

November 26, 2003

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE SECRETARY

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In the Matter of

Docket No. 110-540

U.S. DEPARTMENT OF ENERGY

(Plutonium Export License)

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**REQUEST FOR HEARING AND PETITION TO INTERVENE  
BY GREENPEACE INTERNATIONAL, CHARLESTON PEACE,  
AND BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE**

**I. INTRODUCTION AND SUMMARY**

Pursuant to 10 C.F.R. § 110.82 and the notice of opportunity to request a hearing published at 68 Fed. Reg. 6,123 (October 27, 2003), Greenpeace International, Charleston Peace, and Blue Ridge Environmental Defense League hereby petition the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) for a hearing on whether the NRC should grant a license to the U.S. Department of Energy (“DOE”) to allow DOE to ship “up to 140 kg” of plutonium from the United States to France on British-flagged vessels for processing into plutonium Mixed Oxide (“MOX”) Lead Test Assemblies (“LTAs”).<sup>1</sup> Petitioners also request leave to intervene in any proceeding that is otherwise convened by the NRC to consider this license application.<sup>2</sup>

As set forth below in Section III, Petitioners believe that the international standard under which the application is to be judged is grossly inadequate to meet the security

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<sup>1</sup> DOE submitted the application in the form of a letter from Edward J. Siskin, Assistant Deputy Administrator, Office of Fissile Materials Disposition, DOE, to Deputy Director, Office of International Programs, NRC at 1 (hereinafter “DOE Export License Application”).

<sup>2</sup> Should the NRC grant a hearing, the Petitioners have designated Greenpeace International as the lead intervenor.

demands of the post-September 11, 2001 environment. Therefore, Petitioners seek a hearing on whether security measures for the proposed export license are sufficient to satisfy the requirements of the Atomic Energy Act. Moreover, the environmental analyses that are purported to support the export of plutonium to France fail to consider the significant new information and changed circumstances that have been brought about by the terrorist attacks of September 11 and the U.S. government's response to them. Therefore, Petitioners seek a hearing on whether the DOE should be required to prepare a new Environmental Impact Statement ("EIS") and submit it for public comment.

Petitioners' concerns are supported by the Declaration of Edwin S. Lyman, Ph.D. In Support of Petitioners' Hearing Request and Petition to Intervene (November 26, 2003) (hereinafter "Lyman Declaration") (Attachment 1); the Declaration of 26 November 2003 of John H Large in Support of Petitioners' Hearing Request and Petition to Intervene (November 26, 2003) (hereinafter "Large Declaration") (Attachment 2); and Mr. Large's report, entitled Disposition of Surplus Weapons Plutonium Using Mixed Oxide Fuel: EuroFab – Transfers to and From France; Comments and Opinions on the Applicability and Sufficiency of the Safety, Security and Environmental Requirements And Measures As These Apply to Transatlantic Shipments, European Waters, and France (November 26, 2003) (hereinafter "Large Report") (Attachment 3). Dr. Lyman and Mr. Large are highly qualified experts whose testimony will make a significant contribution to the review of the adequacy of DOE's license application.

As discussed in Section IV of the petition, Petitioners have standing to obtain a hearing by virtue of the standing of their members. In addition, as discussed in Section IV, Petitioners' will make a significant contribution to the public interest in safe and

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secure disposition of the 140 kg of plutonium at issue, through the testimony of their highly qualified experts, Dr. Lyman and Mr. Large.

## **II. FACTUAL BACKGROUND**

### **A. Description of Petitioners**

Greenpeace International is an international nonprofit campaigning organization that uses nonviolent, creative confrontation to expose global environmental problems, advocate nonproliferation and disarmament, and force solutions for a green and peaceful future. Greenpeace International's goal is to ensure the ability of the Earth to nurture life in all of its diversity. Greenpeace International conducts public campaigns on a number of environmental issues, including ending the nuclear threat and nuclear contamination. Greenpeace International has over 1,000 supporters in North Carolina and over 6,000 supporters in Virginia. Greenpeace International also has over 50,000 supporters in France, and over 2 million supporters worldwide. Greenpeace International's address is Ottho Heldringstraat 5, 1066 AZ Amsterdam, Netherlands.

