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

May 12, 1980

MEMORANDUM FOR: Chairman Ahearne
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Hendrie
Commissioner Bradford

FROM: EB Leonard Bickwit, Jr., General Counsel

SUBJECT: APPLICATION OF SECTIONS 127 AND 128 OF THE ATOMIC ENERGY ACT TO PROPOSED EXPORTS TO INDIA

On May 7, 1980, the Executive Branch submitted additional information on XSNM-1379 to the NRC as requested by the Commission in July and October of last year. The Executive Branch also provided its views recommending approval of the follow-on license application, XSNM-1569. Both of these license applications cover proposed exports of special nuclear material to be used at the Tarapur facility. The primary legal issue raised by these applications is whether the full-scope safeguards requirement set forth in Section 128 of the Atomic Energy Act is now applicable to either or both of these licenses.

Applicability of Section 128

In its May 7 submission the Department of State did not provide an analysis in support of its legal position on the Section 128 issue. Instead, the Executive Branch views include a one sentence, conclusory assertion that Section 128 of the Atomic Energy Act does not apply because the two applications were filed with the Commission prior to September 10, 1979, and the initial shipment of the material was reasonably planned to occur prior to March 10, 1980. This legal view appears to represent a change from earlier positions taken by the Executive Branch. For example, in testimony delivered shortly after enactment of the NNPA, when NRC referred Tarapur application XSNM-1060 to the President, Joseph Nye (then Deputy Undersecretary of State for Security Assistance, Science, and Technology) took the position before two congressional committees that the "... Nuclear Non-Proliferation Act ... establishes that a recipient country must, within two years, have all its peaceful nuclear activities subject to IAEA safeguards as a condition for U.S. supply after that time." (Emphasis supplied.) 1/

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1/ Hearings on Nuclear Fuel Export to India Before the Subcommittee on Arms Control, Oceans and International Environment of the Senate Committee on Foreign Relations, 95th Cong. 2nd Session (May 24, 1978) at 339 and 343; Hearings and Markup on Export of Nuclear Fuel to India Before the House Committee on International Relations, 95th Cong. 2nd Session (May 23, 1978) at 38.

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The Executive Legal Director provided the Commission with a memorandum on March 6, 1980 which analyzed the legislative history of Section 128 of the Atomic Energy Act and concluded that

> ... whether or not the March 10, 1980, date in section 128 of the Atomic Energy Act of 1954, as amended ..., is in fact a deadline under the present circumstances, with respect to export of low-enriched uranium to Spain, is an extremely close question. Sound and reasonable arguments on each side of the issue can be made and the Commission is free from a legal standpoint to go either way--although, on balance, the better legal position is probably that there is a deadline. 2/

OGC has reviewed that memorandum, and a February 13, 1979 OGC memorandum to Chairman Ahearne entitled "Tarapur -- Analysis of the Legislative History of the Prospective Application of Export Licensing Criteria", and believes that the State Department's legal position on the effective date of Section 128 is not defensible. For the reasons set forth below, OGC believes that the Commission must apply the full-scope safeguards requirement to both of the pending Tarapur licenses. In this memorandum we will not reiterate the thorough ELD analysis, but will instead focus on the major issues.

The Executive Legal Director's office informally discussed the State Department's position with the Department before drafting its March 6, 1980 memorandum. Apparently, the Department's argument relies upon a somewhat strained reading of the language of Section 128. That section provides that the full-scope safeguards criterion "shall be applied as an export criterion with respect to any application ... which is filed after eighteen months from the date of enactment of this section [September 10, 1979], or for any such application under which the first export would occur at least twenty-four months after the date of enactment of this section [March 10, 1980]." In interpreting this provision the State Department believes that the term "would occur" refers to the shipping date planned by the applicant when submitting its export license application, rather than the actual shipping date which, at that time, would be unknown.

It is OGC's view that this interpretation is inconsistent with the Congressional intent underlying Section 128. As the ELD legal analysis indicates (pp. 3-9), the Congressional drafters of the NNPA insisted that a full-scope safeguards provision be included within the Act. The legislative history of the NNPA is replete with statements that on a date certain exports should be terminated to countries which had not accepted full-scope safeguards. The House Committee report, for example, states:

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2/ The ELD memo is entitled "Legal Analysis of Section 128 of the Atomic Energy Act with respect to approval of a proposed license to export Low-Enriched Uranium to Spain (License Application No. XSNM-1477, SECY-79-200B and SECY-80-114)."

