers name. It sounds as though we are talking about a restructuring which I see many restructurings go bad. Apple is a good example recently. I have many issues to bring in. I want to also address Mr. HO's comment, is that correct? Mitigation efforts should be minimal. He stressed this. Is this gentleman?

>> I'm sorry that's -- HO: From the NRC. That's not my comment.

>> Mr. Matthews said that the mitigation efforts should be minimal, okay. It doesn't sound that way from what both of you have said today.

This is coming from K street, so let's take that into consideration.

Mitigation efforts on this will be huge. Security itself will be huge. Insurance issues will be huge.

Sovereignty issues are a big issue here. In the time we are losing sovereignty to multinational corporations through trade deals all the time, first and foremost I believe for this panel should be the safety and the security of the American people that should be number one.

>> We appreciate your comments. I would like to provide the folks on the web chat.

>>

>> If I may quickly go through a couple more things. Mr. Matthews made the question do we really think that EDF is someone that we need to be concerned about. I say yes. I point to the fire that is EDF has had. I point to the death in EDF Facility in France. I think we need to be concerned about this. Now when I discuss this with industry people as I do the FUKISHIMA could never happen here? Because we are America we do things differently

here in America. We have American technology. We have American know how and we have American workers that are concerned with safety. Okay.

Well, let's not change that. We are doing good so far let's not change that. We don't need to change that. We don't need to take these risks, so I am urging this panel to consider to not reconsider this, and the last I would like to bring some other issues later up if I could. I want to ask was Calvert cliffs denied based on fort ownership control? That's my understanding that the Calvert cliffs numbers 3 was denied; is that correct?

>> Beth from the office of general council. The atomic safety and licensing board had in front of it a contention with respect to foreign ownership. The board ruled on a motion for summary of judgment or summary disposition that the application was --

>> I was looking for a yes or no answer
not to be rude. Is it denied in the
eyes of

>> It could be denied in the NRC.

>> You designate all of your
facilities

>> Excuse me, sir? We need to move on

>> It was a yes or no question.

>> I will be happy to talk to you
afterwards.

>> We were told by the public it was
denied. On your website it's listed
under review. I want the public to
know whether it's denied or whether
it's under review

>> I think I understand the source of
the confusion. The issue was denied
by the three judge panel. It's my
understanding there's a petition for
review is that right that's currently?

>> The petition is review which is what
led to this meeting.

>> The petition has not been yet
determined.

>> Please state your name before speaking.

>> Can I try to clarify as the intervener of the Calvert cliffs case.

>> The license is denied for the current structure of the UniStar nuclear they cannot get a license.

The application is technically under review in the event UniStar comes back.

>> You probably said that better than I would have said that. Thank you.

>> Okay. And I know we are trying to. We are a little bit behind schedule.

Thank you. I think we need -- I did want to address a couple points you made by Mark. From my perspective safety is number one priority. I don't think we are compromise that in anyway. With respect to the NRC making its mind up. I don't believe we have. In fact we haven't even started really writing anything.

>> Thank you and I will hope you will

consider my thoughts.

>> We will certainly consider your comments. I will also point out an option is to maintain the current regulatory framework. That's always an option. We are in the process of hearing what we can about what's done elsewhere and what other perspectives an issues are. The NRC has not made its mind up. This is an issue that the commission asked for and we are responding to its request to the staff to take a fresh look at foreign ownership and present any option that is we see could consider it's for policymaking decisions. Thank you.

>> Thank you Jocelyn is there a comment on the teleconference.

>> He should be on the bridge line, I'm not sure. I'm not sure if she can talk. Is there anyone on the conference before we take a break?

>> I'm here.

>> Did you have a comment. I didn't

even know it was live. Okay. My name is Erica Gray I'm calling from Virginia. I have got an echo going. I wanted to go back to Paul Murphy's presentation I think the biggest challenge that comes across to the public such as myself is this is really all about financing. There's a lack of funds and it looks like the basically they like to change the laws and I agree with mark's statement that we need to continue the current regulations. Frankly I would like to know who would own the weight, the nuclear waste that's produced. I would also like to know the budget that taxpayers are going to have to pay for to set up all of these different Departments's to have to oversee all of this foreign ownership or come nation. Frankly I think that the public in general would not want foreign ownership over our nuclear power plants. How do I get off the

line so I can mute it?

>> The operator will help you or I believe star six will mute you. Thank you.

>> Thank you for your comment.

>> At this time I would like to take a break 15 minutes.

>> HO: Can we take a ten minute break I want to make sure we have enough time for dialogue. If we can ask the participants to come back in 10: 35.

>> Thank you.

>> welcome back everyone our next presentation is from Michael MARIOTTE. Thank you Michael.

>> Thank you. -- probably more to the point of this meeting I was the prose intervener with the Calvert cliffs licensing process which were the foreign ownership issue turned out to be a play a major role. I wrote the original contention and pursued it through the end. It's the GENTLEMAN brought up the licensing effort was

unsuccessful for UniStar nuclear it's currently constituted which was a first and then in that sense although I have a lot of help from -- France. In winning that case it was the Commissioners -- that set in forth this meeting. I am as much to blame as anybody for this. You know just because a law worked in this case in presented ineligible applicant from get ago license is not a justification for changing the regulations or the law. Sometimes regulations work as they are meant to. And in this case they have and I have seen this before when Louisiana energy services was initially denied a license because it was financially unqualified, first movement from NRC was change the financial qualification rule. Well, you know when they worked it doesn't mean you have to change them. It means you should take prior the fact they worked. Atomic energy act is the

law and it's been stated here today. I won't reread it, but it's up on the screen. It's the law and if you go to the next slide the NRC has recognized that's the law, the final standard review law keep that is pretty clear. To the extent that the NRC makes any changes in its standard review plan or any other guidance it has to be in the context of the law. NRC is not the policymaking body. They are the implementing body and you don't have the authority to underline the law. You don't have the authority to try to get around the law. You do have the authority and the ability to implement the law and that's what you should be doing in this context and in fact all other context. Let's go to the next slide. A lot of what I have heard today would be quite appropriate on how subcommittee meeting. It's not appropriate for the NRC. The industry wants to change the law. The

industry knows where to go to change the law. You have much better contacts there than I do. A hundred percent foreign ownership of a U.S. reactor is illegal and will remain so unless or until Congress changes it is law. There's no distinction of the law and I bring this up specifically because it's in the federal register that NRC put out for this meeting. There's no distinction in the law between direct and indirect foreign ownership. You don't make that distinction the law doesn't. I don't see how the NRC possibly could. And there for NRC request for comments on these issues and I'm quoting from the Federal Register Notice here involving and up to indirect foreign ownership that's inappropriate. One hundred percent is illegal in every case. That's the law. Actually I want to go to the next slide. I want to mention somebody I think Mr. Murphy

has the presumption that foreign is bad. You know I am not a xenophobe. My grandfather was born in France. My father was born in Paris. The presumption is in fact the law. The law does presume that foreign ownership is bad otherwise the law wouldn't have been written. The law would instead state foreign ownership is fine and dandy. It says it's illegal as is control and compilation of a foreign company or a foreign government. You know in the Calvert cliffs case I want to remind people that we filed our initial contention at a time when UniStar was 50-50 owned by electric France and -- and when we looked into the application and started doing research into the corporate structure well we accepted EDF a major shareholder in energy. The reactor was EDF is owned by the government of France. The reactor was to be built by AREVA. We started

looking at not only at strict ownership, but also at the control or dominate features of the law, and it concluded that this was a case for foreign control and domination, and often it's the time on EDF ended up with a hundred percent ownership.

