



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

October 19, 1979

OFFICE OF THE
SECRETARY

MEMORANDUM FOR: Leonard Bickwit, Jr., General Counsel
FROM: Samuel J. Chilk, Secretary *[Signature]*
SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION 79-32, 3:00 P.M.,
FRIDAY, OCTOBER 19, 1979, COMMISSIONERS' CONFERENCE ROOM,
D. C. OFFICE (OPEN TO PUBLIC ATTENDANCE)

- I. Order in Philippine Application (In the Matter of Westinghouse Electric Corporation - Exports to the Philippines) (Application No XR-120, Docket No. 110-0495) (Application No. XCOM-0013)

The Commission, by a vote of 3-0*, approved the attached Order.
(Subsequently, the Secretary signed the Order later in the day.)

cc:
Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford
Commissioner Ahearne
Exec Dir for Operations
Commission Staff Offices

*Commissioners Gilinsky and Bradford were not present but had previously indicated their prior approval.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Joseph M. Hendrie, Chairman
Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford
John F. Ahearne

In the matter of
WESTINGHOUSE ELECTRIC CORP.
(Exports to the Philippines)

Application No. XR-120
Docket No. 110-0495

Application No. XCOM-0013

ORDER

On April 19, 1979, the Nuclear Regulatory Commission received a Petition for leave to intervene and for a hearing concerning a license application by Westinghouse Electric Corporation covering the export of slightly enriched uranium to the Philippines, and to consolidate consideration of that license with two other nuclear license applications pending for the Philippines.^{1/}

The material would be used to fuel a nuclear power reactor being constructed by the Philippine National Power Corporation at Napot Point on the island of Luzon.

The Westinghouse Electric Corporation submitted an application to export a nuclear facility (XR-120) to the Philippines on November 18, 1976. The Commission did not receive final Executive Branch views on that application until September 28, 1979.^{2/} Because action had not been taken on the reactor application, on August 3,

^{1/} The Commission had published a notice of receipt of this license application (XSIM-1471) in the Federal Register on March 20, 1979, 44 Fed. Reg. 16987.

^{2/} Under Section 126a(1) of the Atomic Energy Act the Commission may not issue a reactor export license until it "has been notified by the Secretary of State that it is the judgment of the Executive Branch that the proposed export... will not be inimical to the common defense and security..."

1978 Westinghouse submitted an application (XCOM-0013) requesting authorization to export components to the Philippines which would permit construction activities related to the facility to continue while the U.S. Government reviewed the reactor application. On November 3, 1978, the Executive Branch recommended that NRC issue the component license. The Commission has deferred action on the component license application pending receipt of the Executive Branch views on the facility application.

The Petitioners -- The Center for Development Policy (CDP), Jesus Nicanor P. Perlas, III, and the Philippine Movement for Environmental Protection (PMEP) -- specifically requested a hearing on seven issues: (1) the nature and magnitude of seismic and geological risks posed by the reactor site; (2) the adequacy of the reactor's seismic design; (3) the environmental impact of the proposed reactor and disposition of its spent fuel; (4) dangers to the health and safety of Philippine citizens posed by the reactor; (5) dangers to the health and safety of U.S. citizens residing in the Philippines; (6) risks to the effective operation of U.S. military installations in the Philippines; and (7) generic safety questions posed by nuclear power plants, and by Westinghouse reactors in particular.

On June 26, 1979, another group, the Concerned Citizens Reactor Export Review Board, also requested an opportunity to submit information on the Philippine export applications.

On September 28, 1979, the Executive Branch submitted its views recommending issuance of XR-120. On October 10, 1979, the Commission discussed the pending intervention and hearing requests at a public Commission meeting. After thoroughly considering the submissions already received from Petitioners, the Applicant

(Westinghouse Electric Corporation), and the Nuclear Regulatory Commission staff, the Commission has decided that it would be appropriate to order further public proceedings in this matter. The Commission believes that such proceedings would assist it in making the statutory determinations required by the Atomic Energy Act and would be in the public interest. See 10 C.F.R. 110.84(a)(1) and (2) and Section 304(b) of the Nuclear Nonproliferation Act of 1978, 42 U.S.C. 2155a.

