The Nuclear Regulatory Commission and Foreign Ownership of Commercial Nuclear Power Plants in the United States

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Comments

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What impact does the Atomic Energy Act of 1954, as amended, have on a possible venture between a United States corporation and a foreign corporation to develop, construct, operate, and own a commercial nuclear power plant in the United States?

I. INTRODUCTION

The Atomic Energy Act of 1954 ("the Act" or "the AEA") prohibits any person or entity from owning or operating a commercial nuclear power plant in the United States unless the United States Nuclear Regulatory Commission ("the NRC" or "the Commission") issues a license pursuant to Section 101 of the Act. Section 103 of the AEA prohibits the issuance of a license to "an alien or any corporation or other entity" that is "owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government." The NRC also has the discretion to refuse to issue a license to any person or entity if, in the opinion of the Commission, issuance would be "inimical to the common defense and security."

Any type of joint venture, partnership, or parent-subsidiary arrangement between a domestic corporation and a foreign corporation to own and operate a nuclear power plant in the United States must satisfy the NRC's license requirements, technical, financial, and managerial qualifications, and demonstrate that the public health and safety and the environment will be adequately protected during construction and operation.

3. Id.
4. 42 U.S.C. Subparts I - XVIII; Energy, 10 C.F.R. Chapter 1, Nuclear Regulatory
II. THE ATOMIC ENERGY ACT

A. Nuclear Power Plants

The AEA and the NRC regulations implementing the AEA classify a commercial nuclear power plant as a "utilization facility." The AEA defines a utilization facility as:

Any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public.5

The NRC regulations define a utilization facility as "any nuclear reactor other than one designed or used primarily for the formation of plutonium or U-233."6

To construct and operate any utilization facility within the United States, a party must obtain the necessary licenses from the NRC.7 The NRC has a two-step procedure for licensing nuclear power plants. First, the license applicant must obtain a construction permit to build the reactor.8 Second, when construction is substantially completed, the license applicant must obtain an operating license to operate the reactor.9

B. License Restrictions

The AEA prohibits:

any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any utilization . . . facility except under and in accordance with a license issued by the Commission pursuant to section 2133 or 2134.10

The NRC regulations similarly prohibit any "person within the United States [to] transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, or use any . . . utilization facility except as authorized by a license issued by the Commission."11

A nuclear reactor which would be used for commercial purposes

Commission.

to generate power for sale or resale would be licensed pursuant to Section 103. Section 103 of the AEA, governing commercial licenses, contains specific restrictions concerning foreign participation in NRC licensed activities. Section 103(d) specifically provides:

No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

The NRC is therefore prohibited from directly issuing a commercial reactor license to any foreign entity, as well as any entity which is "owned, controlled, or dominated by" a foreign entity. Under Section 103(d), the NRC is also prohibited from issuing a commercial reactor license to any entity if the NRC determines that license issuance would be "inimical to the common defense and security" of the United States. The NRC regulation which implements Section 103(d) specifically provides:

any person who is a citizen, national, or agent of a foreign country, or any corporation, or other entity which the Commission knows or has reason to believe is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, shall be ineligible to apply for and obtain a license.

The NRC also requires all co-owners of commercial reactors to be licensees, even if the co-owners have no operational responsibilities. The NRC, therefore, prohibits a foreign corporation from being a direct owner or even a co-owner of a domestic commercial reactor. However, NRC caselaw illustrates that this prohibition does not preclude a foreign corporation, or one of its subsidiaries, from owning an interest in an NRC licensee which actually owns or operates a reactor.

While seemingly straightforward, neither the AEA or the NRC...
regulations provide any substantive criteria or guidance to determine what type of foreign participation might constitute “foreign ownership, control, or domination” or what type of circumstances might be “inimical to the common defense and security.”

