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Nuclear Services Division

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June 17, 1997

Mr. David Meyer  
Chief, Rules Review and Directive Branch  
Division of Freedom of Information and Publication Services  
Office of Administration, Mail Stop T6D59  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Subject: NRC Request for Public Comment on NRC Proposed Strategies to  
Address the Need for a Safety-Conscious Work Environment  
(62 Fed. Reg. 8785; February 26, 1997)

Dear Mr. Meyer:

Westinghouse Electric Corporation ("Westinghouse") respectfully requests that the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") consider these late filed comments in response to the Commission's request for public comment on proposed strategies to address the need for a safety conscious work environment (62 Fed. Reg. 8785; February 26, 1997; hereinafter the "Notice"). In its Notice, the NRC requests public comment on the appropriateness of developing a standardized approach for licensees to establish and maintain a safety conscious work environment, including strategies to clearly define attributes of such an environment, indicators that may be monitored and specific remedial actions to be included in such a standardized approach.

Comments with respect to the Notice have been filed on behalf of the commercial nuclear power industry by the Nuclear Energy Institute ("NEI") of which Westinghouse is a member. Westinghouse fully supports the comments submitted by NEI and believes there is no need for the NRC to interject itself into this area either through regulation or issuance of a policy statement. Westinghouse acknowledges and recognizes the clear importance and benefits of establishing and maintaining a safety conscious work environment. However, like NEI, Westinghouse strongly objects both to the NRC's premise of the need to standardize the establishment of a safety conscious work environment and the strategies the NRC is considering to "attempt" to achieve a standard regulatory approach in this important area.

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Specifically, Westinghouse agrees with NEI and believes that: (1) the NRC has not justified that a need exists to further regulate in this area, either from the perspective that a regulatory problem exists to be solved by the Commission or that additional NRC regulation is needed for licensees to focus on safety and a safety conscious work environment; (2) any potential benefits that might be derived from an attempt to regulate a standard approach in this area will be far outweighed by the detrimental effects to individual members of the nuclear industry in the loss of flexibility and ability to develop programs that best suit the nature and character of their individual organizations; (3) the NRC's suggested strategies are vague and Westinghouse believes incapable of objective or consistent enforcement by the NRC; and (4) certain of those strategies, most particularly the contemplation of a mandated "holding period", is legally impermissible under NRC implementing law and regulations. In addition to its full support of the NEI comments, Westinghouse offers the following additional comments to express further its opposition to the NRC's proposed strategies. Our comments are offered from Westinghouse's perspective as a major nuclear reactor designer, manufacturer and vendor, a holder of various NRC licenses, an applicant for design certification for the AP-600 Advanced Passive Nuclear Power Plant, and as a responsible member of the safety-conscious, commercial nuclear power industry.

## **WESTINGHOUSE'S COMMENTS**

### **1. Additional Regulation or Policy is not Warranted to Encourage Safety.**

Westinghouse has developed and currently maintains policies and procedures to ensure that a safety conscious work environment exists, both at our own licensed facilities and when our employees perform work at the facilities of other licensees. These policies establish a safety/quality conscious work setting where employees are encouraged to come forward and freely raise safety concerns and where such concerns are promptly reviewed, given proper priority based on their potential safety significance and are appropriately resolved with timely feedback given to the employee raising the issue. Our policies also stress that employees consider this to be an integral part of their work-related responsibilities of ensuring the quality and safety of Westinghouse supplied goods and services to the nuclear industry. Westinghouse management and employees working at our customers' nuclear plants are also required by Westinghouse's policies to understand and comply with the corresponding safety policies and procedures in effect at each customer's site.

It is Westinghouse's experience that the licensees to whom Westinghouse supplies goods and services have similar and effective policies and procedures in place for encouraging the free raising of safety concerns without fear of retaliation, intimidation or discrimination. This is most clearly evidenced by the demonstrable positive trends in safety performance and safety culture that have been achieved and documented at U.S. commercial nuclear facilities. The fact that industry safety is at an all-time high demonstrates that licensees and their contractors, such as Westinghouse, are attentive to safety concerns, are highly cognizant of their responsibilities in

this area and that the NRC's current system and approach in this area is working well. The NRC has not presented a clear justified need to change this approach by issuing further regulation or policy such as proposed in its Notice.

Strong self-motivational factors already exist to cause licensees and their contractors to focus on safety and a safety conscious work environment. These factors include a strong desire to maintain plants that are safe and operable, the need to maintain standards of safety and quality excellence in an increasingly competitive electric utility market, the need to maintain a good corporate image and relationship with the communities in which plants are located and the importance of having a good safety reputation. Together with these factors, the NRC's existing regulations and policies, including its current enforcement scheme, provide more than sufficient incentive for licensee and contractor managements to place and maintain a high priority on an open and free workplace safety culture.

