

# UNITED STATES INTERNATIONAL TRADE COMMISSION

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In the Matter of: )  
 )  
LOW ENRICHED URANIUM FROM ) Investigation No.:  
FRANCE ) 731-TA-909 (Second Review)  
 )

Pages: 1 through 228  
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## THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of: )  
 ) Investigation No.:  
 LOW ENRICHED URANIUM FROM ) 731-TA-909 (Second Review)  
 FRANCE )

Tuesday,  
 September 10, 2013

Main Hearing Room  
 U.S. International Trade  
 Commission  
 500 E Street, S.W.  
 Washington, D.C.

The hearing commenced, pursuant to notice, at 9:33 a.m., before the Commissioners of the United States International Trade Commission, the Honorable IRVING A. WILLIAMSON, Chairman, presiding.

## APPEARANCES:

On behalf of the International Trade Commission:Commissioners:

IRVING A. WILLIAMSON, CHAIRMAN  
 SHARA L. ARANOFF, COMMISSIONER  
 DEAN A. PINKERT, COMMISSIONER  
 DAVID S. JOHANSON, COMMISSIONER  
 MEREDITH M. BROADBENT, COMMISSIONER

Staff:

BILL BISHOP, Supervisory Hearings and  
 Information Officer  
 SHARON D. BELLAMY, Hearings and Meetings Assistant  
 CYNTHIA FORESO, International Trade Analyst  
 AIMEE LARSEN, Economist  
 JUSTIN LEE, Accountant/Auditor  
 KARL von SCHRILTZ, Attorney  
 JAMES MCCLURE, Supervisory Investigator

APPEARANCES: (Cont'd)

In Support of the Continuation of the  
Antidumping Duty Order :

On behalf of USEC, Inc. and United States  
Enrichment Corporation (collectively "USEC"):

PHILIP G. SEWELL, Senior Vice President and Chief  
Development Officer, USEC

JOHN M.A. DONELSON, Vice President, Marketing,  
Sales & Power, USEC

DANIEL W. ROGERS, General Manager, American  
Centrifuge Plant, USEC

JAMES A. SCHOETTLER, Assistant General Counsel, USEC

DANIEL KLETT, Principal, Capital Trade Inc.

RICHARD O. CUNNINGHAM, Esquire, Of Counsel

THOMAS J. TRENDL, Esquire, Of Counsel

HENRY N. SMITH, Esquire, Of Counsel

ALEXANDRA E.P. BAJ, Esquire, Of Counsel

Steptoe & Johnson LLP

Washington, D.C.

In Opposition of the Continuation of the  
Antidumping Duty Order :

On behalf of AREVA:

MICHAEL MCMURPHY, Chairman, Board of Directors,  
AREVA NC, Inc.

MARC CHEVREL, Executive Vice President, Chemistry  
and Enrichment, AREVA NC

STUART M. ROSEN, Esquire, Of Counsel

New York, New York

GREGORY HUSISIAN, Esquire, Of Counsel

Foley & Lardner LLP

Washington, D.C.

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P R O C E E D I N G S

(9:33 a.m.)

CHAIRMAN WILLIAMSON: Good morning. On behalf of the U.S. International Trade Commission, I welcome you to this hearing on Investigation No. 731-TA-909 (Second Review), involving Low Enriched Uranium from France.

The purpose of this five year review investigation is to determine whether revocation of the antidumping duty order on low enriched uranium from France will be likely to lead to continuation or recurrence of material injury within a reasonable foreseeable period of time.

Schedules setting forth the presentation of this hearing, notices of investigation and transcript order forms are available at the public distribution table. All prepared testimony should be given to the Secretary. Please do not place testimony directly on the public distribution table. All witnesses must be sworn in by the Secretary before presenting testimony.

I understand that parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary.

Speakers are reminded not to refer in their remarks or answers to questions to business

1 proprietary information. Please speak clearly into  
2 the microphone and state your name for the record for  
3 the benefit of the reporter. I repeat. Please speak  
4 clearly into the microphone, because unfortunately we  
5 have some construction activity and other activities  
6 outside which we try to control, but we are not able  
7 to, so you're just going to have to speak up.

8 If you will be submitting documents that contain  
9 information you wish classified as business  
10 confidential, your request should comply with  
11 Commission Rule 201.6.

12 Mr. Secretary, are there any preliminary  
13 matters?

14 MR. BISHOP: Mr. Chairman, I would note that  
15 all witnesses for today's hearing have been sworn in.

16 There are no other preliminary matters.

17 CHAIRMAN WILLIAMSON: Very well. Let's  
18 begin with opening statements.

19 Welcome, Mr. Cunningham. You may begin when  
20 you're ready.

21 MR. BISHOP: Opening remarks on behalf of  
22 those in support of continuation of the order will be  
23 by Richard O. Cunningham, Steptoe & Johnson.

24 MR. CUNNINGHAM: Thank you. This is what I  
25 call a silk purse case. I call it that when I am, as

1 I occasionally am, filled with admiration at the  
2 ingenuity of a member of the trade bar in devising  
3 ingenuous, but utterly spurious, arguments in an  
4 effort to change his, or her, side of the case from,  
5 as my old grandmother used to call it, a sow's ear  
6 into a silk purse. This is one of those cases.

7 Counsel for AREVA obviously took a hard look  
8 at the two issues this Commission is to consider.  
9 First, will dumped imports continue or increase if the  
10 order is revoked, and will those dumped imports cause  
11 material injury. Now, when he looked at those issues  
12 he obviously said, correctly, oops, we need different  
13 issues and he came up with two really wild arguments.

14 Before getting to AREVA's arguments, let's look  
15 briefly at the two relevant issues.

16 First, will dumped increase if the order is  
17 revoked. Well, we know the answer to that because  
18 AREVA has told us. I've never been in a case quite  
19 like this. The clear truth is that AREVA has  
20 continued to sell substantial quantities of LEU in the  
21 U.S. market. Just look at Table II-10 at page 227 of  
22 the public staff report.

23 But wait a minute, AREVA says, those aren't  
24 imports from France. We're buying from some non-  
25 French source to fill those orders. Now,

1       parenthetically, we're going to be furnishing  
2       information to the staff which will demonstrate that  
3       it is URENCO that's helping its supposed competitor  
4       AREVA stay in the U.S. market.

5               So what does this tell us? Number one,  
6       AREVA has gone to great lengths to maintain a presence  
7       in the U.S. market. They're not getting out of this  
8       market. Number two, unless we are to believe that  
9       AREVA wants to become a sales agent for URENCO, it  
10      will shift to using its own production to fill its  
11      U.S. orders if the order here is revoked. So imports  
12      from France will clearly increase, and dumped imports  
13      will be substituted for fair value imports.

14             Finally, there's every indication that the  
15      volume of French imports will increase substantially  
16      above the quantities we see in Table II-10. This is  
17      because the other markets served by AREVA outside the  
18      United States, and by URENCO for that matter, are  
19      declining significantly: Japan, the EU, et cetera.

20             Now let's look at the second issue. Will  
21      French dumped imports cause injury to the U.S.  
22      industry. Here, again, there's no real debate. I'm  
23      going to leave most of this explanation to our  
24      witnesses today but I want the Commission to focus on  
25      one fact. This is the most critical and most



1 vulnerable to market disruption by dumped imports  
2 moment in USEC's history.

3 USEC is engaged in an absolutely necessary  
4 transition from high cost, gaseous diffusion  
5 enrichment technology to a lower cost, energy-  
6 efficient centrifuge technology, the American  
7 Centrifuge Project. Moreover, that technology, which  
8 is passing every test, will leapfrog the older  
9 centrifuge technology used jointly by AREVA and  
10 URENCO.

11 To put that American centrifuge technology  
12 into production, however, USEC needs to obtain very  
13 substantial financing. It's ability to do that  
14 depends on getting sufficient orders, and that, in  
15 turn, depends on having a stable market, free from  
16 disruption by dumped imports.

17 So let me now just focus briefly on what I  
18 understand that AREVA will argue.

19 First, they're going to tell you that USEC's  
20 cessation of gaseous diffusion production, which,  
21 remember, is a temporary cessation pending the  
22 starting of commercial American centrifuge production,  
23 that this means that USEC is no longer a U.S.  
24 producer.

25 Now, those of you and your staffs who toured

1 USEC's American centrifuge plant know that argument  
2 simply won't wash. After hearing our witnesses today,  
3 I predict you'll never give that argument another  
4 thought.

5 AREVA's second argument is going to be that  
6 when they shift their U.S. sales back to French  
7 sourcing there will be no change in volume, just a  
8 change in country of origin. There's not going to be  
9 any harm to the U.S. industry. So many things wrong  
10 with that argument it's hard to know where to start.

11 First, dumped imports are different from  
12 fair value imports. That's why we have this law.

13 Secondly, if AREVA had been delivering  
14 French LEU over the past several years you would have  
15 no hesitation in saying there will be a continuation  
16 of substantial imports of dumped French product, case  
17 closed.

18 Third, if AREVA has been, in effect, selling  
19 for URENCO in the U.S. market, why will URENCO forego  
20 that U.S. sales volume? To the contrary, one would  
21 expect URENCO to keep selling in the U.S. so AREVA's  
22 French imports will be additional.

23 Finally, as I mentioned, both AREVA and  
24 URENCO face contracting markets in Europe and Asia and  
25 can be expected to increase their U.S. sales because

1 they have to.

2 So these arguments may be ingenuous, but  
3 AREVA's case remains a sow's ear, not a silk purse.

4 CHAIRMAN WILLIAMSON: Okay. Thank you.

5 MR. BISHOP: Opening remarks on behalf of  
6 those in opposition to continuation of the order will  
7 be by Stuart M. Rosen.

8 CHAIRMAN WILLIAMSON: Welcome, Mr. Rosen.  
9 You may begin when you're ready.

10 MR. ROSEN: Thank you. Good morning, Mr.  
11 Chairman, Commissioners. It's always interesting to  
12 follow the remarks of a cherished colleague who's  
13 gaseous diffusion should really be disregarded in this  
14 proceeding. Mr. Cunningham has mischaracterized the  
15 case that AREVA brings before you today.

16 Let me remind you that it was the Commission  
17 itself that put its finger on the key issue in this  
18 case: USEC's cessation of production at Paducah.  
19 Paducah is all over. It's going back to DOE. It's  
20 being shuttered. USEC is no longer a producer. So  
21 under these circumstances, as the Commission  
22 recognized, what would be the consequences of  
23 termination of the order?

24 Obviously, if a company is not producing,  
25 how can there be a volume or a price impact from

1 imports from France? Can't be. All USEC has to sell  
2 is air and production from Russia. It is not a  
3 producer.

4 Will it soon become a producer of LEU? We  
5 don't know. We know that USEC came here five years  
6 ago and said ACP was the greatest thing since sliced  
7 bread, it was soon going to be here, we'll be  
8 producing in two years. Well, those two years are  
9 long ago and it's not producing, and maybe it won't.

10 USEC would like to have this case determined  
11 based upon it alone. It ignores LES, but LES is the  
12 only U.S. producer in the market today. I can't get  
13 into details, but you have those details. LES is  
14 performing well, it's got capacity, it's building  
15 additional capacity, and the Commission should have no  
16 concern that termination of the antidumping duty  
17 order, which is consistent with United States'  
18 international obligations, will not have any adverse  
19 impact on current U.S. production.

20 Well, what about if USEC makes it over its  
21 hurdles? Mr. Cunningham has told you we're just about  
22 there, we're at a critical moment, we're turning the  
23 corner. Read USEC's most recent 10-Q, please. That's  
24 the most instructive piece in this case.

25 What has USEC said? We do not have a

1 current, a definitive timeline for ACP deployment. We  
2 have no assurances that we will be successful in  
3 obtaining financing. We're uncertain regarding the  
4 amount of internally generated cash flow from  
5 operations that we will have available to finance the  
6 project in light of the delays in deployment of the  
7 project and potential requirements for our internally  
8 generated cash flow to satisfy our pension and  
9 postretire benefit and other obligations.

10 Will USEC make it through to ACP? We don't  
11 know. We believe that's sheer speculation that the  
12 industry is scratching its heads about, utilities are  
13 scratching their heads, considering whether or not to  
14 contract with USEC. Of course they can buy Russian  
15 SWU from USEC. That's what USEC is peddling today.

16 Will they make it through to ACP, and when?

17 You've got to make a decision in that regard. If you  
18 think that USEC is not likely to make it through in  
19 the near term, within a reasonable period of time as  
20 the statute contemplates, the outcome should be clear.

21 This Commission should determine that termination of  
22 the order will not lead to continuation or recurrence  
23 of injury to the domestic industry, which is LES  
24 alone.

25 If you believe, based on the evidence, that

1 USEC will soon be a producer with its leapfrogging  
2 technology, the result should still be the same. LES  
3 will be the dominant producer unless, and until, USEC  
4 ramps up to be substantial. LES, as I noted, is  
5 performing extremely well, and there's no reason to  
6 believe that if USEC makes it with its ACP technology,  
7 that it won't perform well also.

8 Based on the foregoing, this Commission  
9 should determine that revocation of the antidumping  
10 order will not be likely to lead to the continuation  
11 or recurrence of injury. Thank you very much.

12 CHAIRMAN WILLIAMSON: Thank you.

13 MR. BISHOP: Will the first panel, those in  
14 support of continuation of the antidumping duty order,  
15 please come forward and be seated.

16 CHAIRMAN WILLIAMSON: Okay. I want to  
17 welcome this panel and express the Commission's  
18 appreciation from all of your taking time away from  
19 your businesses to be here today.

20 Mr. Cunningham, you may begin when you're  
21 ready.

22 MR. CUNNINGHAM: Thank you, Mr. Chairman.  
23 Once again, I'm Dick Cunningham, Steptoe, on behalf of  
24 USEC.

25 Will Rogers, in talking about a politician

1 many years ago, said, you know, it's not what he don't  
2 know that bothers me so much, it's all the things he  
3 knows for damn sure that just ain't so. That's how I  
4 would characterize Mr. Rosen's opening statement.

5 We're going to correct that here, and you  
6 will find out that USEC is well on the way to the  
7 implementation of the American centrifuge technology.

8 You will find that it is not just a seller, or even  
9 predominantly a seller, of Russian material.

10 As you listen to this, I would say to you,  
11 you are an International Trade Commission, you are not  
12 a bunch of investment bankers. The task you have is  
13 not to give the definitive definition on whether USEC  
14 will make it. The task you have is to determine  
15 whether an influx of dumped French imports would  
16 adversely affect, and indeed prevent, USEC from making  
17 it.

18 So let me begin with Philip Sewell, if I  
19 may.

20 MR. SEWELL: Thank you, and good morning,  
21 Mr. Chairman, Commissioners, and staff. My name is  
22 Phil Sewell and I am Senior Vice President and Chief  
23 Development Officer at USEC, Inc. I've been with USEC  
24 since its formation in 1993. Prior to that time, I  
25 held a number of positions in the U.S. Department of

1 Energy's uranium enrichment enterprise, including  
2 deputy assistant secretary for uranium enrichment.

3 My purpose today in testifying is to discuss  
4 the importance and status of the American Centrifuge  
5 Project and to describe the serious repercussions to  
6 USEC if the antidumping order on LEU from France was  
7 terminated.

8 USEC was formed in 1993 as a wholly owned  
9 government corporation whose mission was to produce  
10 and sell low enriched uranium, or LEU, from enrichment  
11 facilities in Paducah, Kentucky, and Portsmouth, Ohio.

12 These enrichment facilities were originally  
13 constructed by the U.S. Government in the early 1950s  
14 to produce weapons-grade uranium and beginning in 1969  
15 sold commercial nuclear fuel to U.S. and foreign  
16 utilities. In 1998 USEC was privatized and we are not  
17 a publicly-traded corporation.

18 From 1993 until the end of May this year  
19 USEC operated the Paducah plant using U.S. technology  
20 to produce LEU for fueling commercial nuclear power  
21 plants in the United States and around the world. For  
22 more than 50 years the Paducah plant provided a  
23 reliable source of nuclear fuel.

24 Over the past decade USEC took steps to  
25 improve operations at the Paducah plant and the



1 facility had been running at peak efficiency in recent  
2 years. These efforts, however, could not overcome the  
3 inherent cost of the substantial amounts of  
4 electricity required by the gaseous diffusion  
5 technology in the face of aggressively priced  
6 competition from foreign competitors.

7 A more advanced and less energy-intensive  
8 uranium enrichment process using gas centrifuge was  
9 needed and, as I will discuss momentarily, USEC turned  
10 to developing and deploying the only U.S.-owned  
11 centrifuge-based technology, the American Centrifuge  
12 Plant Project, or ACP. To remain in the LEU market  
13 USEC must transition to centrifuge technology as  
14 quickly as possible.

15 I would like the Commission to understand  
16 that while enrichment at Paducah ceased a few months  
17 ago, USEC continues to rely on inventories produced at  
18 Paducah to meet its obligations to its customers, that  
19 U.S.-produced LEU is being delivered to U.S. utilities  
20 today, and we expect to continue delivering U.S.-  
21 produced LEU for several more years. Therefore, the  
22 production at Paducah is providing continuity and is  
23 important in assisting in our transition to ACP.

24 USEC also continues to perform other work at  
25 the Paducah facility to ensure the timely delivery of

1 U.S. low enriched uranium to customers and  
2 fabricators.

3 I would now like to discuss the American  
4 Centrifuge Project. I will address three points: 1)  
5 the background of ACP; the advantages ACP has over all  
6 other centrifuge technologies in the world; how the  
7 ACP is invigorating the U.S. manufacturing sector; and  
8 why the ACP is essential to U.S. energy security and  
9 national security; and 5) the status of our financing  
10 efforts. My colleague Dan Rogers, who is General  
11 Manager at ACP, will discuss where we are on the  
12 specific operations of the plan.

13 In 2001 USEC began an ambitious program to  
14 demonstrate and deploy an advanced centrifuge  
15 enrichment technology originally developed by DOE.  
16 The ultimate goal of this program called American  
17 centrifuge was to deploy and replace the Paducah  
18 enrichment plant. It remains the only project  
19 underway involving an American technology for uranium  
20 enrichment. The French antidumping order was, and is,  
21 important to our ability to pursue this project.

22 The American centrifuge is based on a  
23 technology originally developed by the U.S.  
24 Government. From the early 1960s to 1985, the U.S.  
25 Government developed advanced centrifuge technology,

1 including an advanced design that is the basis for  
2 USEC's American centrifuge design, and they began  
3 initial steps toward its deployment in Ohio at the  
4 former site of the Portsmouth gaseous diffusion plant.

5           However, in 1985 the U.S. Government  
6 terminated the program in favor of continuing to rely  
7 on gaseous diffusion, which at that time was capable  
8 of meeting 100 percent of U.S. needs. Among the  
9 reasons for DOE's decision was that the outlook for  
10 nuclear power at that time was not as promising as one  
11 forecast.

12           The world has clearly changed since 1985 and  
13 today projections for nuclear power in the United  
14 States and around the world, while less robust than  
15 before the incident in Fukushima, Japan in 2011, have  
16 grown and show anticipated growth over the next  
17 several decades.

18           Among the reasons for this growth are the  
19 environmental benefits of nuclear power, which does  
20 not produce greenhouse gases. For this reason, USEC  
21 has made investments of \$2.5 billion in the American  
22 Centrifuge Project. I repeat. Investments of \$2.5  
23 billion.

24           The two most significant advantages of  
25 centrifuge technology generally over diffusion

1 technology are its much lower energy requirements and  
2 the modular architecture of separation production.  
3 This means much lower cost, as well as flexible and  
4 continuous deployment. This is true of both our ACP  
5 and the AREVA, the URENCO centrifuge technology. I  
6 refer to it as the AREVA-URENCO technology because, as  
7 you may know, all centrifuge plants constructed by  
8 AREVA and URENCO share the same technology, and they  
9 have a joint venture called ETC dedicated to producing  
10 those centrifuges.

11 The ACP is technically superior to all other  
12 centrifuge technologies in at least two respects.

13 First, our AC-100 centrifuge machine is  
14 designed so that we can replace individual machines  
15 from a cascade, for example, for repair or upgrade,  
16 while still allowing the cascade to remain in  
17 production. The individual AREVA-URENCO machines used  
18 in their cascades are not replaced in the same manner  
19 as ours.

20 Second, and perhaps the most dramatic  
21 evidence of the superiority of the USEC technology,  
22 our AC-100 machine has demonstrated performance levels  
23 of 350 SWUs per machine, per year. This makes the  
24 performance of USEC machines over the AREVA-URENCO  
25 centrifuge machines more than four times greater.

1           The ACP-100 machine has been developed,  
2           engineered, and assembled in the United States.  
3           Accordingly, the development of the AC-100 also has  
4           contributed to invigorating the U.S. industrial base.

5           Because of the highly sensitive and, in some  
6           cases, classified nature of the components of the AC-  
7           100, USEC has had to fund the construction,  
8           refurbishment, and/or retooling of facilities in the  
9           United States to make key components. This  
10          manufacturing capability simply did not exist in the  
11          United States. USEC created it and funded it. These  
12          investments in turn have provided significant  
13          employment and economic benefits to communities and  
14          companies in a number of U.S. states.

15          My colleague Dan Rogers will go into more  
16          detail about the jobs we're creating now and will  
17          create in the future and our contribution to re-  
18          establishing a high technology U.S. infrastructure for  
19          producing nuclear-grade components and support  
20          systems.

21          The American centrifuge plant is designed to  
22          assure that the United States has the capacity using  
23          U.S. technology and not simply a plant located here  
24          that uses foreign technology, produces LEU subject to  
25          foreign government restriction, and is subject to

1 foreign control.

2           Ensuring that the United States continues to  
3 produce fuel using U.S. technology also is vitally  
4 important from a national security perspective. All  
5 foreign enriched uranium and all uranium enriched with  
6 foreign technology, including in the United States, is  
7 subject to treaty obligations with foreign governments  
8 that prevent its use for weapons purposes. Therefore,  
9 the enriched uranium to make the fuel to produce  
10 tritium for weapons purposes must be produced in the  
11 United States using U.S. technology.

12           DOE currently has a supply of qualifying LEU  
13 to produce tritium for approximately 10 years. Beyond  
14 that, no facility other than the ACP can produce  
15 enriched uranium for tritium production in the future.

16       ACP is the only commercial solution to address this  
17 critical deficiency in America's national defense  
18 infrastructure.

19           Having a domestic enrichment capability  
20 based on U.S. technology also is vitally important to  
21 ensure that the United States continues to have a seat  
22 at the table in influencing nonproliferation policies  
23 of other nations, including by allowing the United  
24 States to offer other countries nuclear fuel supplies  
25 in order to deter these countries from pursuing their

1 own enrichment technology or from buying from  
2 countries whose proliferation policies are not as  
3 strict. I can discuss this point further, if you  
4 like.

5 AREVA's prehearing brief tries to make a lot  
6 out of the financial and technical difficulties USEC  
7 has endured in order to get the ACP to commercial  
8 deployment.

9 As an aside, I note that AREVA itself has  
10 essentially abandoned its planned Eagle Rock facility  
11 because it has experienced its own financing  
12 difficulties, although it continues to aggressively  
13 expand capacity in France. Make no mistake. These  
14 are massively intensive, capital-intensive, highly  
15 sophisticated plants that must be executed in a safe  
16 and reliable way.

17 Yes, we've had some delays, and no, we are  
18 not where we would have wanted to be at this point;  
19 however, we are fully committed to deploy the ACP in  
20 America and supply our customers with fuel produced  
21 with U.S. technology. This is exactly why the  
22 Commission should not terminate this order. We must  
23 complete this project to ensure that the United States  
24 continues to have a domestic producer using U.S.  
25 technology.

1           Dan Rogers will expand on some of this, but  
2 I will now tell you where we are with respect to our  
3 current progress.

4           USEC has a construction and operating  
5 license issued by the U.S. Nuclear Regulatory  
6 Commission, or NRC. Although due to delays in  
7 financing USEC has not been able to commence  
8 deployment of the full plant, we have an ongoing  
9 program that is achieving remarkable results. In  
10 2012, DOE and USEC agreed to a program to deploy and  
11 demonstrate a full 120 machine cascade that will  
12 eventually be part of the commercial plant.

13           I submit to you that the government's 80  
14 percent share of the \$350 million program for this  
15 purpose is a clear acknowledgment by DOE and Congress  
16 that the American centrifuge is important for the  
17 United States' national and energy security, as it  
18 would provide a domestic source of enriched uranium  
19 for decades to come that is free of obligations to  
20 foreign governments.

21           The 120 machine cascade built by USEC under  
22 this program, which a team from the Commission was  
23 able to see first hand, uses the same AC-100 machines  
24 that will be used in the full commercial plant. These  
25 120 machines are running on gas today in preparation



1 for the full demonstration of commercial cascade  
2 production by the end of the year.

3 In the last quarter of this year, USEC will  
4 operate these machines in a cascade configuration to  
5 confirm the technical readiness of the American  
6 centrifuge technology for commercial deployment.

7 At the end of the program, the cascade will  
8 have accumulated 20 years worth of run time and we  
9 expect to submit an updated application for a DOE loan  
10 guarantee that will allow us to complete deployment of  
11 the plant.

12 To get that guarantee we have to provide  
13 both a strong technical record of the technology and a  
14 strong plan to commercialize the output of the plan.  
15 We will have the necessary technical record. The open  
16 question is the commercialization plan.

17 Commercialization will begin even while  
18 construction is ongoing. As I mentioned earlier, the  
19 technology is modular and USEC plans to add groups of  
20 centrifuge cascades to production as it builds the  
21 plant. This will allow USEC to begin production  
22 before construction is complete and to produce  
23 increasing amounts of low enriched uranium throughout  
24 plant completion.

25 The commercialization plan depends on a

1 strong backlog of long term contracts. My colleague  
2 John Donelson will explain this in more detail, but  
3 you should understand that the market conditions that  
4 exist now and that could be influenced by revocation  
5 of the antidumping order on French LEU will determine  
6 whether USEC can obtain the contracts it needs for  
7 this plant. If USEC cannot secure these contracts,  
8 there will be no financial basis to proceed with the  
9 plant.

10 Obviously, any plan faces challenges.  
11 However, the issue today is whether the Commission  
12 will permit anticompetitive dumping to stand in the  
13 way of achieving that plan, recognizing that the  
14 failure of that plan will mean that U.S. technology  
15 may never be deployed commercially if we cannot get  
16 ACP built. If the plant is not built, then, frankly,  
17 not only my company, but this nation's national  
18 security and energy security, would be at grave risk.

19 The French antidumping order was fundamental  
20 in USEC's ability to pursue the ACP beginning in 2001,  
21 and we've done our best to pursue this program to our  
22 fullest ability since that time, notwithstanding  
23 difficult challenges in the market, including the  
24 recent incident at Fukushima. Yet, precisely because  
25 we face those challenges, we need assurance at least

1 that dumping will not be allowed to resume so that we  
2 can see this critical project through.

3 Thank you for your time, and we greatly  
4 appreciate your consideration of this matter which is  
5 so important to my company. I'm happy to answer any  
6 questions you may have.

7 MR. CUNNINGHAM: Thanks, Mr. Sewell.

8 Before we turn to Mr. Rogers, I want to  
9 underline just a few of the points that you should  
10 really take away from Mr. Sewell's testimony.

11 First, the importance of ACP to USEC's  
12 future and the immense advantage commercially it will  
13 give to USEC over rivals like URENCO and AREVA. One  
14 would expect that AREVA and the URENCO organization,  
15 including its subsidiary LES, would want, would much  
16 prefer never to have ACP see the light of day  
17 commercially.

18 Secondly, note the ties that are seen  
19 between LES and the URENCO organization on one hand  
20 and AREVA on the other. They have a joint venture for  
21 producing the centrifuges of their technology.  
22 Clearly, that gives them an interest in not having the  
23 American centrifuge technology come to the floor and  
24 take market away from their centrifuge business, as  
25 well as their LEU business.

1           Also notice that, as you will find as you  
2 explore this further, URENCO, and remember LES, URENCO  
3 subsidiary, have been actively helping AREVA maintain  
4 its U.S. market position.

5           Second, note a few things critical to your  
6 analysis of whether USEC is a member of domestic  
7 industry and a current industry member. U.S.-produced  
8 LEU is continuing to be sold by USEC that was produced  
9 by its gaseous diffusion technology. Even though the  
10 further production has been shut down, they're  
11 continuing to sell out of the inventory of U.S.  
12 production.

13           USEC has made \$2.5 billion in investment  
14 going forward in the ACP. The U.S. Government is  
15 cooperating with USEC, including providing substantial  
16 funds -- not just loan guarantees -- for 80 percent of  
17 the cost of the research, development, and  
18 demonstration project for the ACP.

19           Keep those facts in mind. Let me turn now,  
20 for a more detailed look at the ACP, to Mr. Daniel  
21 Rogers.

22           MR. ROGERS: Thank you. Good morning,  
23 Commissioners and staff. Thank you for giving me the  
24 opportunity to talk with you today. For those of you  
25 I did not meet during the visit at the end of July, my

1 name is Dan Rogers and I am the General Manager of  
2 USEC's American centrifuge plant in Piketon, Ohio.  
3 I'm currently responsible for oversight and operations  
4 of this advanced production facility for low enriched  
5 uranium.

6 I have a long history with USEC. I started  
7 working at the Portsmouth uranium enrichment plant in  
8 Piketon, Ohio in 1974. I joined USEC's American  
9 centrifuge program in 2005. Prior to that, I held a  
10 number of senior positions at the Portsmouth plant,  
11 both for USEC and for DOE contractors. From 1980 to  
12 1985 I worked on the Department of Energy's centrifuge  
13 program. I'm here today to provide information and  
14 answer any questions you have about the operations at  
15 our American centrifuge facility.

16 It's really important for me to be here  
17 today. I took time away from my plant  
18 responsibilities to prepare for this hearing and to  
19 fly out and appear before you because this antidumping  
20 duty order matters to USEC's production, it matters to  
21 me as a general manager of our cutting edge production  
22 facility, and it matters to my employees at the  
23 facility and the many Americans with jobs at companies  
24 producing the parts and equipment for our facility.  
25 Dumped uranium from France will hurt U.S. production.

1           As Phil Sewell explained, USEC has been  
2 around for a long time producing LEU in the United  
3 States. For many years we were the only U.S.  
4 producer, and we are still the only U.S.-owned  
5 producer using U.S. technology.

6           What I'm here to talk about today, though,  
7 is not the past. I'm here to talk about the present  
8 and the future of the American LEU technology. This  
9 is the American centrifuge.

10           While Phil discussed this a bit, I'm going  
11 to start with our capital investment. USEC has not  
12 been dabbling in LEU production as a side business.  
13 It isn't some distant theoretical plan. We are a U.S.  
14 producer of LEU and that is the core of our company.  
15 We have made enormous capital investment in our  
16 American centrifuge facility, and frankly, we are very  
17 proud of what we've accomplished and where we are  
18 going from here with our U.S. production.

