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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WESTINGHOUSE ELECTRIC COMPANY,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 00-CV-895
	)	Judge Gary L. Lancaster
v.	)	
	)	
UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF ENERGY, and NUCLEAR REGULATORY COMMISSION,	)	
	)	
Defendants.	)	

PROTECTIVE ORDER

Upon application of the United States of America on behalf of the United States Department of Energy (DOE) and the Nuclear Regulatory Commission by its undersigned counsel, for a Protective Order to prevent the unauthorized disclosure or dissemination of classified National Security Information or Restricted Data, and other controlled information which will be reviewed by representatives of the Plaintiff and their respective counsel of record in this case, pursuant to the Classified Information Procedures Act, Title 18, United States Code, App. IV; the Security Procedures promulgated by the Chief Justice of the United States pursuant to the Act; Rules 26, 29, 30 - 34 of the Federal Rules of Civil Procedure; and the general supervisory authority of the Court, in order to protect the national security, and good cause having been shown,

IT IS HEREBY ORDERED THAT

(1) This Protective Order shall apply to:

(a) the named parties in this action and their counsel and representatives and any other persons acting on their behalf with notice of this Order who receive access to classified or controlled information;

(b) any other person producing or disclosing documents or information who agrees to be bound by the terms of this Order, and who so notifies the parties in writing. As used herein, "person" includes the named parties and others who have agreed to be bound by this Order; and

(c) to any and all other parties presently, or at any time in the future, in litigation with the Defendant involving issues the same as, or similar to, the issues in this action.

(2) As used in this Protective Order:

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(a) "Party" or "Parties" shall mean and refer to any party, Plaintiffs, or Defendant, in this action.

(b) "Counsel of Record" shall mean and refer to the members of the law firms or corporate legal departments retained by the parties or appointed to serve in such a capacity, for the litigation of this action, including all partners and associate attorneys of said law firms, as well as paralegal associates, stenographic and clerical employees, or other full-time support personnel engaged by the law firms or corporate legal departments to provide services in this action.

(c) "Counsel for the Government" shall mean and refer to the Chief Counsel, Schenectady Naval Reactors Office, United States Department of Energy and any member of his staff and any member of the Safeguards and Security Division of the Schenectady Naval Reactors Office designated to act on his behalf.

(d) "Court personnel" shall include all personnel employed by or assigned to this Court or, if this case is appealed, any appropriate Court having jurisdiction over this matter, including stenographic reporters engaged in such proceeding as are necessary incident to the preparation for trial and/or the trial of this action or any appeals arising therefrom.

(e) "Classified Information" refers to any document, portions thereof, or information contained therein which contains National Security Information or Restricted Data and which bears the designation, "Confidential," "Secret," "Top Secret" and has not been declassified by the United States Government, and is subject to disclosure only to persons who are United States citizens and possess the required United States Government granted access authorization (security clearance).

(f) "Naval Nuclear Propulsion Information," or "NNPI," is defined in NAVSEAINST C5511.32B and DOE Order 471.2A as all information classified or unclassified, concerning the design, arrangement, development, manufacture, testing, operation, administration, training maintenance, and repair of the propulsion plants of naval nuclear powered ships or prototypes including the associated nuclear support facilities, and the disclosure of which information is restricted by Federal statutes and regulations. Unclassified NNPI may be marked "NOFORN," "For Official Use Only," "Special Handling Required - - Not Releasable to Foreign Nationals," or "This document is subject to special export controls and each transmittal to foreign governments or foreign nationals may be made only with the prior

approval of the Untied States Navy."

(g) "United States citizen" is defined in NAVSEAINST C5511.32B under the definition of "Foreign National" as any United States citizen or Untied States national. It excludes any United States citizen and United States national representing foreign governments, foreign private interests, or foreign nationals. It also excludes immigrant aliens.

(h) A party's "representatives" shall include its employees and all employees of any independent contractor(s), expert witnesses, and consultants furnishing services related to the parties to this action, including its counsel.

(i) "Document" shall include any written or graphic matter, or other means of preserving thought or expression, including, but not limited to, writings, correspondence, contracts, memoranda, handwritten notes, applications, notebooks, books, studies, surveys, graphs, charts, calculations, analyses, drawings, reports, computer printouts or matter stored on computer or on a computer disk, tape recordings, photographs, microfilm, microfiche, transcripts, diary entries, and desk calendar entries, whether originals or copies, however produced or reproduced.

