

Mr. Shannon Doyle  
[Home Address Deleted  
Under 10 CFR 2.790(a)]

October 18, 2000

Dear Mr. Doyle:

In a letter dated July 18, 2000, submitted pursuant to 10 CFR 2.206, to William D. Travers, you request the Nuclear Regulatory Commission (NRC) to take specified regulatory actions against Hydro Nuclear Services/Westinghouse and/or its successors (Hydro Nuclear) for willfully failing to comply with a Department of Labor (DOL) order. Specifically, you state that the DOL Administrative Review Board (ARB) issued an order in "Shannon T. Doyle vs. Hydro Nuclear Services," 1989-ERA-22, which requires Hydro Nuclear Services, a former division of Westinghouse, to take certain actions. As a basis for your request, you maintain that after a full two months of the order becoming administratively final, Hydro Nuclear had not complied with the order, therefore creating a potential chilling effect which serves as a disincentive to workers in the nuclear industry stepping forward to identify potential safety problems.

You state that the failure to comply with the DOL order was directed by the highest corporate levels and deserved a violation of the Severity Level I classification. You request that the NRC immediately "debar" Westinghouse from doing business in the nuclear industry, at least until such time that they fully comply with the ARB order. Additionally, you conclude that a fine should be immediately assessed against Westinghouse commensurate with a Severity Level I violation, and each day of noncompliance should count as a separate violation, with its own fine.

As provided by Section 211(c) the Energy Reorganization Act of 1974, as amended, any person adversely affected by a DOL order may obtain review of the order in the appropriate United States Court of Appeals. According to Westinghouse, Hydro Nuclear filed a petition for review of the ARB order with the United States Courts of Appeals for the Sixth Circuit on May 18, 2000. The petition challenges both the liability and damages aspects of the order. In addition, on July 3, 2000, Hydro Nuclear requested a stay of the monetary damages portion of the ARB order in a motion made to the United States District Court for the Western District of Pennsylvania in connection with a proceeding filed by you to obtain execution of the monetary judgment portion of the ARB order. In an order issued August 14, 2000, the District Court granted Hydro Nuclear's motion for a stay of the monetary portion pending appeal, stayed the proceeding before the District Court, and ordered that a bond be posted on behalf of Hydro Nuclear to guarantee payment in the event a final judgment is rendered for you by the Court of Appeals.

Our petition review board (PRB) has reviewed your submittal and the information your attorney, Mr. Steven Kohn, provided on September 14, 2000, during a pre-PRB meeting telephone conference. The NRC Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," Handbook states that a petition will not be reviewed if, among other requirements, the petitioner fails to provide some element of support beyond the bare allegation. You assert that Hydro Nuclear's failure to comply with a DOL order creates a chilled environment in the

nuclear industry. However, we do not find any support for such an allegation in the petition. Further, the staff has concluded that, because Hydro Nuclear is pursuing its case in the courts, as is its right, NRC involvement at this point would not be appropriate.

During the September 14, 2000, telephone conference call, Mr. Kohn alleged that an additional violation of 10 CFR 50.7, "Employee Protection," had occurred when Westinghouse notified Choice Point (Equifax), by letter dated May 25, 2000, that the disqualification previously identified to Equifax was improper. Specifically, Mr. Kohn alleged that the letter provided information that could identify you as a person who had raised concerns to the DOL/NRC and that such a disclosure was itself a violation of 10 CFR 50.7. After reviewing the May 25 letter, which was sent to comply with the DOL order, the PRB concluded that stating a reason to Equifax for requesting the change to its records was appropriate and, by itself, does not evidence a violation of 10 CFR 50.7.

On September 19, 2000, Mr. Kohn submitted, by letter, information that alleged two additional violations of the Atomic Energy Act, specifically, two examples of alleged false statements made by Hydro Nuclear to the PRB during the September 14 telephone conference. The two new assertions concern whether Hydro Nuclear Services has accepted service of process of the complaint Mr. Doyle filed in federal court and whether Westinghouse Electric Company had acknowledged that Westinghouse Staffing Services was liable for Hydro. As support for these assertions, you attached various federal court pleadings. These issues are not relevant to NRC's consideration of a potential violation of 10 CFR 50.7. Furthermore, to the extent you believe that Hydro Nuclear has made false or inconsistent statements to the courts, the NRC is not the appropriate forum to resolve those issues.

Finally, on October 11, 2000, we provided you an opportunity to comment and provide any new information relevant to the chilled environment alleged in your petition in light of the PRB's tentative recommendations. You did not provide any new information beyond information already on the record relevant to the PRB decision.

Based on the above information and our discussions, we consider this matter closed.

Sincerely,

/RA/

R. W. Borchardt, Director  
Office of Enforcement

cc: Steven Kohn, Esq.  
Kohn, Kohn, & Colapinto  
3233 P Street, N.W.  
Washington, DC 20007

Lisa Campagna  
Assistant General Counsel  
Westinghouse Electric Company LLC  
Box 355  
Pittsburgh, Pennsylvania, 15230-0355

Distribution

PUBLIC (Home Address Withheld)  
 EDO Ticket #G20000357  
 OE Chron File  
 WTravers, EDO  
 CPaperiello, EDO  
 FMiraglia, EDO  
 PNorry, EDO  
 JCraig, EDO  
 KCyr, OGC  
 SBurns, OGC  
 WKane, NMSS  
 GCaputo, OI  
 RBorchardt, OE  
 JLuehman, OE  
 NHilton, OE  
 JGoldberg, OGC  
 SBlack, DLPM/NRR  
 HBerkow, PDII/DLPM/NRR  
 RSubbaratnam, PDII/DLPM/NRR

OFFICE	ES:OE	DD:OE	PM:PDII/S2	PD:PDII	OGC	AD:DLPM	D:OE
SIGNATURE		JLuehman*	RSubbaratnam*	HBerkow*	No legal objection LChandler for*	SBlack*	
NAME	NHilton	JLuehman	RSubbaratnam	HBerkow	JGoldberg	SBlack	RBorchardt
DATE	10/ /2000	10/16/2000	10/16/2000	10/16/2000	10/16/2000	10/17/2000	10/18/2000

\*See previous concurrence

DOCUMENT NAME: C:\Doyle Closure Letter.wpd

**OFFICIAL RECORD COPY**