

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
CONSOLIDATED EDISON COMPANY)
OF NEW YORK, INC. and) Docket No. 50-286
POWER AUTHORITY OF THE STATE) Operating License No. DPR-64
OF NEW YORK) (Removal of Power Limitation)
(Indian Point Station,)
Unit No. 3))

APPLICATION TO WITHOLD DOCUMENT
FROM PUBLIC DISCLOSURE

Pursuant to § 2.790 (b) of the Rules of Practice of the Nuclear Regulatory Commission ("the Commission"), 10 C.F.R. § 2.790 (b) (1977), Consolidated Edison Company of New York, Inc. ("Con Edison"), in its own right and as agent for Power Authority of the State of New York, co-holder of Facility Operating License No. DPR-64, hereby applies for an order withholding from public disclosure the Westinghouse Electric Corporation ("Westinghouse") document entitled "Results of the June 1976 Augmented Startup Program Tests Conducted at Indian Point Unit 3". Westinghouse is the owner of this information.

Con Edison is advised that the document cited above includes information proprietary to Westinghouse and of the same technical type as Westinghouse information submitted to the Commission on July 19, 1976 for Commonwealth Edison Company (Zion Station Units No. 1 & 2, Docket Nos. 50-295, 50-304) and Indiana & Michigan Electric Co. (Donald Cook Unit No. 1, Docket No. 50-315). A request for withholding that submittal was made in an application and accompanying affidavit (AW-76-8) dated August 11, 1976. An affidavit supporting

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this application for withholding, executed by Mr. Robert A. Wiesemann, Licensing Programs Manger for Westinghouse and dated April 7, 1977, is attached. That affidavit incorporates AW-76-8 and demonstrates entitlement to withholding from public disclosure of the document entitled "Results of the June 1976 Augmented Startup Program Tests Conducted at Indian Point Unit 3".

Correspondence with respect to the proprietary aspects of this application for withholding or the accompanying affidavit should reference AW-77-13 and should be addressed to Mr. Robert A. Wiesemann, Manager Licensing Programs, Westinghouse Electric Corporation, P. O. BOX 355, Pittsburgh, Pennsylvania 15230.

WHEREFORE, Con Edison respectfully requests that the contents of the above-noted Westinghouse document be withheld from public disclosure.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By William J. Cahill, Jr.
William J. Cahill, Jr.
Vice President

Subscribed and sworn to
before me this 15 day
of April 1977.

David Watson
Notary Public

DAVID WATSON
Notary Public State of New York
No. 03-4604876
Qualified in Bronx County
Commission Expires March 30, 1979

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF ALLEGHENY:

Before me, the undersigned authority, personally appeared Robert A. Wiesemann, 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 Corporation ("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:

The proprietary material of Westinghouse being transmitted by Consolidated Edison Company of New York, Inc.--Results of the June 1976 Augmented Startup Program Tests Conducted at Indian Point Unit 3--is of the same technical type as that proprietary material previously submitted by Westinghouse Letter No. NS-CE-1139, Eicheldinger to Stolz, dated July 19, 1976.

Justification for withholding such information from public disclosure has been provided by Westinghouse in a previously submitted affidavit and application for withholding, AW-76-8, dated August 11, 1976, a copy of which is attached. The averments in that affidavit apply equally to the above-referenced Indian Point Unit 3 report, and are incorporated herein by reference.

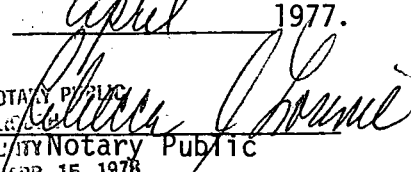
Further the deponent sayeth not.



Robert A. Wiesemann, Manager
Licensing Programs

Sworn to and subscribed
before me this 7th day
of April 1977.