Charleston Peace is an organization of over 100 individuals in the Charleston, South Carolina area. The purpose of the organization is to promote peace and social justice. Charleston Peace's address is 37A Cleveland Street, Charleston, South Carolina, 29403.

Blue Ridge Environmental Defense League ("BREDL") is a nonprofit membership organization whose purposes include the fostering of earth stewardship and

conservation of natural resources by the government and the public. BREDL's address is P.O. Box 88, Glendale Springs, North Carolina 28629.<sup>3</sup>

**B. DOE Application for Plutonium Export License**

On October 1, 2003, DOE filed its application with the NRC for a license to export "up to 140 kg of weapon-grade plutonium oxide" to France. Export License Application at 1. According to DOE, the plutonium dioxide "is being purified at Los Alamos National Laboratory, where it is currently stored." *Id.*, Attachment to NRC Form 7 at 1. The plutonium would be shipped by Safe Secure Transport ("SST") to the Charleston Naval Weapons Station in Charleston Harbor. At Charleston Harbor, DOE proposes to transfer the plutonium to two Pacific Nuclear Transport, Ltd. ("PNTL") ships for transport to Cherbourg, France.

From Cherbourg, DOE proposes to have the plutonium shipped overland to COGEMA's Cadarache fabrication facility, where it will be made into plutonium MOX pellets and inserted into rods. The rods would then be shipped overland to COGEMA's MELOX facility for incorporation into fuel assemblies.

Under the proposal, the plutonium LTAs, as well as leftover material and spare and "archival" fuel rods, would be shipped back to Cherbourg for transport back to Charleston via PNTL ships.<sup>4</sup> Then the packages would be unloaded at Charleston for shipment of the LTAs to the reactor in which the assemblies will be irradiated (i.e., the

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<sup>3</sup> Greenpeace International, Charleston Peace, and BREDL can be reached by telephone through undersigned counsel.

<sup>4</sup> The Export License Application identifies Charleston as the shipping and receiving port. In a separate document, however, DOE has stated that if the Charleston Naval Weapons Station is not available, DOE plans to use either the Yorktown Naval Weapons Station or Naval Station Norfolk for both the outgoing and return shipments.

Catawba reactor in South Carolina), and shipment of the archival material to Los Alamos National Laboratory.

In its license application, the DOE states that it is the agency's "understanding that a new Environmental Report is not required for this export license." *Id.* at 1. Apparently, the DOE intends to rely on environmental analyses which were conducted in 1996 and 1999 and supplemented in 2003. *See* DOE/ES-229, Storage and Disposition of Weapons-Usable Fissile Materials, Final Programmatic Environmental Impact Statement (1996) (hereinafter "Storage and Disposition PEIS"); DOE/EIS-0283, Surplus Plutonium Disposition Final Environmental Impact Statement (1999) (hereinafter "SPDEIS"); DOE/EIS-0229-SA3, Supplemental Analysis, Fabrication of Mixed Oxide Fuel Lead Assemblies in Europe (November 2003) (hereinafter "Supplemental Analysis"); Surplus Plutonium Disposition Program, Amended Record of Decision, 68 Fed. Reg. 64,611 (November 14, 2003).<sup>5</sup>

In Appendix G, the Storage and Disposition PEIS contains a brief discussion of the risks of sabotage and terrorism against the plutonium while in storage or transit in the United States and on the "global commons," and concludes that the risk is very low. PEIS at G-7. The PEIS, however, was written before the United States government became highly sensitized and significantly more attentive to the risks of terrorist attacks in the aftermath of the September 11, 2001, attacks on the World Trade Center and the Pentagon. The Supplemental Analysis, while claiming to update the PEIS, contains no discussion of the federal government's changed perception of the terrorist threat as a

