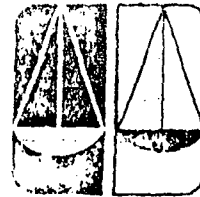


IDR 11 5462a  
[BP]  
Box 28  
Acc. 431-86-111  
NRL



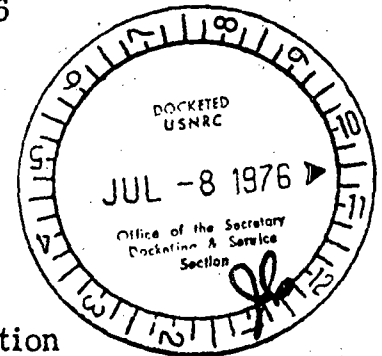
LAWYERS' COMMITTEE  
FOR CIVIL RIGHTS UNDER LAW

SUITE 520 • 733 FIFTEENTH STREET, NORTHWEST • WASHINGTON, D.C. 20005 • PHONE (202) 638-6700

CABLE ADDRESS: LAW CIV, WASHINGTON, D.C.

July 2, 1976

Office of the Commissioners  
Nuclear Regulatory Commission  
1717 H Street, Northwest  
Washington, D.C. 20555



Re: The Matter of U.S. Nuclear, Inc. Application  
for Special Nuclear Material Export License  
(XSNM-690, Amendment 2)

Dear Sirs:

The undersigned hereby serve notice, in accordance with 10 C.F.R. §2.713(a) of their appearance on behalf of the intervenors enumerated below who seek to become parties in the above-referenced proceeding. Goler Teal Butcher and T. Michael Peay are members in good standing of the bar of the Court of Appeals of the District of Columbia, which is the highest court in the District. William F. Ware is a member in good standing of the bar of the highest court in the State of Illinois. The addresses and telephone numbers of the undersigned appear herein below.

The addresses of the intervenors represented by the undersigned are as follows:

1. Congressman Charles C. Diggs, Jr.  
2208 Rayburn House Office Building  
Washington, D.C.

X-121

E-1

Office of the Commissioners  
Nuclear Regulatory Commission  
July 2, 1976  
Page 2

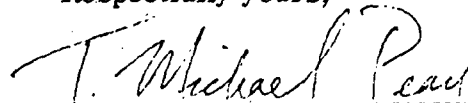
2. Congresswoman Shirley Chisholm  
123 Cannon House Office Building  
Washington, D. C.
3. Congresswoman Cardiss R. Collins  
1123 Longworth House Office Building  
Washington, D. C.
4. Congressman John Conyers, Jr.  
2444 Rayburn House Office Building  
Washington, D. C.
5. Congressman Ronald V. Dellums  
1417 Longworth House Office Building  
Washington, D. C.
6. Congressman Walter E. Fauntroy  
326 Cannon House Office Building  
Washington, D. C.
7. Congressman Augustus F. Hawkins  
2350 Rayburn House Office Building  
Washington, D. C.
8. Congressman Ralph H. Metcalfe  
322 Cannon House Office Building  
Washington, D. C.
9. Congressman Parren J. Mitchell  
414 Cannon House Office Building  
Washington, D. C.
10. Congressman Robert Nix  
2201 Rayburn House Office Building  
Washington, D. C.
11. Congressman Charles B. Rangel  
107 Cannon House Office Building  
Washington, D. C.
12. Congressman Louis Stokes  
303 Cannon House Office Building  
Washington, D. C.

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Office of the Commissioners  
Nuclear Regulatory Commission  
July 2, 1976 - Page 3

13. Congressman Andrew F. Young  
332 Cannon House Office Building  
Washington, D. C.
14. Congressman William Clay  
328 Cannon House Office Building  
Washington, D. C.
15. The American Committee on Africa  
305 East 46th Street  
New York, New York 10017
16. The Episcopal Churchmen for South Africa  
14 West 11th Street  
New York, New York 10011
17. Elizabeth S. Landis, Esquire  
1095 Park Avenue  
New York, New York 10028
18. Theo-Ben Gurirab  
SWAPO Observer Mission to the UN  
801 Second Avenue, Suite 1401  
New York, New York 10017
19. South West African Peoples Organization (SWAPO)  
801 Second Avenue, Suite 1401  
New York, New York 10017
20. The Washington Office on Africa  
110 Maryland Avenue, N.E.  
Room 208  
Washington, D.C. 20002
21. Thami Mhlambiso  
28 East 35th Street  
New York, New York 10016

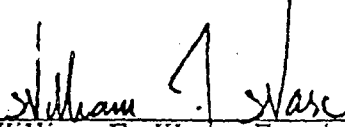
Respectfully yours,




T. Michael Peay, Esquire  
Lawyers' Committee for Civil Right  
Under Law  
733 Fifteenth Street, N.W.  
Washington, D. C.

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Office of the Commissioners  
Nuclear Regulatory Commission  
July 2, 1976  
Page 4

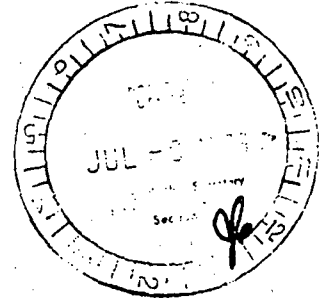
  
William F. Ware, Esquire  
Lawyers' Committee for Civil  
Rights Under Law  
733 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 628-6700

  
Goler Teal Butcher, Esquire  
1156 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 659-2900

Attorneys for Intervenors

Dated: July , 1976

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



IN THE MATTER OF )

U.S. Nuclear, Inc. Application )  
for Special Nuclear Material )  
Export License )

Docket No.  
XSNM-690

PETITION OF

CONGRESSMAN CHARLES C. DIGGS, JR.  
CONGRESSWOMAN SHIRLEY CHISHOLM  
CONGRESSWOMAN CARDISS R. COLLINS  
CONGRESSMAN JOHN CONYERS, JR.  
CONGRESSMAN RONALD V. DELLUMS  
CONGRESSMAN WALTER E. FAUNTROY  
CONGRESSMAN AUGUSTUS F. HAWKINS  
CONGRESSMAN RALPH H. METCALFE  
CONGRESSMAN PARREN J. MITCHELL  
CONGRESSMAN ROBERT NIX  
CONGRESSMAN CHARLES B. RANGEL  
CONGRESSMAN LOUIS STOKES  
CONGRESSMAN ANDREW F. YOUNG  
THE AMERICAN COMMITTEE ON AFRICA  
THE EPISCOPAL CHURCHMEN FOR SOUTH AFRICA  
ELIZABETH S. LANDIS, ESQUIRE  
THEO-BEN GURIRAB  
SOUTH WEST AFRICAN PEOPLES ORGANIZATION  
THE WASHINGTON OFFICE ON AFRICA  
THAMI MHLAMBISO  
CONGRESSMAN WILLIAM L. CLAY

FOR LEAVE TO INTERVENE

Pursuant to Section 189(a) and Section (3)(f) of the Atomic  
Energy Act of 1954, as amended, 42 U.S.C. §§2239(a) and 2013(f), and  
applicable rules and regulations of the United States Nuclear Regulatory

Commission (the "Commission"), including 10 C. F. R. § 2. 714, Congresspersons Charles C. Diggs, Jr., Shirley Chisholm, Cardiss R. Collins, William L. Clay, John Conyers, Jr., Ronald V. Dellums, Walter E. Fauntroy, Augustus F. Hawkins, Ralph H. Metcalfe, Parren J. Mitchell, Robert Nix, Charles B. Rangel, Louis Stokes, Andrew F. Young, and Thami Mhlambiso, The American Committee on Africa, The Episcopal Churchmen for South Africa, Elizabeth S. Landis, Esquire, Theo-Ben Gurirab in his individual capacity and as Representative Plenipotentiary to the United Nations and to the Americas for the South West African Peoples Organization (hereinafter "SWAPO"), South West Peoples Organization and The Washington Office on Africa hereby respectfully petition the Commission for leave to intervene as parties in opposition to the amendment to the license of U. S. Nuclear, Inc. dated March 26, 1975 to increase the amount of exportable material to the Republic of South Africa from 19,298.05 grams U-235, enriched to 93.3%, to a total of 43,157.45 grams. Petitioners further request a hearing in connection with the Commission's consideration of the said application.

