

UNITED STATES
INTERNATIONAL TRADE COMMISSION

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

Pages: 1 through 269

Place: Washington, D.C.

Date: October 11, 2007

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THE UNITED STATES INTERNATIONAL TRADE COMMISSION

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)	Investigation No.:
LOW ENRICHED URANIUM)	731-TA-909 (Review)
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Thursday,
October 11, 2007

Room No. 101
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 DANIEL R. PEARSON, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

DANIEL R. PEARSON, CHAIRMAN
SHARA L. ARANOFF, VICE CHAIRMAN
CHARLOTTE R. LANE, COMMISSIONER
IRVING A. WILLIAMSON, COMMISSIONER
DEAN A. PINKERT, COMMISSIONER

APPEARANCES: (Cont'd.)

On behalf of the International Trade Commission:

Staff:

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WILLIAM R. BISHOP, HEARINGS AND MEETINGS
COORDINATOR
SHARON D. BELLAMY, HEARINGS AND MEETINGS ASSISTANT
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JACK GREENBLATT, INDUSTRY ANALYST
KELLY CLARK, ECONOMIST
DAVID BOYLAND, ACCOUNTANT/AUDITOR
PETER SULTAN, ATTORNEY
DIANE MAZUR, SUPERVISORY INVESTIGATOR

In Support of the Continuation of Antidumping Duty
Order:

On behalf of USEC, Inc. and its wholly owned
subsidiary, United States Enrichment Corporation
(Collectively USEC):

PHILIP G. SEWELL, Senior Vice President, American
Centrifuge and Russian HEU, USEC
ROBERT VAN NAMEN, Senior Vice President, Uranium
Enrichment, USEC
MICHAEL C. WHITEHURST, Director, Marketing, USEC
JOHN DORRIAN, Assistant Controller, USEC
PHILIP POTTER, Counsel to United Steel Workers,
Law Offices of Philip Potter
DANIEL W. KLETT, Principal, Capital Trade, Inc.

RICHARD O. CUNNINGHAM, Esquire
THOMAS J. TRENDL, Esquire
ERIC C. EMERSON, Esquire
Steptoe & Johnson, LLP
Washington, D.C.

APPEARANCES: (Cont'd.)

In Opposition to Continuation of Antidumping Duty Order:

On behalf of Eurodif S.A., AREVA, AREVA Inc. and AREVA NC Inc.:

JOSE-LUIS CARBONELL, Senior Vice President, AREVA,
S.A.

STUART M. ROSEN, Esquire
JOHN M. RYAN, Esquire
Weil, Gotshal & Manges, LLP
Washington, D.C.

On behalf of Ad Hoc Utilities Group (AHUG):

KENNETH CHURCH, Nuclear Fuel Supply Manager, Duke
Energy Corporation

NANCY A. FISCHER, Esquire
JOSHUA D. FITZHUGH, Esquire
CHRISTINE J. SOHAR, Esquire
Pillsbury Winthrop Shaw Pittman, LLP
Washington, D.C.

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P R O C E E D I N G S

(9:33 a.m.)

CHAIRMAN PEARSON: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing on Investigation No. 731-TA-909 (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 covering low enriched uranium from France would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Notice of investigation for this hearing, list of witnesses and transcript order forms are available at the public distribution table. I understand that parties are aware of the time allocations. Any questions regarding time allocations should be directed to the Secretary.

Parties are reminded to give any prepared testimony to the Secretary. Please do not place documents directly on the public distribution table. All witnesses must be sworn in by the Secretary before presenting testimony.

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1 that contain information you wish classified as
2 business confidential that request should comply with
3 Commission Rule 201.6.

4 Before we begin, I would note for the record
5 that in Memorandum CO76-X-018 dated December 12, 2000,
6 Commissioner Deanna Tanner Okun recused herself from
7 this investigation. Therefore, she will not be
8 participating in these proceedings.

9 Mr. Secretary, are there any preliminary
10 matters?

11 MR. BISHOP: No, Mr. Chairman.

12 CHAIRMAN PEARSON: Very well. Let's proceed
13 with opening remarks.

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

17 CHAIRMAN PEARSON: Good morning, Mr.
18 Cunningham. Welcome to the Commission once again.

19 MR. CUNNINGHAM: Good morning, Mr. Chairman.
20 Nice to see you in this country for a change.

21 I want to begin today with a quotation taken
22 from the staff report. "In the event of the
23 termination of this order, we would be on the phone
24 immediately to solicit a long-term contract to ensure
25 enrichment supply for our plants." That's not me

1 speaking, but the purchasing agent for one of the
2 domestic utilities.

3 The staff report is kind of unique in my
4 experience in that normally reticent U.S. purchasers
5 make repeated statements to that effect. I pulled
6 four of them -- five of them -- out of the public
7 version of the staff report, and the ones in the
8 confidential portion are even more explicit or
9 revealing. You should look at pages 68 to 70 of our
10 brief for a sampling of those.

11 There's no doubt if this order is revoked
12 domestic utilities are going to be going to France
13 seeking to buy more enriched uranium. There's also no
14 doubt about what AREVA, the French producer, will do.

15 You should look at Exhibit 10 to our brief,
16 which presents AREVA's own description of its plans
17 taken from its 2006 and 2007 business and strategy
18 reviews. It plans to: 1) Double uranium production
19 by 2011; and 2) Increase its market share in specific
20 markets. Where? In Asia and the United States.
21 Indeed, it has the capacity now to substantially
22 increase its U.S. sales.

23 There is no doubt that lifting this order
24 will result in a major increase in AREVA's selling in
25 the U.S. market and -- I'm trying to figure out the

1 microphone, okay -- and an increase that the U.S.
2 utilities are eager for, and that increase will be at
3 dumped low prices.

4 Department of Commerce has consistently
5 found significant margins for AREVA during the reviews
6 of this order. AREVA's low prices in third country
7 markets provide further evidence of what the world is
8 going to do here, and the purchaser questionnaire
9 responses also confirm that pricing.

10 Such an influx of low-priced French sales
11 would come at an extremely bad time for USEC, the only
12 U.S. producer. As this Commission knows from prior
13 hearings, USEC is in the midst of a bet-the-company
14 transition to a new and more efficient American
15 centrifuge technology, and that new technology is
16 absolutely critical to USEC's ability to prosper, but
17 it's costing a bundle. As a consequence, the U.S.
18 industry is uniquely vulnerable here.

19 Another major factor making USEC vulnerable,
20 particularly now before American centrifuge comes on
21 line, is high energy costs. Enrichment, particularly
22 gaseous diffusion enrichment, USEC's present
23 technology, is hugely energy intensive, and you know
24 what's happened to energy prices over the past several
25 years.

1 Thank heavens this order has been in effect.
2 It has enabled USEC and other participants in the U.S.
3 market to increase prices somewhat to keep pace with
4 cost increases, but I and USEC shudder to think what
5 will happen if this order is revoked, so I submit this
6 is in no way a case where you can reasonably determine
7 that the termination of this order would not result in
8 a recurrence of material injury.

9 What do the folks on the other side have to
10 say in response? That's very interesting indeed.
11 What AREVA wants you to believe is that the Court
12 decisions have predecided this case. AREVA therefore
13 doesn't say anything on the merits. Indeed, it has
14 refused, despite repeated requests, to supply
15 information needed by the Commission.

16 So what is their argument? It goes like
17 this. CAFC has ruled that low enriched uranium, LEU,
18 produced under a SWU contract, an enrichment contract,
19 is not a sale of goods, but rather a sale of
20 enrichment services and is thus outside the scope of
21 the dumping law. Well, says AREVA, all of our future
22 sales will be made pursuant to SWU contracts so there
23 will be no dumped imports.

24 There are two things wrong with that
25 argument. First, the law doesn't support it. Second,

1 the facts don't support it. Other than that, it's
2 fine.

3 As to the law, AREVA just tried out their
4 argument on the CAFC and they lost. They argued that
5 any future contract would be a SWU contract, thus
6 outside the dumping law, as long as the price paid by
7 the purchaser covered only the enrichment service and
8 not the natural uranium.

9 We argued it's a lot more complicated.
10 Suppose, for example, that AREVA or an affiliate of
11 AREVA had also supplied in a separate contract, to be
12 sure, the uranium to be enriched. Then the Respondent
13 would be selling the LEU as a whole, just in two
14 contracts instead of one. Do you know what?

15 CHAIRMAN PEARSON: Your light has changed.

16 MR. CUNNINGHAM: The Court agreed with us,
17 and you do not have a basis for accepting AREVA's
18 argument, nor do you have the facts to accept it
19 because AREVA hasn't given you the facts as to what
20 its practice has been, and I would note that AREVA is
21 one of the four largest natural uranium producers in
22 the world. That's an important fact to take into
23 account here.

24 CHAIRMAN PEARSON: Thank you, Mr.
25 Cunningham.

1 MR. BISHOP: Opening remarks on behalf of
2 those in opposition to continuation of the order will
3 be by Stuart M. Rosen, Weil, Gotshal & Manges.

4 CHAIRMAN PEARSON: Welcome, Mr. Rosen.
5 Please proceed.

6 MR. ROSEN: Thank you, Mr. Chairman. Good
7 morning, Commissioners, everyone else.

8 This is a new case for all of you, and as
9 you listen to Mr. Cunningham and as you will listen
10 throughout the day today, please keep in mind the
11 critical fact that the imports of LEU from France that
12 USEC alleges will likely cause material injury if the
13 order is revoked are not subject to the dumping law.

14 Contrary to what Mr. Cunningham has said,
15 the Court has been clear on more than one occasion --
16 on two occasions at the Court of Appeals level and
17 just recently -- that SWU transactions are outside the
18 scope of the law.

19 Had that clarity existed six years ago when
20 the Commission considered injury initially in this
21 case, no injury determination could have been made
22 against the imports from France which were clearly
23 negligible, and any sunset review determination based
24 on SWU imports would be contrary to law.

25 We know that the Commission takes its

1 responsibilities most seriously, and the statute
2 directs the Commission in this review to determine the
3 likely volume, price effect and impact of imports of
4 subject merchandise.

5 When the record is properly reviewed, the
6 Commission has before it all of the transactions
7 involving subject merchandise, and the case becomes
8 straightforward. There is no likelihood of imports of
9 subject merchandise in the foreseeable future and no
10 likelihood whatsoever that revocation could result in
11 the continuation or recurrence of material injury in
12 the absence of imports of subject merchandise.

13 At the end of the day, a negative
14 determination is the only possible conclusion in this
15 sunset review that can be supported by record evidence
16 and the statute.

17 Thank you.

18 CHAIRMAN PEARSON: Thank you, Mr. Rosen.

19 MR. BISHOP: Would those in support of
20 continuation of the antidumping duty order please come
21 forward and be seated?

22 Mr. Chairman, all witnesses have been sworn.

23 (Witnesses sworn.)

24 CHAIRMAN PEARSON: Mr. Cunningham, are you
25 running this show?

1 MR. CUNNINGHAM: Some people wonder about
2 that, but in point of fact that's my title today.

3 CHAIRMAN PEARSON: Okay. Well, please
4 proceed.

5 MR. CUNNINGHAM: Let me ask to turn on the
6 issue where I left off to my partner, Eric Emerson,
7 who will talk to you a bit about goods versus services
8 and what really is a SWU contract.

9 MR. EMERSON: Good morning. My name is Eric
10 Emerson. I'm with Steptoe & Johnson.

11 Before we get to the factual testimony today
12 about the nature of the enrichment industry, we felt
13 it was important to be able to frame this goods/
14 services issue that formed a large part of Mr.
15 Cunningham's testimony and Mr. Rosen's opening
16 statement because this is a legal issue that's going
17 to be critical for the Commission to understand. It's
18 going to help you frame your decision as you go
19 forward.

20 First let me just briefly give you an
21 update, if you will, as to where this litigation
22 stands. In 2005, the Federal Circuit held that sales
23 of LEU, low enrichment uranium, under enrichment
24 transactions were not sales of merchandise under the
25 antidumping duty law and that imports of LEU made

1 pursuant to those enrichment transactions were outside
2 the scope of the antidumping duty law.

3 I know your staff report gives the
4 Commission a good explanation of the difference
5 between enrichment transactions and so-called EUP,
6 enriched uranium product transactions. I won't go
7 into that now, although I'd be happy to take questions
8 about that.

9 After that 2005 decision, the Department of
10 Commerce issued two remand determinations in 2006, and
11 the bottom line from those remand determinations was:
12 1) The order remains in place. Today there is an
13 antidumping duty order on low enriched uranium from
14 France, which is why we're here today.

15 The Department of Commerce on its remand, on
16 one of its remands, also recalculated the dumping
17 margin from the original investigation to focus solely
18 on sales of low enriched uranium under these EUP
19 transactions, and the margin actually increased
20 slightly.

21 Most important for this case, the Department
22 developed an exclusion and certification to exempt
23 certain imports of LEU from the antidumping duty
24 order. That certification and exclusion embodies many
25 of the principles that were contained in the Federal

1 Circuit's 2005 decision.

2 However, the Department of Commerce said
3 that the Department would formally amend the scope of
4 the order once there was a final and conclusive Court
5 decision in the case, so today the scope of the order,
6 the low enriched uranium from France antidumping duty
7 order, is exactly the same as the day it was imposed,
8 covering all imports of LEU into the United States
9 with an exemption for processing and re-export that's
10 not really relevant right now.

11 The Federal Circuit has issued a decision
12 September 21, 2007, the decision that Mr. Cunningham
13 referred to in his opening statement, in which it
14 dismissed U.S. Government and USEC appeals as unripe,
15 saving for another day many of the questions that we
16 raised in those appeals and also essentially rejecting
17 the arguments of AHUG and Eurodif that SWU
18 transactions, that every single SWU contract, is per
19 se outside the scope of the antidumping duty order and
20 effectively telling the Department that whether or not
21 an import of low enriched uranium is or is not exempt
22 from the order is really something that needs to be
23 looked at by the Department.

24 The entirety of the transaction needs to be
25 looked at. Factors need to be taken into account that

1 may exist outside the four corners of that contract.
2 That was the Federal Circuit's decision in September
3 2007. The time for seeking cert on that decision has
4 not yet run, and as a result the Department has not
5 yet even as of today amended the scope of the
6 underlying antidumping duty order.

7 Let's turn back time just a little bit to
8 May of 2007. In May 2007, the Department of Commerce
9 issued the final results of its sunset review which
10 are before the Commission now, and in those final
11 results the Department again reported a scope to you
12 that was exactly the same as the scope the Department
13 of Commerce originally imposed back in 2002, the scope
14 covering all imports of low enriched uranium.

15 Just as a footnote, the final results of
16 that sunset review has been taken up on appeal at the
17 CIT, and that proceeding is currently stayed.

18 With that brief run through, and obviously
19 I'll be happy to take questions on that at the
20 appropriate time, but let me just give you with that
21 background you can understand a little bit more about
22 the state of play of that litigation.

23 In this review, both Eurodif and AHUG urge
24 the Commission to exclude from its analysis imports of
25 LEU pursuant to SWU transactions. That's really the

1 entire thesis of Eurodif's argument, the basis for
2 Eurodif's argument, and that forms a large part of
3 AHUG's argument.

4 There are two reasons that that argument
5 legally must be rejected. First and foremost --
6 perhaps one of the only principles of blackletter law
7 in the entire antidumping law -- the Commission does
8 not have the statutory authority to effect the scope
9 and amend the scope of a proceeding. We've cited
10 chapter and verse from the Federal Circuit in our
11 brief to support that proposition.

12 AHUG came to the Commission just a year ago
13 and on the basis of these same decisions asked the
14 Commission to amend the scope of the Russian
15 suspension agreement to exclude these transactions.
16 The Commission, in its decision a year ago, rightly
17 rejected that invitation saying we don't have the
18 authority to amend the scope of that decision.

19 Secondly, all of the litigation I described
20 stems from the Department of Commerce's original
21 determination of dumping, of its original final
22 determination. No case at the CIT or at the Federal
23 Circuit so far has in any way addressed the
24 Commission's injury determination. In fact, that
25 case, the Commission's original injury determination

1 in that case, is still stayed as of today.

2 Those decisions, AHUG and Eurodif would
3 suggest, are stare decisis. They're binding on this
4 Commission. Leaving aside for the moment the question
5 of whether those decisions are or are not final, they
6 simply are not relevant to the Commission's
7 determination of injury in this case because those
8 decisions go to questions about what constitutes a
9 sale for purposes of calculating an antidumping
10 margin, does not go to the question of how the
11 Commission is to analyze imports under an antidumping
12 duty order and pursuant to an investigation for
13 purposes of determining injury.

14 Now, leaving those two fatal issues aside
15 for the moment -- fatal meaning fatal to their
16 argument -- let's assume for the moment the Commission
17 did have the authority to amend the scope of an
18 antidumping duty order, which it doesn't, and let's
19 assume that these Eurodif decisions were in fact
20 relevant to and binding on the Commission, which
21 they're not.

22 How is the Commission's analysis different
23 if you were in fact to apply those decisions? As we
24 explain in our brief, your analysis, the Commission's
25 analysis in this case, would be exactly the same for

1 two critical reasons.

2 First, we have cited evidence that Eurodif,
3 prior to the time that we filed our petition -- it's
4 in the staff report -- sold low enriched uranium
5 pursuant to EUP type transactions, transactions which
6 everyone in this room would agree are merchandise
7 still subject to the dumping law. Utilities today
8 continue to buy low enriched uranium under EUP
9 transactions.

10 Some of the facts are confidential in the
11 record. Mr. Van Namen will speak to the issue of EUP
12 sales in the U.S. market, but the factual record
13 demonstrates that if this order were to be revoked,
14 Cogema can and would sell low enriched uranium
15 pursuant to the EUP transactions.

16 This goes to a point that Mr. Cunningham was
17 making in his opening statement, and the reason that
18 it's so critical to know that AREVA is one of the
19 world's largest producers of natural uranium. Their
20 intent, as they've expressed in their public
21 statements, is to become really a one-stop shop for
22 nuclear fuel where you could buy your enrichment and
23 your natural uranium in a single transaction, which
24 clearly is subject merchandise.

25 Second, and this is perhaps the most

1 critical point in what I'll say today. The Eurodif
2 decisions did not exclude all SWU transactions from
3 the scope of the antidumping duty order. While Mr.
4 Rosen would have you believe that simply calling
5 something a SWU transaction is enough to get it out of
6 the scope of the antidumping duty order, that's simply
7 not true even under the terms of the Department's
8 scope exclusion. Certain factors must be met.

9 For example, that the enricher cannot hold
10 title to the low enriched uranium prior to
11 transferring it to the utility; a critical fact for
12 the Federal Circuit, a critical fact in the Department
13 of Commerce's exemption.

14 Those are just a couple of the factors, but
15 the Eurodif case, the one most recently from September
16 2007, makes clear that factors outside the four
17 corners of that contract can dictate whether an import
18 is in or out of the dumping law.

19 There were plainly imports of LEU from
20 France during the review period, and I don't think
21 that Eurodif is saying that it would never ship
22 another pound of LEU to the United States in the
23 future.

24 What's critical for the Commission to
25 understand is that by Eurodif's failure to participate

1 in this case they have not provided this Commission
2 with any evidence that any of their past imports into
3 the United States satisfy the terms of this exclusion
4 or that any of their future imports would satisfy this
5 exclusion, so that even if this Commission were to
6 conclude that this exclusion were applicable somehow
7 in its analysis, you have no way of knowing whether
8 these past or future imports meet that test to be
9 excluded from the dumping order.

10 Here's where the shoe really pinches for
11 Eurodif for its failure to participate. If adverse
12 inferences were ever appropriate in this case, they're
13 appropriate on this particular fact. They're asking
14 you to assume that all future imports are excluded
15 from the dumping law on their say so without having
16 provided any particular facts in this case to back
17 that up.

18 Let me just close with one word on domestic
19 like product, and then I'll turn this over to Mr.
20 Sewell. In this case obviously the scope of a
21 transaction affects numerous aspects of the
22 Commission's analysis, one of which is domestic like
23 product.

24 Here domestic like product would not be
25 affected. It would continue to be all imports of LEU

1 pursuant to -- pardon me. All imports of LEU of any
2 kind, and that was a decision as well that the
3 Commission reached in its recent Russian case in which
4 it concluded that the Eurodif decision, because it
5 focused on sales of merchandise, was inapplicable in
6 the domestic like product decision because there's no
7 sale requirement in the domestic like product
8 definition in your statute.

9 With that I'll turn it over to Mr. Sewell.

10 MR. CUNNINGHAM: Before turning to Mr.
11 Sewell, let me add one postscript and underline one
12 point that Mr. Emerson made.

13 The Commission is probably aware that it's
14 not unheard of for me to appear here on the other side
15 of the room representing a respondent. Members of the
16 Commission have heard me argue that my client, the
17 respondent's, future sales will be made in a
18 noninjurious manner.

19 But I know that argument is never going to
20 succeed unless I give you information to back it up.
21 What I have to do is say look at what my respondent
22 did during the period of review here, and you can see
23 that what it's doing is a noninjurious manner of
24 selling.

25 Eurodif -- you'll sometimes hear us say

1 Eurodif and sometimes hear us say AREVA. They've
2 cleverly changed their name to disconcert us here.
3 Eurodif has not given you any information on its
4 selling practices during the period of review despite
5 your repeated requests.

6 We've had submissions to you about you
7 should use facts available, you should draw adverse
8 inferences, but one of the clearest consequences in an
9 administrative proceeding of a party's failure to
10 provide information is that the Commission should not
11 and cannot entertain an argument that they make where
12 the evaluation of that argument depends upon
13 information within their control which they have
14 refused to submit.

15 I submit to you that if you do nothing else
16 with their refusal to provide information, the one
17 thing you must do is say to them we can't entertain
18 your argument that your sales will be SWU sales and
19 thus outside the order, even though that argument
20 suffers from all the other defects that I and Mr.
21 Emerson have talked about.

22 So now let's turn to what are the real facts
23 of this case that you need to look at to determine, as
24 you ordinarily do in a sunset review, whether there's
25 a likelihood of recurrence of material injury.

1 Let me begin by asking Mr. Sewell to discuss
2 the American centrifuge project, which is so crucial
3 to USEC, and the HEU agreement, which is such an
4 important element of this market, but which gets
5 mischaracterized all the time by other parties.

6 Mr. Sewell?

7 MR. SEWELL: Thank you.

8 Good morning. For those of you I haven't
9 met, my name is Phil Sewell, and I am Senior Vice
10 President for American Centrifuge and Russian HEU and
11 USEC, Inc. I appreciate and welcome this opportunity
12 to speak with you today on this important matter.

13 By way of background, I have been with USEC
14 since its formation in 1993. Prior to that time I
15 held a number of positions in the U.S. Department of
16 Energy's Uranium Enrichment Enterprise, including
17 Deputy Assistant Secretary for Uranium Enrichment
18 where I ran the DOE's uranium enrichment operations.

19 Though I will be happy to address any aspect
20 of our business, my purpose in testifying today is to
21 discuss the importance of two items that compromise my
22 portfolio, the American centrifuge project and USEC's
23 role as the executive agent for the Russian HEU
24 agreement, and to describe the serious repercussions
25 to USEC if the antidumping order on LEU from France

1 was terminated.

2 Before discussing these two topics, I would
3 like to give the Commission a brief historical
4 overview of the company. USEC was formed in 1993 as a
5 wholly owned government corporation whose mission was
6 to produce and sell low enriched uranium or LEU from
7 enrichment facilities in Paducah, Kentucky, and
8 Portsmouth, Ohio.

9 These enrichment facilities were originally
10 constructed by the U.S. Government in the early 1950s
11 to produce weapons grade enriched uranium and
12 beginning in 1969 supplied U.S. and foreign utilities
13 with commercial nuclear fuel. In 1998, USEC was
14 privatized, and we are now a publicly owned
15 corporation.

16 Today only the Paducah facility remains in
17 operation. This facility produces approximately five
18 million SWU per year, which equates to almost one-half
19 the annual U.S. LEU consumption.

20 The Piketon, Ohio, facility where we
21 produced LEU until 2001, is the location of our
22 American centrifuge project. We are gratified that
23 many of you were able to visit our Ohio facility to
24 see the complex and to meet some of our workers.

25 I'd like to now discuss the American

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1 centrifuge program and its critical importance to the
2 viability of our company. In 2001, USEC began an
3 ambitious program to demonstrate and deploy an
4 advanced centrifuge technology originally developed by
5 DOE. The ultimate goal of this program, called
6 American Centrifuge, is to deploy a new enrichment
7 plant to replace the Paducah facility. It is the only
8 project currently underway involving an American
9 technology for uranium enrichment.

10 The agreement with DOE established, among
11 other things, the terms under which USEC could gain
12 access to the American centrifuge technology. We made
13 a number of important commitments in this agreement.
14 First, USEC agreed to continue producing at least
15 three and a half million SWUs per year at the Paducah
16 plant until six months before our new centrifuge
17 facility is operating at a 3.5 million SWU per year
18 level.

19 Second, we agreed to continue to purchase
20 LEU containing 5.5 million SWU per year from Russia as
21 the U.S. executive agent under the Russian HEU
22 agreement.

23 Third, DOE and USEC agreed to a series of
24 milestones for American centrifuge deployment. To
25 date, USEC has successfully achieved the first 10 of

1 15 milestones, and we have installed and are in the
2 midst of testing centrifuge in our lead cascade
3 demonstration facility.

4 One of the most significant challenges we
5 face is the need to secure the financing we need to
6 proceed with construction. Although we recently
7 completed an offering of securities, we expect that we
8 will seek to raise significant additional capital in
9 the second half of 2008.

10 Our ability to secure this additional
11 financing will depend, among other things, on whether
12 the LEU market remains sufficiently strong to enable
13 us to secure long-term purchase commitments at
14 adequate prices.

15 I cannot say this strongly enough. The
16 success of American centrifuge is vital to our
17 company. Although the Paducah facility has been
18 upgraded several times and is now running more
19 efficiently than ever, gaseous diffusion technology
20 has a much higher production cost than centrifuge
21 technology. Thus, we will remain vulnerable to these
22 higher costs.

23 We currently estimate that the new plant
24 will cost at least \$2.3 billion to deploy. The plant
25 is being funded from USEC's cashflow, borrowings under

1 its credit facility and recently through public
2 offerings of common stock and convertible notes.
3 However, even with these recent offerings USEC will
4 still need to raise a significant amount of additional
5 capital to complete the American centrifuge project.

6 I am extremely concerned about the threat to
7 USEC and its American centrifuge program if the French
8 antidumping order is terminated. As my colleagues
9 will describe in greater detail, termination of the
10 order would cause us to lose sales in the U.S. market
11 to French imports and would result in a sharp decline
12 in market prices.

13 If that were to occur, USEC would face
14 serious difficulties in securing financing for
15 American centrifuge, which would put this program, our
16 company and, frankly, this nation's energy security at
17 risk.

18 In addition, loss of sales to French imports
19 would threaten our ability to maintain our current
20 level of production at Paducah and the jobs related to
21 this production. It would be impractical to operate
22 Paducah much below the current level. If production
23 fell, we would have to consider shutting the plant
24 down.

25 A premature shutdown of the only operating

1 uranium enrichment facility in the United States would
2 be a disaster for USEC and for the United States,
3 which would then become wholly dependent on foreign
4 sources of enriched uranium.

5 For these reasons, the French antidumping
6 order is critical to allow us to continue to provide a
7 domestic source of LEU while making the transition to
8 American centrifuge.

9 I would like to now briefly discuss the
10 Russian HEU agreement. The Commission has found the
11 HEU agreement to be a condition of competition in the
12 past, and it remains so today.

13 In 1993, the United States and the Russian
14 Federation signed an historic agreement for the
15 purchase by the United States of 500 metric tons of
16 highly enriched uranium or HEU from the Soviet
17 Aeronuclear Weapons. Under this agreement, Russian
18 HEU was blended down into LEU suitable for commercial
19 use in nuclear reactors. As the U.S. executive agent
20 under this program, USEC buys the blended down Russian
21 material for resale at its own risk.

22 This program is intended to eliminate the
23 equivalent of about 20,000 Soviet nuclear weapons by
24 2013, while providing Russia with much needed currency
25 for important nuclear safety and environmental

1 restoration programs. As of today, we have purchased
2 the equivalent of HEU contained in over 12,000 nuclear
3 warheads.

4 USEC's role as an executive agent has had
5 both positive and negative consequences for our
6 company. Originally we paid a fixed price for the
7 weapons material, which negatively impacted USEC when
8 the market price declined below our purchase price.

9 In 2002, we renegotiated this pricing term
10 to allocate market risk equitably between the parties.
11 This change helped to avoid losses on our resale
12 Russian LEU and allows us to continue to buy large
13 quantities of downblended weapons material each year.

14 However, the relatively flat demand for LEU
15 over the past several years and the need to absorb
16 large quantities of Russian material each year
17 contributed to USEC's difficult decision to
18 discontinue production at the Portsmouth facility in
19 June 2001.

20 Today USEC must purchase the Russian
21 material, produce LEU at Paducah and transition to
22 American centrifuge. The domestic and export sales we
23 are making at current price levels ensure that we can
24 do all three of these things.

25 However, if the French order were terminated

1 and AREVA were permitted to make sales at unfairly low
2 prices in the U.S. market USEC would lose sales or
3 would have to offer lower prices to win sales.

4 Our production and revenues would decline,
5 and if we didn't sell LEU containing at least 5.5
6 million SWU per year in the United States we would
7 have trouble delivering all of the Russian LEU we
8 import. Given that we are committed to purchase a
9 fixed quantity of Russian LEU, production levels at
10 Paducah would suffer.

11 For the reasons stated earlier, however, we
12 cannot afford to cut production much below current
13 levels. Thus, while the imports under the Russian HEU
14 agreement remain a condition of competition in this
15 industry it is one that USEC can effectively manage in
16 a fair and stable market.

17 While it has been challenging, we have done
18 our best to make the Russian HEU agreement work in a
19 way that ensures continued domestic production of LEU,
20 and we are now on a path to improve the
21 competitiveness of the U.S. enrichment industry. It
22 would be tragic if the Commission were to prematurely
23 pull the plug on these efforts before we have a chance
24 to see them through.

25 Thank you for your time, and we greatly

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1 appreciate your consideration of these important
2 issues to our company. Thank you.

3 MR. CUNNINGHAM: Next is Mike Whitehurst,
4 Director of Marketing at USEC and the man in charge of
5 analyzing and evaluating the nuclear fuel markets for
6 the company. Mike?

7 MR. WHITEHURST: Thank you, Dick.

8 Good morning. In my testimony I will make
9 three key points. First, despite our shared hope of a
10 nuclear renaissance, the facts remain that consumption
11 of LEU in the United States is and will continue to be
12 essentially flat in the near term. Second, AREVA has
13 the capacity to increase exports to the United States,
14 and, third, AREVA has every incentive to increase
15 those exports.

16 U.S. consumption of LEU can be predicted
17 with a relatively high degree of accuracy through an
18 analysis of currently operating U.S. nuclear power
19 plants as the reload cycle information is fairly
20 transparent and is tracked by various entities.

21 Let me be very clear about this. Currently
22 U.S. demand for LEU is flat and stable, and demand
23 will not increase to a meaningful degree in the near
24 future. As of today, there are 104 operating reactors
25 in the United States requiring fuel reloads. It is

1 important to recognize, however, that no new reactors
2 are expected to come on line in the United States
3 prior to 2016 at the earliest.

4 Certainly there is increased interest in new
5 reactors, and some entities have announced intentions
6 to apply for a license. Nevertheless, even if all
7 these intentions were to eventually result in
8 approvals by the Nuclear Regulatory Commission, as we
9 hope they do, construction and operation of new plants
10 will not occur for many years to come, and any effect
11 on increased LEU consumption that may occur will not
12 occur until after 2013.

13 The reality is that between 2003 and 2006
14 annual LEU requirements fluctuated in a fairly narrow
15 band according to nuclear plant reload schedules. As
16 detailed in our prehearing brief, average annual LEU
17 requirements in the United States are expected to
18 remain flat, increasing by .7 percent from 2006 to
19 2011.

20 This is particularly evident when one looks
21 at expected demand for LEU over the next seven years,
22 which remains relatively flat within a range as
23 confirmed by the Commission data.

24 Indeed, the nuclear renaissance has recently
25 been described by U.S. observers as far from a sure

1 thing. Utilities have noted that realities involved
2 are dampening the euphoria around the nuclear
3 renaissance, as stated by Flower Power & Light at a
4 recent American Nuclear Society meeting.

5 AHUG suggests in its prehearing brief that
6 the new reactors that may come on line by 2016 are
7 currently driving up LEU prices due to anticipated
8 increase in the need for enriched uranium, but I have
9 seen no such linkage between the most recent increases
10 in market prices and the possibility of new reactors.

11 USEC welcomes and supports the concept of a
12 nuclear renaissance in the United States and elsewhere
13 and believes such a renaissance will have a beneficial
14 impact on the market for LEU in the latter part of the
15 next decade.

16 The reality today, however, is that any
17 meaningful increase in the demand in the United States
18 will not occur any time in the near future.
19 Accordingly, the most reliable available data
20 indicates that through 2013 the average annual LEU
21 requirements in the United States are expected to
22 remain relatively flat.

23 I think it's important that the Commission
24 understand what AREVA is and how it is structured.
25 AREVA is an integrated producer involved in all stages

1 of the nuclear fuel cycle, heavily supported by the
2 French government, with great flexibility in its LEU
3 operations. AREVA emphasizes this in its
4 presentations to customers.

5 For example, in their July 2007 business and
6 strategy overview AREVA lists one of their strengths
7 as one-stop shopping, given their vertical
8 integration. Among its strategic priorities AREVA
9 states -- and these are AREVA's words, not mine --
10 that it will "double uranium production by 2011,
11 switch to uranium enrichment by centrifuge, increase
12 market sales in fuel in the U.S. and Asia."

13 My analysis of the market indicates that
14 AREVA unquestionably has the capacity and incentive to
15 increase exports of LEU produced in France to the
16 United States should the order be revoked. Given its
17 high degree of vertical integration, its stated
18 strength of one-stop shopping for utilities and its
19 stated goal of increasing its share of the U.S.
20 nuclear fuel market, it necessarily follows that to
21 achieve this goal AREVA will attempt to increase its
22 sales of LEU to the U.S. market.

23 AREVA is positioning itself to attain this
24 goal with substantial investments in French centrifuge
25 capacity that will begin production in 2009 and which

1 can be expanded incrementally to accommodate any
2 additional sales it could make to utilities in the
3 near term consequent to the revocation of this order.

4 From USEC's analysis of the data as set
5 forth in our prehearing brief, AREVA has excess supply
6 capacity that increases substantially each year from
7 2007 to 2010 based on the difference between its plant
8 capacity sales commitments.

9 AREVA, through its own production, has
10 accumulated an additional supply of enriched uranium
11 to meet its commitments as it transitions from its
12 gaseous diffusion plant to a new centrifuge plant,
13 which is expected to start production in 2009.

