PROPRIETARY

Nuclear Operating Company

South Texas Project Electric Generating Station P.O. Box 289 Wadsworth, Texas 77483

September 24, 2009
U7-C-STP-NRC-090142

U. S. Nuclear Regulatory Commission
Attention: Document Control Desk
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

South Texas Project
Units 3 and 4
Docket Nos. 52-012 and 52-013
Transmittal of Toshiba Pool Swell Report

Attached is a technical report prepared by Toshiba Corporation in support of the STP 3 & 4 Combined License Application. The topical report is entitled "Post LOCA Suppression Pool Swell Analysis for ABWR Containment Design," UTLR-0005-P Rev. 0. Also attached is a non-proprietary version of this same report, UTLR-0005-NP Rev. 0.

Since this report contains information proprietary to Toshiba Corporation and Westinghouse Electric Company, LLC, it is supported by two affidavits signed by the respective companies. The affidavits set forth the basis on which the information may be withheld from public disclosure by the Commission and specifically addresses the considerations listed in paragraph (b)(4) of Section 2.390 of the Commission's regulations.

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

Attachment 1 contains the proprietary version of the report. Attachment 2 contains the request for withholding of proprietary information and affidavit for Toshiba Corporation. Attachment 3 contains the affidavit for Westinghouse Electric Company, LLC, the proprietary information notice, and the copyright notice. Attachment 4 contains the non-proprietary version of the report.

When separated from the proprietary material, this letter is not proprietary.

There are no commitments in this letter.

STI 32533227 D091 NRO

If you have any questions regarding this report, please contact Scott Head at (361) 972-7136, or Bill Mookhoek at (361) 972-7274. Correspondence with respect to the proprietary aspects of the report should be addressed to B.F. Maurer, Manager, ABWR Licensing, Westinghouse Electric LLC, P.O. Box 355, Pittsburgh, Pennsylvania, 15230-0355.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/24/2009

Mark McBurnett
Vice President, Oversight & Regulatory Affairs
South Texas Project Units 3 & 4

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Attachments:

1. UTLR-0005-P Rev. 0 (proprietary version)
2. Toshiba Corporation Affidavit
3. Westinghouse Electric Company LLC Affidavit
4. UTLR-0005-NP Rev. 0 (non-proprietary version)

cc: w/o attachment except*
(paper copy)

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U. S. Nuclear Regulatory Commission
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L. D. Blaylock
CPS Energy

Affidavit for Withholding Confidential and Proprietary Information from Public Disclosure under 10 CFR § 2.390

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

STP Nuclear Operating Company

Docket Nos.52-012
52-013

South Texas Project
Units 3 and 4

AFFIDAVIT

I, Kenji Arai, being duly sworn, hereby depose and state that I am Senior Manager, System Design & Engineering Department, Nuclear Energy Systems & Services Division, Power Systems Company, Toshiba Corporation; that I am duly authorized by Toshiba Corporation to sign and file with the Nuclear Regulatory Commission the following application for withholding Toshiba Corporation's confidential and proprietary information from public disclosure; that I am familiar with the content thereof; and that the matters set forth therein are true and correct to the best of my knowledge and belief.

In accordance with 10 CFR § 2.390(b)(ii), I hereby state, depose, and apply as follows on behalf of Toshiba Corporation:

(A) Toshiba Corporation seeks to withhold from public disclosure the document entitled and identified as "Post LOCA Suppression Pool Swell Analysis for ABWR Containment Design," Revision 0, UTLR-0005-P(Proprietary), and all information identified as "Toshiba Proprietary Information Class 2" therein (collectively, "Confidential Information").

(B) The Confidential Information is owned by Toshiba Corporation. In my position as Senior Manager, System Design & Engineering Department, Nuclear Energy Systems & Services Division, Power System Company, Toshiba Corporation, I have been specifically delegated the function of reviewing the Confidential Information and have been authorized to apply for its withholding on behalf of Toshiba Corporation.

(C) This document is the additional information of hydrodynamic (pool swell) load evaluation for South Texas Project Units 3&4 Combined License Application to the Nuclear Regulatory Commission. The Confidential Information which is entirely confidential and proprietary to Toshiba Corporation is indicated in the document using brackets.

(D) Consistent with the provisions of 10 CFR § 2.390(a)(4), the basis for proposing that the Confidential Information be withheld is that it constitutes Toshiba Corporation's trade secrets and confidential and proprietary commercial information.

(E) Public disclosure of the Confidential Information is likely to cause substantial harm to Toshiba Corporation's competitive position by (1) disclosing confidential and proprietary commercial information about the design, manufacture and operation systems for nuclear power reactors to other parties whose commercial interests may be adverse to those of Toshiba Corporation, and (2) giving such parties access to and use of such information at little or no cost, in contrast to the significant costs incurred by Toshiba Corporation to develop such information.

Further, on behalf of Toshiba Corporation, I affirm that:

(i) The Confidential Information is confidential and proprietary information of Toshiba Corporation.

(ii) The Confidential Information is information of a type customarily held in confidence by Toshiba Corporation, and there is a rational basis for doing so given the sensitive and valuable nature of the Confidential Information as discussed above in paragraphs (D) and (E).

(iii) The Confidential Information is being transmitted to the NRC in confidence.

(iv) The Confidential Information is not available in public sources.

