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

November 18, 1993

MEMORANDUM FOR: Ronald Hauber, Assistant Director
Exports, Security and Safety Cooperation
Office of International Programs

FROM: Theodore S. Sherr, Chief
Regulatory and International Safeguards Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

SUBJECT: XSNM-2748, EXPORT OF UNIRRADIATED FORT ST. VRAIN FUEL CONTAINING HIGH-ENRICHED URANIUM MIXED WITH THORIUM TO FRANCE FOR RECOVERY, DOWN-BLENDING AND SUBSEQUENT USE AS FUEL IN RESEARCH AND TEST REACTORS (COGEMA)

The following physical security information is being provided for the subject export application for the export of high-enriched uranium (HEU) for the purpose of recovery, down-blending, and subsequent use as fuel in research and test reactors. This examination of the application addresses the Category I physical security for the domestic transport portion of the pending application.

NMSS was informed on November 3, 1993, by Transnuclear, Inc., the license applicant, that the shipment of material under this license will move as a series of Category I shipments. Transnuclear again plans to petition the Department of Energy (DOE) to transport and protect the HEU on the domestic leg of the shipment from its present storage location plant to the Aerial Port of Embarkation. The French Air Force will fly the material from the Aerial Port of Embarkation directly to France.

In a letter to NRC dated October 24, 1986, confirming that DOE would provide transport on the domestic leg of an earlier shipment, DOE stated that "the domestic portion ...will be made in accordance with DOE directives..." DOE also stated that they plan to terminate use of the SST system for commercial purposes at the earliest possible time. In view of this, DOE may decline to make this shipment if a suitable commercial carrier can be found.

At this point in time, there are no approved commercial carriers for transporting Category I material domestically. NRC requirements for such shipments have yet to be upgraded consistent with the results of the most recent NRC/DOE physical security transportation comparability review. If a commercial carrier were to come forward to transport Category I material, its physical security plan would need to be reviewed on a case-specific basis against interim licensing criteria pending codification of upgrades in the regulations.

We have reviewed the proposed export application and have determined that the following physical protection condition should be made part of the license.

"The material to be exported under this license shall either be protected in transit, while within U.S. jurisdiction, in accordance with NRC-approved licensing criteria or shall be protected in transit, while within U.S. jurisdiction, by the Department of Energy (DOE) Safe Secure Transport (SST) system in accordance with the DOE requirements and directives for the transport of such material."

Theodore S. Sherr, Chief
Regulatory and International Safeguards Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:
Ivan Selin, Chairman
Kenneth C. Rogers
Forrest J. Remick
E. Gail de Planque

In the Matter of	
TRANSNUCLEAR, INC.	Docket No. 11004649
(Export of 93.15% Enriched Uranium)	License No. XSNM 02748

MEMORANDUM AND ORDER

CLI-9 -

I. INTRODUCTION

The Nuclear Control Institute ("NCI") filed a Petition for Leave to Intervene and Request for Hearing on an application from Transnuclear, Inc. ("Transnuclear") for a license to export 280 kilograms of high-enriched uranium ("HEU") in the form of mixed uranium and thorium carbide, as unirradiated fuel fabricated for the Fort St. Vrain reactor, to COGEMA in France to be processed for recovery of the uranium and thorium. For the reasons stated in this Memorandum and Order, we deny the Petition for Leave to Intervene and Request for Hearing.

II. BACKGROUND

Transnuclear filed an application, dated May 5, 1993, for a license to export 280 kilograms of HEU containing 260.9 kilograms of uranium-235 (93.15% enriched) and 2481 kilograms of thorium, in the form of mixed uranium and thorium carbide, as unirradiated fuel fabricated for the Fort St. Vrain reactor,[1] to COGEMA in France to be processed for recovery of the uranium and thorium.[2] On June 24, 1993, NCI filed a Petition for Leave to Intervene and Request for Hearing on the Transnuclear license application. NCI asserts that it is a nonprofit, educational corporation based in the District of Columbia, and engages in disseminating information to the public concerning the risks associated with the use of nuclear materials and technology. Petition at 1-2.

NCI seeks intervention to argue that (1) the proposed export, if authorized, would be inimical to the common defense and security of the United States, (2) approval of the proposed export would be contrary to Section 134 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2160d (the "Schumer Amendment")[3], and (3) the license application is deficient in

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[1]The fabricated fuel is from the now-decommissioned Fort St. Vrain Power Station, a high temperature gas-cooled thorium fuel cycle prototype reactor located at Platteville, Colorado and owned by the Public Service Company of Colorado. The material is currently owned by Nuclear Fuel Services (NFS) and stored at the Erwin, Tennessee facility of NFS.

[2]Notice of receipt of the application was published in the *Federal Register* on May 26, 1993 (58 Fed. Reg. 30187).

[3]The Energy Policy Act of 1992, Public Law 102-486, signed into law on October 24, 1992, among other things, added new

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meeting the information requirements of NRC regulations in that it does not sufficiently describe the ultimate intended end use of the material to be exported. Petition at 10-11.

NCI requests that the Commission (1) grant NCI's Petition for Leave to Intervene, (2) order a full and open public hearing at which interested parties may present oral and written testimony and conduct discovery and cross-examination of witnesses, and (3) act to ensure that all pertinent information regarding the issues addressed by NCI is made available for public inspection at the earliest possible date. Petition at 1-2, 18.

Transnuclear filed an Opposition in Response to Petition to Intervene ("Response") on July 27, 1993. Before responding to the petition, Transnuclear amended its application on July 16, 1993, to require that the exported material be blended down and used as low enriched uranium ("LEU") for research or test reactors. In its Response, Transnuclear argues that the NRC is

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[3](...continued)
restrictions on the export of uranium, in a new Section 134 of the Atomic Energy Act (the "Schumer Amendment"). The Schumer Amendment permits the issuance of a license for export of uranium enriched to 20 per cent or more in the isotope-235 to be used as a fuel or target in a nuclear research or test reactor only if, in addition to other requirements of the Atomic Energy Act, the NRC determines that 1) there is no alternative nuclear reactor fuel or target enriched in the isotope 235 to a lesser percent than the proposed export, that can be used in that reactor; 2) the proposed recipient of that uranium has provided assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and 3) the United States Government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor. The applicability of the Schumer Amendment to the instant application is discussed *infra*.

not statutorily required to provide an adjudicatory hearing on export licenses and that in any case, NCI is not entitled to a hearing as a matter of right because NCI lacks standing. Response at 2-4. Transnuclear further argues that a discretionary hearing would not be in the public interest or assist the Commission in making its statutory determination because Transnuclear's amended license application makes clear that the uranium recovered from the exported material will be blended down to LEU thus removing the relevance of the contentions proffered by NCI. Response at 8-10.

NCI filed a timely Reply to Applicant's Opposition to the Petition for Leave to Intervene and Request for Hearing ("Reply") on August 16, 1993. In its Reply, NCI argues that a hearing of right is available in export licensing cases. Reply at 2-4. NCI concedes that Commission case law has denied standing, as a matter of right, to organizations with interests substantially similar to NCI in proceedings substantially similar to the instant one, but argues that the Commission should expand its approach to standing in export licensing proceedings to meet Congressional expectations regarding public participation in such proceedings. Reply at 5-7. NCI further argues that, notwithstanding Transnuclear's stated intention to blend down the material after it is exported, NCI's contentions remain valid because granting the license will increase the amount of HEU in international transport and commerce, and the expressed intention to down blend is unacceptably vague. Reply at 7-14.

Subsequent to NCI's Reply, COGEMA submitted a letter dated September 8, 1993, confirming that COGEMA will notify the NRC, in writing, within 30 days after all the exported material has been blended down to LEU. In a letter dated September 24, 1993, COGEMA again confirmed the earlier notification commitment and further confirmed that commercial arrangements regarding the material require that all the exported material be blended down with no substitutions or sale of HEU allowed, and that COGEMA will retain title to the material until it has been blended down to LEU.

III. THE PETITIONER'S STANDING

A. NCI Does Not Have Standing To Intervene As A Matter Of Right

Section 189a of the Atomic Energy Act of 1954, as amended, provides, among other things, that the Commission grant a hearing, as a matter of right, to any person "whose interest may be affected by" a proceeding under the Act for the granting of any licenses. 42 U.S.C. § 2239(a)(1).[4] To determine if a

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[4]The Commission's regulations at 10 C.F.R. § 110.84 list the factors to be considered in taking action on a hearing request or intervention petition in a licensing proceeding for the export of nuclear materials. Section 110.84(b) addresses considerations to determine whether a petitioner has standing to intervene as a matter of right and provides that:

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petitioner has sufficient interest in a proceeding to be entitled to intervene as a matter of right under section 189a, "the Commission has long applied contemporaneous judicial concepts of standing." *Cleveland Electric Illuminating Company, et al.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993), *citing Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992), *aff'd, Environmental & Resources Conservation Org. v. NRC*, No. 92-70202 (9th Cir. June 30, 1992); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983). To satisfy the judicial concept of standing, a petitioner must demonstrate "a concrete and particularized injury that is fairly traceable to the challenged action." *Id.* (citations omitted).

NCI asserts a claim of interest for standing based on its institutional interests in the dissemination of information concerning nuclear weapons and proliferation in general and the use of HEU in particular. Petition at 3. The Commission has

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[4](...continued)

(b) If a hearing request or intervention petition asserts an interest which may be affected, the Commission will consider:
(1) The nature of the alleged interest;
(2) How the interest relates to issuance or denial; and
(3) The possible effect of any order on that interest, including whether the relief requested is within the Commission's authority, and, if so, whether granting relief would redress the alleged injury.

10 C.F.R. § 110.84(b).

long held that institutional interest in providing information to the public and the generalized interest of their memberships in minimizing danger from proliferation are insufficient for standing under section 189a. *See, e.g., Edlow International Co.* (Agent for the Government of India on Application to Export Special Nuclear Material), CLI-76-6, 3 NRC 563,572-78 (1976); *Exxon Nuclear Company, Inc., et al.* (Ten Applications For Low Enriched Uranium Exports To EURATOM Member Nations) CLI-77-24, 6 NRC 525, 529-32 (1977); *Westinghouse Electric Corp.* (Export to South Korea) CLI-80-30, 12 NRC 253, 257-60 (1980); *General Electric Company* (Exports to Taiwan) CLI-81-2, 13 NRC 67, 70 (1981). *See also Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station) CLI-92-02, 35 NRC 47, (1992) (rejection of "informational interests" as grounds for standing in other than an export licensing case).

NCI "concede[s] that there is a line of Commission cases, starting with the pre-NNPA [Nuclear Non-Proliferation Act] decision in *Edlow International Co.*, CLI-76-6, 3 NRC 563 (1976), denying standing to organizations with interests substantially similar to Petitioner in proceedings substantially similar to the present one." Reply at 5. NCI argues, however, that the Commission's approach to standing should be expanded to realize the Congressional intention to increase public participation in export licensing through enactment of section 304 of the Nuclear Non-Proliferation Act of 1978, 42 U.S.C. § 2155a ("NNPA"). Reply at 5-7.

The mechanism for increased public participation NCI urges already is provided for in the Commission's regulations. Section 304(b)(2) of the NNPA mandated that the Commission promulgate regulations establishing procedures "for public participation in nuclear export licensing proceedings when the Commission finds that such participation will be in the public interest and will assist the Commission in making the statutory determinations required by the 1954 Act." 42 U.S.C. § 2155a(b)(2). The Commission amended its regulations in 1978 expressly to accommodate this mandate by adding the criteria set out in 10 C.F.R. § 110.84(a) for granting a hearing as a matter of discretion.[5] *See* Statement of Considerations, 43 Fed. Reg. 21641, 21642-43 (1978). The regulation specifically sets forth the Commission policy to hold a hearing or otherwise permit public participation if the Commission finds that such a hearing or participation would be in the public interest and would assist the Commission in making the required statutory determinations.

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[5]Section 110.84(a) of Title 10 of the Code of Federal Regulations provides that:

> (a) In an export licensing proceeding, or in an import licensing proceeding in which a hearing request or intervention petition does not assert or establish an interest which may be affected, the Commission will consider:
> (1) Whether a hearing would be in the public interest; and
> (2) Whether a hearing would assist the Commission in making the statutory determinations required by the Atomic Energy Act.

10 C.F.R. § 110.84(a).

Thus, even though NCI has not established a basis on which it is entitled to intervene as a matter of right, the Commission could hold a hearing under 10 C.F.R. § 110.84(a)(1) and (2) if such hearing would be in the public interest and assist the Commission. *See Braunkohle Transport, USA* (Import of South African Uranium Ore Concentrate), CLI-87-6, 25 NRC 891, 893 (1987).

B. A Discretionary Hearing Would Not Assist The Commission And Be In The Public Interest

The issues raised by NCI - (1) the common defense and security of the United States, (2) compliance with the Schumer Amendment, and (3) assurance of the ultimate intended end use of the material - do concern matters which the Commission considers in making an export license decision. There is no indication in NCI's pleading, however, that it possesses special knowledge regarding these issues or that it will present information not already available to and considered by the Commission.

