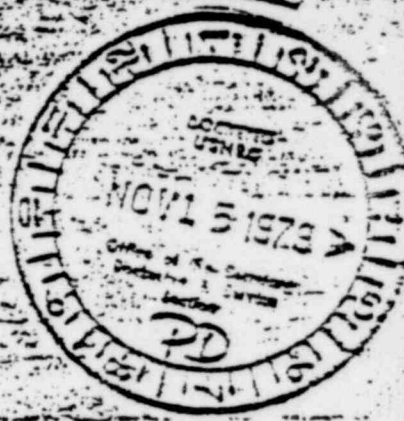


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the matter of)	
)	Docket No. 110-0495
WESTINGHOUSE ELECTRIC CORP.)	
)	Application No. XR-120
)	Application No. XCOM-0013
(Exports to the Philippines))	(Application No. XSNM-1437)
)	

BRIEF OF INTERVENOR/PETITIONER

COALITION AGAINST REACTOR EXPORTS
(COALITION CARE)

1442 119

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INTRODUCTION AND MOTION TO INTERVENE

Export license applications filed by the Westinghouse Electric Corporation in connection with its proposed nuclear power plant in the Philippines are presently pending before the Nuclear Regulatory Commission. In Application No. XR-120, Westinghouse seeks to export a nuclear facility. In Application No. XCOM-0013, it seeks to export certain reactor components. In a related application, XSNM-1437, it seeks a license for export of nuclear fuel.

The Commission, by Order of October 19, 1979, invited submissions from participants and interested individuals and groups on various procedural and jurisdictional questions related to the license applications for the reactor (XR-120) and its components (XCOM-0013).

The Coalition Against Reactor Exports (Coalition-CARE) hereby moves to intervene and fully participate in the Commission's proceedings regarding these license applications. In addition, the Coalition hereby moves to have this brief considered as a submission in response to the Commission's Order of October 19, 1979.

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IDENTIFICATION OF PETITIONER
AND ITS INTEREST IN DENIAL OF
THE REQUESTED EXPORT LICENSES

The Coalition Against Reactor Exports (Coalition-CARE, hereinafter referred to as the Coalition) is an association of Filipinos and Americans in the San Francisco Bay area, with offices located at the Vicariate, 4276 Howe Street, Oakland, California, 94612, telephone (415)-428-0142. Its purpose is to gather and disseminate information about the export of nuclear reactors from the United States to so-called Third World countries. In particular, it seeks to inform the American public of the proposed export by the Westinghouse Electric Corporation of a nuclear power plant to the Philippines, so that the public may make informed decisions regarding this project. Members of the Coalition have sponsored lectures, slide shows and other cultural events regarding the proposed export of a reactor to the Philippines. The Coalition supports the efforts of thousands of Filipinos in the Philippines to convince the Philippine government not to construct the nuclear power plant.

The Coalition is comprised of individual members of the following offices, organizations and groups: the Vicariate, a Catholic ministry to approximately 3,000 Filipinos in the Bay area; the Committee of 26, an organization concerned with human rights in the Philippines and other countries; Science for the People, an organization of scientists concerned with the safe development of appropriate technologies; Christians for Socialism, a church-related movement

for social justice in Third World countries; the Peace and Social Action Committee of the Palo Alto, Calif., Friends Meeting; Friends of the Filipino People, an organization opposed to American political and military intervention in Philippine affairs, and International Students Against Nuclear Exports (INSANE). The Coalition includes private individuals, such as returned Peace Corps Volunteers, missionaries and political exiles from the Philippines, members of California bar organizations and students, who are interested in the safety, health and environmental issues posed by the export of a nuclear reactor to the Philippines. Many members of the Coalition are either Philippine citizens or of Filipino ancestry or have spent significant periods of time in the Philippines. Such members have relatives, godchildren and friends living in the Greater Manila area. Such members have continuing contractual, religious, property, professional and/or recreational interests in the Philippines which will be directly damaged or destroyed by Commission approval of the requested export licenses, and, in particular, by the unsafe location, construction or operation of the proposed reactor. The Coalition has standing to intervene in the pending license application matter. (United States v. SCRAP, 412 U.S. 669, 684-685 (1973); Warth v. Seldin, 422 U.S. 490, 498-499, 500 (1975); Crowther v. Seaborg, 312 F. Supp. 1205, 1212-1213 (D.C. Colo. 1970); see 10 C.F.R. § 110.84, subd. (b); see also, Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 38-42 (1976).

ARGUMENT

The Philippines now stands close to achieving one of the least coveted distinctions among nations -- being the home of the world's most dangerous nuclear power plant. Incredibly, the Napot Point reactor is being constructed on the flanks of a volcano, Mt. Natib, which the International Atomic Energy Agency (IAEA) has found capable of eruption. The potentially catastrophic consequences of this and related dangers are discussed herein.

