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MEMORANDUM TO: NSC - Dr. DAVID D. ELLIOTT
FROM: OES/SCI/AE - Myron B. Kratzer
SUBJECT: Requirements for Export Licensing
Determination under the Atomic
Energy Act

Following up on our conversation of this morning, I have attempted to summarize below the principle points in support of the view that individual export transactions under an Agreement for Cooperation do not require a finding that such exports are "non-inimicable to the common defense and security."

1. Agreements for cooperation in the peaceful uses of atomic energy are contained under Section 123 of the Atomic Energy Act. Sub-section b requires that "the President has approved and authorized the execution of the agreement and made a determination in writing that the performance of the agreement will promote and will not constitute an unreasonable risk to the common defense and security." Thus, a determination is made at the time the agreement is signed, stating not merely that the agreement meets U.S. security interests but that its performance meets these objectives. I believe that this structure was intentional from the outset, inasmuch as it was recognized in the earliest days of the peaceful nuclear program that we must offer reasonable assurance of continued supply to other nations.

2. The interpretation that the President's determination under Section 123(b) is intended to be a continuing one is supported by the new provision under Section 144(b) and (c) which deals with the agreements for cooperation



in the more sensitive field of military uses of atomic energy. Under these provisions, added to the Act in 1958, the President is required to determine from time to time that "the proposed cooperation will promote and will not constitute an unreasonable risk to the common defense and security." No such requirement for renewed determinations during the course of the implementation of agreements for cooperation in civil uses was added to Section 144(a), which deals with agreements in civil uses.

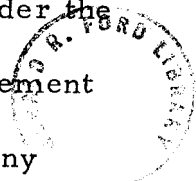
3. Additional provisions relating to export licensing of specific types of nuclear goods are covered in other sections of the Act. Chapter 10 deals with licenses for production and utilization facilities. Section 103 covers licenses for commercial facility, i. e., power reactors, while Section 104 covers licenses for research and development facilities. In point of fact, licenses are rarely if ever issued for commercial power reactors since these are built abroad from components derived from a number of sources. At most, individual components of such reactors are shipped from the U.S. under export licenses issued by the Department of Commerce. Those reactors which have been the subject of export licenses as complete units are usually research reactors exported under Section 104. Under Section 104(d) no license may be issued for the export except under terms of an agreement for cooperation although component parts specially identified by the Commission may be exported without an agreement for cooperation on a determination that the export will not constitute an unreasonable risk to the common defense and security. The language which



appears in the last sentence of Section 104(d) that no license may be issued to "any person within the United States" if this would be inimicable to the common defense and security clearly relates, in my view, to activities within the United States and not to the act of export itself.

The export of source material is covered under Section 64. It is entirely clear that under this Section the export of source material can take place either under an agreement for cooperation or on a determination that the export will not be inimicable. A similar approach is provided for by Section 82 in relation to export of by-products material. These sections contemplate that distribution of source and by-product material would normally be accomplished by the Commission itself, i. e., AEC, and this indeed was the normal procedure in the early days of the program.

The foreign distribution of special nuclear material is covered by Section 54 and 57. In practice this is by far the most important area of exports since these occur on a repetitive basis over the lifetime of such reactors. Here again the original procedure dealt with exports directly by the Commission. Under Section 54 it is clear that the only export requirement is that it be pursuant to the agreement for cooperation. After the 1964 amendment to the Atomic Energy Act, export by licensees became the normal procedure. Section 57(c) provides that the Commission shall not distribute any special nuclear material to any person not under the jurisdiction of the U. S. except under Section 54, i. e., under an agreement for cooperation. Alternatively, the Commission may not distribute any special nuclear material to any person within the U. S. except on a finding



of noninimicability. The structure of this section makes it clear that "within the United States" refers to distribution of material for uses within the U.S., and not simply to possession by licensees for the purpose of exports. Section 53 which now authorizes the issuance of licenses for the import or export of special nuclear material originally dealt with the domestic distribution of special nuclear material and the Section is still so entitled. The language authorizing import and export licenses was added at the time of the private ownership amendments of 1964. Significantly it refers only to export under the terms of an agreement for cooperation and contains no language calling for a finding of non-inimicability.

In summary, I conclude that:

1. Exports of the more sensitive items, i.e., complete reactors and special nuclear material, are to take place only under an agreement for cooperation. When this requirement is met, there is no need or room for the added requirement of a non-inimicability finding on a case-by-case basis. The President has made the definitive finding that performance on the agreement will not be inimical to U.S. security interests.

2. In the case of export of less sensitive items, i.e., source material, by-product material, or reactor components, the Act provides two alternatives for export: under an agreement for cooperation or on a finding of non-inimicability. This latter alternative was intended for the export of these less sensitive items where no agreement had been executed and was indeed frequently applied in just that way.



3. There is language which appears in several sections of the Act calling for a finding of non-inimicability when issuing licenses to persons "within the United States." When viewed in the overall structure summarized above, I believe that it becomes clear that the words "within the United States" relate to activities which the licensee will undertake within the U.S., and not to the act of export itself.

It is my distinct recollection that as we began to issue licenses for the export of reactors and special nuclear material, we informed the Regulatory side of the Commission only that the proposed export was pursuant to an agreement for cooperation. I have been informed that this procedure has been modified in recent years and that a "dual determination" is made, i.e., that the export is not only pursuant to an agreement for cooperation but also that it is non-inimicable. I have discussed the interpretation discussed above with several attorneys, including Jack Pender and Mark Rowden. Mark informed me today that he had looked again at this question following my conversation with him on this point some two weeks ago. It is his conclusion that the Act was unclear and that either interpretation can be defended; by practice, however, the AEC has essentially opted for the approach requiring a dual certification. Mark also states, and I have not had an opportunity to review this personally, that the Commission regulations call for the dual determination thus further strengthening this interpretation.

Whatever the practice has been, I am convinced that the interpretation that an export under an agreement for cooperation need not be subject to a separate determination of non-inimicability, is the correct one. Indeed,



I believe there is a strong basis on which to conclude, in view of the President's determination under Section 123(c), that any further determination by any other authority is improper and contrary to the Act.



Announced 2/6/76
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To Archives 2/2/76

EXECUTIVE ORDER

-- 11902 --

PROCEDURES FOR AN EXPORT LICENSING POLICY
AS TO NUCLEAR MATERIALS AND EQUIPMENT

The Energy Reorganization Act of 1974 transferred to the United States Nuclear Regulatory Commission the licensing and related regulatory functions previously exercised by the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended.

The exercise of discretion and control over nuclear exports within the limits of law concerns the authority and responsibility of the President with respect to the conduct of foreign policy and the ensuring of the common defense and security.

It is essential that the Executive branch inform the Nuclear Regulatory Commission of its views before the Commission issues or denies a license, or grants an exemption.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), and as President of the United States of America, it is hereby ordered as follows:

Section 1. (a) The Secretary of State is designated to receive from the Nuclear Regulatory Commission a copy of each export license application, each proposal by the Nuclear Regulatory Commission to issue a general license for export, and each proposal by the Nuclear Regulatory Commission for exemption from the requirement for a license, which may involve a determination, pursuant to the Atomic Energy Act of 1954, as amended, that the issuance of the license or



exemption from the requirement for a license will, or will not, be inimical to or constitute an unreasonable risk to the common defense and security.

(b) The Secretary of State shall ensure that a copy of each such application, proposed general license, or proposed exemption is received by the Secretary of Defense, the Secretary of Commerce, the Administrator of the United States Energy Research and Development Administration, hereinafter referred to as the Administrator, the Director of the Arms Control and Disarmament Agency, hereinafter referred to as the Director, and the head of any other department or agency which may have an interest therein, in order to afford them the opportunity to express their views, if any, on whether the license should be issued or the exemption granted.

Sec. 2. Within thirty days of receipt of a copy of a license application, proposed general license, or proposed exemption, the Secretary of Defense, the Secretary of Commerce, the Administrator, the Director, and the head of any other agency or department to which such copy has been transmitted, shall each transmit to the Secretary of State his views, if any, on whether and under what conditions the license should be issued or the exemption granted.

Sec. 3. The Secretary of State shall, after the provisions of section 2 of this order have been complied with, transmit to the Secretary of Defense, the Secretary of Commerce, the Administrator, the Director, and the head of any other department or agency who has expressed his views thereon, a proposed position of the Executive branch as to whether the license should be issued or the exemption granted, including a proposed judgment as to whether issuance of the license or granting of the exemption will, or will not, be inimical to or constitute an unreasonable risk to the common defense and security.



Sec. 4. If the heads of departments and agencies specified in section 2 of this order are unable to agree upon a position for the Executive branch, the Secretary of State shall refer the matter to the Chairman of the Under Secretaries Committee of the National Security Council in order to obtain a decision. In the event the Under Secretaries Committee is unable to reach a decision, the Chairman of that Committee shall refer the matter to the President for his decision.

Sec. 5. The Secretary of State, after taking the actions required by this order, shall notify the Nuclear Regulatory Commission of the position of the Executive branch as to whether the license should be issued or the exemption granted, including the judgment of the Executive branch as to whether issuance of the license or granting of the exemption will, or will not, be inimical to or constitute an unreasonable risk to the common defense and security. The Executive branch position shall be supported by relevant information and documentation as appropriate to the proceedings before the Nuclear Regulatory Commission.

Gerald R. Ford

THE WHITE HOUSE,

February 2, 1976.



THE WHITE HOUSE

WASHINGTON

July 16, 1975

MEMORANDUM FOR: GLENN SCHLEEDE
THROUGH: PHIL BUCHEN *T.W.B.*
FROM: DUDLEY CHAPMAN *pc*
SUBJECT: Protection of Information in
Civilian Nuclear Installations

The issued raised by the letter from the Nuclear Regulatory Commission is whether new safeguards for commercial nuclear industry information should be handled under the existing classification procedures (E.O. 11652) or some new procedure established specifically for the commercial nuclear industry. The majority view of the Commission favors the use of existing classification procedures. Commissioner Gilinsky dissents, arguing it would be an overextension of the concept of national security to apply it to the risks of criminal activity associated with use of nuclear energy in the commercial sector. He also objects to categorization of essentially private data in private hands as "official information." Commissioner Gilinsky favors the study of an alternative procedure to meet what he categorizes as the "inescapable" need for some degree of control.

I am in complete agreement with Commissioner Gilinsky.

To the extent that there is a need to extend protection of commercial nuclear industry information to protect it from criminal activity within the United States, that purpose has no necessary connection with national security. There is a valid and urgent need for protection against domestic criminal elements of information that may be of little or no importance for national security reasons. Even information known to the Russians, for example, may need to be protected internally to keep it out of domestic criminal hands.

To stretch the concept of national security for this internal purpose, would be much less acceptable politically than to establish a new safeguard system addressed specifically to domestic protection. Such a system would not suffer from the negative connotations that are now rampant with respect to national security classification, and should find positive support for the purpose of preventing nuclear incidents at home.