Specifically, the NRC already has a long-standing regulatory and enforcement scheme to ensure licensee and contractor compliance in this area, including under regulations such as 10 CFR 50.7 (and the analogous regulations in other Parts of 10 CFR). In addition, the NRC's recently issued Policy Statement on "The Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation" (61 Fed. Reg. 24336, May 14, 1996) further conveys and enforces the NRC's mandates and expectations to industry members regarding their responsibility to foster a safety conscious work environment. In light of both the industry's own effective actions and the NRC's existing regulatory scheme, Westinghouse fails to see why there is a need for the NRC to do more in this area<sup>1</sup>. Moreover, the NRC has not shown that by doing more the level of industry safety or safety consciousness would be improved, only that the level of industry regulation would be increased.

The NRC cites the findings of its recent compilation of industry-wide allegation data and the Millstone Independent Review Group as proof that "not all licensees are successful in maintaining a safety-conscious work environment" (see 62 Fed. Reg. At 8786), thereby apparently justifying its need to step in. However, neither of these reports provides sufficient justification for the NRC's promulgation of further regulation or policy in this area. The counting of mere numbers of allegations without an assessment of their merits or safety significance, as appears to be the case in the NRC allegation report, does not serve as proof that a safety-conscious work environment does not exist in the industry generally, or even at the facilities of those licensees and contractors noted in the report. In fact, contrary to the NRC's negative interpretation of its allegation data, the fact that employees are raising concerns with the NRC may actually be proof that the opposite is true and that a free and open safety culture does exist within these licensees' and contractors' organizations. Moreover, it is not clear, and the NRC provides no information in its report, as to whether such allegations, in addition to being made to the NRC, have also been raised and/or addressed within the licensees' or contractors'.

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<sup>1</sup> It can be argued that the fact that the NRC has issued its Notice for public comment, in addition to the already existing self-motivational factors and NRC regulations and policies to encourage safety, is alone sufficient to instill in nuclear industry members a further awareness of the need to maintain a safety conscious work environment.

own safety concerns programs, or that employees made their allegations to the NRC based on the absence of a safety-conscious environment at their workplaces. Further, in the case of Millstone, Westinghouse agrees with NEI that the NRC's actions under its current inspection and enforcement scheme appear to be adequate to address the unique issues at that site. Beyond the NRC's on-going responses, Westinghouse fails to see what more an additional layer of regulation or policy issued by the NRC in this area would do (short of mandating a concept such as a "holding period" which, as discussed below, Westinghouse believes is beyond the Commission's authority) to respond to the Millstone issues.

**2. The NRC's Proposed Standardized Strategies Would Eliminate Management Flexibility to Develop an Appropriate and Individualized Safety Culture.**

The NRC itself acknowledges in its Notice that departures from a safety-conscious work environment are much more effectively corrected from within a licensee's or contractor's own organization than by the intervention of an outside government agency (see 62 Fed. Reg. at 8787). This statement is a further reflection of this same concept expressed by the NRC in last year's Policy Statement. There, in acknowledging that approaches to addressing workplace safety issues must remain flexible in light of the varied characters of workplaces in the industry, the NRC stated: "[t]he Commission recognizes that what works for one licensee may not be appropriate for another" (see 61 Fed. Reg. 24,336 at 24,338). Westinghouse agrees with these statements made by the NRC and believes that it is more appropriate to let the management of individual licensees and contractors subject to NRC regulation maintain the flexibility to determine the type of policies, procedures and programs that can best establish and maintain an appropriate safety-conscious work environment at their facilities. In fact, in light of the NRC's own statements, Westinghouse questions even the issuance of the Notice by the NRC.

The need for workplace flexibility, rather than the NRC's proposed approach as described in the Notice, is based on the variety of licensees that would potentially fall under any standardized regulation or policy statement that the NRC might issue. The form of policy or regulation that might be appropriate for a reactor licensee at a nuclear plant site likely would not be appropriate for a major materials licensee, such as a fuel fabrication vendor, or a small materials, source or by-product licensee. Individual reactor licensees also may need to take varying approaches to their workplace safety environment, including more or less formalized safety programs, depending upon the size of their work force and the operating status of their plant. Added to this is the variety of contractors and vendors organizations that might also come under the purview of a standardized NRC approach and the difficulties of implementing such an approach become obvious.