The Coalition, in support of its motion to intervene, and in response to the Commission's Order of October 19, 1979, submits: 1) the Commission has the legal authority and obligation to undertake a complete review of health, safety and environmental risks associated with the proposed reactor before deciding whether to issue the requested export licenses; 2) such review must be undertaken with the same regard for health and safety of the Filipino people as the Commission has for (a) the common defense and security of the United States and (b) the welfare of American citizens in the Philippines; 3) the review should be conducted in the same manner, and reflect the same concerns and criteria, as for issuance of a domestic license, and 4) during such review, the Commission should hold comprehensive public hearings, at which proponents and opponents of the export licenses may participate fully.

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- I. THE COMMISSION HAS THE AUTHORITY AND AN OBLIGATION TO EXAMINE THE HEALTH, SAFETY AND ENVIRONMENTAL IMPACTS OF LICENSING A REACTOR EXPORT TO THE PHILIPPINES; SPECIFICALLY, THE COMMISSION MUST REVIEW THE SEVEN ISSUES IDENTIFIED IN ITS ORDER OF OCTOBER 19, 1979.

A. The Commission's Legal Authority.

The Commission may issue licenses for the export of nuclear utilization facilities, but in no case may the Commission issue, without a Presidential order that it do so, licenses which it determines are "inimical to the common defense and security or to the health and safety of the public." (42 U.S.C. § 2133, subd. (d).) The phrase "common defense and security" is defined in the Atomic Energy Act as "the common defense and security of the United States," but nowhere in the Act is there a definition of the phrase "health and safety of the public." (See 42 U.S.C. § 2014 and subd. (g) thereof.)

Two questions are presented as to the Commission's legal authority in the present proceedings. First, will the common defense and security of the United States be affected by construction of a reactor which threatens the health and safety of the Filipino people? Second, does the phrase "health and safety of the public" encompass, besides the health and safety of approximately 30,000 Americans residing near the reactor site, the health and safety of the Filipino people generally? The Coalition submits that the answer to both questions is yes. Hence, the Commission's

review of health, safety and environmental issues is not limited solely to the connection between these issues and the "common defense and security of the United States."

The Philippine nuclear reactor is unique among reactor exports by private American enterprise because it is located within a "nuclear stone's throw" of two of the largest foreign military installations of the United States. The American government has in the past asserted on numerous occasions that Subic Naval Base at Olongapo City -- 16 miles from the reactor site -- and Clark Air Field at Angeles City -- 36 miles from the reactor -- are vital to the protection of American political, military and economic interests in the Western Pacific, the South China Sea and the Indian Ocean regions. The legal and practical viability of these bases depends heavily, almost exclusively, upon friendship and good relations between the Filipino people and the American people. A nuclear accident which harms or imperils the health and safety of the Filipino people or the Philippine environment will adversely affect the future viability of these bases because the goodwill and support of the Filipino people will be eroded if not also destroyed. For example, several thousand Filipinos serve as technicians and support personnel at these bases. Without their services, the military bases could function, if at all, only at a significantly reduced level. Their willingness to contribute to the bases' viability surely is based upon the United States government's not taking any action which is inimical to their

health and safety or that of their relatives and countrymen.

The proposed Westinghouse reactor is all but painted an American red, white and blue. It is built by a corporation, Westinghouse, known to Filipinos as a famous American company, financed in large part (\$644 million in loans and loan guarantees toward the overall \$1.1 billion cost) by the United States Export-Import Bank, and to be licensed for export by an American regulatory agency, the Commission. Therefore the American people, and specifically, the American government, will be held fully responsible for any nuclear accident which threatens the health and safety of the Filipino people. The Filipinos -- who waged a long military and political struggle for independence from the United States -- have been and are highly nationalistic in their protection of their patrimony. In response to a nuclear accident, the Filipino people might well demand that their government take action against the symbol of the American presence in the Philippines, the military bases. Such action could include abrogation of the bases agreements between the two countries. In this broad sense, the common defense and security of the United States is placed in jeopardy by the export of a reactor to the Philippines.^{1/}

^{1/} The Commission should also take notice of the fact that American corporations have investments of several billion dollars in the Philippines. Such corporations contribute to the national defense and security by advancing the material prosperity of this country. A nuclear accident could either damage these investments or lead to repercussions against them. For this reason, the proposed reactor export is inimical to the common defense and security.

The Commission therefore must, under the mandate of 42 U.S.C. § 2133, ensure absolutely that the health and safety of the Filipino people will not be endangered by the proposed reactor export. In support of this argument, the Coalition submits the affidavit of David O'Connor, an economist and political scientist who has studied the foreign and economic relations of the United States and the Philippines. (See pages 1-2 thereof.) Perhaps the most critical point raised by Mr. O'Connor is that many Filipinos will believe, if the Commission issues a license, that it conducted a thorough health and safety review. Failure now to conduct such a review will have disastrous repercussions for the friendship of the Philippine and American peoples if there is a nuclear accident in the future.

