



CHAIRMAN

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

March 18, 1982

The Honorable Richard L. Ottinger, Chairman
Subcommittee on Energy Conservation and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In my November 27, 1981 letter to you regarding the Commission's assessment of International Atomic Energy Agency (IAEA) safeguards, I stated that we were reviewing our responsibilities under the Atomic Energy Act of 1954, as amended, for the licensing of nuclear exports in light of concerns expressed in that letter, and that I would inform you of the Commission's conclusions. It is for this reason that I am writing you now.

Before I describe the Commission's decision with respect to future export license reviews, I would like to clarify for the record the basis on which the Commission has to date issued export licenses.

- While the NRC places considerable reliance on the IAEA safeguards system in licensing nuclear exports, this reliance is supplemented by other means.
- In making the finding that "safeguards...will be applied" under the Nuclear Non-Proliferation Act (NNPA), the Commission requires assurance that the export will be subject to a safeguards agreement with the IAEA. However, because of current confidentiality requirements and international sensitivities, rarely do we have much specific information from IAEA regarding the application of safeguards in the subject country or at the subject facility. We do, however, receive substantial amounts of information of a more general nature, including some information on the application of safeguards at some types of facilities.
- In making the more general finding that the export will not be inimical to the common defense and security of the U.S., many factors are taken into account. In addition to the considerations reflected in the NNPA

export criteria, these factors include our judgment of the proliferation aspects of the export based on all the information available to us from various sources, and any information about the application of safeguards in the recipient country.

As a result of the Commission's internal review, we have determined that the procedures we have been using for the past year should be continued. Thus, for exports raising no significant proliferation concerns, particularly to those countries with which we have long-standing trade or mutual security arrangements, we will continue to consider individual export license applications using the standard staff review. We anticipate that this mode of operation would apply to the majority of export cases that come before us.

For exports in which significant proliferation concerns do arise, particularly in cases that involve sensitive facilities or facilities that present special technical safeguards problems, we will continue to give each export license application additional scrutiny. These applications are often referred to the Commissioners even though they may fall within the staff's delegation of authority and are subject to more extensive staff review, including frequent consultation with appropriate Executive Branch agencies regarding safeguards and all other facts potentially relevant to the Commission's required statutory findings.

We therefore are directing the NRC staff to:

- Meet with the Executive Branch at the senior staff level on a regular and frequent basis to be briefed on current issues which may affect NRC's consideration of export license applications. This would supplement the Commission's periodic meetings with the Executive Branch;
- Keep the Executive Branch informed of NRC's interest in all information bearing on the proliferation aspects of particular exports early in the license review process;
- Consult, in the final stage of its review of export cases of concern, with agencies of the Executive Branch to ensure that no new information has developed, including that from sources not routinely provided to NRC, since previous Executive Branch views were provided; and

- Refer to the Commission any export license application which raises inimicality questions, even though the export may be within the staff's authority to license under approved delegations of authority.

While we have been doing most of these things up to now, we expect special staff attention to safeguards and other factors, and we encourage greater staff consultation with Executive Branch agencies both on a regular basis and regarding certain export cases to assure that we are aware of all available information.

Review of export applications will continue to rely on Executive Branch information about the proliferation intentions and capabilities of the proposed recipients and assessments of such factors as application of safeguards and the status of development of the recipient country's nuclear programs.

In addition, the Commission, working principally through the newly revitalized Interagency Steering Group on International Safeguards, will continue to strongly support renewed U.S. efforts to improve international safeguards, particularly with respect to new initiatives to address those problems identified in information available to the Commission.

Commissioner Bradford feels that the current shortcomings at the International Atomic Energy Agency have more drastic implications for NRC export licensing than the Commission letter indicates. He believes that Criterion One does require the NRC to consider safeguards adequacy, at least to the extent that it may not find the criterion met if it knows the safeguards in the recipient country to be likely to be ineffectual. He believes that the presence of IAEA safeguards has supported a presumption of adequacy which satisfied Criterion One, but the shortcomings alluded to in the Commission's November letter are serious enough to undermine that presumption.

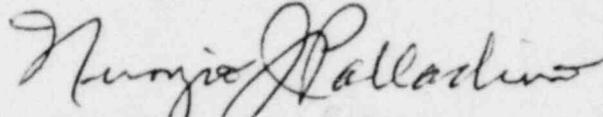
In his view, all exports to on-line refueled heavy water reactors and all exports that will result in reprocessed plutonium that the U.S. will allow to be transferred to or remain in a non-weapons state do not satisfy Criterion One. Because there is not reasonable assurance that they will effectively be safeguarded, Commissioner Bradford feels that the NRC cannot find that safeguards apply to them. Consequently, in his view, approval of such exports can only come from the President under the framework provided by the Nuclear Non-Proliferation Act.

Honorable Richard L. Ottinger

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We have informed the appropriate Executive Branch agencies of this letter and their comments regarding factual accuracy and classification have been considered.

Sincerely,



Nunzio J. Palladino

cc: Rep. Carlos Moorhead