



United States Department of State

Washington, D.C. 20520

February 12, 2003

Ms. Janice Dunn Lee
 Director, International Programs
 United States Nuclear Regulatory Commission
 Rockville, Maryland

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Dear Ms. Lee:

I refer to the letter from your office of December 26, 2002, requesting the views of the Executive Branch as to whether issuance of an export license in accordance with the application hereinafter described meets the applicable criteria of the Atomic Energy Act of 1954, as amended:

NRC No. XMAT0404 – SGL Carbon, LLC has applied for authorization to export to various countries up to 11,617,833 kilograms of bulk nuclear grade graphite for an indefinite period for production of various non-nuclear industrial and commercial articles.

It is the judgment of the Executive Branch that the proposed exports will not be inimical to the common defense and security of the United States, and is consistent with the provisions of the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978, provided that exports are authorized only to the countries/destinations included in the application that are listed in 10 CFR Part 110.26 as having provided the U.S. Government generic assurances with respect to reexport of U.S.- supplied nuclear components, substances and items, including bulk nuclear graded graphite. These countries/destinations are--members of the European Union, Czech Republic, Japan, New Zealand, Republic of Korea and Taiwan. The Executive Branch also concurs in the NRC proposal to limit the license to a validity of five years.

The above-listed countries/destinations have committed themselves to maintain IAEA safeguards on all of their peaceful nuclear activities and have pledged not to produce or otherwise acquire any nuclear explosive device, therefore satisfying criteria (1) and (2) of Section 109b of the Atomic Energy Act, as amended, for exports of nuclear components, substances and items. With regard to the EU-member nuclear weapon states, France and United Kingdom, Section III(2) of the NPT does not require that IAEA safeguards apply to nuclear-weapon states, and therefore Criterion (1) of section 109 b of the Atomic Energy Act, as amended, is met. The 1996 and 1979 Euratom assurances for all EU Member States include generic no nuclear explosive use assurances thereby satisfying criterion (2) for France and the UK.

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The remaining criterion, agreement not to retransfer any of the U.S.-supplied nuclear components, substances or items including bulk nuclear grade graphite without prior U.S. consent, has been satisfied by the generic assurance letters from Euratom and the other above-listed countries/destinations, copies of which have been previously provided to your office.

On the basis of the foregoing, the Executive Branch recommends that the license be issued, subject to the provisos stipulated above. The Executive Branch concurs in the NRC's view that exports to the other countries on applicant's list could be approved, once the government-to-government assurances required by section 109(b) of the Atomic Energy Act, as amended, are obtained. However, in these cases the Executive Branch will require more specific information from the applicant with respect to past and anticipated future exports before the assurances can be requested.

Sincerely,



Alex R. Burkart
Acting Director
Nuclear Energy Affairs