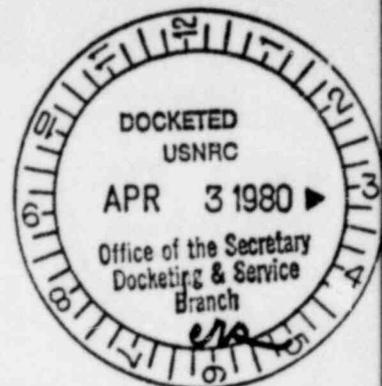


BEFORE THE
UNITED STATES NUCLEAR REGULATORY COMMISSION



In the Matter of)
)

WESTINGHOUSE ELECTRIC CORPORATION)

(Exports to the Philippines))

)

) Docket No. 110-00495
) Application No. XR-120
) Application No. XCOM-0013
)
)

MOTION FOR A STAY PENDING APPEAL

The Natural Resources Defense Council, Union of Concerned Scientists, and Philippines Movement for Environmental Protection ("Movants") move the Nuclear Regulatory Commission ("the Commission") to stay the effective date of any final Order entered in this proceeding granting one or both of the licenses sought by the Westinghouse Electric Corporation. Movants request that any such Order be stayed until they have had the opportunity to obtain judicial review of the Order pursuant to the Atomic Energy Act §189, 42 U.S.C. §2339, and the Administrative Procedure Act §10, 5 U.S.C. §706.

It appears that the Commission has not promulgated regulations governing the stay of an export licensing decision pending appeal to the courts. Presumably, applications for such stays are to be considered according to the analogous judicial standards, which have essentially been adopted by the Commission with respect to stays of decisions of Atomic Safety and Licensing Boards and Atomic Safety and Licensing Appeal Boards pending appeal to the Commission, See 10 C.F.R. §2.788 (1979); In the Matter of Public

Service Co. of New Hampshire (Seabrook Sta. Units 1 and 2), ALAB-338, 4 NRC 10 (1976); The same standards have also been applied by the Appeal Board regarding appeals of its decisions to the courts, Northern Indiana Public Service Co. (Bailly Generating Sta., Nuclear-1) ALAB-224, 8 AEC 244, 272 (1974). Similarly, these standards appear to govern decisions by the Commission itself. See In the Matter of Petition of Natural Resources Defense Council, CLI-76-2, 3 NRC 76 (1976).

Motions for stay pending appeal are granted upon a showing similar to that required of a motion for a preliminary injunction. Warm Springs Dam Task Force v. Gribble, 565 F.2d 543 (9th Cir. 1977); Society for Animal Rights v. Schlesinger, 512 F.2d 915 (D.C. Cir 1975). The well established rule is that a Movant for preliminary injunctive relief must demonstrate that:

- (1) it is likely to succeed on the merits of its legal claims;
- (2) it will be irreparably injured unless relief is awarded;
- (3) the harms with which it is threatened outweigh the threatened harm to the opposing party; and
- (4) considerations of the public interest favor the issuance of relief. Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n, 259 F.2d 921 (D.C. Cir. 1958). Movants submit that an application of these criteria to the instant case clearly entitle them to a stay of the Commission's final Order pending recourse to the courts. Furthermore, the District

of Columbia Circuit has held a party seeking a preliminary injunction need not demonstrate a "likelihood of success" on the merits if it can show that the balance of hardships tips sharply in that party's favor. Instead, all that is required is a showing of a "substantial case on their merits." Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.D. Cir. 1977). See also Providence Journal Co. v. Federal Bureau of Investigation, 559 F.2d 889, 890 (1st Cir., 1979); Wm. Inglis & Sons Baking Co. v. ITT Continental Baking Co., 526 F.2d 86, 88 (9th Cir. 1975); Southern Oregon Citizens Against Toxic Sprays, Inc. v. Andrus 9 ELR 20715 (D. Ore. 1979); Village of Kaktovic v. Corps of Engineers, 9 ELR 20117, 20119-120 (D. Alas, 1978). Indeed, a severe imbalance in the respective entities of the parties may support an award of preliminary relief even where the court's initial view of the merits is contrary to that of the Movant. WMATC v. Holiday Tours, Inc., supra, at 843.

It is difficult to conceive of a case in which the balance of irreparable injuries swing more heavily in favor of one party than it does here. Once the Commission has issued the export licenses and the reactor has been transported out of this country, the Movants and their members will be irreparably injured. The reactor would be irrevocably outside of the jurisdiction of the Commission. The Commission will lack the authority to compel its return or in any meaningful way to undo the damage done.

More importantly, the reactor would be outside of the jurisdiction of the Courts. The issuance of the license without stay-

ing its effect would, as a practical matter, render the case moot. It would deprive the Movants of their right to judicial review under the Atomic Energy Act and the Administrative Procedure Act.

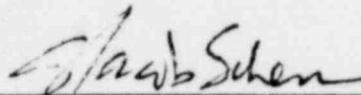
The countervailing interests of Westinghouse in obtaining the license on an immediately effective basis are relatively insignificant. The amount of time required to present the case to the courts on an expedited basis is small in contrast to the extended history of this proceeding. Moreover, construction at the proposed reactor site has been suspended indefinitely as a result of concern about the safety of the reactor by order of the Government of the Philippines. It can hardly be argued that a further brief delay in the shipment will materially or irreparably injure the interests of Westinghouse or anyone else.

Movants have already submitted to the Commission extensive comments setting forth their views as to legal issues presented by the License applications under consideration in these proceedings. There is a strong likelihood that Movants will prevail on their claim that the Commission is required by the Atomic Energy Act and the National Environmental Policy Act to consider fully all the health, safety, and environmental aspects of the proposed nuclear reactor export, in so far as they affect the common defense and security, health and safety of the public, and the human environment. Some of our views have been strongly supported by the President's Council on Environmental Quality and a substantial number of Congressmen. The extent to which the Commission

must take health, safety, and environmental factors in account in reactor export licensing is a crucial question of law and policy. This is the first export license proceeding since the passage of the Nuclear Nonproliferation Act of 1978 to consider this question which has never been directly addressed by the courts. Thus, it is in the public interest to secure a judicial determination of the question before it would be preempted by the shipment abroad of the reactor.

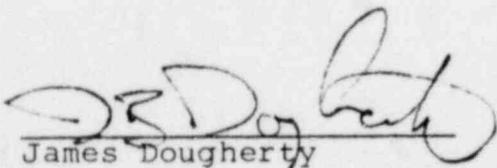
For the reasons stated above, the Movants request the Commission to grant a stay of the effectiveness of a final Order granting one or both of the above-captioned licenses pending disposition of the judicial review of this proceeding.

Respectfully submitted,



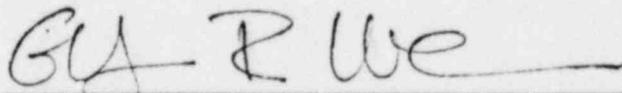
S. Jacob Scherr
Natural Resources Defense
Council, Inc.
1725 I Street, N.W., Suite 600
Washington, D.C. 20006
(202) 223-8210

Counsel for Natural Resources
Defense Council, Inc.



James Dougherty
Suite 620
1346 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 452-5600

Counsel for Philippine
Movement for Environ-
mental Protection



Ellyn R. Weiss
Sheldon, Harmon & Weiss
1725 I Street, N.W., Suite 506
Washington, D.C. 20006
(202) 833-9070

Counsel for Union of Concerned
Scientists

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