

NRC PUBLIC DOCUMENT ROOM



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the matter of	)	
	)	
WESTINGHOUSE ELECTRIC CORP.	)	Application No. XR-120
	)	Docket No. 50-574
	)	
(Exports to the Philippines)	)	Application No. XCOM 0013
	)	Application No. XSNMO 1471
	)	

PETITION FOR LEAVE TO INTERVENE  
AND REQUEST FOR HEARING

The Nuclear Regulatory Commission (hereafter sometimes referred to as "the Commission" or "NRC") published in the Federal Register of March 20, 1979 a Notice of Receipt of Application No. XSNMO 1471 for the export of "3.6 enriched uranium" to the Philippines, constituting the "initial core and three reloads" for a proposed electric power plant nuclear reactor to be located at Morong, the Philippines (hereinafter sometimes referred to as "the Reactor" and "the proposed Reactor"). Already pending before NRC are two other export applications, numbers XR-120 and XCOM-0013, respectively for the Reactor itself and component parts thereof.

Pursuant to the Commission's Rules and Regulations, 10 C.F.R. Chapter I, Part 110, this Petition for Leave to Intervene and hearing request in No. XSNMO-1471 is filed by the Center for Development Policy, Jesus Nicanor P. Perlas, III, and the Philippine Movement for Environmental Protection.

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I. Identification of Petitioners<sup>1/</sup>

1. The Center for Development Policy.

The Center for Development Policy (hereinafter "CDP") is a project of The International Center, a District of Columbia nonprofit corporation duly ruled by the Internal Revenue Service to be charitable and educational and, therefore, exempt from taxation under §501(c)(3) of the U.S. Internal Revenue Code. CDP monitors the flow of resources to developing nations, primarily from the United States, and conducts independent nonpartisan research and analysis of development policies and their implementation which is disseminated to the public and interested public officials and offices of government.

CDP is conducting comprehensive research and analysis of policies and risks posed by the export of nuclear reactors and related equipment and material from the United States to developing countries and is particularly focussing on the nuclear power plant proposed for Morong, the Philippines, which is the subject of the three pending applications captioned above.

CDP's offices are located at 225 Fourth Street, Northeast, Washington, D. C. 20002 (telephone: (202) 547-1656).

2299 340

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<sup>1/</sup> This information is submitted pursuant to 10 C.F.R. §110.82(b)(1) and (4).

2. Jesus Nicanor P Perlas, III.

Jesus Nicanor P. Perlas, III (hereinafter "Perlas") is a citizen of the Philippines (residence address: 99 Roces Avenue, Quezon City, Philippines) presently a resident of the United States of America (3508 Lowell Street, N.W., Washington, D. C. 20016, telephone: (202) 363-0643). Perlas' Philippine residence is approximately 65 miles from the Reactor site in Morong. Perlas holds a B.S. degree in agriculture from Xavier University, Philippines. He presently is a candidate for a M.S. degree in Botany (major in Ecology) at the University of the Philippines and is writing his master's thesis on Energy and Agriculture in the Philippines, in part focusing on the environmental and agricultural impact of the Reactor.

He has published articles on the potential dangers of nuclear power to Philippine agriculture and, during the past year, has lectured frequently at conferences, symposia, and other educational programs on questions concerning the safety, potential agricultural impact, and political implications of nuclear power in general and the proposed Morong facility in particular, in the Philippines, Canada, and the United States. Perlas is the Executive Secretary of petitioner Philippine Movement for Environmental Protection.

2299 341

3. Philippine Movement for Environmental Protection.

The Philippine Movement for Environmental Protection (hereinafter "PMEP") is an unincorporated association comprised primarily of Philippine citizens who reside within 40 miles (most in or near the town of Morong, within 10 miles) of the proposed reactor site. It has several members in the United States and also serves as a loose coalition of organizations in the Philippines concerned with environmental protection in general and the Reactor in particular.

PMEP seeks to determine and evaluate the potential risks and benefits of the proposed Reactor and assure that the Philippine and American publics receive all pertinent information and can formulate intelligent views on questions concerning the proposed Reactor and communicate those views to all pertinent agencies and officials, both in the United States and the Philippines. PMEP's main address is P. O. Box 3153, Manilla, Philippines and its United States address is c/o Jesus Nicanor F. Perlas, III, 3508 Lowell Street, N.W., Washington, D. C. 20016 (telephone: (202) 363-0643.)