> Section 504(e)(2) adds an additional licensing criterion which becomes effective 18 months after the enactment of this bill. This criterion requires that a recipient State permit IAEA safeguards to be applied with respect to all peaceful nuclear activities carried out within that State. This requirement is an essential element of the bill, and in the committee's view, indispensable to any comprehensive nuclear antiproliferation policy.
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> The committee has, in the interest of flexibility, permitted an 18 month period of grace before requiring the mandatory application of this criterion. In addition, the bill provides for further extension by Executive Order, subject to congressional disapproval by concurrent resolution.
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> India and South Africa would be most significantly affected by this requirement. The committee feels strongly that the currently unsafeguarded facilities in those countries must be brought within the framework of the IAEA safeguards system if American nuclear cooperation is to continue.... 3/

On July 29, 1977, Senator Glenn, the NNPA's primary Senatorial sponsor, inserted into the Congressional Record a section-by-section analysis of S. 897. In pertinent part, that analysis stated:

> In addition to the phase I criteria, the bill prohibits exports to nations which refuse to place all of their nuclear facilities under safeguards ... as of 18 months after the date of enactment. The 18 month delay is designed to allow time for negotiations, and the President may delay this requirement for any particular country in extra-ordinary circumstances, subject to Congressional veto. 4/

In fact it was precisely the inclusion of a date certain cut-off in the full-scope safeguards provision that the Executive Branch initially objected to. In Congressional testimony Joseph Nye asserted: "I should have mentioned the other concern which we have which is the 18-month guillotine--in other words, if you haven't achieved agreement by then, that a uranium embargo would begin." 5/

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3/ H. Rep. No. 95-587, 95th Cong., 1st Sess. at 22, 25.

4/ 123 Cong. Rec. S.13139 (July 29, 1977).

5/ Hearings before the Subcommittees on International Security and Scientific Affairs, and on International Economic Policy and Trade of the House Committee on International Relations, 95th Cong., 1st Sess., at 118 (May 19, 1977).

The Senate Committee report explained the final language of Section 128 as follows:

> In defining what exports will be covered by the additional criterion, the bill refers to any application which is filed after 18 months from enactment, and to any application filed prior to that date for an export which would occur at least 24 months after enactment. The reason for this provision is to ensure that a large number of applications covering future exports will not be filed in the 18th month to avoid this requirement. However, the 6-month lagtime is allowed for licenses legitimately filed prior to the 19th month where the actual shipping process is a lengthy one. The NRC should also not prevent any other highly unusual proposals which are intended to circumvent this statutory provision. 6/

We find no indication here or elsewhere in the legislative history of the NNPA that the applicant's intended shipping date is to be the controlling factor in determining whether the full-scope safeguards criterion is to be applied to a given application.

Use of the applicant's proposed shipping date could in fact lead to obviously unintended results. For example, in 1975 an application was filed with the NRC seeking authorization to export high-enriched uranium to South Africa. The Executive Branch has not yet provided the NRC with its views on that application. Suppose that five years from now the Executive Branch recommended issuance of that license. Under the State Department analysis full-scope safeguards would not be required because the application was filed prior to September 10, 1979, and the applicant expected to export the material prior to March 10, 1980. Certainly this is inconsistent with the Congressional intent that there be a "guillotine" approach in the implementation of the full-scope safeguards requirement.

Despite the establishment of such an approach, Congress recognized that in some cases the United States might wish to continue exports to a given country even though negotiations on full-scope safeguards had not been fruitful. Section 128(b)(1) of the NNPA specifically provides procedures to be followed in such cases. The Act provides that the Commission is not to apply the full-scope safeguards criterion if the President determines that "failure to approve an export to which this subsection applies because such criterion has not yet been met would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize

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6/ S. Rep. No. 467, 95th Cong., 1st Sess., at 18.

the common defense and security ...." Licenses issued pursuant to this waiver procedure would be subject to Congressional review procedures specified in the Act. The President has made no such determination with respect to the two pending exports to India, and it is therefore our view that the Commission cannot issue the licenses without making a determination that India has accepted full-scope safeguards. 7/

