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Draft Guidance on Foreign Ownership, Control, or Domination

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Comment On: NRC-2016-0088-0005
Draft Standard Review Plan on Foreign Ownership, Control, or Domination; Revision 1; Extension of Comment Period

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RULES AND REGULATIONS

General Comment

See attached file dated July 25, 2016

Attachments

Docket ID NRC-2016-0088 Comments on Draft SRP for FOCD, Rev 1

SUNSI Review Complete
Template = ADM - 013
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Add= S. Harwell (SWH2)

Ms. Cindy Bladey
Office of Administration
Mail Stop: OWFN-12-H08
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Docket ID NRC-2016-0088

July 25, 2016

Subject: Comments on "Draft Standard Review Plan on Foreign Ownership, Control, or Domination,"
Revision 1

Ms. Bladey,

The Global Energy Management Corporation, an entity incorporated in the state of Ohio of the United States of America with an interest in supporting the development, construction, operation and maintenance of nuclear power generation plants, appreciates the opportunity to provide comments on the "Draft Standard Review Plan on Foreign Ownership, Control, or Domination," Revision 1 (ADAMS Accession Number ML16048A025; Docket ID NRC-2016-0088). The following comments are provided for consideration by the U.S. Nuclear Regulatory Commission (NRC).

General Comments:

The Atomic Energy Act (AEA) of 1954 was enacted during the Cold War era when nuclear technology was limited to few countries and the transfer of nuclear reactor technology outside of the United States was a concern. The AEA prohibits the issuance of a commercial reactor license to an entity that the NRC knows or suspects is owned, controlled, or dominated by a foreign corporation or government. However, since 1954 the development, operation and ownership of nuclear technology has spread across the globe and the implementation of the AEA should reflect the realities of the global nuclear energy market. As a case in point, the NRC has licensed use of the Toshiba's Advanced Boiling Water Reactor technology in the U.S, which was initially developed and implemented in Japan. Today there are over 400 nuclear power reactors operating globally in 30 different countries. In addition, foreign nuclear service providers and vendors are currently active in the U.S. market supporting safe and reliable operation of the U.S. fleet. The global nuclear power generation landscape has changed significantly in the last 62 years.

Consequently, it is important that the NRC review process for FOCD recognize the realities of the global nuclear power market regarding foreign investment opportunities in the U.S. and provide clarity in the 10 CFR Part 50 and 10 CFR Part 52 licensing review processes.

As a measure of the importance of foreign investment in the national defense industry itself, the National Industrial Security Program Operating Manual DoD 5220.22-M 1-104 recognizes that "[f]oreign investment can play an important role in maintaining the vitality of the U.S. industrial base. Therefore, it is the policy of the U.S. Government to allow foreign investment consistent with the national security interests of the United States." Similarly, the NRC processes should provide a clear process to evaluate and allow appropriate foreign investment on a case-by-case basis, including the provision of criteria to

mitigate the potential for control or domination of licensee decision-making by a foreign entity, and the use of license conditions to reflect the allowable foreign investment. We support the draft SRP as an important document in clarifying the regulatory review process for FOCD concerns.

Specific Comments:

1. It is recommended that within the SRP the meaning and scope of “direct” and “indirect” ownership in the context of the SRP be clarified. Using “indirect ownership” within Appendix A of the SRP regarding the grading level of FOCD without defining its scope or meaning may lead to inappropriate interpretation by licensees, the public, or the NRC staff in future licensing evaluations, and may not support regulatory clarity and certainty.
2. The draft “Minimum Negation Measures Imposed via License Condition,” would call for a resolution by the Board of Directors that identifies the foreign shareholders and their representatives and includes a certification that the foreign shareholders and their representatives will be effectively excluded from NRC licensed activities, and will not be permitted to occupy positions that may enable them to influence the organization’s nuclear policies and practices. Copies of such resolutions would be required to be furnished to the NRC and, all board members, and principal management officials. This requirement is broadly stated and thus could be subject to broad interpretation by NRC staff or inspectors. For example, participation by foreign shareholders or their representatives in discussions whereby they are providing technical information in influencing the organization’s nuclear policies and practices could be excluded under this broadly stated standard. It is recommended that this requirement be specific and focused on effectively excluding foreign shareholders and their representatives from final decision-making affecting control over nuclear technology, operation, or nuclear material that could be adverse to nuclear safety, national security, or nuclear non-proliferation.
3. We support the use of properly-constructed license conditions, which are legally binding, to address FOCD issues and resolve FOCD issues at the time of licensing, thereby providing regulatory certainty to all financiers and investors, including those that are not foreign-based but never-the-less may have financing and investment participation decisions dependent on the resolution of the FOCD issues.
4. Under paragraph 3.3.2.a.2, it states, in part: “Information should include: . . . If loan payments are in default, prove details.” It is recommended that “prove” be revised to “provide.”

Sincerely,

Dale Wuokko, President

Global Energy Management Corporation