

**UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

-----x
In re: Docket Nos. 50-247-LR; 50-286-LR

License Renewal Application Submitted by ASLBP No. 07-858-03-LR-BD01

Entergy Nuclear Indian Point 2, LLC, DPR-26, DPR-64
Entergy Nuclear Indian Point 3, LLC, and
Entergy Nuclear Operations, Inc. December 14, 2015
-----x

**STATE OF NEW YORK
MOTION FOR PUBLIC DISCLOSURE
OF SIX REVISED WESTINGHOUSE DOCUMENTS**

Office of the Attorney General
for the State of New York
The Capitol
Albany, New York 12224

TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
BACKGROUND	2
APPLICABLE LEGAL STANDARDS	5
ARGUMENT.....	7
I. Entergy and Westinghouse Bear the Burden of Showing Why the Westinghouse Documents Should Not be Publicly Disclosed.....	7
II. The Board Should Order the Public Disclosure of CUF Results and Associated Summaries in the Six Revised Westinghouse Documents.....	8
III. Alternatively, the Board Should Order the Disclosure of the Six Revised Westinghouse Documents in Their Entirety	12
CONCLUSION.....	13

PRELIMINARY STATEMENT

The State of New York submits this motion pursuant to Paragraph D of the Atomic Safety and Licensing Board's September 4, 2009 Protective Order,¹ to compel the public disclosure of six revised calculation note documents created by Westinghouse in support of the license renewal application of Entergy to extend the operating life of the Indian Point nuclear facilities. The documents are revisions of Westinghouse calculation notes previously disclosed by Entergy in this proceeding, and which the State has sought to make available to the public. Although the Board has considered the appropriateness of Entergy's designation of earlier versions of these documents, and the NRC Commission did not take up the State's interlocutory appeal on this issue, the State brings this motion both to continue to urge the Board to order the use of redaction as a reasonable means for resolving this dispute, and to preserve its argument that these six documents should be made available to the public.

In connection with the instant motion, the State attaches versions of the six Westinghouse documents with proposed redactions, which the State has also provided to the parties. Although Entergy and Westinghouse have not reconsidered their position after reviewing the State's proposed redactions, the State hopes that the proposed redactions will aid the Board in understanding the State's position by identifying the specific portions of these documents that the State believes, at minimum, should be publicly disclosed. The question of whether the Indian Point facilities can and will operate safely for an extended 20-year period is one of significant concern to the public. Though the hearing has been completed, the public record will persist and will continue to serve as evidence on this important question.

¹ See *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), Protective Order (unpublished) ("Protective Order") (Sept. 4, 2009) (ML092470105).

This issue has been briefed in the State’s previous filings on this issue.² To streamline the State’s arguments here, and to relieve the Board from a lengthy and repetitive motion, the State refers the Board to its previous arguments and incorporates those documents by reference.

BACKGROUND

The six Westinghouse documents are the latest revisions to a line of calculation notes generated by Westinghouse in support of Entergy’s license renewal application for Unit 2 and Unit 3 of the Indian Point nuclear facilities. These revised calculation notes describe the iterative process by which Westinghouse, at Entergy’s behest, performed evaluations of the environmentally-adjusted cumulative usage factor (“ CUF_{en} ”) of various structures, systems, and components at Indian Point in support of Entergy’s Fatigue Monitoring Program. The six revised calculation notes address the same components and associated CUF screening values for the components which are already publicly disclosed in Entergy’s license renewal application,³ i.e., the NUREG/CR-6260 locations (Commitment 33),⁴ other potentially more limiting locations (Commitment 43),⁵ and reactor vessel internals (Commitment 49).⁶ In particular, Entergy’s

² See State of New York Motion to Withdraw the Proprietary Designation of Various Pressurized Water Reactor Owners’ Group and Westinghouse Documents (Apr. 9, 2015); State of New York Reply in Support of Motion to Withdraw Proprietary Designations (May 1, 2015); State of New York Petition Pursuant to 10 C.F.R. § 2.341 for Commission Interlocutory Review of the July 20, 2015 Atomic Safety and Licensing Board Order Denying New York Motion to Withdraw Proprietary Designations (Aug. 14, 2015); State of New York Motion for Public Disclosure of Various Westinghouse Documents (Oct. 19, 2015) (“NYS October 19 Motion for Public Disclosure”); and State of New York Supplemental Brief on the State of New York Motion for Public Disclosure of Various Westinghouse Documents (Nov. 12, 2015).