(3) As soon as practicable, each counsel of record or representative of the parties who is expected to participate in the inspection of classified documents, or otherwise have access to them, shall obtain security clearances as described in the DOE Order 471.2A, Information Security Program.

(4) Access to documents containing classified information, classified NNPI, or unclassified NNPI as is necessary to prepare for proceedings in this action shall be provided as follows:

(a) Access to documents containing classified information or classified NNPI, including any notes, memoranda, or work product based thereon, shall be restricted to those individuals with a demonstrable "need to know" who are also counsel of record, Court personnel, and employees and representatives of the parties, and who are also United States citizens and possess the required security clearance under DOE Order 471.2A and DOE Order 5631.2C, Personnel Security Program. Access by an individual having a proper security clearance, but who is not a member of one of the foregoing groups, or who does not have a demonstrable "need to know," shall only be permitted in accordance with subparagraph (4)(c) below.

(b) Access to documents containing unclassified NNPI, including any notes, memoranda, or work product based thereon, shall be restricted to those

individuals with a demonstrable "need to know" who are also counsel of record, Court personnel, and employees and representatives of the parties, and who are also United States citizens. Access by an individual having United States citizenship, but who is not a member of one of the foregoing groups, or who does not have a demonstrable "need to know", shall only be permitted in accordance with subparagraph (4)(c) below.

(c) Access by or dissemination to any person not within one of the categories set forth in subparagraphs (4)(a) and (b) above, with respect to documents containing classified information, classified NNPI, or unclassified NNPI, including any notes, memoranda, or work product based thereon , shall not be permitted by the parties without prior written approval of counsel for the Government. All requests for such approval shall be made in writing to the Government and shall include a written statement setting forth the name of such person, his/her present business and residence address, and his/her present and, where applicable, former citizenship and security clearances, if any, and justification for "need to know."

(d) All access under this Protective Order to documents containing classified information, classified NNPI, or unclassified NNPI including any notes, memoranda, or work product based thereon, shall only be had and used for purposes of preparation for trial or the trial of the above captioned action or any appeals therefrom.

(5) Counsel of record will submit to counsel for the Government the following documents for each of the parties' employees, counsel, or representatives for who access to documents containing classified information, classified NNPI, or unclassified NNPI is requested:

(a) For access to documents containing classified information, classified NNPI, or unclassified NNPI, a sworn statement, in the form attached hereto, by such person, duly notarized certifying that such person:

(i) has read this Protective Order and agrees to be bound by all of its terms and conditions; and

(ii) irrevocably submits his person to the jurisdiction of the Court for the purpose of securing compliance with the terms and conditions of this Protective Order.

(b) For access to documents containing classified information or classified NNPI, a completed and executed Questionnaire for National Security Position, Standard Form 86, must be submitted in accordance with the DOE

Order 471.2A to the facility security officer along with a written statement setting forth the person's place of birth; his former citizenship, if any; his present and former residence addresses for the past 10 years; and his present and former professional and business relationships and addresses for the past 10 years, including the nature of his present and former business for the last 10 years;

(c) For access to documents containing unclassified NNPI, a written statement setting forth the name of such person; his present business and residence address; his present and all former citizenships; and why the person requires access to the documents or information;

(d) The documents referred to in subparagraphs (5)(a) through (c) above shall be submitted to counsel for the Government no less than 15 calendar days prior to the proposed date for access by each person to documents containing classified information, classified NNPI, or unclassified NNPI and counsel of record shall be notified in writing of any objections to proposed access by any individual person within 10 calendar days of receipt of the documents. The names of persons proposed for access for under subparagraphs (5)(a) through (c), and the documents submitted, shall be kept confidential and not revealed to persons representing the Government, unless permission is given by counsel of record or the Court. In the event of objection to the proposed access by counsel for the Government, counsel of record for the party seeking access may thereafter seek leave of Court to permit the proposed access. Such proceedings shall be held in camera.