#### DISCUSSION

##### I. Interests of Petitioners

Petitioners Charles Coles Diggs, Jr., et al., have the following direct and substantial interests in the instant application and

the proceedings related thereto.

Petitioner Charles Coles Diggs, Jr., is a Member of Congress representing the 13th District of Michigan. He presently serves as a member of the International Relations Committee of the House of Representatives and serves as Chairman of the Subcommittee on International Resources, Food and Energy. As such, he also has special functions relating to issues regarding United States international energy policy. He formerly served as Chairman of the Subcommittee on Africa of the House Committee on Foreign Relations. His responsibilities include, inter alia: (a) relations of the United States with foreign nations, generally; (b) intervention abroad and declarations of war; (c) measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad; (d) protection of American citizens abroad; (e) United Nations Organizations; (f) measures relating to international economic policy; (g) export controls; (h) international commodity agreements (other than those involving sugar), and, specifically, energy, natural resources, and food commodity agreements; and (i) disaster assistance. He has had and maintains special official interest in United States relations with and policy towards Africa as well as in the U.S. government and business relations with South Africa. As such he also has maintained an official interest in seeing that the United States observes its international

1

legal obligations to refrain from any dealings with South Africa that would imply recognition of or support to the illegal South African administration of, and presence in, Namibia. Additionally, his official interest in these concerns is evidenced by his participation in such legal actions as Diggs v. Dent, Civ. Action No. 74-1292 (D.D.C., May 14, 1975), appeal docketed, sub. nom. Diggs v. Morton et al., No. 75-1775 (D.C. Cir., August 8, 1975). He believes that the proposed export and the issuance of the requested export licenses would be inimical to the common defense and security. He further believes that dealings by the United States Government, such as the granting by the Nuclear Regulatory Commission of a license for the enrichment of uranium both supplied by and imported from South Africa, without a condition that Namibia may not be the source of such uranium, are inconsistent with the aforementioned international legal obligations and contrary to the foreign policy interests of the United States and are inimical to the common defense and security. Petitioner Diggs is a member of the Congressional Black Caucus.

Petitioner Shirley Chisholm is a United States Congresswoman serving the 12th Congressional District of New York. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

Petitioner William L. Clay is a United States Congressman serving the 1st Congressional District of Missouri. As a Member of Congress with direct representational and committee functions, and as a member of the



Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

Petitioner Cardiss Collins is a United States Congresswoman serving the 7th Congressional District of Illinois, is a member of the International Relations Committee of the House of Representatives and is a member of the Subcommittee on International Resources, Food and Energy of this Committee. She is also a former member of the House Foreign Affairs Subcommittee on Africa. Her interests are the same as those of Petitioner Diggs.

Petitioner John J. Conyers, Jr., is a United States Congressman serving the 1st Congressional District of Michigan. As a Member with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

Petitioner Ronald V. Dellums is a United States Congressman serving the 8th Congressional District of California. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the proceeding.

Petitioner Walter E. Fauntroy is a United States Congressman serving the District of Columbia. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional

Black Caucus, Petitioner has a direct and substantial interest in the instant proceedings.

Petitioner Augustus Hawkins is a United States Congressman serving the 29th Congressional District of California. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

Petitioner Ralph H. Metcalfe is a United States Congressman serving the 1st Congressional District of Illinois. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

Petitioner Parren J. Mitchell is a United States Congressman serving the 7th Congressional District of Maryland. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

Petitioner Robert Nix is a United States Congressman serving the 2nd District of Pennsylvania, is a member of the International Relations Committee of the House of Representatives and is a member of the Subcommittee

on International Resources, Food and Energy of this Committee. He is also a former member of the House Foreign Affairs Subcommittee on Africa. His interests are the same as those of Petitioner Diggs.

Petitioner Charles B. Rangel is a United States Congressman serving the 19th Congressional District of New York. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

Petitioner Louis Stokes is a United States Congressman serving the 21st District of Ohio. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

Petitioner Andrew Young is a United States Congressman serving the 5th Congressional District of Georgia. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

Petitioner Thami Mhlambiso is a native of South Africa who was forced to go into exile by the South African Government because of his

political beliefs centering on opposition to South Africa's racial policy of apartheid. He is also the official representative within the United States of the African National Congress of South Africa (ANC) which is a political party that is banned in South Africa. Petitioner Mhlambiso does not return to South Africa because he would be subject to arrest, detention and persecution by the Government of South Africa. Since his ability to return to his native land is dependent upon a new social and political order being established within South Africa and because he strongly believes that the approval of the proposed license will for various reasons postpone his return to South Africa, and consequently the processes that will bring about the desired new social and political order, Petitioner Mhlambiso asserts that he has a direct and substantial stake in presenting his views in this export license proceeding.

Petitioner American Committee on Africa (ACOA), is a non-profit organization incorporated in the State of New York. During the nineteen years of its existence, ACOA has been the principal organization concerned with unearthing and resisting American participation in the perpetuation of colonialism and racism in Africa, as well as a major coordinator of other groups of like interest. It has continuously professed a dedication to upholding international law, human rights and justice as they

apply to Africa, particularly southern Africa. Petitioner organization has a direct and substantial institutional interest in the instant proceeding.

Petitioner The Episcopal Churchmen for South Africa, founded in 1956, is a non-profit New York corporation which disseminates information about and renders support to individuals active in the struggle against apartheid and for self-determination through peaceful means in southern Africa. Petitioner will be substantially affected by the outcome of the instant case in that it has an institutional interest and function in working to bring about change in South Africa through peaceful means which, in the view of the petitioner, is an objective now gravely threatened by the enhanced nuclear weapons capability for South Africa embodied in the proposed export licenses. Petitioner Episcopal Churchmen for South Africa will be substantially affected by the outcome of this proceeding in that it has an institutional interest in participating to ensure that issues related to the United States role in, and assistance to, South Africa's nuclear capability, the effectiveness of safeguards and the prevention of nuclear weapons proliferation as they relate to prospects for peaceful change in southern Africa are fully explored by the Commission.

Petitioner Elizabeth S. Landis, individually and in her capacity as Legal Consultant to the United Nations Commissioner for Namibia, asserts

interests which will be substantially affected by the outcome of the instant proceeding. Petitioner is concerned about the possible use of Namibian uranium in connection with the reactors, which are the subject matter of the instant proceeding, in violation of the United Nations Charter and of Decree Number One of the United Nations Council of Namibia that no natural resources may be exported from the territory without the express consent of the Council for Namibia or of the Commissioner acting for the Council. Petitioner is a prohibited immigrant and is, therefore, barred from seeking judicial or administrative redress within South Africa or Namibia.

Petitioner Theo-Ben is a member of the South West Africa Peoples Organization (SWAPO) and is presently its Representative Plenipotentiary to the United Nations and to the Americas. He is a refugee from his homeland, Namibia, and is presently residing in New York City. He does not return to Namibia because he would be subject to arrest by the Government of South Africa which controls Namibia. He is prevented from exercising his basic legal and other rights in Namibia because of the illegal occupation of Namibia by South Africa. His interest in the present case arises in connection with his diplomatic missions to the United States and the United Nations; his interest in seeing that United Nations resolutions with respect to his homeland are observed; his interest in safeguarding the resources of his

homeland; and his interest in agreements relating to the illegal occupation of his homeland.

Petitioner South West Africa Peoples Organization of Namibia (SWAPO) is a political organization whose members are inhabitants of, or refugees from, Namibia, some of whom reside in the U. S. The interest of South West Africa Peoples Organization in this matter flows from its recognition by the United Nations and the Organization of African Unity as the authentic representative of the people of Namibia. South West Africa Peoples Organization is concerned that United Nations Security Council resolutions concerning Namibia be implemented, and that the International Court of Justice Advisory Opinion of June 21, 1971, which obliges all State Members of the United Nations to refrain from any dealings which imply recognition of, or lend support and assistance to, that regime's illegal occupation of Namibia, be observed.

Petitioner The Washington Office on Africa is a non-profit organization sponsored by the American Committee on Africa, The Africa Office of the Board of Global Ministries of the United Methodist Church, the United Presbyterian Church, the Board of World Ministries and the Council for Christian Social Action of the United Church of Christ, The Public Affairs Office of the Executive Council of the Episcopal

Church, The Christian Church (Disciples of Christ), The Church of The Brethren and The Lutheran Church in America. Its purpose is to provide to concerned individuals and groups information on, and to be directly active on behalf of its sponsors in influencing the outcome of, issues related to developments in United States policy relative to questions of self-determination and majority rule in southern Africa. Petitioner organization has a direct and substantial institutional interest which will be affected by the outcome of the instant proceeding.