³ Entergy’s 2007 LRA, Tables 4.3-13 and 4.3-14 (ENT00015B). See also State of New York Supplemental Brief on the State of New York Motion for Public Disclosure of Various Westinghouse Documents (Nov. 12, 2015), at 5.

⁴ See Letter from Fred Damico, Entergy, to NRC, NL-08-021, at 15 (Jan. 22, 2008) (NYS000351) (Entergy committed to “update the fatigue usage calculations using refined fatigue analyses to determine valid CUFs less than 1.0 when accounting for the effects of reactor water environment.”).

⁵ See Commitment 43, Letter from Fred Damico to NRC, NL-11-032, at 26 (March 2011) (NYS000151) (Under Commitment 43, Entergy will determine the limiting locations at IP2 and IP3).

⁶ See Entergy Letter NL-13-052, at 20 (May 2013) (NYS000501) (Under Commitment 49, Entergy committed to “[r]ecalculate each of the limiting CUFs in Section 4.3 of the LRA for the reactor vessel internals to include the reactor coolant environment effects (F_{en}).”)

application is conditioned on Entergy demonstrating that the CUF_{en} values for components constituting the reactor coolant system pressure boundary and for RVI components will not exceed a value of 1.0 throughout the period of extended operation. The State's expert witness, Dr. Richard Lahey, has repeatedly expressed his concern in this proceeding that the iterative process described in the Westinghouse documents to ensure that CUF_{en} values for these components are less than 1.0 may have resulted in the removal of necessary conservatism.⁷ In some cases, the CUF_{en} values are exceedingly close to 1.0. Entergy's failure to consider the synergistic effects of various aging mechanisms and possible shock loads, and Entergy's removal of conservatisms as part of its metal fatigue analyses for plant components pose significant concerns for the millions of people who live, travel and recreate in the area around Indian Point.

The State has been consistent in its view that the Westinghouse calculation notes do not contain proprietary information, and should be disclosed to the public. The State initially raised its concerns in early 2015.⁸ In April 2015, the State moved to compel the public disclosure of four Westinghouse calculation notes, and later sought interlocutory review from the NRC Commissioners of the Board's denial of the State's motion.⁹ In October 2015, the State moved for the public disclosure of another set of 10 Westinghouse calculation notes, again arguing that the information contained in these documents is highly relevant, and has already been disclosed

⁷ See, e.g., Revised Pre-filed Written Testimony of Richard T. Lahey, Jr. in support of Contention NYS-26B/RK-TC-1B (June 2, 2015) (NYS000530); Supplemental Reply Statement of Position of the State of New York and Riverkeeper, Inc. in support of Contention NYS-26B/RK-TC-1B (September 9, 2015) (NYS000570).

⁸ See Email thread between J. Sipos and P. Bessette, February 4-10, 2015, Att. 1, to the State of New York's Answer Opposing Motion of Westinghouse Electric Company LLC to Appear Specially in Connection with the State's Motion to Withdraw Proprietary Designations of Westinghouse and PWROG Documents (May 6, 2015).