Administratively, our study of this issue should reflect the domestic and civilian, as distinct from national security, purpose of the program. This suggests the desirability of giving the lead to the Attorney General and the Director of the FBI. Commissioner Gilinsky should, of course, be given a full opportunity to participate in any study and in the formulation of recommendations.

The matter deserves a very high priority.

THE WHITE HOUSE
WASHINGTON

Date 7/16

TO: Phil Buchra

FROM: DUDLEY CHAPMAN

I have revised this
memo to clear up the
question you had.

510

THE WHITE HOUSE
WASHINGTON

July 11, 1975

TO: DUDLEY CHAPMAN
FROM: *Glenn*
Glenn Schleede

What do you think of the
arguments of the dissident
Commissioner in the attached?

Attachment

5W

THE WHITE HOUSE
WASHINGTON

July 11, 1975

TO: DUDLEY CHAPMAN
FROM: *Glenn*
Glenn Schleede

What do you think of the
arguments of the dissident
Commissioner in the attached?

Attachment

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UNITED STATES

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D. C. 20555

DECLASSIFIED
E.O. 12958 Sec. 3.6

MA 98-31, #7, NRC-44, 6/18/01

MAY 20 1975

By dsl NARA, Date 6/25/01

The President
The White House

Dear Mr. President:

I wish to convey to you the views of the Nuclear Regulatory Commission on the study of the national security aspects of releasing safeguards information carried out under NSSM 216.

The Commission is in unanimous agreement with the general proposition that effective means to protect certain safeguards information are a necessary element in an overall system designed to guard against theft or diversion of nuclear materials or sabotage of civil nuclear installations. It would appear that achieving this objective -- whether by classification or by some combination of other means such as described in the study -- will require restrictions on access to such information within the industry and by the public. This means the application of an industrial security program to private activities not now subject to security restrictions and also entails the imposition of limitations greater than are now the case on public participation in safeguards-related aspects of the nuclear regulatory process. Thus, what is involved is a major step -- a step which departs from a consistent policy over the past twenty years of maximizing the public's ability to participate in all aspects of nuclear regulatory proceedings.

Given these considerations, it is our view that any action to impose added security controls on information of the subject type should be carefully tailored so as to apply the minimum restrictions needed to achieve safeguards objectives. The Commission would put forth, in this connection, the following operative principles:

- Restrictions should apply only to those activities where such a requirement is definitely established for safeguards purposes (principally, to those fuel cycle activities which involve the handling of significant quantities of strategic nuclear materials, with only limited application to nuclear power plants).



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Document Transmitted

Herewith C. 100000

NATIONAL SECURITY INFORMATION

MAY 20 1975

A new security program need not apply across-the-board to the entire nuclear power industry.

- As regards those activities which are covered, restrictions should be applied to the minimum information necessary to achieve safeguards objectives.
- Any such restrictions should be applied only when and to the extent that some other measure will not supply the protection deemed necessary for safeguards purposes.

With these principles in mind, the Commission has also carefully weighed the matter of whether the national security classification system is the regime best suited to give safeguards information the requisite degree of protection. The majority of the Commission believes that it is. In reaching this conclusion, two basic objectives were considered:

1. Assuring the trustworthiness of persons generating and having access to the subject information.
2. Protecting the information from unauthorized disclosure while in the possession of NRC.

Short of special legislation -- which would not appear to be necessary at this juncture -- national security classification is the only single way to accomplish both objectives; and, on balance, it is probably the soundest available way to achieve each of these objectives. The Commission majority, in considering its position, was particularly mindful that national security classification under the Executive Order provides a framework which assures the procedural rights of persons affected and is a system familiar to the Congress, the courts and the public. The Commission would urge, however, that the firmest possible underpinnings be provided for application of the national security classification system to this type of information (i.e., information which is privately generated within a regulatory framework). This may make it desirable to amend Executive Order 11652 so as to give such information explicit coverage thereunder.

In sum, based on the foregoing considerations and with the limitations indicated, the majority of the Commissioners are of the view that certain types of safeguards information should be covered by security restrictions and that the classification system established under Executive Order 11652 provides an appropriate basis for protecting such information.

The President

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MAY 20 1975

Commissioner Gilinsky disagrees with the majority view. He believes that the disadvantages of employing the national security classification system, pursuant to Executive Order 11652, are so great, both for substantive reasons and those related to public perceptions, that more careful examination of alternative approaches should be undertaken before a final decision is made. He believes the NSSM 216 study to be inadequate in two respects: with regard to the analysis of alternatives for protecting information, and with regard to the related discussion of the impact of national security classification upon public acceptability of civilian nuclear programs. The Commissioner also suggests that, in consideration of the potentially momentous and long-term impact of the decision in question on a critical civilian industry, further study of this issue should be done with Domestic Council participation. The background of these views is set forth at greater length in an enclosure to this letter.

Turning to the matter of types of safeguards information warranting protection, the full Commission believes that -- apart from the means adopted to protect the information -- at least the security plans of critical fuel cycle facilities should be given protection from unauthorized disclosure additional to that provided today. However, with regard to light water reactors using uranium fuel of low enrichment, the Commission believes that alternative means of protecting security plans from unauthorized disclosure, or compensating physical security measures, should be further analyzed in light of the nature and consequences of sabotage to such facilities before applying national security restrictions in this area. We also believe that the portions of the study dealing with the disclosure of reports on inventory discrepancy of special nuclear material do not provide an adequate basis for deciding under what conditions such information should be withheld. We therefore urge that, before you make any decision on withholding information of this kind from public disclosure, you direct that further analysis be undertaken. Specifically, we recommend analysis of the relationship between the release of inventory discrepancy data -- at any time -- and the credibility of hoaxes. We also recommend the development of alternative criteria for release of data (e.g., withholding of a small, but particularly sensitive, part of the data; aggregating data), taking into account the possibility that hoaxes may not become any less credible after a predetermined interval, such as the six months assumed in the study.

CONFIDENTIAL

MAY 20 1975

In order to permit the earliest possible decision on the unresolved issues, we would urge that the NSSM 216 Working Group be directed to complete quickly a detailed analysis of the means which might be employed to protect inventory discrepancy data, while at the same time keeping the public adequately informed of this aspect of the civil nuclear industry -- a public policy consideration which the Commission deems to be of prime importance. The Group should also carry out, simultaneously, an additional study of the risks associated with sabotage of light water reactors and of the need for additional information safeguards to reduce these risks.

Finally, in line with our earlier observation, we urge that the Justice Department carefully review the question of whether the present provisions of Executive Order 11652 are sufficiently comprehensive to cover information of this type.

The Nuclear Regulatory Commission staff will be pleased to participate in additional analyses such as those we have recommended, as well as in the necessary follow-on work to identify specific safeguards information that should be classified or otherwise protected in accordance with decisions made. Prior to making our determinations on what specific safeguards information will be classified or otherwise protected, we will afford the NSC staff an opportunity to comment on our proposed determinations.

On behalf of the entire Commission, I would like to express our appreciation for the opportunity provided the Commission staff to participate in this study and for the invitation to the Commission to furnish you with its views.

Respectfully yours,

Original signed by
William A. Anders

William A. Anders
Chairman

Enclosure:

Commissioner Gilinsky Comment

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COMMISSIONER GILINSKY'S COMMENT CONCERNING
NATIONAL SECURITY CLASSIFICATION OF CIVILIAN NUCLEAR INDUSTRY DATA

In my view, commercial nuclear industry safeguards information is not of the type contemplated in Executive Order 11652. The Order refers to "official information within the Federal Government" which "bears directly on the effectiveness of our national defense and the conduct of our foreign relations." It is, I believe, an overextension of the concept of national security to apply it to the risks of criminal activity associated with use of nuclear energy in the commercial sector. Furthermore, categorization of essentially private data in private hands as "official information" on the basis that the industry in question is federally licensed is, I believe, unprecedented. We should approach this uncharted area with great caution.

It is regrettable that any sort of information control is required here. Unfortunately, it seems inescapable that some degree of control is needed. But before we institute more extensive controls than now exist, we should have a better understanding than we have today of the threats against which we must provide protection.

We will not, in the end, deny ourselves means that are essential to our domestic peace. But if we are wise, we shall clearly circumscribe the domain of restrictive measures. A broad interpretation of national security with regard to nuclear power could lead step-by-step to extensive classification with consequent chilling effects on the public's need to know and debate.

It may turn out that no other course is open for protecting certain nuclear industry information, such as facility security plans, which of course need to be protected. But in view of the far-reaching implications of such a step — in particular, introduction of a military element into our civilian electric power industry — it should not be taken without a searching and comprehensive study of alternatives; this, in my opinion, has not yet been accomplished. For example, the NSSM 216 study dismissed too readily the possibility of supplementing NRC's present classification and clearance authority by means of suitable legislation.

There is still time to re-study the matter. Industry is disinclined to reveal any of the information in question. The NRC is under pressure to reveal only material inventory discrepancy data. In the interim, the latter data could adequately be handled in accordance with the guidelines proposed by the NSSM 216 study — in most cases this would mean release after a six-month period.

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DECLASSIFIED

AUTHORITY RAE NLF-PB-1-13-2-3 5/5/08
BY blh NLF DATE 6/29/09



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Finally, I believe that use of national security classification would adversely affect the acceptability of nuclear power in this country. Such use would unnecessarily feed the existing apprehensions and fears among part of the public over the dangers of organized, malevolent acts involving nuclear facilities, and it would tend to support charges that nuclear energy can be employed in a secure manner only by resorting to procedures more characteristic of a garrison state than those of the traditional free enterprise system in the United States.

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MR 98-31, #8; at dept. et. 6/1/01

By dal NARA, Date 6/22/01

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BEING REPEATED TO YOU. QUOTE

~~C O N F I D E N T I A L~~ BOMBAY 0566

EO 11652: GDS

TAGS: TECH ENRG IN

SUBJECT: TARAPUR NUCLEAR FUEL EXPORT LICENSE

REF: STATE 52153

1. AS J.C. SHAH, LIKE CHAIRMAN SETHNA, IS OUT OF TOWN FOR PERIOD OF THIS WEEK, THERE IS NO ONE AT EITHER THE IAEC OR AT THE INDIAN ATOMIC POWER AUTHORITY WHO CAN OFFICIALLY CONFIRM OR PROVIDE DATA TO SUPPORT CHAIRMAN SETHNA'S AND J.C. SHAH'S STATEMENTS THAT MARCH 15 IS THE ULTIMATE DATE FOR RECEIPT OF ENRICHED URANIUM TO AVOID ALOWDOWN AND PERHAPS EVENTUALLY SHUTDOWN OF TARAPUR POWER REACTORS. HOWEVER, CONGEN DID MANAGE TO TALK WITH A SENIOR TECHNICIAN WHO IS WELL VERSED ON THIS SUBJECT AND WHO PROVIDED CONSIDERABLE DETAIL TO THROW LIGHT ON EFFECT ON NON-RECEIPT OF ENRICHED URANIUM. IN VIEW OF SETHNA'S EXTREME SENSITIVITY ABOUT QUOTING ALMOST ANYONE OTHER THAN HIMSELF ON MATTERS OF GREAT IMPORTANCE TO INDIA'S NUCLEAR PROGRAMS, WE WILL NOT BE ABLE TO PUBLICLY CITE IAEC OFFICIAL AS SOURCE OF THIS INFORMATION ALTHOUGH CONGEN IS QUITE CONFIDENT OF ITS ACCURACY AND THAT IT WILL ULTIMATELY BE BASIS OF WHATEVER PUBLIC STATEMENT SETHNA PROVIDES ON THIS POINT.

