

Group   A  

FOIA/PA NO:   2016-00023  

**RECORDS BEING RELEASED IN THEIR ENTIRETY**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

GEORGIA POWER COMPANY, OGLETHORPE )  
POWER CORPORATION, MUNICIPAL )  
ELECTRIC AUTHORITY OF GEORGIA, and )  
the CITY OF DALTON, GEORGIA, )

Plaintiffs/Counterclaim-Defendants, )

Case No. CV112-167-JRH-JEG

v. )

STONE & WEBSTER, INC., and )  
WESTINGHOUSE ELECTRIC COMPANY LLC, )

Defendants/Counterclaim-Plaintiffs. )

ATTACHMENT A TO SUBPOENA TO NUCLEAR REGULATORY COMMISSION

INSTRUCTIONS

1. This Subpoena is continuing in nature and any document obtained or located subsequent to production that would have been produced had it been available or its existence known at the time of production is to be supplied seasonably.
2. The documents shall be produced as they are kept in the usual course of business or You shall organize and label them to correspond with the categories and the requests herein.
3. If in responding to the requests You encounter any ambiguity in construing any request, instruction or definition, You shall set forth the matter deemed ambiguous and the construction used in responding.

DEFINITIONS

1. "NRC" means the Nuclear Regulatory Commission of the United States and any agent, employee, former employee, Commissioner, former Commissioner, representative, or Person acting, or who has acted, on behalf of it in relation to the Project.

2. "You" or "Your," as used herein, means and refers to the NRC as defined herein.
3. "Contractor," as used herein, means and refers to Stone & Webster, Inc. and Westinghouse Electric Company LLC, both individually and collectively, or any of their agents, administrators, directors, managers, shareholders, supervisors, commissioners, officers, employees, subsidiaries, affiliates, engineers, consultants or representatives.
4. "Southern," as used herein, means and refers to Southern Nuclear Company, its owners, stakeholders, managers, partners, directors, officers, affiliates, divisions, subsidiaries, predecessors, successors, agents, employees, personnel, representatives, consultants, claim representatives and attorneys, whether now or heretofore employed as such.
5. "Owners," as used herein, means and refers to Georgia Power Company, Southern, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, collectively. The term "Owners" shall also be deemed to refer to each of the Owners individually and collectively, including their respective owners, stakeholders, managers, partners, directors, officers, affiliates, divisions, subsidiaries, predecessors, successors, agents, employees, personnel, representatives, consultants, claim representatives and attorneys, whether now or heretofore employed as such, including legal counsel or anyone who could reasonably be expected to have personal knowledge that would affect the completeness and accuracy of the productions and responses made to this Subpoena.
6. "Projects," as used herein, means and refers to the design and construction of any AP1000 nuclear power plant, including two new nuclear electrical generating units known as Vogtle Units 3 and 4 (the "Units"), located at the Vogtle Electric Generating Plant in Waynesboro, Georgia ("Vogtle Project"), as well as any other nuclear power

plant, whether currently under construction or already constructed.

7. "AP1000 Shield Building," as used herein, means and refers to the shield building structure proposed to be included, referenced, or incorporated by reference in, or actually included, referenced, or incorporated by reference in, the AP1000 Design Control Document ("DCD"), including all wall panels, parts, components, or connections thereof. As used in the request below, "AP1000 Shield Building" refers to any shield building design, or portion thereof, whether or not the design or portion thereof was ever included, referenced, or incorporated by reference in any Revision of the AP1000 DCD or any Westinghouse Technical Report submitted to NRC for review in support of the AP1000 design certification or the amendment to the AP1000 design certification.
8. "AP1000 Structural Modules," as used herein, means and refers to the modular sub-assemblies that are housed within and without each Unit's Containment Vessel (including structural modules CA01, CA02, CA05 and CA20) proposed to be included, referenced, or incorporated by reference in, or actually included, referenced, or incorporated by reference in, the AP1000 DCD, including all wall panels, parts, components, or connections thereof. As used in the request below, "AP1000 Structural Modules" refers to any AP1000 Structural Modules design, or portion thereof, whether or not the design or portion thereof was ever included, referenced, or incorporated by reference in any Revision of the AP1000 DCD submitted to NRC for review in support of the AP1000 design certification or the amendment to the AP1000 design certification.
9. "AIA Rule," as used herein, means and refers to the NRC's rule, including without limitation drafts or proposals of the rule, relating to aircraft impact considerations for new nuclear power plants which would establish criteria to require that nuclear reactor shield

buildings be capable of sustaining an aircraft impact without breaching the shield building, as currently defined in 10 CFR § 50.150.

