



DEPARTMENT OF STATE

BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

May 8, 1978

XSDm-844
70-2125
S-198

MEMORANDUM FOR JAMES R. SHEA
NUCLEAR REGULATORY COMMISSION

Enclosed is an Executive Branch analysis covering two license applications for the export of low-enriched uranium to Spain. 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 these cases, has concluded that the requirements of the Atomic Energy Act and P.L. 95-242 have been met and that the proposed exports would not be inimical to the common defense and security of the United States. Moreover, Spain has adhered to the provisions of its Agreement for Cooperation with the United States. Therefore the Executive Branch recommends issuance of the requested export licenses.

Louis V. Nosenzo
Deputy Assistant Secretary

Enclosure:
As stated.

1978 MAY 9 PM 4 30

EXPORT
ENVIRONMENTAL AFFAIRS

EXPORT LICENSE APPLICATION ANALYSES

Ultimate Consignee State: Spain
Type of Material: Low-Enriched Uranium
Application Numbers: A. XSNM - 1147
B. XSNM - 844 (Amendment)

B. XSNM-844 Amendment

Transaction: Amendment of Export License Number
XSNM-844 for an additional 2,068
kilograms of U-235 contained in
64,610 kilograms of uranium enriched
to a maximum of 3.20 percent U-235
content partly in the form of fuel
rods and partly as UO2 powder
Applicant: Westinghouse Electric Company
Applicant's Reference: WP-41190-AR 8, Unites 1 and 2
Date of Application: November 2, 1977, amendment.

Purpose of the Export

This supply of enriched uranium in the form of fuel assemblies will be used in two fuel reloads for Almaraz No. 1 Nuclear Power Plant and in one reload for Almaraz No. 2 Nuclear Power Plant. These plants will be used to generate electricity for the area near the town of Almaraz, located 165 miles southwest of Madrid.

Almaraz 1 and 2 are pressurized water reactors with a net design output of 901.6 megawatts electric and 2,696 megawatts thermal each. The plants are owned and operated by three utility local companies, -- Compania Sevillana Electricidad, Hidroelectricia Espanola SA and Union Electricia SA.



EMBASSY OF SPAIN
WASHINGTON

INDUSTRY AND ENERGY OFFICE

1875 CONNECTICUT AVE., NW - #1020
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Tel: (202) 332-9060

Ref No. 014

January 25, 1978

Mr. Vance H. Hudgins
Assistant Director for
Politico-Military Security Affairs
Division of International Security Affairs
U. S. Department of Energy
20 Massachusetts Avenue
Washington, D.C. 20545

Dear Mr. Hudgins:

In accordance with your letter of December 5, 1977 regarding the authorization requested by Westinghouse to increase the quantity of material authorized for export for the Almaraz 1 and 2 nuclear generating power-stations in Spain, under Licence XSNM-844 (S-198), I am pleased to inform you that the Spanish Junta de Energía Nuclear has determined that the transfer of the additional 2,060 kilograms of U-235 contained in 64,610 kilograms of uranium, is covered by the clauses and conditions of the Agreement for Nuclear Cooperation between the United States and Spain, and the corresponding Spanish Safeguards Agreement with the U.S. and the IAEA.

Furthermore, we wish to confirm that Central Nuclear de Almaraz, as final consignee, is authorized to receive and possess the material.

Sincerely yours,

Martin Gallego
Industry and Energy Counselor

SPAIN -- EXPORT LICENSE APPLICATION ANALYSIS

1. Applicable Agreement for Cooperation

The proposed export is subject to all of the terms and conditions of the Agreement for Cooperation between the Government of the United States of America and the Government of Spain concerning Civil Uses of Atomic Energy, which entered into force on June 28, 1974.

Spain has adhered to all provisions of its agreement with the United States.

2. Extent to Which Export Criteria Are Met

A. Section 127 Criteria

As provided in Section 127 of the Atomic Energy Act, the following criteria govern exports for peaceful nuclear uses from the United States of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology:

Criterion (1)

"IAEA safeguards as required by Article III(2) of the Treaty will be applied with respect to any such material or facilities proposed to be exported, to any such material or facilities previously exported and subject to the applicable Agreement for Cooperation, and to any special nuclear material used in or produced through the use thereof."