19           Let's get into specifics. We have already  
20 invested \$2.5 billion in the American Centrifuge  
21 Project. This money has gone into real things that  
22 you can see and feel on the ground. It's in the  
23 plant, in the machine manufacturing, and in the  
24 machine research and development. We've made major  
25 advances in centrifuge technology through our

1 investment. We've submitted on the record pictures of  
2 our facility and I'd like to show you a few of the  
3 additional pictures now to help you understand the  
4 work we are doing.

5 The picture you see here now is our K-1600  
6 facility in Oak Ridge, Tennessee. That's a facility  
7 where we do our research and development of our  
8 centrifuge machine and that is ongoing today.

9 The next page is, this is our manufacturing  
10 facility in Oak Ridge, Tennessee. We have several  
11 manufacturers. This is our core manufacturing,  
12 operated by American Centrifuge Manufacturing. It's  
13 where we make nuclear components, classified nuclear  
14 components, that are shipped to Piketon for assembly.

15 This is our American centrifuge plant in  
16 Piketon, Ohio. This was built and operated by the  
17 Department of Energy for, to the 1980s. We have  
18 leased that facility from them. This is where  
19 currently, today, operating 120 machines on gas in  
20 this facility.

21 This is a picture of the 120 machine  
22 cascade, standing in the middle of the cascade,  
23 looking down through the cascade, and the various  
24 machines that are on the left and right and the  
25 controls of the machine. These are the actual

1 machines that are in operation today.

2 Finally, this is a picture of the machines,  
3 the 120 machines that are currently, right now, today  
4 in operation in Piketon, Ohio.

5 So what have our accomplishments been? We  
6 received a license to construct and operate the lead  
7 cascade for the American centrifuge from the Nuclear  
8 Regulatory Commission in February 2004. We got a  
9 license to construct and operate our commercial  
10 American centrifuge plant at a level of 3.8 million  
11 SWU in April of 2007. We started our commercial plant  
12 construction in May of 2007.

13 In August of that year, our lead cascade  
14 test program began operations and that lead cascade  
15 has accumulated more than 143 years, or 1.25 million  
16 hours, of machine run time.

17 Commercial plant designed AC-100 machines at  
18 the facility have accumulated more than 71 machine  
19 years of run time. Those AC-100 machines have  
20 demonstrated performance level of 350 SWUs per  
21 machine, per year, which, as Phil mentioned, is four  
22 times greater than any commercially-deployed machine  
23 in the world.

24 What are we doing now? Through December of  
25 this year we are finishing up a nineteen month



1 research, development, and demonstration program  
2 conducted with the Energy Department. This phase of  
3 our production facility is where we have been building  
4 and operating a 120 centrifuge commercial  
5 demonstration cascade. Those of you who visited with  
6 us stood in the middle of that cascade.

7 Together with DOE, we're investing up to  
8 \$350 million in this phase of the project. Our share  
9 of that is 20 percent. I'm very pleased to report to  
10 you that this commercial cascade project continues to  
11 be on schedule and within budget. All of our machines  
12 are on gas and we're preparing to begin operation of  
13 the cascade in a commercial configuration.

14 We also have successfully completed six of  
15 the nine technical milestones for the project. We are  
16 on schedule to complete the remaining three milestones  
17 by the end of this year. We provided technical  
18 information on these milestones in our prehearing  
19 brief.

20 We've had some delays over the years.  
21 Delays are certainly not unusual in this type of  
22 industry requiring such a big capital investment and  
23 such a complicated technology. I point out that LES's  
24 U.S. facility got its commercial production going  
25 about three years behind schedule even though it was

1 using its European parent's existing technology.

2 Our French competitor, AREVA, who mocks our  
3 facility delays should not throw any stones. Even  
4 with a \$2 billion loan guarantee and centrifuge  
5 technology from its own joint venture with URENCO,  
6 AREVA's planned Eagle Rock enrichment plant in the  
7 United States has been delayed so many years that the  
8 press reports that AREVA is no longer projecting a  
9 date for production to avoid dashing expectations  
10 while they hunt for financing.

11 We've put billions into our facility and we  
12 are producing test quantities of LEU now. Our timing  
13 and projections for commercial production are based on  
14 actual progress and substantial technological  
15 developments. AREVA hasn't even put a shovel in the  
16 ground.

17 Let's talk about the technical expertise  
18 needed for production for this industry. I know  
19 that's something that matters to you and how you think  
20 about USEC as a producer. Frankly, I don't think  
21 there are many industries out there that rival uranium  
22 enrichment for needing such specialized technical  
23 expertise.

24 As I'm sure you can imagine, the enrichment  
25 of LEU involves highly technical controlled

1 information and skills, and expensive and advanced  
2 technology and equipment. Only a small number of  
3 companies worldwide have the technology and capability  
4 to enrich uranium. USEC has long been a member of  
5 that club. Only a few countries in the world possess  
6 this technology.

7 Because of the nature of technology, it is  
8 obviously classified. Our employees working at our  
9 American centrifuge facility must have security  
10 clearance through the Department of Energy.

11 As general manager of the ACP, I just want  
12 to share with you the incredible technical expertise  
13 of our employees. My staff at ACP, and as I've said,  
14 there are hundreds of them, have decades of experience  
15 with uranium enrichment. Many of them worked on our  
16 Portsmouth or Paducah production facilities. They  
17 have advanced engineering and scientific degrees and a  
18 level of sophistication about uranium that is hard to  
19 match. USEC NS employees are proud to be part of the  
20 high tech manufacturing that we believe is the future  
21 of the manufacturing of this country.

22 When we talk about commercial low enriched  
23 uranium, we're talking about what goes into fuel rods  
24 to power a nuclear reactor. Your staff report does a  
25 great job of laying out the process from uranium

1 mining, to enrichment, to the fuel rods going into the  
2 plant. Here, the key thing to keep in mind is that  
3 enrichment is a large part of the cost of the  
4 production of LEU. We produce LEU from converted  
5 natural uranium and it is the enrichment of that  
6 uranium that really creates its value.

7           Where the uranium enriched determines the  
8 country of origin of that uranium as well, so uranium  
9 mined in Canada but enriched in the United States by  
10 USEC is USEC LE, U.S. LEU, while that same natural  
11 uranium enriched by AREVA in France is French LEU.  
12 This is due to the significant cost of enriching  
13 uranium and how enrichment results in the creation of  
14 a new and different product that is LEU.

15           USEC has several hundred employees working  
16 at and supporting its American centrifuge facility.  
17 More specific numbers are in our brief and in our  
18 materials I provided during the plant visit, which I  
19 understood are part of the record. We're looking to  
20 hire more people at our American centrifuge facility  
21 as our production ramps up over the next several  
22 years.

23           As we have detailed in our brief, our  
24 facility is supporting not only USEC's direct jobs,  
25 but thousands of other jobs at a number of U.S.

1 companies. All of our AC-100 machines are designed,  
2 engineers, and built in the United States. We  
3 estimate that 8,000 jobs in the United States will  
4 result from the American Centrifuge Project and its  
5 ongoing construction and development.

6 We have been working with top American  
7 companies to develop the materials needed for our  
8 centrifuges. What you see here are some of the  
9 companies of the major suppliers and we currently have  
10 over 100 suppliers supplying us materials from 26  
11 states. Again, these are just some of our major  
12 suppliers throughout the country that are supplying  
13 major components in support of the American Centrifuge  
14 Project.

15 Because of the sensitive and technical  
16 nature of the components for uranium enrichment USEC  
17 has funded with our own money the construction and  
18 retooling of facilities in the United States that make  
19 the components for our American centrifuge facility.  
20 The quality and type of these parts are highly  
21 technical and the result of substantial R&D specific  
22 to the ACP project. As those on the tour of ACP saw,  
23 we currently have hundreds of millions of dollars of  
24 U.S.-made parts at the facility ready to be installed.

25 Finally, as the general manager of our ACP,

1 I want to reiterate the importance of this antidumping  
2 duty order. As John Donelson will explain  
3 momentarily, I know our sales team for ACP production  
4 does not want to be competing with unfairly traded  
5 LEU. We need a stable and fair marketplace in order  
6 to secure long term contracts for our USEC production.

7 The ACP is an extensive, highly  
8 sophisticated, production-related endeavor, dedicated  
9 to the U.S. production of LEU. It will be the only  
10 U.S.-owned LEU facility and the only operating  
11 facility using U.S. enrichment technology.

12 Thank you for your attention, and I will be  
13 happy to answer any questions you may have.

14 MR. CUNNINGHAM: I'm sorry.

15 CHAIRMAN WILLIAMSON: You couldn't, you  
16 can't hear him?

17 MR. CUNNINGHAM: Light wasn't on. Sorry  
18 about that. My metal light didn't go on either. It  
19 was terrible. Let me start that -- let me underline a  
20 couple of the points that you should take away from  
21 Dan Rogers' testimony, first on the issue of whether  
22 USEC is a U.S. producer.

23 Notice that it has the licenses, substantial  
24 investment, substantial employment in the ACP project,  
25 has developed substantial technology of its own, has

1 parts ready to be installed. This is a project, this  
2 is a company that is in the business, continuing in  
3 the business.

4 Second area that you should take away from  
5 this, listen to what he said about the successful  
6 progress of this project. This is not speculation, as  
7 Mr. Rosen would have you look at it. This is a  
8 project that is on track, but subject to derailment if  
9 a flood of French dumped imports comes in.

10 On the subject of what happens in the  
11 market, let me turn now to John Donelson.

12 MR. DONELSON: Good morning, Commissioners,  
13 staff. My name is John Donelson. I'm Vice President  
14 of Marketing, Sales and Power at USEC, Inc. I thank  
15 you for this opportunity to address you today.

16 I've been with USEC since 1995, and in my  
17 current position I'm responsible, among other things,  
18 for supervising the sales and marketing of our  
19 enriched uranium products in the United States and  
20 abroad. Prior to that time, I was the uranium  
21 enrichment buyer for Duke Energy, a major U.S.  
22 utility. In total, I have been involved in the  
23 purchase or sale of LEU for over 20 years.

24 In my testimony today I will discuss five  
25 points that are critical for the Commission's

1 assessment of likely injury if the antidumping duty  
2 order were revoked.

3 1) AREVA remains a major competitor in the  
4 U.S. market; 2) the nature of contracts in the market  
5 for nuclear fuel; 3) the critical importance of price  
6 in utilities' purchasing decisions; 4) how one  
7 competitor, i.e., AREVA, offering low prices can have  
8 a profound effect on the market as a whole; and 5) the  
9 likely market effects of a revocation of the  
10 antidumping duty order and how that would impact USEC.

11 First, I was not surprised to read in the  
12 ITC staff report that despite AREVA claiming not to  
13 have imported LEU to the United States since 2007,  
14 AREVA continues to have a major market presence.  
15 Table II-10 in the staff report shows AREVA's  
16 continued market presence and indicates that even in  
17 2014 AREVA will hold a greater market share than it  
18 did in 2012 or 2013.

19 Given AREVA's aggressive behavior in the  
20 market, this increase in market share does not  
21 surprise me either. Our own market research shows  
22 that AREVA's U.S. market share will increase in the  
23 years to come.

24 I, and others at USEC have assumed for some  
25 time that the only way AREVA could continue selling,



1 contracting, and delivering LEU in the United States  
2 without paying duties was that they had made some type  
3 of deal with URENCO, their joint venture partner, to  
4 trade markets, or supply each other's customers, or  
5 something along those lines.

6 I hope that the confidential version of the  
7 staff report has data and other information on this,  
8 but my main point is that AREVA has never left the  
9 market and AREVA continues to sell aggressively in the  
10 United States.

11 Second, as in the investigation and first  
12 review, it was noted that long term contracting was  
13 the most prevalent form of contracting for LEU in the  
14 U.S. market, and the loss of a major long term  
15 contract can have a significant negative impact for an  
16 enricher. These observations remain true today, as  
17 does the corresponding impact on USEC.

18 If the order were revoked, I fully expect  
19 that AREVA would attempt to sell even greater amounts  
20 of LEU into the U.S. market, particularly their own  
21 French-produced and unfairly traded LEU. AREVA would  
22 do so by signing long term contracts with U.S.  
23 utilities.

24 The loss of these long term sales would be  
25 devastating for USEC. I can't replace these sales

1 taken by AREVA with other sales. The U.S. customer  
2 base is fixed, and even declining in the intermediate  
3 term. This is revenue lost to me for a number of  
4 years. As Mr. Sewell explained, these lost sales  
5 would have a decisive negative effect on our company  
6 as we transition to the commercial deployment of the  
7 ACP.

8 I'm going to be as clear as I can be here.  
9 My job is to sell the future output of the ACP. If I  
10 can't do this because AREVA is selling dumped LEU and  
11 taking sales I should be able to get, there will be  
12 nothing to sell because there will be no ACP plant.  
13 It's that stark.

14 Third, the Commission has repeatedly, and  
15 correctly, found that sales of LEU are generally made  
16 on the basis of price, and that the enricher with the  
17 lowest evaluated price will always win the sale.  
18 Today, in my experience in the market, price remains  
19 the key determinant in the utilities' purchasing  
20 decision, and the low priced supplier continues to  
21 take the sale.

22 If the antidumping duty order were revoked,  
23 AREVA would try to make more sales in the U.S. market  
24 to the same type of aggressive low pricing that the  
25 Commission saw in the original investigation. This is

1 not just speculation. In third country markets where  
2 there is no antidumping duty discipline we have  
3 experienced AREVA pricing policies first hand and have  
4 lost substantial sales there, as explained in our  
5 prehearing brief on pages 78 and 79.

6 In view of AREVA's pricing practices in  
7 third country markets, and given the fact that  
8 utilities continue to treat price as the most  
9 important factor in their purchases, I have every  
10 reason to believe that AREVA would be equally  
11 aggressive in the U.S. market if given the  
12 opportunity.

13 Fourth, with only four companies competing  
14 for long term sales in the United States, and three  
15 companies if you consider AREVA and URENCO as a single  
16 entity as they seem to be these days, the actions by  
17 one company resonate and have a profound effect on the  
18 market. This is pretty basic economics, but it is  
19 certainly the reality to me in the LEU market.

20 Finally, Phil Sewell has explained the  
21 positive effects the antidumping duty order has had  
22 for USEC operations and for our American Centrifuge  
23 Project. I'd like to say a few words about the impact  
24 this order has had on the U.S. market for LEU.

25 When USEC filed its antidumping and

1       countervailing duty petitions against imports from  
2       western Europe in late 2000, SWU prices were at  
3       historic lows. After a thorough investigation the  
4       Commission found that this price depression was caused  
5       by Kojima, now AREVA, and URENCO and their unfairly  
6       traded imports and their pervasive and aggressive  
7       underselling.

8               Thanks to the antidumping and countervailing  
9       duty orders that were imposed in 2002, market prices  
10       increased over the next few years and we signed new  
11       contracts at these higher prices. This allowed USEC  
12       to cover our significantly increased power cost and to  
13       help fund our critical centrifuge project.

14              The tragic events at Fukushima in 2011 led  
15       to reactor shut downs in Europe and Japan. These shut  
16       downs resulted in excess LEU supply which AREVA would,  
17       if allowed, direct towards sales in the U.S. market,  
18       particularly because AREVA needs to find new demand  
19       for its expanding production in France.

20              Let me briefly discuss price. Just as price  
21       for LEU recovered almost instantly after this trade  
22       action was initiated, we expect that price would  
23       decline just as quickly if the order were revoked and  
24       dumping resumed.

25              As U.S. utilities adjust their price

1 expectations to take into account the additional  
2 supply of unfairly priced French LEU that would become  
3 available in the market, this price decline would  
4 impact USEC in three ways.

5 First, because current market prices are  
6 considered by utilities when signing long term  
7 contracts, a reduction in market prices would lower  
8 the price at which we sign long term contracts. Thus,  
9 even if USEC were able to win a contract, it would be  
10 at a lower price and would yield lower revenue over  
11 the life of that contract, thereby reducing our  
12 ability to commercialize ACP.

13 Second, USEC would lose revenue under  
14 contracts that contain market-based pricing  
15 provisions. These market-based pricing provisions  
16 would require USEC to reduce its prices if market  
17 price indicators fall.

18 Third, USEC would immediately lose revenue  
19 on its sales of LEU made in the spot market. While  
20 these sales represent a minority of our business, this  
21 impact would still be felt.

22 For all of these reasons, and based on my  
23 experience in the U.S. LEU market both as a buyer and  
24 seller of nuclear fuel, I am confident that if the  
25 antidumping duty order were revoked USEC would again

1 be injured by imports of LEU from France. Thank you.

2 MR. CUNNINGHAM: Thank you, John.

3 Before turning to Dan Klett for some  
4 economic views on this, let me add some gloss on one  
5 point that John made, and that is the decline in  
6 demand in markets outside the United States upon which  
7 USEC, and URENCO, too, rely.

8 He talked about declining demand in Europe.  
9 Germany is shutting down its nuclear power program, a  
10 major, major blow to these companies. They have to go  
11 get new business elsewhere. There is only one market  
12 accessible to them that would give them that demand,  
13 and that's the United States.

14 Let me turn now to Dan Klett for some  
15 economic analysis here.

16 MR. KLETT: Good morning. My name is Daniel  
17 Klett. I'm an Economist with Capital Trade  
18 Incorporated, testifying on behalf of U.S. producer  
19 USEC. My testimony will focus on the effects of  
20 revocation of the order on the U.S. market and on  
21 USEC.

22 AREVA asserts no likelihood of adverse  
23 effects, claiming that it will not increase its  
24 exports to the U.S. because its new centrifuge  
25 capacity is smaller than the gaseous diffusion

1 capacity it replaced and its capacity is booked for  
2 the foreseeable future.

3 AREVA also claims that the Commission must  
4 consider for its causation analysis whether any  
5 increase in imports from France would displace U.S.  
6 production or nonsubject imports.

7 AREVA has maintained a significant interest  
8 in the U.S. market through sales to U.S. utilities  
9 from nonsubject sources. AREVA's share of the U.S.  
10 market from Table II-10 of the prehearing report is  
11 replicated in Slide 1 and shows that AREVA held at  
12 least 10 percent of the U.S. market in the last three  
13 years and higher shares in prior years. Although  
14 confidential, compare that with the market share of  
15 import from France in the original investigation in  
16 Table I-1 of the staff report.

17 AREVA clearly will continue to participate  
18 in the U.S. market absent the order and it will have a  
19 financial incentive to do so with its French origin  
20 LEU that it needs to sell to support the growing  
21 capacity of its plant in France.

22 AREVA did replace gaseous diffusion  
23 production of 10.8 million SWU-rated capacity with a  
24 centrifuge plant with capacity forecast to be 7.5  
25 million SWU by 2016. However, this comparison is

1 misleading. A large share of gaseous diffusion  
2 production cost is electricity, and thus variable  
3 rather than fixed. For this reason, there is less of  
4 an incentive to produce at maximum capacity, and table  
5 4-3 of your staff report shows that this has been the  
6 case over the review period.

7 In contrast, as shown in slide 2, a  
8 centrifuge-enrichment plant is highly capital-  
9 intensive, with much lower energy costs, and therefore  
10 a financial incentive to operate closer to full  
11 capacity. As shown in slide 3, AREVA itself forecasts  
12 significantly higher levels of enrichment in future  
13 years with its new plant as compared to enrichment  
14 levels at its old facility.

15 In addition, centrifuge capacity is modular  
16 in nature, and the capacity can be increased  
17 incrementally. AREVA has reported that the new  
18 facility is designed to be able to reach a capacity of  
19 11 million SWU. As shown in slide 4, AREVA states  
20 that the modular construction enables rapid ramp-up of  
21 production and adjustment of production capacity to  
22 market demand. Given the large lag between  
23 procurement of an enrichment contract and delivery  
24 requirements, it is not speculative to find that  
25 absent the order, AREVA would aggressively bid on new



1 enrichment contract with the utilities in the United  
2 States and could meet any such wins with incremental  
3 increases in its enrichment capacity up to 11 million  
4 SWU.

5 This conclusion also was supported by  
6 AREVA's current relationship with U.S. utilities in  
7 the United States, not only for LEU supplied from non-  
8 subject sources, but its North American uranium  
9 activities at other stages of nuclear fuel cycle. As  
10 shown in slide 5, AREVA is a fully integrated producer  
11 of nuclear fuel from mining to recycling.

12 As shown in slide 6, AREVA claims to have  
13 commercial relations with all 130 reactors in  
14 operation in North and South America. And as shown in  
15 slide 7, it has substantial uranium operations in  
16 North America.

17 In addition, AREVA ignores the fact that  
18 Commerce has found LEU imports from France to continue  
19 to have been sold at less than fair value, so there is  
20 an issue of the effect of AREVA's likely pricing  
21 behavior in the United States, even if any increase in  
22 LEU imports from France were to replace just non-  
23 subject imports.

24 Because AREVA continued to participate in  
25 the U.S. market, we do have information on its pricing

1 behavior to U.S. utilities for sales of non-subject  
2 imports. The data are confidential, but our  
3 prehearing brief shows these comparisons, which also  
4 supports a finding of likely adverse price effects in  
5 the event of revocation.

6 AREVA's pricing behavior to non-U.S. markets  
7 also is relevant. As shown in slide 8, in a late 2012  
8 bid for an enrichment contract to Korea Hydro for  
9 600,000 SWU, AREVA is reported to have submitted the  
10 lowest bid in competition with URENCO, USEC, Tenex,  
11 and others, which resulted in price decreases of from  
12 \$6 to \$11 per SWU by December 2012.

13 AREVA has provided no facts to support a  
14 finding that any increase in LEU imports from France  
15 will displace just non-subject imports. We know from  
16 public sources such as ships' manifest data that  
17 AREVA's continued sales of non-subject LEU in the U.S.  
18 market are sourced from URENCO's production in Europe.

19 As shown in slide 9, URENCO's LES facility  
20 accounts for 15 percent of its total SWU capacity, but  
21 the United States accounts for 41 percent of its total  
22 SWU sales in 2012, and 46 percent of its current order  
23 book for future sales. By comparison, Europe only  
24 represents 37 percent of its order book, and demand  
25 there is declining. In other words, the United States

1 is a greater part of URENCO's business than its own  
2 home market.

3 URENCO also continues to expand its European  
4 capacity, while at the same time slowing down  
5 deployment of its U.S. plant. So it is difficult to  
6 see how URENCO can continue to meet its U.S.  
7 commitments without continued significant reliance on  
8 LEU imports from its European plants.

9 The Commission recognized in the uranium  
10 sunset review last year that the U.S. remained the  
11 single largest market for all uranium products. Your  
12 prehearing report acknowledges that while post-  
13 Fukushima effects on nuclear power demand in Japan and  
14 Europe have been negative, U.S. demand for nuclear  
15 energy is anticipated to continue to grow.

16 As shown in slide 10, AREVA's enrichment  
17 order cancellations, primarily in markets outside the  
18 United States, have soared since the Fukushima  
19 incident. We show in our prehearing brief from a  
20 third-party source that the U.S. is forecast to  
21 account for a large share of open or uncommitted  
22 demand in the years 2014 to 2018.

23 While there are forecasts of considerable  
24 demand increases for nuclear energy in China, this  
25 demand is expected to be served by growth of Chinese

1 enrichment capabilities, so China is not a source of  
2 demand for European LEU or SWU either.

3 To summarize, AREVA is a company that is  
4 focused on and actively pursuing contracts in the U.S.  
5 market and needs U.S. sales in light of declining  
6 demand in its other markets, and the need to maintain  
7 high levels of capacity utilization at its expanding  
8 centrifuge enrichment plant. Neither is there any  
9 support for the statement that an increase in LEU  
10 imports from France will displace just non-subject  
11 imports.

12 Thank you.

13 MR. CUNNINGHAM: Before concluding this  
14 panel, I'd like to add one further item in the file  
15 that I hope you're keeping of things that Respondent  
16 knows for damned sure that just ain't so. Mr. Rosen  
17 said that USEC is just selling Russians through in the  
18 market. It's just an importer.

19 In the expanded version, which you didn't  
20 have time to read all of, of Mr. Sewell's testimony at  
21 pages 12 to 13, he addresses that issue. There are  
22 statutory limits on the imports of Russian SWU into  
23 the United States. As a consequence, the use that  
24 USEC makes of Russian SWU is primarily for its foreign  
25 customers. USEC is selling LEU from its own

1 production and inventories to its U.S. customers.

2 That concludes this panel's presentation.  
3 Brought it in under the time limits, I'm pleased to  
4 see. And we'd be happy to entertain any questions  
5 that you may have.

6 CHAIRMAN WILLIAMSON: Thank you. I again  
7 want to express our appreciation to all of the  
8 witnesses for taking time from business to come and  
9 present testimony this morning.

10 This morning we'll begin our questioning  
11 with Commissioner Aranoff.

12 COMMISSIONER ARANOFF: Thank you, Mr.  
13 Chairman. I'd like to welcome all of this morning's  
14 witnesses to the Commission, or perhaps back to the  
15 Commission for a number of you who have been here  
16 before. And speaking of been there before, my first  
17 question is going to be -- I visited USEC's Portsmouth  
18 facility back in the last review in 2007, and I  
19 believe the day I was there was the very day that they  
20 were turning on that first cascade in the facility of  
21 installed centrifuges.

22 So of that capacity that I saw installed and  
23 apparently operating back in 2007, can you explain  
24 what has happened to that in the intervening years?

25 MR. ROGERS: Dan Rogers. Yes, Commissioner.

1       That was what we call a prototype cascade that we  
2       started in 2007. It was a small number of machines to  
3       demonstrate the cascade configuration and the  
4       performance of the machine.

5               Since then we have expanded it, as I have  
6       mentioned. Now we have taken it all the way to the  
7       cascade that we're talking about today is a fully  
8       commercial demonstration cascade. The cascade of the  
9       120 machines is the same and similar as to what we  
10      have produced in the 11,520 machines for the  
11      commercial plant.

12             So it was really -- it was the pilot. It  
13      was our first cascade operation to show and  
14      demonstrate that we could produce low enriched uranium  
15      at customer orders. So it's a smaller cascade.

16             COMMISSIONER ARANOFF: But have there been  
17      changes to the technology since the time that that  
18      first one was installed? Because otherwise you could  
19      have just been installing lots of them --

20             MR. ROGERS: That's correct.

21             COMMISSIONER ARANOFF: -- and operating in  
22      the intervening time.

23             MR. ROGERS: Now, Commissioner, yes, we have  
24      made several changes to and enhanced the machines. As  
25      we talked about today, we have a 350-SWU machine today

1 that we're producing. That was a somewhat less  
2 produced machine at that point in time, so we have  
3 made significant advancements in the machine to where  
4 that's why today we're saying we have our commercial  
5 deployment machine which we started 19 months ago.

6 COMMISSIONER ARANOFF: Okay. In the time  
7 that you have been operating at various test levels,  
8 have you yet produced any LEU that would be  
9 commercially salable?

10 MR. ROGERS: Well, Commissioner, first and  
11 foremost, the license that we're operating under for  
12 our lead cascade with the NRC is our lead cascade  
13 license, which does not allow us to possess in a form  
14 of enriched LEU. So what we do on that is basically  
15 recycled.

16 But what we are able to do is to pull test  
17 samples. Instead of taking it and withdrawing it that  
18 you would say would be shipped to a customer, we  
19 withdraw it and sample it in our laboratory to  
20 validate the assay and the SWU performance of the  
21 machine, but that it's recyclable.

22 So under our lead cascade license, which  
23 we're doing all our demonstration, is it's a recycled  
24 configuration to where we don't possess the LEU. But  
25 it could very easily be turned into deployment of our

1 commercial license, is to extract that and sell it to  
2 a customer.

3 COMMISSIONER ARANOFF: Okay. But so is the  
4 issue is that you're not licensed right now to sell  
5 anything of commercial quality that might come out of  
6 your process?

7 MR. ROGERS: We have two licenses. It's  
8 kind of confusing. We have two licenses. One is our  
9 lead cascade license, which we're doing our test. The  
10 other license I mentioned to you is our commercial  
11 license. We could implement the commercial license,  
12 but the commercial license is for the full production  
13 of the plant. So we have it, it has been issued to  
14 us, we've implemented it. But we have to build out  
15 the remaining part of the plant to get into full  
16 production that would implement the full aspects of  
17 our commercial plant license.

18 COMMISSIONER ARANOFF: Okay. So the courts  
19 that review the Commission's decisions have told us  
20 that when we're looking at what is likely in the  
21 reasonably foreseeable future, we're looking at  
22 something that is, you know, at least a shade over 50  
23 percent more likely than not.

24 How should the Commission make the  
25 conclusion that that the ACP is going to go into



1 commercial operation more likely than not within the  
2 reasonably foreseeable future when we know that there  
3 are a number of significant hurdles between now and  
4 that achievement?

5 MR. CUNNINGHAM: Yeah. Let me take that on.  
6 The Commission needs to look at two aspects of this.  
7 One is, is the technology going to be commercially  
8 viable? Returns aren't all in, but they're pretty  
9 close to all in, and they will be all in at the end of  
10 this year. Six of the nine milestones have been  
11 successfully passed. There is no suggestion that the  
12 other milestones won't be successfully passed. The  
13 DOE is on board and participating and funding this  
14 research, development, and demonstration project.

15 So from a technical standpoint, from a  
16 scientific standpoint, the test that you talk about,  
17 the more than 50 percent, seems pretty clearly one  
18 that you can do.

19 The other one is will this be made  
20 commercial by gaining sufficient financing to build  
21 out the plant. That's what this case is all about.  
22 And I think everyone here would say that -- and I'll  
23 ask them if they want to chime in -- but that if we  
24 have a market that's not disrupted by dumped pricing,  
25 we'll be able to get that financing. If we don't, if

1 the market is disrupted, we're in very bad trouble.

2 MR. SEWELL: If I can add, I would offer the  
3 opinion that the one thing standing in the path toward  
4 commercialization is the sale of the output of ACP.  
5 The technology has been proven, will be confirmed by  
6 the end of this year. You can check that box.

7 We have contracts with our suppliers and  
8 manufacturers that are going to be transitioned to  
9 fixed-price contracts, which fit into a project  
10 financing mode with a DOE loan guarantee program. You  
11 can check that box.

12 The next box is a sale of the output from  
13 ACP in order to provide the assurance that you can  
14 repay the debt. That is highly dependent upon the  
15 marketplace and whether there is revocation of the  
16 French order -- the order on French LEU.

17 So you can look at the U.S. Government's  
18 commitment to this program, the testimony by the  
19 Secretary of Energy, the Deputy Secretary of Energy,  
20 and the administrator for the Nuclear -- the National  
21 Nuclear Security Administration within DOE, all of  
22 which emphasize the importance of this project and  
23 this plant in a commercial mode for the national  
24 security and energy security objectives for this  
25 nation.

1           You put all of those factors together, and I  
2 would offer to you that the prospects for  
3 commercialization are very positive.