And some of the more nuance issues never were litigated, but we were certainly repaired to litigate those.

>> If I may this is HO with the NRC. This is a natural time to ask a question on the last two slides you talked about. Going back to the one you said NRC does not have the authority to change the law. It would require an act of congress to change that. I think with respect to, I think Chris' presentation it's the United States government policy to allow foreign investment in the United States, and going back to your comments that you know states what's in the atomic energy act with respect

to foreign ownership that the NRC should be proposing any changes in that to the law. I guess how do you reconcile that where you know on one hand you hear that the policy of the United States government to allow foreign -- now there's a delta between those things?

>> The question is not whether any foreign ownership is permissible because quite clear there is some. What is the appropriate line and what was the legislative intent, and I will get to some of those issues. I think I will also get to this. I think one of the key things of change that do need to be made is much clearer definitions of what control means or what dominate means because that is not clear in the standard review plan. It's not, as we all know the law doesn't get very explicit beyond the one sentence on that. I will talk somewhat about that.

>> I don't think it's to say the government allows foreign investment. The government approves foreign investment and at the same time to say well in this case the law says foreign investment has to be limited. It's not a conflict.

>> Is it correct for me to characterize your comment or at least the focus of your comment it's aimed at the 100% ownership case?

>> I think the 100% ownership case is clear. The NRC doesn't have any ability to change that. I would argue in going to argue that the actual level of ownership that is permissible is quite below that. I think what I was saying in the Calvert Cliffs case is we had one that was initially that was potentially accepted for hearing was in a factual situation where you have 50-50 ownership but then in additional layer above that from French entities that you made it now 50-50

proposition. I will say this. One of the problems in developing regulations and guidance in this kind of case is lawyers are really good at developing complex corporate structures. I think we are seeing this in the UniStar case. When I first looked at the UniStar application there's 7 different limited liability corporations between the reactor itself and the parent company's. Corporate structures can get very complex and for that reason I think the NRC guidance does need to be very flexible. And the NRC has to be alert and on guard to be able to implement this law. You need to have flexibility and authority to meet the demand of this this law. I guess I'm arguing against a prescriptive approach that would say you know that would give an exact percentage of ownership or something that say this

is level is always legal and this level is illegal because it's not too hard to think of corporate structures that will weasel around that. You need to really delve into these sometimes.

Okay. We are on the right slide.

Your federal register notice on this meeting, and on the comment period I think inappropriately focuses on the ownership issues, and as I mentioned I think the control domination issues are equally important. We basically have a three legged stool here.

Ownership control and dominate.

That's the way the law is worded.

It's not ownership control and dominate or dominate. Each one of those is an equal pillar. It's an equal leg of this stool and without all of them being taken into account the stool will fall over. So I think that you need to look at the control and dominate issues more closely. I think they are equally important. I

know my first business college, my first business class in college and I'm sure everybody else who has taken business class in college already knows you can achieve control and you can achieve domination with much less than one hundred percent ownership especially in a publicly traded corporation as most utilities are.

Not all, but most. We recently went through and have a legislative history of this provision of the atomic energy act at dun forest. It was, you came very clear that the level of concern about foreign ownership and control was actually much greater than even I had realized at the time this was being passed. The original language of the act was presented in committee said no reactor could be owned by foreign interest and set the threshold of ownership at 5%. That was the maximum. Negotiations in the committee they dropped the five

percent threshold and added the terms control or dominate. With the implication being they weren't happy with a strict numerical level of you know defining ownership, but very clearly concerned that they did not want any significant foreign ownership. They did not want the possibility of a foreign entity owning or controlling a U.S. nuclear power plant. Witnesses argued that the witnesses I have a list. I didn't bring it with me. They were all business people and legal scholars. They argued with no, having a congressional dissent which the federal communication ability which is brought up here today and sets a maximum of 25% ownership, again recognizing it's possible to control a publicly traded corporation with a minority interest. Let's go to that. Okay. You are right with me. Okay the current guidance on the FOCD

issues overly permissive. It does not have basis in the legislation. I think you bent over too far backwards to allow foreign owner involvement in the U.S. reactor project. I am thinking about the AMEGEN, and the 50-50 ownership of British energy, and I think it was maybe Philadelphia electric. I probably would have intervened in that having known what I know now, but I didn't at the time. We believe foreign ownership above 50% is defacto. Once you get above 50% you own something. The burden which should be ton applicants to sort of why it isn't illegal. And it is clear to us that the intent of the atomic energy act and we are happy to show this in court that any significant or foreign involvement should be examined and probably rejected. The next slide on control and domination can get minority ownership. Certainly can be controlled for less than this. Why

the FCC act was used as a model. Even for privately held corporations such as UniStar control and domination can be achieved by ownership or 50-50 ownership and depending on factors and how the company is structured and who's putting how much money into it with regard to in this slide. In UniStar's case EDF owned 50% plus a significant portion of its partner constellation energy. We believe that had was a FOCD violation even before EDF ended up the sole owner of that project. If you go to the next slide we do think your guidance needs more improvement in the standard review plan. We are thinking that these should provide. It does need to provide as much clarity and transparency for applicants and the public alike. The public needs to be able to understand what the NRC is lacking. The definitions of control and dominate how the NRC

determines that is not very clear. I think it can be clarified for both the public and applicants I think that can go far. We believe that the guidance can be clear that anything over 50% foreign ownership is illegal as some other absent mitigating factors. I don't know what those factors maybe. That should be part of your standard review plan, and the review plan should recognize that control or domination those two issues can occur with less ordinary reason ship. As I mentioned corporate structures are frequently not transparent and frequently very complex. For that reason the burden has to be on the applicants to demonstrate that they don't run afoul of the restrictions. The burden should not -- to make sense of these convoluted structures. Without you know having some transparency. Of course this is not a burden for those applicants that is

are domestically owned which has been the case through tout history of the U.S. nuclear program to date. So why is this important? In some ways it doesn't matter if it's important over not it's the law. As I mentioned.

