



Westinghouse Electric Company
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Via E-Mail

September 3, 2009

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Docket No. 70-36, NRC-2009-0278
Response to Request of Citizens for a Clean Idaho, Inc. for Extension of the
Deadline to Request a Hearing

Gentlemen:

On September 1, 2009, David H. Leroy, on behalf of Citizens for a Clean Idaho, Inc. ("CCI"), requested pursuant to 10 CFR §§ 2.1312 and 2.1325 that the U.S. Nuclear Regulatory Commission ("NRC") "extend the deadline for hearing requests regarding Notice of License Amendment Request of Westinghouse Electric Company LLC for Hematite Decommissioning Project, Festus, MO, and Opportunity to Request a Hearing [Docket No. 70-6; NRC-2009-0278]." The opportunity to request a proceeding pertained to Westinghouse Electric Company LLC's ("WEC") planned disposal of NRC licensed material. The amendment request seeks authorization to transfer decommissioning waste to U.S. Ecology Idaho, Inc.

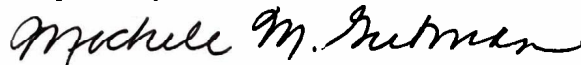
As a basis for its request, CCI asserts that the July 6, 2009 Federal Register notice (74 Fed. Reg. 31994) was "improper and insufficient." Principally, CCI relies on the fact that one of the accession numbers of the referenced documents was incorrect and asserts that "despite a multiple of unsuccessful emails to and from the NRC ADAMS 'librarian' to locate the referenced document, CCI finally located the document."

CCI, as the proponent of the request, bears the burden of justifying it.¹ However, the September 1, 2009 letter is devoid of any mention of the actual dates on which the asserted attempts to contact the ADAMS librarian were made. CCI has not demonstrated that it acted in a reasonable and timely manner. CCI has not stated whether it attempted to contact the NRC Project Manager or Branch Chief (whose name was contained in the Notice) or any other NRC representative. CCI also fails to disclose when this document was actually available to it. Certainly, CCI has not justified resetting the clock in which any petition could be filed. On the other hand, Westinghouse may be prejudiced by any substantial delay in the NRC's reaching its decision on the exemption request. Any unwarranted delay could affect its schedule and could have a significant impact on project costs.

CCI made no attempt to submit any petition to the Commission whatsoever. It has not justified why it could not have submitted a petition regarding matters unrelated to the subject document, *i.e.*, its interest and how that interest would be affected and any asserted contentions it might have. Even if a petition could not be filed, the requested 45-day period ignores that the time period allowed by the present notice could have been profitably spent on the portions of the petition unrelated to the document, *e.g.*, interest of the petitioner.

Given these facts, WEC opposes the request in that the requestor has not fulfilled its burden in justifying the requested delay or the other relief requested. However, in the circumstances, Westinghouse would not object to an additional period of 10-15 days in which CCI (and only CCI) could submit a petition meeting NRC requirements requesting the institution of a proceeding.

Respectfully submitted,



Michele M. Gutman
Assistant General Counsel

cc: David H. Leroy, Esquire
Michael Clark, Esquire
Jack J. Hayes
E. Kurt Hackmann

¹ The Atomic Safety and Licensing Board in the *Catawba* proceeding, *Duke Energy Corporation* (Catawba Nuclear Station, Units 1 and 2), 2003 NRC Lexis 176, stated that any party seeking an extension must specifically and in detail state what "unavoidable and extreme circumstances" warrant the extension, citing the Commission's Statement of Policy on Conduct Of Adjudicatory Proceedings; Policy Statement (48 NRC 18, 1998) which stated "parties to a proceeding . . . are expected to adhere to the time frames specified in the Rules of Practice in 10 CFR Part 2 for filing . . ." It further stated that extensions of time are only warranted by "unavoidable and extreme circumstances." *Id.* at 21.