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May 14, 1979

FREEDOM OF INFORMATION  
ACT REQUEST

FOIA-79-186  
REC 45-16 79

Joseph Hendrie,  
Chairman  
Nuclear Regulatory Commission  
1717 H Street, N.W.  
Washington, D. C. 20558

By Hand Delivery

Re: Docket 50-574  
Applications No. XR-120,  
XCOM 0013, and  
XSNMO-1471

Dear Mr. Hendrie:

On April 19, 1979, The Center for Development Policy, Jesus Nicanor Perlas, III, and the Philippine Movement for Environmental Protection ("Intervenors") filed a Petition for Leave to Intervene and Request for Hearing in the above-numbered proceedings involving the application to export a nuclear reactor, component parts, and enriched uranium fuel to the Philippines.

The Petition seeks full and complete ventilation of the questions of seismic and geologic risks and dangers at the reactor site; the adequacy of the Philippine reactor's seismic design; the environmental impact of the reactor and the disposition of its spent fuel; the dangers to the 13,000 United States citizens at Clark Air Force Base and Subic Bay Naval Base, both located a short distance from the site; dangers to the health and safety of the Philippine citizens located near the site; generic safety problems posed by all nuclear power plants and by Westinghouse reactors in general; and risks to the national defense caused by the potential risks to the Clark and Subic Bay facilities. Intervenors feel that these issues must be explored in detail for the public and the Commission to make an informed and intelligent decision about the proposed export licenses.

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In preparing and seeking to pursue the issues raised in the Petition, we have reviewed the four files mentioned above which are located in the Public Document Room at the NRC's 1717 H Street, N.W. offices. Our conclusion is that, at best, the information in these matters is kept in a sloppy, confusing, and frequently irretrievable fashion and, at worst, there is a deliberate and ongoing coverup which includes violations of federal statutes and the NRC's own regulations.

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No one can tell what the NRC has considered in its deliberations on the proposed Philippine Reactor. Instead of the usual practice of government agencies to maintain full and complete files with all documents filed in a matter under consideration, the NRC has hidden, mislaid, destroyed and otherwise made unavailable much, perhaps most, of the key data in this case. This is in direct contradiction to the spirit and intent of the Freedom of Information and Sunshine Acts, and frustrates any interested member of the public from becoming aware of the important facts in this case.

As an example, none of the four files listed above nor the monthly accession list maintained by NRC contains any mention of a four volume Preliminary Site Investigation Report ("PSIR") for the proposed Philippine reactor. Yet, in a December 27, 1977 letter 1/, J. M. Felton, Director of the NRC's Division of Rules and Records, confirmed its existence. Why was this PSIR omitted from the Docket?

In that same letter, Mr. Felton stated that two of the PSIR's four volumes had been "inadvertently" destroyed. Who prepared the PSIR, who destroyed the two volumes, and why? It is inconceivable that only one copy of such an important document exists. Has the NRC obtained replacement volumes? If so, from whom and, if not, why has the NRC not replaced this critical information for use by itself and the public? Why is the PSIR nowhere mentioned in NRC's records on the Philippine case?

We were told (by the State Department and the news media) that a seven-volume Preliminary Safety Analysis Report ("PSAR") had been recently delivered to the Commission by Westinghouse. Again, there is no mention of this important document in either the monthly accession list or in any of the four files. Why is it omitted? After much struggle, intervenors were finally able to gain access to that portion of the PSAR mentioned above. Why did it take so long to gain access to it?

Had we not learned of Mr. Bush's Freedom of Information Act request and Mr. Felton's reply, Intervenor might never have learned of the PSIR, which should deal with the central risks questioned in their

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1/ To Graeme W. Bush, Esq., in response to a Freedom of Information Act request (a copy of the NRC letter is attached).

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Petition. In fact, a copy of Mr. Felton's letter referred to above is not even in the Public Document Room or listed in any public file relating the the Philippine export license Applications.

The above cited omissions are merely illustrative of the mess which NRC calls its files and filing system in the entire Philippines export license matter. Probably there are numerous other highly pertinent documents missing or unavailable of which we and other members of the public have never learned. Also, the papers which are on file are maintained in a very disorderly manner. Some are loose and fall to the floor. One can only imagine what vital information has been lost in this fashion.

There is no excuse for NRC's haphazard and frequently secretive handling of information which should be readily and systematically available to the public. The lack of key data makes it impossible for concerned members of the public to know what NRC is considering and doing and evaluate all the pertinent facts in order to communicate on the issue or intervene at NRC.

