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Electric Corporation

Water Reactor
Divisions



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Nuclear Technology Division

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May 4, 1981
NS-TMA-2445

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

ATTN: Docketing and Service Branch

SUBJECT: Comments to Proposed Rule to Modify 10 CFR Part 2; Immediate Effectiveness Rule; Commission Review Procedures for Power Reactor Operator Licenses

PROPOSED RULE PR-2
46 FR 20215

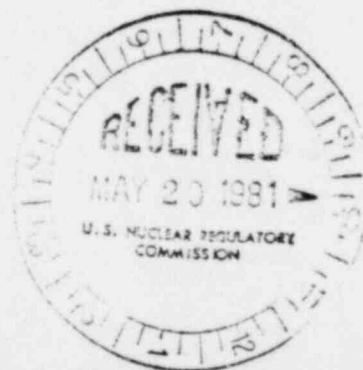
Dear Mr. Chilk:

Westinghouse Electric Corporation (Westinghouse) is filing these comments in response to the Commission's request for comment on a proposed rule to modify Appendix B to 10 CFR Part 2 (Appendix B) which would purportedly either:

- (a) reduce the length of time between a Licensing Board decision permitting fuel loading and low power testing or full power operation and the Commission's decision to permit the Licensing Board's decision to become effective, or
- (b) allow a Licensing Board decision permitting fuel loading, low power testing or full power operations to become immediately effective.

46 Fed. Reg. 20215 (April 3, 1981).

Westinghouse urges the Commission to reduce or eliminate the delays now being experienced between the dates that Licensing Boards reach favorable decisions on applications and the dates that the decisions become effective. To this end, Westinghouse urges the Commission to revoke Appendix B in its entirety, thereby effectively reinstating the operability of sections 2.764 and 2.788. The immediate effectiveness rule is sound, based as it is on the premise that once a Licensing Board has resolved contentions at issue in a proceeding and has determined that the application for a license meets the appropriate statutory and regulatory criteria, such determination should govern unless good cause exists why plant operation should be held up during the review process.



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A thorough safety review is performed for the Commission by its regulatory staff. The Licensing Board determination is a thorough reevaluation of largely the same issues. These reviews assure the protection of the public health and safety. The immediate effectiveness rule recognizes this, and it was only after the extraordinary event at Three Mile Island (TMI) that Appendix B was adopted. Appendix B was viewed by the Commission to be an interim measure designed to increase Commission supervision of adjudicatory licensing decisions involving power reactors while the Commission investigated the cause of the TMI accident and developed new requirements based on the "lessons learned."

Westinghouse agrees with the Commission "that substantive licensing requirements are sufficiently settled in light of the numerous studies of TMI and regulatory actions taken in response thereto."

The TMI "lessons learned" now have been incorporated into NRC safety requirements. Automatically delaying the effectiveness of Licensing Board decisions during any Appeal Board and Commission review process, either with regard to operating licenses or construction permits, cannot be justified.

Westinghouse has viewed with dismay the unnecessary delays its utility customers and their ratepayers have suffered since Appendix B took effect because favorable Licensing Board decisions have not been allowed to take effect. The problem has been felt most acutely by applicants for operating licenses whose power reactors, already completed at great expense, have not been allowed to operate as quickly as they might otherwise have been absent Appendix B stays. The problem has been felt as well, however, by applicants for construction permits. The reduction in delays should therefore also be made applicable to construction permit reviews.

The two options proposed by the Commission go only part way to achieve this broader goal. At the outset, Westinghouse notes that neither Option A nor Option B applies fully to favorable decisions on construction permit or operating license applications. The costs heretofore visited on both construction permit and operating license applicants by applying Appendix B stays to favorable Licensing Board decisions should not continue to apply to construction permit applicants.

In addition, Westinghouse notes these unfavorable aspects of Option A:

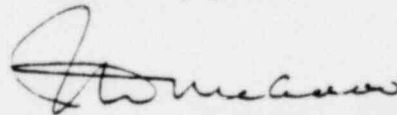
- o No time is fixed for the Commission's review of favorable Licensing Board decisions, during which time the initial decision will not become effective. This open-ended automatic stay period is too long, and might exceed the present 80 day delay nominally experienced now.

- o The Commission proposes to decide whether a formal stay should be issued from its own review of the record. Only if an "extensive stay" is to be issued does the proposed rule call for allowing interested parties to be heard. Westinghouse believes that there are two problems here. First, it believes that no formal stay, of whatever length, should be issued without notice to the parties and opportunity to comment. Secondly, standards should be given as to what periods will be considered "extensive".
- o Standards to be applied for issuance of a stay are charged. Westinghouse recommends that the standards given in 10 CFR section 2.788 should apply. They are the judicially approved standards for the determination of the validity of motions for stays.
- o Option A provides that the Appeal Board conceivably could stay issuance of a license approved by the Commission. This anomaly should be eliminated, perhaps by removing the Appeal Board from the process entirely.
- o The rule provides an automatic stay following a favorable Licensing Board decision on a construction permit application for Appeal Board review of any timely stay motions filed pursuant to section 2.788. Westinghouse believes that the indefinite period is unjustified.

Of the two options presented by the Commission, Westinghouse favors Option B. While Westinghouse views Option B as less burdensome than Option A, we nevertheless view negatively the continued application of the automatic stay provisions of Appendix B to any favorable decisions, whether on construction permit or operating license applications.

Westinghouse thanks the Commission for taking these views into consideration.

Very truly yours,



for T. M. Anderson, Manager
Nuclear Safety Department