4           COMMISSIONER ARANOFF: Okay.

5           MR. CUNNINGHAM: And to sort of summarize  
6 that in terms of checking boxes, there is a  
7 qualitative difference between one box and all of the  
8 other boxes. All of the other boxes are being checked  
9 and are being -- the milestones are being passed, and  
10 they are independent of market conditions. The one  
11 box that you can't fully check yet is the box that  
12 depends upon market conditions. And you can't very  
13 well say, well, we can't yet say that there is a 51  
14 percent chance of doing that because we don't know  
15 whether the market will be stable or not.

16           You can't do that kind of analysis when a  
17 major if not the major factor in the markets being  
18 stable will be the outcome of this case.

19           COMMISSIONER ARANOFF: Mr. Donelson, do you  
20 have any signed contracts yet for output from the ACP?

21           MR. DONELSON: Yes.

22           COMMISSIONER ARANOFF: Okay.

23           MR. DONELSON: We can elaborate on that  
24 confidentially.

25           COMMISSIONER ARANOFF: Okay.

1           MR. CUNNINGHAM: We'll be happy to give you  
2 information on that in the confidential submission.

3           COMMISSIONER ARANOFF: Okay. I mean, it  
4 would be useful to know, obviously, how much relative  
5 to how much you think you need to meet your financing  
6 requirements, and also what kinds of conditions might  
7 be in the contracts with respect to the ability to  
8 actually deliver on them. Okay. Thank you.

9           You know what? I don't have enough time  
10 left to get into my next question, so I'm going to do  
11 the chairman a favor and stop right there. Thank you  
12 very much.

13           CHAIRMAN WILLIAMSON: Thank you.  
14 Commissioner Pinkert?

15           COMMISSIONER PINKERT: Thank you, Mr.  
16 Chairman, and I join my colleagues in thanking all of  
17 you for coming to testify today and helping us to  
18 understand these issues.

19           I want to begin with a question for Mr.  
20 Donelson that is prompted both by his testimony and by  
21 his answers to Commissioner Aranoff's questions.  
22 Assuming that the ACP will make USEC the low-cost  
23 producer, why would dumping by AREVA now prevent USEC  
24 from selling its future ACP production?

25           MR. DONELSON: You could break costs down to

1 a couple of categories. You have fixed costs and you  
2 have variable costs. Suppliers will frequently price  
3 below their full cost, particularly if they have their  
4 fixed costs covered in their home market, which is the  
5 situation we see in France. So they can sell on a  
6 variable cost basis into the U.S. and undercut our  
7 sales even if we have a more competitive technology.

8 MR. CUNNINGHAM: I would just like to add,  
9 Commissioner Pinkert, that one of the ways to look at  
10 the antidumping law is that it works to ensure that a  
11 company that has a cost advantage over its foreign  
12 rivals can get the benefit of that cost advantage  
13 without being subjected to incremental dumped pricing,  
14 which is either funded by higher-priced home market  
15 sales or is below cost.

16 In dumping cases, you get cases where a  
17 foreign manufacturer is selling in here below cost.  
18 And in the case, the fact that you might be the lowest  
19 cost -- a U.S. producer might be the lowest cost  
20 producer in the world, it might still mean you're  
21 losing the business.

22 COMMISSIONER PINKERT: I understand that.  
23 But in assessing the likely future dynamic in this  
24 market, don't we have to consider the magnitude of the  
25 cost advantage that the U.S. industry is projecting?

1           MR. CUNNINGHAM: And we do, and you should.  
2           Absolutely right. But remember, the issue here is  
3           not yet how will the low-cost, ACP-produced LEU from  
4           USEC be competitive with French dumped or not dumped  
5           LEU. It is can we get to the use of that low-cost new  
6           enrichment technology that USEC wants to implement, or  
7           will we be prevented from doing so by inability to get  
8           contracts before we have assurance that we have the --  
9           can implement this project, and thus the question of  
10          USEC's cost advantage disappears.

11                 That's the sad reality of this case.

12          MR. TRENDL: Commissioner Pinkert. This is  
13          Tom Trendl, if I could add to that. As you heard  
14          testimony here from the USEC folks, while USEC has a  
15          machine that is superior in its productivity, that  
16          doesn't necessarily mean it has a cost advantage. I  
17          don't know what AREVA's costs are. They didn't submit  
18          that information. I don't know. We could probably  
19          figure it out. But if you're suggesting that USEC has  
20          an inherent cost advantage, I don't know that that's  
21          necessarily true, and it seems to underpin what your  
22          question is getting at.

23                 Secondly, as Mr. Donelson said, costs can be  
24          looked at in a different way. It's not just a cost of  
25          production. There is a cost of financing, and that's

1 important. And that's really what these contracts  
2 that they're trying to get now and that this case is  
3 somewhat dependent on -- it goes to the cost of  
4 financing as well.

5 COMMISSIONER PINKERT: Thank you. If in the  
6 posthearing either side can submit information about  
7 the likely cost advantage or disadvantage, assuming  
8 the completion of the ACP project and coming online of  
9 ACP production, I would appreciate that.

10 Now, my next question doesn't presuppose any  
11 conclusion with respect to whether USEC is a domestic  
12 producer currently. But it's really prompted by your  
13 opening statement, Mr. Cunningham, where you focused  
14 on the two factors that you believe the Commission  
15 should center its analysis on. And I'd like to ask  
16 you, if we were to find that USEC is not a domestic  
17 producer currently, would that change of the outcome  
18 of the overall sunset injury analysis here at the  
19 Commission?

20 MR. CUNNINGHAM: It would change the nature  
21 of the analysis because if you determine that USEC is  
22 not and is not going to be a member of the U.S.  
23 industry, then you're not going to be looking at the  
24 issues we've been laying before about USEC being able  
25 to put into -- or being prevented from putting into

1 effect the ACP.

2 I would, however, not that that's not the  
3 only thing you analyzed here. And another element to  
4 put in your new and rapidly growing file of things the  
5 Respondent knows for damned sure that just ain't so  
6 was their statement that LES is doing just fine. You  
7 should look at LES' operating results. You should  
8 look at -- I think you should draw a distinction, by  
9 the way, between your analysis of the impact and  
10 likely impact of revocation on, say, LES. Put that at  
11 one question.

12 The other question might be what LES might  
13 say or not say about whether it wants this order  
14 revoked. As we have suggested to you, we would not be  
15 surprised to find LES supporting revocation of this  
16 order, not because it would have LES doing better in  
17 the U.S. market because free from French -- because of  
18 the impact or no impact of French competition, but  
19 because LES has an interest in not -- LES and URENCO  
20 and AREVA all have a common interest in not ever,  
21 ever, ever seeing -- having the ACP technology see the  
22 light of day. They have an interest because it gives  
23 USEC advantages over them in sale of LEU. It has  
24 impact because the ACT technology would be supplying a  
25 significant part of the marketplace, and therefore it



1 would be supplied by machines of a different design  
2 than the LES-URENCO joint venture produces, so they  
3 lose in that market, too.

4 So I guess I would suggest I your analysis,  
5 take a look at LES. Take a look at how they're doing.

6 I think you'll find that it doesn't support a picture  
7 like Mr. Rosen presented of everything is just plain  
8 fine and rosy for LES. But I can't go much further  
9 because of confidentiality concerns.

10 COMMISSIONER PINKERT: All right. I  
11 appreciate the constraint of confidentiality. And if  
12 you can't answer this next question during the public  
13 hearing, perhaps you can look at it in the  
14 posthearing. But if LES takes a position that it  
15 doesn't need the order, then -- and you're saying but  
16 objectively speaking, they would be injured if the  
17 order were revoked, what factors should we take into  
18 account? Is this a credibility issue with respect to  
19 LES?

20 MR. CUNNINGHAM: Frankly, it's a member of  
21 the U.S. industry issue. You exclude from the U.S.  
22 industry in appropriate circumstances companies that  
23 are related to the foreign Respondent that have  
24 involvement with the foreign Respondent.

25 The URENCO-LES organization is intimately

1 entwined with AREVA, overtly, in the joint venture  
2 that they have to produce the technology, produce all  
3 of their technology of enrichment. But in addition to  
4 that, I urge the Commission to look into the  
5 cooperation between the URENCO group and AREVA to help  
6 maintain AREVA's position in the U.S. market, a very  
7 odd thing to have one competitor doing to help another  
8 competitor.

9 COMMISSIONER PINKERT: Thank you.

10 MR. CUNNINGHAM: I'm a suspicious type guy.  
11 You have to understand that, but still.

12 COMMISSIONER PINKERT: Well, whatever you  
13 can do to document your suspicions in the posthearing,  
14 I'd appreciate it.

15 Thank you, Mr. Chairman.

16 CHAIRMAN WILLIAMSON: Thank you.  
17 Commissioner Johanson?

18 COMMISSIONER JOHANSON: Thank you, Mr.  
19 Chairman, and I would like to thank all of our witness  
20 for appearing here today.

21 Mr. Cunningham, I'd like to follow up on  
22 what you were just speaking on in response to  
23 Commissioner's Pinker's question. On page 37 of  
24 USEC's brief, USEC states that, quote, "The ITC should  
25 exclude LES' views of the antidumping duty order on

1 LEU from France as unrepresentative of the domestic  
2 industry," closed quote.

3 When you state "exclude," do you mean that  
4 LES should be excluded from the domestic industry?  
5 What is USEC's position on LES' membership in the  
6 domestic industry?

7 MR. CUNNINGHAM: There are two questions.  
8 On the issue that you just asked specifically, should  
9 LES be excluded from the domestic industry, I think  
10 it's extraordinary that AREVA is, as we believe and as  
11 we are presenting, going to be presenting, information  
12 to you to confirm, that AREVA is supplying -- excuse  
13 me, that URENCO, the URENCO organization, is supplying  
14 to AREVA the material that it's using to maintain its  
15 position in the U.S. market.

16 It is extraordinary not only in the  
17 abstract. It is extraordinary in the market situation  
18 we have now in which European demand puts great  
19 constraints on both of these producers, and Japanese  
20 demand also has declined, and the main market where  
21 they are both looking, the only market around other  
22 than China, which is not an open market, the only  
23 market that shows potential for growth in the near  
24 future, is the United States market. And here is  
25 cooperation between two supposed competitors to help

1 maintain one competitor in the U.S. market.

2 That's extraordinary. I've never seen that  
3 in a dumping case before. And I would say that that  
4 plus their obvious business cooperation in the joint  
5 venture for producing the centrifuge technology that  
6 they use gives you ample basis to say they're not a  
7 member of the U.S. industry.

8 Even if they are a member of the U.S.  
9 industry, whenever the Commission looks at the  
10 statement, I support, I oppose, I take no position,  
11 the Commission justifiably should say, okay, yes. Is  
12 there a reason that you would do that other than the  
13 reason for I am not concerned about the impact of  
14 French imports in the U.S. market.

15 And here there is ample ground to believe  
16 that LES as a part of the URENCO organization has  
17 other reasons to want this order lifted, and the other  
18 reasons are its effect on USEC and its effect  
19 particularly on USEC's ability to implement the  
20 American centrifuge project, which would give USEC an  
21 advantage over both of those companies.

22 Secondly, it affects -- if USEC is not in  
23 the business, and if the American centrifuge project  
24 doesn't come into play, and therefore increased demand  
25 needs to be met by building other companies'

1 centrifuge machines using the URENCO and AREVA  
2 technology in their joint venture, they profit by  
3 that, too.

4 So LES -- I would not treat an LES  
5 statement, if they have made one, that we don't  
6 support revocation -- excuse me, that we do support  
7 revocation, if they have made such a statement -- I  
8 would not treat it quite the same way as you treat  
9 other types -- other companies that make such a  
10 statement because they have other reasons for the  
11 position that they might take, and it's perfectly  
12 sound for the Commission to think about that.

13 And in particular, if you look at URENCO's  
14 -- at LES' operating results, and you don't see them  
15 making money hand over fist despite the presence in  
16 the market of AREVA, then you should think about  
17 whether it must be some other reason that they're  
18 taking -- that they might take that position, if in  
19 fact they take it.

20 That was a pretty long-winded answer. I  
21 apologize for that. Even for me, that's a long-winded  
22 answer.

23 COMMISSIONER JOHANSON: All right. Well,  
24 thank you for your lengthy response. I found it  
25 useful. I do have a question for you, and I know that

1 you're constrained in getting this information. But  
2 if you have information on the financial performance  
3 of LES which is public, if you could put that in the  
4 posthearing, I would appreciate that.

5 MR. CUNNINGHAM: Absolutely.

6 COMMISSIONER JOHANSON: I know it's hard for  
7 you to do, and they're not here today. But if there  
8 is anything you have, I would appreciate it.

9 MR. CUNNINGHAM: Right. I also -- there may  
10 be some significance to the fact that they're not  
11 here. If in fact they took a position one way or the  
12 other, one would have thought that they would be here  
13 to express that position.

14 COMMISSIONER JOHANSON: All right. Thank  
15 you. This is another question presumably for you, Mr.  
16 Cunningham. Is the sixth part Sebacic Acid test for  
17 membership in the domestic industry the right way to  
18 look at the reasonably foreseeable future? After all,  
19 the Commission has often considered the financial data  
20 of defunct companies when looking at the performance  
21 of an industry over the period of review, but there  
22 are usually many other companies for us to consider in  
23 the reasonably foreseeable future.

24 For instance, we have to look at the likely  
25 price effects, but if there are no price effects -- if

1 there are no U.S. price issue effect, then can we  
2 properly do our analysis? And I just used the word  
3 defunct. I probably should not have used that word.  
4 But --

5 MR. CUNNINGHAM: And no offense taken.

6 COMMISSIONER JOHANSON: Okay. Thank you.

7 MR. CUNNINGHAM: Because USEC is clearly not  
8 a defunct company, nor is it a company that does not  
9 have prices for sales in the U.S. market of U.S.-  
10 produced --

11 COMMISSIONER JOHANSON: No. I was not  
12 implying that USEC was defunct. I was just referring  
13 to past cases when there is no production.

14 MR. CUNNINGHAM: Yeah. I think the test  
15 basically is okay. You need to interpret it in the  
16 context of a company that has so much commitment,  
17 tangible commitment, money commitment, employment  
18 commitment, technology commitment, to transitioning to  
19 a new technology.

20 I'll take a look. I'd like to -- I haven't  
21 got the case in front of me. I'll take a look at the  
22 case and give you some more in a posthearing brief so  
23 I don't go have another 20-minute, long-winded answer.  
24 But in general, I think your test is about right.  
25 Your test will lead you to conclude that USEC is a

1 member of the U.S. industry. You have looked in the  
2 past at companies that are either starting up or are  
3 in some sort of transitional -- the transition is so  
4 much stronger at case than starting up.

5 Remember one more thing, and then I'll shut  
6 up from this long-winded answer. This is not a  
7 statute -- this is a statute that obviously explicitly  
8 contemplates that there are situations in which even  
9 absent present U.S. production there could be an  
10 affirmative determination where production is  
11 relatively imminent in the universe -- we're talking  
12 about 2016 or thereabouts here. In the context of  
13 this industry, that's pretty imminent, particularly  
14 when you have ongoing sales out of your past  
15 inventory.

16 The statute, remember, has a material  
17 retardation provision, material retardation of  
18 establishment. That by definition allows you to go  
19 affirmative where you have a company that's not in  
20 production, but is moving to get into production.

21 This is a much stronger case. This is a  
22 company that has been in production and has only  
23 temporarily ceased production as a method of  
24 transition to a renewed form of production.

25 MR. TRENDL: I hate to prolong Mr.



1 Cunningham's long answer, but I'm going to because I  
2 think it's a great question. And I think if you take  
3 a look at our prehearing brief, starting at page 27  
4 forward, we go through those factors. We think those  
5 factors are indeed relevant, are instructive to this  
6 case. And the Sebacic -- I'm going to mispronounce it  
7 -- acid case I think is highly instructive, and I  
8 think it would be very relevant for the Commission to  
9 look at our discussion of that, particularly in  
10 footnote 34.

11           There is a company in that case -- I won't  
12 say it's the same, it's not, but it's not dissimilar  
13 from where USEC is at right now, a company called  
14 Genesis Chemicals. AREVA, in their prehearing brief,  
15 have focused on other companies in that same case that  
16 are very unlike USEC's position. And in footnote 34  
17 -- and please indulge me for just a moment -- the ITC  
18 found that Genesis Chemicals was a firm opposed to the  
19 revocation of the order, was a domestic producer, and  
20 a member of the domestic industry, even though that  
21 company stopped producing, which we don't contend that  
22 we really have, during the course of the sunset  
23 review. And then there is specific information about  
24 technical expertise, employment levels over the past  
25 three years. And I think if you take a look at that

1 case, our discussion of that case, and compare it to  
2 the companies and aspects of that case cited by AREVA,  
3 you'll find a very different picture, and we believe  
4 that ours is the correct one.

5 Those factor are indeed relevant for this  
6 preview.

7 COMMISSIONER JOHANSON: All right. Thank  
8 you, Mr. Trendl, and thank you, Mr. Trendl and Mr.  
9 Cunningham. I appreciate your responses. My time has  
10 expired.

11 CHAIRMAN WILLIAMSON: Thank you.  
12 Commissioner Broadbent?

13 COMMISSIONER BROADBENT: Great. Thank you.  
14 I welcome the witnesses and appreciate your testimony.

15 Mr. Cunningham, I noticed in your opening  
16 statement you didn't say much about the national  
17 security arguments that have been made by some of the  
18 other members of the panel. Is that an issue or a  
19 concern that we ought to take into account in making  
20 our determination?

21 MR. CUNNINGHAM: In a couple of senses. I  
22 would submit that it is not appropriate for this  
23 commission to make a determination as to what is in  
24 the U.S. national security. That's not your job. It  
25 is your job to do things like determine the extent to

1       which it is likely and reasonably foreseeable that  
2       USEC is going to move forward and implement the  
3       American centrifuge technology.

4               One of the important factors in that is the  
5       U.S. Government's support of this program, which is in  
6       significant part based on the U.S. Government's view  
7       that it is in the U.S. national interest to have  
8       production of enriched uranium by domestically-owned  
9       companies with domestic technology.

10              To that extent -- and the U.S. Government is  
11       putting its money where its mouth is on that by making  
12       -- by contributing 80 percent of the money for the  
13       millions of dollars for the research, development, and  
14       demonstration project that is ongoing.

15              So in that sense, it's important to -- for  
16       you to keep this in mind. That's the legal hook. I  
17       have to say that the Commission shouldn't be entirely  
18       blind, however, to national security interests. And  
19       if you were to be convinced that it really was in the  
20       U.S. national security interest to do this, I'd have a  
21       hard time if I was a commissioner sort of blotting  
22       that out of my mind in looking at the issues.

23              I have to tell you, though, I can't give you  
24       a statutory basis for doing that, other than to say  
25       what I just said about the importance of that issue

1 for the U.S. Government's position in its support of  
2 the American -- of the ACP.

3 COMMISSIONER BROADBENT: Because I think if  
4 we were going to make that argument, this would be a  
5 more appropriate case for section 232, where the  
6 government actually took a coherent look at what the  
7 long-term interests of this operation is. Have you  
8 guys --

9 MR. CUNNINGHAM: And if we were here  
10 primarily arguing national security to you, we'd be  
11 here under 232.

12 COMMISSIONER BROADBENT: Did you consider  
13 using that statute? I know it has kind of been a dead  
14 letter since about 1992 or so, but --

15 MR. CUNNINGHAM: I have -- we have discussed  
16 it. I have recommended against it, a long time ago,  
17 when we first started -- thought about bringing this  
18 case. There have been -- there has been a 232  
19 earlier, not in the enrichment area, but in the  
20 natural uranium issue, which failed. It doesn't give  
21 you a great deal of confidence. 232 is a  
22 discretionary statute. This is not a discretionary  
23 statute. Where there is approvable, injury-causing  
24 unfairness that you see as the real heart of your  
25 problem, then my view is that's what you go after.

1 And that's what we have done, and that's why we're  
2 still here.

3 COMMISSIONER BROADBENT: But I think the  
4 difficulty we have in kind of putting this is in this  
5 dumping statute is really the domestic industry. And,  
6 you know, I know you were apologizing for the long-  
7 winded answer, but it seems to me it's sort of on the  
8 one hand you want it in the domestic industry, and  
9 then on the other hand you want the foreign investor  
10 views that are employing people here discounted in  
11 terms of whether we extend this order or not.

12 MR. CUNNINGHAM: I don't ask them to be  
13 discounted on national security grounds. I ask --

14 COMMISSIONER BROADBENT: Yeah, no. I'm back  
15 on the domestic industry issue --

16 MR. CUNNINGHAM: Yes.

17 COMMISSIONER BROADBENT: -- and how we --  
18 that's really -- you tell us not to be investment  
19 bankers and figure out whether their investment is  
20 going to be coming in --

21 MR. CUNNINGHAM: Right.

22 COMMISSIONER BROADBENT: -- to this  
23 facility. We're supposed to know the domestic  
24 industry and be able to assess --

25 MR. CUNNINGHAM: Sure.

1                   COMMISSIONER BROADBENT:  -- what is there.  
2           And you're sort of telling us two things about the  
3           domestic industry.  You count it in certain  
4           circumstances, but you discount what their advice is  
5           to us about extending this order.

6                   MR. CUNNINGHAM:  Sure.  I think any member  
7           of the domestic industry that has another motivation  
8           that may be more important to them than the motivation  
9           of, well, I'm going to tell the Commission whether I  
10          am or likely to be adversely impacted by the subject  
11          imports, is something you take into account.  You do  
12          that whether they're foreign, you do that whether  
13          they're domestic.

14                   If you had a member of the U.S. industry  
15          that had a totally -- that was clearly in this to put  
16          USEC out of business without regard to the issues that  
17          you are to examine under the statute, I would say,  
18          look, all of their facts you should take into full  
19          account.  All of their statistics, all of that stuff.

20          But when somebody gives you an opinion statement, an  
21          intent statement, a purpose statement, something like  
22          that, it's always relevant for the Commission or any  
23          other body to ask should we give that a little less  
24          consideration because they have an axe to grind that  
25          motivates them to do that.

1 I just think that's the way -- it is, as you  
2 mentioned before, it's a credibility issue, yeah.  
3 There is a credibility aspect to it. But it's also a  
4 how much is that worth to you. How much is that  
5 opinion worth to you when somebody who is giving it  
6 has another reason to take that position?

7 COMMISSIONER BROADBENT: Okay. Are LES and  
8 AREVA related parties within the meaning of the  
9 statute?

10 MR. CUNNINGHAM: Surely, of course. They  
11 have a joint venture for the production of centrifuge  
12 technology. Legally they are related parties. They  
13 are also, if they are -- I would submit if they are  
14 cooperating in sales to the United States, they are  
15 related parties for purposes of your analysis. I  
16 think the evidence will show that in fact they are.

17 COMMISSIONER BROADBENT: What are the  
18 specifics on that cooperation? How is that happening?

19 MR. CUNNINGHAM: We have some  
20 confidentiality issues there.

21 COMMISSIONER BROADBENT: Okay. But you'll  
22 let us know in the record?

23 MR. CUNNINGHAM: We'll give you the whole --

24 COMMISSIONER BROADBENT: The whole blow-by-  
25 blow, huh?

1           MR. CUNNINGHAM: That's right. But it  
2 starts from -- wait a minute. Let me get my notes  
3 here -- from comparing -- in a minute -- table 2-10 of  
4 the staff report, which shows substantial AREVA sales  
5 in the United States on a continuing basis, and page  
6 I, Roman numeral I-33 of the text of the staff report,  
7 which showed no imports from France. There is your  
8 French producer selling in the United States, but no  
9 imports from France.

10           And if you look at AREVA's brief on page 37,  
11 they try to anticipate that issue and they say, oh,  
12 don't let USEC come in and tell you there is anything  
13 wrong with imports from France that are going to be  
14 substituted, that might be substituted, for previous  
15 imports from a non-subject country.

16           That sounds to me like they're saying, well,  
17 that is what is going on here. And, of course,  
18 obviously it is going on. They're buying from  
19 somebody else. They have to be. That's the only way  
20 to reconcile table I-33 with table 2-10. Who are they  
21 buying it from? We're going to be giving you  
22 information that shows that those imports coming in of  
23 AREVA -- excuse me, URENCO-produced material. And  
24 so --

25           MR. TRENDL: And, Commissioner, I would add,



1 in our brief, as you duly note, a lot of that is  
2 highly confidential. But in our brief from page 34  
3 through 37, we use the information that's in the staff  
4 report and in the questionnaire responses to give as  
5 much of a blow-by-blow as we could figure out, and  
6 we've encouraged in some specific areas that  
7 additional information might be sought.

8 I don't know if that has occurred by the  
9 staff or not. But we've tried to give you everything  
10 that we have in those pages.

11 COMMISSIONER BROADBENT: Okay.

12 MR. TRENDL: I can't say --

13 MR. CUNNINGHAM: I really have never seen a  
14 case like this where two companies reported to be  
15 fierce competitors, one is helping out the other to  
16 maintain its position in the market that is the one  
17 that is most promising for them, at which they need to  
18 get sales to offset the decline in their business in  
19 Europe and Asia to offset -- you saw that chart that  
20 Mr. Klett showed about the escalating cancellation of  
21 primarily non-U.S. AREVA contracts.

22 I mean, how often do you get a competitor to  
23 step in and help you alleviate a problem like that?

24 COMMISSIONER BROADBENT: Okay. Who can tell  
25 me a little bit the Silex technology and what is going

1 on in that area?

2 MR. SEWELL: Yeah. This is the laser  
3 investment process to enrich UF-6. It's an Australian  
4 technology that is licensed to General Electric-  
5 Hitachi venture in North Carolina. And that is one  
6 that's currently under development, and they have  
7 consistently delayed an announcement of what they  
8 would do with respect to commercialization of that  
9 technology.

10 They sought a license from NRC and received  
11 that, but the issue they have is, quite frankly, the  
12 technical readiness of that technology. And they have  
13 delayed and delayed and delayed making an announcement  
14 to deploy a plant in North Carolina. And recently  
15 they have asked DOE -- or expressed an interest to the  
16 Department of Energy of enriching their depleted  
17 uranium tails, its high assay tails, where you can  
18 I'll say economically take advantage of a natural  
19 uranium component to offset the economic disadvantage  
20 of that technology to enrich natural uranium up to low  
21 enriched uranium.

22 So the short story is they've got a long way  
23 to go to commercialize that technology. They continue  
24 to test, demonstrate that process in North Carolina,  
25 and they've yet to reach the point where they believe

1 that they can economically commercially deploy that  
2 technology.

3 COMMISSIONER BROADBENT: Mr. Chairman, can I  
4 just have one quick followup?

5 CHAIRMAN WILLIAMSON: Sure.

6 COMMISSIONER BROADBENT: Really quick. I  
7 guess what is the disadvantage of that technology for  
8 a layman?

9 MR. SEWELL: The disadvantage of that  
10 technology -- from a scientific standpoint, it is  
11 wonderful, beautiful. For a scientist, they love it.  
12 For an engineer, it is a very difficult technology to  
13 actually collect the product and do it on a basis  
14 where you have continuous collection of the product in  
15 a way that will make the process economic.

16 COMMISSIONER BROADBENT: Okay. Thank you  
17 very much. Thank you, Mr. Chairman.

18 MR. SEWELL: I'm sorry I can't be more --

19 COMMISSIONER BROADBENT: No, I know. It  
20 wasn't quite fair, but it was interesting to me.

21 MR. CUNNINGHAM: The one thing I would add  
22 there is when he talks about the company now saying we  
23 would like to get help to use it to enrich high assay  
24 tails, that's a very limited use of it. That's  
25 nothing like the use that we're talking about in the

1 American centrifuge project for your basic production  
2 of LEU. That's a very limited use, and maybe it works  
3 for that limited use. But so far, it doesn't -- there  
4 is nothing to indicate that's a competitor for either  
5 the USEC/ACP technology or the URENCO/AREVA  
6 technology.

7 COMMISSIONER BROADBENT: Thank you very  
8 much, Mr. Chairman.

9 CHAIRMAN WILLIAMSON: Thank you. There have  
10 been a lot of questions and some today speculation  
11 about LES. Posthearing, I was just wondering whether  
12 or not you could give us your opinion on if you look  
13 at the workers, suppliers, and shall we just say the  
14 other components of that industry, what effect would  
15 revocation have on them?

16 So irregardless of what the company might  
17 say about the impact of revocation, if it said  
18 anything, if we're looking at the domestic industry,  
19 what should we say about -- what impact would  
20 revocation have on those components of it?

21 MR. CUNNINGHAM: We'll be happy to give you  
22 an analysis of that in the brief.

23 CHAIRMAN WILLIAMSON: Good. Thank you.

24 Let me turn to some other questions then.  
25 What are the expectations in terms of demand both in

1 the U.S. and in other key markets over the next few  
2 years? You've already talked about the Fukushima and  
3 what is happening in Europe. But do you want to talk  
4 further about the demand in the U.S. and elsewhere?

5 MR. DONELSON: Demand specifically in the  
6 United States, we had 104 operating reactors up to a  
7 couple of years ago. We've lost five of those units.  
8 We're down to 99 reactors. There are five units  
9 under construction. The completion of the Watts Bar  
10 unit by TVA should be coming online in 2014-2015, and  
11 then two new units by Southern Company in Georgia and  
12 two new units by South Carolina Electric and Gas.

13 So we've lost five units this year. We'll  
14 be getting five units back. Four of those units are  
15 of the new Gen3 technology that have some additional  
16 safety features. So demand should be roughly steady.

17 The prospect for new reactors beyond these  
18 five under construction has been dampened somewhat by  
19 the low cost of natural gas due to the gas fracking  
20 that has brought abundant supplies of that, and other  
21 utility CEOs will argue that their price for what they  
22 sell the electricity has also been dampened by the tax  
23 benefits afforded to the wind power industry.

24 So those two factors have led to a more -- a  
25 delay in the expansion of new nuclear units. The new

1 nuclear units do provide benefits in no CO<sub>2</sub> emissions  
2 and greenhouse gas space. But we're looking over at  
3 least the intermediate term that the United States  
4 would be at about 104 reactors once these new units  
5 come online in 2017 and 2018.

6 CHAIRMAN WILLIAMSON: Yeah. This is  
7 basically the same number of reactors. Is there any  
8 increase in demand of LEU for those reactors, or is  
9 that -- their consumption has stayed pretty flat?

10 MR. DONELSON: We had seen a significant,  
11 maybe a 20 percent, increase over the last decade by  
12 up-rates of those existing reactors. A lot of the up-  
13 rates that had been ordered have now been deferred  
14 because the cost of electricity, the price of  
15 electricity, is low enough that it doesn't justify the  
16 additional capital to fund those up-rates.

17 So the existing reactors should be using  
18 about the same amount of fuel and not more fuel if  
19 they were getting these up-rates.

20 CHAIRMAN WILLIAMSON: Okay. Thank you.  
21 What about in terms of demand elsewhere in the world?  
22 You talked about China and the fact that China would  
23 probably supply that. You've talked about Europe.  
24 Any other markets that are of any significance that we  
25 should note?

1           MR. DONELSON: Well, I usually split the  
2 globe up into the three markets, Europe being about a  
3 third, the United States about a third, and Asia being  
4 the last third. We've discussed the United States.  
5 The European market does not look very good with the  
6 closure of the German reactors. They've closed eight  
7 already, and the rest of their fleet will be phasing  
8 out over the next seven or eight years.