Some of the remarks I am making here and the remarks I heard today. Like I said it would be more appropriate in a congressional hearing room rather than here. Some industry has argued it's increasing financially the nuclear industry. I don't deny it.

NRC can't change the law. The other point we have to recognize is reactors are currently licensed for 40 years.

They routinely receive license extension for 20 more years. That's 60 years. There's talk in the building and we have additional 20 year licensing periods. That's 80 years. 08 years ago we were at war with Germany and Japan. We dropped nuclear bombs on Japan if we want to

bring it back to nuclear technology.

We don't know who our friends are going to be friends in 7 years. I would like to think we are always going to be friends with France, Germany and Japan. I am not a clairvoyant. I can't say that and history suggests strongly that things happen you know our best friend now may not be our best friend later. 40 years ago we were best friends with the Shah of Iran.

We tried to sell them export of technology. Fortunately we didn't. I think I don't think anybody would be very happy if they are U.S. reactor ins Iran right now. Conversely if Iran had been in nuclear power back then and wanted to build a plant here in the U.S. I don't think we would be very happy with that either. The fact is that we don't know who our friends and allies are going to be. 50-60-70, 80 years from now. Back in is the 85 I wrote a piece entitled nuclear

reactors -- in fact nuclear reactors
are a target for enemy. If they
happen to be inside your country
running that nuclear reactor it's a
very tempting target let me tell you.

As my friend Paul said it's a
predeployed planned destruction.

That has to be in the front of NRC's
mind when you talk about this issue
because you don't know what's going to
happen 50-60-70 years from now. We
all hope to be living in the garden of
Eden, but that's not what we are
repaired for. I would conclude that
the A E A prohibition on FOCD still
makes sense and it must be enforced.

It makes sense today. I would argue
against changing the law if it does
come to that. You know more
importantly is that the NRC has to
follow the law. Thank you for the
opportunity to speak here today.

>>

>> This is Chris Reagan. I have one

thought or question. You spoke to the three legged stool and one of the suggestions you made to improving our clarity and transparency and the definition of control and dominate.

Can you elaborate a little bit more on what you see that definition or how you interpret that definition and it might help with subsequent presentations.

>> I didn't say it was easy to do. I just said it needs to be done. We will be submitting comments on that issue. I am not prepared today to provide you a detailed answer, but I think, my thinking is that it's you have to look at the total picture. So I go back to the UniStar case of where you have a U.S. company that has one level of ownership and foreign company with another level of ownership and then what other corporate, what other issues might include might make domination and UniStar case that was you had a French government company

being a half partner. A French government company being the reactor supplier and the French government company owning a significant share of the U.S. utility. That brings up control and come nation issues we argue that would have been illegal had we litigated that. In fact the next step after that was that this -- France shortly after we file it had contention conservation energy is near bankruptcy. They ended up selling off 49.9% to electricity France. By the time the contention was admitted you also had this very significant investment. It was four and a half billion dollars from electricity de France into Constellation Energy. You know that very clearly to us made electricity France the dominant and controlling partner in that partnership. How you write rules or how you write a review plan to take into account all of these

different things it's difficult. I think you need to layout at least the factors that you are going to look at to make that determination. That would be level of ownership and level of contract and other types of contracts and that kind of things, and we will try to get you more detail answer in your written comments.

>> Thank you for your comment.

>> HO: We had one comment on the presentation if you don't have an on the spot answer today send us something in a response. In your slide you said that your views that you made clear anything over 50% is illegal absent any mitigating factors. I have seen a number of different mitigation factors in the process here at the NRC do you have any sense of what other mitigating factors you feel are appropriate?

>> I mentioned as I think as an aside I am not sure what those mitigating

factors will be. I am not ruling out the possibility that there could be some.

>> HO: Thank you.

>> We are ready for our next speaker?

>> I actually had a similar question.

This is Jo Ann Simpson. I wanted to make a clarifying comment. You talked about the federal register notice. Inappropriately focuses on the foreign ownership issue T.

commission has specific aspects that they wanted to look at in as part of our fresh assessment which were the item that is were identified in the federal register notice. That's what we will provide to them and that's what we were trying to get input on is ownership and the totality of the facts of control and domination.

>> Michael MAROTTE: I understand that. I wasn't trying to cast blame. This is a three legged stool. If you are going to look at one leg you have

to look at all the legs. I mean you know if you are going to review the rules you will review the guidance and you will review it.

>> Thank you for your comment. We need to move onto our next speaker Ellen DINSBERG. This is Sheila.

>> Ellen: Thank you very much for the opportunity to present on this issue this morning. We are extremely interested in participating in these discussions and possibly offering some suggestions this morning for some opinions that could be included in your SECY as you prepare it for commission consideration. We think that this is an extremely important opportunity to express our views, and I would also like to offer that we are available and would encourage you to provide other opportunities for this public dialogue in the future. I think it's extremely valuable both to the staff and industry to expose these

sorts of issues where the differences of opinion on differences of view early on so that the various stakeholders can provide their views.

I am very mindful of the fact that you have a December 31 deadline by which to get a paper to the commission.

Next. I wanted to provide a little bit of an overview here, and you will see that what I tried to do is offer some answers to questions that are posed here as because Joe Ann just mentioned many of them are subject of the SRM that was issued and the federal register notice. I think they are the core of the issues that we need to address. This issue about compliance with the atomic energy act obviously first and foremost and whether or not it would allow, and it would be elastic enough to allow indirect foreign ownership. Another ownership that's worthy of consideration is whether the agency has looked at the litigation

action plans and whether there's room for improvement there. Further the commission specifically asked if there would be an opportunity to resolve FODC following issues and license and we will cover that as a relatively higher level. The limits on FOCD grounds and what would be left. I have already been addressed and turn to them in some second. We will be offering some suggestions and proposed modifications for the SRP this morning. We think there are areas whereas has been said earlier clarification would be appropriate. I am going to suggest that you go a little further and consider some new ideas here. Next slide. So in brief what are the answers to this? I am going to present my next set of comments in part because I'm in a rush to get through the comments in 25 minutes. The question is already arisen to why this is important?

