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ATOMIC ENERGY COMMISSION

AUSTRALIAN REQUEST TO TRANSPORT FUEL ELEMENTS ACROSS  
THE UNITED STATES

Note by the Secretary

The General Manager has requested that the attached report by the Director of International Affairs be circulated for consideration by the Commission at an early date.

W. B. McCool  
Secretary

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ATOMIC ENERGY COMMISSION

REQUEST BY AUSTRALIA FOR PERMISSION TO TRANSPORT  
FUEL ELEMENTS ACROSS THE UNITED STATES

Report to General Manager by the Director  
Division of International Affairs

THE PROBLEM

1. To consider a request by the Government of Australia that enriched fuel elements purchased by Australia from the United Kingdom be permitted to transit the United States en route to Australia.

SUMMARY

2. The Australian Government has requested, through the Department of State, that an indefinite series of shipments, each consisting of eight enriched fuel elements fabricated in the United Kingdom with a total U-235 content of 920 grams, and destined for the Australian Government's HIFAR research reactor, used for peaceful purposes only, be permitted to cross the United States on Australian Qantas commercial airliners. Shipments would be made approximately every four weeks from London to Sydney via New York, San Francisco and Honolulu. At the present time, the fuel elements, which are enriched to 90% U-235, and to which the Australian Government takes title in the U.K., are flown from the United Kingdom to Australia by way of Egypt and India in diplomatic pouches on Royal Australian Air Force planes. The Australian Government has strong misgivings concerning the suitability of the route now used. They have advised that the countries

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[REDACTED]

through which the fuel elements now pass are generally not sophisticated enough to have developed adequate rules for transit of material of this kind, and, consequently if an accident occurred, or if it otherwise became known that the material was transiting the area, the countries involved might react violently and irrationally. Even if there was no adverse publicity they further state that the military aircraft now used are able to provide service only at irregular intervals at considerable inconvenience to the military authorities, and that regular shipments are essential if AAEC research programs are not to suffer.

3. The Department of State supports the Australian request, and has informed us accordingly. (Appendix "A").

4. The staff recommends accommodating the Australian request under the following conditions:

a. Our arrangements with the Australians would require that the fuel elements not actually be imported into the U.S., as that term is generally understood, but be carried across the country as "in bond" transit shipments by Qantas, a commercial air carrier, pursuant to section 6.9 of the Air Commerce Regulations (19CFR6).

b. The material would be subject to whatever requirements the Commission deems necessary for protecting the public health and safety, including satisfactory packaging and shipping methods. Although a special nuclear material license is, in the opinion of the staff, not required in the case of such "in bond" transit shipments by a commercial air carrier, the Commission does have authority and responsibility under section 161b. Of the Atomic Energy Act to exercise health and safety control of the material when it is within United States jurisdiction. The Division of Licensing and Regulation has examined packing methods and specifications used in the shipments, and has concluded that they would meet AEC health and safety standards for the shipment of radioactive materials.

c. The USAEC would be indemnified by the Australian Government against any liabilities the United States Government might incur by reason of its involvement in the shipments.

d. Title to the contained special nuclear material would pass to the United States upon its coming within United States jurisdiction and to Australia when the fuel elements leave the jurisdiction of the United States. No compensation would accompany such passage of title;

[REDACTED]

[REDACTED]

the Commission would not acquire any beneficial interest in the material. But legal title and full right of control, sufficient to satisfy Section 52 and the basic purposes of the Act relating to health and safety, automatically vests in the United States upon the material entering its jurisdiction. However, as the material is not to be delivered to nor paid for by the Commission, the staff is of the view that the Commission will not be making a distribution of the material within the meaning of Chapter 6 of the Act when the material leaves the United States and title reverts in Australia, and the material can, therefore, transit the United States without the necessity of a Section 123 agreement for cooperation.

5. The conditions noted in paragraph 4 above, together with other appropriate provisions would, however, be incorporated into a written agreement between the Australian and U.S. Atomic Energy Commissions. The Australians have informally indicated their willingness to accept such conditions in an agreement.

6. Because of the unique character of the proposed transaction, and its conceivably precedent-setting aspects, the staff proposes to discuss it informally with the staff of the JCAE before any positive indication is given the Australians.

#### STAFF JUDGMENTS

7. The Division of Licensing and Regulation concurs in the recommendation of this paper. The Office of General Counsel believes that the proposed arrangement is legally supportable. The Office of Public Information concurs in paragraph 8 d.

#### RECOMMENDATION

8. The General Manager recommends that the Atomic Energy Commission:

a. Approve the transshipment of fuel elements across the United States en route from the United Kingdom to Australia in accordance with the methods outlined above.

b. Note that the JCAE staff will be informally advised of this proposed activity, it being understood that any adverse reaction from the Committee will be brought to the attention of the Commission prior to communicating with the Australian Government on this matter.

[REDACTED]

c. Note that the Australians also recently stated they wished to explore the possibility of shipping HIFAR elements, following irradiation, back to the U.K. via the Panama Canal, because of the infrequent and irregular sailings via the Cape of Good Hope route. This request would be considered on its merits separately.

d. Note that a public announcement will not be issued, but the Office of Public Information will be prepared to answer questions on the basis of the statement attached as Appendix "B".

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[REDACTED]

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APPENDIX "A"

Assistant Secretary of State  
Washington

December 27, 1960

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Dear Mr. Luedecke:

It has come to my attention that in its consideration of the Australian request to transport nuclear fuels across the United States, the Atomic Energy Commission would appreciate a statement of the degree of political importance attached by the Department to acceding to this request.

I wish to assure you that we in the Department of State attach considerable importance to granting this request for the following reasons:

1. We can appreciate, as a very legitimate matter of concern, the Australian worries about continuation of their present means of transporting fuel by military aircraft through the Near East. The discovery that they were so doing would undoubtedly prove most embarrassing to them, and it is to our interest to help them avoid the possibility of such a discovery by providing an alternate route.
2. Before requesting the transport of this fuel across the United States, and, again later, at our request, the Australian Government thoroughly explored whether there might be other and more suitable means of bringing the fuel from Great Britain to Australia. I am satisfied that the requested route across the United States is the most feasible for them, and, in the interests of our good relations with Australia, I think that their request should be granted.
3. The conditions laid down in working level meetings for acceding to this request have been fully met by the Australian Government. As a result, it seems to me that we should now follow through by acceding formally to their request.

Sincerely yours,

/s/ Avery F. Peterson

Avery F. Peterson  
Deputy

Mr. A. R. Luedecke  
General Manager,  
Atomic Energy Commission,  
Washington 25, D. C.

[REDACTED]

APPENDIX "B"

BASIC STATEMENT FOR ANSWER TO QUERIES

AUSTRALIAN REACTOR FUEL ELEMENTS TO BE  
SHIPPED ACROSS U. S. BY AIR

1. The first of a series of shipments of fuel elements manufactured in the United Kingdom for use in an Australian research reactor will be flown across the United States on (date). The shipment, en route from the U. S. to Sydney, and containing 920 grams of U-235, will be the first air shipment across U. S. territory of special nuclear materials belonging to a foreign country. Stopovers are scheduled in New York, San Francisco, and Honolulu.

2. All air shipments in the series will be made in accordance with strict U. S. Atomic Energy Commission safety regulations that apply to domestic air shipments.

3. Under provisions of the Atomic Energy Act of 1954, legal title to the nuclear material vests in the United States while the material is within U. S. territorial limits. The fuel element shipments are destined for the Australian Government's HIFAR research reactor, a peaceful uses project located at Lucas Heights.