



Westinghouse
Electric Company LLC

Box 355
Pittsburgh Pennsylvania 15230-0355

August 28, 2000

Mr. William R. Borchardt
Director, Office of Enforcement
U.S. Nuclear Regulator Commission
Washington, DC 20555-0001

Subject: Response to 10 CFR Section 2.206 Petition Filed by Shannon T. Doyle

Dear Mr. Borchardt:

Westinghouse Electric Company LLC ("Westinghouse") submits this letter in response to the Petition of Shannon T. Doyle dated July 18, 2000 filed with the U.S. Nuclear Regulatory Commission pursuant to 10 CFR Section 2.206 (the "Petition"). The Petition requests that enforcement action be taken by the NRC against Hydro Nuclear Services/Westinghouse and/or its successors in connection with an on-going proceeding that arose out of an administrative complaint¹ filed by Mr. Doyle with the U.S. Department of Labor ("DOL") against Hydro Nuclear Services, Inc. ("Hydro Nuclear"). Hydro Nuclear is a former subsidiary of Westinghouse and its predecessor, CBS Corporation ("CBS").² In discussions during the week of August 14, 2000 with the NRC's Office of General Counsel, Westinghouse was requested to provide an initial response to Mr. Doyle's Petition.

Westinghouse welcomes this opportunity to inform the Commission of the history and current status of the proceeding between Mr. Doyle and Hydro Nuclear that forms the basis of the Petition. Westinghouse also believes that it is important to correct certain mischaracterizations of fact presented by Mr. Doyle in his Petition. Westinghouse believes that this information will make it clear that, contrary to Mr. Doyle's statements, no persons at Hydro Nuclear/Westinghouse, senior management or otherwise, presently are or have been engaged in a "continuing non-compliance with an administratively final order arising under the employee protection provisions of the ERA" constituting a "willful non-compliance" of the Act and NRC regulations (See Petition at. p. 2).

¹ Shannon Doyle v. Hydro Nuclear Services, Department of Labor Case No. 89-ERA-22.

² Hydro Nuclear was dissolved on July 12, 1999 and is no longer in existence. Prior to that date, the name of Hydro Nuclear was changed on two occasions in 1988 and 1990; and at the time of its dissolution, the company was named Westinghouse Staffing Services LLC. Also, in 1991, the decontamination services business of Hydro Nuclear, the area of the company's business involved in the DOL proceeding, was sold to a third party. For clarity throughout this response, the name Hydro Nuclear is used, as it is the party against whom Mr. Doyle originally filed his complaint at the DOL and which today remains the named party in the case.

I. Background – Procedural History of the DOL Proceeding

To put Mr. Doyle's Petition in an accurate perspective, it is necessary to understand the twelve year procedural history of the DOL proceeding. (For ease of reference, a chronology of key proceeding events is attached hereto as Exhibit 1.) Mr. Doyle's January 13, 1989 administrative complaint filed at the DOL asserted that Hydro Nuclear violated the Energy Reorganization Act of 1974, as amended ("ERA") when it refused to hire him as a decontamination services technician to work at the D.C. Cook plant during its 1988 fall outage. Hydro Nuclear took this action because Mr. Doyle refused to sign a release permitting it to perform the background check required by NRC regulations for Mr. Doyle to be granted unrestricted plant access.

On July 17, 1989, solely based on a stipulated record on motions for summary judgment, the DOL Administrative Law Judge ("ALJ") ruled that Mr. Doyle's refusal to sign the release was not protected activity under the ERA. The Secretary of Labor ("Secretary") almost five years later, again without more before him than the parties' original summary judgment motions, reversed the ALJ's ruling in an Opinion and Order dated March 30, 1994. The Secretary, on September 7, 1994, then remanded the matter to the ALJ for a hearing on damages. The ALJ, after a one day damages hearing, issued his first Recommended Decision and Order on damages on November 7, 1995, awarding Mr. Doyle back pay, front pay, compensatory damages, interest, attorneys' fees and costs and other equitable relief.³ On September 6, 1996, the ARB, newly created to hear these types of cases at DOL, issued a decision, captioned as a "Final Decision and Order," affirming the ALJ's November 7, 1995 Recommended Decision and Order. Certain matters were left unresolved in the ARB's decision; and the ARB urged the parties to agree to, among other things, an average hourly wage rate for the decontamination technician position for which Mr. Doyle was being considered at D.C. Cook and the discount rate to calculate the back and front pay awards.

Both Mr. Doyle and Hydro Nuclear attempted to appeal the ARB's September 6, 1996 "Final Decision and Order". However, the appeals were dismissed and the matter remanded to DOL on November 26, 1997 for lack of jurisdiction based upon lack of finality of the ARB decision. After additional procedural actions taken by the parties at DOL and interim decisions by the ALJ, the ALJ issued a Final Recommended Decision and Order on Damages on February 12, 1999 and a Recommended Decision and Order Awarding Attorneys Fees on November 15, 1999. Both Hydro Nuclear and Mr. Doyle requested ARB review of the February 12, 1999 ALJ decision and Mr. Doyle challenged aspects of the ALJ's November 15, 1999 decision as well. Thereafter, the ARB issued its May 17, 2000 Final Order, which is the order referred to by Mr. Doyle in his Petition.

Hydro Nuclear and Mr. Doyle filed petitions for review of the ARB Final Order with the United States Courts of Appeals. Hydro Nuclear's review petition, filed on May 18, 2000 in the Sixth Circuit, challenges both the liability and damages aspects of the Final Order, as Hydro Nuclear continues to contend that no violation of the ERA has occurred. Mr. Doyle's appeal to the Third

³ It was at this point in the proceeding that the NRC issued its enforcement action number EA 95-080 dated June 18, 1995.

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Circuit, filed on May 19, 2000, challenges certain damage award aspects of the ARB Final Order. The two appeals have been consolidated at the Third Circuit.⁴

Hydro Nuclear's request to the ARB for a stay of its decision pending a final order on appeal was denied by the ARB in its Final Order. However, Hydro Nuclear renewed its stay request with respect to the monetary portions of the ARB Final Order in a motion made to the U.S. District Court for the Western District of Pennsylvania on July 3, 2000 in connection with a proceeding filed by Mr. Doyle⁵ to obtain execution of the monetary judgment portion of the Final Order. In an Order issued August 14, 2000 (attached hereto as Exhibit 2), the District Court granted Hydro Nuclear's motion for a stay of the monetary portion of the ARB Final Order pending appeal, stayed the proceeding before the District Court and ordered that, within thirty days, a bond be posted on behalf of Hydro Nuclear to guarantee payment in the event a final judgment is rendered for Mr. Doyle by the Court of Appeals. Westinghouse currently is arranging for the posting of the bond on behalf of Hydro Nuclear.

II. Response to Mr. Doyle's Petition

Mr. Doyle bases his Petition and his allegation that Hydro Nuclear/Westinghouse is engaged in willful and continuing non-compliance with the ERA and NRC regulations on the statement that "Hydro Nuclear Services/Westinghouse has yet to comply with the ARB's Final Order" (Petition at p. 1). This statement is not accurate. With the exception of a requirement that is not applicable, Hydro Nuclear/Westinghouse has complied with all non-monetary elements of the Final Order.⁶ With respect to the monetary portions of the ARB Final Order, Hydro Nuclear/Westinghouse has pursued its rights concerning the payment of the monetary judgment in the Federal Courts; and a stay has been granted relating to such payment. This legitimate pursuit of rights does not constitute willfulness or any non-compliance with the Final Order. Moreover, Mr. Doyle's Petition does not meet the standard for review of 10 CFR 2.206 petitions as established in current NRC guidance documents. For these reasons, as described more fully in the following sections, the Petition should be rejected.

