

NRC STAFF COMMENTS  
ON  
PROPOSED EXPORT OF SPECIAL NUCLEAR MATERIAL  
TO INDIA FOR THE TARAPUR ATOMIC POWER STATION  
(LICENSE NO. XSNM-1222)

Statement by James R. Shea  
Director, Office of International Programs,  
Nuclear Regulatory Commission

The NRC staff hereby submits its views on issues raised in connection with the subject pending license application:

License No. XSNM-1222, as amended, to authorize Edlow International Company to export 16,803.6 kilograms of enriched to a maximum of 2.71%, to India for use in the Tarapur Atomic Power Station (TAPS). (U)

On December 6, 1978, the Commission ordered a public hearing focusing on four topics: (1) the sufficiency, for purposes of the Nuclear Non-Proliferation Act (NNPA), of Indian Prime Minister Desai's assurances that "he will not authorize nuclear explosive devices or further nuclear explosions"; (2) the adequacy, for purposes of the NRC's determination under the NNPA, of the safeguards applied by the International Atomic Energy Agency at the Tarapur facility, and of U.S. Government information on those safeguards; (3) the status of U.S.-India negotiations regarding the return of spent fuel from Tarapur to the United States for storage; and (4) the need for the fuel requested. The following staff comments are keyed to these four topics. (U)

1. The question of Indian assurances regarding nuclear explosions has been addressed in the Executive Branch analysis of XSNM-1222 dated September 15, 1978 and in the staff's analysis dated November 20, 1978 (SECY 78-596). The Commission's determination under Criterion 2 of Section 127 of the

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Atomic Energy Act need not rest, of course, solely on the Desai statement quoted above. The Executive Branch has cited the written assurance contained in a letter dated September 17, 1974 from Dr. Homi Sethna, Chairman of the Indian Atomic Energy Commission, to Dr. Ray, Chairman of the U.S. Atomic Energy Commission, that "...the special nuclear material that has been or is hereafter made available for, or used, or produced in the Tarapur Atomic Power Station located at Tarapur will be devoted exclusively to the needs of that Station unless our two Governments hereafter specifically agree that such material be used for other purposes." (U)

SECY-78-896 quoted several additional statements by Prime Minister Desai relevant to the question of peaceful nuclear explosives. Since that paper was prepared, the Prime Minister is reported to have made the following statement in response to a Parliamentary question during the November 30, 1978 Rajya Sabha debate on nuclear policy: (U)

"It has been our policy for all the past years, started by Jawaharlal Nehru, that we will not have anything to do with nuclear weapons and that we will develop nuclear energy for peaceful purposes. This is the policy to which we are sticking, and if any explosion can be made without any fall-outs and without any such things which lead to atomic weapons and only for peaceful purposes, that explosion is never debarred." (U)

2. Before addressing the question of the adequacy of safeguards implementation at TAPS, the staff wishes to comment on the Petitioner's contention (Motion of October 31, 1978, pages 2-4) that the Commission is not in a position to determine that Criterion 1 or its equivalent is met because the material to be exported under XSNM-1222 is not covered by IAEA safeguards as required by Article III(2) of the Nuclear Non-Proliferation

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Treaty (NPT). The Petitioner notes that the objective of safeguards agreements conforming to IAEA INFCIRC/66/Rev.2, the type of agreement covering the TAPS facility, is to prevent the use of safeguarded materials for any military purpose, whereas the objective of agreements conforming to IAEA INFCIRC/153 is to prevent the use of safeguarded materials in any nuclear explosive. The Petitioner's argument here implies that only INFCIRC/153-type agreements satisfy the requirement of Criterion 1 of Section 127 of the Act, and that INFCIRC/66-type agreements do not. The staff believes that this interpretation of the NNPA is erroneous. INFCIRC/153 safeguards agreements, for example, require the application of IAEA safeguards on all nuclear activities under the jurisdiction or control of the State concerned. Had the Congress intended that only the INFCIRC/153 type of safeguards agreement be considered to satisfy Criterion 1, full-scope safeguards coverage would have become an immediate licensing requirement upon enactment of the NNPA. But the Act, in Section 128, explicitly defers full-scope safeguards coverage as a licensing condition for an 18-24 month period after enactment of the NNPA. Moreover, a large number of States receiving U.S. nuclear exports have safeguards agreements modeled on INFCIRC/66/Rev.2; to interpret Criterion 1 in the manner suggested by the Petitioner would have resulted in immediate termination of further U.S. nuclear exports to all such States, and it is clear from the legislative history of the NNPA that this result was not intended or expected. (U)

With respect to the adequacy of safeguards implementation in India, the Petitioner contends that the Commission is unable to make a positive determination, citing the failure of the Executive Branch analysis to

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take into account the Safeguards Implementation Report (SIR) for 1977, and the unwillingness of the NRC's Office of Nuclear Materials Safety and Safeguards (NMSS) to "certify that IAEA safeguards are adequate." (c)

It is true that NMSS has taken the position that it has not received country-specific information which permits it to make an independent conclusion as to the effectiveness of IAEA material control and accounting safeguards in India.

(C)

The staff has addressed, in SECY-78-696, the question of the durability of Indian safeguards commitments. While the staff is not yet prepared to make a final recommendation on the Commission's determination under Criterion 1, it wishes to emphasize here that this question is quite distinct and separable from the issue of safeguards adequacy. (U)

3. The staff has no additional information or comment to provide at this time. (U)
4. The staff believes it is clear that the material proposed to be exported under XSNM-1222 will not be inserted into the TAPS reactors until well after the March 10, 1980, the date when the full-scope safeguards requirement of Section 128 becomes effective. If the U.S. were exporting fully fabricated fuel to India, there would be no operational requirement to approve the present application during the period before the full-scope

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requirement comes into effect. However, since the fuel is to be fabricated at the Hyderabad facility in India, lead times for normal and efficient operation of this facility may well require shipment of the fuel far in advance of March 10, 1980. The staff is presently analyzing recently acquired information concerning current inventories of material in India and future fabrication and reload schedules and expects to provide the Commission with a more detailed assessment of this question in the near future. (U)

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