

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of :
WESTINGHOUSE ELECTRIC CORPORATION :
(Exports to the Philippines) :

: Docket No. 110-0495
: Application No. XR-120
: Application No. XCOM-0013
: (Application No. XSNM-143)

REPLY OF INTERVENOR/PETITIONER
COALITION AGAINST REACTOR EXPORTS
(COALITION CARE) TO ANSWER OF
APPLICANT WESTINGHOUSE ELECTRIC
CORPORATION



Intervenor/ petitioner Coalition Against Reactor Exports
(Coalition CARE) hereby makes its Reply to the Answer of Ap-
plicant Westinghouse Electric Corporation, and in further sup-
port of its previously filed Motion to Intervene respectfully
submits:

1. Good cause exists for the Commission to treat the the Coalition's Motion to Intervene as having been timely filed.

As Applicant observes in its Answer, when the Commission
first published notice of the Application by Westinghouse for
a license to export a nuclear utilization facility to the
Philippines, the Commission stated:

"In its review of applications solely to author-
ize the export of production or utilization facili-
ties, the Nuclear Regulatory Commission does not
evaluate the health and safety characteristics
of the facility to be exported. Consequently,
there are no safety analysis ... reports."
41 Fed. Reg. 56895.

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This announcement was consistent with the Commission's then
existing policy not to consider health and safety impacts of
reactor exports on foreign populations. See, e.g., Edlow

International Company, 3 NRC 563, 575, 582, 583 (1976); Westinghouse Electric Corporation, 3 NRC 739, 754 (1976); see also, Babcock and Wilcox, 5 NRC 1332, 1353 (1977).

However, by order dated October 19, 1979, the Commission consolidated applications nos. XR-120 and XCOM-0013 and invited public submissions on "the precise scope of the Commission's foreign health, safety and environmental jurisdiction and what procedures the Commission should adopt to govern further proceedings" regarding the Philippine export licenses. (P. 3 of Order.) This Order strongly intimated that the Commission was considering a significant and potentially far-reaching revision of its past policies. In view of these changed circumstances, the Coalition promptly moved to intervene within the time limits set by the Commission for submissions in response to its Order. These changed circumstances constitute good cause for the Commission to treat the Coalition's Motion to Intervene as having been timely filed.

2. The Coalition has standing to intervene in Commission proceedings related to the export of a nuclear reactor to the Philippines.

The Coalition has previously described the interests of its members which it will represent in proceedings before the Commission. See page 3 of previously filed Brief, dated November 15, 1979. The affidavit of Coalition member David O'Connor, which was appended to that Brief, notes, for example, a long-term contractual interest which may be damaged by the unsafe location, construction or operation of the proposed reactor. The Coalition now invites the Commission's attention to the affidavit appended to this Reply, in which the property interests

of an unnamed^{1/} Coalition member are described. These are interests which will be damaged if the Coalition issues the requested licenses to Applicant. These are not mere abstract concerns generally shared by the public at large, but specific and legally cognizable interests which confer standing on the Coalition in the present proceedings before the Commission. (Warth v. Seldin, 422 U.S. 490, 498-499, 500 (1975).)

3. Philippine health and safety issues are within the Commission's jurisdiction; a full review of these issues in a public hearing would be in the public interest; the Coalition can assist the Commission in such a review, and for these reasons the Commission should not assign representation of the Coalition's interests to other parties.

In its previously filed Brief, the Coalition demonstrated why the Commission has jurisdiction to consider the impact of the proposed reactor on the health and safety of the Filipino people and the Philippine environment. In its Answer, Applicant

^{1/} There exists a real danger of retaliation by the Philippine martial law dictatorship against any Filipino who publicly opposes construction of the proposed Napot Point reactor. The Coalition submitted with its Brief and Motion to Intervene a copy of the United States State Department's Report to Congress on Human Rights Practices in the Philippines to demonstrate that critics of the martial law government and its policies are subject to arrest, torture, imprisonment without trial and even death at the hands of the Philippine military. For this reason, the Coalition cannot divulge the names of certain of its members who are Philippine citizens.