The Executive Branch and the Commission staff have addressed the issues sufficiently in their respective reviews of the Application. The transportation, international safeguards, and foreign physical security concerns associated with the issue of the common defense and security were addressed by the Executive Branch and the Commission staff in their consideration of the Application. The Commission has reviewed the Executive Branch's and Commission staff's evaluation of the ultimate end use of the

material and the effect of the COGEMA September 8 and 24, 1993, letters regarding that end use. NCI offers no reason for the Commission to differ with the views expressed by the Executive Branch and the Commission staff on these matters.

The only remaining issue raised by NCI is compliance with Section 134 of the Atomic Energy Act of 1954, as amended, (the Schumer Amendment) 42 U.S.C. § 2160d. NCI contends that, notwithstanding that the HEU is to be blended down for use as LEU reactor fuel, the Schumer Amendment issue "remains alive" because of the terms of the Amendment. Reply at 13-14. A fair reading of the entire amendment, however, shows that, while Congress may have been concerned about the transportation of HEU, the focus of the statute is on discouraging the continued use of HEU as reactor fuel and not on prohibiting the exportation, per se, of HEU. Any other reading would be inconsistent with the plain meaning of the legislation since it allows for the exportation of HEU fuel for use in a reactor provided that certain provisions are in place to ultimately convert the reactor to use LEU. *See* 42 U.S.C. § 2160d(a)(2) and (3). Further, assuming *arguendo* that the terms of the Schumer Amendment are ambiguous,[6] a review of

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[6]The Schumer Amendment states, in part:

> a. The Commission may issue a license for the export of highly enriched uranium to be used as a fuel or target in a nuclear research or test reactor only if, in addition to any other requirement of this [Act], the Commission determines that-
>
> (1) there is no alternative nuclear fuel or target enriched in the isotope 235 to a lesser percent than the proposed export, that can be

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its legislative history clearly shows that the intent of the amendment is to "put into law what was, from 1978 to 1990, the policy of both Democratic and Republican administrations--prohibiting the NRC from licensing the exports of *bomb-grade uranium fuel*... ." 138 *Cong. Rec.* H. 11440 (daily ed. October 5, 1992) (remarks of Representative Schumer) (emphasis added). The NRC staff advises that the material the Applicant seeks to export, although fabricated as HEU fuel for the now defunct Fort St. Vrain reactor, is not in a form that can be used as HEU fuel or target material in a research or test reactor without first processing the material to recovery its uranium content. Exporting the material for processing, blending down, and subsequent fabrication into LEU fuel or target material for test and research reactors may aid in discouraging the continued use of HEU as fuel in reactors by increasing the availability of LEU fuel. The action, if nothing else, meets one of the goals of the Schumer Amendment, in that it will remove 280 kilograms of HEU from the world inventory and, thereby, help encourage "developing alternative fuels that will enable an end to the bomb-grade exports." *Id.*

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[6](...continued)
used in that reactor;

42 U.S.C. § 2160d. The meaning of the phrase "to be used as a fuel" in the first sentence, in the context of the whole provision, clearly means "to be used as a HEU fuel." The NCI argument depends on reading the word "fuel" in the first sentence as meaning either "HEU fuel" or "LEU fuel."

In summary, nothing in the NCI Petition and Reply indicates that a hearing would generate significant new insights for the Commission regarding the instant application. To the contrary, conducting a public hearing on issues concerning matters about which the Commission already has abundant information and analyses would be contrary to one of the purposes of the NNPA, namely, "that United States government agencies act in a manner which will enhance this nation's reputation as a reliable supplier of nuclear materials to nations which adhere to our non-proliferation standards by acting upon export license applications in a timely fashion." *Westinghouse* CLI-80-30, 12 NRC 253, 261 (1980) (citation omitted). For these reasons, NCI's petition and request for a public hearing should be denied as not in the public interest and not necessary to assist the Commission in making its statutory determinations.

IV. CONCLUSION AND ORDER

For the reasons stated in this decision, NCI has not established a basis on which it is entitled to intervene as a matter of right under the Atomic Energy Act. Further, a hearing, as a matter of discretion pursuant to 10 C.F.R. § 110.84(a), would not be in the public interest and is not needed to assist the Commission in making the determinations required for issuance

of the export license to Transnuclear. The Petition for Leave to Intervene and Request for Hearing is denied.

It is so ORDERED.

For the Commission

SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.
this day of , 199 .

By HAND 6/25/93
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Ref: 7/1/93

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

In the Matter of	)	
	)	
TRANSNUCLEAR, INC.	)	Docket No. 11004649
	)	
(Export of 93.15% Enriched Uranium)	)	License No. XSNM 02748
	)	

9302729

PETITION OF THE NUCLEAR CONTROL INSTITUTE 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" or "Petitioner") hereby respectfully petitions the Commission for leave to intervene as a party in opposition to the application of Transnuclear, Inc. ("Applicant"), dated May 5, 1993, for a license to export 280 kilograms of 93.15% enriched uranium for processing in France, as published in the Federal Register on May 26, 1993 (58 Fed. Reg. 30187).

In addition, Petitioner requests that the Commission order a full and open public hearing at which interested parties may present oral and written testimony and conduct any discovery and

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cross-examination necessary to resolve the factual and legal issues relevant to the Commission's determinations with respect to the pending license application. 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. Petitioner's Interests

Petitioner 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. Its address and telephone number are: 1000 Connecticut Avenue, N.W., Suite 704, Washington, D.C. 20036; (202) 822-8444. It is actively engaged in disseminating information to the public concerning the proliferation, safety and environmental risks attendant upon the use of sensitive nuclear materials, equipment, and technology. It develops strategies for halting the further spread of nuclear weapons and is deeply concerned with the inadequacies of present national and international systems for the safeguarding of nuclear materials against theft, diversion and other unauthorized uses.

NCI has undertaken special efforts to educate the public

about the feasibility and desirability of eliminating bomb-grade (or "highly enriched") uranium ("HEU") from commerce in general and research reactors in particular and has strongly advocated the completion and full implementation of the Reduced Enrichment for Research and Test Reactors ("RERTR") program. Examples of its publications in the area include the January, 1991, Issue Paper, "Eliminating Bomb-Grade Uranium From Research Reactors," and its June 23, 1991, Washington Post "Outpost" article, "Politicians in the Lab . . . and Scuttling an Easy Way to Stop Nuclear Proliferation". It has been active in prior proceedings before the Commission relating to the export of HEU, specifically the proposed export of HEU to the HFR/Petten Reactor in The Netherlands (Dkt. No. 11004440, Lic. No. XSNM 02611).

Petitioner has important institutional interests which would be directly affected by the outcome of this proceeding. As noted above, it is actively involved in public information and education programs concerning arms control, the spread of nuclear weapons, and the risks of proliferation and nuclear terrorism in general and the use of HEU in particular. Its 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 application.

Petitioner has no other means to protect its interests in this proceeding, 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. It is timely filed, within 30 days of the publication of the license application in the Federal Register, as required by 10 C.F.R. § 110.82(c)(1). Finally, Petitioner's contentions raise important questions concerning the appropriateness of continued commerce in and use of HEU, which is directly useable in nuclear bombs, and Petitioner submits that its participation will assist the Commission in developing a sound record.

II. Background

For many years, HEU has been used in the civil sector primarily to fuel research and test reactors around the world. However, its risks have likewise long been recognized, and there have therefore been substantial efforts to curtail its use.

The risks associated with the circulation of HEU in commerce are self-evident. HEU was the material used in the Hiroshima bomb (Little Boy). According to J. Carson Mark, former head of weapons design at Los Alamos National Laboratory, a "first generation" implosion weapon requires no more than about twelve

kilograms of this material.[1]

Consequently, HEU is an attractive target for national diversion or seizure by terrorists. Indeed, the Manhattan Project physicist Luis Alvarez has noted, "[W]ith modern weapons-grade uranium ... terrorists, if they had such materials, would have a good chance of setting off a high-yield explosion, simply by dropping one-half of the material on the other half."[2] Furthermore, the possession of this material in the hands of a Saddam Hussein or in a country such as Romania or the former Yugoslavia during a breakdown of civil order, or by terrorists who steal such material, would present a grave international threat. Unless quantities of HEU in commerce are substantially reduced, or eliminated, such risks are only likely to grow.

In recognition of the problems associated with continued reliance on HEU in research reactors, the United States instituted the RERTR program in 1978. Under the leadership of Argonne National Laboratory, this program has been developing high density, low-enriched uranium ("LEU") fuels -- fuels not suitable for fabrication into weapons but suitable for use in research reactors -- thereby allowing conversion to LEU and much

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[1]Mark, "Some Remarks on Iraq's Possible Nuclear Weapon Capability In Light of Some Known Facts Concerning Nuclear Weapons" (Nuclear Control Institute, May 16, 1991), at 2.

[2]Alvarez, Adventures of a Physicist 125 (Basic Books 1987).

reducing the amount of HEU in commerce. Its results have been impressive: the RERTR program has developed, tested, and qualified four types of LEU fuel "which make it technically possible to convert to LEU use some 95 percent of the 118 research reactors in 34 countries (36 in the United States and 82 in other countries)."[3]

U.S. policy has also been strongly in favor of reducing use of HEU. Thus, the Commission itself for more than ten years has sought to "reduc[e], to the maximum extent possible, the use of HEU in ... foreign research reactors." See 47 Fed. Reg. 37007 (August 24, 1982). The same Policy Statement affirms that "any reduction in the potential for access to these [HEU] inventories would constitute a reduction in the proliferation risk." Moreover, domestically, the Commission has since 1986 been requiring all licensed research reactors to convert to LEU. See 51 Fed. Reg. 6514 (February 25, 1986). In taking this action, the Commission asserted that the "domestic conversions are intended to be put on solid footing by setting a strong, resolute and sensible example, consistent with U.S. national policy, to encourage foreign operators of non-power reactors to convert to

[3]ERC Environmental and Energy Services Co., Review of the RERTR Program (Report submitted to the U.S. Department of Energy, May 15, 1990), at 3-3.

the use of LEU fuel." Id. at 6516.[4]

In 1986, Congress, too, acted. It passed the Omnibus Diplomatic Security and Anti-Terrorism Act, calling upon the President "to take, in concert with United States allies and other countries, such steps as necessary to keep to a minimum the amount of weapons-grade nuclear material in international transit." See Omnibus Diplomatic Security and Anti-Terrorism Act of 1986, Pub. L. No. 99-399, Sec. 601(a)(3)(A) (August 27, 1986).[5] Under this legislation, HEU exports have been limited only to those countries "... which have cooperated closely with the U.S. in the Reduced Enrichment for Research and Test Reactors (RERTR) Program. Exports are further limited to supply of only those research reactors which either cannot be converted at present to LEU fuel or which need additional HEU fuel while in process of conversion to LEU." 1991 Annual Report Under Section 601 of the NNPA, 22 U.S.C. § 3281 (July 2, 1992), at 77.

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[4]Commission policy, it should be noted, has reflected the consistent views of the Executive Branch that it is important to U.S. non-proliferation policy to minimize the amount of HEU in international commerce. See Presidential Non-Proliferation Policy Statement of April 7, 1977, 13 Weekly Comp. Pres. Doc. 507 (April 11, 1977); U.S. Nuclear Non-Proliferation and Cooperation Policy (July 16, 1981), 17 Weekly Comp. Pres. Doc. 769 (July 20, 1981); 1991 Annual Report under Section 601 of the NNPA, 22 U.S.C. § 3281 (July 2, 1992), at 77.

[5]Congress had previously passed resolutions supportive of Executive Branch efforts to reduce HEU use. See S.J. Res. 179, 97th Cong., 1st Sess. (July 27, 1981); S. Con. Res. 96, 97th Cong., 2d Sess. (May 27, 1982).

Finally, Section 603 of the 1986 law added a new Section 133 to the Atomic Energy Act, 42 U.S.C. § 2160c., specifically requiring Commission consultation with the Secretary of Defense concerning the adequacy of physical security in connection with any proposed export or transfer of HEU.

Most recently, Congress dealt with commerce in HEU in Title IX, Section 903, of the Comprehensive National Energy Policy Act, Pub. L. No. 102-486, 106 Stat. 2944, enacted October 24, 1992 (the "Schumer Amendment"). The Schumer Amendment adds a new Section 134 to the Atomic Energy Act, 42 U.S.C. § 2160d., which limits the circumstances in which any HEU can be exported for use as a fuel or target in a research or test reactor. As its principal author stated, "[T]his bill codifies once and for all that bomb grade uranium is simply too dangerous to continue indefinitely shipping it overseas for non-military purposes". 138 Cong. Rec. H. 11440 (daily ed., Oct. 5, 1992). Under the Schumer Amendment, no HEU exports are permitted for use in a research or test reactor unless three conditions are met:

> (1) there is no alternative nuclear reactor fuel or target enriched in the isotope 235 to a lesser percent than the proposed export, that can be used in that reactor;
>
> (2) the proposed recipient of that uranium has provided assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and

(3) the United States Government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor.

42 U.S.C. § 2160d.(a)(1)-(3). It was expected that, under the Schumer Amendment, all HEU exports could be phased out "within 5 years," assuming the RERTR fuel development program were restarted. In the absence of continued funding for the RERTR program, the only option would be to "cut off the bomb-grade exports immediately." See 138 Cong. Rec. at H. 11440 (Statement of Rep. Schumer).

