

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CONVERDYN,)
Plaintiff,)
v.)
ERNEST J. MONIZ, in his official capacity as) Case No. 1:14-cv-1012-RBW
Secretary of the United States Department of Energy)
and)
UNITED STATES DEPARTMENT OF ENERGY,)
Defendants)

**ATTACHMENT 6
DECLARATION OF KEVIN P. SMITH
DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

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DECLARATION OF KEVIN P. SMITH

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the Managing Director for Uranium Marketing & Trading of Traxys North America LLC (“Traxys”), and have been employed as head of this division since 2007. In that capacity, I am responsible for all of Traxys’ purchases and sales of uranium products worldwide, including Traxys’ purchase and sale of 100% of the uranium hexafluoride (“UF6”) acquired by Traxys from Fluor-B&W Portsmouth LLC (“FBP”) who in turn acquired the UF6 from the U.S. Department of Energy (“DOE”).

2. I am providing this Declaration in support of Defendants’ Motion in Opposition to Plaintiff’s Motion for a Preliminary Injunction. I believe Plaintiff’s claims are factually inaccurate and I would like to correct the record. As the entity that is responsible for the sales of all of the UF6 transferred by DOE to FBP, which sales represent approximately 80% of all UF6 sold or transferred by DOE to all market participants, Traxys is uniquely positioned with the knowledge of the actual marketing and sales of the DOE-derived UF6 and the impact that such sales have had -- and are likely to have -- on the U.S. uranium market.

3. As more fully set forth below, it is my position that neither the domestic U.S. uranium market nor Plaintiff will be adversely materially impacted by the DOE transfers to FBP, as substantially all DOE-derived supply has already been sold by Traxys under forward delivery contracts and more

than half is sold outside the U.S. Accordingly, substantially all of the DOE supply of UF₆ to the market over the next two years has been committed under forward delivery contracts. Moreover, an injunction on DOE uranium transfers would potentially cause Traxys contract defaults and disrupt fuel supply to utilities if Traxys does not receive timely deliveries under its supply agreement with FBP. Finally, an injunction would permanently impact Traxys' ability in the future to contract uranium sales of DOE-derived UF₆ acquired from FBP as utility buyers' confidence in the supply will be significantly reduced due to the threat of disruption and will leave sales of such material relegated to immediate spot deliveries that would put unnecessary downward pressure on the market. This would lead to a situation that is counter to what Plaintiff claims it wants, since sales of DOE-supplied conversion under forward delivery contracts would be reduced. Such a restriction on DOE supply would undermine the predictability that market participants have relied upon in scheduling their uranium inventory purchases.

Background

4. Traxys is a leading supplier and marketer of natural resources, metals and energy commodities to utilities and industrial companies globally. It has annual revenue of over \$6 billion dollars and employs over 300 people in 25 offices around the world. Traxys invests in mines, provides sales and marketing services to producers, and finances supply chain and logistics from the mine site to the customer. Traxys' uranium marketing business transacted over 25 million pounds of uranium globally in 2013 and had revenues of nearly \$700 million dollars.

5. FBP is a DOE contractor that conducts accelerated environmental cleanup work at government sites on behalf of DOE. DOE pays FBP for a portion of its services in the form of delivery of UF₆. Traxys then purchases all of the DOE-supplied UF₆ from FBP, thus monetizing the commodity on behalf of FBP. The quantities that FBP receives from DOE represent approximately 80% of all DOE uranium transfers.

6. Since June 2011, Traxys has been the exclusive buyer of all UF₆ provided to FBP by DOE in exchange for services. In 2011, Traxys purchased 1,250,000 kgU; in 2012, 1,600,000 kgU; and in 2013, 2,400,000 kgU. From 2014 to 2016, Traxys has contracted to purchase 2,055,000/kgU per year, a quantity that represents approximately 75% of all planned DOE uranium sales in those years. Almost 100% of the quantity contracted to be purchased by Traxys has already been committed to be sold to utility customers under forward delivery binding contracts.

