

May 9, 1980

SECY-80-238

## COMMISSIONER ACTION

For: The Commissioners

From: James R. Shea, Director  
Office of International Programs

Thru: Acting Executive Director for Operations *TAP L U.S.D.*

Subject: PROPOSED EXPORTS OF FUEL AND COMPONENTS TO TARAPUR  
(XSNM01379, XSNM01569, XCOM0240 AND XCOM0250)

Purpose: To inform the Commission of the receipt of final Executive Branch views on the subject cases and to provide the staff's recommendation on these cases.

Background: On May 8, the Commission received final Executive Branch views with respect to the following export license applications for the Tarapur Atomic Power Station in India:

1. XSNM01379 - 19.858.8 kilograms of uranium in the form of UF<sub>6</sub> and enriched to a maximum of 2.71% U-235. Ref: SECY-79-233 and SECY-79-233A through 233D.
2. XSNM01569 - 19.858.8 kilograms of uranium in the form of UF<sub>6</sub> and enriched to a maximum of 2.71% U-235. Ref: SECY-79-516.

In addition, there are pending before the Commission two related component applications for Tarapur as follows:

1. XCOM0240 - Miscellaneous replacement parts. Ref: SECY-79-238 and 238f.

SECY NOTE: This topic is tentatively scheduled for discussion on Tuesday, May 13, 1980.

Contact:  
M.R. Peterson, IP (49-28155)

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2. XCOM0250 - Six traversing in-core probe detector assemblies (TIPS). Ref: SECY-79-338 and SECY-674 and 674A.

As noted in the referenced Commission papers, favorable Executive Branch views were initially received by NRC in 1979 for XSNM01379 and XCOM0240 and 250. However, on August 15, 1979, the Commission informed the Executive Branch that final action on these three cases was being deferred pending receipt of certain clarifications regarding the changes in Indian government leadership. The Executive Branch's unclassified response to this request is dated May 7 and is attached at Appendix A.

Classified Executive Branch comments were also provided and are attached at Appendix B. Simultaneously, the Executive Branch has provided the Commission with its final views on XSNM01569 (Appendix C).

Discussion:

The Executive Branch responses recommend that the Commission issue export licenses for the two pending fuel cases (XSNM01379 and 1569). In addition, the staff notes that the receipt of the Executive Branch's answer to the Commission's August 15, 1979 letter also responds to the Commission's request for further information with respect to XCOM0240 and 250. The Executive Branch's earlier recommendations to approve these two cases still stand.

The new information provided by the Executive Branch in support of approving the Tarapur exports is not sufficient to change the position the staff took in SECY-79-574A with regard to XCOM0240 and 250, in that it fails to provide adequate additional Indian assurances concerning the Section 127 criteria. There remains an insufficient basis for finding that all of these criteria are met. (NOTE: While SECY-79-674A dealt solely with component exports subject to Section 109, the criteria involved are equally applicable to the two pending fuel applications which in addition must also meet the physical security and reprocessing criteria.)

In addition, since the proposed fuel exports would now take place after March 10, 1980, there is the problem of meeting the full-scope safeguards criterion of Section 128 of the Atomic Energy Act, as amended. While there are differing views on the application of Section 128 to these applications, which were received before September 10, 1979 and which involved material intended for shipment before March 10, 1980, ELD has concluded that the better legal view is that Section 128 would apply to both of the pending Tarapur fuel cases. ELD's legal analysis of this matter is contained in Howard Shapar's March 6, 1980 memorandum to the Commissioners.

Conclusion:

As a result of the above considerations, the staff believes that the Commission should conclude that it is unable to make the statutory determinations required under the Atomic Energy Act and should submit the license applications to the President pursuant to Section 126 of the Atomic Energy Act. The staff notes the Executive Branch requests that expeditious action be taken on XSNM01379. We support this request, and believe that XSNM01569 and XCOM0240 and 250 should also be processed in tandem with XSNM01379. In view of the urgency involved, and since we believe all relevant issues have been addressed adequately in previous staff submissions on Tarapur applications, we have chosen not to develop a lengthy and time-consuming criterion-by-criterion analysis for these cases or prepare a series of options for handling them. However, if any Commissioner desires such an analysis, we would be pleased to prepare it.

NMSS Technical Review:

NMSS has not had an opportunity to complete a technical review. When completed, it will be forwarded separately.

Recommendation:

That the Commission affirm the staff's conclusion and direct the Office of the General Counsel to prepare the necessary Commission order and covering letter to the President, noting that we are unable to find that all of the applicable export criteria are met with respect to the pending export applications for Tarapur. The license applications are enclosed at Appendix D.

