

Comm CORR

STATEMENT OF JOHN F. AHEARNE
CHAIRMAN, U.S. NUCLEAR REGULATORY COMMISSION
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE
HOUSE COMMITTEE ON FOREIGN AFFAIRS
MAY 7, 1980

The Commission is pleased to have this opportunity to discuss its efforts to assist foreign nations in addressing the health, safety and environmental risks associated with the development of nuclear power.

During the past five years the Commission has given detailed consideration to the role it should play in assisting foreign nations on health, safety and environmental matters. In a series of formal opinions we have taken the position that the appropriate means for providing such assistance is through ongoing bilateral and multilateral cooperative programs; and not by making a domestic-style health and safety review part of the NRC export licensing process. In the Commission's recent Philippine export license proceeding we set forth our views on this matter in great detail. I would request that the text of the opinions of the various members of the Commission be included in the record of this hearing.

In that proceeding the Commission rejected arguments that it should consider in its export licensing decisions health, safety, and environmental impacts that would result in the recipient country as a result of a reactor export. On the other hand, the Commission determined, as a matter of law, that it was required to consider potential impacts from foreign activities on U.S. territory

8005 270256

and decided, as a matter of discretion, to consider impacts on the global commons -- areas such as the high seas, Antarctica, and portions of the atmosphere that are not within the territorial jurisdiction of a single nation state. We examined the Atomic Energy Act, as amended by the Nuclear Non-proliferation Act of 1978, as well as the National Environmental Policy Act and were unable to discern a clear Congressional mandate that we should consider impacts within recipient nations in the licensing process. The Commission's Philippine opinions set out in much greater detail the Commission's legal analysis of these matters.

Some of the participants in the public proceeding on the Philippine reactor export took the view that the Commission should take a greater role in the area of assessing foreign health, safety and environmental impacts, and that this effort should be undertaken as part of the export licensing process. The NRC considered these arguments and concluded that the Commission would not be in a position to determine that the exported reactor could be operated safely. The NRC review would inherently have to be less complete than our review of domestic reactor applications. For example, site visits by NRC technical experts, including verification of data on site characteristics, which are an essential element of the domestic review process, could not be conducted without the consent of the foreign government. Many countries would undoubtedly object to such site visits, believing that such reviews would constitute an unwarranted intrusion into their sovereignty.

Some participants in the Philippine proceeding specifically suggested that the Commission should conduct a comprehensive review

of the proposed reactor design before acting upon reactor export applications. The Commission rejected this approach, even though some type of paper review could probably be accomplished without major intrusions into foreign sovereignty. First, such a review would be exceedingly difficult. In many cases the recipient nation purchases only a portion of the required equipment from the United States. Therefore, a design review would require the NRC to examine the interrelationship of U.S.-supplied equipment with systems and components produced in the recipient nation or procured from third-country suppliers. Each review would be unique and NRC staff experience gained from review of U.S. reactor designs might be of limited value.

Even more significantly, because the NRC has no continuing regulatory jurisdiction over activities associated with the reactor project once the export license is issued and commodities are shipped, the NRC cannot inspect the reactor as it is being constructed to ensure that the plant is being built according to specifications and could not periodically inspect the plant once it is operating. Moreover, the NRC has no control over the selection and training of the individuals who will manage and operate the reactor. In the absence of such controls, the NRC is unable to make a meaningful safety determination. A partial review could in fact have adverse results because it could give the misleading impression that the NRC is warranting the safety of the facility as eventually constructed. This could lead recipient nations to place undue reliance upon the NRC review and to reduce

their own efforts and expenditures to develop an indigenous capacity to construct, operate, and maintain plant safety.

Another consideration is that comprehensive health, safety and environmental reviews could not be completed within the time limits established for NRC action on export license applications set forth in the Nuclear Non-Proliferation Act.

I should add that the Commission regularly exchanges large volumes of nuclear health, safety, and environmental information with other countries, and encourages the progressive development of safety and regulatory practices by foreign governments. The NRC currently has negotiated and is implementing agency-to-agency agreements for health and safety cooperation with regulatory bodies in eighteen countries. For the record, I would like to submit a list of these countries and a copy of a typical cooperative agreement (in this case between the United States and the Philippines). As part of these exchanges the NRC provides notification of its decisions affecting design and operation of reactor types similar to those exported; analyses of problems similar to those encountered abroad, if requested; and copies of NRC regulations, environmental impact statements and other health and safety documents. These bilateral agreements offer a framework for providing a significant amount of safety assistance and advice to countries embarking on commercial nuclear power programs.

The Commission also arranges for representatives of foreign regulatory organizations to be assigned to the NRC technical staff to work with NRC safety experts for periods of from four months to

two years to gain experience in safety and regulatory matters. Representatives of foreign countries also attend 1-3 week NRC training courses on a range of regulatory topics. NRC staff members also participate in IAEA reactor safety missions which visit developing countries for varying periods of time to advise on safety matters related to siting, construction and operation of nuclear reactors. NRC devotes approximately 10 man years annually to these foreign assistance efforts.

In light of the Three Mile Island Accident, suggestions have been made that the NRC should devote greater resources to providing assistance to foreign countries. However, due to government-wide budget constraints and the need to devote scarce Commission resources to domestic nuclear regulation, the Commission does not expect to increase its foreign assistance efforts to any great extent in the near future. Instead, the United States Government is encouraging the IAEA to provide greater health and safety assistance to developing countries.

Commissioners Kennedy and Hendrie have the following additional comments. It is their view that the Commission lacks the legal authority to consider health, safety and environmental impacts on citizens or the recipient nation and that as a matter of policy the Commission should not consider impacts on U.S. military bases located in foreign nations or on American citizens residing abroad. Their conclusion that the United States lacks the legal authority to consider impacts on citizens in foreign nations is grounded in part in the traditional rule of domestic U.S. law that federal statutes apply only to conduct within, or

have effect within, the territory of the United States, unless the contrary is clearly indicated in the statutory language. In this regard, it should be noted that the Government of the Philippines has made clear in its submissions to the Commission that the Commission lacked the legal authority to consider impacts that would occur in the Philippines, and that it would oppose any U.S. effort to conduct a comprehensive health, safety and environmental review.

They believe the best means to enhance safety in recipient nations is through international cooperative efforts, either through the International Atomic Energy Agency or through bilateral arrangements between the United States and recipient nations. The export licensing process is not the appropriate forum for providing advice to foreign countries on health, safety and environmental matters.