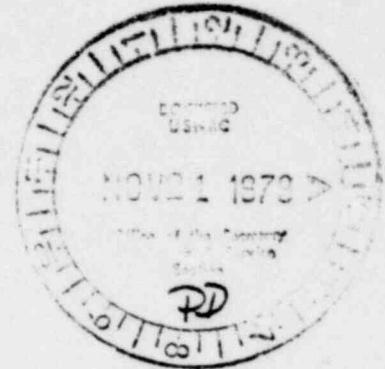


Philippine Movement for Environmental Protection

WASHINGTON DC OFFICE

November 20, 1979

The Secretary
Nuclear Regulatory Commission
1717 H St. NW
Washington D.C. 20555



Dear Mr. Secretary,

Enclosed are my 'Notes to Views of Petitioner J. Nicanor Perlas III on Procedural and Jurisdictional Issues' which I inadvertently missed to submit together with my final views because I was rushing to meet the 5:00 p.m. deadline. I am also enclosing an "Errata" on said "Views".

Kindly consider these as supplements to my "Views".

Sincerely Yours,

J. Nicanor Perlas III
J. Nicanor Perlas III
Executive Director

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NOTES TO
VIEWS OF PETITIONER J. NICANOR
PERLAS III ON PROCEDURAL AND
JURISDICTIONAL ISSUES



1. Transcript of Civil Case No. 79-2060 and 79-2110. Case argued by Parties involved on August 30, 1979 before Judge June Green of the Federal Circuit Court of the District of Columbia. Judge Green ruled for defendants NRC saying that NRC's analysis of health and safety issues of the Philippine reactor, contrary to Westinghouse assertion, is "not arbitrary and capricious". Westinghouse argued that NRC's action was an infringement on Philippine sovereignty. See p.13 of Transcripts. Hereafter, this note will be referred to as simply Transcript (Tr.).

National Power Corporation. Statement of Views. In The Matter of Westinghouse Electric Corp. (Exports to the Philippines.) p.3. Hereinafter, NPC.

NRC Staff Answer To Motion For Leave To Intervene Filed By Center for Development Policy, Jesus Nicanor P. Perlas, III, and Philippine Movement for Environmental Protection. May 23, 1979. pp.11-14. Hereinafter, NRC Staff-1.

2. Answer of Applicant Westinghouse Electric Corporation to Petition for Leave to Intervene and Request for Hearing. May 22, 1979. p. 13. Hereinafter, Westinghouse-1.

Westinghouse Electric Corporation. Motion for Preliminary Injunction. Civil Case. No. 79-2060. August 6, 1979. pp.16-20. Hereinafter, Westinghouse-2.

Ibid. NRC Staff-1.

3. Westinghouse Electric Corporation. Plaintiff's Reply Memorandum on the Merits and In Opposition to Defendants' Motion to Dismiss or in the Alternative for Summary Judgement. Civil Case No. 79-2060 and 79-2110. August 29, 1979. pp.39-44. Hereinafter, Westinghouse-3.

Ibid. NRC Staff-1.

Op. Cit. NPC. pp.3-4.

4. Nuclear Regulatory Commission. Memorandum and Order. In The Matter Of Babcock & Wilcox (On Application for Consideration of Facility Export License. License No. XR-118. Reported in Nuclear Regulation Reports. Commerce Clearing House, Inc. 1977. p. 28,062. Hereinafter, B&W Case.

Ibid. Westinghouse-3.

5. Op. Cit. Westinghouse-1. pp. 14-15.

Op. Cit. Westinghouse-3. pp. 45-49.

Ibid. B&W Case. In Toto.

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6. All the cases cited above do not question that a decision must be made on whether a proposed nuclear facility export could have an inimical impact on the common defense and security of the United States. Opinions diverge, however, as to the scope and jurisdiction of such a review.

Ibid. Westinghouse-3. See also pp.33-39.

7. Op. Cit. Tr. p.45. Westinghouse argued that, although there is no question that the NRC has to make a judgement on the common defense and security impacts of proposed exports, health and safety aspects are not part of this determination.

Ibid. Westinghouse-3. p.38 especially.

8. Louis V. Nosenzo. Deputy Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State. Memorandum for James R. Shea, Nuclear Regulatory Commission. September 28, 1979.

9. Ibid. Westinghouse-3.

10. Letter of Puno Commission to President Marcos of the Philippines. November 1979. This document was actually a cover letter for the final report of the Puno Commission on the safety and health hazards at PNPP-1. Hereinafter, Puno Commission Letter.

