

September 8, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:

)
ENTERGY NUCLEAR OPERATIONS,) Docket Nos. 50-247-LR and
INC.) 50-286-LR
)
(Indian Point Nuclear Generating)
Units 2 and 3)

WESTINGHOUSE ELECTRIC COMPANY MOTION FOR LEAVE
TO FILE *AMICUS CURIAE* BRIEF

Pursuant to 10 C.F.R. §§ 2.323(a) and 2.315(d), Westinghouse Electric Company LLC (“Westinghouse”) hereby moves the Commission for leave to file the attached brief as *amicus curiae* in this proceeding. The attached brief addresses the petition for interlocutory review filed by the State of New York (“State”) on August 14, 2015. The State’s petition seeks review and reversal of the Atomic Safety and Licensing Board Order of July 20, 2015, denying the State’s motion to withdraw Westinghouse’s proprietary designation on five documents.

The documents were disclosed to the State by Entergy Nuclear Operations, Inc. (“Entergy”), and were provided to the State under a protective order. The Licensing Board denied the State’s motion. The Licensing Board determined that there would be no public interest in the release of one document (a PWR Owners Group internal memorandum) and that the documents are entitled to be protected as confidential commercial information under 10 C.F.R. § 2.390(a)(4). Westinghouse supports the Licensing Board’s decision on this issue and opposes the State’s petition for interlocutory review.

In the proceeding below Westinghouse sought leave from the Licensing Board to appear specially to protect its proprietary information.¹ The Licensing Board allowed Westinghouse to participate in an oral argument on May 14, 2015, to address the proprietary designations made by Westinghouse for the five documents at issue. Further, the Board allowed Entergy and Westinghouse to file a joint brief on the issue of Westinghouse's proprietary designations for the documents and the legal standards for public release of such documents.² Westinghouse did not seek, and was not granted, party status in this proceeding.²

Under NRC regulations and practice, non-parties have been allowed to file *amicus* briefs on issues affecting their interests and the Commission has considered those briefs.³ Westinghouse recognizes that it is not a party to this proceeding and therefore does not have, as a matter of right under 10 C.F.R. § 2.341(b)(3) (allowing parties to a proceeding to answer a petition for review), an opportunity to respond to the State's petition for interlocutory review. Accordingly, the present circumstances are appropriate for Westinghouse to be granted leave to file a brief as *amicus curiae*.

¹ “Motion of Westinghouse Electric Company LLC to Appear Specially in Connection with State of New York Motion to Strike Proprietary Designations of Westinghouse and PWROG Proprietary Documents,” dated May 5, 2015.

² “Joint Brief of Entergy and Westinghouse Regarding Proprietary Documents,” June 4, 2015 (“Joint Brief”).

³ *Calvert Cliffs 3 Nuclear Project, LLC & UniStar Nuclear Operating Services, LLC* (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-13-04, 77 NRC 101, 103 n. 9 (2013) (denying a petition for review, noting that as a matter of discretion the Commission reviewed the *amicus* filings); *Entergy Nuclear Vt. Yankee LLC and Entergy Nuclear Operations, Inc.* (Vt. Yankee Nuclear Power Station), CLI-10-17, 72 NRC 1, 6 n.16 (2010); *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 and 2), ALAB-862, 25 NRC 144, 150-51 (1987); *Gen. Pub. Utils. Nuclear Corp.* (Oyster Creek Nuclear Generating Station), LBP-96-23, 44 NRC 143, 161 (1966).

As explained in the Joint Brief filed with the Licensing Board, and in the declarations attached to that brief (executed by Westinghouse personnel), all five of the documents at issue were prepared by Westinghouse and designated as confidential commercial information by Westinghouse. Public release of the documents would result in competitive injury to Westinghouse. The documents are available to the State for use in the proceeding under a protective order, and there is no opposition by Entergy (or Westinghouse) to the disclosure under the protective order or to the protective order itself. Westinghouse is the entity with the direct interest in protecting the confidential commercial information at issue. Westinghouse's *amicus* brief addresses why interlocutory review is not warranted and why the petition for review should not be granted. The *amicus* brief does not inject any new issues into the proceeding beyond those raised by the State (*i.e.*, whether Westinghouse's proprietary designation on the documents should be withdrawn). And the brief provides Westinghouse's unique perspective (that cannot be represented by any party in the proceeding) on the issues raised by the State.

In accordance with 10 C.F.R. § 2.323(b), counsel for Westinghouse certifies that he has contacted counsel for the parties in this proceeding to seek consent to the motion. Counsel for Entergy and for the NRC Staff have authorized Westinghouse to state that they do not object to Westinghouse's motion. Counsel for the State responded that the State would not object to Westinghouse's motion to submit an *amicus* brief — so long as Westinghouse does not object to the State submitting a response to Westinghouse's brief. Westinghouse does not object to a State reply in accordance with 10 C.F.R. § 2.341(b)(3).

For the reasons discussed above, Westinghouse respectfully requests that the Commission grant its request to file a brief as *amicus curiae* in opposition to the State's petition for interlocutory review.

Respectfully submitted,

/s/ signed electronically by David A. Repka

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Dated at Washington, DC
this 8th day of September 2015

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "WESTINGHOUSE ELECTRIC COMPANY MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF" and "*AMICUS CURIAE* BRIEF OF WESTINGHOUSE ELECTRIC COMPANY OPPOSING NEW YORK PETITION FOR INTERLOCUTORY REVIEW" in the captioned proceeding have been served via the Electronic Information Exchange ("EIE") this 8th day of September 2015, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

/s/ signed electronically by
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