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Annette L. Vietti-Cook  
 Secretary  
 U.S. Nuclear Regulatory Commission  
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Attention: Rulemakings and Adjudications Staff

Our ref: LTR-NRC-03-58

September 16, 2003

Subject: *Federal Register* Notice 68 FR 40026, July 3, 2003, Notice of Proposed Rule for Early Site Permits, Standard Design Certifications, and Combined Licenses for Nuclear Power Plants

Dear Ms. Vietti-Cook:

Westinghouse Electric Company is submitting the enclosed comments in response to the subject Federal Register notice. We appreciate the opportunity to participate in this rulemaking which we consider to be very important to ensure that future licensing proceedings conducted pursuant to 10 CFR Part 52 will benefit from lessons learned in prior Part 52 proceedings and will meet the original intent of Part 52 to provide predictable and stable licensing for nuclear reactors.

Westinghouse has substantial experience in utilizing Part 52 processes. We are the vendor of record for the System 80+ and AP600 standard plant designs that were certified by the NRC in 1997 and 1999 respectively. These design certifications are codified in NRC regulations in Part 52 appendices B and C. More recently Westinghouse has submitted an application for design certification of the AP1000 standard plant that is a higher-rated version of the AP600. We have undertaken this endeavor because we believe the AP1000 can meet the needs of our U.S. customers for a safe, cost effective standard plant design as our customers increasingly consider investment in new nuclear build utilizing the Part 52 licensing processes.

Westinghouse participated in the development of and endorses the comments on this rulemaking that are provided by the Nuclear Energy Institute (NEI) in their letter dated September 16, 2003. Westinghouse would like to elaborate on two items that were raised in the comprehensive set of comments provided by NEI.

**ITAAC Verification** – This topic is crucial to the successful application of Part 52 for a COL applicant. In discussions with our potential customers, licensing certainty, which is requisite for project implementation certainty, is of the utmost importance. In consideration of a new reactor project, the highest degree of uncertainty is attributed to the untested processes of 10 CFR Part 52, including the ITAAC Verification process. Westinghouse believes that the proposed rulemaking falls short of achieving the licensing certainty that our U.S. customers will demand for an investment in a new nuclear build. Therefore Westinghouse strongly endorses the specific language proposed by NEI regarding ITAAC verification.

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The ITAAC verification language that is proposed in the NOPR only requires that the NRC verify that the inspections, tests and analyses have been satisfactorily completed. However, the language in the design certification rules requires a verification that the ITAAC has been successfully completed. Article IX.B.1 of each DCR states:

*The NRC shall ensure that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the Federal Register.*

That means not only successfully conducting the inspections, tests and analyses, but also verifying that the pre-approved acceptance criteria have been satisfied. Furthermore, it directs that the basis for determining that the acceptance criteria have been met is to be based solely on the inspections, tests and analyses performed by the licensee. This language clearly states what the staff must do, how they are to do it, and when they must publicly announce the results. That language, and not the inadequate language in the NOPR, is needed in §52.99 to provide the licensing certainty that investors will demand.

The accumulation of these episodic §52.99 verifications by the staff will constitute the basis for the Commission's finding under §52.103(g) that all of the ITAAC have been satisfactorily completed. Once the staff has verified that an ITAAC has been successfully completed, this conclusion must stand, absent new information that would render the staff's conclusion invalid.

We further emphasize that while the proposed Section 52.229(e) is inadequate, we note that the intent of Part 52 and the Commission is reflected in the staff's draft Construction Inspection Program Framework Document (May 2003). In that document, the staff clearly acknowledges the May 6, 2003 SRM and states that the staff intends to publish its determinations on ITAAC acceptability in the Federal Register. This is consistent with the direction of the Commission and existing requirements, and should be reflected in the final Part 52 rule. Westinghouse believes that the NRC should continue to develop an approach to construction inspections of new nuclear plants that will meet both the public's need for high confidence in the oversight process, as well as the very real needs of the U. S. customer to maintain projects within schedule.

**Vendor Design Change Process** – Westinghouse supports the incorporation of a change process into Part 52 to allow the original design certification applicant to seek amendments to the DC rule to accommodate design improvements that arise under completion of a first-of-a-kind engineering effort or from other improvements in technology. These design changes would be subject to a notice-and-comment rulemaking and would obviate the need for subsequent license applicants referencing the design to seek exemptions to the DC rule. Amplification and proposed rule language is provided in the NEI response.

An excellent example of the benefit that such a change process would provide is the recently revised 10 CFR 50.44. In the revised §50.44, a licensee is permitted to apply risk-based insights to their plant design, and thus simplify or eliminate unnecessary equipment currently installed in the plant. The revised §50.44 would permit Westinghouse to re-design aspects of the hydrogen mitigation and monitoring systems included in both the System 80+ and AP600 designs to improve capital cost as well as O&M costs. Presently, Part 52 does not permit the organization that was the applicant for the certified design to petition the NRC to modify a certified standard plant in order to realize the benefit of the revised §50.44. We believe that the changes proposed in the NEI letter benefits a COL applicant by allowing a vehicle for a design certification holder to implement beneficial design changes to a standard plant design. Such a

design change process would maintain the principles of plant standardization without degrading plant safety.

Thank you for taking our comments and proposals into account in this very important rulemaking proceeding.

Sincerely yours,



H. A. Sepp, Manager  
Regulatory Compliance & Plant Licensing

cc: Nils Diaz, Chairman, NRC  
Edward McGaffigan, Jr., Commissioner, NRC  
Jeffrey Merrifield, Commissioner, NRC  
William Travers, Executive Director of Operations, NRC  
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