

**Testimony of Deputy Secretary of Energy Daniel B. Poneman**  
**Senate Foreign Relations Committee**  
**Hearing on Section 123: Civilian Nuclear Cooperation Agreements**  
**January 30, 2014**

Chairman Menendez, Ranking Member Corker, and distinguished members of the Committee, I appreciate the opportunity to testify before you today on the Administration's policies regarding civil nuclear cooperation.

I first worked on this issue as a summer intern in 1975 for my home state Senator, John Glenn of Ohio. That summer I was assigned to work on S. 1439, the Export Reorganization Act, which was designed to address some of the shortcomings in our system and strengthen our nonproliferation controls. That legislation eventually evolved into the Nuclear Non-Proliferation Act of 1978. So I have nearly 40 years of experience with this issue, including six years on the National Security Council (NSC) staff under President George H.W. Bush and President Bill Clinton, for whom I served as the first Special Assistant to the President for Nonproliferation and Export Controls.

At the NSC, I was proud to be part of the initial team under President Bush that negotiated the agreement with Russia to purchase 500 metric tons of highly-enriched uranium to be blended down into commercial reactor fuel. That 20-year deal concluded last month, having eliminated 20,000 bombs-worth of nuclear material, while providing one-tenth of America's electricity for the last generation. And I was proud to serve on the team under President Clinton that worked to reduce the proliferation threat emanating from North Korea's nuclear programs, an issue that we continue to confront today.

In short, for four decades I have done my best to prevent nuclear weapons or the materials and technologies that can be used to build them from falling into the wrong hands, and have benefited throughout from the wide degree of bipartisan consensus supporting U.S. nonproliferation policy. That consensus was well articulated by President Eisenhower in his historic 1953 "Atoms for Peace" speech, then institutionalized in 1957 with the creation of the International Atomic Energy Agency (IAEA), and ultimately universalized through the Nuclear Nonproliferation Treaty (NPT) of 1968, all of which seek to secure to humankind the benefits of the peaceful use of the atom while guarding against its misuse for military or other destructive

aims. Every President since Eisenhower has embraced these goals, each applying the flexibility of his own policies to achieve these goals.

This is indeed fortunate, since there is no more important task than succeeding in this daunting yet imperative national security mission. So when President Obama delivered his compelling vision to advance our global nuclear security in his 2009 Prague speech, he was following firmly in the footsteps of his predecessors in advancing a strong vision of global leadership in reducing nuclear threats. The Department of Energy (DOE), through its national laboratories and production plants, and in close partnership with the State Department, Department of Defense, Nuclear Regulatory Commission (NRC) and other U.S. government and international partners, has worked and will continue to work tirelessly to reduce this threat and enhance the nuclear nonproliferation regime.

In your letter, Mr. Chairman, you asked about the Administration's policy on 123 agreements. At the broadest level, it is and always has been U.S. policy that 123 Agreements should support U.S. nonproliferation objectives, to combat the threat that nuclear weapons and related materials and technologies should fall into the wrong hands. And, by their structure, 123 agreements serve that mission well. Indeed, our 123 Agreements are the world's strongest framework agreements for peaceful nuclear cooperation. No government requires more stringent nonproliferation conditions than the United States.

Consider the specific provisions of our 123 Agreements. The United States requires our trading partners to commit to the legal obligations contained in section 123 of the Atomic Energy Act. These obligations are purposely stringent and set the global standard for nuclear commerce. The U.S. Government requires non-nuclear-weapon-state partner countries to have in place IAEA safeguards over all nuclear materials in peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere. Additionally, the cooperating party must guarantee that safeguards as set forth in the agreement for cooperation will be maintained in perpetuity with respect to all nuclear materials and equipment transferred pursuant to the 123 agreement and any special nuclear material used in or produced by such material and equipment. The United States requires guarantees that any nuclear material and equipment transferred be used only for peaceful purposes. 123 Agreements also require that the United States has the right to demand the return of any U.S.-

obligated material and equipment if a non-nuclear-weapon state detonates a weapon or abrogates its safeguards agreement. Partners may not retransfer any nuclear material or equipment supplied by U.S. companies without the permission of the U.S. Government. Partners may not enrich, reprocess, or otherwise alter in form or content U.S.-obligated material without U.S. Government permission. Partners also must adhere to U.S. requirements for physical security and storage of U.S. nuclear material and equipment.

