

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the matter of
WESTINGHOUSE ELECTRIC CORP.
(Exports to the Philippines

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Application No. XR - 120
Application No. XCOM - 0013
Docket No. 110 - 0495

STATEMENT OF VIEWS

The Nuclear Regulatory Commission (hereinafter referred to as "the Commission") in its Order of October 19, 1979, requests that participants and any other interested persons file with the Commission a statement of views on the procedural and jurisdictional issues presented in the aforesaid Order on the matter of the pending Westinghouse applications for export license for the Philippine Nuclear Power Plant.

It appears that the purpose of the Commission in requesting submissions from the participants and any other interested individuals or groups is to determine "the proper scope of the Commission's jurisdiction to examine health, safety and environmental questions arising from the construction and operation of exported nuclear facilities and what procedural framework would be appropriate for considering such issues, if they are found to lie within the Commission's authority".

I. Identification of Party

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The National Power Corporation (hereinafter referred to as "NPC") is a corporation wholly owned by the Government of the Republic of the Philippines and is charged by Philippine law with the national responsibility of undertaking the installation, production, transmission and bulk distribution of electricity in the Philippines from indigenous and other sources of energy.

II. Identification of Interest

In February 9, 1976, the NPC contracted the services and equipment of Westinghouse Electric Corporation (hereinafter referred to as "Westinghouse") to construct a 620 megawatt nuclear power plant (hereinafter referred to as (PNPP-1) at Napot Point, Morong, Bataan, Philippines.

The contract between NPC and Westinghouse requires Westinghouse, among others, to apply for and in behalf of NPC, for all United States export licenses and permits needed for the shipment and transportation of equipment and materials to the Philippines that are to be supplied by Westinghouse.

III. Discussion of Issues

1. Whether and if so, to what extent the Commission possess the legal authority or a legal obligation to examine the health, safety and environmental impacts of an exported nuclear facility in reaching its licensing determination specifically, which of the seven issues raised by petitioners are appropriate for Commission review?

The NPC submits and maintains that on the bases of current US nuclear legislation, including the Honorable Commission's jurisprudence and precedents on the licensing and regulation of export of nuclear facilities, the Commission is devoid of legal authority to examine the health, safety and environmental impacts of an exported nuclear facility.

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In Edlow (Tarapur), 3 NRC 563, 570-577 (1976), Westinghouse Electric Corporation ASCO II, Barcelona, Spain, License No. XR-99 (Docket No. 50-4-74) (1976), and Babcock and Wilcox (Buergeraktion), 5 NRC 1332, 1348 (1977), it was decided and established by the Honorable Commission that the export licensing procedures under

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Nuclear Non-Proliferation Act (NDPA) was not intended to examine or evaluate the health, safety and environmental impacts arising outside the United States territory from exported nuclear facilities.

International law and ethics suggests that the Honorable Commission should not arrogate unto itself the consideration of specific health, safety and environmental impacts of an exported nuclear facility on the territory that is within the sovereign jurisdiction of a foreign government, like the Philippines, for this will lead to a situation of applying U.S. law to actions occurring in a foreign nation. It is a customary rule of international law that one country cannot impose a requirement upon a foreign nation or upon its citizens within the territorial jurisdiction of that foreign nation.

Upon the foregoing considerations, the only issue raised by the petitioners which NPC considers as appropriate for Commission review and which are not related to the export of nuclear facilities, are matters of generic safety questions posed by nuclear power plants which are of US manufacture and origin.

2. Is the Commission's health, safety or environmental review of export license applications limited to the connection of these issues with the US common defense and security or are there other legal principles which permit or require the Commission to examine these matters as part of its licensing review?

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The US Atomic Energy Act and the US Nuclear Non-Proliferation limits the review of export license applications by the Commission to matters affecting the US common defense and security and non-proliferation goals on the one hand and to assure other nations

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that the US is a reliable and predictable supplier of nuclear fuels and equipment.

A full reading of the statement of policy and purposes of the NNPA indicates that the U.S. Congress did not intend the Commission to dictate policies of other nations relative to their nuclear energy program nor of substituting US wisdom in the nuclear field in the place of that of the importing country. The matter of safety, health and environmental impacts of nuclear power plants whether exported from the US or from other supplier nations are issues within the exclusive and legitimate concern of the importing country. The fact of the matter is that the Philippine Government or any other country for that matter could still construct and operate a nuclear reactor within its territorial jurisdiction with components and equipment obtained from suppliers other than the U.S. Thus, whatever problems posed by the PNPP-1 on the matter of health, safety and environmental impact lies most exclusively within the regulatory authority and laws of the Philippine Government .

The Commission, in its action on export license applications, should not act in total disregard of the foreign policy implications of its actions. The Commission should make its judgments on the basis of the views and information received by it from the more authoritative agencies of the US government on matters of foreign policy. Again, the fact of the matter is that the US Executive Branch has rendered a favorable judgment on the export license applications for the PNPP-1 after a thorough evaluation of the statutory criteria of the NNPA on exports for nuclear uses from the U.S.