The phrase "health and safety of the public" encompasses the health and safety of the Filipino people. Legislation must be construed consistently with the policies which led to its enactment. The Atomic Energy Act must now be read in light of the Nuclear Non-Proliferation Act of 1978 (NNPA). Section 2 of the NNPA declares that it is a policy of the United States to "cooperate with foreign nations in identifying ... suitable technologies for energy production and ... alternative[s] ... to nuclear power ... consistent with environmental protection." (22 U.S.C. § 3201, subd. (d).) The concern of this provision is obviously with protection of foreign countries' environments and, in addition, the environment of the globe as one universal eco-system. Construction of the phrase "health and safety of the public,"

when undertaken in light of this provision, leads to the conclusion that it encompasses the health and safety of foreign populations and their environment. Nothing appearing in the Atomic Energy Act or the Nuclear Non-Proliferation Act negates this conclusion; Congress left to the Commission the task of defining the scope of the phrase. Only the phrase "common defense and security" is specifically delimited to that of the United States. (42 U.S.C. § 2014, subd. (g).) The Commission's past reluctance to construe "health and safety of the public" to include concern for foreign populations, as evidenced by the Commission's own definition of this term in 10 C.F.R. § 110.2, subdivision (ii), is examined more particularly below. For the present, the Coalition submits that the provisions contained in 42 U.S.C. § 2133 and 22 U.S.C. § 3201 provide legal authority for the Commission to examine the health, safety and environmental issues on their own merits, and not simply as they are connected to the United States' "common defense and security."

Even if the Commission refuses to conduct a full review of the health, safety and environmental issues on their own merits, it clearly must safeguard the health and safety of American citizens residing in the Philippines. There are approximately 30,000 American service personnel and their dependents living in the Philippines at the Clark and Subic bases or in their vicinity. The "United States" includes, for Commission purposes, "all territories and possessions of the United States." (10 C.F.R. § 110.2, subd. (rr).) In the present proceedings, the American bases in the

Philippines may be deemed the equivalent of American "territories and possessions," since the United States effectively controls these areas under treaties and executive agreements entered into with the Philippine government. The health and safety of the Americans stationed there may be jeopardized by the export of an unsafe reactor to a site only a short distance from the bases. Therefore, the Commission has the legal authority, under 42 U.S.C. § 2133, subdivision (d), the legal authority to conduct a full review of the health, safety and environmental impacts of the proposed reactor export.

The most telling -- and most obvious -- point may now now be addressed. If there is a serious "nuclear incident" (42 U.S.C. § 2014, subd. (q)) or "extraordinary nuclear occurrence" (id., subd. (j)) arising from the unsafe location, construction or operation of the nuclear power plant, the American military personnel and their dependents stationed at these bases may need to be evacuated to avoid wind-borne radioactive contaminants. The "common defense and security of the United States" will certainly be adversely affected by the need for such evacuation, which may be permanent depending on the level of contamination. For this reason, the Commission possesses the legal authority, under 42 U.S.C. § 2133, subdivision (d), to conduct a full safety, health and environmental review of the dangers posed by the reactor export.

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One other point must be addressed: the steadily increasing political instability of the martial law dictatorship in the Philippines. Time magazine recently described the situation as the "Powder Keg of the Pacific," citing one "highly classified diplomatic cable" which concludes "internal political threats ... [which] ... the Philippines faces ... could overturn the system of government itself." (Time, September 24, 1979, p. 28; see also "Disenchanted Filipinos Say Party's Over," reprinted from the Asian Wall Street Journal in The Philippine Times, October 1, 1979, p. 10.) The martial law government, which Time called "a symbol of plutocracy," faces increasing domestic opposition due to an annual inflation rate of 30%, severe malnutrition problems affecting 30% of all Filipino children,^{2/} and endemic corruption and violation of human rights. (Time, September 24, 1979, pp. 29-30.) Recently the head of the Catholic Church in the Philippines, Cardinal Jaime Sin, predicted civil war unless Marcos resigns. (The Philippine Times, September 17, 1979, p. 1.) If a revolution brought a new political force into power in the Philippines, such as the Communist Party, the objectives of the NNPA could be completely frustrated, since a new government might find different purposes for the fissionable material and no longer comply with IAEA safeguards. (42 U.S.C. § 2156.) The Commission must not blind itself to this risk.

^{2/} According to the Time article, malnutrition affects as many as 80% of the children in the poorest provinces. Thus, construction of the reactor at a cost three times the regime's budget for agriculture may fuel discontent and further increase its instability. (Cf. 22 U.S.C. § 3201, subd. (d).)

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B. The Rationale Underlying Past Commission Reluctance to Examine Health, Safety and Environmental Impacts of Reactor Exports on Foreign Populations has been undermined by the Nuclear Non-Proliferation Act of 1978 and Executive Order 12114; In any Event, the Rationale is Inapplicable Where, as here, the State Department has Publicly Reviewed the Human Rights Environment of the Philippines and Found Credible Reports of Torture by Philippine Government Agents and Where the Lives of Thousands of Americans may be endangered by the Reactor Project.