It is therefore in the U.S. national interest to encourage other governments that are considering commercial nuclear programs and that are in compliance with their nuclear nonproliferation obligations to sign 123 Agreements with the United States. Our 123 Agreements set the global nonproliferation standard, thereby discouraging a nonproliferation “race to the bottom,” in which potential partners negotiate peaceful nuclear cooperation agreements with suboptimal nonproliferation controls.

The more 123 Agreements that exist in the world, the stronger the nonproliferation controls that will apply to all nuclear commerce. Consequently, it is in the U.S. national security interest to maximize the number of countries with which the United States has 123 Agreements.

There is nothing new in this logic. Indeed, a decade ago, I joined with then-professor Ernest Moniz and other colleagues to argue in favor of a global regime that minimized acquisition of enrichment and reprocessing technologies. Such a regime would achieve this minimization goal, not by legal diktat or diplomatic pressure, but rather by addressing the underlying concern in many countries to secure reliable nuclear fuel services from the commercial marketplace. This approach of acquiring services from the existing market would save nations billions of dollars in unnecessary investments in fuel cycle facilities, thereby becoming a far more attractive prospect. Of course, to be effective, these nuclear fuel service supply assurances would have to be credible – for example, they could only be revoked if the country in question violated its nonproliferation obligations, and not for other important but distinct issues of concern to the United States.

We want other nations to enter into 123 Agreements with the United States because our standards are the highest in the world – bar none. When we

enter into new 123 Agreements, we bring our nonproliferation standards to the partner country, and thereby enhance our national security. Conversely, when a state opts to enter into an agreement for civil nuclear cooperation only with another country but not the United States, then U.S. influence on that state's nonproliferation regime decreases.

Some people have mistakenly viewed U.S. economic interests in nuclear trade as somehow at odds with a strong nonproliferation policy. This is a false dichotomy. A strong U.S. commercial nuclear industry does not weaken our nonproliferation; on the contrary it strengthens U.S. nonproliferation efforts, since it ultimately provides the basis for countries to enter into 123 Agreements. Conversely, failure to reach a 123 Agreement with a potential partner country prevents the United States from extending the coverage of its nonproliferation controls, thus weakening our nonproliferation efforts.

The U.S. commercial nuclear industry is no longer dominant in the global marketplace. Over time, the U.S. share of global exports for enriched uranium and other sensitive nuclear materials declined dramatically. As reported in a 1987 GAO report, the U.S. share of the global non-communist market in enriched uranium declined from 100% in 1969 to 50% in 1987, Since that report, the decline in market share has continued to just 10 percent of the overall market in 2008. Diminishing U.S. market share means diminished controls over materials worldwide and diminished influence over the safety, security, and nonproliferation cultures of those markets.

It is important to remember that 123 Agreements are not the only tools in our nonproliferation arsenal. In addition, we have the NPT regime; IAEA safeguards, now strengthened by the Additional Protocol; U.N. Resolution 1540; nuclear fuel banks; the Nuclear Suppliers Group; as well as a number of nonproliferation conventions on such matters as physical protection, safety, and radioactive waste. All of these tools advance the U.S. national security interest in achieving the lowest number of sensitive nuclear fuel cycle facilities and technologies (specifically enrichment and reprocessing).