REBECCA A. LORINCE, NOTARY PUBLIC
MONROEVILLE, PA.
ALLEGHENY COUNTY Notary Public
MY COMMISSION EXPIRES APR. 15, 1978



AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF ALLEGHENY:

Before me, the undersigned authority, personally appeared Robert A. Wiesemann, 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 Corporation ("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:

Robert A. Wiesemann
Robert A. Wiesemann, Manager
Licensing Programs

Sworn to and subscribed
before me this 11th day
of August 1976.

Robert J. [Signature]
Notary Public

REC'D
ALLEGHENY COUNTY
MY COMMISSION EXPIRES APR. 15, 1978

- (1) I am Manager, Licensing Programs, in the Pressurized Water Reactor Systems Division, of Westinghouse Electric Corporation 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 or rule-making proceedings, and am authorized to apply for its withholding on behalf of the Westinghouse Water Reactor Divisions.
- (2) I am making this Affidavit in conformance with the provisions of 10 CFR Section 2.790 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 Nuclear Energy Systems 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 2.790 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.
- (g) It is not the property of Westinghouse, but must be treated as proprietary by Westinghouse according to agreements with the owner.

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 which 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 in 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 2.790, it is to be received in confidence by the Commission.
- (iv) The information is not available in public sources 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 the attachment to Westinghouse letter number NS-CE-1139, Eicheldinger to Stolz, dated July 19, 1976, concerning supplemental information for use in the Augmented Startup and Cycle 1 Physics Program. The letter and attachment are being submitted as part of the above mentioned program in response to concerns of the Advisory Committee on Reactor Safeguards with the new Westinghouse PWR's, which are rated at higher power densities than currently operating Westinghouse reactors.

This information enables Westinghouse to:

- (a) Justify the Westinghouse design correlations.
- (b) Assist its customers to obtain licenses.
- (c) Provide greater flexibility to customers assuring them of safe reliable operation.
- (d) Optimize performance while maintaining a high level of fuel integrity.

- (e) Justify operation at a reduced peaking factor with a wider target band than normal.
- (f) Justify full power operation and meet warranties.

Further, the information gained from the Augmented Startup and Cycle 1 Physics Program is of commercial value and is sold for considerable sums of money as follows:

- (a) Westinghouse uses the information to perform and justify analyses which are sold to customers.
- (b) Westinghouse uses the information to sell to its customers for the purpose of meeting NRC requirements for full power licensing.
- (c) Westinghouse could sell testing services based on the experience gained and the analytical methods developed using this information.

Public disclosure of this information concerning the Augmented Startup program is likely to cause substantial harm to the competitive position of Westinghouse by allowing its competitors to develop similar analysis methods and models at a much reduced cost.

The analyses performed, their methods and evaluation represent a considerable amount of highly qualified development effort, which has been underway for many years. If a competitor were able to use the results of the analyses in the attached document, to normalize or verify their own methods or models, the development effort and monetary expenditure required to achieve an equivalent capability would be significantly reduced. In total, a substantial amount of money and effort has been expended by Westinghouse which could only be duplicated by a competitor if he were to invest similar sums of money and provided he had the appropriate talent available.

Further the deponent sayeth not.

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PROPRIETARY INFORMATION

NOTICE

THE ATTACHED DOCUMENT CONTAINS "PROPRIETARY INFORMATION" AND SHOULD BE HANDLED AS NRC "OFFICIAL USE ONLY" INFORMATION. IT SHOULD NOT BE DISCUSSED OR MADE AVAILABLE TO ANY PERSON NOT REQUIRING SUCH INFORMATION IN THE CONDUCT OF OFFICIAL BUSINESS AND SHOULD BE STORED IN A MANNER WHICH WILL ASSURE THAT ITS CONTENTS ARE NOT MADE AVAILABLE TO UNAUTHORIZED PERSONS. — DO NOT TRANSFER OR DESTROY THIS DOCUMENT WITHOUT ADVISING THE RECORDS FACILITIES BRANCH, DDC.

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PROPRIETARY INFORMATION