Beyond Westinghouse's overall Corporate policy that employees remain free to raise safety concerns without fear of retaliation, Westinghouse recognizes that the appropriate approach to a safety conscious workplace may vary even from location to location or varying functions within its own organization. Thus, Westinghouse's individual sites are also free to establish appropriate site-specific approaches to addressing safety and safety consciousness. These include implementing a safety concerns "hotline" (currently in place at Westinghouse's nuclear business



unit headquarters and available to all business unit employees), appointing individual safety and quality concerns managers (such as are in place at our Columbia fuel fabrication facility) and establishing safety review committees and peer review groups (also in place at our nuclear business unit headquarters and fuel division facilities). The goal of each of these approaches is the same, to ensure that employee safety concerns are properly addressed and that no adverse actions are taken with respect to employees based on the raising of safety concerns. Moreover, as Westinghouse believes that individual licensees are best suited to developing safety concerns policies and programs at their own plants, Westinghouse requires its service workers, both management and employees, to comply both with Westinghouse internal safety policies and procedures and also the licensee's policies when working at a specific plant site.

The NRC, either through regulation or a policy statement, is not capable of implementing one standard scheme that would be equally appropriate, much less effective, to foster safety consciousness for the entire nuclear industry. Nor should the NRC, either explicitly or implicitly, cause licensees and their contractors to fear NRC enforcement action should they not be able to fully adopt the NRC's standardized safety conscious requirements. The standardized approach proposed by the NRC in its Notice would directly impinge on management discretion and its unique understanding of its employees and employee relations. This, in turn, could very well derogate from an individual management's ability to foster at its nuclear facilities the very safety conscious environment that is necessary to ensure the health and safety of its workers and the public in general.

### **3. The NRC's Proposals for Establishing a Safety Conscious Work Environment are Overly Vague and Ambiguous.**

In its Notice, the NRC purports a need to standardize a regulatory response for the industry in light of its concerns, albeit generally unsupported by specific proof, that there is a lack of safety focus at individual work environments. The NRC's response, however, is to consider codifying or otherwise promulgating an ambiguous set of attributes and indicators, along with an equally ambiguous and pre-determined set of remedies, to be used to mandate safety. As previously noted, this standardized approach is inappropriate for addressing safety issues given the diversity of the workplaces that fall within the NRC's jurisdiction. In addition, the intangible standards proposed by the NRC are highly subjective and are based on criteria that the NRC has not shown to be reliable to achieve its intended result. As the NRC noted in its Notice, these attributes and indicators "can be ambiguously interpreted" (see 62 Fed. Reg. At 8786). Given the vagueness of its proposed standards, to which even the NRC admits, Westinghouse questions the reliability of the NRC's attempt to uniformly regulate in this area; and in fact, whether it is even possible to assess and/or regulate the existence of something as highly subjective as a "safety culture" or a "safety conscious work environment."

Like NEI, Westinghouse is concerned with the NRC's misinterpretation (or inability to consistently interpret) data with respect to its indicators. This is particularly the case with interpreting the meaning of "an increase in the number of employee safety allegations." This is one very real and clear indication to Westinghouse that, despite the NRC's best intentions to

develop reliable measures to demonstrate the absence of a safety conscious work environment, the measure selected may not always point to the absence of this nuclear work place characteristic.

As the NRC itself acknowledges, legitimate employer action, such as is common in today's current environment of workforce downsizing, can result in a significant increase in the number of employee safety allegations and associated charges of discrimination. Given this reality, it is entirely possible that there may be an increase in allegations when employees realize that the NRC has mandated (including through its proposed holding period concept) their continued employment and pay should they raise a safety allegation in light of a pending and legitimate employment action. Westinghouse agrees with the NRC (as stated by Chairman Jackson at this year's Regulatory Information Conference) that one should not presume employees are raising safety concerns for self-motivated reasons. However, the NRC does not indicate in its Notice how it will assure that the allegations it would point to as indicators of a failed safety culture are not these types of allegations, but are allegations that truly reflect a lack of a safety culture and a safety conscious work environment. Westinghouse also finds the other NRC indicators to be equally vague, and it supports the statements to this effect in the NEI comments.

Added to this is the broad enforcement discretion the NRC would have in determining the appropriate remedy to apply to a "violation" of its indicators and attributes. As the NRC notes: "[e]valuating the safety consciousness of a licensee's work environment is highly subjective and achieving reliability in such an evaluation requires careful judgment" (see 62 Fed. Reg. At 8786). In light of the NRC's own concerns with its ability to assess a safety culture, it is difficult for Westinghouse to believe that a consistent set of enforcement decisions would result if the NRC were to attempt to regulate a uniform safety environment. Westinghouse can more readily see a series of inconsistent enforcement actions resulting from the NRC's vague standards and proposals.

Thus, not only has the NRC not shown a need to further regulate this area, or that it can mandate one set of standards for what needs to remain a flexible and individualized approach left to management discretion, but the NRC also has not provided any level of comfort that it can correctly interpret its indicators and attributes or enforce them on a consistent basis. The NRC's Notice also provides no support to demonstrate that a nexus exists between its proposed

indicators to identify "adverse trends" and the actual existence of a deteriorated safety environment. As a result, Westinghouse urges the Commission not to proceed down the vague and ambiguous path set forth in its Notice.

