

April 21, 1997

SECY-97-085

FOR: The Commissioners

FROM: Carlton R. Stoiber, Director /s/
Office of International Programs

SUBJECT: PROPOSED AGREEMENT FOR COOPERATION BETWEEN THE U.S. AND
SWITZERLAND

PURPOSE:

To recommend that the Commission approve the attached letter to the President supporting the proposed new U.S.-Switzerland Agreement for Cooperation.

DISCUSSION:

The Department of State has requested agency views on a recently negotiated agreement for cooperation between the U.S. and Switzerland (Attachment 1) to replace the 1965 agreement, which expired by its terms August 7, 1996. A draft Department of State summary of its provisions (Attachment 2), a draft memorandum of law by the Office of the State Department's Legal Advisor (Attachment 3), and a draft Nuclear Proliferation Assessment Statement (Attachment 4) by the Arms Control and Disarmament Agency (ACDA) are attached to this paper. A draft analysis by the Department of Energy (DOE) is available in the Office of International Programs and will be provided upon request.

The proposed agreement is modeled after the new U.S.-EURATOM (European Atomic Energy Community) agreement, which the Commission reviewed in 1995 (SECY-95-210). Switzerland's major nuclear trading partners are the EURATOM member states and the Swiss plan to rely on them for certain fuel cycle services. Like the new EURATOM agreement, the agreement is for an initial term of 30 years, and will continue in force indefinitely in five-year intervals until either party elects to terminate the agreement. Most other agreements expire in thirty years.

The agreement gives Switzerland advance, long-term consent to send U.S.-obligated spent power reactor fuel to France and the United Kingdom for reprocessing, after which the recovered plutonium could be fabricated into mixed oxide (MOX) fuel and returned to Switzerland for use in Swiss power reactors. Most Swiss reactor operators have switched to

Contact: Elaine Hemby, OIP
415-2341

MOX fuel, and this feature will eliminate the delays experienced by Switzerland under the old agreement in obtaining case-by-case retransfer approvals from the U.S. This provision is similar to the provisions in the Japan agreement and the EURATOM agreement. The facilities within EURATOM to which the U.S.-obligated nuclear material may be transferred for reprocessing and alteration in form and content are specified in Attachment 2 to the Agreed Minute. Additional facilities may be added to this list only with U.S. agreement. Switzerland does not plan to develop its own reprocessing and fuel fabrication capabilities.

During reprocessing and alteration into MOX fuel, U.S.-obligated nuclear material from Switzerland will be in EURATOM territory and will be subject to the new U.S.- EURATOM Agreement. The U.S.-EURATOM Agreement permits the retransfer of U.S.-obligated plutonium outside of EURATOM to countries designated by the U.S. During conclusion of the U.S.- EURATOM Agreement, the U.S. presented a side letter to the European Commission confirming that the U.S. was then negotiating a new agreement with Switzerland. The letter contained the following commitment:

The U.S. is also prepared, in connection with a new peaceful nuclear cooperation agreement with the Swiss Federation, to offer long-term prior consent to EURATOM to the retransfer of Swiss plutonium, including such plutonium contained in MOX fuel elements, subject to the U.S.-EURATOM Agreement, to Switzerland for use in that country's peaceful nuclear program.

Moreover, the Agreed Minute to the proposed U.S.-Swiss agreement contains the following obligatory language:

In the case of irradiated nuclear material, subject to the Agreement, retransferred by Switzerland, the U.S. hereby agrees to give its consent, under the applicable agreement for cooperation, to the return to Switzerland of nuclear material recovered from that nuclear material so retransferred.

Simultaneous with entry into force of the new U.S.-Swiss Agreement, the U.S. will give EURATOM its consent to retransfer to Switzerland U.S.-obligated plutonium recovered from Swiss spent fuel by providing a list consisting of one country, Switzerland. This associated statutory determination constitutes the subsequent arrangement required for the U.S. to inform EURATOM, pursuant to the Agreed Minute to the U.S.-EURATOM Agreement, of U.S. consent to retransfer to Switzerland.

Another provision of the agreement allows Switzerland to retransfer, without further U.S. approval, U.S. origin low-enriched uranium, moderator material, equipment, and source material to any country or group of countries identified by the U.S. on a specific list. Only the new EURATOM agreement contains a similar provision.

As required by Section 123 of the Atomic Energy Act (AEA), the Department of State, ACDA, and the Department of Energy must provide their views on the proposed agreement. The State Department Office of Legal Advisor's draft analysis of the proposed agreement

concludes that it meets all pertinent statutory requirements of the AEA and the Nuclear Non-Proliferation Act of 1978. The Department of Energy's draft analysis of the advance, long-term approvals in the proposed agreement concludes that the consents and approvals meet all requirements of the AEA and concurs in its approval. ACDA's draft Nuclear Proliferation Assessment Statement analyzes the consistency of the agreement's text with all the requirements of the AEA, with specific attention to whether it is consistent with each of the Section 123 criteria, including maintenance of safeguards and peaceful use assurances to ensure that any assistance furnished will not be used to further any military or nuclear explosive purpose. ACDA concludes that the proposed agreement is consistent with the AEA and recommends that the President approve and authorize its execution. ACDA will provide the final Nuclear Proliferation Assessment Statement to the President separately.

NRC staff (including the Office of the General Counsel) agrees with these findings and believes the agreement provides a satisfactory basis for cooperation with Switzerland over the next thirty or more years. The staff notes that Switzerland is a party to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and maintains full-scope International Atomic Energy Agency (IAEA) safeguards with respect to all nuclear materials in all peaceful nuclear activities within its territory. Also, the Swiss are members of the NPT Exporters (Zangger) Committee and the Nuclear Suppliers Group. Accordingly, the staff recommends that the Commission approve dispatch of the proposed letter to the Department of State from the Chairman to the President setting forth the Commission's views on the agreement, as required by Section 123 of the AEA. NRC staff concludes that the agreement involves little resource cost to the NRC or U.S. industry.

COORDINATION:

The Office of the General Counsel has no legal objection and the Office of the Executive Director for Operations concurs in this paper.

RECOMMENDATION:

That the Commission approve the attached letter to the President, indicating NRC concurrence in the subject agreement (Attachment 5).

Carlton R. Stoiber, Director
Office of International Programs

Attachments:

1. Text of the Proposed U.S.-Swiss Agreement
2. Draft DOS Summary of Provisions
3. DOS draft Legal Analysis
4. ACDA's draft Nuclear Proliferation Assessment Statement
5. Draft of Proposed Letter to the President

D R A F T

The President
The White House
Washington, DC 20500

Dear Mr. President:

In accordance with the provisions of Section 123 of the Atomic Energy Act, as amended, the Nuclear Regulatory Commission has reviewed the proposed Agreement for Cooperation with Switzerland. It is the view of the Commission that the proposed Agreement includes all of the provisions required by Section 123 of the Atomic Energy Act, as amended. The Commission therefore recommends that you make the requisite statutory determination, approve the Agreement, and authorize its execution.

Respectfully,

Shirley Ann Jackson

FILE NAME: G:\EXPORTS\SWISSAGR.LTR

D R A F T