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**Westinghouse  
Electric Corporation**

**Energy Systems  
Business Unit**

R J Stember  
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Pittsburgh Pennsylvania 15230

August 20, 1990

Mr. Samuel Chilk, Secretary  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Re: Petition for Reconsideration

Dear Mr. Secretary:

Westinghouse Electric Corporation hereby submits this Petition for Reconsideration of the denial of the Westinghouse Request for Exemptions from the financial assurance instrument requirements of 10 CFR Parts 30, 40, 50 and 70. The Westinghouse Request for Exemptions was filed on May 25, 1990 and denied by letter dated July 31, 1990. A document in support of the Petition for Reconsideration is enclosed.

The intent of the requested exemptions is to permit Westinghouse to satisfy the financial assurance requirements by submitting a self-guarantee which otherwise meets or exceeds the criteria for a qualifying parent company guarantee under 10 CFR Part 30, Appendix A. The Westinghouse Request for Exemptions was based upon the applicable exemption provisions of Commission regulations and a showing of special circumstances demonstrating particular circumstances is not necessary to achieve the underlying purpose of the rule.

Westinghouse also requests a temporary extension from the financial instrument filing deadline (currently August 31) until 15 days after the Commission rules on the Petition.

Sincerely,

- cc: Chairman Kenneth M. Carr
- Commissioner Kenneth C. Rogers
- Commissioner James R. Curtiss
- Commissioner Forrest J. Remick
- James M. Taylor, Executive Director for Operations
- Robert M. Bernero, Director, Office of Nuclear Material Safety and Safeguards
- William Parler, Esq., General Counsel
- Stuart Treby, Esq., Office of the General Counsel

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PETITION FOR RECONSIDERATION  
OF DENIAL OF REQUEST FOR EXEMPTIONS  
UNDER 10 CFR PARTS 30, 40, 50 AND 70

August 20, 1990

Submitted By  
Westinghouse  
Energy Systems  
Pittsburgh, Pennsylvania 15230

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PETITION FOR RECONSIDERATION OF DENIAL OF REQUEST  
FOR EXEMPTIONS UNDER 10 CFR PARTS 30, 40, 50 AND 70

Westinghouse Electric Corporation ("Westinghouse") hereby requests that the Nuclear Regulatory Commission ("Commission" or "NRC") reconsider its denial of the Westinghouse Request For Exemptions Under 10 CFR Parts 30, 40, 50 and 70 from the financial assurance instrument requirements of the Commission's decommissioning rule, 53 Fed. Reg. 24018 (June 27, 1988), and permit Westinghouse to satisfy these requirements by submitting a self-guarantee that meets or exceeds the NRC criteria for qualifying parent company guarantees under 10 CFR Part 30, Appendix A. Westinghouse incorporates herein by reference its original Request For Exemptions (May 25, 1990), which the Commission denied by letter from Mr. R. M. Bernero, Director of Nuclear Material Safety and Safeguards, on July 31, 1990 (the "Denial Letter").

A. Reasons To Grant Reconsideration

In its Request For Exemptions, Westinghouse demonstrated that, as a large, respected company with a long history of financial strength and stability, it easily meets or exceeds the criteria specified by the NRC for parent company guarantees of decommissioning costs. With a consolidated net worth of over \$2 billion, Westinghouse enjoys a position of financial security matched by few other licensees, or by parent company guarantors of licensees, and is thus fully qualified to utilize a self-guarantee in place of the financial assurance instrument options specified in the decommissioning rule.

Westinghouse respectfully submits that the explanation offered for the denial of the exemptions, as set forth in the Denial Letter and the Safety Evaluation Report ("SER") enclosed with that letter, fails to justify that denial. This failure, together with new information available from other licensee filings since the end of July 1990, warrants reconsideration of the denial.

1. The Staff's Flawed Analysis

Under Part 50 of the NRC regulations, a licensee may obtain an exemption from a regulatory requirement by showing the existence of special circumstances, such as those present when "application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." 10 CFR § 50.12(a)(2)(ii) (emphasis added).<sup>1</sup> This provision thus offers two distinct bases for the granting of an exemption, either of which provides adequate justification. The SER accompanying the Denial Letter, by not properly focusing on whether application of the regulation, as written, to Westinghouse is necessary to achieve the underlying purpose of the rule, failed to address the thrust of the Westinghouse filing and thus failed to grant the legitimate request for exemptions.

The purpose of the financial assurance requirements of the decommissioning rule is to provide "reasonable assurance"

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<sup>1</sup>Parts 30, 40 and 70 contain similar exemption provisions without reference to "special circumstances."

that funds will be available for future decommissioning. 53 Fed. Reg. at 24031. Among the methods deemed adequate by the Commission for providing such assurance is a guarantee from a licensee's parent company, if the parent company can meet certain financial tests. Logically, therefore, a financial assurance mechanism that is just as reliable as a parent company guarantee must also be adequate. Thus, when a licensee proposes to utilize such an alternative means of financial assurance, strict application of the rule is "not necessary to achieve [its] underlying purpose," and an exemption must be granted.