Clearly, we, the FODC have the potential to unnecessarily --I will get to the notion that safety security and economic benefits are derived from participation by certain foreign entities. The second and third question we have answered both in the affirmative and negative you can comply with the atomic energy act and read it in the context of 2013, and you can also the atomic energy also admits of a hundred percent indirect ownership. Further I would say that the key here and we talked about it a little bit and I would like to delve into it a little bit more. When you look at the litigation plan and that's the action on the table. The question is whether the foreign owner would have the control over the nuclear safety or security operational decisions or the special nuclear material, and there's precedent for analyzing it in that fashion. I can

will get into that in a second. We have answer it had last three question ins affirmative as you can see. Why is this issue important? It's important because at its heart failure by the NRC to appropriately interpret foreign ownership control and domination restrictions could needlessly impair the both the development and the fundability of nuclear assets. This isn't strictly related. I wanted to make that point. I do not want to sound too much of an alarm, but I do want to note that there's a sense in the regulated community that the FOCD analysis as it's currently applied creates in our view what I would describe unnecessary and undermine hurdles for licensees and license transfers. There's a perception I think we have talked about a very high level here. To put a fine point on it there's a perception that the agency seems to be assuming

that upstream foreign owners or lenders will observe direct or indirect influence that will circumvent even robust action plans that are designed to do exactly what the atomic energy act provision is intended to achieve. I think Paul pointed out and we would agree that investors where they are domestic or foreign they all need regulatory certainty. I would add to the comment that they need some measure of confidence if reasonable measures are adopted to address regulatory requirements that those reasonable measures will be reviewed in depth, but at some point will be determined to be acceptable. It won't be a constant one off. So what are the benefits? I think it's fair to say that many reactor vendors and nuclear service providers are already participating in the U.S. nuclear market. These are entities that are

credible, they are experienced and I didn't list them above but certainly EDF and -- Westinghouse which is majority owned by Toshiba come to mind. The reactor technology for new build in the United States is now often a foreign origin. So it is in my mind I think perhaps a bit arrogant to describe the U.S. as the only player in town. We are not. It is a global market. There is something, in fact, there are significant gains to be made by the sharing of the sorts of information that will improve operation that can advanced safety.

I think it's somewhat uninformed opinion to think that we are in fact living in a world where the U.S. has the sole license, if you will, the exclusive license on nuclear technology. Next slide please. We have gone over the Atomic Energy Act to some degree. I would make the point in the 1950's when this was

enacted technology, as I just mentioned was the United States was exclusive to the United States.

Further the FODC requirements and the provisions were adopted during the cold war. It's critical to this analysis when they were adopted there was concern about the transfer reactor technology, and the proliferation of special nuclear material, and the transfer of nuclear information, technological information. Today's global market that's just not, it's not the concern anymore and it shouldn't be. Those are greatly diminished issues. When you look at foreign involvement you are looking at enhancing safety. You are also looking at sharing and we often talking about sharing operating experience. You want that operating experience shared as a regulator the other point is a subsidiary point is that the nuclear industry and the

public benefit from the inflow of foreign dollars was there's indirect and direct economic gains to be made. What has the commission asked you to do? It's asked you to take a fresh look. The commission was pretty clear in the SRM that it wasn't looking here to stop at the point in time. That having been said I think you have to go back to the legislative history in order to understand how this statutory enactment should be applied. Michael talked a little bit earlier about the 5%. He is correct. There was originally a 5% limitation on voting stock that was deleted. And the understanding was that it was responsive to that action, it was responsive to criticisms related to the fact that it's very hard to determine who owns the voting stock in a publicly traded company. I think we conclude, we reach a very different conclusion than Michael offered this

morning in that we believe that it's clear or one could fairly conclude that the atomic direct intended no absolute bar solely on the percentage of foreign stock ownership.

Historically I would say it's obvious that hasn't been the case. The commission has acted so as to allow foreign participation in U.S. projects. Returning to the early precedent just 12 years after the atomic energy act was enacted which would lead one to conclude that those interpreting at the AEC at the time were closest to the issue. They established the control and principle. They-- SEFOR. The commission actually said that the limitation on foreign ownership should be given an orientation toward safeguarding national defense and security, and the commission said that it believed quote that the words owned controlled or dominated refer to the

relationships where the will of one party is subjugated. The other and congressional intent was to prohibit the relationships where an alien has the power to direct the action of the licensee. Going into your question about how do you define the control and domination and commissions already given us some help there. The next slide. The SEFOR given the SEFOR pres debt it's clear that the atomic energy is emphasizing and this remains good law is the need to take into consideration the many aspects of corporate experience an activity. The ability to restrict or inhibit with the security and other regulations now of the NRC and importantly the capacity to control the use of special nuclear fuel an it's disposal quote would be of greatest significant. I think it's critically important in this conversation. To the extent that the SEFOR precedent

was issued by the commission it was also recognized in the NRC's SRP standard review plan and is allowed, it is recognized also with the use of action plans. Next slide. So today we join the issue with respect to how does one read the atomic energy act? Michael offers what I would describe somewhat of a literal reading. Where owned is in isolation. Even with that reading I would suggest that it is plausible to read that provision to refer solely to the ownership of the licensed of the licensee. It is possible to even with that sort of what I would describe of more restrictive approach allow foreign participation. More importantly the commission is already answered that question. The commission said that in analyzing the facts that SEFOR it's the effect of the contracts, the governance control that is would mitigate any ability of the foreign participant to

compliance -- NRC regulation that is' relevant. It's not strictly ownership. In fact it's ultimately one of control. So the AEC and current precedence still hold that a unified reading of those terms is the appropriate way to read this. We think that should continue. So again, it's the potential to create security problems, the ability to control compliance with NRC regulations after control over nuclear fuel and disposal of that fuel that's relevant here. Next slide.

So how do we view this 10% ownership question our view it's with the operative point. With that operative point. The agency already done that in certain other cases. The McDermott comes to mind. And also with respect to British energy with, sorry with also with respect to Trojan nuclear plant next slide. Let me turn now to a practical suggestion that we

have. We strongly believe that the nationality of the foreign participants in the status of the foreign nation from which they come are extremely important with respect to how foreign ownership control and domination issues should be considered. In many ways those factors are more significant to protecting the security special nuclear material than are some of the others identified. The NRC has already identified a list of special, sorry a list of countries in section 110.30. The nuclear suppliers group and section 810 of the DOE regulations. You have a list of countries, and it doesn't really matter whether you exclude some and allow others, but my view is it's always easier to identify those that are permissible but that's can be discussed later T. point is that there should be some list of countries from

which the agency is able to make a decision that either less or more is necessary. And in particular if there are MPG treaties or you already agreed to the kind of safety obligations under the nuclear suppliers group that should be a good starting point. The other thing I think is critical to consider and this goes to the fundamental philosophy of FOCD analysis. That is there's no basis to assume that necessary foreign entities are going to excerpt certain -- engage in action measure that is U.S. citizens are going to be in charge of safety and security are not going to abide by their obligation but are going to violate U.S. law and risk criminal penalty and that the over site for licensing an NRC will somehow not hold. Next slide.