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Surplus Plutonium Disposition Program, Amended Record of Decision, 68 Fed. Reg. 64,611, 64,614 note 5 (November 14, 2003).

result of the 9/11/01 attacks, security upgrades that have been imposed since the 9/11/01 attacks, or the viability of such alternatives as preparation of the LTAs in the United States. Nor does the Supplemental analysis contain any mention of U.S. government negotiations or other interactions with France or the United Kingdom (“U.K.”) for the purpose of raising physical security standards for the export of the 140 kg of plutonium.<sup>6</sup>

### **III. STATEMENT OF ISSUES ON WHICH PETITIONERS SEEK A HEARING**

#### **A. Issues Under Atomic Energy Act**

##### **1. Inadequate and outdated standards for maintaining security**

Pursuant to 10 C.F.R. § 110.44(a), physical security measures in recipient countries must provide:

protection at least comparable to the recommendations in the current version of IAEA publication INFCIRC/225/Rev. 4 (corrected), June 1999, “The Physical Protection of Nuclear Material and Nuclear Facilities,” and is incorporated by reference in this part.

For several reasons, this standard for maintaining physical security of the plutonium under an export license is inadequate to allow a determination that (a) “adequate physical security measures will be maintained,” 42 U.S.C. § 2156(3), and (b) the proposed export

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<sup>5</sup> Issuance of the Supplemental Analysis and accompanying Amended Record of Decision was announced at 68 Fed. Reg. 64,611 (November 14, 2003).

<sup>6</sup> Petitioners also note that there is a troubling discrepancy between the Export License Application and the Supplemental Analysis regarding the amount of plutonium that is subject to the export license application. The license application states that DOE intends to ship “up to 140 kg of weapon-grade plutonium oxide” to France. Export License Application at 1. In contrast, the Supplemental Analysis states that the amount of plutonium to be exported is approximately 150 kilograms. *Id.* at 6, 21 (November 2003) (hereinafter “Supplemental Analysis”). Petitioners believe the license application should be controlling. In any event, the discrepancy should be addressed in the review of the license application.

is “not inimical to the common defense and security.” *See* 42 U.S.C. §§ 2074 (b) and (c), 10 C.F.R. § 110.42(a)(8).

First, as discussed in pars. 3-6 and 11 of the Lyman Declaration, and Sections 4 and 5 of the Large Report, the standards in IAEA INFCIRC/225 (Rev. 4) are not comparable to NRC standards for protection of Category I nuclear material. They have never been comparable, but the divide has grown even wider since the NRC imposed Interim Compensatory Measures (“ICMs”) in February of 2002, and permanent physical protection upgrades to Category I fuel cycle facilities in April of 2003.

For instance, NRC regulations require that Category I licensees provide an armed response force capable of protecting their facilities from NRC-specified design basis threats (DBTs) of theft and radiological sabotage. The regulations further require that the ability of Category I armed response forces be tested through regular force-on-force exercises. It is well-recognized in the United States that force-on-force testing is essential to verify that physical protection plans will function as intended to effectively defeat the DBT. Lyman Declaration, par. 4.

The Department of Energy also requires similar measures for protection of Category I materials at DOE sites. These include the presence of heavily armed paramilitary protective forces equipped with automatic weapons, night vision equipment, body armor and chemical protective gear. *Id.*, par. 5. The DOE has also committed to apply the “Stored Weapons Standard” to the storage, plutonium in the course of disposing of it. *See, e.g.*, Record of Decision for the Surplus Plutonium Disposition Final Environmental Impact statement, 65 Fed. Reg. 1,608 (January 11, 2000), in which the DOE stated that:

From a nonproliferation standpoint, the highest standards for safeguards and security will be employed during transportation, storage (i.e., the stored weapons standard<sup>14</sup>) and disposition.

