

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

WESTINGHOUSE ELECTRIC COMPANY’S OPPOSITION TO NEW YORK STATE’S
MOTION FOR DISCLOSURE OF PROPRIETARY DOCUMENTS

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.323(c), Westinghouse Electric Company LLC (“Westinghouse”) herein opposes the State of New York’s most recent motion for disclosure of six Westinghouse proprietary documents.¹ All six documents are revisions of proprietary documents addressed in two prior State motions to withdraw the proprietary designations. The Licensing Board has previously denied those motions. In revisiting the issue yet again, the State offers proposed redactions that it has prepared and a supporting declaration of Dr. Joram Hopfenfeld. Westinghouse opposes release of the redacted reports for the reasons discussed in responses to the State’s prior motions and in the declarations prepared by Westinghouse personnel included in those responses.²

¹ “State of New York Motion for Public Disclosure of Six Revised Westinghouse Documents,” dated December 14, 2015 (“Motion”).

² Twice before in this proceeding Westinghouse has sought leave from the Licensing Board to appear specially to protect its proprietary documents. Twice before the Licensing Board has granted leave to appear. The present State Motion relates to revisions of six of the fifteen documents addressed in the prior State motions. Because

In addition, this response includes a new declaration of Mark Gray (“Gray Declaration IV”), an authorized Westinghouse engineer, responding to the declaration of Dr. Hopenfeld. In short, in its third bite at the apple the State (and Dr. Hopenfeld) provide insufficient basis for the Licensing Board to overturn its prior decisions and release the contested proprietary documents, either in total or in redacted versions — particularly at this juncture of the proceeding. Moreover, Westinghouse opposes any precedent for a procedure by which third parties such as the State would be allowed to redact and release Westinghouse proprietary documents.

II. BACKGROUND

New York State filed its first motion to withdraw the proprietary designation on Westinghouse documents, including four Westinghouse Calculation Notes, in April 2015.³ Entergy Nuclear Operations, Inc. (“Entergy”) initially opposed that motion, with a supporting declaration from Mr. Gray from Westinghouse.⁴ After an oral argument on May 5, 2015, Entergy and Westinghouse filed a joint brief on the issues related to protection of confidential commercial information. The joint brief included another supporting declaration from Mr. Gray

the Motion addresses an ongoing issue for what are, in effect, the same proprietary evaluations, Westinghouse concludes that the Motion is within the scope of Westinghouse’s limited appearance in the proceeding (*i.e.*, Westinghouse’s limited appearance relates to the documents, and is not limited to specific motions or other events).

³ “State of New York Motion to Withdraw the Proprietary Designation of Various Pressurized Water Reactor Owners’ Group and Westinghouse Documents,” dated April 9, 2015.

⁴ “Entergy’s Answer Opposing New York State’s Motion to Strike Proprietary designations,” dated April 20, 2015. Attachment 3 to Entergy’s answer is “Gray Declaration I.”

attesting, in detail, to the proprietary designations for the Westinghouse Calculation Notes.⁵ Mr. Gray explained, section-by-section, the bases for the proprietary designations and for protection of each section of the documents. The Licensing Board subsequently denied the State’s first motion.⁶ The State sought interlocutory Commission review of that decision. The Commission declined to take review.⁷

New York filed its second motion to withdraw the proprietary designations for ten additional Westinghouse documents in October 2015.⁸ The ten documents were either Westinghouse Calculation Notes or technical evaluations or reports designated as a “WCAP.” Entergy again filed a response opposing the second motion, with another supporting declaration from Mr. Gray.⁹ (In parallel to that response, Westinghouse filed its second motion for leave to appear.) Mr. Gray explained that proprietary Calculation Notes and WCAPs disclose methodologies, data, and conclusions that have commercial value. He addressed each of the documents at issue in the second State motion and addressed the proprietary nature of specific sections of the documents identified by the State for targeted release. The Licensing Board

⁵ “Joint Brief of Entergy and Westinghouse Regarding Proprietary Documents,” June 4, 2015 (“Joint Brief”). Attachment 1 to the Joint Brief is “Gray Declaration II.”

⁶ “Order (Denying New York Motion to Withdraw Proprietary Designation),” dated July 20, 2015.