In Edlow International Company, C.C.H. Nuclear Regulation Reporter (hereinafter, N.R.R.) ¶ 30,069 (May 7, 1976), the Commission responded to contentions that it had not analyzed health and safety risks at the Tarapur Atomic Power Station in India. The Commission pointed to "elementary principles of comity among nations" (N.R.R. ¶ 30,069.06) as the basis for its conclusion that it lacked "authority to address ..., or attempt to regulate, matters so clearly domestic to the Indian nation." (N.R.R. ¶ 30,069.10.) The Commission found significant the omission in the Atomic Energy Act of "reference to public health and safety in its provisions addressed to international matters." (Ibid.) The Commission has adhered to this reluctance to examine foreign site health and safety risks in more recent decisions. (See, e.g., Babcock and Wilcox, N.R.R. ¶ 30,205.15 (June 27, 1977) and Edlow International Company, N.R.R. ¶ 30,373.08 (March 23, 1979), in which the Commission focused solely on the health and safety impact on the U.S. population. See also Edlow International Company, N.R.R. ¶ 30,206.05 (June 28, 1977).)

The Coalition submits that the Nuclear Non-Proliferation Act of 1978 (NNPA) and Executive Order No. 12114 now undermine

the basis of the Commission's past reluctance to review health, safety and environmental impacts of reactor exports on foreign populations.

As stated in Part A, the NNPA declares that it is the policy of the United States to: "cooperate with foreign nations in identifying and adapting suitable technologies for energy production and, in particular, to identify alternative options to nuclear power in aiding such nations to meet their energy needs, consistent with economic and material resources of those nations and environmental protection." (22 U.S.C. § 3201, subd. (d).) Although this declaration does not delineate specific responsibilities for the Commission, it leaves no doubt of Congress' determination that the principles of comity among nations will be served by a cooperative effort to identify whether a proposed export of nuclear technology will benefit the country receiving that technology. The contention that foreign sovereignty is infringed by the Commission's own review of foreign health and safety risks associated with exports of nuclear technology is inconsistent with this declaration of policy. A well-intentioned, professional and responsible review of health, safety and environmental impacts by the body charged with approving or denying export license applications is in keeping with the cooperation Congress envisioned for identification of suitable technologies. Suitable technologies consistent with environmental protection cannot possibly be identified without a full review by the Commission. Given the immense health and safety risks inherent in all nuclear

power generation, it is inconceivable that a foreign nation, as well as its international neighbors, would not welcome the well-intentioned application of the Commission's accumulated expertise in evaluating such risks.

The promulgation of Executive Order 12114 (44 Fedl. Reg. 1957, January 4, 1979) reinforces these conclusions. Sections 2-3 and 2-4 of President Carter's order now require the Commission, when reviewing reactor export license applications, to provide for and take into account environmental impact statements, environmental studies, and environmental reviews. The purpose behind preparation of an environmental impact statement in the United States is to "assure ... safe, healthful [and] productive surroundings ..." and to avoid "risk to health or safety." (42 U.S.C. § 4331, subd. (b)(2) and (3).) A similar purpose of protecting foreign environments undoubtedly underlies Executive Order 12114. The contention that foreign sovereignty is infringed by a Commission review of foreign health and safety risks associated with nuclear exports is fundamentally inconsistent with the Presidential determination that such review must be undertaken. The "infringement of sovereignty" argument no longer withstands scrutiny: the constitutional office charged with the conduct of American foreign policy now has implicitly declared that no infringement will occur. The Commission must reexamine the policy considerations which underlay its rulings in the above-cited decisions in Edlow International Company and Babcock and Wilcox. The Commission should, in

fact, order that Applications XR-120 and XCOM-0013 are governed by Executive Order 12114 and conduct the full environmental review required thereby. Nothing in the Order, such as an effectivity provision, prevents the Commission from deeming it applicable to the present proceedings. Under section 2-1 of the Order, the Commission should now have procedures to implement the Order.

In any event, the rationale underlying past Commission reluctance to infringe foreign sovereignty is entirely inapplicable where, as here, the United States State Department has itself publicly undertaken to review the political environment --the societal health and safety -- of the Philippines. The Commission's attention is directed to Exhibit I, appended hereto, in which is reproduced the pertinent chapter of the State Department's "Report on Human Rights Practices in Countries Receiving U.S. Aid" (pp. 395-407, dated February 8, 1979). The chapter on the Philippines finds, for example, "credible reports of widespread voter fraud ... during the [1978 Interim National Assembly] elections" (p. 395), "widespread poverty" (ibid.), "credible reports of torture ... [and] ... of the involvement of military units in abductions and murders ..." (p. 396), a large number of political prisoners (p. 398), inequitable income distribution (p. 401), "substantial abridgement of freedom of assembly" (p. 403), the suspension of democratic government (p. 404), etc.

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Congress has determined that such intensive review of

the Philippine human rights environment represents no infringement of Philippine sovereignty. A similarly intensive review by the Commission of the safety risks to the Philippine physical environment by the proposed reactor export also constitutes no infringement of that nation's sovereignty. The Commission will be studying conditions now beyond the Philippine government's control -- i.e., the seismic, volcanic and other physical conditions of the reactor site. If the Commission issues directions at all, it will only issue directions to the Westinghouse Electric Corporation. The Philippine government, of course, will remain free to act or not act as it alone chooses.