It is uncertain just what the end use of the HEU under the pending application is likely to be. The end use statement in the license application (paragraph 11) merely states that "recovered uranium ... are [sic] to be returned to NFS in the USA". The application does not state to what use the HEU will be put after its return. However, it would be logical to presume that the recovered HEU is ultimately intended for use in a research or test reactor, either domestically or abroad, since there appear to be few, if any, other civil uses for the material.[6] Such use would directly implicate the laws and policies discussed above and should not be furthered by the

[6]Conceivably the HEU could also be used as start-up material in a breeder reactor. Obviously, however, such use would have equally, if not more, serious non-proliferation and terrorism implications.

Commission through approval of the pending license application. In any event, because a substantial amount of material -- 280 kilograms or enough to fabricate more than 20 bombs -- is involved in this proposed export, no potential use of this material is justified, unless it can be persuasively demonstrated that there are no presently available, viable alternatives (e.g., blending down the uranium) involving lesser proliferation and terrorism risks. This is a heavy burden which Applicant has not sought in any way to meet.

III. Petitioner's Contentions

In accordance with Section 53 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2073, and 110 C.F.R. §§ 110.42(a)(8) and 110.44(a)(1)(ii), the Commission may not issue a license for the export of special nuclear material, such as the HEU at issue in this proceeding, unless it determines that "[t]he proposed export would not be inimical to the common defense and security." For the reasons set forth in paragraph (a) below, Petitioner submits that this requirement cannot be met by the pending license application. In addition, as set forth in paragraph (b) below, to the extent the ultimate end use of the material would be in a research or test reactor, approval of the proposed export would be contrary to the requirements of the Schumer Amendment, Section 134 of the Atomic Energy Act of 1954,

as amended, 42 U.S.C. § 2160d. Finally, as set forth in paragraph (c) below, because Applicant has not sufficiently described the ultimate intended end use of the export, the pending application does not meet the information requirements set forth in 10 C.F.R. § 110.31(f)(5).

(a) The Proposed Export Would Be Inimical to the Common Defense and Security.

The proposed export would be inimical to the U.S. common defense and security in at least three respects. First, to the extent positive Commission licensing action could imply U.S. government approval of either domestic or foreign use of an additional 280 kilograms of HEU in research or test reactors, this would fundamentally undercut the RERTR program, exacerbating the risk that operators who have not yet converted their reactors would refuse to do so and that operators who have converted would revert to HEU use, contrary to the United States' non-proliferation interests. Second, approval of the pending application would lead to increased international transport of weapons-useable material, aggravating the risk of interception by rogue states, criminals or terrorists, even though it is by no means clear that (i) fuel processing, if truly necessary, could not be performed in the United States, or (ii) other supplies of HEU (again, if truly necessary) might not be available from sources other than the Fort St. Vrain fuel, or (iii) alternatives

such as blending down the fuel for use in a converted research reactor might not be viable.[3] Third, since there is no stated justification for HEU processing in the application, the nuclear proliferation and terrorism risks associated with increasing amounts of HEU in international commerce necessarily outweigh any hypothetical benefits to Applicant or others from the export. In a world in which major efforts are underway to eliminate HEU surpluses, it makes little sense to process more.[4] In light of such considerations, the grant of the pending license application cannot be squared with U.S. common defense and security interests.

(b) To the Extent the Ultimate End Use of the Material Is in a Research or Test Reactor, the Proposed Export Would Be Inconsistent with the Schumer Amendment.

The proposed export would be inconsistent with the Schumer Amendment in at least two possible respects.

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[3]It should be noted that Nuclear Fuel Services, Inc. ("NFS"), the present owner of the fuel, is now licensed to carry out blending down operations at its facility (NRC Dkt. No. 70-143 SFOS).

[4]The United States has already undertaken, at an estimated cost of several billion dollars, to purchase 500 tons of Russian HEU, all of which is to be blended down to LEU to remove the bomb-grade material from international commerce and eliminate any risk of diversion to weapons. An interim agreement was signed in May 1993 by Lynn Davis, U.S. Undersecretary of State, and Viktor Mikhailov, head of Russia's Atomic Energy Ministry, to this end. Approving the proposed export would be at cross purposes with this major U.S. post Cold War initiative.

First, while the end use in a specific reactor is not indicated in the license application, there is plainly a risk that, once the HEU is in Europe and has been processed, Applicant would seek a license amendment permitting the fuel to be transferred for use at a foreign research or test reactor. Given the absence of other civil uses, this is a highly plausible scenario. In fact, NFS, the current owner of the HEU, is actively engaged in discussions with the Commission to lower security requirements at its facility (NRC Dkt. No. 70-143 WSOJ). Such an outcome is possible only if NFS reduces its inventory of HEU below the Category I threshold (five kilograms). NFS, in other words, has every incentive not to have the fuel returned but instead utilized abroad.[9] Furthermore, even if the fuel is returned to the United States as planned, there might be subsequent efforts to reexport it for research or test reactor use. Indeed, Petitioner understands that the originally intended end use for this fuel was France's RHF Grenoble reactor, and another option under consideration has been shipment to Canada for use as targets in the NRU reactor and the yet-to-be-completed

[9]It should be noted that export of the HEU is not the only alternative available to NFS to get the fuel off-site for the purpose of lowering security requirements. NFS could transfer the fuel to a Department of Energy ("DOE") facility where Category I level security is in place, e.g., Oak Ridge or Savannah River. NFS could possibly transfer ownership to DOE as well, since Petitioner understands that it originally obtained the fuel without charge from the Fort St. Vrain reactor.

Maple X10 reactor.[10] Once costs are sunk in fuel processing, it would be all the more difficult for the Commission to turn down a request for use of the HEU in a foreign research or test reactor. Finally, Applicant might attempt a substitution arrangement whereby the HEU would remain in Europe in exchange for LEU containing an equivalent quantity of U-235. If such an arrangement were permitted, and the HEU were ultimately used in a foreign research or test reactor, the Schumer Amendment would be evaded.[11] To avoid such scenarios, the Commission should now decide that any such use would be contrary to the Schumer Amendment and, more specifically, that the three criteria set forth in Section 134 of the Atomic Energy Act cannot be satisfied.

Second, if Applicant affirms that the ultimate end use of

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[10]In the RHF reactor the HEU would be used as fuel, while it would be used as target material for production of radioisotopes in the NRU and Maple X10 reactors. Since the RERTR program is not actively developing LEU fuels, the Schumer Amendment would bar export of HEU for the RHF reactor. Since the RERTR prgoram is developing LEU targets, the Schumer Amendment might permit exports of HEU to Canada until LEU targets are successfully developed -- estimated at five years. However, in light of existing HEU stocks in Canada, Petitioner understands that Canada's maximum HEU import requirements over this period will be no more than 40-60 kilograms, or just a fraction of the total HEU to be processed in the proposed export. Thus, these reactors do not represent a legal export market for the bulk of the HEU at issue in this proceeding.

[11]Applicant might find substitution financially attractive. Since there is currently a premium on HEU in Europe, Applicant might receive a larger quantity of U-235 in LEU than was contained in the HEU.

the fuel would be in a research or test reactor in the United States, the Schumer Amendment would still apply. By its terms, it unequivocally bars the Commission from allowing any export at all of HEU "to be used as a fuel or target in a nuclear research or test reactor", unless its three statutory conditions are satisfied, without regard to whether the ultimate end use is in a foreign or domestic reactor.

In sum, given the provisions of the Schumer Amendment, absent a demonstration by Applicant either that the fuel is ultimately intended for some end use other than in a research or test reactor or that the Schumer Amendment's conditions are satisfied for the ultimate end use, the pending license application should not be approved.

(c) The Pending Application Does Not Meet The Information Requirements of the Commission's Regulations.

As noted above, the pending application does not describe the ultimate end use of the HEU to be processed. However, under the Commission's regulations, a license application must contain:

> [A] description of end use by all consignees in sufficient detail to permit accurate evaluation of the justification for the proposed export ..., including the need for shipment by the dates specified.

10 C.F.R. § 110.31(f)(5). It is readily apparent that, until the Commission knows the use to which the processed HEU will be put, it lacks sufficient information to make an "accurate evaluation of the justification for the proposed export", and, therefore, the pending application must be denied.

IV. The Need for a Full Oral Hearing

A full oral hearing to examine Petitioner's contentions is essential both to 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. § 2155a. and 10 C.F.R. §§ 110.40(c), 110.44(a), (b), 110.80-110.91, 110.100.[12]

There is substantial controversy surrounding any continued use of bomb-grade uranium. Indeed, the questionable wisdom of

[12]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).

permitting commerce in HEU has been sharply illustrated by the actions of the United States, its allies and the International Atomic Energy Agency to remove the HEU in the possession of Iraq after the conclusion of the Persian Gulf War. Similarly, after the fall of Romania's Communist government, the U.S. sought and won in 1991 permission to convert all unirradiated HEU fuel elements owned by the Romanian government to LEU. Only a public hearing in which issues related to the continued appropriateness of exporting HEU are fully aired and subjected to public scrutiny will serve to resolve legitimate public questions concerning both the need for granting this license application and the risks associated with such action. Certainly, the unchallenged assertions of Applicant and/or the Executive Branch are not enough to satisfy the public interest in the case.-

Petitioner includes among its directors, staff and supporters individuals with broad experience and expertise in technical and policy matters directly relevant to the risks and implications of the proposed export. Additionally, it has expert consultants fully familiar with all aspects of the RERTR program. These individuals 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 the pending license application.

V. Relief Requested

For the reasons set forth above, Petitioner respectfully requests 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 application; and

3. Act to ensure that all pertinent data and information regarding the issues addressed by Petitioner be made available for public inspection at the earliest possible date.

Respectfully submitted,

Eldon V.C. Greenberg
GARVEY, SCHUBERT & BARER
1000 Potomac Street, N.W.
Suite 500
Washington, D.C. 20007
(202) 965-7880

Attorney for Petitioner

Dated: June 24, 1993
Washington, D.C.

AFFIRMATION

I affirm that I am duly authorized counsel for Petitioner in this proceeding, that I have consulted with Petitioner 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 24th day of June, 1993.

Notary Public

Phyllis Landau
Notary Public District of Columbia
My Commission Expires May 14, 1998

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Petition of the Nuclear Control Institute for Leave to Intervene, together with counsel's Notice of Appearance, to be served by having copies thereof mailed, first class, postage prepaid, on the 24th day of June, 1993, to the following:

Joan McLaughlin
Traffic Coordinator
Transnuclear, Inc.
Two Skyline Drive
Hawthorne, New York 10532-2120

Executive Secretary
U.S. Department of State
Washington, D.C. 20520

and by having copies thereof hand-delivered on such date to the following:

Docketing and Service Branch
Office of the Secretary
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852
(3 copies)

General Counsel
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Eldon V.C. Greenberg

Dated: June 24, 1993
Washington, D.C.

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

In the Matter of	)	
	)	
TRANSNUCLEAR, INC.	)	Docket No. 1100649
	)	
(Export of 93.15% Enriched Uranium	)	License No. XSNM 02748
	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with § 2.713(a), 10 C.F.R. Part 2, the following information is provided:

Name: Eldon V.C. Greenberg

Address: GARVEY, SCHUBERT & BARER
1000 Potomac Street, N.W.
Suite 500
Washington, D.C. 20007

Telephone: (202) 965-7880

Admission: Member of D.C. and New York Bars

Name of Party: Nuclear Control Institute

Eldon V.C. Greenberg

Attorney for Petitioner

Dated: June 24, 1993
Washington, D.C.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	
TRANSNUCLEAR, INC., on behalf of, COGEMA, INC.,	Docket No. 11004649
	License No. XSNM-2748
(Export of Unirradiated Fuel for Defabrication)	

TRANSNUCLEAR'S OPPOSITION
IN RESPONSE TO PETITION TO INTERVENE

Transnuclear, Inc. ("Transnuclear"), on behalf of COGEMA, Inc., 1/ files this opposition in response to the "Petition of the Nuclear Control Institute For Leave to Intervene and Request For Hearing" ("Petition") submitted on June 24, 1993. Nuclear Control Institute ("NCI") seeks leave to intervene as a party in opposition to Transnuclear's May 5, 1993 application (amended on July 16, 1993) for a license to export unirradiated fuel for defabrication in France.

The license would permit the export of fuel fabricated for the Fort St. Vrain high temperature gas reactor and scrap and excess material resulting from production of such material that is currently owned by Nuclear Fuel Services (NFS) and stored at NFS' Erwin, Tennessee facility. Pursuant to the proposed

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1/ COGEMA, Inc. is a U.S. corporation and is a wholly-owned subsidiary of Compagnie Générale des Matières Nucléaires ("COGEMA"), a French corporation.

application, as amended, the fuel and nuclear material will be exported to France, where it will be defabricated at COGEMA's facility located at Pierrelatte, France, and where all of the recovered uranium will be blended with natural and/or low-enriched uranium so that the resulting product is enriched to less than 20 percent U_{235} (low-enriched uranium or "LEU") for ultimate use as fuel for research and test reactors.

Although it has long been established statutorily and judicially that the NRC need not provide an adjudicatory hearing on export licenses, 2/ NCI requests a "full and open hearing" pursuant to 10 CFR § 110.84 (1993), with an opportunity to present oral and written testimony and to conduct cross-examination and discovery. 3/ NCI establishes no basis for such extraordinary procedures. Indeed, it fails to articulate any cognizable interest which will be affected by this proceeding and thus fails to establish its organizational standing.