A self-guarantee by Westinghouse is indistinguishable, for purposes of providing "reasonable assurance" of the availability of funds for decommissioning, from a parent company guarantee. As the staff SER noted, Westinghouse "is financially stable, has an excellent history of profit-making and easily meets the financial test applicable to a parent guarantee." If Westinghouse held its licenses through a subsidiary rather than directly, there is no question that Westinghouse would be entitled to satisfy the financial assurance requirement by submitting its guarantee as the parent company. Plainly, because exactly the same assets and financial strength must be relied upon whether Westinghouse guarantees itself or guarantees a subsidiary, the Commission's refusal to allow a self-guarantee is illogical, unfair, and improper under the exemption provisions.

The objections in the SER to the grant of the requested exemptions do not appropriately address the point. In equating a self-guarantee with an internal reserve, and then arguing that

the use of internal reserves by Westinghouse is not foolproof because creditors may be able to assert claims against Westinghouse, the staff overlooks the obvious applicability of this objection to parent company guarantees as well. Similarly, when the SER addresses the involvement of Westinghouse in "diversified financial activities," the same point is applicable to parent companies permitted under the regulations to give guarantees.<sup>2</sup> The NRC has expressly permitted parent company guarantees despite the potential of financial risks. It is arbitrary and capricious to deny the Westinghouse exemption request on the basis of objections that are equally applicable to parent companies that are expressly permitted by the rule to give guarantees.<sup>3</sup>

The SER also asserts that Westinghouse must "provide a financial assurance mechanism that is segregated from licensee corporation assets." Why this is the case, the staff does not say other than to suggest that reserves cannot be protected from creditors' claims - a point equally applicable to parent corporations, as discussed above. The NRC regulation with

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<sup>2</sup>Westinghouse believes that financial diversification enhances, rather than diminishes, long term financial stability. Regardless of the effects of these activities, however, they are the same whether a company chooses to conduct them directly or through subsidiaries.

<sup>3</sup>If the Commission is concerned about the financial condition of Westinghouse in the future, it would be simple to fashion a self-guarantee mechanism by which the Westinghouse financial position is updated on an annual basis, thus providing greater assurance than an unmonitored internal reserve. See General Electric Company Statement In Support Of Petition For Reconsideration.

respect to parent company guarantees does not require that a parent company guarantor provide a financial assurance mechanism that is segregated from the parent company assets. The notion that a company of the admitted financial strength of Westinghouse must segregate assets while a parent company guarantor need not do so appears to be the product of pointless formalism. Again, if Westinghouse were to create a subsidiary to hold its licenses, and then submit a parent company guarantee, there would indeed exist technical "segregation" of licensee assets and the financial assurance mechanism. The financial assurance mechanism itself, however, would be no different, and no stronger, than if Westinghouse acted as a self-guarantor. Plainly, in the case of Westinghouse, a "segregation" requirement does not promote greater financial assurance, and serves no purpose except to penalize Westinghouse unfairly for selecting its particular corporate structure. <sup>4</sup>

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<sup>4</sup>In a reference to Environmental Protection Agency ("EPA") regulations concerning financial responsibility for closure of facilities, the staff notes that the NRC use of a parent company guarantee was modeled on the EPA regulations which permit such guarantees. However, the EPA regulations also expressly permit self-guarantees, a fact not mentioned in the SER. See 40 CFR §§ 264.143(f), 264.145(f), 265.143(e), 265.145(e). In fact, Westinghouse has acted as a self-guarantor under the EPA regulations to demonstrate financial assurance for closure and post-closure of toxic waste facilities. In view of the efforts of the NRC and EPA to coordinate and render more uniform their regulations regarding risk management, see Letter from Kenneth M. Carr, NRC, to William K. Reilly, EPA (June 21, 1990) (attaching draft of NRC's "Resolution of NRC and EPA Interface Issues"), the Commission should reconsider Westinghouse's request to act as a self-guarantor under NRC rules as well.

Thus, the claim that a parent company guarantee is somehow different from a self-guarantee because "the parent company will provide an independent commitment beyond that of licensee to expend funds" is misconceived. What counts is the financial soundness and reliability of the company providing the financial assurance. Whether that company chooses to organize itself as a parent and subsidiary or as a single business entity is irrelevant. Westinghouse has met the tests for financial strength devised by the Commission, and thus should be deemed qualified to bear financial responsibility for decommissioning, whether it is a parent or not.