14 Further, USEC expects that as AREVA's new
15 centrifuge plant comes on line AREVA will accumulate
16 even greater inventories of LEU because it will
17 operate both the centrifuge plant and the existing
18 gaseous diffusion plant at the same time.

19 This means that notwithstanding the
20 transition to a new enrichment plant, AREVA has
21 accumulated and will continue to accumulate LEU
22 sufficient to continue to sell substantial quantities
23 in the market and potentially to secure even greater
24 sales by releasing its excess inventories into the
25 market.

1 AREVA has also stated that the ultimate
2 capacity of its modular centrifuge plant in France
3 will be based on market conditions, indicating a
4 flexibility to increase capacity should additional
5 uncommitted U.S. demand be accessible. AHUG asserts
6 in its prehearing brief that AREVA is at full capacity
7 and therefore cannot meet any additional requirements
8 over the next few years.

9 It is important for the Commission to
10 understand how procurement of enriched uranium by
11 utilities works. Even if AREVA's current gaseous
12 diffusion capacity is full, which we do not believe is
13 true, this would not preclude it from taking sales
14 away from USEC today based on future plant capacity
15 increases. This is because utilities' enrichers enter
16 into long-term contracts typically several years in
17 advance of first deliveries.

18 Thus, AREVA could commit to supplying U.S.
19 utilities' future requirements based on its future
20 centrifuge capacity even if its gaseous diffusion
21 capacity is full. In fact, given AREVA's stated
22 intent to base actual French capacity on market
23 conditions, one such condition is obviously whether
24 the current order will remain in place or not given
25 the size of the U.S. market.

1 AHUG's analysis also fails to take into
2 account the impact of inventories that AREVA is
3 accumulating as part of the transition to the
4 centrifuge program. USEC believes this inventory is a
5 near term threat to the market today as it could be
6 released into the market at some point in the near
7 future.

8 Absent the order, inventory would likely be
9 sold at dumped prices. Moreover, a decision by AREVA
10 to operate its GDP for even one more year would allow
11 AREVA to dump LEU containing an additional eight
12 million SWU into the market.

13 I would also like to point out that in May
14 2007 AREVA announced that its subsidiary, COMURHEX,
15 would begin to build replacement conversion facilities
16 in France with plant design that is expandable,
17 allowing it to increase production beyond its initial
18 design capacity. The increase in conversion capacity,
19 combined with the new centrifuge plant, is another
20 indicator of potential increased LEU production in
21 France.

22 Bob Van Namen will explain the U.S. market
23 has by far the greatest amount of open demand in the
24 world. Open demand is the amount of LEU utilities are
25 contracting for now to meet future requirements and is

1 the most relevant measure of demand in the
2 marketplace.

3 Assuming a five-year lead time for
4 contracting, open demand from 2008 to 2012 using the
5 Commission's data is approximately 2.9 million
6 kilograms of LEU that represents approximately 17
7 million SWU.

8 The destination for this excess capacity is
9 not in question. Aside from the fact that AREVA's
10 business plan calls for increasing its market share in
11 the United States, a number of market factors make
12 clear that AREVA has the incentive to export a greater
13 volume of LEU to the United States should the order be
14 revoked.

15 In its 2007 business and strategy overview,
16 AREVA reports the number of nuclear reactors operating
17 in various regions around the world, including the
18 Americas, Europe, Asia and Africa. You should note
19 that it is the American market that AREVA projects the
20 greatest growth in its sales and market share.

21 In sum, there is no question that France has
22 the ability to increase substantially its exports of
23 LEU both through its existing inventories and through
24 its underutilized enrichment capacity and LEU reserves
25 and that the United States is AREVA's most likely

1 export market.

2 In a market with flat demand for the near
3 and mid term, AREVA's increased exports to the United
4 States will have a negative impact on the domestic
5 industry if the order is revoked.

6 Thank you for your time and attention, and
7 I'm happy to answer any questions you have.

8 MR. CUNNINGHAM: Next is Bob Van Namen, who
9 has been on both sides of uranium marketing. He now
10 supervises sales and marketing of enriched uranium
11 products for USEC. Prior to that he worked as manager
12 of Nuclear Fuel Management for Duke Energy.

13 MR. VAN NAMEN: Good morning. In my
14 testimony today I would like to discuss four points
15 that are critical for the Commission's assessment of
16 likely injury if the antidumping duty order on LEU
17 from France were revoked, the nature of contracts in
18 the market for nuclear fuel, the critical importance
19 of price in utilities' purchase decisions, the
20 continued prevalence of EUP contracts in the U.S.
21 market and the likely market effects of a revocation
22 of the antidumping duty order and how it would impact
23 USEC.

24 First, in the investigation I testified that
25 long-term contracting was the most prevalent form of

1 contracting for the sale of LEU in the U.S. market and
2 that the loss of just a single long-term contract can
3 have a significant negative impact for an enricher.
4 Both of these observations remain true today.

5 While I understand that AREVA refused to
6 answer the Commission's questionnaire, I also
7 understand that import statistics demonstrate that
8 AREVA continues to export LEU to the U.S. market.

9 I also understand that U.S. utilities have
10 reported to the Commission that they have continued to
11 sign contracts with AREVA for LEU since the
12 antidumping duty order was imposed. This is
13 consistent with my experience. Notwithstanding the
14 antidumping duty order, AREVA remains a vigorous
15 competitor in the U.S. market.

16 If the order were revoked, I expect that
17 AREVA would attempt to sell even greater amounts of
18 LEU in the U.S. market and that it would do so by
19 signing long-term contracts with U.S. utilities.

20 Just as in the investigation, the loss of
21 these long-term sales would be devastating for USEC.
22 The loss of this sales volume would drive up our costs
23 further and make it even harder for us both to
24 purchase LEU under the Russian HEU contract and to
25 maintain our production at the levels required under

1 our agreement with the Department of Energy. These
2 lost sales would have a decisive negative impact on
3 our company.

4 Second, in the original investigation I
5 testified that sales of LEU are made on the basis of
6 price and that the enricher with the lowest evaluated
7 price will always win the sale. Today price remains
8 the key determinant in a utility's purchasing
9 decision, and the low price supplier continues to take
10 the sale.

11 If the antidumping duty order were revoked I
12 firmly believe that AREVA would try to take more sales
13 in the U.S. market through the same type of
14 aggressively low pricing that the Commission saw in
15 the original investigation.

16 This is not just speculation. In third
17 country markets where there is no antidumping duty
18 discipline we have experienced AREVA's pricing
19 policies firsthand and have lost substantial sales
20 there as explained in our prehearing brief at page 76.

21 In view of AREVA's pricing practices in
22 third country markets and given the fact that
23 utilities continue to treat price as the most
24 important factor in their purchases, I have no reason
25 to believe that AREVA would not be equally as

1 aggressive in the U.S. market if given the
2 opportunity.

3 Third, I understand that the utilities are
4 arguing that if the antidumping duty order were
5 revoked AREVA is unlikely to make sales of LEU under
6 enriched uranium production of EUP contracts. This
7 contention is squarely at odds with my experience in
8 the LEU market.

9 By way of background, the Commission should
10 be aware that AREVA is a fully integrated producer of
11 nuclear fuel. It owns and operates natural uranium
12 mines throughout the world. It operates a conversion
13 facility to convert natural uranium from a U308 form
14 into uranium hexafluoride, and through its affiliation
15 with Eurodif it has massive enrichment capacity.

16 The fact that AREVA is a fully integrated
17 producer of nuclear fuel products means that they have
18 every incentive to sell not just the enrichment
19 component of LEU through a SWU contract, but the full
20 value of LEU through an EUP contract.

21 This is not just our speculation. AREVA has
22 publicly stated that it is interested in making
23 integrated offers of nuclear fuel, which we interpret
24 to mean the sale of LEU as EUP, which would integrate
25 both natural uranium and enrichment into a single

1 sale.

2 As for USEC, while it is true that USEC
3 delivers more LEU under SWU contracts than EUP
4 contracts, EUP contracts remain a common form of
5 contract in the U.S. market, and USEC continues to
6 deliver a significant amount of LEU each year to U.S.
7 utilities under this type of contract.

8 USEC continues to sign EUP contracts with
9 utilities and AHUG, and in some cases utilities
10 deliver LEU to certain AHUG members only under EUP
11 contracts. The Commission therefore should not be
12 misled into thinking that EUP contracts are never or
13 only rarely used by U.S. utilities or that AREVA would
14 not make sales under EUP contracts in the future if
15 the antidumping duty order were revoked.

16 Finally, my colleague, Phil Sewell, has
17 explained the positive effects that the antidumping
18 duty order has had for USEC's operations and for our
19 American centrifuge project. I'd like to say a few
20 words about the impact this order has had on the U.S.
21 market for LEU.

22 When USEC filed its antidumping and
23 countervailing duty petitions against imports from
24 western Europe in late 2000, SWU prices were at
25 historic lows. After a thorough investigation, the

1 Commission found that this price depression was caused
2 by Cogema and Urenco, their unfairly traded imports
3 and their pervasive and aggressive underselling.

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

10 In my opinion, the needed stability that the
11 Commission helped return to the U.S. market would
12 immediately disappear if the antidumping duty order on
13 French LEU were revoked.

14 Just as price is recovered almost instantly
15 after this trade action was initiated, we expect that
16 prices would decline just as quickly if the order were
17 revoked as U.S. utilities adjusted their price
18 expectations to take into account the additional
19 supply of unfairly priced French LEU that would become
20 available in the market.

21 This price decline would impact USEC in
22 three ways. First, because current market prices are
23 considered by utilities when signing long-term
24 contracts, a reduction in market prices would lower
25 the price at which we sign long-term contracts. Thus,

1 even if USEC were able to win a contract it would be
2 at a lower price and would yield lower revenue over
3 the life of that contract.

4 Second, and more imminently, USEC would lose
5 revenue under its existing long-term contracts that
6 contain market-based pricing provisions. These
7 market-based pricing provisions require USEC to reduce
8 its price if market price indicators fall, and a fair
9 percentage of the LEU that USEC is to deliver under
10 these existing long-term contracts is subject to these
11 provisions.

12 The specific figures are confidential and
13 are contained at page 30 of our prehearing brief.
14 Thus, if market prices were to fall USEC's base of
15 long-term contracts would not be spared, and USEC
16 would lose revenue on these contracts as well.

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

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

1 Thank you.

2 MR. CUNNINGHAM: Now, AREVA doesn't seem to
3 want the Commission to do its normal economic analysis
4 in this case, and I can certainly see why, but we do
5 want you to do it. To aid you in that, let me turn to
6 Dan Klett of Capital Trade.

7 MR. KLETT: Good morning. During the
8 original investigation, imports of LEU from France
9 were a significant factor in the U.S. market. Imports
10 from France continued to increase after the order was
11 imposed due to long-term contract commitments, but
12 they have decreased since 2003 as older contracts have
13 expired and with fewer new contracts with AREVA for
14 French origin LEU being entered into. Throughout this
15 period, AREVA continued to sell at less than fair
16 value.

17 A number of facts support a finding that
18 AREVA will increase its exports of LEU to the U.S.
19 with revocation of the order. As shown in our
20 prehearing brief, the U.S. accounts for a large share
21 of future world uncommitted demand, and AREVA
22 necessarily has an economic incentive to compete for
23 this business.

24 AHUG contends that there can be no
25 additional demand for French LEU when U.S. purchasers

1 have already fulfilled their requirement for the
2 timeframes relevant to the Commission's analysis.
3 However, AHUG knows that utilities can and do enter
4 into contracts to supply their uncommitted requirement
5 needs well into the future.

6 That is, even if utilities' requirements for
7 the next few years are fully met, USEC can still lose
8 sales in the near term for utilities' unfilled
9 requirements in later years. This is because, as
10 reported in the prehearing staff report at 2-15 and
11 2-16, well over 95 percent of purchases are generally
12 under long-term contracts that last four to seven
13 years or longer.

14 This is a point I cannot stress enough. As
15 Mr. Whitehurst pointed out, over the next five years
16 utilities will have over about 2.9 million kilograms
17 of enriched uranium that are uncommitted for which
18 AREVA can compete in the near term.

19 Although the details are confidential, many
20 utilities reported that the order resulted in a
21 reduction in their purchases of French origin LEU and
22 that revocation of the order would result in an
23 interest in their renewing negotiations with AREVA to
24 procure French origin LEU for future requirements.

25 Appendix D to the prehearing report includes

1 some comments from utilities on the likely effects of
2 revocation. While some utilities reported no
3 anticipated effects, many others did report expected
4 effects on their purchasing patterns and on the
5 market. We have provided in our prehearing brief
6 other comments from utilities which indicate a
7 significant supply response with the revocation of the
8 order.

9 There are also likely to be adverse price
10 effects with revocation of the order. The staff
11 report at 2-24 to 2-25 confirms that price continues
12 to be very important to utilities, and this has not
13 changed since the original investigation.
14 Underselling was found by the Commission in the
15 original investigation.

16 Based on prices reported by utilities in
17 their questionnaires summarized at pages 5-20 and 5-23
18 of the prehearing staff report, French LEU was
19 consistently lower priced than U.S. produced LEU
20 during the period of review even with the discipline
21 of the order.

22 As recognized by the Commission in the
23 original investigation, utilities look at evaluated
24 prices in their purchase decisions, which encompass
25 all factors affecting the actual cost of procurement

1 over the life of the contract.

2 In this review, utilities reported that
3 French origin LEU had advantages for a number of
4 factors that would affect the evaluated price. In
5 particular, French LEU was offered at more favorable
6 terms for escalation provisions, credit extensions and
7 the ability to adjust to transactional tails assay.

8 Flexibility in the transactional tails assay
9 would be of particular significance to the evaluated
10 price, and seven of nine utilities reported French LEU
11 to have better terms for this factor, which indicates
12 underselling of USEC on an evaluated price basis.

13 Prices in the LEU market have increased
14 significantly since the order was imposed. While
15 these increases cannot be attributed entirely to the
16 order on French origin LEU, responses of U.S.
17 utilities indicate that the order has had a
18 significant effect on U.S. price levels. Utilities
19 also reported that they expected revocation would
20 result in increased volume of French LEU supply and
21 consequently lower prices for this reason as well.

22 AHUG contends that projections of higher
23 prices in the future due to various supply/demand
24 factors mean that USEC will not suffer adverse price
25 effects with revocation. However, they completely

1 ignore the significantly higher electricity input
2 costs and the resulting cost/price squeeze being
3 experienced by USEC for its electricity intensive
4 gaseous diffusion production. The assertion that USEC
5 can absorb any price decreases that would result from
6 revocation does not comport with USEC's actual
7 experience and cost.

8 Finally, AHUG contends that there can be no
9 adverse price effects because most of USEC's sales are
10 Russian origin LEU and that the majority of its U.S.
11 produced LEU is exported. However, USEC continues to
12 sell a significant volume of U.S. produced LEU in the
13 U.S. market, and any adverse price effects for these
14 sales would be commercially significant.

15 Thank you.

16 MR. CUNNINGHAM: Of course, the impact of
17 imports is felt not just by companies, but by workers.
18 We're fortunate to have here testimony on behalf of
19 the United Steelworkers, and I'd like to ask Philip
20 Potter to deliver that testimony now.

21 MR. POTTER: Thank you.

22 Good morning, Mr. Chairman, Commissioners
23 and staff. My name is Philip H. Potter. I'm here on
24 behalf of the United Steelworkers, USW.

25 USW is the successor to the original

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1 co-petitioner in this action and represents the U.S.
2 workers at USEC's gaseous diffusion plant in Paducah,
3 Kentucky, and the remaining workers at the site of the
4 closed gaseous diffusion plant in Piketon, Ohio. USEC
5 plans to build a new centrifuge enrichment plant at
6 Piketon using new technology. We hope to be the
7 workers at that plant as well.

8 USW also represents the workers at the only
9 uranium conversion plant left in the U.S., which is
10 operated by Honeywell and is located just across the
11 Ohio River from Paducah. This is all that is left of
12 the U.S. uranium enrichment industry.

13 We are concerned that if the antidumping
14 order on LEU from France is terminated our workers
15 will lose jobs, and their families and communities in
16 which they live will be directly and negatively
17 impacted.

18 In January of 1998 we had 2,050 hourly
19 employees at the two plants in Paducah and Piketon
20 producing LEU. These were good jobs. These kind of
21 jobs are not easy to come by in western Kentucky and
22 southern Ohio or southern Illinois.

23 As imports began to increase and prices
24 began to decrease, USEC was under pressure to cut
25 costs to maintain sales. That meant cutting jobs. As

1 USEC lost sales to AREVA and at the time Urenco, it
2 had to cut production. That costs even more jobs.

3 This was one of the factors that led USEC to
4 cease enrichment operations at Piketon, resulting in a
5 loss of jobs at that plant. USEC also reduced
6 employment at Paducah. Today we have only 1,065
7 workers at the two plant sites.

8 Now the Paducah plant is the last operating
9 enrichment facility in the United States. Paducah
10 uses 50-year-old technology, but has nevertheless
11 increased its efficiency and is now producing LEU at
12 the highest efficiency level ever.

13 We have highly skilled Americans who are
14 working hard to keep Paducah competitive. We
15 recognize the challenges to keep Paducah competitive
16 and the need to move on to the centrifuge technology
17 at Piketon, but we don't have a chance to achieve
18 those goals if we have to compete with increased
19 imports at unfair prices. A resurgence of price
20 undercutting will cost us more jobs. The record is
21 very clear on that.

22 We are aware of the U.S. Court of Appeals
23 decision in this case regarding services and goods.
24 We strongly disagree with it however. We view that
25 decision as applying only to a very narrow and very

1 specific type of contract. There are other types of
2 contracts used throughout the uranium and LEU markets.
3 Those contracts and sales should remain covered.

4 These workers need fair pricing and fair
5 trade to maintain operations and jobs at Paducah and
6 the conversion plant in Metropolis, Illinois. We need
7 fair pricing and fair trade to give USEC the financial
8 ability to build the new American centrifuge plant and
9 create new jobs. We need fair pricing and fair trade
10 to maintain the U.S. enrichment industry.

11 All of those objectives are at risk if
12 unfair imports are allowed to increase. We ask you to
13 continue the order on LEU from France.

14 Thank you very much.

15 MR. CUNNINGHAM: I'd like to close, members
16 of the Commission, by saying to you this is a case,
17 and not all cases are like this, where it's important
18 for the Commission to step back and think about this
19 from a longer term and bigger picture standpoint.

20 This is an important industry in the United
21 States economically, but also strategically. We're
22 looking at -- we all hope there will be coming -- a
23 nuclear renaissance. Some decade or so down the road
24 we hope and believe there will be such a nuclear
25 renaissance. This company hopes and wants to be there

1 and to participate in that.

2 Members of this industry -- not just USEC,
3 but others -- are moving to a new type of technology,
4 centrifuge technology. We believe that the American
5 centrifuge is the best of those types of centrifuge
6 technology. We hope to be there when this nuclear
7 renaissance occurs with the best technology that
8 anyone can have.

9 The Commission will have a lot to say about
10 whether we get there or not. That's what this case is
11 very much about.

12 Thank you. That concludes our testimony.

13 CHAIRMAN PEARSON: Okay. Permit me to offer
14 my thanks to members of this panel. I appreciate you
15 being here today and for hosting some of our
16 Commissioners and staff who managed to make it to your
17 facility.

18 By luck of the draw, I get to ask the first
19 round of questions. The Department of Commerce
20 revoked the countervailing duty orders on LEU from
21 Germany, the Netherlands and the United Kingdom in
22 2006. What effect has this had on imports from these
23 countries since that time?

24 MR. CUNNINGHAM: Who is the best one to do
25 that? Mike Whitehurst will address that.

1 MR. WHITEHURST: The order was revoked
2 against Germany, U.K. and the Netherlands, and the
3 imports from those countries have continued to
4 increase as they have continued to expand capacity.
5 They are currently sold out of capacity we believe for
6 many years and do not have much additional capacity to
7 sell to the United States.

8 The other factor is we believe they've had a
9 change in the way they've priced their product.
10 They've stated that they view appropriate returns
11 necessary to build that capacity to be a key part of
12 their strategy. That appeared in their public
13 documents after the initial proceeding in this case.

14 In other words, the pricing policies have
15 become more disciplined and more reflective of current
16 market pricing.

17 CHAIRMAN PEARSON: Okay. So they now
18 participate in the U.S. market in what you would
19 consider a responsible manner, and they're not doing
20 things that would cause injury to the domestic
21 industry. Is that correct?

22 MR. CUNNINGHAM: That is our observation at
23 the moment.

24 CHAIRMAN PEARSON: Okay.

25 MR. EMERSON: If I might add a comment,

1 Chairman Pearson?

2 Urenco is also affiliated with -- the
3 precise nature of the corporate relationship escapes
4 me at the moment, but is also affiliated with one of
5 the other enrichment facilities that's starting up in
6 the United States, LES, Louisiana Energy Services,
7 which I think is not in Louisiana anymore, and so when
8 we're speaking of corporate pricing policies this is
9 not just something off their web page.

10 This is in fact something that they're
11 probably taking very seriously because they're also
12 now balancing their roles as potentially an importer,
13 but also potentially as a long-term player in the U.S.
14 market so their discipline I think is founded in that
15 sort of corporate strategy.

16 CHAIRMAN PEARSON: Okay. Thank you for
17 that.

18 In your prehearing brief, page 40, Footnote
19 83, you say that AREVA will once again offer low
20 prices for LEU in order to secure or regain market
21 share in the United States, just as AREVA is now doing
22 in Asia.

23 Could you please explain what AREVA is doing
24 in Asia and how it's affecting your exports to that
25 region?

1 MR. CUNNINGHAM: Mr. Van Namen, why don't
2 you take a first cut at that?

3 MR. VAN NAMEN: Sure. I can do that.
4 Again, a lot of the information we have is
5 confidential. We can probably amplify on it, but we
6 have seen aggressive pricing from AREVA in various
7 Asian markets indicating this underselling pattern
8 that was the basis of the original filing would
9 continue.

10 We can answer that probably better in
11 confidential submissions.

12 CHAIRMAN PEARSON: Okay. I'd appreciate
13 that.

14 MR. CUNNINGHAM: We'll make a submission on
15 that after the hearing in confidence.

16 CHAIRMAN PEARSON: Okay. Any other comments
17 at this time?

18 (No response.)

19 CHAIRMAN PEARSON: Okay. Why do you think
20 that AREVA is planning to set up an enrichment
21 facility in the United States if, as you allege in the
22 brief, AREVA is planning to increase LEU imports from
23 France if the orders are revoked?

24 MR. CUNNINGHAM: Mr. Van Namen?

25 MR. VAN NAMEN: Sure. Two different

1 expectations underlie the two different behaviors.

2 The enrichment plan in the United States
3 during the early stages of announcing that project --
4 and that project would be into the next decade and
5 likely predicated on the renaissance of nuclear power
6 -- on their success in selling new reactors and then
7 their desire to fuel those reactors that they would
8 sell both in the U.S. market and possibly
9 internationally, so I think the new plan in the U.S.,
10 they're establishing an early placeholder for
11 potential improvements in demand well into the next
12 decade.

13 We expect that the LEU imports that we would
14 see if the antidumping order were revoked would be due
15 to their desire to increase their market share in the
16 existing marketplace, so two different fundamentals
17 driving the behavior.

18 MR. CUNNINGHAM: Mr. Whitehurst might want
19 to add something to that.

20 CHAIRMAN PEARSON: Please. Yes, sir?

21 MR. WHITEHURST: At this point, AREVA has
22 only made an indication to the NRC that they are
23 evaluating building a plant in the United States.
24 It's unlikely that they would do that unless the
25 reactor build began.

1 They're participating in many of the reactor
2 construction projects in the United States. It's
3 unlikely they would build that plant without the
4 demand that would come along with the new reactor.

5 CHAIRMAN PEARSON: So how much behind
6 Louisiana Energy Services is the possibility of an
7 AREVA plant in the United States?

8 MR. WHITEHURST: It's many years behind. It
9 would be mid next decade before it would provide any
10 supply to the U.S. market.

11 MR. VAN NAMEN: The LES project is expected
12 to start commercial operation in 2009 and reach
13 capacity in 2013. I think again AREVA can speak to
14 this, but that would be 2015 -- 2014 or 2015 -- for
15 their project.

16 MR. CUNNINGHAM: To begin.

17 MR. VAN NAMEN: To begin.

18 CHAIRMAN PEARSON: Okay. So you see a
19 different rationale here for the likely marketing
20 behavior of AREVA in the United States relative to
21 what was mentioned before about Urenco in the United
22 States where there, if I understood the comment of Mr.
23 Emerson, he was saying that the upcoming domestic
24 presence for that firm has perhaps led them to market
25 carefully the product that they export into this

1 country.

2 MR. CUNNINGHAM: You have to remember that
3 AREVA is by no means committed to building a plant in
4 the United States now at all, and the Urenco LES plant
5 is going to happen. It's coming.

6 There was a long time it wasn't clear that
7 the LES plant was going to happen, and one thing I
8 would note to the Commission is that prior to this
9 case and the market price improvement that occurred as
10 a result of this case no one was talking about
11 building new enrichment plants in the United States.

12 MR. KLETT: Mr. Chairman, this is Dan Klett.
13 Just to close the loop, by contrast the AREVA plant in
14 France is much further along and has transitioned from
15 their existing gaseous diffusion to centrifuge
16 capacity in France.

17 CHAIRMAN PEARSON: So you're saying that as
18 a practical matter they will have additional capacity
19 coming from France that they would want to sell
20 somewhere in the world?

21 MR. CUNNINGHAM: I couldn't have put it
22 better myself.

23 CHAIRMAN PEARSON: I'm just trying to
24 clarify here. I'm not trying to make the arguments.

25 MR. CUNNINGHAM: I would be happy to

1 delegate that to you at any time. You're doing a
2 wonderful job of it.

3 CHAIRMAN PEARSON: In your prehearing brief,
4 pages 15 and 16, you state that in the absence of an
5 antidumping duty order Eurodif would likely make sales
6 of LEU pursuant to EUP contracts and that Eurodif has
7 the incentive to sell LEU under EUP contracts.

8 Mr. Van Namen commented on this a bit in his
9 statement, but to the best of your knowledge does
10 Eurodif export LEU to the United States pursuant to
11 EUP contract in significant quantities?

12 MR. EMERSON: Chairman Pearson, if I could
13 respond to that?

14 I guess the answer is we don't know
15 currently because in part, in large part, because
16 Eurodif has failed to respond to the Commission's
17 questionnaire.

18 We do know that there are imports of low
19 enriched uranium from France, those publicly available
20 import statistics. What we don't know from those
21 imports is what are the contracts under which those
22 imports were sold.

23 Now, I would expect that Cogema had modified
24 its behavior perhaps in response to the imposition of
25 an antidumping duty order perhaps to terminate a sales

1 practice under EUP contracts since the order was
2 imposed, but we certainly don't know that because the
3 factual record isn't before the Commission to
4 determine how much of that is in fact sold as EUP
5 under EUP contracts.

6 What we do know though is that from the
7 utility side, based on USEC's own experience, we do
8 know from the utility side that utilities continue to
9 be desirous of purchasing LEU under EUP contracts
10 because that's the way USEC sells to many of them in
11 the U.S. market.

12 MR. CUNNINGHAM: And I would like to add one
13 follow-up on that because when we say gee, is this
14 sold by a SWU contract or an EUP contract, you have to
15 understand that it is not entirely settled yet what
16 the nature of these contractual arrangements by AREVA
17 is and how they fit with what the Department of
18 Commerce will require to show that it's a SWU
19 contract.

20 The Department of Commerce's amended scope
21 determination on the final remand in 2006 says that a
22 transaction -- a transaction, not contract. A
23 transaction is excluded where the parties only
24 contract for the provision of enrichment processing
25 and where the purchasing party is responsible for the

1 provision of natural uranium.

2 Take a contract where there is a separate
3 contract between the utility and AREVA or Eurodif for
4 enrichment. Then there is a contract between the
5 utility and Eurodif for the supply of the natural
6 uranium. I would say that's not a SWU contract. Is
7 it an EUP contract? Well, it's two contracts that add
8 up to an EUP contract.

9 None of this we know about, and there's a
10 reason we don't know about it, and that is they
11 haven't told us. And, more important, they haven't
12 told you.

13 CHAIRMAN PEARSON: Thank you. My time has
14 expired.

15 Madam Vice Chairman?

16 VICE CHAIRMAN ARANOFF: Thanks, Mr.
17 Chairman, and thank you to this morning's panel for
18 being with us today and for your hospitality when I
19 visited your plant over the summer.

20 It was a very auspicious day when I was
21 there I know for multiple reasons, both the successful
22 start of your new centrifuge cascade and also because
23 I got to spend extra time being locked into the plant,
24 but I'm over that now.

25 Let me start by asking you this. You were

1 talking with the Chairman about the various incentives
2 of the global players to build new plants in the U.S.
3 and the relative speed with which we can expect those
4 new plants to come on line.

5 How much of the incentive to build at
6 capacity in the U.S. is related to the expiration of
7 the HEU agreement in 2013 as opposed to the state of
8 prices in the U.S. market at the present time?

9 MR. CUNNINGHAM: Mr. Whitehurst will take a
10 first crack at that.

11 MR. WHITEHURST: The motivation to build the
12 plant, to build a new plant in the United States, is
13 partially related to the end of the HEU agreement as
14 there is a dropoff of about 5.5 million SWUs in 2013,
15 but the building of that capacity is also an economic
16 incentive.

17 As was mentioned earlier, the LES facility
18 came back into the plans of Urenco after prices
19 returned to an acceptable level where they could build
20 a plant economically in the United States, so it's
21 both a demand driven issue, as well as an economic
22 driven issue by Urenco.

23 VICE CHAIRMAN ARANOFF: But they don't need
24 new nuclear facilities in the U.S. to come on line.
25 They're just looking at the portion of the market

1 that's going to free up when the Russian LEU stops
2 coming in?

3 MR. WHITEHURST: Yes, that's correct.

4 VICE CHAIRMAN ARANOFF: Okay.

5 MR. WHITEHURST: And they've gone ahead, and
6 they're building that facility. They have placed the
7 majority of the output from that facility for we
8 believe the first 10 years of production.

9 VICE CHAIRMAN ARANOFF: Okay. You also
10 talked a little bit with the Chairman about the
11 differing situations of AREVA and Urenco vis-à-vis the
12 U.S. market.

13 Given that both companies, from what I
14 understand, are receiving similar treatment from
15 European governments and share a protected substantial
16 part of the market in Europe, why are there incentives
17 regarding how they might behave in the U.S. market in
18 terms of pricing or investment as different as you
19 assert that they are?

20 MR. CUNNINGHAM: Mr. Van Namen will respond.

21 MR. VAN NAMEN: Two different situations.
22 The French again are currently operating a gaseous
23 diffusion plant. They're going to continue to operate
24 that plant for the foreseeable future as they ramp up
25 their production from their new centrifuge facility,

1 so at that time they're going to be building
2 inventories of low enriched uranium, which they might
3 then choose to sell into the marketplace.

4 They will have excess inventories available
5 for sale, where Urenco is contracting on an as-needed
6 basis from their customers so they do not have major
7 inventory issues in the way they handle their selling.

8 I think what we see as the threat from AREVA
9 comes from an inventory position and from excess
10 capacity where Urenco has essentially sold out and
11 therefore does not have an active role in the near
12 term market.

13 VICE CHAIRMAN ARANOFF: In terms of
14 technology, the technology that Urenco is using to
15 build its U.S. plant, and the technology which AREVA
16 is using to build its new plant in France; that's all
17 Urenco's existing technology that they are using.
18 Correct?

19 MR. CUNNINGHAM: Mr. Sewell?

20 MR. SEWELL: Yes. That is correct. It's
21 the existing technology they are currently using in
22 their production plants in Europe.

23 VICE CHAIRMAN ARANOFF: In terms of how fast
24 they can bring their new plants online and the risks
25 that they might face in doing so, does that put them

1 as more of a sure thing than your own project, which
2 is based on a technology which has not yet been
3 commercially used?

4 MR. SEWELL: We would like to believe that
5 we have tremendous confidence that our plant will be
6 built, it will succeed, and it will perform as we have
7 projected. I would humbly suggest to you that this
8 technology has already been demonstrated 20-some years
9 ago and that we are taking that technology and
10 improving upon it with respect to materials,
11 manufacturing, and control systems, and, therefore, we
12 have a tremendous base upon which we can use in terms
13 of deploying an American centrifuge technology that we
14 believe is better than the technology that is
15 presently used in Europe.

16 As a matter of fact, the technology that the
17 Department of Energy had 20-some years ago was
18 actually much better than the technology that our
19 competitors use. We don't think there is a additional
20 risk with respect to ours because of the base and the
21 foundation upon which we are building, and we remain
22 confident that we will be able to build that plant,
23 and it will perform as expected.

24 So we don't see that there is a
25 differentiation or a distinction between us in terms

1 of risk. It's a matter of the difference between
2 performance, which we think that we have, the use of
3 leading-edge technology that will give us an
4 advantage, especially with respect to expansion.

5 In terms of an earlier question you asked,
6 as you visited our plant, I'm sure you saw, and we
7 pointed out to you, the expansion capability at our
8 facility, not just the original 3.8 million SWU, but
9 we have expansion capability and room there to build
10 with respect to any market to serve after the Russian
11 HEU contract is over. And that's why we have that
12 expansion capability.

13 That's why we submitted an environmental
14 impact statement to the Nuclear Regulatory Commission,
15 which is the long pole in the tent from a license
16 standpoint; an environmental impact statement that
17 identifies the capacity for 7 million SWUs and not
18 3.8.

19 So those factors all add up to something
20 that we think portends, assuming that the market
21 remains stable, that prices will be sufficient to
22 allow us to continue to use our cash flow, our
23 borrowings, our credit, and our ability to raise
24 additional capital to bring U.S. technology, American
25 technology, online to serve the market in the United

1 States and internationally, but to meet the nuclear
2 renaissance that we certainly hope does occur.

3 VICE CHAIRMAN ARANOFF: Okay. I appreciate
4 those answers. Let's see what I have time to get to
5 here.

6 Well, just to close the loop on something,
7 in talking about the HEU Agreement and its expiration,
8 I know that there is still a stockpile of more HEU in
9 Russia. Just to update our record, has there been any
10 conversation about extending the HEU Agreement or
11 adding additional volume to it? Is that something
12 that might be contemplated?

13 MR. SEWELL: Every time we meet with the
14 Russians, and the U.S. government meets with the
15 Russians, we ask about extending that agreement. The
16 answer we get is no. They have no intention to expand
17 that agreement, in part, so they can take advantage of
18 their commercial infrastructure, and another part is
19 related to the condition of that additional stockpiled
20 material and the ability to convert it to commercial
21 specifications that are needed in the commercial
22 market; that is, it's hard to convert the rest of that
23 in a way that will meet commercial specifications.

24 So, to date and currently, the Russians do
25 not intend, even though we, at USEC, and the U.S.

1 government would like to see, from a nonproliferation
2 standpoint, that agreement to continue.

