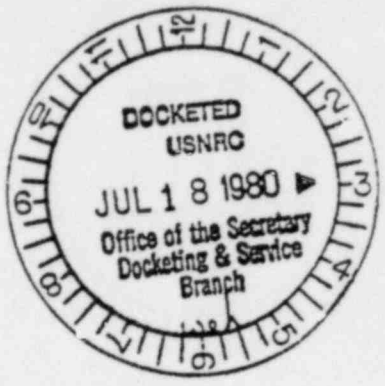

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	:	
	:	
WESTINGHOUSE ELECTRIC CORPORATION	:	Application No. KR-133
	:	Docket No. 1000435
(Exports to South Korea)	:	

ANSWER OF APPLICANT WESTINGHOUSE ELECTRIC CORPORATION
TO PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING

On January 26, 1979, Westinghouse Electric Corporation ("Westinghouse" or "Applicant") applied to the Nuclear Regulatory Commission ("NRC" or "Commission") for a license to export two nuclear facilities (KNU-7 and KNU-8) to the Republic of South Korea. Notice of the Application was published in the Federal Register on February 28, 1979 (44 Fed. Reg. 11282), and provided for the filing of a petition for leave to intervene until March 30, 1979. On June 13, 1980, a "Petition for Leave to Intervene and Request for Hearing" (the "Petition to Intervene") was filed on behalf of the Center for Law and Development Policy ("CDP"). This Answer is filed by Westinghouse in opposition to the Petition to Intervene.

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I. CDP's Attempt To Intervene In The Long-Standing Export License Application Proceeding Is Untimely.

The Petition to Intervene in the present case was filed more than fifteen months after the Notice of Application was published in the Federal Register. Such filing was untimely and should be denied. Under Commission Regulations (10 C.F.R. § 110.82(c)), a petition to intervene or a request for hearing is timely only when filed within thirty days after notice of receipt is published in the Federal Register for those applications so published. Clearly, CDP did not meet this requirement.

In an effort to overcome its failure to file a timely petition to intervene, CDP claims that the "seriousness of three recent events affecting the pending application" warrants allowance of this untimely intervention petition. None of the three alleged "recent events" provides "good cause" required by Commission regulations to excuse an untimely filing.

The first event cited by CDP concerns a so-called "rebellion in the South Cholla Province of South Korea." CDP had indicated a clear awareness of the proposed export to Korea, and the issues which they now seek to raise, substantially before this event occurred. For example, the CDP Export Monitor, Volume 2, Number 1, published in February,

1980, devotes a full page to allegations regarding KNU-7 and KNU-8. Further, the incident, which was limited to a very small area of one province in Korea, and which was quickly brought under control, cannot serve as the basis to justify the untimely filing of the intervention petition.

Second, CDP claims that "recently released population statistics by the State Department" indicate that population density in the area around the KNU-7 and KNU-8 sites is higher than originally was expected and that the NRC should consider health and safety impacts in South Korea associated with siting these reactors in the allegedly high density population zone. This purported reason provides no justification for allowance of intervention. The question of whether the population is nigher than CDP expected is irrelevant to the matter of timely filing. Further, CDP's reference (p. 6) to "recently released population statistics by the State Department" is misleading. Apparently, CDP refers to data in the Concise Environmental Review, forwarded to the NRC by the Department of State on May 6, 1980. Similar data was available far earlier. For example, population data was set forth by CDP in February, 1980, in the Export Monitor referred to above.[1] Further, the Commission has recently ruled in the

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[1]It should be noted that the site for the two reactors which are the subject of this export license application does not violate any present siting criteria for domestic reactors, even assuming that United States siting policy and criteria should be imposed on foreign nations.

matter of Westinghouse Electric Corporation (Export to the Philippines), CLI-80-14 and CLI-80-15 (May 6, 1980), that health, safety and environmental impacts in foreign nations are outside the jurisdiction of the Commission. Moreover, the Commission decided in the aforementioned Opinion that it would not, as a matter of discretion, examine health, safety or environmental impacts on U.S. interests abroad in connection with nuclear export licensing determinations. Since the alleged concerns derived from the so-called "recently released population statistics" would not be considered in this proceeding, it obviously serves as no basis to justify a late intervention request.