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To inject more criteria than what is required by Statutes would be ignoring the traditional forms of concession, agreement, accommodation, negotiation and mutual adjustment of interests which has characterized the approach of the United States in its relations with foreign nations. It would mean a deterioration of the US credential as a reliable supplier of nuclear equipment and materials which is one of the goals intended to be achieved by NNPA.

3. What issues arising from the application to export a nuclear facility to the Philippines should the Commission examine in any future public proceedings?

As we have maintained in our response to Question No. 2 above, the only issues that the Commission may legitimately examine and review relative to nuclear export license applications, be it for the Philippines or any other foreign country, are those affecting the common defense and security of the U.S. and its non-proliferation goals as delineated in the NNPA.

It will be recalled that Philippine President Ferdinand E. Marcos, as a result of the Three-Mile Island incident which occurred on March 28, 1979, ordered a suspension of plant construction on the PNPP-1 and at the same time created an investigative panel (Philippine Commission) to conduct an inquiry on the safety of the PNPP-1. The Philippine Commission terminated its hearings on September 14, 1979. The Philippine Commission has also secured the services of internationally known experts to act as its technical advisers in assessing and evaluating the evidences and testimonies submitted by the participants. Thus, it will

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be seen that the Philippine Government recognizes the fact that the health, safety and environmental impacts arising from the construction and eventual operation of the PNPP-1 are matters within the jurisdiction of the Philippine Government to assess and evaluate which the US Government in general and the Commission in particular must respect and recognize.

It is not unlikely that the findings of the Philippine Commission may not be consistent with the findings of the US Nuclear Regulatory Commission. An embarrassing situation would thus arise with unwarranted repercussions to the foreign relations of the US with the Philippines in the event of contrary findings between the two bodies on health, safety and environmental impacts of the PNPP-1.

4. What procedural format should the Commission adopt to examine any foreign health, safety and environmental issues falling within its jurisdiction?

On the assumption that any foreign health, safety and environmental issues adversely affect the common defense and security of the US including its non-proliferation goals, the probability of which is far fetched with respect to Philippine application for export license, it is proposed that the procedural format that the Commission should adopt is a non-adversary type of inquiry approximating a legislative committee hearing. The parties/participants will initially be asked to submit position papers and/or statement of views on issues previously delineated by the Commission. The eligibility of the parties and the legitimacy of their interests should first be evaluated by the Commission before they are allowed to participate in the inquiry.

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Only the members of the Commission or of the appropriate investigating panel will be allowed to ask questions to elicit details and information from the parties/participants determined to be eligible by the Commission to participate in the inquiry.

A party/participant shall have no right to propound questions or cross-examine witnesses, any adverse party/participants in contrast to, and as would not happen in, a Court room type of proceedings. This would afford the Commission complete control of the proceedings and will preclude the possibility of investigating and placing a trial highly sensitive foreign policy and national interest and security matters of the importing country, including the importing country's political system, international and national policies.

5. If health, safety and environmental aspects of a US supplied nuclear facility are to be evaluated in the NRC export licensing process, in what specific manner should this review be conducted differently from the Commission's domestic reactor licensing proceedings? Should the scope of review be different, and if so, in what precise way?

The NPC submits and maintains that the Commission may conduct its domestic reactor licensing proceedings in whatever way it may deem appropriate pursuant to its existing legislative mandates and administrative procedures.

However, in the matter of export licensing process, we propose the procedural format we have discussed above in response to Question No. 4.

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6. Are there any factual or legal considerations which would justify a different NRC health, safety or environmental review for some export license applications that for others? Specifically, are such considerations applicable to the present matter?

Outside of the statutory requirement for the Commission to make a finding on the effects of the export of a nuclear facility on the common defense and security of the US and its non-proliferation goals as outlined in the NNPA, NPC does not see any other substantial factual or legal considerations which would justify or required a different Commission approach for some export license applications from others.

For the Commission to adopt one approach for one export license application and another approach for other applications would to say the least, be discriminatory and would do violence to the equal protection provisions of the US Constitution. It would go against the US statutory assurance pursuant to the NNPA that the United States is a reliable and effective supplier of nuclear facilities and fuels. Such a situation may lead other nations to view the US as a capricious and whimsical supplier.

The developing countries in the Far East and Southeast Asia who are in the threshold of initiating nuclear power programs are watching with keen interest the Philippine situation. The issuance or non-issuance of the export license applications for the PNPP-1 will certainly have a profound influence on any national decision these countries will make as to which supplier country they will turn to for their nuclear power plants.

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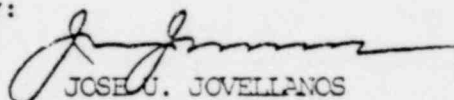
The delay in the issuance of the US export license has presently caused considerable financial loss to the NPC and will be continuing so long and as long as the export license is being withheld by the Honorable Commission. Additionally, the non-issuance of the export license, if the Commission should so decide, would certainly undermine NPC's power program to provide electricity up to the 1980's for the infrastructure, developmental projects and other economic needs of the Republic of the Philippines.

WHEREFORE, on the basis of the foregoing submissions, it is most respectfully requested of this Honorable Commission to grant the export license pursuant to the above applications without further proceedings.

7 November 1979, Manila, Philippines.

NATIONAL POWER CORPORATION

By:


JOSE U. JOVELLANOS
Senior Vice-President

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