2299 342

II. Interest of Petitioners<sup>2/</sup>

There are several reasons to believe that favorable NRC disposition of the instant license applications would result in construction of the proposed Reactor which, in turn, could result in serious injury to the common defense and security and/or the health and safety of the public and may well be inimical to those interests.<sup>3/</sup>

CDP seeks to assure that the American public is as fully informed as possible about the environmental, public health and safety, and national defense and security implications of the proposed Reactor and that the Commission, in disposing of the instant applications, make all pertinent data and information available to the public and take into account all pertinent criteria, including all relevant public participation in these proceedings which can result from a well informed public opinion.

Perlas' interest in this proceeding is both professional and a question of his personal health and safety. His Philippine residence is close to the proposed Reactor site and any untoward development at the reactor could well cause him serious personal injury.

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<sup>2/</sup> Submitted pursuant to 10 C.F.R. §110.82(b)(4) and 110.84(b).

<sup>3/</sup> See 42 U.S.C. §2131.

Moreover, both as an individual and an official PMP, Perlas is engaged in research, analysis, and public education pertaining to the risks of the proposed reactor and has an interest in assuring that those risks are as thoroughly and completely ventilated before the public and before the Commission in the above instant proceedings.

Approximately one-half of PMP's 200 members live within 40 miles of the proposed Morong Reactor site. Like the residents of Harrisburg, Pennsylvania and environs in the case of the Metropolitan Edison Company's Three Mile Island reactors, PMP and its members have an extraordinary interest in assuring that any nuclear facility constructed near their homes will not expose them or their families to serious health and safety dangers. Moreover, because of the close military relationship between the United States and the Philippines, all petitioners have an interest in assuring the proposed reactor not jeopardize the common defense and security, whether by threatening the continued operation of the U.S. military bases in the Philippines, at Subic Bay and Clark Air Force Base, both of which are in close proximity to the proposed reactor site, or otherwise.

Petitioners have a clear interest in the issuance or denial of the instant applications,<sup>4/</sup> which involve,

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<sup>4/</sup> See 10 C.F.R. 110.84(b) (3).

respectively, the Reactor itself, component parts, and fuel. Denial of any or all of the applications would either delay or preclude construction of the Reactor and thus assure that the possible risks to petitioners, the United State, the Philippines, their citizens, and particularly the U.S. citizens who are or may be stationed at Clark Air Force Base and/or Subic Bay Naval Station, the Philippines, at such time as the reactor might be built, would not be exposed to such risks. Moreover, if the Commission issues one or more of the requested licenses but makes its issuance subject to the highest feasible public health and safety and common defense and security safeguards, both petitioners and all affected governments and public interests will be advanced.

It clearly is within the Commission's authority to inquire into the factors raised by this Petition and, as requested by petitioners, to delay issuance of the above captioned applications until (a) all pertinent information and data has been made available for public inspection and analysis and (b) the public has been afforded a reasonable opportunity to present its views on these questions to the Commission. See 42 USC §2155(a) and 10 C.F.R. Chapter 1, part 110, particularly §§110.40(c), 110.44(a) and (b), 110.80-110.91, and 110.100.

The intervention and hearing sought herein plainly

will be in the public interest<sup>5/</sup> and will assist the Commission in making statutorily required determinations.<sup>6/</sup>

Hornbook law requires federal agencies to afford the public the widest possible opportunity to participate in significant proceedings and to make their processes should be as open as possible.<sup>7/</sup> This was acknowledged by Congress in the 1978 Nonproliferation Act, P.L. 95-242 (March 10, 1978) §304(b) of which enacted 42 U.S.C. §2155a. It requires the NRC to make provision for public participation in export proceedings. The Rules and Regulations promulgated pursuant to that statutory requirement appear in 10 C.F.R. Chapter 1 part 110 subparts I and J and include specific recognition by the Commission that public participation and input is encouraged. See, e.g., 10 C.F.R. §110.81(a).

As is more fully explained in the following sections of this petition, petitioners bring to the instant proceedings a perspective which (a) is presently

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<sup>5/</sup> See, e.g., Neusse v. Camp, 358 F.2d 694 (D.C. Cir., 1967.)

<sup>6/</sup> See 10 C.F.R. 110.84(b) (3).