3 VICE CHAIRMAN ARANOFF: Okay. One of the
4 conditions of competition that we noted in the Russian
5 review recently was that the emergence of hedge funds
6 and other financial speculators into uranium markets.
7 Is that something that you've seen in the market for
8 LEU, or was that something that principally involves
9 other steps in the fuel cycle, and is it about the
10 same as what we saw back at the time of the Russian
11 case?

12 MR. CUNNINGHAM: Mr. Van Namen?

13 MR. VAN NAMEN: The activity of the hedge
14 funds, I think, is clearly constrained to the uranium
15 market. It started off mainly in U-308 and has
16 broadened to UF-6, or uranium hexafluoride, but we
17 have not seen activity when it comes to LEU by the
18 hedge funds.

19 VICE CHAIRMAN ARANOFF: Okay. Would you say
20 that the activity, where it exists, has increased,
21 stayed about the same, or maybe decreased because
22 hedge funds are being a little more cautious now about
23 what they are doing since the time we looked at it in
24 the Russian case?

25 MR. VAN NAMEN: I'll ask Mr. Whitehurst to

1 offer his opinion. I think it has continued to
2 increase, from my observation.

3 MR. WHITEHURST: I believe it's continued to
4 increase, but it's still not at a magnitude that is
5 the main control in the market.

6 VICE CHAIRMAN ARANOFF: Okay. We had some
7 data in the record in the Russian case about what
8 portion of sales were accounted for by hedge funds, so
9 if there is anything that you can do to help us update
10 that, that would be helpful. Thank you very much.
11 Thanks, Mr. Chairman.

12 CHAIRMAN PEARSON: Commissioner Lane?

13 COMMISSIONER LANE: Good morning. I, too,
14 thank you for coming this morning and want to thank
15 you again for the nice tour that we had, and I see,
16 Mr. Cunningham, your colleague, Mr. Trendl, didn't
17 give you the message, which was, if you don't show up
18 for the tour, you can't show up for the hearing.

19 MR. CUNNINGHAM: I have consulted a noted
20 civil liberties lawyer, and we're analyzing that issue
21 now.

22 COMMISSIONER LANE: Okay. Thank you.

23 Well, Mr. Emerson, I have a couple of
24 questions for you.

25 What is the status right now of subject

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1 merchandise coming into this country? Do the tariffs
2 apply to any of the SWU that is coming into our ports
3 now?

4 MR. EMERSON: Commissioner Lane, the order
5 remains in place, just as it was when it was imposed
6 in early 2002. All entries of LEU from France are
7 subject to eight antidumping-duty, cash-deposit
8 requirements and suspension of liquidation.

9 The exemption and the certification
10 requirement that was contained in the Department of
11 Commerce's remand determination has not yet been
12 imposed. The Department stated that its remand
13 determination would take effect upon a final and
14 conclusive court decision, and that's not quite
15 happened yet.

16 There was a decision from the Federal
17 Circuit in September of 2007, late September, so 15
18 days ago, 20 days ago. The period for seeking
19 certiorari has not yet run, and both the Department of
20 Commerce and USEC have indicated, in filings to the
21 Federal Circuit, that that is a distinct possibility.

22 COMMISSIONER LANE: So is the Federal
23 Circuit order stayed at this point?

24 MR. EMERSON: No, it's not.

25 COMMISSIONER LANE: And so explain to me,

1 then, why the order of the Court would not be carried
2 out by Customs?

3 MR. EMERSON: The order of the Court went to
4 dismissing our appeals in that case as unripe, but the
5 Department of Commerce's language, in its last remand
6 determination, which I think was May of 2006 -- I'll
7 need to double-check, but the language in the
8 Department of Commerce's remand determination stated
9 that this exemption and certification would take place
10 only, again, at a final and conclusive decision.

11 I think that, from the Department's
12 perspective, because the U.S. Department of Commerce
13 did, again, in filings to the Federal Circuit,
14 indicate a possibility of seeking certiorari on this
15 case because it is so critical to the administration
16 of the dumping law, I believe, from their perspective
17 -- I can't speak for the Department of Commerce, but I
18 believe, from their perspective, that they thought
19 that that chance was high enough that they didn't want
20 to get into a situation where they applied this
21 exemption, sought cert., got some sort of reversal
22 from the Supreme Court, and then had to go back and
23 kind of unwind their actions.

24 I think, from their perspective, they were
25 going to hold off on applying the scope exception

1 until that period ran.

2 CHAIRMAN PEARSON: Okay. Thank you.

3 MR. CUNNINGHAM: And I would just add, I
4 understand that the most recent CAFC determination
5 makes it very clear that, while the contracts that
6 were looked at at the time of the original CAFC case
7 and were made during the period of investigation by
8 then Eurodif, that some of them were SWU contracts,
9 and I think you can say those are not subject.

10 The CAFC determination makes it very clear
11 that there are issues that Commerce has to look at on
12 a case-by-case, contract-by-contract basis to
13 determine whether it's a SWU contract, just as
14 Commerce said in its certification requirements that
15 it published as part of the exclusion that it was
16 going to impose.

17 So we will have an ongoing process, even
18 after the scope exclusion becomes final.

19 COMMISSIONER LANE: Okay. I understand
20 that, so let me go to my next question.

21 Let's talk about the funding for the new
22 facility at Piketon. Will there be any government
23 funding for that project, and are you receiving any
24 state or federal tax credits to build that facility?

25 MR. SEWELL: We expect to have a need to

1 raise additional capital in the latter part of 2008,
2 as we indicated in our testimony. To date, we have a
3 small amount of state incentives and tax credits that
4 we're taking advantage of, and it's in the tens of
5 millions of dollars. Compared to a \$2.3 billion
6 plant, it's not sufficient to carry the entire need.

7 To date, we've had no other government
8 support or government funding for the deployment needs
9 and the financing needs of our new project, using
10 American Centrifuge technology.

11 The DOE loan guarantee program for nuclear
12 projects and efficient technologies, under the Energy
13 Policy Act of 2005, is a potential candidate for us to
14 utilize in raising the additional capital. That is
15 one additional candidate. The other would be to do a
16 structured financing deal to raise additional capital
17 for the remaining funds in our plan.

18 Short story: We're not getting government
19 funding now. We're using our own funds and the money
20 that we raise through debt, using our debt facility,
21 and our securities offerings, and we'll need to raise
22 additional capital in the future, and government-
23 backed loans, not government subsidies but government-
24 backed guarantees, is one candidate that we would like
25 to take advantage of because we feel that we meet the

1 criteria that are specified in the Energy Policy Act
2 in Title 17.

3 COMMISSIONER LANE: Okay. Maybe I'll stick
4 with you, Mr. Sewell. What percentage reduction in
5 your costs to produce the low-enriched uranium do you
6 expect to achieve by use of the new centrifuge
7 technology?

8 MR. SEWELL: The best example that we use
9 publicly is the American Centrifuge technology uses
10 five percent of the electricity to generate the same
11 amount of production from a gaseous-diffusion
12 technology and, therefore, would represent a
13 significant savings, from a production-cost
14 standpoint.

15 We have generally talked, in raising -- I
16 don't know if it's a classified number or confidential
17 number. I think we would be glad to submit that for
18 the record, in terms of the percentage decrease we see
19 in production costs.

20 COMMISSIONER LANE: Okay. That would be
21 fine. Thank you.

22 Mr. Van Namen, in your testimony, you said
23 that while it is true that USEC delivers more LEU
24 under SWU contracts than EUP contracts, EUP contracts
25 remain a common form of contract in the U.S. market.

1 Do you know what percentage of USEC's contracts are
2 EUP contracts as opposed to SWU contracts?

3 MR. VAN NAMEN: Again, I would be happy to
4 submit that confidentially.

5 COMMISSIONER LANE: Okay. Thank you.

6 In the prehearing staff report, and in
7 USEC's prehearing brief, it is noted that LEU is sold
8 to electric utilities under long-term contracts that
9 run four to seven years or even longer. Is the
10 current trend to use the longer-term contracts that
11 might be longer than seven years?

12 MR. VAN NAMEN: Bob Van Namen. Yes, that is
13 the case, that we do see utilities looking for
14 reliability of supply and suppliers looking for solid
15 revenue streams that would indicate longer-term
16 contracts. So, yes, we have seen that trend in the
17 market.

18 COMMISSIONER LANE: Okay. Thank you.

19 Mr. Chairman, I'll just wait until my next
20 round.

21 CHAIRMAN PEARSON: Commissioner Williamson?

22 COMMISSIONER WILLIAMSON: Thank you, Mr.

23 Chairman. I do want to express my appreciation to the
24 witnesses for their testimony.

25 I would like to know how should the

1 Commission look at the reasonable foreseeable time in
2 this industry? What is a reasonable foreseeable time
3 for this case?

4 MR. CUNNINGHAM: It's a little more
5 complicated in this case because there are several
6 aspects on which reasonably foreseeable time may be
7 relevant for you. Certainly, the fact that there are
8 longer-term contracts means that, as to the present
9 contracts that are being taken now, they are likely to
10 have a longer-term effect in the reasonably
11 foreseeable time of one or two years, as the
12 Commission normally looks at, doesn't really encompass
13 that.

14 The four-year period for analyzing the
15 effects of sales being currently lost seems
16 reasonable.

17 On the other hand, some of the issues as to
18 what's reasonable foreseeable relate to when is new
19 demand going to increase in this marketplace because
20 of the nuclear renaissance, which we're all crossing
21 our fingers and hope that that comes to pass. That's
22 something as to which, it seems to me, it's not
23 appropriate for the Commission to extend its
24 reasonable time period.

25 That is going to happen, or not going to

1 happen, and it doesn't depend on length of contracts
2 for the supply of SWU, and, therefore, in analyzing
3 issues such as that, which really lie at the heart of
4 what -- I shouldn't say it lies at the heart of
5 AREVA's argument because AREVA doesn't really have any
6 argument. They don't make any argument. But in
7 AHUG's argument, for example, they say everybody is
8 going to do fine here because of the nuclear
9 renaissance.

10 I think, there, you're really looking at a
11 pretty traditional time period of one or two years as
12 to whether that's reasonable to look at that as a
13 factor that will affect the welfare of this industry.

14 COMMISSIONER WILLIAMSON: Thank you.

15 I've got a question about exports. I
16 noticed USEC has exported most of its domestically
17 produced LEU in recent years. Will the revocation of
18 the orders have an effect on USEC's exports, and to
19 the extent that the subject imports affect USEC's
20 revenue from the sale of imported Russian LEU, is this
21 relevant to the Commission's analysis of likely
22 injury?

23 MR. VAN NAMEN: Bob Van Namen. I'll answer
24 that. We do supply significant amounts of
25 domestically produced material to the domestic market,

1 so we do have a significant quantity that we place
2 into the domestic market from our gaseous-diffusion
3 plant.

4 If we were to have imports come into the
5 U.S. of unfairly priced product, they would displace
6 Paducah production. Let me know if I get back to --

7 MR. CUNNINGHAM: Can I break into that?

8 MR. VAN NAMEN: Sure.

9 MR. CUNNINGHAM: And you have to understand
10 there is a priority thing here. We are committed to
11 buy and to sell the HEU volume, and, therefore, we've
12 got to do that. It's not a question of can we limit
13 our production when we don't get enough sales? We
14 have to sell that stuff, so that stuff would be sold
15 first, and the hit from lost sales would come first
16 out of our domestic-produced material before it would
17 hit the material which we have to buy and sell.

18 MR. VAN NAMEN: So if we were to decrease
19 production, that would be decreased revenues. It
20 would decrease our ability to fund the American
21 Centrifuge project. It would likely impact our
22 ability to continue full employment at the Paducah
23 facility.

24 So we would have injurious effects. Even
25 though we're seeing imports in the U.S. market, it is

1 going to displace that Paducah production first. It
2 would not necessarily hurt our exports, but it's going
3 to hurt our overall business position and our ability
4 to transition.

5 MR. CUNNINGHAM: But it would also -- check
6 me if I'm wrong here. If your production has to be
7 reduced disproportionately to your total amount of
8 sales because you have to keep selling the HEU stuff,
9 that means your plant loading goes down very
10 substantially, and your unit costs go up very
11 substantially, and that does substantially affect your
12 ability to sell the domestic production.

13 MR. VAN NAMEN: Right. To sell the domestic
14 production and to finance the American centrifuge.

15 COMMISSIONER WILLIAMSON: Sell it both in
16 the U.S. market and overseas or just in the U.S.
17 market?

18 MR. VAN NAMEN: It would hurt us in both
19 markets because it would drive up our total unit cost
20 of production, as we had to decrease the volume that
21 we produce from the Paducah facility.

22 COMMISSIONER WILLIAMSON: So it affects your
23 competitiveness in world markets.

24 MR. VAN NAMEN: Yes. Absolutely.

25 MR. CUNNINGHAM: Mr. Whitehurst has an

1 addition.

2 MR. WHITEHURST: There is also one dimension
3 of the business that when we deliver low-enriched
4 uranium at the fabricator to make the fuel rods, the
5 assays that are required to make those fuel rods are
6 not known until several months before that delivery.

7 In the Russian material, the assays are
8 fixed, so the LEU assays, between a range of three and
9 five percent, are fixed for the calendar year.

10 As the orders come in from the fabricators
11 to make specific assays, the Paducah plant is the
12 swing item that allows us to meet those obligations
13 that the U.S. utilities are dependent on to make their
14 fuel rods.

15 COMMISSIONER WILLIAMSON: Thank you.

16 I want to understand this difference between
17 a SWU and an EUP contract. From the point of view of
18 utilities, what makes them want to choose one over the
19 other? What are the factors that they consider?

20 MR. CUNNINGHAM: Mr. Van Namen?

21 MR. VAN NAMEN: Sure. The general
22 preference is for a utility to be able to control each
23 step of the procurement chain of the fuel. However,
24 utilities do see benefits in having one-stop shopping.
25 They only have to write one contract. It's easier on

1 contract administration, and perhaps a supplier can
2 incorporate risk management and lead time savings as
3 he were to provide and manufacture each of the
4 individual components of the fuel cycle.

5 So there are abilities for the supplier to
6 get benefits which they can then pass on to the
7 customer in the way of price. It's a convoluted
8 problem.

9 COMMISSIONER WILLIAMSON: In other words,
10 each utility may make a decision in a particular case
11 as to what makes the best sense.

12 MR. VAN NAMEN: That is correct.

13 MR. CUNNINGHAM: But do remember that AREVA
14 markets explicitly on the one-stop-shopping basis, as
15 they say in their own materials.

16 COMMISSIONER WILLIAMSON: Would you mean --
17 is that an EUP contract?

18 MR. CUNNINGHAM: Well, I would call it an
19 EUP. They might say, No, it's not an EUP contract if
20 we actually have a separate document for the sale of
21 uranium and a separate document for the enrichment. I
22 would say, boy, if there was ever a case of form over
23 substance should be disregarded, that's it.

24 But like I said, that's one of the things
25 that the Court of Appeals, just a few weeks ago, said

1 we're going to have to work out, Commerce is going to
2 have to work out, as it goes through the
3 administration of this order.

4 COMMISSIONER WILLIAMSON: But from the point
5 of view of looking at the impact on the competition in
6 the U.S. and all, do utilities often modify contracts
7 in the course of the history, so that might change the
8 nature of the contract?

9 MR. VAN NAMEN: Absolutely. They would
10 tailor the contract to avoid the dumping regulations.
11 It's a very creative industry that finds many ways
12 around trade restrictions.

13 COMMISSIONER WILLIAMSON: Okay. Thank you.
14 That's the clarification I was trying to understand.

15 This may have to be in a confidential
16 submission, but how much money does USEC need for the
17 American Centrifuge project and over what period of
18 time?

19 MR. CUNNINGHAM: Mr. Sewell.

20 MR. SEWELL: Our estimate is \$2.3 billion
21 that we would need for the deployment of American
22 Centrifuge, and we expect to finish that deployment by
23 2012. That estimate does not include financing costs
24 or contingency. So, to the extent that there's
25 additional elements associated with the actual

1 financing of that deployment, that would require some
2 additional amount.

3 We can submit to you, in a confidential
4 submission, the remaining amount of money that we need
5 for the completion of that plant. But the overall is
6 2.3 without contingency in financing; \$2.3 billion
7 without financing and contingency.

8 COMMISSIONER WILLIAMSON: I don't know
9 whether you could say or address whether or not you've
10 entered into any contracts already for the delivery of
11 uranium LEU that would come from the American
12 Centrifuge project.

13 MR. VAN NAMEN: We have not entered into any
14 contracts for that, but we are in the process of
15 engaging customers for that output.

16 COMMISSIONER WILLIAMSON: Thank you. My
17 time is about up, so thank you.

18 CHAIRMAN PEARSON: Commissioner Pinkert?

19 COMMISSIONER PINKERT: I want to begin by
20 joining my colleagues in welcoming the panel and
21 thanking you for being here.

22 I want to begin the more technical legal
23 issues that Mr. Emerson testified about, and, in
24 particular, you spoke about whether or not the Eurodif
25 decisions were final and conclusive. It's my

1 understanding that "final and conclusive" means that
2 all of the appeal timelines have run. Is that your
3 understanding?

4 MR. EMERSON: Commissioner Pinkert, I
5 believe that's the way the Department of Commerce is
6 understanding that as well, yes.

7 As I mentioned, the Federal Circuit issued
8 its decision, its last decision, in the string of
9 litigation September 21, 2007. The parties have 90
10 days to file a petition for certiorari, so that 90-day
11 period has not yet run. We're about 20 days into it.

12 So, yes, I believe that's my understanding,
13 and I believe that's how the Department understands it
14 as well and is waiting until that full period runs to
15 make any changes to the scope of this order.

16 COMMISSIONER PINKERT: Okay. Now, you also
17 testified that it's solid, Black letter principle that
18 the Commission does not have the authority to amend
19 the scope of an order, and I'm wondering if you've
20 thought about how that Black letter principle fits in
21 with our changed-circumstances practice, where, I
22 believe, for example, in Fish Netting from Japan, we
23 took a like product out from an order.

24 MR. EMERSON: To be sure, leaving aside the
25 sunset context for a moment, if the Department of

1 Commerce were forced to change the scope of an order
2 due to appellate activity such that a portion of that
3 merchandise falls outside the scope, parties would be
4 free to come to the ITC, request a changed-
5 circumstances review, note that the Department had
6 changed the scope of the proceeding, and ask this
7 Commission to reconsider whether injury would still
8 occur.

9 That's something that every party would have
10 the right to do, but, in that particular case, it's
11 the Department that would change the scope of that
12 proceeding, and the Commission would do what it
13 normally does: analyze injury by reason of subject
14 imports, the subject imports remaining in the order.

15 MR. CUNNINGHAM: Commissioner, I would only
16 add, of course, the like product is a little
17 different. You're free at any time, if the facts so
18 warrant, to say, "Wait a minute. The like product is
19 somewhat different than the scope," and you do that in
20 a number of cases.

21 That's not what they are asking you to do
22 here at all. They are asking you to take the imports
23 out as being no longer subject to this proceeding
24 rather than saying, "Wait a minute. Some aspect of
25 U.S.-produced merchandise shouldn't be included in the

1 like product, and, therefore, in the industry." They
2 are not asking that at all. They are asking to take
3 imports out, and that is, as Mr. Emerson has analyzed
4 it.

5 COMMISSIONER PINKERT: Okay. Now, to
6 perhaps a slightly less technical area of practice and
7 law. Assuming that the Commission were to use adverse
8 facts available as a result of AREVA's failure to
9 provide the requested information, as you suggest, can
10 you specify what information we should use as facts
11 available?

12 MR. EMERSON: Commissioner Pinkert, we have,
13 in our prehearing brief, supplied the Commission with
14 some evidence taken from USEC's own market
15 intelligence, other published sources, in areas like
16 French enrichment capacity, likelihood of exports, and
17 so on, and Mr. Trendl may be able to add to some of
18 these particular areas as well.

19 It's information that we have provided to
20 the Commission, both in USEC's domestic producer
21 questionnaire response and also with our prehearing
22 brief, to kind of fill the holes in the record. So I
23 think we've provided that, but I'll let Mr. Trendl
24 chime in, if he knows of other pieces.

25 COMMISSIONER PINKERT: Mr. Trendl?

1 MR. TRENDL: Yes, Commissioner Pinkert. I
2 would direct you to pages 11 and 12 and 13 of our
3 prehearing brief. We would note that the staff did a
4 terrific job, in the absence of questionnaire response
5 data, to try to compile this, and a number of the
6 sources that the staff used are relevant and should be
7 used, we believe, as adverse facts available.

8 As detailed, though, some of the capacity
9 information, in particular, which we've provided, we
10 think is particularly probative and should be used in
11 the absence of having that data from the only party
12 that could have provided that data.

13 CHAIRMAN PEARSON: Let me add one particular
14 thing to this, and, remember, there is a very curious
15 position on the part of AREVA here, which is that they
16 think you should only consider one thing, which is
17 their assertion that everything they sell is going to
18 be under a SWU contract in such a way that it's not
19 subject to the dumping law, and that is, on the
20 record, I would submit, an entirely unsubstantiated
21 assertion, and you should disregard it.

22 To the extent that there is evidence on the
23 record of what they are selling in the United States,
24 and there is precious little, and to the extent, both
25 that they have not submitted any information about the

1 details of those transactions and because the Court of
2 Appeals has said, Wait a minute. There are lots of
3 complexities that you need to look at as you analyze
4 the transactions as they come in.

5 I think you cannot assume that any of those
6 transaction, any of them, are transactions that are
7 excluded from the case or outside the antidumping law.
8 That's the most clear and obvious use of adverse
9 inferences or facts available, or whatever you want to
10 call it, because they have keyed a whole argument on a
11 factual proposition that they have declined to
12 support.

13 COMMISSIONER PINKERT: Would that be an
14 adverse inference, in your view?

15 MR. CUNNINGHAM: Yes, definitely.

16 COMMISSIONER PINKERT: Okay. Now, Mr.
17 Cunningham, I believe you also testified that there
18 are national security and energy security issues that
19 relate to the Commission's decision in this case, and
20 certainly correct me if I'm wrong about that, but I'm
21 wondering whether the statute permits us to take into
22 account those kinds of issues, those kinds of
23 considerations, in our sunset determination.

24 MR. CUNNINGHAM: Not explicitly, and I would
25 not argue that this is a national security case or

1 that you should reach a decision on the basis that it
2 is an industry essential to the national security.

3 What I do think you should do is to look at
4 the fact that because of national security
5 considerations, certain obligations have been imposed
6 upon USEC, specifically, the HEU Agreement, where it
7 is required, and is in the national interest doing, to
8 buy certain quantities of material converted from the
9 Russian bombs.

10 That colors the entire outlook as to how
11 USEC must run its operations between now and 2013, and
12 it means, as Mr. Van Namen says, that in the interest
13 of national security, USEC has put its domestic
14 production at a greater risk than would otherwise be
15 the case because any business it uses in the U.S.
16 market will come out of its domestic production and
17 not out of import supply that it gets.

18 That leads to the prospect, as Mr. Van Namen
19 testified, that any loss of production affects its
20 entire cost structure in an aggravated way, and, to
21 that extent, national security is a force that has
22 operated on USEC.

23 I would love to be able to say, and I think
24 the administration would love for you to be able to
25 say, "By God, we want to use this case to protect USEC

1 for national security reasons."

2 I can't legally argue that you should do
3 that, but you should consider the extent to which
4 national security has impinged upon USEC's operations
5 as a condition of competition.

6 COMMISSIONER PINKERT: Thank you. Thank
7 you, Mr. Chairman.

8 CHAIRMAN PEARSON: Mr. Cunningham, you spoke
9 a little while ago about the definition of "like
10 product" in this case. Given the unusual
11 circumstances in which there is a legal dispute over
12 what the scope might eventually be -- I understand
13 there is no question about what Commerce's scope is at
14 this moment, but in this somewhat fluid situation, are
15 you suggesting that we should consider narrowing our
16 like-product definition to look specifically at the
17 EUP sales of the domestic industry and not include the
18 SWU operations?

19 MR. CUNNINGHAM: I know you will be shocked
20 to hear that my answer to that question is, no, you
21 should not narrow it. Let me tell you what I mean
22 here.

23 Like product deals with the question, what
24 are the sales by the domestic industry that are like
25 the imported sales? In every regard that the

1 Commission has ever considered, sales, by any
2 contractual means, by USEC are like imports under EUP
3 contracts.

4 They are absolutely fungible merchandise.
5 The transactions are commercially interchangeable.
6 The only reason for exclusion is a formality that they
7 do not involve a "sale" of merchandise, in the view of
8 the Court, a decision which I will respectfully
9 continue to disagree with, and it has nothing to do
10 with the like-product issue.

11 A SWU sale competes directly with, as a like
12 product, an EUP sale or a SWU sale by the domestic
13 industry. An EUP sale of imports competes directly
14 with, and is interchangeable with, a SWU sale or an
15 EUP sale by the domestic industry. So there is no
16 reason to, either in terms of characteristics of the
17 merchandise or in terms of the competitive interaction
18 of the two types of sales, there is no reason
19 whatsoever to narrow the like product.

20 CHAIRMAN PEARSON: Okay. Well, as you know,
21 I am not highly trained in these fine points of the
22 law, but I am aware that, at times, domestic
23 industries prefer that the like-product definition be
24 narrower rather than broader, so I wanted to give you
25 the opportunity to --

1 MR. CUNNINGHAM: We're of a firm view that
2 it makes no difference. I think we all would, 100
3 percent, agree with that.

4 CHAIRMAN PEARSON: Mr. Emerson, did you have
5 something to add?

6 MR. EMERSON: Nothing to add, no. Thanks.

7 CHAIRMAN PEARSON: Mr. Van Namen, how do you
8 respond to the argument that providing AREVA with open
9 access to the U.S. market should make it less likely
10 that they would price aggressively in Asia, thus
11 improving the prospects for USEC to sell profitably in
12 Asia?

13 MR. VAN NAMEN: I think, as you look at
14 their inventory position over the next several years,
15 they will look to the U.S. market as the primary place
16 to be able to sell that inventory. I think, in our
17 submission, we've indicated that the majority of open
18 demand in the world occurs in the United States, so if
19 they are allowed to come into the U.S., that will be
20 the direct and most injurious path for them to be able
21 to sell in a way that harms USEC.

22 It's a secondary effect, I guess, is what
23 you were saying. If they were to sell into the U.S.
24 freely, then they would not have as much to sell
25 aggressively into Asia for. I think they are two

1 totally different markets, and near-term fundamentals
2 are clearly driven by the U.S. market and by the near-
3 term open demand. Asia does have a longer contracting
4 cycle and has substantially less uncovered demand than
5 the U.S. does.

6 So if you're looking at the quickest way to
7 harm USEC, it would be the sales into the U.S. market,
8 and the longer term is in the Asian market.

9 MR. CUNNINGHAM: Mr. Klett has something to
10 add to that.

11 MR. KLETT: Mr. Chairman, I think that
12 argument is premised on AREVA being at full capacity,
13 such that increased exports to the U.S. will result in
14 lower exports to Japan, and given the fact that AREVA
15 is expanding centrifuge capacity, and they,
16 themselves, have stated, with respect to that
17 capacity, in terms of what will it be, that the
18 ultimate level of capacity will be based on market
19 conditions.

20 I submit that one of the market conditions,
21 given the size of the U.S. market, is whether the
22 order stays in place or not, but I don't think, based
23 on the nature of the capacity and their ability to
24 expand incrementally, that increased exports to the
25 U.S. will necessarily result in decreased exports to

1 Japan.

2 CHAIRMAN PEARSON: Okay. We need to look at
3 the domestic operations of the domestic industry, and
4 this case is confused, to some degree, by the fact
5 that the Russian imports account for a significant
6 percentage of USEC's sales. That's on the record. We
7 know that.

8 So if we're to look at the part of the world
9 where USEC may be most dependent on achieving
10 profitable prices for its domestic production, we
11 probably need to look at Asia, and that's why I don't
12 know that this is an entirely irrelevant question.

13 I understand what you're saying, Mr. Klett,
14 that if AREVA can produce a lot of product and sell it
15 at low prices, both in the United States and in Asia,
16 maybe they would want to do that, although my own
17 experience in business led me to believe that selling
18 at low prices isn't a lot of fun. Often, commercial
19 firms have an incentive to sell at higher prices. I'm
20 getting off the track here.

21 Mr. Van Namen, would you care to comment?

22 MR. VAN NAMEN: Just one more comment. I
23 tried to touch on this in my testimony. If they are
24 successful in getting sales in the U.S. market, I will
25 have to reduce the production at the Paducah facility.

1 So as they are successful in doing that, it doesn't
2 mean, as Mr. Klett said, that they will sell less into
3 Asia. I think they want to sell more into both.

4 Their ability to sell at unfair prices into
5 the U.S. market means I will have to reduce production
6 at Paducah because I have to take, and I have to sell,
7 that five and a half million SWUs of Russian HEU.

8 CHAIRMAN PEARSON: That's a contractual
9 obligation that USEC has regarding the Russian HEU.

10 MR. VAN NAMEN: That is correct.

11 CHAIRMAN PEARSON: Okay. Well, we may hear
12 more of this in the afternoon. I'm not sure, but I
13 wanted to put it out there so that you would have an
14 opportunity to address it.

15 Shifting gears, in the staff report, there
16 is a reference to futures markets for uranium. What
17 uranium product currently has a futures market, and
18 where is that futures market located? Mr. Van Namen?

19 MR. VAN NAMEN: NYNEX and the Uranium
20 Exchange, UXC, offer a service of uranium futures for
21 U-308 and UF-6, I believe, for both products but not
22 for any enriched uranium. It stops at natural uranium
23 for those products, and it is a product that they
24 offer basically paper transactions. There is no
25 physical trading, but it's paper transactions to cover

1 price hedging going forward for several years.

2 CHAIRMAN PEARSON: I looked in the Wall
3 Street Journal to see if I could find the uranium
4 futures markets quoted. I looked in the metals. I
5 didn't see it there. I looked in energy products. I
6 didn't see it there. It's not an agricultural, so I
7 didn't even look there.

8 Is it traded relatively thinly, and thus it
9 doesn't get reported widely?

10 MR. WHITEHURST: It's a relatively new index
11 that has limited volume. We would be happy to
12 provide, in our post-hearing brief, the data on the
13 transaction volumes and price trends for the contracts
14 that have traded.

15 CHAIRMAN PEARSON: Okay. Has USEC availed
16 itself of hedging opportunities? If you can comment
17 generally on that, that would be fine. If there are
18 more things you would want to add in post-hearing,
19 that's also fine.

20 MR. VAN NAMEN: Bob Van Namen. No, we have
21 not. Again, what we do is to place the uranium that
22 we have into long-term contracts with our enrichment
23 customers, so we have not engaged in the price
24 hedging.

25 CHAIRMAN PEARSON: But for your EUP

1 contracts, where you need to own some unenriched
2 uranium in order to have product to enrich and sell to
3 customers, you need somehow to acquire that unenriched
4 uranium. The futures market would allow some hedging
5 of that price risk, I would think.

6 MR. VAN NAMEN: Bob Van Namen again. We
7 have two sources of uranium available to us. We
8 either have uranium which was with us at the time that
9 we were created as a publicly traded company, or we
10 can choose to underfeed the Paducah facility so we
11 would use more power and use less uranium in that
12 process, which effectively generates additional
13 uranium that we can then place into EUP contracts.
14 That is our main source.

15 We've also acted as an intermediary for
16 suppliers where a customer does want one-stop
17 shopping. We've been the front person for a single
18 contract where we do source, but generally those are
19 done on a pass-through basis.

20 CHAIRMAN PEARSON: Okay. Thank you very
21 much.

22 Vice Chairman Aranoff?

23 VICE CHAIRMAN ARANOFF: Thanks, Mr.
24 Chairman.

25 Well, one more legal question to follow up

1 on the ones that Commissioner Pinkert was asking.
2 I've got my best legal questions saved for this
3 afternoon.

4 If the Commission were to do, as AREVA is
5 suggesting, and adopt Commerce's amended scope prior
6 to Commerce formally informing us that that is what
7 they wish us to do, what would be the legal
8 consequences of that? Would we be merely misguided,
9 in your view, or would we be acting ultra vires?

10 MR. CUNNINGHAM: It would have no effect
11 whatsoever on your analysis, and the reason is, as the
12 Court of Appeals for the Federal Circuit has made
13 clear, what we have decided is what the significance
14 was of the contracts in the original investigation.
15 Contracts to be looked at in future imports must be
16 assessed as they come in in the annual reviews.

17 If somebody doesn't like how Commerce
18 analyzed them, they will appeal it to us, and we'll
19 decide that then, and then, if facts permit us to do
20 so, we will deal with issues like whether it's a SWU
21 contract or an EUP contract when the enricher
22 organization supplies the natural uranium, say, in a
23 separate contract.

24 Since you have no data on the record to
25 analyze any of those issues, since the Court has

1 explicitly told you that those issues as to ongoing
2 contracts have not been decided, and since AREVA has
3 refused to give you information which would enable you
4 to analyze that, it can't affect your decision at all.

5 VICE CHAIRMAN ARANOFF: Okay. Fair answer.
6 Would you view it as an ultra vires act?

7 MR. CUNNINGHAM: I would sue you.

8 VICE CHAIRMAN ARANOFF: Right. Okay.

9 Turning to a demand question, AHUG makes the
10 argument in their brief that increased demand for
11 uranium products is not as far off in the future as
12 you predict because it doesn't depend on new reactors
13 coming online. In fact, what they say is that
14 existing nuclear power plants are being run, or will
15 be run, at increased load levels, but that's going to
16 increase demand in the short run.

17 Now, is that consistent with the small -- I
18 think the number was 0.7 percent -- increase in demand
19 that Mr. Whitehurst testified to, or are they pointing
20 to something else that you haven't responded to?

21 MR. CUNNINGHAM: Let's hear Mr. Whitehurst
22 on that.

23 MR. WHITEHURST: The increased load levels
24 on the plants, et cetera, are, to my knowledge,
25 included in the responses that were given to the

1 Commission, and we've used the Commission's data for
2 this. There are also offsetting efficiencies
3 continuously being put into the cycle, as well as the
4 possibility of shortening the cycles from 18 to 25
5 months to 12 months, which would, in fact, reduce the
6 demand for LEU.

7 There are things that will go both ways in
8 the potential of what may happen in the future. The
9 consensus in all of the studies tend to come back
10 that, on an LEU basis, it's flat.

11 VICE CHAIRMAN ARANOFF: Okay.

12 MR. CUNNINGHAM: And I just want to
13 emphasize, that is the consensus of the studies. This
14 is not a "Gee, this is what USEC says." This is what
15 the consensus of the objective observers say.

