DECEMBER 14, 2015

EMAIL THREAD BETWEEN L KWONG AND R KUYLER RE: IP -- 2015 11 12 NYS NOTICE OF OBJECTION TO PROPRIETARY DESIGNATION

ATTACHMENT 11

to NYS DECLARATION

From:	Kuyler, Raphael Philip
To:	Lisa S. Kwong; "Turk, Sherwin"
Cc:	Bessette, Paul M.; Sutton, Kathryn M.; Harris, Brian; Roth(OGC), David; "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:	Monday, December 14, 2015 3:23:41 PM

Lisa,

As we discussed, Entergy was finally able to access the documents this morning. Today we were also able to send the documents to Westinghouse for it to begin its review review. We further understand based on your latest e-mail that New York's third motion will only address the six new documents listed in the November 12 Objection. At this point, however, given the eleventh-hour nature of this consultation and for all of the substantive reasons we have previously provided, Entergy objects to New York's third motion on this topic.

Regards,

Ray P. Kuyler
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From: Lisa S. Kwong [mailto:Lisa.Kwong@ag.ny.gov]
Sent: Monday, December 14, 2015 3:12 PM
To: 'Turk, Sherwin'; Kuyler, Raphael Philip
Cc: Bessette, Paul M.; Sutton, Kathryn M.; Harris, Brian; Roth(OGC), David; 'Deborah Brancato (DBrancato@riverkeeper.org)'; John J. Sipos; Mihir Desai; Siobhan C. Blank; Teresa Manzi
Subject: RE: RE: IP -- 2015 11 12 NYS Notice of Objection to Proprietary Designation

Sherwin:

The State's two previous motions addressed earlier versions of the six documents which are listed on the November 12, 2015 Objection. The current motion is necessitated by Entergy's late submission -- and the Board's admission during the hearing -- of these documents as revised hearing exhibits.

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From: Turk, Sherwin [mailto:Sherwin.Turk@nrc.gov]

Sent: Monday, December 14, 2015 2:54 PM
To: Lisa S. Kwong; 'Kuyler, Raphael Philip'
Cc: 'Bessette, Paul M.'; 'Sutton, Kathryn M.'; Harris, Brian; Roth(OGC), David; 'Deborah Brancato (DBrancato@riverkeeper.org)'; John J. Sipos; Mihir Desai; Siobhan C. Blank; Teresa Manzi
Subject: RE: RE: IP -- 2015 11 12 NYS Notice of Objection to Proprietary Designation

Lisa,

I'm not sure I understand what you intend to file. Your E-mail message referred to "six revised Westinghouse documents listed in the State's November 12, 2015 Notice of Objection." Did your previous motions to compel public disclosure address those six documents? Does the State intend to file a motion to compel public disclosure of additional Westinghouse documents, beyond those that were addressed in your two previous motions?

Sherwin E. Turk
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Office of the General Counsel
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From: Lisa S. Kwong [mailto:Lisa.Kwong@ag.ny.gov]
Sent: Monday, December 14, 2015 2:37 PM
To: 'Kuyler, Raphael Philip'; Turk, Sherwin
Cc: 'Bessette, Paul M.'; 'Sutton, Kathryn M.'; Harris, Brian; Roth(OGC), David; 'Deborah Brancato (DBrancato@riverkeeper.org)'; John J. Sipos; Mihir Desai; Siobhan C. Blank; Teresa Manzi
Subject: [External_Sender] RE: IP -- 2015 11 12 NYS Notice of Objection to Proprietary Designation

Ray,

This follows-up on our call earlier today. During this morning's call, you confirmed that you were able to access (with some trouble-shooting assistance from your colleague, Grant Eskelson) the information contained in the CD we sent to you by overnight mail on December 10, 2015. I'm relieved that we were able to overcome that technical difficulty without IT assistance.

I indicated during our conversation that, in light of the State's deadline for filing a motion under the Protective Order, the State was planning to a motion to compel public disclosure of the six revised Westinghouse documents listed in the State's November 12, 2015 Notice of Objection. Based on your comment that Entergy and Westinghouse would not have sufficient time to fully consider the State's proposal in advance of the State's motion, I understood that Entergy would object to the State's proposed motion. Please let me know if my understanding is incorrect.

The State appreciates your concern about the need for additional time to evaluate the State's proposal. We will be filing our motion later today in order to preserve the State's right to challenge Westinghouse's proprietary designations pending Entergy/Westinghouse's review of the proposed redactions, with the understanding and hope that the parties may reach a mutual resolution of this issue without further Board intervention. We would, of course, seek to apprise the Board of the outcome of our efforts to find common ground.

Thank you,

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From: Lisa S. Kwong
Sent: Monday, December 14, 2015 8:25 AM
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

Ray,

I'm told that we have had similar difficulties with CDs containing Entergy's monthly disclosures. Here's a fix that has worked for us: copy the zipped folder to the desktop to unzip/extract the files and then cut and paste the extracted files to the appropriate folder(s) onto the server. Please let me know if that resolves the problem. If not, we can call in IT or set up a cloud-based file exchange program. Sorry for the trouble, but I'm fairly confident we can get this worked out this morning.

As to your question regarding our reservation of rights, that statement was meant to cover the situation where the parties are unable to agree on appropriate redactions for the 20 documents. In that instance, the State reserves its right to submit the proposed redactions to the Board, file a third motion to address the State's November 12, 2015 objection, and/or seek appellate review of any adverse determinations regarding these issues.

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From: Kuyler, Raphael Philip [mailto:rkuyler@morganlewis.com]
Sent: Friday, December 11, 2015 5:39 PM
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

Lisa,

I am sorry we missed your call this afternoon. As I mentioned earlier, we received your CD. We will review the CD and also pass it on to Westinghouse for its review. As I noted, we were unable to open or extract any files, so we will need your assistance on Monday in doing so. As you suggested, I will call you Monday morning.

By our calculations, any motion regarding the November 12 objection would be due this Monday, December 14. We will, of course, not have sufficient time to review the State's new proposed redactions in advance of that deadline. In addition, we do not entirely understand the following statement in your letter: "The State reserves its right to pursue public disclosure of all or parts of each of these 20 documents depending on Entergy, Westinghouse, Staff, and Riverkeeper's position." Given the Board and Commission rulings against the State on 14 of the 20 documents, please clarify the State's intent and the meaning of this statement.

Regards,

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From: Lisa S. Kwong [mailto:Lisa.Kwong@ag.ny.gov]
Sent: Friday, December 11, 2015 8:51 AM
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

Counsel:

Please see the attached correspondence which was sent by overnight mail yesterday.

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From: Lisa S. Kwong
Sent: Wednesday, December 02, 2015 11:47 AM
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

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.

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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,

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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.

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