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<sup>14</sup> The “Stored Weapons Standard” for weapons-usable fissile material storage was initially defined in Management and Disposition of Excess Weapons Plutonium, National Academy of Sciences, 1994. DOE defines the Stored Weapons Standard as follows: The high standards of security and accounting for the storage of intact nuclear weapons should be maintained, to the extent practical, for weapons-usable fissile materials throughout dismantlement, storage and disposition.

*Id.* 1,614. *See also* Large Report, Sections 4 and 5.

In contrast, INFCIRC/225 (Rev. 4) does not provide any guidelines for the development of design basis threats, other than that they should be based on states’ own evaluations. It neither mandates that Category I facilities deploy armed response forces to defeat teams of armed external attackers, nor requires full-scale performance testing to demonstrate that such facilities can be adequately protected against realistic threats. While INFCIRC/225 (Rev. 4) does call for exercises to test physical protection systems and the training and readiness of guards, this provision falls far short of a requirement for rigorous force-on-force testing.

One of the greatest shortcomings of INFCIRC/225 (Rev. 4) is its lack of emphasis on internal security. It only recommends that states require “predetermination of the trustworthiness of all individuals permitted unescorted access to nuclear material and facilities.” Much more stringent and prescriptive access authorization procedures are clearly needed today to effectively deter the insider threat. *Id.*, par. 6.

In the case of the instant Export License Application, these shortcomings are exacerbated by the lack of available information regarding the manner in which the French Government implements IAEA INFCIRC/225 (Rev. 4). *See* Large Report, pars. 5.3, 5.6

A high-level U.S. government official has acknowledged that IAEA INFCIRC/225 (Rev. 4) is out of date. As Dr. Lyman states in his declaration, in a meeting of the American Nuclear Society in November of 2003, Richard Stratford, Director of the Office of Nuclear Energy Affairs at the U.S. Department of State, said that he favors the development and adoption of a fifth revision of INFCIRC/225 (Rev. 4), particularly with respect to transportation security. He also stated that he had floated the proposal within the U.S. government and had talked to a number of other countries without receiving serious objections, and that he intended to pursue adoption of his proposal starting in mid-2004. Lyman Declaration, par. 9.

As Dr. Lyman asserts, the huge disparity in U.S. government requirements for physical protection of Category I nuclear materials between domestic facilities and foreign facilities that receive U.S. exports is irrational and dangerous, particularly in the post-September 11 environment. The U.S. should seek to ensure that a uniformly high standard of protection is applied for special nuclear materials at all times and in all locations. *Id.*, par. 11. In fact, given that vulnerability of the plutonium will no doubt be greater when it is outside the United States, security requirements for recipient countries should be even stricter than U.S. standards.

Petitioners acknowledge that the provisions of INFCIRC/225 (Rev. 4) are included in the NRC's regulations, and that ordinarily, the raising of this issue would

constitute an impermissible challenge to NRC regulations. Ordinarily, the appropriate course would be for Petitioners to submit a petition for rulemaking. *Potomac Electric Power Co.* (Douglas Point Nuclear Generating Station, Units 1 & 2), 8 AEC 79, 88-89 (1974).

Petitioners submit, however, that ordinary circumstances do not apply here. In imposing security upgrades in the aftermath of the events of September 11, 2001, the Commission has consistently taken the course of making those changes through orders, rather than through modifications to its regulations. For instance, the NRC issued orders modifying the licenses of all nuclear power plants and Category I facilities on April 29, 2003. In a March 18, 2003, letter to the Hon. Edward J. Markey of the U.S. House of Representatives, then-Chairman Richard A. Meserve explained the reasoning for this approach as follows:

Orders are the only means available to make changes that involve Safeguards Information or classified national security information (in the case of Category I Fuel cycle facility licensees.)