In support of its request, NCI presents three contentions which presuppose that the exported material either could or would ultimately be used as high enriched uranium ("HEU"). On July 16, 1993 Transnuclear amended its application to require that the exported material be blended down and used as

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2/ *Natural Resources Defense Council v. NRC*, 580 F.2d 698, 699 (D.C. Cir. 1978).

3/ The extraordinary procedures of cross-examination and discovery requested by NCI are not provided in 10 CFR Part 110, Subpart J, which contemplates "legislative-type" non-adjudicatory hearings. 10 CFR §§ 110.100-113 (1992).

LEU for research or test reactors. Thus, none of NCI's contentions has any relevance to the current application.

For these reasons, and the reasons more fully stated below, Transnuclear respectfully requests that the Commission deny the petition to intervene and deny the request for a hearing.

ARGUMENT

I. NCI HAS NO RIGHT TO A HEARING

Unlike NRC's consideration of other licenses, its review of an export license application does not trigger the hearing rights afforded by section 189 of the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2239 (1988)). Section 304(b) of the Nuclear Non-Proliferation Act of 1978 ("NNPA") provides that the Commission shall provide for public participation in export licensing proceedings when it "finds that such participation will be in the public interest and will assist the Commission in making the statutory determinations required by [the Act]." 42 U.S.C. 2155a(b) (1988). Section 304(c) of the NNPA directs that the criteria of Section 304(b) "shall constitute the exclusive basis for hearings in nuclear export licensing proceedings" and "shall not require the Commission to grant any person an on-the-record hearing in such a proceeding." 42 U.S.C. § 2155a(c). This latter subsection "thus directs in unequivocal language that the NRC need not afford any person an adjudicatory hearing in a nuclear export licensing proceeding." *Natural Resources Defense Council v. NRC*, 580 F.2d 698, 699 (D.C. Cir. 1978).

Despite the dictates of the NNPA, NCI seeks a hearing and rights such as discovery and cross-examination which would effectively create a full-blown adjudicatory proceeding. Such procedures, however, "are not provided for in the Commission's regulations set forth in 10 CFR Part 110." Braumkohle Transport (Import of South African Uranium Ore Concentrate), CLI-87-6, 25 NRC 891, 893 (1987). 4/ In accordance with section 304(b) of the NNPA, the NRC's regulations establish procedures for the public to participate in export licensing proceedings by providing their written views. As such, these regulations provide the "only basis for determining the hearing rights of groups such as [NCI]." *See* NRDC, 580 F.2d at 700. They do not include a hearing as of right, or any of the other extraordinary procedures requested by NCI.

According to the Commission in Braumkohle, Part 110 does not provide for adjudicatory procedures because they would be inappropriate in export and import license proceedings which "frequently involve sensitive foreign policy and national defense considerations." CLI-87-6, 25 NRC at 184. Consistent with this rationale, such procedures would be inappropriate and serve no useful purpose in considering the instant export license application.

4/ In Braumkohle the Commission did not rule on the Petitioners' request that a hearing be granted as a matter of right. CLI-87-6, 25 NRC at 893. Instead, the Commission granted a discretionary written hearing because it was interested in certain legal issues relating to interpretation of the Comprehensive Anti-Apartheid Act of 1986. Id. at 894.

II. NCI HAS FAILED TO ESTABLISH THE REQUISITE STANDING

Assuming arguendo that a petitioner could assert a right to some sort of hearing before the Commission, NCI has not demonstrated here that it has standing or a sufficient interest to assert such a right in this proceeding. NCI has failed to demonstrate any cognizable interest which will be affected by this proceeding.

In order to meet the requirements for standing, *i.e.* an affected interest, "an organization must show injury either to its organizational interests or to the interests of members who have authorized it to act for them." *Philadelphia Elec. Co.* (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1437 (1982). NCI apparently seeks to establish its standing or interest on the basis of an alleged generalized injury to its organizational interests, rather than to assert the interests of any members who have authorized it to act for them. 5/ NCI baldly asserts that it "has important institutional interests which would be directly affected by the outcome of this proceeding." (Petition at 3). The only interests asserted, however, are NCI's generalized interest in public information and education regarding its concerns about non-proliferation. This type of general grievance does not

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5/ When an organization undertakes to intervene on behalf of its members, it must demonstrate that at least one member with the requisite interest has authorized the organization to represent her in the proceeding. *Limerick*, LBP-82-43A, 15 NRC at 1437; *Houston Lighting & Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 444 (1979).

demonstrate the requisite "injury in fact" to confer standing upon NCI.

It has long been established and consistently reaffirmed that an "organization seeking relief must allege that it will suffer some threatened or actual injury resulting from the agency action." *Westinghouse Elec. Corp.* (Export to South Korea), CLI-80-30, 12 NRC 253, 257 (1980) (citing cases). In reviewing a request for intervention and a hearing on an export license application in *Westinghouse*, the Commission relied upon judicial precedents and concepts of standing which "made clear that 'an organization's abstract concern with a subject that could be affected by an adjudication does not substitute for concrete injury.'" *Id.* (quoting *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 40 (1976)); *see also Sierra Club v. Morton*, 405 U.S. 727, 739-40 (1972). Likewise, the Commission has also held that under the "injury in fact" test "a claim will not normally be entertained if the 'asserted harm is a "generalized grievance" shared in substantially equal measure by all or a large class of citizens.'" Transnuclear, Inc. (Ten Applications for Exports to EURATOM Member Nations), CLI-77-24, 6 NRC 525, 531 (1977) (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975)).

NCI states that it is actively involved in public information and education programs concerning issues such as nuclear proliferation. (Petition at 3). NCI then contends, without providing any basis or support, that "[i]ts interest and

abilit 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 NEPA by the pending license application." (Petition at 3). Thus, NCI appears to argue that it should be granted standing to intervene in this proceeding because it would like to inform the public concerning issues that might be raised by the pending export license application. If this were the applicable standard, any newspaper, newsletter or other organization providing information to the public would have standing to intervene in any NRC proceeding. Such a result is contrary to established notions of standing.

In order to establish standing "the injury must be fairly traceable to the challenged action. 'or put otherwise, that the exercise of the Court's [or NRC's] remedial powers would redress the claimed injuries.'" *Westinghouse*, CLI-80-30, 12 NRC at 259 (quoting Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59, 74 (1978)). However, NCI has failed to suggest that it will be injured in any way that the Commission could remedy in connection with its review of this export license application.

The NCI Petition clearly fails to identify any cognizable injury to its interests. In sum, NCI has failed to establish any interest in this proceeding.

III. A DISCRETIONARY HEARING IS NOT IN THE PUBLIC INTEREST AND WOULD NOT ASSIST THE COMMISSION IN MAKING ITS STATUTORY DETERMINATIONS

Section 304(b) of the NNPA provides for public participation in export licensing proceedings "when the Commission finds that such participation will be in the public interest and will assist the Commission." 42 U.S.C. 2155a(b); *see also* 10 CFR §§ 110.84(a)(1)-(2). Thus, no hearing should be ordered where the Commission is unable to affirmatively make such findings. *See, e.g.*, General Electric Co. (Exports to Taiwan), CLI-81-2, 13 NRC 67, 72 (1981); Babcock & Wilcox (Application for Consideration of Facility Export License), CLI-77-18, 5 NRC 1332, 1349 (1977).

NCI has failed to make the showing required to justify a finding that a hearing will be in the public interest or assist the Commission. §/ NCI has raised three contentions, all of which presuppose that the ultimate end-use of the exported material would involve utilization as MOX. However, Transnuclear has amended its application to make clear that the fuel will be defabricated and "the recovered uranium will be blended down at Pierrelatte to less than 20 percent U-235 (low-enriched uranium

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§/ No hearing is warranted. However, if the Commission determined that further inquiry were required, a written hearing should be sufficient to develop an adequate record on the issues that the Commission deems relevant. *See, e.g.*, Edlow Int'l Co. (Agent for the Government of India), CLI-79-2, 9 NRC 2, 3 (1979) ("[W]e do not believe that oral presentations before the Commission would substantially assist the Commission in its analysis of this license application."). An oral hearing could only serve to unnecessarily delay this proceeding without any significant benefit to the Commission in reviewing the application.

for ultimate use as fuel for research and test reactors." (Amended Application, Block 11). Thus, the contentions proffered by NCI have no relevance to the current application.

In its first contention, NCI argues that approval of this export would imply U.S. governmental approval for use of HEU and that U.S. common defense and security interests would not be served by increasing the amount of HEU in international transport and commerce. In light of Transnuclear's amended application, it is clear that this export will not result in increased use and proliferation of HEU. To the contrary, the defabrication of this HEU and blending down to LEU will reduce the world inventory of HEU. Moreover, it will eliminate the possibility that the HEU in this fuel will be utilized in a high-enriched form at some future time. Finally, since the HEU contained in the exported material will be blended down to LEU and fabricated into fuel for research and test reactors, the export directly supports the longstanding U.S. objective -- expressed in the Reduced Enrichment Research and Test Reactor program and other U.S. initiatives -- to eliminate the use of HEU fuel in research and test reactors.

NCI's second contention is that the proposed export would be inconsistent with the Schumer Amendment, 7/ which prohibits export of HEU for use in research and test reactors unless certain conditions are met. Under the amended application, the exported material will be blended down and used

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7/ Section 903 of the Energy Policy Act of 1992 (known as the "Schumer Amendment") added section 134 to the Atomic Energy Act of 1954. 42 U.S.C. § 2160d.

to fabricate LEU fuel. Therefore, the Schumer Amendment is inapplicable to this export. In fact, the proposed export would promote the underlying goals of the Schumer Amendment, by providing through blending a source of 19.75 percent enriched uranium to be used in fabricating LEU fuel for foreign research or test reactors.

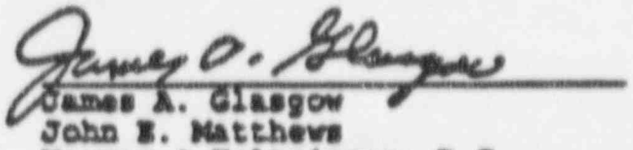
Finally, NCI's third contention argues that Transnuclear failed to adequately describe the proposed end-use in its application and thereby did not meet the information requirements of 10 CFR § 110.31(f)(5). This argument is now moot, in light of Transnuclear's amended application which makes clear that the blended down LEU will be used as fuel in research and test reactors.

NCI has failed to raise any contention which will assist the Commission in making the determinations required by statute, and thus, the Petition fails to satisfy the criteria of 10 CFR § 110.84(a)(2). Further inquiry will not assist the Commission.

CONCLUSION

For the foregoing reasons, Transnuclear, Inc., on behalf of Cogema, Inc., respectfully requests that the Petition of Nuclear Control Institute be denied in its entirety.

Respectfully Submitted,



James A. Glasgow
John E. Matthews
Newman & Holtzinger, P.C.
1615 L Street, N.W., Suite 1000
Washington, D.C. 20036
(202) 955-6600

ATTORNEYS FOR TRANSNUCLEAR, INC.

July 27, 1993

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	
TRANSNUCLEAR, INC., on behalf of, COGEMA, INC.,	Docket No. 11004649
(Export of Unirradiated Fuel for Defabrication)	License No. XSNM-2748

NOTICE OF APPEARANCE OF COUNSEL

Notice is hereby given that James A. Glasgow enters an appearance as counsel for Transnuclear, Inc., on behalf of COGEMA, Inc., in the above-captioned proceeding.

Name:	James A. Glasgow
Address:	Newman & Holtzinger, P.C. 1615 L Street, N.W., Suite 1000 Washington, D.C. 20036
Telephone:	(202) 955-6766
Admissions:	United States Court of Appeals for the District of Columbia Circuit
Name of Party:	Transnuclear, Inc. Two Skyline Drive Hawthorne, New York 10532-2120

James A. Glasgow
Newman & Holtzinger, P.C.
1615 L Street, N.W., Suite 1000
Washington, D.C. 20036

Date: July 27, 1993

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of TRANSNUCLEAR, INC., on behalf of, COGEMA, INC., (Export of Unirradiated Fuel for Defabrication)	Docket No. 11004649 License No. XSNM-2748

NOTICE OF APPEARANCE OF COUNSEL

Notice is heraby given that John E. Matthews enters an appearance as counsel for Transnuclear, Inc., on behalf of COGEMA, Inc., in the above-captioned proceeding.