1. Hydro Nuclear Has Complied with the Non-Monetary Elements of the ARB Final Order.

Mr. Doyle attempts to support a review of his Petition by mischaracterizing Hydro Nuclear/Westinghouse's actions in response to the non-monetary aspects of the ARB Final Order as a continuing violation of the ERA and applicable NRC regulations and as continuing

⁴ Hydro Nuclear has filed a challenge to this action believing the matter is more appropriately heard in the Sixth Circuit where the D.C. Cook plant is located.

⁵ Shannon Doyle v. Hydro Nuclear Services, Westinghouse Staffing Services, Inc. Westinghouse Electric Corporation and CBS Corporation, United States District Court for the Western District of Pennsylvania, Civil Action No. 00-CV-1141.

⁶ Notwithstanding its compliance with the non-monetary aspects of the Final Order, Hydro Nuclear is pursuing its appellate rights and is challenging both the liability and damages aspects of the Final Order in its Sixth Circuit appeal.

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discrimination. Mr. Doyle also attempts to escalate these alleged violations by tying them to a standard of willfulness and as actions of high level management. Mr. Doyle's argument is not supported by the facts. Based on the accurate facts, the Petition is groundless and should be dismissed.

The ARB Final Order (in addition to setting monetary damages) included provisions for injunctive relief against Hydro Nuclear. In the "Disposition" Section of the Final Order at pp. 26-27 (attached hereto as Exhibit 3), Hydro Nuclear was ordered to:

- Send a notice to Equifax Corporation correcting its earlier notice that it had denied Mr. Doyle access to the D.C. Cook plant;
- Expunge from Mr. Doyle's personnel records all derogatory and negative information related to the failure to hire him;
- Provide a neutral employment reference for Mr. Doyle and agree not to divulge any information pertaining to not hiring or denying him access to a nuclear facility; and
- Post, for 45 days, the Final Order at all its facilities in the United States.

By letter dated June 1, 2000 (attached hereto as Exhibit 4), two weeks after the date of the Final Order, counsel for Hydro Nuclear notified Mr. Doyle's counsel that Hydro Nuclear had complied (with the exception of one non-applicable requirement) with these provisions of the ARB Final Order. Included as an attachment to the June 1 letter is a copy of the notice sent to Choice Point (formerly Equifax Corporation) in compliance with the first non-monetary requirement of the Final Order. The letter further indicated, also in compliance with the first non-monetary requirement of the Final Order, that no derogatory or negative information is contained in Mr. Doyle's personnel records related to the failure to hire him, beyond the original report to Equifax which now has been corrected. The original of a neutral letter of reference for Mr. Doyle, issued by Westinghouse on behalf of the now dissolved Hydro Nuclear, also is attached to the June 1, 2000 letter demonstrating compliance with the second non-monetary requirement of the Final Order. The letter also notes the procedure designed specifically to satisfy the third non-monetary requirement of the Final Order and which will be followed for responding to any verbal inquiries for references for Mr. Doyle. Finally, the letter indicates that since there are no Hydro Nuclear facilities the decision would not be posted.

Based on the foregoing actions taken in response to the non-monetary requirements of the ARB Final Order, Mr. Doyle's Petition mischaracterizes the current facts of the DOL proceeding when it states that Hydro Nuclear/Westinghouse has yet to comply. The mischaracterizations are compounded by Mr. Doyle's further claim of willfulness on the part of Hydro Nuclear/Westinghouse. Certainly, Mr. Doyle's counsel would have received the June 1, 2000 letter from counsel for Hydro Nuclear at the time the Petition, dated July 18, 2000, was filed. Mr. Doyle nonetheless chose to file the Petition. For this reason alone, that in actuality there is no continuing non-compliance with an order arising under the ERA, and certainly no willful non-compliance, Mr. Doyle's Petition should be rejected.

In addition to the fact that there is no evidence of willful or any non-compliance with the Final Order, Hydro Nuclear's actual compliance with the non-monetary elements of the Final Order demonstrates that there is no violation of those aspects of the ERA or NRC regulations with which Mr. Doyle, in his Petition, purports to be most concerned. According to Mr. Doyle, the alleged non-compliance "could serve as a disincentive to workers in the nuclear industry against their stepping forward to identify potential safety problems" or could create a "potential chilling effect ... on the flow of information, [which] should be viewed as having potential safety consequences ..." (Petition at p. 2). Hydro Nuclear's compliance clearly renders Mr. Doyle's concerns in this regard moot and clearly rebuts his argument that there is an attempt to ignore the ERA or NRC regulations. Moreover, as Hydro Nuclear no longer exists and there is no allegation in the DOL proceeding against Westinghouse, Mr. Doyle's further allegation that there is a violation based on continuing discrimination by Hydro Nuclear (Petition at p. 2, note 1) also is without merit.

Mr. Doyle's Petition further alleges, with no support whatsoever, violations at "the highest corporate level" (Petition at p. 2). Hydro Nuclear and its management no longer exist; and the DOL proceeding does not involve any allegation of discrimination, violation of the ERA, or other violation against Westinghouse and its management. The management of Westinghouse has, in fact, long had a policy of fostering a safety conscious workplace where its employees are free to raise safety and other concerns and where any retaliation for doing so will not be tolerated. Westinghouse's President and CEO most recently reaffirmed this management commitment on July 1, 2000 by reissuing a revised and updated Westinghouse company-wide policy on "Dealing with Safety Concerns" (attached hereto as Exhibit 5). As set forth in the President and CEO's letter issuing the policy to every employee in the Westinghouse organization, it is an obligation of all Westinghouse managers to train and familiarize employees with the policy and their rights and obligations under the policy.

2. Westinghouse has Legitimately Pursued Its Rights Regarding the Monetary Portions of the ARB Final Order and a Stay Has Been Granted.

Although Mr. Doyle has not received the monetary judgment provided in the Final Order, Hydro Nuclear's non-payment can not be construed as willful or continuing non-compliance with the Final Order, the ERA or NRC regulations. Westinghouse, on behalf of Hydro Nuclear, is legitimately pursuing its appellate rights in connection with the ARB Final Order, which it continues to believe reaches an incorrect result. This included challenging in the federal courts payment of the monetary judgment set forth in the Final Order prior to a final decision on appeal.

Mr. Doyle himself provided Hydro Nuclear/Westinghouse this opportunity when he filed his June 8, 2000 action in the District Court for the Western District of Pennsylvania to enforce payment of the monetary judgment. In response to Mr. Doyle's filed action, Hydro Nuclear/Westinghouse, on July 3, 2000, asked the District Court to stay payment of the monetary judgment pending appeal and offered to post a bond to secure the judgment. These actions ultimately resulted in the August 14, 2000 Order of the District Court granting the requested stay

and requiring the posting of a bond to guarantee payment to Mr. Doyle should he prevail in the appeal of the Final Order. As noted above, Westinghouse, on behalf of Hydro Nuclear, will post the required bond.

