



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

June 25, 2012

Mr. John A. Ventosa
Site Vice President
Entergy Nuclear Operations, Inc.
Indian Point Energy Center
450 Broadway, GSB
P.O. Box 249
Buchanan, NY 10511-0249

SUBJECT: INDIAN POINT NUCLEAR GENERATING, UNIT NOS. 2 AND 3 - REQUEST
FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
(TAC NOS. ME1671, ME1672, AND L24299)

Dear Sir or Madam:

By letter dated March 2, 2012 (Agencywide Documents Access and Management System Accession No. ML12074A027, Entergy Nuclear Operations, Inc. submitted an affidavit dated February 8, 2012, executed by J. A. Gresham of Westinghouse Electric Company, requesting that the information contained in the following documents be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 2, Section 2.390:

Enclosure 2 to the letter from Mr. John A. Ventosa, Site Vice President, dated March 2, 2012, "Response to Request for Additional Information Regarding the Inter-Unit Spent Fuel Transfer License Amendment Request (TAC Nos. ME1671, ME1672, and L24299);" A non-proprietary version of the report was also submitted as Enclosure 3.

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

- (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 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 contained in CE- 12-86, "Thermal-Hydraulic Design Results for the Indian Point Unit 3 Wet Fuel Transfer Reactivity Analysis;" (Proprietary), dated February 6, 2012, for submittal to the Commission, being transmitted by Entergy Nuclear Northeast letter and Application for Withholding Proprietary Information from Public Disclosure, to the Document Control Desk. The proprietary information as submitted by Westinghouse is that associated with Request for Additional Information Regarding the Inter-unit Spent Fuel Transfer License Amendment Request (TAC numbers ME1671, ME1672, L24299), and may be used only for that purpose.

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.

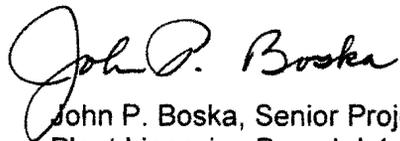
Therefore, Enclosure 2 to the letter from Mr. John A. Ventosa, Site Vice President, dated March 2, 2012, "Indian Point Nuclear Power Plant Units 2 and 3, Response to Request for Additional Information Regarding the Inter-unit Spent Fuel Transfer License Amendment Request (TAC numbers ME1671, ME1672, L24299)," which is 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.

Please contact me at (301) 415-2901 if you have any questions on this issue.

Sincerely,



John P. Boska, Senior Project Manager
Plant Licensing Branch I-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-247 and 50-286

cc: Mr. J. A. Gresham
Westinghouse Electric Company
Nuclear Services
1000 Westinghouse Drive
Cranberry Township, Pennsylvania 16066

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/ra/

John P. Boska, Senior Project Manager
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cc: Mr. J. A. Gresham
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Nuclear Services
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Cranberry Township, Pennsylvania 16066

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