

April 23, 2004

Mr. J. A. Gresham, Manager
Regulatory Compliance and Plant Licensing
Westinghouse Electric Company
P.O. Box 355
Pittsburgh, PA 15230-0355

SUBJECT: WESTINGHOUSE ELECTRIC COMPANY, REQUEST FOR WITHHOLDING
INFORMATION FROM PUBLIC DISCLOSURE FOR INDIAN POINT NUCLEAR
GENERATING UNIT NO. 2 (TAC NO. MC1865)

Dear Mr. Gresham:

By letter dated January 29, 2004, Entergy Nuclear Operations, Inc., (the licensee) submitted an application to the Nuclear Regulatory Commission (NRC) to increase the licensed thermal power for the Indian Point Nuclear Generating Unit No. 2 (IP2). In support of this application, the licensee provided a copy of Westinghouse Electric Company Report WCAP-16157-P, "Indian Point Nuclear Generating Unit No. 2 Stretch Power Uprate NSSS [nuclear steam supply system] and BOP [balance of plant] Licensing Report," dated January 2004. By letter dated January 27, 2004, you submitted an affidavit, executed by you, requesting that the information contained in WCAP-16157-P be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 2, Section 2.390.

A nonproprietary copy of this document has been placed in the NRC's Public Document Room and added to the Agencywide Documents Access and Management System Public Electronic Reading Room.

The affidavit stated that the submitted information should be considered exempt from mandatory public disclosure for the following reasons:

- (a) The information sought to be withheld from public disclosure is owned and has been held in confidence by Westinghouse.
- (b) The information is of a type customarily held in confidence by Westinghouse and not customarily disclosed to the public. Westinghouse has a rational basis for determining the types of information customarily held in confidence by it and, in that connection, utilizes a system to determine when and whether to hold certain types of information in confidence. The application of that system and the substance of that system constitute Westinghouse policy and provides the rational basis required.
- (c) The information reveals the distinguishing aspects of a process (or component, structure, tool, method, etc.) where prevention of its use by any of Westinghouse's competitors without license from Westinghouse constitutes a competitive economic advantage over other companies.

- (d) Its use by a competitor would reduce his expenditure of resources or improve his competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing a similar product.
- (e) It reveals aspects of past, present, or future Westinghouse or customer funded development plans and programs of potential commercial value to Westinghouse.

We have reviewed your application and the material in accordance with the requirements of 10 CFR 2.390 and, on the basis of your statements, have determined that the submitted information sought to be withheld contains proprietary commercial information and should be withheld from public disclosure.

Therefore, the version(s) of the submitted information marked as proprietary will be withheld from public disclosure pursuant to 10 CFR 2.390(b)(5) and Section 103(b) of the Atomic Energy Act of 1954, as amended.

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the documents. If the need arises, we may send copies of this information to our consultants working in this area. We will, of course, ensure that the consultants have signed the appropriate agreements for handling proprietary information.

If the basis for withholding this information from public inspection should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You also should understand that the NRC may have cause to review this determination in the future, for example, if the scope of a Freedom of Information Act request includes your information. In all review situations, if the NRC makes a determination adverse to the above, you will be notified in advance of any public disclosure.

If you have any questions regarding this matter, I may be reached at 301-415-1457.

Sincerely,

/RA/

Patrick D. Milano, Sr. Project Manager, Section 1
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-247

cc: See next page

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*See previous concurrence

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Indian Point Nuclear Generating Unit No. 2

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