Petitioner Congresspersons share a common interest with their constituents and are cognizant of their special need arising out of their function as representatives of their constituents to foster and participate in a full, open and independent hearing before this Commission on the common defense and security issue raised by the instant license application. Other individual petitioners are particularly aggrieved by actions of the South African Government either in its denial to them of entry into South Africa or Namibia (formerly known as South West Africa) or in its refusal to adhere to its international legal obligations under the United Nations Charter. Petitioner organizations as representatives of their members have an identical concern aligned to their institutional functions and duties to participate in a full, open and independent review of these issues.



Petitioner Congresspersons have special interests arising out of their congressional duties to make appropriations for, to hold hearings on, to take other legislative actions on, as well as to remain currently informed as to the Commission's administration of the Atomic Energy Act, as amended, and agreements pertinent thereto. These duties related specifically to the U.S. international nuclear power program and agreements, the nuclear use of U.S. supplied research reactors, special nuclear materials and nuclear technology and the development of sound nuclear policy generally and specifically with respect to South Africa.

The very fact of their being Members of Congress creates for them a special obligation to protect the American public from:

- (1) the dangers of ineffectual safeguard arrangements in the proposed export license;
- (2) the dangers of atomic energy utilization in the destabilized volatile situation prevalent in South Africa with its explosive racial tensions arising both out of the human rights violations by the South African Government and the determination by that minority to continue minority rule; and
- (3) the dangers to the common defense and security of the United States as a result of the international discord in southern Africa, arising out of South Africa's human rights deprivations and political situation, which has

been recognized by the United States Government as necessitating an arms embargo against South Africa.

All of these dangers relate directly to the issue before the Commission as to whether the proposed export would be inimical to the common defense and security. Therefore, it is necessary for them to be parties to this proceeding to see to it that there is full and open ventilation of their views on the illegality of granting the subject export license here in question as well as independent consideration thereof by the Commission. Their ability to carry out their legislative functions and, with particular respect to Petitioners Diggs, Nix and Collins, to discharge their Committee and Subcommittee assignments, would be significantly and adversely impaired by their failure to participate in any prospective hearing before this Commission on the export license application in question.

Petitioner Congresspersons, individuals and organizations (hereinafter "Petitioners") have a direct and immediate need for information as to the U.S. nuclear program administration with regard to South Africa and as to the impact of the proposed nuclear export on the common defense and security. Petitioners also have a special official interest in this proceeding in regard to the risk of proliferation of nuclear weapons, of diversion and of theft of exported special nuclear material, and the use thereof for threats or destructive purposes because the potential for such diversion or theft

is of particular concern with regard to South Africa. The holding of a full, open and independent hearing by the Commission on these applications is critical to the proper discharge of the public duties of the Petitioner Congresspersons and of the official duties of Petitioner organizations and individuals.

Further, Petitioners contend that the determination as to whether these license applications comply with the requirements of the Atomic Energy Act of 1954, as amended, and with regulations promulgated thereunder (10 C. F. R. , Chapter 1) can only properly be made as to whether this license application applies after a full, open and independent hearing.

Petitioners have no other effective means to protect their interests in this proceeding since, as a practical matter, congressional review procedures with respect to the instant application are either inoperative, inapplicable or ineffectual.

The application and the proceeding as to whether the export license is inimical to the common defense and security thereon have direct relations to each of the Petitioners' congressional duties, institutional functions and individual duties and the outcome of this proceeding will therefore directly affect their interests.

Petitioners' interests are not now represented by existing parties. Their petition is not interposed for delay or to broaden the proper

scope of the proceeding. Petitioners believe their participation will assist in developing the type of record on which a proper statutorily required determination can be made on the issue of inimicability.

The specific interests of Petitioner Congresspersons, organizations and individuals and the manner in which those interests will be affected are affirmed in the affidavit of T. Michael Peay.

## II. Contentions

Petitioners contend that with regard to this application the Commission cannot find that the issuance of the requested license would not be inimical to the common defense or security, as required by the Atomic Energy Act of 1954, as amended, (the "Act") and as required specifically by the following sections: Sections 3(d) and (e); 53; 57(c)(2); 82; (42 U.S.C. § 2013(d) and (e); 2073; 2077(c)(2); 2112;) and as further required by 10 C.F.R. 70.31(d) and (e).

Petitioners' contentions relate to (a) the appropriateness of intervention in this proceeding; (b) procedural and (c) substantive grounds for intervention.

### A. Appropriateness of Intervention In This Proceeding

Petitioners contend, at the outset, that the Commission must hold a full and complete and de novo hearing on this application for the following several reasons.

First, there is a statutory obligation on the Commission to make the finding as to non-inimicality as a precondition for the issuance of a license to "distribute any special nuclear material". (§ 57(c)(2) of the Act).

Secondly, the Commission cannot, by treating this application as an amendment of existing licenses XSNM-508 and 690,

abbreviate the procedure on the instant application and satisfy the statutory procedures. For Petitioners contend that the requisite export licensing findings were not made in the issuance of licenses XSNM-508 and XSNM-690. Under the Atomic Energy Act of 1954, as amended, two independent and separate conditions for the granting of each license for the export of special nuclear material must be established by the Commission: 1) that there is a valid Agreement for Cooperation pursuant to section 123 of the Act and the proposed export is in conformity with its terms; and 2) a section 57 finding that the proposed export is not inimical to the common defense and security. (See pages 49-50 of the Commissions Opinion in Edlow\*).

The record indicates that no such finding was made with respect to licenses XSNM-508 or 690.\*\* Therefore the granting of initial license XSNM-508 and of license XSNM-690 was procedurally defective. Thus, Petitioners contend that this proceeding must be considered a de novo proceeding wherein for the first time the consonance of this application with the statutory requirements must be determined.

---

\*In the Matter of the Application of Edlow International Company as Agent For the Government of India to export special nuclear material License No's XSNM-805 (DKT 70-2071) and XSNM-845 (DKT 70-2131)

\*\*For the record, Petitioners include the following chronology: (1) XSNM-508 dated January 22, 1974 licensed the export of 12,529.25 grams of Uranium enriched to 93.0%; (2) XSNM-508 Amendment 1 dated October 2, 1974, allowed export of an additional 12,529.25 grams of Uranium with an enrichment of 93.30%; (3) XSNM-690 dated January 6, 1975 licensed the export of 20,759.65 grams of uranium enriched to 93.30%; (4) XSNM-690: Amendment 1, dated January 30, 1976, extended the expiration date of XSNM-690; and (5) XSNM-690 Amendment 2, currently being requested, seeks to have authorized the export of an additional 25,713.50 grams of uranium enriched to 93.30%.

Petitioners further contend that in any event the present application to double the quantity of weapons grade uranium, authorized in licenses XSNM 508 and 690, alters the terms of those applications so substantially that the present application is properly the subject of a distinct licensing proceeding.

Petitioners further contend that any argument that, by reason of previously licensed exports to South Africa controls in this case would not be effective, misconceives the Commission's statutory obligation to make the determination of inimicality for each application as a prerequisite to licensing. Section 57 of the statute requires that the Commission shall not exercise its licensing authority pursuant to Section 53 of the Act if it finds that the proposed export would be inimical to the common defense and security of the United States. Therefore, if the Commission finds that IAEA safeguards as applied in South Africa may be inadequate with regard to: 1) the possibility of diversion of weapons grade uranium from peaceful applications, 2) control over plutonium which may be produced from weapons grade uranium, 3) the reprocessing of spent fuel and the development of enrichment technology or the retransfer of uranium enriched through reaction processes involving U.S. supplied weapons grade uranium, 4) or control over retransfers of the original uranium, once it has been reprocessed, then the Commission must deny the license or appropriately condition it.

Petitioners also contend that recent developments in South Africa since the issuance of the previous licenses mandate a full hearing on the issue of the relevance of these changed circumstances to the finding of non-inimicability.

