UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 4, 1994

The Honorable Charles E. Schumer
United States House of Representatives
Washington, DC 20515

Dear Congressman Schumer:

This refers to your letter of September 3, 1993, and our response of September 23, 1993, regarding export license application No. XSNM02748. At that time, we advised you that the application was still under Executive Branch review and a Petition of the Nuclear Control Institute for Leave to Intervene and Request for Hearing was pending resolution.

After receipt of Executive Branch views on October 5, 1993, the NRC staff prepared a Commission Policy Paper which contained a comprehensive analysis of the case, including the legal considerations of the Nuclear Control Institute's (NCI) Petition for Leave to Intervene and Request for Hearing as well as Section 134 of the Atomic Energy Act of 1954, as amended. The staff concluded that all criteria required for the issuance of the license were met. The Office of the General Counsel advised that NCI was not entitled to intervene as a matter of right and had no legal objection to the recommendation of the Office of International Programs that a hearing as a matter of discretion would not be in the public interest and was not necessary to assist the Commission in making its statutory determination. A copy of the Commission Policy Paper (SECY-93-352, dated December 23, 1993) is enclosed for your information.

The staff recommended that the Commission 1) affirm the order denying the NCI petition to intervene and hearing request; and 2) authorize the issuance of export license XSNM02748 to Transnuclear, Inc.

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On January 19, 1994, the Commission approved the order to deny the NCI petition. The Commission also authorized the issuance of the export license to Transnuclear, Inc. Cogema in France, which is purchasing the fuel, has agreed to blend down the high-enriched uranium to less than 20 percent enrichment. We are enclosing copies of the Commission's determination, Memorandum and Order, CLI-94-01, the Staff Requirements Memorandum and export license XSNM02748, all dated January 19, 1994.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures:
1. SECY-93-352 dated 12/23/93, with all attachments
2. Memorandum and Order, CLI-94-01, dated 1/19/94
3. Staff Requirements Memorandum for CRStoiber from SJChilk dated 1/19/94
4. Export License XSNM02748 dated 1/19/94

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OFF:	OIP/ESSC	OIP/ESSC	OIP	OGC	OCA
NME:	BLWright	RDHauber	JRShea	JRutberg	DRathbun
DTE:	2/01/94	2/ /94	2/ /94	2/ /94	2/4/94

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UNITED STATES
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WASHINGTON, D.C. 20555-0001

September 23, 1993

The Honorable Charles E. Schumer
Member, United States House of
Representatives
1628 Kings Highway
Brooklyn, NY 11229

Dear Congressman Schumer:

I am responding to your letter of September 3, 1993, regarding Export License No. XSNM02748.

In accordance with our standard procedures, the Nuclear Regulatory Commission referred the export license application to the Executive Branch for their determination as to whether the requested export meets the applicable criteria in the Atomic Energy Act as amended.

The application is still under review by the Executive Branch; additionally, a Petition of the Nuclear Control Institute for Leave to Intervene and Request for Hearing, dated June 24, 1993, is pending resolution. The NRC will take no action on the application until the formal views and recommendations of the Executive Branch are received.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

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17TH DISTRICT, NEW YORK

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Congress of the United States
House of Representatives
Washington, DC 20515-3210

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September 3, 1993

The Honorable Ivan Selin
Chairman
Nuclear Regulatory Commission
Washington, DC 20555

Re: Export License No. XSNM 02748

Dear Chairman Selin,

I write out of concern that the above-cited export license application may be used to evade a provision of last year's energy bill (P.L. 102-486) which is intended to restrict exports of bomb-grade uranium.

The new law specifically prohibits exports of highly enriched uranium (HEU) for use in research and test reactors unless these three conditions are met: 1) there is no alternative reactor fuel or target, 2) the reactor operator has committed to using an alternative fuel once it is developed, and 3) the United States is actively developing an alternative fuel. Since the Administration has requested no funds for alternative fuel development, the statute effectively bars exports of HEU fuel to research and test reactors.

In this case, the applicant requests a license to export 280 kilograms of HEU for processing in France, claiming the material will then be returned for an unstated end-use in the U.S. If the Commission approves the export of this HEU, it is very possible that once the material is overseas the applicant may seek to sell it for use in a foreign reactor. That is because the applicant could claim that the statute does not apply once the HEU is out of the country.