7. Traxys' marketing strategy for UF₆ acquired from FBP at all times has been to sell the material in a market neutral, non-disruptive manner that minimizes the impact on the market. Traxys has pursued this goal by striving to sell at least 50% of the DOE-supplied material acquired from FBP pursuant to and into forward delivery forward contracts, thereby minimizing the quantities entering the spot market. In addition, Traxys' goal is to sell at least 50% of such material to non-U.S. customers, which has further reduced the quantities entering the U.S. marketplace. Traxys has consistently met these goals by selling at least 50% of such material pursuant to forward delivery contracts and 50% to non U.S. buyers.

8. A stable and predictable market serves Traxys' commercial interests. Traxys' affiliates are investors and shareholders in two US uranium producers (both UPA members) and support them with financing and sales & marketing services, and thus Traxys is incentivized to maintain a strong market that does not adversely impact its investments.

Traxys' UF6 Purchases and Conversion Sales

9. UF6 consists of two components, uranium (U_3O_8 or "yellowcake") and conversion, the process by which uranium is converted from a solid to a gas. DOE-supplied uranium consists entirely of UF6, being the finished product derived from the combination of these two components. As there is an independent trading market for each component, Traxys, based on market opportunity, sells each component -- uranium and conversion -- separately.¹

10. In 2013², Traxys purchased a total of 3,160,000 kgU of conversion in UF6, which included 2,400,000 kgU of UF6 purchased from FBP, plus another 757,000 kgU of conversion purchased from the open market, which is an additional 31% above the conversion component of the material supplied by DOE to FBP. This counters Plaintiff's claim that the conversion component of the DOE-supplied material is being 100% sold into the spot market, as Traxys actually is buying additional quantities from the market above and beyond the material it is purchasing from FBP and thus is offsetting significant portions of DOE-introduced quantities.

11. Of the 2,400,000 kgU of DOE-supplied UF6 that Traxys purchased from FBP in 2013, only 1,000,000 kgU of the conversion component was delivered to U.S. utilities, which means only 42% of the DOE-derived conversion component of such material even entered the U.S. marketplace. This represents 5.6% of total annual U.S. conversion demand (18,000,000 kgU per year, according to ERI, DOE's external report consultant) and even if the conversion component of all of the other material sold by DOE in a given year were supplied into the U.S. market, it would be well below even DOE's former guideline of 10% of U.S. demand.

12. Of Traxys' total conversion sales contracted in 2013, only 760,000 kgU were sold in spot market transactions, representing 25% of Traxys' total conversion sales (FBP + open market buys) and 32% of its sales of the conversion component of UF6 it acquired from FBP. Traxys sold an additional 2,240,000n kgU conversion (75% of Traxys' total conversion sales) under forward delivery contracts. This means at least 68% of DOE-derived conversion was sold under forward delivery contracts. This further counters the Plaintiff's assertion that the 2,400,000 kgU of the conversion component of DOE's UF6 transfers is being sold into the spot market.

13. Of the 4,000,000 kgU of the conversion component in UF6 that FBP received from DOE and delivered to Traxys in 2012 and 2013, at least 2,000,000 kgU are presently held in Traxys accounts at converters or enrichers, at Traxys' expense, in support of forward delivery contract commitments.

¹ Sales of the conversion component of UF6 are effectuated by the seller delivering UF6 and the buyer paying for such UF6 by delivering in return the equivalent uranium (yellowcake) plus the cash consideration for the conversion component.

² Historical and prospective sales data is based on Traxys' 2013 filing with the U.S. Energy Information Administration ("EIA") [www.eia.gov/] and Traxys' contract book to date.

This means at least 50% of the 4,000,000 kgU of the conversion component in UF₆ introduced over the last two years has been withheld from the spot market. This further counters Plaintiff's assertion that most or all of the DOE-supplied conversion component is being sold into the spot market, as no more than half has even been delivered outside Traxys' accounts over the last two years.

14. Of the 4,100,000 kgU of the conversion component to be included DOE's proposed transfers to be acquired by Traxys from FBP before the next Secretarial Determination in 2016, 90% has already been sold forward by Traxys under forward delivery contracts, leaving negligible quantities available to sell in any spot sales. As these quantities have been committed to forward delivery contracts, these transfers by DOE will not result in significant additional quantities being sold into the spot market.