The affidavit appended to this Reply is, therefore, meant to serve two purposes. First, it is the Coalition's attorney's sworn statement that a representative member of the Coalition is a Filipino with cognizable legal interests which will be directly damaged by the Commission's issuance to Applicant of the requested licenses. Second, it serves as a reminder to the Commission that there are millions of Filipinos who would publicly state their opposition to the Napot Point reactor were it not for the repressive dictatorship presently in power in the Philippines.

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fails to address or rebut those arguments, but instead simply relies on past expressions of past Commission policies. As the Coalition demonstrated, these policies have now been undermined by the Nuclear Non-Proliferation Act of 1978 and Executive Order 12114. The arguments presented in the Coalition's Brief regarding the Commission's jurisdiction need not be repeated here.

Applicant's claim that public hearings on the health and safety risks of the proposed Philippine reactor would not be in the public interest rests on a doubly mistaken premise. Applicant argues only that a foreign policy objective of the United States -- namely, assuring other nations of its reliability as a supplier of nuclear materials and components (22 U.S.C. § 3201, subd. (b)) -- would be frustrated by the delays attendant upon safety and environmental reviews for a foreign reactor site. (See pages 16-18 of Attachment I to Applicant's Answer.) But the word reliable means "trustworthy, safe, sure." (The Shorter Oxford English Dictionary (3d ed.), p. 1696.) Export of an unsafe reactor to the Philippines hardly enhances the reliability of the United States as a major supplier of nuclear materials and components. The Commission therefore should not sacrifice consideration of safety issues to concerns for mere timeliness. Second, Applicant overlooks another, and equally important, foreign policy objective of the United States -- "in particular, to identify alternative options to nuclear power in aiding [foreign] nations to meet their energy needs, consistent with the economic and material resources of those nations and

environmental protection." (22 U.S.C. § 3201, subd. (d).) Public hearings on health and safety issues are in the public interest because they further this Congressional policy declaration. They are also in the public interest because of the widespread fear that volcanic and seismic risks -- examined at length in the Coalition's previously filed Brief -- make the Napot Point reactor manifestly unsafe and a monumental folly. Only a public inquiry can satisfy the persistent doubts about this reactor's safety.

The Coalition will assist the Commission in its review of these health and safety issues. Because of its members' familiarity with Philippine-American relations, Philippine history and political, social, economic and environmental factors which presently obtain in the Philippines, the Coalition can provide the Commission and its staff with a full picture of the context in which the export license applications must be viewed to fulfill the policy mandate of subdivision (d) of 22 U.S.C. § 3201. The Coalition will also present appropriate testimony on the technical safety issues related to the location of pressurized water reactors (PWRs) in areas of seismic and volcanic activity.

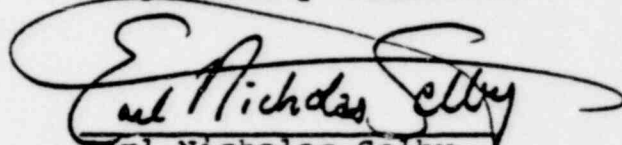
For these reasons, the Commission should not assign representation of the Coalition's interests to other intervening parties. Neither public confidence nor the public interest will be furthered by preventing full participation by parties which have demonstrated, as the Coalition has, both cognizable legal interests and the ability to assist the Commission in complete consideration of the health, safety and environmental

issues.

4. Conclusion.

Wherefore, the Coalition respectfully requests the Commission to grant it leave to intervene.

Respectfully submitted:

A handwritten signature in cursive script that reads "Earl Nicholas Selby". The signature is written in black ink and is positioned above the typed name and address.