2. IAEC SOURCE SAYS THAT PROBLEM HAS TO BE VIEWED IN TERMS OF NFC PRODUCTION CAPACITY AND PROCESS. HE OUTLINED PROBLEM AS FOLLOWS: HEXAFLORIDE (UF-6), THE ENRICHED URANIUM PROVIDED BY THE US, IS CONVERTED INTO PELLETS OF URANIUM OXIDE, WHICH, IN TURN, ARE INSERTED INTO THE FUEL RODS WHICH EVENTUALLY ARE GROUPED TOGETHER INTO BUNDLES OF 36 EACH FOR LOADING INTO REACTORS. EACH BUNDLE IS MADE UP OF RODS CONTAINING THREE DIFFERENT ENRICHMENTS, THE GE SYSTEM PURCHASED BY THE IAEC. THE BREAKDOWN OF VARIOUS ENRICHMENTS IN EACH BUNDLE IS APPROXIMATELY 22, 11 AND 3. AS THE URANIUM

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HEXAFLORIDE IS PURCHASED IN CYLINDERS CONTAINING 1.5 TONS EACH, THE VARIOUS ENRICHMENTS ARE MADE IN BATCHES WHICH ALLOWS THE NFC TO USE UP COMPLETE CYLINDERS SO AT ANY ONE TIME THERE ARE A FEW SPARE RODS OF VARIOUS ENRICHMENTS IN INVENTORY. ANOTHER COMPLICATION IN THE PRODUCTION PROCESS IS THAT THE FACILITY HAS TO BE COMPLETELY CLEANED UP AFTER EACH PARTICULAR SET OF ENRICHMENT RODS ARE RUN THROUGH.

3. OUR SOURCE ESTIMATES THAT THE COMPLETE LEAD TIME FROM APPROVAL OF THE LICENSE APPLICATION TO COMPLETION OF AN INTEGRATED BUNDLE IS 9 TO 11 MONTHS, INCLUDING AN AVERAGE OCEAN SHIPMENT TIME OF 60 DAYS. AFTER ARRIVAL AT HYDERABAD, 5-1/2 TO 6 MONTHS ARE REQUIRED FOR THE COMPLETION OF THE INTEGRATED BUNDLES OF 36 RODS. THE ANNUAL NEEDS OF THE TWIN TARAPUR REACTORS ARE FOR 130 RODS. THE CAPACITY OF THE NFC FOR PRODUCTION OF TARAPUR TYPE FUEL IS ESTIMATED AT 10 PER CENT GREATER THAN THE NEEDS OF TARAPUR AND MIGHT UNDER ALL-OUT OPERATIONAL PUSH REACH 150 RODS PER YEAR.

4. ON MARCH 15, OR THEREABOUTS - BUT CERTAINLY NOT LATER THAN APRIL 15 - THE NFC PRODUCTION SCHEDULE FOR TARAPUR WILL BE SLOWED DOWN AS THE FACILITY WILL NO LONGER HAVE SUPPLIES OF THE THREE GRADES OF ENRICHED URANIUM REQUIRED FOR TARAPUR. SOMETIME IN APRIL OR MAY THE OUTPUT AT TARAPUR WOULD HAVE TO BE REDUCED AND WITHIN 5 TO 6 MONTHS, BARRING A NEW SUPPLY OR ALTERNATIVE SOURCES WHICH I AM TOLD NO ONE AT THE IAEC CAN FORESEE, TARAPUR WOULD SHUT DOWN COMPLETELY, ASSUMING THAT IT OPERATES UP TO THAT POINT TO THE MAXIMUM POSSIBLE WITH THE FUEL AVAILABLE.

5. MY SOURCE STRESSED THAT THESE DATA ARE ESSENTIALLY CORRECT, BUT THERE ARE SOME FLEXIBILITIES IN THE DEADLINES, BUT THEY ARE NOT GREAT. HE EMPHASIZED THAT UNLESS FUEL IS FORTHCOMING FOR TARAPUR WITHIN THE NEXT 2 OR 3 WEEKS, SOME ADDITIONAL ELECTRICITY CUTBACKS IN WESTERN INDIA WILL ENSUE AND ANY PROTRACTED DELAYS, LIKE 2 OR 3 MONTHS, WILL ALMOST CERTAINLY RESULT IN MAJOR NEW RESTRICTIONS ON ELECTRICITY USAGE. WE ARE REPORTING SEPARATELY A 3DAY ELECTRICITY HOLIDAY THAT WPGL BE NECESSARY BECAUSE OF THE SHUTDOWN OF MAHARASHTRA'S MAJOR HYDRO FACILITY WHICH CURRENTLY HAS INSTALLED CAPACITY OF ABOUT 550 MW IN ORDER TO PUT IN TWO ADDITIONAL GENERATORS OF 60 AND 80 MW. THIS ILLUSTRATES THE PROBLEM WESTERN INDIA IS NOW ENCOUNTERING IN MEETING ITS POWER REQUIREMENTS. THEY HAVE INSUFFICIENT CAPACITY TO MEET ESSENTIAL INDUSTRIAL AND COMMERCIAL DEMANDS, SO ANY REDUCTION CUTS IMMEDIATELY AND SHARPLY INTO EMPLOYMENT AND INCOME.

COURTNEY
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

March 5, 1976

Mr. George Springsteen
Executive Secretary
Department of State
Washington, D.C.

Attention: Myron Kratzer, Acting Assistant
Secretary of State (OES)

Dear Mr. Springsteen:

On March 2, 1976, the Nuclear Regulatory Commission was served with petitions seeking leave to intervene in two license applications for the export of special nuclear material to India (License Nos. XSNM-805 and XSNM-845). Copies of these petitions have been furnished previously to your Department through Acting Assistant Secretary Myron Kratzer. The petitioners (Sierra Club, Natural Resources Defense Council, and Union of Concerned Scientists) also request a hearing in connection with the Commission's consideration of the applications.

These petitions constitute the first requests for intervention and hearing on an export licensing application for special nuclear materials received by either the NRC or its predecessor the Atomic Energy Commission. Before ruling on the several issues presented, the Commission wishes to obtain further information and views of concerned government agencies and others to assist it in making its decisions. Accordingly, and consistent with the procedures outlined in Executive Order No. 11902 for furnishing Executive Branch views on nuclear export license applications to the NRC, we invite you to submit views and comments on the issues raised in the petitions.

Also, the Commission believes it would be appropriate for you to inform the Government of India of the NRC's intended course of action for determining the issues raised by the petitions, and its willingness to entertain any views that government may wish to express, either for submission through your Department or independently.



In this regard, the Commission has asked that written statements be filed with it no later than 5:00 p.m., Friday, March 12, 1976, and has scheduled a preliminary oral hearing on issues relevant to the petitions at 10:00 a.m., on Wednesday, March 17, 1976. The hearing will be held in the Commission's Conference Room (Room 1115) at 1717 H Street, N.W., Washington, D.C.

The oral hearing will be addressed to the need or desirability of conducting a hearing on the applications for export licenses, the matters proper to be considered in such a hearing, the procedures to be observed, the standing of petitioners to participate in those proceedings, and the timeliness of the petitions, and not to the issuance or not of the licenses themselves. If the Commission decides to conduct hearings on one or both applications, those hearings will be held at a later date. However, a full written exposition of facts and argument bearing on each of the contentions made in the motions for leave to intervene is desired.

In particular, the Commission invites each of the participants to address the following questions in written and oral presentations:

- (1) On what date were notices of the license applications in XSNM-805 and -845 placed in the Public Document Room or actually made known to the petitioners or their attorneys?
- (2) Assuming a petition to intervene in the circumstances of this case to be otherwise proper, what standard should govern the timeliness of a petition?
- (3) Do you consider that the present petitions are timely?
- (4) Are there special factors, such as the possibility of harm to foreign relations interests, that would warrant treating one petition differently from the other with respect to its timeliness? If the impact of any such factors depend significantly upon the promptness with which the export licenses which are the subject of the two petitions are issued, what is the latest time each license might be issued to avoid this impact, taking



George Springsteen

- 3 -

March 5, 1976

into account such feasible alternative methods of transportation and other options which would extend this time period to the fullest extent possible?

- (5) In your view, do either of the present petitions state circumstances requiring or making it advisable in the public interest to hold public hearings?
- (6) If a public hearing were held, what rules of procedure should govern?
- (7) What procedures should apply to the receipt by the Commission of sensitive or classified information bearing on foreign relations issues and the Commission's common defense and security responsibilities?
- (8) If a hearing is granted by the Commission on the Tarapur export license applications, are there any issues raised by petitioners which should be excluded from consideration as falling outside the NRC's jurisdiction?

If you have any questions concerning the mechanics of the scheduled hearing or submission of written comments, please contact the Commission's General Counsel, Mr. Peter Strauss, at 634-1398 or 492-7375.

Sincerely,

Samuel J. Chilk
Secretary

cc: All parties
The Assistant to the President
for National Security Affairs,
The White House



Before the
UNITED STATES
NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555

In the Matter of the Application)
of Edlow International Company,)
as Agent for the Government of) Docket No. XSNM-845
India, to Export Special Nuclear)
Material)

PETITION OF THE NATURAL RESOURCES DEFENSE COUNCIL, INC.,
THE SIERRA CLUB AND THE UNION OF CONCERNED SCIENTISTS
FOR LEAVE TO INTERVENE

Pursuant to Section 189(a) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2239(a), and applicable rules and regulations of the United States Nuclear Regulatory Commission (the "Commission"), including 10 C.F.R. §2.714, the Natural Resources Defense Council, Inc. ("NRDC"), the Sierra Club and the Union of Concerned Scientists ("UCS") hereby respectfully petition the Commission for leave to intervene as parties in opposition to the proposed application dated October 21, 1975, of Edlow International Company, as agent for the Government of India, for a license to export special nuclear material (463.64 kgs. U235 in 18371.4 kgs U enriched to a maximum of 2.71 percent) for use in the Tarapur Atomic Power Station ("Tarapur"), India. They further request a hearing in connection with the Commission's consideration of such application.