Third, the last purported reason cited by CDP as alleged justification for its untimely filing is a contention that there is recent "evidence that South Korea is again considering the purchase of a reprocessing facility" (Petition to Intervene, p. 6). The so-called "evidence" cited by CDP consists mainly of statements and activity many years ago. (See infra, p. 10) If CDP had any purported concerns arising out of South Korea alleged statements concerning purchase of such a facility, it knew or had reason to know of the South Korea position in this regard at the time the application for the export license originally was noticed in the Federal Register. Thus, there is no justification for citing the possible purchase of a reprocessing facility as being a newly discovered

matter which would somehow warrant the untimely intervention request.

In passing the Nuclear Non-Proliferation Act of 1978, ("NNPA"), Congress emphasized that a factor vital to the success of U.S. non-proliferation policy is our ability to assure other nations that the U.S. is a reliable supplier of nuclear material and equipment. One method of providing such assurance is to demonstrate that applications for export licenses will be processed in a timely fashion. The NNPA thus stresses the need for action on license applications in a timely manner. See AEA § 126. In the present situation, the late filing by CDP is inconsistent with this policy. For the Commission to rescue the untimely Petition by allowing intervention at this stage of the application review process would allow those seeking to delay and oppose nuclear exports to withhold their opposition until a very late stage, with the knowledge that they would thereby maximize the possibility of delay. The NRC should adhere to its rules and criteria and reject the CDP Petition to Intervene as untimely.

II. CDP Lacks Standing To Intervene.

The leading case regarding standing to intervene in export license proceedings is In the Matter of Edlow International Company (Agent for the Government of India on Application to Export Special Nuclear Material), CLI-76-6, NRC 563

(1976). In that case, the Commission denied petitions for leave to intervene on the basis, inter alia, that petitioners lacked standing to do so. In so ruling, the Commission laid down the following general rules:

1. "[A]s a general proposition, the Commission relies principally on judicial precedents in deciding issues of standing to intervene." (3 NRC at 569)

2. "[A]s a matter of policy . . . an expansive rule of standing would be undesirable in the export licensing context . . . ." (3 NRC at 570)

3. "Congress has not granted an express right of action to citizens who can claim an undifferentiated risk to themselves in the context of export license proceedings." (3 NRC at 571)

The Commission reaffirmed these principles in Ten Applications for Low-Enriched Uranium Exports to EURATOM Member Nations, (Transnuclear, Inc. et al.), CLI-77-24, 6 NRC 525, 530, 531 (1977).

Since the Commission establishes these principles, the NNPA was passed. In § 304(b)(2) of that Act, the NRC was directed to establish regulations ". . . for public participation in nuclear export licensing proceedings when the Commission finds that such participation will be in the public interest and will assist the Commission in making the statutory determinations required by the 1954 Act . . . ." The legislative history of this provision gives guidance indicating that the above-quoted language was "not in any way intended to expand

upon the provisions of the legislation designed to provide careful but prompt consideration of all export license applications." (123 Cong. Rec. H9832, September 22, 1977). Accordingly, although the Commission is required to allow for public participation when such participation is in the public interest and will assist the Commission in fulfilling its statutory responsibilities, the language of the NNPA does not mandate a departure by the Commission from the principles regarding standing which it previously enunciated in Edlow.

Indeed, Commission regulations recognize this fact. The regulatory regime established in 10 C.F.R. § 110.82 and § 110.84 clearly contemplates that where a petitioner purports to assert an interest which may be affected, he is to do so with particularity under traditional principles.