This enriched uranium and any special nuclear material generated therefrom is subject to safeguards under the trilateral Agreement between the U.S., Spain and the IAEA on the Application of Safeguards by the IAEA to the United States-Spain Cooperation Agreement, which entered into force December 9, 1966. Under the latter bilateral agreement, U.S. safeguards rights are suspended during the time and to the extent that the U.S. agrees that the need to exercise such rights is satisfied by the trilateral agreement. IAEA safeguards also are applied to any material or facilities previously exported and to any material used in or produced through the use thereof under this bilateral Agreement. Therefore, it is the Executive Branch view that criterion (1) is met.

Criterion (2)

"No such material, facilities, or sensitive nuclear technology proposed to be exported or previously exported and subject to the applicable Agreement for Cooperation, and no special nuclear material produced through the use of such materials, facilities, or sensitive nuclear technology, will be used for any nuclear explosive device or for research on or development of any nuclear explosive device."

The Government of Spain has accepted our note related to the Agreement for Cooperation signed on March 20, 1974 and in its response of April 13, 1977 has agreed that in connection with this agreement and the related trilateral safeguards agreement it is understood that U.S.-supplied materials, equipment, devices, and special nuclear material generated therefrom will not be used for any nuclear explosive device, regardless of how the device itself is intended to be used and that the safeguards provided under the trilateral agreement will verify that such material is not so used.

Therefore, it is the Executive Branch view that criterion (2) is met.

Criterion (3)

"Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof. Following the effective date of any regulations promulgated by the Commission pursuant to Section 304(d) of the Nuclear Non-Proliferation Act of 1973, physical security measures shall be deemed adequate if such measures provide a level of protection equivalent to that required by the applicable regulations."

The Commission has not, as yet, promulgated new regulations pursuant to Section 304(d) of P.L. 95-242.

The Executive Branch has assessed the physical security measures maintained in Spain with respect to nuclear material and facilities and determined that they are adequate for the material covered by these license applications. Therefore, it is the view of the Executive Branch that criterion (3) is met.

Criterion (4)

"No such materials, facilities, or sensitive nuclear technology proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other nation or group of nations unless the prior approval of the United States is obtained for such retransfer. In addition to other requirements of law, the United States may approve such retransfer only if the nation or group of nations designated to receive such retransfer agrees that it shall be subject to the conditions required by this section."

Article X (3) of the 1974 U.S. - Spain Agreement for Cooperation provides that: "No material, including equipment and devices, transferred to the Government of Spain or to authorized persons under its jurisdiction pursuant to this Agreement or the superseded Agreement will be transferred to unauthorized persons or beyond the jurisdiction of the Government of Spain except as the Commission may agree to such a transfer to the jurisdiction of another nation or group of nations, and then only if, in the opinion of the Commission, the transfer is within the scope of an Agreement for Cooperation between the Government of the United States of America and the other nation or group of nations."

Article XI B. provides, inter alia, that: "B. ... the Government of the United States of America, notwithstanding any other provisions of this Agreement shall have the following rights: ...

"(2) With respect to any source or special nuclear material made available to the Government of Spain or any person under its jurisdiction by the Government of the United States of America or any person under its jurisdiction and any source or special nuclear material utilized in, recovered from, or produced, as a result of the use of any of the following materials, equipment, or devices so made available:

"(a) source material, special nuclear material, moderator material, or other material designated by the Commission,"
...

"(ii) to require that any such material in the custody of the Government of Spain or any person under its jurisdiction be subject to all of the safeguards provided for in this Article and the guaranties set forth in Article X;"

These articles give the U.S. an unqualified approval right over the retransfer of material from Spain supplied by the U.S. or produced through the use of such material*and allow retransfers only if it is determined to be within the scope of an agreement for cooperation with the recipient country. This right would apply to irradiated fuel because it contains U.S.-supplied material.

Therefore, it is the Executive Branch view that, as the U.S. has the right of prior approval over retransfer of U.S.-supplied material and material produced through the use of U.S. material, criterion (4) is met.

* IP staff notes that this provision is explicitly covered in Article VIII E of the Agreement.

Criterion (5)

"No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor shall be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration."