Record Long Term Conversion Price

15. Plaintiff's assertion that the DOE uranium transfers negatively impact the long-term conversion price for uranium is inaccurate. In fact the long-term conversion price (\$16 per kgU as of May 31 2014, per UxC, the uranium price publishing firm) is near its record all-time high of \$17 per kg, and has been in this record high range since DOE first supplied FBP with UF₆ in June 2011. The long-term conversion price has held at these record levels for the last 3 years while the long-term uranium price and enrichment price each have fallen by 34% and 35% respectively, further demonstrating the strength of the long-term conversion market. This long-term conversion price stability has persisted despite the fact that spot conversion prices have ranged between \$11 and \$7 dollars. This fact belies Plaintiff's assertion that the spot conversion price is negatively impacting the long-term conversion price. Nearly 80% of the conversion component of UF₆ that Traxys acquires from FBP is sold under forward delivery contracts to utilities.

16. Plaintiff asserts that it sells almost exclusively in the long-term market based on long-term prices and is not concerned with or involved in the spot market. In 2011, Ganpat Mani, Plaintiff's prior CEO, sent a letter to customers notifying them ConverDyn would not sell its conversion services for less than \$16.50/kgU. This turned out to be a very successful strategy as Plaintiff booked significant business at this level, which persists to this day and demonstrates Plaintiff's strong pricing power in the market. Spot DOE supply has minimal impact on Plaintiff's sales, and the near record high conversion price for the last 3 years belies Plaintiff's claim that it will be harmed by the DOE's transfer of UF₆ to FBP.

17. Plaintiff's assertion that the DOE transfers are being made at less than fair market value also is inaccurate. Spot market prices are generally accepted as the best measure of a commodity's fair market value. DOE in fact transfers its material to FBP at spot market prices and thus receives fair market value. Traxys in turn enters into forward delivery contracts based on prices applicable to the secondary supply market. However, Traxys' sales, which are made pursuant to forward delivery contracts, do not put downward pressure on the spot price, because they do not need to clear the market on a real-time basis. The long-term conversion price, on the other hand, which is based on the marginal cost of production, is available only to primary producers such as Converdyn.

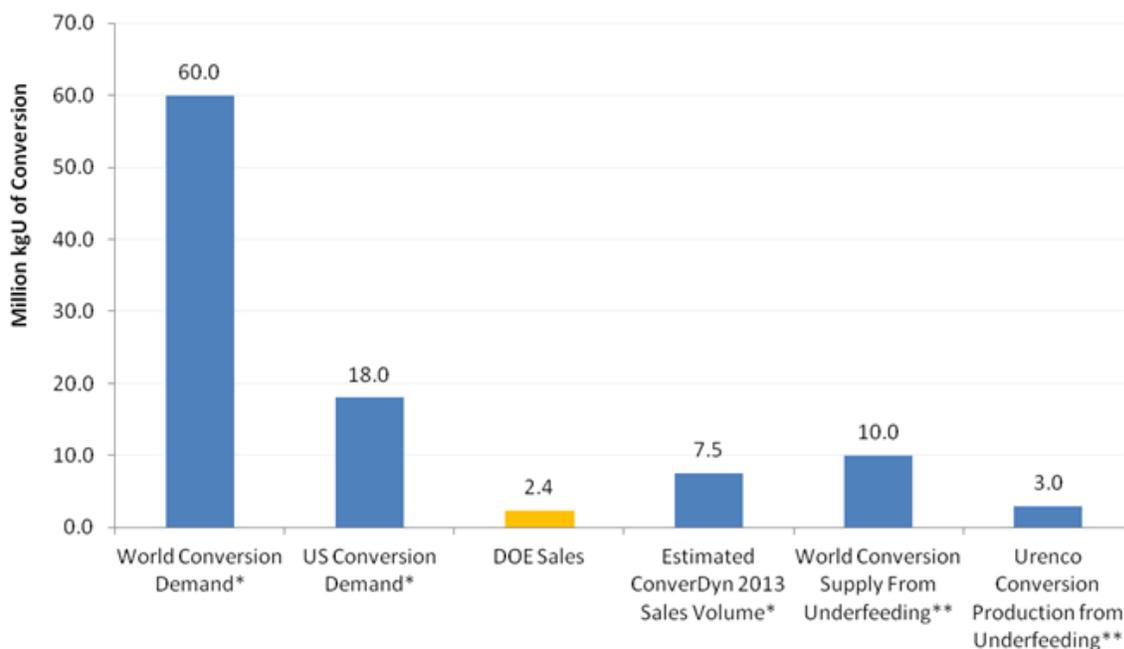
Plaintiff's Interest and Benefit from DOE's Transfers