C. Legislative History

The legislative history of the AEA does not provide any guidance for interpreting Section 103(d). An earlier draft of the AEA included an even more restrictive provision than the one adopted in Section 103(d). This earlier provision would have prohibited any United States corporation or association from obtaining a license if:

it is owned or controlled by a foreign corporation or government, or if more than 5 per centum of its voting stock is owned or voted by aliens or their representatives, or if more than 5 per centum of its members are aliens, or if any officer, director, or trustee is not a citizen of the United States. 16

Several objections were raised with respect to the inclusion of this provision including:

(1) that similar provisions in other regulatory statutes, such as the Federal Communications Act, permit foreign nationals to own a 20-25 percent interest in U. S. licensees,
(2) that a domestic U. S. corporation cannot feasibly prevent foreign nationals from purchasing five percent of its stock, and
(3) that it is difficult and expensive for a domestic U. S. corporation to constantly keep track of the identity and nationality of all of its shareholders to assure compliance with this requirement. 17

This provision was deleted from the final draft without any additional explanation. Section 103(d) was subsequently passed without any quantitative restrictions on foreign ownership or control.

III. Section 103: Foreign Ownership, Control, or Domination

A. Commission Decisions and Advisory Letters

The Commission and its staff have issued a series of decisions and advisory letters which construe the “foreign ownership, control, or domination” provision of the AEA and the NRC regulations. These decisions provide the criteria for interpreting this provision.

The first Commission decision construing the “foreign owner-
ship, control, or domination” provision was the General Electric Company and Southwest Atomic Energy Associates case (“SEFOR”).18 In SEFOR, an Atomic Safety and Licensing Board (“ASLB”) of the Atomic Energy Commission (“AEC”), the predecessor to the NRC, granted a conditional construction permit to the General Electric Company (“GE”) and the Southwest Atomic Energy Associates (“SAEA”), an association of electric utility companies organized under Arkansas law. The conditional construction permit permitted GE and SAEA to construct the SEFOR test reactor as part of the AEC’s fast breeder reactor program.19

The ASLB then suspended the SEFOR construction permit on the ground that a contract between SAEA and Gesellschaft fur Kernforschung (“GFK”), a non-profit association formed under the laws of the Federal Republic of Germany, violated the prohibition against foreign ownership, control, or domination contained in the AEA.20 The contract between the SAEA and GFK provided that GFK would contribute 50% of the construction costs of the SEFOR reactor, participate in project review and technical policy committees, designate scientists and engineers to participate in the design and construction of SEFOR, subject to the approval and direction of GE, and be consulted on matters of policy and questions affecting costs.21

On review, the AEC reinstated the construction permit holding that “it does not know or have reason to believe that SAEA and/or General Electric are owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, and that issuance of a construction permit will not be inimical to the common defense and security.”22 In support of its holding, the AEC found that GFK did not have: (1) stock in GE or SAEA, (2) a say in the management, hiring, supervision, or dismissal of GE or SAEA employees on the SEFOR project, (3) a voice in the day to day activities of the project, (4) legal ownership or interest in SEFOR’s physical assets, (5) a right to use or direct the use of any SEFOR physical assets, and (6) a voice in the financial affairs of GE or SAEA.23 The

18. 3 AEC 99 (1966).
21. Id.
23. Id. at 101.
AEC concluded that GFK did not possess the rights and powers which are indicative of ownership, control, or domination.\textsuperscript{24} The AEC, therefore, permitted a foreign interest to indirectly participate in the construction of a United States commercial nuclear power plant through a contractual arrangement.

In its \textit{SEFOR} decision, the AEC indicated that Congress intended to prohibit situations in which a foreign entity would have the power to direct the actions of a United States licensee. The AEC interpreted the phrase “owned, controlled, or dominated” to mean a situation where “the will of one party was subjugated to the will of another” with potential adverse implications “toward safeguarding the national defense and security.”\textsuperscript{25} As a result, the AEC determined that issuance of a construction permit was not prohibited by the statutory bar against foreign ownership, control, or domination.\textsuperscript{26} The NRC later characterized GFK’s participation in the SEFOR project as that of a capital contributor and consultant with no direct or indirect ownership interest in the NRC licenses, the actual NRC licensees (GE and SAEA), or the project facilities.\textsuperscript{27}

In 1973, the AEC expanded the policy it set forth in \textit{SEFOR} when it permitted the Gulf Oil Corporation (“Gulf”) to transfer various nuclear facilities to a newly formed partnership, the General Atomic Company (“General Atomic”). Gulf and Scallop Nuclear Inc. each owned a 50% share of General Atomic. Scallop Nuclear, Inc. was a Delaware corporation whose shares were owned via several intermediate corporations including Royal Dutch Petroleum, a Netherlands company, and Shell Transport and Trading, a

\begin{itemize}
  \item \textsuperscript{24} \textit{Id.} The Commission specifically concluded that:
  
The board erred in failing to take into consideration the many aspects of corporate existence and activity in which control or domination by another would normally be manifested in giving undue significance to the voice and influence afforded contractually to Gesellschaft in the matters of participation in project planning and review of program execution. The ability to restrict or inhibit compliance with the security and other regulations of the AEC, and the capacity to control the use of nuclear fuel and to dispose of special nuclear material generated in the reactor, would be of great significance.
  
