

XCOM0460
11002284

Before the
UNITED STATES
NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555

In the Matter of)	
GENERAL ELECTRIC CO.)	Docket No. 11000112
(Export of Nuclear Components to India))	Lic. No. XCOM0020
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In the Matter of)	
REUTER-STOKES, INC.)	Docket No. 11002063
(Export Of Nuclear Components to India))	Lic. No. XCOM0407
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In the Matter of)	
ROCKWELL INTERNATIONAL CORP.)	Docket No. 11002071
(Export of Nuclear Components to India))	Lic. No. XCOM0409
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In the Matter of)	
BYRON JACKSON PUMP, INCORPORATED)	Docket No. 11002269
(Export of Nuclear Components to India))	Lic. No. XCOM0455
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In the Matter of)	
GENERAL ELECTRIC CO.)	Docket No. 11002284
(Export of Nuclear Components to India))	Lic. No. XCOM0460
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In the Matter of)	
PACIFIC PUMPS, INC.)	Docket No. 11002327
(Export of Nuclear Components to India))	Lic. No. XCOM0475
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PDR XPORT
XCOM-0460 PDR

PETITION OF THE NUCLEAR CONTROL INSTITUTE,
FEDERATION OF AMERICAN SCIENTISTS,
UNION OF CONCERNED SCIENTISTS,
GREENPEACE, U.S.A.,
ENERGY RESEARCH FOUNDATION,
AND
COMMITTEE FOR A SANE NUCLEAR POLICY
FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING

Pursuant to Section 189a. of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2239a., and Section 304(b) of the Nuclear Non-Proliferation Act of 1978, 42 U.S.C. §2155a. (the "NNPA"), and the applicable rules and regulations of the United States Nuclear Regulatory Commission (the "Commission"), including 10 C.F.R. Part 110, Subpart I, the Nuclear Control Institute ("NCI"), Federation of American Scientists ("FAS"), Union of Concerned Scientists ("UCS"), Greenpeace, U.S.A. ("Greenpeace"), Energy Research Foundation ("ERF"), and Committee for a Sane Nuclear Policy ("SANE") (collectively, "Petitioners") hereby respectfully petition the Commission for leave to intervene as parties in opposition to the following proposed applications to export specially designed or prepared components to India for use in the Tarapur Atomic Power Station ("Tarapur"):

- (A) The application of General Electric Co., dated March 26, 1981, to export "miscellaneous components";
- (B) The application of Reuter-Stokes, Inc., dated May 13, 1980, to export "15 pieces LPRM assemblies-flux map";
- (C) The application of Rockwell International Corp., dated May 14, 1980, to export "globe stop valve, metal diaphragm sealed";

- (D) The application of Byron Jackson Pump, Incorporated dated October 27, 1980, to export "tandem mechanical seal cartridge";
- (E) The application of General Electric Co., dated November 14, 1980, to export "in-core detectors", "control rod drive parts", and "miscellaneous unspecified parts"; and
- (F) The application of Pacific Pumps, Inc., dated December 12, 1980, to export "parts for pumps".

In addition, Petitioners request an adjudicatory hearing as of right with respect to such applications. If the Commission denies Petitioners' request for an adjudicatory hearing as of right, Petitioners request that the Commission use its discretionary powers to order a full and open public hearing at which interested parties may present oral and written testimony and conduct any discovery and cross-examination necessary to resolve the factual and legal issues relevant to the Commission's determinations with respect to the pending license applications. Such a hearing would be in the public interest and assist the Commission in making its statutory determinations under the Atomic Energy Act, as provided for by Section 304(b) of the NNPA, 42 U.S.C. §2155a., and 10 C.F.R. §110.84.

I. Petitioners' Interests

There are six Petitioners in this matter:

(a) Petitioner NCI is a nonprofit, educational corporation organized and existing under the laws of the District of Columbia, whose principal place of business is also in the District of Columbia. It is actively engaged in

disseminating information to the public concerning the risks attendant upon the use of sensitive nuclear materials, equipment, and technology. It has issued reports on the nuclear weapons implications of growing civilian plutonium inventories throughout the world and on worldwide development of reprocessing facilities and breeder reactors. NCI seeks to intervene on its own behalf and on behalf of its 1,000 members. That membership includes a diverse group of citizens opposed to the further spread of nuclear weapons and deeply concerned about the inadequacies of the present international system for the safeguarding of nuclear materials against theft, diversion, and other unauthorized uses. NCI's address and telephone number are: 1000 Connecticut Avenue, N.W., Suite 406, Washington, D.C. 20036; (202) 822-8444.

