July 23, 1976

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NRC

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
U.S. NUCLEAR, INC.	)	
	)	
For the Export of Special Nuclear Material to the Republic of South Africa	)	License No. XSNM-690, Amendment 2

U.S. NUCLEAR'S ANSWER TO PETITION TO INTERVENE

On March 26, 1975, U.S. Nuclear, Inc. (hereinafter the Licensee) in a letter to the U.S. Nuclear Regulatory Commission (NRC) sought an amendment to its license, No. XSNM-690, for the purpose of increasing the amount of completely fabricated fuel elements and experimental fuel plates the Licensee could export to the Republic of South Africa for use in its research reactor, SAFARI-1. On May 14, 1975, NRC sought the views of the U.S. State Department concerning the proposed amendment in a letter addressed to Mr. George S. Springsteen, Executive Secretary. NRC is still awaiting a reply to this request to the best of Licensee's knowledge. Over one year later on July 2, 1976, Petitioner Congressman Charles R. Diggs, Jr., other members of Congress, certain institutions and individuals filed a Petition to Intervene as parties with respect to the

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above Amendment to License No. XSNM-690 and to request a hearing. */ Because of delays in receiving both the petition and an amended petition filed July 9, 1976, the Licensee requested a short extension of time in which to file its Answer. The NRC in an Order dated July 14, 1976, granted an extension until July 23, 1976, for the Licensee to file its Answer.

I. Factual Background of Licensee's Activities Related to Petition Request

To assist the NRC Commissioners in reaching a decision concerning this Petition, the following explanation of the facts surrounding Licensee's application for an amendment are included.

The Licensee is a small corporation located in Oak Ridge, Tennessee, whose principal business is the fabrication of fuel rods and associated elements for small research reactors located in laboratories and universities in the United States and foreign countries. The various types of research reactors are all less than one percent of the nuclear output of the reactors powering the large electrical generators being built today. Because of their small size and the small amount of

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*/ By letter dated June 10, 1976, from Mr. Chilk, Secretary of the NRC, to Congressman Diggs, the latter was informed that all petitions filed with NRC within 30 days of June 4, 1976, would be considered as timely. Except for this letter, presumably written after the Commissioners' approval, Licensee would object to the Petition as untimely under 10 CFR § 2.714(a).

uranium in the core of these reactors (less than 10 pounds in the case of SAFARI-1), the uranium has to contain a very high percentage of fissionable U-235 in order to operate. SAFARI-1 requires fuel containing up to 93.3% of the fissionable U-235 isotope. This fissionable material is alloyed with aluminum in a ratio of one to four and then pressed between more aluminum into very thin fuel plates. Up to seventeen of these plates are then encased in a fuel rod of the MTR-type which is 3 inches square and less than five feet long. The completed fuel rods contain approximately 2% uranium (less than one-half of a pound per fuel rod) and 98% aluminum by weight. SAFARI-1 contains 52 fuel rods and 8 control rods, which are similar to fuel rods but contain less uranium (hereinafter both types of rods will be included in the terms "fuel" or "fuel rods"). Thus, a full load of fuel would contain less than 28 pounds of uranium or less than 11.7 kilograms of U-235.

The SAFARI-1 research reactor was constructed in the early 1960's by Allis-Chalmers, a United States corporation. It is located in Pelindaba, Transvaal, Republic of South Africa, approximately 20 miles southwest of Pretoria. SAFARI-1's ORR-type reactor is similar to research reactors located in the Netherlands, Sweden, and the Oak Ridge National Laboratories in the United States. SAFARI-1 is used solely for peaceful purposes, such as scientific research in basic nuclear physics and the production of radio-isotopes for medical applications and agricultural research, and for research into the preservation

of foodstuffs by sterilization. The medical isotopes produced are often of such short half-life that they must be produced locally. As and when necessary, several neighboring African countries have also been provided with such isotopes.