18. In 2011, when FBP first entered into its contract with DOE and began to receive transfers of UF₆ in exchange for services, Plaintiff was one of the finalists pursuing the right to purchase all of the UF₆ acquired by FBP. Subsequently, Traxys offered on several separate occasions to give Plaintiff access to significant quantities of such material at the same price and payment terms that Traxys paid FBP. (See Exhibit "A" attached hereto.) Traxys thus offered to give Plaintiff access to and a chance to control significant quantities of secondary conversion which would ensure that Plaintiff would not be adversely impacted by DOE's transfers. Plaintiff declined to acquire any of the conversion component of the UF₆ that it was offered.

19. Nevertheless, at Plaintiff's request, Traxys has loaned Plaintiff approximately 1,000,000 kgU of conversion component received from FBP to help Plaintiff meet its customer deliveries during its recent extended NRC shutdown. Plaintiff still has significant loans of conversion from Traxys outstanding. Thus, rather than being harmed, Plaintiff has in fact benefited from the DOE transfers by being able to meet its contractual supply commitments to customers during the recent shutdown.

Market Impacts on Conversion Price

DOE Supply vs Other Conversion Sources in 2013

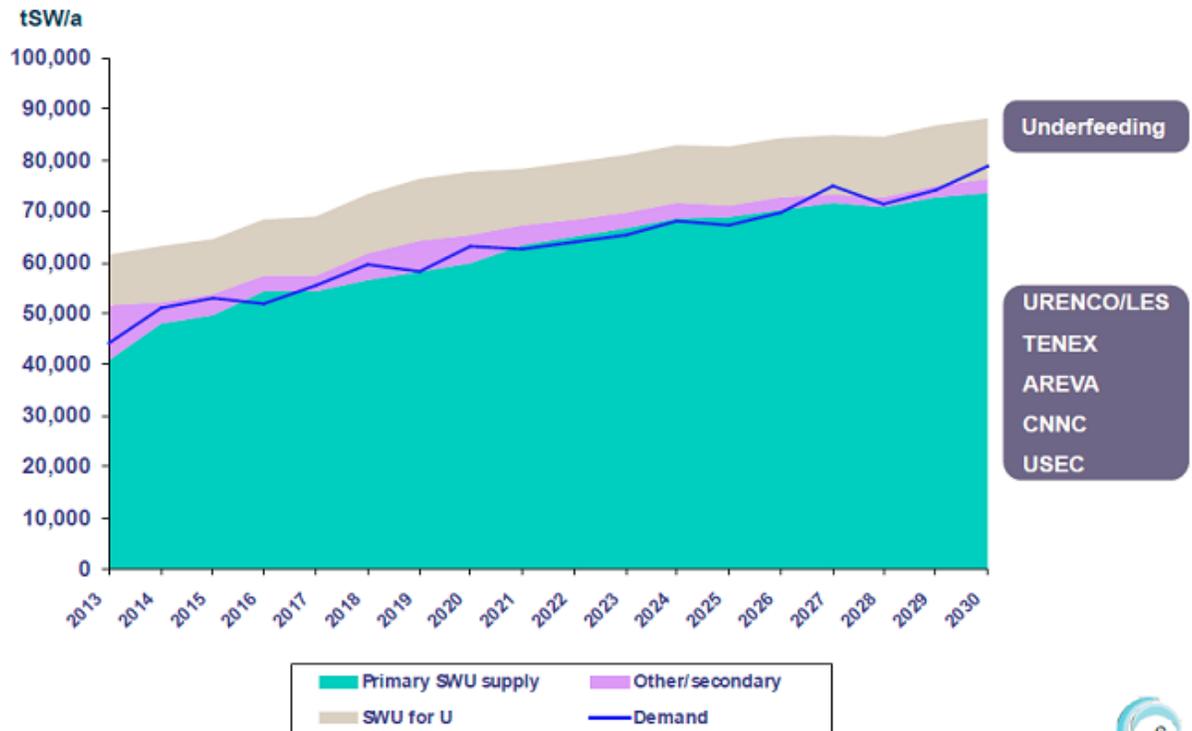


* ERI 2014 Review of the Potential Impact of DOE Excess Uranium Inventory on the Commercial Markets