(b) Petitioner FAS is a non-profit, membership organization, incorporated in the District of Columbia, composed of 5,000 natural and social scientists who are concerned with problems of science and society. First organized in 1946 as the Federation of Atomic Scientists, it seeks to ensure the proper use of science in society and to represent the views of the scientific community on issues of public importance. It publishes a monthly Public Interest Report. FAS has been deeply involved through analysis, comment, testimony and educational programs in arms control issues, including those related to non-proliferation. It

seeks to intervene on its own behalf and on behalf of its members. Its address and telephone number are: 307 Massachusetts Avenue, N.E., Washington, D.C. 20003; (202) 546-3300.

(c) Petitioner UCS is a non-profit corporation incorporated in the District of Columbia by a coalition of scientists, engineers and other professionals concerned about the impact of advanced technology on society. Begun in 1969 as a group composed primarily of faculty members in science and engineering disciplines at the Massachusetts Institute of Technology, UCS is today a national organization supported by the contributions of some 100,000 citizens, with professional staff in Cambridge, Massachusetts and Washington, D.C. UCS's work includes educational activities, participation in adjudicatory and rulemaking proceedings, and legislative representation and litigation, all of which are supported by independent technical research and analysis conducted by UCS's staff and outside professional advisors. The issues of primary concern to UCS are energy policy, nuclear safety and arms control. UCS's goals are the adoption of a safe and sensible course for America's energy program and a world secure from the threat of nuclear war. UCS has published many technical books and studies covering topics such as U.S. energy options, radioactive waste management, techniques for verification of arms control agreements and analyses of alternative national security policies. UCS has long been

involved in non-proliferation matters and participated in the Commission's nuclear licensing proceedings with respect to the supply of fuel to Tarapur. See Edlow International Co., CLI-76-6, 3 NRC 563 (1976); Edlow International Co., CLI-77-20, 5 NRC 1358 (1977); Edlow International Co., CLI-78-8, 7 NRC 436 (1978); Edlow International Co., CLI-79-4, 9 NRC 209 (1979). UCS seeks to intervene on its own behalf and on behalf of its supporters. Its address and telephone number are: 26 Church Street, Cambridge, Massachusetts 02238; (617) 547-5552.

(d) Petitioner Greenpeace is a not-for-profit membership organization incorporated in California in 1978, with approximately 280,000 members throughout the United States. It seeks to intervene on its own behalf and on behalf of its members. Its principal office is in Washington, D.C. In addition, it has six other offices in the United States. Greenpeace, U.S.A. is a member of a larger international organization, Greenpeace, International, which is based in London and has offices in nine other countries. The organization's stated purpose is to protect the global environment with a particular concern for wildlife protection, the control of toxic substances and disarmament. Greenpeace's national office publishes a magazine entitled the Greenpeace Examiner which has a national circulation. Greenpeace's other activities include both grassroots and national lobbying and direct action through peaceful demonstrations against activities which it opposes. Many

of these efforts have focused on the risks associated with the misuse of nuclear power, including proliferation of nuclear weapons. Greenpeace's address and telephone number are: 2007 R Street, N.W., Washington, D.C. 20009; (202) 462-1177.

(e) Petitioner ERF is a non-profit operating foundation incorporated under the laws of the State of South Carolina with offices in Columbia, South Carolina. ERF engages in research and public education on nuclear and other energy issues. ERF has a particular interest in research and education on the risks associated with the reprocessing of nuclear fuel and thus particular concern about the implications of possible reprocessing of U.S. - supplied fuel at Tarapur. ERF seeks to intervene on its own behalf. Its address and telephone number are: 2530 Devine Street, Suite 201, Columbia, South Carolina 29205; (803) 256-7298.

