January 17, 2001

The Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515-2107

Dear Congressman Markey:

I am writing in response to your letter of December 14, 2000, concerning a Nuclear Regulatory Commission (NRC) report of an interagency meeting to discuss the 1996 authorization issued to Combustion Engineering (CE) under 10 CFR Part 810 to export nuclear power technology to the Democratic Peoples Republic of Korea (DPRK). You express concern that North Korea may be permitted increased access to nuclear reactor technologies that could enable the design or manufacture of nuclear reactor components or fuel by that country in possible circumvention of 10 CFR Part 110. The Commission appreciates your concern on this issue.

Our responses to your specific questions are enclosed. However, because the Commission has yet to receive a request from the Department of Energy for our views on a new or revised Part 810 authorization for CE, we are unable to respond fully.

The Commission appreciates your concern on this issue.

Sincerely,

/RA/

Richard A. Meserve

Enclosure: Responses to Questions

RESPONSES TO QUESTIONS

QUESTION 1. The Agreed Framework requires that North Korea come into "full compliance with its safeguards agreement with the IAEA" before "key nuclear components" are delivered. Will the new technology transfers enable the manufacture of such components? In other words, could items from the Part 110 list be manufactured?

ANSWER.

The Department of Energy's (DOE) current Part 810 authorization stipulates that the DPRK "should not gain access to technologies enabling it to replicate reactor components or nuclear fuel." It is our understanding that DOE would propose to incorporate the same condition in an extended or revised Part 810 authorization.

QUESTION 2. Given North Korea's historical noncompliance regarding its nuclear materials, what assurances would we have that North Korea would not seek to use the proposed exported technology to build weapons? Does the NRC believe that such exports may raise significant non-proliferation issues?

ANSWER.

Under U.S. law, the supply of U.S. exports of reactor fuel and major reactor components under 10 CFR Part 110 would require an Atomic Energy Act (AEA) Section 123 Agreement for Cooperation between the U.S. and the DPRK, and full DPRK compliance with its IAEA safeguards commitments. We presume that these assurances would be required in the context of any future technology exports as well.

The Commission notes that the safety-related technology that is incorporated in the South Korean light water nuclear power plant models does not qualify as "sensitive nuclear technology," i.e., technology "which is not available to the public and which is important to the design, construction, fabrication, operation or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water," under Section 4(a)(5) of the Nuclear Non-Proliferation Act of 1978.

QUESTION 3. Combustion Engineering's Part 810 authorization is up for renewal in May 2001. Has the DOE indicated to you that they would be making a decision on a new or revised Part 810 authorization before this date?

ANSWER.

The DOE has not indicated to the NRC when a decision will be made on a new or revised Part 810 authorization for Combustion Engineering.

QUESTION 4. It is my understanding that Henry Sokolski, the Executive Director of the Nonproliferation Policy Education Center, has written to you on this issue and has requested public comments. Will the NRC hold public hearings on the subject? If not, please explain why not, and what processes the NRC intends to follow to allow public comment or input regarding this matter? If so, when will these hearings take place?

ANSWER.

The NRC's current practice is not to hold public hearings on the review of 10 CFR Part 810 authorizations. The Atomic Energy Act (AEA) sets forth clear distinctions between nuclear technology transfers on the one hand and nuclear exports licensed by the NRC on the other.

Under Section 57b. of the Atomic Energy Act, the DOE, while required to consult with the NRC and the Departments of Commerce and Defense, has the authority to make decisions with respect to nuclear technology transfers. Concurrence is required only by the Department of State. However, given the importance that NRC places in its consultative role, and the unique circumstances associated with this particular matter, we will consider Mr. Sokolski's request once, or if, we receive the subject Part 810 request.