Another change to the SRP that we would like to see is to recognize very much more directly the context in which the

FODC limitations would apply. We have gone through a number of these already. I think it's important to set for the NRC like other agencies and like the industry has turn over in its staff. I think it's important to establish what the context is for these reviews and that would be helpful to do at this point. Next slide. The other approach that we would like to see a little more emphasis placed on is an analysis that considers the totality of the circumstances. In reviewing the facts the commission in SEFOR, concluded all of the facts should be given an orientation toward safeguarding national defense and security. You are not just talking about an analysis that hinges on whether the foreign entity is owned. It's whether they exercise influence or control over, and here's the important issue, over those security

interests or safety interests that are relevant. It really shouldn't matter to the NRC whether a project, whether a foreign interest has some ability to influence decisions on whether to sell the project on accounting or on tax matters that are extraneous to the national security. So I suggested that I would offer some new ideas in addition to the list of countries that one might include in the SRP for those which less consideration on FOCD issues would be given. There's few other ideas here that we would like to float. The second dash relates to 10%, less than 10% of a nuclear operator. I think Michael said with special voting rights there could be some influence or control exercise, so without special voting rights there should be a di minimis amount of ownership that would not have FOCD requirements associated with it.

Further if you have a non-operating

owner that owns less than 50% of the nuclear plant that should also be perhaps either a presumption that no action plan is necessary or a very limited one at best. Finally if in fact the foreign entity owns or finances a nuclear plant where the entity, foreign entity is also the reactor vendor that could also be basis for presumption. Next slide.

So in term of clarifying the SRP another point is to go back to this question about ownership and whether or not ownership alone confers, control over nuclear safety matters.

Our view I think is that unless there's some indication that the matters over which control is exercised relate to those two issues ownership alone should not be cause for concern. I would also like to mention that a little bit about funding. So in the case of loans to an applicant or I will sense see by a foreign participant.

If the foreign lender only has normal creditor rights, again, the arrangement should be considered to be non-indicative of control. Thanks.

And I think we could go into, John will probably go into this foreign lending and financing and how it should be viewed rather than a control issue if there is no real issue of initial control. The commission has asked whether or not there is a means of addressing foreign ownership control and domination issues in the post license context and our answer is yes.

As I noted at the outset there is an opportunity for the commission to issue a license condition. It can be verifiable. It's been used before and I think the criteria can be relatively easily set out such a license condition would make sense.

So in sum our analysis of the relevant statutory language the legislative history and the applicable case law

established a few baseline principles. Those are first that foreign ownership of a licensing parent is not prohibited per se. Up to a 100%. Secondly, the ordinary foreign control should be looked at by reasonable litigation plan arrangements. The negation action plan should only be really, one could go so far it should only apply to rights over safety or special nuclear material. Most of the other issues really aren't a function of foreign ownership control and domination.

With that I simply would like to thank you for the opportunity to make this presentation this morning and to reemphasize our offer to continue to participate in the public forum on these issues which we consider to be very important 6789

>> Any questions to the staff here.

>> I have a question. The NRC shouldn't have the ability to pick

winners and losers. I think that's the exact term that was used to foreign ownership. One of your options was creating a safe list of nations. They seem counter intuitive because we are picking winner ifs we create a list.

>> Actually I don't think you are. The idea with the list is that you borrow from other parts of the government where concerns of the sort that otherwise would have to be confronted here. They have already been addressed. If other parts of the government the state Department, the Department of Energy have reached conclusions about whether or not these countries are credible and whether they are experience demonstrates they don't have proliferation risks. I don't see why the NRC wouldn't want to leverage that information. It also seems to me that it creates a reasonable basis for a lighter touch.

>> I know we need to move on. The

license condition piece I saw that in your last slide is that something that you feel is something that we need to consider if we were to look at other means for looking at higher levels of ownership control or domination. I am not familiar enough with the licensing issue to determine whether or not there easterly sense condition in this area. This is the time where everybody heard it in this context.

>> My answer would be in this context if some of the suggestions are made are adopted it would be unlikely to meet a license condition.

>> Okay. I see what you are saying.

>> Thank you for your questions.

Let's 3406 onto John Matthews from Morgan Lewis.

>> Go ahead and go to the first slide. Looking at the presentations on this topic before the regulatory conference last year in March of 2012.

One of the things that occurred to me

that I think is an important point to make up front is foreign investment in the U.S. nuclear industry is in the national interest. Foreign investment comes in and creates jobs in America and facilitates to infrastructure and important to the future of the United States. Foreign participation an increasingly availabilities of foreign participation improves liquidity of nuclear assets and enhances the value of nuclear assets. We saw a very beneficial effect on the nuclear industry when you know the nuclear assets always had to be in cost of service regulation and there were a lot of utility that is we're not interested in operating nuclear plants. The NRC took an enlightened view about the future of the industry. If you look at the license transfer rules for example that said we are not going to stand in the way of commercial

transactions we are going to facilitate them. Merchant generators came in and bought assets and we saw the value of nuclear assets. We saw increased acceptance of wall street. I think that had overall a very positive effect on the industry. It's also the policy of the United States government. Energy Policy Act encouraging the development of advanced nuclear reactors and so the extent they take a restrictive view of control an domination provisions in the act and limits investment and nuclear and whatnot. It's acting against that interest and against that national policy. I really believe that the restriction should be enforced as necessary to protect the national security in the United States. That means you look to what real credible threats are in terms of diversion of the nuclear technology and diversion of the nuclear material.

When you have participants foreign, participants in the U.S. industry that are coming from countries that have track records and positive track records in the nuclear industry, and positive nonproliferation then it should be a very light touch. Go ahead and flash slide number three. I think we should move onto slide four. The statutory restrictions we mentioned this before. It's really up to Congress to change the statute. Where commission has flexibility is in interpreting, and how it enforces its statutory restrictions. I really believe that going back to the C four decision in 1966 is important because the commission there did take a narrow view as to the purpose of the FOCD restriction. That was a national security purpose. Let me go ahead and move onto slide five. The Ellen has already comments on this. Clearly the statement from SEFOR the

restrictions should be given in orientation. That principle was adopted by the commission once again in the SRP that was issued in 1999. Go to slide six. I would like to go back again and revisit with SEFOR. The focus that the commission had was the ability of foreigners to restrict or inhibit compliance with security and other regulations of AEC and the capacity to dispose of special nuclear term. If you have U.S. citizen bees in control of security and being control of the special nuclear material. I mean, nuclear power plants are very secure facilities because of the physical threat that they have to defend against. The idea that a foreign participant is going to be successful or have a motive to try and access and divert special nuclear material from a U.S. nuclear reactor to me seems impossible. Unless you are dealing with a foreign investor

from a country like north Korea I believe the agency can rely on fairly minimal negation step that is are taken by the U.S. company to ensure U.S. citizens are no control of the material. The commission once again in 1966 the atomic energy commissions said you know this is an issue of controller domination which would have special significance in view of the apparent objective of section 104. It's that capacity to control nuclear fuel, dispose of the material which is all controlled in the United States under U.S. law.