Mr. Chairman, you asked whether the Section 123 requirements need to be modified or updated. In our judgment, Mr. Chairman, the current requirements are strong, relevant, and effective. Indeed, in our view no country has more robust nonproliferation criteria, and the current requirements represent a major increase in rigor compared to those in effect

prior to the 1978 Nuclear Nonproliferation Act. The non-proliferation criteria of Section 123 should not lightly be changed. The U.S. Government has been persuading other countries to accept our existing rigorous set of constraints for thirty years, but we will undermine our ability to negotiate agreements and extend our strong nonproliferation controls if we keep changing the rules of the game and cause other countries to view the United States as an unreliable partner.

I would argue that changes made in 1978 were justified, as they addressed genuine weaknesses in the nuclear export regime. Indeed, they have been very successful in minimizing the proliferation of sensitive nuclear technologies like enrichment and reprocessing. While I understand well-meaning efforts to further constrain the acquisition and development of enrichment and reprocessing around the world, ratcheting up restrictions yet again will drive countries away from the United States and therefore out of the reach of U.S. 123 controls. A perfect policy that applies to zero percent of the market would be a perfect failure.

Mr. Chairman, you asked about the proposed Taiwan 123 Agreement. Recently, the President submitted this agreement to Congress for review. As required under the Taiwan Relations Act, the agreement was concluded between the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office (TECRO).

Entry into force of this Agreement constitutes an important step forward in our cooperation with the authorities on Taiwan in the field of civil nuclear energy. The United States supplies all of their power and research reactors, along with the fuel to power them. The AIT-TECRO 123 Agreement will allow this cooperation to develop further.

In the AIT-TECRO Agreement and the supporting side letter, the authorities represented by TECRO renew their commitment to strong nonproliferation norms, including giving legal weight to their existing policy not to seek enrichment and reprocessing technologies. The proposed Agreement prohibits the possession by the authorities on Taiwan of sensitive nuclear facilities and any engagement in activities involving sensitive nuclear technology in the territory of the authorities represented by TECRO. Assistant Secretary of State Tom Countryman will discuss the Taiwan 123 Agreement in greater detail. I simply want to reaffirm the basic point that the 123 Agreement with TECRO is another 123 Agreement that implements

the longstanding U.S. goal to use 123 Agreements as one means to achieve the lowest number of enrichment and reprocessing facilities around the world.

Finally, Mr. Chairman, you asked about the role of Congress in formulating 123 policy. As the Committee knows, the role of Congress has been vital in this area, as has been expressed through the Atomic Energy Act of 1954, as amended. Congress developed and enacted this comprehensive framework, institutionalizing its vital review and oversight function. The documentation required to accompany a 123 Agreement is extensive and requires a joint letter from the Secretaries of State and Energy, supplemented by separate input from the Nuclear Regulatory Commission and the Director of National Intelligence. That documentation is reviewed by both houses of Congress. We believe it is a good system, with a robust role for Congress. As long as the President retains his prerogatives in the area of foreign diplomacy, the non-proliferation criteria of Section 123 should not lightly be changed, for the same reasons our policy should not lightly be changed; the United States should be both strong and steadfast.

### **Conclusion**

The United States has the highest non-proliferation standards in the world. Our 123 agreements remain a highly effective tool in promulgating those standards – though they are far from the only tool. It is in our national security interests to assure that we can renew current and achieve new future 123 agreements.

Though the strategy for engaging with individual nations is tailored to the nation at hand, the underlying principle remains the same: we must do what is necessary to minimize the acquisition and development of enrichment and reprocessing technology and provide persuasive alternatives.

Well-intended changes to requirements for 123 agreements risk making the perfect the enemy of the good – arriving at a policy that is strong on paper and nowhere else. We run the risk of countries moving forward without us – choosing instead to partner with countries that have less stringent non-proliferation controls and losing the opportunity to help new partners and allies use peaceful nuclear power.

The Department of Energy remains committed to implementing President Obama's policies and goals on nuclear nonproliferation and use of civil nuclear cooperation, as President Eisenhower expressed 60 years ago – that cooperation in the peaceful use of nuclear power will bring together an international community committed to using “their strength to serve the needs rather than the fears of mankind.”

Thank you for the opportunity to address to committee, and I look forward to your questions.