Finally, Petitioners contend that intervention is appropriate since (1) the congressional review process prior to the entry into force of the 1974 Amendment of §123(d) was deficient (2) the procedures of the Atomic Energy Commission for ascertaining the formal views of the executive agencies and for "developing all the necessary information within the purview of the executive branch which bears on the license decision"\* were wanting and (3) notice of the application for licenses XSNM-508 and 690, and the amendments thereto, was deficient, thus rendering the right of intervention under 10 C.F.R. 2.714 and the Fifth Amendment nugatory.

#### B. Procedural Grounds for Intervention

Petitioners contend that as a matter of procedure the required finding of non-inimicality cannot be made until the Commission has obtained the detailed and comprehensive data relevant to: safeguards at Safari I; reprocessing facilities presently and prospectively available to South Africa; and the significance of South Africa's nuclear program to the issue of diversion. Petitioners contend that the eight questions in the present Export Licensing Procedures, Nuclear Regulatory Commission, January 1976, do not satisfy this procedural requirement.

---

\*Export Licensing Procedures, Nuclear Regulatory Commission, January 1976.



Petitioners contend that the Nuclear Regulatory Commission has a non-delegable statutory obligation to find for each export license that South Africa satisfies the criteria of responsibility and international respectability that would make reliance on her assurances of adherence to present safeguards, or indeed, her capacity to guarantee that safeguards would be maintained over a period of years, reasonable.

Petitioners contend that the requirements of appropriate consultation with other executive branch agencies does not relieve the Commission of its ultimate responsibility to determine on the basis of the best and most current information available, that the affirmative grant of any proposed export license is not inimical to the common defense and security of the United States\*

Relevant and necessary information should be available to the Commission relating to:

- 1) the adequacy and effective of existing IAEA safeguards at the SAFARI-I, reactor;
- 2) South Africa's nuclear facilities;
- 3) South Africa's weapons development capacity;
- 4) South Africa's plans for reprocessing and storage of spent fuels;
- 5) accounting and inspection procedures bearing on the possibility of diversion by either national or subnational groups;
- 6) adequacy of plans for physical security against subnational diversion, sabotage, terrorism and theft;

---

\*The finding that a license application is in conformity with a valid agreement for cooperation pursuant to § 123 of the Act is a prerequisite for licensing. But it is not dispositive.

- 7) whether or not the U.S. could retrieve the special nuclear material at SAFARI-I should South Africa breach its obligations;
- 8) the significance of the SAFARI-I reactor as it related to the issue of proliferation and the involvement of South Africa in domestic regional and international friction;
- 9) other sources of supply of nuclear materials and technology that South Africa has access to; and
- 10) the significance of the laager mentality of the South African Government, compounded by the surfacing of racial tensions into the recent upheavals, for the likelihood of diversion.

C. Substantive Grounds for Intervention

In support of their substantive contentions, Petitioners maintain that the Commission is unable to reach the finding required by applicable statutes, and the regulations promulgated thereunder, that the issuance of the requested license would be consistent with the common defense and security for the reasons hereinafter set forth.

The ordinary risks, bearing on the common defense and security issues with respect to adequacy of safeguards, diversion and proliferation are multiplied in the case of nuclear exports to South Africa. The special risks associated with South Africa arise from the following facts:

- (a) South Africa has not ratified the Non-Proliferation Treaty (hereinafter NPT);
- (b) South Africa is a country with advanced nuclear technology and is in the process of implementing its uranium enrichment potential;
- (c) South Africa has nuclear weapons capability;
- (d) South Africa has nuclear facilities not subject to IAEA safeguards;
- (e) the U.S. bilateral agreement with South Africa, as amended, and the applicable trilateral agreement between the U.S., South Africa and the IAEA raise serious questions as to the provision thereunder for adequate safeguards for the proposed exports;
- (f) South Africa is beset with deep internal conflicts and exploding tensions.
- (g) South Africa is engulfed in regional tensions arising out of human rights deprivations and its racial policies all of which contribute to perpetuating a volatile atmosphere;
- (h) the proposed exports would contribute to international friction, inasmuch as "the apartheid policy of South Africa has clearly led to a situation the continuation of which is likely to endanger international peace and security"

---

\*From August 2, 1963 statement of Ambassador Adlai Stevenson, United States Representative to the United Nations.

and would be inconsistent with the U.S. arms embargo against South Africa; and

- (1) absent prohibitions on Namibia as a source of uranium possibly involved in these applications, the risks of illicit use in violation of U.S. international legal obligations and threats to the common defense and security are increased.

Jointly and severally, the above facts have a direct and substantial impact on the requisite finding that the granting of the license would not be inimical to the common defense and security of the United States.

(a) South Africa has not ratified the Non-Proliferation  
Treaty (hereinafter NPT)

Petitioners contend that South Africa's refusal to sign the NPT means that South Africa has not foresworn the use of nuclear energy for nonpeaceful means. Nor has the United States requested South Africa to refrain from developing nuclear devices. In the recent ASCO\* decision by the Commission, Spain, the proposed country of export, was not a signatory to the NPT either. The Commission held that whereas signing the NPT can be an indicatia of a nation's peaceful use intentions, in ASCO, the Department of State had made a formal finding that "there is no indication that [Spain's] failure to adhere [to the NPT] is based on any desire to develop a nuclear weapon's capability".\*\*

South Africa not only has the capacity to develop nuclear weapons capability, but recent statements by South Africa's Prime Minister show that it has the desire to maximize its nuclear options including those that are militarily related.\*\*\*

---

\*In the Matter of the Application of Westinghouse Electric Corporation for the Export of Pressurized Water Reactor to Association Nuclear ASCO II, Barcelona, Spain (hereinafter ASCO) Docket No. 50-474.

\*\*Ibid., p. 19.

\*\*\*The Prime Minister of South Africa has recently indicated that South Africa has nuclear capability and reminded the world that "[W]e did not sign the nuclear non-proliferation Treaty". Newsweek Magazine, May 17, 1976 edition.

- (b) South Africa is a country with advanced nuclear technology and is in the process of implementing its uranium enrichment potential.
- (c) South Africa has nuclear weapons capability.
- (d) South Africa has nuclear facilities not subject to IAEA safeguards.

Without regard to the specific effectiveness, or lack thereof, of IAEA safeguards, Petitioners contend that in the case of South Africa which has

- 1) not ratified the NPT
- 2) projected nuclear reprocessing capability and
- 3) nuclear weapons capability

there is no substantive basis for concluding that U.S. supplied material would not be reprocessed for weapons purposes.

Points one and three are discussed above. With respect to reprocessing, South Africa has been cooperating with other nations such as West Germany in order to foster development of its overall nuclear program and may be in the process of acquiring alternative reprocessing facilities. These reprocessing facilities could be used to reprocess spent fuel outside the IAEA framework of safeguards. Thus, provision for a United States veto authority against such reprocessing of any licensed material is mandatory for adequate safeguards.

The United States has not required South Africa to refrain from developing enrichment and reprocessing facilities. Petitioners submit that the existence of such facilities should be considered with respect to the ability to safeguard adequately the special nuclear material sought to be exported and any special nuclear material produced therefrom.

Nor has the United States required South Africa to agree, prior to the shipment of nuclear fuel to SAFARI-I, to safeguards and physical security requirements for any future reprocessing of such fuel.

Petitioners further contend that South Africa's access to indigenous uranium means that it is not dependent on the U.S. for its uranium supply. Nor is it dependent on external enrichment technology within the framework of the IAEA. South Africa has a pilot nuclear enrichment plant at Valindaba which boasts a unique enrichment process and which became operational in 1975, and a larger-scale enrichment plant is scheduled to be operational in the mid-1980's. In the ASCO case, the Commission held that a country dependent for its nuclear technology and supply on external sources would have "strong practical reasons for abiding by its undertakings". \*

Such reasons do not exist for South Africa, a country which has its own nuclear technology and energy resources.

---

\*ASCO, p. 23.

Petitioners further contend that the fact that South Africa has nuclear facilities not subject to IAEA safeguards (e.g., the Valindaba prototype Uranium enrichment plant and the Pelindaba research reactor) together with the totality of other facts in the case, prevents the finding of non-inimicality for the export of weapons grade uranium to South Africa.



- (e) The agreement between the United States, South Africa and the IAEA raises serious questions as to the provision thereunder for adequate safeguards.

First, Petitioners contend with respect to the transfer of weapons grade uranium to South Africa that the enforcement provisions of the agreement between the United States, South Africa and the IAEA (hereinafter the trilateral) and the Agreement for Cooperation with South Africa (hereinafter the bilateral) are not adequate to permit the requisite finding of non-inimicality.