⁷ CLI-15-24, dated November 9, 2015.

⁸ “State of New York Motion for Public Disclosure of Various Westinghouse Documents,” dated October 19, 2015.

⁹ “Entergy’s Answer Opposing State of New York Motion for Public Disclosure of various Westinghouse Documents,” dated October 29, 2015. Attachment 1 to that answer is “Gray Declaration III.”

subsequently denied the State's motion, declining to release either the documents in their entirety or specific information or sections from the documents.¹⁰

III. DISCUSSION

In the Motion the State revisits this issue for the third time. The Motion specifically addresses six documents. All six documents are more recent revisions of documents that were the subject of the second motion.¹¹ A prior revision of one of the documents was also addressed in the State's first motion.¹² This time, rather than simply identifying information or sections for release as in the second motion, the State proffers redacted versions of the documents that it has prepared. The State clearly seeks to establish a precedent potentially applicable to all proprietary documents in issue.¹³ Westinghouse opposes the Motion for the reasons discussed below.

A. The Licensing Board Has Already Decided This Issue

The six documents were addressed in the prior motions, responses, and supporting declarations, and now again in the attached declaration from Mr. Gray. Westinghouse has designated the latest revisions of the documents listed in the Motion as proprietary in their entirety. The documents are of types that are customarily maintained in confidence by the

¹⁰ Hearing Transcript ("Tr.") at 4772.

¹¹ Gray Declaration IV at ¶¶ 3-5.

¹² *Id.* at ¶ 5.

¹³ The State in its Motion asserts that it prepared the redactions "in accordance with the Board's suggestion." Motion at 5. In fuller context, the Licensing Board made the "suggestion" only after the State indicated that it would continue to request that the Board "consider redactions as well" (as if it had not already requested redactions in its prior motions). Tr. at 4999.

company and each of the documents has in fact been maintained in confidence.¹⁴ They were provided by Westinghouse to Entergy, in accordance with commercial terms, as Westinghouse proprietary documents and are not available in public sources.¹⁵ Westinghouse has never submitted the six documents to the NRC¹⁶ and the documents were not required to be submitted to the government in connection with this matter.

The documents at issue were disclosed by Entergy to the State under the NRC's rules of procedure and submitted on the hearing docket as exhibits by the parties. Under the test for Freedom of Information Act ("FOIA") Exemption 4 adopted in *Critical Mass Energy Project v. NRC*, if confidential commercial information is submitted to the government voluntarily, it is protected categorically so long as it is the kind of information "that would customarily not be released to the public by the person from whom it was obtained."¹⁷ The documents meet that test as described in Gray Declaration II, Gray Declaration III, and attached Gray Declaration IV. No further case-by-case consideration or balancing of interests is required or appropriate.¹⁸

Alternatively, under the standard for Exemption 4 adopted by the D.C. Circuit Court of Appeals in *National Parks and Conservation Assoc. v. Morton*, commercial information supplied to the government "pursuant to statute, regulation or some less formal mandate" is "confidential" if disclosure is likely to either:

¹⁴ Gray Declaration IV at ¶ 3.

¹⁵ *Id.* at ¶ 6.

¹⁶ *Id.* at ¶ 3.

¹⁷ *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (*en banc*), *cert. denied*, 507 U.S. 984 (1993).

¹⁸ *See* Joint Brief at 5-6. In creating FOIA exemptions, Congress already weighed the potentially competing interests in both the disclosure and the protection of information.

- Impair the government’s ability to obtain necessary information in the future; or
- Cause substantial harm to the competitive position of the person from whom the information was obtained.¹⁹

The six revised documents meet this test, for the reasons discussed in Gray Declaration II, Gray Declaration III, and attached Gray Declaration IV. Mr. Gray has described the competitive market for engineering evaluations of the types documented in the reports, and the substantial competitive harm that would result even with limited release of redacted versions of the documents.²⁰ Again, no further case-by-case consideration or balancing of interests is required or appropriate.