Discussion

1. Interests of Petitioners

Petitioners NRDC and the Sierra Club are both national, non-profit membership organizations which seek to intervene on their



own behalf and on behalf of their members in this proceeding. NRDC and the Sierra Club are environmental organizations committed to the protection of the human environment and public health and safety. They have a combined membership in excess of 175,000 persons in the United States and abroad, which includes persons who are citizens of or reside in India and Pakistan.

Petitioner UCS is a non-profit, tax exempt organization which seeks to intervene on its own behalf in this proceeding. UCS is a coalition of scientists, engineers, and other professionals concerned about the impact of technology on society. It conducts research on a wide variety of public policy and scientific questions, and seeks to promote and ensure the rational and safe use of modern technology. UCS has taken a major interest in the U.S. nuclear power program in general and the export of nuclear equipment, fuels and technology in particular.

With respect to this proceeding, all three petitioners contend that they have important institutional interests which will be directly affected by its outcome. They are actively engaged in disseminating information to the public concerning environmental and public policy issues in general and nuclear power in particular. They further are seeking to promote the wise use of technology and natural resources and the development of sound energy policy. Their interest in and ability to continue to carry out these functions is significantly and adversely impaired by the absence of a full, open and independent review by the Commission



of the common defense and security, health and safety, and environmental issues raised by the pending application.

Petitioners NRDC and the Sierra Club contend, in addition, that the interests of their members will be directly affected by the outcome of this proceeding. Their members who travel to or reside in India may be exposed to the risks associated with the operation of Tarapur. Moreover, because of the potential worldwide harm associated with the risk of diversion or theft of exported special nuclear material and the use thereof for destructive purposes, as well as the risk of major radioactivity releases at Tarapur resulting from accident, sabotage or armed attack, all their members' interests in the maintenance of a safe, healthful and productive environment are directly threatened by the granting of the pending application.

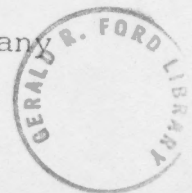
Petitioners have no other means to protect their interests in this proceeding, and those interests are not now represented by existing parties. Their petition is not interposed for delay or to broaden the proper scope of the proceeding. Further, Petitioners believe their participation will assist in developing a sound record.

The specific interests of NRDC, the Sierra Club and UCS and how those interests will be affected are more fully set forth in the affidavits of J. Gustave Speth, Charles Clusen, and Daniel F. Ford attached hereto as Appendices 1, 2, and 3, respectively.



II. Contentions of Petitioners

The risks inherent in the export of special nuclear material are well-known. As a necessary consequence of its utilization in a power reactor such as Tarapur, plutonium and highly radioactive waste products are generated. Plutonium may be either openly or clandestinely diverted by nation-states for fabrication into explosive devices which threaten international stability and world order, as well as the common defense and security of the United States. Moreover, it may be stolen by terrorist organizations for the purpose of producing a bomb or creating other weapons of terrible destructive capability, i.e., plutonium aerosols which could be released anywhere in the world. Additionally, a power reactor, such as Tarapur, in which the special nuclear material is utilized may be the object of sabotage or armed attack, aimed at causing the release of enormous quantities of radioactivity or of literally holding a city or country hostage to political demands. Use of special nuclear material in a power reactor, such as Tarapur, further carries with it the possibility that accidental mechanisms will cause its release into the environment, with untold damage to the health and safety of exposed populations. Finally, in the absence of long term waste management solutions, high level radioactive wastes, which will pose hazards for ensuing generations, may be introduced into the environment, causing death, disease and genetic mutation to living organisms. Should any



of these eventualities occur, the extent of damage and other adverse consequences may not be bounded by national frontiers and certainly may not be limited to the Indian subcontinent.

The general risks inherent in the export of special nuclear material are magnified in the specific case of fuel shipments to India. Risks of diversion, theft and sabotage may be particularly acute. India is not a party to the Treaty on the Non-Proliferation of Nuclear Weapons (the "NPT"). 1/ Thus, it has not committed itself internationally to forswear the development of nuclear weapons, and it has proceeded to develop and detonate a nuclear explosive device fabricated from unsafeguarded nuclear fuel irradiated in a reactor supplied for peaceful purposes only. Moreover, because it has not adhered to the NPT, and because its bilateral Agreement for Cooperation Concerning Civil Uses of Atomic Energy with the United States 2/ contains no provision to the contrary, it has maintained and continues to maintain nuclear facilities which are either only partially safeguarded or which are totally free from international and United States safeguards against their use for the production of nuclear weaponry. In such circumstances, the

1/ Done at Washington, London and Moscow, July 1, 1968; entered into force for the United States, March 5, 1970, 21 U.S.T. 483, T.I.A.S. No. 6839.

2/ Done at Washington, August 8, 1963; entered into force October 5, 1963, T.I.A.S. No. 5446.



continued shipment of special nuclear material to Tarapur fundamentally undercuts the long-standing non-proliferation policy of the United States as embodied in the NPT, discriminating against those countries which have undertaken NPT obligations and effectively sanctioning India's refusal to accept those obligations. It can only have the effect of encouraging other countries to ignore the prohibition against nuclear weapons development, and, within the region, it may continue to increase the insecurity of other nations, leading to even further proliferation.

Health and safety risks attendant upon the shipment of special nuclear material to Tarapur may also be significant. Testimony presented on January 30, 1976, at hearings held by the United States Senate Committee on Government Operations indicates that operations at Tarapur have resulted in the leakage of substantial radioactivity, and that high radioactivity levels have forced turnover in plant personnel, leaving less well trained replacements in charge of many operations. The continued shipment of special nuclear material to Tarapur may aggravate these problems and increase the threat of a major nuclear accident at Tarapur, with repercussions not just for the health and safety of affected populations, but for the United States' relations with India and its other trading partners.

Specifically, Petitioners contend that the Applicant has not demonstrated, and the Commission cannot properly determine, that the granting of the pending application will not be inimical to or constitute an unreasonable risk to "the common defense and



security," within the meaning of Sections 3(d) and 53(b) of the Atomic Energy Act of 1954, 42 U.S.C. §§2013(d), 2073(b), and Executive Order 11902, 41 Fed. Reg. 4877 (February 3, 1976), or that such action would not be "inimical to the interests of the United States," within the meaning of the Commission's regulations, 10 C.F.R. §70.31(e). Petitioners further contend that the granting of the pending application would be in violation of the requirements of Sections 3(d) and 53(b) of the Atomic Energy Act of 1954, 42 U.S.C. §§2013(d) and 2073(b), which require that Commission actions not be inconsistent with the "health and safety of the public." Petitioners additionally contend that the pending application cannot be granted until it has been established in accordance with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. §§4321 et seq. ("NEPA") and the Commission's implementing regulations, 10 C.F.R. Part 51, that such action is appropriate. Finally, Petitioners contend that granting the pending application would be inconsistent with and in violation of (a) Article I of the NPT, which prohibits the United States from transferring "nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly" to any nation and from "assist[ing]... any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices," and (b) Article III of the NPT which prohibits the transfer to special nuclear material to any non-weapons State in the absence of safeguards on all nuclear activities within its territory, or under its control or jurisdiction.



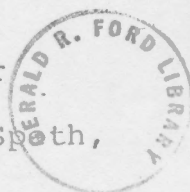
In support of their contentions, Petitioners maintain that, for both procedural and substantive reasons, the Commission is unable to make the determinations required by law as a pre-condition for the issuance of an export license for special nuclear material to be shipped to Tarapur. Procedurally, with regard to the pending application, the Commission has issued no public notice of its receipt and consideration, is applying no criteria to judge facts and information relevant to its licensing decisions, has not consulted directly with other federal agencies having relevant expertise, and has neither obtained nor analyzed all relevant facts and information, so as to enable it to exercise its independent licensing judgment with regard to safeguards and health and safety risks associated with the shipment of special nuclear materials to Tarapur. Moreover, it has not prepared, circulated for comment and considered in its decisionmaking process, in accordance with Section 102(2)(C) of NEPA, 42 U.S.C. §4332(2)(C), a detailed environmental impact statement, covering the pending application.

Substantively, given India's failure to ratify the NPT, its position with regard to non-proliferation, and the significant possibility that international conflict with such neighboring countries as Pakistan and China might disrupt safeguards agreements and severely threaten the security of nuclear materials and facilities, there is inadequate assurance that issuance of the license will meet the standards of the Atomic Energy Act and the Commission's implementing regulations with



regard to protection of the common defense and security and the interests of the United States. Further, such standards cannot be met in this proceeding because the United States has failed to require India, inter alia, (a) absolutely to refrain from the development of further nuclear explosive devices; (b) to permit safeguards on all of its nuclear facilities; (c) to refrain from developing national enrichment and reprocessing facilities; (d) to agree, prior to the shipment of fuel to Tarapur, to safeguards and physical security requirements for any future reprocessing of such fuel, should such reprocessing be permitted; (e) to establish physical security requirements applicable to Tarapur; (f) to permit additional bilateral safeguards on Tarapur and related facilities; and (g) to permit U.S. control over the disposition of plutonium produced at Tarapur. Finally, the Commission cannot lawfully determine that issuance of the license will meet the standards of the Atomic Energy Act and the Commission's implementing regulations with respect to protection of the health and safety of the public and the interests of the United States because the United States has failed, inter alia, to require India to meet the above-mentioned conditions, and to establish effective programs to ensure that adequate health and safety standards are applied and enforced in the operation of Tarapur and that repair and maintenance capability is sufficient to ensure safe reactor operation.

The detailed contentions of Petitioners and the bases for them are more fully set forth in the affidavit of J. Gustave Spoth, attached hereto as Appendix 4.



III. Request for Financial Assistance

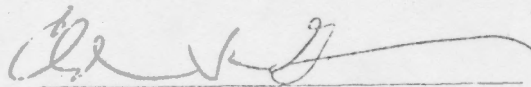
Pursuant to the provisions of law and regulations now in existence or to be subsequently adopted, Petitioners request that the Commission provide them with financial assistance to enable them to represent fully their views and the views of their members. At an appropriate time, Petitioners will submit a detailed request for financial assistance.

Conclusion

Based upon this Petition and the supporting affidavits, Petitioners request that leave to intervene be granted and that a hearing be ordered in this proceeding.

