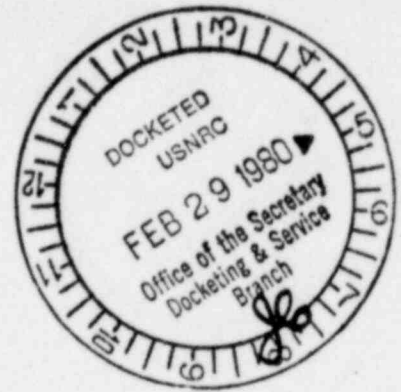


DOCKET NUMBER
EXPORT-IMPORT

110-00495

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the matter of)	
WESTINGHOUSE ELECTRIC CORP.)	Application No. XR-120
)	Docket No. 110-0495
(Exports to the Philippines))	Application No. XCOM 0013
)	Application No. XSNMO 1471

COMMENTS OF THE CENTER FOR DEVELOPMENT POLICY
AND THE MOVEMENT FOR A FREE PHILIPPINES

These proceedings result from the November 18, 1976 filing of an application by the Westinghouse Electric Corp. to export a nuclear reactor to the Philippines and two subsequent applications to export component parts and fuel. All pertain to the proposed nuclear power plant at Napot Point, Bataan, the Philippines ("the Site"). On April 19, 1979 the Center for Development Policy filed a Petition for Leave to Intervene, which was subsequently joined by the Movement for a Free Philippines (hereinafter "Petitioners"). In response to NRC's October 19, 1979 order requesting public input on six specific questions, Petitioners filed detailed comments as to the scope of the Commission's jurisdiction herein.

This document responds to the Commission's February 8, 1980 Order requesting additional public comments on the issue of whether the proposed exports herein pose a threat to either United States territory or the "global commons" and the relationship of such hazards "to the common defense and

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security of the United States." As explained more fully below, we suggest that these issues at best are tangential to making NRC's Congressionally mandated findings in nuclear export cases and, based on discussion at the Commission's January 29, 1980 meeting, apparently constitute an effort to avoid the central problem--viz. whether the NRC in this case may avoid evaluating the Site's seismic and volcanic hazards.

In brief, Petitioners contend that NRC correctly perceived the pertinent issues in its October 19, 1979 Order herein, earmarking the second phase of these proceedings for "particular health, safety and environmental aspects of the Napot Point facility." Now, after Petitioner Center for Development Policy has brought much expert opinion and evidence on those questions to NRC's attention^{*/} indicating that the site hazards have been systematically understated and may well render it unsuitable, the Commission seems to be ducking those problems by limiting its inquiry to matters outside Philippine territory. We will demonstrate below that this is statutorily impermissible on the facts of the instant case.

* * *

In the Atomic Energy Act and the 1978 Nuclear Nonproliferation Act, P.C. 25-242 ("NNPA"), Congress has charged the Commission with determining whether

^{*/} See evidence in detail in Petitioners' November 19, 1979 Brief.

this and other proposed nuclear exports will pose unreasonable risks either to (1) this nation's common defense and security or (2) public health and safety interests. 42 U.S.C. 2133a, 42 U.S.C. 2139b.^{1/} Only if able to answer both questions in the affirmative can NRC issue an export license. By limiting the present inquiry to United States territory or global commons, the Commission apparently seeks to narrow its responsibility to make these determinations on the basis of a reliable record despite the vast and growing record questioning the Site's suitability on seismic and volcanic grounds.^{2/}

Although some NRC staffers claim that additional NRC site investigation will produce no "fundamentally new information,"^{3/} expert opinion to the contrary continues to accumulate. For example, there is a "low but not

1/ See also the August 26, 1979 Memorandum of Points and Authorities submitted by the U.S. Department of Justice on behalf of the Commission in Westinghouse Electric Corp. v. Hendrie, C.A. No. 79-2060 (D.D.C.) and Westinghouse Electric Corp. v. Vance, C.A. No. 79-2110 (D.D.C.), pp. 26-29.

