



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

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OFFICE OF THE
COMMISSIONER

Classified By Thomas R. Giffon

☐ Declassify

or on 1/26/85

☒ Review

(Date for Event)

Derivative Classifier: Jan 3 1978 Bmg

By DOS

MEMORANDUM FOR:

Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Ahearne

FROM:

Peter A. Bradford

SUBJECT:

TARAPUR

(U)

I am circulating views at this time in order to assist in arriving at an early decision and opinion on this Tarapur export. What follows is simply a statement of points that seem to me to be of possible interest. It is by no means complete, and more may follow next week:

(U)

1) My views have not fundamentally changed since the decision on XSNM-1060. Consequently, the position set forth in the opinion in that case is still the one that I hold.

(U)

2) The staff analysis set forth in SECY-78-596A (including the separate ELD analysis) is a work of [

] Nor are the points made in the Gilinsky-Bradford separate opinion on the last Tarapur export addressed anywhere. The terms "currently" and "prospectively" are undefined, and this invites confusion as to whether the word "prospectively" should be read to mean "perpetually." The question is not whether any of the safeguards against reprocessing, retransfers, and explosives will continue in force perpetually, but whether they will remain in force for just 13 months.

(U)

No one would argue (I trust) that the criteria were met if we knew that one or more of the safeguards would clearly not be in force within a few weeks. By the same token, no one is arguing that we must have assurance that the safeguards will be in force for the length of time in which plutonium produced by the export might be used in a weapon. For the analysis to be of any use, it should be dealing not with two artificially clear adverbs, but with the degree of uncertainty that is present in this case and with the legal significance of that uncertainty.

(U)

3) Both criterion 2 and criterion 5 (no explosives pledge and reprocessing) lose all meaning if they are not read to require a level of confidence extending at least a year or two into the future. There will simply be no spent fuel to reprocess, nor any plutonium to make an

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explosive out of until after the fuel has been fabricated and irradiated. These two criteria have no meaning if the safeguards required by them need only be in force at the time the LEU is exported. [

- (U) 4) Several events since our consideration of XSNM-1050 seem worthy of note. For one thing, neither Congress nor the President have contradicted the Gilinsky-Bradford analysis of the applicability of the criteria. Indeed, Senator Glenn, whose words are cited in support of the staff recommendation, went out of his way to state that we had not misapplied the criteria. The same is true of the House International Relations Committee.* As far as I know, only Senator McClure has expressed a contrary view in the Congress.
- (U) 5) No legal analysis has addressed the significance of the fact that Congress provided the Presidential approval route for cases in which the criteria were not met. If in fact the criteria are to be so tortured as to accommodate Executive Branch speculation about Indian behavior in place of concrete assurances, then it is hard to see just what the purpose of the track involving Presidential approval would be.
- (U) 6) It bears repeating that a failure on the Commission's part to find that the criteria are met is not at all the same thing as either a refusal to send the export or a finding that it would be inimical to the common defense and security. A finding that some of the criteria are unmet does not involve any dispute over the propriety of the President's sending the export for whatever reasons he deems necessary.

cc: S. Chilk, SECY

1/30 = OFE, OGC, SLD + IP

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