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Your ref: OFR-13-0001
78 Fed. Reg. 191, October 2, 2013
Our ref: LTR-RC-14-8

January 31, 2014

Reference: Westinghouse Letter, LTR-RC-12-20, "Request for Information, Office of Management and Budget, 'Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities' Federal Register, Vol. 77, No. 62, Friday, March 30, 2012" dated May 1, 2012.

Subject: Partial Grant of Petition and Notice of Proposed Rulemaking on 1 CFR Part 51, Incorporation by Reference

Dear Mr. Barth:

This letter provides comments by Westinghouse Electric Company (Westinghouse) on the Office of the Federal Register (OFR) notice of proposed rulemaking on Title 1 CFR Part 51 related to Incorporation by Reference. As a key consumer of and participant in the development of industry consensus standards that are often incorporated by reference into the Code of Federal Regulations (CFR), Westinghouse appreciates the opportunity to comment on OFR's proposed resolution of the petition for rulemaking. Westinghouse strongly supports OFR's decision not to adopt the petitioner's proposal to require that Incorporated by Reference documents are made available free of charge, and agrees that OFR's interpretation of its regulations at 1 CFR Part 51 and Section 552(a)(1) of the Freedom of Information Act (FOIA) is rational and appropriate. Our comments below are provided to reinforce OFR's interpretation of the "reasonably available" standard by providing additional perspective on the impact that the incorporation by reference of standards documents in federal regulations has on our global business.

Westinghouse provides fuel, equipment, engineering and field services, automation and nuclear power plant technology to the worldwide commercial nuclear electric power industry. Our company employs over 14,000 people in 18 countries around the globe. Nearly 50% of the more than 400 nuclear power plants worldwide, and nearly 60% of the 99 reactors in the U.S., are based on Westinghouse technology.

Commercial nuclear power is one of the most highly regulated industries in the world, and voluntary consensus standards, combined with regulations from the U.S. and other countries, have provided the foundation for this technology since its inception over 50 years ago. Hundreds of Westinghouse employees have served during these six decades as volunteers to several standards writing bodies, including ASME, the American Nuclear Society, ASTM International, IEEE and many others. Thousands of volunteers and over 100 Westinghouse employees continue to serve in various positions within these standards development organizations to ensure that appropriate standards requirements are in place to establish and maintain adequate safety for current and new reactors worldwide.

Westinghouse recognizes the importance of independent voluntary consensus standards to the global nuclear power industry as evidenced by our level of participation. Open participation that includes the public, regulators, government and private laboratories, academic institutions, and U.S. and foreign industry members is a key credibility of consensus standards documents. Commitment to developing these consensus standards, based on their value-added to the industry, represents a significant financial investment. Direct costs of codes and standards activities are primarily absorbed by administrative fees and end-user payments for end-user access to published codes and standards documents.

Given this vast global experience in developing voluntary consensus standards, we support the expressed OFR positions contained within the supplementary information to the proposed rulemaking. In particular, we agree with your statement that if OFR required that all materials incorporated by reference into the Code of Federal Regulations be made available for free, that requirement would compromise the ability of regulators to rely on voluntary consensus standards.

As OFR correctly observes, the various federal agencies that employ the Incorporation by Reference provisions of 10 CFR Part 51 “are the substantive subject matter experts” and as such, “are better suited to determine what standard should be incorporated by reference into the CFR based on their statutory requirements, the entities they regulate, and the needs of the general public.” The U.S. Nuclear Regulatory Commission, Westinghouse’s primary regulator, has been successfully endorsing codes and standards via their regulations (e.g. 10 CFR § 50.55a), regulatory guides, and standard review plans for the nuclear industry for over 40 years by use of consensus standards documents incorporated by reference while respecting the copyright of the standards development organizations. The referenced standards can be readily purchased at a reasonable cost via a service such as IHS Inc. that permits a company or organization to obtain electronic access for multiple users at a specific location at a reasonable cost. IHS has provided such service for over 50 years.