In fact, the Commission confirmed -- in a letter to Members of Congress dated April 6, 1992 -- that after HEU is exported to Europe for a specified end-use, the United States cannot prevent (indeed we need not even be informed of) a change in the end-use so long as the material remains in the EURATOM community.

According to the Commission's letter, "the United States has no direct control over future disposition of EURATOM retransfers solely within the EURATOM Community. . . . Movements of nuclear materials within the Community are not reported to the United States. . . . Prior U.S. consent is not required if the material is transferred to different end-uses within the EURATOM community . . . . We do not have information on the quantities and enrichment levels of the still-unirradiated, U.S.-origin uranium exported for use in (European) facilities."

In addition, I have three other concerns with the application:

1) The applicant's original draft reportedly identified the HEU's end-use as HEU fuel for France's Grenoble research reactor. When informed by Commission staff that this would be denied under

9/8...To EDO to Prepare Response for EDO's Signature.....Date due:
Sept 21.....Cpy to: RF, OCA to Ack.....93-0803

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P.L. 102-486, the applicant changed the declared end-use claiming the material would be returned to the U.S. When Administration officials reportedly informed the applicant that this end-use would still not be approved, they filed an amendment changing the end-use once again, this time claiming the material will be blended down to LEU. It seems to me that the applicant is shopping for an end-use just to satisfy application requirements, and this makes me less confident that the stated end-use on the application and the actual end-use will be the same.

2) There is a glut of 19.9%-enriched uranium in Europe, whereas there is a scarcity of HEU. Thus, blending down the material would greatly reduce its value. From an economic standpoint, the applicant would have a strong motivation not to blend down the material once in Europe, regardless of its stated end-use.

3) If the Administration goes forward with plans to renew its Off Site Fuels policy, the applicant would have an even stronger motivation not to blend down the material. That is because as U.S.-origin HEU, the material would have extra value since the United States would be obligated to accept its return as spent fuel after use in a foreign research reactor. For this reason, the material in question would have greater value as HEU than even identical, European-origin HEU.

The United States has had a policy of minimizing exports of bomb-grade uranium since the mid-1970s, institutionalized in 1978 by the creation of the RERTR program and codified last year with the enactment of my amendment to the Energy Bill. Indeed, as early as 1986, P.L. 99-399 directed the President "to keep to a minimum the amount of weapons-grade nuclear material in international transit." 280 kilograms of HEU is far from minimal and could supply the fuel for a dozen nuclear weapons if it fell into the wrong hands.

In light of these statutes and the inherent dangers of civilian commerce in bomb-grade uranium, I urge you to reject the proposed application unless the applicant can verify that:

1) the HEU will be blended down to LEU, not merely swapped for existing LEU;

2) the material will not be re-enriched to HEU;

3) the HEU will be returned to the United States if the blending down does not occur within a reasonable, specified time period;

4) there is a market for 19.9%-enriched LEU; and

5) the blending down cannot be accomplished domestically.

On this final point, the owner of this material has now received authorization from the Commission to de-fabricate and blend down the HEU which further undermines any rationale for exporting this weapons-usable material.

Thank you for your attention to this matter, and please do not hesitate to contact me if I can be of additional assistance.

Sincerely,

Charles E. Schumer
Member of Congress

CES:jmk

CONGRESSIONAL CORRESPONDENCE SYSTEM
DOCUMENT PREPARATION CHECKLIST

This checklist is be submitted with each document (or group of Qs/As) sent for ing into the CCS.

1. BRIEF DESCRIPTION OF DOCUMENT(S) Ltr. to Rep Schumer

2. TYPE OF DOCUMENT ___X___ Correspondence _____ Hearings (Qs/As)

3. DOCUMENT CONTROL _____ Sensitive (NRC Only) ___X___ Non-Sensitive

4. CONGRESSIONAL COMMITTEE and SUBCOMMITTEES (if applicable)

_____ Congressional Committee

_____ Subcommittee

5. SUBJECT CODES

(a) _____

(b) _____

(c) _____

6. SOURCE OF DOCUMENTS

(a) _____ S520 (document name _____

(b) ___X___ Scan- (c) _____ Attachments

(d) _____ Rekey (e) _____ Other _____

7. SYSTEM LOG DATES

(a) 3/7/94 Date OCA sent document to CCS

(b) _____ Date CCS receives document

(c) _____ Date returned to OCA for additional information

(d) _____ Date resubmitted by OCA to CCS

(e) _____ Date entered into CCS by _____

(f) _____ Date OCA notified that document is in CCS

8. COMMENTS

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