Name: John E. Matthews

Address: Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036

Telephone: (202) 955-6806

Admissions: United States Court of Appeals
for the District of Columbia Circuit

Name of Party: Transnuclear, Inc.
Two Skyline Drive
Hawthorne, New York 10532-2120

John E. Matthews
Newman & Holtzinger, P.C.
1615 L Street, N.W., Suite 1000
Washington, D.C. 20036

Date: July 27, 1993

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 1993, copies of "Transnuclear's Opposition in Response to Petition to Intervene," two Notices of Appearance of Counsel, a Certificate of Service, and a letter to the Secretary of the Commission, in the above-captioned proceeding were served by hand on the following:

Chairman Ivan Selin
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Commissioner Kenneth C. Rogers
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Commissioner Forrest J. Remick
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Commissioner Gail de Planque
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Office of the Secretary
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Attention: Chief, Docketing and Service Section
(Original plus two copies)

Office of the General Counsel
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Eldon V.C. Greenberg
GARVEY, SCHUBERT & BARER
1000 Potomac Street, N.W, Suite 500
Washington, D.C. 20007

James A. Glasgow

July 27, 1993

7 Ilston / Ken Nordlinger / Rutberg / Al Parker

NEWMAN & HOLTZINGER, P.C.
ATTORNEYS
1615 L STREET, N.W.
WASHINGTON, D.C. 20036-5610
TELEPHONE: (202) 955-6600
FAX (202) 872-0660

James A. Glasgow
DIRECT DIAL NUMBER: (202) 955-6764

July 27, 199-

July 27, 1993

BY HAND DELIVERY

Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attn: Chief, Docketing and Services Branch

Re: *Transnuclear, Inc., on behalf of COGEMA, Inc.*
(Export of Unirradiated Fuel For Defabrication)
Dkt. No. 11004649, License No. XSNM-2748

Dear Mr. Chilk:

Enclosed are the original and two copies of: "Transnuclear's Opposition in Response to Petition to Intervene," together with two Notices of Appearance of Counsel and a Certificate of Service. All are for filing in connection with the above-referenced application for an export license.

Service on Transnuclear, Inc. in the above-referenced proceeding should be made to James A. Glasgow, Newman & Holtzinger, P.C., 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036.

Sincerely,

James A. Glasgow

James A. Glasgow

JAG/lgw

Enclosures

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8/16/93

by H. Horan / Becker / Nordlinger / Rutberg / F. Parler

Aug 16, 1993

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

In the Matter of	)	
	)	
TRANSNUCLEAR, INC.	)	Docket No. 11004649
	)	
(Export of 93.15% Enriched Uranium)	)	License No. XSNM 02748
	)	

REPLY OF PETITIONER
NUCLEAR CONTROL INSTITUTE TO
APPLICANT'S OPPOSITION TO
THE PETITION FOR LEAVE TO INTERVENE
AND REQUEST FOR HEARING

Petitioner, Nuclear Control Institute ("Petitioner"), submits this reply memorandum in support of its Petition For Leave to Intervene and Request for Hearing (the "Petition"), and in response to the views of Applicant, Transnuclear, Inc. ("Transnuclear" or "Applicant"), as expressed in Transnuclear's Opposition of July 27, 1993 (hereinafter cited as "App. Opp.").[1] As set forth below, Petitioner submits that it has a sufficient interest to warrant intervention under Section 189a. of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2239a. (the

[1] It is Petitioner's understanding that the Commission Staff is not filing an Answer in this matter, and no other Answers are expected.

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"Act"); that a hearing would assist the Commission in making its statutorily-required determinations and would be in the public interest; and that a full oral, adjudicatory hearing, including cross-examination and discovery, is appropriate.

I. PETITIONER HAS A SUFFICIENT INTEREST TO WARRANT A HEARING AS OF RIGHT UNDER SECTION 189a. OF THE ATOMIC ENERGY ACT AND 10 C.F.R. § 110.84.

Applicant contends that there is no right to a hearing on an export license under Section 189a. of the Atomic Energy Act and that, in any case, Petitioner has no standing to assert such a right in this proceeding. App. Opp. at 3-7. Petitioner recognizes that the Commission has addressed these issues extensively in prior export licensings; it does not intend to reiterate the arguments with which the Commission is fully familiar. It does wish to make two points, however, with respect to (1) the relationship between Section 189a. of the Atomic Energy Act and Sections 304(b) and (c) of the Nuclear Non-Proliferation Act of 1978, 42 U.S.C. § 2155a. (the "NNPA"); and (2) the appropriateness of the Commission's general approach to standing in export licensing cases.

A. A Hearing As of Right Is Available In Export Licensings.

The argument that Section 304(c) of the NNPA eliminates any right to a hearing in a nuclear export licensing proceeding under

Section 189a. of the Atomic Energy Act misunderstands both the NNPA and the Commission's own prior practice.[2]

Section 304(c) of the NNPA does not override Section 189a. of the NNPA in the export licensing context. The form of a hearing, which is the subject of Section 304(c), must not be confused with the right to a hearing, which is provided for in Section 189a. and not dealt with in Section 304(c).

In Section 304(c), Congress merely determined that standing under Section 189a. does not entitle an individual to an "on-the-record" hearing and that, instead, Section 304(b) would be the "exclusive basis for hearings." Whether a particular individual would have a right to a hearing under Section 304(b) is a different question. The House Report on the NNPA is explicit in stating that, other than eliminating any requirement for an on-the-record hearing, "[I]t is not the intent of the Committee to limit public participation in the export licensing process in any other respect." H.R. Rep. No. 587, 95th Cong., 1st Sess. 22 (1977). See also S. Rep. No. 467, 95th Cong., 1st Sess. 15

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[2]Section 304(c) of the NNPA states: "The procedures to be established pursuant to subsection (b) [of Section 304] shall constitute the exclusive basis for hearings in nuclear export licensing proceedings before the Commission, and notwithstanding section 189a. of the 1954 Act, shall not require the Commission to grant any person an on-the-record hearing in such a proceeding."

(1977). In other words, Section 189a., except as expressly modified by Section 304(c), is not affected by the NNPA.[3]

Also unavailing to Applicant's position is the opinion of the District of Columbia Circuit Court of Appeals in Natural Resources Defense Council, Inc. v. Nuclear Regulatory Commission, 580 F.2d 698 (D.C. Cir. 1978). That case merely held that, in view of the enactment of Section 304(c), the question of need for an adjudicatory hearing under Section 189a. was overtaken by Congressional action. Since the petitioners in that case had been afforded a legislative-type hearing by the Commission, it was not necessary for the Court to address questions of entitlement or standing. The Court, nonetheless, specifically stated that, if a petitioner sought to intervene and were denied intervention, it would be prepared to review the Commission's ruling. 580 F.2d at 700.

Lastly, the Commission's own practice has consistently been to consider the right to intervention in terms of standing under Section 189a. Not only does 10 C.F.R. § 110.84 refer to the establishment of "an interest that may be affected," the very language of Section 189a., but, in each export licensing case since enactment of the NNPA in March of 1978, the Commission has

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[3]This conclusion is reinforced by the "cardinal principle" of statutory construction that, absent irreconcilable conflict, repeals by implication are not favored. E.g., Morton v. Mancari, 417 U.S. 535, 549-551 (1974).

looked to Section 189a. precedent as a basis for determining the right to intervene. E.g., Westinghouse Electric Corp., CLI-80-30, 12 NRC 253 (1980); General Electric Co., CLI-81-2, 13 NRC 67 (1981).

B. Petitioner's Interest Is Sufficient To Warrant A Hearing In This Proceeding.

Petitioner must necessarily concede that there is a line of Commission cases, starting with the pre-NNPA decision in Edlow International Co., CLI-76-6, 3 NRC 563 (1976), denying standing to organizations with interests substantially similar to Petitioner in proceedings substantially similar to the present one. E.g., Edlow International Co., supra; Transnuclear, Inc., CLI-77-24, 6 NRC 525 (1977); Westinghouse Electric Corp., CLI-80-30, 12 NRC 253 (1980); General Electric Co., CLI-81-2, 13 NRC 67 (1981).[4] However, Petitioner submits that a more equitable

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[4]Contrary to the Commission's approach, Petitioner believes that there is an "institutional" basis for determining that it has standing to intervene, that the Commission's determination that standing must be established "in terms of the final result of the proceedings" and that informational interests do not suffice to do so, Edlow International Co., supra, 3 NRC at 572-574, is erroneous, and that the United States Court of Appeals for the District of Columbia Circuit has recognized an institutional basis for standing essentially identical to that asserted in these proceedings. See Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission, 481 F.2d 1079 (D.C. Cir. 1973); National Wildlife Federation v. Hodel, 839 F.2d 694, 712 (D.C. Cir. 1988); Competitive Enterprise Institute v. National Highway Traffic Safety Administration, 901 F.2d 107, 123 (D.C. Cir. 1990). But see Foundation on Economic Trends v. Watkins, 794 F. Supp. 395 (D.D.C. 1992).

approach to standing in export licensing proceedings is required than has been applied in the past.

The effect of the Commission's standing rulings just cited is essentially to preclude mandatory review of export licensing action by all but equipment suppliers and foreign importers of nuclear materials, i.e., those with financial interests in the transaction, while the persons whom the process is designed to protect are excluded from participation. Comment, Environmentalists Attack NRC's Fuel Export Licensing, 6 E.L.R. 10190 (Sept. 1976). This result is unwarranted.

At the time of the Edlow decision, there was nothing in the Atomic Energy Act to indicate that Congress contemplated public participation in the export licensing process. Edlow International Co., supra, 3 NRC at 570-572. Since Edlow was decided, the NNPA has been enacted, reflecting the judgment of Congress that public participation in the export licensing process is "crucial." Natural Resources Defense Council, Inc. v. Nuclear Regulatory Commission, 647 F.2d 1345, 1368, 1375 (D.C. Cir. 1981) (Robinson, J., concurring). Indeed, the House Report on the NNPA states, "[T]the intent of the committee [is] to guarantee to citizens and public interest groups their right to make their views known during the export licensing process." H.R. Rep. No. 587, 95th Cong., 1st Sess. 22 (1977) (emphasis

added). See also 124 Cong. Rec. S. 1438 (daily ed. February 7, 1978) (remarks of Senator Glenn).

Given this history, since Article III of the Constitution does not dictate the results to be reached under Section 189a. of the Atomic Energy Act, as it does in federal court actions, there is every reason to expand the Commission's approach to standing in proceedings such as this one. If such action were taken, Petitioner believes that there would be few "public interest groups" deemed more qualified than itself to invoke the hearing procedures as of right under 10 C.F.R. Part 110.[5]

II. A FULL AND OPEN HEARING WOULD ASSIST THE COMMISSION IN MAKING ITS STATUTORILY-REQUIRED DETERMINATIONS AND WOULD BE IN THE PUBLIC INTEREST.

Applicant argues against a public hearing on the ground that, by virtue of the July 16, 1993 amendment to its initial application,[6] Petitioner's contentions, "which presuppose that

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[5]It deserves note that in a prior licensing also involving the proposed export of highly enriched uranium ("HEU"), that for the HFR Petten Reactor (Dkt. No. 11004440, Lic. No. XSNM 02611), the Commission Staff itself, while opposing intervention as of right, acknowledged that Petitioner "might possess knowledge and information that would be helpful to the Commission" and supported permissive intervention. Commission Staff Answer, dated August 2, 1991, at 12. Should the Commission deem it appropriate, Petitioner stands ready to submit by supplemental affidavit more detailed information concerning its informational activities as they relate to HEU and the background and expertise of its directors, staff and consultants with respect to the uses and control of HEU.

[6]This amendment was noted in the Federal Register on August 12, 1993 (58 Fed. Reg. 42991). Consistent with the terms of the Federal Register notice, Petitioner reserves its right to file

the ultimate end-use of the exported material would involve utilization as HEU . . ., have no relevance to the current application." App. Opp. at 8-9. Petitioner readily concedes that Applicant's newly-announced intention to blend down the HEU to less than 20% U-235 is a welcome development and removes some of Petitioner's concerns about the proposed export. However, it does not resolve all Petitioner's concerns, and, contrary to Applicant's views, Petitioner submits that its participation, with respect to the amended application, "will be in the public interest and will assist the Commission in making the statutory determinations required" by the Atomic Energy Act, within the meaning of Section 304(b) of the NNPA and the Commission's own regulations, 10 C.F.R. § 110.84(a).

A. Petitioner's Common Defense and Security Contentions Remain Valid.

Petitioner's common defense and security contentions remain valid because, despite Applicant's assertions, the risks associated with increased transport of and commerce in HEU are not completely eliminated by Applicant's stated intention to blend down the fuel at issue in this proceeding at COGEMA's Pierrelatte facility in France. This is so for essentially four reasons.

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amended contentions within thirty days of such notice.

First, while Applicant correctly notes Petitioner's position "that U.S. common defense and security interests would not be served by increasing the amount of HEU in international transport and commerce," App. Opp. at 9, the conclusion does not follow that the amended license application eliminates the problem of increasing international transport of and commerce in HEU. To the contrary, obviously such increase would in fact occur if the proposed export were approved, since HEU would be shipped from the United States to France. The goal of U.S. non-proliferation law and policy, as set forth in Section 601(a)(3)(A) of the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986, Pub. L. No. 99-399, is to "keep to a minimum the amount of weapons-grade nuclear material in international transit." Petitioner continues to maintain that, unless and until Applicant demonstrates that processing and blending down could not be accomplished in the United States, the proposed export would still run afoul of this goal and so should not be approved by the Commission. In fact, it is doubtful that such a showing can be made, since Nuclear Fuel Services, Inc., the owner of the fuel in question, has recently obtained amendments to its license (Dkt. No. 70-143, Lic. No. SNM-124, Amendments Nos. 3 and 8, dated May 7, 1993 and August 4, 1993, respectively) authorizing both the processing of the fuel to recover HEU and enrichment down blending at its Erwin, Tennessee facility. Since it appears that processing and blending down of the bomb-grade material now can

be done domestically, the common defense and security rationale against the proposed export is more compelling than ever.[7]

Second, despite the expressed intention to defabricate and bland down the fuel which is the subject of this licensing, actual physical alteration of the material proposed to be exported is not assured. Applicant has nowhere averred that sale, substitution or swap of the material would not take place once the material is in France, within the European Atomic Energy Community ("EURATOM"), but prior to any actual defabrication or bland down. Nor has Applicant averred that the material would not otherwise be retransferred within EURATOM, prior to defabrication or bland down, to an end use different than that specified. Under the terms of the U.S.-EURATOM agreements for nuclear cooperation,[8] such eventualities could occur, without U.S. consent or knowledge, thereby permitting the material

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[7] It might also be questioned whether the proposed export can be considered to meet the "minimum transit" goal of Pub. L. No. 99-399, unless Applicant could demonstrate that there is no way to produce 19.75% enriched uranium and satisfy the demand for the use of such material in research and test reactors other than by exporting HEU for blanding down in foreign facilities.