16 VICE CHAIRMAN ARANOFF: Okay. In looking
17 back to what I was asking in the first round in
18 questions, in looking at the situation that faces both
19 your new American Centrifuge and also the LES project,
20 is there a scenario where subject imports could come
21 into the market and undermine the deployment of the
22 American Centrifuge in the manner that you've
23 described and yet not have an effect on the LES
24 facility, which, as I understand, is not as dependent
25 on the capital markets for financing and, therefore,

1 not have an adverse affect on the domestic industry
2 when looked at as a whole?

3 MR. EMERSON: Before I let Mr. Van Namem
4 answer on the economics of the two plans, I just would
5 question that one of the premises of your question,
6 which is that it would not affect the domestic
7 industry as a whole, ACP would still be part, and USEC
8 would still be part, of the domestic industry. It
9 would still be injured.

10 Depending on what Mr. Van Namem has to say,
11 that injury may be affected by the inclusion of LES,
12 if it can continue, but simply by saying that, well,
13 LES might not be affected, whereas ACP would;
14 therefore, the domestic industry at large would not be
15 impacted by imports of subject merchandise is not
16 quite correct because USEC would be part of that
17 domestic industry. But I'll let Mr. Van Namem speak
18 to the facts.

19 MR. VAN NAMEN: As Mr. Whitehurst, I think,
20 commented, LES does have a majority of their outputs
21 sold and committed from their upcoming plant. That
22 would make them less susceptible to market
23 expectations, but they still are counting on, I
24 believe, and I can't speak for them, as we are,
25 discipline in the marketplace to have fair pricing,

1 which has come to the market since the order was
2 imposed.

3 I think, before then, you heard no one
4 talking about new plants. LES had actually canceled
5 their plans to build in Louisiana, and since that
6 order, you've seen the prices improve, and you've seen
7 them and USEC turn to the new centrifuge project.

8 So I think it would have an injurious effect
9 if you were to see a return to where we were pre-
10 order, and you were to see the price-suppressive
11 effects.

12 MR. WHITEHURST: Mike Whitehurst. The
13 investment policy that Urenco invoked after the
14 initial order, they publicly stated, required stable
15 markets and acceptable pricing to justify capacity
16 expansion, either in Europe or in the United States.
17 They very much are focused on a stable, competitive
18 marketplace as a precursor to building, and they also
19 required a large portfolio of contracts to back up
20 that investment before it was made.

21 VICE CHAIRMAN ARANOFF: Am I correct in my
22 understanding that they have not gone to capital
23 markets for financing; they are financing internally?

24 MR. WHITEHURST: They are using internally
25 generated cash flows within the Urenco corporate

1 structure to finance LES.

2 MR. VAN NAMEN: Bob Van Namen. But they are
3 getting loans from the European Investment Bank for
4 expansion of their facilities, so they are getting
5 some support from outside agencies in addition to
6 their internally generated cash flow.

7 VICE CHAIRMAN ARANOFF: For their U.S.
8 facilities or for their European facilities?

9 MR. VAN NAMEN: It is all basically under
10 one umbrella. I think it's hard to distinguish what
11 capital -- the end financing for the U.S. facility
12 goes back to the Urenco parent company in Europe.

13 VICE CHAIRMAN ARANOFF: Okay. Returning to
14 your comments, Mr. Van Namen, on the fact that Urenco
15 has already got contracts for its projected output
16 from its U.S. facility, under what circumstances --
17 the utilities tell us that they are very concerned
18 about security of supply.

19 Under what circumstances would they enter
20 into and depend on a contract with a provider who
21 doesn't currently exist? Are these contingent
22 contracts? Do they have backup plans, or are they
23 really betting the store on this supply being there
24 when it's scheduled to be there?

25 MR. VAN NAMEN: Again, that's a question you

1 might better ask to the utilities. I think a utility
2 is going to look for the opportunity to be able to
3 line up backup supply in case the plant is not built.
4 They would want to have sufficient lead time to be
5 able to line up alternate supplies for that facility,
6 but maybe that's better directed to the utility. In
7 my role as a fuel manager, I would want to have the
8 physical output or a backup contingency plan or the
9 ability to go out and line up alternatives.

10 VICE CHAIRMAN ARANOFF: Okay. I will ask
11 that question to the utilities later. I don't know if
12 you have anything you can supply on this -- I'll ask
13 them this also. The utilities that have had contracts
14 with AREVA during the period of review or have
15 discussed contracts with AREVA; one of the questions I
16 have is whether we know if any of those contracts are
17 contingent on revocation, as was the case with some of
18 the contracts we saw in the Russian review.

19 MR. VAN NAMEN: Bob Van Namen. I do not
20 have any knowledge on that issue.

21 VICE CHAIRMAN ARANOFF: Okay. I appreciate
22 those answers. Thank you.

23 CHAIRMAN PEARSON: Commissioner Lane?

24 COMMISSIONER LANE: I'm not sure who I
25 should direct these questions to. Perhaps Mr.

1 Whitehurst, but I'm not sure. I have several
2 questions about USEC's operating revenues and costs.

3 In the prehearing report, USEC's revenues
4 and expenses are shown on a total basis and then
5 separated between USEC's U.S. production revenues and
6 costs and USEC's revenues and costs related to the
7 Russian LEU contract. Have you reviewed the separated
8 data, as shown on Table C-2 of the prehearing report,
9 and do you agree with the revenue and cost data shown
10 on that table?

11 MR. WHITEHURST: I would need a minute to
12 look at that data that came out of the Commission
13 report. I have not reviewed the Commission's report.

14 COMMISSIONER LANE: Well, then has somebody
15 reviewed that so I can direct the questions to that
16 person?

17 MR. VAN NAMEN: Bob Van Namen here. And,
18 again, this is not the way we normally look at our
19 business. We broke out that information specifically
20 for the convenience of the Commission. So we're not
21 going to be able to answer any specific questions on
22 that in public. It would be a confidential reply.

23 COMMISSIONER LANE: Okay. Well, then let me
24 ask the questions, and then you can provide it in your
25 post-hearing.

1 To the extent that you can answer today or
2 in your post-hearing, can you explain whether there
3 should be any significant differences between USEC's
4 unit revenues and costs for its separated U.S.
5 operations as a producer versus USEC buying and
6 selling the Russian product?

7 MR. TRENDL: Commissioner Lane, this is Tom
8 Trendl. The breakout between those two, and the
9 reason why we sort of hesitated there for a second,
10 the breakout of that data is, indeed, confidential.
11 The macro data is not, but to break out what your
12 questions are getting at is, indeed, confidential, so
13 we would be very happy to answer that in our post-
14 hearing brief.

15 COMMISSIONER LANE: Okay. Thank you.

16 MR. KLETT: Commissioner Lane, this is Dan
17 Klett. I just want to make one general point, and
18 that is that because this is not a spot market, and
19 there are long-term contracts, you wouldn't
20 necessarily expect to see unit revenues the same.

21 I haven't closely looked at the data. I
22 don't know what the relationship is, but I'm just
23 saying, as a conceptual matter, because the data
24 reported in the staff report are based on sales for
25 long-term contracts, depending on the contractual

1 terms, there could be differences in unit revenues.

2 COMMISSIONER LANE: Okay. Thank you. I
3 will look forward to reading your post-hearing
4 submissions on this issue.

5 There have been significant changes in the
6 utility industry in some states and parts of the
7 country with regard to restructuring and price
8 deregulation of power supply. In the regulated
9 states, it is common for electric utilities to have
10 tariff-adjustment provisions which allow rate changes
11 to pass through changes in fuel costs.

12 Even in the deregulated or transition
13 states, there may be some default pricing that allows
14 power-supply-related adjustments to reflect changes in
15 fuel costs.

16 Do you know what percentage of your sales
17 goes to utilities that are allowed to adjust their
18 tariffs to pass through changes in fuel costs to their
19 customers? Mr. Van Namen?

20 MR. VAN NAMEN: Bob Van Namen. We do have
21 that information, and we can get that to you. To the
22 best of our knowledge, some utilities do operate in
23 both regulated and deregulated markets. We do see
24 very little difference in behavior. Whether they are
25 in a regulated or deregulated market, they are very

1 focused on price and very focused on other competitive
2 issues that we've talked about in our briefs.

3 COMMISSIONER LANE: Okay. Could you provide
4 us a post-hearing response a list of the nuclear
5 electric-generation facilities that you provide fuel
6 to, the ownership of those facilities, the state they
7 are located in, and any information available to you
8 as to whether those facilities provide electricity in
9 a deregulated-power-supply market or serve captive
10 customers under state-regulated tariffs?

11 MR. VAN NAMEN: Yes. We will do that.

12 COMMISSIONER LANE: Okay. Now, I remember
13 reading in the report that you all have achieved
14 savings when you renegotiated your electricity
15 contract with TVA. Could you tell me what percentage
16 of savings on your electricity you achieved pursuant
17 to that renegotiation? And if you need to do that
18 post-hearing, that's fine.

19 MR. VAN NAMEN: Sure. I can make some
20 general comments on it, and then we will give you the
21 specifics.

22 We still have incurred about a 50-percent
23 increase in the price we pay for electricity from the
24 prices we were paying in the 2000-to-2005 timeframe.
25 The price did come down modestly compared to the one-

1 year deal that we signed as we extended the contract
2 the first time, and we did get more certainty in our
3 pricing, which was one of our main goals in extending
4 that contract.

5 So it was a modest decrease. It then steps
6 up in very small increments over time between now and
7 2012, and we'll get you the specifics.

8 COMMISSIONER LANE: Okay. Thank you. The
9 Energy Information Administration publishes a list of
10 data on nuclear fuel. However, it does not show the
11 amounts under contract in 2007 and 2008. For 2009,
12 the EIA estimates that 76 percent of U.S. utility fuel
13 requirements are under contract. Comparing the EIA
14 numbers to the staff report, it appears that the staff
15 report shows even larger percentages of utility
16 requirements being under contract.

17 Table 2-3 of the prehearing report shows
18 over 90 percent of expected 2009 demand under
19 contract, and the number stays above 50 percent until
20 2003. Do you have any disagreement or comments on the
21 data in Table 2-3 of the prehearing report?

22 MR. KLETT: Commissioner Lane, this is Dan
23 Klett. Table 2-3 of the staff report is based on your
24 questionnaire responses from utilities, and I think it
25 covers 21 purchasers.

1 The EIA data probably have a better coverage
2 with respect to the number of utilities reporting, so
3 that may, in part, explain the differences. I think
4 the differences may also be, in part, due to the
5 timing of the EIA report and when the utilities
6 reported data to the EIA, which would have been
7 earlier, so that, therefore, they would have reported
8 more uncommitted demand for those comparable years
9 because they reported the data in an earlier timeframe
10 than when the data were reported to you in your
11 questionnaire responses.

12 So I think the differences relate primarily
13 to those two factors. I don't think one is accurate,
14 and one inaccurate. It's just differences in
15 potentially coverage as well as timing of when the
16 data are reported.

17 COMMISSIONER LANE: Okay. Thank you.

18 I would like you to describe the pricing
19 provisions in typical long-term contracts. When you
20 refer to "market-based pricing," please describe that
21 mechanism, and how prevalent it is in utility fuel
22 supply contracts. Mr. Van Namen?

23 MR. VAN NAMEN: Sure. Over the last several
24 years, we have seen more contracting take place with
25 market-related provisions. The extent to which that's

1 in our contracts is confidential, and we would be
2 happy to provide you more information on that.

3 But it generally relates to indicators that
4 are published by consultants and observers and
5 participants in the industry as to what going market
6 prices are for both spot and long-term enrichment
7 transactions, and then those are used to calculate the
8 final price for enrichment deliveries.

9 COMMISSIONER LANE: Okay. Thank you.

10 Could you please describe how USEC obtains
11 its natural uranium that it then enriches? Does it
12 buy the natural uranium, take ownership, enrich it,
13 and then sell the enriched product to a fabricator; or
14 do utilities buy natural uranium, have it delivered to
15 USEC, and then to fabricators; or are there other
16 possible iterations to describe how USEC gets the
17 natural uranium that it enriches?

18 MR. CUNNINGHAM: Mr. Van Namen.

19 MR. VAN NAMEN: Bob Van Namen here. A
20 combination of all of the above. At times, we will
21 use our own uranium. At times, we will be the
22 purchaser of the uranium, as I mentioned in response
23 to Chairman Pearson's question, and then we will sell
24 that enriched uranium product to a customer, and, at
25 times, the customer will supply us the equivalent

1 amount of natural uranium for the amount of the
2 uranium included in the low-enriched uranium we
3 deliver to him. So it's a combination of all of those
4 methods for the transactions.

5 MR. EMERSON: If I could make another
6 comment to add to what Mr. Van Namen said, it's
7 important to understand, and we can certainly provide
8 the Commission with this information.

9 USEC, itself, owns a massive quantity of
10 natural uranium. In fact, my understanding is that --
11 we can speak about this in the confidential version of
12 the brief, but it's important to understand that the
13 utility perspective, as they are explaining the SWU
14 contracts, that somehow they are providing all of the
15 natural uranium, USEC is performing enrichment on that
16 or some fungible other utility natural uranium and
17 simply returning that back to the utility doesn't
18 square with what's, in fact, happening at USEC's
19 facility.

20 USEC has a massive working stock of natural
21 uranium that it owns outright. Now, there clearly is
22 some natural utility uranium on the property -- of
23 course, there is -- and in its various accounts, but
24 USEC, itself, owns a massive amount of that, and
25 that's also incorporated into its production.

1 We can go into detail, again, about that in
2 the post-conference.

3 COMMISSIONER LANE: Okay. Thank you. Thank
4 you, Mr. Chairman.

5 CHAIRMAN PEARSON: Commissioner Williamson?

6 COMMISSIONER WILLIAMSON: Thank you, Mr.
7 Chairman.

8 In Table 2-1 of the public staff report, it
9 shows steadily increasing expected future deliveries
10 of LEU from other suppliers. Presumably, this is
11 Urenco. Why is this occurring, and what does it mean
12 for the Commission's likely injury analysis?

13 MR. WHITEHURST: Mike Whitehurst. It means
14 that the increasing contracts that particularly Urenco
15 has made, and the market is putting more pressure on
16 USEC and our ability to make the sales we need to both
17 support Paducah and meet our commitments under the
18 Russian --

19 MR. CUNNINGHAM: Maybe I could take a cut at
20 the significance for the Commission's decision.

21 There are a couple of things to be noted.
22 In our observations, Urenco is selling at essentially
23 market prices and AREVA is not. Urenco is taking a
24 somewhat increasing share of the market. Obviously,
25 any share of the market they take has some adverse

1 effect on USEC.

2 It is not a Bradz-type situation where you
3 say to yourself, "Okay. If we oppose the restriction
4 on AREVA and thereby limit them in the market, would
5 Urenco step in and take that so that there would be no
6 benefit to USEC?" This is happening while AREVA is
7 limited.

8 Any increase in AREVA's activity by virtue
9 of taking off the order would be over and above what
10 else is happening in the market, and so it's not a
11 question of Urenco displacing AREVA and frustrating
12 the order or anything like that..

13 The fact of Urenco's presence is something
14 like a condition of competition, as long as it's a
15 fair trader at a time when AREVA is under an order,
16 and, therefore, the question the Commission should ask
17 is, "Okay. "Given the competitive situation that
18 exists today, what would be the change that occurred
19 if we were to take the restrictions away from AREVA?"
20 And that has to do with all of the normal things that
21 you look at.

22 Would AREVA sell at low prices? We have
23 evidence for you that they have not contradicted
24 because they don't contradict anything that says that
25 they would.

1 Would they sell at increased volume? We
2 have shown you information that says they have
3 ambitions, explicit ambitions, to sell at increased
4 volume in the U.S. market.

5 Do you analyze that and say, "Okay. What's
6 our best judgment as to whether that's true or not,
7 and if it's true, how would it impact USEC?"

8 So I don't think that the Urenco stuff
9 changes your analysis. I would say one thing. There
10 is significant evidence on the record that AREVA has
11 much more leeway, both now because of its excess
12 capacity and in the future because they are going to
13 double capacity, to make a great deal more substantial
14 incursion into the U.S. market than does Urenco, which
15 all the reports are, is selling at essentially
16 capacity. Urenco could increase capacity, yes, but
17 you don't have announcements there to the effect that
18 they intend to do so as you do with AREVA.

19 MR. KLETT: Commissioner Williamson, this is
20 Dan Klett. Just one quick data point. If you look at
21 the note to that table, it says it's based on
22 purchasers or utilities that reported data on a SWU
23 basis, and if you cross-reference that to Table 3-4,
24 it also is only for purchasers who reported on a SWU
25 basis. There were only 10 utilities that reported

1 that data.

2 So there is somewhat of a question about the
3 reliability of those trends, just with respect to the
4 response rate that's in the data. That's the only
5 point I want to make.

6 COMMISSIONER WILLIAMSON: Thank you. What
7 role do you see URADAM -- what role do you think they
8 would play in stimulating or reducing LEU exports from
9 France, were the orders revoked? Does anyone have any
10 insights on that?

11 MR. VAN NAMEN: I'm sorry. Could you repeat
12 the question, Mr. Williamson?

13 MR. SEWELL: I can do it. His question
14 really was, what effect or what control would URADAM's
15 supply agency have if this order was revoked? The
16 thing you have to remember is URADAM's supply agency
17 monitors contracts into the European Union, not export
18 contracts, per se.

19 So, Mr. Van Namen, if you have something to
20 add.

21 MR. VAN NAMEN: No. I don't think URADAM
22 would have any role in anything if this order were to
23 disappear, anything affecting AREVA's behavior.

24 COMMISSIONER WILLIAMSON: Okay. Thank you.
25 AHUG claims that the U.S. supply of LEU is

1 constrained. Can you respond to their claim? They do
2 this in their prehearing brief.

3 MR. VAN NAMEN: And they are saying that
4 U.S. supply of LEU is constrained.

5 COMMISSIONER WILLIAMSON: Yes.

6 MR. VAN NAMEN: Bob Van Namen here again.
7 We are not at full capacity for the Paducah gaseous-
8 diffusion plant. We still have the ability to run
9 that plant at higher levels, so I have a hard time
10 understanding how they could say that we are capacity
11 constrained. We still have the ability to do that.
12 As we would purchase additional power, we could
13 produce more SWU, so I would not agree with that
14 statement.

15 COMMISSIONER WILLIAMSON: I'll ask them to
16 address it this afternoon. Thank you.

17 The price of uranium increased dramatically
18 during the review period but has declined somewhat
19 recently. This is in the staff report, pages 5-2 and
20 5-3.

21 Can you explain the reasons for this recent
22 price decline and where you expect uranium prices to
23 go next year, and does some of this have to do with
24 uranium inventories?

25 MR. WHITEHURST: Mike Whitehurst here. The

1 price increase resulted from some activity when there
2 were some issues with the mines and the converters.
3 It disrupted the flow of supply.

4 The more recent decline has resulted from
5 some supply that's come into the market. The spot
6 market price is very sensitive to some incremental
7 trading, and there has been some supply that has come
8 onto the market that has brought the spot price down.

9 I'll point out that a very low percentage of
10 the uranium is actually trading against that spot
11 market. There is a much larger, long-term market
12 where the price has been more stable. It has come up.
13 What we're seeing is really the incremental trades in
14 the spot market. They have declined, based on some
15 incremental supply, relatively small volumes.

16 COMMISSIONER WILLIAMSON: Was the Department
17 of Energy's August 2007 sale on natural uranium, was
18 that one of the things that affected the market?

19 MR. WHITEHURST: I believe so, yes.

20 COMMISSIONER WILLIAMSON: Okay. No further
21 questions at this time, Mr. Chairman.

22 CHAIRMAN PEARSON: Commissioner Pinkert?

23 COMMISSIONER PINKERT: Thank you, Mr.
24 Chairman. I just have a couple of questions left.
25 Coming at the end of the questioning order has some

1 disadvantages to it. Many of my questions have been
2 asked.

3 You argue that the best measure of demand in
4 this case is uncommitted or open demand; that is the
5 portion of a utility's future requirements for LEU
6 that are not already covered by long-term contracts.
7 Can you explain the significance of uncommitted demand
8 for purposes of the Commission's evaluation of the
9 likelihood of injury?

10 MR. WHITEHURST: I'll start. Mike
11 Whitehurst. The uncommitted demand, or open demand,
12 is really the market against which USEC is available
13 to win sales to support our operations to make our
14 economic model successful. If we were to boost those
15 sales or to have depressed prices if we won those
16 sales, both of those would affect our company and our
17 viability.

18 MR. CUNNINGHAM: One of the normal ways you
19 look at demand in the marketplace is consumption, how
20 much is being used every year. The problem with that
21 measure of demand here is that much of what is being
22 used each year was prepurchased a number of years ago.
23 So it's not demand in the sense that it is open for a
24 supplier to supply it by making a new sale.

25 The uncommitted demand could be rephrased as

1 amount of purchasing that is to be done by utilities,
2 which may not be the same as their consumption in a
3 particular year, but it's the amount they will be
4 purchasing still for this year's and for future years'
5 production, so that when you go in, and you do a deal
6 with Duke Energy for a certain amount, that certain
7 amount is not just for use by Duke Energy now; it will
8 be for use by Duke Energy in 2007, 2008, 2009, 2010,
9 let's say. But it is a sale that you make now.

10 So the uncommitted demand available in each
11 year is the best measure that you can find that still
12 needs some interpretation from time to time but fitted
13 with such things as coordinating it with production in
14 the industry and things like that. We've tried to
15 help the staff and tried to help you do that. But
16 it's the best measure of competition in the
17 marketplace, what we will be going head to head with
18 AREVA to get at any given time.

19 MR. KLETT: Mr. Pinkert, this is Dan Klett.
20 I just want to emphasize that there is an important
21 temporal element when you look at uncommitted demand,
22 and that is that uncommitted demand in the future can
23 be competed for, or is competed for today, among the
24 various enrichers for utilities so that even though,
25 over the next few years, a high percentage of demand

1 may be committed, so, therefore, for those years, AHUG
2 is arguing there can be no injury because a high
3 percentage of demand over the next few years is
4 committed. That really doesn't reflect the realities
5 that uncommitted demand in future years can be lost
6 today.

7 COMMISSIONER PINKERT: How committed is
8 committed demand? Are there circumstances in which
9 committed demand can become uncommitted?

10 MR. VAN NAMEN: Bob Van Namen. Very rarely.
11 I think you see, in long-term contracts, both sides
12 generally adhere to commitments under their long-term
13 contracts, and when you have a specified portfolio
14 covered under a contract, a utility does that because
15 it wants the security of supply associated with that.
16 The supplier does it because he wants the assured
17 revenue stream associated with that contract. So you
18 generally see committed staying fairly constant and
19 fairly solid.

20 COMMISSIONER PINKERT: Thank you, and thank
21 you, Mr. Chairman.

22 CHAIRMAN PEARSON: Mr. Van Namen, perhaps
23 you could tell me a bit more about USEC's stockpile of
24 natural uranium. How large is it? Are you able to
25 sell portions of it to generate revenues?

1 MR. VAN NAMEN: We do not publicly disclose
2 the size of the stockpile. We have announced publicly
3 that we are decreasing the amount that we're going to
4 be selling over the next several years. We still will
5 have reasonably significant quantities of sales of
6 natural uranium.

7 We can get you the specific numbers on both
8 what our physical inventory is and what our ability is
9 to create that uranium that I talked about by changing
10 the operation of the plant. Those are the two main
11 sources for our sales, and, yes, it is available for
12 sale.

13 CHAIRMAN PEARSON: Okay. So, in terms of
14 the company's stock valuation, that stockpile plays
15 some role in how the market would evaluate the stock
16 price, yes?

17 MR. VAN NAMEN: Yes.

18 MR. CUNNINGHAM: Although very much a
19 secondary role, obviously, because we are essentially
20 an enrichment company. The sales of natural uranium
21 in dollar volume are substantially less, much less
22 than the enrichment.

23 MR. VAN NAMEN: I would agree with Mr.
24 Cunningham's characterization that the stock value
25 generally is done on an ongoing basis of what is your

1 ongoing business performance. It clearly is an aspect
2 of value in the company but secondary to the
3 enrichment operations.

4 CHAIRMAN PEARSON: Okay. You may know that,
5 but I don't know that.

6 MR. VAN NAMEN: I understand.

7 CHAIRMAN PEARSON: On the record, we know
8 that the price of natural uranium has risen
9 significantly, and so I'm just wondering whether we
10 should look at the financial condition of USEC
11 differently now than we might have in the original
12 investigation.

13 MR. VAN NAMEN: I would also say that we
14 have a substantial amount of that uranium pledged
15 under long-term contracts that are at prices that are
16 lower than what you're seeing in the market today. We
17 also will reserve a piece of that, as Mr. Emerson
18 said, for our working stock for the way that we
19 operate our plant with the low-enriched uranium
20 production.

21 CHAIRMAN PEARSON: Okay. I'll look forward
22 to learning whatever you're able to say in the post-
23 hearing.

24 MR. CUNNINGHAM: I think one of the things
25 we'll try to do is, from the standpoint of we'll give

1 you an idea of how material it is to a valuation of
2 the company. I'll try to assess that for you because
3 I think that's where you're going with this.

4 CHAIRMAN PEARSON: Yes. Thanks.

5 AREVA is involved in this expansion project
6 in Europe. Is Jorge Besse the second facility?
7 Pardon my lack of capability in French. French, the
8 law; there are a lot of things I don't know much
9 about.

10 This facility, as I understand it, will come
11 online in 2012, and it's apparently a relatively
12 expensive project, some 3 billion euros that are going
13 into it. Part of your argument is that USEC is
14 constrained in its pricing because you've got to
15 maintain margins because you're making an expensive
16 investment in the American Centrifuge facility.

17 Does that same rationale apply to AREVA,
18 with the Jorge Besse facility?

19 MR. VAN NAMEN: Again, I think that is a
20 question best addressed to AREVA. Two points on it.
21 One is they will have significant inventories of
22 uranium as they continue to operate their gaseous-
23 diffusion plant and as they ramp up their centrifuge
24 facility. They will have inventories of low-enriched
25 uranium that will then be available for sale into the

1 market.

2 They are a large company, and they have very
3 substantial aspirations regarding new reactor sales.
4 So I think that they have many different aspects of
5 their business that will drive their behavior. They
6 have the expressed desire to be a market leader in the
7 various markets that they participate in.

8 MR. CUNNINGHAM: Phil Sewell and then Mike
9 Whitehead both have some remarks.

10 MR. SEWELL: If I could just, as a reminder,
11 AREVA is government owned, and, as such, the financing
12 capability is a little bit different with respect to
13 government-backed financing to deploy their plant, and
14 that is a big distinction between us and them and who
15 we're looking at their ability to expand or deploy.

16 MR. CUNNINGHAM: Mr. Whitehurst?

17 MR. WHITEHURST: Additionally, France
18 produces about 80 percent of its electricity from
19 nuclear power. The core of their decision to build
20 that facility was to create a long-term enrichment
21 capability to supply that energy need, and AREVA's
22 secondary interest is to support the building of
23 reactors worldwide.

24 They want to have the enrichment capacity to
25 continue that one-stop-shopping cycle of supply to all

1 of the reactors they currently service through their
2 other components of their business, and they want to
3 keep that business model in place.

4 So building Jorges Besse II is to supply
5 long-term supply to France and to support their long-
6 term business ambitions in the full nuclear fuel
7 cycle.

8 MR. CUNNINGHAM: One thing I would remind
9 you is, while I would love to be able to say that I
10 represent here a client who is a mega client that
11 strides the world, we're pretty small compared to
12 Urenco and to AREVA, and we are rifle shot, enriched
13 uranium with a little bit of natural uranium thrown
14 in.

15 These folks are into nuclear power plant
16 construction. AREVA is among the four largest natural
17 uranium producers in the world, and their financing
18 situation is qualitatively different than what USEC
19 faces as a much smaller, single-business company.

20 CHAIRMAN PEARSON: Okay. Thank you. What
21 can you tell me about the Silex technology and the
22 implications it may have for the U.S. market in coming
23 years?

24 MR. CUNNINGHAM: Mr. Sewell?

25 MR. SEWELL: Silex technology is a

1 technology that we actually looked at and spent a
2 considerable amount of money reviewing. What we can
3 tell you is, at GE, after studying that for a while,
4 we stopped our interest with respect to utilizing that
5 technology because we felt that the American
6 Centrifuge technology was superior, both in terms of
7 cost and timing.

8 GE is presently looking at that technology
9 with respect to utilizing it for the purpose of
10 uranium enrichment, and the way we look at that,
11 that's a long-term vision on the part of General
12 Electric, and there is a significant time in the
13 future, we believe, that it will be required with
14 respect to commercializing that technology.

15 CHAIRMAN PEARSON: So, as things stand now,
16 you don't anticipate that if GE is successful with
17 Silex, that within the next few years there will be
18 more production of enriched uranium, perhaps with an
19 even lower cost structure than would be the case with
20 American Centrifuge.

21 MR. SEWELL: We, at the present time, do not
22 expect it, not in the near term. We expect that to be
23 a long-term possibility.

24 MR. CUNNINGHAM: Okay, well, remember, GE
25 has not announced it's committed to this at all. GE

1 is looking at it, and that is the best phrase for it,
2 'looking at it.'

3 CHAIRMAN PEARSON: Well, they are spending
4 money on R&D, so I -- whether or not -- that implies
5 some degree of commitment.

6 MR. CUNNINGHAM: True, but GE is, again, a
7 massive company that spends more money on R&D,
8 perhaps, than almost any other company in the world,
9 and probably more than some countries do.

10 CHAIRMAN PEARSON: No doubt. I have the
11 impression from the staff report that at least in a
12 theoretical sense, the costs of the SILEX process
13 could be less than a centrifuge process. Is that
14 correct, or is that not really the right
15 understanding?

16 MR. SEWELL: Excuse me, Phil Sewell. I
17 think any projection of SILEX cost right now is
18 prospective, it's speculative, and I'm not sure anyone
19 can very accurately predict what the costs will be,
20 both the capital and the operating costs for that
21 technology. So, I'm not sure that I would apply much
22 credence to anybody's expectation at this time with
23 respect to the economic viability of that project.

24 MR. CUNNINGHAM: Mr. Sewell once quoted Yogi
25 Berra to me as saying, it's dangerous to predict,

1 especially about the future.

2 CHAIRMAN PEARSON: I appreciate that. It's
3 also dangerous to try to decide what's more likely
4 than not in the reasonably foreseeable future. We
5 have to do that.

6 Madame Vice Chairman?

7 VICE CHAIRMAN ARANOFF: Thank you, Mr.
8 Chairman. One question on vulnerability, and it
9 touches on a number of things that you have already
10 been asked, but I want to wrap them all together into
11 the context of vulnerability. AHUG makes the argument
12 that the domestic industry is shielded from the
13 effects of subject imports, at least in what they
14 would characterize as the short-run, or the reasonably
15 foreseeable period, for a couple of reasons; because
16 most of USEC's domestic production is exported,
17 because there is very little uncommitted demand in the
18 U.S. market through the end of 2009, because USEC
19 receives favorable returns and good cash flow from its
20 sales of the Russian product, and that for all those
21 reasons, USEC is sort of protected from anything that
22 might happen until 2009, at which point the new
23 American Centrifuge comes on line and improves your
24 cost picture significantly.

25 Taken together, do these facts indicate that

1 USEC is not in a vulnerable state?

2 MR. CUNNINGHAM: Mr. Van Namen?

3 MR. VAN NAMEN: I dearly wish it were so. I
4 would do a couple of points on it. Number one, we do
5 have a significant amount of sales that we need to
6 make in the next year to two years which are
7 predicated on Paducah operations, so those are very
8 important to us financially for both our overall
9 economic picture and our ability to have funds to
10 continue on the demonstration and the deployment of
11 the American Centrifuge.

12 So I would say that losing those sales would
13 put us at great risk of not being able to accomplish
14 what we need to accomplish. We are vulnerable for the
15 financial performance associated with those new sales.
16 Number two is that we are at a particularly vulnerable
17 time with the American Centrifuge, where investors,
18 and as we go out to raise the remaining capital, they
19 are going to be looking at the stability of the
20 marketplace as a substantial underpinning for their
21 desire to provide us with the capital to continue with
22 the American Centrifuge project.

23 So I think the next year, as Phil said, will
24 be going out for that remaining capital, and having a
25 stable marketplace is incredibly important for us to

1 be able to continue with American Centrifuge. I won't
2 comment on the specifics of the financial performance,
3 other than to say we have been impacted by the higher
4 power costs that we talked about. We continue to have
5 stress put on the gaseous diffusion plant, and we need
6 to have that discipline of fair pricing to be able to
7 operate the Paducah plant economically.

8 MR. CUNNINGHAM: I'd like to comment on two
9 aspects of what AHUG argues, because they are
10 misconceptions, and one of them is just plain
11 wrongheaded. First of all, on the fact that there is
12 little uncommitted demand between now and 2009, as we
13 talked about a moment ago, uncommitted demand for
14 future years is available for sale now, and so you
15 can't analyze the uncommitted demand for this year or
16 next year and say, ha, nothing left in the market to
17 sell, because what people are buying now are what they
18 are going to have deliveries for several years in
19 advance. Okay.

20 Secondly, and most bizarrely, to say that
21 USEC wouldn't have to worry about a resumption of
22 French dumping, which would depress the U.S. price
23 level, because of the returns it would get from the
24 Russian HEU, is so preposterous because remember, the
25 HEU has to be sold in the U.S. market, not by contract

1 but because there is no other place to put it. The
2 Europeans have a limit on how much imported HEU from
3 Russia that they will take, and we can't get any in
4 there, and the Japanese won't buy Russian LEU from
5 HEU, and therefore it has to be sold in the U.S.
6 market, and one of the huge hits that we would take if
7 we have to have a depression of prices in the United
8 States by French dumping would be, it would affect the
9 prices we'd be able to sell the Russian material.

10 That's a totally wrongheaded argument on
11 their part.

12 MR. KLETT: Commissioner Aranoff, this is
13 Dan Klett. Just one point on that. In AHUG's brief,
14 they did a little comparison of revenue and costs for
15 the Russian sales, and we talked about that a little
16 bit yesterday in our meeting, and we think they are
17 comparing apples and oranges and we can give you more
18 specifics on that, but their calculations of
19 profitability just are incorrect.

20 VICE CHAIRMAN ARANOFF: Okay, we will
21 appreciate any response that you can give to that
22 material. My understanding from the Russian case was,
23 though, that to the extent that changes in the
24 marketplace of whatever sort drive down the price for
25 LEU, the effect on pricing for sales of the Russian

1 product is lagged because of the three-year formula.
2 Is that correct? I see Mr. Van Namen nodding.

3 MR. CUNNINGHAM: Yes, I think it's fair to
4 say that provides some cushion for us but does not
5 insulate us from the effect of it.

6 VICE CHAIRMAN ARANOFF: Okay.

7 MR. CUNNINGHAM: We know how to negotiate.
8 We do try to get some cushion for anticipated
9 adversities.

10 MR. VAN NAMEN: Bob Van Namen here again.
11 The impact on our revenue would be immediate from the
12 decrease in the prices. The price that we would pay
13 for the Russians, as you said, would come down on a
14 much slower basis because of the lag in the pricing
15 mechanism. So we would continue to have elevated
16 prices, but we would get lower revenue from our sales,
17 from market-related contracts and from less dollars
18 per SWU from new contracts that we would sign.