  \textit{Id.}
  
  \item \textsuperscript{25} \textit{Id.} at 103.
  
  \item \textsuperscript{26} In Commonwealth Edison Company (Zion Station, Units 1 and 2), 4 AEC 231 (1969), the AEC affirmed the continued validity of its \textit{SEFOR} decision. It noted that “if a domestic public utility corporation were subject to alien direction, . . . there would be manifestations of this in the corporation organization and management . . . .” \textit{Id.} at 233.
  
  \item \textsuperscript{27} See Letter from N.J. Palladino, Chairman of the NRC, to Senator Alan Simpson, Chairman, Senate Subcommittee on Nuclear Regulation, with attached OELD Legal Analysis of Foreign Control and Domination (September 22, 1983).
\end{itemize}
British company.\(^{28}\)

The assets transferred by Gulf to General Atomic included licenses for three TRIGA research reactors and the Barnwell spent fuel reprocessing plant. The licenses for the TRIGA research reactors were subject to Section 104 of the AEA, while the licenses for the Barnwell spent fuel reprocessing plant were subject to Section 103 of the AEA.

Before approving the license transfers to General Atomic, the AEC imposed certain conditions to assure that the operations and activities of General Atomic would be free from foreign control. Specifically, the AEC imposed the following conditions:

1. The president and any officers of the partnership having direct responsibility for the control, and any employees having direct custody of, special nuclear material must be U.S. citizens.
2. A separate department of General Atomic must be responsible for special nuclear material, and the head of the department must report directly to the president.
3. The president shall be charged with the responsibility and exclusive authority of ensuring that the business and activities of the partnership are at all times conducted in a manner consistent with the protection of the common defense and security of the United States.
4. The foregoing conditions apply to the partnership and any entities in which the partnership shall have voting control.
5. General Atomic will not change any of the foregoing conditions without approval of the Director of Regulation of the AEC or of the person holding any equivalent successor position.\(^{29}\)

The AEC, therefore, permitted two foreign entities to purchase an indirect ownership interest in several AEC domestic utilization facility licenses.

In 1983, in response to a congressional inquiry, the NRC’s Office of the Executive Legal Director (“OELD”) conducted an analysis of the statutory prohibitions and the corresponding AEC/NRC caselaw on foreign ownership and control with respect to NRC license issuance.\(^{30}\) The OELD’s analysis was prompted by the proposed transfer of an NRC license for an isotope-producing research reactor from a subsidiary of Union Carbide to Cintichem, Inc. (“Cintichem”). Union Carbide was a domestic corporation while

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Cintichem was a Delaware corporation whose ultimate parent was F. Hoffman-LaRoche and Co., Ltd., a Swiss corporation.

The Commission concluded that it "has reason to believe" that the proposed transferee was owned, controlled, or dominated by an alien or foreign corporation and that the transfer would therefore be barred, without any need to consider whether the foreign ownership, control, or domination would be inimical to the common defense or security.\(^1\) The NRC based its initial resolution of the Cintichem case on an obvious interpretation of the plain wording of the statute. Its interpretation illustrates that foreign corporations, and even domestic corporations which are wholly-owned by a foreign corporation, are prohibited from directly owning or obtaining an NRC license for a nuclear reactor in the United States. In response to the Commission's adverse decision, Congress added a rider to the NRC's 1984 Authorization Bill\(^2\) permitting the NRC to transfer this specific license to an entity owned or controlled by a foreign corporation if:

(a) the NRC could find that the transfer would not be inimical to the common defense and security, and
(b) the NRC included in the license such conditions as it deemed necessary to ensure that the foreign corporation could not direct the actions of the licensee in ways that would be inimical to the common defense and security.\(^3\)

After the special legislation was passed, the NRC conditionally approved the Cintichem transfer. The transfer was subject to General Atomic type conditions, with the additional requirement that: (1) all of the directors of Cintichem had to be United States citizens unless otherwise approved by the NRC; (2) any actions by Switzerland or changes in Swiss law which would affect ownership or control of Cintichem had to be reported immediately to the NRC; and (3) only individuals with security clearances were permitted to have access to Restricted Data. The Cintichem case illustrates that the only way a foreign entity can obtain an ownership interest in a United States commercial nuclear power plant is by special congressional legislation.