9           So Europe as a whole, you're not going to  
10 see any new units, and you'll see the loss of units,  
11 so that Europe is in decline. Where the growth of the  
12 industry is, is in Asia. China has a significant  
13 growth program planned. They should pass the United  
14 States, that is, the largest market, by 2030. Also,  
15 South Korea has had a very successful program. They  
16 have 23 units running and another seven or eight under  
17 construction, more than the United States has under  
18 construction.

19           And then the Japanese market, much different  
20 than the Chinese and the Koreans in that their fleet  
21 is basically idled and is looking to restart those  
22 units over the next couple of years.

23           So in total, the world demand should be  
24 increasing slightly. You have the loss of the  
25 Japanese and German reactors that will be offset by

1 the new reactors coming on in China and South Korea.  
2 You also have some emerging markets like UAE. There  
3 is four units under construction, and the Saudis are  
4 looking to build 12 to 16 units over the course of the  
5 next decade.

6 So that will replace the loss in Japan and  
7 in Europe.

8 CHAIRMAN WILLIAMSON: Okay. Thank you for  
9 that comprehensive overview. What are the  
10 expectations in terms of prices, both in the U.S. and  
11 in other key markets over the next few years?

12 MR. DONELSON: I don't think anybody has a  
13 clear forecast to price. If we knew that, we'd  
14 probably be making more money speculating on stock  
15 prices of some of these supplier companies. Fukushima  
16 was an unexpected event. Prior to that, we had seen  
17 fairly strong gains in price for both the natural  
18 uranium component and the enrichment component. Since  
19 that, there has been a significant degradation in the  
20 pricing of those two key commodities for nuclear fuel.

21 The unknown, the driver, is really the 40-plus  
22 reactors in Japan that are currently not online and  
23 how quickly those can come back to the market.

24 When they come back to the market, in  
25 addition to the other growth I've mentioned in China



1 and South Korea, then we think prices will recover.  
2 But if these Japanese reactors take five, six, eight  
3 years instead of two or three years to come back to  
4 the market, that price recovery will be pushed out  
5 accordingly.

6 MR. CUNNINGHAM: And this is a very  
7 sensitive political issue in Japan right now, and  
8 there is lots of uncertainty as to what is going to  
9 happen there.

10 CHAIRMAN WILLIAMSON: Understood. Thank  
11 you. Okay. And I take it -- well, is it fair to say  
12 that the increase in demand outside of China would be  
13 a major factor in terms of the opportunities for, say,  
14 the U.S. and European producers to sell?

15 MR. DONELSON: Yeah. I mean, these new  
16 reactors take -- initial cores take significantly more  
17 fuel than reloading a reactor. Approximately three  
18 times as much fuel goes into a new core. So the  
19 opportunities in UAE, Saudi Arabia, Turkey that are  
20 all looking to add new programs are certainly very  
21 attractive sales targets outside of the U.S. The  
22 U.S., however, is the largest market and it's where  
23 everybody wants to be.

24 CHAIRMAN WILLIAMSON: Okay. Thank you.  
25 What is the typical delay between when a supply

1 contract is signed and when delivery begins?

2 MR. DONELSON: It varies. For a spot  
3 contract, you can make a delivery in the same calendar  
4 year. Long-term contracts to underpin new facilities  
5 like the American centrifuge plant, you might have as  
6 much as a seven- or eight-year delay between the  
7 signing of the contract and the first sales. So it  
8 really depends on when the utilities have openings.

9 The sales that we made for ACP generally had  
10 a five-year delay. Now in the market being a little  
11 bit covered in the long-term, significant ACP sales  
12 might have a six- or eight-year delay.

13 CHAIRMAN WILLIAMSON: Okay. Is there any  
14 cycle in -- so how do the renewal contracts -- are  
15 they bunched up, are they evenly spread out -- that we  
16 should take into account? And if you want to do it  
17 posthearing, I'm not sure how sensitive that is.

18 MR. DONELSON: There have been cycles. I'm  
19 not sure the relevance here, but as new projects such  
20 as ACP or LES or Eagle Rock have been trying to have  
21 their underpinning contracts cut into the market,  
22 sales teams such as the one I manage have been out  
23 calling on customers around the globe, encouraging  
24 them to award underpinning contracts.

25 So there was a large sales cycle in the 2005

1 time period for LES, and followed a couple of years  
2 later by ACP, and we've seen similar activities by  
3 AREVA.

4 CHAIRMAN WILLIAMSON: Okay. Well, if there  
5 is anything posthearing relevant to our decision, you  
6 can include it then.

7 MR. DONELSON: I mean, theoretically,  
8 utilities should be making purchasing decisions  
9 independent of one another. I think it's often the  
10 culmination of large buying cycles are driven more by  
11 the supplier's needs for contracts.

12 CHAIRMAN WILLIAMSON: Okay. Thank you.  
13 Does that mean people sometimes try to go out and  
14 renegotiate contracts that are already in existence?

15 MR. DONELSON: Frequently those terms will  
16 be negotiated in a contract when it is signed. You  
17 might have a price reopener in a contract. If you do  
18 a ten-year contract, neither the buyer nor the seller  
19 wants to be significantly away from the market price  
20 at the time of delivery. So customers will ask for  
21 price reopeners in the middle of that contract, so  
22 there could be a price renegotiation halfway through.

23 CHAIRMAN WILLIAMSON: Okay. Would  
24 revocation be the type of event that might trigger  
25 some of this type of activity?

1           MR. DONELSON: Well, as revocation would  
2           have an impact on market pricing, the customers'  
3           purchasing expectations are certainly influenced by  
4           market indicators. And if market indicators went down  
5           with revocation, that could drive a request or the  
6           ability of the customers to get new prices into  
7           contracts through these price reopeners.

8           CHAIRMAN WILLIAMSON: Okay. Thank you for  
9           those answers. Commissioner Aranoff?

10          COMMISSIONER ARANOFF: Thank you, Mr.  
11          Chairman. So when it became obvious to USEC and  
12          apparently to everyone else in this business that it  
13          was just too expensive to continue operating gaseous  
14          diffusion plants, at that point I'm assuming USEC had  
15          a choice, which was to either go with the bird in the  
16          hand of using a proven centrifuge technology that  
17          already is commercially proven, or developing the new  
18          technology.

19                 And I want to understand a little bit about  
20          what underlay the decision to take the latter course.

21          Wouldn't licensing the existing technology have  
22          restored USEC to the position of being a globally  
23          competitive domestic producer faster and more cheaply  
24          than pursuing the ACP? And couldn't USEC have  
25          acquired that technology and then also continued to

1 work to develop the more cost-effective ACP technology  
2 and would have a more reliable income stream in the  
3 meantime?

4 MR. SEWELL: This is Phil Sewell. The  
5 answer to your question is that we concluded that the  
6 path to commercialization and to a more competitive  
7 supply was to seek deployment of the American  
8 centrifuge rather than license the technology from a  
9 foreign competitor. The licensing from a foreign  
10 competitor would put us in a less of a competitive  
11 position than deploying a technology that had been  
12 developed by the Department of Energy, and where we  
13 saw that there could be significant I'll say  
14 advancements made based upon improved materials, more  
15 digital control systems -- I'll say enhanced -- I'll  
16 say ability to put those machines at high efficiency.

17 And so therefore we looked at that  
18 technology, not just from the standpoint -- that  
19 technology being American centrifuge -- not just from  
20 a standpoint of the initial increment, but follow-on  
21 increments and the ability to more quickly move to,  
22 say, a larger deployment than the one that we are  
23 contemplating today.

24 So we saw that as a more advantageous  
25 competitive path for our company. And so we planned

1 that transition from gaseous diffusion to American  
2 centrifuge, with the ending of our megatons-to-  
3 megawatts contract with the Russians on down-blended  
4 weapons material. And the timing that we planned on  
5 moving forward with that was delayed somewhat by DOE  
6 in a very low-risk environment for loan guarantees,  
7 wanting to see the technology proven, confirmed in a  
8 cascade configuration.

9 And I think we've mentioned it several times  
10 before. With this cascade that we are operating in  
11 the RD&D program, it is basically replicated 95 more  
12 times in a commercial plant. So when we operate that  
13 cascade, we are basically operating a commercial  
14 plant. And so the short story is we saw that as a  
15 faster, more efficient, long-term competitive  
16 environment for USEC to be in to take the American  
17 centrifuge technology, license it from DOE, take  
18 advantage of advancements since 1985, and move forward  
19 with that deployment.

20 MR. CUNNINGHAM: I would also add that it's  
21 not a given at all that using the -- let's say the  
22 URENCO-AREVA technology would have accelerated things.

23 I would call to your attention the three-year delay  
24 beyond schedule in LES becoming operative, and the  
25 fact that AREVA has never gotten Eagle Rock operative,

1 never gotten it financed, not clear that it will.

2 So, I mean, that wasn't a panacea. It  
3 wasn't like you'd look at one and say, oh, here is the  
4 quick, easy way to do it, now we can do that, and then  
5 we can move to the harder one later. It's not so  
6 clear it would have been quick or easy.

7 COMMISSIONER ARANOFF: Okay. Fair enough.  
8 then let me ask something that kind of comes around  
9 the back door toward the same issue. As best as I  
10 think we can tell from the record here, domestic  
11 utilities seem to be happy with LES as a domestic  
12 supplier. They have -- I don't know if the right word  
13 is invested in bringing LES online by signing  
14 contracts and maybe in other ways, I'm not sure.

15 So from their standpoint, one might be able  
16 to say that one domestic producer, USEC, has been  
17 replaced by another domestic producer of a reasonably  
18 comparable size, and the utilities may be satisfied at  
19 this point and therefore not very excited about  
20 getting onboard with any of the other projects that  
21 are underway at various stages of being underway.

22 And if that's the case, what reason is there  
23 to believe that maintaining the order would really  
24 have an effect on USEC's ability to get financing for  
25 going to the next stage of the ACP project?

1           MR. SEWELL: We've had a number of  
2           conversations with respect to contracts of the ACP  
3           output, and seeking financing under a DOE and project  
4           financing mode with CEOs and CNOs of U.S. utilities.  
5           And unanimously, they've expressed the desire to have  
6           ACP, the American centrifuge plant, succeed because  
7           they value a domestic producer, they value a domestic  
8           technology, and they value diversity of supply.

9           And indeed, if they were to depend on just  
10          in this case LES only as a domestic supplier, that is  
11          something that doesn't fit their risk profile, and  
12          their -- I'll say intention to have a portfolio of  
13          contracts that services their needs in -- I'll say  
14          buying the nuclear fuel to maintain those reactors on  
15          a continuous basis.

16          So revocation of this order if it has the  
17          effect of not supporting the deployment of ACP, that  
18          is counter to the interests that we've heard from CEOs  
19          and CNOs of U.S. utilities.

20          COMMISSIONER ARANOFF: Okay. Now, I know  
21          that we're going to get some information posthearing  
22          about contracts that you have signed for ACP output,  
23          but I guess aside from that it doesn't cost CEOs of  
24          utilities anything to say they support you 100  
25          percent. So what is their skin in the game?



1           MR. SEWELL: What is their skin in the game  
2 with respect to signing up for ACP output?

3           COMMISSIONER ARANOFF: Or supporting in any  
4 other way your efforts. I mean, it's easy for them to  
5 say they'd love to have another competitor beating for  
6 their business. Why wouldn't they?

7           MR. SEWELL: Their skin in the game is that  
8 if we get financing, they will sign contracts, and  
9 they will sign contracts contingent upon financing.  
10 And they've maintained that they would do that. Their  
11 skin in the game is that preserves the supply  
12 diversity they're looking for. And they'll put their  
13 skin in the game on the basis that if we get financing  
14 secured, then contracts will be signed and become  
15 firm.

16           MR. CUNNINGHAM: But remember that every  
17 time the Commission has looked at this issue, every  
18 time they have surveyed customers, the customers say  
19 that the chief determinant is price. And the idea  
20 that customers would be, quote, "supporting USEC," end  
21 quote, or quote, "supporting LES," end quote, is way,  
22 way, way down the ladder of motivations from who is  
23 going to give me the better price.

24           COMMISSIONER ARANOFF: Okay.

25           MR. CUNNINGHAM: Would you agree with that,

1 Mr. Donelson?

2 MR. DONELSON: Sure, absolutely. And the  
3 U.S. customers have been supportive of ACP. The  
4 posthearing briefing will show that. But, yeah,  
5 they're in a very cost-intensive pressure business, so  
6 revocation -- anything that leads to lower prices  
7 makes it tough for them to make decisions that aren't  
8 based on cost. These contracts are hundreds and  
9 millions of dollars, and price is the key determinant  
10 for them. But we've had good support from our U.S.  
11 utility customers.

12 MR. SEWELL: It is true, price is king.  
13 Regardless of anything else, price is king with  
14 respect to the predominant factors in those purchase  
15 decisions.

16 COMMISSIONER ARANOFF: Okay. Thank you very  
17 much for those answers. Thank you, Mr. Chairman.

18 CHAIRMAN WILLIAMSON: Thank you.  
19 Commissioner Pinkert?

20 COMMISSIONER PINKERT: Mr. Donelson, you've  
21 talked about your ability to sell the future  
22 production of ACP, but what role does your ability to  
23 sell the imported product play in your ability to  
24 maintain customer relationships while the ACP is  
25 coming online?

1           MR. DONELSON: The imported product you're  
2 referring to are Russian supply, Commissioner? Okay.

3       The Russian supply gives us a transitional bridge  
4 between the production in Kentucky, which is now  
5 stopped, and the production in Ohio. Customer  
6 contracts frequently mandate what origin of LEU we can  
7 supply. Some of those contracts require U.S. origin  
8 only, so we have been working to -- the inventories  
9 that we have that is U.S. origin is very important for  
10 us because it is required for some of these contracts.

11       So there will be a gap between the production between  
12 the diffusion plant and the American centrifuge plant.

13       But our U.S. origin we have used to decrease that gap  
14 and make sure that we can provide all the existing  
15 contracts.

16           Russian supply can go to customers in Asia.

17       There are limits where it can be imported into the  
18 European market, and there are -- we have some U.S.  
19 quota that we can bring that Russian material in under  
20 those quotas into the U.S. market. So it's a key  
21 component of our supply mix. But it's a part of our  
22 supply along with our inventories and our future  
23 production.

24           COMMISSIONER PINKERT: Well, what I'm trying  
25 to get at here, though, is this question of

1 maintaining relationships with the customer in the  
2 hope, presumably, that you will be able to sell the  
3 ACP in the future. Is that part of what is going on  
4 in this case?

5 MR. DONELSON: Maintaining customer  
6 relationships and maintaining market share is a key  
7 component of our business. Customers buy on long-  
8 cycle contracts. Contracts could be 10 years, they  
9 could be 15 years. So you don't want to lose that  
10 relationship because you have a small period where you  
11 don't have production.

12 So the Russian supply that can help us  
13 maintain these relationships, that's an important  
14 factor in our purchasing decision of that material.

15 COMMISSIONER PINKERT: And just as a  
16 technical matter, can those customers be transitioned  
17 from the Russian imported product to the ACP  
18 production, or is there some barrier there?

19 MR. DONELSON: Commissioner, absolutely.  
20 They can be transitioned from one supply source to  
21 ACP, yes.

22 MR. SEWELL: We should emphasize that most  
23 of the imports that we have going forward next year  
24 and beyond of Russian material is for foreign supply  
25 and foreign customers. And because of the U.S. quota

1 on Russian-origin material, almost all of which is  
2 dedicated to the Russian direct sales, it limits the  
3 amount of imports of Russian material that we would  
4 send to domestic customers.

5 So therefore, we are using Paducah  
6 inventories from Paducah production for the most part  
7 to meet our domestic sales, and maintain the sales for  
8 the relationships with the customers that Mr. Donelson  
9 is referring to.

10 MR. DONELSON: We can use U.S. supply for  
11 all of our contracts. You can't necessarily put  
12 Russian supply into all of the contracts. So any  
13 contract that is currently getting Russian could take  
14 American centrifuge production in the future.

15 COMMISSIONER PINKERT: And how long do you  
16 expect that U.S. supply to remain available for these  
17 sales that you're talking about?

18 MR. DONELSON: We can give you that  
19 information. We'd prefer to do that in the  
20 confidential setting.

21 COMMISSIONER PINKERT: That would be fine.  
22 And please also in the confidential submission address  
23 what you would do with those customers once you're not  
24 able to sell from the inventories that you're talking  
25 about.

1 MR. DONELSON: Okay.

2 COMMISSIONER PINKERT: Okay? Thank you.

3 Now, if AREVA were to substitute subject  
4 imports from France for the non-subject imports  
5 currently sold in the United States, would there be  
6 any net impact on the domestic industry?

7 MR. KLETT: Commissioner Pinkert, this is  
8 Dan Klett. I think there are two elements to that  
9 question. First is the premise that there would be  
10 just the one-for-one displacement of French for non-  
11 subject if the order were to be revoked, so that there  
12 would be no net increase in imports. And I think even  
13 under that scenario, there would likely be an adverse  
14 effect just because of the pricing behavior of the  
15 French versus URENCO.

16 And you can look outside the United States,  
17 you can look at some information in your staff report  
18 on that basis. But I think the premise that there  
19 would be just a one-for-one displacement such that you  
20 had no net increase in imports is incorrect. And the  
21 reason for that -- I mean, I think there is a couple  
22 of reasons for that.

23 Number one, when you look at the AREVA new  
24 capacity and their production forecast, they are  
25 producing higher production volumes with the new

1 capacity than with the old capacity. So you actually  
2 have an increase in AREVA production.

3 There is also the premise that URENCO would  
4 just unilaterally cede U.S. market to AREVA if the  
5 order were to be revoked. And based on the importance  
6 of the U.S. to URENCO relative to their SWU capacity,  
7 another slide I showed, I don't think that's a  
8 credible premise either. And URENCO was also  
9 increasing capacity.

10 And actually, there is a third factor, and  
11 that is demand in the United States relative to other  
12 markets. European demand, as was testified earlier,  
13 and I think in answer to some questions by John,  
14 European demand is down. So that's another reason why  
15 you wouldn't expect URENCO to just cede U.S. volume to  
16 AREVA if the order were to be revoked.

17 So I think the premise of just no net  
18 increase in imports into the U.S. with revocation of  
19 the order is not a credible premise.

20 MR. TRENDL: Commissioner Pinkert, this is  
21 Tom Trendl. In addition to Dan's point about the one-  
22 for-one displacement not really being credible as to  
23 what would happen, even if there were only a one-to-  
24 one displacement, not all imports are equal because  
25 you will have under that scenario an increase in

1 French imports, absolutely, even if it's the same  
2 amount that they were bringing in before, and that  
3 would also, as the Department of Commerce has told us,  
4 be dumped at a 20 percent margin on an LEU basis,  
5 which is about a 30 percent margin on a SWU basis.

6 So you would in fact have an increased  
7 volume of unfairly traded imports, even if it were a  
8 one-to-one displacement. But as Dan said, I don't  
9 know that that's really the way to look at it.

10 MR. CUNNINGHAM: Could I add one -- actually  
11 two quick points, quick for me.

12 COMMISSIONER PINKERT: We'll be the judge of  
13 that.

14 (Laughter.)

15 MR. CUNNINGHAM: Touche. First, we would  
16 urge the Commission to get copies of the agreements  
17 between AREVA and URENCO for specific transactions.  
18 Why do I say that? Because you don't know what is  
19 going on here. You really don't know what is going  
20 on. You don't know, for example, whether URENCO is  
21 providing LEU to AREVA at a price of let's say X, and  
22 AREVA is then reselling it at a loss in the United  
23 States. You don't know to what extent there is a  
24 swap, and if so what are the terms of the swap, and is  
25 the swap reversible, and if so why would URENCO



1       reverses it.

2                   The assumption that -- all right. Let me  
3 just stop there with that one.

4                   The other thing is that it seems to me  
5 implausible that URENCO, which is producing a certain  
6 amount of LEU, and has provided some of that LEU to  
7 USEC for sale in the U.S. market would say, okay, you  
8 don't want that anymore, that's fine, that's fine.  
9 We'll give up what is for URENCO essentially an  
10 indirect sale into the U.S. market.

11                   I'm not sure why they would do that. Maybe  
12 there are reasons, but it doesn't seem plausible to  
13 me. And the idea that there would be a complete  
14 offset, as your question implied there might be, thus  
15 seems to me implausible.

16                   COMMISSIONER PINKERT: Thank you. Thank  
17 you, Mr. Chairman.

18                   CHAIRMAN WILLIAMSON: Thank you.  
19 Commissioner Johanson?

20                   COMMISSIONER JOHANSON: Thank you, Mr.  
21 Chairman.

22                   I'd like to ask you all about the EU's Corfu  
23 Declaration. How has this Corfu Declaration affected  
24 USEC's exports to EU member states, and does this  
25 trade measure impact exports from USEC's domestic

1 production, from its Russian HEU production, both, or  
2 neither?

3 MR. SEWELL: The Corfu Declaration was a  
4 policy to -- as I'm sure we've indicated to you, where  
5 80 percent of U.S. demand should come from European  
6 enrichment suppliers.

7 MR. CUNNINGHAM: EU demand.

8 MR. SEWELL: EU demand. I apologize. What  
9 has that done? That provides a base or a foundation  
10 upon which the European enrichers can -- I'll say  
11 recover their cost for capital operating for the most  
12 part, and then aggressively compete in foreign  
13 markets, and in particular the United States.

14 And we -- the net result has been I'll say  
15 greater competition in the United States for supply  
16 from USEC, whether it was from gaseous diffusion  
17 plant, whether it was sales from the Russian HEU  
18 contract, the megatons-to-megawatts, or our future  
19 sales of output from ACP. And it's not just the  
20 United States, but in Asia, where that type of home  
21 protection, so to speak, has afforded an ability for  
22 those European suppliers to aggressively compete in  
23 markets where USEC had a large portion of its sales  
24 portfolio both in the United States and Asia, and  
25 where USEC was not able to sell a large portion of its

1 output or meet a significant portion of the EU market.

2 Perhaps Mr. Donelson has further flavor or  
3 color commentary.

4 MR. DONELSON: Yeah. The end result,  
5 Commissioner, of what Mr. Sewell has mentioned is that  
6 the 80 percent of the market being reserved for the  
7 domestic European producers has left USEC to fight  
8 with the Russian supplier for the remaining 20 percent  
9 of the pie there, which has put us in a difficult  
10 position to win business in Europe. And as a result,  
11 that's one of our weaker sales markets.

12 MR. CUNNINGHAM: I would just add one thing  
13 from antidumping 101. Antidumping is about  
14 incremental pricing. The move from gaseous diffusion  
15 to centrifuge technology shifts the structure of your  
16 costs more toward your capital costs and away from  
17 your variable costs, your high energy costs.

18 That is a situation that makes it important  
19 for you to have -- to recover your capital costs. And  
20 once you've recovered your capital costs, you can  
21 differentially price. This is classic dumping  
22 economics.

23 Where you have a sheltered home market that  
24 gives you a guaranteed sales volume, you are better  
25 able to recover your capital costs through that

1 domestic market. You are better able to engage in  
2 incremental pricing, i.e., dumping, in other markets,  
3 as opposed to USEC's situation where USEC does not  
4 have a guaranteed market in the United States. USEC  
5 has to recover all of its costs in all of its markets.

6 And we don't have that protected market from which we  
7 can sell incrementally.

8 COMMISSIONER JOHANSON: You said, I think,  
9 Mr. Sewell -- I believe you cited that the Corfu  
10 Declaration provides that 80 percent must be European,  
11 EU-produced. Do you have a copy of this declaration?

12 From what I understand, it's --

13 MR. SEWELL: We would encourage you to ask  
14 for it, like we have and other people have, and see  
15 what kind of success you have.

16 MALE VOICE: I thought I had it in here, but  
17 it's wrong.

18 COMMISSIONER JOHANSON: Okay.

19 MR. SEWELL: The answer is no.

20 COMMISSIONER JOHANSON: Okay. But you just  
21 know that's the case.

22 MR. SEWELL: Yeah. And you should probably  
23 look at what percentage of the EU market is met by EU  
24 suppliers, and then with the expansion of the EU and  
25 the former Soviet block countries having long-term

1 contracts with the Russians, also those contracts were  
2 grandfathered, so the share of the EU market met by  
3 those suppliers being close to 80 percent probably  
4 went down because of the grandfather contracts. But  
5 once those grandfather contracts are over with the  
6 Russians, then the expectation is that that percentage  
7 will again increase.

8 I only mention that just in case someone  
9 tells you that it's not close to 80 percent now. But  
10 there is a reason, and the reason is because of  
11 grandfather contracts in those countries joining the  
12 EU.

13 MALE VOICE: Jim?

14 MR. SCHOETTLER: I'm Jim Schoettler from  
15 USEC with the general counsel's office. Let me just  
16 ask you to look at two things. One would be the  
17 national trade estimates published by the U.S. trade  
18 representative every year, which has identified this  
19 as a trade barrier in the European Union. And  
20 secondly, if you look at AREVA's reference document  
21 which is published every year, they sort of add a  
22 report, and they specifically acknowledge such a  
23 things as the Corfu Declaration. But to date, the  
24 document itself has not been made available. It has  
25 only been mentioned in EU documentation, but it is

1 clearly acknowledged as being a point that -- or a  
2 policy that exists.

3           And I think the most important part of it is  
4 that it expresses as an official policy of the  
5 European Union under the guise of diversity of supply  
6 -- actually, it's an official policy to support these  
7 two enrichers to ensure their success. I think that's  
8 the most important part. You're not looking at  
9 specific numbers. You're looking at the overall  
10 policy to ensure their success. And so how it is  
11 supplied from year to year is less important as the  
12 overall emphasis in the EU on those two enrichers and  
13 their success, and that the success begins with their  
14 home market, and then allows them to compete in  
15 markets abroad on that base.

16           COMMISSIONER JOHANSON: All right. Thank  
17 you, Mr. Schoettler. And, actually, I have a question  
18 that the United States posed to the European  
19 communities of the WTO. This is from 2004, which  
20 indeed does state that the United States believes only  
21 about 20 percent of the European market is open to  
22 imports of enriched uranium. So I do have some type  
23 of source here, Mr. Sewell, but I don't, of course,  
24 have the actual document itself of the EU declaration.

25           All right. I thank you for your response on

1 that. With regard to Russian imports, I understand  
2 asking for consideration in the case of LEU from HEU  
3 contract, because that responsibility, from what I  
4 understand, was placed upon USEC for national security  
5 reasons. But at the end of the day, Russian imports  
6 certainly do impact prices in the U.S. market, don't  
7 they?

8 MR. SEWELL: The Russian imports are placed  
9 into our sales portfolio, and we have a combination of  
10 supply, whether it's Russian HEU or production from  
11 our GDP. And we have -- under that contract, we're  
12 able to price with our U.S. customers on a market-  
13 based pricing basis, and therefore we have not seen  
14 any negative impact or price suppression of that  
15 supply from the Russian HEU contract.

16 MR. CUNNINGHAM: I urge you not to do what  
17 I'm about to suggest you do, and that is look at the  
18 history of this in the antidumping proceeding against  
19 imports of all types of uranium from Russia. And it  
20 ended up with a suspension agreement, which was called  
21 -- which justifiably was called Rube Goldberg does  
22 trade law, although some people called Rube Cunningham  
23 does trade law. But the underlying premise of the  
24 suspension agreement was that where you have the  
25 Russian imports controlled by a member of the U.S.

1 industry, it will not be in the U.S. industry member's  
2 interest to sell them in the marketplace at a market-  
3 distorting or depressing price. And it achieved that  
4 in a way so complicated that even one of my long-  
5 winded answers couldn't fully explain it to you. But  
6 if you want to get into it at some point, we can  
7 discuss that in a posthearing brief or perhaps in a  
8 three-tome -- three-volume tome.

9 MR. DONELSON: I would add one other factor.  
10 When the Russian HEU came into the U.S. market, we  
11 purchased about 5.5 million SWUs annually, and we had  
12 two enrichment facilities, the other one being the  
13 Portsmouth gaseous diffusion plant. After a couple of  
14 years, we closed the Portsmouth plant. That helped to  
15 normalize the supply required because of the extra  
16 material coming in from the Russians.

17 So once Portsmouth was closed, the supply  
18 and demand balance was back in effect.

19 COMMISSIONER JOHANSON: All right. Thank  
20 you. Yeah, Mr. Cunningham, if you wouldn't mind  
21 addressing this in the posthearing brief. I know you  
22 have a lot -- there is a lot to respond to, I know.  
23 We've asked you a number of questions today. This is  
24 a rather difficult -- as you probably understand, this  
25 is a somewhat difficult investigation, and I know



1 about the Russian suspension agreement. I can't say  
2 I've actually looked into the history of that.

3 Actually, I do know some of the history on  
4 that. I know it's quite confusing from day one,  
5 basically, of filing. But if you wouldn't mind  
6 looking into that, I'd appreciate it.

7 MR. CUNNINGHAM: Right. You will see in our  
8 posthearing submission an appendix, the title of which  
9 will be "This Way Lies Madness," and that will  
10 conclude the discussion of the suspension agreement.

11 COMMISSIONER JOHANSON: Okay, yeah. And the  
12 reason I'm asking this, as you know, as you know, the  
13 Respondents have addressed the issue of Russian  
14 imports somewhat forcefully in their briefs. So I'd  
15 like to have some type of response to that. Thank  
16 you. And that concludes my questions.

17 CHAIRMAN WILLIAMSON: Thank you.  
18 Commissioner Broadbent.

19 COMMISSIONER BROADBENT: Great. This is a  
20 little off-point, but, Mr. Donelson, could you explain  
21 to me how the Germans can shut down all their nuclear  
22 reactors and keep up their manufacturing production?

23 MR. DONELSON: You're going to get me  
24 excited.

25 (Laughter.)

1           MR. DONELSON: Commissioner, the unification  
2 of Germany led to the East Germans -- they got most of  
3 their electricity generation from dirty coal. Those  
4 plants were going to be closed, so Germany is very  
5 focused on the environment. By losing these nuclear  
6 fleets, they have been basically -- the straight  
7 answer is they have been building more coal plants.  
8 They were going to miss -- that will give them a much  
9 larger carbon footprint, and they've taken credit for  
10 the dirtier coal units in the east that they were  
11 going to close anyway as an opportunity to close these  
12 nuclear units and still say that they're fairly close  
13 to what their carbon footprint was.

14           But the German fleet was very well run, very  
15 efficient reactors, and their power will cost them  
16 more. They will put out more carbon, and they're  
17 going to do it largely through burning more coal, and  
18 they'll be importing electricity from other countries  
19 such as France and the Slovaks that get the majority  
20 of their electricity from nuclear.

21           COMMISSIONER BROADBENT: How much will this  
22 increase demand for nuclear from the French exports?

23           MR. DONELSON: I don't have those numbers  
24 about the European electrical market. But the French  
25 do export. It's a commodity based on price. There is

1 wind energy there as well, but it tends to be you only  
2 get it when the wind blows, so the imports vary  
3 according to other seasonal factors.

