

September 19, 2013

The Honorable Edward J. Markey  
United States Senate  
Washington, D.C. 20510

Dear Senator Markey:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of August 2, 2013. You inquired about recent direction from the Commission to the staff to provide a "fresh assessment" on issues relating to foreign ownership, including recommendations on any proposed modifications to guidance or practice on foreign ownership, domination, or control that may be warranted.

The staff published a *Federal Register* Notice on June 3, 2013, (78 FR 33121) to obtain the public's views on issues relating to foreign ownership, control, or domination to consider in its conclusions and recommendations to the Commission. The comments contained in your letter of August 2, 2013, will be considered by the NRC staff in its assessment.

Responses to your specific inquiries are enclosed. If you have any additional questions, please contact me or Rebecca Schmidt, Director of the Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

**/RA/**

Allison M. Macfarlane

Enclosure:  
As stated

**Responses to Information Requests from Senator Edward J. Markey  
Letter Dated August 2, 2013**

**1. Is it NRC's legal position that there exists a specific statutory basis in either the Atomic Energy Act of 1946, the Atomic Energy Act of 1954, or legislative history connected to the passage of either act for allowing majority ownership or control of a nuclear power plant license by a foreign entity? If so, please specify any such basis and provide copies of any legal opinions in support thereof. Please also provide me with copies of all NRC legal analysis related to any efforts to assess or identify a maximum percentage of foreign ownership or control of a nuclear reactor that would, in NRC's view, not be in violation of the Atomic Energy Act of 1946 or 1954.**

In 1999, the Commission issued a "Final Standard Review Plan on Foreign Ownership, Control, or Domination [SRP]" (see Attachment 1), which provides that "[t]he Commission has not determined a specific threshold above which it would be conclusive that an applicant is controlled by foreign interests through ownership of a percentage of the applicant's stock. Percentages held of outstanding shares must be interpreted in light of all the information that bears on who in the corporate structure exercises control over what issues and what rights may be associated with certain types of shares." The Commission did not preclude the possibility of more than 50 percent foreign ownership, under certain circumstances and with certain protections in place. Further, the Commission has held that "an applicant is considered to be foreign owned, controlled or dominated whenever a foreign interest has the 'power,' direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant."

The Commission has approved indirect ownership of up to 50 percent of a reactor licensee by a foreign interest coupled with a negation action plan. The Commission has not approved more than 50 percent indirect or direct ownership of a licensee by a foreign interest except in one case where the "foreign" parent company was owned and controlled by U.S. citizens and its stock was largely owned by U.S. citizens. However, as indicated in the SRP and the discussion above, it has been the Commission's position that such approval is not prohibited by the Atomic Energy Act.

In addition to the SRP cited above, a staff paper to the Commission on this matter (SECY-99-165, June 30, 1999) and the associated Staff Requirements Memorandum issued by the Commission are also attached (see Attachments 2 and 3). Further, two publicly available letters referenced in the SRP are attached (see Attachments 4 and 5).

On March 11, 2013, the Commission issued Staff Requirements Memorandum SECY-12-0168 (see Attachment 6), which directed the staff to "provide a fresh assessment on issues relating to foreign ownership including recommendations on any proposed modifications to guidance or practice on foreign ownership, control, or domination that may be warranted." In conducting this assessment, the staff will look into the legislative history of the statutes and the regulatory history of the regulations that govern the actions of the NRC. As of this time, the research has not been completed and the legal analysis and opinions have not yet been drafted.

The facts and legal theories of the General Counsel are set forth in the SRP and in SECY-99-165, referenced above. These documents were informed by predecisional, non-public legal analyses.

ENCLOSURE

**2. Has the NRC sought or received guidance on foreign ownership, control, or domination issues from the Federal Communications Commission during the last 15 years? If so, please describe the content of that guidance.**

As part of the NRC staff's ongoing assessment of issues relating to foreign ownership, control, or domination (FOCD), the staff is obtaining stakeholder views to include with its recommendations to the Commission for review and approval. NRC staff has been conducting outreach with other Federal government agencies, including the Federal Communications Commission (FCC), regarding how those agencies conduct reviews of foreign ownership issues and how they mitigate FOCD concerns. On June 4, 2013, NRC staff held a teleconference with FCC staff members and asked specific questions regarding how the FCC coordinates with other agencies; the information that is reviewed in making a determination regarding foreign ownership; whether there is a threshold for implementing mitigation and, if so, what the main mitigation measures are that the FCC implements when making a determination; how the mitigation measures are monitored; and, whether the FCC initiates enforcement actions relating to foreign ownership or violations of mitigation measures. We also discussed the recent FCC rulemaking that streamlined foreign ownership reviews. The conversation record documenting the call, including a summary of the FCC responses, is attached (see Attachment 7) for your information.

