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August 4, 1995

Mr. John Hoyle  
Secretary of the Commission  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555

DOCKET NUMBER  
PROPOSED RULE **PR 52**  
(60FR17924) **(5)**

Attention: Docketing and Service Branch

Subject: Comments of Westinghouse Electric Corporation re: Proposed Rules: Standard Design Certifications for the U.S. Advanced Boiling Water Reactor and the System 80+ Standard Designs

Dear Mr. Hoyle:

Westinghouse Electric Corporation ("Westinghouse") submits the following comments in response to the invitation for comments on the proposed rules for Standard Design Certifications for the U.S. Advanced Boiling Water Reactor and the System 80+ Standard Designs [60 Fed. Reg. 17902 and 17924 (April 7, 1995) (Docket Nos. 52-001 and 52-002)]. Westinghouse has participated in the development by the Nuclear Energy Institute ("NEI") of its comments on the proposed design certification rules for both the ABWR and System 80+ and fully supports and endorses the positions set forth in the NEI comments. The purpose of these Westinghouse comments is to provide the Nuclear Regulatory Commission ("NRC") with additional insight into Westinghouse concerns with certain aspects of the proposed rules with respect to the change process, changes by design certification applicants, finality and applicable regulations.

Westinghouse has submitted to the NRC an application for certification of the Simplified Passive Advanced Light Water Reactor (AP600). That application currently is under review by the NRC staff. Many of the determinations made in connection with the present design certification rulemakings for the ABWR and System 80+ may serve as precedent for the processes to be used in connection with the certification of the AP600. Accordingly, Westinghouse has a substantial interest in making certain that the design certifications currently undergoing rulemaking contain appropriate provisions with respect to such processes so that designs certified by the NRC will provide a viable and attractive option to the U. S. utility industry when future plant orders in this country are being considered.

Westinghouse underscores NEI's concerns over the significant process deficiencies in the proposed design certification rules which, if not corrected, cast substantial doubt on the utilization of certified standardized designs. Simply stated, the proposed design certification rules contain process flaws of a serious and significant nature which need to be corrected in the final rule to insure the viability and workability of the licensing process for standardized nuclear power plants.

When the NRC added Part 52 to its regulations in 1989 to provide for the issuance of early site permits, standard design certifications and combined construction permits and operating licenses, the NRC declared that its action was intended to achieve "early resolution of licensing issues and enhance

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the safety and reliability of nuclear power plants." [54 Fed. Reg. 15372 (April 18, 1989)]. However, rather than enhancing standardization and making the licensing process more predictable and stable -- two of the goals of Part 52 -- certain of the procedural provisions in the design certification rules being proposed for the ABWR and System 80+ will have the contrary effect. In many respects, the proposed design certification rules will introduce even more uncertainty than exists in the Part 50 licensing process. Westinghouse believes it is important for the Commission to correct the deficiencies in the proposed rules to achieve the goals of design certification and Part 52 sought by the Commission and by the nuclear industry.

There appears to be a fundamental philosophical problem with respect to certain processes proposed in the design certification rules. The rules reflect a reluctance to accept the discipline intended when the Part 52 licensing process was established -- that once a proposed standard design has been reviewed and the Commission has issued a design certification rule with respect to that design, all matters resolved in connection with the issuance of that rule will be treated as resolved by the Commission. This philosophical problem accounts for the very narrow concept in the proposed design certification rules of what will be accorded finality and the denial of finality even to matters which are subject to hearing and resolution in the design certification rulemaking proceedings. The problem also can be seen in the denial in the proposed rules of finality to proprietary information, safeguards information and secondary references which are submitted to, and reviewed by, the NRC as part of its review of the design certification applications. Even under the Part 50 process, such information is accorded finality. The failure of the proposed rules to provide finality to safety issues within the scope of the design unless those issues are discussed in the Design Control Document ("DCD") or Final Safety Evaluation Report ("FSER") and the failure of the proposed rules to provide finality to issues related to the adequacy of the standard designs are reflections of a philosophical approach to design certification which is at odds with the concepts on which standardization and Part 52 are based.