The State argues that “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.”²¹ But contrary to this claim, Entergy and Westinghouse *have* established that the documents are proprietary *in their entirety*. Westinghouse and Entergy have previously addressed the legal basis for concluding that even disclosure of “pieces of the puzzle” is precluded where disclosure would allow a competitor to more readily see the whole.²²

¹⁹ *Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 766, 770 (D.C. Cir. 1974). *See also New Hampshire Right to Life v. HHS*, 778 F.3d 43, 49 (1st Cir. 2015). Referencing *McDonnell Douglas Corp. v. NASA*, 180 F.3d 303, 305 (D.C. Cir. 1999), the Commission in *Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-05-01, 61 NRC at 160, 163 - 64 (2005), accepted the *National Parks* definition of “confidential,” adding that the definition also encompasses information whose disclosure is likely to impair government interests such as compliance, program efficiency and effectiveness, and the fulfillment of the agency’s statutory mandate.

²⁰ *See* Gray Declaration II at ¶¶ 12-29; Gray Declaration III at ¶¶ 12-19; Gray Declaration IV at ¶¶ 8, 13-18.

²¹ Motion at 7.

²² *See* Joint Brief at 14-16. In this context, as discussed in the Joint Brief, the business judgment and sworn declarations of Westinghouse personnel regarding the proprietary

In these documents, proprietary information is so intertwined with potentially non-proprietary information that the redacted versions would be meaningless to the public.

Furthermore, contrary to the State's argument, the Licensing Board *has already decided this issue* for the prior revisions of the six documents. Referring to the original set of documents, the Licensing Board recognized that "the information in the Calculation Notes, if taken piece-by-piece or together, would enable a competitor to undercut Westinghouse's market position."²³ And the Licensing Board denied the second motion, presumably for the same reasons. The same rationale supports the same conclusion for the current revisions that are addressed in the third Motion. There is no public "right to know" proprietary information and no further consideration of the Motion is necessary.

B. Release of Redacted Versions Is Not Appropriate

The redacted versions of the six documents offered by the State are said to be focused primarily on disclosure of "CUF_{en} results and transient cycle limits, and associated background, summary, and conclusion statements."²⁴ Westinghouse objects to release of the redacted documents and to release of the specific information identified by the State.

First, for the reasons discussed above, no further consideration of redaction is necessary. As discussed above, the Licensing Board has already decided that the documents meet the test under FOIA Exemption 4 and that the documents are appropriately withheld in their entirety. In the first motion the State identified CUF_{en} values and fatigue calculation results as

nature of documents and the commercial consequences of release are entitled to deference.

²³ Board Order (Denying New York Motion to Withdraw Proprietary Designations), dated July 20, 2015, slip op. at 7.

²⁴ Motion at 8.

the focus for the proposed public release of the documents. In the second motion the State listed specific sections of the documents proposed to be released, paralleling the current proposed redactions. Mr. Gray has therefore already addressed the proprietary nature of the documents as well as the specific information and sections previously identified by the State. For example, addressing CN-PAFM-13-32, Mr. Gray explained that tables with EAF results for various equipment and locations, as well as specific CUF_{en} values, constitute confidential commercial information — because the tables disclose equipment locations analyzed, which are drawn from a Westinghouse proprietary database,²⁵ and because calculated values can be used by a competitor for benchmarking its own method.²⁶ Mr. Gray has also previously explained the proprietary nature of tables of contents as well as the “associated background, summary, and conclusion statements” in the documents.²⁷ There is no difference now, simply because the State has taken it upon itself to prepare a redacted document illustrating the information it desires released.

Second, in its response to the State’s second motion, the NRC Staff (the party that brings substantial experience in connection with the disclosure and protection of proprietary information), observed that the State had not explained how “a redaction could be made to these highly technical documents in a way that could provide the public with a meaningful understanding of the documents, nor does it explain why the parties’ redacted pre-filed testimony and statements of position . . . fail to afford sufficient and meaningful information to the

²⁵ Gray Declaration II at ¶ 23; Gray Declaration III at ¶ 24.

²⁶ Gray Declaration II at ¶ 17; Gray Declaration III at ¶¶ 23, 27, 34, 38.

²⁷ *See generally* Gray Declaration II at ¶¶ 23, 29; Gray Declaration III at ¶ 23, 31, 32, and 35.

public.”²⁸ Westinghouse fully concurs with this assessment. Disclosure of the cherry-picked information identified by the State in their proposed redacted documents would not in fact enhance public “transparency.”