(f) Petitioner SANE is a not-for-profit, membership organization incorporated in Delaware, with its principal office in Washington, D.C. In addition to its national office, it has twenty-nine local chapters, and more than 30,000 members nationwide. Its primary purpose is to organize citizens to lobby and to disseminate information on arms control and economic conversion issues (including diverting funds from military to peaceful uses where appropriate). SANE publishes a monthly newsletter, entitled SANE World, and various action alerts designed to keep its

membership apprised of key legislation being considered in Congress. SANE's activities also include organizing people on the local and national level for coordinated lobbying efforts and educating people as to important arms control issues. SANE seeks to intervene on behalf of itself and its members. Its address and telephone number are: 711 G Street, S.E., Washington, D.C. 20003; (202) 546-7100.

With respect to this proceeding, all Petitioners have important institutional interests which would be directly affected by its outcome. As noted above, they are actively involved in public information and education programs concerning arms control, the spread of nuclear weapons, and the risks of proliferation. Their interest and ability to carry out these functions would be significantly and adversely impaired by the absence of a full, open and independent review by the Commission of the issues raised under the Atomic Energy Act and the NNPA by the pending license applications.

In addition, a number of Petitioners are membership organizations. The interests of their members will be directly affected by the outcome of this proceeding. Because of the potential world-wide harm associated with the use of special nuclear material produced at Tarapur for destructive purposes, all of their members' interests in the maintenance of a safe, healthful and productive environment are directly threatened by the granting of the pending license applications.

Petitioners have no other means to protect their interests in these proceedings,^{1/} and those interests are not now represented by the existing parties. This Petition, moreover, is not interposed for delay or to broaden the proper scope of the proceedings. Indeed, the license applications have, in some cases, been before the Commission for more than three years. In order to avoid burdening the Commission with unnecessary argument, Petitioners have delayed their intervention pending some specific indication that the Executive Branch would support the applications and submit its views to the Commission, in accordance with 10 C.F.R. §110.41.^{2/} That indication did not come until June 30, 1983 when Secretary of State Shultz announced that the United States was committed to assure delivery of the requested components. Finally, Petitioners' contentions

^{1/} Petitioners' ability to protect their interests, particularly through access to relief in other forums, such as Congress, may in fact have been limited recently by the Supreme Court's decision holding legislative vetoes unconstitutional. Immigration and Naturalization Service v. Chadha, 51 U.S.L.W. 4907 (U.S., June 21, 1983).

^{2/} While in each case this Petition comes more than 15 days after the filing of the license application and thus outside the period within which intervention must ordinarily be sought in order to be considered "timely", see 10 C.F.R. §110.82(c)(2), this should not preclude intervention. There was every indication prior to June, 1983, that the Executive Branch would withhold its views indefinitely, presumably because the applications could not meet the requirements of the Atomic Energy Act. In such circumstances, Petitioners' determination not to seek intervention represented a reasonable conservation of both their and the Commission's resources.

raise fundamental questions regarding the authority of the Commission to grant the applications, and Petitioners submit that their participation will assist the Commission in developing a sound record.

II. Petitioners' Contentions

Under Section 109 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2139, applications to export component parts must meet the following criteria:

(1) IAEA safeguards as required by Article III (2) of the Treaty will be applied with respect to such component, substance or item; (2) no such component, substance or item will be used for any nuclear explosive device or for research on or development of any nuclear explosive device; and (3) no such component, substance or item will be retransferred to the jurisdiction of any other nation or group of nations unless the prior consent of the United States is obtained for such retransfer.

In addition, the Commission must determine "in writing" that the issuance of the license "will not be inimical to the common defense and security." The Commission's regulations embody these same requirements. 10 C.F.R. §§110.42(b), 110.44(a)(1)(i),(ii). Three years ago the Commission concluded that these requirements could not be met. Edlow International Co., CLI-80-18, 11 NRC 680 (1980). With respect to the pending licensing applications, Petitioners submit that these requirements still cannot be met, for the following reasons:

(1) Application of Safeguards - Subsection b.(1) of Section 109 requires that safeguards "be applied" to exported

components. This requirement is not time-limited. Currently, the bilateral Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and India, done at Washington, August 8, 1963, entered into force October 5, 1963, TIAS No. 5446 (the "Agreement for Cooperation"), provides for the application of safeguards both to the Tarapur facility itself and to special nuclear material produced through the operation of the facility. The Agreement for Cooperation, however, expires by its terms in 1993. Whether the obligation to apply safeguards will continue in perpetuity is a matter in dispute. The Government of India has refused to agree that safeguards at Tarapur, and on the materials produced through the operation of Tarapur, will continue after the expiration of the Agreement for Cooperation. There is a real risk that it will continue to insist on this interpretation and that, after 1993, safeguards will be removed. Consequently, there is no assurance that the criterion set forth in Section 109 b.(1) will be met,^{3/} and, therefore, the Commission cannot lawfully grant the export license applications thereunder.