4 COMMISSIONER BROADBENT: Okay. Thank you.

5 Mr. Rogers, I want to thank you again for  
6 the great tour that you gave us out in Piketon last  
7 month. Can you summarize a bit where you guys are on  
8 the milestones that you need to reach, as I  
9 understand, by the end of the year? There was maybe  
10 three left. Have those been a steady list of  
11 milestones, or have they been revised along the way,  
12 and how do you stand with respect to the last three?

13 MR. ROGERS: Sure. It's actually -- it's a  
14 steady list, as we laid out the schedule for the  
15 milestones with the Department of Energy back in June  
16 of last year. So it has been a very steady  
17 progression through the milestones. We have the three  
18 left. The three left are basically when we will be  
19 starting the initiation of those milestone completions  
20 here in October, and we expect to complete them the  
21 early part of September or by the end of the year.

22 So it's all according to our schedule.  
23 There has been no deviation, or there has been no  
24 change in the milestones. So again, we expect to --  
25 we're at the -- we're right at the precipice of

1 starting the initiation of the last three milestones  
2 here in probably the next three or four weeks.

3 COMMISSIONER BROADBENT: Okay. But by the  
4 time we have to make our decision, we won't know, I  
5 guess.

6 MR. ROGERS: No. We won't have -- we won't  
7 complete the milestones by the requirements of the  
8 milestone until sometime in early December, early to  
9 mid December.

10 COMMISSIONER BROADBENT: Okay. All right.  
11 And then in terms of financing, how is the  
12 sequestration and the budget process impacting your  
13 prospects on getting the financing that you need from  
14 the Energy Department?

15 MR. SEWELL: The budget and the  
16 sequestration and continuing resolution effect is on  
17 the funding for the research, development, and  
18 demonstration program, and not on the financing for  
19 the American centrifuge plant. And as most people  
20 expect, the Congress will most likely pass a  
21 continuing resolution again for this quarter of the  
22 government fiscal year, and we expect as part of that  
23 process that the Department of Energy will look to  
24 means in which they can complete the funding, provide  
25 the funding to complete the program by the end of the

1 year.

2 They have given us every indication of that.

3 In the past, they have submitted an anomaly to the  
4 budget process, which is very unusual. But when you  
5 do submit an anomaly as part of the continuing  
6 resolution process, that's an indication of the  
7 importance of the program. And it's our understanding  
8 that they will do the same starting in this month, and  
9 that the funding necessary to complete the RD&D  
10 project will be available.

11 In that context, that completion of the RD&D  
12 program will then fold into I'll say an update of a  
13 loan guarantee application between USEC and the  
14 Department of Energy, and any other project financing  
15 processes that we'll be seeking, whether it be from  
16 Japan, which is part of the portfolio of financing for  
17 the American centrifuge plant that we've already  
18 discussed with the Japanese, or from other sources,  
19 equity financing or other forms of debt.

20 So there is a transition and a folding in of  
21 the RD&D program with the financing and the deployment  
22 of the American centrifuge, and coming full circle  
23 again is the revocation of the French -- of the order  
24 for French LEU that will impact their ability to sell  
25 output from the ACP as part of the closure on an

1 application for project financing.

2 COMMISSIONER BROADBENT: Okay. So how much  
3 is the RD&D money that you need by the end of the  
4 year?

5 MR. SEWELL: The DOE contribution, it's  
6 about a little bit less than \$50 million. And with  
7 that, the government will then have funded \$270  
8 million out of total project costs of \$350 million.  
9 And USEC's contribution in the last quarter of this  
10 calendar year, the first quarter of the fiscal year,  
11 will be 20 percent, as it has been since June of 2012.

12 COMMISSIONER BROADBENT: Okay. And then you  
13 need the update on the loan guarantee, which is -- is  
14 that about \$2 billion that the government is going to  
15 loan that you're looking to get?

16 MR. SEWELL: In the past, they've identified  
17 an allocation of \$2 billion as part of the amount of  
18 money that they'd make available under a DOE loan  
19 application for American centrifuge. It's a loan  
20 guarantee.

21 COMMISSIONER BROADBENT: Yeah, okay. And  
22 then you're hoping that Japan's going to have some  
23 financing available on the order of, what, a billion  
24 dollars? Is that right?

25 MR. SEWELL: About, yes.

1                   COMMISSIONER BROADBENT: Has that changed  
2 based on the political problems we've been dealing  
3 with?

4                   MR. SEWELL: To date, no.

5                   COMMISSIONER BROADBENT: Okay. And then how  
6 as a development officer, you know, what's the case  
7 that you make to the private sector to invest here  
8 based on the 10K and some of the exceptions that you  
9 have in there?

10                  MR. SEWELL: The case that we make is the  
11 technology program will be confirmed. Two, we have  
12 contracts with suppliers and manufacturers with the  
13 thoughts well-defined for a commercial plan and that  
14 those contracts can be converted to fixed price  
15 contracts that are very important for project  
16 financing.

17                  And finally, the case to investors is that  
18 with the sales of output of ACP at the appropriate  
19 price level, assuming this order is not rescinded,  
20 will generate a return that is sufficient to attract  
21 equity. This is the first step in terms of this  
22 module, 3.8 million SWU, into a future where future  
23 expansion can be even more competitive and realize  
24 greater returns.

25                  COMMISSIONER BROADBENT: Mr. Donelson, can

1 you talk a little bit about the Chinese market? There  
2 were some statements that it's closed. Do you do  
3 business there? And what are your projections on what  
4 kind of competition there will be for you in the  
5 future?

6 MR. DONELSON: The Chinese continue to be a  
7 bit of an enigma. They don't disclose their  
8 production capabilities. They have been forthcoming  
9 about their projected consumption. We have done some  
10 business there. We would like to do more business  
11 there with them. We can give you more of the  
12 specifics in a confidential briefing. But the unknown  
13 question for the companies such as ours is are the  
14 Chinese going to be a net importer of nuclear fuel, or  
15 will they be a net exporter? They have such a massive  
16 program planned, being off by five or ten percent in  
17 one direction or the other could have a significant  
18 impact on the supply/demand balance for the other  
19 markets outside of China.

20 COMMISSIONER BROADBENT: Do they have their  
21 own intellectual property or will they be buying it to  
22 do the enrichment?

23 MR. DONELSON: They have both. They have  
24 built Russian machines there that are supposedly in a  
25 black box that they can't reproduce. They have also



1       engineered their own machines. There's speculation  
2       who they cooperated with on that, but they certainly  
3       have their own centrifuge production, along with the  
4       Russian machines that they have bought. So they have  
5       two different avenues.

6                   CHAIRMAN WILLIAMSON: Thank you.

7                   I want to return back to the question of  
8       Japanese Export Credit Agency financing.

9                   Did you say that that would depend on  
10       approval of the loan guarantees from DOE and then DOE,  
11       then that's going to be dependent on I guess the test  
12       phase? It wasn't clear to me exactly what -- I'll try  
13       to go through the sequence here to be maybe a little  
14       more clarifying.

15                   One is the R&D&D program confirms the  
16       technical readiness for commercialization. That's a  
17       step that is important for anybody that would provide  
18       debt in this space, and loan guarantees. Then DOE  
19       would look to that as reducing the risk associated  
20       with performance. That helps them a lot with respect  
21       to what they would see in terms of the return, the  
22       payment on the debt.

23                   Japan and the United States have cooperated  
24       on nuclear energy, nuclear power in lots of different  
25       ways. Any financing from the Japanese Export Credit

1 Agencies would look to the Department of Energy from  
2 the standpoint of verifying if the technology is  
3 proven, it's confirmed. Primarily because it's  
4 classified and other investors can't have the access  
5 that the Department of Energy would. So when the  
6 Department of Energy puts its stamp of approval on  
7 either technical performance of loan guarantee from a  
8 financing standpoint, that is a tremendous advantage  
9 for anybody else, whether it's for debt or whether  
10 it's for equity for the purpose of putting their money  
11 towards this project and seeing, realizing the  
12 benefits of its success.

13 So they kind of fit together in a way.  
14 Technical helps DOE with respect to risk; DOE's  
15 guarantee, loan guarantee, provides the veracity of  
16 the project that's going to go forward and they're  
17 going to support it for other investors, whether it's  
18 for debt or whether it's for equity.

19 CHAIRMAN WILLIAMSON: Could you maybe  
20 explain why you're looking to the Japanese for this  
21 financing and what interest do they have in doing it?  
22 You already talked about the US-Japanese cooperation  
23 in this area.

24 MR. SEWELL: One of the investors in USEC is  
25 Toshiba and Toshiba is a nuclear supplier as part of

1 their portfolio of businesses, and the Japanese see  
2 this cooperation between Toshiba and the United  
3 States, between Japan and the United States, as being  
4 indicative of a stronger relationship across the  
5 board. Whether it's a nuclear fuel cycle, whether  
6 it's nuclear power. As you know, Toshiba has  
7 invested, or purchased, Westinghouse. So all of these  
8 interconnections make for I'll say a partnership that  
9 people see in both countries benefits from the  
10 standpoint of peaceful use of nuclear power and  
11 meeting the needs of nuclear fuel for reactors in the  
12 United States, Japan, the Middle East, the Far East.

13 MR. SCHOETTLER: Commissioner, this is Jim  
14 Schoettler.

15 Commissioner, I think you also need to look  
16 at it broadly in terms of diversity of supply. The  
17 Japanese are extremely sensitive to this. Although  
18 the reactors are shut down, they've made a major  
19 investment in nuclear power. Their indigenous  
20 production is extraordinarily small, so they're  
21 reliant on foreign countries for the supply of fuel  
22 and they can understand -- And the United States has  
23 traditionally been their number one, one of their  
24 major suppliers. We were number one supplier for many  
25 years, and we share that with the Europeans.

1           So it's important to them to see diversity  
2 of supply and I think we've seen that in dealing with  
3 them. So this is all part and parcel of this  
4 longstanding relationship.

5           As Phil mentioned, the technology is  
6 classified. You can't just simply license it on a  
7 commercial basis like you would any other technology.

8       It has to be obtained through intergovernmental  
9 agreements if you're even going to get it, and  
10 typically that's not the way -- the United States does  
11 not share its enrichment technology with any other  
12 country.

13           So that's a constraint externality in the  
14 market that they have to deal with. So this is all  
15 part and parcel of that larger question of the  
16 cooperation between our countries' longstanding supply  
17 we have.

18           CHAIRMAN WILLIAMSON: Thank you.

19           To the extent possible could you supply any  
20 internal documents created in the ordinary course of  
21 business which may be useful to us in evaluating the  
22 importance of these? This funding.

23           MR. CUNNINGHAM: I'm not sure what sort of  
24 documents you wanted from --

25           CHAIRMAN WILLIAMSON: Internal documents

1 created in the ordinary course of business, business  
2 plans that relate to --

3 MR. CUNNINGHAM: Business plans and things  
4 like that that would shed light on how imports  
5 intersect with the goals of the company and the  
6 operation of the company.

7 CHAIRMAN WILLIAMSON: Right.

8 MR. CUNNINGHAM: Good, good, good.

9 CHAIRMAN WILLIAMSON: Thank you.

10 MR. CUNNINGHAM: Excuse me. The answer is  
11 yes.

12 CHAIRMAN WILLIAMSON: I gotcha.

13 I was just thinking about the question of  
14 funding from private sources. You've already talked a  
15 little bit about that, but if you could talk further  
16 about that, and also again documents created in the  
17 ordinary course of business that might relate to that  
18 that would help us in understanding how likely it has  
19 to be, things like that.

20 MR. CUNNINGHAM: Again, that's real  
21 confidential stuff, but --

22 CHAIRMAN WILLIAMSON: I understand. Thank  
23 you.

24 Also, you gave Commissioner Broadbent the  
25 update on the milestones. I guess, again, relevant

1 documentation that would help us understand, that  
2 would be useful.

3 I was wondering to what extent the Fukushima  
4 accident has affected your financial discussions with  
5 Japan. It sounds like it hasn't, but I just wanted  
6 clarification on that. It hasn't derailed them.

7 MR. SEWELL: That's the best way we can put  
8 it. Of course the Japanese utilities, as Mr. Donelson  
9 can relate to, a plan to resubmit applications to  
10 start the reactors. We expect a large number of the  
11 54, 53 reactors that they had operating before  
12 Fukushima, a substantial portion of them to come back  
13 on-line once their nuclear regulatory authority has  
14 reviewed the submission of the applications to  
15 restart.

16 So nuclear power in particular with the  
17 current Japanese government is still very much a  
18 significant part of their energy portfolio. Because  
19 of that their interest in I'll say cooperation,  
20 relationships, arrangements, investments, remains  
21 significant.

22 CHAIRMAN WILLIAMSON: Thank you.

23 To what extent has LES's expanding  
24 operations affected your ability to secure long term  
25 contracts and obtain financing for ACP?

1           MR. SEWELL: We expect the market, there is  
2 a market available for ACP. You'll look at the size  
3 of the ACP with I'll say the completion of the Russian  
4 A2 contract, the megatons to megawatts contract and  
5 closing of the Paducah Gaseous Diffusion Plant. We  
6 expect that there will be demand out there with  
7 respect to the ability for ACP output to meet it, and  
8 U.S. utilities in the time frame, closer to the end of  
9 this decade, could, would and could have a sufficient  
10 demand to take output from ACP. LES certainly is a  
11 competitor and is meeting supply in the United States.

12       But we believe that with I'll say the ability, the  
13 commitment by ACP to financing, will be able to  
14 service a significant portion of the U.S. demand and  
15 be able to deploy the commercial plant.

16           MR. DONELSON: To add to that, URENCO  
17 competition. URENCO has been very successful in  
18 selling, I think their market share has been  
19 increasing steadily for many years.

20           But we have, particularly in the U.S.  
21 market, some of the larger fleet operations have  
22 policies that they are only allowed to buy 50 percent  
23 or less of any of their nuclear fuel from one  
24 supplier. So USEC and ACP becomes very important to  
25 their supply plans from a diversity of supply aspect,

1 and that's why they've been supportive of us.

2 MR. SEWELL: Excuse me, but we repeat, they  
3 won't buy at any price. That's the key. And as Mr.  
4 Donelson has indicted before, that's a very, very  
5 important factor in buying output from ACP. That's  
6 why we're here today.

7 CHAIRMAN WILLIAMSON: I was going to ask you  
8 what affect does LES in the future expect you to have?  
9 I guess you're saying this diversity of supply can  
10 keep you in the market --

11 MR. SEWELL: Diversity of supply can keep us  
12 in the market as long as we are competitive, and in  
13 order to be competitive we need to make sure there's  
14 no dumped enrichment in the United States and there's  
15 a level playing field in that context. With the level  
16 playing field, U.S. utilities will look to diversify  
17 their supply but we emphasize very strongly, not at  
18 any price. And that's very, very important to them.

19 CHAIRMAN WILLIAMSON: Just briefly, how  
20 significant is this diversity of supply? Is it just  
21 the big firms? Do all of them want to do it, assuming  
22 the price is right?

23 MR. DONELSON: It depends on the size of the  
24 reactor fleet. Some of our customers only have one  
25 reactor, some have two. Diversity is generally not



1 high on their portfolio because they feel that they,  
2 it's not worth the logistical complications of dealing  
3 with multiple enrichers.

4 As the fleet size starts to increase to  
5 four, to five -- Exlon Corporation has 17 reactors and  
6 they've just purchased a constellation with several  
7 more units. Diversity is critical for them. The  
8 represent 25 percent of the U.S. market. Entergy has  
9 11 reactors. Diversity very important for them as  
10 well.

11 So it really depends on the customer, but  
12 the trend has been towards aggregation and the smaller  
13 reactor operators have either been selling their units  
14 or purchased in whole or in part by the larger  
15 operators.

16 CHAIRMAN WILLIAMSON: Is it sort of  
17 diversity in the sense that you get supply for one  
18 group of reactors from one source and supply from  
19 another source for a different group? Or do you have  
20 diversity of suppliers for each reactor?

21 MR. DONELSON: Different utilities handle it  
22 in different ways. Both models that you mentioned are  
23 used.

24 CHAIRMAN WILLIAMSON: Okay.

25 MR. CUNNINGHAM: I'd just like to say that

1 the -- USEC, when it implements the ACP technology,  
2 doesn't want to be dependent upon some sort of set-  
3 asides to achieve diversity or something like that.  
4 We want to be a fully competitive, on-price actor in  
5 the marketplace. We want to go out there and if we  
6 can eat LES' lunch we'll eat LES' lunch.

7 The problem we have is it's harder to do  
8 that with a foreign company that's engaging in  
9 incremental dumped pricing.

10 CHAIRMAN WILLIAMSON: You want a quality of  
11 opportunity.

12 MR. CUNNINGHAM: There you go.

13 MR. SCHOETTLER: Let me just add another  
14 thing. We're not just speculating what utilities will  
15 do. We have this experience. We have marketed the  
16 ACP. We'll provide this information to you in the  
17 confidential record. And we have gotten contracts for  
18 our supply from the ACP, so it's not speculation. It  
19 has happened. We're talking about completing the  
20 commercialization plan and being in a position as we  
21 retire the technical risk with respect to the ACP,  
22 which we're going to do at the end of this year, under  
23 the program which the DOE wanted us to do so they  
24 could get to that point, and then it's just a  
25 commercialization point.

1 I just want to make sure it's understood  
2 that we're not just saying this could happen, it has  
3 happened. But it does depend, of course, on the  
4 market and what utilities expect.

5 CHAIRMAN WILLIAMSON: Thank you.

6 No further questions.

7 Commissioner Aranoff?

8 COMMISSIONER ARANOFF: Thank you, Mr.  
9 Chairman. I'm sure my colleagues want their lunch, so  
10 two questions for posthearing.

11 The first one, I know a number of my  
12 colleagues had talked to you about the sebacic acid  
13 case and its applicability, or whether it's a good  
14 analogy in this case with respect to the issue of  
15 domestic production. To the extent that you go back  
16 and look at that I would also ask that you look at  
17 synthetic indigo from China which is 20006 case that  
18 was a review where the domestic producer had shut down  
19 production and was in Chapter 11 bankruptcy  
20 proceedings, and in some factual respects may also be  
21 an analogy. Not with respect to the Chapter 11  
22 proceeding.

23 MR. CUNNINGHAM: Great legal minds will get  
24 on that.

25 COMMISSIONER ARANOFF: Thank you.

1           The second question I have, there was some  
2 discussion of this issue of if the Commission is going  
3 to look at a longer period as the reasonably  
4 foreseeable future than it typically does, I wanted to  
5 pin you down on that a little more. I think you  
6 talked about 2016 as being with the reasonably  
7 foreseeable future, but my question is if we're going  
8 to define a longer period, how are we defining it?  
9 Are we defining it based on the average duration of a  
10 long term contract? Are we defining it based on the  
11 amount of time until the ACP is likely to be in  
12 commercial operation? I'm trying to find out what the  
13 criterion is that we should apply if we're going to  
14 look out further as opposed to sort of vaguely saying  
15 further.

16           MR. CUNNINGHAM: Right.

17           COMMISSIONER ARANOFF: With that I don't  
18 have any further question and I do want to thank you  
19 all for your testimony today.

20           Thanks, Mr. Chairman.

21           CHAIRMAN WILLIAMSON: Thank you.

22           Commissioner Pinkert?

23           COMMISSIONER PINKERT: I just want to thank  
24 the panel and I look forward to the additional  
25 information in the posthearing submission.

1 CHAIRMAN WILLIAMSON: Thank you.

2 Commissioner Johanson?

3 COMMISSIONER JOHANSON: I have no further  
4 questions, but I would also like to thank the  
5 panelists for appearing here today.

6 CHAIRMAN WILLIAMSON: Commissioner  
7 Broadbent?

8 COMMISSIONER BROADBENT: No further  
9 questions.

10 I do have a foreseeable future question that  
11 Commissioner Aranoff asked, so looking forward to your  
12 answer on that, and I just wanted to thank you all for  
13 the effort that you're making here because I think it  
14 is important to the national security. A lot of good  
15 work being done and hopefully it all comes to  
16 fruition. Thank you.

17 CHAIRMAN WILLIAMSON: Thank you.

18 I have no further questions.

19 Does staff have any questions for this  
20 panel?

21 MR. MCCLURE: Jim McClure, Office of  
22 Investigations. The microphone is apparently hungry,  
23 so staff has no questions.

24 CHAIRMAN WILLIAMSON: Thank you.

25 To those in opposition to continuation, does

1 the opposition have any questions for this panel?

2 MR. ROSEN: No questions, thank you.

3 CHAIRMAN WILLIAMSON: Okay. Thank you.

4 In that case, I think it's time for a lunch  
5 break since several people have mentioned that.

6 Good. So we will take a lunch break until  
7 1:35.

8 (Whereupon, at 12:30 p.m., the hearing in  
9 the above-entitled matter was recessed, to reconvene  
10 at 1:35 p.m. this same day, Tuesday, September 10,  
11 2013.)

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1 A F T E R N O O N S E S S I O N

2 (1:40 p.m.)

3 CHAIRMAN WILLIAMSON: On the record.

4 MR. ROSEN: Thank you, Mr. Chairman and  
5 Commissioners, and thank you again for this  
6 opportunity.

7 You'll hear fortunately less from me this  
8 afternoon and more from the AREVA witnesses. Michael  
9 McMURPHY, who is the Chairman of AREVA NC, Inc. in the  
10 United States, and Marc Chevrel, who is the Executive  
11 Vice President of AREVA NC in France and head of its  
12 enrichment operations.

13 We believe that they can bring you an  
14 interesting and important perspective on this case  
15 that will be critical to your deliberations and  
16 decisions.

17 So I turn it over to you, Michael. Do your  
18 thing.

19 MR. MCMURPHY: As Stuart said, I'm Michael  
20 McMURPHY. Good afternoon, Mr. Chairman,  
21 Commissioners. I'm really pleased to be here, and I  
22 mean that sincerely. I returned from France in April  
23 and today I'm awaiting the birth of a grandchild which  
24 is a much more important delivery than any enrichment  
25 delivery we can speak of.

1           I've been employed in the enrichment  
2 industry for several decades. I hesitate to say how  
3 many. I was the head of Kojima, Inc. during the  
4 original investigation so I'm somewhat familiar with  
5 it. Twelve years ago, of course.

6           I subsequently became the head of the global  
7 front end business group of AREVA which included  
8 responsibility for all of AREVA's uranium enrichment  
9 activities, and currently I am Chairman of AREVA NC,  
10 Inc. AREVA has 5,000 employees in some 30 states in  
11 the United States.

12           My experience gives me, I think, a long term  
13 perspective on how the industry functions and AREVA's  
14 role in the market since at least the 1980s.

15           We know that when we enter into a contract  
16 the utility relies on us to carry through on our  
17 supply commitments, so when USEC brought its  
18 antidumping petition 12 years ago we were placed in a  
19 difficult position under our long term contracts, but  
20 rather than abandon our U.S. customers we decided that  
21 we had to continue to participate in the market and to  
22 honor our commitment to fulfill our contracts.

23           We're always sensitive to their need for  
24 security and reliability of supply to protect their  
25 large nuclear generation assets.



1           I would like to address a few things that  
2 I've heard this morning. Things that USEC and Mr.  
3 Cunningham know for damn sure but just ain't so.

4           USEC has argued that AREVA's decision to  
5 continue to serve the U.S. market is aggressive and  
6 proof we would destabilize the market if the LEU order  
7 were lifted. Please excuse me, but I don't really  
8 understand that argument.

9           Standing by customers that are relying on us  
10 doesn't strike me as aggressive. It strikes me as the  
11 right thing to do.

12           Nor do I see it as being anything other than  
13 prudent business that we have very carefully continued  
14 to serve the U.S. market with non-subject merchandise.

15           As USEC concedes, sales satisfied with non-  
16 subject merchandise are by definition fairly traded  
17 sales. The prices at which we sold this LEU were  
18 competitive and consistent with our delivery  
19 obligations to customers and gave us an acceptable  
20 rate of return on our operations.

21           We only enter into contracts where we expect  
22 to make a profit. To do otherwise would be  
23 irresponsible. And while I was in France, to do  
24 otherwise would have eliminated my short term  
25 incentive.

1           In light of our costs and our very strong  
2 profit motive, we have no desire as USEC claims to  
3 undersell in the U.S. market. USEC's claim it has  
4 lost sales due to underselling makes no sense. Any  
5 time a company loses a bid, whether it's AREVA, USEC,  
6 URENCO or Tenex, it's likely that the winner's price  
7 was lower, or at least not higher than the loser's  
8 price.

9           We also have been underbid by all of our  
10 competitors in the international markets. It happens.  
11 Sometimes you win, sometimes you lose, that's  
12 competition. It's not unfair trade.

13           Another strange claim that I see USEC making  
14 this morning is that LES should not be considered to  
15 be a member of the U.S. industry because AREVA has in  
16 some cases acquired LEU from URENCO. As USEC is well  
17 aware, well aware, such transactions are common in the  
18 industry, whether to minimize transportation costs,  
19 the payment of customs duties, or other costs of doing  
20 business.

21           We've entered into purchases of LEU or  
22 exchanges with enrichers all over the world including  
23 USEC on some occasions. Doing so is beneficial for  
24 both parties. It does not, however, do anything to  
25 dilute the strong, and I might add healthy competition

1 between all enrichers.

2 Nor is there any basis for USEC to claim  
3 that we do not compete hard with LES because AREVA and  
4 URENCO are involved in a joint venture that produces  
5 centrifuge equipment.

6 Each of the joint venture companies builds  
7 its own plants, develops its own supporting  
8 infrastructure, and operates its own plants. We may  
9 have a joint venture. We do have a joint venture to  
10 produce equipment, but we're fierce competitors when  
11 it comes to the sales of enrichment services, and I  
12 believe that USEC knows that.

13 As the staff report recognizes, the joint  
14 venture to manufacture centrifuges was subject to  
15 close competition, a lot of scrutiny by the  
16 authorities, and cleared on the express basis that it  
17 would not curtail competition in the sale of  
18 enrichment services, and it does not.

19 I find it astounding and maybe even a little  
20 offensive that someone would insinuate or even suggest  
21 outright that there is somehow something nefarious  
22 going on. If USEC knows what's happening in the  
23 competitive market as they claim to, they know there's  
24 fierce competition.

25 USEC's remarks this morning illustrate a

1 fundamental misunderstanding of the international  
2 market, or to be more generous, some inconsistencies.

3 As Mr. Sewell and Mr. Donelson said, going  
4 forward the market is robust. They spoke of China,  
5 South Korea, the Emirates. We are very active there  
6 with significant contracts.

7 One must also add France, the UK's ambitious  
8 new nuclear program, India, and Saudi Arabia that Mr.  
9 Donelson did mention.

10 My final point relates to the impact that  
11 the LEU order is having on the U.S. market. Now that  
12 USEC has shut down its only enrichment facility the  
13 U.S. market is highly dependent on just a few  
14 suppliers. URENCO and its U.S. subsidiary LES, Tenex,  
15 and of course AREVA. Of the four enrichers, only LES  
16 is producing in the United States. No matter what  
17 happens with the LEU order, nearly all U.S. demand for  
18 enrichment services is going to be served by imports  
19 over the next several years.

20 Even after LES expands production in a few  
21 years, the majority of demand will still be served by  
22 imports. Imports serve a vital role in the market  
23 and will continue to do so for the reasonably  
24 foreseeable future, however that is defined.

25 So far as I can tell USEC's arguments in the

1 end entirely come down to its claim that it needs the  
2 protection of the LEU order so that it can make lots  
3 of revenue on its imports.

4 Mr. Cunningham and Mr. Sewell clearly stated  
5 that the order needs to stay in place for financing,  
6 but as a long term observer of the industry that's  
7 another argument that I don't understand. USEC, after  
8 all, has been enjoying the protection of the LEU order  
9 since 2001 and their slides illustrate that our sales  
10 have declined.

11 If 12 years is not enough time for USEC to  
12 implement the ACP project, how much time does it need?

13 Indeed, USEC's argument that it needs the protection  
14 of the LEU order to allow it to fund its ACP is  
15 precisely the same argument that USEC made five years  
16 ago in front of this Commission.

17 USEC's inability to get the project done has  
18 nothing to do with the presence or absence of the LEU  
19 order. Rather it's all about USEC's difficulties in  
20 developing the technology, in deploying the  
21 technology, in testing the technology, its constantly  
22 slipping the time table for completion, and its  
23 inability for several years now to line up financing.

24 In these circumstances I think it's hard to  
25 justify retaining the LEU order. Even if revocation

1       resulted in an increase in French imports, it would  
2       necessarily be moderate due to AREVA's capacity  
3       constraints and our commitments to existing non-U.S.  
4       imports.

5               Even assuming there were an impact felt in  
6       the United States, it would not be felt by the healthy  
7       producer LES. The impact would be felt by non-subject  
8       imports. This is obvious to me, considering that U.S.  
9       production is satisfying less than 20 percent of U.S.  
10      demand. There would be no, that's zero, impact on  
11      production by USEC which is selling Russian SWUs and  
12      not producing anything.

13             Given the closure of France's only gaseous  
14      diffusion plant more than a year ago, and recall that  
15      this is the old technology on which dumping was  
16      decided and the margins were determined, its gradual  
17      replacement by smaller and more efficient centrifuge  
18      technology, the largely committed capacity of our  
19      George Besse II centrifuge plant, USEC's exit from  
20      production and status as a seller of Russian SWU, and  
21      LES' success as the only U.S. current producer, to me  
22      it would strain logic to continue the LEU order.

23             Thank you very much, and I'd be happy to  
24      answer any questions.

25             MR. CHEVREL: Good afternoon, Mr. Chairman,

1 Commissioners. I am Marc Chevrel. As Executive Vice  
2 President at AREVA NC in charge of enrichment  
3 operations I am happy to be here today to provide more  
4 information about AREVA's global operation.

5 More specifically, I want to address four  
6 topics. How AREVA has responsibly managed transition  
7 to its new centrifuge operations; how AREVA is  
8 managing the balance between its supply and demand;  
9 why USEC is incorrect to claim that AREVA has  
10 substantial capacity it can devote to the U.S. market;  
11 and AREVA's world-wide pricing strategy.

12 AREVA has recently completed a successful  
13 transition from its 10.8 million SWU capacity gaseous  
14 diffusion plant to its current centrifuge facility.  
15 This process was completed in 2012 with a complete  
16 shutdown of the original URD facility.

17 As a result we are not operating  
18 approximately four million SWU of centrifuge capacity.

19 Only about 40 percent of our previous capacity. Even  
20 when the centrifuge facility reaches its full 7.5  
21 million SWUs of annual capacity over the next few  
22 years, the result will be a smaller, more efficient  
23 enrichment facility that is only about 70 percent of  
24 our shuttle gaseous diffusion facility. We have taken  
25 capacity off the market.

1           As you would imagine, a project of this  
2 magnitude has to be managed carefully. Too quick an  
3 expansion would result in costly excess capacity, and  
4 too slow would risk leaving us without the ability to  
5 serve our customers.

