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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	Application No. XR-120
WESTINGHOUSE ELECTRIC CORP.	)	Docket No. 110-0495
	)	
(Exports to the Philippines)	)	Application No. XCOM-0013

RESPONSE OF THE DEPARTMENT OF STATE
TO REQUEST FOR WAIVER OF RULES

This pleading is filed by the Department of State, pursuant to 10 CFR 110.111(d), in response to the request of the Center for Development Policy, Philippine Movement for Environmental Protection, Movement for a Free Philippines, and Jesus Nicanor Perlas III, that the Commission waive its rules governing export procedures and adopt procedures set forth at pages 43-47 of their pleading filed November 19, 1979.

The Department of State strongly opposes waiver of the rules. The regulations concerning nuclear export proceedings were promulgated on May 19, 1978, in response to the requirement in Section 304(b) of the Nuclear Non-Proliferation Act of 1978, 42 U.S.C. 2155a. These regulations resulted from detailed consideration within the NRC and followed careful interagency discussions of what procedures would be appropriate for export licensing cases. Insofar as they concern public participation, they drew on the experience gained by the Commission during its proceedings on export licenses XNM-805 and 845. In the context of those licenses, pleadings were

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submitted which led to the decision to adopt the procedural format then used, and now more precisely developed and reflected in 10 CFR 110.

The Department of State believes that it is important to give the procedures in 10 CFR 110 an opportunity to work. This, after all, is the first case of public participation under those procedures. We believe that to waive those procedures would create unacceptable uncertainty abroad as to how the United States intends to act in export licensing cases. As the Commission knows, the NNPA seeks to establish the United States as a reliable and timely nuclear supplier to countries that meet the non-proliferation criteria identified in law. Part of that effort is the creation of predictable and expeditious procedures, as mandated by the NNPA, to deal with export licensing cases. We will be severely hampered in arguing to foreign nations that, if they meet U. S. requirements, they can expect a reliable supply, if the procedures for, and timing of, NRC consideration of license applications are perceived to be subject to case-by-case variation. Thus, as a general matter, we do not believe waiver of the procedures is desirable. Further, we believe it is inappropriate because we believe the procedures in 10 CFR Part 110 are adequately suited for the consideration of the current case.

Without reaching the legal question as to the extent of NRC's authority to employ mandatory process in an export licensing proceeding, the Department believes that discovery and the use

of mandatory process as proposed are particularly inappropriate in such a proceeding. As indicated in our response to Question 4, in our November 14, 1979, pleading, the Department does not believe additional discovery is required. Moreover, we believe the kind of discovery procedure suggested by petitioners could have extremely inflammatory foreign policy consequences and thus should clearly be avoided. Finally, we do not believe the procedure suggested, as applied to classified information, would be acceptable and believe that the current regulations are entirely adequate with respect to the treatment of such information.

We point out that the Executive branch has submitted its comprehensive views and analysis of the case in its September 28, 1979, submission to the Commission. The NNPA establishes a procedure by which the Department of State is given responsibility to speak on behalf of the Executive branch before the Commission in export licensing proceedings. Therefore, we believe it is unnecessary and inappropriate for the Commission to request separate information from individual United States Executive branch agencies. Further, as the Department indicated in its November 14 pleading, a site analysis of a foreign site is clearly inappropriate. We do not believe that any foreign government would be likely to agree that the United States could conduct such an analysis. Moreover, such a review would be inconsistent with Executive Order 12114. In the instant case, we note that the Government

of the Philippines itself continues to give careful attention to questions of health and safety related to the site and the plant. The kind of review that the United States may appropriately conduct was discussed in our November 14 pleading.

Finally, the suggestion that Westinghouse be required to withdraw its pending export license application is unprecedented. Under law, we know of no authority for such action. If the relevant statutory criteria are met, Westinghouse is entitled to receive the license in a timely fashion. The law and procedures permit certain delays to permit public participation when certain criteria are met, but we see no justification or rationale for requiring Westinghouse to withdraw its application.

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November 29, 1979

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