** Data from URENCO

20. DOE-supplied conversion does not represent a substantial portion of the available conversion supply. Rather, the secondary supply of conversion is principally the result of record underfeeding (which generates excess secondary UF₆) from uranium enrichers such as Urenco, Areva and Tenex has contributed 10,000,000 kgU/year of secondary conversion to the market, which is

almost four times the quantity introduced by DOE to the market. Urenco publicly stated in 2013 that it was currently supplying at least 3,000,000 kgU annually of conversion from its underfeeding activities, which is more than DOE has ever supplied in a year and has a significant impact on the spot market.



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Accordingly, any injunction or reduction in DOE transfers will only serve to improve the sales prospects for these sources of secondary supply.

21. While events at Fukushima, Japan that caused the shutdown of all Japanese reactors have caused a temporary reduction in uranium and conversion demand, no meaningful reduction in primary conversion supply has resulted and thus there is a temporary oversupply of conversion in the global marketplace. However, growth in demand in other Asian countries (especially China) has created new sales opportunities for conversion that can be exploited by both primary and secondary supply channels that would offset the reduced Japanese demand, providing Plaintiff with additional sales and additional buyers of DOE derived conversion. Finally, utilities around the globe actively seek to include secondary conversion supply in their portfolios to diversify risk and ensure supply when primary facilities have unexpected and prolonged outages as Plaintiff has had on multiple occasions.

22. Coupled with the availability of substantial quantities of secondary supply resulting from underfeeding, these macro-economic factors demonstrate that there are significant sources other than DOE-supplied UF₆ that have a significant impact on uranium prices.

³ Uranium Enrichment – Update from URENCO World Nuclear Fuel Market, Istanbul, Paul Harding, Executive Director Commercial, URENCO Enrichment Company 11 June 2013

Conclusions

23. As 90% of Traxys' expected conversion supply from FBP has already been sold pursuant to forward contracts, there is little to no additional conversion that will be introduced into the market over the next two years. The claim that Plaintiff will suffer immediate irreparable harm from any further DOE uranium transfers is not supported as there is a negligible amount of material left to sell.

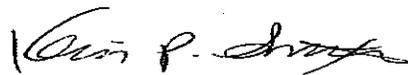
24. An injunction on DOE uranium transfers would potentially cause Traxys contract defaults and disrupt fuel supply to utilities if Traxys does not receive timely deliveries under its supply agreement with FBP. This will cause irreparable harm to Traxys financially and to its reputation as a reliable source of supply if it is forced to default or Force Majeure its customers.

25. Finally, an injunction would permanently impact Traxys' ability in the future to contract uranium sales of DOE-derived UF₆ acquired from FBP as utility buyers' confidence in the supply will be significantly reduced due to the threat of disruption and will leave sales of such material relegated to immediate spot deliveries that would put unnecessary downward pressure on the market. This would lead to a situation that is counter to what Plaintiff claims it wants, since sales of DOE-supplied conversion under forward delivery contracts would be reduced. Such a restriction on DOE supply would undermine the predictability that market participants have relied upon in scheduling their uranium inventory purchases.

26. As Traxys delivered 75% of the conversion component under forward delivery contracts in 2013, and expects this percentage to climb to 90% over the 2014-2016 period, Plaintiff's claim that DOE supply is causing an adverse material impact by being sold into the spot market is not supported as this is factually inaccurate. Sales are in fact already being done under forward delivery contracts, which is what Plaintiff (and the UPA) claim they want.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th day of July, 2014.

A handwritten signature in black ink, appearing to read "Kevin P. Smith", written over a horizontal line.

Kevin P. Smith