Dated: Washington, D.C.
March 1, 1976

Respectfully submitted,



Eldon V.C. Greenberg
Richard A. Frank
Center for Law and Social Policy
1751 N Street, N.W.
Washington, D.C. 20036
(202) 872-0670

Counsel for Petitioners

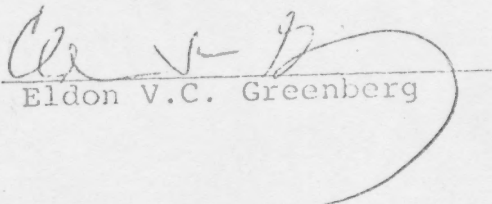
J. Gustave Speth, Esquire
S. Jacob Scherr, Esquire
Natural Resources Defense Council, Inc.
917 15th Street, N.W.
Washington, D.C. 20005
(202) 737-5000

Of Counsel

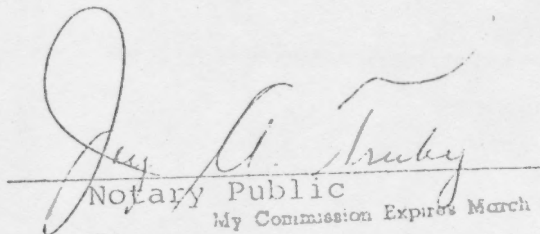


Affirmation

I affirm that I am the duly authorized counsel for
Petitioners in this proceeding and that the statements con-
tained in this Petition are true and correct to the best of
my personal knowledge.


Eldon V.C. Greenberg

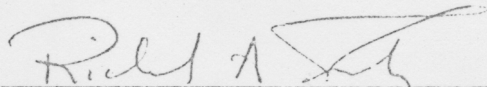
Subscribed and sworn to before
me this *1st* day of *March*
1976.


Notary Public
My Commission Expires March 31, 1981



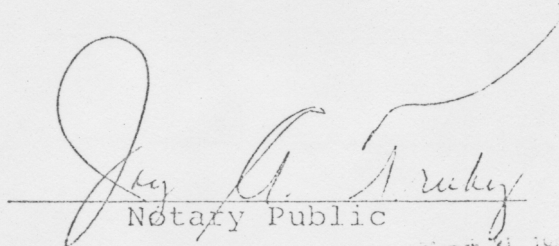
Affirmation

I affirm that I am the duly authorized counsel for
Petitioners in this proceeding and that the statements con-
tained in this Petition are true and correct to the best of
my personal knowledge.



Richard A. Frank

Subscribed and sworn to before
me this *1st* day of *March*
1976.


Notary Public

My Commission Expires March 31, 1980



Before the
UNITED STATES
NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555

In the Matter of the Application)
of Edlow International Company,) Docket No. XSNM-845
as Agent for the Government of)
India, to Export Special Nuclear)
Material)

AFFIDAVIT OF J. GUSTAVE SPETH
IN SUPPORT OF THE PETITION OF THE
NATURAL RESOURCES DEFENSE COUNCIL, INC.
FOR LEAVE TO INTERVENE

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA) ss:

J. GUSTAVE SPETH, being first duly sworn, deposes and
says:

1. I am an attorney on the staff of Petitioner, Natural
Resources Defense Council, Inc. ("NRDC"), with an office at 917
15th Street, N.W., Washington, D.C. 20005. I am a member of the
Bar of the Court of Appeals of the District of Columbia. I am
familiar with the facts set forth in this affidavit, which I
make in support of NRDC's petition for leave to intervene in the
above-captioned proceeding.

2. NRDC is a non-profit, public benefit membership corpora-
tion organized and existing under the laws of the State of New
York. NRDC is a charitable organization exempt from taxation
under Section 501(c)(3) of the Internal Revenue Code. NRDC's



principal office and place of business is located at 15 West 44th Street, New York, New York. It maintains other offices at 917 Fifteenth Street, N.W., Washington, D.C., and at 664 Hamilton Avenue, Palo Alto, California. NRDC has a membership in the United States and abroad of more than 22,000 persons, including scientists, lawyers, educators, and other citizens dedicated to the defense and preservation of the human environment and the wise use of natural resources. Other persons support NRDC's objectives by financial contributions and personal efforts.

3. NRDC's members include citizens of India and Pakistan. In addition, its members have travelled in the past and can be expected to travel on the Indian subcontinent.

4. The objectives of NRDC include:

- (a) to maintain and enhance environmental quality;
- (b) to monitor federal departments and regulatory agencies to ensure that environmental values are fully considered in decisionmaking, and, in particular, to ensure that federal statutes designed to protect and enhance the environment are fully and properly implemented;
- (c) to improve federal agency decisionmaking which affects the environment by commenting, furnishing information, and participating in administrative proceedings;



(d) to select and undertake environmental lawsuits and administrative actions which have a potential for establishing widely applicable precedent for saving or reclaiming some important aspect of the environment, and, in particular, which require federal agencies to meet legal obligations established in federal statutes designed to protect and enhance the environment; and

(e) to provide a central, national focus for scientists, lawyers, and educators, and concerned citizens in an effort to make our courts and administrative agencies effective instruments of environmental protection.

5. NRDC has had a special interest in preventing harm to the international environment. It has established an International Project with two main objectives:

(a) to monitor and influence decisions of United States government agencies and international agencies which affect the quality of the international environment; and

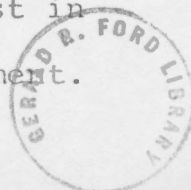
(b) to make NRDC's environmental expertise systematically available to foreign environmental groups so as to enhance their effectiveness.

6. In pursuit of its objectives, NRDC has been involved in numerous proceedings involving the Nuclear Regulatory Commission (the "Commission") and its predecessor, the Atomic Energy Commission, including domestic reactor licensing, rule-making, and administrative reviews of proposed nuclear waste



management, liquid metal fast breeder reactor and plutonium recycle programs. In particular, as regards the export of nuclear equipment, fuel and technology, NRDC was a plaintiff in the lawsuit against the Atomic Energy Commission, the Department of State and the Export-Import Bank of the United States seeking preparation of an environmental impact statement on U.S. nuclear power export activities (Sierra Club, et al. v. Energy Research and Development Administration, et al., D.D.C. Civil Action No. 1867-73), and it has played an active and vigorous role in the administrative review of the impact statement resulting from such suit, commenting extensively at each opportunity for public input in the review process. NRDC has also commented on the international aspects of domestic waste management and enrichment proposals in the context of NEPA reviews of such proposals, and it has testified before Congressional committees reviewing controls over nuclear exports.

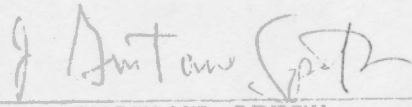
7. NRDC, in addition to its institutional interests, has a further interest in this proceeding to protect the health and safety of its members and others similarly situated from the risks occasioned by the continued shipment of nuclear fuel to Tarapur Atomic Power Station ("Tarapur"). As noted in paragraph 3 above, members of NRDC are citizens of India and Pakistan and have travelled and can be expected to travel to the Indian subcontinent. Thus, they have been and may be exposed to the hazards associated with the operation of Tarapur. Additionally, each member and supporter of NRDC has a personal interest in maintenance of a safe, healthful and productive environment.



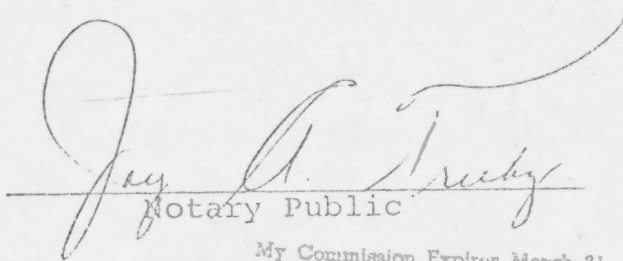
Continued shipments of nuclear fuel to Tarapur create a risk of diversion or theft of special nuclear material and the use of such material for destructive purposes. Further, the use of such fuel in Tarapur carries with it the threat of major radioactivity releases resulting from accident or sabotage. The danger of hostilities with Pakistan, China or other nations, moreover, creates that possibility that Tarapur may be the object of armed attack or that India will utilize nuclear weapons, employing material derived from Tarapur, to wage such a conflict, with widespread destructive consequences. The extent of damage which could occur, should these risks or threats be realized, cannot be bounded by national frontiers and may certainly not be limited to the Indian subcontinent. Indeed, the use of nuclear weapons on the Indian subcontinent could have far reaching consequences for international stability and world order, as well as the common defense and security of the United States, while terrorist action using stolen plutonium in explosive or dispersal devices could be directed against transportation and other public facilities virtually anywhere in the world, including the United States. The interests of NRDC, and the interests of its members and supporters in the environment in which they live and work, are thus directly threatened and would be



adversely affected and injured by the granting of the pending application.


J. GUSTAVE SPETH

Subscribed and sworn to before me
this 1st day of March , 1976


Notary Public

My Commission Expires March 31 1980



Before the
UNITED STATES
NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555

In the Matter of the Application)
of Edlow International Company,)
as Agent for the Government of)
India, to Export Special Nuclear)
Material)

Docket No. XSNM-845

AFFIDAVIT OF CHARLES CLUSEN
IN SUPPORT OF THE PETITION
OF THE SIERRA CLUB
FOR LEAVE TO INTERVENE

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA) ss:

CHARLES CLUSEN, being first duly sworn, deposes and says:

1. I am the Washington Representative of the Sierra Club, with offices at 324 C Street, S.E., Washington, D.C. 20003. As such, I am fully familiar with the organization, membership, purposes and policies of the Sierra Club. I make this affidavit in support of the Sierra Club's petition for leave to intervene in the above-captioned proceeding.

2. The Sierra Club is a non-profit organization, incorporated in 1890 under the laws of the State of California, with its headquarters and principal place of business at 530 Bush Street, San Francisco, California 94104, an office in Washington, D.C. and an office of international environmental affairs in New York, New York. The Sierra Club is a conservation organization which has sought to enlist public cooperation in the pro-



tection of the natural environment and its resources, to provide the public with information relevant to environmental issues, and to stimulate informed public discussion with respect to such issues. The stated corporate purposes of the Sierra Club are:

"To protect and conserve the natural resources of the Sierra Nevada, the United States and the World; to undertake and publish scientific and educational studies concerning all aspects of man's environment and the natural eco-systems of the World; and to educate the people of the United States and the World to the need to preserve and restore the quality of that environment and the integrity of those ecosystems."

3. The Sierra Club has a membership of approximately 156,000 persons throughout the world. Such membership comprises persons residing in the United States and 100 foreign countries, including India.

4. The Sierra Club has organized and intends to continue to organize tours for its members to places of environmental, historical and cultural significance on the Indian subcontinent. Since 1970, the Sierra Club has organized approximately 20 such trips and more than 250 persons have participated in them.

5. As an integral part of its effort to protect the natural and human environment, the Sierra Club has devoted special attention to the consequences of producing electrical energy in general and to the problems of nuclear power, in particular.

The Sierra Club has sponsored conferences and meetings for the purposes of discussing energy policy, and has published books, pamphlets and articles thereon, including, e.g., the following:



Books

"Towards an Energy Policy" ed., Keith Roberts (1973)

"Energy", John Holdren and Philip Herrera (1971)

Pamphlets

"Energy and the Sierra Club" (June 1975)

"The Sierra Club and Nuclear Power" (July 1975)

Articles

"Stop, Wait, Look and Listen," Roger Olmsted and
Steve Whitney, Sierra Club Bulletin (April 1975)

6. The Sierra Club has further manifested interest and concern in international environmental problems. Its Office of International Affairs publishes an International Report which is distributed to environmentalists around the world, and has participated in international conferences, and has joined in panels and seminars on matters of international concern. The Sierra Club has two Chapters outside the United States, and its International Committee has appointed six country representatives outside the United States in order to "provide as communications and representation liaison for the Club in a given country."