Analysis of Section 127 Criteria

Even if the Commission adopts the State Department position that the full-scope safeguards requirement did not apply to the two pending fuel licenses, the Commission could reasonably take the position that issuance of these licenses -- as well as the component licenses pending before the Commission -- would be inconsistent with Congressional expectations. In OGC's February 13, 1979 memorandum analyzing Congressional intent with respect to Indian export licenses during the 24 month "grace period", we concluded that Congress intended that exports would continue during the period provided for negotiations. We stated, however, two qualifications to that conclusion. In sum, it was our advice that:

> Congress intended exports to continue throughout the grace period with the blessing of the Commission unless one of two kinds of determinations -- reflecting the two caveats mentioned above -- could be made. The first is that the recipient nation is not presently in compliance with the obligations reflected in the Phase I criteria or with other statutory requirements, or may not be in compliance later on during the grace period. The second is that circumstances have changed in a material way so that the likelihood of compliance with those obligations and requirements, either during or after the grace period, has decreased significantly since enactment.

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7/ Despite these provisions, one could conceivably argue that the failure of the Commission to act upon these applications resides with the Executive Branch for failing to respond to the Commission questions on XSNM-1379 and provide views on XSNM-1569 before March 10, 1980 and that under the doctrine of nunc pro tunc the licenses could be issued retroactively to March 9, 1980. It is our view that unlike the Argentina case, the doctrine may not be properly applied here. As set forth in the May 8, 1980 OGC memorandum, we believe the nunc pro tunc doctrine could be used in cases where bureaucratic error caused unjust results. Here, however, there is no bureaucratic error. The Executive Branch for months has been negotiating with India on full-scope safeguards, and has finally decided to provide its views to the NRC. We therefore do not believe the Commission could legally apply the nunc pro tunc doctrine.

Focusing on the second of these points, we believe that the Commission could plausibly argue that the likelihood of India's compliance has in fact decreased significantly. Two years of negotiations with India have produced no changes in India's policy with respect to full-scope safeguards, and no change is anticipated in the foreseeable future. If anything, the situation has worsened. Indira Gandhi has been returned to power and in recent months has made assertions that India will not renounce the possibility of developing "peaceful" nuclear explosive devices. Moreover, the Indian Government continues to condition its assurances of compliance with the U.S.-Indian Agreement for Cooperation on continued compliance by the United States with "its obligations under the agreement". (See letter of May 7, 1980 from Louis V. Nosenzo to James R. Shea.)

The likelihood that the sequence of events outlined in the previous Gilinsky-Bradford opinions will ultimately occur would thus appear to have increased with the passage of time. 8/ Whether it has increased to the degree necessary to constitute a "change of circumstances" under the test previously proposed to the Commission is the issue on which we believe the Commission should focus.

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8/ It will be further increased with respect to the component exports if the Commission sends the fuel exports to the President on the basis of their failure to satisfy the section 128 criterion. Our view is that the 128 criterion does not apply directly to the component exports. See OGC memorandum to Commissioner Bradford of February 1, 1980.

March 23, 1979

SEPARATE VIEWS OF COMMISSIONERS GILINSKY AND BRADFORD

We find the application before the Nuclear Regulatory Commission for the export of enriched uranium to the Tarapur Atomic Power Station in India 1/ does not meet the standards for NRC approval set forth in the Atomic Energy Act. We believe it is unwise for the Commission to relax those standards in order to accomodate a favorable decision.

Under the terms of that Act as amended by the Nuclear Nonproliferation Act the Commission cannot deny an export. The Act sets forth several requirements, principally codified in the six safeguards-related criteria of Section 127. 2/ If the Commission cannot find upon a "reasonable judgment" that an application meets these requirements, it must refer the application to the President, who has broad discretion under the law to balance overall U.S. nonproliferation and security interests. 3/ Congress intended to separate the function of the Commission in applying the licensing criteria from that of the President and the Congress in their consideration of broader questions of foreign policy. The

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1/ The License Application is number XSNM-1222, filed by Edlow International, as agent for the Government of India, to export 404.51 kilograms of U-235 contained in 16803.6 kilograms of uranium enriched to a maximum of 2.71 percent.

2/ Section 127 of the Atomic Energy Act, 42 U.S.C. 2156.

