

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

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



COMMENTS OF
EBASCO SERVICES INCORPORATED
IN RESPONSE TO COMMISSION ORDER
ISSUED FEBRUARY 8, 1980

I. SUMMARY STATEMENT AND BACKGROUND

Ebasco Services Incorporated hereby submits its comments in response to the Commission's Order of February 8, 1980 (Order) that requested further public comment specifically relating to the Westinghouse applications for licenses of export to the Philippines for the Napot Point facility.

The Order initiates the second phase of a hearing process. The first phase commenced on October 19, 1979. As a result of the first phase hearing, the second phase comments have been limited by the Order to particular factors relevant to the Napot Point facility with respect to: "(a) the health, safety, or environmental effects the proposed export would have upon the global commons or the territory of the United States, and (b) the relationship of these effects to the common defense and security of the United States."

Ebasco Services Incorporated is one of the largest engineering and construction firms in this United States and operates throughout the world. Ebasco has an ongoing generic interest in the Commission's export licensing reviews because it has contracts and assignments relating to the engineering, construction and planning for nuclear power plants or facilities within the United States and in other countries of the world. Ebasco also serves as consultant to the National Power Corporation on the Napot Point facility and therefore has a specific interest in this hearing.

Ebasco's position is that the Commission, through its assistance in the preparation of the "Final Environmental Impact Statement on U.S. Nuclear Power Activities" (ERDA 1542, April 1976), has already adequately addressed the health, safety, and environmental effects upon the global commons and the territory of the United States. Additionally, there has been no showing of a relationship between these effects and the common defense and security of the United States in the instant case.

Therefore, the requested license should be issued immediately.

II. COMMENTS

A. The health, safety, and environmental effects the proposed exports would have upon the global commons or the territory of the United States have been fully addressed.

The Commission need not, and should not, consider further the health, safety or environmental effects of the proposed export on the global commons or United States territory. The only legal provisions which could possibly be construed to require inquiry into these areas are Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions", 44 Fed Reg 1957 (1979) and the National Environmental Policy Act, 42 USC 4321 ("NEPA"). Any obligations that the Commission may have with respect to NEPA are fulfilled by the "Final Environmental Impact Statement on U.S. Nuclear Power Activities" (ERDA 1542, April 1976). Any conditions precedent to the Commission's action imposed by Executive Order 12114 have been fulfilled by the Executive Branch evaluation transmitted to James R. Shea, Office of International Programs of the Commission, on September 28, 1979 by the U.S. Department of State.

The requirements of Executive Order 12114 are intended to further the purposes of NEPA by requiring some form of environmental review to be prepared for each major federal action. The purpose and scope of Executive Order 12114 state that:

While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act... consistent with the foreign policy and national security policy of the United States, and represent the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the

United States, its territories and possessions. Section 1-1

The Department of State was the lead Executive Branch agency responsible for preparing the environmental report "Concise Environmental Review Philippine Nuclear Power Plant Unit 1" which was sent to the NRC on September 28, 1979. As a matter of discretion, the Commission did not participate in the preparation of this evaluation and has deferred consideration as to the kind of resources it is willing to provide the Executive Branch in preparing such assessments. The Commission's decision is consistent with the policy that the NRC is not legally bound by Executive Orders pertaining to substantive parts of the decision making process owing to its position as an independent agency (SECY-80-20, page 13). Having exercised its discretion not to participate in the development of the analysis called for by the Executive Order, the Commission should, as a matter of policy, accept the findings and conclusions of the Executive Branch.

The Commission has previously considered the statutory language, legislative history and judicial decisions, and the interpretations of the Council on Environmental Quality, with regard to the Commission's NEPA obligations. (See Matter of Babcock and Wilcox, 5 NRC 1332 (1977)). The Commission in reaching its basic conclusion that NEPA does not require the preparation of environmental impact statements assessing the impact of U.S. exports on the local environment of foreign sovereigns, specifically addressed the international implications of NEPA Sections 102(2)(C) and 102(2)(F). First, the Commission concluded that Section 102(2)(F) imposed no obligation. In

discussing Section 102(2)(F) the commission noted:

Agencies are to seek and encourage cooperation with other nations on environmental problems. However, this requirement to lend support is limited to the extent 'appropriate' and 'consistent with the foreign policy of the United States'. Thus, Section 102(2)(F) does not appear to create enforceable obligations for agencies. To the contrary, the very conspicuousness of the foreign policy qualification indicates a concern for the practical problems of conducting foreign policy and responding to the vicissitudes of international relations. 5 NRC 1382 at 1338-39

Section 102(2)(C), while concluding that Section 102(2)(C) did impose an obligation on U.S. agencies, the Commissioners considered that obligation to be restricted, as follows:

Indeed, the references to the 'human environment' in Section 102(2)(C) and similar expressions elsewhere in the statute and the legislative history, while recognizing the need for U.S. agencies to consider the impact on the global environment of U.S. activities, can readily be understood in a manner far less intrusive on the sovereignty of other nations than Petitioner contends. These references emphasize a global or world-wide outlook, one concerned for the global commons for which the United States shares responsibility with all other nations, not an intent to become involved in matters primarily or exclusively of interest only to a particular foreign sovereign. In most contexts, moreover, the language emphasizes cooperative approaches to dealing with problems affecting the global environment, not unilateral measures taken by a single state. The obligation of Section 102(2)(C) plainly extends to considering the global impacts of the major federal actions significantly affecting the environment which also have substantial impacts within the United States - for example, impacts on the Pacific Ocean from oil transportation between Alaska and the continental United States. The more attenuated impacts on the United States become, however, the less clearly Section