>> If I may this is HO. I am going to ask this question of you but I offer anybody at the table to address the question. I heard throughout conversation with you and Ellen and you emphasized minimal restrictions. Reflecting back on the kind of overlap at least I'm seeing with the FOCI review that is are done with the CSS

and the Department of defense. Those mitigated measures didn't seem minimal to me. I kind of offer that up just as a point of discussion. I am hearing your comment about the minimal and the light touch and that the industry has evolved. What I'm looking at with other sectors in the federal government particularly in the defense area. That framework seems fairly robust for the FOCI reviews. Kind of what I heard. I'm not an expert in that area it didn't seem minimal to me. Anybody at the table if you can give me your view.

>> I will take a shot at that. I think slide 11 in my deck commission should establish a graded approach. We are not suggesting here as a blanket statement there be a light touch. If that was the implication it's not what I end r intended. There can be a light touch I believe for certain countries where you don't have proliferation

concerned where they own the technology, where they are perhaps even selling to the U.S. the technology that's their national technology or the technology developed in that country. It's quite different I think when we are passing along classified information or some other important technological issue that where the outside country does not have it, where the foreign country is not in a possession of that. So I asked the question which is there anything left if you take some of our suggestions on FOCD. The answer is clearly yes. We are not asking the agency to create a blanket statement if this is no longer relevant. What I think is available to the agency is to look at this based on the risk posed by what the activity is and what the level of involvement is up to and including a hundred percent. If it's grandparent or great grandparent or

great-great grandparent. I don't want to leave the impression it's a light touch.

>> I agree with that point. I think the perspective that one has to have that in 1966 and 1954 nuclear technology was restricted data. it was classified information. Okay.

Nuclear reactor technology today is not restricted data. So you know if it were still restricted data or if you are dealing with restricted data, certainly the kinds of mitigation measure that is you have imposed in the N IDX O M would be appropriate. Here where the foreign investor has the technology where the technology is not itself classified you don't need those measures. Those measures are really should only come into play if you have a foreign investor that is coming from a country like north Korea where there's clearly you would one would reasonably have suspicions about what

the motive is of this central bank north Korea invest anything a nuclear project in the United States. That motive may well be to gain access to nuclear information that the foreign participant wouldn't otherwise have. You don't have that Moe tiff when you have a foreign participant from the country that has access to it. Let me move to slide 7 because nuclear safety is very important. Everyone agree that is nuclear safety is important T. FOCD restriction is not the place to focus on nuclear safety in my opinion. Foreign companies are involved in designing and constructing plants in the United States. Foreign control companies are doing that. There for they have to have nuclear safety responsibility. The idea that they shouldn't have nuclear safety responsibility would be appalling to me. They are involved in the design and construction. We have foreign

companies on foreign soil that manufacture safety critical equipment that goes into U.S. reactors. Those foreign citizens when they are manufacturing those critical components dam well better have safety responsibilities they have quality responsibilities. It should not be a core for this agency to have foreign -- it's about inhibiting this agencies jurisdiction over a U.S. entity that has nuclear safety responsibility. If the foreign company would inhibit the NRC's ability to exercise it's appropriate jurisdiction and inhibit the U.S. licensee to comply with NRC regulations. They are every day in this industry and wouldn't operate unless they were involved in safety decisions. More over if you are worried about influence and external stakeholder that is might impact safety look. We have that across this

industry. There are co-owners, there are political stakeholders, and there are state regulator that is have the potential to impact safety because they have the potential to influence how a nuclear power project is managed. We have systems in place to make sure that notwithstanding those stakeholders having the ability to influence or having the ability to have impact that we have U.S. citizen that is are responsible, personally responsible for compliance with the NRC requirements or safety. We also have robust programs, corrective action programs quality assurance programs the over active. The NRC inspection program that all act to identify to any inappropriate influence that might have an adverse effect in safety. We don't need to worry about foreign involvement in nuclear safety in the United States. In fact we need foreigners to be

involved in nuclear safety in the United States in my opinion. Let me move onto the next slide. I think we should take a fresh look, a fresh assessment of the SRP and we should go back topics that the national security is the primary purpose. We need to recognize that national security realities are different than they were 30 or 60 years ago. Our reactor technology is not restricted data. You no longer have that concern. We have now in 1966 or in the 1960's the focus was on potential export on American technology abroad. Today we are importing foreign technology in the United States. I think the commission has considerable flexibility on how it interpret it had FOCD restriction in light of that. Let me go to slide nine. I wanted to give some background. The country of origin should matter in 1998 with the staff sent the information out to the

commission. I was at deco energy. We said look you ought to take account that the British energy is from the United Kingdom they have a great nonproliferation effort. The NRC staff said we looked at all the precedent, there's no indication that we ever taken into account of origin. Saying we are not going to take into account the country of origin. His voting sheet and I have shown it here struck those sentences. In fact, if we go ahead and turn to slide ten if you look at the safety evaluation, and you look at the discussion of foreign ownership and domination there is a taking into out that British energy is from the United Kingdom. It's not a new idea. It's an idea that the staff has been resistant to, and was resistant in 1998 and the commission gave different commission. I think the commission should get the same direction again that's the country of

origin should matter. Let's go ahead and turn to slide 11 because my suggestion is that the best place to look for the countries that you can have confidence in, foreign participants from these countries are the nuclear suppliers group. The nuclear suppliers group is a largely U.S. effort. The U.S. right now is chairman of the U.S. suppliers group. They have guideline that is the member participants adhere to that include physical protection, safeguards, export controls, special controls for sensitive exports or enrichment technology for example. Control of the material. So here you have a group of countries that it's clear that the participants in these countries are sophisticated, global nuclear players that have a stake in nuclear safety. That have a stake in the nonproliferation goals of the United States and hearings. I think

we can take a great deal of confidence from the fact that we have those countries. Let me go ahead and turn to slide 12. So how would we devise negation measures. As long as you have U.S. citizen that is have adequate authority that's not an in appropriation diversion of nuclear technology which isn't even an issue in most case where is you have foreign participation and that the foreign participation if they are seeing from global nuclear players already have the technology, so it's simply not a major risk. You need to have U.S. citizens in charge of national, in charge of the security programs. And if you know if you are dealing with an operator and operator that volunteers to obtain a security clearance so that the individuals in the operator can receive classified information regarding for example the incredible terrorist threat. Then they are

going through the part 95 process.