Petitioners further contend that there are inherent deficiencies in the IAEA inspection procedures. Further, Petitioners contend that even to the extent these safeguards are intended not to prevent diversion, but to ensure the immediacy of international response to diversion once detected, the safeguards cannot operate effectively with respect to South Africa. For the effectiveness of the usual sanctions\* (such as censure by the United Nations, development or intensification or regional hostilities,

---

\* Petitioners refer to the Department of State's analysis of the function and adequacy of safeguards presented in that Department's Edlow submissions. The Department stated that, "A vital element in deterring diversion is the risk of early detection, which includes the anticipated severity of the international reaction, regardless of the moment at which it might occur." The Department concluded in Edlow that it was unlikely that "India would risk the certain and serious international consequences that would flow from the violation of its agreements with the United States."

possible termination of U.S. aid agreements, and possible enforcement of an arms embargo) are already in some form directed against South Africa. Thus, to the extent that IAEA and bilateral safeguards depend on the sort of deterrent value detailed in the Department of State analysis, they have no real deterrent potential with respect to South Africa.

Petitioners contend that the safeguards applicable to the proposed license are so inadequate that they preclude a finding that the transfer of weapons grade uranium to the Republic of South Africa would not be inimical to the common defense and security. \*\*

Nuclear materials can easily be removed from safeguards and stockpiled and such conduct is permissible under the NPT as long as the stockpiling state declares that such removal is for peaceful purposes. But notwithstanding such a disclaimer, stockpiled material can then be used either for immediate weapons use or to maintain a nuclear options program. "When in addition to reactors and low-enriched fuel, a nation has access to stockpiled, separated plutonium, or to facilities which permit rapid separation

---

\* Ibid.

\*\* Petitioners note: that the IAEA has no enforcement power; adherence to its provisions is entirely consensual; and the trilateral may be unilaterally terminated by South Africa upon no more than simple notification. Should the trilateral terminate or be suspended, the safeguards provisions of the bilateral Agreement for Cooperation, would be reasserted. Petitioners contend that the safeguard provisions of the bilateral are also inadequate.

\*\*\* As the Commission noted in ASCO: "The applicability of the bilateral IAEA safeguards to a nuclear export assures that the peaceful use of the material can be technically verified, and is therefore of crucial importance in reaching a decision on whether the issuance of the license might contravene the common defense and security." (Emphasis supplied)

of plutonium from spent fuel, the value of accounting and inspection as safeguards to deter a sudden switch from peaceful to military use is open to question. Safeguarded plutonium, though it may have been stockpiled against entirely peaceful future applications, is nevertheless but a short step away from use as an explosive." ASCO, Dissenting Opinion, p.10 et seq. In this situation where highly enriched fuel is involved, the IAEA safeguards is clearly inadequate.\*

Petitioners further urge that existing safeguard mechanisms are insufficient to justify transfer by the Government of the United States, or by agencies or persons under its jurisdiction, to the Government of the Republic of South Africa, or to agencies or persons under its jurisdiction, of 93.30% uranium.

- (f) South Africa is beset with deep internal conflicts and exploding tensions.
- (g) South Africa is engulfed in regional tensions arising out of internal human rights deprivations and its racial policies, all of which contribute to perpetuating a volatile atmosphere.

---

\* Petitioner further notes indicated inadequacies in IAEA safeguards by reason of provisions in the INFCIR and Agency's Inspector's Documents.

Petitioners contend that there are special factors, outside of the obvious considerations pertinent to an application for a license to export special nuclear materials are pivotal in this case.

Petitioners contend that internal events in South Africa of June, 1976 as well as regional developments since the 1974 Portuguese Coup, have greatly increased the likelihood which the U.S. Ambassador to the United Nations referred to in December 4, 1963, as "the chance that international tensions over apartheid might lead to a major explosion". \*

These internal developments and the indicated possibility of a laager reaction by the South African Government have immensely complicated the issue of diversion to the point where Petitioners contend that no justifiable basis exists for a finding that the preponderant\*\* fact, relevant to the issues of peaceful use and diversion, permits a finding of non-inimicability.

---

\* Statement of U.S. Ambassador to the United Nations, December 4, 1963.

\*\* Petitioners however contend that the section 57 finding is not satisfied by the mere weight of the evidence and that a clear showing of non-inimicability is required.

Further Petitioners contend that internal and regional tensions make probable diversion by a terrorist or dissident group, Black or White, which in turn would imperil common defense and security. This danger is especially significant since IAEA safeguards are intended to detect national and not subnational diversions of safeguarded material. The possibility of subnational diversion must be considered, given the destabilized situation in South Africa and southern Africa and the already inherent danger of this situation not only for regional peace but for global peace and the common defense and security.

- (h) The proposed exports would contribute to international friction inasmuch as "the apartheid policy of South Africa has clearly led to a situation the continuation of which is likely to endanger international peace and security", and would be inconsistent with the U.S. arms embargo against South Africa.

Petitioners contend that the issuance of the requested licenses not only be inimical to the common defense and security of the United States but would also contribute to international friction. Petitioners further contend that the proposed export would be inconsistent with the U.S. arms embargo against South Africa.

In October 1962, the United States Government announced that it had voluntarily adopted and was enforcing the policy of forbidding the sale to the South African Government of arms and military equipment, whether

from government or commercial sources, which could be used by that government to enforce apartheid either in South Africa or in the administration of South West Africa (i.e., Namibia).

In August 1963, the United States Government took a further step and announced to the United Nations Security Council its decision, "to bring an end to the sale of all military equipment to the Government of South Africa . . . , in order further to contribute to a peaceful solution and to avoid any steps which might at this point directly contribute to international friction in the area."\*

The policy of forbidding all sale of arms and military equipment to South Africa is still the policy of the U.S. government. The "menacing situation" referred to by the U.S. Ambassador to the United Nations in December 4, 1963 to cease provision to South Africa of equipment for the production and maintenance of arms and munitions has deteriorated markedly since the adoption of the arms embargo in 1963. The supplying to South Africa of 93.30% enriched uranium which can be used for the production of nuclear weapons is clearly unwarranted under a reasonable construction of the terms of the arms embargo policy. The fundamental aspiration of the arms embargo against South Africa was not to feed the possibility of a conflagration of global import and to pursue "a solution which will lead to enjoyment by all of the people of South Africa of their human rights and fundamental freedoms."\*\*

---

\*From August 2, 1963 statement of Ambassador Adlai Stevenson, United States Representative to the United Nations.

\*\*Statement of U.S. Ambassador to the United Nations, December 4, 1963.

The proposed license raises serious questions under the U. S. arms embargo against South Africa, and, at a minimum, require that all relevant information be elicited and thoroughly examined and weighed by the Commission as to South Africa's development of plans and capability for non-peaceful uses of nuclear energy, whether or not safeguards are applicable thereto.

- (i) Absent prohibitions on Namibia as a source of the uranium involved in these applications, the risks of illicit use in violation of U. S. international legal obligations and threats to the common defense and security are increased.

Finally, Petitioners contend the proposed licenses substantially implicate the United States international obligations and policy with respect to Namibia. The South African Government is already illegally extracting uranium within Namibian borders, namely, at the Rossing mine and possibly at other locations. These activities are in violation of General Assembly Resolution 2145 (1966), which withdrew South Africa's mandate over South West Africa and for which the United States Government cast an affirmative vote, and are in derogation of the 1971 Advisory Opinion of the International Court of Justice on the Legal Consequences For States of South Africa's

continued Occupation of Namibia, the conclusions of which the United States accepted in its affirmative vote on Security Council Resolution 301 (1971).

U.S. Government issuance of the license for the export of enriched uranium without requiring certification that no Namibian uranium is involved would be directly violative of the United States international legal obligation to refrain from any dealings with South Africa that would encourage its illegal administration of Namibia.

### Summary

For the reasons outlined above, Petitioners contend that the Commission cannot reach the conclusions required by the Atomic Energy Act, as amended, and therefore that the issuance of the license would be unlawful.

The specific contentions of Petitioners Congresspersons organizations and individuals and the manner in which those interests will be affected are affirmed in the affidavit of Goler T. Butcher.