2/ Compare Chairman Ahearne: "[W]e ought to obtain all the information that is available. That does not lead me to conclude that we ought to require the same amount of information as required for a domestic site," (Transcript of NRC's January 19, 1980 "Discussion and Vote in SECY-80-20, Philippine Export Application," p. 39), and Commissioner Gilinsky: "I would limit our responsibilities to health and safety responsibilities, to effects on the United States and on the 'global commons'--and environmental responsibilities, too." (Id. at p. 47)

3/ SECY-80-20, p. 31, emphasis in original (1/15/80).

necessarily remote" likelihood that the Site's safe-shutdown earthquake would exceed the "high value of seismic design. By way of comparison, the staff of the NRC would require for a domestic site that the likelihood of exceedance of the design level be demonstrably remote."^{4/}

Moreover, evidence mounts that potentially disastrous volcanological hazards were both inadequately measured and severely understated by Ebasco, the American firm consulting for the Philippine National Power Corporation. Christopher Newhall of Dartmouth University recently submitted to NRC an eighty-six-page analysis of the site's volcanological risks and Ebasco's failures to measure them adequately.^{5/} He concluded: "I cannot describe the Ebasco volcanological work as either careful or objective."^{6/}

The United States Geological Survey ("USGS"), at NRC's request, reviewed Mr. Newhall's study. It found that he raised "a number of important questions in a forthright, scientific manner and his arguments are persuasive."^{7/} USGS concludes that Ebasco inadequately explored the Site's volcanological

4/ John Kelleher, "Review of Reports Relating to the Philippine Reactor Site," July 18, 1979 (released by the Commission in response to F.O.I.A. Request 79-463 on November 16, 1979), p. 5.

5/ "Review of Volcanological Discussions in the PSAR and Related Documents, Philippine Nuclear Power Plant No. 1," December 22, 1979.

6/ Id. at p. 85.

7/ USGS "Review of Volcanological Discussions on the PSAR and Related Documents, Philippine Nuclear Power Plant #1," February 22, 1980, p. 1.

history and that "without such a firm understanding of the historic and prehistoric record of eruptive activity, a meaningful volcanic hazards assessment of the Mt. Natib region, let alone the Napot Point site, is not possible."^{8/}

The courts have made clear that an agency charged by Congress to carry out a regulatory scheme must evaluate carefully all facts and issues material to making determinations under that scheme.^{9/} Therefore, NRC's appropriate response to conflicting and unclear evidence on key statutorily defined issues is to weigh it thoroughly and, where necessary, secure additional evidence rather than avoiding key questions.^{10/}

The lengthy proceedings involving the proposed Philippine reactor demonstrate that the statutory determinations in these cases ultimately turn upon a clear evaluation of the Site's hazards. Yet this is the very issue the Commission apparently seeks to avoid or dispose of on the basis of the dubious evidence supporting the applications, despite recent events which underscore the enormous importance of the affected military bases--Subic Bay Naval Station and Clark Air Force Base--to this nation's common defense and security interests.

^{8/} Id.

^{9/} See, e.g., The Public Service Commission for the State of New York v. Federal Power Commission, 511 F. 2d 338, 345 (D.C. Cir. 1975) (hereinafter "Public Service Commission"); Greater Boston Television v. FCC, 444 F.2d 841 (D.C. Cir. 1970) cert. denied, 403 U.S. 923 (1971); WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969).

^{10/} See, e.g., Public Service Commission, supra.

Subic Bay Naval Station is the key base for American naval vessels responding to the ongoing crises in the Persian Gulf. Therefore, a nuclear accident which would close or severely limit Subic Bay's operations would jeopardize the United States' military capabilities in the Middle East as well as Asia and thus almost certainly be "inimical" to our common defense and security interests.

Furthermore, United States and Filipino defense interests are mutual and coextensive. Both nations' governments have recognized this by treaty.^{11/} Therefore, attempts by the Commission to artificially limit common defense and security considerations to those which occur within the territory of the United States and outside the territory of the Philippines are unrealistic and, under NNPA's common defense and security standard, arbitrary and unlawful.

In the same fashion, a large radioactive release at the Site would certainly threaten the health and safety of the 30,000 Americans at the military bases. Therefore, we suggest that in this case both statutory licensing standards--public health and safety and common defense and security--require a careful analysis of the Site's hazards.

^{11/} See e.g. 1952 Mutual Defense Treaty between the United States and the Philippines, August 27, 1952, Department of State Publication 4733 (1954) and the March 26, 1947 Treaty covering U.S. military bases in the Philippines, Department of State Publication 3257 as amended January 1979.