6           As a result, we have carefully planned our  
7 centrifuge operation so the demand lines up with  
8 production. The goal, which we have achieved, is to  
9 keep supply and demand in balance.

10           In putting together our plans for enrichment  
11 capacity we haven't factored in the potential  
12 revocation of the LEU order. We have carefully  
13 calibrated our production based upon contracts that we  
14 had or reasonably can expect to land in the near term  
15 future. In doing so we necessarily have focused on  
16 our traditional SWU market in Europe and Asia which  
17 are the reason why we have particularly strong  
18 customer relationships.

19           This includes significant and quite large  
20 contracts in the upcoming year that are not reflected  
21 in our questionnaire response. We'd be happy to  
22 provide further detail in our posthearing brief.

23           We are strongly committed to these markets.

24           Between now and 2025 we already have firm commitments  
25 for more than 80 percent of our capacity which is very



1 high going so far out. We know our non-U.S. customers  
2 have additional needs that they are counting on us to  
3 fill. Our commitments to our traditional SWU markets  
4 on customers constrict USEC's claim that we have  
5 significant capacity that we will use to target the  
6 U.S. market.

7 I recognize that there has been a short term  
8 loss of demand in parts of Asia, most specifically  
9 Japan, due to the tsunami. AREVA, however, sees this  
10 as a temporary curtailment of demand that already is  
11 working its way through the system.

12 I believe AREVA is well positioned with a  
13 reactor that I expected to be among the first to be  
14 on-line.

15 Every independent observer is aware that the  
16 region will continue to be a sort of strength due to  
17 the increase in the number of nuclear reactors  
18 operating in the region.

19 With regard to pricing, USEC claims that  
20 again sure understanding because there are reports  
21 that AREVA won a contract with a price that was lower  
22 than those of our competitors in South Korea. This  
23 doesn't show anything. This was a single spot sell of  
24 EUP, and EUP spot sales are not representative of the  
25 market which has been mainly of long term sales of

1 SWU.

2 Our market intelligence indicates that there  
3 were also sales both in the United States and world-  
4 wide on the basis of price.

5 As Mike just said, we have lost sales to all  
6 our competitors, Tenex, URENCO and USEC. We accept  
7 this as a normal functioning of the marketplace.

8 In these circumstances I cannot see that  
9 revocation would lead to any real shift in attention  
10 to the U.S. market. Our careful long range plan to  
11 match supply and demand has been key in AREVA  
12 transition from its gaseous diffusion plant with  
13 smaller centrifuge facility.

14 Regardless of what happens to the LEU order,  
15 we plan to stick with our timetable that we have  
16 worked out based upon long term contracts to be  
17 secured outside the United States.

18 I would be happy to answer any further  
19 questions that you might have. Thank you.

20 MR. HUSISIAN: Hi. I'm Greg Husionian. I'm  
21 here on behalf of AREVA. I'm from the law firm of  
22 Foley & Lardner. I'm here to address two questions  
23 that I think are central to this case. The first is  
24 whether USEC can be considered to be a domestic  
25 producer given the shutdown of its plant and its

1 current state of operations; and the second is the  
2 rather glaring holes in the causation argument that  
3 you heard about this morning.

4 As an opening matter I feel like we're  
5 already a little bit behind because we didn't come  
6 prepared with a World War II era quote to help set up  
7 our arguments, but fortunately I thought of one while  
8 Mr. Cunningham was speaking. The quote that came to  
9 mind is from the Wizard of Oz right after Dorothy and  
10 Toto reached the Emerald City. As they're begging the  
11 Wizard to give them help, there's all this smoke and  
12 mirrors and gesticulating and the Wizard is telling  
13 them why he's not going to be able to help them, but  
14 the little dog Toto runs up and grabs the curtain and  
15 pulls it aside showing that behind all the illusion  
16 there's just a man in the booth. What the Wizard of  
17 Oz says is, "Pay no attention to the man behind the  
18 curtain." That's the quote I came up with as I was  
19 listening to Mr. Cunningham talk this morning.

20 TO me there's an entire crowd of men behind  
21 the curtain and they're all revealed by looking at the  
22 issues that USEC did not address this morning. These  
23 are key issues that were raised in our brief, and  
24 they're issues that you're hoping that you don't pay  
25 attention to.

1           Among these are the total skipping of the  
2 funding issues; and the fact that beyond the \$2  
3 billion loan guarantee there's another third billion  
4 where all they can say is that there are discussions  
5 from Japanese people that have been ongoing for years  
6 but no commitment. And then a fourth billion dollar  
7 of funding which they don't even have a person they  
8 can name or have any source of the funding at all,  
9 other than say they hope to raise it from someone.

10           There are pension obligations that are not  
11 mentioned that go into the hundreds of millions of  
12 dollars that are going to take priority over any  
13 claims that they have for funds that they say they're  
14 going to use for the ACP.

15           There's a half billion dollars of  
16 convertible notes that are coming due in 2014 which  
17 also are going to come ahead of funding of the ACP.  
18 And again, that man behind the curtain is not  
19 mentioned by USEC either.

20           Nor is there any mention of the array of  
21 precedent that we mentioned in our prehearing brief  
22 which shows that you need to have domestic production  
23 in order to be considered to be a domestic producer.  
24 They don't even mention that the issue came up and  
25 that they took a position on this issue with regard to

1 LES the last time around when they said that LES was  
2 not going to, should not be considered to be a  
3 domestic producer because it wasn't engaged in  
4 domestic production.

5 And they don't even mention their 10Q report  
6 which in their official filing they concede that  
7 there's no real timetable for the ACP and that they  
8 don't have any funding lined up.

9 So as we go through the issues I would  
10 suggest that like the little dog Toto, you be guided  
11 to the true issues of the case and look at the issues  
12 that USEC is not addressing.

13 Now as the Commission is aware, your basic  
14 task in a sunset review is to determine whether  
15 revocation of the order would cause the recurrence of  
16 material injury to the producers of the whole of the  
17 domestic like product. Due to the need to evaluate  
18 material injury upon an industry and not in a vacuum,  
19 this means that the first task before you is to  
20 consider what is the domestic industry.

21 Here there is no question that USEC is not a  
22 current producer. It has shuttered its only facility.

23 And USEC considers that Paducah will be engaged in  
24 only non-enrichment operations for the next year after  
25 which it will be engaged in no operations at all.

1           With USEC in the process of returning the  
2 plant to DOE control, it is difficult to see how USEC  
3 can base any claim to domestic producer status on the  
4 Portsmouth facility or on the Paducah facility either  
5 wince they've closed both of them.

6           Nevertheless, USEC tries. USEC has of  
7 course read the sebacic acid case and in fact it's the  
8 only case that they cit on this issue at all, other  
9 than 1993 DLC determination that has absolutely no  
10 relevance to any issue before the Commission.

11           They try accordingly to shoehorn themselves  
12 into the fact pattern of that case. But sebacic acid  
13 involved a plant that was hooked up and that could be  
14 restarted on a moment's notice. Nothing could be  
15 farther from the situation with regard to the Paducah  
16 plant.

17           As USEC concedes, restarting the Paducah  
18 facility would be extraordinarily expensive. Further,  
19 with USEC in the process of terminating its workers,  
20 terminating its lease, and in the process of turning  
21 over the facility to the DOE, it is readily apparent  
22 that USEC will never be operating this plant again.  
23 Indeed, as we pointed out in the prehearing brief, the  
24 DOE is seeking bids for the decommissioning of this  
25 facility.

1           For USEC to reach out to this slim and non-  
2           existent possibility of reopening the plant as a way  
3           to argue that it should be considered to be a domestic  
4           producer reveals the bankruptcy of its arguments.

5           We also saw today a new argument that they  
6           raise which was with regard to inventory. They say  
7           well, if we're not producing today, we've still got  
8           some inventory in our back pocket that at one time was  
9           produced, and that should be enough to turn us into a  
10          domestic producer.

11          Well, this doesn't show anything other than  
12          that USEC is willing to bounce from argument to  
13          argument and hoping that one will stick with the  
14          Commission.

15          In its brief what it argued was what you  
16          need to do is apply the six factor test. Well, if you  
17          look at the six factor test it involves things like  
18          the level of capital investment, things like that, but  
19          there's no factor in there that says you need to look  
20          at the level of inventories. In fact it's not part of  
21          the statute either, where you're supposed to look at  
22          the producers as a whole of the domestic like product.

23          Not look at past production.

24          In fact if you look at cases involving  
25          companies that have shut down their production, I

1 don't think you're ever going to find one where the  
2 Commission has found domestic producer status based on  
3 the presence of inventories.

4 In the ferrovanadium case, for example, the  
5 Commission found that a domestic producer named  
6 International Specialty Alloys was no longer engaged  
7 in current production. What it concluded, and this is  
8 a quote, is that, "Since International Specialty  
9 Alloys no longer produces ferrovanadium, it does not  
10 qualify as a domestic producer."

11 It didn't look at the inventories of the  
12 company. It said that answers the question. I'm sure  
13 there's other cases on that, but that is all that  
14 would fit on my teeny tiny iPhone screen while I was  
15 researching it while Mr. Cunningham was speaking.

16 We'll also provide some information in our  
17 posthearing brief as well to compare the inventory  
18 levels that USEC currently has with the massive  
19 amounts of SWUs that it has committed to import in its  
20 deal with Tenex. When you look at that as well, you  
21 see just how minuscule the inventories are compared  
22 with its overwhelming levels of import operations.  
23 It's clear that this, like the arguments that USEC  
24 raised in its prehearing brief, are going nowhere.

25 Nor is there any validity to USEC's claims



1 of being a substantial investor in new production  
2 facilities makes it a domestic producer. USEC needs  
3 to reacquaint itself with the arguments it raised in  
4 the prior sunset review and the Commission's  
5 determination.

6 The last time USEC was here, LES was a  
7 substantial investor in a new enrichment facility. In  
8 fact that facility was less than two years out from  
9 production and was proceeding on the basis of  
10 technology that was proven and financing that was  
11 lined up. Yet in that case USEC argued that LES was  
12 not a domestic producer, even though the facility  
13 would soon be on-line.

14 The Commission correctly accepted USEC's  
15 argument consistent with the requirement of the  
16 antidumping duty law that only companies that produce  
17 be considered to be domestic producers.

18 The reality is that USEC once it structured  
19 itself as an importer no longer can be considered to  
20 be a domestic producer. This is shown by the myriad  
21 determinations that the Commission has made.

22 In this regard we have a silk purse, if I  
23 can borrow a phrase, of precedent that supports us.  
24 This was not a situation where you look as a lawyer  
25 and you have to pick and choose and find the precedent

1 that supports you. When you look at it, every case  
2 supports this position.

3 You have cases that talk about how it's  
4 insufficient to rely on speculative claims of future  
5 production in order to turn someone into a domestic  
6 producer, and all those cases support AREVA.

7 You have cases that talk about it is not  
8 sufficient to engage in merry import operations or to  
9 be someone who is merrily handling the goods because  
10 that is not sufficient to turn you into a domestic  
11 producer.

12 And you have many, many cases that talk  
13 about if you're a toller, if you're someone who goes  
14 out and gets the input and then pays a fabrication fee  
15 and then brings it back into the United States, that  
16 doesn't constitute domestic production either. That's  
17 exactly what USEC does. It gets the uranium, it gives  
18 it to Tenex, Tenex in fact produces the LEU. Tenex is  
19 the producer. You can't have Tenex be the producer  
20 and then have USEC claim to be the producer as well.  
21 It just doesn't work.

22 Perhaps recognizing that it doesn't have a  
23 legal leg to stand on, USEC argues that the Commission  
24 should not consider LES to be a domestic producer  
25 because LES has a parent company that is a co-owner

1 along with AREVA and ETC which is a joint venture for  
2 the development of centrifuges that you heard so much  
3 about this morning.

4 Well, no one can claim that USEC does not  
5 have a sense of humor. USEC after all is attempting  
6 to argue that LES should not be considered part of the  
7 domestic industry because it has ties to a foreign  
8 enricher when USEC itself has arranged to put itself  
9 in a position to entirely satisfy its U.S. contracts  
10 through its own very direct ties to a foreign  
11 enricher, Tenex.

12 But even putting aside the irony of USEC's  
13 position, its attempts to disqualify LES under Section  
14 1677(4)(b) flounder under the law and facts for two  
15 reasons.

16 First, Section 1677(4)(b)(4) states on its  
17 face that it only would apply if LES and AREVA jointly  
18 control a third company. They do not.

19 LES does not have a stake in ETC. Only  
20 URENCO does. Since ETC is neither owned nor  
21 controlled by LES the statute does not apply on its  
22 face.

23 Second, Section 1677(4)(b) states that a  
24 company can only be disqualified where there is reason  
25 to believe that the relationship causes a producer to

1 act differently than a non-related producer would.

2 USEC, however, has advanced no evidence that  
3 LES is acting otherwise and would be expected, let  
4 alone that we are acting as they claim as, "The same  
5 company", unquote, as you heard this morning.

6 LES, as the record shows in detail, has  
7 acted aggressively to fill its capacity and to expand  
8 its market share. This includes, I would add, by  
9 taking contracts away in competition against AREVA NC,  
10 Inc., which AREVA would have loved to have landed.

11 LES obviously has been successful in its  
12 quest to act as an enricher because it's expanding its  
13 capacity. You have all the information about it,  
14 exactly how it is operating and its capacity  
15 utilization in the staff report and in the  
16 questionnaires, and I would suggest that all the  
17 information that's out there shows that LES is acting  
18 just as a domestic enricher should. It's out there,  
19 it's competing, it's grabbing contracts.

20 The idea that LES salesmen are out there  
21 saying gee, I would compete really hard for this  
22 contract but I think that I should give up my bonus  
23 and get in trouble with management because what's more  
24 important is to make sure that ETC is performing well  
25 because there is an indirect connection between LES

1 and that company is really quite laughable.

2 USEC's statement is especially puzzling  
3 given the information reported in the staff report  
4 with regard to the review of this arrangement that  
5 occurred by the competition authorities in the EU.

6 This arrangement was carefully reviewed in  
7 2006 when AREVA joined in the investment with ETC.

8 As the prehearing staff report states on  
9 page 4-7, the ETC agreement was quote, "subject to  
10 competition clearance from the European Commission as  
11 well as intergovernmental agreements between the  
12 governments of Germany, the Netherlands, the United  
13 Kingdom, and France. Under the agreement URENCO and  
14 AREVA will continue to compete in the provision and  
15 marketing of uranium enrichment services."

16 In other words the position of USEC is after  
17 going through a competition review, making filings,  
18 making representations that these companies were going  
19 to compete vigorously with regard to the sale of  
20 enrichment services, LES was willing to stick its  
21 finger in the eye of the competition authorities and  
22 as engaged in a massive hoodwinking of them as well.  
23 As you can see, this is not a hidden agenda. This is  
24 an arrangement that is subject to scrutiny and which  
25 has been cleared by the EU competition authorities.

1 There is utterly no way that AREVA, LES, URENCO,  
2 anyone involved with this is going to go back on those  
3 representations that they've made to the EU  
4 competition authorities and risk having the  
5 consequences of that hoodwinking be brought down on  
6 their head.

7 Make no mistake. AREVA, LES, everyone  
8 involved, is complying with the representations to the  
9 EU.

10 In short, there is no valid reason for  
11 either USEC to be considered part of the domestic  
12 industry or for Les not to be. LES is engaged in  
13 substantial production. USEC only has hopes and dreams  
14 that it will be able to. Under these circumstances  
15 the only approach is to consider LES to be the  
16 domestic industry and not USEC.

17 With regard to causation, four of you were  
18 up here six years ago when Mr. Cunningham was up there  
19 making the exact same arguments. At that time his  
20 claim was USEC is at a very critical juncture and it  
21 is important that it have the protection of an  
22 antidumping duty order so that it can protect the  
23 investment stream that it needs to invest in the ACP.

24 In other words, as shown on page six of the  
25 hearing transcript last time, his opening statement

1       boiled down to, "It is an extremely bad time" for  
2       revocation because of the impact of that you could see  
3       on the ACP project.

4               In other words, this is the same tired and  
5       old causation argument that USEC has been raising  
6       since the beginning. The only thing that has changed  
7       since then is that the cost of the project has gone up  
8       and that USEC has moved no closer to realization of  
9       the project.

10              With regard to Mr. Klett's causation  
11       analysis, I felt bad when I got here that we didn't  
12       have any pretty little charts to show you ,nothing to  
13       show up there, but fortunately Mr. Klett filled that  
14       in for us because he put in charts that perhaps we  
15       should have put in ourselves.

16              The first chart that I'm referring to is  
17       chart one that he had which shows the relative market  
18       share of AREVA. The first thing that comes out of  
19       that is that since 2008 when the market share is close  
20       to 20 percent, it has declined each and every year,  
21       basically the entire POR for the sunset review period,  
22       until it reached a slightly more than ten percent in  
23       2012.

24              Now juxtapose this chart which USEC put in  
25       the record with their claims that AREVA is engaged in

1 massive underselling in a bid to gain market share.  
2 If we're going to go back to antidumping economics 101  
3 as Mr. Cunningham suggested, I'd like to see how he's  
4 going to try to reconcile claims of aggressive  
5 underselling, a fungible commodity, and market share  
6 that's fallen by 50 percent. You just can't put those  
7 things together. It doesn't make any sense.

8 Nor does it add up, the arguments they make  
9 on page nine where they talk about how URENCO is  
10 importing a large share into the U.S. market and this  
11 shows for some reason that the order should be  
12 retained. I don't understand this at all.

13 As we know from seeing so many sunset  
14 reviews, generally when you see a high level of non-  
15 subject imports in the market that's considered to be  
16 something that's a negative for petitioners from a  
17 causation standpoint.

18 What that means, in other words, is that  
19 even if you're going to see some kind of increase in  
20 imports from the subject producers, the question then  
21 becomes who are they going to displace? And if you  
22 have a lot of non-subject imports the answer is from a  
23 causation standpoint, that's going to dilute the  
24 impact of any increase in imports that you're going to  
25 see. So it makes no sense for me for them to come in



1 and to be talking about gee, injury is more likely  
2 because there's this high level of URENCO imports into  
3 the market.

4 Well the reality is, LES can only produce  
5 approximately three million SWUs of output in a market  
6 that's demanding somewhere between 14 and 16 million  
7 SWUs. That means by simple mathematics or antidumping  
8 economics 101 that about 80 percent of the market is  
9 being served by non-subject imports.

10 So the question then becomes even if there  
11 were some increase in imports from AREVA, where is the  
12 impact of that going to be felt? Is it going to be  
13 felt on LES which has been able to land a lot of juicy  
14 contracts and it is a good position and it actually  
15 needs to expand in order to serve its contracts? Or  
16 is it going to be felt in the 80 percent of the market  
17 that's being served by non-subject imports? Again, I  
18 just don't understand why they're making this  
19 causation imports.

20 Finally, I want to speak for just a moment  
21 about the implications of how AREVA has been serving  
22 the market and the fact that it has stayed in the  
23 market.

24 The claim, after all, is that if this order  
25 is to be lifted what is going to happen is that AREVA

1 is going to rush into the market and take advantage of  
2 the absence of the order because it previously was  
3 being constrained.

4 Once again, that claim does not reconcile to  
5 their claim that the inclination of AREVA to dump is  
6 shown by the fact that it has remained in the market  
7 and has served U.S. demand using non-subject imports.

8 This is not a situation, in other words,  
9 where there's pent-up demand and people are waiting  
10 for the order to be lifted so that they will suddenly  
11 have access to sales by AREVA. In fact the opposite is  
12 true. AREVA has been able to serve the U.S. market  
13 and is doing so under the order using non-subject  
14 merchandise.

15 The situation, in other words, is much like  
16 what you might see with a multinational corporation  
17 which has factories in one country that are under an  
18 order, but another country where they're not under an  
19 order. If that multinational corporation is serving  
20 the U.S. market with its imports from Ireland, which  
21 is not under an order, then revocation of the order on  
22 Japan is not going to have an impact because they  
23 already had the ability to serve the U.S. market.

24 So their argument is utterly backwards and I  
25 don't understand it at all.

1           That concludes the items behind the curtain,  
2           the things that I think you need to be looking at. I  
3           really do not see how USEC can distinguish all the  
4           cases we have cited with regard to how you need to be  
5           a producer in order to be considered to be a domestic  
6           producer. Let alone how it can distinguish its own  
7           pronouncements with regard to LES or the treatment of  
8           LES in the last sunset review.

9           Since USEC doesn't cite a single case in  
10          response other than sebacic acid which was so readily  
11          distinguishable, I guess this is something they just  
12          want you to skip over as well. I don't see how you  
13          can do that.

14          The implications of all this foregoing, by  
15          the way, are very clear. As Commissioner Aranoff  
16          pointed out, the synthetic indigo case is quite  
17          instructive. In that case the sole domestic producer  
18          had been shut down and was in the process of going out  
19          of business. The Commission held that it was not  
20          possible, however, for there to be material injury in  
21          these circumstances. What they found was, and I'll  
22          quote on my teeny tiny iPhone, "It is clear that  
23          revocation of the antidumping order would not be  
24          likely to lead to a continuation of recurrence of  
25          injury to the domestic industry. Considering the

1 condition of the domestic industry and given the  
2 likely absence of future domestic production of  
3 synthetic indigo, it is not possible to conclude that  
4 such imports, even were they to increase the  
5 significant levels if the order were revoked, would  
6 have a negative affect on domestic prices or  
7 negatively impact the domestic industry."

8 Nobody is saying that USEC is on the verge  
9 of going bankrupt like the person there, but otherwise  
10 the case is directly on point. The point of synthetic  
11 indigo is if you're not producing now and you're not  
12 going to be producing in the reasonably foreseeable  
13 future then it is not possible to have material  
14 injury.

15 That brings my presentation to the end. I  
16 want to end with one Will Rogers quote that I think  
17 the Commission would probably urge on all people who  
18 appear before it. As Will Rogers once said, "Never  
19 miss an opportunity to shut up." So that's what I'm  
20 going to do.

21 MR. ROSEN: Thank you, Greg, particularly  
22 for the last remark.

23 I feel like -- This is Stuart Rosen. I feel  
24 like a proud parent listening to Greg in particular  
25 because he gave a beautiful presentation. What he

1 forgot is that he gave not only his presentation but  
2 mine. Therefore, he's left me with very little to  
3 say, probably to your relief.

4 Let me focus just on a few things. We've  
5 covered very thoroughly the current situation of USEC.

6 It's not producing. It has some inventory to sell.  
7 You can look in the prehearing staff report, et  
8 cetera, and find out the extent to which those sales  
9 of inventory have been made or whether there's  
10 anything more for USEC to sell of its domestic  
11 inventory.

12 So it's not a producer, as Greg has outlined  
13 in detail. The whole question is about the future.  
14 The future is what the sunset proceedings are all  
15 about.

16 I was struck this morning by USEC's  
17 presentations, the ACP project is a gigantic project.  
18 USEC has been at it for a long time. Indeed the ACP  
19 project goes back into the '80s when the U.S.  
20 government started it, so it's 30-some-odd years old  
21 by now. And maybe USEC will complete its three  
22 remaining milestones under the RD&D program by the end  
23 of this year and demonstrate that it can do more than  
24 just twirl the centrifuges with gas, that's all that's  
25 in them now, and indeed enrich uranium

1           Perhaps there's not a whole lot of doubt  
2           about that from an operational standpoint, but that  
3           leaves commercialization issues. How will the  
4           machines perform over time? Will there be infant  
5           breakdown issues? What are the longevity issues?  
6           What are down time issues? And what's the lifetime of  
7           these machines?

8           Beyond operational issues which I obviously  
9           can't speak about with any degree of expertise, there  
10          are the financing issues and again, as I indicated  
11          this morning and as covered in our brief, the  
12          financial issues are substantial and remain  
13          outstanding.

14          It was remarkable to go through the morning  
15          and not hear one single word as I recall about USEC  
16          and its financing. It spoke about it only in response  
17          to questions and perhaps there will be something on  
18          the record about it.

19          The record that is before the Commission is  
20          most compellingly indicated by the SEC filing only a  
21          few weeks ago where USEC indicated that it didn't have  
22          its financing, that its financing was uncertain, and  
23          that the ACP project might founder.

24          So the future of ACP as a viable commercial  
25          entity is in doubt. We'll see.

1           If it doesn't make it, then as Greg pointed  
2 out, all we have is domestic production from LES.

3           If on the other hand it does make it, as I  
4 indicated this morning and as USEC's witnesses  
5 indicated, it will be the shiniest performer on the  
6 block. It's got centrifuges which are four times as  
7 productive and the most modern technology and the most  
8 modern plant, et cetera, et cetera, so that its cost  
9 structure will be wonderful and it will fit  
10 beautifully into the market.

11           So whichever way you look at the situation.

12       If you are not willing and in a position to conclude  
13 that USEC's operation of ACP is likely, then the  
14 answer is revocation will not have an adverse impact  
15 on the U.S. industry which is a healthy and  
16 progressing LES.

17           If on the other hand after reviewing all  
18 that's put before you you come to the position that  
19 you believe that it is likely that USEC will surmount  
20 its production and operational hurdles and surmount  
21 its financing hurdles and get ACP off the ground  
22 commercially, then I submit you are left with no  
23 conclusion other than that this will be a successful  
24 operation along with that of LES and that the future  
25 of the LEU producing industry in the United States is

1 one which would not be adversely affected by imports  
2 from France and therefore there is no further place  
3 for this order on the books.

4 The sunset review proceeding was put on  
5 pursuant to our Tokyo Round obligations in recognition  
6 of the fact that dumping orders disrupt the  
7 functioning of the marketplace and they are not to be  
8 there forever.

9 Thank you. We're here to answer whatever  
10 questions you might have.

11 CHAIRMAN WILLIAMSON: Thank you. Let me  
12 express our appreciation to the witnesses for coming  
13 today and presenting their testimony.

14 This afternoon we'll commence with  
15 Commissioner Pinkert.

16 COMMISSIONER PINKERT: Thank you, Mr.  
17 Chairman, and I thank all of you for being here today  
18 to help us understand these issues.

19 I noted in your presentation that you  
20 highlighted the need on USEC's part to serve the U.S.  
21 market with imported LEU and I wanted to ask you what  
22 you make of the argument they provided that they can't  
23 serve many of their U.S. customers with the imported  
24 product. For technical reasons or for legal reasons.

25 MR. MCMURPHY: Actually, Commissioner, I'd



1 love to answer the question but I can't because I  
2 don't know what was in USEC's confidential  
3 presentation. I don't know what's in their contracts.

4 But it would be highly unusual that most of the  
5 contracts would specify a certain origin. Highly  
6 unusual.

7 They may have some. That's a question  
8 they'll have to answer. I can't.

9 MR. HUSISIAN: I would also refer, it's  
10 confidential, but if you look, many of the utilities'  
11 comments on the source of the LEU that's delivered to  
12 them and they answer that question. So if you look in  
13 the questionnaire responses, they often tell you  
14 exactly what kind of LEU USEC is delivering.

15 I also would add that since they no longer  
16 have a domestic production plant, if they didn't look  
17 ahead and compare their delivery obligations with the  
18 reality that they're bringing in over 20 million SWUs  
19 from Russia, then that would be a shocking development  
20 and poor planning on their part.

21 COMMISSIONER PINKERT: For the posthearing I  
22 would ask that you take a look at the level of  
23 inventories and estimate how long they could supply  
24 their U.S. customers with the U.S. produced LEU that  
25 they have in inventory.

1 MR. ROSEN: We'll do that.

2 COMMISSIONER PINKERT: Thank you.

3 I know that a lot of the argument today has  
4 centered on whether USEC is a domestic producer, but  
5 you will note from the questions of the earlier panel  
6 that USEC maintains that that's not the end of the  
7 story. Even if we were to find that they are not a  
8 domestic producer, they maintain that the domestic  
9 industry would be injured in the event of revocation  
10 by the subject imports or by imports of the subject  
11 merchandise.

12 So if we conclude that USEC is not a  
13 domestic producer, how would that change the analysis  
14 of subject import volume, subject import pricing, and  
15 impact by reason of subject imports?

16 MR. ROSEN: Stuart Rosen.

17 We should all state our names at the outset  
18 for the benefit of the transcriber.

19 Stuart Rosen.

20 I think what changes is the focus on the  
21 industry. The industry focus is LES in that event.  
22 Then the question is the impact of the volume and the  
23 pricing of subject imports on the U.S. industry, the  
24 producers as a whole, LES, what impact would our  
25 imports from France have on LES?

1           I would submit, since LES is operating at  
2 full capacity and expanding and has a healthy  
3 situation which Mr. Cunningham seemed to pooh-pooh,  
4 that the impact would not be negative, particularly in  
5 light of what you've heard this afternoon about  
6 AREVA's supply commitments and limitations on its  
7 capacity with 80 percent of its capacity already  
8 committed out through 2025.

9           MR. HUSISIAN: I would also add on top of  
10 that, if you look at footnote 217 on page 29 of the  
11 last sunset review report, you actually dealt with  
12 that same issue but flipped. What you said in that  
13 case was since LES is not a domestic producer but  
14 nonetheless will be one in the reasonably foreseeable  
15 future, you were going to take them into account. But  
16 what you said was NES has yet to begin operation and  
17 is scheduled to produce only a relatively small amount  
18 of LEU starting in 2009, an estimated one million  
19 SWUs. Accordingly we have focused our analysis of the  
20 likely effects of subject imports on data pertaining  
21 to USEC.

22           So flipping that around, even if USEC were  
23 determined that it maybe in the industry within a few  
24 years, its production is going to be so small and  
25 perhaps of even test quantities, that you necessarily

1 are going to end up focusing on the very healthy LES  
2 no matter what.

3 So we would suggest that the way you handled  
4 LES last time is the way you should handle USEC this  
5 time.

6 MR. MCMURPHY: Michael McMurphy, if I may  
7 add something?

8 COMMISSIONER PINKERT: Please.

9 MR. MCMURPHY: I tried to address one point  
10 during my remarks. As it wasn't part of a prepared  
11 remark, maybe I didn't address it adequately, but I  
12 was trying to address the substance of part of your  
13 question that you just asked.

14 Marc Chevrel spoke about our capacity and  
15 the lack of capacity to apply to different markets,  
16 but we also spoke about the different markets that we  
17 have to serve with that limited capacity. Those  
18 markets include, and we are serving them and will  
19 continue to serve them, China, the Emirates, we will  
20 serve the UK's ambitious program. We already have  
21 offers in front of them. India, Saudi Arabia. So  
22 with our very limited capacity we don't have a lot to  
23 target the U.S. with anyway.

24 COMMISSIONER PINKERT: Thank you.

25 This next question is again a hypothetical

1 question, but I'm trying to get at some legal issues  
2 here.

3 Assuming again that we find that USEC is not  
4 a domestic producer, what role should LES' times to  
5 AREVA play in our understanding of the domestic  
6 industry and the interests of the domestic industry.