(e) Prior to the deposition of any witness to whom access to documents containing classified information of NNPI will be, or may be provided, and for whom documents and information are required pursuant to subparagraphs (5)(a) through (c), supra, deposing counsel or record shall provide counsel for the Government 15 calendar days prior to the proposed date for the access to documents containing classified information, classified NNPI, or unclassified NNPI with: (1) a copy of the deposition notice of the witness and (2) the information required by subparagraphs(5)(a) through (c), supra, as appropriate, unless said witness is a person who has previously been given access to documents containing classified information, classified NNPI, or unclassified NNPI pursuant to the terms of this Protective Order. All counsel of record shall be notified in writing of any objection by counsel for the Government to the proposed access by said witness within 10 calendar days of the receipt of the deposition notice. In the event of objection by counsel for the Government, leave of Court may be sought to permit the proposed access; such proceedings shall be held in camera. During the course of any deposition of a witness who has not executed a sworn statement in

accordance with subparagraph (5)(a), but who is otherwise in compliance with subparagraphs 5(b) and (c), deposing counsel of record, before giving said witness access to any document containing classified information, classified NNPI, or unclassified NNPI, shall provide the witness with a sworn statement to execute, shall explain to the witness the pertinent terms and conditions thereof, and shall obtain the witness' signature to the sworn statement and his acknowledgment that he understands the pertinent terms and conditions of this Protective Order, and that the Protective Order shall be enforceable against the witness in this Court or in any other Court of competent jurisdiction.

(f) Six months after commencement of parties' review of documents, counsel of record shall submit the name, business address and business telephone number, and security clearance of all persons who have been given access to documents containing classified information, classified NNPI, or unclassified NNPI including any notes, memoranda, or work product based thereon. Counsel of record shall update this list every six months and provide similar information concerning all additional persons who were afforded such access.

(6) The parties, their representative, and/or counsel of record shall not disclose the substance or contents of any documents containing classified information, classified NNPI, or unclassified NNPI to any person not named herein, except the Court, Court Personnel, including stenographic reporters, attorneys for the United States and Government agents having the appropriate security clearances and verification of the United States citizenship, without prior approval of this Court. Counsel for the Government will be given an opportunity to be heard in response to any request of the parties for disclosure to a person not named in this Protective Order. If the Court finds that the preparation of any party's case requires that documents containing classified information, classified NNPI, or unclassified NNPI be disclosed to persons not named in this Protective Order, the DOE shall obtain security clearances as appropriate in accordance with the DOE Order 471.2A and verify United States citizenship for such persons, upon submittal to counsel for the Government of a request in writing by counsel of record.

(7) Before any person subject to this Protective Order receives, inspects, or reviews documents containing classified information, classified NNPI, or unclassified NNPI, they shall receive a copy of this Protective Order, and execute the written agreement, in the form attached, to comply with the terms of this Order. Such agreements are to be filed with counsel for the Government.

(8) Except as provided in paragraphs (9), (10), (12) and (13), documents or things containing classified information, classified NNPI, or unclassified NNPI shall at all times be kept secure at a location which has a facility clearance for storage of

classified material. Access to such documents and things shall be permitted only to those persons specified in paragraph (4).

(9) Documents containing classified information, classified NNPI, or unclassified NNPI may be transferred from the possession of the Government provided that the information is properly controlled and protected pursuant to DOE regulation as follows:

(a) The parties, their representatives, and counsel of record shall maintain all documents obtained or generated as a result of inspecting documents that contain classified information or classified NNPI, including any notes or material based thereon, and all copies thereof, in a facility that has an appropriate clearance granted by DOE for storage of such classified material in accordance with the provisions of this Protective Order. The parties shall maintain all documents containing unclassified NNPI, including any notes or materials based thereon, in conformity with applicable regulations. The parties shall provide a specific plan for approval by DOE which demonstrates compliance with applicable DOE regulations prior to transfer of these documents from the Government's possession. The plan submitted by a party shall comply with the provisions of subparagraphs (10)(a) and (b) of this Protective Order. All documents containing classified information, classified NNPI, unclassified NNPI, including any notes or materials based thereon, shall be maintained by the parties separately from other documents and things, and access to such documents shall be permitted only to those persons described in paragraph (4) of this Protective Order.

(b) Persons permitted to inspect documents containing classified information, classified NNPI, or unclassified NNPI may make written notes of the documents and their contents. However, notes or logs taken from any documents containing classified information, classified NNPI, or unclassified NNPI shall be marked with the same classification markings as the documents from which they were taken, and shall not be disseminated or disclosed in any manner or form to any person not authorized to review or inspect the same and shall be subject to the provisions of the Protective Order. Such notes will be maintained under appropriate security conditions as set forth in this Protective Order. No person permitted to inspect documents containing classified information, classified NNPI, or unclassified NNPI shall copy or reproduce any part of said documents or their contents in any manner or form, except as provided in this Protective Order.

