UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

CHAIRMAN

October 23, 1979

The Honorable John Glenn
United States Senate
Washington, D. C. 20510

Dear Senator Glenn:

During Commissioner Bradford's and my appearance at the Senate Foreign Relations Committee's October 5 hearing, you requested the Commission to re-examine the text of the proposed U.S.-Australia Agreement for Cooperation to determine whether my June 8, 1979 letter to the President on the proposed Agreement continues to reflect the NRC position.

On the basis of this re-examination, I would like to reiterate Commission concurrence in the proposed Agreement. However, during your hearing, you requested further comment on the question of whether the Agreement's provision dealing with U.S. "fall-back" safeguards is sufficiently stringent. Our conclusion is as it was when we provided our comments to the President on June 8 that the provision is sufficiently stringent for purposes of our Agreement with Australia.

The proposed Agreement requires the parties to enter immediately into new safeguards arrangements, if those provided for by the Australia-IAEA Agreement of 1974 are not and will not be applied. The net effect of this provision is generally consistent with certain of our existing agreements for cooperation. One notable exception, however, is our agreement with Japan, the counterpart article of which triggers U.S. fall-back safeguards rights upon determination that IAEA safeguards acceptable to the U.S. are not being applied.

One might argue, therefore, that if the Japanese language is the standard against which others are to be measured on this point, the Australian Agreement falls short, in that the notion of "acceptability" to the U.S. is, at a minimum, diluted.

In response to this argument, proponents of the language in the Australian Agreement would point to the detailed provisions of the Australia-IAEA Agreement and assert that serious problems of non-implementation, e.g., with respect to material control and accounting, scope of inspections, inventory and design information, etc., could be used by the U.S. as a basis for insisting on new safeguards arrangements. They would also maintain that the proposed U.S.-Australia Agreement represents an improvement over current agreements in that framework of such new arrangements, i.e., conformance "with agency safeguards principles and procedures," etc., is specifically provided for.

I noted earlier that the Commission continues to concur in the proposed Agreement with Australia, notwithstanding deficiencies perceived by certain Commissioners with regard to those matters addressed in my June 8 letter to the President (and in related Congressional testimony) and the adequacy of the language dealing with fall-back safeguards rights. In no small measure, this unanimous position reflects Australia's acknowledged non-proliferation credentials. It is not possible to forecast whether, in the case of another agreement involving a nation whose credentials are less impeccable than those of Australia, our position would be the same. At this juncture, I can assure you that we will consider each future proposed Agreement on its merits and forward our recommendations to the President.

Commissioner Bradford notes that unlike prior agreements, the Australian Agreement for Cooperation does not give the United States the automatic right to impose bilateral safeguards if IAEA safeguards are not acceptable or are not applied. Instead, it calls for the parties to enter into arrangements conforming to IAEA safeguards principles and procedures and providing equivalent assurance. He also notes that the newer Agreements for Cooperation, signed before the NNPA, provided to the U.S. the right to impose bilateral safeguards if the IAEA safeguards were no longer satisfactory to the U.S. The clearest example of this right is the U.S.-Japan Agreement which would permit the U.S. to impose bilateral safeguards upon a determination that IAEA safeguards acceptable to the U.S. are not being applied. The Australian Agreement for Cooperation, on the other hand, would permit safeguards arrangements other than IAEA safeguards only if safeguards are not applied. This standard in the Australian Agreement is generally equivalent to the older Agreements for Cooperation negotiated before the NNPA.

He feels that the rights of the parties must be set forth with sufficient clarity to avoid misunderstandings on this important issue. Accordingly, he would suggest that the safeguards provision unambiguously provide the U.S. right to impose bilateral safeguards in the event that it determines that IAEA safeguards are no longer acceptable. The nature of these bilateral safeguards should also be clearly set forth.

I hope that you will find these comments useful in connection with the Committee's consideration of the proposed Australian Agreement.

Sincerely,

Joseph M. Hendrie

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