*Id.* at 14, response to Question 15c. Clearly, the relief requested by Petitioners would involve safeguards and/or classified information. Therefore, requesting a rulemaking would not provide the relief that Petitioners seek. Moreover, a rulemaking would not be likely to afford Petitioners timely relief, because it typically takes much longer than the timeframe of a licensing proceeding. Therefore, pursuant to 10 C.F.R. § 110.111, Petitioners have requested a waiver of 10 C.F.R. § 110.44 in a separate pleading filed today.

## **2. Failure to Identify United Kingdom As Recipient State**

The Export License application is insufficient because it does not identify the U.K. as a recipient of the plutonium. As discussed in the application, the plutonium will be shipped by PNTL boats. These boats are registered in the U.K., and majority-owned by the U.K. Large Report, par. 4.8 and note 22. The NRC may not allow DOE to put the plutonium into the hands of a foreign state without a duly authorized export license. 42 U.S.C. §§ 2074(c), 2141. This is not an academic exercise: as discussed in the Large Report, security arrangements for the PNTL boats are questionable. *Id.*, par. 5.3 and note 23. Therefore, it is important for the NRC to license the transport by the U.K. of the shipments of plutonium oxide and plutonium MOX LTAs.

**B. ISSUES UNDER NATIONAL ENVIRONMENTAL POLICY ACT**  
**Inadequacy of EISs and Supplements to Support Export License**

For a number of reasons, the 1996 Storage and Disposition PEIS and 1999 SPDEIS, along with the Supplemental Analysis recently prepared by the DOE, are completely inadequate to support the issuance of an export license to the DOE. First, the Supplemental Analysis does not address the existence of significantly changed circumstances which cast grave doubt on the wisdom of overseas plutonium shipments. The 1996 and 1999 EISs predate the terrorist attacks of September 11, 2001, on the World Trade Center and the Pentagon. These attacks provided the federal government with significant new information showing that the potential for terrorist attacks on U.S. facilities is far greater and more lethal than previously thought. Moreover, the measures that have been taken in response represent a sea change in the way the U.S. government views the threat of terrorist attacks and the importance of measures to address it. The federal government has reorganized and devoted enormous amounts of resources to

identifying vulnerabilities in nuclear facilities and protecting against the terrorist threat. As discussed above and in the Lyman Declaration, the NRC has also upgraded the licenses of every nuclear power plant and Category I facility in the United States to provide improved security measures.

Without any doubt, the events of September 11, 2001, the lessons learned from them, and the federal government's response to those events, constitute the type of "significant new circumstances or information" that warrant revision and republication of the 1996 and 1999 draft EISs for public comment. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989). *See also Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1023-24 (9<sup>th</sup> Cir. 1980); *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 558 (9<sup>th</sup> Cir. 2000).

There are a number of alternatives and mitigative measures that demand serious consideration in a newly issued EIS regarding disposition of weapons-grade materials. First, should the risk be mitigated by upgrading the outdated international standard for protection of plutonium under export licenses? Second, how can the potential for terrorist attacks be re-evaluated in light of what we now know about the motives and practices of terrorists? *See* Large Report, Section 7. Third, what are the potential impacts of a terrorist attack on or seizure of these materials? As discussed in the Large Report, Section 6, it is woefully insufficient to merely cross-reference the DOE's discussion of accident impacts in the 1996 Storage and Disposition PEIS and 1999 SPDEIS.

Finally, the new information and changed circumstances that have come about since September 11, 2001, unequivocally call for reconsideration of the option of

postponing fabrication of the LTAs until the proposed MOX fabrication facility at the Savannah River Site is built. At the time the 1996 Storage and Disposition EIS was prepared, the DOE did not give serious consideration to this alternative because it would delay the use of plutonium MOX fuel in nuclear plants. Anticipated delays in carrying out the parallel U.S.-Russian MOX programs reduce any pressure on DOE to have the MOX LTAs manufactured in Europe on a rapid timeline.