<sup>7/</sup> See e.g., Office of Communication of the United Church of Christ v. F.C.C., 359 F.2d 994 (D.C. Cir., 1966).

lacking and (b) will assist the Commission in making statutorily required determinations. In short, petitioners represent and, in proceedings before the Commission, will advance a point of view (a) supportive of the widest possible public participation and information and (b) intelligently critical, from a public interest perspective, of the contentions of applicant Westinghouse and other participants with a direct financial interest in these proceedings.

### III. Background and Newly Available Information

The initial application for a license to export the Reactor was filed by Westinghouse on November 18, 1976 and announced in the Federal Register of December 30, 1976. Pursuant to 42 USC §2112, the Department of State by letter of December 12, 1977 informed the Commission that the Executive branch "concluded that issuance of the proposed license would not be inimical to the interests of the United States including the common defense and security" and recommended its issuance.

However, information subsequently reached the public indicating that, largely because the Reactor's Morong site is in a seismically active area, it might be far more dangerous than the Commission and the Executive Branch were originally led to believe by

applicant Westinghouse and other interested parties. Moreover, the 1978 Nuclear Nonproliferation Act required that the Executive Branch determination of whether a proposed export license might be "inimical to the common defense and security" be coordinated by the Department of State with participation by the Departments of Defense, Energy, and Commerce, and the Arms Control and Disarmament Agency, 42 U.S.C., §2112.<sup>8/</sup>

Because of these two factors, the Executive Branch withdrew its certification that the Reactor's export would not be inimical to the common defense and security and reserved its decision until it could review an analysis of the reactor site and design by an International Atomic Energy Agency team (hereinafter "the IAEA report"). The Commission communicated the Executive Branch's action to Westinghouse by letter of July 10, 1978.

Westinghouse has filed two subsequent export license applications. On August 3 or August 4, 1978, it requested a license to export reactor components (Application No. XCOMO013) and, on March 6, 1979 (published in the Federal Register of March 20, 1979), it applied for a license to export fuel for the reactor.

Petitioners learned from an article in Nucleonics Week (April 5, 1979, pages 8-9) that the IAEA report "reported on safety concerns" and had been transmitted by

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<sup>8/</sup> See also pertinent Regulations published at 43 Fed. Reg. 25,326, et seq.

the Philippine government to the State Department. Accordingly, on April 16, 1979, petitioner CDP requested that the State Department make the IAEA report available to it and the public pursuant to the provisions of the Freedom of Information Act (copy of letter attached). CDP's telephone communications with the State Department indicate that that agency has not yet received the IAEA report, but expects it momentarily and plans to act quickly and without public input

Because of newly disclosed information concerning the Reactor's potential dangers,<sup>9/</sup> petitioner CDP is in the process of gathering data and conducting expert analysis regarding the Reactor's seismic risks and the extent to which its seismic design can protect against serious dangers to public health and safety and/or common defense and security. Clearly, the IAEA report will enable CDP and all other interested members of the public to better evaluate those risks and design questions and determine whether they warrant participation, by comment, intervention, or otherwise, before the Commission in these proceedings.

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<sup>9/</sup> An article in the Journal of Commerce, April 10, 1979, reports that "the controversial Westinghouse Electric Corp. nuclear plant being constructed in the Philippines lies within a few miles of a major geological fault according to scientists in Manila...The area is prone to serious volcanic activity emanating from a geological fault which...has given rise to catastrophic eruptions within the last few years."

IV. Issues Raised by Petitioners<sup>10/</sup>

As information regarding the Reactor, its site and design, has leaked out to the public, there has been growing concern that the Reactor's construction might pose extraordinary risks to public health and safety and the common defense and security and, accordingly, that the instant export applications should be denied.

Without reaching that conclusion or prejudging the questions, Petitioners suggest that the following issues raised by the instant applications, primarily because the Reactor site in Morong is in a seismically active area and it is not clear that the Reactor's seismic design is sufficient to withstand to likely earthquakes and/or volcanic eruptions, must be made the subject of NRC public hearings:

1. The nature and magnitude of the seismic and geological risks and dangers posed by the Reactor site, including those detailed in the IAEA report.

2. The adequacy of the reactor's seismic design to withstand the seismic risks it will face, including all considerations raised by the IAEA report.

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<sup>10/</sup> Pursuant to 10 C.F.R. §110.82(a)(2).

