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April 9, 1981

SECY-81-233



POLICY ISSUE
(Notation Vote)

For: The Commission
From: William J. Dircks
Executive Director for Operations

Subject: PROSPECTIVE CHANGES TO U.S. NON-PROLIFERATION POLICY

Purpose: To request Commission approval of a proposed approach to the Executive Branch regarding NRC involvement in U.S. Government non-proliferation policy developments resulting from post-INFCE reviews and the change of Administration.

Background: Recent developments in the U.S. and abroad have increased the likelihood that major changes will be made within the coming year to U.S. non-proliferation policies. These recent developments include:

1. The completion of the International Nuclear Fuel Cycle Evaluation (INFCE) in March 1980.
2. The establishment of the Committee on Assurances of Supply (CAS) under IAEA auspices in September 1980.
3. The holding of the second NPT Review Conference in Geneva in September 1980.
4. The change of Administration in the U.S.

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

Classified By J. Shea
 Declassify on Original Classification
 Review on April 6 (Date of Event)

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Background:
(Continued)

Following the completion of INFCE last spring, there has developed a general consensus among both the developed and developing nations that the technical issues regarding non-proliferation have now been analyzed comprehensively, and that the international community should now turn its attention toward conducting a fundamental reexamination of international nonproliferation policies at the political level.

For example, this viewpoint was a prime impetus behind the establishment of the IAEA Committee on Assurances of Supply (CAS) in September. A primary aim of the CAS is to achieve an international consensus on nuclear supply and non-proliferation assurance guidelines which would reduce the uncertainties regarding supply assurances caused by the current system of bilateral controls and multiple tracking requirements.

Existing nonproliferation policies came under attack again at the second NPT Review Conference in Geneva, where U.S. efforts to allay concerns about U.S. policies stemming from the NNPA were not well received.

Finally, we can expect that the change of Administration in the U.S., while by no means guaranteeing significant changes, will result in a thorough reexamination of U.S. nonproliferation policy.

Discussion:

It is not the purpose of this paper to analyze the pros and cons of the various possible changes to U.S. nonproliferation policy. However, among the various options being considered are the following:

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Discussion:

Additional options will, of course, be considered. In any event, it is immediately apparent that adoption of any of the foregoing will have an impact on NRC's export licensing responsibilities. It is, therefore, appropriate for the Commission to consider the role NRC should have in the formulation of new nuclear export and nonproliferation policies.

As some Commissioners may recall, NRC was consulted extensively by the Executive Branch during the formative stages of the Carter Administration's nuclear export and nonproliferation policies. The principal effort in this regard was the inter-agency report to the President in response to Presidential Review Memorandum-15, which called for a "thorough review of U.S. policy concerning nuclear proliferation." In addition to providing input to the drafting of the PRM-15 report, NRC sent a formal response to the President regarding nonproliferation matters and their relationship to NRC's responsibilities. In view of its relevance to this paper, this Commission letter is enclosed at Appendix A.

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After the completion of the PRM-15 exercise, NRC participated in related follow-on activities such as Presidential Directive-8 (PD-8) concerning, among other things, reprocessing policy, and also in the various interagency consultations leading eventually to the passage of the Nuclear Non-Proliferation Act in March 1978. Later that year, the Commissioners provided additional comments to the President regarding the Executive Branch's reprocessing policy. This was done in connection with the interagency review of the Kansai and Tepco reprocessing cases, which led to revised presidential guidance on reprocessing requests. The Commission also testified before the Congress on the issues involved.

During the remainder of 1978 and through 1979, there were no major developments affecting U.S. nonproliferation policy other than various clarifications of the NNPA's provisions. More recently, however, with the completion of INFCE, the Department of State has begun exploring various nonproliferation policy options. This activity had been centered in the office of Ambassador Gerard Smith and took the form of various internal studies plus informal discussions with the representatives of several foreign nations. Since Ambassador Smith's resignation last November, we understand that Assistant Secretary Malone's office (OES) has assumed these policy review responsibilities. As the Commission may be aware, during his confirmation hearings in March, Assistant Secretary Malone* stated that important aspects of U.S. non-proliferation policy are currently under review and that some decisions in this area are expected soon.

*The staff assumes that Mr. Malone will be confirmed as Assistant Secretary before the Commission acts on this paper. If the confirmation is delayed, the proposed approach to State will have to be appropriately modified.

