UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

CHAIRMAN

COMM
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January 23, 1980

The Honorable Frank Church, Chairman
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Commission appreciates your courtesy in providing us with a copy of your December 21, 1979, letter to President Carter urging prompt action on the pending Philippine nuclear reactor export license application. We assure you that the Commission is processing this application in an expeditious fashion.

The application was received by the NRC on November 23, 1976. This was sent to the Executive Branch on December 20, 1976. On September 28, 1979, the Executive Branch provided its views to the Commission on the reactor application, recommending that the Commission issue the license. Such views are a prerequisite to NRC licensing. The fact that the Executive Branch review of this application extended for almost three years before submission to the NRC is indicative of the difficulty and complexity of the issues posed by this matter. Promptly thereafter, on October 19, the Commission ordered public proceedings on the Philippine application, after making the determination that such proceedings would assist the Commission to make its statutory determinations and would be in the public interest. The Philippine application raises novel issues pertaining to the scope of the Commission's jurisdiction and the decision to hold public hearings on this matter is consistent with the Congressional mandate set forth in the Nuclear Non-Proliferation Act that the Commission afford members of the public a meaningful opportunity to participate in the export licensing process.

The Commission specifically invited written public comments on six issues relating to the proper scope of the Commission's jurisdiction to examine health, safety and environmental questions arising from the construction and operation of exported nuclear facilities, and the appropriate procedural framework for considering such issues if they are found to lie within NRC's authority. The Commission decided not to solicit comments at that time on issues related to the particular health, safety and environmental aspects of the proposed Philippine facility, and to defer consideration of such issues until the Commission had ruled on the jurisdictional questions. A copy of the order commencing public proceedings is attached.

In response to the Commission's order the Executive Branch, the NRC staff and approximately twenty other groups submitted comments to the Commission. Our offices of the General Counsel and Policy Evaluation have reviewed the diverse comments and have submitted to the Commission the enclosed detailed analysis of the complex issues raised by the Philippine application. A Commission meeting has been tentatively scheduled next week to consider the matter.

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The Commission intends to act upon these applications before the summer 1980 date cited in your letter to the President. In sum, the Commission is acting upon the application expeditiously, and in a fashion that should ensure that the Commission receives sufficient information to make its statutorily required findings.

The Commission appreciates your interest in this matter and will, of course, provide you with all Commission decisions on the Philippine application.

Sincerely,

John F. Ahearne

Enclosures:
1. October 19 order
2. OGC/OPE analysis

property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the renewal action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert Reid: (petitioner's name and telephone number); (date petition was mailed); (Texas A&M); and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR § 2.714(a) (i)–(v) and § 2.714(d).

For further details with respect to this action, see the application for renewal dated July 2, 1979, as may be supplemented by future submittals, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Maryland, this 18th day of October 1979.

For the Nuclear Regulatory Commission.

Eben L. Conner,

Acting Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 79-32758 Filed 10-24-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 110-0495 Application Nos. XR0120 and Application No. XCOM-0013]

Westinghouse Electric Corp. (Exports to the Philippines); Order

On April 19, 1978, the Nuclear Regulatory Commission received a Petition for leave to intervene and for a hearing concerning a license application by Westinghouse Electric Corporation covering the export of slightly enriched uranium to the Philippines, and to consolidate consideration of that license with two other nuclear license applications pending for the Philippines.[1] The material would be used to fuel a nuclear power reactor being constructed by the Philippine National Power Corporation at Napot Point on the island of Luzon.

The Westinghouse Electric Corporation submitted an application to export a nuclear facility (XR-120) to the Philippines on November 18, 1976. The Commission did not receive final Executive Branch views on that application until September 28, 1979.[2] Because action had not been taken on the reactor application, on August 3, 1978 Westinghouse submitted an application (XCOM-0013) requesting authorization to export components to the Philippines which would permit construction activities related to the facility to continue while the U.S. Government reviewed the reactor application. On November 3, 1978, the Executive Branch recommended that NRC issue the component license. The Commission has deferred action on the component license application pending receipt of the Executive Branch views on the facility application.

The Petitioners—The Center for Development Policy (CDP), Jesus Nicanor P. Perlas, III, and the Philippine Movement for Environmental Protection (PMEP)—specifically requested a hearing on seven issues: (1) the nature and magnitude of seismic and geological risks posed by the reactor site; (2) the adequacy of the reactor's seismic design; (3) the environmental impact of the proposed reactor and disposition of its spent fuel; (4) dangers to the health and safety of Philippine citizens posed by the reactor; (5) dangers to the health and safety of U.S. citizens residing in the Philippines; (6) risks to the effective operation of U.S. military installations in the Philippines; and (7) generic safety questions posed by nuclear power plants, and by Westinghouse reactors in particular.

On June 26, 1979, another group, the concerned citizens Reactor Export Review Board, also requested an opportunity to submit information on the Philippine export applications.

On September 28, 1979, the Executive Branch submitted its views recommending issuance of XR-120. On October 10, 1979, the Commission discussed the pending intervention and hearing requests at a public Commission meeting. After thoroughly considering the submissions already received from Petitioners, the Applicant (Westinghouse Electric Corporation), and the Nuclear Regulatory Commission staff, the Commission has decided that it would be appropriate to order further public proceedings in this matter. The Commission believes that such proceedings would assist it in making the statutory determinations required by the Atomic Energy Act and would be in the public interest. *See* 10 C.F.R. 110.84(a)(1) and (2) and Section 304(b) of the Nuclear Nonproliferation Act of 1978, 42 U.S.C. 2155a.