[8] See Agreement for Cooperation between the Government of the United States and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, done at Brussels, November 8, 1958, entered into force February 15, 1959, as amended by Agreement done May 21 & 22, 1962, TIAS Nos. 4173, 5103; Additional Agreement for Cooperation between the United States and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, done at Washington and New York, June 11, 1960, entered into force July 25, 1960, as amended by Agreements done May 21 & 22, 1962, August 22 & 27, 1963, and September 20, 1972, TIAS Nos. 4650, 5104, 5444 and 7566 (collectively, the "U.S.-EURATOM Agreements").

ultimately to be used as HEU in research reactors or for other purposes in the Community, regardless of the end use specified in the license application and authorized by the Commission.[9] In fact, the U.S.-EURATOM Agreements in no way bar such actions, and there is both precedent for them[10] and an economic incentive which makes them plausible.[11] For these reasons, a commitment by Applicant to rendering this specific material into a form below 20% enrichment and therefore unsuitable for weapons use must be

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[9] See S. Rep. No. 467, 95th Cong., 1st Sess. 17 (1977). As stated in a letter dated April 6, 1992, from Acting Commission Chairman Rogers to Congressman Charles E. Schumer regarding previous HEU exports, "EURATOM is not required to seek U.S. approval for transfers within the Community....[M]ovements of nuclear materials within the Community are not reported to the United States....[P]rior U.S. consent is not required if the material is transferred to different end-uses within the EURATOM Community" (emphasis in original).

[10] For example, HEU fuel originally exported for end use in Germany's now closed THTR-300 reactor is at this time, without there apparently even having been consultation with the United States, being marketed elsewhere in Europe, including for end use in reactors, such as the HFR Petten Reactor in the Netherlands, which would not be eligible to receive such fuel under current U.S. law and policy.

[11] There is an economic incentive to utilize HEU from HEU because there is a premium in Europe on such fuel due to its relative scarcity compared with less than 20% enriched fuel, including abundant supplies of 19.75% enriched uranium. In addition, prior to blend down, the material would have an extra premium over and above that of even European-origin HEU, because the United States is committed under the Department of Energy's Off-Site Fuels Policy to accept its return as spent fuel after use in foreign research reactors and retain all residual high level waste in this country. See letter, dated July 13, 1993, from Secretary of Energy Hazel O'Leary to Secretary of State Warren Christopher. By contrast, European processors require reactor operators to accept the return of residual high level waste recovered in the processing of their spent fuel. Petitioner understands that some operators may not be licensed to receive such waste.

accompanied by a commitment in writing by EURATOM that, notwithstanding any provision or interpretation of the U.S.-EURATOM Agreements, bland down operations will be completed, and, after such completion, appropriate certification and reporting will be provided to this effect. Otherwise, achievement of U.S. non-proliferation objectives cannot be assured.

Third, because the material will be in EURATOM, where under the U.S.-EURATOM Agreements the U.S. does not possess consent rights over the subsequent alteration of the material, Applicant's assertion that its proposal will "eliminate the possibility that the HEU in this fuel will be utilized in a high-enriched form at some future time," App. Opp. at 9, cannot be taken at face value, even if defabrication and bland down operations are initially carried out. In fact, reenrichment of the material after bland down must be considered a real possibility, both because there is nothing in the license application as amended or the underlying U.S.-EURATOM Agreements that affirmatively rules it out and because of the economic attractiveness of U.S.-origin HEU in Europe. In such circumstances, since 19.75% enriched uranium is much easier to reenrich than 3-5% material, Petitioner believes that, to reduce the prospect of reenrichment to a minimum, Applicant should be required to identify a specific demand for 19.75% enriched uranium that cannot be satisfied by existing international supplies. Otherwise, no export should be approved, unless there

is a commitment to bland down the material to less than 5% enrichment, for which there plainly is a market.

Fourth, the amended application leaves open questions related to the timing of defabrication and bland down operations. Plainly, the longer the material remains unprocessed, the greater the risk. No export should be approved without a specific requirement that defabrication and bland down occur within a limited time period, i.e., six months from transport, to reduce risks of misuse to a minimum. If defabrication and bland down do not occur within the specified period, than, absent demonstration of reasonable cause for delay, the material should be required to be returned to the United States.

B. Petitioner's Schumer Amendment Contentions Remain Valid.

Applicant contends that, in light of its July 16 amendment, the Schumer Amendment, 42 U.S.C. § 2160d., is now "inapplicable to this export." App. Opp. at 10. Again, the effect of the license application amendment is not so simple. Until the questions noted above with respect to the prospects for sale, swap, substitution, retransfer and reenrichment are resolved satisfactorily -- and any prospect for the use of the material subject to this licensing as HEU in a research or test reactor abroad thus definitively eliminated -- the Schumer Amendment issues raised by Petitioner remain alive. In any event, by its terms, the Schumer Amendment allows the Commission to issue "a

license for the export of highly enriched uranium to be used as a fuel or target in a nuclear research or test reactor only if...there is no alternative nuclear reactor fuel or target enriched in the isotope 235 to a lesser percent than the proposed export, that can be used in that reactor." 42 U.S.C. § 2160d.(a)(1). Applicant affirms that the material at issue here -- HEU -- will ultimately be used in a research or test reactor, albeit in altered form. Consequently, in order to comply with the Schumer Amendment, the burden remains on Applicant to demonstrate that a demand for this material cannot be satisfied by existing international supplies of less than 20% enriched fuel. Absent such a demonstration, the license application must be denied.

C. Petitioner's Informational Contentions Remain Valid.

Applicant suggests that Petitioner's informational contentions under 10 C.F.R. § 110.31(f)(5) are now "moot". App. Opp. at 10. However, while Applicant states that the ultimate end use of the material will be "as fuel in research or test reactors", id., this statement is still unacceptably vague. Applicant has not specified in which particular research or test reactor the fuel might be used, the country where such reactor might be located, the safeguards and physical security conditions applicable to its eventual use and the like. The ultimate end use thus remains speculative, and more information needs to be provided to satisfy the Commission's informational requirements.

III. A FULL ORAL ADJUDICATORY HEARING, INCLUDING CROSS-EXAMINATION AND DISCOVERY, IS APPROPRIATE IN THESE PROCEEDINGS.

Applicant argues that a full oral adjudicatory hearing is not provided for under the Commission's regulations for export licensing and would be "inappropriate." App. Opp. at 4. Petitioner submits that a full oral adjudicatory hearing is both available and desirable in these proceedings.

There is no question that a full-scale adjudicatory hearing is available in the export licensing process. The NNPA in Section 304 does not specify what type of hearing the Commission must provide in an export licensing. While it states that adjudicatory hearings are not required, in no way does it prohibit the granting of an adjudicatory hearing. Rather, the NNPA simply leaves discretion with the Commission to establish appropriate hearing procedures.

Petitioner recognizes that the Commission's regulations, 10 C.F.R. Part 110, Subpart J, basically contemplate legislative-type hearings. Nonetheless, the Commission has a wide range of choices legally available to it in structuring its hearing processes. The agency has authority to modify its procedural rules "when the ends of justice require it", American Farm Lines v. Black Ball Freight Service, 397 U.S. 537 (1970)[2] and

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[2]In Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 524 (1978), Justice Rehnquist similarly noted that, under the Administrative

flexibility under Subpart J to do so. See, e.g., 10 C.F.R. § 110.113(e)(4).

While Applicant vaguely refers to "sensitive foreign policy and national defense considerations" militating against adjudicatory procedures, citing Braunkohle Transport USA, CLI-87-6, 25 NRC 891 (1987), these considerations are unspecified, and none is obvious in this particular proceeding. Vague assertions of foreign policy sensitivity should not be allowed to defeat full and open public processes. As the Court of Appeals for the D.C. Circuit stated a number of years ago: "The time has long passed when the words 'foreign policy' uttered in hushed tones, can evoke a reverential silence from either a court or the man in the streets." Zwaibon v. Mitchell, 516 F.2d 594, 657 n.207 (D.C. Cir. 1975), cert. denied, 425 U.S. 944 (1976), quoting Pillai v. Civil Aeronautics Board, 485 F.2d 1018, 1031 n.34 (D.C. Cir. 1973).

Nor is this case properly comparable to Braunkohle Transport, USA, CLI-87-6, 25 NRC 891 (1987), where the Commission felt a "paper hearing" sufficient because the matters at issue were considered to be primarily ones of law and policy. In Braunkohle, the primary question was whether the Anti-Apartheid

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Procedure Act, "Agencies are free to grant additional procedural rights in the exercise of their discretion."

Act banned the importation of uranium hexafluoride from South Africa. The Commission thus emphasized:

> Use of formal adjudicatory procedures is particularly inappropriate here because the major issues facing the Commission are legal questions regarding what is the scope of the uranium import bar contained in the Anti-Apartheid Act. Legal issues traditionally are resolved through written pleadings, not through use of formal adjudicatory procedures such as cross-examination.

25 NRC at 894. By contrast, in this proceeding, Petitioner's contentions are not ones of statutory construction but are rather focused on the facts and circumstances of a particular fuel export.

There are, Petitioner submits, numerous factual issues with respect to this proceeding. Factual issues that need to be probed are, for example, (a) the feasibility of defabricating and blending down the material in domestic U.S. facilities; (b) the possibility that all current demands for 19.75% enriched uranium in research and test reactors can be satisified by existing international supplies; (c) the economic attractiveness of swap, substitution, sale and retransfer schemes which could result in the continued circulation of the material in international commerce; (d) the conditions, if any, under which reenrichment in EURATOM might make economic sense, thereby undermining Applicant's representations; and (e) the timeframe for completing defabrication and bland down operations at Pierrelatte. The list of issues could readily be expanded. The point, however, is that only an oral adjudicatory hearing can provide

the heightened adversarial context necessary to elicit proper answers to such factual questions.

Discovery privileges, furthermore, are needed to ensure that all relevant information is made available to the parties, the Staff and the Commission. Absent such procedures, there is no assurance that a full picture of the facts relating to this export and its future implications will be developed by the parties and presented to the Commission. Rather, all the Commission will have is information the Commission Staff has requested from or which has been volunteered by Applicant.

In sum, in this case, unless the full panoply of adjudicatory procedures is available, there is a real prospect that the record will not be fully developed and that the substantial risks associated with this proposed export will not be completely and comprehensively explored. Consequently, there is every reason to order a full adjudicatory hearing and so best ensure that the Commission "develop[s] a record that will contribute to informed decisionmaking." 10 C.F.R. § 110.105(a).[13]

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[13]Even if an adjudicatory hearing is not ordered, a full oral hearing is far preferable to the mere "paper" hearing suggested by Applicant. See App. Opp. at 8, n.6. An oral hearing would provide much greater assistance to the Commission in making the required statutory determinations. Only an oral hearing would permit the submission of "oral statements, questions, responses, and rebuttal testimony," 10 C.F.R. § 110.106(b), as well as an opportunity for oral questioning by the presiding officer, 10 C.F.R. §§ 110.105(a)(3), 110.107(f). The Commission itself has

CONCLUSION

For all the reasons set forth in this Reply and in the Petition, Petitioner respectfully submits that the Commission should grant the Petition; order a full, oral adjudicatory hearing in connection with the pending license application; and act to ensure that all pertinent data regarding the issues addressed by Petitioner be made available for public inspection at the earliest possible date.

Respectfully submitted,

Eldon V. C. Greenberg
Linette G. Tobin
GARVEY, SCHUBERT & BARER
1000 Potomac Street, N.W.
Suite 500
Washington, D.C. 20007
(202) 965-7880

Attorneys for Petitioner

Dated: August 16, 1993
Washington, D.C.

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recognized that such public hearings "can be conducted without prejudicing the important national interests on which export licensing determinations are made." Edlow International Co., CLI-76-6, 3 NRC 563, 590 (1976).

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Reply of Petitioner to be served by having copies thereof mailed, first class, postage prepaid, on the 16th day of August, 1993, to the following:

Executive Secretary
U. S. Department of State
Washington, D.C. 20520

and by having copies thereof hand-delivered on such date to the following:

Office of the General Counsel
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Docketing and Service Branch
Office of the Secretary
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852
(3 copies)

James A. Glasgow
Newman & Holtzinger
1615 L Street, N.W.
Washington, D.C. 20036

Eldon V.C. Greenberg

Dated: August 16, 1993
Washington, D.C.