19 VICE CHAIRMAN ARANOFF: Although presumably,
20 except for spot market sales, those would be with
21 respect to deliveries that would take place in the
22 future.

23 MR. VAN NAMEN: No, we have current
24 contracts with market-related provisions that would be
25 impacted by lower prices in the market.

1 VICE CHAIRMAN ARANOFF: Okay. And one last
2 question, and this has to do with inventories. There
3 was some discussion earlier about the fact that AREVA
4 is either currently or planning to build up
5 inventories in anticipation of the switch-over to
6 their new centrifuge facility, and my understanding is
7 that USEC is doing the same thing, that everyone needs
8 to prepare for contingencies that might happen when a
9 switch-over of this significance happens.

10 Now, as I understand it, USEC's new facility
11 is scheduled to come on line several years before
12 AREVA's. You had mentioned that AREVA's inventory
13 buildup is a concern because those might come out into
14 the market at some point if they are not needed.
15 Don't you have an advantage; if you come into the
16 market first, you have first crack at liquidating any
17 unnecessary inventories, while they are still obliged
18 to be holding on to theirs?

19 MR. VAN NAMEN: Bob Van Namen again. There
20 are two AREVA plants that are being discussed. One is
21 their replacement of their gaseous diffusion plant in
22 France with the new plant, and that construction is
23 currently underway and I think operation is expected
24 to start about the same time as ours, roughly 2009.
25 And then the second AREVA plant that they are talking

1 about potentially building in the U.S. is the one that
2 would be lagging our plant by several years, probably
3 in the 2015 time frame.

4 MR. CUNNINGHAM: If it happens at all.

5 VICE CHAIRMAN ARANOFF: Okay, so right now,
6 as I understand it, all three of the new plants that
7 are being built are all going to come on line
8 approximately 2009, is that correct?

9 MR. VAN NAMEN: The LES plant, the American
10 Centrifuge plant, and the new AREVA plant to replace
11 their gaseous diffusion in Europe, yes, those are all
12 approximately the same time, but for instance, the
13 AREVA plant will be coming up to 7 million SWUs worth
14 of capacity between 2009 and 2018, is what they have
15 announced, and our transition is from 2009 to 2012,
16 late 2012, to reach our capacity of 3.8 million SWUs.

17 MR. CUNNINGHAM: And Mr. Whitehurst has
18 something to add.

19 MR. WHITEHURST: Yes, Commissioner Aranoff,
20 the French plan that they have published about their
21 transition from gaseous diffusion to centrifuge is
22 different from what we are doing. We will be selling
23 output from our plants concurrent with production, and
24 the French plan is to begin building a stockpile of
25 LEU such that they can shut down their gaseous

1 diffusion plant about halfway through the ramp-up of
2 their centrifuge plant.

3 So they will be building a substantial
4 inventory of LEU, they will close their -- their
5 announced plan is to close the GDP about the middle of
6 that ramp-up, and they will bleed down that inventory
7 to maintain their sales level. It's very possible
8 that they would extend the life of the GDP. That
9 would free up those inventories to come into the
10 market sooner than the current plan would indicate,
11 absent the order.

12 VICE CHAIRMAN ARANOFF: Okay, so just to
13 make sure I understand then, it is not correct to say
14 that USEC is going to build up a similarly large
15 inventory cushion because you are going to keep
16 operating the Paducah plant until you don't need it
17 anymore?

18 MR. WHITEHURST: That is correct. Our sales
19 profiles will follow our production concurrently. The
20 inventory buildup that the French are planning to do
21 would require a significant amount of capital.

22 VICE CHAIRMAN ARANOFF: Is that because --
23 well, I'm trying to understand why they would make
24 that choice instead of the choice that you have made.
25 From an economic standpoint, building up all of these

1 inventories, which are a cost to carry, versus just
2 continuing to -- I mean, is their diffusion plant
3 really on its last legs?

4 MR. WHITEHURST: Their diffusion plant could
5 run well into the next decade. It's an economic
6 decision and a policy decision as far as I know. I
7 would hesitate to speculate beyond that point.

8 VICE CHAIRMAN ARANOFF: Okay. I appreciate
9 those answers and thank the panel for all of your
10 answers this morning.

11 CHAIRMAN PEARSON: Commissioner Lane?

12 COMMISSIONER LANE: Thank you. I just have
13 one further question. I would like for someone to
14 give me a breakdown of the cost of nuclear fuel
15 delivered to electric utilities, broken down into
16 three components: what percentage of the cost is
17 represented by the natural uranium as concentrated and
18 converted to UF₆; what percentage is represented by
19 enrichment; and what percentage of the cost is
20 represented by making the LEU into a final fuel rod?

21 MR. VAN NAMEN: Bob Van Namen here. I think
22 I can come close to it. It's about 50% of the cost --
23 at \$250 a kilogram, roughly, for uranium, which is a
24 little bit higher than we are today, it's 50% of the
25 cost is natural uranium, about 5% of the cost is the

1 conversion going from U308 to UF6, about 30% is
2 enrichment, and I'm not going to bind myself into
3 trying to get the rest. I think it's like 15%,
4 roughly, is the cost of fabrication.

5 COMMISSIONER LANE: Okay, thank you. That's
6 all I have, and thank you for your answers today.

7 CHAIRMAN PEARSON: Commissioner Williamson?

8 COMMISSIONER WILLIAMSON: Thank you. Just
9 one final question. The staff report notes that the
10 Department of Energy has contracted with WesDyne and
11 Nuclear Fuel Services for down-blending HEU into LEU
12 in the United States. I was just wondering, what
13 effect does this have on USEC's operations and on the
14 U.S. LEU market as a whole?

15 MR. CUNNINGHAM: Bob Van Namen?

16 MR. VAN NAMEN: Bob Van Namen here. The
17 desire of the Department of Energy is to down-blend
18 the high enriched uranium to low enriched uranium,
19 which they would then use to be a fuel supply
20 guarantee for countries that are looking to develop
21 nuclear power that do not already have nuclear power
22 and are willing to forgo their rights to have
23 enrichment and reprocessing technology.

24 So this material is not expected to come to
25 the market. The bulk of it would be held as a fuel

1 guarantee reserve. They will be selling small parts
2 of it to pay for the processing costs of doing the
3 down-blending operation, but this is not expected to
4 have a significant impact in the market.

5 COMMISSIONER WILLIAMSON: Thank you, and I
6 have no further questions, and I also want to thank
7 the panel.

8 CHAIRMAN PEARSON: Commissioner Pinkert?

9 COMMISSIONER PINKERT: One further question.
10 I note that non-subject imports have increased
11 significantly since the original investigation. What
12 evidence is there that any increase in imports from
13 France that might result from revocation of the order
14 would come at the expense of USEC, rather than at the
15 expense of the non-subject imports?

16 MR. VAN NAMEN: Bob Van Namen here. Maybe
17 if I can touch on a couple of items. Again, the
18 increase of the non-subject imports might be increases
19 in sales by Urenco where they will have the lower
20 production cost gaseous centrifuge technology as the
21 underpinning for that, and they will have been done
22 under long-term contracts with Urenco. USEC and the
23 gaseous diffusion operation, as we have said, have
24 some of the highest cost in the market because of our
25 reliance on electricity and the increases that we have

1 seen in electricity prices.

2 So we believe that if imports were increased
3 by the French, that that would come directly out of
4 the highest dispatched source into the market, the
5 highest cost dispatch source into the market, which is
6 the gaseous diffusion plant.

7 MR. KLETT: Commissioner Pinkert, this is
8 Dan Klett. I think there is also a price effect, in
9 addition to the volume effect, and that is that -- is
10 the number of utilities indicated in their
11 questionnaires that additional supply from AREVA and
12 the ability of AREVA to compete in the market, whereas
13 they hadn't before, will result in prices being lower
14 than they otherwise would be.

15 So, in addition to the issue of displacing
16 the volume of one versus the other, there is also a
17 price effect.

18 MR. CUNNINGHAM: And I just underscore Mr.
19 Van Namen's response, because it harks back to what I
20 said before, which is that this is a particularly
21 important sunset review in this case, because USEC
22 needs to get to the point where it has the new
23 technology implemented, and at that point we would
24 have a different answer for you as to whether it would
25 come out of our hide or out of Urenco's hide.

1 And it is so important that we not
2 jeopardize USEC's ability to get that technology done,
3 and a new influx of imports at this point would be
4 crippling from that standpoint.

5 COMMISSIONER PINKERT: Thank you, and I'd
6 like to thank the panel for all of the answers that
7 you've given today.

8 CHAIRMAN PEARSON: I have no further
9 questions. Vice Chairman? Are there any further
10 questions from the dais? Okay.

11 Do members of the staff have questions for
12 this panel?

13 MS. MAZUR: Mr. Chairman, staff have no
14 questions.

15 CHAIRMAN PEARSON: And that was Ms. Mazur.
16 Then, let's see. We should take a lunch break. Oh,
17 yes. We should ask counsel for the Respondents
18 whether they have questions for this panel.

19 MR. ROSEN: No questions, Mr. Chairman.

20 CHAIRMAN PEARSON: Okay. Now we get to take
21 a lunch break. Let's see. I should remind you that
22 the room is not secure, so please take with you any
23 materials. We will stand in recess until 1:30.

24 (Whereupon, a lunch recess was taken.)

25 CHAIRMAN PEARSON: We are now reconvened.

1 Mr. Secretary, are there any matters that should be
2 attended to?

3 MR. BISHOP: No, Mr. Chairman. The second
4 panel, those in opposition to continuation of the
5 antidumping duty order, have been seated. All
6 witnesses have been sworn.

7 CHAIRMAN PEARSON: Welcome, Mr. Rosen. You
8 are in charge here, I assume?

9 MR. ROSEN: In a manner of speaking.

10 CHAIRMAN PEARSON: Okay, please proceed.

11 MR. ROSEN: Thank you for that anointment.
12 With apologies in advance, Mr. Chairman and
13 Commissioners, I was so stimulated -- is this coming
14 through? -- by this morning's presentation that I have
15 thrown away my prepared script and I am going to
16 attempt to ad lib, hopefully to provide some clarity
17 on the situation, the SWU situation and the state of
18 play with respect to the law and the treatment of
19 SWUs.

20 It's now hard to believe, but it's almost
21 seven years since USEC mounted its attack on European
22 enrichment service providers, and hopefully we are
23 almost out of the woods. From the outset of the
24 petitions, the position of our client and our legal
25 position was that SWU transactions were not cognizable

1 under the dumping or countervailing duty laws as USEC
2 had portrayed them.

3 We were unsuccessful at the outset at
4 Commerce, but ever since, USEC has been on the losing
5 end, and it's done a remarkable job here this morning
6 of attempting to turn a sow's ear into a silk purse.
7 Quite simply, the game is over. The dumping and
8 countervailing duty laws don't apply to enrichment
9 services transactions as USEC has claimed. It's been
10 definitively determined as to the countervailing duty
11 law, where USEC attacked Eurodif's enrichment service
12 transactions with EDF, and USEC, despite all its
13 claims that it's going to see things through and go to
14 the Supreme Court, didn't lift a finger, and the
15 definitive decision of the Court of Appeals went into
16 effect.

17 The countervailing duty order against
18 Eurodif, against LEU from France, has been revoked ab
19 initio. On the dumping side, USEC began its
20 uninterrupted string of losses at the Court of
21 International Trade in 2003. It then appealed to the
22 CAFC, which held in March of 2005 that Eurodif
23 enrichment services transactions that were before the
24 court were not covered by the antidumping law.

25 USEC and the government at that time went to

1 the extra step of petitioning for rehearing before the
2 Court of Appeals, and the Court of Appeals, in denying
3 the petition for rehearing, said, you asked whether
4 the dumping law applies to enrichment services
5 transactions, and we told you no. True, we didn't say
6 it unambiguously in our March opinion, but we say it
7 now. That was September '05.

8 Despite all of the claims that USEC and the
9 government would see there right through to the end
10 and go to the Supreme Court, neither the government
11 nor USEC lifted a finger, and no petitions for
12 certiorari were filed. What then ensued? The mandate
13 issued from the Court of Appeals back to the Court of
14 International Trade, which remanded the matter to
15 Commerce for implementation of the Court of Appeals'
16 decision.

17 Commerce acted on the remand and took a look
18 at the record of the investigation in this case, and
19 threw out, from its calculations, every single
20 transaction that was made on a SWU basis. Threw them
21 out of the calculations. Commerce then was left with
22 a remaining determination which was focused on a
23 couple of incidental spot sales that were sales of
24 LEU.

25 In the scheme of things, the LEU sales were

1 peanuts in relation to the entirety of the
2 investigation period, and if the Commission looks back
3 at its investigation for the 12 months preceding the
4 filing of the petitions, there is no question
5 whatsoever, none whatsoever, that imports of LEU from
6 France were negligible during those 12 months period.
7 So we are having a sunset review now, but I am telling
8 you, what we really have here is an order that is to
9 be voided ab initio -- not in today's proceeding.
10 That's not my purpose today.

11 We'll get to that in due course, but it's
12 context for the Commission to consider. If you look
13 back at your investigation, and you look at the LEU or
14 EUP sales transactions and the volume of those
15 transactions, they are nothing. They are nothing.
16 They are a peppercorn on which an order was based.
17 So, what now? Yes, it's true, as Messrs. Cunningham
18 and Emerson say, the Department of Commerce order has
19 not yet been published.

20 Commerce is waiting until a final conclusive
21 court decision, it says, to publish the order. We
22 read what they said, and that's what they will do, but
23 first of all, as to petition for certiorari to the
24 Supreme Court now, we scratch our heads and don't see
25 where it can come from. Sure, USEC can try another

1 delaying tactic, but all of the experts with whom we
2 have consulted indicate there is nothing there. I
3 promise you.

4 But even if there were to be a petition for
5 certiorari, and the revised order excluding imports
6 pursuant to demonstrated SWU transactions at the time
7 of import were published, even before the revised
8 order is published, the law is clear right now, today
9 and going back, the law is clear that SWU transactions
10 are not covered by the antidumping duty law. Plain
11 and simple, they are not covered, whether Commerce
12 publishes a revised order or not.

13 Higher authority has spoken. The Court of
14 International Trade, the Court of Appeals for the
15 Federal Circuit, on multiple occasions, and looking at
16 Eurodif's way of doing business in general and its
17 transactions in particular, these courts have found
18 that Eurodif's SWU transactions are not covered by the
19 law. Even Commerce has indicated its awareness of the
20 binding effect of the Eurodif decision in relation to
21 the Russian sunset proceeding.

22 Commerce approached the Court of
23 International Trade, in which an appeal of Commerce's
24 sunset determination had been filed, to seek a
25 voluntary remand to apply the Eurodif decisions. I

1 was not party to the Russian sunset proceeding and I
2 won't get into the arguments in detail, but Judge
3 Pogue took a look at Commerce's request, and in light
4 of the doctrine of stare decisis, determined that a
5 remand would be appropriate so that the Eurodif
6 decision could be applied.

7 Commerce is now in the process of reviewing
8 its sunset review determination to determine the
9 effect of the Eurodif SWU decision in the context of
10 Russian uranium. Again, just because Commerce has not
11 published a revised order to exclude SWU transactions
12 upon importation, where a certification is tendered,
13 does not mean that the law is not applicable today,
14 and obviously, the Eurodif decisions are applicable to
15 French enrichment, which, after all, is Eurodif.

16 We are the sole enricher and the sole
17 exporter and the sole importer of LEU from France.
18 Given that, the essence of our position to the
19 Commission, as you well know, is that SWU transactions
20 are irrelevant to this sunset review. What is
21 relevant is the extent to which Eurodif has engaged in
22 LEU sales during the period covered by your sunset
23 investigation, and the extent to which Eurodif is
24 likely to engage in LEU sales transactions in the
25 reasonably foreseeable future.

1 That bears directly upon the charge to the
2 Commission in a sunset review, which is to determine
3 the price and volume effect of subject imports in
4 assessing material injury and the likelihood of
5 continuation or recurrence. USEC has tried to confuse
6 the issue as to whether or not they are SWU
7 transactions. Eurodif has not given the Commission
8 any information about SWU transactions, that's a
9 smokescreen.

10 Every transaction that has ever been looked
11 at by the Department of Commerce has been confirmed to
12 be a SWU transaction, and that includes not just the
13 investigation, which goes back to '99, 2000, but to
14 three consecutive reviews covering the period up
15 through January '05. Eurodif responded to every
16 request for information by the Department. Eurodif
17 provided its contracts.

18 Eurodif provided its orders, notification
19 forms from the utilities, payment documents,
20 indications of the supply of feed, the quantities of
21 feed, indications respecting where feed had been
22 obtained from affiliate producers, and in all
23 instances, the Department confirmed that Eurodif's
24 transactions were indeed SWU transactions. I should
25 also add that, in the course of these litigations,

1 both at the Commerce Department level and at the
2 judicial level, the claims that USEC has been making
3 that affiliated feed transactions somehow have to be
4 taken into account have been rejected, and where they
5 weren't flat out rejected, they were simply waived by
6 USEC.

7 So there really is no doubt whatsoever that
8 Eurodif is in the SWU business, not the LEU sales
9 business, and I think a fitting way to end is to point
10 you back to your report and to the information in the
11 report. I don't think there's a price in there --
12 someone correct me if I am wrong -- that is a price
13 other than for SWUs. That is what Mr. Carbonell
14 sells. He doesn't sell uranium, either natural or
15 enriched.

16 He sells the service of enrichment, and the
17 service of enrichment is not covered by the law,
18 dictates a negative determination here. I will now
19 pass the microphone to Mr. Carbonell to amplify.

20 MR. CARBONELL: Good afternoon, Mr. Chairman
21 and members of the Commission. I am José Carbonell,
22 the Senior Vice President at AREVA S.A., and up to the
23 end of last year I was a member of the executive board
24 of Eurodif as well, which is a principal owner of
25 Eurodif AREVA. Thank you for this opportunity to

1 present Eurodif's views regarding revocation of the
2 antidumping order on low enriched uranium from France.

3 Eurodif is a supplier of enrichment services
4 to utilities in the United States. Our business is
5 and will remain being a reliable supplier of
6 enrichment services. Eurodif is not a newcomer to the
7 U.S. market. Eurodif has been selling enrichment
8 services in the United States market since 1982. Our
9 business throughout this time period has been to
10 provide enrichment services.

11 While we certainly value very much our
12 relationship with our U.S. customers, Eurodif has no
13 incentive to sell LEU as a product in the United
14 States. As part of the record in this investigation,
15 the Commission has complete information regarding
16 Eurodif's sales of LEU in the United States or of
17 AREVA and its previous companies in the United States,
18 which amount to two or three spot sales in 1999 and
19 2000.

20 Even prior to the antidumping duty order,
21 Eurodif's business in the U.S. market was as a
22 supplier of enrichment services. Sporadic sales of
23 LEU, which I've just mentioned, were insignificant.
24 There is no reason to believe that Eurodif would sell
25 LEU through enriched uranium product sales in the

1 foreseeable future. As the order is still in place,
2 you can imagine that we have been working very hard,
3 and why change the model which has been used always
4 and which is used by the electric utilities
5 essentially not only in the States but throughout the
6 world.

7 Utilities in the United States purchase feed
8 stock enrichment services separately from the uranium
9 feed stock outside (ph) to mitigate the risk of low
10 enriched uranium supply disruption. Utilities that
11 operate nuclear power plants need a reliable supply of
12 low enriched uranium to fuel continuously operated
13 nuclear power plants. They cannot tolerate a supply
14 disruption.

15 They diversify supply by contracting
16 separately for feed stock supply and enrichment
17 services and diversify sourcing at each stage like our
18 customers throughout the world do. Consequently, U.S.
19 utilities do not purchase LEU but instead purchase
20 uranium feed stock which the utilities separately
21 contract to be enriched. With USEC as the predominant
22 supplier in the U.S. market for enrichment, utilities
23 turn to Eurodif to diversify their supply of
24 enrichment services.

25 Uranco is the only viable alternative

1 supplier of LEU to U.S. utilities. In our view at
2 AREVA the antidumping order provides no benefit to
3 USEC first because SWU transactions are not covered by
4 the antidumping order, secondly, to the extent the
5 antidumping order has an affect it can only be to
6 benefit Uranco as an alternative source of supply to
7 USEC.

8 It has been seven years since the Commission
9 and the Commerce Department initiated the original
10 investigation of LEU from France. During this seven
11 years USEC has wrongly utilized U.S. trade law to
12 disrupt the free and fair functioning of the U.S.
13 enrichment market. The time has come in our opinion
14 to put an end to seemingly endless litigation.

15 With SWU service transactions not covered by
16 the antidumping statute there can be no basis for
17 finding that revocation of the order likely will have
18 any negative effect on USEC.

19 Eurodif trusts the Commission will properly
20 evaluate the facts relevant to this sunset review and
21 find that in the absence of any likelihood of future
22 sales of LEU from France the antidumping order should
23 be revoked. Thank you very much.

24 MS. FISCHER: Good morning. My microphone
25 okay? Can you hear? Yes?

1 CHAIRMAN PEARSON: Even though it's no
2 longer morning, your microphone is just fine.

3 MS. FISCHER: Sorry. Yes, you're right,
4 afternoon. Sorry about that. Mr. Chairman and
5 members of the Commission, my name is Nancy Fischer,
6 and I'm here today representing Ad Hoc Utilities
7 Group, a group of U.S. utilities accounting for 80
8 percent of the nuclear power generating capacity in
9 the United States.

10 AHUG members produce nuclear fuels through
11 enrichment services or SWU contracts with enrichment
12 services suppliers such as AREVA and USEC. AHUG and
13 its members are strongly opposed to continuation of
14 antidumping duties on low enriched uranium from
15 France.

16 AHUG believes there's no reasonable
17 likelihood that injury to the domestic industry, in
18 other words USEC, would be likely if the Commission
19 removed the antidumping duties on LEU from France for
20 two reasons.

21 First, French LEU is not sold in or to the
22 United States. Only enrichment services transactions
23 are likely to occur in the foreseeable future, and
24 those transactions are not subject to the antidumping
25 law. Second, favorable market conditions do not

1 support a finding of likely injury by reason of
2 imports of French LEU.

3 I will first discuss the legal requirements
4 that the Commission exclude enrichment services
5 transactions from its injury analysis, and then Mr.
6 Kenneth Church of Duke Energy will discuss the current
7 market conditions and why they support revocation of
8 the order.

9 As AHUG has stated since the outset of this
10 case enrichment services transactions are not subject
11 to the antidumping law and must be excluded from the
12 Commission's analysis. Since 2002 when the Commission
13 issued its original determination the Courts have
14 ruled nine times in the Eurodif case that French LEU
15 imported pursuant to SWU transactions is not subject
16 to the antidumping law.

17 Those decisions are binding on Commerce and
18 the Commission under the principle stare decisis.
19 Just two weeks ago the Court of International Trade in
20 the Russian uranium case, which AHUG members are a
21 party to, affirmed this fundamental legal point that
22 the principle of stare decisis applies equally in this
23 case as well, especially given that it stems from the
24 very investigation under which the Eurodif decisions
25 were originally based.

1 We also note that the Commission cannot
2 legally treat enrichment services transactions as
3 sales of LEU just because Commerce has not yet amended
4 the scope of its final determination and implemented
5 that in the form of an order change. First, Commerce
6 has already determined to exclude such transactions
7 from the underlying investigation.

8 The most recent Eurodif rulings by the
9 Federal Circuit dismiss further efforts by Commerce to
10 avoid application of the Court's binding decision.
11 The scope of this review cannot exceed the scope of
12 the underlying investigation, so both Commerce and the
13 Commission must exclude enrichment services from their
14 analysis.

15 Second, even if Commerce had not already
16 excluded SWU from the scope of the underlying
17 investigation, the Commission has an independent
18 obligation to make its own determination in accordance
19 with law. The Commission's primary obligation is to
20 comply with the law as passed by Congress and
21 interpreted by the Courts.

22 That obligation is not dependent on
23 Commerce. While the Commission usually defers to
24 Commerce on scope, the law does not require and does
25 not permit the Commission to include within its injury

1 analysis services transactions not subject to the
2 antidumping law.

3 By definition, a determination that it treat
4 SWU transactions as sales of subject merchandise
5 cannot be in accordance with the law, and in
6 connection with Commissioner Aranoff's question would
7 otherwise be ultravirus if you were to do so.
8 Furthermore, this is not merely a scope issue. The
9 Eurodif decisions hold that SWU transactions are
10 services transactions not sales of goods and that such
11 transactions are not covered by the antidumping law.

12 Given those findings the Commission may not
13 legally treat SWU transactions as sales of subject
14 merchandise and include them in their likelihood of
15 injury analysis. IN other words, the Commission's
16 analysis of price effects on the domestic like product
17 cannot include SWU transactions.

18 There could be no likely price underselling
19 or price suppression or depression when either the
20 subject merchandise or the domestic like product are
21 sold in the U.S. The Federal Circuit made clear in
22 the Eurodif case that SWU transactions do not involve
23 the sale of LEU, and therefore, they cannot form a
24 basis of determining likely price underselling
25 suppression or depression.

1 For these reasons, the Commission cannot
2 legally consider imports of prospective enrichment
3 services to be within the scope of subject merchandise
4 and may not include such imports in its following
5 price underselling analysis, yet there were a few
6 French EUP sales prior to the antidumping order, as
7 Mr. Carbonell had stated, and few if any during the
8 period of review.

9 Sales of French EUP are equally unlikely in
10 the future given the long-term commitments of U.S.
11 utilities to enrichment and feed requirements. Those
12 contracts are separate contracts with separate
13 commitments that would require the utilities to breach
14 one contract to somehow now enter into sales of EUP.

15 Because the Commission must exclude SWU
16 transactions from its analysis and because all the
17 evidence suggests that SWU transactions are the only
18 transactions likely in the future the Commission must
19 find the reasonable likelihood of injury to the
20 domestic industry if the order was revoked.

21 Even if the Commission were to include SWU
22 transactions in its likely injury analysis what we
23 would argue is it would be illegal in this case. It
24 should conclude that injury from French LEU imports is
25 not likely for the following reasons. First, USEC

1 exports the vast majority of its domestically produced
2 enrichment to customers outside the U.S.

3 USEC delivers primarily Russian SWU in the
4 U.S. Because domestic production does compete in the
5 U.S. market it is not vulnerable to imports of LEU
6 from France. The antidumping laws are not intended to
7 protect USEC's brokering of Russian enrichment
8 services.

9 Second, U.S. utilities have committed nearly
10 all of their demand for enrichment for the foreseeable
11 future. With demand already committed there is no
12 opportunity for French LEU to supplant U.S. LEU in the
13 U.S. market. Third, prices have increased
14 dramatically since 2002. SWU prices are now above
15 \$140 per SWU.

16 USEC is earning a significant profit from
17 its brokering of Russian SWU, other firms are planning
18 on entering the market and economic indicators are up
19 across the board. Under these circumstances there is
20 no likelihood that imports of French LEU would
21 suppress or depress prices and injure the U.S.
22 industry.

23 I would like to address a couple of points
24 that USEC raised this morning in connection with their
25 what I would consider fundamental mischaracterizations

1 of the legal end market changes that have occurred
2 since the original investigation.

3 First, USEC mischaracterizes the significant
4 decisions of the Federal Circuit and the CIT. As I
5 mentioned, these decisions are binding despite
6 Commerce's statement that it will not implement them
7 until they are final and conclusive. The Court in the
8 Russian case has already confirmed the fact that these
9 are in fact stare decisis and binding on the
10 Department now even though they may at some later
11 point in time take further appeals of those decisions.

12 This is not a question of whether or not
13 there is a suspension of liquidation question as you
14 would look at under Temkin. This is a question of
15 whether the cases are binding precedent that must be
16 applied now.

17 USEC's claim that the Court only ruled as to
18 SWU contracts in the Eurodif case, somehow that any
19 other contracts that might come up in the future would
20 have to be looked at on a case by case basis, yet the
21 Court's ruling was based on the industry practice of
22 contracting for enrichment services. That was in fact
23 started by the U.S. government itself as a manner of
24 contracting in the industry.

25 These are the same types of SWU contracts

1 that the Court of Appeals for the Federal Circuit
2 examined in the Eurodif case as well as in other cases
3 involving enrichment transactions such as Florida
4 Power and Light. This has been the industry practice
5 for over 30 years and is not likely to change any time
6 in the future, especially given alternative
7 commitments for feed in the other parts of the steel
8 cycle chain.

9 The Court has dismissed USEC's appeal which
10 suggests that the utilities would contract for EUP and
11 must include within the scope until the DOC rules that
12 it is out. The Court rejected concepts that somehow
13 we will now continue to include the contract for
14 enrichment services in the scope until they're out.

15 The Court in fact shifted the burden now to
16 USEC and the Department to confirm that somehow that
17 these are EUP transactions as opposed to SWU
18 transactions, but there is no administrative review,
19 as Mr. Cunningham seemed to suggest. That's what the
20 Court specifically dealt with in the context of the
21 appeals and at the CAFC.

22 That was the very issue that the Court was
23 looking at as to whether administrative reviews would
24 be appropriate, and the Court said no. So basically,
25 the SWU transactions, if the certifications are filed

1 and demonstrated to be SWU transactions, based on that
2 criteria those will not be considered part of the
3 scope of subject merchandise and will not be subject
4 to administrative reviews.

5 Furthermore, USEC suggests that it's only
6 AREVA's role that's relevant in the market. To the
7 contrary, the U.S. utilities participated in this
8 review and submitted extensive questionnaire responses
9 including supplemental questionnaire responses at the
10 request of the Commission's staff to demonstrate that
11 they buy SWU, and the staff report supports this
12 conclusion.

13 U.S. utilities procure nuclear fuel
14 predominantly by buying uranium and then separately
15 procure the services needed for conversion, enrichment
16 and fabrication. This is due to the importance of
17 diversity of supply needs which utilities have
18 repeatedly stated are very important to them and as
19 the staff report reflects.

20 USEC's allegations that AREVA wants to be a
21 one stop shop are nothing more than allegations. In
22 fact, the one stop shop concept as suggested by USEC
23 is inconsistent with the utilities' desire to
24 diversity supply. I will now turn over the
25 presentation to Mr. Church.

1 MR. CHURCH: Thank you. Hello. My name is
2 Kenneth Church, and I am Nuclear Fuel Supply Manager
3 for Duke Energy Corporation. I have been working for
4 Duke Energy for 16 years and in the nuclear fuel
5 industry for 18 years. Duke Energy produces and
6 supplies electricity to approximately four million
7 customers in the United States.

8 Much of the electricity we provide to these
9 customers comes from seven nuclear generating units.
10 Approximately 4,000 of Duke Energy's more than 18,000
11 employees work in the Nuclear Generation Department.
12 Like other utilities, Duke Energy purchases enrichment
13 services for the production of the nuclear fuel it
14 loads into the nuclear plants it operates in the
15 United States.

16 I am responsible for securing fuel supply
17 for Duke and contracting with uranium processing
18 service providers on Duke's behalf. The consequences
19 of not having fuel available when we need it would be
20 dramatic.

21 Therefore, we seek to minimize risk which
22 could result in inadequate fuel supply by diversifying
23 our sources at each procurement stage of the nuclear
24 fuel cycle which includes contracting for supplies of
25 uranium concentrates, conversion services, enrichment

1 services and fabrication services. We also seek to
2 minimize risk by staying closely involved and
3 knowledgeable of the nuclear fuel production process.

4 I would like to share with you my
5 perspective on the current status of the enrichment
6 market and what is expected for the market for the
7 reasonably foreseeable future. As reflected in the
8 public version of the staff report, most U.S.
9 utilities including Duke only obtained LEU pursuant to
10 deliveries under enrichment services contracts during
11 the period of review.

12 Duke did not purchase LEU as bundled
13 enriched uranium product, or EUP, containing both
14 uranium feed and SWU during the period and has
15 committed contractually to obtaining all of its LEU
16 requirements several years into the future pursuant to
17 deliveries under enrichment services contracts.

18 As reflected by the filings in this
19 proceeding other U.S. utilities are in the same
20 situation. Thus, if the French order were revoked
21 there would be little U.S. market available for
22 imports of enrichment services because U.S. utilities
23 have already contractually committed their enrichment
24 services requirements for several years into the
25 future.

1 I should also point out that for many years
2 U.S. utilities have obtained the overwhelming majority
3 of their LEU supplies pursuant to enrichment services
4 contracts as opposed to EUP transactions given the
5 increased risk mitigation provided by diversifying
6 their supply sourcing at multiple stages of the fuel
7 cycle.

8 Also, according to industry consultants many
9 U.S. utilities are like Duke in that they have already
10 contracted for the purchase of uranium and conversion
11 services needed over the next several years to produce
12 the uranium feed that will be enriched under our
13 enrichment contracts.

14 Given these market realities it is extremely
15 unlikely that EUP transactions will expand in coming
16 years to satisfy any meaningful portion of the U.S.
17 utility enrichment services. Even if you consider
18 enrichment services transactions, removal of the order
19 on LEU from France is not likely to negatively impact
20 the domestic industry given current market conditions.

21 U.S. utilities' demand for enrichment
22 services has been increasing steadily over the last
23 few years. As electricity demands and prices for oil
24 and gas have increased in recent years utilities have
25 increased the power levels from their reactors,

1 extended the lives of their existing reactors and are
2 pursuing development of new reactors.

3 I have heard estimates that increases in
4 reactor capacity utilization since the early 1990s has
5 been equivalent to adding another 24 1,000 mega watt
6 reactors to the U.S. fleet. The Energy Policy Act of
7 2005 reflected growing public policy support for new
8 nuclear reactors in the United States.

9 Several U.S. utilities including Duke have
10 either selected or are in final site selection for at
11 least eight additional reactors and as many as 28 new
12 reactors in 19 locations are being considered for
13 construction in the United States, and fuel
14 procurement efforts to supply these reactors are
15 already underway.

16 While demand for enrichment has been
17 increasing, supply of enrichment services is
18 constrained and will continue to be constrained for
19 some time. There are only four major suppliers of
20 enrichment services in the market, and their
21 production is largely committed for the next several
22 years.

23 For example, current global SWU supply is
24 largely contracted through 2012. Nontraditional or
25 secondary sources of enrichment services such as HEU

1 blend down, nonutility inventories and tails
2 reenrichment have filled the supply shortfall in
3 recent years, but those secondary sources have
4 dwindled significantly since 2002.

5 The dramatic increases in worldwide
6 enrichment prices in the last three years indicate
7 that those secondary sources are no longer capable of
8 filling the gap between demand and production. With
9 continuous increases in demand we believe that the
10 trends towards tight supply and higher prices are
11 likely to continue through the next five years and
12 beyond.