2. Dissent By Commissioner Curtiss

In a cogent dissent from the denial of the request for exemptions, Commissioner Curtiss -- the only Commissioner to provide written comments -- rejected the staff's arguments. As Commissioner Curtiss concluded, the staff's insistence on the unsupportable distinction between parent company guarantees and self-guarantees created an "anomaly" in the case of a licensee with great financial strength. As he explained, "the degree of financial assurance that we would have if we were to grant this exemption is no less than that which would be afforded by the option of a parent guarantee . . . ." <sup>5</sup> Westinghouse believes

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<sup>5</sup>Although the remarks of Commissioner Curtiss were specifically directed at the exemption request of General Electric, they are equally applicable to the request of Westinghouse, which was before the Commission at the time.

that the full Commission should adopt the persuasive reasoning of Commissioner Curtiss.

### 3. New Evidence

At the time Westinghouse filed its exemptions request, Westinghouse did not have information concerning the plans for compliance to be utilized by other licensees. Now that other financial assurance filings have become available for review, the inequitable operation of the rule as applied to Westinghouse is manifest. These filings make it clear that Westinghouse is entitled to exemptions not only because application of the regulation is not necessary to serve the underlying purpose of the rule, but also under 10 CFR § 50.12(a)(2)(iii), which provides for exemptions when compliance would result in costs to the licensee "significantly in excess of those incurred by others similarly situated."

Despite the enormous financial resources of Westinghouse compared to many other licensees, the Commission insists that Westinghouse bear the expense of obtaining a surety bond, letter of credit or other approved financial assurance instrument. The contrast between this treatment of Westinghouse and the filings authorized and submitted by some of its competitors is startling.

One major competitor of Westinghouse submitted a "parent company" guarantee involving a newly formed holding company which acquired the stock of the licensee only one week prior to the filing with the NRC. This new holding company, which is a subsidiary of the licensee's former direct parent,

apparently has no assets other than the stock of the licensee. The ultimate parent gave no guarantee. The net effect of this restructuring and "parent company" guarantee is to allow the Westinghouse competitor to provide a self-guarantee, although the method used technically appears to comply with NRC regulations.

Another major competitor of Westinghouse provided a guarantee by a holding company which was described in the filing itself as being "inactive other than serving as a parent holding company" for the subsidiary-licensee which was being guaranteed. The financial information used by the parent holding company was that of the subsidiary. Again, the net effect is to allow, apparently within Commission regulations, a self-guarantee.

In each of the above cases, the assets and net worth of the guarantor are substantially less than those of Westinghouse, although well within the financial amounts specified in Commission regulations. Moreover, the annual cost to these competitors for providing the "parent company guarantees" is negligible, since the purchase of letters of credit, etc. will not be undertaken.<sup>6</sup>

Other competitors of Westinghouse whose assets, net worth and financial strength are far less than those of

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<sup>6</sup>Commission regulations allow state entities to provide a statement of intent indicating that funds for decommissioning will be obtained when necessary. Acting pursuant to this provision, a number of state university reactor licensees filed such statements of intent. Such statements, of course, are essentially cost-free. At least one private university asked for an exemption on the basis of its financial strength.

Westinghouse also filed parent company guarantees which meet the regulations. Thus, because of the form in which it chooses to do business, Westinghouse will be required to incur costs significantly in excess of those incurred by others similarly situated. This provides both added evidence as to why application of the regulation to Westinghouse is not necessary to achieve the underlying purpose of the rule, and an independent reason for an exemption because of the significant disparity in costs between Westinghouse and others similarly situated.

4. General Electric Company Petition For Reconsideration

General Electric Company ("GE") also has petitioned the Commission for reconsideration of its denial of GE's request for exemptions from the financial assurance instrument requirements of Parts 50 and 70. The original GE request for exemptions, like the Westinghouse request, sought permission to self-guarantee. The GE Petition For Reconsideration presents further discussion concerning the propriety of the requested exemptions. Westinghouse agrees with the GE discussion and does not repeat it in this document.

B. Request For Extension of Time

Westinghouse also requests an extension of time for compliance with the financial assurance instrument requirements from August 31, 1990, until fifteen days after the Commission has ruled on this Petition For Reconsideration. If the Commission ultimately grants the Petition For Reconsideration, the extension will prevent the unnecessary expenditure of funds by Westinghouse to secure a financial assurance instrument before the current

deadline expires. If the Petition is denied, Westinghouse will have time to take appropriate steps regarding compliance. Westinghouse clearly is fully capable of meeting any decommissioning funding obligations at the present time, and the brief extension requested will not adversely affect that capability or the public interest.

C. Conclusion

For the reasons stated in this Petition for Reconsideration and in the Westinghouse Request for Exemptions, Westinghouse requests exemptions from the financial assurance instrument requirements of Parts 30, 40, 50 and 70 to allow Westinghouse to satisfy such requirements by submitting to the Commission a self-guarantee. Westinghouse further requests an extension of time for compliance with the financial assurance instrument requirements until fifteen days after the Commission has ruled on this Petition for Reconsideration.

8/20/90