All the special nuclear material (SNM) for the SAFARI-1 research reactor has been supplied by the United States, first under a lease agreement with the Atomic Energy Commission (AEC), and since 1974 under a purchase agreement between the Atomic Energy Board of South Africa and the Licensee. Both the SAFARI-1 research reactor and all its fuel are subject to the terms of the Agreement for Cooperation between the Government of the Republic of South Africa and the Government of the United States of America (TIAS 3885) signed in July 1957, and amended in 1962 (TIAS 5129), 1967 (TIAS 6312), and 1974 (TIAS 7845). Both the reactor and the fuel have always been and remain subject to the safeguards and inspection provisions of the bilateral agreement and subsequently those of a trilateral agreement among the International Atomic Energy Agency (IAEA) and the two Governments, signed in Vienna on July 26, 1967. The IAEA has carried out regular inspections of SAFARI-1 since November 1965, and on every occasion has found no departure from the terms of the safeguards agreement covering the materials and facility involved. Quarterly status reports are also submitted to IAEA and in June 1976 a comprehensive "Material Status Report" was submitted to the U.S. Energy Research and Development Administration's (ERDA) Office of International Program Implementation.

ERDA officials inspected the physical safeguards of SAFARI-1 and its fuel in August 1975.

All the SAFARI-1 spent fuel rods have been and are being reprocessed with the prior approval of AEC/ERDA as required by the bilateral agreement. While some of the early fuel rods were sent to Great Britain for reprocessing, all reprocessing is now being done in the United States under a contract between ERDA and South Africa signed on February 12, 1975. All SNM reprocessed by Great Britain was the property of the United States. The SNM reprocessed in the United States from the spent fuel rods of SAFARI-1 is held in the United States. No reprocessed SNM from SAFARI-1 has ever been returned to South Africa. The spent fuel from SAFARI-1 contains only a minuscule amount of plutonium, unlike the large amounts of plutonium produced in the fuel rods of power reactors. No plutonium is extracted during the reprocessing of spent fuel from SAFARI-1. The Government of South Africa has indicated that it has no reprocessing facilities of its own, nor does it have plans to establish any in the foreseeable future.

In 1973 Licensee executed a contract with the Atomic Energy Board of South Africa to supply fuel rods for SAFARI-1. The contract covers the quantity of SNM exported under export licenses XSNM-508 and XSNM-690, as well as the additional quantity requested by the pending amendment. All of the enriched uranium required to fulfill this contract has already

been purchased by the Licensee directly from AEC/ERDA. No uranium ore has been imported from any country for this contract.

AEC License No. XSNM-508, issued on January 22, 1974, authorized Licensee to ship 11.7 kilograms of U-235 contained as an alloy in 60 fabricated fuel rods. Before the license was issued, the AEC's Assistant Director for Politico-Military Security Affairs, Division of International Security Affairs made the determinations required by section 54, 42 U.S.C. § 2074, of the Atomic Energy Act of 1954, as amended (hereinafter AEA). The Joint Committee on Atomic Energy was also informed by the AEC of the issuance of the license. On October 2, 1974, license XSNM-590 was amended to cover the second scheduled shipment of 60 fuel rods pursuant to the contract. This amendment was granted only after the same procedures as outlined above for the initial license were satisfactorily completed. Less than 18% of the allowable uranium, i.e., 4 kilograms of U-235, had been exported when XSNM-508 expired on January 1, 1975.

On January 6, 1975, the AEC issued Export License No. XSNM-690 for the amount of uranium which was previously authorized under XSNM-508, reduced by the 4 kilograms of U-235 contained in approximately 20 fuel rods which had already been shipped. The remaining fuel elements were exported in five shipments during 1975. Thus, altogether under both export licenses, XSNM-508 and XSNM-690, the Licensee has shipped two core-loads of fuel rods containing 23.2 kilograms of U-235 in

25 kilograms of uranium, which is alloyed and encased in about 1220 kilograms of aluminum.