The issues which have been raised in the present matter fall into two general categories. First, there are those issues which pertain to the proper scope of the Commission's jurisdiction to examine health, safety and environmental questions arising from the construction and operation of exported nuclear facilities, and what procedural framework would be appropriate for considering such issues, if they are found to lie within NRC authority. The second category of issues are particular health, safety and environmental aspects of the Napot Point facility (for example, the reactor's seismic design) which the Commission has been asked to examine in the context of its export licensing review. The Commission believes it would be useful, before ordering any proceedings on this second group of issues, to receive submissions from the participants and any other interested individuals or groups concerning the precise scope of the Commission's foreign health, safety and environmental jurisdiction and what procedures the Commission should adopt to govern further proceedings (if any) regarding the Philippine export license applications and other applications of this type. Therefore, the Commission requests that participants and any other interested persons file with the Commission a statement of views on the procedural and jurisdictional issues outlined below on or before November 14, 1979. The identification in this order of certain issues which the Commission believes

particularly relevant for reviewing the jurisdictional and procedural aspects of the matter is intended as guidance for those who may wish to participate in these proceedings. If commenters believe that there are other matters pertaining to the procedural and jurisdictional issues which should be considered by the Commission, their submissions should address those matters. Also, the Commission recognizes that consideration of specific facts associated with the Philippine Export Applications may be instrumental in resolving these general jurisdictional and procedural issues. Therefore, it is expected that the written submissions will discuss the factual circumstances of the pending Westinghouse license applications, to the extent relevant to the legal and policy questions under consideration.

In this first phase of its proceedings, the Commission specifically requests that the following issues be addressed:

1. Whether (and if so, to what extent) the Commission possesses the legal authority or a legal obligation to examine the health, safety and environmental impacts of an exported nuclear facility in reaching its licensing determination (specifically, which of the seven issues raised by Petitioners are appropriate for Commission review)?

2. Is the Commission's health, safety or environmental review of export license applications limited to the connection of these issues with the U.S. common defense and security or are there other legal principles which permit or require the Commission to examine these matters as part of its licensing review?

3. What issues arising from the application to export a nuclear facility to the Philippines should the Commission examine in any future public proceeding?

4. What procedural format should the Commission adopt to examine any foreign health, safety and environmental issues falling within its jurisdiction?

5. If health, safety and environmental aspects of a U.S.-supplied nuclear facility are to be evaluated in the NRC export licensing process, in what specific manner should this review be conducted differently from the Commission's domestic reactor licensing proceedings? Should the scope of review be different, and if so, in what precise way?

6. Are there any factual or legal considerations which would justify a different NRC health, safety or environmental review for some export license applications than for others? Specifically, are such considerations applicable to the present matter?

After receiving submissions on the jurisdictional and procedural issues, the Commission will expeditiously review any new filings, as well as materials already submitted, and announce its decision on these issues. At that time the Commission will also issue a further order defining the nature and scope of further proceedings (if any) to be conducted on specific issues within the Commission's licensing jurisdiction arising from the pending Westinghouse facility and component export license applications.

With regard to Petitioners' consolidation requests, the Commission notes that its rules provide [in 10 C.F.R. 110.84(d)] that a hearing request will not be granted "prior to receipt and evaluation of Executive Branch views on the license application." Since Executive Branch views have not been received on the fuel license application (XSNM-1437), consolidation of that license with the facility and component license applications would not be appropriate at this time. Therefore, the Commission is consolidating its consideration only of applications XR-120 and XCOM-013 for purposes of the present proceeding. However, it should be noted that issues raised by all three license applications are substantially the same, and that the Commission would expect to consider all

relevant matters pertaining to the Philippine exports in the scope of the proceeding commenced by this order.

The Commission does not reach a decision on whether any of the Petitioners is entitled to a hearing under Section 189a. of the Atomic Energy Act. Since the Commission has decided to authorize a hearing pursuant to Section 304(b) of the Nuclear Nonproliferation Act, that issue is moot.

It is so ORDERED.

For the Commission

SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, DC,
this day of October 1979.

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