Costs for developing standards include salaries, benefits and office facilities for Standards Development Organization (SDO) staff members, meeting facilities for standards writing activities, and offices and facilities for publishing. SDO staff efforts to provide services reaching around the globe to support industry developments such as new nuclear plant developments in Asia, Africa and South America over the last decade are also vital activities whose costs must be covered. The staffs of U.S.-based SDOs also interface with other international SDOs, such as the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) standards bodies to support global developments for many industries. Many of the SDOs also have to address training costs of staff and volunteers on American National Standards Institute (ANSI) requirements for processes and procedures for development of voluntary consensus standards. Thus, there are many costs that have to be recovered by the SDOs beyond just the printing and publication of the voluntary consensus documents.

A key source of revenue for the SDOs is from the sale of codes and standards. This revenue is also used to support the broader mission of the professional engineering societies that embody the standards development activities. Without this source of revenue, the SDOs would also be unable to sponsor and fund research for new technology impacting standards development. This approach has led to the successful and safe construction and operation of nuclear plants worldwide and has also enabled commercialization of innovative technologies.

The U.S. is recognized as a global leader in nuclear technology today. Part of this recognition comes from private industry offerings, such as new nuclear power plant designs like the **AP1000**^{®1} reactors that Westinghouse has under construction in China and U.S. However, these developments would not be possible without the voluntary consensus standards, which are also recognized and used globally. International recognition and use keeps U.S. nuclear businesses competitive in the global markets. This worldwide

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recognition and use is a result of U.S.-based nuclear standards being voluntary consensus-based standards, promulgated in an open and transparent manner. If U.S.-based standards developers cannot recover the cost of standards development, global recognition and use of their standards will decline, and U.S. nuclear businesses will be greatly challenged.

U.S.-based voluntary consensus standards are accepted and adopted directly or by intent by government agencies and regulators in other countries. Some countries translate the U.S.-based standards to their native language and then adapt it to fit their own regulatory requirements. Due to this international acceptance, experts from around the world are key volunteers in U.S.-based standards writing groups contributing significant technical information and data from their countries to the standards effort. This critical international input would be lost if SDOs are unable to survive because of standards-for-free.

Nuclear codes and standards are among the most stringent in the world. These safety standards must be dynamic, with the flexibility to respond quickly to incorporate lessons learned from operating experience and new research and development. Events such as the March 2011 nuclear accident at Fukushima Dai-ichi in Japan are currently causing many standards to be reviewed by most SDOs around the globe. Updates are done using valuable operational and design information that is brought to standards-writing bodies by volunteers from industry and government laboratories worldwide (without financial reimbursement). Relying on federal rulemaking alone without the ability to efficiently and effectively incorporate industry consensus standards by reference would not have resulted in the same timely and coordinated industry-wide improvements. Without valuable operational and design information, standards would not advance and new standards would not be developed to address new technologies and products needed to establish and maintain adequate reactor and public safety.

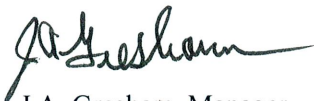
There is a need to get new or updated standards requirements readily endorsed by federal agencies that support acceptance of the revised standard requirement by government agencies in other countries. The SDOs are working towards internationally harmonized safety requirements, guides and practices for the global nuclear industry. While other countries may not directly use U.S. regulations as written in the CFR, it is common that those countries will directly use industry consensus standards that are incorporated by reference in the Code. The current Incorporation by Reference process is one key way of obtaining U.S. agency endorsement of a voluntary consensus standard, and one that helps to get acceptance of that standard by other countries.

Our comments are provided to highlight the importance of the OFR-expressed positions in the subject notice of proposed rulemaking on U.S. competitiveness in the global marketplace. Our global nuclear industry example should serve as being representative of many other global industries that are impacted by the OFR position and the use of documents incorporated by reference by several U.S. federal agencies. While there could be a tendency to think that hundreds or thousands of dollars are being saved by requests to require standards material incorporated by reference into the CFR be available free of charge, such action has the potential downstream impact of threatening billions of dollars of global trade of U.S. led products and services.

Our comments are consistent with those previously provided by Westinghouse to the U.S. Office of Management and Budget on related matters in 2012 as given in the referenced letter.

If you have any questions regarding this response, please feel free to contact me at 412-374-4643.

Very truly yours,



J.A. Gresham, Manager
Regulatory Compliance