On March 26, 1975, the Licensee applied for an amendment to XSNM-690 to cover the additional scheduled shipments required by the contract. This amendment is the subject of the instant proceeding. */ In a letter dated January 23, 1976, the Licensee indicated to NRC that South Africa only needed one core load of fuel rods containing 12 kilograms of U-235 during 1976 and the other core load containing an equal amount of fuel rods during 1977. Each core load would be split into at least three separate shipments, as were the first two orders. By spreading the shipments out, the inventory on hand at SAFARI-1 will be kept more in line with the amount needed for refueling during each year. Fabrication of the fuel rods to be shipped in 1976 has been completed, and they are ready for shipment upon receipt of the pending amendment requested over 15 months ago.

For the following reasons, the Licensee believes that the Petition to Intervene should be denied.

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*/ The amendment became number 2, because a later amendment to extend the expiration date was issued first and became Amendment 1.

II. The Petitioners Lack Standing to Participate in this Proceeding

The first and most basic requirement for standing to intervene as a matter of right pursuant to AEA § 189(a), 42 U.S.C. § 2239(a), is that the petitioners must aver an "interest" which may be "affected" by the proceeding. 10 CFR § 2.714(a). This precise issue was recently examined in depth in the first export license proceeding ever held by either AEC or NRC Commissioners. In the Matter of the Application of Edlow International Company as Agent for the Government of India, to Export Special Nuclear Material, License Nos. XSNM-805 and XSNM-845, Docket Nos. 70-2071 and 70-2131, May 7, 1976 (slip opinion) (hereinafter Edlow). The Commissioners in Edlow affirmed NRC's reliance upon "judicial precedents in deciding issues of standing to intervene," id. at 11; decided that a more narrow definition of the rule of standing than used in domestic NRC licensing proceedings should be applied in export licensing proceedings, id. at 13; and determined that the rules of standing as they have evolved since 1954 are to be applied, id. at 16. Counsel has relied upon these policies in this Answer.

A. The Institutional Petitioners Have No Specific Interest in this Proceeding

In Edlow the Commissioners denied standing to petitioners who claimed merely "institutional" interests of an informational or promotional nature. Id. at 17-21. Therefore,

similarly situated Petitioners in the instant proceeding should also lack standing. Such Petitioners include the following:

(1) American Committee on Africa (ACOA), a non-profit corporation which merely claims an interest in "upholding international law" and a concern with "uncovering American participation in the perpetuation of colonialism and racism in Africa." Affidavit of T. Michael Peay, ¶16 at 8. Neither the Petition nor the Affidavits specify any specific injury that ACOA may suffer as a result of Amendment 2 to XSNM-690 being granted.

(2) Episcopal Churchmen for South Africa, a non-profit corporation disseminating information about and giving support to individuals working to bring about change in South Africa through peaceful means, which claims an "institutional interest in participating" in the hearing. Id., ¶17 at 8-9. It makes no specific claims of injury relating to the issuance of Amendment 2 by NRC.

(3) The Washington Office on Africa, a non-profit organization sponsored by various Church groups, which provides "information on southern Africa" to concerned individuals and claims only an "institutional interest." Id., the second ¶21 at 11.

These three organizations fall plainly within the holding in Edlow (pp. 17-21) that "the institutional interests asserted by petitioners do not establish a claim of right under section 189(a) of the Atomic Energy Act." Id. at 21. A mere "interest" in any proceeding is an insufficient ground to secure

standing. Sierra Club v. Morton, 405 U.S. 727, 739 (1972). Like the institutional petitioners in Edlow, the above three organizations have available many other means of obtaining information considered by the NRC in reaching its decision on Amendment 2 to XSNM-690. The absence of their participation in the consideration of the Amendment will in no way impair these organizations' ability to conduct their programs.