Coordination:

ELD has no legal objection. NMSS views will be submitted separately.

*J. R. Shea*  
James R. Shea, Director      APR 9 1980  
Office of International Programs

Appendices:

- A. EB views dtd. 5/7/80 (UNCL.)
- B. EB views dtd. 5/7/80 (CLASS.) Distributed under separate cover on 5/8/80
- C. EB views on XSNM1569 dtd. 5/7/80 (UNCL.)
- D. Subject export license applications

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Friday, May 16, 1980.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT May 14, 1980, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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APPENDIX A



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OFFICE OF  
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May 7, 1980

Mr. James R. Shea  
Director of International Programs  
United States Nuclear Regulatory Commission  
Room 6714 - MNBB  
Bethesda, Maryland

Dear Mr. Shea:

Your letter of August 15, 1979 requested an Executive Branch assessment of the implications of the governmental changes in India on the Executive Branch analyses concerning the pending application for Tarapur fuel (XSNM01379), including an evaluation of the likely policy of the new Indian Government with regard to nuclear explosive development. It also noted that the Commission would defer its final consideration of this application until it received our response.

As you know, this matter has been the subject of discussions between the two governments and of public statements by the new Indian Government. In response to your request, I wish to provide the following information.

The new Indian Government has provided assurances to the United States that it will continue to meet its obligations under the U.S.-India Agreement for Cooperation and related understandings as long as the United States meets its obligations under the agreement. With regard to the policy of the new Indian Government on nuclear explosive development, Prime Minister Gandhi has stated that India's nuclear program is devoted exclusively to peaceful purposes. At the same time, however, she has not ruled out the option of so-called peaceful nuclear experiments, should this be considered to be in India's interest. India described its 1974 nuclear test as a "peaceful nuclear experiment".

We are concerned that the new Indian Government is not prepared to make a more forthcoming statement concerning continued forbearance on development or testing of nuclear

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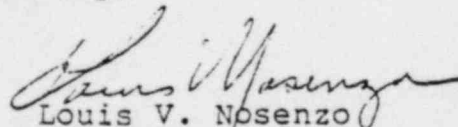
APPENDIX A

explosives, and continue to believe that restraint in this regard is key to international stability. However, we do not believe that withholding the pending export would advance U.S. interests in this regard.

Moreover, we continue to believe that the proposed export meets the criteria of Section 127 and that the Executive Branch analysis of March 28, 1979 continues to be valid in this regard. The Executive Branch also believes that the Section 128 additional criterion does not apply to this license application since the export was reasonably planned to occur during the period prior to March 10, 1980. Finally, it is our judgment that the proposed export will not be inimical to the common defense and security and that withholding the export would be prejudicial to broader U.S. foreign policy interests. Therefore, the Executive Branch recommends that the license be issued and we hope that the Commission will act expeditiously on the application. As you know, the time for Commission consideration of this license under the NNPA has expired, and this letter completes the Administration submission on this case.

We are also forwarding to the Commission under separate cover the Executive Branch analysis and recommendation on XSNM01569. This analysis and recommendation applies as well to XSNM01379 and the additional factors section accompanying the submittal on XSNM01569 updates and supersedes Sections B and C of the March 28, 1979 analysis of XSNM01379.

Sincerely,



Louis V. Nosenzo  
Deputy Assistant Secretary

APPENDIX B

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APPENDIX C



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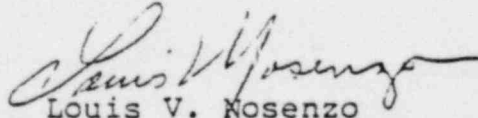
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May 7, 1980

MEMORANDUM FOR JAMES R. SHEA  
NUCLEAR REGULATORY COMMISSION

Enclosed is an Executive Branch analysis covering a license application for the export of low-enriched uranium to India. In accordance with P.L. 95-242, the analysis explicitly addresses how the requirements of Section 126 a.(1) of the Atomic Energy Act are met, including the specific criteria of Sections 127 and 128, as well as certain additional factors, envisaged by Section 126 a. (1).

The Executive Branch, on the basis of its review of this case, has concluded that the requirements of the Atomic Energy Act and P.L. 95-242 have been met and that the proposed export would not be inimical to the common defense and security of the United States. Moreover, India has adhered to the provisions of its Agreement for Cooperation with the United States. Therefore, the Executive Branch recommends issuance of the requested export license.

  
Louis V. Rosenzo  
Deputy Assistant Secretary

Enclosure:  
As stated

DUPLICATE DOCUMENT

Entire document previously  
entered into system under:

ANO

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No. of pages: 14

APPENDIX C

APPENDIX D