3/ Section 126 of the Atomic Energy Act, 42 U.S.C. 2154.

Section 127 criteria do not apply to the President's decision or to any Congressional review of that decision. 4/

The Commission has not taken the Presidential referral provision of the law lightly. Out of more than one hundred major export applications considered by the Commission, only one, the first proposed export to India subject to the new law has been referred to the President, 5/ who subsequently authorized the export. 6/ Congress did not override that action. 7/

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4/ A close scrutiny of Presidential and Congressional actions on the Tarapur license makes clear that neither the President nor the Congress felt it incumbent on them in carrying out their respective roles under the Act to reexamine the question of whether the criteria were met in determining whether larger non-proliferation objectives required that the export should be authorized.

5/ This was License Application XSNM-1060, referred to the President on April 24, 1978. CLI-78-8, 7 NRC 436 (1978).

6/ E.O. 12055, April 27, 1978.

7/ The United States Senate Committee on Foreign Relations and the United States House of Representatives Committee on International Relations held hearings on the President's decision at which the Commission, the Executive Branch and the petitioners testified. See Hearings before the Subcommittee on Arms Control, Oceans and International Environment of the Senate Committee on Foreign Relations, 95th Cong., 2d Sess. (1978); Hearings before the House Committee on International Relations, 95th Cong., 2d Sess. (1978). On July 12, 1978 the House defeated a motion to overturn the President's decision by a vote of 227-181. 124 Cong. Rec. H.6530. No Senate vote was taken on the issue.

At the heart of the circumstances leading to the prior NRC decision lay the unique character of the Indian-U.S. Agreement for Cooperation 8/ and the special interpretation India has put on it. Successive Indian governments have consistently tied that country's obligations under the Agreement to the continuing provision of U.S. fuel. The concerns we expressed last year on this point 9/ have deepened, since the situation today does not appear to have altered.

After September, 1979, U.S. nuclear trade with a country not party to the Nonproliferation Treaty (as India is not) will be conditioned on that country's acceptance of international safeguards on all of its peaceful nuclear facilities ("full-scope safeguards"). 10/ In the case of India, this provision of the Act, which threatens a cut-off of U.S. fuel for India, poses special difficulties even before the end of the 18 month "grace period" for acceptance of full-scope safeguards. These obligations, which are critical for

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8/ The Agreement provides for the exclusive use of U.S. fuel in the Tarapur reactors and, in a reciprocal provision, a U.S. guarantee to supply the necessary fuel. Article II A.

9/ CLI-78-8, 7 NRC 436 (1978), at 437.

10/ Section 128 of the Atomic Energy Act, 42 U.S.C. 2157, requires that non-nuclear weapons states accept international safeguards on all their peaceful nuclear activities as a condition of continued U.S. nuclear export.

export approval, include the application of international safeguards to the exports, 11/ an implied understanding not to use any of the exported fuel materials (or reactors) for nuclear explosive purposes, 12/ and a requirement to obtain U.S. approval for any retransfer or reprocessing of U.S.-supplied fuel. 13/

India has resolutely opposed full-scope international safeguards over Indian nuclear facilities. If India fails to accept such full-scope safeguards by the end of the statutory grace period, and if that period is not extended by the President (an action the Department of State has termed "highly unlikely" 14/), a cutoff of fuel shipments will follow. We are faced with the distinct possibility that India will interpret this result as freeing it of any

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11/ Trilateral Agreement signed by the United States, India and the I.A.E.A. on January 27, 1971.

12/ U.S.-Indian Agreement for Cooperation, Article VII.

13/ U.S.-Indian Agreement for Cooperation, Article VII A (2), Article II F, Article II E.

14/ Testimony of Joseph S. Nye, Deputy to the Under Secretary for Security Assistance, Science and Technology, U.S. Department of State, before the Subcommittee on Arms Control, Oceans and International Environment of the Senate Committee on Foreign Relations, 95th Congress, 2d Sess. (May 24, 1978), at 352.

reciprocal obligations under the U.S.-India Agreement. 15/ In that event the protection now afforded all U.S. nuclear exports to India under the Agreement may well cease to exist.

Had the Indian Government provided assurances that whatever the fate of the Agreement the necessary protections will continue to apply to current and past U.S. nuclear exports, the grace period would not have been disturbed by unresolved questions and disagreement within the NRC. But no such assurances have been received.