B. The Individual and Representative Petitioners are Not Directly Affected by This Proceeding

Another group of Petitioners claim a more individual interest, either directly or on behalf of their members. None of these petitioners meets NRC's requirements for standing to participate either. This group includes:

(1) Thami Mhlambiso, whose attorney states in an affidavit that Mr. Mhlambiso is a native of South Africa who lives in the United States and represents the African National Congress of South Africa, a political party banned by the South African Government. Affidavit of T. Michael Peay, ¶15 at 7. His sole statement of interest is to be able to return to South Africa, which he believes is dependent upon a "new social and political order," which will be postponed for "various reasons" if Amendment 2 to XSNM-690 is granted. This statement is patently abstract and vague. The statement of interest and the alleged manner in which the NRC action would affect Petitioner do not meet the requirements of particularity in 10 CFR § 2.714(a).

Likewise, the Supreme Court has stated flatly with regard to standing: "Abstract injury is not enough." O'Shea v. Littleton, 414 U.S. 488, 494 (1974).

(2) Elizabeth S. Landis, who petitions individually as a person who was refused the right to enter South Africa, and also in her capacity as Legal Consultant to the United Nations Commissioner for Namibia (formerly South-West Africa, a German colony administered since World War I by South Africa) and whose interest is the protection of Namibia's uranium resources, which she thinks may have been or may be used in XSNM-690. Affidavit of T. Michael Peay, ¶18 at 9. Her individual interests are of the same nature as Petitioner Mhlambiso's and are as lacking in particularity as his, thus they create no basis for admission in her individual capacity. Her interests in her other capacity are of a political nature and concern the observance of international obligations between governments, which are too abstract to create standing to participate. Schlesinger v. Reservists to Stop the War, 418 U.S. 208, 217 (1974).

(3) South West Africa Peoples Organization (SWAPO), which is a political organization, whose members are inhabitants or former inhabitants of Namibia, some of whom reside in the United States, that claims to represent the people of Namibia and whose interest is that the granting of Amendment 2 to XSNM-690 may contravene the United States Security Council resolutions concerning Namibia. Affidavit of T. Michael Peay, first ¶21 at 10-11. Since SAFARI-1 is not located in Namibia and SWAPO's

lawyer does not make any statement of fact to establish its concerns vis-a-vis this proceeding, this Petitioner does not meet the requirements of section 2.714(a).

(4) Theo-Ben Guriab, a member of SWAPO and its representative to the United Nations and the Americas according to his lawyer's affidavit, whose interest is that he is not permitted by the South African Government to return to his native Namibia and whose concerns are similar to those of Petitioner Landis in her occupational capacity. Id., ¶20 at 10.

(5) The remaining 14 Petitioners, all of whom are members of the United States House of Representatives who claim a "direct and substantial interest" in whether Amendment 2 to XSNM-690 is granted by NRC, because of their functions on Congressional committees and as representatives of various Congressional districts and because (except for Petitioners Cardiss Collins and Robert Nix) they are members of the Congressional Black Caucus. Id., ¶¶2-14 and ¶19 at 2-7 and 9. These interests, to the extent specified above (the more detailed Affidavit of Petitioner Diggs, which is joined in part by Petitioners Collins and Nix is dealt with infra), are totally lacking in particularity and describe no facts by which these Petitioners might be directly affected by the issuance of Amendment 2 to XSNM-690 as required by AEA § 189(a), 42 U.S.C. § 2239(a). They specify no possible "injury in fact," nor are such informational and representational interests within the "zone of interests" to be protected by the export license

requirements in AEA § 54, 42 U.S.C. § 2074. "Injury in fact" and being within the "zone of interest" are the two basic requirements for standing specified by the Supreme Court in Associated Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 152 (1970).

1. Travel Restriction is Insufficient Nexus To Subject Matter

To the extent that any of the above individual or representative Petitioners state any definite "injury" based upon their inability to enter or return to South Africa or Namibia, it must be disregarded as unaffected by the issuance or denial of Amendment 2 to XSNM-690. This type of speculative and indirect injury, with respect to the shipment of research reactor fuel rods and as described in T. Michael Peay's affidavit, does not meet the minimum requirements for judicial standing; namely, "to establish that, in fact, the asserted injury was the consequence of defendant's actions, or that prospective relief will remove the harm." Warth v. Seldin, 422 U.S. 490, 505 (1975), See 10 CFR § 2.714(d)(3).