10. "AISC," as used herein, means and refers to the American Institute of Steel Construction and its owners, managers, partners, directors, officers, members, committees, subcommittees, affiliates, divisions, subsidiaries, predecessors, successors, agents, employees, personnel, representatives, consultants, claim representatives and attorneys, whether now or heretofore employed as such.
11. "LWA," as used herein, means and refers to a Limited Work Authorization authorized by the NRC or submitted by the Owners for the Vogtle Project allowing the applicant to proceed with construction work, including the driving of piles, subsurface preparation, backfill and installation of foundations.
12. "COL," as used herein, means and refers to the Combined Operating License for the Vogtle Project from the NRC issued pursuant to the procedures set forth at 10 CFR Part 52.
13. "Document," "Documents," and "Documentation" are used in their customary broad sense and are intended to be constructed in their broadest sense and to be inclusive of, but not limited to, all tangible items and all written, printed, typed, recorded, transcribed, punched, taped, or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated, or made, including, but not limited to, writings, records, correspondence, communications, letters, diaries, journals, diary entries, logs, log books, telegrams, telexes, memoranda, notes, reports, bulletins, summaries or other records of telephone or personal conversations, minutes or summaries of telephone or personal meetings and conferences, instructions, literature, work

assignments, agreements, contracts, interoffice or intra-office communications, electronic mail, microfilm, notebooks, calendars, appointment books, circulars, pamphlets, projections, studies, estimates, charts, lists, tables, computer runs, tabulations, printouts, notices, books, checks, credit card vouchers, statements of account, receipts, invoices, graphs, photographs, photocopies, drafts, data sheets, data compilations, computer data compilations, statistics, worksheets, speeches or other writings, and tape recordings as well as any other means of depicting a person or object, recording of conversation, fact, sound, or transmission. Electronically stored information is included within the definition of the terms "Document," "Documents," and "Documentation." A draft or non-identical copy is a separate "Document," "Documents," and "Documentation" within the meaning of the terms "Document," "Documents," and "Documentation."

14. "Communication" or "Communications" shall mean and refer to both written and verbal exchanges or correspondence between any person or persons or entities, including, but not limited to, verbal conversations, telephone calls, letters, internal e-mail, external e-mail, memoranda, reports, telegrams, exhibits, drawings, and any other Document, as earlier defined, which conform, constitute or relate to said Communication.
15. "Minutes" shall mean minutes of any meeting or telephone conversation, notes, or internal memoranda reflecting those meetings or telephone conversations.
16. "Person" shall mean and refer to any natural person or any business, legal, or governmental entity or association.
17. The words "concerning," "evidencing," "referring," "related to," or "relating to" mean and include, in whole or in part, concerning, relating to, referring to, describing, evidencing, constituting, with respect to, in connection with, commencing on, responding

to, showing, describing, referencing and analyzing.

18. The term "all" includes the word "any," and the term "any" includes the word "all." The term "each" includes the word "every," and the term "every" includes the word "each."
19. The terms "and" as well as "or" shall be construed either conjunctively or disjunctively as necessary to bring within the scope of these requests any information which might otherwise be construed to be outside their scope.
20. Terms in the plural include the singular, and terms in the singular include the plural. The present tense includes the past and future tenses.
21. All other terms used herein shall be given their plain and ordinary meaning.