This same philosophical problem also is the underlying reason for the inappropriate inclusion in the proposed design certification rules of "applicable regulations" and the vague, almost wisp-like quality to the proposed applicable regulations. Including broadly-worded applicable regulations as part of the design certification rules appears to be the result of an attempt to maintain maximum flexibility to impose changes and backfits, all at the expense of the underlying concepts behind the standardization process.

Similarly, the philosophical problem is behind an unwillingness in the proposed rules to recognize and utilize the long-standing NRC regulatory practices under Section 50.59 without the introduction of a new concept which would define an "unreviewed safety question" in relationship to whether the NRC has previously reviewed and approved the issue. This radical departure from prior NRC practice and procedure will have the effect of prohibiting virtually all changes to the standardized designs without prior NRC approval, thereby destroying the applicability of the Section 50.59 process to standardized plants.

In short, the processes contained in the proposed design certification rules turn the carefully crafted NRC Part 52 licensing process from one of early identification and resolution of safety issues and a more stable, predictable licensing process to one which undermines standardization and which will discourage the type of commitments necessary for the development, approval and use of standardized final designs. Westinghouse believes it is necessary for the Commission to go back to basics, to review the rulemaking record underlying Part 52 and the Commission determinations when it adopted Part 52 and to impose discipline in such a manner that the processes contained in the design certification rules are in keeping with the basic intent of the Commission in its lengthy development of the standardization process. In the Westinghouse view, the battle for standardization, and hence for the future of nuclear power in the United States, will ultimately be won or lost not only on the quality

of the designs which are being proposed, but on the quality of the processes which surround the designs and which can either enhance or destroy the utility of the designs. The processes in the proposed design certification rulemakings represents a defeat for standardization in that battle.

With this fundamental philosophical problem in mind, Westinghouse has the following additional comments to specific aspects of the proposed design certification rules.

#### Change Process

The notices of proposed rulemaking ("NOPR") provide that an applicant or licensee who references a design certification rule must obtain prior NRC approval for departures from Tier 2 information "if the change involves an issue that the NRC staff has not previously approved" or if the change is inconsistent with the resolution of an issue in the FSER (see 60 Fed. Reg. at 17912-17913). These provisions are contrary to the provisions of NRC regulations in 10 CFR Section 52.63(b)(2) and 10 CFR Section 50.59 and should be deleted from the final rule.

Section 50.59, which is incorporated by reference in Section 52.63 (b)(2), requires prior NRC approval for changes made by a licensee only when the changes involve an unreviewed safety question or a change to the plant technical specifications. An "unreviewed safety question" is defined in terms of the impact of the change on safety. The NOPR, by defining an unreviewed safety question in terms of whether a matter has previously been approved or resolved by the NRC, would radically depart from NRC practice and procedures dating back to the 1960's. No reason is given in the NOPR for this departure, which would fundamentally alter the way the NRC implements its change process. The proposed new standard cannot be justified on a safety basis, since the current criteria in Section 50.59 require NRC approval for any change which adversely affects safety. The effect of the proposed NOPR language would be to prohibit virtually all changes without prior NRC approval. (At the May 11, 1995 public meeting on the NOPR, the NRC staff indicated that the NRC did not intend to establish a new criterion or different criterion. However, the NRC staff comment did not provide an accurate explanation of the current practice under Section 50.59, and thus is not adequate to allay our concerns.) Westinghouse believes such a drastic departure from longstanding NRC practice is not warranted and will adversely affect the usefulness of the certified designs.

The change process contained in the proposed design certification rules is flawed in another respect. The proposed rules would establish a "50.59-like" process allowing applicants and licensees to make changes in Tier 2 without prior NRC approval unless the change involves a change in Tier 1, a change in technical specifications or an unreviewed safety question. However, Section 8(b)(5) of the proposed rules would require consideration of changes in the severe accident risk and probabilistic risk evaluations. As discussed in the NEI comments, this requirement would be extremely burdensome and is neither necessary nor desirable. In seeking to apply Section 50.59 to all severe accident and probabilistic evaluations the rules would go far beyond the goal of preserving severe accident and PRA insights and would require evaluations on matters not important to safety, including evaluations on systems having no safety-related function. Westinghouse believes the NRC should not impose this needless burden on the certified designs which will only have the effect of making the designs less attractive as an alternative for providing power in the future.