ATTACHMENT 6

Attachment 2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:
Ivan Selin, Chairman
Kenneth C. Rogers
Forrest J. Ramick
E. Gail de Planque

In the Matter of	)	
	)	
TRANSNUCLEAR, INC.	)	Docket No. 11004649
	)	
(Export of 93.15% Enriched Uranium)	)	License No. XSNM02748
	)	

MEMORANDUM AND ORDER

CLI-94-01

I. INTRODUCTION

The Nuclear Control Institute ("NCI") filed a Petition for Leave to Intervene and Request for Hearing on an application from Transnuclear, Inc. ("Transnuclear") for a license to export 280 kilograms of high-enriched uranium ("HEU") in the form of mixed uranium and thorium carbide, as unirradiated fuel fabricated for the Fort St. Vrain reactor, to COGEMA in France to be processed for recovery of the uranium and thorium. For the reasons stated in this Memorandum and Order, we deny the Petition for Leave to Intervene and Request for Hearing.

II. BACKGROUND

Transnuclear filed an application, dated May 5, 1993, for a license to export 280 kilograms of HEU containing 260.9 kilograms of uranium-235 (93.15% enriched) and 2481 kilograms of thorium, in the form of mixed uranium and thorium carbide, as unirradiated fuel fabricated for the Fort St. Vrain reactor,[1] to COGEMA in France to be processed for recovery of the uranium and thorium.[2] On June 24, 1993, NCI filed a Petition for Leave to Intervene and Request for Hearing on the Transnuclear license application. NCI asserts that it is a nonprofit, educational corporation based in the District of Columbia, and engages in disseminating information to the public concerning the risks associated with the use of nuclear materials and technology. Petition at 1-2.

NCI seeks intervention to argue that (1) the proposed export, if authorized, would be inimical to the common defense and security of the United States, (2) approval of the proposed export would be contrary to Section 134 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2160d (the "Schumer Amendment")[3], and (3) the license application is deficient in

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[1]The fabricated fuel is from the now-decommissioned Fort St. Vrain Power Station, a high temperature gas-cooled thorium fuel cycle prototype reactor located at Platteville, Colorado and owned by the Public Service Company of Colorado. The material is currently owned by Nuclear Fuel Services (NFS) and stored at the Erwin, Tennessee facility of NFS.

[2]Notice of receipt of the application was published in the Federal Register on May 26, 1993 (58 Fed. Reg. 30187).

[3]The Energy Policy Act of 1992, Public Law 102-486, signed into law on October 24, 1992, among other things, added new

(continued...)

meeting the information requirements of NRC regulations in that it does not sufficiently describe the ultimate intended end use of the material to be exported. Petition at 10-11.

NCI requests that the Commission (1) grant NCI's Petition for Leave to Intervene, (2) order a full and open public hearing at which interested parties may present oral and written testimony and conduct discovery and cross-examination of witnesses, and (3) act to ensure that all pertinent information regarding the issues addressed by NCI is made available for public inspection at the earliest possible date. Petition at 1-2, 18.

Transnuclear filed an Opposition in Response to Petition to Intervene ("Response") on July 27, 1993. Before responding to the petition, Transnuclear amended its application on July 16, 1993, to require that the exported material be blended down and used as low enriched uranium ("LEU") for research or test reactors. In its Response, Transnuclear argues that the NRC is

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[3](...continued)
restrictions on the export of uranium, in a new Section 134 of the Atomic Energy Act (the "Schumer Amendment"). The Schumer Amendment permits the issuance of a license for export of uranium enriched to 20 per cent or more in the isotope-235 to be used as a fuel or target in a nuclear research or test reactor only if, in addition to other requirements of the Atomic Energy Act, the NRC determines that 1) there is no alternative nuclear reactor fuel or target enriched in the isotope 235 to a lesser percent than the proposed export, that can be used in that reactor; 2) the proposed recipient of that uranium has provided assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and 3) the United States Government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor. The applicability of the Schumer Amendment to the instant application is discussed infra.

not statutorily required to provide an adjudicatory hearing on export licenses and that in any case, NCI is not entitled to a hearing as a matter of right because NCI lacks standing. Response at 2-4. Transnuclear further argued that a discretionary hearing would not be in the public interest or assist the Commission in making its statutory determination because Transnuclear's amended license application makes clear that the uranium recovered from the exported material will be blended down to LEU thus removing the relevance of the contentions proffered by NCI. Response at 8-10.

NCI filed a timely Reply to Applicant's Opposition to the Petition for Leave to Intervene and Request for Hearing ("Reply") on August 16, 1993. In its Reply, NCI argues that a hearing of right is available in export licensing cases. Reply at 2-4. NCI concedes that Commission case law has denied standing, as a matter of right, to organizations with interests substantially similar to NCI in proceedings substantially similar to the instant one, but argues that the Commission should expand its approach to standing in export licensing proceedings to meet Congressional expectations regarding public participation in such proceedings. Reply at 5-7. NCI further argues that, notwithstanding Transnuclear's stated intention to blend down the material after it is exported, NCI's contentions remain valid because granting the license will increase the amount of HEU in international transport and commerce, and the expressed intention to down blend is unacceptably vague. Reply at 7-14.

Subsequent to NCI's Reply, COGEMA submitted a letter dated September 8, 1993, confirming that COGEMA will notify the NRC, in writing, within 30 days after all the exported material has been blended down to LEU. In a letter dated September 24, 1993, COGEMA again confirmed the earlier notification commitment and further confirmed that commercial arrangements regarding the material require that all the exported material be blended down with no substitutions or sale of HEU allowed, and that COGEMA will retain title to the material until it has been blended down to LEU.

III. THE PETITIONER'S STANDING

A. NCI Does Not Have Standing To Intervene As A Matter Of Right

Section 189a of the Atomic Energy Act of 1954, as amended, provides, among other things, that the Commission grant a hearing, as a matter of right, to any person "whose interest may be affected by" a proceeding under the Act for the granting of any license. 42 U.S.C. § 2239(a)(1).[4] To determine if a

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[4]The Commission's regulations at 10 C.F.R. § 110.84 list the factors to be considered in taking action on a hearing request or intervention petition in a licensing proceeding for the export of nuclear materials. Section 110.84(b) addresses considerations to determine whether a petitioner has standing to intervene as a matter of right and provides that:

(continued...)

petitioner has sufficient interest in a proceeding to be entitled to intervene as a matter of right under section 189a, "the Commission has long applied contemporaneous judicial concepts of standing." Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 92 (1993), citing Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-92-2, 35 NRC 47, 56 (1992), aff'd, Environmental & Resources Conservation Org. v. NRC, No. 92-70202 (9th Cir. June 30, 1992); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 (1983). To satisfy the judicial concept of standing, a petitioner must demonstrate "a concrete and particularized injury that is fairly traceable to the challenged action." CLI-93-21, 38 NRC at 92 (1993).

NCI asserts a claim of interest for standing based on its institutional interests in the dissemination of information concerning nuclear weapons and proliferation in general and the use of HEU in particular. Petition at 3. The Commission has

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[4](...continued)

(b) If a hearing request or intervention petition asserts an interest which may be affected, the Commission will consider:
(1) The nature of the alleged interest;
(2) How the interest relates to issuance or denial; and
(3) The possible effect of any order on that interest, including whether the relief requested is within the Commission's authority, and, if so, whether granting relief would redress the alleged injury.

10 C.F.R. § 110.84(b).

long held that institutional interest in providing information to the public and the generalized interest of their memberships in minimizing danger from proliferation are insufficient for standing under section 189a. See, e.g., Edlow International Co. (Agent for the Government of India on Application to Export Special Nuclear Material), CLI-76-6, 3 NRC 563,572-78 (1976); Exxon Nuclear Company, Inc., et al. (Ten Applications For Low Enriched Uranium Exports To EURATOM Member Nations) CLI-77-24, 6 NRC 525, 529-32 (1977); Westinghouse Electric Corp. (Export to South Korea) CLI-80-30, 12 NRC 253, 257-60 (1980); General Electric Company (Exports to Taiwan) CLI-81-2, 13 NRC 67, 70 (1981). See also Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station) CLI-92-02, 35 NRC 47, 59-61 (1992) (rejection of "informational interests" as grounds for standing in reactor licensing case).

NCI "concede[s] that there is a line of Commission cases, starting with the pre-NNPA [Nuclear Non-Proliferation Act] decision in Edlow International Co., CLI-76-6, 3 NRC 563 (1976), denying standing to organizations with interests substantially similar to Petitioner in proceedings substantially similar to the present one." Reply at 5. NCI argues, however, that the Commission's approach to standing should be expanded to realize the Congressional intention to increase public participation in export licensing through enactment of section 304 of the Nuclear Non-Proliferation Act of 1978, 42 U.S.C. § 2155a ("NNPA"). Reply at 5-7.

The mechanism for increased public participation NCI urges already is provided for in the Commission's regulations. Section 304(b)(2) of the NNPA mandated that the Commission promulgate regulations establishing procedures "for public participation in nuclear export licensing proceedings when the Commission finds that such participation will be in the public interest and will assist the Commission in making the statutory determinations required by the 1954 Act." 42 U.S.C. § 2155a(b)(2). The Commission amended its regulations in 1978 expressly to accommodate this mandate by adding the criteria set out in 10 C.F.R. § 110.84(a) for granting a hearing as a matter of discretion.[5] See Statement of Considerations, 43 Fed. Reg. 21641, 21642-43 (1978). The regulation specifically sets forth the Commission policy to hold a hearing or otherwise permit public participation if the Commission finds that such a hearing or participation would be in the public interest and would assist the Commission in making the required statutory determinations.

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[5]Section 110.84(a) of Title 10 of the Code of Federal Regulations provides that:

> (a) In an export licensing proceeding, or in an import licensing proceeding in which a hearing request or intervention petition does not assert or establish an interest which may be affected, the Commission will consider:
>
> (1) Whether a hearing would be in the public interest; and
>
> (2) Whether a hearing would assist the Commission in making the statutory determinations required by the Atomic Energy Act.

10 C.F.R. § 110.84(a).

Thus, even though NCI has not established a basis on which it is entitled to intervene as a matter of right, the Commission could hold a hearing under 10 C.F.R. § 110.84(a)(1) and (2) if such hearing would be in the public interest and assist the Commission. See Braunkohle Transport, USA (Import of South African Uranium Ore Concentrate), CLI-87-6, 25 NRC 891, 893 (1987).

B. A Discretionary Hearing Would Not Assist The Commission And Be In The Public Interest

The issues raised by NCI - (1) the common defense and security of the United States, (2) compliance with the Schumer Amendment, and (3) assurance of the ultimate intended end use of the material - do concern matters which the Commission considers in making an export license decision. There is no indication in NCI's pleading, however, that it possesses special knowledge regarding these issues or that it will present information not already available to and considered by the Commission.

The Executive Branch and the Commission staff have addressed the issues sufficiently in their respective reviews of the Application. The transportation, international safeguards, and foreign physical security concerns associated with the issue of the common defense and security were addressed by the Executive Branch and the Commission staff in their consideration of the Application. The Commission has reviewed the Executive Branch's and Commission staff's evaluation of the ultimate end use of the

material and the effect of the COGEMA September 8 and 24, 1993, letters regarding that end use. NCI offers no reason for the Commission to differ with the views expressed by the Executive Branch and the Commission staff on these matters.

The only remaining issue raised by NCI is compliance with Section 134 of the Atomic Energy Act of 1954, as amended, (the Schumer Amendment) 42 U.S.C. § 2160d. NCI contends that, notwithstanding that the HEU is to be blended down for use as LEU reactor fuel, the Schumer Amendment issue "remains alive" because of the terms of the Amendment. Reply at 13-14. A fair reading of the entire amendment, however, shows that, while Congress may have been concerned about the transportation of HEU, the focus of the statute is on discouraging the continued use of HEU as reactor fuel and not on prohibiting the exportation, per se, of HEU. Any other reading would be inconsistent with the plain meaning of the legislation since it allows for the exportation of HEU fuel for use in a reactor provided that certain provisions are in place to ultimately convert the reactor to use LEU. See 42 U.S.C. § 2160d(a)(2) and (3). Further, assuming arguendo that the terms of the Schumer Amendment are ambiguous,[6] a review of

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[6]The Schumer Amendment states, in part:

> a. The Commission may issue a license for the export of highly enriched uranium to be used as a fuel or target in a nuclear research or test reactor only if, in addition to any other requirement of this [Act], the Commission determines that-
>
> (1) there is no alternative nuclear fuel or target enriched in the isotope 235 to a lesser percent than the proposed export, that can be

(continued...)

its legislative history clearly shows that the intent of the amendment is to "put into law what was, from 1978 to 1990, the policy of both Democratic and Republican administrations--prohibiting the NRC from licensing the exports of bomb-grade uranium fuel... ." 138 Cong. Rec. H. 11440 (daily ed. October 5, 1992) (remarks of Representative Schumer) (emphasis added). The NRC staff advises that the material the Applicant seeks to export, although fabricated as HEU fuel for the now defunct Fort St. Vrain reactor, is not in a form that can be used as HEU fuel or target material in a research or test reactor without first processing the material to recovery its uranium content. Exporting the material for processing, blending down, and subsequent fabrication into LEU fuel or target material for test and research reactors may aid in discouraging the continued use of HEU as fuel in reactors by increasing the availability of LEU fuel. The action, if nothing else, meets one of the goals of the Schumer Amendment, in that it will remove 280 kilograms of HEU from the world inventory and, thereby, help encourage "developing alternative fuels that will enable an end to the bomb-grade exports." Id.

