

October 29, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

WESTINGHOUSE ELECTRIC COMPANY’S MOTION FOR LEAVE
TO APPEAR SPECIALLY REGARDING ADDITIONAL PROPRIETARY DOCUMENTS

Pursuant to 10 C.F.R. §§ 2.323(c) and 2.315(a), Westinghouse Electric Company LLC (“Westinghouse”) hereby moves for leave to again appear specially in this proceeding to protect Westinghouse proprietary information as identified by the State of New York (“State”) in the motion dated October 19, 2015.¹ The State seeks to withdraw Westinghouse’s proprietary designation for ten documents or portions thereof.

Westinghouse previously sought leave from the Licensing Board to appear specially to protect its proprietary information in this proceeding.² 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 then at issue. Further, the Board allowed Entergy Nuclear Operations, Inc. (“Entergy”) and Westinghouse to file a joint brief on

¹ “State of New York Motion for Public Disclosure of Various Westinghouse Documents,” dated October 19, 2015 (“Motion”).

² “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.

the issue of Westinghouse's proprietary designations for the documents and the legal standards for public release of such documents.³ As before, the documents now at issue were disclosed to the State by Entergy and were provided to the State under a protective order. Westinghouse has asserted that the documents are entitled to be protected as confidential commercial information under 10 C.F.R. § 2.390(a)(4). Because Westinghouse's past participation in this proceeding is limited, and has been challenged by the State, Westinghouse is again seeking approval to participate as previously allowed to protect its proprietary information.

The NRC's Appeal Board in *Kansas Gas & Elec. Co. & Kansas City Power & Light Co.* (Wolf Creek Nuclear Generating Station, Unit No. 1), ALAB-311, 3 NRC 85, 87-88 (1976), found that Westinghouse, a non-party in the proceeding, would suffer an adverse impact if a contract was disclosed. The Appeal Board observed that "we see no reason why, upon its being advised of the endeavors of the intervenors to obtain unrestricted disclosure of the contract through a discovery request made of the applicants, Westinghouse would not have been entitled to enter a special appearance in the proceeding for the limited purpose of asserting its claim that any disclosure should be made subject to a protective order." In that case, Westinghouse had not entered a special appearance, and the Appeal Board suggested that Westinghouse could not later enter the proceeding on appeal. Consistent with that precedent, Westinghouse is seeking to participate in the present case in an appropriate manner to protect its interests and preserve its rights.⁴

³ "Joint Brief of Entergy and Westinghouse Regarding Proprietary Documents," June 4, 2015 ("Joint Brief").

⁴ As addressed in Westinghouse's prior motion to make a special appearance, the Federal Rules of Civil Procedure provide an insight into the standards that should be applied to permit a special appearance by anyone who claims an interest relating to property that is the subject of a proceeding. Under Rule 24(a) a court must permit anyone to intervene who claims an interest related to property that is the subject of an action, where

Westinghouse understands that Entergy will file a response to the State's Motion. Westinghouse supports Entergy's response on this matter. Nonetheless, Westinghouse clearly has a much greater interest than Entergy in the proprietary designation and protection for Westinghouse's confidential commercial information. As explained in a declaration attached to Entergy's response (executed by Mark Gray, a Westinghouse employee), all of the documents now at issue were prepared by Westinghouse and designated as confidential commercial information by Westinghouse. Westinghouse, as the owner of the commercial information at issue, has a unique perspective that cannot be represented by any party in the proceeding on the issues raised by the State. Accordingly, Westinghouse requests the opportunity to appear and participate in any further proceedings on the Motion.

The State's Motion raises the same basic issues previously considered and rejected by the Licensing Board for similar documents.⁵ Public release of the documents would result in competitive injury to Westinghouse. The documents remain available to the State for use in the proceeding under a protective order. Westinghouse is the entity with the direct interest in protecting the confidential commercial information at issue. Westinghouse's limited participation will 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).

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

“disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless the existing parties adequately represent that interest.” Rule 24(b) also allows permissive intervention.

⁵ “Order (Denying New York Motion to Withdraw Proprietary Registration),” dated July 20, 2015.

not oppose Westinghouse's motion. Counsel for the State responded that the State cannot respond to Westinghouse's motion at this time.

For the reasons discussed above, Westinghouse respectfully requests that the Licensing Board grant this request to appear specially in this proceeding. Westinghouse supports the response to the State Motion submitted by Entergy. However, Westinghouse requests the opportunity to participate in any further proceedings on the Motion.

Respectfully submitted,

/s/ signed electronically by David A. Repka

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Dated at Washington, DC
this 29th day of October 2015

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the “WESTINGHOUSE ELECTRIC COMPANY’S MOTION FOR LEAVE TO APPEAR SPECIALLY REGARDING ADDITIONAL PROPRIETARY DOCUMENTS” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 29th day of October 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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