Mr. Doyle certainly was aware of Hydro Nuclear/Westinghouse's legitimate actions taken in connection with his filed District Court action, including the offer of Hydro Nuclear/Westinghouse to post a bond, when he filed his Petition alleging willful non-compliance on the part of Hydro Nuclear/Westinghouse. It is also important to note that, even before the issuance of the District Court's Order and as early as August 14, 1998 while the case was still before the DOL ALJ and the ARB, Hydro Nuclear, in pleadings filed at DOL, indicated that it was willing to post a bond to secure the monetary portion of any final administrative award that would be issued to Mr. Doyle. (Hydro Nuclear's August 14, 1998 pleading is attached hereto as Exhibit 5.) Thus, for nearly two years, Mr. Doyle has been well aware of Hydro Nuclear's willingness to honor any final order requiring a monetary payment while it exercised its appellate rights; yet his Petition fails to mention this fact. It certainly was within Mr. Doyle's right, prior to the issuance of the District Court's Order, to reject the offer of a bond being posted and to pursue the receipt of the money judgment prior to the conclusion of the appellate process. However, it is disingenuous for Mr. Doyle to file his Petition with the Commission inferring that Hydro Nuclear/Westinghouse's equally valid pursuit of its right to seek non-payment of the money judgment pending a final order on appeal amounts to willful non-compliance with the ARB Final Order, the ERA and NRC regulations.

Mr. Doyle's Petition fails to point out the actual circumstances surrounding the monetary judgment aspects of the ARB Final Order. Instead, Mr. Doyle inaccurately focuses on broad over-generalizations of willfulness and non-compliance with the ERA and NRC regulations as justification for filing his Petition and for the NRC taking immediate action against Hydro Nuclear/Westinghouse. In light of the actual facts presented above, Mr. Doyle's Petition should be rejected.

3. NRC Guidance Mandates that Mr. Doyle's Petition be Rejected.

Finally, Mr. Doyle fails to satisfy the requirements of NRC Draft Directive 8.11 "Review Process for 10 CFR 2.206 Petitions". Under Part III, "Petition Review Board," of the Draft Directive and the subsection entitled "Criteria for Petition Evaluation – Criteria for Reviewing Petitions Under 10 CFR 2.206(1)",⁷ the NRC will review a petition under the requirements of 10 CFR 2.206 if the request meets all of the criteria listed in the subsection. Mr. Doyle's Petition does not meet all of these requirements. Specifically, Mr. Doyle's Petition fails to provide accurate facts to support the Petition and relies instead on general allegations of wrongdoing and violation of NRC requirements. Further, as shown herein, the supporting "facts" presented by Mr. Doyle in his Petition are inaccurate and incomplete and, thus, are not sufficient to warrant further inquiry. Mr. Doyle's Petition is an improper attempt to utilize the NRC's 2.206 process to obtain NRC action against Hydro Nuclear/Westinghouse and is in circumvention of the

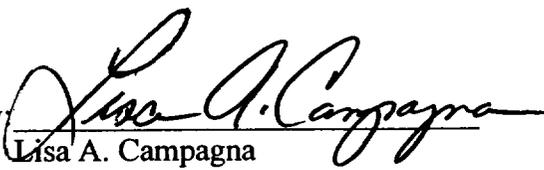
⁷ See Draft Directive 8.11, Approved: July 1, 1999 (Revised: Draft 7/14/00) at p. 10-11.

Mr. William R. Borchardt
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available federal court appellate proceedings regarding the ARB Final Order in which he already is a party. Given Mr. Doyle's failure to satisfy the stated criteria of Draft Directive 8.11, the NRC's own guidance mandates that Mr. Doyle's Petition be rejected.

Hydro Nuclear/Westinghouse appreciates the opportunity to provide the NRC with the foregoing information to appropriately characterize the status of the DOL proceeding and Hydro Nuclear/Westinghouse's compliance with the ARB Final Order. For all of the above reasons, Mr. Doyle's Petition is without merit and should be rejected.

Respectfully submitted,
Westinghouse Electric Company LLC

By 
Lisa A. Campagna
Assistant General Counsel

Attachments (Exhibits 1-6)

Cc: Mr. Shannon T. Doyle
Stephen M. Kohn, Esq.
Jack R. Goldberg, Esq. – NRC Office of General Counsel
Nicholas D. Hilton – NRC Office of Enforcement

EXHIBIT 1 - CHRONOLOGY OF KEY DOL PROCEEDING EVENTS

<u>DATE</u>	<u>EVENT</u>
01/13/89	Complaint Filed at DOL by Shannon T. Doyle
07/17/89	ALJ Recommended Decision
01/07/91	Hydro Nuclear's Decontamination Services Business Sold
3/30/94	Secretary of Labor Opinion and Order Reversing ALJ
09/07/94	Secretary of Labor Remand to ALJ for Damages Consideration
11/07/95	ALJ Recommended Decision and Order on Damages
09/06/96	ARB "Final Decision and Order" Affirming ALJ's Recommended Decision
11/26/97	Court of Appeals Remand of ARB "Final Decision and Order"
02/12/99	ALJ Final Recommended Decision and Order on Damages
07/12/99	Hydro Nuclear (Westinghouse Staffing Services LLC) dissolved
11/15/99	ALJ Recommended Decision and Order Awarding Attorneys' Fees
05/17/00	ARB Final Order
05/18/00	Hydro Nuclear Appeal to the Sixth Circuit
05/19/00	Doyle Appeal to the Third Circuit
06/01/00	Hydro Nuclear's Counsel Letter to Doyle's Counsel on Compliance with Non-Monetary Elements of Final Order
06/08/00	Doyle Complaint for Enforcement Filed in U.S. District Court for the Western District of Pennsylvania
07/03/00	Hydro Nuclear Motion for Stay of Monetary Judgment and Offer to Post a Bond Filed in the District Court
07/18/00	10 CFR 2.206 Petition Filed by Doyle with NRC
08/14/00	District Court Order Granting a Stay and Requiring the Posting of a Bond

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SHANNON T. DOYLE,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 00-1141
)	
HYDRO NUCLEAR SERVICES,)	
WESTINGHOUSE STAFFING SERVICES,)	
INC., WESTINGHOUSE ELECTRIC)	
CORPORATION and CBS)	
CORPORATION,)	
Defendants.)	

ORDER OF COURT

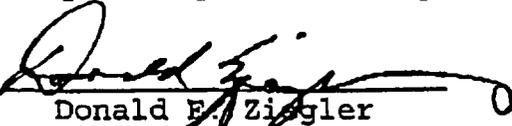
AND NOW, this 14th day of August, 2000,

IT IS ORDERED that the motion of Hydro Nuclear Services for stay of money judgment pending appeal shall be and hereby is granted.

IT IS FURTHER ORDERED that the within civil action is stayed with respect to all parties.

IT IS FURTHER ORDERED that a bond (cash or surety) in the amount of \$1,250,000 shall be posted on behalf of defendant Hydro Nuclear Services with the clerk of this court, within 30 days, to guarantee payment in the event that a final judgment is rendered on behalf of plaintiff by an appellate court.

IT IS FINALLY ORDERED that the pending motions are denied without prejudice during the pendency of the stay.


Donald E. Ziegler
Chief Judge

cc: Stephen M. Kohn, Esq.
Kohn, Kohn & Colapinto
3238 P Street, NW
Washington, D.C. 20007

Hope A. Comisky, Esq.
Pepper Hamilton
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799

James P. Hollihan, Esq.
Pepper Hamilton
500 Grant St.
5000 One Mellon Bank Center
Pittsburgh, PA 15219

EXHIBIT 3

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Finally, the ALJ denied Doyle's claimed expense of \$128 for photocopies because of lack of documentation or even any list of his photocopies. *Id.*

Again, we accept the ALJ's judgment not to award costs for which there was no documentation. The ALJ was free to accept or reject the reason given for Doyle's inability to produce all receipts, and we will not disturb the ALJ's judgment.

