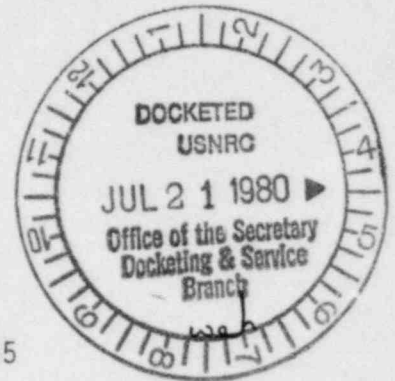


JUL 18 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



In the Matter of	)	
GENERAL ELECTRIC Corp. .Y	)	Application No. XR-135
(Exports to Taiwan)	)	Docket No. 110-01075
and	)	Application No. XSNM-1662
WESTINGHOUSE ELECTRIC CORP.	)	Docket No. 110-01076
(Exports to Taiwan)	)	Application No. XR-136
	)	Docket No. 110-2058

NRC STAFF ANSWER TO PETITIONS FOR LEAVE  
TO INTERVENE AND REQUESTS FOR HEARING  
FILED BY CENTER FOR DEVELOPMENT POLICY

By two petitions docketed June 20, 1980, the Center for Development Policy (CDP) requested leave to intervene and that a hearing be held on Application No. XR-135 by General Electric Company and on Application No. XR-136 by Westinghouse Electric Corp. for a license to export two light water cooled power reactors (Taiwan Power Nuclear Units 7 and 8) to be located at Yen Liao, Taiwan and on Application No. XSNM-1662 by General Electric for a license to export the initial core for those units. Notice of receipt of the General Electric applications was published in the Federal Register on April 15, 1980 and notice of receipt of the Westinghouse application was published on June 24, 1980.

Petitioner suggested that the following issues raised by the instant applications must be made the subject of NRC public hearings:

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1. The nature and magnitude of the seismic risks and dangers posed by the reactors' site and the effects on the global commons.
2. The nature and magnitude of the volcanic risk and dangers posed by the reactors' site and the effects on the global commons.
3. The nature and magnitude of the risks and dangers posed by the high population density around the reactors' site.
4. The risk to the common defense and security of the United States due to the lack of legally binding non-proliferation agreements.
5. Dangers to the health and safety of Taiwanese citizens.
6. The likely environmental impact on the global commons of the proposed reactors and disposition of spent fuel.
7. Generic safety questions posed by all nuclear power plants and by General Electric and Westinghouse in particular.

The petitioner requested that the Commission:

1. Grant the petitions to intervene;
2. Act to assure that the pertinent data regarding the issues addressed by petitioner be made available for public inspection as soon as possible;

3. Defer any action other than denial of the applications until (a) petitioner and other interested members of the public have had at least 60 days to inspect and analyze the pertinent data which the Commission has considered or will consider in these matters and (b) a hearing has been held commencing no sooner than 30 days after expiration of such 60 day period at which petitioner and all other interested members of the public will be able to participate fully, the hearing to be based on public proceedings and a public record in which petitioner and all other interested parties will be able to present evidence and cross-examine adverse witnesses;
4. Make available to petitioner and other interested members of the public the Commission's expertise and resources to assist them to thoroughly analyze and evaluate the issues discussed in the petitions; and
5. Request a volcanic and seismic assessment from the United States Geological Survey in order to adequately assess the increased risk to the environment of the global commons.

#### Background

The General Electric applications for licenses to export to Taiwan two boiling water nuclear power reactors and low enriched uranium for the initial cores, XR-135 and XSNM 1662, were filed on March 10, 1980. Notice of receipt was published in the Federal Register on April 15, 1980. The Westinghouse

application for a license to export two pressurized water nuclear power reactors to Taiwan, No. XR-136, was filed on May 2, 1980. Notice of receipt of that application was published in the Federal Register on June 24, 1980. The reactor export license applications are for the same units; only one of the applicants, depending on which (if either) is selected by the Taiwan Power Company (Taipower) to supply the reactors, would make the export if licenses are issued. It may be noted that the petitioner was one of the petitioners who sought leave to intervene in the matter of Westinghouse Electric Corp. (Exports to the Philippines), Application Nos. XR-130, XCOM-0013 and XSNM-1471, decided by the Commission in CLI-80-14 and CLI-80-15, May 6, 1980.

Because the two petitions for leave to intervene and requests for hearing address the same matters, the NRC Staff is responding to both petitions in this answer.

Executive Branch views on the captioned applications have not yet been received. Paragraph 110.84(d) of 10 CFR Part 110 provides that the Commission will not grant a hearing request prior to receipt and evaluation of Executive Branch views on an export license application. Accordingly, the NRC Staff in this answer addresses only the question of standing to intervene as a matter of right.

Standing to Intervene As a Matter of Right

Petitioner has requested a hearing as a matter of right under section 189a. of the Atomic Energy Act of 1954, as amended, (the Act)<sup>1/</sup> as well as a matter of Commission discretion.