### 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



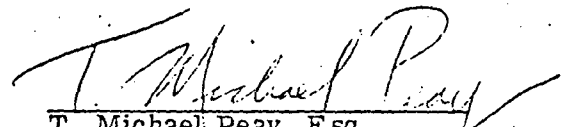
them with financial assistance to enable them to represent fully their views and the views of their members. At an appropriate time, Petitioners will submit a detailed request for financial assistance.

### 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: July 2, 1976, Washington, D.C.

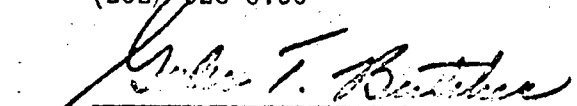
Respectfully submitted  
On Behalf of Petitioners



T. Michael Peay, Esq.  
Lawyers' Committee for Civil  
Rights Under Law  
733 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 628-6700




William F. Ware, Esq.  
Lawyers' Committee for Civil  
Rights Under Law  
733 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 628-6700

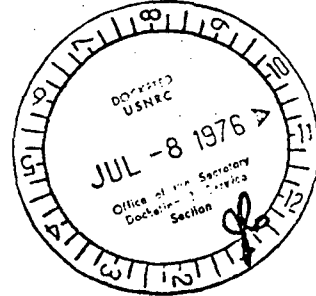


Goler T. Butcher, Esq.  
1156 Fifteenth Street, N.W.  
Washington, D.C. 20005  
(202) 659-2900

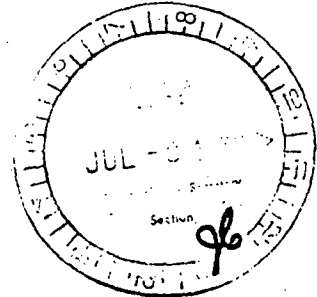
CERTIFICATE OF SERVICE

I hereby certify that a copy of the Petition of Congressman C. Diggs, Jr., Et Al, For Leave to Intervene in the Matter of U. S. Nuclear, Inc., Application for Special Nuclear Material Export License (XSNM-690, Amendment 2) and supporting affidavits of Congressman Charles C. Diggs, Jr., Goler Teal Butcher and T. Micheal Peay were mailed to R. D. Brenner, Vice President Business Operations, U. S. Nuclear Incorporated, P.O. Box 680, Oak Ridge, Tennessee, 37830, this 2nd day of July 1976.

  
\_\_\_\_\_  
Goler T. Butcher  
Attorney for Petitioners



Before the  
United States  
NUCLEAR REGULATORY COMMISSION  
Washington, D.C. 20555



In the Matter of )

U.S. Nuclear, Inc. Application )  
for Special Nuclear Material )  
Export License )

Docket No.  
XSNM-690

AFFIDAVIT OF T. MICHAEL PEAY  
IN SUPPORT OF THE PETITION OF CONGRESSMAN DIGGS, ET AL.  
FOR LEAVE TO INTERVENE

---

City of Washington )  
District of Columbia ) ss:

T. MICHAEL PEAY, being first duly sworn, deposes  
and says:

1. I am an attorney on the staff of the Lawyers' Committee  
for Civil Rights Under Law, with an office at 733 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 the petition for leave to  
intervene in the above-captioned proceeding of Congresspersons Charles C.  
Diggs, Jr., Shirley Chisholm, Cardiss R. Collins, John J. Conyers, Jr.,  
Ronald V. Dellums, Walter E. Fauntroy, Augustus F. Hawkins, Ralph H.  
Metcalf, Parren J. Mitchell, Robert Nix, Charles B. Rangel, Louis Stokes,

Andrew F. Young, and Thami Mhlambiso, The American Committee on Africa, The Episcopal Churchmen for South Africa, Elizabeth S. Landis, Theo-Ben Gurirab, South West African Peoples Organization, The Washington Office on Africa. I have been given written authorization by each of said Petitioners to file this petition on their behalf.

2. Petitioner Charles Coles Diggs, Jr., is a Member of Congress representing the 13th District of Michigan. He presently serves as a member of the International Relations Committee of the House of Representatives and serves as Chairman of the Subcommittee on International Resources, Food and Energy. As such, he also has special functions relating to issues regarding United States international energy policy. He formerly served as Chairman of the Subcommittee on Africa of the House Committee on Foreign Relations. His responsibilities include, inter alia: (a) relations of the United States with foreign nations, generally; (b) intervention abroad and declarations of war; (c) measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad; (d) protection of American citizens abroad; (e) United Nations Organizations; (f) measures relating to international economic policy; (g) export controls; (h) international commodity agreements (other than those involving sugar), and, specifically, energy, natural resources, and food commodity agreements; and (i) disaster assistance. He has had and maintains

special official interest in United States relations with and policy towards Africa as well as in the U.S. government and business relations with South Africa. As such he also has maintained an official interest in seeing that the United States observes its international legal obligations to refrain from any dealings with South Africa that would imply recognition of or support to the illegal South African administration of, and presence in, Namibia. Additionally, his official interest in these concerns is evidenced by this participation in such legal actions as Diggs v. Dent, Civ. Action No. 74-1292 (D.D.C., May 14, 1975), appeal docketed, sub. nom. Diggs v. Morton et al., No. 75-1775 (D.C. Cir., 8/8/75.) He believes that the proposed export and the issuance of the requested export license would be inimical to the common defense and security.

He further believes that dealings by the United States Government with the Republic of South Africa with respect to Namibia, such as granting by the Nuclear Regulatory Commission of a license for the enrichment of uranium both supplied by and imported from South Africa without a condition that Namibia may not be the source of such uranium, are inconsistent with the aforementioned international legal obligations, contrary to the foreign policy interests of the United States, and inimical to the common defense and security. Petitioner Diggs is a member of the Congressional Black Caucus.

3. Petitioner Shirley Chisholm is a United States Congresswoman serving the 12th Congressional District of New York. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

4. Petitioner Cardiss Collins is a United States Congresswoman serving the 7th Congressional District of Illinois, is a member of the International Relations Committee of the House of Representatives and is a member of the Subcommittee on International Resources, Food and Energy of this Committee. She is also a former member of the House Foreign Affairs Subcommittee on Africa and in her official capacity continues to pursue her special interest in United States policy toward Africa, and in particular southern Africa. She thus shares the same interests and beliefs with respect to this proceeding as those expressed in paragraphs 10 through 13 of Petitioner Diggs' affidavit.

5. Petitioner John J. Conyers, Jr., is a United States Congressman serving the 1st Congressional District of Michigan. As a Member with direct representational and committee functions, and as a Member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

6. Petitioner Ronald V. Dellums is a United States Congressman serving the 8th Congressional District of California. As a Member of Congress with direct representation and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

7. Petitioner Walter E. Fauntroy is a United States Congressman serving the District of Columbia. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

8. Petitioner Augustus Hawkins is a United States Congressman serving the 29th Congressional District of Columbia. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

9. Petitioner Ralph H. Metcalfe is a United States Congressman serving the 1st Congressional District of Illinois. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

10. Petitioner Parren J. Mitchell is a United States Congressman serving the 7th Congressional District of Maryland.

As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

11. Petitioner Robert Nix is a United States Congressman serving the 2nd District of Pennsylvania, is a member of the International Relations Committee of the House of Representative and is a member of the Subcommittee on International Resources, Food and Energy of this Committee. He is also a former member of the House Foreign Affairs Subcommittee on Africa. His interests are the same as those of Petitioner Diggs.

12. Petitioner Charles B. Rangel is a United States Congressman serving the 19th Congressional District of New York. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

13. Petitioner Louis Stokes is a United States Congressman serving the 5th Congressional District of Georgia. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and



substantial interest in the instant proceeding.

14. Petitioner Andrew Young is a United States Congressman serving the 5th Congressional District of Georgia. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

15. Petitioner Thami Mhlambiso is a native of South Africa who was forced to go into exile by the South African Government because of his political beliefs centering on opposition to South Africa's racial policy of apartheid. He is also the official representative within the United States of the African National Congress of South Africa (ANC) which is a political party that is banned in South Africa. Petitioner Mhlambiso does not return to South Africa because he would be subject to arrest, detention and persecution by the Government of South Africa. Since his ability to return to his native land is dependent upon a new social and political order being established within South Africa and because he strongly believes that the approval of the proposed license will for various reasons postpone and consequently his return to South Africa, the processes that will bring about the desired new social and political order, Petitioner Mhlambiso asserts that he has a direct and substantial stake in presenting his views in this export license proceeding.