2. Speculative, Generalized, and Political Interests Do Not Create Standing

Any injury or interest that the Petitioners claim as a result of an alleged increase in the probability of nuclear proliferation, the possibility of theft or sabotage, or heightened danger to the common defense and security of the United States is an interest shared in general with all Americans.

The Commissioners' observation in Edlow is equally applicable to the instant proceeding: "Petitioners here assert no more than a hypothetical and speculative 'generalized grievance' shared in every respect by the entire domestic population of the country." Edlow at 27. As the Commissioners in Edlow noted in denying standing to the petitioners in that case, recent Supreme Court decisions have denied standing to those claiming only generalized grievances. Id.

Moreover, to the extent that Petitioners seek to interject political or foreign policy considerations as the basis for their interests, this too must fail as an impermissible basis. "It is well established that the federal courts will not adjudicate political questions." Powell v. McCormack, 395 U.S. 486, 518 (1969). The venting of political or foreign policy arguments in a hearing by private individuals or even elected or appointed persons in their representative capacities would not aid the NRC Commissioners in making a decision on whether to approve two years of additional fuel supply for a small research reactor. As the Commissioners noted in Edlow, the examination of foreign policy issues "may need to be exercised ... in contexts which preclude the public adjudication of another nation's commitments and intentions." Id. at 29.

Thus, Petitioners should be denied standing, since they have not set forth "with particularity" any facts pertaining to their interests which would be directly affected by the issuance or denial of Amendment 2 to XSNM-690. 10 CFR § 2.714(a). See

Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. ____, Nos. 74-1124 and 74-1110 (June 1, 1976); Warth v. Seldin, 422 U.S. 490 (1975); Linda R. S. v. Richard D., 410 U.S. 614 (1973).

C. Congressional Affiliation Creates No Special Right to Intervene

Petitioner Congressman Charles C. Diggs, Jr., submitted a separate affidavit in which he claims, inter alia, an interest because he has not been allowed to visit South Africa, because he needs information to assist him in his Congressional duties, because he needs to uphold certain international obligations, and because he needs to express his views on nuclear proliferation and the impact of XSNM-690 on the common defense and security of the United States. These various claims of interest have all been made by other Petitioners and shown in Part II B of this Answer to be insufficient to grant standing to intervene as a matter of right in the NRC's action with respect to Amendment 2 of XSNM-690.

Petitioner Diggs also avers an interest by "the very fact of my being a Member of the U.S. House of Representatives ...." Affidavit of Congressman Diggs, ¶10 at 4. He is joined in this claim by Petitioners Collins and Nix. Affidavit of T. Michael Peay, ¶4 and ¶11 at 4 and 6. Neither the status of being a Member of Congress, or membership on certain committees of the House of Representatives or other legislative duties or

functions can justify, warrant, or authorize these Petitioners' participation as parties in this matter. A U.S. District Court has specifically held that a plaintiff's "status as a congressman does not place him in any better position than the rest of the general public." Brown v. Ruckelshaus, 364 F. Supp. 258, 264 (D. Cal. 1973); Harrington v. Schlessinger, 528 F.2d 455 (D.C. Cir. 1975); Public Citizen v. Sampson, 379 F. Supp. 662 (D.D.C. 1974). See Gravel v. Laird, 347 F. Supp. 7 (D.D.C. 1972). Cf. Macdonald v. FPC, 505 F.2d 355, 357 n.2 (D.C. Cir 1974).

D. The Asserted Need for Information is Premature and Does Not Justify Petitioners' Admission as Parties

Petitioners base their standing to participate, in part, on a need for information about out country's nuclear program administration, their "special official interest" regarding proliferation of nuclear weapons, diversion and theft of SNM, and the use thereof for threats or destructive purposes, and "proper discharge" of their "official duties." Similar assertions were found not to create standing in Public Citizen v. Sampson, 379 F. Supp. 662, 667 (D.D.C. 1974).