The DOE's concern over timeliness must now be balanced against the new concerns that have arisen since September 11, 2001, over the risks of (a) sending plutonium across the ocean in vessels with questionable security measures, (b) to a country whose measures for safeguarding the plutonium are shrouded in secrecy, (c) under international security standards that are grossly outdated. Accordingly, these issues must be addressed in a new EIS for the disposition of weapons grade fissile material. Moreover, the EIS must be published in draft form, so that members of the public can be involved in the decision-making process.

#### **IV. PETITIONERS HAVE STANDING**

As required by NRC regulations at 10 C.F.R. § 110.84, a hearing request asserting an interest which may be affected must address 1) The nature of the alleged interest; 2) How that interest relates to issuance or denial; and 3) the possible effects 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.

As discussed above in Section II, all of the Petitioners have organizational interests which fall within the purposes of the Atomic Energy Act of protecting public health and safety and the common defense and security. These interests would be

adversely affected if the NRC were to issue the proposed license and thereby create the risk of an unplanned radiological release to the environment during the shipment of plutonium to Europe. Conversely, their interests would be protected if the NRC were to deny the license, because either the plutonium would not be converted to LTAs at all, or it would be converted to LTAs within the United States, under safer and more secure conditions. It is within the NRC's authority to deny the requested license, or to impose conditions that would better protect the interests of the petitioners.

Petitioners seek to establish their representational standing, through the attached declarations of their members. As the ASLB found in *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 41 (1990):

Where the organization is depending upon injury to the interest of its members or sponsors to establish standing, the organization must provide with its petition identification of at least one member or sponsor who will be injured, a description of the nature of that injury, and an authorization for that organization to represent the individual in the proceeding. The injury in fact must be arguably within the zone of interests protected by statutes covering the proceeding.

*See also Curators of the University of Missouri*, LBP-90-18, 31 NRC 559, 565 (1990); *Private Fuel Storage, L.L.C.* (Independent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 168, *aff'd on other grounds*, CLI-98-13, 48 NRC 26 (1998); *Hydro Resources, Inc.* (2929 Coors Road, Suite 101, Albuquerque, NM 87120), LBP-98-9, 47 NRC 261, 271 (1998); *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 426 (2002).

Petitioners submit the following declarations in support of their representational standing:

Merrill Chapman, Greenpeace International supporter and Charleston Peace member (Attachment 4)

Marcella Guerriero, Greenpeace International supporter and Charleston Peace member (Attachment 5)

Amy Horwitz, Greenpeace International supporter and Charleston Peace member (Attachment 6);

Linda Price King, BREDL member and Greenpeace International Supporter (Attachment 7)

James Scott, Greenpeace supporter and Charleston Peace member (Attachment 8)

As demonstrated in their declarations, these individuals have standing by virtue of their proximity to one of the harbors where plutonium shipments may be stored and transferred to ships for transport to France.<sup>7</sup> While in the harbor, the plutonium constitutes “a significant source of radioactivity producing an obvious potential for offsite consequences.” *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-12, 42 NRC 111, 116 (1995), citing *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n. 22 (1994); *Armed Forces Radiobiology Institute* (Cobalt-60 Storage Facility), ALAB-682, 16 NRC 150, 153-54 (1982); *Northern States Power Co.* (Pathfinder Atomic Plant), LBP-90-3, 31 NRC 40, 43 n. 1, 45 (1990). As demonstrated in the attached Large Report, a release of plutonium from a transport vessel as a result of a successful terrorist attack could easily cause injury

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<sup>7</sup> Merrill Chapman lives within an eighth of a mile of Charleston Harbor, and within about two miles of the Charleston naval base. Marcella Guerriero lives about 1.5 miles from Charleston Harbor, and about three miles from the Charleston naval base. Amy Horwitz lives within a mile of Charleston Harbor, and less than ten miles from the Charleston naval base. Linda Price King lives within 20 miles of the port of Newport News, Virginia, about five miles from railroad lines, and five miles from Interstate Highways 168, 464, and 64, where plutonium may be shipped overland. James Scott lives within 20 miles of the port of Newport News, Virginia, about five miles from railroad lines, and 5 miles from Interstate Highways 168, 464, and 64.

to these individuals at distances of 10 to 15 miles and may cause impacts beyond that distance, depending on the prevailing winds. Large Report, par. 7.3 and note 42.