(v) Public disclosure of the Confidential Document is likely to cause substantial harm to the competitive position of Toshiba Corporation, taking into account the value of the Confidential Information to Toshiba Corporation, the amount of money and effort expended by Toshiba Corporation in developing the Confidential Information, and the ease or difficulty with which the Confidential Information could be properly acquired or duplicated by others.

Kenji Arai

Kenji Arai
Senior Manager
System Design & Engineering Department
Nuclear Energy Systems & Services Division
POWER SYSTEMS COMPANY
TOSHIBA CORPORATION

Sept. 16, 2009
Date

平成２１年登簿第　159　号

認　　証

嘱託人株式会社東芝部長新井健司は、公証人の面前で、添付書面に署名した。

よって、これを認証する。

平成２１年　9　月　16　日、本公証人役場において

横浜市中区羽衣町2丁目7番10号

横浜地方法務局所属

公証人

Notary

寺西賢一

KENJI TERANISHI

証　　明

上記署名は、横浜地方法務局所属公証人の署名に相違ないものであり、かつ、その押印は、真実のものであることを証明する。

平成２１年　9　月　16　日

横浜地方法務局長　　紺野清幸

APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country : JAPAN
   This public document
2. has been signed by KENJI TERANISHI
3. acting in the capacity of Notary of the Yokohama District Legal Affairs Bureau
4. bears the seal/stamp of KENJI TERANISHI , Notary

Certified

5. at Tokyo
6. SEP. 16. 2009
7. by the Ministry of Foreign Affairs
8. 09-№ 300568
9. Seal/stamp :
10. Signature :

MINISTRY OF FOREIGN AFFAIRS JAPAN

Kazutoyo OYABE

For the Minister for Foreign Affairs

Registered No. 159 of 2009.

Certificate of Acknowledgment of Notary

On this 16th day of September, 2009, before me, KENJI TERANISHI, a notary in and for YOKOHAMA District Legal Affairs Bureau, appeared Kenji ARAI, Senior Manager of TOSHIBA Corporation, who is personally known to me, affixed his signature to the attached document.

Witness, I set my hand and seal.

Notary

Notary's seal (Official)

Kenji Teranishi

KENJI TERANISHI

Kannai-odori Notary office

2-7-10, Hagoromocho, Naka-ku, Yokohama-city, Japan.

Attached to the Yokohama District Legal Affairs Bureau.

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA:

ss

COUNTY OF ALLEGHENY:

Before me, the undersigned authority, personally appeared B. F. Maurer, 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:

B. F. Maurer, Manager
ABWR Licensing

Sworn to and subscribed before me
this 14th day of September, 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, ABWR 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.

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.

(v) The proprietary information sought to be withheld in this submittal is that which is appropriately marked in, UTLR-0005-P, "Post LOCA Suppression Pool Swell Analysis for ABWR Containment Design" (Proprietary) for submittal to the Commission, being transmitted by South Texas Project Nuclear Operating Company (STPNOC) letter to the Document Control Desk. The proprietary information as submitted by Westinghouse is that associated with the review of the ABWR suppression pool swell analysis methodology and the South Texas Project Units 3 and 4 COL Application.

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

(a) Assist the customer in obtaining NRC review of the South Texas Project Units 3 and 4 COL Application.
(b) Obtain NRC review of the Westinghouse ABWR suppression pool swell analysis methodology.

Further this information has substantial commercial value as follows:

(a) Westinghouse plans to sell the use of this information to its customers for purposes of plant specific ABWR containment pool swell analysis for licensing basis applications.

(b) Its use by a competitor would improve their competitive position in the design and licensing of a similar product for ABWR containment analyses.

(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 calculations 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.

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.

Proprietary Information Notice

Transmitted herewith are proprietary and/or non-proprietary versions of documents furnished to the NRC in connection with requests for generic and/or plant-specific review and approval.

In order to conform to the requirements of 10 CFR 2.390 of the Commission's regulations concerning the protection of proprietary information so submitted to the NRC, the information which is proprietary in the proprietary versions is contained within brackets, and where the proprietary information has been deleted in the non-proprietary versions, only the brackets remain (the information that was contained within the brackets in the proprietary versions having been deleted). The justification for claiming the information so designated as proprietary is indicated in both versions by means of lower case letters (a) through (f) located as a superscript immediately following the brackets enclosing each item of information being identified as proprietary or in the margin opposite such information. These lower case letters refer to the types of information Westinghouse customarily holds in confidence identified in Sections (4)(ii)(a) through (4)(ii)(f) of the affidavit accompanying this transmittal pursuant to 10 CFR 2.390(b)(1).

Copyright Notice

The reports transmitted herewith each bear a Westinghouse copyright notice. The NRC is permitted to make the number of copies of the information contained in these reports which are necessary for its internal use in connection with generic and plant-specific reviews and approvals as well as the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, order, or regulation subject to the requirements of 10 CFR 2.390 regarding restrictions on public disclosure to the extent such information has been identified as proprietary by Westinghouse, copyright protection notwithstanding. With respect to the non-proprietary versions of these reports, the NRC is permitted to make the number of copies beyond those necessary for its internal use which are necessary in order to have one copy available for public viewing in the appropriate docket files in the public document room in Washington, DC and in local public document rooms as may be required by NRC regulations if the number of copies submitted is insufficient for this purpose. Copies made by the NRC must include the copyright notice in all instances and the proprietary notice if the original was identified as proprietary.