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LTR-NRC-15-28

April 6, 2015

Subject: Reply to a Notice of Violation: EA-13-176

Reference: U.S. Nuclear Regulatory Commission (Kerri Kavanagh) letter to Westinghouse (Kim White), dated February 4, 2015, Inspection Report No. 99901426/2013-201 Revised Notice of Violation

Pursuant to the provisions of 10 CFR 2.201, Westinghouse Electric Company LLC (Westinghouse) provides this response to the above referenced letter regarding an inspection conducted at the Westinghouse Western Zirconium facility in May 2013 and associated Notice of Violation (NOV).

Background

2008 Inspection and NOVs

The U.S. Nuclear Regulatory Commission (NRC) conducted an inspection at the Westinghouse Western Zirconium facility from May 7-8, 2013. As the result of the inspection, NRC issued a Severity Level IV Notice Of Violation (NOV), dated June 24, 2013, with two examples related to activities which occurred in 2008. Westinghouse submitted a July 22, 2013 response and a revised response with a September 13, 2013 letter. Subsequently, based on the additional information provided by Westinghouse, the NRC sent a revised NOV to the attention of Ms. Kim White, Quality Assurance Manager for the Western Zirconium facility. The revised NOV identifies two examples of a Severity Level IV violation of 10 CFR Part 21, Section 21.21(a). This letter responds to the revised NOV.

February 4, 2015 Revised NOV

The revised NOV states “[a]s of May 8, 2013, Western Zirconium failed to adopt appropriate procedures to evaluate deviations and failure to comply associated with substantial safety hazards as soon as practicable and, except as provided in paragraph (a)(2) of this section, in all cases within 60 days of Discovery.” WEC 21.0 which was in effect as of May 8, 2013, provided that Discovery must be completed within no later than 30 days and, even if Discovery is not complete within that period, the 60 day evaluation must commence.

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The NOV indicates that Discovery with respect to the 2008 Western Zirconium matter occurred when the Issue Review Committee (IRC) referred the matter to the Safety Review Committee (SRC) and, thus, the evaluation required by Part 21 (not to exceed 60 days) was triggered. As noted in this response, Westinghouse accepts that implementation of WEC 21.0 with respect to the Western Zirconium issue did not meet either the Westinghouse procedural requirements or comply with Part 21. However, Westinghouse is concerned that the NRC is stating that in all instances, referral by an IRC to the SRC constitutes Discovery. Westinghouse would disagree with that interpretation, if that is the basis of the NRC's finding that WZ failed to adopt appropriate procedures. The mere entry referral of a matter from the IRC to SRC staff does not constitute Discovery, the information is not sufficient to determine if a deviation exists.

Westinghouse would also like to address an apparent point of confusion. In the revised NOV, the NRC indicates that Westinghouse has contended that 10 CFR 21.21 does not specify what constitutes Discovery. Westinghouse did not intend to convey such a message. In fact, the Westinghouse procedure which implements the requirements of 10 CFR Part 21, WEC 21.0, adopts the definition of Discovery contained in Part 21.

Also, the revised NOV includes the following statement:

The NRC rejects Westinghouse's position that 52 additional days to issue a report to the NRC was permissible because Westinghouse needed additional time to complete its evaluation. The Issue Review Committee's knowledge on August 20, 2008, of the *deviation potentially adverse to safety*—triggered the reporting requirement in 10 CFR § 21.21(a)(1) and (2). That Westinghouse needed additional time to reach its technical conclusions on the discovered deviation that was documented in CAP #08-231-M033, does not excuse Westinghouse from complying with the reporting requirements.

Westinghouse did not and does not take the position that additional time was permissible and is committed to comply with the regulations. The failure in 2008 was in documenting the known resolution of the issue in a timely manner.

As more fully explained below, Westinghouse believes that WEC 21.0 in place as of May 8, 2013 is an appropriate procedure to evaluate deviations and failures to comply associated with substantial safety hazards. However, Westinghouse agrees that the actions taken in 2008 did not comply with WEC 21.0 (either the revision in place in 2008 or the revision in place as of May 8, 2013). This response will address each of the examples cited in the NOV and also will explain the basis for Westinghouse's position that WEC 21.0, the Westinghouse procedure to evaluate deviations, is an appropriate procedure and complies with the requirements of 10 CFR Part 21.