1. Assertion is Premature

NRC has not approved or disapproved the Licensee's application to amend the license in question. Moreover, NRC has not yet received from the U.S. State Department as is required by Executive Order 11,902, */ the comments of the other

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*/ "Procedures for an Export Licensing Policy as to Nuclear Materials and Equipment," 41 Fed. Reg. 4877 (Feb. 3, 1976).

Executive agencies with respect to the requested amendment. Until these are received, NRC is not permitted to act. Once NRC obtains these comments and acts on the requested amendment, its action will be publicly noted and the basis therefor open to public scrutiny. */ Without knowing at this time what action NRC will take, Petitioners' claim to a need for information is purely speculative and without any foundation.

2. Freedom of Information Act

Moreover, there are already established procedures for obtaining information of the type whose need is asserted by Petitioners. The Freedom of Information Act, 5 U.S.C. § 552, sets forth the rights of persons to information from Executive and independent regulatory agencies, and is the appropriate vehicle for Petitioners to utilize if they have need for information within the control of NRC or any Executive agencies. There is no justification for permitting Petitioners to subvert the procedures and requirements of the Freedom of Information Act by admitting them as parties to this proceeding in order to obtain such information.

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*/ At that time if Petitioners still believe that they have been aggrieved by the final NRC decision on this matter, they have the right to seek judicial review pursuant to Section 10 of the Administrative Procedures Act 5 U.S.C. §§ 701-06. See AEA § 181, 42 U.S.C. § 2231.

3. Congressional Review

The allegations that Congressional review procedures "have been either inoperative, inapplicable or ineffective" also provide no basis for concluding that NRC should admit the Petitioners as parties or even hold a hearing. The procedures, forums, and scope of Congressional reviews are matters solely within the province of the Congress and its duly authorized committees. It is not the prerogative or function of NRC to overcome any such deficiencies, if in fact any exist, or to substitute its judgment for that of the Congress on whether the nature and scope of Congressional review provides Petitioners an "effective means to protect their interests." The manner, timing, nature and results of any Congressional review of NRC's action in this proceeding is the sole responsibility of the Congress as a co-equal and independent branch of the Federal Government. Petitioners' relief because of alleged deficiencies in Congressional review must be sought from the Congress, not NRC.

For the above stated reasons, none of the institutional, individual, representative, or Congressional Petitioners have demonstrated either the necessary "interest" based on the submitted affidavits of Petitioner Congressman Diggs and of Petitioners' Attorney, T. Michael Peay, or any facts with sufficient "particularity" as required by 10 CFR § 2.714(a) to justify the grant of their Petition for Leave to Intervene as a matter of right. Therefore, the Petition should be denied.

III. The Contentions of the Petitioners Do Not Meet the Requirements of § 2.714

NRC regulations establish four factors which a contention must meet to be admissible: (1) specificity, (2) pertinence -- it must identify "the specific aspect or aspects of the subject matter of the proceeding," (3) particularity, and (4) basis -- it must set forth "with particularity ... the basis for his [Petitioners'] contentions with regard to each aspect on which he desires to intervene." 10 CFR § 2.714(a). See BPI v. AEC, 502 F.2d 424 (D.C. Cir. 1974). None of Petitioners' contentions meet all four factors and, therefore, even if Petitioners did not lack standing, the Petition must be denied.

The Petitioners claim to have contentions in three general areas of (a) appropriateness, (b) procedures, and (c) substantive grounds.

The first general area apparently relates to the necessity to have a hearing and allow intervention in export license cases, but neither Attorney Butcher's Affidavit nor the Petition sets forth this contention with specificity. Basically, this general contention is not pertinent, since the instant subject is the issuance vel non of an export license for a small amount of fuel for a research reactor and not whether hearings or interventions are necessary in export license proceedings. This subject should be addressed in a petition for rulemaking pursuant to 10 CFR § 2.802 and not in this

proceeding. Irrespective of Petitioners' contention, NRC proceedings for amendments to export licenses for SNM are already identical to those for initial export licenses. 10 CFR § 70.34.