⁹ See State of New York Motion to Withdraw the Proprietary Designation of Various Pressurized Water Reactor Owners' Group and Westinghouse Documents (Apr. 9, 2015); and State of New York Petition Pursuant to 10 C.F.R. § 2.341 for Commission Interlocutory Review of the July 20, 2015 Atomic Safety and Licensing Board Order Denying New York Motion to Withdraw Proprietary Designations (Aug. 14, 2015).

to the public.¹⁰ In each instance, the State argued that, at minimum, Entergy should disclose partially redacted versions of the calculation notes, both to protect the methods and assumptions that it believes is truly proprietary, and to provide the public with the iterative CUF_{en} values that form the basis of NRC's determination of whether Entergy has demonstrated that it can safely operate Indian Point for an additional 20 years. The Board denied both of the State's motions.¹¹

The State brings the current motion after exhausting the procedures set forth in the Protective Order.¹² This dispute arose when, in early November, and only two weeks before the hearing with the Board, Westinghouse and Entergy disclosed the six revised Westinghouse documents without any prior notice to the parties. On November 12, 2015, the State served its Notice of Objection to counsel for Entergy, requesting that Entergy provide public disclosure of the Westinghouse documents.¹³ In its Notice, the State asserted that "Entergy's request to entirely withhold" the information contained in the documents as proprietary was "overly broad," and that Entergy should produce public, redacted versions of the documents.¹⁴

On November 24, counsel for Entergy advised the State that Entergy and Westinghouse maintained their position that the six revised Westinghouse documents should remain subject to the terms of the Protective Order.¹⁵ On December 10, in an effort to resolve the dispute, the State, without conceding its objections, provided the parties with its proposed redactions with

¹⁰ See NYS October 19 Motion for Public Disclosure.

¹¹ See Order (Denying New York Motion to Withdraw Proprietary Designation) (July 20, 2015); and Atomic Safety and Licensing Board Hearing Transcript, November 16, 2015, at 4772.

¹² See Protective Order, at ¶¶ C, D.

¹³ See Declaration of Lisa S. Kwong (Dec. 14, 2015) ("Kwong Decl."), Att. 1. On November 4, 2015, counsel for Entergy first notified the parties of its intention to seek leave to file the six revised Westinghouse documents as exhibits. Entergy provided the State with copies of the documents on November 6, and after review of the documents, the State informed Entergy on November 10, that it did not oppose Entergy's motion. Two days later, on November 12, the State served on the parties its Notice of Objection. The Board granted Entergy's motion to add these exhibits to the record on November 16.

¹⁴ *Id.* at 1.

¹⁵ See Kwong Decl., Att. 2.

respect to three sets of Westinghouse documents: the six revised documents which are the focus of the current motion, and so as to preserve its claims as to those documents, the 10 documents which were the subject of the State's October 19 motion, and the four Westinghouse documents that the State objected to in its April 9 motion.¹⁶ The State proffered its proposed redactions in accordance with the Board's suggestion, at the hearing, that the State propose redactions for Entergy and Westinghouse's consideration, and if the parties could not agree, to submit its proposals to the Board.¹⁷ In its redactions, the State narrowed its interest primarily to the data outputs reported in the documents, *i.e.*, the CUF values, rather than the underlying methods. As described in the enclosed 10 C.F.R. § 2.323(b) Certification, the State has been unable to resolve the issues raised in this motion despite its sincere efforts to do so. Entergy, Westinghouse, and NRC Staff oppose the motion.¹⁸ Riverkeeper and Clearwater support the motion.

In furtherance of the State's role in this proceeding to ensure meaningful public access to the decision-making concerning the continued operation of the Indian Point nuclear power facilities, the State respectfully requests that the Board compel the public disclosure of the six revised Westinghouse documents identified in this motion.

APPLICABLE LEGAL STANDARDS

The standards that govern the treatment of trade secret or confidential or privileged commercial or financial information have been set forth in the State's prior briefing on this issue. Specifically, requests for nondisclosure of allegedly proprietary information in this proceeding

¹⁶ See Kwong Decl., Att. 3.

¹⁷ See Hearing Transcript, November 16, 2015, pages 4999-5001.