In its January 29, 1980 meeting, the Commission seemed obsessed with deciding whether notions of national sovereignty prevent a thorough review of site hazards in nuclear export matters in general and this case specifically. We suggest that that question was resolved by Congress in NNPA and, if NRC is uncomfortable with its legislative mandate, the appropriate response is to seek new legislation, not to attempt to to rewrite Congress' law.^{12/}

Moreover, the Philippine Atomic Energy Commission ("PAEC") in 1978 specifically requested that NRC review the Preliminary Safety Analysis Report Ebasco had prepared and an NRC employee (Charles Willis), on leave to the International Atomic Energy Agency ("IAEA"), has served as the PAEC's chief safety expert on this project. Therefore, whatever its pertinence in other cases, the issue of sovereignty has been effectively waived here. It is too late in the day for the Commission to overlook its intimate involvement in the Philippines government's evaluation and assessment of the site hazards. And, as USGS suggests, a thorough analysis of certain Site characteristics and dangers is necessary before NRC may consider issuing export licenses.

Some NRC Commissioners seem inclined to take an impermissibly broad approach to the sovereignty doctrine. Even the Department of State, for example, is of the opinion that sovereignty does not preclude NRC's focusing upon U.S. military bases and the threat to these bases posed by site

^{12/} See Greater Boston Television v. FCC, supra, and Public Service Commission, supra.

hazards.^{13/} The NRC staff takes the same approach to finding that the Commission has authority to thoroughly evaluate the Site.^{14/}

To measure and assess the Site's hazards, NRC or other U.S. government personnel need not conduct an intrusive site visit. First, it is entirely possible that the Philippine government, which relies heavily upon U.S. friendship and expertise and has far more to lose in case of a nuclear accident at Napot Point, might welcome a reliable examination and evaluation of the Site.

Second, even if the Philippines opposes an American site investigation, additional tests and monitoring recommended by IAEA, Newhall, USGS and other independent experts can be carried out by agents of the Filipino government and the results, as with the previous data, transmitted to NRC.

The strategic importance of the Subic Bay and Clark installations demands this factfinding.^{15/} The intrusion upon Philippine sovereignty seems nonexistent so long as no site analysis is forced upon that nation.

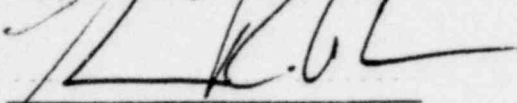
^{13/} See, SECY 80-20 pp. 3-4.

^{14/} SECY 80-20, p. 14.

^{15/} We should note that protecting U.S. military interests is frequently the justification under international law advanced by our government for such severe actions as military occupation or invasion of foreign territories (e.g. Nicaragua (1923) and Dominican Republic (1965)). Without endorsing the merit of such extreme measures in general or in any particular case, it seems ironic to Petitioners that NRC apparently seeks to avoid compiling nothing more intrusive than an accurate evidentiary record in a case like the instant one where the relationship between its actions and America's vital military interests is so plain.

In sum, on the basis of the evidence of major site hazards before the Commission and the sharp and profound challenges to and conflicts within this evidence, the Commission has but two choices in conducting its statutorily mandated inquiries: (1) seek additional and reliable evidence about key site hazards^{16/} or (2) decide that there is insufficient evidence to make the statutorily required determinations and transmit the application to the President pursuant to 42 U.S.C. § 2155(b)(2). In either case, examining the impacts on U.S. territory or the global commons seems superfluous. Rather, impact on Clark Air Force Base and Subic Bay Naval Station, and their U.S. residents, is sufficient to require careful analysis of the Site's volcanic and seismic hazards.

Respectfully submitted,



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^{16/} USGS clearly endorses this approach: "Newhall simply makes a plea for more fieldwork to: a) better establish the geologic setting of samples dated or chemically analyzed; and b) improve evaluations of the various kinds of volcanic hazards on a point-by-point basis for the mapped area, including and especially the vicinity of the Napot Pt. site. Newhall's observations and questions (p. 20-23) are valid and pertinent, and should be addressed." USGS Review p. 2.

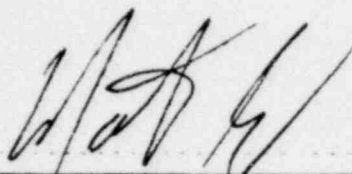
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments of the Center for Development Policy and the Movement for a Free Philippines were mailed this 29th day of February, 1980 first class postage prepaid, to:

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