While the Cintichem case does not provide any additional guidance concerning the amount of foreign ownership, control, or domination which may be permissible beyond that previously estab-

\(^{31}\) Id.
\(^{33}\) Id.
lished in the *General Atomic* case, it does however provide additional guidance concerning the restrictions on foreign participation which may be necessary to satisfy the NRC’s “not inimical to the common defense and security requirement” of the NRC. Although the statutory prohibition on foreign ownership and control in Section 103(d) is closely related to with the separate statutory requirement in Section 103(d) relating to the common defense and security, the *Cintichem* case demonstrates that, even in situations where foreign ownership and control is permissible, the Commission will still examine whether license issuance will be inimical to the common defense and security and may impose additional conditions to satisfy this requirement.

The *General Atomic* case supports the proposition that Section 103(d) of the Act does not preclude foreign ownership of up to a 50% interest in a United States venture as long as appropriate conditions are imposed. However, this proposition does not mean that the conditions imposed in *General Atomic* and *Cintichem* will necessarily satisfy both of the statutory requirements contained in Section 103(d). The *SEFOR* case demonstrates that even where foreign interests have no share in the ownership of the licensee or the facility the Commission must be satisfied that domestic United States interests will actually control the project and will comply with the applicable regulatory requirements for the control of nuclear fuel, special nuclear material, and Restricted Data.

B. Transfer of Corporate Control Between Domestic Corporations

The Commission has addressed the concept of corporate control with respect to a direct or indirect transfer of a license from one United States corporation to another. Although not involving foreign interests, these decisions suggest that the threshold for "control" may be an ownership interest of less than 50%.

In 1977, Babcock & Wilcox ("B&W"), an NRC licensee, asked the NRC to obtain a court injunction prohibiting a hostile tender offer for B&W's controlling stock by United Technologies Corporation ("United"). B&W asserted that under Section 184 of the AEA,34 NRC involvement was required because United’s acquisition of B&W would constitute a prohibited transfer of control of B&W’s licenses without NRC approval.35 The NRC rejected

35. Section 184 of the AEA provides, in pertinent part, that “[n]o license granted
B&W's request stating that although it did not want to get involved "in a whirlpool of corporate litigation," a transfer of "effective control" of a licensee does constitute a transfer of a license within the meaning of Section 184. The NRC indicated that its three major concerns in connection with the grant of a license or a license transfer were: (1) whether the applicant is financially stable and responsible, (2) whether the applicant will employ technically competent personnel, and (3) whether the applicant is under foreign domination or control or whether the common defense or security might otherwise be harmed.

While refusing to take action in the B&W/United litigation, the NRC requested to be kept informed of its progress. The NRC subsequently notified United:

Obviously, you may reach the conclusion that United will be able to exercise effective control over B&W even without having acquired a fifty percent stock interest in the operation. Our firm expectation is that you will take no step to implement any such conclusion before seeking the necessary authorization from the Commission.

This notification indicates that NRC approval would be required before "effective control" could be exercised by United. In the case of a publicly-held domestic corporation, the NRC appears to recognize that "effective control" may exist even if a corporation has an ownership interest below 50%. Regardless of the ownership interest, the NRC will examine every aspect of the relationship between the venture participants when assessing whether foreign domination or control exists.

IV. SECTION 103: NOT INIMICAL TO THE COMMON DEFENSE AND SECURITY

A. Commission Decisions and Advisory Letters

The NRC has continuously exercised its discretionary authority with respect to interpreting and applying the AEA's prohibition against license issuance which would be "inimical to the common

hereunder . . . shall be transferred, assigned or in any manner disposed of, . . . through transfer of control of any license to any person, unless the Commission . . . shall give its consent in writing. 42 U.S.C. § 2234 (1982).