In summary, we have accepted all of the ALJ's rulings concerning attorney fees and costs. Therefore, we accept the ALJ's award of \$145,657 in attorney fees and \$14,273.42 in costs for the proceedings in this case that occurred between December 11, 1995, and the date of issuance of the 1999 Fee Order.

This decision is administratively final.

DISPOSITION

Hydro violated the employee protection provision of the ERA when it declined to hire Doyle and placed a notice with Equifax that it had denied Doyle access to a nuclear plant.

It is **ORDERED** that Respondent's motions for (1) stay pending judicial review, and (2) leave to file a reply brief in support of motion for stay, are **DENIED**.

It is **ORDERED** that Complainant's motions (1) to strike Respondent's motion for stay, and (2) to expedite final order on merits, are **DENIED**.

It is **ORDERED** that Complainant's motion to supplement the 1996 attorney fee award is **GRANTED**.

It is further **ORDERED** that:

(1) Respondent shall pay Complainant a back pay principal of \$218,378.

(2) Respondent shall pay Complainant a front pay principal of \$154,695.

(3) Respondent shall pay Complainant prejudgment interest on both front pay and back pay, compounded and posted quarterly, at the rate for underpayment of Federal income taxes, which consists of the Federal short-term rate determined under 26 U.S.C. §6621(b)(3) plus three percentage points, as explained in this decision.

(4) Respondent shall pay Complainant postjudgment interest on both front pay and back pay, compounded and posted quarterly, at the rate for underpayment of Federal income taxes, which consists of the Federal short-term rate determined under 26 U.S.C. §6621(b)(3) plus three percentage points, as explained in this decision.

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(5) Respondent shall pay Complainant \$45,000 for lost benefits.

(6) Respondent shall pay Complainant \$80,000 in compensatory damages;

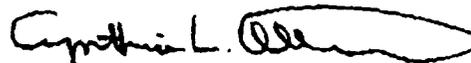
(7) Respondent shall send a notice to Equifax Corporation correcting Respondent's earlier notice that it had denied Complainant unescorted access to a nuclear plant. Respondent shall expunge from Complainant's personnel records all derogatory and negative information related to the failure to hire him. Respondent shall also provide neutral employment references and shall not divulge any information pertaining to not hiring Complainant or to denying him unescorted access to a nuclear facility, or the reasons for it, when inquiry is made about Complainant by another employer, organization, or individual. Respondent shall post this decision at all its facilities in the United States, in a location accessible to its employees, for a period of 45 days.

(8) Respondent shall pay to Complainant's attorney \$259,674.02 in attorney fees and \$30,353.45 in costs. We rely upon Complainant's counsel to remit to Complainant the portion of the awarded costs that Complainant incurred directly.

(9) Complainant's counsel shall have 30 days from the date of issuance of this order to submit to this Board a petition for attorney fees and costs incurred in this proceeding since November 15, 1999 (date of 1999 Fee Order). Respondent shall have 30 days from the date of receipt of Complainant's petition to submit a response, if any. No reply to Respondent's Response will be entertained.²⁹

SO ORDERED.


PAUL GREENBERG
Chair


CYNTHIA L. ATTWOOD
Member

²⁹ Board Member E. Cooper Brown did not participate in the consideration of this case.

Pepper Hamilton LLP
Attorneys at Law

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June 1, 2000

***VIA TELECOPY
AND FIRST CLASS MAIL***

Stephen M. Kohn, Esquire
Kohn, Kohn & Colapinto
3233 P Street, N.W.
Washington, DC 20007

Re: Doyle v. Hydro Nuclear Services

Dear Mr. Kohn:

As you know, the Administrative Review Board issued its Final Decision and Order on Damages on May 17, 2000. Hydro Nuclear Services has now complied with the portions of that Order directing it to take certain actions. Enclosed you will find:

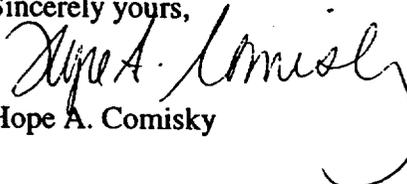
1. a copy of the letter sent to Choice Point (formerly Equifax) stating that Mr. Doyle's disqualification was improper; and
2. a letter of reference for Mr. Doyle.

There is no derogatory or negative information in Mr. Doyle's personnel records related to the failure to hire him, except for the report to Equifax which has now been "corrected," as required by the May 17, 2000 Order. Any telephone inquiries about Mr. Doyle should be directed to Sally Maybray who will provide the same information contained in item nos. 1 and 2, above.

Since there are no Hydro facilities, the decision will not be posted.

Of course, these actions are undertaken without waiver of Hydro's rights to challenge all issues on appeal.

Sincerely yours,



Hope A. Comisky

HAC/mmi
Enclosures

PHLEGAL: #896749 v1 J7XP01!.WPD

Philadelphia, Pennsylvania

Washington, D.C.

Detroit, Michigan

New York, New York

Pittsburgh, Pennsylvania

Wilmington, Delaware

Harrisburg, Pennsylvania

Berwyn, Pennsylvania

Cherry Hill, New Jersey

www.pepperlaw.com



Westinghouse
Electric Company

Nuclear Services Business Unit

Box 158
Madison, Pennsylvania 15663-0158

May 25, 2000

Choice Point
7530 Lucerne Road
Middlebury Heights, Ohio 44130

To Whom It May Concern:

On November 22, 1988, Hydro Nuclear Services provided information to your employee, Chris, that Shannon Doyle was disqualified from his position at D.C. Cook nuclear power plant. The reason for the disqualification was the cancellation of the full background investigation. A copy of the Unescorted Access Authorization Log Sheet is attached hereto for your information.

By a final decision and order dated May 18, 2000, the Administrative Review Board of the Department of Labor directed Hydro Nuclear Services to notify Equifax Corporation that this disqualification was improper. Although Hydro Nuclear Services is appealing the decision of the Administrative Review Board, it is complying with the directive in the May 18, 2000 order by sending you this notification. Please correct your records.

Sincerely yours,

A handwritten signature in cursive script that reads "Sally Maybray".

Sally Maybray, Manager
Human Resources
Waltz Mill Site

UNRESTRICTED ACCESS AUTHORIZATION WORK SHEET

SECTION A

EMPLOYEE NAME: Sabner, Doyle SSN: _____
SITE TO BE VISITED: DC Cook TARGET DATE: _____
WORK PERIOD: _____ TO _____
REQUESTED BY: Rick McCormick TELEPHONE: _____
DATE/TIME: 11/4/88 INITIALS: _____

SECTION B

DATE OF INITIAL CLEARANCE CHECK: 11/21/88 DBASE LW **INITS**
RESULTS: APPROVAL (GO TO SECTION C)
 DISQUALIFICATION (SEE SECTION D ON REVERSE SIDE)
NOTIFICATION OF RESULTS GIVEN TO: Chris - From Equifax
DATE/TIME: 11/22/88 CC

SECTION C

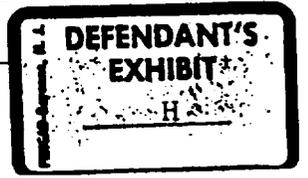
LETTER ISSUED BY SECURITY ADM. ON: _____ **INITS**
TELECOPY SENT ON: _____
TO: _____ VERIFIED _____