The State has had access to the disputed documents to use in the Indian Point proceeding as it considers appropriate. The public record of the proceeding is substantial — and allows the public to understand the issues and the regulatory criteria. The State suggests that — for CUF_{en} values at least — the public “has an interest in understanding whether [the Entergy application] sets forth reasonable assurances that the Indian Point facilities will continue to operate safely,”²⁹ such as by assuring “how close the CUF_{en} values are to 1.0” (the acceptance standard). But, as explained by Mr. Gray, this is a false construct.³⁰ The proximity of the CUF_{en} value to 1.0 provides no further “transparency” to the issues. The important technical point is whether the acceptance criterion is met; not by how close or how far away the value is to the criterion. Margin is provided by conservatism in the acceptance criterion and the analysis methodology. The State’s approach would actually be misleading to the public.

Third, as a matter of law, Westinghouse has met the test for exemption from disclosure. The State has no “right” to release the information, no matter how keen its interest. Beyond establishing that the documents meet the test for confidential commercial information (as discussed above), no further consideration is necessary — even under 10 C.F.R. § 2.390(b)(5). As discussed previously, the test in that NRC regulation is not consistent with the

²⁸ “NRC Staff’s Answer in Opposition to “State of New York Motion for Public Disclosure of Various Westinghouse Documents, dated October 29, 2015, at 6.

²⁹ Motion at 11.

³⁰ Gray Declaration IV at ¶ 19.

federal case law under FOIA.³¹ But even if that regulation applied to the current circumstances, the State has not met the test. As before,³² given the substantial public record that exists, the State has not shown that release of the information it proposes to release is necessary to inform the public of the “bases for or effect of” an NRC licensing decision.

As stated by the D.C. Circuit in *McDonnell Douglas Corp. v. U.S. Dept’ of Air Force*, the core purpose of FOIA is to contribute to the public understanding of the operations or activities of the government. Information that reveals nothing regarding the relevant question of “what the government is up to” is exempt from disclosure.³³ The Licensing Board has not made a decision on any contention associated with the documents. It is, at a very minimum, premature to conclude that information must be released to inform the public regarding the bases for a government decision. The Commission in *Private Fuel Storage*³⁴ specifically recognized the relevance of *McDonnell Douglas*. In *Private Fuel Storage* the Commission considered whether to redact or disclose proprietary information in its *merits decision* on the matter.³⁵ That is *not* the situation here.

Further, the State asserts that the redactions “would merely disclose bare CUF_{en} values and associated summary information that alone, could not possibly enable any competitor

³¹ Joint Brief at 22.

³² *Id.* at 22-23.

³³ *McDonnell Douglas Corp. v. U.S. Dept. of Air Force*, 375 F.3d 1182, 1193 (D.C. Cir. 2004).

³⁴ *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-05-01, 61 NRC 160, 179-80 (2005).

³⁵ *See also Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), LBP-00-6, 51 NRC 101, 135 (2000) (resolution of disputes over the nature of protected information is best left until after a merits resolution relative to the issues of the litigation).

of Westinghouse to discern the methods and assumptions underlying the WESTEMS analysis.”³⁶ For this broad assertion the State cites the “opinion” of Dr. Hopenfeld.³⁷ The State asserts that Dr. Hopenfeld has “extensive experience with metal fatigue and fatigue calculations,” and that he confidently reports that disclosure of “bare CUF results could not cause a loss of competitive advantage to Entergy or Westinghouse in the market place.”³⁸ Dr. Hopenfeld states, for example, in paragraph 11 of his declaration (also in conclusory fashion) that “such information is not properly the subject of a ‘proprietary/confidential’ designation.” And he opines in paragraph 15 that “it is clear that knowledge of such values would not result in a loss of competitive advantage to Entergy or Westinghouse in the market place.” But, with all due respect to Dr. Hopenfeld’s experience in fatigue issues, Westinghouse disagrees. Neither the State nor Dr. Hopenfeld point to any experience he may have in *commercial* issues. And Dr. Hopenfeld’s *curriculum vita* (Exhibit RIV 000004) does not qualify him as an expert in (a) whether Westinghouse customarily designates and maintains documents such as those at issue here as proprietary or (b) the degree of competitive harm that Westinghouse would incur from public disclosure of the documents.³⁹ Nor does Dr. Hopenfeld even give any reason for his confidence that Westinghouse will not be harmed. As a third party with no commercial interest in the issue, his opinion falls into the category of “easy for him to say.” In contrast, Mr. Gray has explained the basis for his conclusions that the Westinghouse information is proprietary.