13 The result of the current and anticipated
14 tight supply is dramatically escalating prices.
15 Prices for SWU have increased nearly 50 percent in
16 five years from around \$100 per SWU during the
17 original investigation to approximately \$143 per SWU
18 today. Supply constraints for SWU are expected to
19 continue to result in upward price pressure for these
20 services in the future.

21 In response to the current lack of available
22 SWU supplies utilities have increased the percentage
23 of the requirements that are covered by long-term
24 contracts. Increasing demand is also prompting
25 utilities to increase the length of their long-term

1 contracts so they can ensure their future fuel needs
2 are met.

3 Industry consultant data suggests that
4 pricing for most of these long-term contracts is set
5 at or near prevailing market prices at the time of
6 contracting and may be escalated for inflation. These
7 conditions have resulted in increasing the prevailing
8 demand and locking in today's high prices for years to
9 come.

10 New investment is flowing into the industry
11 as well with construction either recently initiated or
12 planned for five new enrichment plants worldwide, four
13 of which are in the U.S. One example is Louisiana
14 Enrichment Services, or LES, which is currently
15 constructing a plant in New Mexico and has already
16 contracted its entire enrichment capacity for the next
17 10 years.

18 As a consumer of enrichment services it is
19 difficult to see why USEC or any other U.S. enricher
20 would feel threatened by imports of French LEU given
21 the current market conditions. I want to note that
22 USEC has largely become a broker for Russian SWU to
23 the U.S. market under the HEU agreement.

24 Duke's experience is that USEC sells little
25 U.S. origin SWU to the U.S. market. USEC's U.S.

1 production appears to be sold mostly to overseas
2 customers. I emphasize that domestic enrichment
3 supply is valued by U.S. utilities as evidenced by our
4 actions to help develop LES.

5 We also support USEC's efforts to develop
6 it's American centrifuge program. However, even with
7 the success of those programs SWU supply is expected
8 to remain tight and prices are expected to continue to
9 rise. Utilities such as Duke need access to all
10 available sources of enrichment in order to ensure
11 continued availability of nuclear fuel in the next
12 decade and beyond.

13 Thank you for the opportunity to speak
14 today. I would be happy to answer any questions that
15 you may have about my testimony.

16 MR. ROSEN: I believe that concludes our
17 direct presentation.

18 CHAIRMAN PEARSON: Okay. Thank you. Let me
19 welcome you here today. Thank you for your
20 contributions, especially Mr. Carbonell. You had a
21 plane flight to get here I'm sure. Appreciate the
22 fact that you would travel to be with us. We will
23 begin this afternoon's questioning with Vice Chairman
24 Aranoff.

25 VICE CHAIRMAN ARANOFF: Thank you, Mr.

1 Chairman.

2 I join the Chairman in welcoming all of you
3 here this afternoon and thanking those of you who
4 traveled distances to be with us today.

5 Mr. Carbonell, a yes or no question. Does
6 your company plan to submit a completed questionnaire
7 in this investigation?

8 MR. CARBONELL: I've noticed that there were
9 some things from this morning and I think we can
10 provide some more information which could help you to
11 reach a decision appropriate. I thought in fact that
12 the information including SWUs transactions was
13 already in the record, but I've been looking this
14 morning at what was said and the figures and I notice
15 that they are very disturbed.

16 I thought that because where the information
17 from as we paid hundreds of millions of dollars in
18 deposits, and each of them is because of French SWUs
19 and they're very clearly indicated we thought was
20 unnecessary, but we'd be more than happy to complete
21 that information so that you can see it right even on
22 SWU transactions.

23 VICE CHAIRMAN ARANOFF: Mr. Rosen, did you
24 want to add something there?

25 MR. ROSEN: Only that if there is to be

1 blame it should be directed at counsel rather than
2 clients.

3 VICE CHAIRMAN ARANOFF: Well, I didn't want
4 to approach that since obviously that involves a
5 privileged communication. I just want the answer to
6 whether or not our questionnaire is going to be filled
7 in?

8 MR. ROSEN: As Mr. Carbonell indicated,
9 Eurodif is willing to provide additional information,
10 and it will do so promptly.

11 VICE CHAIRMAN ARANOFF: Okay. I appreciate
12 that, and I would urge you to please fill in the
13 entire questionnaire because at least in my opinion
14 the weight that we can give to the additional
15 information that you provide will depend on our
16 assessment of the completeness of your responses.

17 MR. ROSEN: Noted.

18 VICE CHAIRMAN ARANOFF: Thank you very much.
19 As the record currently stands I think the quote from
20 Ms. Fischer, and I think it's very similar to what you
21 testified to, Mr. Rosen, was that the only SWU
22 transactions are likely to occur in the reasonably
23 foreseeable future.

24 As I understand your theory of the case your
25 whole case depends on our making that finding, that

1 only SWU transactions are likely to occur in the
2 reasonably foreseeable future, that they're therefore
3 not within the scope of the order. Given that we do
4 not in fact have a completed questionnaire from AREVA
5 would we not be justified in drawing an adverse
6 inference to the contrary?

7 MR. ROSEN: No, Ms. Aranoff. We believe
8 that the record is ample including the record of Court
9 decisions and Commerce Department decisions of which
10 this Commission can take notice that all transactions
11 involving Eurodif's imports from France have been SWU
12 transactions. That's what the record reflects from
13 the purchaser questionnaires, that's what the Court
14 decisions have determined, that's what the Commerce
15 Department reviews have determined.

16 VICE CHAIRMAN ARANOFF: Okay.

17 MS. FISCHER: I would also like to add that
18 obviously our purchaser questionnaires do contain
19 detailed information about our purchases of SWU during
20 the period of review as well as projected purchases
21 during the future for which we are under contract for,
22 so there is ample information in the record and the
23 Commission staff report relies on that as it draws the
24 conclusion that few purchases of LEU are made as EUP
25 in the staff report.

1 VICE CHAIRMAN ARANOFF: Ms. Fischer, I do
2 appreciate that, and I do appreciate the fact that all
3 of the utilities did fill in their purchaser
4 questionnaires. Thank you.

5 MR. RYAN: Commissioner Aranoff, could I add
6 one point? Eurodif did supply information on all of
7 our EUP sales during the entire period that's being
8 looked at by the Commission, and everything else is
9 SWU sales, so you know how much EUP we sold from both
10 purchaser perspective as well as what Eurodif
11 themselves supplied. Everything else is a SWU
12 transaction, and, as Mr. Carbonell indicated, we'll
13 get you additional information about those
14 transactions.

15 VICE CHAIRMAN ARANOFF: Okay. Now, just so
16 that I understand, to what extent have the Court
17 decisions, and there have been many of them,
18 specifically addressed, there were a number of factual
19 scenarios that were posited this morning by USEC in
20 terms of perhaps that it's not so black and white,
21 that one thing is a SWU transaction and one thing is
22 an EUP transaction but that there may be variations in
23 the marketplace as, for example, I think one example
24 they gave was someone purchases both enrichment
25 services and natural uranium from companies that are

1 within the same corporate family either at the same
2 time under a different contract or at different times
3 under different contracts.

4 Is there a definitive ruling from the Court
5 that specific factual situation constitutes a SWU
6 transaction that's not within the scope?

7 MR. ROSEN: Yes, Commissioner Aranoff. As I
8 noted in the countervailing duty litigation much was
9 made of the fact that EDF, the French electric
10 utility, purchased its enrichment services from
11 Eurodif but also purchased much, I believe the record
12 was taken from public figures, about 80 percent of its
13 uranium feed requirements from an affiliate, Cogema.

14 That was brought before Commerce, it was
15 brought before the Courts all the way on up through
16 the review process, and it was of no avail. The
17 Eurodif transactions with EDF were treated as service
18 transactions such as to be excluded from any
19 determination of a subsidy resulting in a negative
20 subsidy determination and a revocation of the order.

21 Similarly, in the dumping litigations there
22 were questions raised about affiliated feed
23 purchasing, and information was supplied for the
24 record. Commerce did not base its decision that the
25 transactions were covered on affiliated feed

1 purchasing, and this factor had no moment during the
2 appellate review process.

3 It was raised again in petition for a
4 rehearing, and it went nowhere. I should also add, I
5 thought I had said it but maybe not clearly, that
6 after the definitive Court of Appeals decisions, and
7 the mandate issued and the remand to Commerce, the
8 issue came up again. It was brought forth loudly and
9 clearly by USEC, and Commerce said no, that's
10 irrelevant under the Eurodif decisions.

11 That is what USEC appealed, by the way, and
12 that appeal is what was thrown out, the dismissal that
13 USEC declared a victory this morning.

14 VICE CHAIRMAN ARANOFF: Okay. Let me see.

15 MR. ROSEN: While you're looking let me just
16 add one other thing if I haven't said it already.
17 That close review of the contracts during the period
18 of investigation stands for the contracts that go
19 forward throughout the period that the order has been
20 in effect.

21 To a large extent they are the very same
22 contracts. To the extent that the identical contracts
23 are not in issue the contract form is the same with
24 modifications as to price, delivery dates, quantity
25 and so forth. It changed dates of sale, but the

1 structure of the contracts which led, as Ms. Fischer
2 said, the Court to issue a definitive ruling as to SWU
3 transactions cover Eurodif's business as a whole.

4 VICE CHAIRMAN ARANOFF: Okay. I appreciate
5 those answers, and I'll need to come back in my next
6 round.

7 Thanks, Mr. Chairman.

8 CHAIRMAN PEARSON: Commissioner Lane?

9 COMMISSIONER LANE: Thank you all for
10 participating in this hearing. I have to say that I
11 will only be able to participate today in one round of
12 questioning unfortunately, but I will read the
13 transcript and will read everything with interest.

14 Mr. Church, my first question is for you.
15 How much of Duke's nuclear fuel requirements are being
16 provided by long-term contracts of four years or
17 longer?

18 MR. CHURCH: This is Kenny Church. For our
19 enrichment services that would be 100 percent of our
20 supply in the foreseeable future under long-term
21 contracts greater than four years.

22 COMMISSIONER LANE: So any nuclear fuel that
23 you need for the next four years or shorter period of
24 time are already covered by long-term contract?

25 MR. CHURCH: No. Whatever is covered is

1 covered by contracts that have been signed that are at
2 least four years in duration, but looking at our
3 enrichment and uranium requirements we are covered
4 through the foreseeable future. Through the next few
5 years totally, 100 percent.

6 COMMISSIONER LANE: And so does that mean if
7 you wanted to buy something from AREVA you don't have
8 any need for any fuel or enrichment services from --

9 MR. CHURCH: We don't have a need to cover
10 requirements any time in the near term, so what we
11 would be doing if we made a decision to purchase would
12 be purchasing and carrying that material for some in
13 the future requirement. So we would have to assess
14 things like carrying costs, which would be significant
15 on these type of purchases, so that significantly
16 makes the likelihood not as high that we would do
17 that.

18 COMMISSIONER LANE: Okay. Now I have some
19 questions about toll production. In the prehearing
20 brief you indicate that it is most common for
21 utilities to toll produce their own fuel by purchasing
22 concentrate and then contracting for enrichment
23 services. Do the utilities follow that model with
24 USEC or is it limited to your transactions with
25 enrichers other than USEC?

1 MR. CHURCH: I would say the preference from
2 Duke's perspective and from the majority of utilities
3 would be to contract for those needs independently,
4 each stage independently, for risk management
5 purposes. It's just a more robust risk management
6 process.

7 COMMISSIONER LANE: So does that mean you
8 don't contract with USEC for toll production?

9 MR. CHURCH: I don't say that has not been
10 done. USEC, as they were privatized as you're aware,
11 did inherit a large volume of uranium, and to some
12 extent they leveraged that uranium for additional
13 purchases of enrichment, so there was a period after
14 their privatization where EUP might have been a little
15 more prevalent than any other time that I can recall
16 over the last 10 to 20 years.

17 Still, I think if you look back over time
18 and look at the data you would see that by far and
19 away the overwhelming vast majority of transactions
20 that have been committed by U.S. utilities for LEU
21 supply have been through enrichment services contracts
22 with the utility providing their uranium feed.

23 COMMISSIONER LANE: Mr. Rosen?

24 MR. ROSEN: Yes. I believe, Commissioner
25 Lane, that USEC's testimony this morning was to the

1 same effect regarding its practices and experience.

2 COMMISSIONER LANE: Okay. Energy
3 independence and global warming are both popular
4 topics that can affect the electric utility industry.
5 Use of wind, solar and renewable technologies are
6 mentioned as being desirable to afford this country
7 some measure of energy independence as well as to ease
8 carbon emissions.

9 Nuclear power is also discussed in the
10 context of both energy independence and to east carbon
11 emissions. Do you believe that energy independence is
12 a desirable goal, and should nuclear power be
13 supported because it can contribute to such
14 independence?

15 Mr. Church?

16 MR. CHURCH: I certainly agree with the
17 initiative of energy independence. If I try to
18 extrapolate that into the total fuel supply chain, I
19 think for any time in the foreseeable future we cannot
20 attain that. We don't have the resources today in
21 play to be totally independent for our fuel supply in
22 the United States.

23 COMMISSIONER LANE: Okay. Can nuclear power
24 contribute to energy independence if it is acquiring
25 large portions of its fuel supply from nondomestic

1 sources?

2 MR. CHURCH: I guess theoretically you would
3 be dependent on some outside source for a portion of
4 your energy production in that scenario.

5 COMMISSIONER LANE: Okay. In the uranium
6 case from Russia which we had this past spring there
7 was a question of contamination of the Russian
8 uranium. Could you please describe this contamination
9 and what it means with regard to nuclear fuel and the
10 process and costs for removing the contamination if it
11 is removed?

12 MR. CHURCH: Yes. Some of the uranium as I
13 understand it that was actually transferred to USEC
14 upon privatization was contaminated with technetium,
15 and that technetium had to be processed at their
16 facilities to clean that material up.

17 Basically to the utilities, that effort has
18 been transparent as I believe the government has
19 looked to do things that would raise the funding for
20 those clean up efforts at USEC by selling small
21 quantities, small tranches of say uranium into the
22 market to cover those costs.

23 COMMISSIONER LANE: Okay. Thank you. Long-
24 term storage of spent nuclear fuel remains a
25 significant concern that could slow the revival of the

1 nuclear powered electricity industry in the United
2 States and other developed countries. How will this
3 affect U.S. and global demand in the foreseeable
4 future?

5 MR. CHURCH: Well, it's certainly a question
6 that the U.S. has to come to grips with that certainly
7 could impact the expansion of nuclear power longer
8 term. Obviously the U.S. is looking longer term at
9 things, like reprocessing, that would require that
10 less waste material actually gets sent to the
11 repository, and we would see benefits if the U.S. took
12 that direction, but there's a lot that has to work its
13 way out on the storage side of the nuclear industry.

14 COMMISSIONER LANE: Okay. Thank you. And
15 thank you again for your answers, and I'll look
16 forward to reading the transcript. Thank you.

17 CHAIRMAN PEARSON: Commissioner Lane, could
18 I inquire, do you have any further questions that you
19 would like to present at this time?

20 COMMISSIONER LANE: No. I'm sure that you
21 all will ask all of the questions that I would have
22 asked. Thank you.

23 CHAIRMAN PEARSON: Commissioner Williamson?

24 COMMISSIONER WILLIAMSON: Thank you, Mr.

25 Chairman. I, too, want to welcome the panel here this

1 afternoon. Mr. Rosen, what do you consider to be the
2 reasonable period of time as far as the industry in
3 this investigation, in this case?

4 MR. ROSEN: Frankly, Commissioner
5 Williamson, I haven't focused extensively on that,
6 because of our base position that there is nothing to
7 be reviewed. Certainly, when we reflect upon the
8 performance of Eurodif over the past period, over the
9 past 20 years, 25 years of its operations, EUP sales
10 have not been a part of its business. There were two
11 or three spot transactions in that period. Maybe I'm
12 exaggerating, so correct me if I'm wrong. And there
13 is no expectation going way out into the future that
14 anything will change. Thus, whether you call
15 reasonably foreseeable period in the future, four
16 years, as Mr. Cunningham, I believe, suggested, or
17 five or six, whatever, you go a little too far, it's
18 just speculation.

19 COMMISSIONER WILLIAMSON: Okay.

20 MR. ROSEN: We don't see Eurodif being in
21 the EUP business.

22 COMMISSIONER WILLIAMSON: Okay. Ms.
23 Fischer, do you have any views on that?

24 MS. FISCHER: I don't really have anything
25 more to add, other than the normal one-year period

1 obviously doesn't really make sense in an industry
2 that is subject to a lot of long-term contract and
3 longer-term horizons. But, I think going anywhere --
4 any further beyond the time period even suggested by
5 Mr. Cunningham would be inappropriate.

6 COMMISSIONER WILLIAMSON: Mr. Fischer, you
7 mentioned the fact that -- you said most of USEC's
8 production was from domestic sources were exported. I
9 was wondering, you made a point this morning that
10 there -- you said sales in the U.S. from Russia,
11 they've already admit if that were adversely affected,
12 that would effect their competitiveness in the global
13 market and that, therefore, it would have some adverse
14 effect on the domestic industry. I was wondering what
15 your views are on that.

16 MS. FISCHER: Our views are that the
17 antidumping laws are designed to protect the domestic
18 production in the U.S. not a U.S. company's sales of
19 foreign enrichment services or even foreign LU in the
20 U.S. So, obviously, their claims that somehow their
21 production would be indirectly affected really just --
22 their efforts from a business standpoint of trying to
23 balance their sales of brokering Russian enrichment
24 services with their sales of their domestic
25 production, which, as I indicated, are going overseas.

1 And so, in our view, really the dumping laws are not
2 designed to protect their sales of enrichment
3 services. And furthermore, we've certainly offered,
4 the utilities have offered to take over USEC's role as
5 the executive agent. So, if they feel burdened by
6 having to meet those requirements, the utilities are
7 happy to do it for them.

8 COMMISSIONER WILLIAMSON: But what about the
9 fact -- I mean, there is domestic employment behind
10 those exports; correct? I mean, there is a domestic
11 industry that is --

12 MS. FISCHER: There is.

13 COMMISSIONER WILLIAMSON: -- exported.

14 MS. FISCHER: There is, but that is not
15 competing with sales of French enrichment services,
16 even if the French enrichment services were somehow
17 relevant to the Commission's analysis, that's not
18 competing with the domestic production. It's
19 competing with non-subject imports from Russia.

20 COMMISSIONER WILLIAMSON: Okay. The staff
21 report in Table 2.1 talks about increasing -- set
22 increasing future deliveries of LEU from other
23 suppliers. I raised this question this morning, I was
24 wondering what is your view about why this is
25 occurring? How should it effect our injury analysis?

1 MR. CHURCH: Could you restate that
2 question?

3 COMMISSIONER WILLIAMSON: In this staff
4 report in Table 2.1, they show steadily increasing
5 expected future deliveries of LEU from other suppliers
6 as one of the categories in the study and that's
7 presumably mainly Urenco. And I was just wondering if
8 you had any views about the explanations for this
9 trend or is it something that is just speculative?
10 Mr. Rosen, do you --

11 MR. RYAN: One of our -- this is John Ryan.
12 One of the points in our pre-hearing brief was there
13 are only four players in the market and one of them is
14 at the table here. It's Urenco. It's Urenco's sales
15 that you're projecting. And our position in the pre-
16 hearing brief was to the extent that this order has
17 any effect, it's really just a shift between Urenco
18 and Eurodif. So, the non-subject imports providing
19 any future growth in imports is really a basis to vote
20 negative of this case, because the only benefit then
21 from continuation of an order against France is going
22 to be these non-subject imports from Germany, the
23 United Kingdom, and Great Britain -- Germany, the
24 United Kingdom, and Holland, the Netherlands, which
25 were part of the original Commission determination,

1 but the orders have since been revoked and they're not
2 part of this sunset review.

3 MR. CHURCH: And that is certainly true
4 through, say, 2009. You're potentially getting and
5 likely getting some LES supply that's coming into
6 this, all other suppliers column out in 2009 and
7 beyond; so, a new domestic supplier.

8 COMMISSIONER WILLIAMSON: Okay. Thank you
9 for that answer. Mr. Church, you had indicated, I
10 think in your testimony, that there are a number of
11 new, I guess facility plants, nuclear power plants
12 that are being considered are coming on line. And I
13 think you had indicated that the procurement for the
14 fuel for some of those is already taking place.

15 MR. CHURCH: That's a fact.

16 COMMISSIONER WILLIAMSON: And, yet, at the
17 same time, you, also, mentioned that all of the
18 adjusting operations people are already contracted out
19 to a long time, period of time. But, to what extent
20 are the prices for those contracts of the new plants,
21 the prices they're going to pay for fuel dependent on
22 the conditions of the market now?

23 MR. CHURCH: Very much so. They're being
24 established somewhat by what's a reasonable rate of
25 return for some of these. Potentially, we're talking

1 about supply from new enrichment sources, as well.
2 So, what's a reasonable rate of return for the
3 supplier. But, absent that, they're certainly getting
4 impacted by the current marketplace prices. So,
5 you're talking about an extended term supply that is
6 being set at today's market prices.

7 COMMISSIONER WILLIAMSON: Okay. So the cost
8 of enrichment service is now -- the stability of those
9 would have some effect on --

10 MR. CHURCH: Certainly. Generally, in the
11 staff report, I think you'll see that -- I think it
12 was indicated that the most predominant form of
13 pricing for enrichment services is set at a market
14 price at the time the commitment is made with it's
15 either fixed or some inflationary index applied and
16 that's certainly been Duke's experience in
17 contracting.

18 COMMISSIONER WILLIAMSON: Okay, thank you.
19 I think you indicated that there were some EUP -- some
20 U.S. utilities desire getting fuel on the EUP basis.
21 What are the factors that might determine whether a
22 company might want to do that, as opposed to a smooth
23 transaction?

24 MR. CHURCH: Well, just to kind of -- a
25 little history lesson, back when we had the initial

1 reactor buildup, we had a reactor supplier and support
2 system supplier. That reactor supplier committed fuel
3 that was not only the fabrication services, but it was
4 the special nuclear material to a number of utilities
5 in the marketplace. And they defaulted on those
6 contracts. And so the utilities were left having to
7 run out in the market and scramble to find supply.
8 And that's really not been forgotten. So, ever since
9 that point in time, what you've seen generally is that
10 U.S. utilities wanting to diversify each stage, so
11 they control each step. So, if there is a default at
12 one of the steps, they can potentially overcome that.
13 If you're committed for each step in the chain all
14 with one supplier, it's very difficult to recover from
15 a situation like that.

16 MR. ROSEN: The situation to which Mr.
17 Church referred went back to the 1970s --

18 MR. CHURCH: That's right.

19 MR. ROSEN: -- I believe and it involved
20 Westinghouse, which was the fuel supplier. And there
21 was a spike in the price and limitation in the
22 availability of feed. And Westinghouse claimed force
23 majeure and refused to go forward on its contracts.
24 That's why utilities insist on diversification of
25 supply at every point in the fuel cycle.

1 COMMISSIONER WILLIAMSON: Okay. My time has
2 expired, so thank you, very much.

3 CHAIRMAN PEARSON: Commissioner Pinkert?

4 COMMISSIONER PINKERT: Thank you, Mr.
5 Chairman, and I would like to join my colleagues in
6 thanking this panel for being here today and for
7 providing us with testimony. As I did with my earlier
8 questions, I want to begin with some technical, legal
9 questions and then proceed to perhaps some broader
10 less legal questions. So, I would like to begin with
11 Mr. Rosen and I recall from your testimony today that
12 you talked about no petition for cert being filed
13 after the original Federal Circuit decisions in
14 Eurodif. If there had been a petition for cert filed
15 at that time, would that have been an interlocutory
16 appeal?

17 MR. ROSEN: Absolutely.

18 COMMISSIONER PINKERT: So, wouldn't the more
19 normal procedure be for the government to actually
20 execute the remand and then wait until the remand was
21 affirmed in a final conclusive decision before -- I
22 should say final decision before then appealing it to
23 the Supreme Court?

24 MR. ROSEN: That would have been the more
25 normal route. Nevertheless, throughout the stages of

1 the litigation and appeals, both the government and
2 USEC were indicating that they would be seeking cert.
3 That was the intention. And the 90 days passed with
4 nothing happening.

5 COMMISSIONER PINKERT: I see. So, there was
6 some talk about an interlocutory cert appeal, but it
7 never actually happened?

8 MR. ROSEN: That is correct.

9 MS. FISCHER: And I would also like to add
10 that the government requested a 60-day extension of
11 time to consider that very point. So, they raised
12 that at the time that the Court of Appeals decision
13 was originally issued. The pre-hearing been issued
14 and then after that, they requested additional time
15 before it went back to the CIT to consider that.

16 COMMISSIONER PINKERT: Okay, thank you.
17 Now, back to Mr. Rosen, in your original testimony,
18 you talked about Commerce voiding the countervailing
19 duty orders ab initio. And I was wondering whether
20 Commerce used the term 'ab initio' when it revoked the
21 countervailing duty orders.

22 MR. ROSEN: I don't have the materials in
23 front of me, so somebody correct me if I'm wrong. My
24 distinct recollection is that Commerce voided the
25 order effective May 14, 2001, which was the date of

1 the preliminary determination in the case, which meant
2 that all imports that had been potentially subject to
3 duties would escape such duties.

4 COMMISSIONER PINKERT: I understand that and
5 I did go back and take a look at the order, which
6 indicates that, at least in my reading of it, that it
7 was a retroactive revocation. But the term 'ab
8 initio' does not appear in that order.

9 MR. ROSEN: To me, a retroactive voiding is
10 ab initio. That order had zero effect whatsoever.
11 And Commerce and the government have indicated with
12 filings with the court that it is a certitude that no
13 duties will ever -- no countervailing duties will ever
14 be owed by Eurodif with respect to the entries on
15 which deposits had been required.

16 COMMISSIONER PINKERT: Were there any
17 entries liquidated during the period that the orders
18 were in effect, the countervailing duty orders?

19 MR. ROSEN: There may have been a few
20 erroneous liquidations. But since the voiding of the
21 order, effective May 14, 2001, there have been
22 liquidations and there have been significant refunds
23 of duties to Eurodif. We remain in litigation over
24 the refunds with the government claiming that it
25 cannot give back the money, which it admittedly

1 indicates is due to Eurodif, until the dumping
2 liquidations can be effected.

3 COMMISSIONER PINKERT: With respect to an
4 erroneous liquidation that occurred during the period
5 of time that the orders were in effect, does it make a
6 difference legally whether the orders were revoked ab
7 initio, as opposed to being revoked retroactively back
8 to the date of the prelim?

9 MR. ROSEN: No, Commissioner Pinkert. The
10 court has decided that those liquidations were
11 improper, because they violated the terms of an
12 injunction that was in place.

13 COMMISSIONER PINKERT: I see. Okay. Now, I
14 suppose an equally technical issue, it's my
15 understanding, and correct me if I'm wrong, that
16 Commerce has not amended the scope of the antidumping
17 order, in response to the Eurodif court decisions. Is
18 there any precedent for the Commission, the ITC, to
19 deem the scope to have been amended, as a result of
20 court decisions relating to the Commerce Department?

21 MR. ROSEN: I will certainly look to see if
22 there's any such situation. We have not pointed one
23 out to the Commission to date. But what we have said,
24 as confirmed by the court in its Tenex decision, is
25 that the law is what takes precedence, not a Commerce

1 Department action or order. The Commission has its
2 independent responsibility to apply the law and in
3 applying the law, the teachings of Eurodif are
4 applicable to the Department -- excuse me, to the
5 Commission, even before the Department publishes its
6 remand redetermination. That remand redetermination
7 has been made. And I should point out that in other
8 litigation not relating to uranium or enrichment, the
9 court has made clear that a revised determination is
10 effective as of the date it's made. No action was
11 taken by Commerce or by USEC to stay the effectiveness
12 of the revised determination and its affirmance by the
13 court.

14 COMMISSIONER PINKERT: So, then, is it your
15 view that Commerce is acting outside of its statutory
16 authority in not amending the scope of the orders
17 during the period in which cert could be effectuated?

18 MR. ROSEN: We believe that Commerce should
19 have published that order already, yes.

20 COMMISSIONER PINKERT: Have you taken any
21 action to force Commerce to take such action?

22 MR. ROSEN: Not yet. We are -- let me say,
23 we are in discussions with Commerce on a variety of
24 matters relating to the winding down of these
25 unfortunate proceedings.

1 MS. FISCHER: And may I add, in connection
2 with that concept, that in the context of the Russian
3 case, which is on appeal now before the Court of
4 International Trade, the Court of International Trade
5 has required Commerce to go ahead and apply their
6 decision in the Russian case, on the basis that it is
7 stare decisis and it is binding now. And the comments
8 by Commerce that it was not applying it before because
9 it wasn't final and conclusive were rejected by the
10 court.

11 MR. ROSEN: Let me, also, add, Commissioner
12 Pinkert, we are obliged today to make a filing with
13 the Court of International Trade respecting the status
14 of the stayed injury litigation going back to the
15 original investigation. We have been in discussion
16 with the parties, including with attorneys for the
17 Commission, as to whether or not we could reach
18 agreement on an appropriate course of action. The
19 course of action that we suggested to Commission
20 attorneys was to agree upon a remand of your original
21 injury determination, so that the Commission could
22 consider whether, in light of the Eurodif decisions
23 and the facts on the record of your initial
24 investigation, which showed an infinitesimal quantity
25 of EUP sales volume during the 12 month preceding the

1 petition, the original injury determination should be
2 negated and that the original investigation as to
3 France terminated, based upon negligible imports. We
4 think the facts are straightforward there and that if
5 the court bites, I don't think the Commission
6 attorneys have gone along with us, but if the court
7 goes for it and if we go forward on this basis, this
8 sunset review will become irrelevant. The -- okay.
9 We're hoping to clean up all of the litigation, as
10 well as this proceeding, in one fell swoop, based on
11 the facts and the law.

12 COMMISSIONER PINKERT: Thank you.

13 CHAIRMAN PEARSON: Permit me to begin by
14 making an observation. Whether I've been working in
15 government or in the private sector, there are times
16 when I found government processes to be quite vexing.
17 Perhaps, all of us are in such a situation now. Both
18 sides, if I understand correctly, are telling me that
19 if I do what the other side asks me to do, I'm going
20 to be breaking the law. It's a bit ironic. I'm sworn
21 to uphold the law, as are the other Commissioners, and
22 it now appears that in order to uphold the law, I'm
23 going to be fated to break it. This may be a catch-
24 22. If you have any counsel for me on that point, I'm
25 happy to have it.

1 MR. RYAN: I think when you're thinking
2 about this issue where the two parties come out,
3 you've got, on the one hand, Commerce -- USEC says you
4 can't decide what the scope of this case, so you've
5 got Commerce dragging its feet on issuing finally an
6 amended order. So, that's what you're weighing on one
7 hand for what the law is. And on the other side,
8 you've got two definitive Federal Circuit decisions
9 that say you can't apply the antidumping law to SWU
10 transactions. So, when you're trying to figure out
11 what the law is, you've got sort of this weak
12 authority, sort of an Agency that's been called a
13 scoff law by the court, sort of waiting around to
14 amend an order, and on the other side, you've got two
15 definitive Federal Circuit decisions. So, in deciding
16 what the law is, I think that's what you have to look
17 at. I mean, the highest authority that ever issues
18 decisions on interpreting the trade law or the
19 Commerce Department waiting around and dragging things
20 out.

21 CHAIRMAN PEARSON: Yes. Well, although I
22 have never been an attorney, I have had the privilege
23 of working with counsel throughout my career. I'm
24 very fortunate to have five very accomplished
25 attorneys serving with me on the Commission, which is

1 a good start. And we've got our general counsel's
2 office and our personal staff. So, I can assure you
3 that I will be listening to counsel as we try to sort
4 this out. I'm not going to try on my own volition to
5 reach a final determination.

6 Going back to the first point that the Vice
7 Chairman raised regarding what we have on the record,
8 let me just provide another perspective on it, as to
9 why I would support her request that we have a record
10 that's as full as possible. Every time we vote on one
11 of these cases, we have to sit down and write an
12 opinion and that opinion has to be based on
13 substantial information on the record. And because
14 I'm an economist, I'm a lawyer, I get an impression of
15 what I think is going on in the marketplace and I
16 think it would be pretty nice in this case to decide
17 it this way because of x, y, z. And then I go and ask
18 now, does the record support that. And my concern is
19 what we have on the record now, counsel probably would
20 tell me, you really don't have what you would need to
21 support a negative determination, which, of course, is
22 what you would have us make. And so, if we set aside
23 for a minute your strike issue, which I understand
24 that's important, I'm not negating it, but forget
25 about that for a minute and look at the case, assuming

1 that the SWU transactions are part of the scope. If
2 we had a full record here, there might be a credible
3 argument on a negative on your side. And you have not
4 given us, at this point, leverage to go ahead and make
5 such a determination. So for that reason, I would
6 just emphasize what the Vice Chairman is saying.

7 MR. ROSEN: Thank you. It's noted. And as
8 Mr. Carbonell indicates, Eurodif will respond.

9 CHAIRMAN PEARSON: Okay. Now, a
10 clarification for an issue that was touched on before,
11 because I'm not sure I quite understood what was said.
12 The morning panel would lead us to believe that AREVA
13 may sometime own natural uranium that it would sell to
14 a utility and then enrich that same uranium under a
15 SWU contract and deliver it after enrichment to the
16 utility. Does that, indeed, take place?

17 MR. ROSEN: I think the diagram -- if I
18 could have the one with the picture with the fuel --
19 the exhibit provided by USEC, I believe it's Exhibit
20 10 about business and strategy overview. If you look
21 at page two, the front end division, it notes the
22 various pieces of the front end of the era of the
23 group. There is a mining group that's yellow cake or
24 feed U308; chemistry, that's essentially conversion;
25 enrichment, that's what we're talking about; and fuel.

1 That's the front end to go from uranium in the ground
2 to a fuel rod that one places in the reactor. So, a
3 piece of the era of the group is in the mining
4 business and the sale of uranium concentrate.

5 A different piece is in the enrichment
6 business. That piece, the Eurodif piece, by the way,
7 is not 100 percent owned, out of a subsidiary. It was
8 a multinational project, in which Sweden and Iran and
9 Italy and Belgium and Spain, I don't know if I've left
10 anyone else out, participated from the outset or
11 shortly thereafter. They are separate operations with
12 separate functions. Yes, there are occasions where a
13 U.S. utility bought feed from an era of a group
14 company and has also bought enrichment from Eurodif.
15 But, there's been no instance, other than the
16 occasional, the two or three spot transactions back in
17 1999-2000, teeny spot transactions, where the
18 purchasing is coordinated. There is nothing
19 indicating that a utility, which buys feed from
20 Cojema, must use that feed for enrichment by Eurodif.
21 It could go for a USEC transaction or a Urenco
22 transaction or whatever or it could go into stock for
23 trading or whatever else.