DBASE SECTION

FIELD AUTHORIZATION CHANGE FORM: 11/4/88 CEC
DATE HIRED: 11/2/88 SITE TRAVELING TO: DC Cook CEC
DATE BACKGROUND ENTERED ON DBASE: _____
DATE MMPI TEST ENTERED ON DBASE: _____
DATE DRUG TEST ENTERED ON DBASE: _____
DATE PHYSICAL ENTERED ON DBASE: _____
FORM FOUR ENTERED AND/OR TELECOPY TO REMS: _____

COMMENTS: _____

R(H)



refused to sign entry system statement

SECTION D

DEFICIENCIES	CORRECTIVE ACTION TAKEN	INITIS	CORRECTIVE ACTION COMPLETED	INITIS
<input checked="" type="checkbox"/> MFI	11/9/88 - Clear	ce		
<input type="checkbox"/> INTERVIEW (MFI)				
<input type="checkbox"/> COO				
<input type="checkbox"/> MFR NOT TRAINED				
<input checked="" type="checkbox"/> DRUG SCREENING	Positive THC - 11/10/87	ce	Neg. 11/21/88	ce
<input type="checkbox"/> ALCOHOL SCREENING				
<input checked="" type="checkbox"/> FULL BI	Pending 11/21/87	KW	Cancelled 11/22/87	ce
<input type="checkbox"/> PARTIAL BI				
<input type="checkbox"/> CRIMINAL UPDATE				
<input type="checkbox"/> CRIMINAL (WORK/SCHOOL) CREDIT CHECK				
<input type="checkbox"/> TRANSCRIPTS				
<input type="checkbox"/> RESIDENCE VERIFICATION				
<input type="checkbox"/> DRIVING RECORDS				
<input type="checkbox"/> OTHER				
<input type="checkbox"/> DD214				
<input type="checkbox"/> TRUE ID				

CORRECTIVE ACTIONS COMPLETED/CLEARANCE APPROVAL: DATE _____ BY _____
A LETTER MAY BE ISSUED. SEE SECTION C ON FRONT SIDE.



Westinghouse
Business Unit
Electric Company

15663-0158

Nuclear Services

Box 158
Madison, Pennsylvania

May 25, 2000

To Whom It May Concern:

Shannon Doyle was in training to work as a Decontamination Technician for Hydro Nuclear Services from November 4, 1988 to November 22, 1988. His rate of pay was \$6.50 per hour. Although Mr. Doyle did not work as a Decontamination Technician, his performance in the training was satisfactory.

Sincerely yours,

Sally Maybray, Manager
Human Resources
Waltz Mill Site



From: Charles W. Pryor, Jr.
WIN: 284-6500
Date: July 1, 2000
Subject: Safety Concerns Policy

EXHIBIT 5

To: All Westinghouse Employees and Westinghouse Contractor Organizations

A continuing atmosphere of openness and responsiveness to employee safety concerns is essential in the Westinghouse work environment. Within Westinghouse, all individuals should feel free to express any nuclear safety or other safety concerns they may have.

To reaffirm our commitment in this area, I am reissuing a revised and updated Westinghouse Electric Company Policy "Dealing with Safety Concerns." The revised Policy does not replace any of our other existing policies or procedures for addressing employee concerns. Rather, it is intended as another channel for Westinghouse employees working at Westinghouse facilities and our customers' sites to bring safety concerns to the attention of management. The Policy also is applicable to Westinghouse contractors and their personnel.

All individuals are encouraged to inform their immediate manager, or other appropriate Westinghouse management personnel, of any safety concerns they may have so that appropriate actions can be taken. We are also continuing to maintain the existing safety concerns telephone "hotline" to provide another means for individuals to express concerns they may have about the safety aspects of our work. The telephone number for the "hotline," and details on its use are included in the Policy.

Please read the Policy carefully and discuss it with your manager if you have questions. A listing of current Westinghouse management contacts who can answer your questions and address any safety concerns which may arise also is included in the Policy. Individual managers are required to train and familiarize their employees with the Policy and their rights and obligations under it. Details on training are contained in the Policy.

The Policy will be posted on bulletin boards at our various facilities and also can be accessed through the Westinghouse HR Policies and Procedures Manual on the Westinghouse Intranet.

Charles W. Pryor, Jr.
President and CEO

June 19, 2000
WESTINGHOUSE ELECTRIC COMPANY POLICY
DEALING WITH SAFETY CONCERNS

1.0 POLICY/PURPOSE

Free and open expression of safety concerns is an essential attribute of the Westinghouse safety-conscious work environment. It is Westinghouse's policy that all employees and all personnel of Westinghouse contractors working at Westinghouse facilities or its customers' sites are free to raise safety concerns and that such concerns are promptly reviewed, investigated as necessary and resolved with timely feedback to the concerned individual.

This Policy establishes guidelines for raising, receiving, documenting, investigating and responding by Westinghouse to safety concerns. It is intended to ensure that any issues relating to safety can be raised by employees of Westinghouse and personnel of its contractors without fear of harassment, retaliation, intimidation or reprisal and that issues receive prompt and appropriate attention. If an individual, acting in good faith, raises a genuine safety concern, they will not risk suffering from any form of retribution as a result, even if they are mistaken.

Any action constituting harassment, retaliation, intimidation or reprisal against individuals raising safety concerns in good faith under this Policy will not be tolerated. Action of any Westinghouse employee or member of management that fails to comply with this Policy may result in disciplinary action, up to and including termination. Action of any contractor or contractor personnel that fails to comply with this Policy may result in denial of access of the contractor/personnel to Westinghouse facilities and/or customers' sites.

2.0 SCOPE

This Policy is designed for use by any employee of Westinghouse and personnel of its contractors working at Westinghouse facilities or at customers' sites who believe, for any reason, that resolution of their safety concerns by normal interaction with their management is inappropriate or may be ineffective.

This Policy is not intended to replace other existing Westinghouse policies or procedures as vehicles for individuals to report concerns. These include: 10 CFR Part 21 procedures such as Procedure WEC 21.0, "Identification and Reporting of Conditions Adverse to Safety," and the Westinghouse Safety Review Committee process; corrective action programs, including the "CAPS Implementing Procedure, CAPS 1.0, May 1, 2000"; reporting safety concerns to the local, site environment, health and safety coordinator or to the company Manager of Environment, Health and Safety; open door policies; the Company Ethics Policy; grievance procedures in the resolution of human resources concerns; or the Equal Employment Opportunities (EEO) coordinator process.

3.0 RESPONSIBILITIES

All Westinghouse employees and managers and personnel of Westinghouse contractors working at Westinghouse facilities or its customers' sites have a responsibility and are strongly encouraged to report nuclear safety; environmental, health and safety; working condition safety; quality issues; compliance with laws and regulations; and other work-related safety concerns to Westinghouse management. The following responsibilities apply under this Policy:

3.1 Westinghouse Employees

Westinghouse expects that its employees will identify and report safety concerns relating to their work activities to their immediate manager. If for any reason an employee does not wish to report a safety concern to his/her immediate manager, the concern may be reported to any member of management, including the site Human Resources Manager, the Plant Manager, any Vice President or Subsidiary President, a Business Unit Senior Vice President or the Westinghouse President. Safety concerns also may be reported to any of the Westinghouse management contacts identified at the end of this Policy.

Employees have the responsibility to take their safety concerns directly to a member of management because it is Westinghouse that has the primary responsibility for maintaining safe operations at its facilities and in connection with its activities at customer sites.