Finally, the rationale underlying past Commission reluctance to study foreign safety, health and environmental issues is entirely inapplicable where the lives of thousands of Americans are at stake. In Edlow International Company, the Sierra Club could point to only a handful of Americans who might conceivably be affected by the Tarapur Station. In the present proceedings, by contrast, approximately 30,000 Americans, many stationed involuntarily in the Philippines and, due to their unfamiliarity with the country, utterly unaware of the risks, must be protected by the Commission. The Coalition does not doubt the ability of the Filipino people to conduct a thorough scientific review of the health and safety risks. (The review commissioned by the Philippine government is examined below in Subpart C.) The Coalition questions, however, the wisdom of entrusting the necessary review to a government which in style and substance is a

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dictatorship and which major international organizations (see Part C below) have found to have one of the world's worst records on protection of human rights. The Philippine government may well lack the necessary conviction to protect Americans there. Equally, it will not do, as far the Filipino people are concerned, to rely on a presumption -- that the Philippine government will protect the Filipino people -- when that government's human rights record demonstrates that the presumption is nothing more than a legal fiction.

In support of these arguments, petitioner directs the Commission's attention to the appended affidavit of David O'Connor. (See pages 2-3 thereof.)

C. The Commission Has a Moral and Legal Obligation to Undertake a Full Review of the Health, Safety and Environmental Impacts of the Proposed Reactor Export to the Philippines.

The State Department's accounts of "credible reports of torture" and of large numbers of political prisoners must be taken into account when the Commission decides whether to undertake a full review of the health, safety and environmental issues connected with proposed reactor export.

Since the declaration of martial law in 1972, freedom of speech, press and assembly, as well as other fundamental democratic rights, have been severely curtailed throughout

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the Philippines.^{3/} Those who have dared to publicly question the dictatorship's policies have been harassed, arrested, tortured and/or killed. Members of the Coalition are personally familiar with instances of torture. (See appended affidavit of David O'Connor, pp. 3-5.) There have been many accounts of the disappearance of critics of martial law government. (See, e.g., "Disappearance Phenomenon of Political Dissidents Bared," The Philippine Times, October 22, 1979, p. 8, reporting testimony given before Congress in September, 1979, by the Director of the Human Rights Office of the National Council of Churches, Mr. William Wipfler.) Repression and torture have been documented by the State Department, Amnesty International, the International Committee of the Red Cross, the International Commission of Jurists and the Association of Major Religious Superiors of the Philippines (AMRSP). (See appended State Department Report at pp. 397, 399, 406-407. See also Human Rights in South Korea and the Philippines: Implications for U.S. Policy, Hearings Before the Subcommittee on International Organizations of the Committee on International Relations, House of Representatives (U.S. Govt. Printing Office, Washington, D.C.: 1975), pp. 142-147.)

Such repression and torture, occurring repeatedly and throughout the country, have made full discussion of the issues regarding the reactor impossible in the Philippines.

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^{3/} The most graphic example of the consequences of the suppression of free speech as it relates to the present proceedings is the Philippine government's suppression of the movie, "China Syndrome." (See "Tanada Walks Out as N-Plant Probe Ends," The Philippine Times, October 1, 1979, pp. 1, 9.)

Although public hearings on the safety of the reactor were held in the Philippines in 1979,^{4/} the Coalition has received reports from the Philippines that the hearings were a sham. Indeed, ex-Senator Lorenzo Tanada -- whose June 14, 1979, letter to President Marcos had prompted the government to hold the hearings^{5/} -- withdrew all evidence and exhibits and refused to participate in the hearings because "The [study] Commission was rushing the case unreasonably and [opponents of the reactor] were deprived of due process of law. In effect," Tanada said, "the [study] Commission has prejudged the issue." ("Tanada Walks Out as N-Plant Probe Ends," The Philippine Times, October 1, 1979, p. 1.) Earlier, Tanada, who is one of the most prominent and respected of senior Philippine statesmen, observed that, "There is ... a climate of fear ... in the Philippines which inhibits the people from testifying and thereby prevents a full and effective discussion of the potential dangers posed by the plant." (Nuclear Export Monitor, vol. 1, # 2, p. 5.) This climate stems directly from the government's abuses of human rights.

^{4/} Undoubtedly, the Westinghouse Corp. and the Philippine government will attempt to emphasize that safety hearings were held in the Philippines. However, as of October 15, no report on the study commission's findings had been released. (See "State Department Lifts Objections to Bataan Nuclear Reactor," The Philippine Times, October 15, 1979, p. 2.) When the Philippine study commission's report is released, petitioner/intervenor will demonstrate to the Commission its shortcomings.

^{5/} Senator Tanada's letter to President Marcos is reprinted in The Philippine Times, July 28-August 4, 1979, at page 5. In assessing the value of Senator Tanada's statements, the Commission should recall that President Marcos asked Senator Tanada to be chairman of the Philippine study commission. (See id., at p. 10.)

Petitioner submits that the Commission cannot automatically accept Philippine government assurances of the reactor's safety when that government has created a political climate utterly inconsistent with due regard for health and safety of Filipinos and of Americans in the Philippines who will be exposed to the dangers posed by the nuclear reactor.