11. Washington Post. June 16, 1979. pA9.

12. Op. Cit. Westinghouse-1. pp.16-19

13. Union of Concerned Scientists. The Nuclear Fuel Cycle. 1975.

14. Richard T. Kennedy. Nuclear Export Policy -- The Case for Common Sense and the Rule of Law. Remarks Before the Second ALI-ABA Annual Course of Study on Nuclear Export Control. March 28, 1979. p.6

15. Exchange of Notes Amending the Philippine-US Military Bases Agreement of 1947. January 7, 1979. p.2. Hereinafter, Base Agreement.

16. Agreement Between the United States of America and the Philippines: Atomic Energy, Cooperation for Civil Uses. Article II Section 5. Hereinafter, Atomic Energy Agreement.

17. Delupis, Ingrid. (1974) International Law and the Independent State. Crane, Russak & Co. Inc., New York. pp.108-109.

18. Ibid. p.21.

19. Ibid. p.141.

20. McDowell, Eleanor C. (1977) Digest of United States Practice in International Law: 1976. Government Printing Office. Washington D.C. pp.3-7.

"The position of the United States that emerges from its participation in the development and refinement of the non-intervention principle in contemporary international law is as follows: (1) The broad language prohibiting all forms of intervention was fully acknowledged ... by the United States ... but ... it did not affect the right to intervene in other states for purposes that were sanctioned under customary international law, i.e., protection of a state's own nationals; protection of the lives of other nationals or humanitarian intervention; and for legitimate collective self-defense..." p.5

21. Cruz, Isagani. (1977) International Law. Manila Philippines. Library of Congress No. JX 3695 .P5C78. pp.5-6.

In this regard, the Philippines acknowledges that "a state must not use its territory in such a way as to cause damage to other members of the world community". Op. Cit. Delupis, p. 21.

22. "Information" is defined as any a posteriori limitations on a priori realities. See Margalef, R. Perspectives in Ecological Theory.

23. 1975 Ford/Marcos Joint Communique. December 7, 1975.

24. See Discussion on pp.26-31.

25. Op. Cit. Westinghouse-2.p.20

26. Op. Cit. NRC Staff-1.

27. Op. Cit. Puno Commission Letter.

28. Defendants' Points and Authorities in Support of Their Motion to Dismiss or in the Alternative for Summary Judgment and in Opposition to Plaintiff's Motions for Preliminary Injunction. Civil Case. No. 79-2060 and 79-2110. August 27, 1979. p. 26 footnote 37/. Hereinafter, NRC Defense.

29. Monaco G.P. and Monaco, L.A., Jr. (1978) Outline of International Law. Blackstone Law Summaries, New York. p.13.

Plano, J.C. and Greenberg, M. (1976) The American Political Dictionary. The Dryden Press. Illinois. p.18.

Op. Cit. Delupis, I. p.16

Op. Cit. Cruz, I. pp.19-20.

30. Op. Cit. NRC Defense. pp.26-29.

"It is conceivable that a safety or health risk could so threaten United States relations with a recipient country -- or a United States military facility in that country -- that it would jeopardize important U.S. security or defense interests, such as relations with an ally or base rights....

"Thus, a second basis for considering the health and safety aspects of the Napot Point facility is the potential impact on citizens of the United States.... in the present case, the Napot Point facility could have a potential impact on (1) a large number of U.S. citizens that are (2) located at a close proximity to a (3) major United States facility on a (4) sustained and continuing basis..." pp.27-28

Op. Cit. Tr. P.51,60. Stephanie Golden, attorney for Defendants, asserted that NRC has the right to look at health and safety issues in themselves aside from their relation to threats on U.S. common defense and security.

31. See Note #6.

32. Final Environmental Statement: U.S. Nuclear Power Export Activities. (ERDA, now Department of Energy was lead agency of this study.) p.2-8,2-11.

33. Private Communication from a nuclear physicist working at a major nuclear weapons lab.

34. Brukenfeld, D. (1979) Are Nuclear Plants Unsafe - Even Without Any Mishap? A New German Study Challenges the NRC's Assurances. Washington Post. November 11, 1979. p.B 1.

35. Op. Cit. Nozenso Memo to Shea. See Discussion on Additional Factors.

36. Ibid.

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37. Views of the Department of State on Procedural and Jurisdictional Issues. In the Matter of Westinghouse Electric Corp. (Exports to the Philippines.) p.3.