³⁶ Motion at 9.

³⁷ *Id.*

³⁸ *Id.*

³⁹ The party sponsoring a witness has the burden of demonstrating expertise on the matters involved. *See, e.g., Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398, 1405 (1977).

Dr. Hopenfeld also refers generally, and only, to “end fatigue results” without identifying specifically the information proposed to be released. He does not address transient cycle limits or other sections of the documents that are not redacted in the State’s proposed documents.⁴⁰ He does not address any other inputs or interim or intermediate results. Therefore, there is no basis in his declaration for release of any information of these additional types.

The State also relies on certain disclosures of specific, and limited, information such as CUF_{en} values taken from prior revisions of the documents now at issue.⁴¹ This includes information in the original license renewal application and certain information in a recent NRC Staff inspection report. These disclosures were not by Westinghouse and they were not, as the State suggests, “much of” the information in the six documents. The State also does not explain why the information on the public docket or in the inspection report is not sufficient for its purposes. In any event, none of the information that has been released is specifically from the six document revisions now at issue. Mr. Gray had addressed this as well.⁴²

Finally, Westinghouse is unaware of any precedent which would allow a third party to redact proprietary documents and then offer those redacted documents for public disclosure. Such a process would severely impact the NRC’s regulatory process going forward. Countless technical reports, evaluations, and calculations would become subject to redaction and disclosure at the request of a third party. Such a process would significantly reduce a licensee’s or vendor’s willingness to share documents with the agency. And such a precedent could create new burdens on licensees and vendors, if they are then forced to review third-party proposed

⁴⁰ Gray Declaration IV at ¶ 12.

⁴¹ Motion at 10.

⁴² Gray Declaration IV at ¶¶ 10-11.

redactions document-by-document, line-by-line, and create their own alternative redacted versions of proprietary documents. This procedure is not supported by the regulations, past practice, or agency precedent.

IV. CONCLUSION

For the foregoing reasons, the State's Motion should be denied. The documents at issue should be treated as proprietary in their entirety. The Licensing Board should not adopt a procedure by which intervenors may selectively redact other entities' proprietary documents for public release.

Respectfully submitted,

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Dated at Washington, DC
this 23rd day of December 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the “WESTINGHOUSE ELECTRIC COMPANY’S OPPOSITION TO NEW YORK STATE’S MOTION FOR DISCLOSURE OF PROPRIETARY DOCUMENTS” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 23rd day of December 2015, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

/s/ signed electronically by

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Counsel for Westinghouse Electric Company LLC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

DECLARATION OF MARK A. GRAY

I, Mark A. Gray, declare as follows:

1. I am currently a Principal Engineer for Westinghouse Electric Company LLC (“Westinghouse”). I am familiar with the Westinghouse intellectual property management policy and procedure.

2. I previously made declarations dated April 20, 2015, May 29, 2015, and October 28, 2015, on this topic in this proceeding. In those declarations I described the Westinghouse policy and procedure for protection of commercial information. Westinghouse classifies and designates confidential commercial information that provides Westinghouse with a significant competitive advantage as “Westinghouse Proprietary Class 2.” This includes almost all Westinghouse Calculation Notes and technical evaluations designated as “WCAPs”.

3. New York State has identified six documents in its motion to withdraw proprietary designations, dated December 14, 2015. The six documents are all revisions of documents discussed in my prior declarations. Each of the six documents (the revisions) is designated as Westinghouse Proprietary Class 2 in its entirety and has been maintained in confidence by Westinghouse. The six documents are of a type customarily held in confidence by

Westinghouse. To the best of my knowledge, the documents have never been provided to the NRC by Westinghouse.