Closely connected with the issues of torture and repression is the existence of widespread corruption in the Philippine government and, in particular, in the circumstances surrounding the award of the reactor contract to Westinghouse. The Westinghouse agent in the Philippines for this transaction was Herminio Disini, reportedly a business partner of the President and also an in-law of his wife Imelda Marcos. According to Representative Clarence Long, "Disini not only sold the insurance policy for the project and won the civil construction contract but [also] earned an agency fee of a few million dollars" (Letter to Nuclear Regulatory Commission Chairman Hendrie, dated January 4, 1978.) Mr. Disini, the head of Herdis Enterprises, is reputedly the business partner of the President in such transactions, a fact which full public hearings by the Commission, with testimony under oath by Westinghouse officials, could establish. The aura of corruption, of private enrichment by those closely connected with the highest levels of power in the Philippines, suggests that no real health and safety review will occur in the Philippines. The Coalition submits that when the safety of thousands of Americans is at stake, not to mention the safety of millions of Filipinos, the

Commission cannot simply rely on the Philippine government's review, since that review may be influenced by factors extraneous to the merits of the substantial safety issues presented.

In view of the immense risks presented, the Commission has a moral obligation to undertake a full review. Such a review is presently impossible in the Philippines, due to political conditions created by the martial-law government. If the Commission now fails to undertake such review, and if later there is an accident, it will face the accusations of Americans and Filipinos that it lacked resolve when courage and foresight were most demanded of it. The Commission is the only body which can now conduct a complete and impartial review. The vast responsibility vested in the Commission by the American people elevates this moral obligation to the level of a legal obligation.

This obligation stems as well from recent developments in the United States. Indeed, these developments represent an insuperable obstacle to those who contend the Commission must forthwith issue the export licenses. The events at Three Mile Island are too well known to require elaboration. As a result of those events and of the ensuing Presidential Study Commission,^{5A/}

^{5A/} The Report of the President's Commission on the Accident at Three Mile Island includes technical staff reports which state Westinghouse pressurized water reactors like those at Diablo Canyon in California and Napot Point in the Philippines have fundamental design defects. "The problem centers on the possibility of non-condensable gas in the steam generator blocking the flow of cooling water, in the event the core is uncovered." ("PG&E's Brand New Nuclear Problem," The San Francisco Bay Guardian, November 7-16, 1979, p. 4.) Such generic safety problems in Westinghouse reactors deserve thorough study by the Commission in these and all export license proceedings, especially since the seismic risks at Diablo Canyon and Napot Point are of similar magnitude.

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the Nuclear Regulatory Commission announced that it would "not permit utilities to begin operating or constructing new reactors for at least six months and possibly as long as two years." ("NRC May Close Reactors Near Big Cities," San Francisco Chronicle, November 6, 1979, p. 9.) In addition, the Commission's chairman announced that the proximity of certain reactors to major cities, such as Indian Point Station outside New York City, and the lack of realistic evacuation plans, might require the closure of such plants. (Ibid.) (The Indian Point Station is 36 miles from New York, the same distance as that between the Napot Point site and Clark Air Field.) To allow the export of new nuclear reactors at the same time as the Commission has effectively decreed a domestic moratorium due to health and safety risks is the epitome of irresponsible policy and of arbitrary and capricious regulation. This is especially true when Westinghouse's prior justifications of the Napot Point project have rested on the claim that the Philippine reactor is being built to U.S. specifications, the same specifications now thought to be inadequate. The Commission certainly would not declare safe in Baltimore what it found unsafe under the same conditions in New York. It cannot therefore declare safe for Americans at Subic Naval Base and Clark Air Field what it simultaneously finds unsafe in the United States. Just as the Commission now intends to reexamine all risks before/^{it} permits construction or operation of new domestic nuclear power plants, so must it undertake the same study of risks posed by all reactor exports and,

in particular, by the proposed Westinghouse export to the Philippines. The study must be based upon the same criteria and concerns as would attend domestic licensing proceedings. Any other course of action by the Commission will only fuel speculation that, owing to the drastic decrease in new domestic reactor orders, the Commission is attempting to rescue the American nuclear industry from bankruptcy by allowing it to dump unsafe technology overseas. Such a policy is not only bankrupt of common sense and morality, but stands in fundamental derogation of the right of American military personnel in the Philippines to be protected by the Commission.

In support of these arguments, the Coalition submits for the Commission's review the "Statement of Protest" of the Committee of 26, appended hereto as Exhibit II, which notes the opposition to the reactor of: the head of the Catholic Church in the Philippines, Cardinal Jaime Sin, the National Secretariat of Social Action (NASSA) of the Catholic Bishops Conference of the Philippines, and the Association of Major Religious Superiors of the Philippines (AMRSP). The Committee of 26 condemns the plant as pursuit of "profit making in unconscionable disregard for human life." The Coalition also directs the Commission's attention to documented opposition in the Philippines to this project of: the Bataan Sangunnian Panlalawigan (Provincial Council), the Philippine Movement for Environmental Protection (half of whose members live within 40 miles of Napot Point), the

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National Research Council of the Philippines, the Philippine Biology Teachers Association, and the Bataan Mayors League. (See "Bataan Folk Oppose Nuke," Philippine News, October 20-26, 1979, p. 7.) These organizations and the thousands of Filipinos who have either written or petitioned the Commission regarding their opposition to the reactor project must not stand unrepresented in a rush to issue the requested export licenses.

