



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

May 18, 2011

Mr. M. J. Ajluni  
Nuclear Licensing Director  
Southern Nuclear Operating Company, Inc.  
40 Inverness Center Parkway  
P. O. Box 1295  
Bin - 038  
Birmingham, AL 35201-1295

SUBJECT: VOGTLE ELECTRIC GENERATING PLANT UNITS 1 AND 2 (VOGTLE 1 AND 2) - REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE (TAC NOS. ME5778 AND ME5779)

Dear Mr. Ajluni:

By letter dated March 3, 2011 (NL-11-0280), Southern Nuclear Operating Company, Inc. (SNC, the licensee) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML110660458), submitted an affidavit dated February 1, 2011, executed by J. A. Gresham, Manager, Regulatory Compliance and Plant Licensing, Westinghouse Electric Company, LLC (Westinghouse), requesting that the information contained in the following document be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 2, Section 2.390:

Setpoint Methodology Used for the Steam Generator Water Level-High High Function

A nonproprietary copy of this document has been placed in the Nuclear Regulatory Commission's (NRC's) Public Document Room and added to the ADAMS Public Electronic Reading Room.

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

- (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 "Setpoint Methodology Used for the Steam Generator Water Level-High High Function," (Proprietary), for submittal to the Commission, being transmitted by Southern Nuclear Operating Company letter and Application for Withholding Proprietary Information from Public Disclosure, to the Document Control Desk. The proprietary information as submitted for use by Westinghouse for the Vogtle Electric Generating Plant, Units 1 and 2.

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

- (a) Provide information in support of submittals for setpoint changes.
- (b) Provide customer specific calculations.
- (c) Provide licensing support for customer submittals.

Further this information has substantial commercial value as follows:

- (a) Westinghouse plans to sell the use of similar information to its customers for the purpose of meeting NRC requirements for licensing documentation associated with setpoint changes.
- (b) Westinghouse can sell support and defense of the technology to its customer in the licensing process.
- (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 information 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.

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

Therefore, Enclosure 6 to the license amendment request dated March 3, 2011, 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 Nuclear Regulatory Commission (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.

M. Ajluni

- 5 -

If you have any questions regarding this matter, I may be reached at 301-415-3936.

Sincerely,

A handwritten signature in black ink that reads "Patrick G. Boyle". The signature is written in a cursive style with a large initial "P".

Patrick G. Boyle, Project Manager  
Plant Licensing Branch II-1  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

Docket Nos. 50-424 and 50-425

cc: Mr. J. A. Gresham, Manager  
Regulatory Compliance and Plant Licensing  
Westinghouse Electric Company, LLC  
1000 Westinghouse Drive, Suite 428  
Cranberry Township, PA 16066

Additional Distribution via Listserv

M. Ajluni

- 5 -

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*/RA/*

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Plant Licensing Branch II-1  
Division of Operating Reactor Licensing  
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**ADAMS Accession No. ML11103A068**

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DATE	5/4/11	5/4/11	5/6/11	5/17/11	5/18/11

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