The details of the special problems that attend the Indian Agreement and the arguments against NRC approval are presented at some length in our separate views on the

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15/ The Indian interpretation is at odds with a plain reading of the fuel supply contract implementing the Agreement for Cooperation. The contract provides that India shall comply with the laws of the United States and with any changes in the law or policies of the United States with respect to ownership and supply of special nuclear material. Contract of Sale, May 17, 1966. Article XI. A 1971 amendment to the sales contract provides that the "purchaser shall procure all necessary permits or licenses...and comply with all applicable laws, regulations and ordinances of the United States...." Should India fail to comply with the requirements of Section 128 of the Atomic Energy Act, India would not be in compliance with applicable law and the United States would be relieved of its obligation to supply fuel until India complied.

previous Indian license application 16/ and there is no need to repeat them here. Since that time the situation has not changed for the better. The grace period is shrinking rapidly. We are now some six months away from the time this agency can no longer approve applications for nuclear exports for Tarapur failing India's acceptance of international safeguards on all its nuclear facilities. We are less than a year away from the time, given these same circumstances, when all shipments to Tarapur will have to cease. This is relevant to the present application: Congress did not intend the NRC to turn a blind eye to the serious possibility that in less than a year the accumulated pile-up of U.S. fuel shipped to India over the years will be placed forever beyond the U.S. controls required by the statute. It is not just this but also all preceding shipments of fuel which are at risk.

The fact that assurances covering the eventual fate of U.S. supplied fuel apparently cannot be obtained during the grace period means that the Commission faces a choice: It can approve the export before it by stepping outside the boundary drawn by the Congress for uniform and consistent application of the criteria and into territory which has been explicitly

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16/ CLI-78-8, 7 NRC 436 (1978), at 437.

reserved for the President. Or it can acknowledge the plain fact that the criteria are not met and refer the matter to the President's broader discretion.

## ADDITIONAL VIEWS OF COMMISSIONER KENNEDY

I agree with the Commission's conclusion in this case that, based upon the information before us, we are unable to find that the proposed exports meet the criteria set forth in Sections 109, 127, and 128 of the Atomic Energy Act. That is not to say, however, that the pending applications should not ultimately be granted.

Our focus under the Atomic Energy Act and the Nuclear Non-Proliferation Act is upon a narrow, albeit complex, set of criteria designed to ensure that, to the fullest extent possible, all exports of source material, special nuclear material, production or utilization facilities, and sensitive nuclear technology comport with the non-proliferation objectives set forth in Section 2 of the Nuclear Non-Proliferation Act of 1978 (NNPA). That Act is the product of extensive discussion concerning the proper balance to be struck between the traditional role of the Executive Branch in conducting foreign affairs, on the one hand, and, on the other, the relatively novel oversight function to be fulfilled by the Nuclear Regulatory Commission, an independent regulatory body. It is this synthesis of decision-making functions which has introduced substantial uncertainty both at home and abroad in the export process.

We must not lose sight of the fact that the NNPA is premised, in large part, upon the notion that decisions made by the NRC in the area of

export licensing require substantial interaction with the Department of State. Indeed, effective implementation of the NNPA presupposes heavy reliance by the NRC on the recommendations of the Secretary of State and other agencies which are directly responsible to the President. To the extent that the NNPA imposes constraints, either implicit or explicit, on the Commission's ability to defer to the judgment of the Department of State, it is in fundamental conflict with the paramount principle upon which this country's conduct of foreign affairs is based--that decisions involving intricate and delicate matters of foreign policy are best made by, and properly vested in, the President, and those responsible to him, in consultation with the Congress.

We now find ourselves in an awkward position, faced with a recommendation by the Secretary of State that the Tarapur licenses issue, but unable to find that the proposed exports meet the criteria set forth in Sections 109, 127, and 128 of the Atomic Energy Act. The statute leaves us no choice and compels the decision reached by the Commission.

Lest this decision be seen by our trading partners as indicative of a posture of equivocation toward further nuclear exports, however, it should be made clear that the Commission's decision is not to be interpreted to mean that these export licenses should not be granted.