¹⁸ See Email thread between L. Kwong and R. Kuyler, Nov. 12 through Dec. 15, 2015 (Kwong Decl., Att. 11) (Entergy and Westinghouse), and Email thread between L. Kwong and S. Turk, Nov. 12 through Dec. 15, 2015 (Kwong Decl., Att. 12) (NRC Staff).

are governed by the Exemption 4 to the Freedom of Information Act (“FOIA”),¹⁹ NRC regulation,²⁰ and the Board’s September 4, 2009 Protective Order in this proceeding,²¹ and are guided by NRC’s Approach to Open Government.²² In particular, under both FOIA and NRC regulations, public disclosure of information is the presumptive rule.²³ Pursuant to the Protective Order in this proceeding, the Initial Holder of information that is relevant to this proceeding holds the burden of proving that the information is privileged or confidential.²⁴

The use of redaction as a means to protect proprietary information from public release is well established under each of these standards. For example, under the Protective Order, upon the request by NRC Staff counsel or by a Participant to the proceeding, the Initial Holder must “produce a copy of the document with the proprietary information unredacted.”²⁵ Additionally, the Protective Order explicitly provides for the use of redaction as a means of resolving disputes

¹⁹ 5 U.S.C. § 552. *See also Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-05-08, 61 N.R.C. 129 at 163 (Commission determined that 10 C.F.R. § 2.790 (now, § 2.390) embodied the standards of FOIA’s Exemption 4 for trade secrets and confidential commercial/financial information).

²⁰ *See* 10 C.F.R. § 2.390. In making its determination of whether allegedly privileged or confidential information should be withheld from public disclosure, the Board considers the following factors under section 2.390(b)(4):

- (i) Whether the information has been held in confidence by its owner;
- (ii) Whether the information is of a type customarily held in confidence by its owner and, except for voluntarily submitted information, whether there is a rational basis therefor;
- (iii) Whether the information was transmitted to and received by the Commission in confidence;
- (iv) Whether the information is available in public sources;
- (v) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

²¹ *See* Protective Order, at ¶ D.

²² *See* U.S. NRC Strategic Plan, Fiscal Years 2008-2013, at 16 (*available at*: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1614/v4/sr1614v4.pdf>); *see also* U.S. NRC Open Government Plan Addendum, Activities for 2014-2015, at 2 (May 13, 2014) (*available at*: <http://pbadupws.nrc.gov/docs/ML1410/ML14101A097.pdf>).

²³ *See Westinghouse Electric Corp. v. United States Nuclear Regulatory Commn.*, 555 F.2d 82, 87 (3d Cir. 1977) (the “disclosure of information in NRC files shall be the rule, and nondisclosure the exception”); and *Department of Air Force v. Rose*, 425 U.S. 352, 361 (1976) (the FOIA exemptions are “limited exemptions” that “do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of [FOIA].”).

²⁴ *See* Protective Order, at ¶ D.

²⁵ *See id.*, at ¶ A.

between the parties bound by the Protective Order that relate to the public release of information in a proprietary document.²⁶

ARGUMENT

The Board should issue an order to compel the public production of the six revised Westinghouse calculation notes. As maintained by the State throughout this proceeding, Westinghouse and Entergy cannot demonstrate that the information contained in these documents, in particular, the bare CUF_{en} values, cycle limits, and associated summaries and conclusions, is confidential commercial information that should be shielded from the public. The Board should compel the public disclosure of this information.

I. Entergy and Westinghouse Bear the Burden of Showing Why the Westinghouse Documents Should Not be Publicly Disclosed

Entergy and Westinghouse cannot establish that the documents are proprietary in their entirety, and have declined multiple opportunities to offer redacted versions of the documents. Pursuant to the Protective Order in this proceeding, NRC regulations, and NRC policy pronouncements, the Westinghouse documents have a presumption of public availability. Entergy and Westinghouse have the burden to show why any information within the Westinghouse documents should be considered proprietary. To prevail on their burden, Entergy and Westinghouse must demonstrate that the Westinghouse Documents, or portions of these documents, are privileged or confidential.²⁷ In doing so, Westinghouse should explain with specificity and by competent evidence how public disclosure of information specific to Indian Point will cause Westinghouse substantial harm.²⁸ In the absence of such a showing, the Board

²⁶ See *id.*, at ¶ C.