16. Petitioner American Committee on Africa, is a non-profit organization incorporated in the State of New York. During the twenty-one years of its existence, the ACOA has been the principal organization concerned with uncovering and resisting American participation in the perpetuation of colonialism and racism in Africa, as well as a major coordinator of other groups of like interest. It has continuously professed a dedication to upholding international law.

17. Petitioner Episcopal Churchmen for South Africa, founded in 1956, is a non-profit New York corporation which disseminates information about and renders support to individuals active in the struggle against apartheid and for self-determination through peaceful means in southern Africa. Petitioner will be substantially affected by the outcome of the instant case in that it has an institutional interest and function in working to bring about change in South Africa through peaceful means which, in the view of the Petitioner, is an objective now gravely threatened by the enhanced nuclear weapons capability for South Africa embodied in the proposed export licenses. Petitioner Episcopal Churchmen for South Africa will be substantially affected by the outcome of this proceeding

in that it has an institutional interest in participating to ensure that issues related to the United States role in, and assistance to, South Africa's nuclear capability, the effectiveness of safeguards and the prevention of nuclear weapons proliferation as they relate to prospects for peaceful change in southern Africa are full explored by the Commission.

18. Petitioner Elizabeth S. Landis, individually and in her capacity as Legal Consultant to the United Nations Commissioner for Namibia, asserts interests which will be substantially affected by the outcome of the instant proceeding. Petitioner is concerned that the source of enriched uranium involved in XSNM-690 may be of Namibian origin in violation of the United Nations Charter and of Decree Number One of the United Nations Council for Namibia that no natural resources, including uranium in any of its forms, may be exported from the territory without the express consent of the U.N. Council for Namibia or of the Commissioner acting for the Council. Petitioner is a prohibited immigrant and is, therefore, barred from seeking judicial or administrative redress within South Africa or Namibia.

19. Petitioner William L. Clay is a United States Congressman serving the 1st Congressional District of Missouri. As a Member of Congress with direct representational and committee functions, and as a member of the Congressional Black Caucus, Petitioner has a direct and substantial interest in the instant proceeding.

20. Petitioner Theo-Ben Gurirab is a member of the South West Africa Peoples Organization (SWAPO) and is presently its representative plenipotentiary to the United Nations and to the Americas. He is a refugee from his homeland, Namibia (formerly known as South West Africa), and is presently residing in New York City. He does not return to Namibia because he would be subject to arrest, detention and persecution by the Government of South Africa which illegally administers Namibia. He is thus prevented from exercising his basic legal and other rights in Namibia because of the illegal occupation of Namibia by South Africa. His interest in the present case arises in connection with his desire to safeguard Namibian uranium resources from expropriation and exploitation by South Africa, with his diplomatic mission to the United Nations, with UNGA resolution 2145 and UNSC resolutions with respect to his homeland, and with the 1971 International Court of Justice Advisory Opinion relating to the illegal occupation of his homeland.

21. Petitioner South West Africa Peoples Organization of Namibia (SWAPO) is a political organization whose members are inhabitants of or refugees from Namibia, some of whom reside in the U.S. The interest of SWAPO in this matter flows from the fact that it is recognized both by the United Nations and the Organization of African Unity as the authentic representative of the people of Namibia. Secondly, it is concerned that United Nations Security Council resolutions concerning Namibia be

implemented, and that the International Court of Justice Advisory Opinion of June 21, 1971, which obliges all States Members of the United Nations to refrain from any dealings with South Africa which imply recognition of or lend support and assistance to that regime's illegal occupation of Namibia, be observed.

21. Petitioner The Washington Office on Africa is a non-profit organization sponsored by the American Committee on Africa, The Africa Office of the Board for Global Ministries of the United Methodist Church, the United Presbyterian Church, the Board of World Ministries and the Council for Christian Social Action of the United Church of Christ, The Public Affairs Office of the Executive Council of the Episcopal Church, The Christian Church (Disciples of Christ), the Church of The Brethren and The Lutheran Church in America. Its purpose is to provide to concerned individuals and groups information on southern Africa and to be directly active on behalf of its sponsors in affecting United States policy on questions of self-determination and majority rule in southern Africa. Petitioner organization has a direct, unique and substantial institutional interest which will be affected by the outcome of the instant proceeding.

  
T. MICHAEL PEAY

Subscribed and sworn to  
before me this 30<sup>th</sup> day of June, 1976.

  
Notary Public

My Commission Expires June 30, 1981

## A circular postmark from the US Navy, dated JUL 1945. The text "USNVC" is at the top, "JUL" is in the center, and "Office of" is at the bottom. A stylized anchor logo is on the right. The circular border contains numbers 1 through 12.

Docket No.  
XSNM-690

3. I was granted a visa to visit and did visit the Republic of South Africa in August, 1971. But prior to my January, 1972 fact-finding trip to South Africa I was advised that my visa would be dishonored by the South African Government.

4. Since that incident, I have made repeated applications to the South African Government to obtain a visa to visit that country but all such applications have been denied. Hence, I am of the belief that the South African Government will continue to deny me entry into the country.

5. My interest in this proceeding arises from my membership on the House Committee on International Relations, the terms of reference of which include, inter alia: (a) relations of the United States with foreign nations, generally; (b) intervention abroad and declarations of war; (c) measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad; (d) protection of American citizens abroad; (e) United Nations Organizations; (f) measures relating to international economic policy; (g) export controls; and (h) international commodity agreements (other than those involving sugar).

6. My interest also arises from my aforesaid Chairmanship of the Subcommittee on International Resources, Food and Energy, the terms of reference of which include, inter alia: (a) energy and natural resources; (b) food and international commodity agreements; and (c) disaster assistance.

7. My interest arises further and in a more specific and concrete way from the proposed application herein to amend export license XSNM-690 to authorize the export to South Africa of an additional 25,731.50



grams of uranium enriched to 93.30%. This application affects my specific and general responsibilities as a Member of Congress, inasmuch as it relates not only to critical U.S. energy and other resource management concerns but to foreign policy concerns, as well as the problem of diversion.

The distinct possibility of diversion of the subject special nuclear material for the military or other destructive uses is a matter of grave national security concern which may affect my responsibility as a legislator to undertake necessary legislative action in order to prevent the possibility of such diversion or misapplication.

8. As part of my responsibility as a former Chairman of the Subcommittee on Africa and, most recently, as Chairman of the Subcommittee on International Resources, Food and Energy, I have regularly held congressional hearings to evaluate, inter alia, the impact of United States international energy policies and international commodity agreements upon the human rights situation and the deepening racial tension in southern Africa, with special reference for the purpose of these proceedings to the Republic of South Africa and the international territory of Namibia.

9. Inasmuch as I have not been afforded an opportunity, as part of the amended Congressional review process, to comment upon the U.S. - South Africa Atomic Energy Agreement, as amended in 1974, the denial of my petition to intervene as of right may, as a practical matter, deprive me of, or significantly impair, my right to exercise my legislative

responsibility to express my views upon the Agreement, in a timely way and within the only available meaningful forum. Intervention is critical to the exercise of my responsibility since (1) the congressional review process prior to the entering into force of the 1974 Amendment of §123(d) was deficient, (2) the procedures for ascertaining the formal views of the executive agencies and for "developing all the necessary information within the purview of the executive branch which bears on the license decision"\* were wanting and (3) notice of the application for licenses XSNM-508 and 690, and the amendments thereto, was deficient. This asserted right to express my views further relates directly to the possible impact of the Agreement and of the proposed license upon the common defense and security of the United States. Moreover, the deep racial tensions stemming from South Africa's gross human rights deprivations and strict racial separation policy known as "apartheid", and the consequent volatile atmosphere, makes more urgent that there be exhaustive scrutiny of these statutorily imposed preconditions for the granting of an export license.

10. In addition to my seeking intervention on the bases asserted in paragraphs 3-9, supra, the very fact of my being a Member of the U.S. House of Representatives creates for me a special obligation to protect the American public from the dangers to the common defense and security attendant upon the export to South Africa of such special nuclear materials and to ensure that there is full compliance in this case with statutory prerequisites for export licenses. That my intervention is necessary to see to it that the statutorily required finding

---

\* See, Export Licensing Procedures, Nuclear Regulatory Commission, January 1976.

under the Act, namely that the issuance of such license not be inimical to the common defense and security, is indicated by the absence in the record of any section 57 finding for XSNM-508 by the U.S. Atomic Energy Commission, the predecessor of the Nuclear Regulatory Commission.