The NNPA established a procedure whereby the ultimate decision in cases such as the one before us, involving intricate balancing of seemingly conflicting considerations of foreign policy, is to be made by the President with Congressional review. But such a complex decision-making process must inevitably strain credibility. It is difficult even for serious and knowledgeable students of the American government to understand the unique and all but anomalous position of this Commission in that government--independent of the President as head of the Executive Branch, though, in fact, a part of that Branch. How can it be expected that those abroad, on whose good will and cooperation successful pursuit of U.S. non-proliferation policy depends so greatly, will understand that the conclusions and recommendations of the President's senior foreign policy advisors can be ignored in effect by an agency which, though technically a part of the Executive Branch, is wholly independent of the leadership and policy-making function of that Branch? And if this might seem anomalous, is it easier to comprehend because the President, who cannot affect the NRC decision in the first instance, can then reverse that decision if it is in the negative (provided that Congress concurs)? It is customary for governments in important matters of policy and international relationships to speak with a single voice. Yet a cacophony is here illustrated. If it is reasonable thus to expect that this process be perceived as

indicative of a commitment to the principle of reliable supply--a fundamental principle of the Nuclear Non-Proliferation Act--it must be assumed that our trading partners will ignore those inconsistent voices and listen only to one--but which one?

As we relinquish jurisdiction over these applications, unable to find that the criteria in Sections 109, 127, and 128 are met, it should be recalled that one of the fundamental cornerstones of the NNPA is that we avoid actions which would adversely affect those whose cooperation is essential to our ultimate non-proliferation objectives. Caution must be exercised to avoid measures which could drive recipient nations to other suppliers, or toward the development of indigenous facilities to meet their nuclear fuel needs. The immediate case calls for an analysis not only of the criteria set forth in Sections 109, 127, and 128, but also of the implications for U.S. non-proliferation goals and policy and for U.S. relations abroad more generally. Such an approach is entirely consistent with Congress' intent that the analysis called for by Sections 109, 127, and 128 not be undertaken in total disregard of the foreign policy implications of alternative courses of action.

It is clear that the implications of the decision here will be significant. Trading partners not parties to this matter will view the decision as

inconsistent with the stated or implied national policy, whatever the decision may ultimately be. To some, it will be seen as a vindication of their own doubts as to U.S. constancy and to others as unfair and unbalanced toward them. Yet, in a more rational decision-making framework than that here required, devoid of the need for posturing and assertive determination by decision-makers who have no reasonable role in or responsibility for foreign affairs of this government, a sound and reasonable result consistent with our objectives might have been expected through the application of quiet diplomacy and a reasonable balancing of our interests and those of our friends abroad.

In short, the requirement that the Commission publicly note its inability to act favorably on this request despite the strong representations of the Secretary of State does not bode well for future efforts to negotiate a consensus on the issue of non-proliferation with the government of India. It seems a classic case of the proverbial "biting off one's own nose to spite his face." Although it is true that the existence of such a continuing cooperative relationship will not guarantee achievement of our non-proliferation goals, it is clear that the absence of such a basis for continued discussion and negotiation will likely bar any hope of achieving those goals. The power to persuade depends wholly on the ability to communicate. Thus, while I agree with the conclusion reached

by this Commission, I would support a subsequent decision by the President to authorize these exports by Executive Order.

## Commissioner Hendrie's Concurring Views

I concur in the Commission's conclusion that, based on a reasonable judgment of the information in hand, it cannot find that the seven license applications at issue here meet the criteria for license issuance. Therefore, these license applications should be referred to the President.

In an earlier opinion with Commissioner Kennedy, I expressed the view that Congress contemplated that exports to India would continue during the grace period provided in the Nuclear Nonproliferation Act of 1978 for implementation of full-scope safeguards. CLI-79-4, 9 NRC 209 (1979). That grace period expired on March 10, 1980. Because the Government of India has not accepted full-scope safeguards, I am unable, under the law, to find that the proposed fuel shipments meet the requirements of Section 128 of the Atomic Energy Act.

The unique provisions of the US-India Agreement for Cooperation, coupled with the negative result compelled by Section 128 in the present circumstances, then raise, in my view, significant doubt as to whether the assurances of the Government of India satisfy the requirements of Sections 109 and 127 of the Atomic Energy Act for the proposed component and fuel shipments. Consequently, I am unable to find that the proposed component and fuel shipments meet the criteria of those Sections for license issuance.