²⁷ See *id.*, at ¶ D; see also 10 C.F.R. § 2.390(b)(3)(v).

²⁸ Entergy and Westinghouse did not present such information during the consultation process. Should Westinghouse and Entergy hereafter seek to make such a showing, the State reserves the right to depose Westinghouse's employees, and file a reply.

should grant the State’s motion and compel the public production of the six revised Westinghouse documents, or in the alternative, of some portion of them.

II. The Board Should Order the Public Disclosure of CUF Results and Associated Summaries in the Six Revised Westinghouse Documents

The results of Westinghouse’s fatigue evaluations for IP-2 and IP-3 are not trade secrets or confidential commercial information, in some instances have already been public disclosed, and are necessary for the public to understand NRC’s decision-making with regard to Entergy’s LRA. At minimum, the Board should order the public disclosure of the CUF_{en} results and transient cycle limits, and associated background, summary, and conclusion statements, which are contained in the following Westinghouse documents:

Declaration Attachment Number	Exhibit Number	Title	State’s Objection to Previous Version of Document	Description of the State’s Proposed Redactions
4	ENTR00681	Westinghouse, WCAP-17199-P, Rev. 2; Environmental Fatigue Evaluation for Indian Point Unit 2 (2015)	Sept. 17, 2015 (NYS Second Notice of Objection)	Entire contents redacted after section 1.0 except Tables 5-8, -10, -12, and -14. For these tables, “description” info redacted.
5	ENTR00682	Westinghouse, WCAP-17200-P, Rev. 2; Environmental Fatigue Evaluation for Indian Point Unit 3 (2015)	Sept. 17, 2015 (NYS Second Notice of Objection)	Entire contents redacted after section 1.0 except Tables 5-8, -10, -12, and -14. For these tables, “description” info redacted.
6	ENTR00683	Westinghouse, Calculation Note CN-PAFM-13-32, Rev. 4; Indian Point Unit 2 (IP2) and Unit 3 (IP3) Refined EAF Analyses and EAF Screening Evaluations (2015)	Sept. 17, 2015 (NYS Second Notice of Objection)	Entire contents redacted after section 2.0.
7	ENTR00689	Westinghouse, WCAP-12191, Rev. 5; Transient and Fatigue Cycle Monitoring Program Transient History Evaluation Report for Indian Point Unit 2 (2015)	Sept. 17, 2015 (NYS Second Notice of Objection)	Entire contents redacted after section 1.0 except sections 2.8 and 3.0.
8	ENTR00690	Westinghouse, WCAP-16898-P, Rev. 2; Indian Point Unit 3 Transient and Fatigue Cycle Monitoring Program Transient History Evaluation (2015)	Sept. 17, 2015 (NYS Second Notice of Objection)	Entire contents redacted after Executive Summary except sections 6.5 and 7.0.
9	ENT000727	Westinghouse, CN-PAFM-09-21, Rev. 4, Indian Point Units 2 and 3 Charging Nozzles Environmental Fatigue Evaluation (2015)	None	Entire contents redacted after section 2.0 except Tables 5-23, -24, -25, and -26. For these tables, “location” information redacted.