24 MR. CHURCH: Can I add to that real briefly?

25 CHAIRMAN PEARSON: Please.

1 MR. CHURCH: We're a U.S. utility and we're
2 contracted for that feed with multiple suppliers
3 diversifying on the uranium side. We have contracts
4 with AREVA for enrichment and for the natural uranium.
5 And there's no correlation in the timing, which we're
6 committing those supplies. It's not we are going out
7 at the same point in time and getting a volume of
8 uranium and a volume of SWU and looking to pair those
9 together. It's just doesn't happen.

10 CHAIRMAN PEARSON: Okay.

11 MR. CHURCH: I've seen no evidence of that
12 in the industry.

13 CHAIRMAN PEARSON: And so have you, at some
14 point, purchased natural uranium from an AREVA company
15 --

16 MR. CHURCH: Sure.

17 CHAIRMAN PEARSON: -- and then moved it to -
18 - physically moved it to some other enricher?

19 MR. CHURCH: Oh, absolutely, yeah. Sure.

20 CHAIRMAN PEARSON: Okay.

21 MR. CHURCH: I'm sure we've done it under
22 the period of investigation.

23 MR. CARBONELL: But mainly they're not
24 correlated. They're different parts of the world or
25 different customers. There's no packaging of the

1 whole thing.

2 MR. CHURCH: Yes. There's no requirement
3 that those feed sources get delivered to AREVA for
4 enrichment.

5 CHAIRMAN PEARSON: Just a related question
6 then. Is it common to use swap transactions to avoid
7 moving physical supplies from one place to another?

8 MR. CHURCH: I wouldn't say it's common, but
9 it certainly occurs. If, say, Duke had material at a
10 Urenco facility and we needed it at USEC for feeding
11 some requirement we had at USEC, we would look to, as
12 opposed to physically transfer that, we would look to
13 try to find a like quantity and just exchange with
14 another, potentially a utility, with material at that
15 other location, to save on those transportation
16 charges.

17 CHAIRMAN PEARSON: Okay. Is there a
18 somewhat organized swap market or does it happen
19 somewhat automatically?

20 MR. CHURCH: No. It's usually one off, just
21 you're going out searching for your particular need.
22 There's nothing really developed --

23 CHAIRMAN PEARSON: Okay.

24 MR. CHURCH: -- in terms of a market.

25 CHAIRMAN PEARSON: Thank you, very much.

1 Vice Chairman Aranoff?

2 VICE CHAIRMAN ARANOFF: Thank you, Mr.
3 Chairman. Mr. Church, just to clarify one thing that
4 you said in your direct testimony at the beginning of
5 the afternoon. You had indicated that the idea of
6 one-stop shopping, and that was a quote that USEC has
7 brought up from the AREVA planning document that they
8 put in their brief, you said that the idea of one-stop
9 shopping was inconsistent with utilities desire to
10 diversify their sources of supply.

11 MR. CHURCH: Right.

12 VICE CHAIRMAN ARANOFF: Now, I understand
13 what you're saying there; but just to clarify, you
14 said that you don't deliberately match up your
15 purchases of uranium and your purchases of enrichment.
16 Does that mean that on principle, you would refuse to
17 contract for enrichment with the same supplier from
18 whom you had bought uranium?

19 MR. CHURCH: We would -- if there were this
20 -- somehow this legal issue that there was this feed
21 issue with the enrichment, where that would somehow be
22 in violation of what is considered a SWU contract, we
23 certainly would keep that -- bear that in mind when we
24 contracted for the material and not enter into those
25 type of arrangements.

1 VICE CHAIRMAN ARANOFF: No, I hear you and I
2 understand why you might have that incentive going
3 forward, depending on how things turn out. But, in
4 terms just of your diversification goals?

5 MR. CHURCH: No. Certainly, we do consider
6 how much we might be committing to one particular
7 entity in those two areas, so how much exposure do we
8 have with one company across the chain. So, I mean,
9 we certainly could reach a limit where we felt
10 uncomfortable.

11 VICE CHAIRMAN ARANOFF: Okay, that's
12 understandable. I appreciate that clarification. Mr.
13 Church, you, also, indicated that Louisiana Energy
14 Services has already contracted out its likely output
15 for 10 years. And so, as a utility, who is looking
16 for supply security going out into the future, what is
17 the impact on your security analysis of contracting
18 with a plant that isn't operating yet? I mean, how do
19 you do the calculus on that?

20 MR. CHURCH: Again, we're looking for
21 another source of diversification. LES provided that.
22 There are considerations of startup delays that was
23 discussed this morning regarding the need for
24 potential backstop supplies for that ramp up period
25 that must be considered. It's certainly a risk. We

1 felt like looking at LES, they've got proven
2 technology. As a Urenco affiliate, Urenco has built
3 plants and expanded plants in the recent past. So, we
4 felt like they had a very good track record. So, that
5 gave us the comfort to move forward with that
6 commitment.

7 VICE CHAIRMAN ARANOFF: Okay. So, your
8 assessment on it, then, is basically it's going to
9 happen more or less when they say it will and that
10 they have sufficient inventories on hand to cover you,
11 if there's a delay.

12 MR. CHURCH: I recently went down and saw
13 the construction progress and feel confident that
14 they'll be able to bring that on line.

15 VICE CHAIRMAN ARANOFF: Okay. So, given
16 that there is, in your assessment, likely going to be
17 a second U.S. supplier within about two years, how
18 does that affect your argument that you need to
19 further diversify through revocation of this order?

20 MR. CHURCH: If you consider basically the
21 alternatives to a U.S. utility today, you've got
22 Urenco supplying from Europe, you've got LES, and
23 you've got USEC. So, that's only three suppliers for
24 all of your entire portfolio of enrichment needs.

25 Now, typically, there are a lot more

1 opportunities in uranium. You've got a lot more
2 uranium suppliers to diversify across. And,
3 obviously, we would like to have more suppliers to
4 diversity that risk. We would rather have 20 percent
5 of our commitments have an issue than 30 or 40 that
6 you would have with three suppliers, if you're fairly
7 equitably allocating your total requirements across
8 three suppliers.

9 VICE CHAIRMAN ARANOFF: Okay. Turning to
10 the issue of new demand in the U.S. I think the
11 general testimony has been that 2016 is about the
12 earliest that new reactors could come on line in the
13 United States and there's been some discussion of at
14 what point those facilities need to go out and start
15 looking for fuel. To your knowledge, have any of
16 these plant facilities signed contracts for LEU yet?

17 MR. CHURCH: I can't testify what
18 necessarily absolutely has been done by others. So, I
19 can't say that absolutely a commitment has been made.
20 But, there has been trade press that there have been
21 utilities out looking for supplies for those new
22 reactors. I know Duke has been out in the market
23 looking for supply for our new reactor.

24 VICE CHAIRMAN ARANOFF: When you go out into
25 the market and you're looking now two, three, five, 10

1 years down the road for supply, are you setting aside
2 specific supply for a specific facility or you -- so
3 there would be really no way to tell, at this point,
4 whether supply that you or any other utility is
5 looking for is earmarked for a new plant versus an
6 existing plant?

7 MR. CHURCH: Really, unless the supplier
8 were to require that somehow this quantity of material
9 that we're selling you is for the purpose of use on --
10 for supplying this new reactor.

11 VICE CHAIRMAN ARANOFF: But the point --

12 MR. CHURCH: We generally want flexibility
13 to put that either with the existing fleet or with a
14 new reactor.

15 VICE CHAIRMAN ARANOFF: At the point where
16 you're contracting for the fuel rods, themselves, then
17 there might be a difference?

18 MR. CHURCH: Oh, absolutely. Even specified
19 in the enrichment could get you there.

20 VICE CHAIRMAN ARANOFF: So, it actually
21 could be at the stage of the SWU, because you would be
22 specifying the assay that you wanted.

23 MR. CHURCH: Yeah. Our orders generally do
24 specify what reactor this material that we're ordering
25 is designated for. That, then, subsequently gets

1 shipped to the fabricator for fabrication.

2 MS. FISCHER: Just another point to mention,
3 in connection with the new reactors, there's
4 additional fuel that's required above and beyond that,
5 which would be a normal reload cycle. I don't know if
6 you have a sense of percentage-wise. But, the new
7 reactor cores are a greater volume of nuclear fuel
8 than would be a reload cycle that we're normally
9 looking at now.

10 MR. CHURCH: Yes. It's generally -- it's on
11 the order of twice the amount for an initial core than
12 for a normal reload cycle.

13 VICE CHAIRMAN ARANOFF: Okay. One of the
14 things that I'm obviously after here is to try and get
15 a sense of whether there are actually going to be
16 contracts signed in the reasonably foreseeable future.
17 So, however we end up defining that, in this case, two
18 years, three years, whatever, that would cover new --
19 that could be traced to new reactors, as opposed to
20 existing reactors.

21 MR. CHURCH: Your point about tracing is a
22 good point. I don't know how traceable that would be.
23 But, certainly, the impetus for a utility to go out
24 and line up supply with contracts that would be signed
25 over the next one or two years would be as a result of

1 some of these new reactors that are being pursued.
2 That's my opinion.

3 VICE CHAIRMAN ARANOFF: I take your point on
4 traceability and I guess the easiest indicator would
5 be if the amount that you're contracting for your
6 existing reactor is about the same or various within a
7 modest range or is going up at some modest rate and
8 all of a sudden there's a bubble up.

9 MR. CHURCH: Right.

10 VICE CHAIRMAN ARANOFF: If I could see that,
11 then I would feel like that was pretty good evidence.

12 MR. CHURCH: I think you'll see that
13 evidence through just the total procurement that's
14 occurring in the industry over the next several years.

15 VICE CHAIRMAN ARANOFF: Okay. Thank you,
16 very much.

17 CHAIRMAN PEARSON: Commissioner Williamson?

18 COMMISSIONER WILLIAMSON: Thank you, Mr.
19 Chairman. Mr. Church, I want to go back to my earlier
20 question about when a utility might want EUP
21 contracts. Can you elaborate on that? I know you
22 mentioned --

23 MR. CHURCH: Yeah.

24 COMMISSIONER WILLIAMSON: -- you mentioned
25 the Westinghouse example that was brought up.

1 MR. CHURCH: Yes, I want to get back to
2 that, because we didn't get to the end of that. We
3 have, for instance, when we felt like supply wasn't so
4 tight in a period going forward, left a percentage of
5 our future requirements open for potential small
6 purchases of spot material. So, maybe we would cover
7 90 to 95 percent of our requirements through long-term
8 contracts, but leave a percentage open for later,
9 coming in very late prior to the requirement need and
10 purchasing on the spot market. In an instance like
11 that, if we knew that the EUP was available, that
12 might be a scenario that we would consider an EUP
13 transaction for a small volume. There was some
14 incentive to purchase that feed and enrichment
15 component through an EUP transaction, as opposed to
16 separately. Maybe, it's lower overall price for that
17 particular purchase.

18 I think the conditions you see out there
19 today, though, don't provide for that type of scenario
20 to occur, because U.S. utilities are committed so far
21 out in their feed and enrichment over the next several
22 years. There just isn't that type of ability to make
23 those spot purchase of EUP.

24 COMMISSIONER WILLIAMSON: There's not the
25 opportunity to make it, because, what, you don't think

1 --

2 MR. CHURCH: You're already committed. All
3 the utilities are committed for their needs. So what
4 you would be doing, at this point, the utilities would
5 be just buying extra EUP and carrying it for a need
6 that's well out into the future, which would be a
7 significant cost to the utility and it's something we
8 just generally don't do because of that cost factor.

9 COMMISSIONER WILLIAMSON: AHUG has made the
10 argument, I think, that the supply is constrained.
11 And I do know that USEC made adjustments when you said
12 that they had available capacity. So, I was
13 wondering, a question, what was the basis for making
14 the statement that supply is constrained?

15 MR. CHURCH: The constraints supply issue is
16 if you -- I mean, really looking at the industry as a
17 whole, not just looking at USEC, and you look at
18 Urenco sold out well into the future. Our experience
19 is that Cojema doesn't have material to supply in the
20 near term. They are looking to build enrichment
21 facilities and they are looking at set aside this
22 inventory to help backstop any delays that might occur
23 at those enrichment facilities. So, there's no
24 material available from those two sources. We can't
25 access Russian HU or commercial supply directly. So,

1 to me, that's a constrained market. You're basically
2 down to one supplier in the near term.

3 COMMISSIONER WILLIAMSON: Being USEC as the
4 one --

5 MR. CHURCH: Yes.

6 COMMISSIONER WILLIAMSON: Okay. But that
7 doesn't mean that it's not available, it's just that -
8 -

9 MR. CHURCH: But, yeah, to be dependent on
10 one supplier is not certainly a good market efficient
11 situation to be in.

12 MS. FISCHER: And just another point to
13 make, the argument that the market is tight and
14 constrained and obviously there are other plants that
15 are being built, because there is a perception in the
16 market, both by the suppliers and by the utilities
17 that need the supply, that additional supply is needed
18 in the market. Otherwise, they wouldn't be building
19 very expensive new facilities just because they
20 thought the price in the market had gone up. They're
21 building new facilities, because there is a need for
22 additional supply and that's indicated in many of the
23 market reports that are available.

24 COMMISSIONER WILLIAMSON: Okay, thank you.
25 You indicate, though -- indicated in its pre-hearing

1 brief that revoking the orders would not significantly
2 LEU imports into the United States or effect prices.
3 And I was wondering how you reconcile that statement
4 with one of the things you just said about price
5 constraints, some of the statements in the pre-hearing
6 brief about purchasers citing the antidumping orders
7 as factors limiting availability of French-produced
8 LEU in the U.S., and some other statements, if the
9 orders were lifted, would go out and buy --

10 MR. CHURCH: Okay.

11 COMMISSIONER WILLIAMSON: -- contract with
12 AREVA.

13 MR. CHURCH: Well, yes, I don't know who
14 made the statements, so I can't speak for the people
15 that made the statements. But, again, if you look at
16 the data, utilities are contracted out well into the
17 future and there is this -- nothing really coming from
18 AREVA in the near term, no material being offered
19 before really the end of the decade or later, because,
20 again, they're setting aside this material to help
21 with the startup of these new enrichment facilities.

22 And then another point I wanted to make was
23 that as they're starting up these new enrichment
24 facilities, they're going to be seeking underpinning
25 contracts just like LES did, okay. So, to do that,

1 they're going to want to preserve a reasonable rate of
2 return out of that production. Why would they come in
3 and really drastically drive the market down and then
4 make it more difficult for them to sign up those
5 contracts that would provide for a reasonable rate of
6 return for their new, very large investment enrichment
7 facility that they would like to build?

8 COMMISSIONER WILLIAMSON: But, will they be
9 trying to make sales? We're looking into the future
10 and those future contracts are --

11 MR. CHURCH: Those are mutually exclusive.
12 If they're trying to make very low cost sales in the
13 spot market in the near term, they're dramatically
14 impacting their returns out of that plant over the
15 longer term.

16 COMMISSIONER WILLIAMSON: I guess what I
17 don't understand is the prices both effected by the
18 spot market, but it's also effected by what the
19 contracts are in the long term, aren't they?

20 MR. CHURCH: But there is a linkage. I
21 mean, if you look at the price trends for enrichment
22 over time, generally, the price has been within a
23 couple of dollars of each other over time, spot market
24 versus long-term market. So, there is a relationship
25 there.

1 COMMISSIONER WILLIAMSON: Okay. But, if
2 additional -- you have additional suppliers coming in,
3 that might effect the price over the long term, too,
4 wouldn't it?

5 MR. CHURCH: In the longer term, as we see
6 supply actually make it to market, yeah, you certainly
7 will likely see some price effect of that additional
8 supply coming into the marketplace, would be the
9 expectation.

10 COMMISSIONER WILLIAMSON: Okay. Thank you.
11 Mr. Carbonell and Mr. Rosen, there's clearly been an
12 indication that there have been -- there were some EUP
13 sales, you mentioned, say, before the orders went into
14 effect. We do have in the staff report instances of
15 purchasers in the U.S. making EUP sales -- making
16 these EUO purchases. And so, I wonder what basis for
17 saying that AREVA would not make any EUP sales in the
18 U.S. in the future, if the orders were lifted?

19 MR. ROSEN: Well, first, I would say any
20 indication in the report to the effect that there were
21 EUP transactions during this period being reviewed are
22 flatly inaccurate.

23 MR. RYAN: At least with regard to imports
24 from France.

25 COMMISSIONER WILLIAMSON: Well, I don't

1 think it was specified that they were necessarily from
2 France. They just said they were EUP transactions.

3 MR. RYAN: Okay.

4 COMMISSIONER WILLIAMSON: Which means that
5 if they want to purchase it from one person, they
6 might want to purchase it from another, if the price
7 were right.

8 MR. ROSEN: But, as Mr. Carbonell has
9 testified and as he will continue, that's not
10 Eurodif's business model and it has no intention of
11 changing. The exhibit to which Mr. Cunningham pointed
12 this morning related to fuel, not to enrichment.

13 MR. CARBONELL: Yes, I was a little bit
14 shocked to see, because this is coming from our sales
15 and it's page 22 -- let's see, Exhibit 10 shows for us
16 and this is from us. It's from one of my colleagues,
17 who handles financial communications. For us, one
18 thing is mining, one thing is chemistry, one thing is
19 enrichment, and fuel is a different thing. Fuel is
20 the fuel assemblies. And what we're don't do is
21 increase the market shares in fuel, which is not
22 enrichment, in our definition. You have the thing
23 there. We're not mixing both things together.

24 And coming back to Eurodif, Eurodif has
25 never sold EUP since it started operations up to now.

1 And AREVA or its predecessor companies have only sold
2 EUP in the world, including the United States, three
3 times in spot sales, which are in the investigation
4 report, which are the three very minute spot sales
5 from, I think it was a couple of our subsidiaries.
6 That's the only occasion. On top of that, our
7 colleagues from Hague are saying it's not the normal
8 practice in the market.

9 COMMISSIONER WILLIAMSON: My time is up.
10 Thank you.

11 CHAIRMAN PEARSON: Commissioner Pinkert?

12 COMMISSIONER PINKERT: Mr. Church, do you
13 agree with Petitioners' argument that the best measure
14 of demand in this case is uncommitted or open demand
15 and a portion of the utilities future requirements for
16 LEU is not already covered by long-term contract?

17 MR. CHURCH: Yeah, I think that's a good
18 indicator and that's the point I wanted to get to here
19 today. We have data from industry consultant, a very
20 respected, well-known industry consultant, that shows
21 data that for uncovered requirements going forward
22 that is far less than what we saw from the Petitioners
23 in their pre-hearing brief. And that's something we
24 can supply in a post-hearing submission. But, we see
25 there being very, very limited open requirements

1 through the end of the decade based on that data.

2 COMMISSIONER PINKERT: And what is the
3 significance of that uncommitted demand for purposes
4 of the Commission's evaluation of likelihood?

5 MR. CHURCH: That is really potentially the
6 area that the Petitioner would be competing in the
7 future to make those commitments for those open
8 requirements. So, to the extent -- would you like to
9 comment?

10 MS. FISCHER: Yes, I just want to add one
11 thing. In connection with the concepts that
12 Petitioners are arguing, that demand is -- they're
13 saying demand is flat and demand right now is flat
14 based on the concept that the reactor requirements are
15 what you should be considering, the current reactor
16 requirements. But, yet, at the same time, they're
17 saying that you should look at uncommitted demand in
18 the future, which might be based on perspective
19 requirements, which could include new plants. So,
20 they're trying to mix apples and oranges in connection
21 with the numbers that we're talking about. And so,
22 what we've been saying is that in connection with
23 demand, demand is increasing, we're looking at it from
24 a -- what we're looking at in the market going
25 forward. And we just need to be careful about mixing

1 apples and oranges based on the kind of data they're
2 asking you to look at.

3 COMMISSIONER PINKERT: You may recall that I
4 asked earlier today whether the committed demand was
5 truly committed. In other words, are there
6 circumstances, in which the committed demand could
7 become uncommitted? Do you have any thoughts about --

8 MR. CHURCH: I agree.

9 COMMISSIONER PINKERT: -- whether those
10 circumstances exist?

11 MR. CHURCH: I agree with Mr. Van Namen.
12 It's very, very infrequently that participants in this
13 industry don't live up to the commitments that they've
14 made.

15 COMMISSIONER PINKERT: Okay. And turning to
16 U.S. or global demand more generally, has U.S. or
17 global demand been effected significantly by
18 enricher's use of lower tails assays?

19 MR. CHURCH: Oh, absolutely, yeah;
20 certainly. What we've seen since the original
21 petition, when uranium prices were down around the
22 ten-dollar level, and now they've gone up and they've
23 come back down a bit, but we're at \$75 a pound, U.S.
24 utilities can, I think this is on the record, obtain a
25 certain amount of LEU by either providing more feed

1 and applying less work to it or less SWUs to it, to
2 get that amount of LEU, or less feed and really
3 working it hard through the enrichment process or
4 applying more SWUs to it, to get the same amount of
5 LEU we had in the first instance.

6 What we've seen is, because of the
7 escalating enrichment prices, folks -- I mean,
8 escalating uranium prices, folks are now needing to
9 contract for more enrichment, because they would like
10 to not utilize as much of that high cost feed. So,
11 that is driven really the need for enrichment higher.
12 And if you look at sort of the ranges we were at for
13 optimal tails back in the original petition, we were
14 at about .35 weight percent optimal tails. Well,
15 that's now moved to .25 weight percent or in that
16 range and that's a 20 percent increase on the total
17 need for enrichment, just that movement.

18 COMMISSIONER PINKERT: Mr. Carbonell?

19 MR. CARBONELL: If you allow me to just
20 expand a little bit on this. We have seen throughout
21 the world all of our customers increasing -- sorry,
22 reducing the tails assay. This is one of the reasons
23 we are not selling more at the moment, because we have
24 to make sure that we can satisfy our commitments to
25 our customers, which are long term. We cannot have

1 luxury of not fulfilling our commitments. It's like
2 if you be doing oranges and let's say when you reduce
3 tails assay, it's like you would be -- let's say, to
4 do one liter of -- these are not the proportions --
5 you would use the energy to press five oranges or if
6 the oranges, which is a feed, is more expensive, well,
7 you would try to use less oranges, let's say four or
8 three-and-a-half, and much more force, much more use
9 of the enrichment facility to reach the same thing,
10 which means that all of over, the demand for SWUs has
11 increased, because of this phenomenon of the feed.
12 Immediately, our customers would try to get the best
13 possible outcome of their purchases of feed and SWUS,
14 have been reducing the tails assay or let's say
15 pressing more of the oranges.

16 MR. CHURCH: So, a significant on demand,
17 very significant.

18 COMMISSIONER PINKERT: And is there a
19 consequent impact on price, as well?

20 MR. CHURCH: Well, as supply gets tighter,
21 yeah. I mean, that generally drives a tighter supply-
22 demand balance, which drives the prices, which is what
23 we've seen.

24 COMMISSIONER PINKERT: Mr. Carbonell?

25 MR. CARBONELL: Well, there has been certain

1 pressure on the prices to increase, but these are
2 long-term contracts. And, also, anyway, to think that
3 -- let's say, you still are talking about a market of
4 400 plus reactors throughout the world, 100 reactors
5 in the States. If there are more reactors, AREVA are
6 trying to make it happen, well, there will be a much
7 higher pressure in that sense. So, it's been limited,
8 because, anyway, the number or the fleet is not moving
9 as fast as we would like.

10 COMMISSIONER PINKERT: Thank you. Thank
11 you, Mr. Chairman.

12 CHAIRMAN PEARSON: The domestic industry
13 panel talked about the expected buildup in inventories
14 that AREVA will have when it's Georgebess II facility
15 comes on line and the existing facility is continuing
16 to operate. And they are quite concerned about that
17 increase in inventory and the possibility that greater
18 volumes might then come to the United States and have
19 an effect on the market here. Could you comment on
20 that issue, please?

21 MR. ROSEN: I assume you want Mr. Carbonell
22 to speak to that rather than me.

23 CHAIRMAN PEARSON: That would be fine,
24 unless someone else also has thoughts.

25 MR. CARBONELL: Okay. I go back again to

1 the same exhibit shown by USEC, where you have in the
2 third page of that exhibit, which is 10, I think, you
3 have the ramp up schedule for Georgebess tube plant.
4 As you see, it's growing at the rate between 300,000
5 and 600,000 SWUs per year. And we are going to stopo
6 the other factory. So -- and as it said in there, the
7 initial capacity, we hope to be able to start
8 delivering small quantity, and you have the graphic
9 there, in 2009, if everything keeps going according to
10 construction. We should be reaching the 7.5 million
11 SWUs per year by 2018 only. Because, there is a
12 capacity of producing these machines and the factory
13 doing them is doing it also for Urenco and it's doing
14 it for LES, et cetera. So, this is going to be
15 gradual and you cannot push it faster and you have to
16 be very careful to build it properly. Well, when the
17 other factory is going to be stopped, we need to be
18 able to ensure that the supply and our commitments to
19 our customers. So, that's recent -- we are going to
20 try to use this inventory, which we have, which is not
21 very big, in order to be able to make this facing
22 effect between both of them. And even if we would
23 like to have more machines or increase the speed,
24 well, it's not possible, at least not for the moment
25 or in the near foreseeable future.

1 CHAIRMAN PEARSON: Mr. Rosen?

2 MR. ROSEN: Let me just add, it hasn't been
3 spelled out to any extent, but Eurodif's major
4 commitment long-term, I believe Petitioners did
5 mention it, is to France. France has 58, I believe,
6 functioning reactors. Much of the enrichment for the
7 French reactors comes from Eurodif. So, the
8 enrichment needs of France, alone, far outstrip the
9 production quantities coming out of GB-II for many,
10 many years. All of that puts a break on the ability
11 of Eurodif to supply its services elsewhere in the
12 world.

13 MR. CARBONELL: If we go to AREVA, imagine,
14 if we are trying to build this company reliable, which
15 can serve different things. And, again, when we talk
16 about possible, because it's would like to, but we
17 cannot impose a model on our customers. We can offer
18 different things. Imagine the effect if we start
19 selling or we cannot fulfill our commitment and we
20 leave somebody throughout the world -- saying, okay,
21 well, we cannot supply you with the SWUs that you
22 requested or with the other component. So, we have to
23 be very careful, because it's our commercial standing
24 in the long term, which will be jeopardy. So, we have
25 to be very careful. It is out of my main job of

1 strategic risk, senior vice president.

2 CHAIRMAN PEARSON: So, you're making the
3 argument, basically, that the inventory would be
4 necessary to ensure the stability of the marketplace
5 and it would not have the effect of disrupting the
6 marketplace, either in France or elsewhere in the
7 world.

8 MR. CARBONELL: Absolutely. And we have
9 stated it over and over again in different
10 communications and even in this presentation.

11 CHAIRMAN PEARSON: If there is anything more
12 we should know about that in the post-hearing, please
13 provide information on that.

14 Is there any fundamental difference, Mr.
15 Carbonell, between the technology that is used in the
16 Georgebess II plant and the LES plant that Urenco will
17 be operating?

18 MR. CARBONELL: I'm not sure if the same
19 generation of centrifuge. I believe it's the same or
20 perhaps a slight difference.

21 CHAIRMAN PEARSON: Mr. Church, do you have
22 any information on that?

23 MR. CHURCH: Yeah. I believe them to be
24 very comparable.

25 CHAIRMAN PEARSON: Okay. And then somewhat

1 different than the American centrifuge?

2 MR. CARBONELL: As far as I know or would
3 have seen. I'm not an engineer. Let's say, I've been
4 working over 16 years in this industry. But, it's a
5 different concept, one very big machines, which
6 produce a lot of SWUs, whereas the machines, which
7 Urenco, LES, or Eurodif are building are very --
8 machines are from much smaller capacity, which turn up
9 to very, very high speeds and which produce, I don't
10 know, perhaps I'm making a mistake, but less than 10
11 SWUs per year each machine. So, you need thousands of
12 machines, which explains this ramp up procedure,
13 because to install many, many machines of them in
14 cascades in order to start building this capacity.
15 It's very, very high speed, very thin machines of
16 about 2.4 meters in height, whereas the other machine
17 if huge.

18 CHAIRMAN PEARSON: Okay. Thanks. Mr.
19 Church, you look around the world to acquire SWUs.
20 Are there price differences between SWUs that you
21 could acquire in various European countries compared
22 to the United States, perhaps compared to Russia? Are
23 you able to buy directly -- are you able to buy
24 enrichment in Russia?

25 MR. CHURCH: No, we're not, not today.

1 CHAIRMAN PEARSON: So which countries can
2 you obtain enrichment?

3 MR. CHURCH: U.K., Netherlands, Germany,
4 France, the U.S.

5 CHAIRMAN PEARSON: Okay. And is price --

6 MR. CHURCH: Primarily that's what we seek
7 to secure.

8 CHAIRMAN PEARSON: Price probably plays some
9 role in your decision where to book those SWUs. What
10 goes into the thought process of deciding where to
11 place that enrichment order?

12 MR. CHURCH: A lot of its driven by
13 diversification again, back in the portfolio, what is
14 the need of the time in terms of diversification.
15 Certainly, price is a consideration. Generally, we
16 don't see a lot of disparity between the prices that
17 are bid to us amongst the various suppliers.
18 Reliability, do we know of any reliability concerns
19 that have occurred in the past, certainly a big issue.
20 Financial viability, we look at those issues. Those
21 are the big ones.

22 CHAIRMAN PEARSON: So, you do at times
23 procure enrichment from someone other than the lowest
24 priced.

25 MR. CHURCH: Absolutely, yes, we've done

1 that, yes.

2 CHAIRMAN PEARSON: Okay, my light is
3 turning, so I, too, will turn to the Vice Chairman.

4 VICE CHAIRMAN ARANOFF: Thanks, in the
5 recent review of the Russian suspension agreement, the
6 Commission found that the broader uranium industry in
7 the U.S. was vulnerable to injury if the suspension
8 agreement were revoked. When looking at USEC alone,
9 is there any reason to reconsider that finding? Does
10 anybody want to comment; Mr. Church?

11 MR. CHURCH: I mean, if you look at USEC's
12 recent financial performance, their revenues over the
13 last couple of years have been way up, given where the
14 market prices have gone, given the tight supply I
15 believe to be prevalent out in the marketplace, and
16 the margins that they are attaining off of the Russian
17 HEU supply.

18 Given that current state and the fact that,
19 again, looking at the supply demand situation out
20 there and the current market conditions, it doesn't
21 appear, to me anyway, that USEC would be in any
22 jeopardy in the near term, if there were to be a
23 revocation of the current order.

24 MR. ROSEN: I would simply add that
25 obviously, the Commission has to focus on the industry

1 producing the like product, producing LEU. A broader
2 definition of the uranium industry would not be
3 applicable in this review.

4 VICE CHAIRMAN ARANOFF: Understood.

5 MR. RYAN: I would add one additional point
6 that when you're looking at the vulnerability,
7 vulnerability is not sort of a concept in the
8 abstract. It's vulnerability, injury from increased
9 imports. I mean, our legal position and our position
10 based on the facts is that there will be no increase
11 in subject imports. So the vulnerability of USEC to
12 non-existent increase in imports, that's the context
13 you need to look at it in.

14 VICE CHAIRMAN ARANOFF: Okay, let's see, Mr.
15 Church and maybe Mr. Carbonell, but I think Mr. Church
16 -- on page 57 of their brief, USEC asserts that
17 because of the time lag between contract negotiation
18 and product delivery, that USEC is only now beginning
19 to see the benefit of higher LEU contract prices since
20 this proceeding began in 2001.

21 If it's true that such benefits are yet to
22 come, does that make USEC more or less vulnerable to
23 injury, in the event of revocation?

24 MR. CHURCH: It's a lag. I mean, if they
25 were to be injured, it would be an injury that they

1 would not feel immediately, because again, any sales
2 that they would lose would like be an impact to long-
3 term contracts that they would be seeking to secure
4 for the supply starting several years into the future
5 as opposed to being impacted immediately.

6 Again, getting back to the issue of market-
7 related contracting, I don't know exactly what USEC
8 has done. But our experience has been that the
9 predominant pricing mechanism that's utilized in this
10 industry is a price that's set today at or near
11 market, and escalated into the future.

12 So, therefore, they would have very little
13 exposure to any spot sales which, again, we don't
14 think would occur. But if they did, they would have
15 very little exposure to that in the near term.

16 MS. FISCHER: Also, just one point to keep
17 in mind is that they're selling primarily Russian
18 enrichment services. So really, the question is, is
19 it vulnerable in connection with their domestic
20 supply?

21 VICE CHAIRMAN ARANOFF: Okay, let me just
22 clarify, Mr. Church, when you talk about these price
23 escalation clauses in contracts, are those price
24 adjustment clauses that could go down if spot prices
25 go down, or they only go up?

1 MR. CHURCH: Not price adjuster clauses --
2 they are just an ongoing quarterly increase in the
3 price in that contract, based on a GDPI IPD type
4 escalation. That's a very typical type escalator
5 that's used in the enrichment industry.

6 VICE CHAIRMAN ARANOFF: So if, in fact,
7 prices in the market flattened out and stopped going
8 up, then the price in the contract --

9 MR. CHURCH: It would continue.

10 VICE CHAIRMAN ARANOFF: It would keep going
11 up?

12 MR. CHURCH: It would continue, per that
13 GDPI IPD index inflator increase over time.

14 VICE CHAIRMAN ARANOFF: So you're talking
15 about, that inflator is tied to something other than
16 the price of uranium in the market?

17 MR. CHURCH: Absolutely -- not tied to the
18 uranium market activities at all.

19 VICE CHAIRMAN ARANOFF: Okay.

20 MR. CARBONELL: For us, as well, these are
21 increases. Let's say, if you have an increase in the
22 general prices in the United States, where it will
23 affect prices of the manpower, these are general
24 prices linked to the economy. Because, in fact, these
25 were industries which operate in that. It's protected

1 because the whole thing is growing up. So unless
2 there's inflation zero, as proven by these things,
3 prices keep escalating.

4 VICE CHAIRMAN ARANOFF: Okay, Mr. Carbonell,
5 we heard some discussion this morning about AREVA's
6 proposal to build a centrifuge plant in the United
7 State, I guess, once it completes the new plant in
8 France. Is there anything that you can tell us,
9 either now or confidentially, about how that facility
10 will be financed -- the construction of that facility?

11 MR. CARBONELL: I will try to prepare
12 something to put in the record on that. We are at the
13 beginning of this phase. I will provide some
14 information on this, as a private record; no problem.
15 But mainly, this is all to try to have some sort of
16 financing together with the eventual beneficiaries.

17 MR. RYAN: As Mr. Carbonell indicated, we'll
18 provide additional information in the confidential
19 version of our post-hearing brief. I think that would
20 be the best way to handle this.

21 VICE CHAIRMAN ARANOFF: That's fine. I
22 mean, I'm particularly interested in any breakdown
23 between how much they expect to be financed on capital
24 markets versus their own internal cash flow versus any
25 other investors that they might bring in.

1 MR. RYAN: We'll do our best to include that
2 in our post-hearing brief.

3 VICE CHAIRMAN ARANOFF: I appreciate that.

4 I'm sure that this question has been asked.
5 In my last round, I was asking about new reactors that
6 may be scheduled to come on line in the United States.
7 But I wanted to ask this same question on a global
8 basis.

