

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman
Dr. Michael F. Kennedy
Dr. Richard E. Wardwell

In the Matter of

ENTERGY NUCLEAR OPERATIONS, INC.

(Indian Point Nuclear Generating Units 2 and 3)

Docket Nos. 50-247-LR and 50-286-LR

ASLBP No. 07-858-03-LR-BD01

February 3, 2016

ORDER

(Denying New York's Motion for Public Disclosure)

I. INTRODUCTION

On December 14, 2015, the State of New York (New York) filed a motion to compel public disclosure of portions of six Westinghouse Electric Company, LLC (Westinghouse) documents, generated in support of Entergy Nuclear Operations, Inc.'s (Entergy) license renewal application (LRA) for Indian Point Nuclear Generating Units 2 and 3.¹ Of the six documents, five are revised versions of Westinghouse calculation notes,² which New York

¹ State of New York Motion for Public Disclosure of Six Revised Westinghouse Documents (Dec. 14, 2015) [hereinafter Third Motion].

² Westinghouse, WCAP-17199-P, Rev. 2, Environmental Fatigue Evaluation for Indian Point Unit 2 (Nov. 3, 2015) (Ex. ENTR00681); Westinghouse, WCAP-17200-P, Rev. 2, Environmental Fatigue Evaluation for Indian Point Unit 3 (Oct. 31, 2015) (Ex. ENTR00682); Westinghouse, Calculation Note NC-PAFM-13-32, Rev. 4, Indian Point Unit 2 (IP2) and Unit 3 (IP3) Refined EAF Analyses and EAF Screening Evaluations (Oct. 31, 2015) (Ex. ENTR00683); Westinghouse, WCAP-12191, Rev. 5, Transient Fatigue Cycle Monitoring Program Transient History Evaluation Report for Indian Point Unit 2 (Oct. 31, 2015) (Ex. ENTR00689); Westinghouse, WCAP-16898-P, Rev. 2, Indian Point Unit 3 Transient and Fatigue Cycle Monitoring Program Transient History Evaluation (Oct. 31, 2015) (Ex. ENTR00690).

previously sought to make public,³ and one is a new calculation note filed by Entergy on October 31, 2015.⁴ Attached to the motion are the six documents with redactions proposed by the State.⁵ Entergy, Westinghouse, and the NRC Staff oppose the motion.⁶

The current motion is New York's third effort to make calculation notes public.⁷ New York's First Motion was denied by the Board in an order from July 2015,⁸ and the second was denied at the evidentiary hearing on November 16, 2015.⁹

II. DISCUSSION

For the sake of brevity, the Board will not re-summarize the legal and regulatory standards associated with the protection of confidential commercial information from public disclosures. A detailed summary of these standards can be found in the Board's order ruling on New York's First Motion.¹⁰

³ See State of New York Motion for Public Disclosure of Various Westinghouse Documents (Oct. 19, 2015) at 12-13 [hereinafter Second Motion]. This motion was denied by the Board. Tr. at 4772.

⁴ Westinghouse Calculation Note, NC-PAFM-09-21, Rev. 4, Indian Point Charging Nozzles Environmental Fatigue Evaluation (Oct. 31, 2015) (Ex. ENT000727).

⁵ Third Motion, attach. 4-9 (Dec. 14, 2015).

⁶ See Entergy's Answer Opposing State of New York Motion for Public Disclosure of Six Revised Westinghouse Documents (Dec. 23, 2015); Westinghouse Electric Company's Opposition to New York State's Motion for Disclosure of Proprietary Documents (Dec. 23, 2015); NRC Staff's Answer in Opposition to the State of New York's Third Motion to Compel Public Disclosure of Confidential Westinghouse Documents (Dec. 22, 2015).

⁷ See State of New York Motion to Withdraw the Proprietary Designation of Various Pressurized Water Reactor Owners' Group and Westinghouse Documents (Apr. 9, 2015) [hereinafter First Motion]; Second Motion.

⁸ Order (Denying New York Motion to Withdraw Proprietary Designation) (July 20, 2015) (unpublished) at 6-7 [hereinafter Order Denying First Motion].

⁹ Tr. at 4472.

¹⁰ Order Denying First Motion at 3-4.

As in the Second Motion,¹¹ New York makes specific suggestions of portions of the documents that it argues should be made public because they are not confidential commercial information and “are necessary for the public to understand the NRC’s decision-making with regard to Entergy’s LRA.”¹² The information New York seeks to make public falls into two general categories: 1) bare environmentally adjusted cumulative usage factor (CUF_{en}) values, where all attached identifying information about the locations or components is redacted,¹³ and 2) more detailed information contained in background sections, summary and conclusion sections, and tables where identifying information about locations and components is unredacted.¹⁴ For the latter category, the Board finds this information to contain confidential commercial information entitled to protection under 10 C.F.R. § 2.309(a)(4) as explained in our order denying New York’s First Motion.¹⁵

For the bare CUF_{en} values, the financial or competitive harm that would flow from the release of these calculation results is marginal. However, the Board finds that there would be no benefit to this proceeding, or to the public, by the disclosure of these numbers. In McDonnell Douglas Corp. v. U.S Dept. of the Air Force, the Court of Appeals for the D.C. Circuit discussed public disclosure of private information that “reveals the internal workings of the . . . [private entity], not those of the Government.”¹⁶ Since such information “sheds little if any light upon the

¹¹ Second Motion at 12-13.

¹² Third Motion at 8. While many of the suggested redactions were the same in the Second Motion, New York did modify its proposals in the current motion.

¹³ See Third Motion, attach. 4, Tables 5-8, 5-10, 5-12, and 5-14; Third Motion, attach. 5, Tables 5-8, 5-10, 5-12, and 5-14; Third Motion, attach. 9, Tables 5-23—5-26.

¹⁴ See Third Motion, attach. 4, Section 1; Third Motion, attach. 5, Section 1; Third Motion, attach. 6-8; Third Motion, attach. 9, Sections 1.0 and 2.0.

¹⁵ Order Denying First Motion at 6-7.

¹⁶ McDonnell Douglas Corp. v. U.S. Dept. of the Air Force, 375 F.3d 1182, 1193 (2004).

agency's performance of its statutory duties," and does not aid the public in understanding "what their government is up to," disclosure is inappropriate.¹⁷ The bare CUF_{en} values at issue here provide "little if any light" onto the Board's decision-making. The Board's upcoming decision will make clear to the public the reasoning behind its decision and will not rest on the specific values which New York seeks disclosed. Thus, while the effort to establish these numbers as confidential commercial information is weak, we see no public interest in their release.

The Board holds that the documents in question should remain non-public subject to the Protective Order.¹⁸ New York's Motion for Public Disclosure of Six Revised Westinghouse Documents is denied.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 3, 2016

¹⁷ Id. (internal quotations omitted).

¹⁸ See Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3), Protective Order (Sept. 4, 2009) (unpublished).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Denying New York's Motion for Public Disclosure)** have been served upon the following persons by Electronic Information Exchange.

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ORDER (Denying New York's Motion for Public Disclosure)

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[Original signed by Brian Newell ____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
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