7. In the pursuit of its objectives, the Sierra Club has participated in various court and administrative proceedings involving the licensing and construction of nuclear power plants. It was, for example, a party to the landmark decision of Calvert Cliffs' Coordinating Committee, Inc. v. Atomic Energy Commission,



449 F.2d 1109 (D.C. Cir. 1971), and most recently has actively participated as an intervenor in licensing proceedings before the Nuclear Regulatory Commission involving the Clinch River Breeder Reactor (Docket No. 50-537).

8. In particular, as regards the export of nuclear equipments, fuel and technology, the Sierra Club was a plaintiff in the lawsuit against the Atomic Energy Commission, the Department of State and the Export-Import Bank of the United States seeking preparation of an environmental impact statement on U.S. nuclear power export activities (Sierra Club, et al. v. Energy Research and Development Administration, et al., D.D.C. Civil Action No. 1867-73), and it has played an active and vigorous role in the administrative review of the impact statement resulting from such suit, commenting extensively at each opportunity for public input in the review process. The Sierra Club has also commented on the international aspects of domestic waste management and enrichment proposals in the context of NEPA reviews of such proposals, and it has testified before Congressional committees reviewing controls over nuclear exports.

9. The Sierra Club believes that nuclear exports should occur only under such conditions as are sufficient to protect the environment and the health and safety of the public, and eliminate or meaningfully reduce potential risks of diversion, theft and sabotage. Insofar as the pending nuclear fuel shipment to



Tarapur is concerned, such conditions do not now exist. Thus, a decision at this time to grant the pending application will adversely affect its interests, and the interests of its members, in the adoption of sound nuclear power export policy.

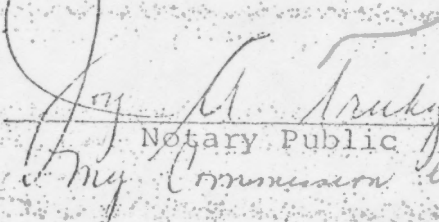
10. The Sierra Club, in addition to its institutional interests, has a further interest in this proceeding to protect the health and safety of its members and other similarly situated from the risks occasioned by the continued shipment of nuclear fuel to Tarapur Atomic Power Station ("Tarapur"). As noted in paragraph 4 above, members of the Sierra Club reside in and may travel to India on Club-organized tours. Thus, they may be exposed to hazards associated with the operation of Tarapur. Additionally, each member of the Sierra Club has a personal interest in maintenance of a safe, healthful and productive environment. Continued shipments of nuclear fuel to Tarapur create a risk of diversion or theft of special nuclear material and the use of such material for destructive purposes. Further, the use of such fuel in Tarapur carries with it the threat of major radioactivity releases resulting from accident or sabotage. The danger of hostilities with Pakistan, China or other nations, moreover, creates that possibility that Tarapur may be the object of armed attack or that India will utilize nuclear weapons, employing material derived from Tarapur, to wage such a conflict, with widespread destructive consequences. The extent of damage which



could occur, should these risks or threats be realized, cannot be bounded by national frontiers and may certainly not be limited to the Indian subcontinent. Indeed, the use of nuclear weapons on the Indian subcontinent could have far reaching consequences for international stability and world order, as well as for the common defense and security of the United States, while terrorist action using stolen plutonium in explosive or dispersal devices could be directed against transportation and other public facilities virtually anywhere in the world, including the United States. The interests of the Sierra Club's members in the environment in which they live and work are thus directly threatened and would be adversely affected and injured by the granting of the pending application.


CHARLES CLUSEN

Subscribed and sworn to before me
this 1st day of March, 1976


Notary Public

My Commission Expires 3/31/80



Before the
UNITED STATES
NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555

In the Matter of the Application)
of Edlow International Company,) Docket No. XSNM-845
as Agent for the Government of)
India, to Export Special Nuclear)
Material)

AFFIDAVIT OF DANIEL F. FORD
IN SUPPORT OF THE PETITION
OF THE UNION OF CONCERNED SCIENTISTS
FOR LEAVE TO INTERVENE

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA) ss:

DANIEL F. FORD, being first duly sworn, deposes and says:

1. I am Executive Director of the Union of Concerned Scientists ("UCS"), with offices at 1208 Massachusetts Avenue, Cambridge, Massachusetts 02138. As such, I am fully familiar with the organization, purposes and policies of UCS. I make this affidavit in support of USC's petition for leave to intervene in the above-captioned proceeding.

2. UCS is a non-profit corporation, organized and existing under the laws of the District of Columbia, with its headquarters and principal place of business at 1208 Massachusetts Avenue, Cambridge, Massachusetts 02138 and an office in Washington, D.C. It is a charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

3. UCS was formed as an informal faculty group at the Massachusetts Institute of Technology in 1969. It is a coalition



of scientists, engineers and other professionals concerned about the impact of advanced technology on society. Based upon technical research performed by faculty members for a number of colleges and universities who devote their time in the public interest, it seeks to disseminate its independent studies to decisionmakers, the national and local media, other scientists and the general public. Its research has been conducted on a wide range of questions relating to the strategic arms race, air and water pollution, pesticide use, liquified natural gas storage and transport, nuclear power plant safety, radioactive waste disposal options, and energy policy alternatives.

4. UCS maintains a Technical Advisory Committee, consisting of a number of distinguished academicians, to advise it on technical and public policy questions. Current members of the Technical Advisory Committee are:

Ann P. Carter,
Professor of Economics, Brandeis University

Oliver Cope,
Professor of Surgery Emeritus,
Harvard Medical School
Senior Consultant
Massachusetts General Hospital

Stanley Dawson,
Assistant Professor of Environmental Health
Engineering, Graduate School of Public Health
Harvard University

John D. Edsall,
Professor of Biology, Harvard University



James A. Fay,
Professor of Mechanical Engineering, M.I.T.,
Chairman, Massachusetts Port Authority

Bernard T. Feld,
Professor of Physics, M.I.T.

Lee Grodzins,
Professor of Physics, M.I.T.

Maurice S. Fox,
Professor of Biology, M.I.T.

Thomas C. Hollocher,
Associate Professor of Biochemistry
Brandeis University

Jerome Y. Lettvin,
Professor of Biology and Electrical
Engineering, M.I.T.

Philip Morrison,
Institute Professor, M.I.T.

5. UCS has taken a major interest in the U.S. nuclear power program. It has published technical studies on nuclear power and has participated on its own behalf and on behalf of citizens' groups in a number of administrative proceedings before the Nuclear Regulatory Commission and its predecessor, the Atomic Energy Commission. In particular, UCS has been a party to the following Atomic Energy Commission proceedings:

(a) In the matter of Boston Edison Company, Pilgrim Nuclear Power Station Unit; and

(b) In the matter of Interim Acceptance Criteria for Emergency Core-Cooling Systems for Light-Water-Cooled Nuclear Power Reactors, Docket RM50-1.



6. As regards the export of nuclear equipment, technology and fuels, UCS has undertaken independent technical studies of the problems associated with such exports, and it has recently published analyses of related issues in its book, The Nuclear Fuel Cycle (MIT Press 1975). UCS further sponsored the Declaration by Members of the American Technical Community, signed as of August 6, 1975, by 2,500 scientists and engineers, which urges "the nation to suspend its program of exporting nuclear plants to other countries pending resolution of the national security questions associated with the use by these countries of the by-product plutonium from United States nuclear reactors." Given, in addition, current uncertainties with regard to reactor safety and radioactive waste management, UCS believes that a decision at this time to grant the pending application would be unwise. Such a decision would adversely affect its interests in promoting and ensuring the rational and safe use of modern technology and the development of sound energy policies.

DANIEL F. FORD

Subscribed and sworn to before
me this 17th day of February, 1976

Sheldon S. Zander
Notary Public

My commission expires January 31, 1978.

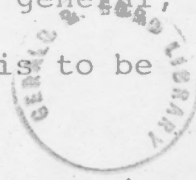


Procedural Objections of the Granting
of the Pending Application

2. Petitioners submit that the Nuclear Regulatory Commission (the "Commission") cannot make the determination required by law for the issuance of a license for the export of special nuclear material for use in the Tarapur Atomic Power Station ("Tarapur"), India, and that the granting of the pending application for such export would therefore be unlawful under the Atomic Energy Act of 1954, 42 U.S.C. §§2011 et seq. (the "Atomic Energy Act") for the following procedural reasons:

(a) There has been no public notice, by publication in the Federal Register or otherwise, of the receipt and consideration of the pending application. Interested members of the public have thus been deprived of information necessary for a timely evaluation of such application, and the opportunity for intervention and the presentation of opposing views has been severely and unwarrantedly abridged. The absence of public notice, moreover, has necessarily limited the Commission's opportunity to receive and hear potentially significant, adverse information bearing on the decision to grant or deny the pending application.

(b) The Commission is not applying criteria in its evaluation of the pending application which define more precisely the general, statutory standards which must be met if such application is to be



granted. The absence of further definition of the standards "not inimical to the common defense and security" and "consistent with the health and safety of the public" leave the Commission with no meaningful guidelines to follow in its consideration of the pending application and disables the Commission from making detailed and informed judgments consistent with the purpose and requirements of the Atomic Energy Act.

(c) The Commission has not consulted individually with Executive Branch agencies having relevant expertise as to whether the granting of the pending application would be "inimical to or constitute an unreasonable risk to the common defense and security," nor has it consulted with Executive Branch agencies having relevant expertise as to the health and safety risks posed by such application. The Commission, therefore, is not in a position independently to exercise its licensing judgment, under the Atomic Energy Act, with all relevant facts and information in its possession.

(d) Even though the Agreement for Cooperation Between the Government of the United States and the Government of India Concerning the Civil Uses of Atomic Energy (the "Agreement for Cooperation")¹ provides in Article I for exchange of unclassified

¹ Done at Washington, August 8, 1963; entered into force October 25, 1963, T.I.A.S. No. 5446.



information with respect to problems of health and safety at Tarapur, the Commission has made no independent analysis of and no findings regarding health and safety risks in connection with the pending application. Significant health and safety risks may attend the shipment of special nuclear material to Tarapur. These result from leakage of radioactivity during normal operations, contamination of the surrounding environment and population, inadequate personnel training, and difficulties in maintenance and repair. Further, serious health and safety consequences may follow from acts of sabotage, terrorism or theft directed against Tarapur and related facilities. Continued shipments of nuclear fuel to Tarapur also increase the threat of a major nuclear accident, which would have serious repercussions not just for the health and safety of affected populations, but for United States' relations with India and its other trading partners.

