DECEMBER 2, 2015

EMAIL THREAD RE: IP -- 2015 11 12 NYS NOTICE OF OBJECTION TO PROPRIETARY DESIGNATION

ATTACHMENT 2

to NYS DECLARATION

From:	Lisa S. Kwong
To:	"Kuyler, Raphael Philip"; sherwin.turk@nrc.gov
Cc:	Bessette, Paul M.; Sutton, Kathryn M.; Harris, Brian (Brian.Harris@nrc.gov); Roth(OGC), David (David.Roth@nrc.gov); Deborah Brancato (DBrancato@riverkeeper.org); John J. Sipos; Mihir Desai; Siobhan C. Blank; Teresa Manzi
Subject:	RE: IP -- 2015 11 12 NYS Notice of Objection to Proprietary Designation
Date:	Wednesday, December 02, 2015 11:46:33 AM

Ray:

Thank you for your response to the State's November 12, 2015, Notice of Objection. The State acknowledges the ASLB's November 16 denial of the State's October 19 motion challenging Entergy/Westinghouse's proprietary designations for certain documents, but that does not end the dispute. We disagree that the issue raised in the November 12 objection -- that is, the over-broad use of proprietary designations -- is moot. Although the hearing has concluded, the hearing record can still be updated with redacted versions of proprietary documents.

First, with respect to the documents identified in the State's October 19 motion, the Board, during the hearing, specifically invited the State to propose redactions for Westinghouse's consideration. We are in the midst of developing a proposed set of redacted documents and expect to be able to forward it to you shortly. Second, with respect to the State's current objection that is directed to six hearing exhibits – five revised and one new – which were filed by Entergy on November 11, the Board's November 16 order does not render the State's objection moot. These six documents supplement, or are in addition to, documents which were the subject of the State's prior challenges. As such, these documents are outside the scope of the Board's July 20 and November 16 rulings on the State's motions to remove proprietary designations.

We are hopeful that the parties can arrive at a pathway forward to enable public disclosure of vital information while affording proper protection for truly proprietary information. If, however, the parties are unable to agree, the State intends to file a motion pursuant to Paragraph D of the 2009 Protective Order so as to preserve its continuing objection to Entergy/Westinghouse's improper withholding of these documents from public access.

Sherwin:

Although we have not heard from you on this, the State assumes that Staff does not agree with the State's position. If that is not the case, please advise as soon as possible as to Staff's position on this issue.

Thank you.

Lisa S. Kwong
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From: Kuyler, Raphael Philip [mailto:rkuyler@morganlewis.com]
Sent: Tuesday, November 24, 2015 10:10 AM
To: Lisa S. Kwong; sherwin.turk@nrc.gov
Cc: Bessette, Paul M.; Sutton, Kathryn M.; Harris, Brian (Brian.Harris@nrc.gov); Roth(OGC), David (David.Roth@nrc.gov); Deborah Brancato (DBrancato@riverkeeper.org); John J. Sipos; Mihir Desai; Siobhan C. Blank; Teresa Manzi
Subject: RE: IP -- 2015 11 12 NYS Notice of Objection to Proprietary Designation

Good morning, Lisa and Deborah.

Entergy believes that New York's November 12 Objection has effectively been rendered moot by the subsequent ASLB decision at last week's hearing denying the second motion on the subject of Westinghouse proprietary documents. Nevertheless, Entergy reiterates that all of the new documents listed in the November 12 objection are Westinghouse fatigue calculations or reports. These documents are maintained in confidence by Westinghouse and contain information which, if released, likely would lead to substantial competitive harm to the company, for all of the reasons explained in Entergy's and Westinghouse's filings before the Board and Commission in response to New York's two prior motions. Therefore, it is Westinghouse's and Entergy's position that these new documents are proprietary and should remain subject to the terms of the Protective Order.

Regards,

Ray P. Kuyler
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From: Lisa S. Kwong [mailto:Lisa.Kwong@ag.ny.gov]
Sent: Thursday, November 12, 2015 1:02 PM
To: Kuyler, Raphael Philip; sherwin.turk@nrc.gov
Cc: Bessette, Paul M.; Sutton, Kathryn M.; Harris, Brian (Brian.Harris@nrc.gov); Roth(OGC), David (David.Roth@nrc.gov); Deborah Brancato (DBrancato@riverkeeper.org); John J. Sipos; Mihir Desai; Siobhan C. Blank; Teresa Manzi
Subject: IP -- 2015 11 12 NYS Notice of Objection to Proprietary Designation

Good afternoon, Ray and Sherwin. Attached please find a copy of the State's November 12, 2015 Notice of Objection to Proprietary and/or Confidential Designations for six Westinghouse documents disclosed by Entergy on November 4, 2015 and produced on November 6, 2015. Please let me or Mihir Desai know when you are available to discuss.

Thank you.

Lisa S. Kwong
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