D. The Commission Must Review All Issues Noted in its Order of October 19, 1979.

The Commission's Order of October 19, 1979, specifies seven issues raised in Applications XR-120 and XCOM-0013 by petitioners/intervenors the Center for Development Policy (CDP), Jesus Nicanor P. Perlas III and the Philippine Movement for Environmental Protection (PMEP). The Coalition submits that each issue should be the focus of thorough Commission study.

1. Seismic and Geological Risks / Adequacy of Design

The site of the nuclear power plant and its 60-ton uranium fuel core "lies within 22 miles of three underground earthquake faults." ("Volcanoes, Faults Underlie Reactor Dispute," reprinted from the Asian Wall Street Journal in The Philippine Times, July 28-August 4, 1979, p. 6.) The Asian Wall Street Journal reports the consultant firm, Ebasco Services, which selected the site found the plant had to be built to withstand seismic shocks of intensity

4.5 on the Richter Scale for shallow earthquakes and 7.5 for deep earthquakes occurring 22 miles away. However, the same article reported that an IAEA study panel recommended that the plant should be built to withstand random or shallow tremors of intensity 6 and deep earthquakes of intensity 8. The differences in these opinions, especially given the expertise of an IAEA report, must be given careful study; the margin between safety and catastrophe may be determined by construction for a lower shock tolerance. The plant is currently being built to withstand ground vibration forces of .4g (40% of gravity), but a quake of intensity 8 could produce vibration forces of .5g. ("Assessment of Design Reliability/Economics/Safety of Philippine Nuclear Power Plant," Energy Research Group Inc. (U.S.) for Westinghouse International Projects Company (Philippines), April 15, 1978, p.7; "IAEA Report Says Volcano Under Reactor Could Erupt," Nuclear Export Monitor, vol. 1, #2, p. 6.) These differences assume critical proportions when it is recalled that: a) no Westinghouse 2-loop reactor has ever been put in operation; b) the Philippine 2-loop reactor is ultimately referenced to a Puerto Rico reactor discontinued due to seismology problems in 1972 (Letter of Representative Clarence Long to Commission Chairman Hendrie, January 4, 1978; "The Critical Issue of Nuclear Power Plant Safety in Developing Countries," IAEA Bulletin, vol. 19, April 2, 1977, p. 15); c) in 1968 an earthquake of intensity 7.4 shook Luzon island, including Bataan, and d) an earthquake in San Fernando, Calif., of intensity 6.6 produced ground acceleration of 1.25g ("On Shaky Grounds," 500-Mile Island, vol. 10, #1, of Pacific Research (First Quarter, 1979), p. 4). The Commission should request an independent agency, like the U.S. Geological Survey,

to resolve these differences of opinion: the danger of core melt-down and subsequent wind dispersal of radioactive contaminants from a steam plume in the wake of major structural damage caused by an earthquake is too real to be ignored.

Volcanic dangers also deserve close study. The report of an IAEA Safety Mission called the eruption of Mt. Natib a "credible event." (July, 1978, IAEA Study, p. 12.) The Philippine Atomic Energy Commission (PAEC) submitted in March, 1979, an interim report to the Philippine National Power Corporation (NPC) which stated, "The PAEC ... cannot accept [NPC's] position that an eruption on the western slope [of Mt. Natib] is 'incredible.'" ("Volcano Under Reactor could Erupt: IAEA," Nuclear Export Monitor, vol. 1, #2, p. 1.) The volcano is only 5.6 miles from Napot Point. The IAEA report thus calls for "extremely careful consideration" of the "hazards associated with such eruption, for example, ash fall, impact of volcanic ejects, glowing avalanches, overflowing gas-ash emulsions and gas accumulation," as well as lava mud flows. (July, 1978, IAEA Study, p. 7.) Volcano surveillance systems are imperfect and only long advance warning would allow time for shutdown, removal and safe storage of fuel rods. The Commission therefore should carefully study these risks.

2. Environmental Impact / Spent Fuel Disposition

It is painfully obvious that any "nuclear incident" or "extraordinary nuclear occurrence," whether caused by unsafe design, operational negligence or seismic events, will have severe and potentially catastrophic consequences for the Philippine environment. The carcinogenic effects of accidental discharges of radioactive Iodine 131, Strontium 90, Plutonium 239 and other fission byproducts could spread across the entire

metropolitan Manila area, as well as to the American bases, depending on prevailing winds at the time of the accident. Even safe operation of the reactor may adversely affect the Philippine environment: for example, discharged ocean coolant waters may raise water temperatures and destroy the delicate marine eco-system. Already, households have been forcibly relocated; grazing fields and rice fields have been flooded with eroded construction landfill. Erosion has also destroyed the Morong milkfish fingerling industry, according to reports received by the Coalition from local residents.

In his January 4, 1978, letter to Commission Chairman Hendrie, Representative Long notes that the PAEC "recognizes ... it cannot provide for long-term storage or ultimate disposal" of radioactive wastes from the reactor. There is no known stable rock salt formation in the Philippines for such disposal. ("Philippines Eyes Australia as Likely Site for Nuclear Waste Disposal," Australian Financial Review, May 31, 1978.) If radioactive wastes are to be brought to the United States for reprocessing or disposal, the Commission should carefully review the risks posed for the Philippine seas, the Pacific Ocean, and the American harbor through which such wastes will be transported.