(2) Development of Nuclear Explosive Devices -

Subsection b.(2) of Section 109 prohibits exports of any component if that component will be used for "development of

^{3/} Article III(2) of the Treaty on Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow, July 1, 1968, entered into force for the United States March 5, 1970, 21 U.S.T. 483, TIAS No. 6839 (the "NPT"), refers to the application of safeguards to "equipment or material specially designed or prepared for the processing, use, or production (Footnote continued on next page....)

any nuclear explosive device." As noted above, these components will allow or assist in the production of special nuclear material at Tarapur. Because of both the uncertainty regarding application of safeguards and the uncertainty, discussed in paragraph (5), infra, regarding possible reprocessing of spent fuel from Tarapur, plutonium produced at Tarapur is subject to diversion or theft and ultimate use in either a subnational terrorist explosive device or in the Indian Government's nuclear explosives program. Consequently, there is no assurance that the criterion set forth in Section 109b.(2) will be met, and, therefore, the Commission cannot lawfully grant the export license applications thereunder.

(3) Retransfer of Exported Components - Subsection b.(3) of Section 109 prohibits exports of any component unless the retransfer thereof is subject to the "prior consent of the United States." Because of the uncertainties discussed above with respect to India's view of its obligations under the Agreement for Cooperation after 1993, there is no assurance that the criterion in Section

3 Cont./ (....footnote continued from previous page). of special fissionable material". There is no question that the components at issue in these licensings meet this standard: they have no other use but to support the operations of a facility which produces special nuclear material. Likewise, it is clear that Article III(2) safeguards extend to the material produced through such equipment, and this understanding is reflected in Section 109 b.(1), as well as the Agreement for Cooperation with India.

109b.(3) can be met, and, therefore, the Commission cannot lawfully grant the export license applications thereunder.

(4) Acquisition of Nuclear Explosive Devices - There is evidence that the Government of India is preparing a site for the testing of a nuclear explosive device, as reflected in the construction of additional shafts at its Rajasthan Desert test site. Congress has made the specific judgment in Section 129 of the Atomic Energy Act that exports should be prohibited to any country which has "engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such activities". 42 U.S.C. 2158 (1)(D). The Commission's regulations prohibit issuance of any license to export equipment to any country subject to a Presidential finding under Section 129(1)(D). See 10 C.F.R. §110.45(a)(4). A Presidential finding, however, is not a prerequisite to license denial on these grounds. Rather, if the Commission finds, based upon information available to it, that test preparations are underway, then, to implement the Congressional judgment reflected in Section 129, it must find that granting these pending export license applications would be "inimical to the common defense and security" within the meaning of Section 109b. of the Atomic Energy Act..

Alternatively, it must send the applications back to the Executive Branch for a specific finding under Section 129 (1)(D) before it acts.

(5) Reprocessing of Tarapur Spent Fuel - The Government of India has stated an intention to begin reprocessing of spent fuel from Tarapur into plutonium by the end of 1983 or the beginning of 1984. Approximately one (1) metric ton of plutonium has been produced thusfar as a by-product of spent fuel from Tarapur - enough to produce about one hundred fifty (150) atomic weapons. The Agreement for Cooperation (Article II(E)) provides that reprocessing may only be performed in an Indian facility upon a joint determination "of the parties" that safeguards "may be effectively applied." It is the position of the United States that, under the Agreement for Cooperation, no reprocessing of spent fuel from Tarapur can take place without the approval of the United States. The Government of India, however, has asserted that, in light of the application of safeguards to its reprocessing facilities by the International Atomic Energy Agency, the United States retains no rights to withhold approval of Indian reprocessing. Consequently, India may proceed to reprocess spent fuel without awaiting United States approval, thereby obtaining possession of directly weapons-usable material. Continuing to authorize exports to India under such circumstances is "inimical to the common defense and

security" within the meaning of Section 109 b. of the Atomic Energy Act, and, therefore, the Commission cannot lawfully grant the pending export license applications thereunder.