CDP describes itself as "a project of The International Center," a District of Columbia non-profit corporation, which "monitors the flow of resources to developing nations, primarily from the United States"; conducts research and analysis of development policies and their implementation; and disseminates the results of its analysis to the public and public officials. Nowhere does CDP allege any "injury in fact" flowing from the licensing here involved on which it might assert standing. Certainly CDP - an entity located in the District of Columbia - can claim no injury to itself. Nor does CDP claim it has any members who might be subject to such in-

jury. In fact, CDP does not purport to be a membership organization at all. CDP does not state whether its officers are elected and whether such officers serve in a representative capacity. CDP does not discuss whether its membership exercises a substantial degree of control over the conduct of the organization's activities. It must be concluded, therefore, that CDP is an organizational shell with no real members in interest.

The District Court for the District of Columbia in a recent unreported case, Health Research Group v. Kennedy, 82 FRD 21 (D.D.C. 1979), concluded that such non-membership organizations lack the requisite standing to assert a public interest. The District Court in Kennedy explained the legal inadequacy of such a non-membership organization for purposes of standing in the following language:

> "So long as the courts insist on some sort of substantial nexus between the injured party and the organizational plaintiff - a nexus normally to be provided by actual membership or its functional equivalent measured in terms of control - it can reasonably be presumed that, in effect, it is the injured party who is himself seeking review. Absent this element of control, there is simply no assurance that the party seeking judicial review represents the injured party, and not merely a well-informed point of view. Ultimately, unless an organization truly represents an injured party its disposition will not be meaningfully different from that of the environmental organization in Sierra Club v. Morton which sought standing as a 'representative of the public.' 405 U.S. 727, 736, 92 S.Ct. 1361,

31 L. Ed. 2d 636 (1972). [emphasis in original] And as the Court there held: 'A mere "interest in a problem," no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to [confer standing].'" 82 F. Supp. at 26-27 (emphasis added).

See also Hunt v. Washington Apple Advertising Commission, 432 U.S. 333 (1977); Data Processing Service v. Camp, 397 U.S. 150 (1970).

In the instant case based on the Petition to Intervene, CDP does not bear a remote resemblance to a membership organization. CDP thus lacks the necessary relationship to any injured party to permit a conclusion that CDP is a true representative of such a party. CDP, therefore, fails to assert an interest which confers standing.

III. CDP Seeks To Raise Questions Outside The Jurisdiction Of The NRC In Export Licensing Proceedings.

The Commission clearly has decided that in nuclear export licensing proceedings consideration of health and safety or environmental impacts in foreign countries are outside the jurisdiction of the Commission, and that the Commission will not address such impacts on U.S. interests abroad. Westinghouse Electric Corporation (Export to the Philippines), supra; Edlow, supra; Babcock & Wilcox Co. (Export of Reactor to Germany), 5 NRC 1332 (1977).

CDP suggests eight issues which it wishes to raise in connection with the proposed export. Five of these issues relate to alleged health, safety or environmental impacts in South Korea, and they are clearly beyond the scope of matters which the Commission has determined it will consider in export license proceedings.[2] Proposed issue No. 3, relating to an alleged threat to U.S. nuclear non-proliferation objectives due to possible South Korean purchase of reprocessing technology, is based upon speculation. Petitioners generally refer to comments and activities of a number of years ago to support their claims. CDP's cautious statement that "a member of the Korean Atomic Energy Commission hinted that South Korea was considering establishing its own reprocessing facilities" demonstrates the speculative nature of their proposed contention. Proposed issue No. 4, concerning the environmental impact of the reactor and disposition of its spent fuel, was analyzed by the Commission in connection with the Philippine export. The Commission concluded in that case there will be no significant adverse environmental impacts on the environment of the U.S. or the global commons from spent fuel generated by a single

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[2]These five issues are issue No. 2, alleged risks "posed by the population density around the Reactors' site"; issue No. 5, alleged health and safety impacts to U.S. personnel at military bases in Korea; issue No. 6, health and safety of South Korean citizens; issue No. 7, alleged risks to "the effective operation of U.S. military installations in South Korea"; and issue No. 8, generic safety questions alleged posed by nuclear power plants.

reactor. That conclusion is true for the instant case.