#### Changes by Design Certification Applicants

The proposed design certification rules would not permit a design certification applicant to make changes to Tier 2 using the Section 50.59 - like change process. (Section 52.63 (b)(2) and the proposed design certification rules allow a COL applicant or licensee to make such changes under a Section 50.59 - like process.) Although submissions to the NRC for design certification will contain



all information necessary for the NRC to reach a final conclusion on all safety questions associated with the design, additional design work will be performed by design certification applicants after issuance of the design certification rules in order to provide added details relating to the designs. In the course of performing this detailed design development, Westinghouse believes there will be occasions when potential improvements in Tier 2 of the design will be identified. If such improvements or changes to Tier 2 fall within the type of changes that are appropriate to be made under a 50.59-like process, Westinghouse believes that a design certification applicant should be allowed to make such changes until a design has been referenced in the first license application. Such authorization will benefit standardization and will promote regulatory efficiency because these changes would become requirements for all plants that reference the design certification. Conversely, because the ability to make such 50.59-like changes by the design certification applicant would end when the first license application referencing the design is submitted, there will be no lessening of the benefits of standardization by allowing such a process.

#### Finality

In adopting Part 52, the NRC was concerned with finality -- that is, with the possibility that achievement of enhanced safety which standardization makes possible would be frustrated if too frequent changes to either a certified design or the plants referencing the design were permitted. Section 52.63(a)(4) thus states that there shall be treated as resolved in license proceedings "those matters resolved in connection with the issuance or renewal of a design certification." Issues decided during the design certification were not to be rereviewed by the NRC or relitigated in subsequent licensing proceedings. The concept of finality was critical to achieving stability sought through the Part 52 licensing process. Rereview and relitigation was one of the major deficiencies of the Part 50 licensing process and preventing such rereview and relitigation was one of the major goals of the Part 52 process.

The proposed design certification rules, however, represent a retreat from the NRC quest for finality in the design certification process. As currently written, the NOPR would result in design information reviewed by the NRC staff and resolved as part of the design review and certification process being subject to rereview and relitigation on a plant-specific basis during licensing proceedings. Such a result is directly contrary to the purpose of Part 52, undermines the regulatory foundation of standardization and is unacceptable.

The proposed design certification rules introduce substantial uncertainties and instability in the licensing process. Perhaps most egregious, there is no clear statement in the proposed rules that the designs being certified meet the applicable standards of the Atomic Energy Act and Commission regulations, determinations required to be made under Section 52.54 for the Commission to certify the designs. Thus, the proposed rules provide no finality with respect to the adequacy of the design, even though the NRC must reach a final conclusion on all safety questions associated with the design in order to finalize the design certification rules. Westinghouse believes it is essential that any design certification rule state that the design satisfies relevant Commission regulations and provides the required reasonable assurance of adequate protection of the health and safety of the public. Inherent in this finding must be a determination that no additional or alternative features are required. Also mandated is a statement that all nuclear safety issues associated with the design have been resolved.

The rules as proposed would provide no finality to safety issues within the scope of the standard designs unless they are discussed in the DCD or the FSER. Even if an issue becomes the subject of and is considered by the NRC in the design certification rulemaking proceeding, the resolution of the issue would not be accorded finality under the proposed rules. The rules as proposed also provide no finality to material contained in the voluminous safety analysis reports ("SARs") or in the dockets of

the rulemakings unless such material also is discussed in the DCD or FSER. Moreover, the proposed rules afford no finality to changes made to Tier 2 in accordance with the 50.59 - like process or to changes which are subject to review by the NRC and to an opportunity for hearing. Finally, the proposed rule affords no finality to proprietary information, safeguards information or information which appears in secondary references, all of which were considered by the NRC staff in its review of the designs. Thus, with respect to finality the proposed rules represent a major step backward from the type of certainty and stability that Part 52 was intended to provide, and in many ways afford even less stability and certainty than the Part 50 licensing process.

