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U.S. Nuclear Regulatory Commission  
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Our ref: LTR-NRC-09-2

January 9, 2009

Subject: Session titled "Testing to support in-vessel downstream effects topical report" to be held at NRC Meeting of January 15, 2009 (Proprietary/Non-Proprietary)

During the subject session, discussions may involve data that is proprietary to Westinghouse during the NRC/NEI/PWROG meeting to be held January 15, 2009. Should that occur, it will be requested that NRC close those discussions to the public.

Also enclosed is:

1. One (1) copy of the Application for Withholding, AW-09-2513 (non-proprietary) with Proprietary Information Notice.
2. One (1) copy of Affidavit (Non-Proprietary).

In conformance with the requirements of 10 CFR Section 2.390, as amended, of the Commission's regulations, we are enclosing with this submittal an Application for Withholding from Public Disclosure and an affidavit. The affidavit sets forth the basis on which the information identified as proprietary may be withheld from public disclosure by the Commission.

Correspondence with respect to this affidavit or Application for Withholding should reference AW-09-2513 and should be addressed to J. A. Gresham, Manager, Regulatory Compliance and Plant Licensing, Westinghouse Electric Company LLC, P.O. Box 355, Pittsburgh, Pennsylvania 15230-0355.

Very truly yours,

A handwritten signature in cursive script that reads 'J. A. Gresham'.

J. A. Gresham, Manager  
Regulatory Compliance and Plant Licensing

cc: Joe Golla, NRC

Enclosures

TO: DIO  
NRR  
Add: Joe Golla  
E-1105



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Our ref: AW-09-2513

January 9, 2009

APPLICATION FOR WITHHOLDING PROPRIETARY  
INFORMATION FROM PUBLIC DISCLOSURE

Subject: Session titled "Testing to support in-vessel downstream effects topical report" to be held at NRC Meeting of January 15, 2009 (Proprietary)

Reference: Letter from J. A. Gresham to Document Control Desk, LTR-NRC-09-2 dated January 7, 2009

The Application for Withholding is submitted by Westinghouse Electric Company LLC (Westinghouse), pursuant to the provisions of Paragraph (b) (1) of Section 2.390 of the Commission's regulations. It contains commercial strategic information proprietary to Westinghouse and customarily held in confidence.

The proprietary material for which withholding is being requested is identified in the proprietary version of the subject report. In conformance with 10 CFR Section 2.390, Affidavit AW-09-2513 accompanies this Application for Withholding, setting forth the basis on which the identified proprietary information may be withheld from public disclosure.

Accordingly, it is respectfully requested that the subject information which is proprietary to Westinghouse be withheld from public disclosure in accordance with 10 CFR Section 2.390 of the Commission's regulations.

Correspondence with respect to this Application for Withholding or the accompanying affidavit should reference AW-09-2513 and should be addressed to J. A. Gresham, Manager, Regulatory Compliance and Plant Licensing, Westinghouse Electric Company LLC, P.O. Box 355, Pittsburgh, Pennsylvania 15230-0355.

Very truly yours,

A handwritten signature in cursive script that reads 'J. A. Gresham'.

J. A. Gresham, Manager  
Regulatory Compliance and Plant Licensing

cc: Joe Golla, NRC

Enclosures

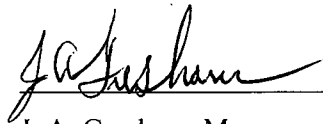
AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF ALLEGHENY:

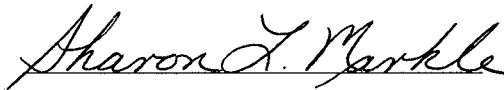
Before me, the undersigned authority, personally appeared J. A. Gresham, who, being by me duly sworn according to law, deposes and says that he is authorized to execute this Affidavit on behalf of Westinghouse Electric Company LLC (Westinghouse), and that the averments of fact set forth in this Affidavit are true and correct to the best of his knowledge, information, and belief:



J. A. Gresham, Manager

Regulatory Compliance and Plant Licensing

Sworn to and subscribed before me  
this 9<sup>th</sup> day of January, 2009



Notary Public

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Sharon L. Markle, Notary Public  
Monroeville Boro, Allegheny County  
My Commission Expires Jan. 29, 2011