Finally, proposed issue No. 1 claims as an issue the "adequacy of the Reactors' physical security plan to withstand the risks it will face in civil war or open rebellion." To the extent that the security plan involves matters of purely domestic concern in Korea, the Commission clearly has taken the position that it is inappropriate to consider such matters. Further, speculation by the petitioner with regard to "civil war or open rebellion" is not appropriate to create an issue in an export license proceeding. Section 127(3) of the Atomic Energy Act of 1954, as amended, provides that "Physical security measures shall be deemed adequate if such measures provide a level of protection equivalent to that required by the applicable regulations." The applicable regulations are contained in 10 C.F.R. § 110.43. The Government of Korea has provided assurance that these regulations will be met, (see Executive Branch judgment). The "what if?" speculations by petitioner provides no legitimate basis for intervention.

Thus, each of the issues raised by the Petition to Intervene are not valid as issues in this proceeding, are not permitted by law or Commission policy, and do not provide any basis on which to grant intervention to the petitioner. The Petition to Intervene therefor should be denied.

IV. The Commission Should Reject CDP's Hearing Request.

In Section V of the Petition to Intervene, CDP has requested that the Commission allow it at least a sixty-day discovery period to "inspect and analyze" information that the Commission has in its possession regarding the proposed export. In addition, CDP has requested that the Commission schedule an adjudicatory-type hearing to consider the issues raised in the CDP Petition wherein "interested parties will be able to present evidence and cross-examine adverse witnesses" (Petition to Intervene, pp. 15-16).

In the event that the Commission should, despite the arguments set forth, supra, decide to grant the CDP intervention request, Westinghouse submits that any hearing conducted by the Commission should be based upon the procedures provided in 10 C.F.R. Part 110, should not encompass any adjudicatory trial-type hearing, and should not be subject to the type of delay for discovery or otherwise sought by petitioners. The NNPA in authorizing the Commission to adopt regulations establishing procedures for the granting of nuclear export licenses and for public participation in such proceedings, specifically provides that the procedures do not require the Commission to grant an on-the-record hearing in any export license proceeding (NNPA § 304(c)). Commission regulations adopted pursuant to the NNPA provide for hearing procedures in export license

cases which exclude characteristics of on-the-record, trial-type hearings such as rights to cross-examine, discovery and issuance of subpoenas. Indeed, 10 C.F.R. Part 110, which "constitute the exclusive basis for hearings on export license applications" (§ 110.80), specifically provide that Commission licensing decisions on exports "will be based on all relevant information, including information which might go beyond that in the hearing record" (§ 110.113). Thus, it is clear that Commission regulations do not contemplate any on-the-record, trial-type hearings for nuclear export license proceedings.

V. Conclusion

For all the reasons discussed above, Westinghouse Electric Corporation respectfully urges the Commission to deny the Petition for Leave to Intervene and Request for Hearing.

Respectfully submitted,

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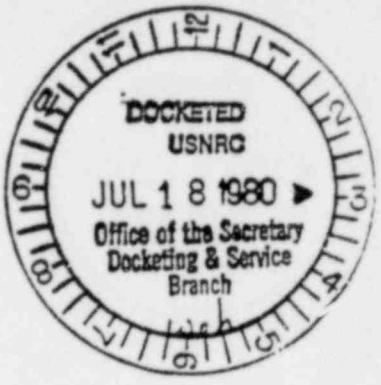
Dated: July 14, 1980



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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Answer of Applicant Westinghouse Electric Corporation to Petition for Leave to Intervene and Request for Hearing" were served upon the persons listed on Attachment 1 to this Certificate of Service by deposit in the United States Mail (First Class), postage prepaid, this 14th day of July, 1980.

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