Article VIII C. of the U.S. - Spain Agreement for Cooperation provides that: "When any special nuclear material received from the United States of America pursuant to this Agreement or to the superseded Agreement requires reprocessing, or any irradiated fuel elements containing fuel material received from the United States of America pursuant to this Agreement or to the superseded Agreement are to be removed from a reactor and are to be altered in form or content, such reprocessing or alteration may be performed in facilities acceptable to both parties upon a joint determination that the provisions of Article XI may be effectively applied."

As no joint determination under Article VIII C. can be made without the agreement of the United States, and since the facilities to be used must be acceptable to the U.S. as one of the Parties, it is the view of the Executive Branch that criterion (5) is met.

Criterion (6)

"No such sensitive nuclear technology shall be exported unless the foregoing conditions shall be applied to any nuclear material or equipment which is produced or constructed under the jurisdiction of the recipient nation or group of nations by or through the use of any such exported sensitive nuclear technology."

The proposed exports do not involve sensitive nuclear technology. Criterion (6) is, therefore, not applicable.

B. Section 128 Criterion

Section 128 a.(1) of the Atomic Energy Act establishes the following additional criterion: "As a condition of continued United States export of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology to non-nuclear-weapon states, no such export shall be made unless IAEA safeguards are maintained with respect to all peaceful nuclear activities in, under the jurisdiction of, or carried out under the control of such state at the time of the export."

It should be noted that this criterion only applies to exports to take place after March 10, 1980 or pursuant to an application submitted after September 10, 1979. We anticipate that this export will occur before March 10, 1980.

3. Additional Factors

- A. Safeguards Implementation -- Significant information the Executive Branch possesses bearing on the effectiveness of implementation of IAEA safeguards in Spain, including any such information on steps being taken to correct any identified deficiencies in the application of IAEA safeguards in that country.

The IAEA Secretariat has concluded in its Special Safeguards Implementation Report that with regard to nuclear material subject to IAEA safeguards, while some deficiencies exist in the system, "in none of the 41 states in which inspections were carried out was there any diversion of a significant quantity of nuclear material". Although recognizing the need to correct existing deficiencies in safeguards implementation, the Executive Branch has no reason to believe that the IAEA Secretariat's conclusion is not a valid one with specific regard to nuclear material subject to the U.S.-IAEA Agreement for Cooperation. In the light of this and other factors associated with the proposed export, the Executive Branch believes the framework of commitments, assurances, and safeguards is adequate for the purposes of this export.

The Spanish currently have one reactor, Vandellós I, not under IAEA safeguards. In response to our inquiry last year, the French have stated that this reactor, which is a joint Spanish/French project, is under French bilateral safeguards. In addition, the arrangement is such that all fuel from the reactor is returned to France for reprocessing, with resulting recovered plutonium retained in France.

We have recently initiated discussions with the Spanish Government concerning renegotiation of the US-Spain Agreement for Cooperation. A key element of this renegotiation is the requirement of the Nuclear Non-Proliferation Act of 1978 (P.L. 95-242) to seek universal NPT adherence and, as a minimum, to require that U.S. recipients have all of their nuclear activities under IAEA safeguards 24 months after enactment (March 10, 1980) as a condition of U.S. supply.

This full-scope safeguards requirement of U.S. legislation was extensively discussed with the Spanish authorities who expressed no difficulty in principle with the idea of

applying IAEA safeguards to the Vandellos reactor project and said that they would look into the matter. We expect to further pursue Spanish acceptance of full-scope safeguards and other upgrading of our existing agreement for cooperation under the renegotiations called for in section 404 (a) of P.L. 95-242 in discussions tentatively scheduled for mid-1978.

B. Special Non-Proliferation and Other Foreign Policy Considerations

None.

4. Inimicality Judgment

Based on review of the proposed exports, it is the judgment of the Executive Branch that the proposed export will not be inimical to the common defense and security, and that the license and the amendment should be issued.