9 USEC indicated this morning that the nuclear
10 renaissance, at least in the U.S., is a ways off, and
11 we've talked about 2016 or later for any new reactors
12 in the U.S. But on a global basis, what nuclear
13 reactors are scheduled to come on line in the nearer
14 future, two or three years maybe?

15 MR. CARBONELL: Well, as you know, AREVA is
16 building a nuclear reactor, an evolutionary pressurized
17 water reactor, which we call the EPR, in Finland.
18 Then we have just started helping EDR to construct a
19 new reactor of the same generation in France.

20 There are several ongoing negotiations in
21 different parts of the world, which I cannot unveil,
22 yet, which are in the process regarding the states,
23 together with a group of American companies. We are
24 working, and we hope to start the licensing of the
25 design process by the end of the this year or early

1 next year, in order to be able to do so. But things
2 are accelerating, we are very confident in that.

3 This year, we have hired several thousand
4 people, more engineers, in order to be able to build
5 several reactors at the same time in different parts
6 of the world.

7 MR. ROSEN: As part of this growth of
8 reactors, China is committed in a major way to
9 expanding its use of nuclear power. The number that
10 sticks in my head for the next several years is on the
11 order of 29 or 30 new reactors. So that's a major
12 increase in the demand for enrichment that will be
13 required.

14 MR. CARBONELL: Even though we are not there
15 yet, there's no secret and it's in the news every day
16 that we would like to be part of that effort.
17 Because, in fact, they are thinking in the very near
18 future of about 29 reactors. You have India. You
19 have South Africa.

20 There are, at this very moment, studies for
21 the United Kingdom, which is going to start building,
22 which just formed a joint venture with Mitsubishi for
23 a new reactor of a smaller size. We think everything
24 is coming to a boiling point, where the movement will
25 accelerate.

1 VICE CHAIRMAN ARANOFF: Okay, I appreciate
2 that answer. Anything that any of the parties can add
3 for us to the record, in addition to what we have in
4 our staff report regarding global demand, particularly
5 in the short term in the next several years, what
6 reactors might be coming on line; and which of them
7 are or are not able to willing to buy directly
8 enrichment from Russia versus needing or wanting to
9 purchase it elsewhere, that information would be very
10 help. I'm sorry I went over a little bit, Mr.
11 Chairman.

12 CHAIRMAN PEARSON: Commissioner Williamson?

13 COMMISSIONER WILLIAMSON: Thank you, Mr.
14 Chairman. I'm glad Commissioner Aranoff raised that
15 question, and I think finished it, because I think it
16 would be very useful to get this overall picture of
17 what the overall demand for enrichment services, given
18 the new construction that's planned; and is the
19 nuclear renaissance in other parts of the world going
20 to be at the same timeframe as here, or is it ahead or
21 further out? So it's just to get some idea, not just
22 in the near term, but maybe even looking as to when
23 these new reactors start contracting for enrichment
24 services, since it seems to be fairly early in the
25 process.

1 MR. CARBONELL: Well, again, a reactor takes
2 several years, from the start-up decision until it
3 comes onto line. So you're talking about five, six,
4 seven, eight years before this would increase the
5 quantities required to fill those reactors.

6 However, at this very moment, let's say, our
7 company is very confident of this happening. We are
8 involved at this very moment in a very significant
9 effort to be prepared. We have started building two
10 new ones, and we want to be able to do a little bit
11 more on that, which requires a lot of hiring.

12 In particular, I can tell you that here in
13 the United States, we have stepped up a strong effort
14 to get people from the right out of the universities
15 at this very moment, because it's a huge, huge effort.

16 Enrichment, of course, and new capacity will
17 come with this renaissance at its speed at which it
18 will happen. Again, the only way to be able to do it
19 is, if this materializes; and also, there's this
20 capacity. Let's say in the ultra-centrifuge, it's
21 related to the factories which produce the machines.

22 Because for the moment, it's like building a
23 factory for cars. You're not going to start
24 increasing that capacity. So you keep the number of
25 cars constant, in order to double the capacity, we

1 need all the supply chain to move. For the moment, we
2 are not there, yet.

3 MR. CHURCH: I take it that if someone is
4 building a nuclear reactor, how far out do they start
5 contracting for the fuel for it; how many years before
6 they expect it to come on line, on average?

7 MR. CARBONELL: Well, usually, when they
8 come on, usually at least the first core will be
9 commanded about the same time; not necessarily to the
10 same company. But usually, it's part of the delivery.
11 It's like when you buy a new car and there's some gas
12 in the tank. You get a full tank or part of it, to
13 start moving. So usually, it comes together at the
14 moment of the command.

15 MR. CHURCH: I think, from a utility
16 perspective, we look at how much excess supply do we
17 think is available. That would certainly influence us
18 with respect to our timing on when we went out to
19 secure that supply.

20 So if we felt like it was an over-supplied
21 market, and not a problem to be able to obtain that
22 supply, we would wait longer. If we felt like it was
23 potentially under-supplied like we feel today, given
24 all the conditions that we're experiencing, that
25 drives us to an earlier procurement cycle.

1 MS. FISCHER: I have just one other thing to
2 point out that obviously the enrichment plants have to
3 have the supply on line. So obviously, the ones that
4 are starting to expand now have to be there for the
5 plants that are going to be there later.

6 So you have to think about all these things
7 in connection with the time horizons that the
8 different plants are going to be operating under. So
9 you can't just think about capacity expanding without
10 some consideration of the reactors that they're going
11 to be fueling, coming on line in the future. So
12 they're really not operating in isolating. You have
13 to look at them together.

14 COMMISSIONER WILLIAMSON: Thank you
15 regarding Eurodif, I was wondering, what happened to
16 your long-term contracts in the U.S. market when the
17 anti-dumping orders were imposed, and did you seek to
18 terminate or change any of the contracts at that time?

19 MR. ROSEN: Absolutely, and let me reflect
20 upon how much I can say publicly. But Eurodif
21 continued to supply to all of its customers. Indeed,
22 it went out to its customers and re-negotiated the
23 terms of the contracts to add supply, change delivery
24 patterns and dates, and in some cases, to change
25 prices, as well. Eurodif did not renounce any of its

1 contracts.

2 MR. CARBONELL: I remember particularly at
3 that time, I was very involved in Eurodif and part of
4 that effort. One of the persons instrumental in that,
5 we said we are not going to leave one single customer
6 without being served. It will cost us, we think, in
7 the long term. But we never missed a delivery.

8 MR. ROSEN: I made reference perhaps
9 obliquely earlier in my presentation to the contracts
10 that had been blessed by the Court of Appeals'
11 decisions being the very same contracts, to a large
12 extent, that are still operative today.

13 By that, I meant the bodies of the contracts
14 remain the same. The quantities and the periods of
15 delivery and the prices, et cetera, were changed. But
16 the basic contractual model, the basic contract number
17 and everything, with the provision for the utilities
18 supplying the feed, retaining title and so forth,
19 which were at the very heart of the judicial
20 decisions, remained the same from the very same pieces
21 of paper, even though the contracts were changed and
22 extended.

23 COMMISSIONER WILLIAMSON: Thank you, and I
24 was wondering, would you say that Eurodif is seeking
25 new business in the United States at this time?

1 MR. CARBONELL: As far as I know, we are not
2 seeking any new business. Let's say, I can provide
3 this in a private version. But at the moment, we are
4 fully satisfied with what we have. And again, there
5 has this increase worldwide due to this lowering of
6 the tariff, as I said, which has been quite
7 significant. So at the moment, we are very well at
8 where we are.

9 COMMISSIONER WILLIAMSON: Okay.

10 MR. CARBONELL: But we will provide you some
11 more information.

12 COMMISSIONER WILLIAMSON: Okay, thank you,
13 Mr. Chairman, and I have no further questions. I
14 thank the panel.

15 CHAIRMAN PEARSON: Commissioner Pinkert?

16 COMMISSIONER PINKERT: I have one or two
17 more questions. You talked a few minutes ago in
18 response to questions from the Vice Chairman about
19 reactors that are anticipated to go on line in the
20 foreseeable future. Is there any anticipation of
21 reactors going off line in the short to medium term
22 around the world?

23 MR. CARBONELL: As far as I know, not. For
24 example, in Germany, there is a pledge of the
25 Government, or in Belgium, as well, to eventually

1 phase out some of these reactors. But this is not in
2 the near future, and for the moment, they are in full
3 operation.

4 We have seen one reactor going off line in
5 Sweden several years ago. But if you look at the
6 capacity of the installed capacity in Sweden, you see
7 that it has been going up, because they have increased
8 the capacity and the availability of present reactors
9 operating. So Sweden is producing more nuclear energy
10 than before; and they are on their moratorium, but
11 it's going on in the future.

12 So there was also one reactor, several years
13 ago in Germany. But again, the capacity of nuclear
14 energy, the nuclear-generated energy in Germany has
15 increased; again, because the other reactors increased
16 availability, and also, there's always some
17 improvements in the capacity, when you do the service
18 and when you replace parts. In fact, also in the
19 states, you see the same phenomenon.

20 COMMISSIONER WILLIAMSON: Go ahead; I'm
21 sorry, Mr. Ryan?

22 MR. RYAN: I just wanted to add a little
23 context. Germany promising to phase out some reactors
24 was a result, or I mean, it's sort of a historic
25 content of the Green Movement in Germany. At that

1 time, the Green Movement was anti-nuclear. But now,
2 as sort of the political wind moves toward global
3 warming and nuclear is looking like a more green
4 alternative, it's hard to say that Germany is going to
5 keep its commitment to phase out nuclear reactors in
6 favor of, for example, coal generation plants or
7 something like that.

8 They need power from somewhere. So the
9 commitment that they made to the Green Party that was
10 part of the government at the time, if my
11 understanding is correct, it's hard to say that that's
12 going to be kept.

13 MR. CARBONELL: It's difficult to elaborate
14 also because it's a coalition going on and you have
15 one of the parties who voted for it. But for a
16 moment, we see them and they are one of our very
17 valued customers. For the moment, it's proceeding
18 full well.

19 So certainly, they will have to resolve this
20 situation in the years to come. But it's more an
21 internal debate, and at the same we recognize that
22 this nuclear energy could be part of the solution to
23 try to reduce carbon dioxide emissions.

24 COMMISSIONER PINKERT: Mr. Church, do you
25 want to comment on that?

1 MR. CHURCH: I have nothing to add, really.

2 COMMISSIONER PINKERT: I'm just wondering
3 whether there's some natural lifespan for a reactor,
4 in the sense that as we go from generation to
5 generation of technology, does the reactor simply get
6 refurnished, or is there some natural lifespan?

7 MR. CARBONELL: Well, I'm not a great expert
8 anyway again, in general terms. Let's say the reactor
9 is licensed for a certain period, and then it's
10 revisited periodically to see if the conditions have
11 changed in comparison to the moment where it was
12 licensed.

13 It happens that when you do services to the
14 nuclear industry, in fact, sometimes you are changing
15 the steam generators. You changing different parts,
16 and this increases the lifespan. It has happened in
17 France. It has happened in many other parts of the
18 world. So, in fact, you can extend that period.
19 Anyway, you cannot extend it indefinitely, because
20 there are parts which are not going to change.

21 In general, the reactors operating at the
22 moment are reactors with a shorter lifespan; we'd say,
23 between 20, 30, or 40 years. The new generations life
24 this European pressurized reactor, which we are
25 building at the moment in Finland or which is just now

1 starting in France and which we hope to license in the
2 states, the lifespan is 60 years with a greater
3 availability. So the times for fuel replacement for
4 periodic visits is reduced through different
5 improvements or maintenance, so you can have it longer
6 years and shorter periods when it is not on line.

7 COMMISSIONER PINKERT: Thank you, and I'd
8 like to thank the panel as a whole. I appreciate it.

9 CHAIRMAN PEARSON: Ms. Fischer, in your
10 prehearing brief, you had indicated that the U.S.
11 supply of low enriched uranium is constrained. Yet,
12 we know that the U.S. EC has some available production
13 capacity, and we haven't on the record seen
14 indications from purchasers that they had had problems
15 getting supplies or had been put on allocation or
16 anything like that.

17 So in the context of the way we would
18 consider a constrained market in a normal
19 investigation, we probably would not see this market
20 as constrained. So I just want to understand, how are
21 you using that term and how would you reconcile the
22 use of it with what I think we see on the record?

23 MS. FISCHER: Well, we're certainly looking
24 at it from the perspective of a going forward basis in
25 terms of the needs that have changed in the

1 marketplace, in terms of supply and demand. In the
2 past, we were seeing more supply coming from secondary
3 sources, and those secondary sources have largely been
4 depleted. Now we're relying more heavily on existing
5 capacity and new capacity that will need to come on
6 line.

7 USEC indicated in their direct testimony
8 that their contract with TBA has put them under
9 pressure for increased electricity costs, which
10 obviously affects their ability to economically expand
11 their production at their Paducah plant.

12 So that capacity can become very expensive
13 for them to keep generating that at times when maybe
14 it would peak electricity supply, and could also
15 affect the ability for them to economically supply
16 into the market. I think we have put information into
17 the questionnaire responses that indicates that at
18 least some of the utilities have had access issues in
19 terms of getting additional supply.

20 CHAIRMAN PEARSON: Okay, well, if there's
21 anything more we should know in the post-hearing, go
22 ahead and include it.

23 While I'm thinking of it, Commissioners
24 earlier have mentioned questions about what reactors
25 would be coming on line, and then Commissioner Pinkert

1 asked a question about de-commissioned reactors. As
2 you look at the reactors that are coming on line or
3 are likely to come into production, if you know
4 something about reactors that also are likely to be
5 de-commissioned and dismantled, please include that in
6 the analysis, as well.

7 Ms. Fischer, back to you. In your
8 prehearing brief, in reliance on the public staff
9 report, you had commented that USEC was showing
10 current financial success. Yet, USEC has had its
11 credit rating downgraded just recently. How do you
12 explain a credit downgraded? Is that a sign of
13 financial success?

14 MR. FITZHUGH: This is John Fitzhugh. I
15 just want to point out, I think our indications are
16 that the credit downgrade was related to some
17 conversion by USEC of debt into equity. So that's not
18 necessarily related to their financial performance.
19 It's related to creating more equity; so diluting
20 their shares, basically.

21 CHAIRMAN PEARSON: Okay, so you see the
22 credit downgrade as not inconsistent with an
23 assessment that they are financially successful.

24 MR. FITZHUGH: That's correct.

25 CHAIRMAN PEARSON: Okay, well, we certainly

1 see circumstances where operating margin doesn't tell
2 us everything that's going on in an industry. If
3 there's more we should know about this, if you could
4 add it to the post-hearing record, please do so.

5 Then one last question. Mr. Church, you may
6 have addressed this already. We've got the new
7 facility coming on line in New Mexico, and it's
8 apparently booked up for about 10 years of sales.
9 Either now or in the post-hearing, can you let us know
10 whether Duke has some portion of that capacity booked?

11 MR. CHURCH: Yes, we can do that in the
12 post-hearing submittal.

13 CHAIRMAN PEARSON: Okay, I don't think I
14 have any further questions; Madam Vice Chairman?

15 VICE CHAIRMAN ARANOFF: Thank you, Mr.
16 Chairman, I thought I was done, but had another idea.
17 Mr. Church, you have talked about how the LES new
18 facility has already contracted out its production for
19 quite a number of years.

20 So I have a question directed at you, but
21 also at USEC to respond to, which is whether USEC is
22 already marketing product to be made in the American
23 centrifuge facility, and whether your company or
24 others you know of have made contracts for that.

25 MR. CHURCH: Yes, I think Mr. Van Namen

1 addressed that this morning. I think he was
2 indicating that over the next year, that they would be
3 looking to seek utility commitments for that supply
4 source.

5 VICE CHAIRMAN ARANOFF: Okay, you can answer
6 this if you want, but it's mostly directly to USEC. I
7 guess my question would be, when USEC begins to
8 contract for production from the American centrifuge
9 facility, I assume since they're intending to keep the
10 Paducah plant operating, that the contracts would
11 provide that if the American centrifuge was unable to
12 meet the delivery schedule, that the product would be
13 delivered from the existing diffusion plant. That
14 would be the kind of contract you would want to sign,
15 wouldn't it, Mr. Church?

16 MR. CHURCH: Yes, I mean, I would certainly
17 like to see some assurance of supply through some
18 back-stopping mechanism, whether that be inventory or
19 whether that be through production at another facility
20 that they've got operating, yes.

21 VICE CHAIRMAN ARANOFF: Okay, I guess I
22 would also ask -- and you can comment if you want --
23 but the question is also directed to USEC, whether the
24 fact that USEC would consider itself ready to go out
25 into the market and contract for production from its

1 new facility would be reassuring to potential
2 creditors, and might improve either USEC's ability to
3 raise the additional financing that it needs or to
4 reverse the recent downgrading in its credit rating
5 that the Chairman was mentioning.

6 MR. CHURCH: Yes, I think as I look at the
7 downgrade, it really, I think, focused on the need for
8 USEC to fund and make the investment that they had to
9 make in this American centrifuge looking forward.

10 As their lead cascade gets further along and
11 demonstrates more reliability and gets more
12 reliability data out of those tests, I think that is
13 going to certainly lead to more comfort on the part of
14 the financial analysts and the investors to have
15 confidence in the technology. So I hope that answered
16 your question.

17 VICE CHAIRMAN ARANOFF: Okay, I appreciate
18 that. As I said, the question is more appropriately
19 directed to USEC. So I hope I'll hear something in
20 the post-hearing.

21 With that, Mr. Chairman, I don't think I
22 have any further questions. But I do want to thank
23 the panel, again, for your answers this afternoon.

24 CHAIRMAN PEARSON: Thank you, do we have
25 other questions from the dias?

1 (No response.)

2 CHAIRMAN PEARSON: Do members of the staff
3 have questions for this panel?

4 MS. MAZUR: Mr. Chairman, staff have no
5 questions.

6 CHAIRMAN PEARSON: Does counsel for the
7 domestic industry have questions for this panel?

8 MR. CUNNINGHAM: No questions, Mr. Chairman.

9 CHAIRMAN PEARSON: Well, then allow me to
10 join my colleagues and thank this panel very much for
11 being with us today. We certainly appreciate it. It's
12 gotten to be a little bit long. We're in pretty good
13 shape, yet. So we haven't worn you out completely.

14 But at any rate, we will now dismiss the
15 panel and sort out the time remaining, which I'm
16 advised consists of, for the domestic industry, six
17 minutes from the direct presentation and five minutes
18 from closing, a total of 11.

19 Those in opposition to continuation of the order have
20 22 minutes from the direct testimony and five minutes
21 from closing, a total of 27.

22 So Mr. Cunningham, starting with you, how
23 would you like to use your 11? Do you want to go
24 straight to closing or do you have some words of
25 rebuttal?

1 MR. CUNNINGHAM: No, I think we'll go
2 straight to a single unified presentation. I'll make
3 some overview remarks, and then my two colleagues here
4 some specific points we want to touch on. I'm not
5 sure it's meaningful to distinguish entirely between
6 rebuttal and closing.

7 CHAIRMAN PEARSON: Okay, very well, let's go
8 ahead and shift around here for a minute, and then
9 we'll proceed; thank you very much.

10 MR. CUNNINGHAM: Could we have about two
11 minutes to put the questions together? I just want to
12 make sure we don't go over the time -- one minute.

13 CHAIRMAN PEARSON: Okay, two minutes to
14 shuffle around.

15 MR. CUNNINGHAM: All right.

16 (Whereupon, a short recess was taken.)

17 CHAIRMAN PEARSON: After I had made the two
18 minute announcement, I learned that it would be
19 prudent to grant such time until the Vice Chairman and
20 other Commissioners returned.

21 MR. CUNNINGHAM: We're in full sympathy with
22 that, sir.

23 CHAIRMAN PEARSON: Okay, please proceed.

24 MR. CUNNINGHAM: Okay, Mr. Chairman, I had
25 two dominant impressions, as I listened to the

1 Respondent's and Intervenor's presentation today. One
2 is just how difficult and unsatisfactory it is for the
3 Commission to deal with a Respondent that has not
4 submitted a questionnaire response, and it imposes
5 upon you the difficulty of trying to coax out of or
6 drag out of witnesses something resembling the
7 information you had hoped to get in the questionnaire
8 response.

9 It's necessarily unsatisfactory; not because
10 they're dissembling. Those are good guys. We have no
11 problem with that. But because they just have the
12 information, as individuals coming here, that is of
13 the level of detail and specificity or of the
14 documented nature that you want in a questionnaire
15 response. So please, rely on questionnaire responses
16 and the formality of a response, rather than the sort
17 of generalities that you got here, no matter how well
18 intentioned they were.

19 The second impression I got was that it's
20 been a real effort by the Respondent, by AREVA, to
21 tell you that this case is already decided, and it's
22 so clear that it hasn't been on the goods versus
23 services issue.

24 Let me just read to you from the definitive
25 decision, just a few weeks ago by the CAFC. In your

1 ADIF-1 and your ADIF-2, we found that the SWU
2 contracts at issue 'in this case' -- and those are the
3 quotes by the Court to emphasize it -- were contracts
4 for the sale of services that were not subject to the
5 anti-dumping statute. We did not address how Commerce
6 should determine whether future entries of LEU are
7 made pursuant to SWU contracts later. We have held
8 that SWU contracts are contracts for services, and
9 that the LEU in this case entered under SWU contracts.

10 Whether the next contested shipments of LEU,
11 the shipments you look at all through the period of
12 review here, are covered by a valid SWU contract is a
13 question that must await the next case. They would
14 say, well, gee, there's nothing really to decide. But
15 certainly, there is something to decide and some very
16 important things to decide, and let me go to that.

17 First of all, let me read to you, and focus
18 on the issue here of whether there is a SWU contract
19 when a purchaser is on one side of a transaction, and
20 part of its purchase is enrichment and part of its
21 purchase is natural uranium, and both purchasers are,
22 al beit it in separate contracts, from companies in
23 the same organization.

24 Here's from the Court again. USEC wants it
25 made clear that future LEU imports will not avoid

1 dumping penalties if the unenriched uranium was either
2 (a) obtained from an affiliated enricher; or (b)
3 delivered to the enricher after the importation of the
4 LEU. That's another big issue, by the way.

5 Although USEC does not challenge our finding
6 that the contracts in this case were contracts for the
7 sale of services, it seeks clarification as to whether
8 our holding would apply to future entries with these
9 characteristics.

10 Until we have record evidence, the evidence
11 that they don't give you regarding such entries,
12 however, USEC's questions are non-distinguishable,
13 meaning they have to be worked out.

14 Commerce has explicitly set the requirement
15 so you have to look at that. This is Commerce's
16 definition of a SWU transaction from the scope
17 amendment, not yet imposed on this case, but approved
18 by the Courts.

19 A SWU transaction means a transaction in
20 which the parties' only contract for the provision of
21 enrichment processing, not with the same organization
22 for the supply of uranium, and the purchasing party is
23 responsible for the provision of natural uranium
24 feedstock to the enricher.

25 You need to get from them information if

1 they are going to sustain their claim as to what they
2 claim to be SWU contracts, as to how they fit into
3 those issues that the Courts have said need to be
4 examined on the basis of facts presented, and Commerce
5 says is a requirement to make it a SWU contract. Let
6 me turn now to Mr. Emerson.

7 MR. EMERSON: I have just a couple of
8 follow-up points, if I might, on this goods/services
9 issue. I believe that there was a question asked by
10 Commissioner Aranoff about whether or not there was a
11 definitive decision from a court as to whether a
12 transaction in which a utility was purchasing both
13 natural uranium and enrichment "services" from either
14 a single company or from an affiliate had been deemed
15 a sale of merchandise under the dumping law. The
16 answer there is, no there has not.

17 I'll again refer the Commission back to this
18 third Eurodif decision from which Mr. Cunningham just
19 quoted. This was one of the issues USEC presented in
20 the case. This was one of our issues that we wanted
21 the Federal Circuit to decide. We said, yes, we
22 believe that these should be deemed equivalent to EUP
23 contracts, or at least not excluded from the scope of
24 the anti-dumping duty law.

25 The Court rejected our appeal, not on the

1 merits, but because it was unripe, and said, for all
2 the reasons that Mr. Cunningham just said, USEC,
3 you're talking about a future case. We're going to
4 wait. We're going to let the Department of Commerce
5 develop a factual record to make the determination as
6 to whether that transaction, the affiliated party
7 purchase transaction, is or is not subject to the
8 dumping law, and then we'll review it.

9 So again, back to the question that I think
10 Vice Chairman Aranoff asked, no, there has not been a
11 definitive decision.

12 To sort of step back just a little bit, I
13 believe that the Respondents in this case want to take
14 the position that simply calling something a SWU
15 contract makes it immediately and instantly outside
16 the scope of the dumping law.

17 That is simply not the case. It was that
18 proposition that was effectively rejected by the
19 Eurodif decision, from just a couple weeks ago, which
20 said, no, the Department of Commerce needs to look at
21 facts and circumstances, both in the contract and also
22 in the way in which the transaction is carried out, to
23 determine whether or not it is or isn't a SWU
24 contract, excluded from the dumping law.

25 For example, USEC produces LEU, sells LEU,

1 some under SWU contracts. However, USEC owns, as I
2 mentioned earlier, a significant amount of natural
3 uranium. USEC's finished product, when it comes out
4 of the back of its factory, contains USEC-produced SWU
5 on the back of USEC-owned natural uranium. USEC owns
6 and holds title to that finished product before it is
7 transferred to U.S. utilities.

8 If USEC were required to fill out the
9 certification, if there were, if you will, kind of
10 domestic analog to this exclusion requirement, USEC
11 wouldn't satisfy it, because USEC owns the material
12 prior to the time it's transferred to the utility.

13 MR. CUNNINGHAM: In other words, all of our
14 sales would be subject to the dumping law.

15 MR. EMERSON: That's exactly right. So it's
16 critical here. Again, Respondent is painting with a
17 broad brush. SWU contracts are out. Trust us, all of
18 our future LEU contracts will be made pursuant to SWU
19 contracts.

20 The devil is in the details whether or not
21 those particular transactions -- not just the four
22 corners of the contract -- but the transaction is
23 excludable, and it depends on a lot of information
24 that the Department hasn't looked at yet, as to
25 transactions during your period of review, and surely

1 depends on information that has not yet been provided
2 to this Commission to analyze.

3 Just in closing, before going to Mr. Trendl,
4 I believe Mr. Carbonell was commenting on the fairness
5 of trade here in the United States and the practices
6 here about the anti-dumping duty order that has been
7 challenged before the Court and been applied here.

8 It is ironic for a French enricher to talk
9 about the restrictions placed on exports of French LEU
10 to the United States when AREVA operates in a market
11 that is protected, quota limited, that only 25 percent
12 foreign SWU can be contracted for in the European
13 market under the declaration of Corfu that's mentioned
14 in our brief.

15 If you'd like to trade and have us apply
16 that standard here, I'm sure that we would have
17 something to talk about then. I'll turn it over to
18 Mr. Trendl.

19 MR. CUNNINGHAM: I'm a free trader, so I
20 disagree with that. But let's let Mr. Trendl go.

21 MR. TRENDL: I'm going to move on from the
22 goods/services issue in the Court cases and look at
23 some of the facts that were discussed today and try to
24 clarify some things.

25 But first, given the vast experience that

1 AREVA and its counsel have in these cases, and the
2 repeated requests that I understand staff and your
3 legal office made to get this questionnaire, it's a
4 little bit curious that today they say, yes, we can
5 provide it promptly and, oh, we didn't really
6 understand it wasn't complete.

7 Frankly, it seems a little bit late in the
8 process for this, and we are certainly going to
9 request some time to review what they provide,
10 especially as I encourage that happens, that it's a
11 full response to all aspects of that questionnaire.

12 But let's look at what they did provide.
13 We've talked a lot now, and they've quoted our Exhibit
14 10 from our prehearing brief. It's been suggested
15 that this one-stop shopping was a term we invented.
16 That is in the AREVA statement.

17 Those are their words, not ours. It talks
18 about integrated player. It talks about -- these are
19 their words -- double uranium production by 2011.
20 They're talking about uranium. They're not talking
21 about other things. They talk about a lot of things
22 in here, but it's still about uranium.

23 Secondly, about the shutdown of their plant,
24 even their own materials say, it's a possible
25 shutdown. This is not a done deal, as Mr. Whitehurst

1 explained. Even one more year running that plant is
2 another eight million SWU on the market.

3 It has been suggested that the purchaser's
4 questionnaire provided accurate data of what AREVA is
5 doing. As the staff report notes at page 2-18 in
6 Table 2-2, in many cases, the purchasers claim that
7 they didn't know the origin of the material. So that
8 data is perhaps not as full. I'll leave it at that.

9 There are other points in here, admissions
10 about Urenco being sold out, and price remains the
11 most important thing. But I'll leave it at that, and
12 we'll deal with it in our post-hearing brief.

13 MR. CUNNINGHAM: Many thanks to the
14 Commission for your attention.

15 CHAIRMAN PEARSON: Thank you, gentlemen.

16 Mr. Rosen, how do you wish to use perhaps
17 less than your 27 minutes, or do you want it all?

18 MR. ROSEN: I think we can use it in one
19 unified presentation, and I think we can use it
20 quickly.

21 CHAIRMAN PEARSON: Please come forward then,
22 unless you prefer to --

23 MR. ROSEN: Whatever is easier for the
24 Commission. I can do it from here.

25 CHAIRMAN PEARSON: Well, come on up so we

1 can see the whites of your eyes.

2 MR. ROSEN: I have to remove Mr. Cunningham,
3 sorry.

4 (Laughter.)

5 CHAIRMAN PEARSON: Permission granted.

6 MR. ROSEN: As I said, we will try to be
7 brief, because we've been through it extensively
8 today. I think what the Commission can glean from the
9 tenor of the discussion today is that USEC will do
10 anything within its power to try to stretch out the
11 inevitable, to try to keep this order in place, and to
12 try to elongate legal proceedings which should have
13 been concluded long ago.

14 Through all of its discussion of the SWU
15 decisions, one thing came through loud and clear.
16 That is that the SWU transactions in this case,
17 meaning the SWU transactions at the time of the
18 original investigation, were SWU transactions outside
19 the scope of the dumping law, which leaves us with the
20 inevitable result that during the period preceding the
21 petition, imports of subject merchandise from France
22 were negligible.

23 So we're coming to the end, Commissioners.
24 We're going to get there, one way or the other;
25 hopefully, with the minimum of disruption by USEC

1 possible. Certainly, that's my goal. We will be back
2 to you, hopefully in short order, with a request for a
3 re-visitation of your original injury determination,
4 to conclude that imports from France of subject
5 merchandise were negligible.

6 But we have this sunset proceeding, and
7 you're obligated to deal with it and we're obligated
8 to participate in it and to coordinate with you, and
9 we will provide the additional information, as Mr.
10 Carbonell indicated.

11 Don't trust me about what is a SWU
12 transaction, and don't trust USEC. Your attorneys can
13 dig in, as I am sure they have, to what the decisions
14 have decided. As I indicated, the contracts in the
15 original investigation are the very same contracts
16 with quantity modifications and time modifications and
17 perhaps price modifications, that are involved in the
18 review period leading up to the sunset review.

19 They're the very same contracts that have
20 been reviewed in three and-a-half years of reviews by
21 the Department of Commerce three times in which
22 Commerce looked at all the information that it
23 requested, conducted verifications, and determined
24 that they were SWU transactions.

25 We do SWU transactions. We don't do EUP

1 sales. That being the case, there is no basis for a
2 finding that in the reasonably foreseeable future,
3 sales of subject merchandise from France will be
4 likely to lead to the continuation or reoccurrence of
5 material injury.

6 It's as straight forward as that. Once you
7 get over the hurdle and satisfy yourselves that SWU
8 transactions are out, and that our transactions are
9 SWU transactions, we have no tricks to play. That's
10 not the way our customers like to do business. You've
11 heard today, that's not the way USEC does the
12 predominant portion of its business. We're in the SWU
13 business. We're not in the business of selling
14 enriched uranium product; thank you.

15 MS. FISCHER: I just have two very quick
16 points to make. It goes to USEC's continued attempts
17 to try to distinguish the contracts that were covered
18 by the course decisions as somehow in the future not
19 being SWU contracts.

20 A fundamental point that the Court decisions
21 have done is shift the burden to USEC and the Commerce
22 Department to, in fact, demonstrate that these are not
23 SWU transactions, where USEC continues to try to do
24 the opposite.

25 If the parties submit the required

1 certifications and the documents according to the
2 remand determination, SWU is out unless USEC and the
3 Government can demonstrate these are somehow not SWU
4 transactions. So it's really a fundamental shifting
5 of the burden. USEC is continuing to try to
6 distinguish these and say that somehow these are not
7 SWU transactions, whether it's truly affiliated fee
8 contracts, or somehow saying that they are title
9 transfer issues.

10 Furthermore, USEC's claims that its own
11 contracts are not, in fact, SWU contracts are just
12 more of its efforts to try to say somehow you're
13 supposed to look behind the contracts at the
14 production process. The Court has already discounted
15 the arguments they've made that somehow because they
16 may use LEU material, a feed material that they have
17 in stock, to pre-produce material is somehow not
18 making that a SWU contract.

19 The Court has already looked at all these
20 things. They've already raised all of these
21 arguments. They have been rejected, and these
22 repeated attempts to continue to try to distinguish
23 these contracts are of no avail. So I would ask
24 you to look at the Court decisions and keep those
25 things in mind in making your assessment.

1 CHAIRMAN PEARSON: Does that conclude your
2 presentation?

3 MS. FISCHER: Yes.

4 MR. ROSEN: That does conclude our
5 presentation. I could add one or two sentences,
6 simply to indicate that even if the paperwork were not
7 to be completed upon importation, that doesn't
8 invalidate the importation and make it subject to the
9 law.

10 All it means is, at the time of importation,
11 the Department would not exclude it from potential
12 coverage, but would then look to whether the
13 transaction in which the material was transferred was,
14 in fact, a SWU transaction.

15 CHAIRMAN PEARSON: Let me thank you for your
16 very efficient 27 minute presentation. That was
17 great. Mr. Secretary, now I get to read the closing
18 statement, correct?

19 MR. BISHOP: That is correct, Mr. Chairman.

20 CHAIRMAN PEARSON: In accordance with Title
21 VII of the Tariff Act of 1930, post-hearing briefs,
22 statements responsive to questions and requests of the
23 Commission, and corrections to the transcript must be
24 filed by October 22nd, 2007; closing of the record and
25 final release of data to parties, November 16; and

1 final comments on November 20. This hearing is
2 adjourned.

3 (Whereupon, at 4:41 p.m., the hearing in the
4 above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Low Enriched Uranium from France
INVESTIGATION NOS: 731-TA-909 (Review)
HEARING DATE: October 11, 2007
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: October 11, 2007

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: Carlos E. Gamez
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: John Delpino
Signature of Court Reporter