4. The six revised documents are:

	Exhibit Number	Document	Prior Declaration
A	ENTR00681	WCAP-17199-P, Rev. 2, “Environmental Fatigue Evaluation for Indian Point Unit 2,” November 2015	Gray Declaration III ¶¶ 26, 28-31
B	ENTR00682	WCAP-17200-P, Rev. 2, “Environmental Fatigue Evaluation for Indian Point Unit 3,” November 2015	Gray Declaration III ¶¶ 26, 28-31
C	ENTR00683	CN-PAFM-13-32, Rev. 4, “Indian Point Unit 2 (IP2) and Unit 3 (IP3) Refined EAF Analyses and EAF Screening Evaluations,” November 25, 2015	Gray Declaration II ¶¶ 10, 20-23. Gray Declaration III ¶¶ 20-25
D	ENTR00689	WCAP-12191, Rev. 5, “Transient and Fatigue Cycle Monitoring Program Transient History Evaluation Report for Indian Point 2,” November 2015	Gray Declaration III ¶¶ 33-35
E	ENTR00690	WCAP-16898-P, Rev. 2, “Indian Point Unit 3 Transient and Fatigue Cycle Monitoring Program Transient History Evaluation,” November 2015	Gray Declaration III ¶¶ 33-35
F	ENT000727	CN-PAFM-09-21, Rev. 4, “Indian Point Units 2 & 3 Charging Nozzles Environmental Fatigue Evaluation,” November 2015	Gray Declaration III ¶¶ 26, 28-30, 32

5. The six documents are revisions to documents previously referenced in paragraph 7 of my declaration of October 28, 2015 — specifically, in the order above, documents

previously identified as NY State Attachment Numbers 2, 3, 4, 6, 7, and 9. One of the six documents (CN-PAFM-13-32) is also a revision of a document addressed in my declaration of May 29, 2015. The table above identifies where in the prior declarations the earlier version of each document was addressed. The six revisions should be withheld from public disclosure for the same reasons as previously stated for the prior versions.

6. The six revised documents at issue were provided by Westinghouse to Entergy to support Indian Point license renewal as Westinghouse proprietary documents, in accordance with commercial terms. The documents are either an Environmentally Assisted Fatigue (“EAF”) screening evaluation; a full EAF evaluation for specified components; or a transient history/cycle evaluation, prepared for potential use as inputs to EAF evaluations.

7. The six revisions at issue and the detailed analytical approaches and application of Westinghouse methodologies as described in the documents are not available in public sources. Other than specific CUF_{en} values submitted previously to the NRC by Entergy to support the Entergy license renewal application for Indian Point (as addressed in Paragraph 25 of my October 28, 2015 declaration), the data and the results contained in Westinghouse’s evaluations for Indian Point license renewal were not submitted on the NRC’s public docket. Westinghouse does not disclose information related to these types of evaluations because release to the public would greatly enhance a competitor’s ability to understand Westinghouse’s approach and to compete in the worldwide market for EAF screening and fatigue evaluations as well as other ASME Code Section III engineering evaluations.

8. The six revisions identified by New York State are properly classified in accordance with Westinghouse policy and procedure as “Westinghouse Proprietary Class 2” and are confidential commercial information. There is a competitive market for fatigue screenings,

component evaluations, transient cycle evaluations, and ASME Code stress evaluations of the types addressed in the documents. And there is a competitive market for nuclear power plant designs and related services. Westinghouse is likely to experience substantial competitive harm if the documents are made publically available, even in the redacted form proposed by New York State.

9. I have reviewed the declaration signed by Dr. Joram Hopensfeld, executed on December 3, 2015, that he submitted in support of the New York State motion. Dr. Hopensfeld (at Paragraph 10) agrees with the State's proposed redactions to "the Westinghouse fatigue calculations/evaluations" and the State's proposal that "the end result fatigue life numbers contained in such documents not be subject to the redactions and to a proprietary/confidential designation." Dr. Hopensfeld asserts that disclosure of "end fatigue results" will not inform Westinghouse's competitors. I disagree.

10. As stated in my third declaration (Gray Declaration III at ¶ 25), only a limited set of CUF_{en} values from EAF evaluations prepared by Westinghouse have been publically submitted to the NRC by Entergy. That decision was not made by Westinghouse. It is my understanding that Entergy has not publicly submitted CUF_{en} values generated by Westinghouse after August 2010.