(e) The Commission has made no independent analysis of and no findings regarding the risks associated with Article VI(c) of the Agreement for Cooperation which permits the Government of India to remove from the scope of such Agreement quantities of special nuclear material provided that it places agreed equivalent quantities of the same type of special nuclear material under the scope of such Agreement. Assurances by the Government of India that "special nuclear material that has been or is hereafter made available for, or used, or produced at the Tarapur Atomic Power



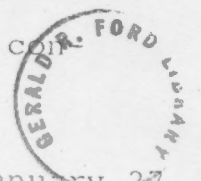
Station located at Tarapur will be devoted exclusively to the needs of that Station. . . ." may not override such provision. Further, restrictions on transfer of special nuclear material contained in Articles II(f) and VII(A)(2) of the Agreement for Cooperation may not apply to exchanged special nuclear material. Article VI(C) may thus permit India to substitute fuel from another source for an identical amount of U.S.-supplied fuel, and then either transfer such material to a third country outside of any safeguards or utilize plutonium separated from the U.S.-supplied fuel for an explosive device, thus circumventing restrictions under the Agreement on such actions.

(f) The Commission has made no independent analysis of and no findings regarding the risks associated with the various provisions of the Agreement for Cooperation which provide for subsequent United States approval of certain actions by the Indian government, e.g., fuel reprocessing (Article II(E)), transfer to third parties (Article II(F)). To the extent that such approvals are solely within the discretion of Executive Branch agencies and there is no Commission review thereof, it may not be able to be determined that safeguards conditions will be adequately maintained.

(g) The Commission has made no independent analysis of and no findings regarding the adequacy and effectiveness of existing safeguards applicable to special nuclear materials shipped to



Tarapur. In accordance with the terms of Article VIII of the Agreement for Cooperation, and the terms of the Agreement Between the International Atomic Energy Agency (the "IAEA"), the Government of India and the Government of the United States of America Relating to Safeguards Provisions. 2/, implementation of safeguards over Tarapur is the responsibility of the IAEA, and United States bilateral rights have been suspended. Approximately 1,000 pounds of plutonium, enough fissionable material to fabricate 100 atomic bombs, have accumulated to date at Tarapur and are under Indian guard and control, subject to inspections and measurements by the IAEA. In such circumstances, before yet further special nuclear material is committed to Tarapur, the Commission must assess such issues as limitations (in both time and space) on the access of inspections to facilities, deficiencies in the technology of containment and surveillance measures (locks, seals, guards, intrusion detectors, etc.), potential inaccuracies in measurement devices, lack of IAEA authority over physical security, and absence of IAEA or other international sanctions in cases of proven diversion or supply of fissionable materials to another country for developing nuclear explosive devices. However, while the IAEA has entered into "Subsidiary Arrangements" with India which detail the specific safeguards applicable to Tarapur, the particulars of the "Subsidiary Arrangements" have not been made available to the Commission in the licensing process. Further, the Commission does not have access to "Safeguards Confidential Information" com.



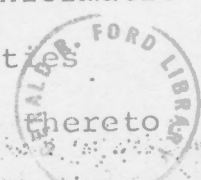
2/ Signed at Vienna January 27, 1971; entered into force January 27, 1971; T.I.A.S. No. 7049.

cerning the experience of the IAEA in applying safeguards to Tarapur. The Commission thus has not only not carried out the necessary review but does not even have the necessary information to properly evaluate the risks associated with further nuclear fuel shipments to Tarapur.

(h) The Commission has made no independent analysis of and no findings as to whether and under which circumstances, if any, the United States could retrieve special nuclear material from Tarapur in the event that India took actions inconsistent with its Agreement for Cooperation, license conditions, or other assurances to the United States. As noted in paragraph 2(g), supra, more than 1,000 pounds of plutonium have accumulated at Tarapur. If retrieval of such material were not possible should India determine to repudiate its agreements and assurances and/or to utilize some part of it to fabricate an explosive device, then yet further shipments of special nuclear material to Tarapur may exacerbate the risks associated with its operation.

(i) The Commission has either obtained back-up material and other data supporting the general expression of the Executive Branch position, prepared in accordance with Executive Order 11902, 41 Fed. Reg. 4877 (February 3, 1976), concerning the pending application, nor made an independent analysis of and findings with regard thereto. The Commission thus is making its licensing decision with regard to the pending application on the basis of the opinions of other agencies, not the facts supporting such opinions.

(j) The Commission has neither obtained safeguards information nor made an analysis of and findings with regard to facilities other than Tarapur within India, the safeguards applicable thereto.



or the relationship of those facilities to Tarapur. India, for example, has an unsafeguarded reprocessing facility at Trombay, with a capacity of 350 kilograms per day, as well as a planned reprocessing facility at Tarapur itself, with a capacity of 100 metric tons per year. Information concerning such facilities is relevant to the issue of whether, under what circumstances, and in what amounts India could separate plutonium from spent fuel should special nuclear material be diverted from Tarapur. Essential information, in other words, pertaining to the ability of India to circumvent safeguards and develop nuclear weapons is not before the Commission.

(k) The Commission has neither obtained physical security information nor made an analysis of and findings with regard to physical security for the handling of special nuclear material intended for Tarapur. In particular, raw files of physical security inspections carried out by the Energy Research and Development Administration have not been made available to the Commission. The Commission consequently cannot assess what protection Tarapur may have against acts of sabotage, terrorism or theft directed against such facility, nor can it assess the possibility of acts of sabotage or terrorism causing core disruptive accidents or severe reactor accidents and the probability of such acts occurring. Further, the Commission has no information concerning physical security requirements applicable to the special nuclear material if and when it is removed



from Tarapur, reprocessed, and recycled. The Commission thus is in the position of authorizing the supply of fuel in the absence of any assurance that the United States will be able to reach a future agreement with India establishing physical security standards for the handling of spent fuel.

(1) The Commission has neither obtained information nor made an analysis of and findings with regard to India's plans for reprocessing and waste management of special nuclear material shipped to Tarapur, and the materials accounting safeguards and physical security standards applicable thereto. Because the Agreement for Cooperation would permit India to reprocess its own materials, which are not safeguarded under such Agreement, in the same facility in which U.S.-supplied special nuclear material might also be reprocessed, the workings of any materials accountability and safeguards system may be appreciably complicated. In the absence of detailed information and analysis, the Commission cannot assess the safeguards risks at the "back end" of the fuel cycle associated with the shipment of nuclear fuel to Tarapur.

(m) The Commission has neither obtained detailed information nor made an analysis of and findings with regard to such factors as India's weapons development capability and plans and its external and internal political situation as they relate to the risks that special nuclear material supplied to Tarapur may be diverted and used for unlawful purposes, e.g., fabrication of nuclear weapons.



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The Commission thus cannot adequately assess safeguards risks associated with the shipment of nuclear fuel to Tarapur.

NEPA Objections to the Granting of
the Pending Application

3. Petitioners submit that the granting of the pending application for export of special nuclear material to Tarapur would be unlawful under the National Environmental Policy Act of 1969, 42 U.S.C. §§4321 et seq. ("NEPA"). No environmental impact statement has been prepared, pursuant to Section 102(2)(C) of NEPA, 42 U.S.C. §§4332(2)(C) and the Commission's implementing regulations. Nonetheless, the issuance of a license for the export of significant quantities of nuclear fuel to Tarapur is a "major federal action significantly affecting the quality of the human environment" within the meaning of NEPA, and no license can be issued until it has been established, after preparation, circulation for comment and consideration of a detailed environmental impact statement, that such action is appropriate thereunder.

Substantive Objections to the Granting
of the Pending Application

4. Petitioners submit that the Commission cannot lawfully determine that granting of the pending application would not be inimical or constitute an unreasonable risk to the common defense



and security and the interests of the United States within the meaning of the Atomic Energy Act and the Commission's implementing regulations, given the risks associated with India's position on non-proliferation and its current international relations:

(a) India is not a party to the Treaty on the Non-Proliferation of Nuclear Weapons (the "NPT"). 3 / Thus, it has not committed itself internationally to forswear the development of nuclear weapons, and it has proceeded to develop and detonate a nuclear explosive device fabricated from unsafeguarded nuclear fuel irradiated in a reactor supplied for peaceful purposes only. The continued shipment of special nuclear materials to Tarapur frustrates and impairs the non-proliferation policy of the United States as embodied in the NPT and discriminates against those countries which have undertaken NPT obligations. Further, it effectively sanctions India's refusal to accept those obligations, and can only have the effect of encouraging other countries to ignore prohibitions against nuclear weapons development. Such proliferation is plainly inconsistent with the purposes and requirements of the Atomic Energy Act.

3 / Done at Washington, London and Moscow, July 1, 1968; entered into force for the United States, March 5, 1970, 21 U.S.T. 483, T.I.A.S. No. 6839.



(b) India has, within the past five years, engaged in armed hostilities against Pakistan, and its relations with Pakistan, China, and other neighbors are a subject of continuing friction and rivalry. Given the current political situation, and, in particular, the potential instability of the area, there is a significant possibility of international conflict which would disrupt safeguards agreements and threaten the security of nuclear materials and facilities. There is thus inadequate assurance that safeguards over special nuclear material at Tarapur can or will be maintained, and accordingly, further transfer of fuel cannot be deemed consistent with the common defense and security and interests of the United States.

5. Petitioners submit that the Commission cannot lawfully determine that granting the pending application would not be inimical to or constitute an unreasonable risk to the common defense and security and the interests of the United States within the meaning of the Atomic Energy Act and the Commission's implementing regulations, because of the failure of the United States to impose the following conditions, singly and in combination, on further transfers of special nuclear material to Tarapur:

(a) The United States has not required India absolutely to refrain from the development of further nuclear explosive devices. Such failure, whatever the safeguards applicable to U.S.-supplied special nuclear material and whatever conditions of export



suppliers may agree upon, permits India to continue on its program of developing nuclear explosives, to the detriment of the non-proliferation policy of the U.S. as embodied in the NPT. Peaceful nuclear explosives and nuclear weapons cannot be differentiated; to allow India to continue to develop and test "peaceful nuclear explosives" is thus incompatible with effective, international nuclear arms control.

(b) The United States has not required India to permit safeguards on all its nuclear facilities. Because India has not adhered to the NPT and because the Agreement for Cooperation contains no provision to the contrary, such failure allows India to maintain nuclear facilities which are either only partially safeguarded or which are totally free from international and United States safeguards against their use for the production of nuclear weaponry. It thus permits India to obtain the benefits of U.S.-supplied special nuclear material, without assuming the obligations of those countries which have adhered to the NPT. The effect of the failure to impose such a requirement is that India is free to use unsafeguarded facilities to develop nuclear weapons. Safeguards, even when applied to all the special nuclear material utilized at Tarapur, are not enough to ensure that non-peaceful nuclear activities . . . are not carried on in India so long as fissionable material from unsafeguarded sources remains free of control and so long as unsafeguarded facilities are available to process special nuclear material diverted from Tarapur.