As set forth in the State’s previous briefing on this issue, Westinghouse can, and should, employ redaction to limit public disclosure of genuinely proprietary information for several reasons. Indeed, redactions have been applied to Westinghouse documents in the past.²⁹ First, as described in the State’s prior briefing, the CUF_{en} results and associated statements in the six revised Westinghouse documents do not constitute trade secrets or confidential commercial information.³⁰ In particular, the redactions to these documents that the State proposes would merely disclose bare CUF_{en} values and associated summary information that alone, could not possibly enable any competitor of Westinghouse to discern the methods and assumptions underlying the WESTEMS analysis.³¹ This information reveals next to nothing about Westinghouse’s analytical or manufacturing processes. The State’s position is consistent with the opinion of Dr. Joram Hopenfeld, Riverkeeper’s expert witness in this proceeding, who has extensive experience with metal fatigue and fatigue calculations, and who asserts that the public disclosure of bare CUF results could not cause a loss of competitive advantage to Entergy or Westinghouse in the market place, particularly because any proprietary methodologies could not possibly be “reverse engineered” simply by virtue of knowing the end result values.³²

²⁹ See NYS October 19 Motion for Public Disclosure, at 13-14. See also “Topical Report on ASME Section III Piping and Component Fatigue Analysis Utilizing the WESTEMS Computer Code,” WCAP-17577-NP, Rev. 2, June 2013 (ML13170A026) (redactions applied by Westinghouse to create a non-proprietary version of its Topical Report for the WESTEMS computer code); and public redacted versions, filed by Entergy on September 18, 2015, of Entergy’s Statement of Position Regarding Contention NYS-25 (Embrittlement), Entergy’s Statement of Position Regarding Contention NYS-26B/RK-TC-1B (Metal Fatigue), Entergy’s Revised Statement of Position Regarding Contention NYS-38/RK-TC-5 (Safety Commitments), Testimony of Entergy Witnesses Nelson F. Azevedo, Robert J. Dolansky, Alan B. Cox, Jack R. Stronsnider, Timothy J. Griesbach, Randy G. Lott, and Mark A. Gray Regarding Contention NYS-25 (Embrittlement), Revised Testimony of Entergy Witnesses Nelson F. Azevedo, Alan B. Cox, Jack R. Stronsnider, Randy G. Lott, Mark A. Gray, and Barry M. Gordon Regarding Contention NYS-26B/RK-TC-1B (Metal Fatigue), and Revised Testimony of Entergy Witnesses Nelson F. Azevedo, Robert J. Dolansky, Alan B. Cox, Jack R. Stronsnider, Timothy J. Griesbach, Barry M. Gordon, Randy G. Lott, and Mark A. Gray Regarding Contention NYS-38/RK-TC-5 (Safety Commitments).

³⁰ See NYS October 19 Motion for Public Disclosure, at 14-15.

³¹ See *id.*, at 15.

³² See Declaration of Dr. Joram Hopenfeld in Support of State of New York Motion to Withdraw Proprietary Designations of Westinghouse Documents (Dec. 11, 2015) (“Hopenfeld Decl.”), at ¶¶ 15-17.

Second, much of the information contained in the six Westinghouse documents identified above has not been held in confidence and is already available to the public. As illustrated previously, and set forth below, Entergy has already disclosed prior iterations of the CUF evaluations in its public filings to the NRC in this proceeding, and has specifically identified the locations and components that are being evaluated in the six revised Westinghouse documents.³³

		Location of evaluated structures and components		
		NUREG/CR-6260 locations (Commitment 33)	Potentially more limiting locations (Commitment 43)	Reactor Vessel Internals (Commitment 49)
Disclosures	Entergy LRA ³⁴ (public)	Table 4.3-13 (IP-2) Table 4.3-14 (IP-3)	Tables 4.3-3, 4.3-7, 4.3-11 (IP-2) Tables 4.3-4, 4.3-8, 4.3-12 (IP-3)	Table 4.3-5 (IP-2) Table 4.3-6 (IP-3)
	The Westinghouse Documents (claimed as CBI)	WCAP-17199-P ³⁵ Tables 5-5, 5-6, 5-8 to 5-14 (IP-2)	CN-PAFM-13-32 ³⁶ Table 2-3 (IP-2)	CN-PAFM-13-32 Table 2-1 (IP-2)
		WCAP-17200-P ³⁷ Tables 5-5, 5-6, 5-8 to 5-14 (IP-3)	CN-PAFM-13-32 Table 2-4 (IP-3)	CN-PAFM-13-32 Table 2-2 (IP-3)

