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February 13, 2006

The Honorable Nils J. Diaz
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Chairman,

We are writing in regard to two pending license applications for export of highly enriched uranium – for use as fuel in Belgium’s BR-2 reactor (XSNM-03404, *Federal Register*, June 28, 2005), and as targets for the production of medical isotopes in Canada’s NRU reactor (XSNM-03427, *Federal Register*, December 29, 2005).

We are concerned that the opportunity for meaningful public comment on these applications as provided for under the Atomic Energy Act (42 U.S.C. § 2155a. and 10 C.F.R. §§ 110.40(c), 110.80-110.91, 110.100)¹ has been vitiated by the Commission’s new policy of withholding from the public both the amount of HEU requested and the applicant’s documentation that its existing inventory of HEU is insufficient to satisfy its imminent needs.

Under prior longstanding policy the Commission publicly disclosed such information, and this enabled the public to submit comments that in several cases demonstrated to the Commission that an applicant had requested an amount of HEU exceeding its documented need. In these cases, either the application was withdrawn, the Commission reduced the amount approved for export, or the Commission required that the approved amount be exported only in small tranches as the applicant subsequently demonstrated imminent need – to avoid the accumulation of surplus HEU by the applicant. This policy reduced HEU exports and avoided the accumulation of foreign surpluses of HEU, thereby reducing the risk of theft or diversion of HEU for weapons.

For example, on June 25, 2001, the Nuclear Control Institute petitioned the Commission, arguing on the basis of information released to the public by the Commission that Belgium’s BR-2 reactor had no immediate need for the 32 kg of HEU that its operator had applied to export at the time (XSNM-03192). The Commission then requested more information from the applicant, which responded by initially reducing the

¹ 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).

amount of its request and later suspending its application entirely.² The applicant has since managed to operate its reactor for five years without receiving any fresh HEU, vindicating NCI's contention in 2001 of no imminent need.

Similarly, following testimony by NCI,³ the Commission reduced by 40 kg the amount of HEU licensed for export to Canada for use as targets to produce isotopes at its MAPLE reactors.⁴ After further public comments by NCI that underscored the surplus of HEU in Canada,⁵ the Commission also constrained the export to Canada of HEU for targets to produce isotopes at the NRU reactor, limiting it to tranches of only 5 kg at a time as need was demonstrated, to avoid the accumulation of any surplus.⁶

However, the Commission's new non-disclosure policy has severely hindered the ability of the public to provide the Commission such informed comments. The logical consequence, given the track record of applicants repeatedly overstating their imminent requirements, is that more HEU than necessary will be exported, thereby needlessly increasing the risk of diversion for weapons. Because this outcome runs counter to the intent of the Commission's new policy, we urge the commission to restore its pre-existing policy of publicly disclosing both the amount of HEU requested and the applicant's documentation of its imminent need for the requested material, including an accounting of its existing HEU inventory and annual requirements.

In addition, the Commission should specify that any HEU it authorizes for export, including for use as fuel in Belgium's BR-2 reactor under XSNM-03404, shall not be retransferred to an unauthorized end user.

Under the U.S.-Euratom Nuclear Cooperation Agreement ("the Agreement"), material exported from the United States to EURATOM for a specified end user can be retransferred within EURATOM to other end users without notification or approval of the United States. When applied to HEU, this practice undermines the intent of Section 134 of the Atomic Energy Act, commonly known as the Schumer amendment, which prohibits exports of HEU except under stringent conditions that are specific to the end user.

Accordingly, the Secretary of Energy has advised Congress that the United States may close this loophole in the following way: "Notwithstanding the terms of the

² *Nuclear Fuel*, November 12, 2001, p. 19.

³ Paul L. Leventhal and Alan J. Kuperman, Prepared Statement, Briefing on Proposed Export of High Enriched Uranium to Canada, U.S. Nuclear Regulatory Commission, public meeting, July 10, 2000, p. 10, stated: "To avoid export of any HEU surplus to the applicant's needs, in accordance with U.S. law and policy, we urge the Commission to modify the current license immediately to reduce the total amount of HEU under the license."

⁴ Staff Requirements Memorandum from Annette L. Vietti-Cook, Secretary, to Janice Dunn Lee, Director, Office of International Programs, U.S. Nuclear Regulatory Commission, July 27, 2000, M0007108.

⁵ Letters from Paul L. Leventhal and Alan J. Kuperman to NRC Chairman Richard Meserve, December 18, 2000, and February 12, 2001.

⁶ SECY-01-0047, U.S. NRC, March 16, 2001.

Agreement, any concerns about retransfers from EURATOM states can be met by the use of contract and licensing conditions that would require U.S. consent for any subsequent transfer of the HEU to an end user not specified in the license.”⁷ We urge the Commission to attach such conditions to any license it approves for export of HEU, including XSNM-03404.

Thank you for your consideration of our views. We look forward to receiving your response. As always, we stand ready to meet with you and to provide further information upon request.

Sincerely,



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and
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Paul L. Leventhal
Founding President
Nuclear Control Institute

cc: NRC Commissioners
The Honorable Charles E. Schumer, U.S. Senate
The Honorable Edward J. Markey, U.S. House of Representatives

⁷ Letter from U.S. Secretary of Energy Samuel W. Bodman to the Honorable Edward J. Markey, September 15, 2005.