(c) The United States has not required India to refrain from developing national enrichment and reprocessing facilities. India, as noted in paragraph 2(j), supra, already has one operational reprocessing facility and one under construction. There are, moreover, no restrictions on development of national enrichment capability. The current absence of restrictions has already contributed to the purchase by Pakistan of a reprocessing facility, thus increasing the risk of a nuclear arms race on the Indian subcontinent. Enrichment and reprocessing are from the standpoint of safeguards the most critical elements of the nuclear fuel cycle. In order to reduce or eliminate the risks associated with national fuel centers, the NPT Review Conference, in its Final Declaration of May 30, 1975, promoted the study and encouragement of regional or multinational nuclear fuel cycle centers. 4/ Secretary of State Kissinger, at the opening of the 30th Session of the United Nations General Assembly, stressing the proliferation dangers of national reprocessing centers, proposed "the establishment of multinational regional nuclear fuel cycle centers" as an alternative to national facilities. 5/ To continue to transfer special nuclear material to Tarapur while permitting

4/ "NPT Review Conference Report," IAEA Bulletin, Vol. 17, No. 4 (August 1975) at 21-26.

5/ United States Mission to the United Nations, Press Release U.S.U.N. - 99(75) (September 22, 1975).



India to maintain and develop its own fuel facilities is inconsistent with the U.S. initiatives and creates unwarranted risks to the common defense and security.

(d) The United States has not required India to agree, prior to the shipment of nuclear fuel to Tarapur, to safeguards and physical security requirements for any future reprocessing of such fuel, should reprocessing be permitted. Thus, there is inadequate assurance that the special nuclear material shipped to Tarapur will not be used for non-peaceful purposes. Should an agreement as to appropriate safeguards and physical security requirements not be reached in the future, the fuel would still be in India and subject to diversion or theft under inadequate safeguards and physical security requirements.

(e) The United States has not required India to establish any physical security requirements applicable to the operation of Tarapur and the protection of special nuclear material utilized at such facility. There are thus insufficient guarantees against acts of sabotage, terrorism or theft. Should such acts occur, even though nominally directed only against the Indian Government, they may directly affect the defense and security interests of the United States.

(f) The United States has not required India to accept bilateral safeguards at Tarapur, additional to those implemented by the IAEA, at least as effective as domestic U.S. safeguards. Such failure creates an unwarranted risk of diversion. The United



States has developed domestic safeguards systems which may be more effective in terms of detection, containment and surveillance than those currently employed by the IAEA. Further, access at all times and in all places for physical inspections would provide greater assurance of protection than current, limited IAEA inspection rights. The absence of such additional safeguards increases the possibility of a successful diversion and the ultimate use of special nuclear material shipped to Tarapur for non-peaceful purposes.

(g) The United States has not required India to agree to U.S. control over the disposition of plutonium produced at Tarapur. The proposed transfer under the pending application is pursuant to a contract of sale, and India, not the United States, has title to the special nuclear material. There are no conditions in the Agreement for Cooperation or other instruments which call for the return of reactor-produced plutonium to the United States, or which require specific disposition abroad (outside of India) or which otherwise give the United States authority to obtain access to and control over such material, e.g., as in a lease rather than sale transaction. Thus, spent fuel containing plutonium has been and will continue to be stockpiled in India, creating the risk of and opportunity for diversion. Should India repudiate its Agreement for Cooperation or other assurances with regard to peaceful uses, the absence of such a requirement would leave India with the wherewithal to fabricate dozens of nuclear devices and thus is plainly inconsistent with the defense and security interests of the United States.



6. Petitioners submit that the Commission cannot lawfully determine that granting the pending application would not be inimical or constitute an unreasonable risk to the health and safety of the public and the interests of the United States within the meaning of the Atomic Energy Act and the Commission's implementing regulations, because of the failure of the United States to impose the following conditions, singly and in combination, on further transfers of special nuclear material to Tarapur:

(a) The United States has not required India to meet the conditions specified in paragraph 5 above. Such failure poses risks not only to the common defense and security, but, should nuclear devices be used for destructive purposes, to the health and safety of the public.

(b) The United States has not required India to establish, maintain, and enforce an effective program for the application of adequate health and safety standards to the operation of Tarapur, nor has it determined that such health and safety standards as the Indian Government may apply to Tarapur are adequate to protect potentially affected persons. Such failure unjustifiably creates

health and safety risks, inconsistent with the purposes of the Atomic Energy Act, which may extend beyond the Indian subcontinent.

(c) The United States has not required India to establish and maintain adequate repair and maintenance capability, utilizing qualified personnel, at Tarapur, nor has it determined that such repair and maintenance capability as now exists is adequate to ensure safe operation and maintenance of nuclear activities. Failures



in maintenance and repair, as well as staffing, may substantially aggravate the risks of both operational releases and major accidents. In the absence of requirements in this regard, there is insufficient assurance that the health and safety of the public will be properly protected.

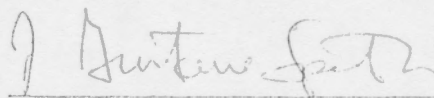
7. Petitioners submit that granting the pending application would be inconsistent with and in violation of the United States' obligations under the NPT:

(a) In light of severe proliferation risks posed by the proposed transfer of special nuclear material to Tarapur, as set forth in paragraph 4 above, and in light of the failure of the United States to impose conditions sufficient to protect against risks of diversion, theft and sabotage, as set forth in paragraph 5 above, granting the pending application would violate Article I of the NPT which prohibits the United States from transferring "nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly" to any nation and from "assist[ing] . . . any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices."

(b) In light of the failure of the United States to require India to permit safeguards on all its nuclear facilities, as set forth in paragraph 5(b) above, granting the pending application

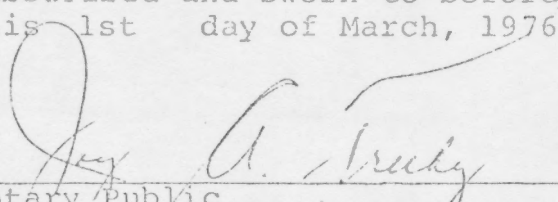


would violate Articles III(1) and III(2) of the NPT which require that transfer of special nuclear material to a non-weapons State be subject to a condition that safeguards required thereunder "be applied on all sources or special fissionable material in all peaceful nuclear activities within the territory of such State, under its jurisdiction, or carried out under its control anywhere" (emphasis added).



J. Gustave Speth

Subscribed and sworn to before me
this 1st day of March, 1976



Notary Public

Commission Expires March 31, 1980



Before the
UNITED STATES
NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555

In the Matter of the Application
of Edlow International Company,
as Agent for the Government of
India, to Export Special Nuclear
Material

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Docket No. XSNM-845

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Petition of the Natural Resources Defense Council, Inc., the Sierra Club and the Union of Concerned Scientists for Leave to Intervene," together with the two affidavits of J. Gustave Speth and the affidavits of Charles Clusen and Daniel F. Ford, annexed thereto as Appendices 1 through 4, was delivered by hand this 2nd day of March, 1976, to the following:

Howard Shapar, Esquire
Office of the Executive
Legal Director
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Peter Strauss, Esquire
Office of the General
Counsel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Chase Stephens, Chief
Docketing and Service Section
Office of the Secretary of the
Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Diane Wright
Assistant to the Vice
President
Edlow International Company
1100 17th Street, N.W.
Washington, D.C. 20036


ELDON V.C. GREENBERG



EXECUTIVE ORDER

-- 11902 --

PROCEDURES FOR AN EXPORT LICENSING POLICY
AS TO NUCLEAR MATERIALS AND EQUIPMENT

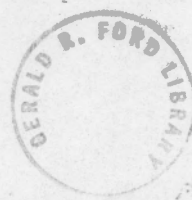
The Energy Reorganization Act of 1974 transferred to the United States Nuclear Regulatory Commission the licensing and related regulatory functions previously exercised by the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended.

The exercise of discretion and control over nuclear exports within the limits of law concerns the authority and responsibility of the President with respect to the conduct of foreign policy and the ensuring of the common defense and security.

It is essential that the Executive branch inform the Nuclear Regulatory Commission of its views before the Commission issues or denies a license, or grants an exemption.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), and as President of the United States of America, it is hereby ordered as follows:

Section 1. (a) The Secretary of State is designated to receive from the Nuclear Regulatory Commission a copy of each export license application, each proposal by the Nuclear Regulatory Commission to issue a general license for export, and each proposal by the Nuclear Regulatory Commission for exemption from the requirement for a license, which may involve a determination, pursuant to the Atomic Energy Act of 1954, as amended, that the issuance of the license or



exemption from the requirement for a license will, or will not, be inimical to or constitute an unreasonable risk to the common defense and security.

(b) The Secretary of State shall ensure that a copy of each such application, proposed general license, or proposed exemption is received by the Secretary of Defense, the Secretary of Commerce, the Administrator of the United States Energy Research and Development Administration, hereinafter referred to as the Administrator, the Director of the Arms Control and Disarmament Agency, hereinafter referred to as the Director, and the head of any other department or agency which may have an interest therein, in order to afford them the opportunity to express their views, if any, on whether the license should be issued or the exemption granted.

Sec. 2. Within thirty days of receipt of a copy of a license application, proposed general license, or proposed exemption, the Secretary of Defense, the Secretary of Commerce, the Administrator, the Director, and the head of any other agency or department to which such copy has been transmitted, shall each transmit to the Secretary of State his views, if any, on whether and under what conditions the license should be issued or the exemption granted.

Sec. 3. The Secretary of State shall, after the provisions of section 2 of this order have been complied with, transmit to the Secretary of Defense, the Secretary of Commerce, the Administrator, the Director, and the head of any other department or agency who has expressed his views thereon, a proposed position of the Executive branch as to whether the license should be issued or the exemption granted, including a proposed judgment as to whether issuance of the license or granting of the exemption will, or will not, be inimical to or constitute an unreasonable risk to the common defense and security.



Sec. 4. If the heads of departments and agencies specified in section 2 of this order are unable to agree upon a position for the Executive branch, the Secretary of State shall refer the matter to the Chairman of the Under Secretaries Committee of the National Security Council in order to obtain a decision. In the event the Under Secretaries Committee is unable to reach a decision, the Chairman of that Committee shall refer the matter to the President for his decision.

Sec. 5. The Secretary of State, after taking the actions required by this order, shall notify the Nuclear Regulatory Commission of the position of the Executive branch as to whether the license should be issued or the exemption granted, including the judgment of the Executive branch as to whether issuance of the license or granting of the exemption will, or will not, be inimical to or constitute an unreasonable risk to the common defense and security. The Executive branch position shall be supported by relevant information and documentation as appropriate to the proceedings before the Nuclear Regulatory Commission.

Gerald R. Ford

THE WHITE HOUSE,

February 2, 1976.