3. The likely environmental impact of the proposed reactor and disposition of its spent fuel. 11/

4. Dangers to the health and safety of U.S. citizens, primarily the approximately 13,000 military employees, personnel, and dependents stationed at Clark Air Force Base and Subic Bay Naval Base, the Philippines. 12/

5. Dangers to the health and safety of Philippine citizens, including petitioner PMP's approximately 100 members who reside within a 40-mile radius of the Morong site. 13/

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11/ See Executive Order 12114, 44 Fed. Reg. 1957 (January 4, 1979). It requires that the Commission take "pertinent environmental considerations...into account [along] with other pertinent considerations of national policy, in making decisions which may have a significant impact upon the environment...of the global commons outside the jurisdiction of any nation" or the environment of foreign nations.

12/ Senate report No. 95-467 on the 1978 Nuclear Nonproliferation Act provides that "[a]lthough the NRC finding on the health and safety of the public refers only to the American public, it should be recognized that certain overseas activities could pose a threat to Americans."

13/ For example, risks to the health and safety of Philippine citizens who help provide essential goods and services to the American military bases in the Philippines, particularly Subic Bay and Clark Air Force Base, could have a serious impact on the health and safety of Americans located at or near those bases, even if it were possible to insulate Americans themselves from the hazards of a nuclear accident.

6. Risks to the effective operation of U.S. military installations in the Philippines, primarily Clark Air Force Base and Subic Bay Naval Station. 14/

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14/ The strategic importance of these military installations to the common defense and security of the United States is clearly spelled out in the preamble to the March 26, 1947 Treaty between the United States and the Philippines covering U.S. military bases in the Philippines, Department of State publication 3257, page 1 (1948). That treaty confirms "the mutuality of interests of the United States of America and the Republic of the Philippines in matters relating to the defense of their respective territories" and provides for the establishment of U.S. military bases in the Philippines, the most significant of which are Clark Air Force Base and Subic Bay Naval Station, "to promote their mutual security and defend their territories and areas."

Also pertinent to the strategic importance of these facilities are the 1952 Mutual Defense Treaty between the United States and the Philippines, effective August 27, 1952, Department of State Publication 4733, page 5 (1954) and recent amendments to the Military Bases Agreement with the Philippines in January, 1979.

The strategic importance of Clark Air Force Base and Subic Bay Naval Station to U.S. national security and defense interests has been the subject of several recent statements by the Administration. On March 21, 1979, the President wrote to Rep. Lester Wolf, Chairman of the House Subcommittee on Asian and Pacific Affairs, urging approval of \$500,000,000 in Securities Supporting Assistance, Foreign Military Sales Credits, and grant Military Assistance during the next five years. The President stated: "I consider the amounts relatively modest in relation to the value which we derive from continued, unhampered operation use (sic) of those facilities."

On March 1, 1979, Assistant Secretary of State for East Asian and Pacific Affairs, Richard Holbrooke testified before the House Subcommittee on Asian and Pacific Affairs of the House Foreign Commerce Committee and emphasized at considerable length the continued importance "of the 32 year old military bases agreement",--cont'd

7. Generic safety questions posed by all nuclear power plants and by Westinghouse reactors in particular. 15/.

It is possible that, when the IAEA report and other pertinent data in the hands of NRC and other government agencies and/or applicant Westinghouse are made available to the public, additional issues may emerge pertaining to the common defense and security and/or public health and safety. Furthermore, as petitioners and other interested members of the public are able to analyze the available information, 16/ as well, petitioners may find that one or more of the above listed issues is not sufficiently serious to warrant specific hearing or attention by the Commission or, alternatively, that new issues, or subissues of those listed above, do require specific attention.

The possible developments listed above are substantially dependent upon the immediate relief requested below by petitioners to the extent that

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as recently amended to continue "unhampered U.S. military operations at the facilities" which "places on a firm footing the ability of our forces to operate effectively in the Pacific and Indian Oceans, protecting vital sea lanes and ready to support our friends and allies." (State Department prepared testimony, page 4)

15/ See, e.g., NRC Report to Congress, January 1, 1978, NUREG-0410.

16/ For example, as noted above, petitioner CDP is in the process of consulting seismologists, lawyers, and other persons with expertise in evaluating seismic risks and the Philippine Reactor's seismic design. Despite the extraordinary cost burdens such analysis poses on CDP, it plans to follow through and make the results available to the public.

it will make public the IAEA report and other pertinent data. This, in turn, will lead to better informed public analysis of the issues presented by the instant applications. On the basis of such analysis, petitioners may move to amend this petition by (a) presenting additional information to the Commission, (b) asking that certain issues be expanded, contracted, refined, or otherwise modified, and/or (c) requesting that additional interested persons and groups be added as intervenors to assure that these proceedings permit the widest possible public participation and take into account the widest possible range of public viewpoints and concerns.