They are getting the FOCI clearance through the NRC, so those issues can be dealt with there and don't need to be dealt with in FODC space. If you go back, precedent on this is when under the U.S. enrichment prioritization act the restrictions on foreign ownership control and domination were extended to facilities. Part of getting issuing, and the certificate to UJEC was a finding on FOCC. They essentially say look as a policy security and security clearance that's more than we would ever do for FOCD compliance.

We're going to rely on that. I think that is useful precedent to look to foreign if you finding? I don't believe that foreign funding should be problematic. Unless a foreign investor is given specific control rights what is the difference if money being loaned or a project is coming

from a foreign bank or U.S. bank.

Creditors have, creditor's rights and we have a regulation and 50.81 is the commission manifestation of the authority under the atomic energy act by the security leans and mortgages et cetera. The commission has decided to do that on a general basis without individual application, provided that the lenders understand that they can't actually exercise their security rights and take control of the facility unless they come to the NRC and get a license approval. So those mechanisms are in place. I don't believe that there should be a focus on where the money is coming from. If you look at the SRP and look at the negation measures, and look at some of the negation actions that are taken a majority of them relate to funding. I don't understand the emphasis because the creditor doesn't have that kind of control over the project that needs to

be, whether it needs to be much concern. And I think if you are talking about funding coming from N S G countries again, what motive do the foreign investors probably have to try and use their funding to use their influence. They don't need access to technology. They don't need access to material. They have a stake in the nuclear industry. They are compliance oriented. They recognize we have a requirement here in the United States that they have to abide by. They put measure ins place to assure that U.S. citizens exercise control. Why assume these companies are going to try and circumvent those requirements? I think the assumption should be they are going to obey the law. That's a long standing principle. We assume in the absence of evidence to the contrary that folks are going to obey the law. Let me go ahead and turn to slide 14. My bottom

line is we ought to have an NRC policy where you have foreign investment coming from N S G countries. So let me, I had a couple suggestions on slide 15 for some safe harbors. You know these come up because I see this from time to time working on license transfers, existing publicly traded companies and we stumble on some financial institution that happens to have subsidiaries and owns you know 8% or 12% of the voting stock of publicly traded companies. I mean, these stockholders have no possibility of being involved in day-to-day nuclear operations. The practical reality is that you know some financial institution like or byes if anything they might be on a quarterly earning call where they ask management about the results of the company. It's just not plausible that they are going to be interfering with nuclear operations. It should be an easy

issue to say look if we talk about ownership about less than ten percent of voting stock of publicly trading company. Unless the voting rights to control the key executive personnel or board members that there really shouldn't be a need to require any further. Secondly the securities and exchange commission has a -- -- if you file a schedule 13 G you have to certify that you have not acquired that interest for the purpose of exercising control or influencing control of the company. I think that ought to be good enough for the NRC. If a foreign investor is filing 13 G and so certifying this to the SCC there isn't a need for further assurances and negation measures or further review or inquiry by the NRC. I put in the back of my slides just a number of case studies of prior precedent for NRC has reviewed foreign ownership in the negation action plans. I am going

to leave those ton slides. Folks can take a look at those precedence for what they are worth but I don't think I need to go over them. That concludes my remarks.

>> HO: I appreciate your moving quickly through your presentation. I don't have a question here but just sort of comments about thinking about your suggestions as well as Ellen's with respect to safe harbor provisions. This is just a very interesting area in the NRC regulatory framework. I agree the mosaic of safety FODC is one element as well as financial qualifications there's a number of safe going programs to help assure that the safety exists or one to be constructed. What's interesting to me when I'm thinking about your safe harbor provisions. There's one branch in the NRC that deals with these particular matters and financial obligations of foreign

ownership. I took note in the SRP when I read it over the last year or so that I have been in this job. It talks about the limit less creativity with respect to ownership of the company. I guess it makes me look at the possibility and consider safe harbors that's an element in my mind and the creative operating arrangements. Again, there's just a hand full of people that deal with this type of work at the NRC. I think that it sort of something that is just new at least to me.

>> John: My suggestion there is it's very much a fair point but look at the threat. So if the foreign investor is the central bank of north Korea look at it. There may be some creative ways where they are trying to gain access to nuclear technology. If the foreign investor is an international global player ask yourself what Moe tiff would they have to create a

complex structure in order to circumvent the NRC FOCD restriction. What motive do they have to gain an inappropriate access to nuclear technology to divert material.

Toshiba owns Westinghouse. It's licenses for fuel fabrication facility in South Carolina. Toshiba controls that company. They can legally control the company and the transports and the nuclear fuel from that facility down the public highway to Texas. When it comes on site and onto a secure facility I got to protect against Toshiba access. Toshiba can control the truck before it get there is. What motive does Toshiba to use its investment to get access to that material. It has ever motive to comply. We are going to hand over responsibility to U.S. citizens. We won't touch it.

>> We need to move to the public comment period.

>> I should point out Westinghouse
operating under a FOCI mitigation plan
that's administered by the NSA. The
operations that are carried out by
Westinghouse are done through
subsidiary west time which operated
under the special security agreement
at the Columbia Facility.

>> Can I ask a clarifying question?

>> Very quickly.

>> You said nuclear technology is no
longer restricted. I am wondering if
by that you mean classified data. I
have been involved in several
interventions where we have been asked
to sign nondisclosure agreements and
daily I receive from the NRC notices
about this utility or that manufacture
where you can with hold information
and I realize that's proprietary.

It's certainly not open to the public
when you say restricted you are
classifying it?

>> John please provide an answer.

Please state your name.

>> John Matthews: Yes that's proprietary data. Restricted data is restricted technology there's classified information that you would have to have a security clearance to access it.

>> I can see a company might be interested in getting restricted data for whatever reason.

>> Let's move to public comments.

Please come to the microphone.

>> My name is Richard. I'm the general counsel of Toshiba nuclear energy corporation which is a U.S. corporation ultimately owned by Japan's Toshiba corporation. You know Toshiba as many people know is invested substantial time and money in the U.S. nuclear industry. You know it's committed to FOCD compliance and nuclear regulatory compliance in general. Just to underscore what John and Ellen have said the past

Chairman of Toshiba used to give a famous speech no compliance no business. We will not allow you to do business out compliance, and you will not be able to sustain business without compliance and that's the Toshiba culture that the type of foreign entity, foreign owned entity that is you are talking about here.

Internal processes and controls that apply in Toshiba corporation are probably as strict as those that apply here among NRC employees. The compliance culture is very strong a couple points. We would like to associate ourselves NEI's remarks as well as John's remarks. Brilliantly presented by both individuals. We believe that the safety and nuclear safety and security should be the focus of FOCD review and that mitigation action plans, and the other techniques mentioned are the way to achieve that. Secondly, the

importance of certainty mentioned by Paul this morning and I cannot emphasize enough how important that is even for someone like Toshiba who is knee deep into the nuclear industry right now. We have been complying with FOCD as we understood it. It appears to be an evolving standard which tends to interject at a late hour issues that you try to comply with and so that certainty is very important.