Employees covered by this Policy also have the unrestricted right to contact the NRC or other appropriate federal or state governmental entity, at any time, to discuss a safety concern. This Policy is not intended to interfere, and should not be construed as interfering, with this right; and there is no requirement to notify Westinghouse that an employee has contacted the NRC or other governmental entity. (The NRC's toll-free hotline number is 800-695-7403.) Westinghouse nonetheless expects concerned individuals normally to have raised their safety concerns with the Company, even if they also contact the NRC or other governmental entity.

An employee may request anonymity and/or indicate whether confidentiality for raising a safety concern is desired. To the extent possible, such requests will be honored. However, employees should recognize that attempts to strictly adhere to such requests can impede an investigation of the concern raised. Employees will be informed if it is not possible to maintain requested anonymity/confidentiality.

3.2 Westinghouse Management

Westinghouse management has responsibility for the administration and effectiveness of this Policy. Management also has responsibility to protect employees from harassment, retaliation, intimidation or reprisal arising from expressing any safety concern.

Upon receipt of a safety concern, a Westinghouse manager shall immediately document the individual's concern and communicate it to the appropriate individual(s) or organization(s) within Westinghouse for resolution. As examples:

- Site Management or site safety representatives
- Human Resources
- Westinghouse Safety Review Committee or Secretary of the Safety Review Committee (for safety-related products and services concerns)
- Westinghouse Manager of Environment, Health and Safety (for workplace radiological/environmental/health/safety concerns)
- Quality Assurance Organization
- Controllers Organization
- Law Department.

In the event the manager receiving a safety concern is unable to determine the appropriate person or organization to address a concern, the site Human Resources Manager will be consulted to assist in identifying the cognizant organization.

Managers will carefully evaluate and, as necessary, investigate safety concerns in conjunction with the appropriate individuals and organizations. This may involve internal technical reviews or a more formal investigation.

The manager who receives a safety concern is responsible for seeing that a timely response is provided, including to the individual involved, if his or her identity is known. This may be done by that same manager, or by the cognizant organization that evaluates the concern. If a response cannot be provided promptly, the reason shall be documented and the individual, if his or her identity is known, shall be informed of the delay and apprised of progress in resolving the concern.

The form and content of the response will be based on the nature of the concern raised. Actions to resolve concerns also will conform with established Westinghouse and, where required, customer policies and procedures, applicable laws, rules and regulations and bargaining unit contracts, as appropriate. The response shall be documented for future reference.

3.3 Responsibilities of Contractors and Their Personnel Working at Westinghouse Facilities

This Policy also applies to Westinghouse contractors working at Westinghouse facilities. Contractor organizations and their personnel shall be cognizant of, and shall comply with, this Policy.

Contractor management shall review, investigate as appropriate and resolve, internally, any safety concerns that may be raised directly to them by their personnel. Compliance by contractors shall include actively pursuing any allegation of harassment, retaliation, intimidation or reprisal by any individual in their employ against any other of their personnel engaging in the raising of safety concerns.

Contractor management also shall promptly inform Westinghouse management of the receipt of any safety concerns raised by their personnel or any allegation of discrimination, harassment, intimidation or other retaliation directed against their personnel as a result of raising such concerns. The contractor organization and management located at Westinghouse facilities shall fully and openly cooperate with Westinghouse to permit a full evaluation and, as appropriate, investigation of any such concerns or allegations. This shall include (to the extent permissible given legal rights of privacy): informing Westinghouse of the results of any internal investigation that the contractor may conduct and any actions that may be taken; allowing Westinghouse to participate in any such investigation and actions, and/or assisting in any Westinghouse investigation or action plan.

3.4 Responsibilities at Customers' Facilities

This Policy also applies to all Westinghouse employees and management and personnel of Westinghouse contractors when working at customers' sites.

In addition, all Westinghouse employees and managers as well as personnel of Westinghouse contractors working at customers' sites are responsible for being aware of and complying with the customer's site safety concerns policy. This typically will require Westinghouse and its contractors' on-site management, in the manner specified in the customer's policy, to notify the appropriate customer contact upon learning of a safety concern reported by either Westinghouse employees or contractor personnel in the course of performing work at the customer's site. Evaluation and investigation of the concern also may be required in the manner required by the customer's safety concerns policy.

4.0 SAFETY CONCERNS HOTLINE

For individuals who do not wish to report safety concerns directly to their manager, another member of management or other contact person identified in this Policy, a dedicated and confidential safety concerns telephone "hotline" continues to be maintained specifically for the reporting of safety concerns. Safety concerns reported to the hotline will be handled in the same manner as safety concerns reported directly to management.

The safety concerns hotline is available 24 hours a day by dialing Win 284-5656 or Bell (412) 374-5656. This number, and information on the purpose and operation of the Safety Concerns Hotline, will be posted on bulletin boards throughout Westinghouse. The hotline is connected to a separate voice mailbox, accessible only by the Secretary of the Westinghouse Safety Review Committee, who will be responsible for checking messages on a daily basis and, in accordance with this Policy, directing them to the appropriate organization(s) to address the specific safety concern(s) raised.

Individuals accessing the hotline are encouraged to identify themselves by name and telephone number, leaving a sufficiently detailed message for their safety concern(s) to be evaluated and, as appropriate, investigated, and to aid management in providing a timely response to them. Anonymous messages will be evaluated, to the extent the message is sufficiently clear and specific, to determine the validity of the safety concern(s) reported and appropriately investigated based upon the information provided in the message. Closure of anonymous concerns with no means of communicating with the originator will be determined and documented by management who will communicate lessons learned as appropriate.

In his/her message to the Safety Concerns Hotline, an employee may indicate whether confidentiality for expressing the safety concern is desired. As with any safety concern reported directly to management, confidentiality will be maintained, to the extent possible.

5.0 TRAINING

Westinghouse employees and its contractors' personnel shall receive training and familiarization with this Policy and its implementation. Training of new employees will be conducted as part of their overall orientation training. Training of existing employees shall be conducted by individual Westinghouse or Westinghouse contractor group managers or their designees.

Training shall provide fundamental information concerning this Policy, including the raising of safety concerns and the requirement of employee protection against retaliation of any kind. Employee rights, responsibilities and company expectations under this Policy for raising safety

concerns shall be discussed, including the right to anonymity, confidentiality and freedom from harassment, retaliation, intimidation or reprisal.

Training material has been developed and is available from the Secretary of the Westinghouse Safety Review Committee for use by Westinghouse managers and Westinghouse Contractor organizations in understanding this Policy and to assist in fulfilling the training obligations under the Policy.

In addition, managers shall maintain awareness of the following requirements in fulfilling their training responsibilities:

- Fostering a safety-conscious work environment
- Westinghouse expectations of managers in dealing with employee safety concerns
- The managers' responsibility to address employee safety concerns
- Employees' rights
- Treatment of employees with dignity and respect
- The importance of adequate documentation and interactions with employees
- Methods and protections provided to employees who raise safety concerns
- Techniques for effectively resolving employee safety concerns
- The organization, function and purpose of this Policy
- The corrective action program and its relationship to this Policy.

6.0 WESTINGHOUSE MANAGEMENT CONTACTS

The following is a list of current Westinghouse Management contacts that individuals may contact in connection with a safety concern. This list will be updated annually with the planned reissue of this Policy.