Member, Pennsylvania Association of Notaries

- (1) I am Manager, Regulatory Compliance and Plant Licensing, in Nuclear Services, Westinghouse Electric Company LLC (Westinghouse), and as such, I have been specifically delegated the function of reviewing the proprietary information sought to be withheld from public disclosure in connection with nuclear power plant licensing and rule making proceedings, and am authorized to apply for its withholding on behalf of Westinghouse.
- (2) I am making this Affidavit in conformance with the provisions of 10 CFR Section 2.390 of the Commission's regulations and in conjunction with the Westinghouse "Application for Withholding" accompanying this Affidavit.
- (3) I have personal knowledge of the criteria and procedures utilized by Westinghouse in designating information as a trade secret, privileged or as confidential commercial or financial information.
- (4) Pursuant to the provisions of paragraph (b)(4) of Section 2.390 of the Commission's regulations, the following is furnished for consideration by the Commission in determining whether the information sought to be withheld from public disclosure should be withheld.
  - (i) The information sought to be withheld from public disclosure is owned and has been held in confidence by Westinghouse.
  - (ii) 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 constitutes Westinghouse policy and provides the rational basis required.

Under that system, information is held in confidence if it falls in one or more of several types, the release of which might result in the loss of an existing or potential competitive advantage, as follows:

    - (a) 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.

- (b) It consists of supporting data, including test data, relative to a process (or component, structure, tool, method, etc.), the application of which data secures a competitive economic advantage, e.g., by optimization or improved marketability.
- (c) 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.
- (d) It reveals cost or price information, production capacities, budget levels, or commercial strategies of Westinghouse, its customers or suppliers.
- (e) It reveals aspects of past, present, or future Westinghouse or customer funded development plans and programs of potential commercial value to Westinghouse.
- (f) It contains patentable ideas, for which patent protection may be desirable.

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There are sound policy reasons behind the Westinghouse system which include the following:

- (a) The use of such information by Westinghouse gives Westinghouse a competitive advantage over its competitors. It is, therefore, withheld from disclosure to protect the Westinghouse competitive position.
- (b) It is information that is marketable in many ways. The extent to which such information is available to competitors diminishes the Westinghouse ability to sell products and services involving the use of the information.
- (c) Use by our competitor would put Westinghouse at a competitive disadvantage by reducing his expenditure of resources at our expense.

- (d) Each component of proprietary information pertinent to a particular competitive advantage is potentially as valuable as the total competitive advantage. If competitors acquire components of proprietary information, any one component may be the key to the entire puzzle, thereby depriving Westinghouse of a competitive advantage.
  - (e) Unrestricted disclosure would jeopardize the position of prominence of Westinghouse in the world market, and thereby give a market advantage to the competition of those countries.
  - (f) The Westinghouse capacity to invest corporate assets in research and development depends upon the success in obtaining and maintaining a competitive advantage.
- (iii) The information is being transmitted to the Commission in confidence and, under the provisions of 10 CFR Section 2.390, it is to be received in confidence by the Commission.
- (iv) The information sought to be protected is not available in public sources or available information has not been previously employed in the same original manner or method to the best of our knowledge and belief.
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- (v) The proprietary information sought to be withheld in this submittal is that which may be discussed in the session titled "Testing to support in-vessel downstream effects topical report" to be held at an NRC Public Meeting on January 15, 2009. The proprietary information to be discussed by Westinghouse is that associated with design of nuclear fuel, data from debris test loop design, and data from testing using the test loop to address GSI-191 concerns regarding debris capture on fuel elements.

This information is part of that which will enable Westinghouse to:

- (a) Evaluate head loss through the core due to debris collection under post-accident long term core cooling conditions.

- (b) Address long-term core cooling capabilities of Westinghouse and CE-designed nuclear steam supply systems.

Further this information has substantial commercial value as follows:

- (a) Westinghouse plans to sell the use of the information to its customers for the purpose of addressing and closing Generic Safety Issue GSI-191 and responding to Generic Letter GL 2004-02.
- (b) Westinghouse can sell support and defense of Westinghouse and CE fuel designs.
- (c) The information requested to be withheld reveals the distinguishing aspects of a methodology which was developed by Westinghouse.

Public disclosure of this proprietary information is likely to cause substantial harm to the competitive position of Westinghouse because it would enhance the ability of competitors to provide similar designs and data and licensing defense services for commercial power reactors without commensurate expenses. Also, public disclosure of the information would enable others to use the information to meet NRC requirements for licensing documentation without purchasing the right to use the information.

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The development of the technology described in part by the information is the result of applying the results of many years of experience in an intensive Westinghouse effort and the expenditure of a considerable sum of money.

In order for competitors of Westinghouse to duplicate this information, similar technical programs would have to be performed and a significant manpower effort, having the requisite talent and experience, would have to be expended.

Further the deponent sayeth not.