(10) Documents containing classified information, classified NNPI, or unclassified NNPI, including any notes, memoranda, or similar work product relating thereto, may be transferred from the premises described in paragraphs (8) or (9) only as follows:

(a) Not less than 15 days prior to the proposed transfer, counsel of record for the party proposing to transfer the classified information, classified NNPI, or unclassified NNPI shall provide counsel for the Government with a written notice:

(i) Naming the proposed document custodian who shall have the necessary security clearance and courier authorization and whose responsibility it shall be to ensure that all documents are stored and maintained consistent with the Protective Order;

(ii) Identifying the documents to be transferred and stating whether they contain or analyze classified information, classified NNPI, or unclassified NNPI;

(iii) Listing the facility to which it is proposed that such documents be transferred; and

(iv) Specifying and providing evidence of all clearances or approvals that the facility has received for storage of documents containing classified information, classified NNPI, or unclassified NNPI or related analyses.

(b) Unless counsel for the Government advises counsel of record for the party proposing to transfer classified information, classified NNPI, or unclassified NNPI or related analyses in writing that the Government objects to the proposed transfer within 10 calendar days after the submission of the written notice to which reference is made in subparagraph (10)(a) above, the transfer may occur as described in the notice, provided, however, that documents containing classified information, classified NNPI, or unclassified NNPI including any notes, memoranda, or work product based thereon, shall at all times thereafter be maintained by the custodian at the location referenced in subparagraph (10)(a)(iii) above, and shall be kept secure and maintained separately from other documents and things regularly maintained by the proposed document custodian, and access documents shall be permitted only to those persons designated in paragraph (4) above.

(c) Should counsel for the Government object to the proposed transfer, counsel of record for the party proposing the transfer may petition the Court for approval of the proposed transfer. All such proceedings shall be held in camera.

(11) Classified information, classified NNPI, or unclassified NNPI shall not be discussed

in any area in which persons not authorized to possess such information may overhear such discussions. Classified information or classified NNPI shall not be discussed or transmitted over any standard commercial telephone instrument or nonsecure communications system.

(12) Until further Order of this Court, all written pleadings, memoranda, or other papers ("Court Documents") relating to classified information, classified NNPI, or unclassified NNPI or those Court Documents which might cause the disclosure thereof, shall be submitted to counsel for the Government. The time of physical submission to counsel for the Government shall be considered the date of filing with the Court. The Court Documents submitted to counsel for the Government in accordance with this paragraph shall be placed in sealed envelopes or other containers. The envelope or container shall be marked front and back indicating the level of classification of its contents. The form annexed hereto as Exhibit A shall be attached to the outside of the envelope or container, and shall contain:

(a) the words "Classified Information," "Classified NNPI, or "Unclassified NNPI;"

(b) the name of the party on whose behalf of the information is being filed , the names of counsel of record for that party; and

(c) the following statement:

"This envelope or other container contains classified information or unclassified, sensitive information and may be sealed upon order of the court in this action. It is not to be opened nor its contents displayed or revealed except by Court Order or by stipulation of all the parties to this action and the United States Government."

Said envelope or other container shall not be opened without further Order of the Court or stipulation as described above. Counsel for the Government shall promptly review such Court Documents to determine whether they contain any classified information, classified NNPI, or unclassified, NNPI, and, for that purpose, shall promptly consult with Mr. John McKenzie, Acting Director of Regulatory Affairs, Naval Nuclear Propulsion Program or other employees of the Naval Nuclear Propulsion Program designated by Mr. John McKenzie. If, after consultation, it is determined that the Court Document does not contain any classified information, classified NNPI, or unclassified NNPI, counsel for the Government shall forward it immediately to the Clerk of the Court for routine filing. If, after consultation, it is determined that the Court Document does contain classified information, classified NNPI, or unclassified NNPI, counsel for the Government shall request that the Court Document be field under seal and stored under appropriate security conditions.

(13) Whenever classified information, classified NNPI, or unclassified NNPI is or may be presented, quoted, or referred to in any deposition, hearing, or other judicial proceedings, and subject to the provision of paragraph (11) above, counsel of record for the party on whose behalf the classified information, classified NNPI, or unclassified NNPI is or may be presented, quoted, or referred to shall make arrangements or, when appropriate, request the Court to make arrangements, to ensure that only persons qualified under this Protective Order to have access to such information are present during such presentation, quotation, or reference, and that all portions of transcripts containing such information are bound separately, labeled "Classified Information," "Classified NNPI," or Unclassified NNPI" and filed in accordance with the provision of paragraph (12) supra. Specific arrangements for handling classified information, classified NNPI, or unclassified NNPI at trial will be resolved as a pretrial matter held in camera.