WESTINGHOUSE MANAGEMENT CONTACTS (MAY, 2000)

TITLE	WIN	BELL
Secretary, Westinghouse Safety Review Committee	284-5282	(412) 374-5282
Chairman, Westinghouse Safety Review Committee	284-4598	(412) 374-4598
Manager, Westinghouse Environment, Health and Safety	284-5124	(412) 374-5124
Westinghouse President	284-6500	(412) 374-6500
Westinghouse General Counsel, Law and Contracts Department	284-4123	(412) 374-4123
Westinghouse Law Department Representatives		
Regulatory – Pittsburgh	284-4614	(412) 374-4614
Labor – Pittsburgh	284-5540	(412) 374-5540
Environment, Health and Safety – Pittsburgh	284-5570	(412) 374-5570
Regulatory – Windsor		(860) 285-9780
Westinghouse Safety Concerns Hotline	284-5656	(412) 374-5656

6/19/00

UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF LABOR
ADMINISTRATIVE REVIEW BOARD

-----)	
SHANNON DOYLE,)	
)	
Complainant,)	
)	
V.)	Case No. 89-ERA-22
)	
HYDRO NUCLEAR SERVICES,)	
)	
Respondent.)	
-----)	

**RESPONDENT HYDRO NUCLEAR SERVICES MOTION FOR STAY
PENDING APPEAL OF THE MONEY JUDGMENT OF THIS
ADMINISTRATIVE LAW JUDGE BY POSTING SUPERSEDEAS BOND**

Respondent Hydro Nuclear Services ("Hydro"), by its undersigned counsel, hereby moves for a stay pending appeal of the money judgment of this Administrative Law Judge ("ALJ") by posting a supersedeas bond, and in support thereof, Hydro avers as follows:

1. On January 13, 1989, Shannon T. Doyle ("Doyle") filed a complaint with the United States Department of Labor. Doyle asserted that Hydro violated the Energy Reorganization Act of 1974 ("ERA"), 42 U.S.C.A. §§ 5801-5891 (West 1983 & Supp. 1998), for failing to hire him as a casual employee, because Doyle refused to sign a release permitting Hydro to perform a background check.

2. On July 17, 1989, based entirely upon a stipulated record, this ALJ ruled that Doyle was not protected under the ERA.

3. On March 30, 1994, the Secretary of Labor reversed the ALJ's liability ruling.

4. On September 7, 1994, the Secretary remanded this matter for an assessment of damages hearing.

5. The assessment of damages hearing was conducted before this ALJ on December 14, 1994.

6. On November 7, 1995, this ALJ issued a recommended decision and order, awarding Doyle back pay, front pay, compensatory damages, interest, attorneys' fees and costs, and other alternative relief.

7. On September 6, 1996, the Administrative Review Board (the "Board") issued a Final Decision and Order, fully upholding the ALJ's recommended decision. In its Final Decision and Order, the Board urged the parties to stipulate to an average hourly wage rate and an appropriate discount rate, to calculate the awards of back pay and front pay.

8. Both parties filed notices of appeal, which were dismissed on the basis of lack of finality of judgment. Accordingly, the matter was remanded to the Board to issue a final judgment.

9. Thereafter, the parties attempted to negotiate a stipulation on the remaining unresolved issues.

10. On November 3, 1997, after negotiations broke down, Doyle moved to remand the matter to the ALJ for a hearing.

11. On November 13, 1997, Hydro moved for a clarification of the Board's Final Decision and Order.

12. On November 26, 1997, both of the aforesaid motions were granted, and the matter was remanded to the ALJ.

13. Since the remand, the parties have engaged in extensive negotiations and have mediated some of the remaining issues.

14. On July 1, 1998, Doyle filed a Motion for Summary Judgment.

15. On July 17, 1998, Hydro moved to strike portions of Doyle's summary judgment motion and for a stay of disposition so that Hydro could obtain the discovery it needed to respond on the merits to the portions of Doyle's motion which were within the remand order.

16. It is Hydro's position that it is improper to rule on the merits of the Motion for Summary Judgment before Hydro has the opportunity to obtain the required discovery, most of which is under Doyle's exclusive control.

17. However, because the Motion for Summary Judgment is now pending, and should this ALJ reject Hydro's arguments in opposition to that motion, this ALJ can issue a Preliminary Order at any time. Pursuant to 29 C.F.R. §24.7(c)(2), said Preliminary Order can become final immediately.

18. Accordingly, Hydro is filing this Motion for a Stay only to protect itself should this ALJ actually reach the merits of Doyle's motion at this time. The filing of this Motion is not intended to suggest that Hydro is conceding the appropriateness of such action.

19. On appeal, a party may stay a money judgment, when posting a supersedeas bond, as a matter of right.

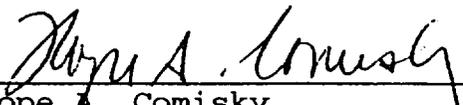
20. In further support of this Motion, Hydro relies on the accompanying memorandum of law and proposed order.

WHEREFORE, Hydro respectfully requests that this Court grant its Motion to stay upon appeal the monetary judgment of an ALJ.

Respectfully submitted,

August 14, 1998

Date



Hope A. Comisky
Robert E. Frankel

ANDERSON KILL & OLICK, P.C.
1600 Market Street, 32nd Floor
Philadelphia, PA 19103
(215) 568-4202

Attorneys For Respondent
Hydro Nuclear Services

UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF LABOR
ADMINISTRATIVE REVIEW BOARD

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SHANNON DOYLE,)
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 Complainant,)
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 V.) Case No. 89-ERA-22
)
)
 HYDRO NUCLEAR SERVICES,)
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 Respondent.)
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**RESPONDENT HYDRO NUCLEAR SERVICES' MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION FOR STAY ON APPEAL OF THE MONEY
JUDGMENT OF THIS ADMINISTRATIVE LAW JUDGE BY SUPERSEDEAS BOND**

Respondent Hydro Nuclear Services ("Hydro"), by its undersigned counsel, hereby submits this memorandum of law in support of its motion for a stay pending appeal of the money judgment that will be entered by this Administrative Law Judge ("ALJ") in the form of a Preliminary Order of Damages, pursuant to 29 C.F.R. § 24.6(a) (1998). As set forth below, the filing of this Motion is not to be viewed as an admission by Hydro that a decision on the merits of Doyle's Motion for Summary Judgment is proper at this time.

I. FACTUAL BACKGROUND

On January 13, 1989, Shannon T. Doyle ("Doyle") filed a complaint with the United States Department of Labor. Doyle asserted that Hydro violated the Energy Reorganization Act of 1974 ("ERA"), 42 U.S.C.A. §§ 5801-5891 (West 1983 & Supp. 1998), when it refused to hire him as a casual employee to work at the D.C. Cook nuclear power plant during an outage in the fall of 1988, because

Doyle refused to sign a release permitting Hydro to perform a background check.

On July 17, 1989, based entirely upon a stipulated record, this ALJ ruled that Doyle's refusal to sign the release was not a protected activity under the ERA. However, by opinion and order dated March 30, 1994, the Secretary of Labor reversed the ALJ's liability ruling. On September 7, 1994, the Secretary remanded this matter for an assessment of damages hearing.

Discovery was conducted, and the assessment of damages hearing was held before this ALJ in Dotham, Alabama on December 14, 1994. The damages hearing lasted only one day, and on November 7, 1995, this ALJ issued his recommended decision and order, awarding Doyle back pay, front pay, compensatory damages, interest, attorneys' fees and costs, and other equitable relief.