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[4](...continued)
used in that reactor;

42 U.S.C. § 2160d. The meaning of the phrase "to be used as a fuel" in the first sentence, in the context of the whole provision, clearly means "to be used as a HEU fuel." The NCI argument depends on reading the word "fuel" in the first sentence as meaning either "HEU fuel" or "LEU fuel."

In summary, nothing in the NCI Petition and Reply indicates that a hearing would generate significant new insights for the Commission regarding the instant application. To the contrary, conducting a public hearing on issues concerning matters about which the Commission already has abundant information and analyses would be contrary to one of the purposes of the NNPA, namely, "that United States government agencies act in a manner which will enhance this nation's reputation as a reliable supplier of nuclear materials to nations which adhere to our non-proliferation standards by acting upon export license applications in a timely fashion." Westinghouse CLI-80-30, 12 NRC 253, 261 (1980) (citation omitted). For these reasons, NCI's petition and request for a public hearing should be denied as not in the public interest and not necessary to assist the Commission in making its statutory determinations.

IV. CONCLUSION AND ORDER

For the reasons stated in this decision, NCI has not established a basis on which it is entitled to intervene as a matter of right under the Atomic Energy Act. Further, a hearing, as a matter of discretion pursuant to 10 C.F.R. § 110.84(a), would not be in the public interest and is not needed to assist the Commission in making the determinations required for issuance

of the export license to Transnuclear. The Petition for Leave to Intervene and Request for Hearing is denied.

It is so ORDERED.

For the Commission[7]

JOHN C. HOYLE
Assistant Secretary of the
Commission

Dated at Washington, D.C.
this 19th day of January, 1994.

[7]Commissioner de Planque was not present for the affirmation of this order; if she had been present she would have approved it.

Attachment 4

NRC FORM 588
(6-87)

EXPORT LICENSE

THIS LICENSE EXPIRES 31 January 1997

NRC LICENSE NO.

XSNM02748

United States of America

Nuclear Regulatory Commission

Pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974 and the regulations of the Nuclear Regulatory Commission issued pursuant thereto, and in reliance on statements and representations heretofore made by the licensee, a license is hereby issued to the licensee authorizing the export of the materials and/or production or utilization facilities listed below, subject to the terms and conditions herein.

LICENSEE

NAME Transnuclear, Inc.
on behalf of Cogema, Inc.

ADDRESS Two Skyline Drive
Hawthorne, NY 10532

Attn: Joan McLaughlin

ULTIMATE CONSIGNEE IN FOREIGN COUNTRY

NAME COGEMA Etablissement de Pierrelatte

ADDRESS B.P. 16
26700 Pierrelatte, France

(For recovery of uranium and thorium and down-blending of HEU to LEU for ultimate use as LEU fuel in research reactors)

INTERMEDIATE CONSIGNEE IN FOREIGN COUNTRY

NAME NONE

ADDRESS

OTHER PARTIES TO EXPORT

Nuclear Fuel Services, Inc.
1205 Banner Hill Road
Erwin, TN 37650

(Supplier)

APPLICANT'S REF. NO. MIS 529

COUNTRY OF ULTIMATE DESTINATION France

QUANTITY	DESCRIPTION OF MATERIALS OR FACILITIES	
260.9 Kilograms	Uranium-235	Contained in 280.0 kilograms of uranium, enriched to 93.15 w/o maximum, in the form of mixed uranium and thorium carbides as unirradiated fabricated fuel, and scrap and excess material which resulted from the original production of the fuel.
2,481.0 Kilograms	Thorium	

Conditions 6, 8 and 9 on page two of this license apply to this export.

END

Neither this license nor any right under this license shall be assigned or otherwise transferred in violation of the provisions of the Atomic Energy Act of 1954, as amended and the Energy Reorganization Act of 1974.

This license is subject to the right of recapture or control by Section 108 of the Atomic Energy Act of 1954, as amended and to all of the other provisions of said Acts, now or hereafter in effect and to all valid rules and regulations of the Nuclear Regulatory Commission.

THIS LICENSE IS INVALID UNLESS SIGNED BELOW BY AUTHORIZED NRC REPRESENTATIVE

Ronald D. Hauber

Ronald D. Hauber, Assistant Director
for Exports, Security, and Safety Cooperation
Office of International Programs

DATE OF ISSUANCE JAN 2 9 1993

U.S. NUCLEAR REGULATORY COMMISSION
EXPORT LICENSE

Conditions License Number XSNM0274/B...

Condition 1 — Licensee shall file with the Customs Officer or the Postmaster two copies, in addition to those otherwise required, of the Shipper's Export Declaration covering each export and mark one of such copies for transmittal to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. The following declaration should accompany or be placed on the Shipper's Export Declarations for such exports:

> "This shipment is being made pursuant to specific license number (**specific license number**) filed at (**location of Customs office where license is filed**), on (**date license was filed**). This license expires on (**expiration date of license**), and the unshipped balance remaining on this license is sufficient to cover the shipment described on this declaration."

Condition 2 — Exports authorized in any country or destination, except Country Groups Q, S, W, X, Y, and Z in Part 370, Supplement No. 1, of the Comprehensive Export Schedule of the U.S. Department of Commerce.

Condition 3 — This license covers only the nuclear content of the material.

Condition 4 — The material to be exported under this license shall be shipped in accordance with the physical protection requirements for special nuclear material in 10 CFR 73.

Condition 5 — Special nuclear material authorized for export under this license shall not be transported outside the United States in passenger-carrying aircraft in shipments exceeding (1) 20 grams or 20 curies, whichever is less, of plutonium or uranium 233, or (2) 350 grams of uranium 235.

Condition 6— This license authorizes export only and does not authorize the receipt, physical possession, or use of the nuclear material.

Condition 7 — The licensee shall complete and submit an NRC Form 741 for each shipment of source material exported under this license.

Condition 8 — The licensee shall advise the NRC in the event there is any change in the designation of the company who will package the nuclear material to be exported under this license, or any change in the location of the packaging operation, at least three weeks prior to the scheduled date of export.

Condition 9 - "The material to be exported under this license shall either be protected in transit, while within U.S. jurisdiction, in accordance with NRC-approved licensing criteria or shall be protected in transit, while within U.S. jurisdiction, by the Department of Energy (DOE) Safe Secure Transport (SST) system in accordance with the DOE requirements and directives for the transport of such material."

ATTACHMENT 7

COGEMA, INC.

FRANK A. SHALLO
VICE PRESIDENT, MARKET DEVELOPMENT

September 8, 1993

Mr. Ronald D. Hauber
Assistant Director, Export, Security
and Safety Cooperation
Office of International Programs
Nuclear Regulatory Commission
One White Flint North Building
11555 Rockville Pike
Rockville, MD 20852

Subject: Docket Number 11004649
License Number XSNM 02748

Dear Mr. Hauber:

COGEMA, Inc. is pleased to confirm that it will notify the Nuclear Regulatory Commission when the uranium material that is the subject of the above mentioned Export License Application is blended down to less than 20% U235. Such notice will be provided by COGEMA, Inc., in writing, within 30 days of completion of all blending operations.

Please feel free to contact me at 301-986-8585 if there are any questions.

Very truly yours,

Frank A. Shallo

Frank A. Shallo

cc: Mr. Robin DeLaBarre
Acting Director
Office of Export and Import Control
Bureau of Politico-Military Affairs
Department of State
Washington, D.C. 20520

INTL SAFEGUARDS
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10/8/93 cy to PDR + DCS/DF12
W/cy of 10/8 ltr to DIS

7501 WISCONSIN AVENUE, BETHESDA, MARYLAND 20814-6514 TEL. (301) 986-8585 TELEX 89406 TELEFAX (301) 652-6990

COGEMA, INC.

MICHAEL A. McMURPHY
PRESIDENT AND CEO

September 24, 1993

Mr. Ronald D. Hauber
Assistant Director, Exports, Security,
and Safety Cooperation
Office of International Programs
Nuclear Regulatory Commission
One White Flint North Building
11555 Rockville Pike
Rockville, MD 20852

Re: License No. XSNM 02748
Docket No. 11004649

Dear Mr. Hauber:

Concerning the above-referenced export license application by Transnuclear, Inc., on behalf of COGEMA, Inc., I am pleased to provide the following confirmation:

1. The terms of COGEMA, Inc.'s arrangements with its French parent company, Compagnie Générale des Matières Nucléaires, for the processing of the unirradiated high temperature gas reactor (HTGR) fuel that COGEMA, Inc. seeks to export to France, will provide that all of the highly enriched uranium (HEU) contained in that fuel will be blended down to low enriched uranium (LEU).

2. The above-mentioned commercial arrangements between COGEMA, Inc. and Compagnie Générale des Matières Nucléaires will not allow any substitution of the HEU contained in the fuel for other isotopically equivalent quantities of uranium and the above-mentioned blending down to LEU is to be performed at COGEMA's Pierrelatte facility in France on the HEU that is separated at Pierrelatte from the thorium and graphite contents of the HTGR fuel.

9401 WISCONSIN AVENUE, BETHESDA, MARYLAND 20814-3416 TEL. (301) 986-8585 TELEX 898586 TELEFAX (301) 652-6050

3. The above-mentioned commercial arrangements between COGEMA, Inc. and Compagnie Générale des Matières Nucléaires will not allow the sale of the HEU separated from the HTGR fuel, and COGEMA, Inc. will retain title to such HEU until the HEU has been blended down to LEU.

4. As previously noted in a letter to the Nuclear Regulatory Commission, from Frank Shallo, Vice President, Market Development of COGEMA, Inc., NRC will be notified by COGEMA, Inc. promptly upon completion of this blending down of the HEU contained in the HTGR fuel to LEU.

Please let me know if you have any questions regarding the commitments specified in this letter.

Sincerely,

Michael A. McMurphy
President and CEO
COGEMA, Inc.

cc: Mr. Robin De La Barre
Department of State

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10/8/93 copy to PDR & DCS/DF02
w/cy to 10/8 ltr to DOS. B K Wright

ATTACHMENT B

CHARLES E. SCHUMER
9TH DISTRICT, NEW YORK

WASHINGTON OFFICE
313 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3210
202-225-6616
TELEFAX (202) 225-4183

PLEASE REPLY TO
BROOKLYN OFFICE
938 KINGS HIGHWAY
BROOKLYN, NY 11223
718-965-5400
TELEFAX 718-965-5256

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

JUDICIARY
CHAIRMAN
SUBCOMMITTEE ON
CRIME AND CRIMINAL JUSTICE

BANKING, FINANCE
AND URBAN AFFAIRS

INTERIOR AND
INSULAR AFFAIRS

NEW YORK STATE
DEMOCRATIC DELEGATION
TREASURER

WHIP-AT-LARGE

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 <u>not</u> 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

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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

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

CHAIRMAN

Legis. Div.
Ltr. dtd.

May 20, 1994

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

Dear Congressman Schumer:

Shortly before the Congress recessed last November, the Senate passed H.R. 3355, the Violent Crime Control and Law Enforcement Act of 1993. Of particular interest to the Nuclear Regulatory Commission (NRC) is title XLV of the bill, the Public Safety and Recreational Firearms Use Protection Act, which would restrict the manufacture, transfer, and possession of semiautomatic assault weapons and large capacity ammunition feeding devices. On May 5, 1994, the House of Representatives passed H.R. 4296, which is similar in substance to title XLV of H.R. 3355. These bills will soon be before a Conference Committee on which I understand you will serve as a Conferee.

As currently written, H.R. 4296 and title XLV of H.R. 3355 could affect adversely the security of NRC-licensed commercial nuclear power plants and facilities possessing a formula quantity of strategic special nuclear material (SSNM). Both types of facilities employ security personnel armed with weapons such as those that would be subject to the restrictions relating to semiautomatic assault weapons to safeguard the facility. They also use large capacity ammunition feeding devices.

Sections 4505 and 4507 of H.R. 3355 and sections 2 and 4 of H.R. 4296 would exempt departments and agencies of the United States from the restrictions described above. However, as drafted, these sections would cover guards only at Government-owned facilities, such as facilities that are owned by the Department of Energy. We believe the same exemption should apply to NRC-licensed facilities.[1]

Therefore, if bans of assault weapons and large capacity feeding devices are included in the final legislation, we recommend that

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[1]The exemptions for law enforcement officers authorized by U.S. departments or agencies to purchase firearms or large capacity ammunition feeding devices for official use, contained in H.R. 4296, will not alleviate the problem. Most NRC-licensed sites do not have guards who are deputized as law enforcement officers.

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the Conference Committee amend the exemptions for departments and agencies of the United States, now contained in sections 4505 and 4507 of HR. 3355 and sections 2 and 4 of H.R. 4296, by inserting the following before the semicolon at the end of the exemption[2]:

> , or to any person (including employees or contractors of such person) who is (i) required by Federal regulation to establish and maintain an onsite physical protection system and security organization, and (ii) licensed pursuant to title I of the Atomic Energy Act of 1954 or subject to regulation under title II of that Act

I would be happy to provide further information regarding this matter, should you so desire.

Sincerely,

Ivan Selin

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[2]The provisions that would be amended are currently identified in H.R. 3355 as paragraph (4)(A) of section 922(s) and paragraph (2)(A) of section 922(u) of title 18, United States Code, and in H.R. 4296 as paragraph (4)(A) of section 922(v) and paragraph (3)(A) of section 922(x) of title 18.