Moreover, NRC's sloppy and secretive record maintenance system violates Congress' intent to allow public participation in export proceedings as expressed in §304 of the Nuclear Nonproliferation Act, 42 U.S.C. §2155a, and undermines the Commission's own regulations, 10 C.F.R. §110.72 et seq.

In particular, the Commission has violated 10 C.F.R. §110.72 (b) <sup>2/</sup> since material correspondence is missing, including the transmittal by Westinghouse of the two substantial and apparently significant reports referred to above. The Commission also has apparently violated 10 C.F.R. §110.72(f) <sup>3/</sup> by failing to include the International Atomic Energy Agency ("IAEA") correspondence and report. The IAEA report recently transmitted by the Philippine government is particularly crucial as it supposedly documents the geological and environmental risks and dangers of the Philippine reactor site.

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<sup>2/</sup> §110.72(b) mandates that the NRC make available in the Public Document Room "Commission correspondence with the applicant."

<sup>3/</sup> §110.72(f) requires that the NRC make available in the Public Document Room "correspondence from foreign governments and international organizations."

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To remedy this situation promptly, we request that you meet with us within one week. At this meeting, you should make available to us all material filed in these proceedings, all reports done by the NRC's staff, any recommendations prepared in connection with any phase of the reactor export, any analysis of the seismic risks or other risks posed to public health and safety and/or the common defense and security by these proposed exports--in sum, any and all material ever considered by anyone at the NRC in regard to the Philippine export applications. In addition, we expect NRC to promptly produce the IAEA report and explain to both Intervenor and the general public why NRC puts so great stock in a report done, by NRC's own admission 4/, in a time much too short to accomplish the report's purpose.

Pursuant to the Freedom of Information Act, 5 U.S.C. §522, as amended, and the NRC's own rules (10 C.F.R. §2.740 et seq.) on behalf of the Intervenor, we further request that you submit to the Intervenor and place in the Public Document Room a complete inventory and copies of all documents in the Commission's possession (or those documents which at one time were in the Commission's possession) in docket 50-574 and for Application XR-120, XCOM 0013, and XSNMO 1471.

Also, it is appropriate for NRC to waive for Intervenor copying charges, if any, pursuant to 5 U.S.C. §552(a)(4)(A) "because furnishing the information can be considered as primarily benefiting the general public." As explained above, the information requested has been hidden from the public and must be revealed immediately.

If the recent events at Three Mile Island have taught any lesson, it is that the public must be fully and completely informed about the perils of nuclear power and that secretive actions by NRC provoke public mistrust of government in general and your agency (and its regulatees) in particular. The American people must be informed about the possible dangers to the world environment and America's national security caused by the export of reactors, particularly this one which is sited in an active seismic and volcanic area near two vital U.S. military bases which house some 13,000 U.S. citizens.

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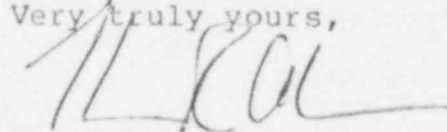
4/ Memorandum of Edison G. Case, May 24, 1977 (a copy of which is attached).

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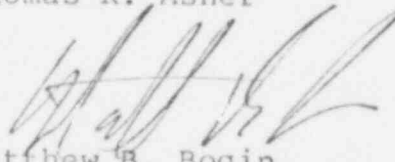
Whether it is due to inadvertent sloppiness or intentional concealment, NRC's coverup in the Philippine export matter must be ended now. The Commission must obey its own rules and regulations if the public's respect for the rule of law and the efficacy of NRC and its regulatees is not to be further undermined. Moreover, the public must have access to all pertinent information in order to make informed decisions regarding significant governmental actions such as those involved in the Philippine reactor proceedings.

If we do not hear from you to the contrary within ten days, Intervenor will deem the requests made herein to have been denied by NRC and will take appropriate actions to protect their (and the public's) legal rights. Since it appears the Commission is prepared to act quickly, see The Washington Star, May 4, 1979, at A-6 "NRC Backs Export of Parts for N. Plant in Volcano, Quake Area", we require the requested materials immediately and thus, must demand your prompt attention.

Very truly yours,



Thomas R. Asher



Matthew B. Bogin

cc: Westinghouse Electric Corp.  
c/o R. P. Keenan

Peter Tarnoff, Executive Secretary  
U.S. Department of State

Howard K. Shapar, Esq.  
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