The procedural contentions of the Petitioners claim that the NRC does not have sufficient information regarding ten listed areas, which may or may not be pertinent, but in any case, Petitioners offer no basis for their procedural contention. The Commissioners have examined similar and even more specific procedural claims in Edlow at 39-41, and decided that "the nature or scope of the information available to the Commission, or of the analyses developed by it" was not a proper subject for hearings before the NRC. Id. at 46. Therefore, such contentions cannot be allowed. Petitioners' procedural claims may be inaccurate because they are relying on statutes pertaining to domestic licenses rather than export licenses. Compare Petition at 17 with Edlow at 42.

Petitioners set out nine substantive contentions allegedly relating to whether the issuance of Amendment 2 would be "inimical to the common defense and security" of the United States. The first contention regarding South Africa's not being a signatory to the Non-Proliferation Treaty was addressed and dismissed as an issue in Edlow at 54-55. Likewise, Petitioner's second contention dealing with South Africa's pilot enrichment plant was also considered in Edlow at 55 and

rejected. No basis is stated for Petitioners' third and fourth contentions, and to the best of Counsel's understanding and belief they have absolutely no basis in fact. Petitioners' fifth contention relating to IAEA safeguards apparently concerns the storage of plutonium or reprocessed SNM which are not pertinent to the factual situation, since the SAFARI-1 research reactor's spent fuel contains only insignificant amounts of plutonium and all of the reprocessing of such fuel is done by ERDA with the reprocessed SNM stored in the United States. Petitioners' next three contentions (six, seven, and eight) all deal in general terms with the political situation in South Africa, and therefore are not pertinent to this proceeding, nor are they set forth with particularity as to their relation to the supply to fuel to SAFARI-1. Fuel rods for a research reactor, in which the U-235 is alloyed with aluminum, are certainly not arms or weapons nor could they easily be made into weapons. The final substantive contention (nine) relates to the possible use of uranium ore from Namibia in SAFARI-1 fuel. No basis for such a contention is given, and indeed could not possibly be given. Counsel understands that all the enriched uranium for export to South Africa by the licensee under its export licenses and under Amendment 2, if it is granted, has been purchased directly from ERDA. Moreover, it is Counsel's understanding and belief that the South African Government has to this day not exported any uranium from Namibia.

For the above stated reasons, none of Petitioner's contentions meet the requirements of section 2.714(a), and the Petition must be denied. */

IV. The Petitioners Set Forth No Reasons to Hold A Hearing

The types of information which Petitioners indicate they would like to present at a hearing could be better presented by a written or oral statement to the Commissioners pursuant to 10 CFR § 2.715(a). In this case, which involves a small research reactor similar to many others in all parts of the world which has been in operation for over ten years without incident and is subject to both a bilateral Agreement for Cooperation and an IAEA-trilateral safeguards agreement, there does not appear to be any reason for NRC to hold even a legislative type hearing as in Edlow. Moreover, unlike the thirteen year old bilateral agreement with India (see discussion in Edlow at 50), the bilateral agreement with South Africa was reexamined and amended as recently as 1974 (TIAS 7845). The normal scrutiny of export license applications by the NRC, done in accordance with statutes passed by Congress as furhter implemented by NRC Regulations and Executive Order 11,902, is entirely sufficient.

If the Commissioners should decide to grant a discretionary hearing, the above reasons would certainly indicate

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*/ Should Petitioners, nonetheless, be admitted to this proceeding, the Licensee requests a prehearing conference for the purpose of clarifying and determining the specific contentions to be considered.

that no more than a legislative-type hearing as in Edlow should be permitted. Licensee is prepared to file legal briefs on the standing issue or other issues in this proceeding, if the Commissioners so request.

For the foregoing reasons, Licensee believes that the Commissioners should deny the Petition and proceed with their normal handling of Licensee's amendment which has been pending for sixteen months.

Respectfully submitted,

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Dated: July 23, 1976

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CERTIFICATE OF SERVICE

Service has been effected on this date by first class mail or messenger to the following:

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Dated: July 23, 1976