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[1] The Commission had published a notice of receipt of this license application (XSNM-1471) in the Federal Register on March 20, 1979, 44 Fed. Reg. 16987.

[2] Under Section 126a(a) of the Atomic Energy Act the Commission may not issue a reactor export license until it "has been notified by the Secretary of State that it is the judgment of the Executive Branch that the proposed export * * * will not be inimical to the common defense and security * * *"

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The issues which have been raised in the present matter fall into two general categories. First, there are those issues which pertain to the proper scope of the Commission's jurisdiction to examine health, safety and environmental questions arising from the construction and operation of exported nuclear facilities, and what procedural framework would be appropriate for considering such issues, if they are found to lie within NRC authority. The second category of issues are particular health, safety and environmental aspects of the Napot Point facility (for example, the reactor's seismic design) which the Commission has been asked to examine in the context of its export licensing review. The Commission believes it would be useful, before ordering any proceedings on this second group of issues, to receive submissions from the participants and any other interested individuals or groups concerning the precise scope of the Commission's foreign health, safety and environmental jurisdiction and what procedures the Commission should adopt to govern further proceedings (if any) regarding the Philippine export license applications and other applications of this type. Therefore, the Commission requests that participants and any other interested persons file with the Commission a statement of views on the procedural and jurisdictional issues outlined below on or before November 14, 1979. The identification in this order of certain issues which the Commission believes particularly relevant for reviewing the jurisdictional and procedural aspects of the matter is intended as guidance for those who may wish to participate in these proceedings. If commenters believe that there are other matters pertaining to the procedural and jurisdictional issues which should be considered by the Commission, their submissions should address those matters. Also, the Commission recognizes that consideration of specific facts associated with the Philippine Export Applications may be instrumental in resolving these general jurisdictional and procedural issues. Therefore, it is expected that the written submissions will discuss the factual circumstances of the pending Westinghouse license applications, to the extent relevant to the legal and policy questions under consideration.

In this first phase of its proceedings, the Commission specifically requests that the following issues be addressed:

1. Whether (and if so, to what extent) the Commission possesses the legal authority or a legal obligation to examine the health, safety and environmental impacts of an exported nuclear facility in reaching its licensing determination (specifically, which of the seven issues raised by Petitioners are appropriate for Commission review)?

2. Is the Commission's health, safety or environmental review of export license applications limited to the connection of these issues with the U.S. common defense and security or are there other legal principles which permit or require the Commission to examine these matters as part of its licensing review?

3. What issues arising from the application to export a nuclear facility to the Philippines should the Commission examine in any future public proceeding?

4. What procedural format should the Commission adopt to examine any foreign health, safety and environmental issues falling within its jurisdiction?

5. If health, safety and environmental aspects of a U.S.-supplied nuclear facility are to be evaluated in the NRC export licensing process, in what specific manner should this review be conducted differently from the Commission's domestic reactor licensing proceedings? Should the scope of review be different, and if so, in what precise way?

6. Are there any factual or legal considerations which would justify a different NRC health, safety or environmental review for some export license applications than for others? Specifically, are such considerations applicable to the present matter?

After receiving submissions on the jurisdictional and procedural issues, the Commission will expeditiously review any new filings, as well as materials already submitted, and announce its decision on these issues. At that time the Commission will also issue a further order defining the nature and scope of further proceedings (if any) to be conducted on specific issues within the Commission's licensing jurisdiction arising from the pending Westinghouse facility and component export license applications.

With regard to Petitioners' consolidation requests, the Commission notes that its rules provide [in 10 C.F.R. 110.84(d)] that a hearing request will not be granted "prior to receipt and evaluation of Executive Branch views on the license application." Since Executive Branch views have not been received on the fuel license application (XSNM—1437), consolidation of that license with the facility and component license applications would not be appropriate at this time. Therefore, the Commission is consolidating its consideration only of applications XR–120 and XCOM–0013 for purposes of the present proceeding. However, it should be noted that issues raised by all three license applications are substantially the same, and that the Commission would expect to consider all relevant matters pertaining to the Philippine exports in the scope of the proceeding commenced by this order.

The Commission does not reach a decision on whether any of the Petitioners is entitled to a hearing under Section 189a of the Atomic Energy Act. Since the Commission has decided to authorize a hearing pursuant to Section 304(b) of the Nuclear Nonproliferation Act, that issue is moot.

It is ordered.

Dated at Washington, DC, this 19th day of October 1979.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc 79-32866 Filed 10-24-79; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 79-43]

Accident Reports, Safety Recommendation Letters and Responses; Availability

Speical Investigation Report

Onscene Coordination Among Agencies at Hazardous Materials Accidents.— Observations of emergency response activities following a March 31, 1977, railroad accident near Rockingham, N.C., prompted the National Transportation Safety Board to inititate a special investigation of emergency response plans for handling railroad accidents in which hazardous materials, including those classified as radioactive, are involved. The Safety Board's formal report, No. NTSB–HZM–79–3, concerning this special investigation was released to the public on October 11.

The Safety Board notes that while the movement of hazardous materials through normal transportation channels is of concern to Federal, State, and local Government agencies and to the public, the transportation of radioactive materials is of special concern. For this reason, special plans designed to cope with emergencies involving radioactive materials have been developed at various levels of Government and by private industry. Those plans are the most comprehensive yet formulated for handling hazardous materials emergencies, and they have served as models for many nonradiological

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