During discussions leading to the adoption of Part 52, Westinghouse sought to allow designs to be certified either by license or rule. Westinghouse was concerned that design certification by rulemaking would not accord the proponent of a certified design the type of protection that would be accorded in connection with licensing of the design. The thrust of the NRC response in rejecting the Westinghouse position and permitting design certification only by rulemaking was that the design certification process was intended to place the design certification proponent in the same position as though there had been a license granted for the design. The finality provisions in the proposed rules are contrary to these assurances provided at the time of the adoption of Part 52. If design certification had been by license and not by rulemaking, finality would have been accorded to all aspects of the application and design, including all aspects of the SAR, the results of the licensing hearing, changes to the design, proprietary information, safeguards information, and secondary references. Thus, in addition to the problems discussed by NEI in its comments on the inadequate finality accorded the certified design, Westinghouse believes that the finality provisions are contrary to the intent of the NRC when it decided to allow design certification only by rulemaking.

#### Applicable Regulations

Westinghouse strongly opposes the use of the design-specific rulemakings to provide for "applicable regulations." In comments dated June 18, 1994 on the Advance Notice of Proposed Rulemakings to Grant Standard Design Certification for Evolutionary Light Water Reactor Designs [58 Fed. Reg. 58664 - (November 3, 1993)], Westinghouse, in responding to the NRC's request for advice on the "acceptability of using design specific rulemaking rather than generic rulemaking for the technical issues whose resolution exceeds current requirements," stated that adoption of such a proposal would significantly and adversely affect design certification. Nevertheless, under the scheme proposed in the NOPR, each design certification rule would contain a collection of "applicable regulations" which will destroy the goal of Part 52 to establish a predictable, stable licensing process. Moreover, as noted in the NEI comments, the proposed "applicable regulations" are unnecessary either to restrict changes by licensees or for any of the other reasons asserted by the NRC staff.

The broadly-worded language contained in the applicable regulations proposed for the ABWR and System 80+ only make this more of a concern. Phrases contained in the proposed "applicable regulations" such as "shall be minimized," "to the extent practical," "use of advanced... techniques," "demonstration of adequate defense," "must facilitate," "reduce the potential for," and "most significant" are so vague and general that they allow for an endless variety of interpretations throughout the life of the design and an endless opportunity for destabilizing backfits. Thus, the proposed "applicable regulations" result in a less stable, less predictable licensing process.

Finally, Westinghouse believes that not only is the concept of applicable regulations inappropriate for design certification, but that the process by which the NRC proposes to adopt the applicable regulations in the current rulemaking is flawed and does not comport with the requirements of law, including the Administrative Procedure Act.

### Request to Participate in Hearings

The NOPR provides that an interested party may request an informal hearing in accordance with 10 CFR 52.51 on matters pertaining to the design certification rulemaking and that such request must be submitted by August 7, 1995. Although Westinghouse does not request an informal hearing on these comments, if the NRC decides to hold a hearing at the request of others, Westinghouse requests the right to participate in such a hearing.

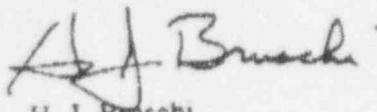
Westinghouse would desire to be heard on that portion of the NOPR upon which the NRC has granted a requestor's request for hearing, would use reasons and would rely on arguments set forth in these comments and the NEI comments. As the design certification applicant for the AP600, Westinghouse is acquainted with the substantive and procedural content and provisions affecting the NOPR, possesses the requisite technical capability to understand the factual matters and help develop a record on any issue for which a hearing is requested and possesses a detailed understanding of the NRC hearing procedures.

### Conclusion

Design certifications and combined licenses represent the future of the nuclear industry in the U.S. If the final design certification rules contain the significant process deficiencies found in the proposed rules, the type of commitments necessary for future nuclear power plant development in the U.S. will be discouraged. Accordingly, Westinghouse urges the NRC to take into consideration the comments contained in this letter, together with the NEI and other nuclear industry comments, in promulgating the final design certification rules for the ABWR and System 80+.

Westinghouse thanks the NRC for the opportunity to comment on the NOPR and looks forward to further interaction with the NRC as the design certifications progress.

Very truly yours,



H. J. Brusch

cc: Chairman Jackson  
Commissioner Rogers  
J. Taylor, EDO  
K. Cyr, General Counsel