DEPARTMENT OF STATE

Washington, D.C. 20520

BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

XSNM01045
70-2446
Amend. 3

14 MAY 1981

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

Dear Mr. Shea:

This letter is in response to the letter from your office dated September 11, 1979, requesting Executive Branch views as to whether amendment of an export license in accordance with the application hereinafter described would be inimical to the common defense and security of the United States and whether the proposed export meets the applicable criteria of the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978:

NRC No. XSNM01045 - Application by Westinghouse Electric Corporation to amend license XSNM01045 to authorize increase of the amount of nuclear material to be exported to Spain by 2,513.123 kilograms of U-235 contained in 71,803.56 kilograms of uranium enriched to a maximum of 3.72 percent. This low enriched uranium in the form of fabricated fuel assemblies will be shipped to Spain for four reloads of the Jose Cabrera Nuclear Power Plant at Zorita.

The proposed export would take place pursuant to the Agreement for Cooperation Between the United States and Spain as confirmed in a letter from the Embassy of Spain, a copy of which is enclosed. Spain has adhered to the provisions of its Agreement for Cooperation with the United States.

The Executive Branch has reviewed this application and concluded that the requirements of the Atomic Energy Act, as amended by the Nuclear Non-Proliferation Act of 1978, have been met and that the proposed export will not be inimical to the common defense and security of the United States. A detailed analysis for Spain was submitted for NRC application No. XSNM01477 on September 19, 1979. There has been no material change in circumstances since that submission other than the developments relating to the application of IAEA safeguards to all Spanish nuclear facilities.

As reported in my letter of May 11, 1981, the Spanish Government has informed the Department of State that all necessary legal steps have been taken to bring the IAEA-Spain Safeguards Agreement into force to cover those facilities not previously under IAEA safeguards. The Spanish Embassy has also provided separate assurances, copy enclosed, with respect to the proposed license amendments, that all nuclear activities in Spain are under IAEA safeguards and in the unlikely event that situation should change, while any shipments under the proposed amendments were pending, the Government of Spain would consult with the U.S. Government 90 days in advance.

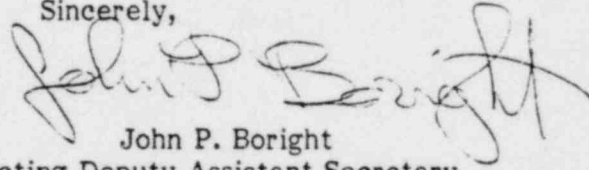
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Copy to FDR and ACC 5-20-81

Shea, Dennis, Moore, Robert Kessler, ELD, NMSS

On the basis of the foregoing, the Executive Branch recommends that the license be amended as requested.

Sincerely,



John P. Boright
Acting Deputy Assistant Secretary

Enclosures:
Assurance letters

RECEIVED
MAY 15 1981

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U.S. DEPT. OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL



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INDUSTRY AND ENERGY OFFICE

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Ref. No. 332a

May 11, 1981

Dr. John Boright
Acting Deputy Assistant Secretary
Bureau of Oceans and International
Environmental and Scientific Affairs
U. S. Department of State
Washington, D. C. 20520

Re: XSNM01045, Amendments 1 and 1a

Dear Dr. Boright:

In addition to the assurances provided regarding the above mentioned amendment requests, I am pleased to note that all nuclear activities in Spain as indicated in the Note Verbale of the Spanish Government of March 8, 1980 are subject to IAEA Safeguards. In the unlikely event that this situation is to change during the time the proposed shipments covered by the subject applications are pending, the Government of Spain will consult with the Government of the United States 90 days in advance.

Sincerely,

German Dominguez, Ph.D.
Industry and Energy Attaché

cpy: Mr. Vance H. Hudgins, DOE

1981 MAY 15 PM 1:55



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Ref. No. 497

September 27, 1979

Mr. Vance H. Hudgins
International Security Affairs
Department of Energy
Washington, D. C. 20545

Re: XSNM-1045 - Amendment

Dear Mr. Hudgins:

In response to your letter of September 24, regarding Westinghouse Electric Corporation's request of August 16 to amend License XSNM-1045, I am pleased to inform you that confirmation has been received from the Spanish Junta de Energia Nuclear about the following particulars:

- a) The transfer of the material, as identified on the application, will be subject to all the terms and conditions of the current Agreement for Cooperation concerning civil uses of atomic energy between the United States and Spain;
- b) The ultimate consignee, as identified on the License application, is authorized by the Spanish Government to receive and possess the material.

Sincerely,

German Dominguez, Ph. D.
Industry and Energy Attaché

P.S.: Please note that Martin Gallego is no longer with this Office.
Thank you.