Finally, as John mentioned this morning you think in the first instance that certainty can be achieved through better approval, improvement of the guidance with any rule making action to be held at a bank. It's very important that this be fixed now and along the lines recommended.

>> Again, please state your name.
>> My name is Paul Gunter I'm with beyond nuclear. I would just like to state we need to talk about the

800-pound gorilla in this room.

Nuclear power is economically flat lining, and there's not a CEO or chief financial officer domestically that will touch these toxic aspects. That the NRC is now in the process of constructing a Trojan horse to drag these toxic assets from foreign investors into our economy and I think it's our chief reason and concern for opposing any changes to the atomic energy act in the prohibition of foreign ownership.

>> Thank you for your comment.

>> I am Jim with Greenpeace. I am glad Ho reminded us of this promotion. The law is pretty clear. Otherwise you would have reactors being built right now in Maryland and probably south Texas as well. So you guys are in the wrong place, you belong on the Hill. The industry also has been very well represented at this table. I would suggest that this agency decide to

move forward. I don't think it's good idea or I don't think we should be wasting our time. I think we should be looking at how to better ensure safety. I would suggest that you broaden the table if you move forward.

I hope you use Homeland Security.

Hopefully we can discuss other instances where there were diversions of special nuclear material from NRC or AEC licenses to our allies. At least one former NRC Commissioner is convinced that happened in this country. So let's broaden the field.

I would also recommend that you broaden it to include the government's that are now suing many of these corporations represented at this table. I think United States Attorney General's -- to allow foreign -- when agency won't adequately regulate them. Again, Michael has made a lot of good fine points about what the law says. This

meeting is inappropriate. The Federal Register was inappropriate. Again, we are wasting good FTE that could be better spent than these reactors do not pose to the public health and safety. Thank you and if you are going to hold the next meeting we would like a better federal register notice.

>> Thank you for your comment. Are there any folks on phone or on the web chat?

>> Thank you my name is Steve Miller. I'm Senior Vice President of the Constellation Nuclear Energy Group. I'm one of the case studies that Gene referred to. I would like to provide an operation perspective and owner operator that is foreign owned. CENG is a fleet owner of five reactors 50% owned by Exelon and 49.99% by EDF. We have both NRC and CFIUS approval. We have been operating under a structure since 2009. The foreign investor

brings to the table of having appropriate structures in place to guarantee U.S. control other safety and security and reliability. I take note too that most of our negotiation action plan that was approved by the NRC was already included in our operating agreements and our application. Make no mistake EDF is at the table at CENG through the board of representation, and the representation of nuclear safety and operating committee and their views, and their votes are also evaluated by our nuclear oversight committee called the Nuclear Advisory Committee that prepares an Annual Report. We have the effective oversight structures that allows us to operate effectively. We do recognize the reality. I asked you to sift through the arrogance and the ignorance and focus on the actual experience anti global nuclear investment. We look

forward to very much providing our further comments to you in both the local and practical aspects in recognizing the value of the foreign investment brings to operational effectiveness, safety and security and reliability. Thank you

>> Thank you for your comments. Are there any others?

>> Just a few brief comments.

>> Mark, private citizen.

>> I agree with the gentleman on one aspect. We need to focus on the reality of the situation at hand. I want to address Mr. Matthews comment that the assumption with these prescreened entities should be that they intend to abide by the law.

Okay. I think we should look at the south Texas case in this matter. For those of you who are not aware of the south Texas case, the south Texas was denied on the basis of foreign ownership. So what happened? The

only American entity in that enterprise sued the other foreign entities for fraud, okay. That is a fact. They were sued for fraud.

Okay. So we really should start to question and let me add that the citizens groups that intervene in this case reiterated that they felt that they had been defrauded in this venture. This case has since been settled between the entities.

However, the citizens group made a statement that they felt that regardless of whether the settlement was in place or not they felt they had been defrauded. They said that they felt that they, the NRG Toshiba section of NINA was had intentionally.

They actually said that they admitted they had fraudulently represented their investments in that. So if the question I would raise here is if this is any truth to this and they actually been accused of this fraud who else

would they fraud. They haven't even got their facility in yet?

>> I want to address another thing that Mr. Matthews said which was you discussed waste disposal issues. Yet he's saying that the mitigation will be minimal. Well, he asked us to consider who has had a strong track record on this. Well, I think we need to look at how are we going to solve all of these waste disposal issues.

We have no permanent facility in the United States. EDF well, where do they dispose of their material? I believe it's in an extremely upheaval area in MALI at this time. It's one of the areas where waste is disposed. We can look at the violence and the political upheaval there and wonder are we going to be making new enemies in this area as well if we partner with these people? These are very serious issues they are not matters to be taken lightly.

>> Before you would continue. I will wrap it up.

>> I think that France is right in denying by insisting on domestic control. I think we should do the same thing. Lastly I would want to address the NEI speakers comment that light touch for some players is acceptable. No. We are dealing with nuclear reactors there can be no light touch. There has to be constant vigilance at all times with regards to these facilities and no light touch can be used in any case. Mitigation must be extremely in-depth. This would require a massive effort on NRC's part of probably an expansion which could still be taxed by an unprecedented regulatory over load. There for share the concerned voices by Mr. HO what are clearly daunting litigations here.

>> Are there any folks on the teleconference that have any

comments?

>> No. Okay.

>> Phone: Hello? I would like to mention there's a long history of counterfeit and forced parts in nuclear power plants. I don't take it lightly that we can expect everybody to comply because of business.

Again, I will stress that our government, the U.S. government seems to be the ones that's going to be responsible and taxpayers for the ultimate disposal of nuclear waste in which we have no place to put. I think this is actual a total waste of time to go over to talk about foreign interest ownership of nuclear power plants an really the new issue is cyber security and we have enough to deal with in our own country than have to worry about other countries and what vulnerabilities they have on their side. Thank you very much.

>> Thank you. Before Ho provides

closing comments. Please sign the attendance sheet and please complete the feedback forms that are next to the door.

>> HO: Thank you for facilitating the meeting. I would like to thank the NRC staff and the members of public that are here and our speakers.

There's a lot of aspects surrounding this issue. I think there's a number of different perspectives on either side. The NRC staff has not made any regulatory decisions on this matter with respect to what options that we are considering in proposing to the commission, and the papers they asked for by the end of this year. We will evaluate the information we receive today. I do appreciate the perspectives and your candor and providing your views to the NRC. We will consider the need for additional meeting. I think as we are really assessing the issues here that we will

be able to consider. I urge and ask you to consider sending in comments in response to the Federal Register Notice as well. Thank you and we are adjourned.