**DOCUMENTS REQUESTED FOR PRODUCTION PURSUANT TO THE SUBPOENA**

In accordance with the instructions and definitions above and the terms of the Subpoena, You are requested to produce each and every Document or Communication that relates to, refers to, constitutes, or evidences:

1. All Documents or Communications responsive to the Owners' Subpoena issued to the NRC dated June 3, 2014 ("Owners' Subpoena") including, without limitation, all Documents or Communications produced or to be produced in response to the Owners' Subpoena.
2. All Documents or Communications including, but not limited to emails, authored by, addressed or copied to, or received by NRC staff, employees, commissioners, or consultants including, but not limited to, John Ma, Laura Dudes, Billy Gleaves, Tom Bergman, Don Jaffe, David Mathews, Eileen McKenna, Pravin Patel, C. Proctor, Bret Tegeler, Brian Thomas, Frank Akstulewicz, Frank Johnson, Joe Braverman, Rich Morante, Tom Lubnow, Frank Akstulewicz, Bruce Mallet, Frank Johnson or Luis Reyes, that arise out of or relate to the licensing and/or design certification for the Projects, the

AP1000 Shield Buildings' design, the AIA Rule, the AP1000 Structural Modules' design, the AP600 Structural Modules' design, the COL, any LWA or the Design Certification Amendment ("DCA").

3. All Documents or Communications describing, concerning or reflecting Your issuance of Requests for Additional Information ("RAIs") related to the AP1000 Shield Building design and AP1000 Structural Modules design, including but not limited to RAIs related to Chapters 3 and 19 of the AP1000 DCD and including, without limitation, all communications between and among You or any third-party, regarding the RAIs or any response thereof.
4. All Document or Communications describing or discussing any regulatory requirements applicable to the faceplate material for the AP1000 Structural Modules, specifically documents related to the change from A36 steel to A572 steel and the change in stud spacing referenced in License Amendment No. 3 to the Vogtle Units 3 and 4 combined licenses (issued November 6, 2012). This request includes, but is not limited to, any Document or Communications related to AISC N690, Appendix N6, including drafts thereof, and United Kingdom licensing inquiries, communications or issues.
5. All Documents or Communications relating to actual or potential AP1000 licensing impacts related to the March 2011 incident at the Fukushima Nuclear Power Plant in Japan.
6. All Documents or Communications relating to any NRC non-concurrence for the AP1000 Shield Building.
7. All Documents or Communications concerning or relating in any way to the Owners seeking issuance of, the actual issuance of, or withdrawal of any LWAs, or portions

- thereof, for the Vogtle Project, including all subsequent revisions or amendments thereto.
8. All reports, studies, or analyses including drafts, prepared or received by any consultant, engineer, architect, vendor, expert, third-party or individual retained by, employed by or associated with You relating to the AP1000 Shield Building design, the AP1000 Structural Modules design, or the AP600 Structural Modules.
  9. All Documents or Communications utilized by You for tracking, evaluating, inspecting or for the reporting of the performance or adequacy of the Contractor's design, engineering, or construction for the Project, including without limitation alleged violations associated with the Contractor's work on the Vogtle Project.
  10. All Documents or Communications relating to the Differing Professional Opinions ("DPO") process for the Project or the AP1000 Shield Building design.
  11. All Documents or Communications identifying key personnel at the University of Texas at Austin, redacted from NRC document number ML0924606190.
  12. All Documents or Communications relating to the assessment of modular construction for safety related structures at advanced nuclear power plants as detailed in NUREG/CR-6486, BNL-NUREG-5250, published March 1997, sent to or received by You or the Brookhaven National Laboratory or any other individual from the Brookhaven National Laboratory, including Rich Morante or Joe Braverman prior to April 1997.
  13. All Documents or Communications between and among You or any third-party including, but not limited to, the University of Texas at Austin, Construction Technology Laboratories, Inc., Information Systems Laboratories, Inc., University of Toronto, or Brookhaven National Laboratory relating to the design of the Shield Buildings, proposed changes to the Shield Buildings' design, the AIA Rule, testing and benchmarking,

design-basis events, or beyond design-basis events.

# UNITED STATES DISTRICT COURT

for the  
Southern District of Georgia

Georgia Power Company, et al.