37. Letter from Nuclear Regulatory Commission to United Technologies Corporation, re: NRC approval necessary before any transfer in ownership from B&W to United may occur (June 7, 1977) (emphasis added).
defense and security.” Although the legislative history of the AEA is sparse with respect to this statutory prohibition, the NRC has addressed the common defense and security requirement in several licensing decisions.

In Florida Power & Light Company (Turkey Point Units 3 and 4) (“FP&L”), the AEC described the not inimical to the common defense and security requirement as assuring “the safeguarding of special nuclear material; the absence of foreign control over the applicant; the protection of Restricted Data; and the availability of special nuclear material for defense needs.” The United States Court of Appeals for the District of Columbia Circuit, in affirming the AEC’s issuance of a construction permit for the Turkey Point units, indicated that this requirement included “such things as not allowing the new industrial needs for nuclear materials to preempt the requirements of the military; of keeping such materials in private hands secure against loss or diversion; and of denying such materials and classified information to persons whose loyalties were not to the United States.”

The emphasis on the availability of special nuclear material (“SNM”), i.e. plutonium, U-233, and enriched uranium, for defense needs in these decisions is partly due to the fact that when these decisions were rendered, the AEC was responsible not only for the regulation of commercial nuclear reactors, but also for the production of SNM for the Department of Defense. When the NRC was established in 1974, it only assumed the AEC’s regulatory responsibilities while the Energy Research and Development Administration (“ERDA”) assumed the AEC’s non-regulatory functions.

Certain information and data pertaining to a new nuclear power plant design may be classified as Restricted Data under Depart-

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38. 4 AEC 9 (1967).
39. Id. at 12-13.
40. Siegel v. Atomic Energy Commission, 400 F.2d 778, 784 (D.C. Cir. 1968). The court concluded that an applicant has to establish that the proposed facility is secure “against his own treachery, negligence, or incapacity,” but does not have to establish that the proposed facility is secure against “whatever destructive forces a foreign enemy might be able to direct against it.” Id.
41. Under the Energy Reorganization Act if 1974, 42 U.S.C. §§ 5801 et seq., the non-regulatory functions of the AEC, such as the promotion of nuclear power, R&D activities, and SNM production for the DOD weapons programs, were transferred to the Energy Research and Development Administration (“ERDA”). These functions were subsequently transferred to the Department of Energy (“DOE”) when it was established in 1977 under the Department of Energy Organization Act, 42 U.S.C. §§ 7101 et seq. (1982).
42. The AEA and the NRC regulations defines “Restricted Data” as “all data concern-
ment of Energy (DOE) and NRC regulations. Under AEA, NRC, and DOE regulations, access to Restricted Data is limited to those persons and entities "within or under the jurisdiction of the United States." Applicants for an NRC license must agree "not to permit any individual to have access to Restricted Data" until an administrative determination is made that such access "will not endanger the common defense and security" and the necessary access permits and security clearances have been obtained. These requirements can probably be met through the imposition of appropriate license conditions requiring that the requisite security clearances and access permits be obtained before any Restricted Data involving the new plant technology is disclosed to any venture participant who is not authorized to have access to such data.

In a more recent decision, the NRC approved the proposed transfer of a controlling interest in Exxon Nuclear, a Delaware corporation, to Kraftwerk Union AG ("KWU") and a wholly-owned subsidiary of Siemens AG, two corporations organized under the laws of the Federal Republic of Germany. Since the NRC licenses held by Exxon Nuclear were for nuclear materials, and not for a production or utilization facility, the statutory prohibition against foreign ownership, control, or domination was not involved, but the

(1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category . . . ." 42 U.S.C. § 2014(y); 10 C.F.R. § 725.3(h).