11. New York State identifies certain CUF_{en} values for specified components in an earlier revision of CN-PAFM-13-32 (Revision 3) that were disclosed in an NRC inspection report in November 2015. This specific information is in a public document that can be cited by New York State. However, this does not change my conclusion that Revision 4 of CN-PAFM-13-32 (and information from the revision) should not be disclosed. The release of the updated

information from the Calculation Note is likely to lead to competitive harm for the same reasons as I have discussed for release of information from earlier versions.

12. Dr. Hopenfeld refers generally to “end fatigue results.” He does not identify specifically which “results” in the documents he is referring to. The documents and the proposed information to be released involve proprietary information other than CUF_{en} values, such as tables of contents, introduction and background sections, transient cycle limits, and at least one summary section. This information is not addressed in the Hopenfeld declaration but is addressed in my prior declarations. The following paragraphs describe more specifically the information that the State would make public.

13. WCAP-17199 and WCAP-17200 (Documents A and B): Section 1 does not provide any final CUF_{en} values. Instead, this section discusses high level methodology for the evaluation. This is proprietary information for the reasons discussed in the prior declaration, as referenced in the table above.

14. CN-PAFM-13-32 (Document C): Section 1 describes at a high level selective methods applied for the evaluations of various components. Section 2 includes screening CUF_{en} values for piping that are not final CUF_{en} values – they are for comparison purposes. The information is proprietary for the reasons discussed in the referenced declarations.

15. WCAP-12191 (Document D): Sections 1 and 2.8 do not provide any CUF_{en} values. Section 1 is an introduction. Section 2.8 provides detailed transient and sub-transient breakdowns that resulted from specific development in the methodology used to evaluate certain components. This information is proprietary for the reasons discussed in the referenced declaration.

16. WCAP-16898 (Document E): The Executive Summary is proprietary because it describes overall methodology. There are no CUF_{en} values. Sections 6.5 and 7 also do not provide any CUF_{en} values, which is the only information addressed by Dr. Hopenfeld. Section 6.5 provides detailed transient and sub-transient breakdowns that resulted from specific development in the methodology used to evaluate certain components. Section 7 is a summary of results and conclusions. These sections involve proprietary information for the reasons stated in the referenced prior declaration.

17. CN-PAFM-09-21 (Document F): Section 2 provides details of models and some methodology, and other ASME stress and qualification information in addition to CUF_{en} values. (The Section 5 tables provide more detailed information than just the final maximum CUF_{en} values, which could provide competitors with information useful for benchmarking a competing methodology.) This information is also discussed in the prior declaration as referenced in the table above.

18. Dr. Hopenfeld claims that “end fatigue results” cannot be “reversed engineered” to uncover proprietary information such as models, assumptions, or data used in the analysis. However, as I have stated in prior declarations (Gray Declaration II at ¶¶ 17; Gray Declaration III at ¶¶ 17, 23, 31, 34, 38) disclosure of locations and results can allow a competitor to check, or benchmark, results from their competing methodology.

19. Dr. Hopenfeld claims (in Paragraph 18 of his declaration) that the “end fatigue results” (again he links this term only to CUF_{en} values) are the “primary source of assurance that analyzed components will operate reliably during the proposed extended operation periods.” This statement has nothing to do with whether the results should be released or not; it does not address the competitive harm to Westinghouse that would result. It is also technically

misleading. Conservatism and margin are built into the calculation methodologies for evaluations of the types addressed in the six documents. Conservatism and margin are also inherent in the acceptance criteria. Dr. Hopenfeld sees relevance in the CUF_{en} values and whether there is margin relative to the acceptance criterion. However, meeting the acceptance criterion (not by how much or how little) is the regulatory standard. Public transparency exists with respect to the conclusion that an evaluation meets the acceptance criterion. Disclosing the numeric results does not add meaningful information or technical "transparency" as Dr. Hopenfeld contends.

I declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the foregoing is true and correct.



Mark A. Gray
Principal Engineer

Westinghouse Electric Company LLC

Executed: 12/22/2015
Date