Earl Nicholas Selby
Attorney for Intervenor/Petitioner
Coalition Against Reactor Exports
2361 Columbia Street
Palo Alto, CA 94306
(415)-326-7740

Dated: December 18, 1979

AFFIDAVIT



I, the undersigned, Earl Nicholas Selby, being first sworn, do depose and say:

1. I am a member of the State Bar of California, with law offices at 2361 Columbia Street, Palo Alto, Calif., 94306, phone (415)-326-7740.

2. I am counsel for the Coalition Against Reactor Exports (Coalition CARE) in proceedings before the Nuclear Regulatory Commission, Docket No. 110-0495, related to the application of the Westinghouse Electric Corporation to export a nuclear reactor to the Philippines.

3. Coalition CARE, as described in its previously filed Motion to Intervene in those proceedings, is composed of numerous Philippine citizens and American citizens who are concerned with the adverse impact of the reactor export on the health and safety of the Filipino people.

4. One member of Coalition CARE, who cannot be identified by name because of the danger of retaliation by the martial law dictatorship in the Philippines, can be described as follows:


- A. She is of voting age and a citizen of the Philippines.
- B. She presently resides in Mountain View, California.
- C. She is a member of Coalition CARE.
- D. She owns property in the city of Olangapo, Zambales province, in the Philippines, located approximately 20 miles from the site of the proposed nuclear plant.
- E. This property is of a commercial character and produces income for her family and relatives.
- F. She believes her property interests will be endangered by Commission approval of the export licenses requested by Westinghouse and, in particular, by the unsafe location, construction or operation of the proposed reactor.
- G. For this reason she is a member of Coalition CARE and endorses its Motion to Intervene in proceedings before the Commission.

5. Based on my four years of experience in the Philippines, living there at carious times before and after the declaration of martial law, and based on my personal knowledge of and friendship with persons who have been arrested by the martial law government solely because of their political beliefs, I believe that her fear of retaliation has a solid basis in fact. For this reason, at her request, I cannot divulge her name.

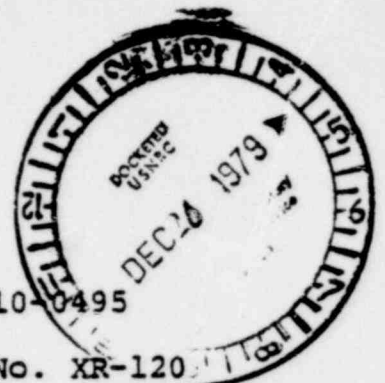
Earl Nicholas Selby

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Subscribed and sworn to before me, this ___th day of December, 1979.


 GLORIA A. DAY
 NOTARY PUBLIC - CALIFORNIA
 SANTA CLARA COUNTY
 My commission expires July 12, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of	:	Docket No. 110-0495
WESTINGHOUSE ELECTRIC CORPORATION	:	Application No. XR-120
(Exports to the Philippines)	:	Application No. XCOM-0013 (Application No. XSNM-1437)

CERTIFICATE OF SERVICE

I hereby certify that copies of the Reply of Petitioner/ Intervenor Coalition Against Reactor Exports (Coalition CARE) to the Answer of Applicant Westinghouse Electric Corporation were served upon the following persons by deposit in the United States Mail (First Class), postage prepaid, this 18th day of December, 1979:

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Those persons whose names are asterisked above were simultaneously served with a copy of the Brief and Motion to Intervene of the Coalition Against Reactor Exports filed with the Nuclear Regulatory Commission on November 15, 1979. Counsel apologizes for any inconvenience caused by previous failure to serve copies of the Brief and Motion to Intervene on such persons.

Earl Nicholas Selby
Counsel for Coalition Against
Reactor Exports

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
WESTINGHOUSE ELECTRIC CORPORATION) Docket No.(s) 50-574
)
(Exports to the Philippines)) (Export/Import No. 11000495)
)
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this

20th day of DEC 1979.

Peggy T. Downing
Office of the Secretary of the Commission

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
WESTINGHOUSE ELECTRIC CORPORATION)
(Exports to the Philippines))

Docket No.(s) 50-574
Export-Import No. 11000495

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