Upon careful review and consideration of the instant petitions and in consonance with the comprehensive analyses and decisions of the Commission in Edlow International,<sup>2/</sup> Babcock & Wilcox<sup>3/</sup> and Exxon Nuclear Company, Inc.<sup>4/</sup> in which certain issues similar to those presented by the instant petitions were considered, the NRC Staff believes that the petitions for leave to intervene as a matter of right should be denied. In the main, and as more fully discussed below, petitioner has not established that its interests are such that the Commission should grant standing.

Section 189a. of the Act provides, in pertinent part, that "in any proceeding under this Act, for the granting... of any license... the Commission shall grant a hearing upon the request of any person whose interest may be affected

<sup>1/</sup> Petition, In the Matter of General Electric Company, p. 3, footnote 2, Petition, In the Matter of Westinghouse Electric Corp., p. 2, footnote 2.

<sup>2/</sup> In the Matter of Edlow International Company, 3 NRC 563 (May 7, 1976).

<sup>3/</sup> In the Matter of Babcock & Wilcox, 5 NRC 1332 (June 27, 1977).

<sup>4/</sup> Exxon Nuclear Company, Inc., et al. (In the Matter of Ten Applications for Low Enriched Uranium Exports to Euratom Member Nations), 6 NRC 525 (Oct. 4, 1977).

by the proceeding, and shall admit any such person as a party to such proceeding." Thus, a statutory right to a hearing and participation as a party in the hearing is granted only to those persons who can show that they have an "interest which may be affected by the proceeding."

The Staff has addressed this statutory provision with respect to the standard established in 10 CFR §§ 110.83 and 110.84, which require that petitions for leave to intervene asserting that the petitioner has an interest that may be affected specify the facts pertaining to the nature of his interest, how it relates to issuance or denial of the export license, and the possible effect of any order on that interest, including whether the relief requested is within the Commission's authority and, if so, whether granting relief would redress the alleged injury.

Petitioner CDP describes itself as a project of the International Center, a nonprofit corporation, and as monitoring the flow of resources to developing nations, primarily from the United States, and conducting independent non-partisan research and analysis of development policies and their implementation which is disseminated to the public and interested public officials and offices of government. It states that it is conducting comprehensive research and analysis of policies and risks posed by the export of nuclear reactors and related equipment and material from the United States to developing countries.

Petitioner CDP explains that it seeks to assure that the American public is as fully informed as possible about the environmental, public health and safety, and national defense and security implications of the proposed reactors and that the Commission, in disposing of the instant applications, make all pertinent data and information available to the public and take into account all pertinent criteria, including all relevant public participation in these proceedings which can result from a well informed public opinion.

Petitioner alleges that it has a clear interest in the issuance or denial of the licenses in that (1) denial of the applications would either delay or preclude construction of the reactors and thus assure that the petitioner, the United States, Taiwan and their citizens would not be exposed to the possible risks and (2) if the Commission issued the requested licenses but made their issuance subject to the highest feasible public health and safety and common defense and security safeguards, both petitioner and all affected governments and public interests will be advanced.

While recognizing that standing requirements in the federal courts need not be transplanted in whole to administrative proceedings, the Commission and its predecessor, the U.S. Atomic Energy Commission, have applied judicial standing doctrines in defining the statutory right to a hearing and participation as a party under section 189a. of the Act.<sup>5/</sup>

<sup>5/</sup> Edlow International, 3 NRC 569-578 (1976); Babcock & Wilcox, 5 NRC 1348 (1977); Exxon Nuclear Company, Inc., et al., 6 NRC 529-532 (1977). See e.g., Northern States Power, Co. (Prairie Island Nuclear Generating Station, Units 1 and 2), 6 AEC 188 (1973).

The leading judicial decisions in this field are Association of Data Processing Service Organizations v. Camp<sup>6/</sup> and Barlow v. Collins.<sup>7/</sup> The Supreme Court enunciated, through these decisions, a two-pronged test for determining whether persons have standing to obtain judicial review of federal agency action: (1) where they have alleged that the challenged federal action has caused them "injury in fact", and (2) where the alleged injury in fact is to an interest "arguably within the zone of interests to be protected or regulated" by the statutes claimed to be violated by the federal agency. 397 U.S. at 152, 153.

Three later decisions by the Court provide useful guidance on the proper application of the "injury in fact" test. In Sierra Club v. Morton,<sup>8/</sup> the Court indicated that an organization's "interest in a problem", no matter how longstanding the interest may be and no matter how qualified the organization may be in evaluating the problem, is not sufficient for standing to obtain judicial review. Thus, the "injury in fact" which the Court spoke of in Data Processing and Barlow is something more than an asserted "injury" to the goals, purposes or policies of an organization.

The "injury in fact" test in Data Processing and Barlow also requires some nexus between the alleged "injury in fact" and the action complained of. Judicial guidance on this aspect of the first test is set forth in the case

<sup>6/</sup> 397 U.S. 150 (1970).

<sup>7/</sup> 397 U.S. 159 (1970).