Entergy has also disclosed various other CUF_{en} values in its public filings in this proceeding.³⁸

Similarly, NRC, in its various Staff inspection reports for Indian Point, has publicly disclosed exactly the sort of information that the State is seeking here. For example, a 2013 NRC Staff

³³ See State of New York Supplemental Brief on the State of New York Motion for Public Disclosure of Various Westinghouse Documents (Nov. 12, 2015), at 4-6; see also Hopenfeld Decl., at ¶ 11.

³⁴ See Entergy License Renewal Application for Indian Point Energy Center (ENT00015B).

³⁵ WCAP-17199-P, Rev. 1, “Environmental Fatigue Evaluation for Indian Point Unit 2,” (ENT000681), and including WCAP-17199, Rev. 2 (ENTR00681), disclosed by Entergy on Nov. 11, 2015 (Kwong Decl., Att. 4).

³⁶ WCAP-17200-P, Rev. 1, “Environmental Fatigue Evaluation for Indian Point Unit 3,” (ENT000682), and including WCAP-17200, Rev. 2 (ENTR00682), disclosed by Entergy on Nov. 11, 2015 (Kwong Decl., Att. 5).

³⁷ CN-PAFM-13-32, Rev. 3, “Indian Point Unit 2 (IP2) and Unit 3 (IP3) Refined EAF Analyses and EAF Screening Evaluations,” (ENT000683), and including CN-PAFM-13-32, Rev. 4 (ENTR00683), disclosed by Entergy on Nov. 11, 2015 (Kwong Decl., Att. 6).

³⁸ For example, Entergy reports the CUF_{en} values of thermowells associated with Indian Point pressurizers (maximum CUF of 0.021), for an IP-2 Loop 3 Accumulator Nozzle (0.95), an IP-2 pressurizer surge nozzle (0.264) and an IP-3 pressurizer surge line nozzle (0.9612). See Letter NL-08-057, Entergy to NRC, at 12-13 (March 24, 2008) (NRC000109).

inspection report for IP-2 discloses the CUF_{en} result for a pressurized nozzle (reported to be 0.999 at 60 years).³⁹ A November 2015 NRC Staff inspection report for IP-3 identifies the specific reactor vessel internal components – for both IP-2 and IP-3 – that are disclosed in the six revised Westinghouse documents at issue here in the State’s motion.⁴⁰ Citing an earlier version of a document covered by the State’s motion here – Westinghouse calculation note CN-PAFM-13-32, Rev. 3, “Environmental Fatigue Screening Results” (ENT000683) – the inspection report describes specific F_{en} values applied by Westinghouse, the identity of components at IP-2 and IP-3 whose CUF values exceeded the 1.0 limit after the F_{en} value was applied, and the final CUF_{en} values for those components after the removal of conservatisms by Westinghouse. The report discloses the refined CUF_{en} results at the end of the period of extended operation for the IP-2 upper support plate assembly and flange (0.867), for the IP-3 upper support assembly (0.867), the IP-3 instrument columns (0.173), and the IP-3 lower support columns (0.740).⁴¹

Finally, the public’s right to understand the basis of NRC’s decision-making with regard to the CUF results in the six revised Westinghouse documents outweighs any possible competitive harm to Westinghouse.⁴² The public has an interest in understanding whether Entergy’s LRA sets forth reasonable assurances that the Indian Point facilities will continue to operate safely for a period 20 years after its designed lifespan. The most direct evidence of this, and of NRC’s decision-making on this issue, is the fatigue evaluations for critical components in the reactor pressure vessel and reactor vessel internals, *i.e.*, how close the CUF_{en} values are to 1.0, whether they exceed 1.0, and the adequacy and reliability of the methods used to generate

³⁹ NRC License Renewal Team Inspection Report 05000247/2013010 at 7 (ML13263A020).

