



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001

May 27, 2003

Mr. Hank A. Sepp, Manager  
Regulatory And Licensing Engineering  
Westinghouse Electric Company  
P. O. Box 355  
Pittsburgh, PA 15230-0355

SUBJECT: WESTINGHOUSE PART 21 REVIEWS

Dear Mr. Sepp:

The NRC has a concern regarding Westinghouse Nuclear Safety Review Committee (WNSRC) interpretation of the requirements of Part 21 of Title 10 of the Code of Federal Regulations (10CFR). The concern arose from our review of a November 20, 2002, letter from an individual requesting a clarification of the requirements of 10 CFR Part 21. The November 20, 2002, letter included information indicating that the Westinghouse Electric Company performed an evaluation in accordance with 10 CFR Part 21 and concluded that, since the isolated condition had been corrected and limited to a particular plant, the failure did not constitute a reportable condition. The author was concerned that the WNSRC evaluation was limited to a determination that the condition did not create a substantial safety hazard instead of determining whether the condition could create a substantial safety hazard if left uncorrected as required by the regulation.

The issue appears to have arisen from an evaluation of control element assembly (CEA) cracking at the Palo Verde Nuclear Generating Station. The specifics of the issue were discussed with you by Joseph Petrosino and Stephen Alexander of the NRC. During those conversations you stated that it was Westinghouse's belief that the condition was not reportable under 10 CFR Part 21 because the cause of the CEA cracking was not a deviation or failure to comply associated with the basic components that Westinghouse had supplied to the plant. Instead, it was caused by Arizona Public Service (APS) keeping the CEAs in service beyond their design lifetime. Based on our review of the circumstances surrounding the Palo Verde specific issue, it appears that WNSRC is justified in the belief that they had no further responsibilities under Part 21.

However, the NRC remains concerned regarding Westinghouse's interpretation of Part 21. It appears that Westinghouse does not adequately address the requirements of Part 21 to evaluate deviations and failures to comply that could create a substantial safety hazard if left uncorrected.

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. H. A. Sepp

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On February 5, 2003, the NRC Office of General Counsel (OGC), the office authorized to make formal interpretations of Commission regulations, responded to the individual. Although OGC stated that the views do not constitute a formal interpretation, their response provided the OGC perspective regarding the meaning of Part 21. OGC stated:

...the words [in Part 21.21(a)(1)] as they now are written clearly state that deviations must be evaluated to identify defects that **could** [emphasis added] result in a substantial safety hazard assuming they had remained uncorrected. There is no exception specified in the rule that allows nonreporting of a defect to the Commission if the defect has been corrected. Nor is there any mention of an exception to reporting if the evaluating entity has concluded that the defect will not affect another utility.

A copy of the February 5, 2003, letter to the individual is enclosed for your convenience.

Therefore, the NRC requests that Westinghouse provide a response to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington D.C. 20555, with a copy to the Chief, Equipment and Human Performance Branch, Office of Nuclear Reactor Regulation, within 30 days of the date of this letter. This reply should include (1) a description of the steps that have been taken or will be taken to assure that 10 CFR Part 21 is interpreted properly during the review of deviations and failures to comply; (2) a description of the steps that have been taken or will be taken to assure current or recently completed Part 21 evaluations were not determined to be not reportable conditions based on the incorrect criteria used by Westinghouse; and (3) the dates your corrective actions and preventive measures were or will be completed. If your response contains personal privacy, proprietary, or safeguards information, such information shall be contained in a separate attachment, appropriately marked, so that it will not be subject to public disclosure. The affidavit required by 10 CFR 2.790(b) must accompany your response if proprietary information is included.

The responses requested by this letter and the enclosed Notice of Nonconformance are not subject to the clearance procedures of Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Public Law No. 96-511. We will gladly discuss any questions you may have concerning this information. Please contact Gregory Cwalina at (301) 415-2983 or Joseph Petrosino at (301) 415 -2979 if you have any questions.

Sincerely,

**Original signed by**

Theodore R. Quay, Chief  
Equipment and Human Performance Branch  
Division of Inspection and Program Management  
Office of Nuclear Reactor Regulation

Enclosure: As stated

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Equipment and Human Performance Branch

Division of Inspection and Program Management

Office of Nuclear Reactor Regulation

Enclosure: As stated

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OFFICE	IEHB/DIPM	OAC/NRR	OGC	BC:IEHC
NAME	JPetrosino	GCCwalina	STreby	TQuay
DATE	5/23/03*	5/23/03*	5/23/03*	5/27/03*

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