In its revised NOV, the NRC referred to its Draft Regulatory Basis to Clarify 10 CFR Part 21 as defining Discovery as "the initiation of the problem identification and resolution of a deviation or noncompliance after it is found or documented." Westinghouse believes that this is not an appropriate use of a draft document as it is not definitive nor is it a codified interpretation of Discovery pursuant 10 CFR 21.

As the Draft Regulatory Basis document released in March 2015 clearly indicates, a rule change will be necessary to implement the NRC staff's desired interpretation of Discovery. However, even so, the language in the Draft Regulatory Basis does not appear to suggest that referral by an IRC necessarily constitutes Discovery. It still indicates that the deviation must be found or documented. In many instances, the information which is input into the Westinghouse Corrective Action, Prevention and Learning (CAPAL) system or which is available to the IRC at the time they refer it to the SRC is not

sufficient to determine whether there is a deviation (or failure to comply). Thus, the mere entry of an issue into CAPAL or the referral by an IRC to the SRC does not constitute Discovery in every instance.

Examples Set Forth in the Revised NOV

The two examples cited are:

1. Western Zirconium Line Stop Procedure failed to comply with 10 CFR 21.21(a)

In response to the June 24, 2013 NOV, Westinghouse provided information and corrective actions and Westinghouse has no further comments regarding Example 1.

2. Western Zirconium's failure to file an Interim Report within 60 days of the Discovery that four lots of Global Nuclear Fuel Zr₂ bars failed grain size and metallography tests by showing atypical grains (a deviation) was a violation of 10 CFR 21.21(a)

Westinghouse acknowledges that the evaluation required by Part 21 was not completed in accordance with WEC 21.0 Testing had been completed within approximately a month from the time the issue cited in Example 2 was identified. This testing demonstrated that the bar material was suitable for its intended use and that there was no defect to be reported per 10 CFR 21. This basis for concluding the investigation should have been documented on or about September 19, 2008. Contrary to Westinghouse procedures, this documentation was not completed until December 10, 2008. This was a failure to follow the Westinghouse procedures rather than a deficiency in the procedures.

While recognizing that WEC 21.0 was not followed, Westinghouse maintains that its 10 CFR Part 21 implementing procedures meet the requirements and intent of the current regulation. However, through our discussion with the staff on March 27, 2015, we did identify an opportunity to clarify the intent of WEC 21.0 and Westinghouse commits to issue guidance to clarify that Discovery should be completed promptly. In conclusion, Westinghouse acknowledges that the violation is correct with respect to Example 2 in the NOV.

Information Required by the NOV

- (1) The corrective steps that have been taken and the results achieved:

Western Zirconium submitted its Line Stop Procedure, Revision 5, by letter to the NRC dated July 22, 2013 (ADAMS Accession No. ML13205A392 at pp. 4 to 19). The NRC staff reviewed the changes to Sections 2.5 and 8.2.1.4 and corrective actions undertaken by Western Zirconium and has accepted the response.

- (2) Additional corrective steps that will be taken:

Westinghouse will issue guidance regarding the 10 CFR Part 21 implementation procedure to ensure it is clearly understood; that the intent is to complete Discovery as soon as practicable. Training will be provided to the staff that performs 10 CFR Part 21 evaluations to reinforce this principle and the requirements of the regulation with respect to Discovery and Evaluation.

- (3) The date when full compliance will be achieved:

The guidance will be issued and training provided by April 30, 2015.

If you have any questions regarding this response, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "J A Gresham". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

James A. Gresham, Manager
Regulatory Compliance

cc: Edward H. Roach, NRC Mail Stop T-7D24
Kerri Kavanagh, NRC
Aaron Armstrong, NRC
Patricia A. Jehle, NRC
Michael Cheok, NRC
Jonathan Ortega-Luciano, NRC