3. Other Issues

The Commission's legal authority and obligation to conduct a thorough review of health and safety dangers for Filipinos and Americans in the Philippines, risks to the effective operation of U.S. military bases there, and particular safety questions posed by this Westinghouse plant have been discussed above. These issues require full consideration by an impartial body like the Nuclear Regulatory Commission. If Public hearings are held, they can serve as a trial model

for future review of generic safety questions posed by nuclear power plant exports in general and by Westinghouse reactors in particular, such as those which Westinghouse has now contracted to export to South Korea and Brazil.

II. RESPONSE TO OTHER QUESTIONS CONTAINED IN THE COMMISSION ORDER OF OCTOBER 19, 1978.

A. The Commission Should Hold Public Hearings.

The Coalition submits that the best procedural format for examination of foreign health, safety and environmental issues falling within its jurisdiction is a public hearing, at which proponents and opponents of the license shall testify under oath, undergo cross-examination and otherwise fully participate. Only a public hearing will allow full airing of the issues and provide a means for answering the widespread doubts which have arisen concerning the safety of this project. In particular, based on the reports which it has heard from sources in the Philippines, including a member of the construction team at Morong, Bataan, the Coalition submits that Westinghouse officials and project engineers should be questioned by the Commission whether they know of or suspect any construction irregularities or short-cuts by on-site construction contractors. The Commission should inquire particularly into unforeseen problems which have arisen and the responses to them. In July, 1979, 1442 153 Walter S. Wingus, the Westinghouse Napot Point project director,

stated to the Asian Wall Street Journal that the project was "beyond being a pain in the neck, it's a disaster." ("Delays on Philippine Reactor Illustrate Problems Plaguing Nuclear Exporters," reprinted in The Philippine Times, July 28-August 4, 1979, pp. 1, 7.) Such comments do little to instill faith in the structural integrity of the construction work. Other subjects for public inquiry in the Commission's hearings could include, as suggested above, the relationship between Mr. Disini and President Marcos (regarding whether extraneous considerations affected the Philippine study commission's conclusions) and the opportunity, if any, of Philippine citizens to appear before the Philippine study commission and testify fully on safety, health and environmental impacts of the Napot Point reactor on their communities.

B. The Scope and Manner of the Commission's Review Should Be the Same as that used in Domestic Licensing Proceedings.

The Coalition submits that the scope and manner of a Commission review of the health, safety and environmental impacts of the power plant should be the same as would be used in domestic licensing proceedings. This is not only because of the presence of approximately 30,000 Americans within some 40 miles of the reactor. It is also because the Westinghouse Corporation has attempted to quell the fears of Filipino citizens about the safety of the project by assuring them that the plant is being built to U.S. specifications.

C. The Commission Must Review Whether the Proposed Reactor is a Suitable Technology for Energy Production in the Philippines.

The Coalition submits that the Commission must attempt to answer whether this proposed reactor is a suitable technology for energy production in the Philippines and whether there are alternative options consistent with economic and material resources of the Philippines and its environmental protection. (22 U.S.C. § 3201, subd. (d).) The Commission must view the \$1.1 billion project against the general level of economic underdevelopment in the Philippines, the material poverty of the vast majority of its people, the documented abuses of human rights, the country's staggering foreign debt of some \$8 billion, and the skyrocketing cost of uranium.^{6/} (See appended affidavit of David O'Connor and Exhibits I and II.) The Commission should recognize the entire set of unique circumstances surrounding this reactor, its location, contract history and controversy, as warranting a full inquiry.

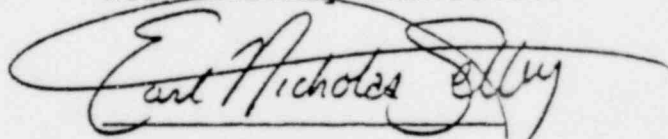
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^{6/} The Philippines has no commercially feasible deposits of uranium, according to the Philippine Atomic Energy Commission. ("RP Uranium Find Not Commercially Feasible," The Philippine Times, October 15, 1979, p. 2.) The country does have, however, abundant geothermal resources because of its location in the Pacific volcanic "ring of fire." By virtue of its tropical location, the country can tap solar energy as well. These technologies, along with power plants fired by Philippine oil and coal, may provide better alternatives to nuclear power.

CONCLUSION

For the reasons set forth above, the Coalition submits that: 1) the Commission has the legal authority and obligation to undertake a complete review of the health, safety and environmental issues associated with the Napot Point reactor; 2) this review must extend beyond these issues' connection with the United States' common defense and security, so that full regard is given to the health and safety of the Filipino people and the American citizens residing near the reactor; 3) this review should be conducted in the same manner, with the same scope and criteria, as for domestic licensing proceedings, and 4) this review must be accompanied by comprehensive public hearings. The Coalition submits that once such review is completed, there will be no rational decision for the Commission but to deny the requested export licenses.

Respectfully submitted:



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