38. Series of communications between Export-Import Bank, American Embassy in the Philippines, and the Philippine Government in 1974 and 1975. Obtained through a series of Freedom of Information Requests by the Union of Concerned Scientist. February 1978 to April 1978.

39. Scherr, J., Memorandum Re: US-Philippines Nuclear Cooperation - Revised Chronology. January 31, 1978. Based on the integration of various State Department telegrams and internal NRC documents obtained through a Freedom of Information Request by the Natural Resources Defense Council.

40. Ibid.
41. Affidavit of Sister Aida Velasquez, Secretary of Philippine Movement for Environmental Protection. December 19, 1977. Manila, Philippines. p.5. Apparently, based on this affidavit, Rosen made this remark in IAEA Bulletin, Vol.19 no.2.
42. Personal Communication by Sister Aida Velasquez who has filed a legal request before the Philippine Atomic Energy Commission for a hearing. June 9, 1979.
43. Philippine Sunday Express, December 4, 1977.
44. Letter of James Shea, Director of International Programs at NRC to Samuel Chilk, Secretary, NRC. October 12, 1979.

Affidavit of William Lindsley Cummings in Support of Brief of Intervenor/Petitioner, Friends of the Filipino People. pp.32-33 of Brief.
45. National Power Corporation, Philippines. p.4-1. Xeroxed without title heading and sent by a reliable source within NPC. Document is supposed to be a feasibility study done in 1973.
46. Times Journal (Philippines), September 11, 1979.
47. 124 Cong. Rec. S1085.
48. The Times Journal, October 2, 1979. p.6

"The government's energy program is undergoing major revision in the face of the possible shelving of the multi-billion peso nuclear project in Bataan, Energy Minister Geronimo Velasco said.

"We may have to abandon the nuclear project because of safety problems," he said.

"He added, however, that coal development and the setting up of alco-gas (alcohol-gasoline) plants will be accelerated so as not to derail the government's energy targets.

"Originally, he hinted, the government had planned to set up a second nuclear plant once the \$1.1 billion Bataan project is complete.

"This has been shelved, however, Velasco said and gave indications that even the Bataan plant may have to be abandoned due to safety problems."

Also, Philippine Daily Express, October 1, 1979.
Editorial.

"These problems, coupled with growing anti-nuclear sentiment in the United States and here, leave the project's fate still uncertain.

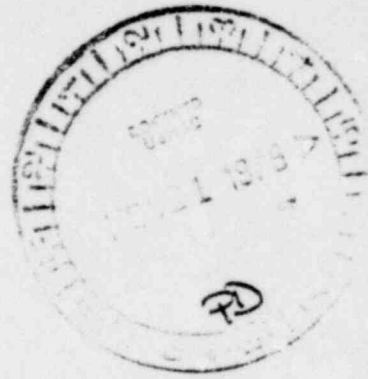
"... However, it is never too late to reconsider -if necessary - the plans about the Bataan nuclear plant, which is already 20 percent complete. While there is little question as to the big boost a nuclear plant would give the national energy program, the issues of economic viability and public safety should be resolved with caution and a deep concern for public welfare. While the idea of going nuclear looks progressive, reason tells us not to compromise public safety and welfare for whatever considerations, even great financial losses. (Emphasis added.)

Also, The Times Journal, October 2, 1979.

"The Philippine government may have to scrap the Bataan nuclear plant project if by Jan.28,1980, the US government has not acted favorably on the pending export license for the nuclear plant's components.

"This was disclosed yesterday by Gabriel Y. Itchon, president of the National Power Corp., operator of the first Philippine nuclear power plant, who said the government will be forced to abandon the \$1.1 billion project in favor of a less controversial one due to mounting interest payments and the projected increased power requirements which have to be met."

ERRATA
VIEWS OF PETITIONER J. NICANOR
PERLAS III ON PROCEDURAL AND
JURISDICTIONAL ISSUES



- p.2 line 5 "type",to"types"
- p.2 line 7 "is a violation",to "are violations"
- p.2 line 13 "this" objections,to "these"
- p.2 line 18 "assesses" in, to "assessed"
- p.2 line 20 "scuh" to "such"
- p.10 las. line add, "to mean" after "this Article"
- p.12 line 7 "was" to "were"
- p.12 line 12 "was" to "were"
- p.13 line 13 comma after "legal obligations"
- p.13 line 14 remove "the" before protection and change
"protection" to "protect"; add comma after
property
- p.19 third to "any or all" (Emphasis added.)
the last
line
- p.22 line 6 "body" to "study"
- p.31 bottom the whole section VII title is to be cancelled
page