**3. Has the NRC sought or received guidance on foreign ownership, control, or domination issues from the Federal Aviation Administration during the last 15 years? If so, please describe the content of that guidance.**

The NRC is aware of the specific regulations that are in place regarding aviation in the United States, and as part of its outreach effort, the NRC staff is working with the U.S. Department of Transportation (DOT) to set up a teleconference to obtain further information on how DOT reviews foreign ownership issues and how foreign ownership is mitigated and limitations are enforced.

**4. In the Federal Register notice from June 3, 2013, requesting comments on issues surrounding the foreign ownership, control, or domination of nuclear power plant licenses, you state that there will be a "Category 3 Public Meeting on June 19, 2013, to facilitate additional stakeholder engagement and input." Has the NRC scheduled more than one public meeting on this subject? If so, please list the dates and their locations. If the NRC has not scheduled more than one public meeting, please explain why not.**

In addition to the June 19, 2013, Category 3 Public Meeting, NRC staff held a webinar on August 21, 2013, to discuss FOCD of U.S. nuclear power plants. During the webinar, NRC staff described the statute and current regulations, and then discussed previously received stakeholder comments on the issue. Interested participants had the opportunity to ask questions and provide statements and additional feedback on the matter.

**5. The proposed Commission rulemaking is not required by statute to be completed by a date certain. As a result, would you consider increasing the public comment period from just 60 days to 180 days to give all interested parties a full opportunity to comment upon the issue of foreign ownership, control or domination? If not, why not?**

The NRC has not proposed, nor is it currently conducting, rulemaking regarding FOCD. As noted in response to Information Request #1 above, on March 11, 2013, the Commission issued Staff Requirements Memorandum SECY-12-0168, which directed the staff to "provide a fresh

assessment on issues relating to foreign ownership including recommendations on any proposed modifications to guidance or practice on foreign ownership, domination, or control that may be warranted.” As part of this generic review, the Commission directed the staff to obtain stakeholder views and present its conclusions and recommendations in a voting paper for Commission review and approval. This voting paper is due to the Commission no later than December 31, 2013, and will “include recommendations on the path forward, recognizing that the Commission would provide formal notice and opportunity for public comment should it propose to endorse or make significant changes in policy.”

As part of its efforts to solicit stakeholder input, NRC issued a *Federal Register* Notice (78 FR 33121, June 3, 2013) providing a 60-day comment period for stakeholders to offer their views on FOCD issues relating to commercial nuclear power plants. The comment period was to end on August 2, 2013. However, the addition of the August 21, 2013 webinar effectively extended the comment period to August 21, 2013, since all written and oral comments made at the webinar will be considered by the staff. In addition, the staff will consider comments received after that date if it is practical to do so. The NRC staff believes that the comment period is reasonable and allows the public sufficient time to respond, while not impacting the staff’s December 31, 2013, deadline.

**6. The June 3, 2013 Federal Register Notice states that the Commission decided to ask staff for “a fresh assessment on issues relating to” foreign ownership, control, or domination as part of the process of considering whether a license should be granted for the “Calvert Cliff Nuclear Power Plant, Unit 3.” Why did that individual case, which involved the request for a nuclear license by the entity that was 85% owned by a foreign entity, prompt this reconsideration of the issues? Which Commissioner or Commissioners proposed this? Did the Commission vote on this matter? If so, how did each Commissioner vote?**

As noted in the June 3, 2013, *Federal Register* Notice, in recent years a number of licensing actions have been submitted to the NRC involving issues related to foreign ownership, control, or domination. Most recently, UniStar Nuclear Operating Services, LLC, and Calvert Cliffs 3 Nuclear Project, LLC (together, UniStar), in their *Petition for Review of LBP-12-19* and the *UniStar Reply Brief Supporting Review of LBP-12-19* (see Attachments 8 and 9), requested generic guidance to the nuclear industry on the foreign ownership issue.

In its Memorandum and Order denying UniStar’s petition (see Attachment 10), the Commission, as a whole, acknowledged that reconsideration of the agency’s guidance should not be resolved in an application-specific proceeding. The Commission went on to conclude that, given “the passage of time since the agency first issued substantive guidance on the foreign ownership provision of AEA section 103d, a reassessment is appropriate.” Therefore, as a matter separate from the adjudication, in Staff Requirements Memorandum SECY-12-0168, the Commission directed the NRC staff to provide “a fresh assessment on issues related to foreign ownership” by December 31, 2013.

This direction did result from a Commission vote; the Commission’s decision as a collegial body was captured in Staff Requirements Memorandum SECY-12-0168, as discussed above. All Commissioners supported issuance of the Staff Requirements Memorandum.

Attachments:  
As stated above.