7 MR. HUSISIAN: That ties in fairly closely  
8 with the 1677(4)(b) argument.

9 This kind of issue actually comes up the  
10 most often where you have a situation where someone  
11 who is a producer also happens to be importing. And  
12 what the Commission has done in those cases, which is  
13 somewhat analogous, is it's looked at what's the  
14 dominant and most important consideration that is  
15 driving that company. If you're importing uranium and  
16 you're also producing here, then you have to weigh  
17 that.

18 If you look at what the dominant interests  
19 of LES are, its entire reason to exist is to fill up  
20 that expensive capacity that it's put in place by  
21 selling its enrichment services. It's many steps  
22 removed to go back and say they're going to be looking  
23 at the health of ETC and its ability to sell  
24 centrifuges into the U.S. market at some point in the  
25 future when LES is focused on what any enricher would

1 be focused on. We've got this capacity, we have to  
2 use it, we have to sell enrichment services. That's  
3 its dominant interest and that's what you should be  
4 driving the Commission's consideration, not claims  
5 that people are going to be looking back at a joint  
6 venture, especially when that joint venture by the  
7 terms of the EU competition approval is required to  
8 operate completely independently of URENCO let alone  
9 LES.

10 COMMISSIONER PINKERT: Staying with the  
11 hypothetical, is it also relevant at that point that  
12 LES is the last company standing, it's what remains of  
13 the domestic industry. So could we in fact discount  
14 LES at that point?

15 MR. HUSISIAN: that would be a very strange  
16 situation because if you discount LES and you treat  
17 USEC under the reality which is it's an importer, then  
18 you're left with no domestic industry at all, which  
19 also would be a strange situation and one where you  
20 would have to revoke because how can you have price  
21 impacts and volume impacts on a non-existent industry?

22 But from a logical standpoint that's where  
23 it ends up.

24 Where we think it should be done is LES is  
25 the domestic industry. As the staff report notes with

1 its capacity that's increasing, it's basically  
2 replaced USEC and is a positive development. Its  
3 broad centrifuge, working technology into the United  
4 States and is operating and it's here to serve U.S.  
5 demand. Otherwise it would be completely dependent on  
6 imports.

7 But either way you're left with a situation  
8 where you need to revoke.

9 COMMISSIONER PINKERT: Thank you.

10 Thank you, Mr. Chairman.

11 CHAIRMAN WILLIAMSON: Commissioner Johanson?

12 COMMISSIONER JOHANSON: Thank you, Mr.

13 Chairman. And I would also like to thank all of you  
14 for appearing here today.

15 Mr. Husisian, I'm going to go back to the  
16 domestic industry issue. I know we've spoken quite a  
17 bit on that today but that of course is a major, I  
18 guess you would say problem in this investigation,  
19 trying to figure out what to do there.

20 You stated that USEC is currently not  
21 producing, but USEC did produce during most of the  
22 period of review, and USEC has stated at length that  
23 it will resume production soon.

24 Accordingly, why should the Commission not  
25 consider USEC to be a domestic producer for purposes

1 of this five year review?

2 MR. HUSISIAN: That is the key question and  
3 it comes down to do you think it's probably or likely  
4 then in the reasonably foreseeable future USEC will be  
5 a producer?

6 The fact that it was producing in the past  
7 is irrelevant. That's like the ferrovanadium case or  
8 other case cited. Past production doesn't mean that  
9 you are a current producer. So it really comes down  
10 to are they likely to be a producer in the future.  
11 They can show that they've got pretty little machines  
12 that spin around when you press the button, but what  
13 they haven't been able to show is that it's likely or  
14 probable that they actually will be a producer in the  
15 reasonably foreseeable future, given the hurdles that  
16 Mr. Rosen mentioned of trying to line up the  
17 financing, trying to make money they claim off of  
18 their import operations so they can build up an  
19 investment kitty when they've got other requirements  
20 to use that. That's where it comes down.

21 Their past production is irrelevant. The  
22 question is will they have future production the  
23 reasonably foreseeable future.

24 And since in 2003 if you look at their 10Ks  
25 and 10Qs they were saying oh, we're going to have a



1 fully operational production seven years from now; and  
2 today you look at their current 10Q and 10K they're  
3 saying oh, it's going to be fully operational seven  
4 years from now. The only difference is they used to  
5 think it was going to cost another billion dollars and  
6 now they think it's going to cost four billion or  
7 more.

8           What credibility do they have when they come  
9 in here saying don't worry, our machines will be  
10 spinning and operational when they've got ten years of  
11 failed promises? What credibility do they have when  
12 they're coming in here and making the same arguments  
13 today that the ACP is about to come on line, that they  
14 were telling you in 2007?

15           COMMISSIONER JOHANSON: But USEC does have a  
16 plant. That's the issue we have here. One of my  
17 fellow Commissioners visited the plant, staff visited  
18 the plant. So there is something there which is  
19 different than in some of the investigations where  
20 we've had somewhat of a similar situation in past  
21 investigations.

22           MR. ROSEN: Stuart Rosen.

23           Perhaps I can jump in hopefully to help.  
24 Yes, they have a plant, but the entire focus of a  
25 sunset review is on the future. What will be the

1 affect in the future if the dumping order went away?

2 So the fact that they have a plant doesn't  
3 mean that there will be any affect on production, on  
4 volume, on price. Something has to come out of that  
5 plant. All that's in that plant in the centrifuges in  
6 one cascade out of the 96 cascades that are  
7 contemplated for the plant is gas. They are not  
8 producing LEU as USEC indicated earlier today.  
9 They're operating in a test mode. They are not  
10 producing any LEU that can be commercially sold.

11 Perhaps they will. We're not the ultimate  
12 decision-makers on that. The governmental authorities  
13 who might give them money or a guarantee, DOE,  
14 Japanese authorities, the private marketplace, and  
15 others will make that decision some day.

16 You have to make a decision as to whether  
17 it's likely in the reasonable period of time that that  
18 plant, that plant with one cascade that's not yet  
19 functioning commercially will turn into a viable  
20 commercial operation initially projected to have 96  
21 cascades.

22 So the one plant they have is one percent of  
23 their dream. IT's not a whole lot of production.

24 If you add up what could come out of that  
25 plant with one cascade, I think I did the numbers, it

1 was 42,000 SWUs. Put those 42,000 SWUs in a 14 to 16  
2 billion, million SWU marketplace, it's nothing. The  
3 real question is will they get to achieve their 96  
4 cascade dream in the reasonable period of time that  
5 the statute requires you to focus upon in making your  
6 decision on the impact of revocation of the order.

7 MR. HUSISIAN: And I would suggest, again,  
8 the most relevant case is the sunset review five years  
9 ago. Everything that USEC has right now LES had and  
10 more. LES also had a plant. It was on the verge of  
11 production. The Commission said we think they are  
12 going to be a domestic producer in the reasonably  
13 foreseeable future. It actually had the financing  
14 lined up. It actually had the technology worked out.

15 But the Commission still said LES is not a domestic  
16 producer because it's not engaged in domestic  
17 production.

18 There's just no way to turn USEC into a  
19 domestic producer today when LES was not a domestic  
20 producer back then because LES was much farther along  
21 and it still wasn't a domestic producer. I still  
22 that's, you actually have considered this issue and  
23 reached the determination on it six years ago in the  
24 LES.

25 COMMISSIONER JOHANSON: If the Commission

1 were to continue the order now but in six months the  
2 Department of Energy were to deny the loan guarantee,  
3 could AREVA come back at that point under changed  
4 circumstances?

5 MR. ROSEN: I suppose so, but that's not an  
6 answer to the issue confronting the Commission today  
7 and for its vote in a month from now.

8 You have a responsibility right now to  
9 determine what is likely right now in a reasonable  
10 period of time. I would submit that throwing up your  
11 hands and saying oh, well, they can always fix things  
12 later is not an appropriate way to confront the issue  
13 before us all.

14 COMMISSIONER JOHANSON: Thank you.

15 I believe you addressed this a moment ago,  
16 Mr. Rosen, but Mr. Cunningham stated that LES is not  
17 in good shape. Could you please respond to this? And  
18 if you don't have that information on you right now,  
19 if you could provide it in posthearing.

20 MR. ROSEN: We certainly will. There's no  
21 way for us to respond in the public hearing, but we'll  
22 address it in the posthearing brief.

23 COMMISSIONER JOHANSON: That would be  
24 useful, thank you.

25 At pages 36-37 of your prehearing brief you

1       argue that AREVA already has commitments in place for  
2       the George Besse II plant's future capacity, but you  
3       then note that AREVA fully expects that remaining  
4       capacity will soon be contracted for as utilities move  
5       ahead with their long term planning.

6                 If the order were to be revoked, why  
7       wouldn't AREVA seek to fill this remaining capacity  
8       with increased exports to the United States?

9                 MR. MCMURPHY: Well, Mr. Commissioner, I  
10       really feel badly because I've tried to answer that  
11       question and apparently I haven't done it  
12       successfully. But we have huge opportunities in  
13       China. We have huge opportunity outside of China  
14       through Asia. We have opportunities in India. We are  
15       selling to the Emirates. We will be selling and are  
16       already -- well, we will be selling in Saudi Arabia.  
17       We will be selling in the UK, which is just across the  
18       channel from our production facility. So as I said,  
19       very limited capacity available for the international  
20       market and large demand with current customers and  
21       customers that we're pretty confident we will have  
22       going forward.

23                 COMMISSIONER JOHANSON: That being said the  
24       United States from what I understand is perhaps the  
25       world's largest market. I would still think there

1 would be a demand pool here.

2 MR. MCMURPHY: The United States is the  
3 largest gross market. They're definitely -- I mean  
4 you can't say that the U.S. is not attractive for  
5 enrichers. But what you can look at is what is being  
6 sold in the U.S. and who is selling it and you can  
7 look at the aggressive competition from all of the  
8 competitors and then you can look at the places where  
9 we need to reserve our capacity.

10 And we need to conserve our capacity in  
11 those places that are going to have -- I think Mr.  
12 Sewell or Mr. Donelson talked about the new builds and  
13 when the new builds come on, they need an entire first  
14 core. They need huge quantities and they need to know  
15 that it's going to be there reliably. And we will  
16 serve those and we will have to serve some of those.  
17 We're doing new builds in some of those countries and  
18 where we're doing new builds, we've been requested to  
19 serve.

20 Yes, in theory, the U.S. is an attractive  
21 market. In practice with the limited capacity, our  
22 ability to serve that U.S. market and our ability to  
23 increase market share -- and by the way our business  
24 plans are not based on market share unlike some -- but  
25 our ability to change the market share that we have is

1 almost nonexistent.

2 COMMISSIONER JOHANSON: All right. I've  
3 gone over my time. Thank you for your responses.

4 CHAIRMAN WILLIAMSON: Thank you.  
5 Commissioner Broadbent?

6 COMMISSIONER BROADBENT: Mr. Rosen, do you  
7 have any comments on any national security  
8 considerations that we ought to take into account here  
9 or not take into account?

10 MR. ROSEN: Thank you, Commissioner  
11 Broadbent. I think Dick Cunningham, as articulate as  
12 he is, couldn't even come up with a reason for the  
13 Commission to consider national security issues. It's  
14 not in the statute. It's not an appropriate  
15 consideration for the Commission.

16 I want to hesitate just a bit here, and I'll  
17 address it in connection with our posthearing brief,  
18 but I think national security issues are a red  
19 herring. I don't have current statistics, but the  
20 national security issue largely relates to tritium and  
21 my recollection of our tritium needs is that they are  
22 more than adequately covered well into the future.  
23 Whether it's a decade or two decades or whatever, I'm  
24 not sure.

25 But beyond that, there is information in the

1 staff report that indicates the extent to which  
2 national security needs might be served in the event  
3 that USEC with its proposed ACP were not in the  
4 picture. And we'll focus on them for you in our  
5 posthearing brief.

6 COMMISSIONER BROADBENT: Okay. Now is the  
7 tritium the enriched uranium that goes to the nuclear  
8 submarines, is that -- what's the market for tritium?

9 MR. ROSEN: I believe it's utilized in  
10 connection with nuclear weapons, but the specifics of  
11 it I can't tell you. Marc or Michael?

12 MR. MCMURPHY: It's used for defense  
13 purposes and Department of Energy and NSA. And  
14 Department of Energy, of course, is who USEC is  
15 requesting a long guarantee from. Department of  
16 Energy and NSA handles the requirements for tritium  
17 and tritium is used in defense programs. Beyond that,  
18 I'm not an expert and I'm not supposed to --

19 COMMISSIONER BROADBENT: Right.

20 MR. MCMURPHY: Yeah. But I would say that  
21 as Stuart said, there's a lot of tritium available and  
22 USEC said this morning during their testimony that  
23 there's 10 years of tritium already in storage  
24 essentially. Additionally, I would say that it's  
25 reported in a lot of the press, especially the



1 industry press that USEC has cited, it's reported that  
2 DOE has kept rights -- because of the RD&D, DOE has  
3 rights to the technology, has rights to take the  
4 technology, and has rights to produce from the  
5 technology, especially if ACP is not ultimately  
6 successful.

7 MR. HUSISIAN: Yeah, actually that's  
8 addressed on the USEC website itself. If you go to  
9 the USEC website, pick the American Centrifuge project  
10 and go to what are called taxpayer protections, what  
11 it says is they have all the intellectual property  
12 that relates to the ACP, the U.S. Government has a  
13 write in, and any centrifuges that are developed as a  
14 result of the RD&D project also the U.S. Government  
15 has rights.

16 So basically if USEC is able to develop the  
17 ACP, the national security falls off the table because  
18 they're available to do it. And if USEC is unable to  
19 get the financing and it falls down, then the U.S.  
20 Government has taken steps to protect itself and to  
21 ensure that it has the rights to all the technology.  
22 So I would say the USEC's website itself takes care of  
23 the national security concern.

24 COMMISSIONER BROADBENT: Okay. Does AREVA  
25 product tritium?

1 MR. MCMURPHY: This is Michael McMurphy  
2 speaking. No.

3 COMMISSIONER BROADBENT: Okay, good. How  
4 should we evaluate the reasonably foreseeable future?  
5 How long do you think that should be in this case?

6 MR. ROSEN: Well, Stuart Rosen, five years  
7 ago Dick Cunningham said it's a little longer in this  
8 industry than your normal two, three years. I would  
9 say four years would be appropriate here. So I guess  
10 under his formulation, you should be looking to 2011.

11 But if you were to take his four years and add it to  
12 2013, you would be looking out to 2017 or so.

13 Actually, this is an industry that focuses  
14 on long-term contracts, et cetera. It's not making  
15 fashion items that change four times or five times a  
16 year. So long-term contracts are the name of the  
17 game.

18 That doesn't mean, however, that we should  
19 look forever to the effects of revocation. Indeed  
20 because of the long-term contracting in this industry,  
21 one can have a better picture rather quickly as to the  
22 future. As Marc Chevrel indicated, he's sold out 80  
23 percent of his capacity through 2025. So this  
24 Commission with the facts on the table today, with the  
25 contracts that are in place, with the expected

1 production capacity that will be available within the  
2 next few years, should be comfortable in making a  
3 judgment on the future by focusing on the next couple  
4 of years.

5 Let me make just one further point on that.

6 The further out you go to speculate or divine the  
7 future, the further out you go in thinking about what  
8 might a dumping margin be. Recognize that you get  
9 your dumping margins from Commerce, but the dumping  
10 margin that Commerce sends your way is really a  
11 fantasy. It's a 19 percent margin based upon sales in  
12 1999, based on production in machines which are no  
13 longer operating.

14 We're in a new era, so don't take old  
15 dumping margins into account and simply roll them  
16 forward four, five, 10, 20 years, or whatever. There  
17 was one question indeed that said should we look at  
18 the life of the machines. That's just too long to  
19 make a reasoned evidence-based judgment on the effects  
20 of revocation.

21 COMMISSIONER BROADBENT: Okay. This is for  
22 Mr. Chevrel. Earlier this morning I think the  
23 witness, Daniel Klett, said that AREVA -- is it AREVA  
24 centrifuge technology forces it or the conditions are  
25 such that it has to run at full capacity. Is that

1 correct?

2 MR. CHEVREL: I stated the economics of the  
3 centrifuge technology is such that you have a huge  
4 investment and a much smaller operation cost. So,  
5 obviously, it's a high incentive to use it at full  
6 capacity, yes.

7 COMMISSIONER BROADBENT: Okay, all right. I  
8 wanted to discuss the Eagle Rock enrichment project.  
9 What kind of difficulties have you had there leading  
10 up to the delay in coming on line?

11 MR. MCMURPHY: We have no difficulty with  
12 the technology. We have no difficulty with the  
13 licensing. We have the licensing in place. We're  
14 ready to go. We have no difficulty with the  
15 engineering. We have continued the detailed  
16 engineering. We have no difficulty with all of the  
17 contractors. They're all in place.

18 What we have done is made -- what AREVA has  
19 done, and it's in their public documents, is made a  
20 decision to defer the start of construction of Eagle  
21 Rock and to defer it for, as was said, financing  
22 reasons. But that doesn't mean that we can't get the  
23 financing. We have access. We do not want to  
24 increase our debt ratio. Therefore, we want to  
25 finance from operating cash flow and from investors

1 and in fact we are looking for investors. And I would  
2 say that with everything that we have going for Eagle  
3 Rock, if we are unable to find outside investors for  
4 Eagle Rock, there's no way USEC is going to find  
5 investors for ACP.

6 COMMISSIONER BROADBENT: Okay, thank you.

7 CHAIRMAN WILLIAMSON: Thank you. Would you  
8 address what are the expectations in terms of demand,  
9 both in the United States and the key markets over the  
10 next few years and how did the Fukushima accident  
11 affect demand? I posed the same question to the  
12 Petitioner's this morning.

13 MR. CHEVREL: Well, we have said that in our  
14 questionnaire, basically we expect the market to be  
15 strong, the demand to grow. There are development in  
16 Asia. We've talked about Saudi Arabia, the Middle  
17 East. So we do believe in development of the market.

18 CHAIRMAN WILLIAMSON: What about in the  
19 United States?

20 MR. CHEVREL: We share the idea expressed  
21 this morning that it's going to remain basically flat  
22 in the reasonable foreseeable future.

23 CHAIRMAN WILLIAMSON: Okay. You've  
24 mentioned I guess a number of times your prospects in  
25 China and you mentioned a number of other projects.

1 And I was wondering, Petitioners this morning, you  
2 know, said they didn't think you could get into the  
3 Chinese market, but clearly you have -- I don't know  
4 whether you have committed projects or what is the --  
5 you talked about, you know, your demand in a number of  
6 other countries, like China, but I was just wondering  
7 what's the basis for that, because I don't think we  
8 have any documentation on the record on these  
9 projects?

10 MR. MCMURPHY: Michael McMurphy speaking.

11 CHAIRMAN WILLIAMSON: Yeah.

12 MR. MCMURPHY: In China, AREVA has been in  
13 China for a long, long time. AREVA's predecessor,  
14 Framatome, built several of the Chinese reactors that  
15 are running now. And AREVA is building new reactors  
16 in China and AREVA is very active in the Chinese  
17 market and the Chinese are receptive.

18 Now as USEC said this morning, the target of  
19 the Chinese is to be eventually capable of serving  
20 their own market for enrichment, but that's going to  
21 be a long time before they can reach that with their  
22 aggressive nuclear new build programs on top of their  
23 already existing reactors.

24 CHAIRMAN WILLIAMSON: Okay. So in terms of  
25 your sales, commitments in China, you're saying that's

1 sort of -- that's not real now, as opposed to what the  
2 Chinese forecast for growth; is that --

3 MR. MCMURPHY: Yes, sir. Our sales are  
4 real. Our prospects are real. The Chinese  
5 projections as you read them are probably real in  
6 terms of building the reactors. And I can't even  
7 opine on their ability to bring the enrichment on.  
8 But I think the nuclear community, the enrichment  
9 community, the reactor community would all agree that  
10 it's going to be a very long time before the Chinese  
11 can have enough production capacity to serve the  
12 indigenous market, which is what their primary target  
13 is eventually.

14 CHAIRMAN WILLIAMSON: Okay. What I'm  
15 getting at is in the past --

16 MR. ROSEN: Excuse me, if I could --

17 CHAIRMAN WILLIAMSON: Sure.

18 MR. ROSEN: -- just add, Chairman  
19 Williamson, I read somewhere, I can't remember where,  
20 I'm sure Greg has it on his I-Phone, that China hopes  
21 to satisfy its indigenous needs by 2030. It's a long  
22 way out.

23 CHAIRMAN WILLIAMSON: Okay. What I was  
24 about to say is that usually when we've said a country  
25 is not likely to come to the -- you know, if an order

1 is lifted, they're not likely to come to the U.S., we  
2 have good documentation to show that, you know, they  
3 have contracts -- you know, there's a lot of evidence  
4 to show that their production is going to be consumed  
5 in other markets and therefore they won't come to the  
6 U.S. I don't think we have that on this record now,  
7 so I was wondering what you could provide posthearing.

8 MR. MCMURPHY: Mr. Chairman, we'll provide  
9 what we can and I think we can probably provide  
10 adequate documentation for you. We do have,  
11 especially as you, I think, would imagine in the  
12 Chinese market, we have some fairly heavy  
13 confidentiality requirements that they've imposed. So  
14 --

15 CHAIRMAN WILLIAMSON: Okay. So whatever you  
16 can provide. And it's not just for China, but all  
17 those other markets that you said that you were  
18 expected, you know, to use up all of your production -  
19 -

20 MR. MCMURPHY: Certainly.

21 CHAIRMAN WILLIAMSON: -- and therefore there  
22 would be no reason to expect that you would come to  
23 the U.S. market.

24 MR. MCMURPHY: Yes, Mr. Chairman, we will  
25 address that.



1                   CHAIRMAN WILLIAMSON: Okay, good, because  
2                   that's -- I think substantiating that claim is I think  
3                   an important issue here.

4                   MR. HUSISIAN: The staff report -- this is  
5                   Greg Huisian, the staff report is a little bit  
6                   incomplete in that it asks about historic capacity to  
7                   drive capacity utilization. But then you add the  
8                   overlap of the ramping down of the old gaseous  
9                   diffusion plant, which artificially made it look like  
10                  there was more capacity. And for the U.S. market, the  
11                  questionnaires asked about, you know, biggest  
12                  customers and things like that, but that wasn't asked  
13                  on the foreign side.

14                  So there's some very significant and  
15                  committed contracts that are out there, that are going  
16                  to take up the capacity that are not on the record and  
17                  we would be happy to describe them confidentially  
18                  that's out there. But that's how you get to the  
19                  figure that was mentioned today of over 80 percent  
20                  commitment going out well more than a decade into the  
21                  future is on the basis of the actual capacity and the  
22                  contracts that are not in the record. So that's the  
23                  true situation and what obviously concerns you for  
24                  sunset review purposes.

25                  CHAIRMAN WILLIAMSON: Okay. Well, that

1 would be very helpful. And you've already mentioned,  
2 I guess, the capacity utilization that you talk about  
3 in your brief and also the data in Table 4-3 of the  
4 staff report and you suggested an explanation. But  
5 you could also address that issue to.

6 MR. MCMURPHY: Be happy to do so.

7 CHAIRMAN WILLIAMSON: Good. What can you  
8 say about -- what are the expectations in terms of  
9 price, both in the U.S. and in other key markets, over  
10 the next few years?

11 MR. CHEVREL: Well, I think it has been said  
12 this morning that price projects are very difficult to  
13 do especially in the future. So obviously it would be  
14 a question of balance between supply and demand. We  
15 do think that we have a temporary setback right now  
16 because of Fukushima and the fact that some Japanese  
17 reactors are for the time being idle. But we also  
18 think that they will restart in the next few years and  
19 that the market will recover.

20 CHAIRMAN WILLIAMSON: Okay. So you're  
21 saying -- in terms of price in the U.S., you're saying  
22 that you think that's going to be static as demand is  
23 or did you -- are you --

24 MR. CHEVREL: Are you now talking about  
25 prices in the U.S. market?

1           CHAIRMAN WILLIAMSON: Well, I'm thinking  
2 about both, prices in the U.S. market and globally.

3           MR. CHEVREL: Volume, we said we're going to  
4 be flat.

5           CHAIRMAN WILLIAMSON: Yeah.

6           MR. CHEVREL: And as far as prices are  
7 concerned, it's a whirlwind market.

8           CHAIRMAN WILLIAMSON: Yeah, okay.

9           MR. CHEVREL: There's no difference between  
10 prices in the U.S. and prices actually in the world.

11          CHAIRMAN WILLIAMSON: And what you're saying  
12 in terms of what the worldwide prices is somewhat how  
13 fast the Japanese come back online, is that --

14          MR. CHEVREL: That should go up hopefully  
15 again.

16          CHAIRMAN WILLIAMSON: Okay.

17          MR. CHEVREL: But like I said, we can't  
18 predict prices.

19          CHAIRMAN WILLIAMSON: Yeah, okay. Thanks.  
20 This morning --

21          MR. MCMURPHY: Mr. Chairman?

22          CHAIRMAN WILLIAMSON: Sure.

23          MR. MCMURPHY: Mike McMurphy. There are  
24 several entities that try to predict prices. If you  
25 want those projections, they exist from the outside

1 entities. We don't really try to do our own price  
2 projection. We do expect that prices will recover, as  
3 Marc said.

4 CHAIRMAN WILLIAMSON: Okay. What's sort of  
5 relevant for our consideration is I guess the best way  
6 to put it. I was wondering about, do you believe the  
7 domestic suppliers about the typical delay between  
8 supply -- when a contract is signed and when delivery  
9 begins? And I'm also thinking about this question  
10 this -- the discussion we had this morning about  
11 whether or not domestic utilities want to have  
12 alternative -- a diversity of supply and what your  
13 experience with that and how we should take that into  
14 account?

15 MR. CHEVREL: Again here, there is a lot  
16 depending on customers. We do have some spot activity  
17 on the market, quite limited, very limited actually  
18 when you deliver in the same calendar year. Other  
19 than that, you can have an RFQ for delivery that start  
20 two years ahead, three years ahead, something small.  
21 It really depends on the needs of the customer.  
22 There's no real rule on this one.

23 CHAIRMAN WILLIAMSON: Okay.

24 MR. MCMURPHY: Again, Mike McMurphy, but on  
25 the diversity question, our experience -- I would say

1 our experience is very similar to USEC, which is that  
2 the customers want to -- by and large want to have  
3 diversity of supply from multiple suppliers and they  
4 want to have a security of supply, to make sure that  
5 they know that the entity they're buying from is  
6 producing and will deliver.

7 CHAIRMAN WILLIAMSON: Okay. Okay, thank you  
8 for those answers. Commissioner Aranoff?

9 COMMISSIONER ARANOFF: Thank you, Mr.  
10 Chairman. So much easier when I went first this  
11 morning and my colleagues have asked most of my  
12 questions. In your testimony today, you've talked  
13 about the effect of the events at Fukushima as being  
14 somewhat temporary and having more or less work their  
15 way through the system and Japanese capacity coming  
16 back on line. But obviously in just the last few  
17 weeks, there's been a lot of news that the damage that  
18 was done and is being done from the Fukushima facility  
19 is much worse than what had been understood at the  
20 time. Has that started to have an effect on the  
21 market and do you think it will slow down or stop some  
22 of the restarts of Japanese capacity?

23 MR. CHEVREL: Well, Commissioner, we haven't  
24 seen anything for the time being on the market. We  
25 think actually that what we're talking about with the

1 news is really regarding the Fukushima, the station in  
2 itself, whereas parallel to that the new Nuclear  
3 Regulatory Authority is now working on the restart of  
4 several computers -- sorry, several power reactors.  
5 And we haven't seen an effect on that.

6 But now again it's a sensitive issue in  
7 Japan obviously and we don't know how it will develop.

8 But we have to remind you that the government over  
9 there is strongly pro-nuclear, has now a large  
10 majority in both houses of parliament, so that could  
11 be a factor too for the restart of reactors.

12 COMMISSIONER ARANOFF: Okay. In talking  
13 about AREVA's committed capacity going forward and you  
14 mentioned the figure of 80 percent committed through  
15 2025, and I know you were going to try and document  
16 that in response to a request from the Chairman and I  
17 had a follow-on request. I think what would be  
18 helpful to us would be to look at the amount of  
19 uncommitted capacity you have relative to the level of  
20 uncommitted demand in the market for the years for  
21 which contracts are currently being considered or  
22 negotiated, you know, covering over the next few  
23 years.

24 Because we need to -- I mean, the Commission  
25 said the last time, the last review, that what we

1 needed to look at was uncommitted demand within the  
2 reasonably foreseeable future and competition for  
3 those contracts. So I think it would be helpful to  
4 look at what capacity is available relative to that  
5 uncommitted demand.

6 MR. CHEVREL: We can do that.

7 COMMISSIONER ARANOFF: Okay, thank you. My  
8 last question I think is somewhat similar to questions  
9 that my colleagues have asked and it has to do with if  
10 the Commission is looking principally at LES as either  
11 the sole domestic producer or the largest domestic  
12 producer for the reasonably foreseeable future. The  
13 argument you made was that LES is doing great and  
14 they're not vulnerable and so they wouldn't have any  
15 effect from revocation of the order.

16 And I would ask for those of you who have  
17 access to the confidential record to take a look  
18 posthearing. Your brief mentioned some of the things  
19 you would expect to see with a startup: production is  
20 up, capacity is up, sales are up. But take a look at  
21 the financials and some of the other things in the  
22 confidential record and talk about whether or not LES  
23 would be vulnerable to increased competition from  
24 French product if the order were revoked. I really  
25 would like to have the argument spelled out why

1 competition from whether it's French, LEU, would not  
2 harm LES's attempts to continue to increase its U.S.  
3 market share if the order were revoked. Okay?

4 MR. ROSEN: We'll do that.

5 COMMISSIONER ARANOFF: Okay. With that I  
6 surprisingly don't have any further questions. But I  
7 do want to thank all of the witnesses for your  
8 testimony and for traveling to be with us today.  
9 Thank you, Mr. Chairman. Mr. Chairman is not in his  
10 chair, but I believe that after me comes Commissioner  
11 Pinkert.

12 COMMISSIONER PINKERT: Thank you,  
13 Commissioners. Now you've already talked about the  
14 use of long-term contracts and the various conditions  
15 on those contracts in this industry. But given the  
16 use of the long-term contracts and the condition, what  
17 value are price trends and comparisons to the analysis  
18 we have to perform in this review?

19 MR. HUSISIAN: I think the price trends are  
20 just one of the pieces of information you have to look  
21 at. You have to look at market share. You can be  
22 misled easily, for example, in that deliveries that  
23 are occurring at the same time may have been pursuant  
24 to contracts that were signed at different times. So  
25 because of that, when the marketplace has changed a



1 bit, then it can look like you're overselling, when in  
2 fact the contract was quite reasonable at the time;  
3 whether you're underselling, when in fact you were  
4 selling at the market.