#### **4. Westinghouse Objects to the NRC's Attempt to Regulate a Holding Period.**

Westinghouse endorses the concerns of NEI, as stated in its comments, regarding the "standard options," such as surveys and independent oversight groups, that the NRC proposes be implemented to establish a safety conscious work environment. As the NRC states and as Westinghouse believes, "what may be necessary [to establish a safety conscious work environment] for some licensees may be unnecessary for others (see 62 Fed. Reg. At 8787). Westinghouse also believes it is inappropriate for the NRC to regulate a standard set of remedies in this area and, as such, also fully endorses the NEI comments in this regard.

Westinghouse is most concerned, however, with the NRC's proposal to regulate a mandatory "holding period" whenever an employee raises a safety concern. This is a costly concept that will interfere with the traditional employer/employee relationship and that the NRC has not convincingly demonstrated will be an effective means of encouraging a safety conscious environment. Alternate mechanisms can and have been established by licensees and contractors, again in light of the peculiar characteristics of their individual work settings, to encourage employees to raise safety concerns and to foster a safety-oriented workplace. These include open door policies, safety hot lines, safety review committees, peer review groups and quality assurance organizations. The adverse effect that a holding period concept would have on a licensee's or contractor's ability to choose from these varied options to manage the safety culture of its workforce, especially in light of the extreme cost associated with the mandatory holding period concept, clearly has not been justified by the NRC.

Westinghouse also strongly believes that it is inappropriate for the NRC to mandate a holding period, including continued employee pay and benefits, each time that a mere allegation of discrimination or retaliation is raised. Under the NRC's proposal a holding period would be required, regardless of an assessment of the legitimacy of the employee's claim and even before a licensee or contractor is given the right to defend itself against non-meritorious claims. Rather than fostering greater safety or an improved safety conscious work environment, the NRC's holding period concept could skew efforts of licensees to ensure safety by forcing them to expend significant resources on allegations and claims that may actually be raised for non-safety related reasons. The clear potential for misuse and abuse that a holding period policy would have could therefore further distort the evidence as to the existence of a safety conscious work environment.

In addition, the NRC's holding period concept would amount to significant interference by the government in the employer/employee relationship and could be held by a federal court to be inappropriate regulatory action based on its intrusion on management's ability to address its employee issues. Like NEI, Westinghouse also believes that requiring a holding period is an action outside the NRC's jurisdiction under Section 211 of the Energy Reorganization Act of 1974. The Federal statutory scheme under Section 211 clearly provides the Department of Labor,

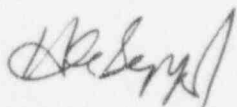
and not the NRC, with the authority and jurisdiction to grant personal remedies to employees for an act of discrimination based on the raising of safety concerns or engaging in other protected activity. The NRC, on the other hand, was tasked under Section 211 to bring enforcement actions against licensees and others subject to its jurisdiction that engaged in the prohibited action. The holding period concept proposed by the NRC and the personal remedy that would result to an employee from a mandated holding period would appear to circumvent this clear statutory intent of Section 211. The NRC should not consider going down this unclear legal path, particularly given the dubious effect that implementing such a measure will have on the goal of fostering a safety conscious work environment.

## 5. Conclusion.

The evidence and industry data clearly indicate that the nuclear industry is safe and that industry members clearly acknowledge the need to foster and maintain a safety conscious work environment. Individual licensees and contractors in the industry, including Westinghouse, are already expending a great deal of effort to establish and maintain programs to ensure that safety is maintained at their facilities, with such programs based on and reflective of the individual character of their work forces. Such programs already are required by existing NRC regulations and policies, which have proven to be more than sufficient to regulate any recalcitrance in this area. Even absent such existing regulatory requirements, licensees and contractors would still maintain aggressive programs to maintain safety conscious work environments to ensure their own safety performance which is critical to the continuation of the U.S. commercial nuclear industry. Moreover, the NRC's own statements in its Notice indicate the difficulty of promulgating standard regulation or policy in this area; and there is a lack of clear proof that the proposals set forth in the Notice would measurably increase the safety consciousness of the nuclear industry work environment. Adding all of the above together, it is difficult to see the merits of the NRC's proposals. Based on the views of Westinghouse presented in these comments and those contained in NEI's comments, Westinghouse strongly urges that the NRC not proceed further with the issuance of regulation or policy to attempt to mandate a safety conscious work environment.

Westinghouse appreciates the opportunity to comment on this matter and to submit its comments after the closing date for comments stated in the NRC's Notice. We would be pleased to discuss our comments further with the Commission and members of the NRC staff.

Sincerely,



H. A. Sepp, Manager  
Regulatory and Licensing Engineering

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