102(2)(C) applies. 5 NRC 1339

The AEC undertook the preparation of a generic environmental impact statement in order to meet their NEPA obligations. This document, ERDA 1542, was completed by ERDA with NRC assistance and addresses the environmental, social, technological, economic, national security, and foreign policy benefits and costs of nuclear exports as well as the reasonably available alternatives and their foreseeable costs and benefits. The NRC, therefore, can clearly rely on ERDA 1542 to meet any requirements imposed by NEPA with respect to the Napot Point facility.

The Executive Branch considered ERDA 1542 in preparing its specific environmental statement for the Napot Point facility and stated that "There is no reason to believe that the nature of such activities described in ERDA 1542, as they relate to environmental impacts, will significantly change in the foreseeable future." (Concise Environmental Review Philippine Nuclear Power Unit 1, September 1979, page 22).

The Executive Branch conclusion should be echoed by the Commission. There are no effects on the global commons or United States territory associated with this application that have not been considered previously.

B. Health, safety and environmental effects on the global commons and United States territory should not be considered when deciding whether an export is inimical to the common defense and security of the United States.

The Commission's Office of General Counsel, in concluding that the Commission has the legal authority to evaluate

the health, safety and environmental effects of exports insofar as they bear on United States common defense and security issues, noted that the Commission may ignore such effects so long as its basis is defensible on policy grounds, (SECY-80-20, pages 7 and 16). The Commission should, as a matter of policy, refuse to consider health, safety or environmental effects on the global commons and United States territory as matters relevant to whether the export is inimical to defense and security of the United States.

The Commission demonstrated in preparing ERDA 1542 that the environmental impacts on the global commons and United States territories will be negligible. Edlow International Company, 5 NRC 1365 (1977). As discussed previously, the Executive Branch through the Department of State has reviewed the specific circumstances of the instant applications and found no reason to change this conclusion.

It has been argued by NRDC that an accident at Napot Point could result in contamination of the two U.S. military bases found within forty miles of the plant and that this would be inimical to common defense and security. While these military bases are United States interests, they cannot be considered either global commons or United States territories and therefore should not be considered in determining whether to grant the present applications under the limitations of the Commission Order of February 8, 1980.

Furthermore, the Executive Branch has considered the "unique" circumstances of the Napot Point Plant in preparing its "Export License Application Analysis" when explicitly addressing AEA Sections 126a (1), 127 and 129. This analysis,

transmitted to the NRC in the Department of State's letter of September 28, 1979, noted that questions have been raised about the safety of U.S. military forces and discussed specific site safety issues. The Executive Branch noted, "based on review of the proposed export, it is the judgement of the Executive Branch that the proposed export will not be inimical to the common defense and security, and that the license should be issued" (Export License Application Analysis, page 13).

As it has in the past, the Commission should defer foreign policy decisions to the Executive Branch. The Commission noted in a prior export application that:

In dealing with such questions (foreign policy), it would be irresponsible for this Commission not to consider fully the views of the Executive Branch agencies, which have not only functional competence, and constitutional responsibility, but also are politically accountable for foreign policy decision, (Westinghouse Electric (ASCO II)), 3 NRC 744 (1976).

Since the Executive Branch has made this decision in the instant case, the Commission should not change its policy.

C. Further consideration of health, safety and environmental effects of the proposed exports would be contrary to existing law and public policy.

While it is clear that the Commission has fulfilled all legal obligations regarding the consideration of health, safety and environmental effects related to the instant applications, the Commission still has an obligation under Section 126 of the AEA to expedite the processing of export applications. This obligation, as implemented by 10 CFR 110.40(a), requires the Commission to

initiate its licensing review immediately after receipt of a license application and to process the application concurrently with the Executive Branch to the extent feasible.

The NNPA and the Senate Report accompanying it (S.R. 95-467) indicate that it is the public policy of the United States to "take such actions as are required to confirm the reliability of the United States in meeting its commitments to supply nuclear reactors and fuel to nations which adhere to effective non-proliferation policies by establishing procedures to facilitate the timely processing of requests for subsequent arrangements and export licenses". 22 U.S.C. 2201

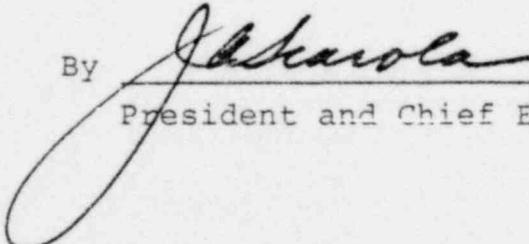
Any decision by the Commission to undertake an additional and delaying review of health, safety or environmental effects in the instant proceeding would clearly be inconsistent with the above regulations and policy objectives.

Wherefore, we submit the foregoing comments and trust that they will be considered carefully and prove to be of value to the Commission in its deliberations on the jurisdictional and procedural issues under review.

Respectfully submitted,

EBASCO SERVICES INCORPORATED

By



President and Chief Executive Officer

28 February 1980