11. Thus, my intervention is necessary to see to it (1) that there is full, open and adequate consideration of the proposed amendment of the license to double the quantity of weapons grade level enrichment of uranium exported to South Africa; (2) that adequate safeguards verifications in regard to the special nuclear material already exported under the present licenses are satisfied, (3) that implications of relevant nuclear and other developments in South Africa since January 22, 1974, the date of issuance of License XSNM-508, are fully weighed on the issue of diversion and South Africa's commitment to peaceful uses and (4) that the findings required by the law are made.

12. Further, my intervention is necessary to see to it that no license is granted that is inconsistent with U.S. international obligations under the United Nations Charter to refrain from any dealings with South Africa that would imply recognition of or support to the illegal South Africa administration of and presence in Namibia.

13. My intervention is therefore based on procedural and substantive grounds. It is necessary for me to become a party to this proceeding

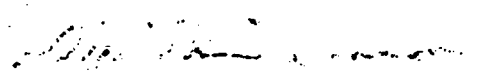
under section 57 and to see to it there is: (a) a full and open expression of my views on the consonance of the subject application with the requirements of the Atomic Energy Act of 1954, as amended, and (b) an independent consideration of my views thereon by the Commission.

14. My joint and several interests, as asserted in the foregoing paragraphs, would not be adequately represented by any other party to these proceedings.

15. Goler T. Butcher and T. Michael Peay, whom I have authorized to represent me in this proceeding, have consulted with me concerning the matters contained in their Affidavits In Support of the Petition of Congressman Charles C. Diggs, et al., for Leave to Intervene and Identifying Specific Contentions and Bases, which affidavits they make in accordance with 10 C.F.R. §2.714(a), to set forth both the facts pertaining to the interests of Petitioners herein and the specific contentions and the bases therefor, which I and other Petitioners for intervention seek to raise herein.

  
CHARLES COLES DIGGS, JR.

Subscribed and sworn to before me  
this 15 day of July, 1976.

  
\_\_\_\_\_  
Notary Public

## A circular stamp from the United States Nuclear Regulatory Commission (USNRC). The outer ring contains the numbers 1 through 12. The center text reads "USNRC" at the top, "JUL -8 1976" in the middle, and "Office of the Secretary" and "Constitution &amp; Legislation Section" at the bottom. A handwritten signature is scrawled over the bottom right portion of the stamp.

Docket No. XSNM-690.

1. I am an attorney with an office at 1156 15th Street, N.W., Suite 302, Washington, D.C., 20005. I am a member of the Bar of the Court of Appeals of the District of Columbia. I have been given written authorization by each of the Petitioners herein, Congresspersons Charles C. Diggs, Jr., Shirley Chisholm, Cardiss R. Collins, John Conyers, Jr., Ronald V. Dellums, Walter E. Fauntroy, Augustus F. Hawkins, Ralph H. Metcalfe, Parren J. Mitchell, Robert Nix, Charles B. Rangel, Louis Stokes, Andrew F. Young, William L. Clay, and Thami Mhlambiso, The American Committee on Africa, The Episcopal Churchmen for South Africa, Elizabeth S. Landis, Esquire, Theo-Ben Gurirab, South West African Peoples Organization, and The Washington Office on Africa, to file this

petition on their behalf. I and/or my co-counsel have consulted with members of Petitioners' staffs concerning the matters contained in this affidavit, which I make in accordance with 10 C.F.R. § 2.714(a), to set forth the specific contentions, and to indicate the bases therefor, which the Petitioners for intervention seek to raise herein.

Petitioners submit that the Nuclear Regulatory Commission (the "Commission") cannot reach the conclusions required by the Atomic Energy Act, as amended and therefore that the issuance of the licenses would be unlawful.

Specifically, Petitioners contend that with regard to this application the Commission cannot find that the issuance of the requested license would not be inimical to the common defense or security, as required by the Atomic Energy Act of 1954, as amended, (the "Act"), and as required specifically by the following sections: Sections 3(d) and (e); 53; 57(c)(2); 82; (42 U.S.C. §2013(d) and (e); 2073; 2077(c)(2); 2112;) and as further required by 10 C.F.R. 70.31(d) and (e).

Petitioners contentions relate to (a) the appropriateness of intervention in this proceeding; (b) procedural; and (c) substantive grounds for intervention.

Petitioners contend, at the outset, that the Commission must hold a full and complete and de novo hearing on this application for the several reasons, including the totality of circumstances of the issuance of licenses

XSNM-508 and 690, and the amendments thereto, all of which jointly and severally demonstrate the appropriateness of Petitioners' intervention.

In support of their contentions, Petitioners maintain that the Commission is unable to reach the conclusion as required by the applicable statutes, and the regulations promulgated thereunder, that the issuance of the requested license would be consistent with the common defense and security for the reasons hereinafter set forth.

In support of their procedural claims, Petitioners contend that the Commission has not obtained relevant and necessary information relating to:

- 1) the adequacy and effectiveness of existing IAEA safeguards at the SAFARI-I reactor;
- 2) South Africa's nuclear facilities;
- 3) South Africa's weapons development capacity;
- 4) South Africa's plans for reprocessing and storage of spent fuels;
- 5) accounting and inspection procedures bearing on the possibility of diversion by either national or subnational groups;
- 6) adequacy of plans for physical security against subnational diversion, sabotage, terrorism and theft;
- 7) whether or not the U.S. could retrieve the special nuclear material at SAFARI-I should South Africa breach its obligations;
- 8) the significance of the SARARI-I reactor as it relates to the issue of proliferation and the involvement of South Africa in domestic, regional

and international friction;

- 9) other sources of supply of nuclear materials and technology that South Africa has access to; and
- 10) the significance of the laager mentality of the South African Government, compounded by the surfacing of racial tensions into the recent upheavals, for the likelihood of diversion.

In support of their substantive contentions, Petitioners maintain that the Commission is unable to reach the finding required by applicable statutes, and the regulations promulgated thereunder, that the issuance of the requested license would be consistent with the common defense and security for the reasons hereinafter set forth.

The ordinary risks, bearing on the common defense and security issues with respect to adequacy of safeguards, diversion and proliferation are multiplied in the case of nuclear exports to South Africa. The special risks associated with South Africa arise from the following facts:

- (a) South Africa has not ratified the Non-Proliferation Treaty (hereinafter NPT);
- (b) South Africa is a country with advanced nuclear technology and is in the process of implementing its uranium enrichment potential;
- (c) South Africa has nuclear weapons capability;



- (d) South Africa has nuclear facilities not subject to IAEA safeguards;
- (e) the U.S. bilateral agreement with South Africa, as amended, and the applicable trilateral agreement between the U.S., South Africa and the IAEA raise serious questions as to the provision thereunder for adequate safeguards for the proposed exports;
- (f) South Africa is beset with deep internal conflicts and exploding tensions;
- (g) South Africa is engulfed in regional tensions arising out of human rights deprivations and its racial policies all of which contribute to perpetuating a volatile atmosphere;
- (h) the proposed exports would contribute to international friction inasmuch as "the apartheid policy of South Africa has clearly led to a situation the continuation of which is likely to endanger international peace and security"\*, and would be inconsistent with the U.S. arms embargo against South Africa; and
- (i) absent prohibitions on Namibia as a source of uranium possibly involved in these applications, the risks of illicit use in violation of U.S. international legal obligations and threats to the common defense and security are increased.

---

\*[from August 2, 1963 statement of Ambassador Adlai Stevenson, United States Representative to the United Nations]

Jointly and severally, the above facts have a direct and substantial impact on the requisite finding that the granting of the license would not be inimical to the common defense and security of the United States..

Petitioners' contentions are developed more fully in their Petition for intervention filed herein.

Goler Teal Butcher  
GOLER TEAL BUTCHER

I, GOLER TEAL BUTCHER, affirm that this is a true copy of my affidavit identifying specific contentions and bases, such affidavit having being executed on the 2<sup>nd</sup> day of July, 1976, Washington, D. C.

Goler Teal Butcher

A. E. Smith 2 July, 1976  
Witness

James D. G. Taylor  
Witness