⁴⁰ See U.S. NRC Indian Point Nuclear Generating Unit 3 – License Renewal Inspection Report 05000286/2015011 at 6 (ML15323A026) (Kwong Decl., Att. 10).

⁴¹ *Id.*

⁴² See NYS October 19 Motion for Public Disclosure, at 17-18.

those CUF values. The six revised Westinghouse documents bear directly on this question.

III. Alternatively, the Board Should Order the Disclosure of the Six Revised Westinghouse Documents in Their Entirety

As discussed above in Point II, the State objects to Entergy and Westinghouse's proprietary designations over portions of the six revised Westinghouse documents, i.e., CUF_{en} values, allowable transient cycles, and associated summaries. As previously briefed by the State, however, the State also has an additional and more general objection to Entergy and Westinghouse's decision to withhold public disclosure of these documents in their entirety. Westinghouse has itself publicized its methodology for conducting environmental fatigue analysis using WESTEMS in industry publications and presentations.⁴³ It would take little effort for a competitor to identify and simulate the basic elements of Westinghouse's EAF screening and refined analysis strategy and technique. Moreover, these documents also identify issues relevant to NRC's assessment of Entergy's compliance with its current operating licenses. The concerns of Entergy and Westinghouse are an insufficient basis for depriving the public access to these documents, particularly if the information contained in that document is relevant to NRC's evaluation of Entergy's compliance with its current operating licenses for IP-2 and IP-3, and its consideration of Entergy's LRAs for those facilities.

⁴³ See *id.*, at 19-22. See also Kupper, C. and M. Gray, "License Renewal Environmental Fatigue Screening Application," PVP2014-29093, ASME Pressure Vessels and Piping Conference in Anaheim, California (2014) ("ASME Paper") (NYS000513); "WESTEMS™ Integrated Diagnostics and Monitoring Systems," Westinghouse Electric Co. (March 2015) (Kwong Decl., Att. 20, to NYS Second Motion for Public Disclosure); "EAF Screening: Process and Technical Basis for Identifying EAF Limiting Locations," EPRI Report 1024995 (August 2012) (Kwong Decl., Att. 21, to NYS Second Motion for Public Disclosure); and Safety Evaluation Report, "Topical Report on ASME Section III Piping and Component Fatigue Analysis Utilizing the WESTEMS™ Computer Code" (WCAP-17577, Revision 2) (ENT000687).

CONCLUSION

Westinghouse and Entergy have failed to establish that the documents at issue contain trade secrets or confidential commercial/financial commercial within the scope of the Protective Order or section 10 C.F.R § 2.390. The Board should therefore issue an order compelling the production of public versions of the documents either in redacted form or in their entirety. In the event that the Board affords Entergy or Westinghouse an opportunity to submit affidavits in support of Westinghouse's proprietary claim, the State respectfully reserves its right to file an appropriate motion or a reply.

Executed on December 14, 2015

Signed (electronically) by

Lisa S. Kwong
Mihir A. Desai
Assistant Attorneys General
Office of the Attorney General
for the State of New York
The Capitol
Albany, New York 12224
(518) 776-2400
Lisa.Kwong@ag.ny.gov
Mihir.Desai@ag.ny.gov

10 C.F.R. § 2.323 Certification

Pursuant to 10 C.F.R. § 2.323(b) and the Board's July 1, 2010 Scheduling Order at 8-9, I certify that I have made a sincere effort to contact counsel in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues, and I certify that my efforts have been unsuccessful.

Executed on December 14, 2015

Signed (electronically) by

Lisa S. Kwong
Assistant Attorney General
Office of the Attorney General
for the State of New York
The Capitol
Albany, New York 12224
(518) 776-2422
Lisa.Kwong@ag.ny.gov