45. 10 C.F.R. § 95.35 (1989).
47. Id.
48. 42 U.S.C. § 2165(a) (1982); 10 C.F.R. § 95.35 (1989); 10 C.F.R. § 725.2 (1989). See also 10 C.F.R. Parts 10 and 25. While foreign corporations and foreign nationals are not eligible to apply for access permits under DOE's regulations, partnerships and other business ventures which include U.S. corporations and have U.S. citizens as their principal officers are eligible. 10 C.F.R. § 725.12 (1989).
49. The AEC has indicated that Restricted Data includes all information satisfying the statutory definition whether or not it is generated under sponsorship of the U.S. government or by a person within, or under the jurisdiction of the United States. Such information was considered "born classified" and once it was brought into the United States or conveyed to a U.S. citizen, the AEC considered it to be Restricted Data subject to regulation under the Act. See e.g., Testimony of AEC General Counsel William Mitchell, Hearings before a Subcommittee on Reorganization of the Senate Committee on Government Operations on S.J.Res. 21, to Establish A Commission on Government Security, 84 Cong. 1st Sess., 2658-270 (1955). This interpretation was apparently never challenged in Congress or in the Courts, although the AEC did back off of this position in subsequent rulemakings.
license transfer still had to satisfy the not "inimical to the common defense and security" requirement.

In seeking the NRC's consent to the transfer, but without conceding that such consent was necessary, Exxon Nuclear stated that control by KWU would not be inimical to the common defense and security because, among other things, prior to the closing date, Exxon Nuclear would divest itself of all interests in DOE classified contracts and would transfer to another entity all of its intellectual property rights in various types of Restricted Data. In addition, Exxon Nuclear would remain a Delaware corporation and indicated that the current directors and principal operating officers, all of whom were United States citizens, would remain in office; that there would be no change in the fundamental materials control program or in the plans for physical security of the facilities or for the physical protection of SNM in transit. Exxon Nuclear also noted that the Federal Republic of Germany is a signatory of the Nuclear Non-Proliferation Treaty and is a member of Euratom. The NRC approved the transfer without comment or imposition of additional conditions. The NRC thus permitted two foreign entities to obtain a controlling interest over NRC issued nuclear materials licenses.

Any proposed venture between a domestic entity and a foreign entity must satisfy the AEA's common defense and security requirement. The necessary assurances concerning the safeguarding of SNM and the absence of foreign control can presumably be obtained through the imposition of the General Atomic/Cintichem conditions. However, before obtaining an NRC license, the DOE and the venture participants must provide the NRC with appropriate assurances that any possible impact on the availability of SNM for defense needs or access to Restricted Data which the joint domestic and foreign development of a new nuclear power plant might create have been considered, analyzed, and accommodated.

V. CONCLUSION

The NRC permits foreign participation in NRC licensed activities if the license applicants can demonstrate that foreign entities do not hold a majority interest in the venture and that the licensed

51. Letter from NRC to Exxon Nuclear re: Approval of Materials License Transfer (Oct. 28, 1986).
activities will be conducted under the direction and control of United States citizens. While allowing foreign participation, the NRC imposes various license conditions which limit the amount of foreign ownership over the applicant and the nature and extent of the foreign participation in the applicant's licensed activities. These license conditions have included, but are not limited to: (1) the foreign interest should not hold more than a 50% ownership interest in the venture, (2) the board of directors, or other equivalent executive or management committee of the venture, should be comprised primarily of United States citizens who are not under the influence or control of the foreign interest, (3) the chief executive officer and chief operating officer of the venture should be United States citizens who are free from such influence and control, (4) other officers and employees of the venture who have responsibility for the custody and control of special nuclear materials should be United States citizens, and (5) all directors, officers, and employees who have access to Restricted Data involving plant technology should have the necessary security clearances and access permits. Although the NRC might impose less stringent conditions on a foreign entity seeking to develop, construct, own, and operate a commercial nuclear power plant in the United States than those imposed in General Atomic/Cintichem, it seems more likely that additional conditions would be imposed. These additional conditions would probably involve the control of SNM and Restricted Data relating to the new plant design. The conditions the NRC might actually impose on a foreign interest which seeks to own a portion of a United States domestic nuclear power plant depend on the form of the venture and the nature and extent of the participation by other parties.

The NRC has laid the groundwork for permitting foreign participation in NRC licensed activities. Its present policies and precedents permit foreign ownership in an NRC licensee and foreign participation in NRC licensed activities. A natural expansion of NRC policy and precedent will permit partial and direct, albeit conditional, foreign ownership in United States commercial nuclear power plants. If the NRC wants to prohibit foreign entities from obtaining an ownership interest in domestic commercial nuclear power plants, the NRC must review and revise its present policies.

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