*Plaintiff*

v.

Stone and Webster, Inc. and  
Westinghouse Electric Company LLC

*Defendant*

Civil Action No. 1:12-00167-JRH-JEG

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Margaret M. Doane, General Counsel, United States Nuclear Regulatory Commission,  
11545 Rockville Pike, Rockville, Maryland 20852 - ATTN: Charles E. Mullins

*(Name of person to whom this subpoena is directed)*

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Please see Attachment A, hereto.

Place: Kilpatrick Townsend & Stockton LLP,  
607 14th Street NW, Ste. 900,  
Washington, DC 20005

Date and Time:

07/31/2014 9:00 am

**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 06/30/2014

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)*

Westinghouse Electric Company LLC, et al., who issues or requests this subpoena, are:

Heather L. Heindel, 1100 Peachtree St. NE, Suite 2800, hheindel@kilpatricktownsend. (404) 745-2577

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:12-00167-JRH-JEG

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**

**(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information.

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has, must not use or disclose the information until the claim is resolved, must take reasonable steps to retrieve the information if the party disclosed it before being notified, and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

UNITED STATES DISTRICT COURT

for the Southern District of Georgia

Georgia Power Company, et al. Plaintiff v. Westinghouse Electric Company LLC and Stone & Webster, Inc. Defendant Civil Action No. 1:12-cv-00167-JRH-JEG (If the action is pending in another district, state where: Southern District of Georgia)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES

To: Margaret Doane, General Counsel, United States Nuclear Regulatory Commission 11545 Rockville Pike, Rockville, MD 20852

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A.

Place: Balch & Bingham LLP 601 Pennsylvania Ave NW, Washington, DC 20004 Date and Time: 07/03/2014 05:00

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: June 3, 2014

CLERK OF COURT

OR

David R. Boyd

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and The City of Dalton, Georgia, who issues or requests this subpoena, are:

David R. Boyd, Balch & Bingham LLP, P.O. Box 78, Montgomery, Alabama 36101; Telephone: (334) 834-6500; E-mail: dboyd@balch.com

Civil Action No. 1:12-cv-00167-JRH-JEG

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_

I personally served the subpoena on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the subpoena at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the subpoena to *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because \_\_\_\_\_ ; or

other *(specify)* \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**

**(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessibly Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified, and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

# EXHIBIT A

## DEFINITIONS AND INSTRUCTIONS

1. "Westinghouse" refers to Westinghouse Electric Company LLC, and its subsidiaries and affiliates, including but not limited to any divisions, subsidiary or business group of Westinghouse Electric Company LLC, and any agent, representative or Person acting, or who has acted, on behalf of any of them in relation to the Projects.

2. "Westinghouse's AP1000 Shield Building" refers to the shield building structure proposed to be included, referenced, or incorporated by reference in, or actually included, referenced, or incorporated by reference in, the AP1000 Design Control Document (DCD), including all wall panels, parts, components, or connections thereof. As used in the request below, "Westinghouse's AP1000 Shield Building" refers to any shield building design, or portion thereof, whether or not the design or portion thereof was ever included, referenced, or incorporated by reference in any Revision of the AP1000 DCD or any Westinghouse Technical Report submitted to NRC for review in support of the AP1000 design certification or the amendment to the AP1000 design certification.

3. "NRC" means the Nuclear Regulatory Commission of the United States and any agent, representative, or Person acting, or who has acted, on behalf of it in relation to the Projects.

4. "Projects" means the design and construction of any AP1000 nuclear power plant, including the two new electrical generating units known as Vogtle Units 3 & 4 located in Georgia, as well as any other nuclear power plant, whether currently under construction or already constructed, located either in the United States or abroad.

5. "October 15, 2009 Letter" means the letter from David B. Matthews, Director, Division of New Reactor Licensing, Office of New Reactors to Robert Sisk, Manager, AP1000 Licensing and Customer Interface, Nuclear Power Plants, Westinghouse Electric Company, which was filed in NRC Docket No. 52-006. A public version of the October 15, 2009 Letter without its enclosure is available at ADAMS Accession No. ML092320205.