On September 6, 1996, the Administrative Review Board (the "Board") issued a Final Decision and Order, completely affirming this ALJ's recommended decision and Order. The Board urged the parties to agree to, among other things, an average hourly wage rate for decontamination technicians in the nuclear industry for each year since 1988, and an appropriate discount rate, to calculate the back pay and front pay awards.

Thereafter, both parties attempted to appeal the Board's decision, filing notices of appeal in the Third and Sixth Circuits, but both appeals were dismissed for want of jurisdiction, based upon lack of finality of judgment. Accordingly, the matter was remanded to the Board to issue a final judgment.

On November 3, 1997, Doyle moved to remand the matter to the Department of Labor. On November 13, 1997, Hydro moved for a clarification of the Board's Final Decision and Order of September, 1996. On November 26, 1997, both motions were granted, and the matter was remanded to the Department of Labor. Since the remand, the parties have engaged in extensive negotiations and a binding mediation, resolving some of the open issues.

Yet, on July 1, 1998, while negotiations were still on-going, Doyle moved for summary judgment. On July 17, 1998, Hydro moved to strike portions of Doyle's summary judgment motion and for a stay of disposition so that Hydro could obtain the discovery it needed to respond on the merits to the portions of Doyle's motion which were within the remand order. It is Hydro's position that it is improper to rule on the merits of Doyle's motion for summary judgment before Hydro has the opportunity to obtain the required discovery, most of which is under Doyle's exclusive control.

However, because Doyle's motion for summary judgment is now pending, and should this ALJ reject Hydro's arguments in opposition to that motion, this ALJ can issue a Preliminary Order at any time. Pursuant to 29 C.F.R. §24.7(c)(2), said Preliminary Order can become final immediately. Accordingly, Hydro is filing this Motion for a Stay pending appeal of the money judgment only to protect itself should this ALJ actually reach the merits of Doyle's motion at this time. The filing of this Motion is not intended to suggest that Hydro is conceding the appropriateness of such action.

II. DISCUSSION

The rules of practice and procedure for administrative hearings before administrative law judges provide that: "[t]he Rules of Civil Procedure for the District Courts of the United States shall be applied in any situation not provided for or controlled by these rules" 29 C.F.R. § 18.1(a) (1998). The recent amendments of these rules provide that even a Preliminary Award of a money judgment is effective immediately. 29 C.F.R. § 24.7 (1998). However, nowhere in the administrative rules are stays of such orders pending appeal, by posting of supersedeas bonds, even mentioned. Thus, the Federal Rules of Civil Procedure govern the issue.

The Federal Rules of Civil Procedure provide that:

When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) [relating to appeals of injunction, receiverships, and patent accountings]. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

Fed. R. Civ. P. 62(d). The United States Supreme Court has interpreted this rule to mean that "a party taking an appeal from the district court is entitled to a stay of a money judgment as a matter of right if he posts a bond" in accordance with the federal rules. American Mfrs. Mut. Ins. Co. v. American Broadcasting-Paramount Theaters, Inc., 87 S. Ct. 1, 3 (1966) (emphasis added).

The proposition that a party may stay a money judgment as a matter of right, if a supersedeas bond is posted, is a basic

tenet of United States appellate procedure. Dillon v. City of Chicago, 866 F.2d 902, 904 (7th Cir. 1988); Olympia Equip. Leasing Co. v. Western Union Tel. Co., 786 F.2d 794, 795 (7th Cir. 1986), cert. denied, 480 U.S. 934 (1987). Indeed, as the name denotes, this bond is meant to supersede the right of enforcement of the previous judgment, and the concomitant stay is granted as a matter of right. Perez & Cia., Inc. v. United States, 578 F. Supp. 1318, 1320 n.1 (D.P.R.), aff'd, 747 F.2d 813 (1st Cir. 1984). With the bond, the prevailing party knows that the assets are available to pay the full amount of the judgment, should that party also prevail in appeal.

Moreover, the right to a stay of a money judgment is so basic that it can be granted even without posting a bond. Federal Prescription Serv., Inc. v. American Pharm. Ass'n, 636 F.2d 755, 757-61 (D.C. Cir. 1980); In re Oil Spill by the "Amoco Cadiz" Off the Coast of France on March 16, 1978, 744 F. Supp. 848, 849 (N.D. Ill. 1990). Furthermore, a court may allow security other than a supersedeas bond to be posted pending appeal. See, e.g., Olympia Equip., 786 F.2d at 799-800. The rationale for this automatic right to a stay of a money judgment is to minimize risk of loss on both parties. Otherwise, a party who lost below, but prevails on appeal, would be at risk of losing its assets to an indigent opposing party because it chose to exercise its vital rights to have the decision reviewed on appeal.

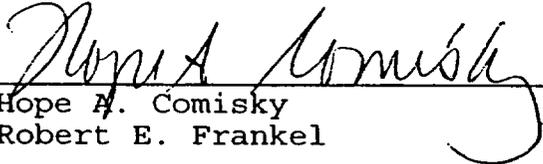
Here, Hydro will agree to post a supersedeas bond for the amount of the ALJ's judgment, plus interest, even though it may not be necessary that Hydro do so. In this way, Doyle is fully

protected should he nonetheless prevail on appeal. If Hydro prevails, it will not be placed at risk of being unable to recover the money judgment from Doyle. Given the decision by the United States Supreme Court that a money judgment is to be stayed on appeal as a matter of right, entry of a stay on this case is required.

III. CONCLUSION

It is Hydro's position that it is improper to rule on the merits of Doyle's motion for summary judgment before Hydro has the opportunity to obtain the required discovery, most of which is under Doyle's exclusive control. However, should this Administrative Law Judge reach the merits of Doyle's motion at this time and enter a money judgment, for the reasons set forth above, Respondent Hydro Nuclear Services requests that its motion be granted, and that an Order in the form attached hereto be entered, staying enforcement of any money judgment pending appeal.

Respectfully submitted,



Hope A. Comisky
Robert E. Frankel

August 14, 1998
Date

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(215) 568-4202

Attorneys For Respondent
Hydro Nuclear Services

UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF LABOR
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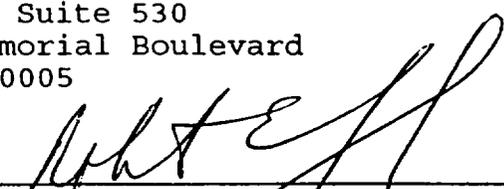
CERTIFICATE OF SERVICE

I hereby certify that at my direction a true and correct copy of Respondent Hydro Nuclear Services' Motion for Stay Pending Appeal of the Money Judgment of This Administrative Law Judge by Posting Supersedeas Bond and Respondent Hydro Nuclear Services' Memorandum of Law in Support of its Motion for Stay On Appeal of the Money Judgment of This Administrative Law Judge by Supersedeas Bond were sent by federal express on this date to the following:

Stephen M. Kohn, Esquire
Kohn, Kohn & Colapinto, P.C.
3233 P Street, N.W.
Washington, D.C. 20007-2756

Honorable Richard D. Mills
Administrative Law Judge
Office of Administrative Law Judges
Heritage Plaza, Suite 530
111 Veterans Memorial Boulevard
Metairie, LA 70005

August 14, 1998
DATED



Robert E. Frankel
ANDERSON KILL & OLICK, P.C.
1600 Market Street, 32nd Floor
Philadelphia, PA 19103
(215) 568-4202

Attorneys for Respondent
Hydro Nuclear Services, Inc.