UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	:	
	:	
WESTINGHOUSE ELECTRIC CORPORATION	:	Application No. XR-136
	:	Docket No. 11002058
(Exports to Taiwan)	:	

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

On April 23, 1980, Westinghouse Electric Corporation ("Westinghouse" or "Applicant") applied to the Nuclear Regulatory Commission ("NRC" or "Commission") for a license to export two nuclear facilities (Taiwan Power Nuclear Units 7 and 8) to Taiwan. Notice of the Application was published in the Federal Register on June 24, 1980 (45 Fed. Reg. 42431). On June 20, 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.

I. 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 Materials), CLI-76-6, 3 NRC 563 (1976). In that case, the Commission denied petitions for

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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 established these principles, the Nuclear Non-Proliferation Act of 1978 ("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 injury. 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 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.

II. 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 is 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), CLI-80-14 and CLI-80-15, 2 CCH Nuclear Reg. Rep. §§ 30,475-476 (1980); Babcock & Wilcox Co. (Export of Reactor to Germany), 5 NRC 1332 (1977); Edlow, supra.

CDP suggests seven 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

Taiwan and on the global commons.[1] To the extent that these issues concern alleged impacts in Taiwan they are clearly beyond the scope of matters which the Commission has determined it will consider in export license proceedings. With respect to impacts on the global commons, such impacts were considered in the Final Environmental Statement on U.S. Nuclear Power Export Activities (ERDA-1542). ERDA-1542, published in April 1976, addressed the environmental, social, technological, economic, national security and foreign policy benefits and costs to the United States and the global commons of the nuclear power export program. The Department of State, acting on behalf of the Executive Branch, commented on ERDA-1542 in September, 1979 as follows:

> "ERDA-1542 concluded, among other things, that the level of projected United States nuclear power export activities through the year 2000 would not entail significant and unacceptable adverse environmental impacts to the United States and global commons. The nature of United States nuclear power export activities, as they relate to potential environmental impacts, has not altered substantially since issuance of ERDA-1542 in April 1976, except that the export activity levels have proved lower than then projected. Therefore, the environmental impact of such activities is expected to be even less than estimated in ERDA-1542. There is also no reason to

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[1] These five issues are issue No. 1, alleged "seismic risks . . . posed by the Reactors' site"; issue No. 2, alleged "volcanic risk . . . posed by the Reactors' site"; issue No. 3, alleged risks "posed by the high population density around the Reactors' site"; issue No. 5, alleged "[d]angers to the health and safety of Taiwanese citizens"; and issue No. 7, generic safety questions allegedly posed by nuclear power reactors.

> believe that the nature of such activities described in ERDA-1542, as they relate to environmental impacts, will significantly change in the foreseeable future." (Executive Branch Concise Environmental Review, Philippine Nuclear Power Plant, Unit 1, September, 1979, p. 20)

In light of these conclusions, the impact on the global commons from the two reactors to be exported to Taiwan necesssarily must be subminimal. In Westinghouse Electric Corporation (Export to the Philippines), supra, the Commission relied on ERDA-1542 and other existing documents in concluding that impacts on the global commons from the proposed export would be insignificant. Since the Commission has recently resolved, on a generic basis, the issue of alleged impacts on the global commons, Westinghouse submits intervention by CDP on this issue would be of no benefit to the Commission.[2]

Proposed issue No. 4, relating to an alleged risk to the common defense and security of the United States due to the lack of legally binding non-proliferation agreements, is based on an erroneous premise. Contrary to CDP's allegation, legally binding non-proliferation agreements are in effect. The Taiwan Relations Act, Public Law No. 96-8 (1979) (codified in various sections of Titles 8, 22, 26, and 42 of the United States Code) provides that all treaties and international agreements between the United States and Taiwan which were

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[2] It should be noted that CDP participated in the Philippine export license proceedings and was accorded a full opportunity by the Commission in that proceeding to present its position regarding alleged effects on the global commons of reactor exports.

in force on December 31, 1978, are continued in force unless terminated in accordance with law (Section 4(c), 22 U.S.C. § 3303(c); see also "Memorandum for All Departments and Agencies" from President Carter dated December 30, 1978, 44 Fed. Reg. 1075 (Jan. 4, 1979)). Thus, all treaties and agreements pertinent to the proposed export, such as the "Agreement for Cooperation Concerning Civil Uses of Atomic Energy" (23 U.S.T. 945; T.I.A.S. 7364) continued in effect after the recognition of the Peoples Republic of China on January 1, 1979. Moreover, Taiwan is a party to the NPT and has agreed to comply with International Atomic Energy Agency safeguards requirements.

Proposed issue No. 6, 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 that there would be no significant adverse environmental impacts on the global commons from spent fuel generated by the exported reactor. That conclusion is true for the instant case.

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 therefore should be denied.

III. 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. 13-14).

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.

IV. Conclusion

In passing the NNPA, Congress emphasized that a factor vital to the success of United States non-proliferation policy is our ability to assure other nations that the United States 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 Atomic Energy Act of 1954, as amended, § 126 (42 U.S.C. 2155). For the reasons discussed supra it is clear that allowance of intervention by CDP would be of no benefit to the Commission and the unnecessary delay which would result from any such intervention would be adverse to the public interest in that it would jeopardize attainment

of this nation's non-proliferation goals. Therefore, 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 21, 1980

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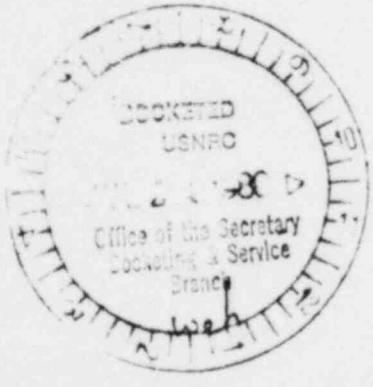
CERTIFICATE OF SERVICE

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 21st day of July, 1980.



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