6. The terms "document" and "electronically stored information" (abbreviated "ESI") are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34, and include all versions, drafts, iterations, revisions, and copies. As used in the below requests, the term "document" includes electronically stored information and communications.

7. The term "communication" includes every manner of transmitting or receiving facts, information, opinions, or thoughts from one person to another person, whether orally, by documents, writing, e-mail, other electronic or telephonic means, by copy, or in any other conceivable manner.

8. "Person" means any natural or artificial person, including business entities, governmental entities and other legal entities.

9. The words "and" or "or" must be construed conjunctively or disjunctively as necessary to make the requests inclusive rather than exclusive.

10. The use of the word "including" is to be construed to mean "without limitation," and any examples provided are not intended to limit a request in any way, but rather should be construed to broaden instead of narrow the requests.

11. Reference to the singular in any of these requests also includes a reference to the plural, and reference to the plural includes a reference to the singular.

12. The terms "related to," "in relation to," or "relating to" are to be construed in the broadest possible sense to mean directly or indirectly supporting, constituting, identifying, depicting, evidencing, describing, mentioning, regarding, referring to, relevant to, comparable to, corresponding to, reflecting, contradicting, disaffirming, disproving, opposing, bearing upon, arising out of, associated with, connected to, pertaining to, comprising or concerning.

13. The documents requested below are to be produced as they are kept in the usual course of business or are to be organized and labeled in a manner that corresponds to the number of the document request.

14. The duty to produce documents is not limited or affected by the fact that the same document is available through another source.

### **REQUESTED DOCUMENTS**

Please produce the following in response to this subpoena:

1. The October 15, 2009 Letter including all enclosures or attachments thereto and any drafts of the October 15, 2009 Letter or any enclosures or attachments thereto.

2. All correspondence, including communications between NRC employees, or between NRC employees and any third party (including, but not limited to, Westinghouse) related to the October 15, 2009 Letter.

3. All documents related to the NRC's conclusions in the October 15, 2009 Letter regarding Westinghouse's AP1000 Shield Building. This request is intended to

encompass documents reflecting the regulatory requirements applicable to Westinghouse's AP1000 Shield Building design, including the regulatory requirements applicable to design basis loads for structural modules; discussing the regulatory requirements applicable to Westinghouse's AP1000 Shield Building design, as cited in the October 15, 2009 Letter; the application of those regulatory requirements; any changes in those requirements or their enforcement or interpretation; whether or not submittals by Westinghouse in support of Westinghouse's AP1000 Shield Building met those requirements; and communications with Westinghouse with respect thereto.

4. All documents describing or discussing the regulatory requirements applicable to the faceplate material for structural modules CA01, CA02, CA05, and CA20, specifically documents related to the change from A36 steel to A572 steel and the change in stud spacing referenced in License Amendment No. 3 to the Vogtle Units 3 and 4 combined licenses (issued November 6, 2012).

5. All documents related to the audit conducted by the NRC in June of 2010 of the AP1000 DCD Chapter 3, specifically all documents related to the module connection design.

6. All documents related to RAI-SRP-3.8.3-SEB1-04, issued in NRC Docket No. 52-006 to Westinghouse, or responses thereto.

7. All documents describing or discussing the regulatory requirements applicable to the lapped splice connection design referenced in RAI-SRP-3.8.3-SEB1-04, issued in NRC Docket No. 52-006 to Westinghouse.

8. All documents created in connection with the NRC's inspection and findings referenced in the November 14, 2012 Integrated Inspection Reports

05200025/2012-004, 05200026/2012-004 and Notice of Violation issued in Docket Nos. 52-025 and 52-026.

9. All documents created in connection with the March 2012 inspection and findings by the NRC at Vogtle Unit 3 related to the installation or design of nuclear island rebar, including in particular internal NRC documents or correspondence from the period March 1, 2012, through July 31, 2012.

