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Submitted via e-Rulemaking Portal

Re: Draft NRC Enforcement Policy Revision
Docket ID: NRC-2008-0497
Comments of Westinghouse Electric Company LLC

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To the Office of Rulemaking, Directives, and Editing:

Westinghouse Electric Company LLC ("Westinghouse") appreciates the opportunity to comment on the proposed revisions to the NRC Enforcement Policy ("Policy") announced at 73 Fed. Reg. 53,286 (Sept. 1, 2008). Westinghouse has reviewed the comments to be submitted by the Nuclear Energy Institute (NEI) and in general supports those comments. Westinghouse has the following additional comments.

Section 2.0 NRC Enforcement Process

Section 2.2.1 Assessment of Violations

Section 2.2.1 of the draft Policy states in part:

Therefore, a violation may be considered more significant than the underlying noncompliance if it includes indications of willfulness. Violations with willful aspects will typically be considered for escalated enforcement.

The current Policy states that one factor to be taken into consideration in determining the significance of a violation involving willfulness is the "position and responsibilities of the person involved in the violation (e.g., licensee official or non-supervisory employee.)"¹ It is unclear from the proposal whether or not the deletion of the reference is intended as a substantive change or is merely the result of streamlining of the Policy. Westinghouse believes that it remains appropriate to consider the position and responsibilities of the person in determining whether or not escalated enforcement is appropriate and requests that the Policy be clarified in this respect.

Policy, IV.A.4. at page 10.

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Section 2.3(c) Disposition of Violations

While the draft Policy language indicates that NRC may mitigate or escalate a penalty for loss of control of regulated material for any period of time the Policy also states that normally NRC should impose at least a base civil penalty. Thus the draft Policy may be interpreted to mean that the risk significance of the loss is not taken into account. Westinghouse suggests that the Policy clarify that risk significance should be taken into account.

Section 3.0 Use of Enforcement Discretion

Section 3.4 Violations Involving Certain Discrimination Issues

The discussion regarding exercise of discretion in alleged discrimination cases which are settled before a finding of discrimination indicates that it is NRC's expectation that not only should the licensee settle a complaint but it should address the overall work environment. However, in certain instances, a licensee may settle a complaint which is without merit and or for which it is not necessary or appropriate to address the overall work environment. The Policy should clarify that addressing the overall work environment as a predicate to exercise of discretion is not always required.

Section 6.0 Supplements

Section 6.5 Facility Construction

The current Policy in Supplement II-Part 50 Facility Construction incorporates into the definitions of Severity Levels 1 and II the concept of "completion". Completion is defined to mean "completion of construction including review and acceptance by the construction QA organization." However, the term "completion" is not used in the revised definitions of comparable Severity Levels in the draft Policy. It is not clear whether or not the absence of the term is intended to remove the concept of completion of review and acceptance by the construction QA organization. If this is the intent, these definitions should be reconsidered as there should not be a violation before the QA organization has completed its review and acceptance.

Section 6.7 Health Physics

With respect to Part 70 licensees, the ISAs for the facility should be the criteria referenced.

Conclusion

Westinghouse recognizes the significant effort undertaken by NRC with respect to the revision of the Policy. Westinghouse submits these comments with the goal of further refining the Policy to support NRC's safety mission in a risk informed manner while providing a framework that supports consistent implementation of NRC's enforcement process.

A handwritten signature in cursive script that reads "Michele M. Gutman".

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