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The Executive Branch should, of course, continue to play the lead role in this policy review process, both because of its greater expertise and because of its broader statutory authority, especially in the area of foreign policy and international negotiations. IP, nonetheless, believes that NRC should also be involved in the review process, since, under the provisions of the Atomic Energy Act, NRC is charged, among other things, with making independent inimicality determinations on all NRC-licensed nuclear exports, and changes that might emerge from the current policy review could significantly affect NRC's responsibilities. Also NRC could make a useful contribution to the policy formulation process and would have a better understanding of the reasoning behind any policy changes if it had a chance to comment during the evolution of the policy. In this connection, Congress intended, through the enactment of the NNPA, that NRC do more than simply administer the export licensing process. Relevant in this regard are Senator Percy's comments on the role of NRC during the February 2, 1978 Senate floor debate on the NNPA. Senator Percy, for example, stated:

"I am committed to the concept of a strong independent check on Executive Branch nuclear export decisions... The Executive Branch still plays the leading role in the implementation of U.S. nuclear export policy. But we must recognize that in their zeal to achieve their own institutional interest, these agencies may well overlook important nonproliferation concerns."

Another illustration of Congressional intent regarding NRC's role is the provision in the NNPA requiring the Executive Branch agencies to consult with NRC before completing action on "subsequent arrangements" and other nuclear export-related matters under their authority. Commission comments on these actions have traditionally focused on the broad nonproliferation policy considerations involved. For example, the NNPA stipulates that the Department of State shall negotiate all agreements for cooperation "with the technical assistance and concurrence of the Department of Energy and in consultation with the Director of [ACDA]; and after consultation with the Commission shall be submitted to the President..." The provision clearly places primary responsibility within the Executive Branch. However, it is logical to assume that Congress intended the Commission to comment substantively on

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the provisions of new agreements and, as a practical matter, this can only be done effectively if the Commission exercises a meaningful role in the establishment of any significant new policy shifts which may be incorporated in new agreements.

To reduce the possibility of such a development, the staff believes that NRC should be allowed the opportunity to at least comment to the Executive Branch on proposed new nonproliferation policy changes so that any NRC concerns can be factored into the review process at an early stage and not when it is too late to have a practical impact.

As a final point, there is the possibility that major policy changes could adversely affect the processing of NRC export license applications if not properly explained in advance to the Commission. Policy changes, if simply "imposed" on NRC, could be subject to critical after-the-fact questioning by the Commission. NRC involvement in the policy review process, even if limited to a largely monitoring role, would, to a significant extent, reduce licensing delays caused by the need to clarify the new policy. This is especially relevant in such areas as HEU export policy.

Conclusion:

IP believes that the Commission should advise Assistant Secretary Malone of NRC's wish to be consulted on significant new activities affecting U.S. non-proliferation policy. The upcoming Executive Branch briefing, which Mr. Malone will conduct, will provide an appropriate opportunity to make such representations. If the response from Mr. Malone is negative or does not lead to Commission involvement in the policy development process, consideration could be given to a follow-up letter to Mr. Malone or others in State regarding this matter. To this end, and also to aid the Commissioners as a back-up

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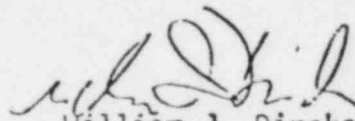
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paper during the forthcoming briefing, the staff has prepared a proposed letter at Appendix B which emphasizes the benefits of NRC involvement to all concerned. (As an alternative approach, the Commission may wish to consider sending the proposed letter directly to State without engaging in any preliminary discussions.)

Recommendation: That the matter of NRC involvement in non-proliferation policy issues be discussed with Assistant Secretary Malone during the forthcoming Executive Branch briefing (drawing on the letter at Appendix B) and followed up, as appropriate, with a comparable letter to the State Department. Alternatively, the Commission may wish to send the draft letter at Appendix B directly to the State Department.



William J. Dircks
Executive Director for Operations

Attachments:

- Appendix A - letter from
Chmn. Rowden to
President Carter,
dtd 3/14/77
- Appendix B - Proposed letter

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Monday, April 27, 1981.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT April 20, 1981, 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



NUCLEAR REGULATORY COMMISSION
(WASHINGTON, D. C. 20555)

March 14, 1977

OFFICE OF THE
CHAIRMAN

~~SUBJECT TO GENERAL DECLASSIFICATION SCHEDULE OF
EXECUTIVE ORDER 11652 INFORMATIONALLY CONTAINED
AT TWO YEAR INTERVALS AND DECLASSIFIED ON 03/14/99~~

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APPENDIX B

