

18 July, 2000

William D. Travers
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject : 2.206 Petition

Dear Mr. Travers,

This is a request pursuant to 10CFR2.206.¹ I request that the NRC take an additional immediate enforcement action against Hydro Nuclear Services/Westinghouse and /or its successors for the reasons stated herein.

Statement of Facts

On May 17th, 2000 The United States Department of Labor's Administrative Review Board (ARB) issued a final enforceable order in the **12 year old** case of "Shannon T. Doyle vs. Hydro Nuclear Services", (89ERA22) This case arose under the Energy Reorganization Act (ERA) The order requires Hydro Nuclear Services, a former division of Westinghouse, to take certain action to abate a violation that the NRC had previously noticed in an enforcement action identified as **EA 95-080** . The respondent in this case, Hydro Nuclear Services/Westinghouse, has yet to comply with this DOL order a full two months after its becoming administratively final.²

¹ 10CFR2.206 states in part "(a) Any person may file a request to institute a proceeding pursuant to §2.202 ...for any,,, action as may be proper" 10CFR2.202 states in part "(a) The Commission may institute a proceeding to take such.. action as may be proper by serving on the person subject to the jurisdiction of the Commission an order that will:...allege the violation..... or facts deemed to be sufficient grounds for the proposed action, and specify the action proposed ;state the effective date of the order ;"

²Although this case has been appealed, an appeal does not serve to stay the order. A stay was requested, but has been denied. The pertinent guidance provided in NRC Enforcement Manual NUREG BR -0195, rev.2 sec.7.7.3.2.e states in part, "Absent a stay issued by the Court, the NRC enforcement action is not stayed".

The Noncompliance Should be Considered a Continuing Violation.

The Office of General Counsel should give guidance that will allow the NRC to take a firm stand in sending the message that "continuing" non-compliance with an administratively final order arising under the employee protection provision of the ERA **should be treated just as any other willful and continuing non-compliance of any other requirement of the Act.**¹ The non-compliance should not be tolerated.

This Willful and Continuing Noncompliance Has its Direction from the Senior Most Persons at Westinghouse and Deserves a Severity Level 1 Classification.

This visible non-compliance with an administratively final requirement of the Energy Reorganization Act (ERA) could serve as a disincentive to workers in the nuclear industry against their stepping forward to identify potential safety problems. Willful noncompliance may give the appearance that orders arising from the employee protection provisions of the ERA can simply be ignored. Due to the potential chilling effect that non-compliance could have on the flow of information, this should be viewed as having potential safety consequences and the NRC should take a firm stance to lessen the chilling effect.² It is apparent that the non-compliance that serves as the impetus of this request receives its direction from the highest corporate level and deserves a **Severity Level 1** classification.

¹The pertinent guidance in NRC Enforcement Manual NUREG BR-0195, rev.2 sec.7.7.7 *"Continuing Violations Involving Discrimination"* provides that "OE will consult with OGC on cases involving the potential for "continuing" discrimination"


² With regards to determining the level of severity the NRC assigns to acts of discrimination, NUREG 1622.II.O, *"Violations Involving Discrimination"*, states in part "In practice, Severity Level I is senior management, generally at the corporate level". This would be consistent with the description in NUREG-1499, *"Reassessment of the NRC's Program for Protecting Allegers Against Retaliation,"* January 1994, that stated that Severity Level I and II violations are "important because higher level supervisors clearly set the attitude towards safety and compliance; presumably, the higher the position, the greater the sphere of influence, with the resulting increased potential for a chilling effect if discrimination is practiced at this level."

The NRC Should Make the Order Immediately Effective

If it was in the public interest that the ERA employee protection provisions were passed into law by Congress, then it should also be considered to be in the **public interest** that they be complied with. Furthermore it is apparent that the non-compliance is **willful**. Either of these reasons, the public interest of compliance, or the willfulness of the non-compliance, would be singular justification for the NRC to use its discretion to make the order **immediately effective** as per 10CFR2.202(a)5¹

This case is over 12 years old and is at long last administratively final. Hydro's successor, Westinghouse, should be immediately debarred from doing business in the nuclear industry at least until such time that they fully comply with the order of the ARB. A fine should be immediately assessed against Westinghouse commensurate with a Severity Level 1 violation, and each day of noncompliance should count as a separate violation, with its own fine, as per 10CFR2.205(j)²

Thank-you for your consideration. I look forward to hearing from your office in the very near future.

Sincerely,

Shannon T. Doyle

¹ 10CFR2.202(a)5 states in part ".....if the Commission finds that the **public health, safety, or interest** so requires or that the violation or conduct causing the violation is **willful**, the order may provide, for stated reasons, that the proposed action be **immediately effective** pending further order." (emphasis added)

² 10CFR2.205 (j) Amount." A civil monetary penalty imposed under Section 234 of the Atomic Energy Act of 1954, as amended, or any other statute within the jurisdiction of the Commission that provides for imposition of a civil penalty in an amount equal to the amount set forth in Section 234, may not exceed \$110,000 for each violation. **If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.**" (emphasis added)