5 So looking at the delivered prices, this  
6 isn't like, you know, a steel market where you've got  
7 thousands of spot sales and the underselling, you  
8 know, might tell you something like that. It's a bit  
9 complicated to look at it. That's one of the reasons  
10 why I think stepping back and looking at the market  
11 share figures they have here tells you something here,  
12 because if there really were this rampant and  
13 aggressive underselling, why the heck is AREVA losing,  
14 its sales going down by 50 percent over the last five  
15 years?

16 But just as a general economic matter, you  
17 kind of have to take it with a bit of a grain of salt  
18 because you would have to adjust for things like the  
19 quantities when the contract was signed, when the  
20 delivery is taking place, the terms, things like that,  
21 that probably aren't going to be apparent in the  
22 record based on the information that that's there.

23 COMMISSIONER PINKERT: Now, Mr. Rosen, you  
24 talked earlier about some of the suggestions as to the  
25 length of the reasonably foreseeable future in this

1 investigation; in other words, the possible life. And  
2 you suggested that 2018 was too long. What is the  
3 reasonably foreseeable future in this case?

4 MR. ROSEN: I think the big issue here is  
5 whether or not ACP will be producing. That's the big  
6 issue and I think that's the first judgment that the  
7 Commission has to make. If you make a judgment next  
8 month that ACP is not likely to get off the ground, it  
9 doesn't matter what you set as the reasonably future.  
10 You'll be looking only at LES and what's going to be  
11 happening with LES in the next few years. And I would  
12 submit that we'll put as much information that we can  
13 before you with respect to the health of LES, but all  
14 indications are that it's fully sold its capacity and  
15 it's expanding its capacity such that in the next  
16 several years, whichever year you want to pick,  
17 revocation would not adversely affect LES because it  
18 is and will be sold out for the next several years.

19 MR. HUSISIAN: I would add, if you look at  
20 what Mr. Cunningham said on page 80 of the hearing  
21 transcript the last time around, he actually divided  
22 it up in a way that doesn't quite make sense. What he  
23 said was that for nearly all things, the one- or two-  
24 year period that you usually would use is quite  
25 reasonable, what he called the pretty traditional time

1 period. But he said with regard to one exact aspect,  
2 you need to look at a four-year period, which is the  
3 impact that longer-term contracts that are being  
4 entered into now are going to have in the future.

5 And on that point, he has it exactly  
6 backwards. The fact that a contract -- you're  
7 contracting say in 2013 for demand in 2018 doesn't  
8 mean you need a longer timeframe. What it means is  
9 you don't have to wait until 2018 to see any material  
10 injury. You can look at it right now because it's  
11 observable based on the long-term contracts.

12 So there's this disconnect. They kind of  
13 throw out there, oh, there's lots of long-term  
14 contracts, so therefore you need to look at a longer  
15 timeframe for everything is what they're saying this  
16 time around. But that logical connection is just not  
17 there. The fact that there's longer contracts for  
18 demand actually gives you a window into the future and  
19 makes it easier to tell right now what is out there.  
20 It doesn't give you any reason to say, gee, this means  
21 that they should have an extraordinarily long time to  
22 be considered to be a domestic producer and to raise  
23 their financing.

24 MR. ROSEN: And Stuart Rosen again. Let me  
25 just add to that, if you conclude that it's likely ACP

1 will become a commercial reality, what are you  
2 deciding? You're deciding to accept the projection of  
3 USEC that it will begin operations in 2018 or maybe  
4 2017 or maybe 2016 they say in their brief without  
5 support, but I believe in the 10Q filing they're  
6 talking about 17 or 18. Even at that point, USEC's  
7 ACP operations would pale in relation to LES's fully  
8 committed capacity at that point. So it really would  
9 come down to how do we expect LES to be doing a few  
10 years out, four years out, 17.

11 COMMISSIONER PINKERT: Thank you. My last  
12 question touches on some of the policy issues that  
13 have been raised today, but it has a specifically  
14 economic focus. Assume that the United States  
15 Government wants to support the financing of the ACP,  
16 what's the most efficient way for the U.S. Government  
17 to do that? Is it to support trade relief or is it to  
18 do it in some other way?

19 MR. ROSEN: Interesting question. We submit  
20 that it can't support it through the statute as it's  
21 written to conform with the requirements of our WTO  
22 obligations. This statute has to be administered  
23 based upon the facts and the evidence to determine  
24 whether or not there's dumping, to determine whether  
25 or not there's injury, to determine whether or not

1 injury would continue or recur in the absence of an  
2 order.

3 The U.S. Government has supported USEC well  
4 into the billions over the years from. I'm going back  
5 a long time, just the RD&D program that we're talking  
6 about that's now being implemented I believe is a \$350  
7 million program. If they want to do that, that's  
8 DOE's business, that's Congress's business. That's  
9 subject to scrutiny, criticism, et cetera. But it's  
10 not the role of the Commerce Department or this  
11 Commission to think about supporting USEC in this  
12 fashion.

13 But let me just add a footnote to that. The  
14 more USEC is supported by the U.S. Government, the  
15 more USEC exposes itself to potential criticism and  
16 claims in the international marketplace that is being  
17 unfairly subsidized as it travels about the world  
18 attempting to make sales. Not an issue today because  
19 it's got nothing it's producing that it has to sell;  
20 but if the U.S. Government were to go down that road,  
21 there are international issues that come into play.

22 COMMISSIONER PINKERT: Thank you. I have no  
23 further questions for this panel. I appreciate the  
24 testimony and I look forward to the posthearing  
25 submission.

1                   CHAIRMAN WILLIAMSON: Thank you.

2                   Commissioner Johanson?

3                   COMMISSIONER JOHANSON: Thank you, Mr.  
4                   Chairman. This is an issue I raised with the  
5                   Petitioners this morning and would appreciate a  
6                   response for you all on this. But can you help me  
7                   understand the relevance of the Corfu Declaration to  
8                   the global market for enriched uranium? This was  
9                   raised both in the staff report and also I believe in  
10                  the Petitioner's brief.

11                  MR. MCMURPHY: I wish I could, but I can't.  
12                  I don't know what the Corfu Declaration says. I  
13                  don't know the operation of it. I guess you would  
14                  have to get it from the EU.

15                  COMMISSIONER JOHANSON: I would think of any  
16                  entity, AREVA would be most impacted by this.

17                  MR. MCMURPHY: I'm sorry?

18                  COMMISSIONER JOHANSON: I would think of any  
19                  entity, AREVA would be most impacted by this, by the  
20                  Corfu Declaration.

21                  MR. MCMURPHY: Well, depending on what it  
22                  says. As I said, I don't know what it says. But if  
23                  it's related to European enrichers, then AREVA and  
24                  URENCO are the current European enrichers, that's  
25                  true.

1 COMMISSIONER JOHANSON: Okay.

2 MR. MCMURPHY: I don't know what more to  
3 say.

4 COMMISSIONER JOHANSON: All right, that's  
5 fine. If you don't know, you don't know. I  
6 understand. Kind of along those lines though, does  
7 AREVA import non-EU-produced enriched uranium into the  
8 European Union?

9 MR. MCMURPHY: Commissioner, I don't know if  
10 the answer is confidential.

11 COMMISSIONER JOHANSON: Okay. I understand  
12 and I thought that might be your response. An issue  
13 that we have in this investigation on the whole is  
14 that there is a lot of confidential information and I  
15 understand it.

16 MR. MCMURPHY: But we certainly -- we can  
17 answer the question under confidence.

18 COMMISSIONER JOHANSON: Okay, that's fine.  
19 Thank you for your response or your attempted  
20 response. I'll look forward to seeing the answer.

21 With regard to Eagle Rock, one of you, and I  
22 believe it was Mr. McMurphy perhaps, mentioned the  
23 issue of financing for this project. Has fracking in  
24 the United States and the resulting increase in  
25 natural gas production in the U.S. market impacted

1 possible financing for Eagle Rock?

2 MR. MCMURPHY: I would say not directly at  
3 all. You know, fracking and the natural gas prices  
4 are affecting the nuclear industry in the U.S.  
5 Whether they should or not if companies have a long-  
6 term vision is another question. But it definitely is  
7 impacting the nuclear industry and how the nuclear  
8 industry operates.

9 But I think we would also agree with what  
10 USEC said this morning, which is that over time the  
11 nuclear generation in the U.S. will be essentially  
12 flat for now, I would say the next seven to 10 years  
13 anyway. We don't expect new builds other than the  
14 ones that are underway. And the ones that were  
15 mentioned in this morning where they're finishing old  
16 plants and they mentioned one of the TVA plants and an  
17 additional TVA plant may be finished after that.

18 So fracking I would say has had an impact on  
19 the attitude of the utilities to investing in new  
20 nuclear, but I don't think it has any direct impact on  
21 us and on the enrichment plants.

22 COMMISSIONER JOHANSON: All right. Well,  
23 thank you. Well, there are many issues in this  
24 investigation. I am satisfied that I have learned  
25 enough for now. That completes my questions, but I do



1 look forward to seeing the posthearing briefs and  
2 learning from those. Thank you again for appearing  
3 here today.

4 CHAIRMAN WILLIAMSON: Okay, thank you. I  
5 just had one additional question. USEC argues that  
6 the AREVA's new plant has a modular design and  
7 therefore capacity could be expanded relatively  
8 easily. I was wondering if you could respond to that  
9 and maybe explain exactly what it means when you have  
10 a modular plant?

11 MR. CHEVREL: Well, you have the gaseous  
12 diffusion plant. Once it was done, it was done and  
13 suddenly you couldn't add capacity or you had to build  
14 a whole new plant with probably million or two of  
15 capacity. Whereas now basically what you can do is  
16 build new holes, one after the other, and in those  
17 holes put new cascades. So that would be the modular  
18 aspect of it.

19 However, it still a shared investment to  
20 build a given hole and to buy the cascades into the  
21 hole. So it's not as if your, you know, your marginal  
22 investment was small. It's still an important  
23 investment and you're not going to do it just like  
24 that without asking yourself first do I have the  
25 market for that to fill the capacities.

1                   CHAIRMAN WILLIAMSON: How long might it take  
2 to do, say, from the time you decide to make such a  
3 decision until you bring it on line, just roughly?

4                   MR. CHEVREL: I would say we'd have to  
5 construct the whole structure. It depends. You have  
6 the holes I would say empty. But even then you would  
7 immobilize capital for possibly quite a long time. If  
8 you did so probably maybe, I don't know, one to two  
9 years. But other than that, you will have three years  
10 I would say to that. And that's not taking into  
11 account the licensing issue, et cetera. You don't  
12 necessarily have -- if licensing the world has a much  
13 smaller capacity and you usually don't get the  
14 authorization immediately for, you know, twice your  
15 capacity. Capacity, it's public. I think it's eight  
16 million for our plant of 7.5 million. So we don't  
17 have that capacity to increase without a new license.

18                  CHAIRMAN WILLIAMSON: Okay. So basically  
19 what you're saying is if demand expanded or you had  
20 some new opportunities to sell, if your operating at  
21 full capacity, it's going to take you a while before  
22 you can build -- add another modular unit or another  
23 cask?

24                  MR. CHEVREL: Absolutely, absolutely. It  
25 can be done overnight. It's really quite a long

1 process.

2 CHAIRMAN WILLIAMSON: Now is the LES plant  
3 similar? Is that in a similar situation, do you know?

4 MR. MCMURPHY: Well, LES has eliminated one  
5 hurdle that we would have for George Besse II. Their  
6 plant is licensed for more than they're building right  
7 now. As Marc just said, the George Besse II plant is  
8 licensed for eight million. So it would have to be  
9 licensed for anything above that. We would have to  
10 build the halls. We would have to build the  
11 infrastructure. We would have to buy the centrifuges.

12 We would have to install the centrifuges. And based  
13 on our own commercial policy, we would have to have a  
14 significant majority of the new capacity already under  
15 contract before we started building.

16 But LES, it's modular also. It's the same  
17 concept, but they have licensed -- I don't know what  
18 they've built in terms of infrastructure to handle the  
19 expansion already.

20 CHAIRMAN WILLIAMSON: Okay. And the license  
21 would come from the national --

22 MR. MCMURPHY: Yes.

23 CHAIRMAN WILLIAMSON: -- national  
24 authorities who regulate?

25 MR. MCMURPHY: Yes, sir.

1           CHAIRMAN WILLIAMSON: Okay. I think that's  
2 the only question I have. I want to reiterate the  
3 importance of whatever documentation you can provide  
4 on that committed capacity you have around the world  
5 to support that, because it also gets to this question  
6 of how fast can you expand if the order were lifted.

7           Let's see, I don't have any further  
8 questions. Does any other Commissioner have  
9 additional questions at this time?

10           (No response.)

11           CHAIRMAN WILLIAMSON: In that case, I guess  
12 we can thank you. Does the staff have any questions  
13 for this panel?

14           MR. MCCLURE: Jim McClure, Office of  
15 Investigations. I'll say the phrase you like to hear  
16 most, staff has no questions.

17           CHAIRMAN WILLIAMSON: Thank you.  
18 Petitioners, those in favor of the continuation, Mr.  
19 Cunningham?

20           MR. CUNNINGHAM: We have one question.

21           CHAIRMAN WILLIAMSON: Sure.

22           MR. CUNNINGHAM: Directing your attention to  
23 Table 2-10, which shows AREVA's imports in the United  
24 States over the past number of years, would you be  
25 willing to inform the Commission as to each year how

1 much of those imports were produced by URENCO? It  
2 sounded to me like a yes or no question.

3 MR. ROSEN: First of all, Stuart Rosen, we  
4 can't share this table, as far as I understand it,  
5 with our client, so that's the first inhibition we  
6 have.

7 CHAIRMAN WILLIAMSON: Okay. Can this be  
8 something that can be worked out with staff afterwards  
9 to address the question what can be told to -- what  
10 information can be provided to the Commission? Is  
11 that okay, Mr. Cunningham?

12 MR. CUNNINGHAM: As long as it gets worked  
13 out, it's fine with me. I'd be happy to have it  
14 entirely confidential.

15 MR. ROSEN: Let me respond.

16 MR. CUNNINGHAM: The staff table -- by the  
17 way, the staff table is a public document. That's a  
18 public document. You can show your client that. It's  
19 a public version of the report, not bracketed.

20 CHAIRMAN WILLIAMSON: Okay.

21 MR. ROSEN: One minute, Mr. Chairman.

22 MR. CUNNINGHAM: Can I ask that this delay  
23 in response not be taken out of our time?

24 CHAIRMAN WILLIAMSON: Yes, Mr. McClure?

25 MR. MCCLURE: Jim McClure, Office of

1 Investigations. All the parties have a copy of the  
2 public version, so I would suggest to Mr. Rosen that  
3 he, at the appropriate time, just pull out his copy of  
4 the public version of the prehearing report and I  
5 think he'll see that Table 2-10 is indeed non-  
6 suppressed. Now whether you're going to answer that  
7 or not, it's up to you guys. But, anyway, always  
8 resort to the public prehearing report. Thank you.

9 CHAIRMAN WILLIAMSON: Yeah, okay, and the  
10 allocations in it.

11 MR. MCCLURE: Thank you.

12 CHAIRMAN WILLIAMSON: Okay, thank you.  
13 Okay. Any further questions of this panel?

14 MR. CUNNINGHAM: I'm sorry, I lost his  
15 answer. Is that a yes or a no, that they will or will  
16 not supply it, supply the information?

17 MR. MCMURPHY: The answer isn't very clear,  
18 I don't know.

19 CHAIRMAN WILLIAMSON: Okay. I think that --  
20 the question I got is I think they have to work it out  
21 as to -- you know, the table is public. The question  
22 about the allocation within it I guess may -- that may  
23 raise questions. But I leave that to be worked out  
24 between the parties and staff. Okay? Good. So you  
25 all can consult about that afterwards.

1           Right now if there's no further questions, I  
2           propose to go to closing statements. And let's see,  
3           and we have those in favor of continuation -- excuse  
4           me? One minute. Okay. For those in favor of  
5           continuation, we have I guess seven minutes direct,  
6           five minutes closing, for a total of 12 minutes. For  
7           those in opposition, there's 14 minutes direct and  
8           five minutes closing, for a total of 19 minutes. And  
9           our tradition is usually to combine those. And Mr.  
10          Cunningham, you can start with that.

11                 First, I want to thank this panel for coming  
12           today and presenting their testimony. And I can  
13           dismiss you now and then we'll have closing statements  
14           as soon as everyone is settled. Thank you.

15                         (Pause.)

16                         CHAIRMAN WILLIAMSON: Mr. Cunningham, you  
17           can begin when you're ready.

18                         MR. CUNNINGHAM: Good afternoon. I'll be  
19           brief and then I'll turn it over to Mr. Trendl, who  
20           will undoubtedly be even briefer than me, as is his  
21           wont.

22                         Starting with the issue of whether USEC is a  
23           member of the U.S. industry, this is not a case in  
24           which you're dealing with a company that is trying to  
25           get into the business of start-up production. It is

1 not a case where you're dealing with a company that it  
2 has closed its plant to go out of the business. This  
3 is a case where USEC is transitioning to a new  
4 centrifuge technology at a different facility, and  
5 there will be a hiatus in its active production. But  
6 in this transition period, USEC is very clearly still  
7 an active participant in the market with U.S.  
8 production. This is true in not one way, as the  
9 Respondents suggest, but in two ways.

10 The first way is that USEC, as we've talked  
11 about before, is using inventory from its past  
12 production in Paducah to supply commitments to U.S.  
13 customers. But secondly, USEC has been taking orders  
14 and has a substantial backlog of orders for its ACP  
15 production, the new production in the new plant.

16 Now this is just not a case like synthetic  
17 indigo where the Commission found no likelihood of  
18 future U.S. production. We're doing everything in the  
19 marketplace that a producer does in the marketplace  
20 transitioning to production in a new plant. It is as  
21 if the USEC plant had burned down, we're going to  
22 build a new plant, and we were using past inventories  
23 to supply the market, that we were taking orders based  
24 on the production in the forthcoming plant. You  
25 wouldn't even hesitate to say that USEC is a member of



1 the U.S. industry.

2 Now look also at the evidence of the  
3 substantiality of the ACP project and of the  
4 commitment to the ACP project by both USEC and the  
5 U.S. Government. And think about this in terms of the  
6 Sebacic Acid criteria. Look at the investment, \$2.5  
7 billion invested by USEC in putting in the new plant:  
8 \$270 million put in by DOE, plus \$80 million by USEC  
9 in the research, development, and demonstration  
10 project. And look at the other criteria from Sebacic  
11 Acid.

12 Technical expertise, you heard Mr. Sewell  
13 and Mr. Rogers on this.

14 Value added in the U.S. Enrichment is the  
15 largest part of LEU's value.

16 Employment levels, and this is really  
17 important, they're very substantial already in the ACP  
18 project. You heard Mr. Rogers talk about it. We  
19 believe that employment by USEC in the ACP project is  
20 at least as large and quite probably substantially  
21 larger than LES's employment in the United States  
22 today.

23 Quantity and type of parts sourced in the  
24 U.S., you heard the testimony today. We have hundreds  
25 of millions of dollars in parts waiting to be

1 installed.

2 And finally, other costs and activities in  
3 the U.S. -- I'm going down the Sebacic Acid list here  
4 -- look at the map that Mr. Rogers had presented of  
5 the facilities all over the U.S. that are contributing  
6 to this project.

7 Now moving along from that issue, I want to  
8 make one point regarding the significance of AREVA's  
9 substantial continuing sales in the United States.  
10 Statute speaks in terms of continuation or resumption.

11 There are myriad sunset review cases in which the  
12 Commission has found continuing U.S. sales by a  
13 respondent of subject merchandise after the entry of  
14 order to be a significant indication supporting a  
15 determination that dumped imports will continue or  
16 increase if the order is revoked.

17 Why is that? Because it shows that  
18 exporters serious interest in and commitment to future  
19 participation in the U.S. market. I submit to you in  
20 that regard, the evidence you have on the record here  
21 is equally persuasive. Whatever else you may conclude  
22 from AREVA's continuing substantial sales in the U.S.,  
23 even if they are URENCO production, you must  
24 acknowledge that they dramatically show AREVA's  
25 interest in and commitment to U.S. selling. Indeed,

1 Mr. McMurphy said exactly that in his statement today,  
2 if the order is lifted, those sales will become AREVA  
3 French production sales, dumped subject imports. And  
4 that's what you need to find here and that's clear on  
5 the record that that's likely to occur.

6 Finally, last point I want to make before  
7 turning to Mr. Trendl. There was debate over whether  
8 -- as there is in most of these sunset review cases  
9 and any likelihood of injury case, whether AREVA has  
10 or doesn't have prospects for sales in various non-  
11 U.S. markets. We think most of them are declining  
12 demand particularly after the Fukushima incident.  
13 AREVA points to a project in the Middle East and a  
14 project in Korea and that sort of thing.

15 Let me cut through that. I ask you to look  
16 at Mr. Klett's chart number 10. These are hard facts  
17 from AREVA. This is what is happening to AREVA almost  
18 entirely outside the United States. These are order  
19 cancellations, which have soared since the Fukushima  
20 incident. Clearly there is pressure on AREVA to seek  
21 business in the United States. Clearly it's under  
22 pressure to fill that plant. And remember again, the  
23 nature of this type of plant that AREVA operates and  
24 that we will be operating is that it is capital  
25 intensive. It is very important to maintain a high

1 level of utilization in order to handle the fixed  
2 costs of the plant. This sort of thing means that  
3 you're under pressure to seek other markets and the  
4 U.S. is the biggest available market with the best  
5 demand -- possibly except for China, with the best  
6 demand portrait.

7 Now let me ask Mr. Trendl to make some  
8 remarks.

9 MR. TRENDL: Thank you, Chairman,  
10 Commissioners. I appreciate the time to chat and I'll  
11 try to indeed be brief. In fact I apologize because  
12 normally I would not have done this except in the  
13 posthearing brief. But listening to the other side,  
14 it just irked me beyond belief that they've portrayed  
15 a list of your cases as somehow suggesting that USEC  
16 was not part of the domestic industry. You know,  
17 while your cases are not precedential, nevertheless  
18 they cite a number of cases that they say, oh, we  
19 ignore them. It's not even distinguishable, they're  
20 inapplicable, and I'd like to go through a few of  
21 these things.

22 You've heard about the plant. All of the  
23 Commissioners that were present today or their staff  
24 have seen the facility either in 2007 or at the end of  
25 July. This is not a pretty little machine, as counsel

1 called it. This is a substantial facility. So let's  
2 look at the cases that they cite and I'm going through  
3 on their brief, without changing how they  
4 characterized them.

5 Starting at page eight, they're saying that  
6 you're not a domestic producer if you're a mere seller  
7 or distributor. USEC is not a seller or distributor.

8 They make their own stuff. They've been making it  
9 for years. They've made it through the end of July.  
10 They're still selling it. And going through the  
11 factors of Sebacic Acid, you know, they're making it  
12 again shortly. So, yes, the statute does not permit  
13 mere sellers or distributors. That is not USEC.

14 Or one who merely engages in finishing  
15 operations. There are not finishing operations to  
16 enriched uranium. Either you're making it or you're  
17 not and we're making it and we've got the facility  
18 that makes it and the investment and the people and  
19 the technology.

20 They cite a case that said if you're only an  
21 import of the subject merchandise. We made it clear  
22 that we're not just an importer of subject merchandise  
23 and the stuff that gets sold in the United States in  
24 fact is U.S. produced in great measure.

25 They talk about if you're just a total

1 arranger, you are not part of the domestic industry.  
2 I'm not even arguing about their characterization of  
3 these cases, but just the ones that they cite. USEC,  
4 there's no way we can be construed as a total  
5 producer.

6 Merely supplying raw materials and paying a  
7 fabrication fee. Wholly inapplicable. USEC doesn't  
8 do that. I don't think they can -- AREVA can  
9 sincerely suggest that that's what we are doing.

10 The one case that they do cite is mentioned  
11 during my presentation this morning, Sebacic Acid.  
12 They cite two companies, CasChem and Dover, but  
13 neither one of them was currently capable of producing  
14 the merchandise in commercial quantities, instead of  
15 looking at the third company, the one that we cite in  
16 our brief in that same case, Genesis Chemicals, which  
17 was a U.S. firm that was opposed to revocation. It  
18 was a domestic producer and a member of the domestic  
19 industry, even though they stopped producing during  
20 the course of the review. And the ITC found that  
21 their capital investment in the industry was  
22 significant and they continued to own their production  
23 facilities in which it invested. We've done more than  
24 that. We've advanced our production facility.

25 So in that regard, I'd like to also rebut

1 and take note that AREVA's counsel tries to make much  
2 of USEC arguing a prior case, that LES was not a  
3 domestic producer prior to LES starting commercial  
4 production. Here, AREVA is giving us another  
5 opportunity to demonstrate the uniqueness of USEC's  
6 position in the U.S. market and why USEC is a domestic  
7 producer as contrasted with these other cases. Unlike  
8 LES and the two companies they cite from Sebacic Acid,  
9 USEC has been a domestic producer for decades. USEC,  
10 unlike LES five years ago, is transitioning from one  
11 form of production to another form of production.

12 It's not starting from scratch like LES was  
13 doing. USEC is closest to the company I just  
14 mentioned in Sebacic Acid, which I'll pronounce  
15 differently every time I say it. We produced during  
16 most of the period -- we're producing test quantities  
17 now. And the ACP meets the ITC's definition for the  
18 future probable production in existing plant with a  
19 license for commercial production.

20 And unlike the company in the Synthetic  
21 Indigo case, which I believe Commissioner Aranoff  
22 mentioned, that company ceased production for some  
23 time and actually went out of business during the  
24 review. That's not USEC. We're here, and we intend  
25 to be here for a while.

1           These cases cited by counsel for AREVA have  
2 nothing to do with the case that's in front of you  
3 today, with all due respect.

4           MR. CUNNINGHAM: One last point. I submit  
5 the only way you can find USEC not a member of the  
6 U.S. industry is for this commission to conclude that  
7 the ACP project can't be financed. That's really what  
8 it boils down to, and that's not your job, and it's  
9 not a reasonable assumption to make at this point  
10 anyway.

11           So go forward with it. And the last thing  
12 I'd say to time period, USEC needs to get this  
13 financing done in a year and a half to two years.  
14 That's okay. That's a good time period. In four  
15 years then, we'll be at -- in two and a half years,  
16 we'll be back in production. But one and a half to  
17 two years is the time when the effect will either make  
18 or break USEC's ability to get financing.

19           That has been a good day.

20           CHAIRMAN WILLIAMSON: Thank you.

21           MR. CUNNINGHAM: Thank you.

22           (Pause.)

23           CHAIRMAN WILLIAMSON: Okay. You may begin  
24 when you're ready, Mr. Rosen.

25           MR. ROSEN: Thank you, Mr. Chairman and



1 commissioners. With your permission, I'll proceed  
2 without my sign, and I'll also proceed without my  
3 script because you've been hearing -- you've been  
4 hearing from us and for USEC for several hours, and  
5 we've gone over the ground quite thoroughly. And I  
6 think you understand the positions of the parties  
7 quite well, and we appreciate that.

8 Most striking is the focus that needs to be  
9 made on production. We recognize that USEC has  
10 produced for many, many years, and that it has SWUs,  
11 it has LEU in inventory. We recognize that USEC,  
12 along with the U.S. Government, has spent billions  
13 toward the development and rolling out of a facility  
14 which could produce commercially down the road. But  
15 spending a lot of money does not mean that that will  
16 become a reality. What is needed is operational  
17 security, comfort that the program really can work  
18 commercially, and financing to make it a reality.

19 Those are the issues here. All of the  
20 facets that Mr. Trendl touched upon, capital  
21 expenditure, employees, inventory inhouse, et cetera,  
22 don't put a SWU on the table. They don't do anything  
23 in terms of having LEU available down the road for  
24 sale into the marketplace. It's a possibility. It is  
25 not yet a reality.

1           Mr. Trendl spoke in the present tense. The  
2 reality is in the past. The reality is that USEC  
3 produced -- made LEU in the past. It doesn't make it  
4 anymore. Even if its cascade becomes operational and  
5 can work, all it will produce is 42,000 SWUs per year.  
6       Nothing.

7           USEC must get from where it is today to a  
8 long way down the road to having a facility with 96  
9 cascades, 120 centrifuges each, if I am accurate on  
10 the numbers. And that's not today's reality. It's a  
11 possibility for the future. It's not a reality.

12           The task before this commission is to  
13 determine whether the possibility is a likelihood.  
14 And we submit that the record is full of information  
15 to make you scratch your heads and determine that we  
16 are not in a position to say it's a likelihood, if the  
17 likelihood that USEC promised you five years ago is  
18 not in place, and the marketplace is hesitating, and  
19 USEC is telling the world in its SEC filings that this  
20 may not become a reality, we may have to abandon ship.

21           If you think in the face of all of that  
22 evidence and all of the pronouncements from USEC  
23 itself that its future operation of ACP is a  
24 probability in the near-term, I would think that that  
25 requires very careful deliberation.

1           A second aspect of this is AREVA, what has  
2           it been doing, and what will it be doing. AREVA is a  
3           world player, and as you have heard, the marketplace  
4           for nuclear services and for LEU is broad and is  
5           expanding, with obviously a major Fukushima-related  
6           hiccup. But the staff report makes clear that the  
7           marketplace is expanding, long-term demand is growing.  
8           The record is clear that capacity is limited, and it  
9           will be detailed for you in the posthearing brief.

10           Our capacity is largely committed. There is  
11           not a whole lot to come possibly to the U.S. market.  
12           And we would submit to you that simply changing from  
13           non-subject LEU, which we have utilized to service  
14           this market in a responsible way, to French LEU has no  
15           effect whatsoever on the marketplace, and it certainly  
16           has no effect on USEC, which has no LEU to purvey, no  
17           enrichment services to purvey today other than  
18           enrichment services that it gets through its  
19           arrangements with Tenex.

20           So based on all of this, we believe that the  
21           appropriate decision for this commission is that  
22           revocation of the LEU from France order would not lead  
23           to a continuation or a recurrence of injury to the  
24           domestic industry, which is today LES and possibly,  
25           but not likely, USEC.

1 Thank you very much for bearing with us.

2 CHAIRMAN WILLIAMSON: Thank you. I want to  
3 thank all of the witnesses for their testimony today  
4 and closing statement.

5 Posthearing briefs, statements responsive to  
6 questions, and requests of the Commission and  
7 corrections to the transcript must be filed by  
8 September 19, 2013. Closing of the record and final  
9 release of data to parties is October 10, 2013. Final  
10 comments are due October 15, 2013. And with that,  
11 this hearing is adjourned. Thank you.

12 (Whereupon, at 4:00 p.m., the hearing in the  
13 above-entitled matter was adjourned.)

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**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Low Enriched Uranium from France  
**INVESTIGATION NO.:** 731-TA-909  
**HEARING DATE:** September 10, 2013  
**LOCATION:** Washington, D.C.  
**NATURE OF HEARING:** Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: September 10, 2013

SIGNED: LaShonne Robinson  
Signature of the Contractor or the  
Authorized Contractor's Representative  
1220 L Street, N.W. - Suite 600  
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Rebecca McCrary  
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Sofia Misenheimer  
Signature of Court Reporter