

CENTER
FOR
LAW
AND
SOCIAL
POLICY

1751 N STREET, N.W. WASHINGTON, D.C. 20036 202 872-0670

~~APPEAL OF INITIAL DETERMINATION~~

FOIA-80-335

rec'd 06/30/80 June 1980

HAND-DELIVERED

Joseph M. Felton, Director
Div. of Rules & Records/U.S. NRC
Md. Nat'l Bank Bldg., Rm. 4210
7735 Old Georgetown Rd.
Bethesda, MD 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-80-335

rec'd 6/30/80

James N. Barnes
Nancy Duff Campbell
Deborah C. Costlow
Clifton E. Curtis
Roger S. Foster
L. Thomas Galloway
Marcia D. Greenberger
Margaret A. Kohn
J. Davitt McAteer
Leonard C. Meeker
Sanford A. Newman
Carol Oppenheimer
Marilyn G. Rose
Andrew Jay Schwartzman
Heidi P. Sanchez
Herbert Semmel
Richard L. Webb
Attorneys at Law
*Not admitted in D.C.

Export of Special Nuclear Material and Replacement Parts
to India (License Nos. XSNM-1379, XSNM-1569, XCOM-0240,
XCOM-0250, XCOM-0376, XCOM-0381, XCOM-0395)--Request for
Production of Documents

Dear Mr. Felton:

This is a request under the Freedom of Information Act, as amended (5 U.S.C. §552), for access to the records specified below.

On June 19, 1980, the President submitted to Congress an Executive Order authorizing exports to India of special nuclear material and replacement parts for use at the Tarapur power station in India (licenses XSNM-1379, XSNM-1569, XCOM-0240, XCOM-0250, XCOM-0376, XCOM-0381, XCOM-0395).

Section 130(a) of the Atomic Energy Act allows 45 days of continuous session for the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives to prepare reports of views and recommendations and to pass resolutions approving or disapproving the President's actions. The undersigned have been invited to appear before these committees and to submit written statements on behalf of several public interest groups to assist members of Congress in making their decisions. The documents requested would enable the undersigned to contribute more effectively to the Congressional review procedure provided for in the Act in addition to enhancing the general public debate regarding this important question.

On May 14, 1976 and December 19, 1978 the undersigned presented similar requests to the Department of State (the "Department") for production of specified documents concerning the export of special nuclear materials to India pursuant to

8007310237

License Applications Nos. XSNM-805, XSNM-845 and XSNM-1222. Those requests were made in connection with public proceedings held on the above license applications by the Nuclear Regulatory Commission. This request should be considered supplemental to those earlier requests. Where the requests specified below are substantially the same as those previously made, the production should be deemed to refer to documents not previously made available. With that qualification, we hereby request access to any and all written reports, memoranda, studies, correspondence or other pertinent documents in the custody of the Department with respect to:

1. The effect on U.S. non-proliferation policy of India's failure to commit itself absolutely to refrain from the development of further nuclear explosive devices;
2. The effect on U.S. non-proliferation policy of India's failure to accept safeguards on all its nuclear facilities and of India's ability to develop nuclear weapons in unsafeguarded facilities;
3. The effect on U.S. non-proliferation policy of the absence of Indian agreement regarding safeguards for future reprocessing of spent fuel, including the risk that special nuclear material shipped to Tarapur will not be used for peaceful purposes;
4. The total amount of U.S.-supplied enriched nuclear fuel shipped to India to date, broken down by percentage of enrichment, size and date of each shipment, and the expected time frame for using any such fuels which have not yet been sent or used at Tarapur, including analysis of the documented present imbalance between the three fuel enrichments needed to power Tarapur, an explanation of the reasons for this imbalance, and its implications for the present fuel enrichment mixture in license applications XSNM-1379 and XSNM-156^o as opposed to alternative fuel enrichment mixtures;
5. The capability and likelihood that India will construct, test and/or use nuclear explosive devices, including the text of communications to and from India on this issue, analyses regarding Prime Minister Gandhi's assurances, and analyses as to how U.S. perceptions on these matters have been affected by the January 1980 change in India's government;

6. The negotiations that have transpired between the U.S. and Indian governments since the inception of the Nuclear Non-Proliferation Act in 1978 to gain India's acceptance of full-scope safeguards on all its nuclear facilities, including the text of all communications to and from the U.S. embassy in India on this issue, analyses of the likelihood that India will adopt full-scope safeguards on its remaining unguarded nuclear facilities in the near future, and analyses of how this timing and likelihood have been affected by the January 1980 change in India's government.

We ask that the records requested above be made available for inspection and copying at the Department's Public Document Room, Room 2811, Department of State, 21st Street and Virginia Avenue NW, Washington, D.C. At such time as the records requested are made available, we will determine whether we will want any of the records reproduced.

We believe that this request is "in the public interest, because furnishing the information can be considered as primarily benefitting the public," and that any applicable fees should therefore be waived as permitted under the amended Freedom of Information Act. The documents requested are relevant to the Congressional hearings and the debates scheduled with respect to the President's decision to ship special nuclear material and replacement parts to Tarapur. The documents requested will provide needed background and bases for assessing the issues raised by the pending exports. Their production will facilitate the formulation of issues for the written comments to be submitted by the undersigned for the record of these hearings and otherwise enhance the opportunity for a more complete discussion of the issues by all participants.

If you determine that some or all of the records requested are exempt from release, please state which exceptions you believe cover the materials you are not releasing. In this connection, we advise you that we are prepared, if necessary, to execute an appropriate protective agreement with respect to any confidential or proprietary document, or, if the document requested falls within the categories specified in 22 C.F.R. §6.4(a)(1), (3), (5), to abide by such protective orders or agreements as the Department may deem appropriate. Finally, if you determine that some portions of the requested records are exempt, we ask that you make available the remainder of the records, to the extent that the records determined to be exempt are "reasonable segregable," as provided in the amended Act.

June 30, 1980

Page Four

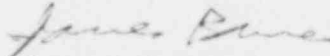
It is our intent that this Freedom of Information Act request benefit all members of Congress and the public interested in the Tarapur exports and the hearings which have been scheduled to consider that issue. As provided for in the amended Freedom of Information Act, we expect to receive a reply at least within ten (10) working days. We urge that the documents be produced as quickly as possible, as they become available, in light of the fast-approaching deadline for Congress' decision on this matter.

If you have any questions concerning this request, we would appreciate your contacting us by telephone to expedite consideration of this matter.

Sincerely,



Jacob Scherr
Natural Resources Defense Council



James Barnes
Center for Law and Social Policy

/cp