

## STATEMENT OF CONSIDERATIONS

Request by Foster Wheeler Development Corporation for an Advance Waiver of Domestic and Foreign Invention Rights under DOE Cooperative agreement No. - DE-AC22-95PC95143; W(A)-97-004, CH-0917

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The Petitioner, Foster Wheeler Development Corporation (FWDC), was awarded this cooperative agreement under the High Performance Power Systems (HIPPS) program. This project is for the development of a coal-fired combined cycle power generating plant that will have efficiency in excess of 47 percent. The scope of work includes engineering analysis, laboratory testing, pilot plant testing and the proposal level design of a prototype commercial plant. The Petitioner was one of two proposers selected as a result of its response to the PRDA for this program. The Petitioner has requested a waiver of domestic and foreign rights for all subject inventions under Phase II of its cooperative agreement with DOE.

The total estimated cost of the cooperative agreement is about \$41,088,296. FWDC is cost sharing 20% of this total estimated cost, plus a 5% imputed fee, or \$8,217,659, with DOE providing the remaining \$32,870,637. The cooperative agreement term is from June 1995 through December 1999. Work under this program has been proceeding from June 1995 under a letter contract. Phase II will proceed under the cooperative agreement on which this waiver is based.

In its response to questions 5 and 6 of the attached waiver petition, FWDC has shown that it has established itself as a pioneer and leading supplier of firing systems and steam generator technology directed at hard to burn, low volatile solid fuels. It has maintained and operated a combustion and environmental test facility (CETF) at its Danville, NY manufacturing facility since 1985. In 1996, FWDC renovated and upgraded this CETF, demonstrating its commitment to continued research and development for the subject technology.

From its response to question 9, FWDC indicates that there would be no effect on competition and market concentration by grant of the waiver because of the multiple technologies available which can be used on a given project, as well as the large number of competitors bidding on a given project.

The Petitioner has agreed to the standard provisions with respect to invention waivers with the substitution of the march in rights, U.S. manufacturing preference and U.S. government license provided in 35 U.S.C. 202-204. Additionally, FWDC has accepted standard background patent and data provisions of paragraphs (k) to assure commercialization of the technology.

The subject cooperative agreement will be modified to add the Patent Rights--Waiver clause in conformance with 10 CFR 784.12. This waiver clause will also include a paragraph entitled U.S. Competitiveness, in which FWDC agrees to substantial U. S. manufacture of the subject inventions. Additionally, FWDC agrees not to transfer the subject inventions to any other entity unless that other entity agrees to these same requirements.

Considering the foregoing, it is believed that granting the waiver will provide the Petitioner with the necessary incentive to invest their resources in the commercialization of the results of the agreement in a fashion which will make the agreement's benefits available to the public in the shortest practicable time. In addition, it would appear that grant of the above requested waiver would not result in an adverse effect on competition nor result in excessive market concentration. Therefore, in view of the objectives and considerations set forth in 10 CFR 784, all of which have been considered, it is recommended that the requested waiver, as set forth above, be granted.



Mark P. Dvorscak  
Assistant Chief Counsel  
Office of Intellectual Property Law

Date \_\_\_\_\_

Date Mar 31, 1997

Based on the foregoing Statement of Considerations and the representations in the attached waiver petition, it is determined that the United States and the general public will best be served by a waiver of rights and consent to assignment of the scope described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of this agreement, where through such modification or extension, the purpose, scope, or cost of the agreement is substantially altered.

CONCURRENCE:



George Rudins  
Deputy Assistant Secretary for  
Coal and Power Systems

Date 7/30/97

APPROVAL:



Paul A. Gottlieb  
Assistant General Counsel  
for Technology Transfer and  
Intellectual Property

Date 7-31-97