<sup>8/</sup> 405 U.S. 727 (1972).



of Warth v. Seldin.<sup>9/</sup> As the Court made clear in Warth, specific facts must be alleged demonstrating both that the challenged action harms the petitioner and that the petitioner would benefit in a tangible way from the Court's intervention.

On June 1, 1976, in Simon v. Eastern Kentucky Welfare Rights Organization,<sup>10/</sup> the Supreme Court again squarely faced questions of standing and strongly reaffirmed the earlier principles laid down in Sierra Club, Data Processing, Barlow and Warth. Of particular interest in Simon is the Court's strong insistence that the required "injury in fact" must "fairly be traced to the challenged action of the defendant, and not [merely be] injury that results from the independent action of some third party not before the court."<sup>11/</sup> It must be shown that "the asserted injury was the consequence of the defendant's actions, or that the prospective relief will remove the harm."<sup>12/</sup>

A reasonable application of the judicial standing doctrines discussed above, as well as the Commission's determinations in Edlow International,<sup>13/</sup> Babcock & Wilcox and Exxon Nuclear Company, et al. leads us to conclude that

<sup>9/</sup> 422 U.S. 490 (1975).

<sup>10/</sup> 426 U.S. 26 (1976).

<sup>11/</sup> Id., at 41.

<sup>12/</sup> Id., at 45, citing Warth, 505.

<sup>13/</sup> In Edlow International, the Commission remarked that: "an expansive rule of standing would be undesirable in the export licensing context, which involves sensitive questions of the nation's conduct of foreign policy." at 570.

the petitioner here has failed to establish the requisite interest (and zone of interest) upon which to grant standing.

Petitioner CDP does not appear to be a membership organization or purport to represent persons whose interest may be affected; its interest in the proceedings is purely institutional. As already noted, allegations of an organization's generalized interest in a subject matter do not in themselves suffice to confer standing. Sierra Club v. Morton; Edlow International at 572-574; Health Research Group v. Kennedy, No. 77-0734, U.S. District Court of the District of Columbia (47 U.S.L.W. 2586).

Accordingly, the interest asserted by petitioner CDP does not establish a claim of right under section 189a. of the Atomic Energy Act of 1954, as amended.

Further, the interests related to the health, safety and environmental impact of the reactors on the population of Taiwan asserted by the petitioner are not within the zone of interests to be protected by the Act and other pertinent statutes.

Addressing a similar question in Edlow International, the Commission emphasized that "standing cannot be claimed on issues which the Nuclear Regulatory Commission has no legal competence to decide."<sup>14/</sup> The NRC has held to the

<sup>14/</sup> Edlow International at 574.

view that under the Atomic Energy Act, the Energy Reorganization Act, general principles of international law, and the National Environmental Policy Act (NEPA), it lacks authority to consider health, safety or environmental effects of its export licensing actions upon citizens of recipient nations.<sup>15/</sup>

The petitioner also asserts a concern about the alleged lack of legally binding bilateral non-proliferation agreements between the United States and Taiwan and the resultant risk to the common defense and security. (Petition at p. 9) Thus, the petitioners claim to represent interests that are those of the nation as a whole, which the Commission, no less than the Congress and the Executive Branch, are sworn by oath to uphold. The Commission has concluded that in these circumstances, the need for separate representation and for adjudication rather than political oversight is not established (Edlow International, p. 571). Petitioner has shown no injury in fact that would result from actions which would allegedly jeopardize the U.S. common defense and security.

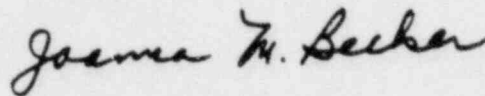
Hence, as in Edlow International, petitioner has failed to establish that its interests in this regard and that of its members, are sufficiently within the zone of interests protected by pertinent statutes to be afforded intervention in this proceeding as a matter of right.

<sup>15/</sup> Westinghouse Electric Corp., (Exports to the Philippines) CLI-80-14, Opinion of Commissioners Kennedy and Hendrie, p. 8, Opinion of Commissioner Gilinsky, p. 1; Edlow International, 582, 585; Babcock & Wilcox, 1346, 1353.

Discretionary Hearing

Although the petitioners have not shown a statutory right to a hearing pursuant to section 189a., the Commission has discretion to grant a hearing if it would be in the public interest and would assist the Commission in making the determinations required by the Atomic Energy Act of 1954, as amended. However, pursuant to 10 CFR § 110.84(d), a hearing request may not be granted until after receipt and evaluation of Executive Branch views. Accordingly, the NRC Staff will submit its views on whether the Commission should hold a discretionary hearing on those applications after receipt and analysis of Executive Branch views.

Respectfully submitted,



Joanna M. Becker  
Counsel for NRC Staff

Dated At Bethesda, Maryland  
this 18th day of July, 1980.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



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) Docket No. 110-01075  
) Application No. XSNM-1662  
) Docket No. 110-01076  
) Application No. XR-136  
) Docket No. 110-2058

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO PETITIONS FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING FILED BY CENTER FOR DEVELOPMENT POLICY," in the above-captioned proceedings have been served on the following by deposit in the United States mail, first class or air mail, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 18th day of July, 1980.

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