The potential for such an attack and radiological release is “obvious” [*see Georgia Institute of Technology*, 42 NRC at 116], for two reasons. First, as stated in the Large Report, par. 6.9, note 39, a variety of weapons is available that can pierce the typically carbon steel walls of storage and transport casks. Second, as also discussed in the declarations and in the Large Report at Section 6, plutonium is an extremely attractive target to terrorists, because of the great harm that can be done with it. If a cask is successfully breached in a terrorist attack, the resulting explosion can do significant damage. If stolen, plutonium can also be used to make both dirty bombs and nuclear bombs. Indeed, the Homeland Security Department and the NRC have focused significant effort on monitoring and protecting all nuclear facilities, including Category I facilities, from attack. Plutonium transport vessels in the harbors of Charleston or Newport News are particularly attractive and likely targets, due to their high visibility and symbolic social value. Notably, the DOE is unable to say that the probability of such attacks is low, but states only that it is “not precisely knowable.” Supplemental Analysis at 23.<sup>8</sup>

Finally, the harm about which declarants express concern and seek to avoid, i.e., radiological injury to their health resulting from the taking of inadequate security measures for the 140 kg of plutonium to be exported, is within the scope of injuries

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<sup>8</sup> While the DOE has stated that the likelihood of success of such an attack is “very low,” *see* Supplemental Analysis at 23, the DOE does not seem to have grappled with the phenomenon that terrorists seek out targets of high visibility and symbolic social value, as witnessed by the attacks on the Pentagon and the World Trade Center in 2001,

protected by the Atomic Energy Act. *See Curators of the University of Missouri*, LBP-90-18, 31 NRC at 565.<sup>9</sup>

## V. THE GRANTING OF A HEARING IS IN THE PUBLIC INTEREST

The granting of Petitioners' hearing request would serve the public interest. As documented above, and in the Lyman Declaration and Large Report, Petitioners have raised gravely important questions about the safety and security of the proposed Export License Application, and have pointed out serious deficiencies in the environmental analyses that are purported to support the application. Moreover, Petitioners' concerns are supported by the declarations of qualified experts who have extensive experience in national and international security issues, and who are prepared to testify in the proceeding. In their submittals, they raise significant security issues that do not appear to have been addressed by the NRC, the DOE, or any other federal government agency. They are in a position to make a substantial contribution to the process of reviewing the Export License Application for the purpose of ensuring that it is sufficiently stringent to protect the common defense and security against undue risk, and to ensure a well-

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the bombing of the U.S.S. Cole in 2002, the 1998 bombing of the U.S. Embassy in Nairobi, and most recently, the bombing of two synagogues in Istanbul.

<sup>9</sup> Petitioners acknowledge that the claims they make in Section III go beyond issues that relate to the injuries their members may personally suffer. For instance, Petitioners are concerned about the adequacy of security measures to protect plutonium while it is in transit from the United States to France on the Atlantic Ocean, and also while it is in France. Obviously, Petitioners' members do not live close enough to these places to claim injury for purposes of showing standing. Nevertheless, they have standing to raise all of these claims. As the Commission recognized in *Yankee Atomic Electric Company* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996), "[o]nce a party demonstrates that it has standing to intervene on its own accord, that party may then raise any contention that, if provide, will afford the party relief from the injury it relies upon for standing."

reasoned decision that provides reasonable protection to the environment under the National Environmental Policy Act.

**VI. CONCLUSION**

For the foregoing reasons, the Commission should grant Petitioners' hearing request.

Respectfully submitted,

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