(6) Unsafe Operation of Tarapur - Applicants and the Government of India have stated that the components at issue in these proceeding are necessary for "humanitarian" reasons, to ensure the safe operation of Tarapur. However, independent of the need for spare parts, the operation of Tarapur has been beset by health and safety problems, including but not limited to, fuel leakage resulting in high exposure levels to workers and releases of radioactivity into the environment substantially greater than permitted under Commission regulations in the United States. Authorization of the exports under the pending license applications, by prolonging the unsafe operation of Tarapur, will exacerbate these problems and contribute to the continuing accident and other health and safety risks associated with facility operation. The risk of a serious reactor breakdown or accident, resulting in widespread death or disease, threatens U.S. relations with India and other U.S. trading partners. Accordingly, authorization of these exports would be "inimical to the common defense and security" within the meaning of Section 109b. of the Atomic Energy Act, and, therefore, the Commission cannot lawfully grant the pending license applications thereunder.

III. The Need For A Full Oral Hearing

A full oral hearing to examine Petitioners' contentions is essential to both serve the public interest and to assist the Commission in making its statutory determinations. Such a hearing would fulfill the Commission's mandate to explore fully the facts and issues raised by export license applications, where appropriate through full and open public hearings in which (a) all pertinent information and data are made available for public inspection and analysis and (b) the public is afforded a reasonable opportunity to present oral and written testimony on these questions to the Commission. See 42 U.S.C. §2155 a. and 10 C.F.R. §§110.40(c), 110.44(a),(b), 110.80-110.91, 110.100.4/

There is substantial controversy surrounding the nuclear intentions, capabilities and activities of the Government of India. Indeed, the wisdom of carrying on any nuclear intercourse with India has been the subject of extensive debate in the press and in Congress. Only a public hearing in which these issues are fully aired and subjected to public scrutiny will serve to resolve legitimate public questions concerning both the need for granting these license applications and the risks associated with such

4/ The Commission's regulations, it should be noted, include specific recognition that public participation and input are encouraged. 10 C.F.R. §110.81(a).

action. Certainly, the unchallenged assertions of license applicants and/or the Executive Branch are not enough to satisfy the public interest in the case.

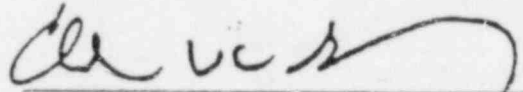
Additionally, the pending license applications raise important questions with respect to the interpretation of the Commission's responsibilities under the Atomic Energy Act and the application of the Act to the specific facts of these proposed exports. Petitioners include among their directors and members individuals with broad experience and expertise in technical and policy matters directly relevant to the risks and implications of the proposed exports. They would bring to the instant proceeding perspectives which are presently lacking and are pivotal to an understanding and resolution of the factual and legal issues raised by these applications.

IV. Relief Requested

For the reasons set forth above, Petitioners respectfully request that the Commission:

1. Grant this Petition for Leave to Intervene;
2. Order that an oral hearing be held in connection with the pending license applications; and
3. Act to ensure that all pertinent data regarding the issues addressed by Petitioners be made available for public inspection at the earliest possible date.

Respectfully submitted,



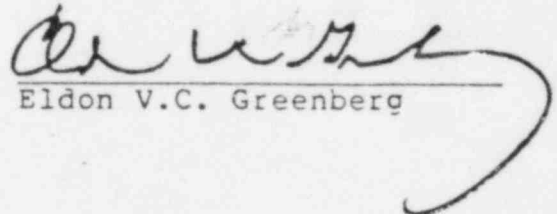
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(202) 833-9084

Attorney for Petitioners

Dated: July 28, 1983
Washington, D.C.

AFFIRMATION

I affirm that I am the duly authorized counsel for
Petitioners in this proceeding, that I have consulted with
Petitioners concerning the statements contained in the
Petition, and that such statements are true and correct to
the best of my personal knowledge and belief.


Eldon V.C. Greenberg

Subscribed and sworn to before
me this 28th day of July, 1983.


Notary Public

My Commission Expires July 31, 1987