V. Relief requested

For the above stated reasons, petitioners request that the Commission:

1. Grant this petition to intervene;
2. Act to assure that the IAEA report and all other pertinent data regarding the issues addressed by petitioners be made available for public inspection as soon as possible;
3. Assuming arguendo that the Executive Branch certifies the issuance of any or all of the instant licenses is not inimical to the common defense and security, defer any action other than denial of the instant applications until (a) petitioners and other interested members of the

public have had at least 60 days to inspect and analyze the IAEA report and all other pertinent data which the Commission has considered or will consider in these matters and (b) a hearing has been held commencing no sooner than 30 days after expiration of such 60 day period at which petitioners and all other interested members of the public will be able to participate fully, which hearing shall be based solely on public proceedings and a public record in which petitioners and all other interested parties will be able to present evidence and cross examine adverse witnesses.

4. Make available to petitioners and other interested members of the public the Commission's expertise and resources to assist them to thoroughly analyze and evaluate the issues discussed herein.

5. Consolidate all of the pending license applications listed in the caption of this Petition and all other matters pending or which may be brought pertaining to the Reactor.

Respectfully submitted,



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Thomas R. Asher



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Matthew B. Bogin

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Dated: April 19, 1979

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Director  
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Washington, D.C. 20520

Re: FOIA Request

Dear Sir:

This letter is to request, on behalf of the Natural Resources Defense Council, Inc. ("NRDC") and the Center for Development Policy ("CDP"), access under the Freedom of Information Act, as amended (5 U.S.C. § 522) (the "Act"), to the report of the International Atomic Energy Agency safety mission on the Philippine Nuclear Power Plant, Unit No. 1, now under construction at Napot Point in the Philippines. It was reported in the April 5, 1979, Nucleonics Week, at pp. 8-9 that this report was very recently submitted to the Department of State. In addition to the report, NRDC and CDP seek access to any analyses, comments or memoranda prepared by the Department of State or any other U.S. agency concerning the above.

I request that any records located as a result of your search be made available for inspection and copying. At the time they are made available, it will be determined whether it is necessary to reproduce any of them. If you determine that some or all of the records are exempt from release under the Act, please notify me in writing which exceptions you believe cover the materials you are not releasing, and make available the remainder of the records to the extent that they are "reasonably segregable," in accordance with the Act, from the records you have determined to be exempt.

2299 57

April 16, 1979

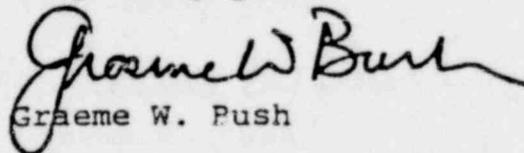
Page Two

NRDC is an organization with world-wide membership which has demonstrated a continuing interest in the safety of nuclear plants and their effect on the environment. CDP is a research and education project of the International Center and has had a continuing interest in the rational extension of technology, particularly abroad. This request on their behalf is, therefore, "in the public interest, because furnishing the information can be considered as primarily benefiting the general public," and any applicable fees should be waived as permitted by the Act. In the event that a search is required, and the Department of State is unwilling to waive search fees, I would appreciate your advising me in advance.

In light of my past experience with the Department of State I feel it necessary to point out that the Act provides 10 working days for an agency to respond to an FOIA request by producing the records requested or giving reasons for any refusal to produce. The Federal courts have held that lack of administrative resources does not excuse compliance with these time limits. The Department presently has pending before it one request filed in September 1978 and one appeal filed in May 1978, both on behalf of NRDC, as to which no disposition has been forthcoming. While I recognize the problems confronting the Department of State with respect to processing FOIA requests, lengthy delays and violations of the Act are not a solution available to the Department under the Act. Accordingly, I expect this request to be processed within the time limits afforded by the Act.

NRDC's and CDP's need for information requested by this letter is urgent. If you have any questions concerning this request, please contact me by telephone in order to expedite matters. Otherwise, I will expect to receive a reply from you within the ten (10) working days provided for response by the Act.

Very truly yours,

  
Graeme W. Bush

cc: S. Jacob Scherr, Esquire  
Thomas R. Asher, Esquire ✓

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