10. All documents, including notes, analyses, reports, meeting notes, meeting summaries or other materials, as well as all correspondence, referring or relating to delays or potential delays in the NRC's review of the AP1000 DCD in support of Westinghouse's AP1000 design certification amendment application, including, but not limited to, the impact on the NRC's review schedule for combined license applications referencing the AP1000 design certification.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 30

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JASON D. FREEMAN, as Executor for the Estate of  
ROBERT D. FREEMAN, and JUDITH FREEMAN,  
Individually,

Index No: 100867/04  
Motion Seq. 002

Plaintiffs,

-against-

A.O. SMITH WATER PRODUCTS, et al.,

Defendants.

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SHERRY KLEIN HEFTLER, J.:

**ORDER DIRECTING  
ISSUANCE OF OPEN  
COMMISSION**

WHEREAS, plaintiffs' decedent Robert D. Freeman and his wife plaintiff Judith Freeman commenced this action against numerous defendants alleging that Mr. Freeman sustained personal injuries as a result of his exposure to asbestos;

WHEREAS, defendant Cleaver Brooks, Inc. ("Cleaver Brooks") asserts that Mr. Freeman encountered radiation throughout his career which may be a proximate cause of his injuries;

WHEREAS, Cleaver Brooks now seeks records from non-party the United States Nuclear Regulatory Commission relative to Mr. Freeman's alleged radiation exposure, including, but not limited to, dosimeter readings;

NOW, upon review of the affirmation of Michael S. Cromer, Esq. dated March 4, 2014, and the exhibits annexed thereto, and due deliberation having been had thereon, and this matter having come to be heard before this court on April 3, 2014, and there being no opposition at that time or at any point thereafter, and good cause appearing therefor, it is hereby

ORDERED that pursuant to CPLR 3120 Cleaver Brooks' application for an order directing the issuance of an open commission is granted; and it is further

ORDERED that the Clerk of this Court is directed to issue a commission in this action to the Clerk of the Superior Court of the District of Columbia, or any person authorized to administer oaths pursuant to the laws of Washington D.C., requesting that such court issue a subpoena *duces tecum* to the United States Nuclear Regulatory Commission, Washington D.C. 20555, to produce all records in its possession relating to Robert Freeman's radiation exposure; and it is further

ORDERED that Cleaver Brooks is directed to serve a copy of this order on all interested persons, including the United States Nuclear Regulatory Commission, within ten (10) days of the date hereof; and it is further

ORDERED that upon service of a copy of this order, Cleaver Brooks shall also provide to the United States Nuclear Regulatory Commission its reasonable fee for the production of such materials; and it is further

ORDERED that Cleaver Brooks is directed to submit to the Clerk of this Court a proposed commission and subpoena *duces tecum* consistent with the moving papers and this order, or notice.

This constitutes the order of the court.

ENTER:

DATED:

4-9-14



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SHERRY KLEIN HEITLER  
J.S.C.

Index No.: 100867/04

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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JASON D. FREEMAN, as Executor for the Estate of  
ROBERT D. FREEDMAN, and JUDITH FREEMAN,  
Individually,

Plaintiffs.

-against-

A.O. SMITH WATER PRODUCTS, ET AL,

Defendants.

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**ORDER DIRECTING ISSUANCE OF OPEN COMMISSION**

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**PLEASE TAKE NOTICE**

[ ]  
notice of that the within is a (certified) true copy of an  
\*entry entered in the office of the clerk of the within named Court on \_\_\_\_\_.

[ ]  
notice of that a Proposed Order of which the within is a true copy will be presented  
settlement for settlement before the Honorable \_\_\_\_\_ one of the judges of  
the within named Supreme Court, \_\_\_\_\_ County, \_\_\_\_\_,  
at 9:30 a.m. on the \_\_\_\_ day of \_\_\_\_\_.

Dated: New York, New York  
April 18, 2014

Michael Cromer, Esq.  
**BARRY, McTIERNAN & MOORE**  
Attorneys for Defendant  
**CLEAVER-BROOKS, INC.**  
2 Rector Street - 14<sup>th</sup> Floor  
New York, New York 10006  
(212) 313-3600  
File No.: CLB56306