

August 21, 2017

EA-17-075

Ms. Melissa L. Marshall
Chief Compliance Officer
Legal, Risk and Commercial Affairs
Westinghouse Electric Company
1000 Westinghouse Drive
Cranberry Township, PA 16066

SUBJECT: WESTINGHOUSE ELECTRIC COMPANY – EXPORT OF NUCLEAR REACTOR
EQUIPMENT AND EXERCISE OF ENFORCEMENT DISCRETION

Dear Ms. Marshall:

This letter refers to the U.S. Nuclear Regulatory Commission's (NRC) review of exports of nuclear reactor equipment by Westinghouse Electric Company (WEC) under an NRC general license in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR), Section 110.26(a). The regulations in 10 CFR 110.54(a)(1) requires, in part, that licensees making exports under a general license provide to the U.S. Department of Commerce (DOC) quarterly reports of exports of nuclear facilities and equipment shipped during the previous quarter.

On February 2, 2017, the NRC provided you and Mr. Nathan Harsh, Manager, Global Trade Compliance, a summary of information concerning WEC exports of nuclear equipment during a meeting held at the NRC's One White Flint North Complex. The summary included shipments of nuclear reactor equipment that were apparently not reported to the NRC and DOC as required by 10 CFR 110.54(a)(1) and the Protocol Additional to the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States (hereinafter referred to as the Additional Protocol). Following the February 2nd meeting, WEC conducted its own thorough review of shipments of nuclear equipment, and on March 8, 2017, you informed the NRC's Ms. Andrea Jones and Mr. Peter Habighorst via email that WEC discovered additional shipments that were not reported as required by 10 CFR 110.54(a)(1). The results of this review were further discussed with you during a March 23, 2017, phone call, with Ms. Jones.

By letter dated May 3, 2017, (ADAMS Accession No. ML17228A103) WEC notified the NRC that it had submitted amended quarterly reports for all the nuclear equipment exports made since 2009. The NRC corrected its records accordingly, to reflect the revised number of exports. The letter also stated that WEC had documented in its corrective action program the NRC's determination that the nuclear equipment in question is subject to the Additional Protocol reporting requirements under 10 CFR 110.54(a)(1) to ensure that this equipment will be captured in all future Additional Protocol reports.

Based on its review of information concerning the exports, the NRC has determined that a violation of NRC requirements occurred. Specifically, WEC failed to report to the NRC and the DOC, certain exports of nuclear reactor components, including equipment associated with

reporting requirements under the Additional Protocol, shipped in calendar years 2009 through 2016 to Canada, Japan, Sweden, and the Republic of Korea. The violation was evaluated in accordance with the NRC Enforcement Policy (Policy) and has been characterized at a Severity Level IV. The current Policy is included on the NRC's Web site <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforcement-pol.html>. However, based on the circumstances of this case, I have been authorized, after consultation with the Director, Office of Enforcement, to exercise enforcement discretion and not cite this violation in accordance with Section 3.5 of the Policy because of: (1) the low safety significance of the violation; (2) a lack of clarity in the NRC's guidance associated with the applicability of reporting requirements for the specific items that were exported, and (3) the fact that your company has not been subjected to any enforcement actions related to 10 CFR Part 110 requirements within the last two years. In addition, WEC promptly submitted amended quarterly reports required by 10 CFR 110.54(a)(1) to the DOC when it learned that these exports had not been reported as required.

In the May 3, 2017, letter, WEC stated that it submitted amended reports to conform to OIP's determination that the exports were reportable under the Additional Protocol; however, WEC reiterated that "its position remains that [the nuclear equipment exported] is not reportable under the Additional Protocol." Therefore, while the NRC is choosing to exercise enforcement discretion in this case, we are requesting that you respond to this letter within 30 days to confirm your understanding of the NRC's interpretation that the specific items that were exported meet the description of nuclear facilities, equipment, and non-nuclear materials listed in Annex II of the Additional Protocol, and are thus reportable under 10 CFR 110.54(a)(1). The NRC expects that exports of these items will continue to be reported under the Additional Protocol in the future.

In accordance with 10 CFR 2.390, a copy of this letter, its enclosures, and your response will be made available electronically for public inspection in the Public Document Room or from the NRC's Agency wide Documents Access and Management System, accessible from the NRC Website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary, information so that it can be made available to the Public without redaction.

Please contact Ms. Jones at (301) 287-9072 if you have any questions regarding this matter.

Sincerely,

/RA/

Nader L. Mamish, Director
Office of International Programs

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