(14) Furthermore, the procedures set forth in the Classified Information Procedures Act, Title 18 United States Code, App. IV, will apply to all pretrial and trial matters concerning classified information or classified NNPI.

(15) The parties to this Protective Order are advised that direct or indirect unauthorized disclosure, retention, or negligent handling of classified information, classified NNPI, or unclassified NNPI reasonably could be expected to cause serious damage to the national security of the United States or be used to advantage by a foreign nation. This Protective Order is to ensure that those named herein will never divulge such information disclosed to them to anyone who is not authorized to receive it without prior written authorization from the originating agency and in conformity with this Order.

(16) The parties to this Protective Order are further advised that any unauthorized disclosure of classified information or classified NNPI may constitute violations of United States criminal law, including, but not limited to, the provisions of Title 18, United States Code, Sections 793, 794, 798, and 952; Title 42, United States Code, Section 2274; and Title 50, United States Code, Section 783, as well as the regulations promulgated under them, and that the unauthorized disclosure of unclassified NNPI may constitute violations of Title 10, United States Code, Section 130, and Title 42, United States Code, Section 2168, as well as the regulations promulgated under these and other statutes. In addition, anyone who violates the terms of this Order may be charged with contempt of Court. The parties to this Protective Order are further advised that any breach of this Order may result in the termination of their access to classified information, classified NNPI, or unclassified NNPI.

(17) All information to which counsel of record obtains access under this Order is now and will forever remain the property of the United States Government. Upon the

final determination of the action or any other action governed by similar stipulations, including all appeals:

(a) The parties shall assemble and hand-deliver to counsel for the Government all documents containing classified information, classified NNPI, or unclassified NNPI including any notes, memoranda, computer disks or tapes, or work product based on or otherwise containing or analyzing said information. At their option, the parties may destroy their notes, memoranda, and work product forthwith in accordance with the applicable security requirements of DOE Order 471.2A in lieu of hand-delivery to counsel for the Government. In that event, the parties shall provide counsel for the Government with an affidavit describing all notes, memoranda, and work product created, describing the circumstances of its destruction, and certifying that all such documents not hand-delivered have been destroyed.

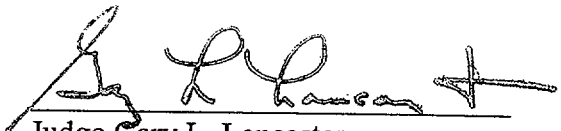
(b) The Clerk of the Court shall return all documents containing or referring to classified information, classified NNPI, or unclassified NNPI to counsel of record for the party on whose behalf such documents were filed. If counsel of record for a party caused any such documents to be filed, they shall dispose of them in accordance with subparagraph (17)(a), above.

(18) A copy of this Protective Order shall issue forthwith to counsel of record for the parties named below who shall advise their respective clients of the contents of this Order, as well as furnish their respective clients with a copy of this Order.

(19) Nothing contained in this Protective Order shall be construed as a waiver of any rights of any of the parties.

Dated: August 16, 2001

BY THE COURT:



Judge Gary L. Lancaster

EXHIBIT A

THIS ENVELOPE OR OTHER CONTAINER CONTAINS CLASSIFIED INFORMATION OR UNCLASSIFIED, SENSITIVE INFORMATION AND MAY BE SEALED UPON ORDER OF THE COURT IN THIS ACTION. IT IS NOT TO BE OPENED NOR ITS CONTENTS DISPLAYED OR REVEALED EXCEPT BY COURT ORDER OR BY STIPULATION OF ALL THE PARTIES TO THIS ACTION AND THE UNITED STATES GOVERNMENT.

This envelope or other container contains information which has been designated as classified information, classified NNPI, or unclassified NNPI.

The information contained in this envelope or other container has been filed by the party identified below: (circle the appropriate party)

Plaintiff,

Counsel:

Defendant.

Counsel:

AGREEMENT

I have received, read, and understand the Protective Order entered by the Honorable Gary L. Lancaster, Western District of Pennsylvania in Westinghouse Electric Company v. United States, et al., Civil Action No. 00-0895, and I agree to be bound by and comply with the provisions thereof and irrevocably consent to the jurisdiction of the United States District Court for the Western District of Pennsylvania for purpose of complying with this Protective Order.

Signature

Printed or Typed Name

Date