



### RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

2017-0470

1

RESPONSE TYPE  INTERIM  FINAL

**REQUESTER:**

Julian Tarver

**DATE:**

04/24/2017

**DESCRIPTION OF REQUESTED RECORDS:**

- (1) Any letters or requests to NRC to not release requested records in FOIA-2011-0251 and FOIA-2011-0252 from a non-NRC employee
- (2) A copy of all response letters in FOIA-2011-0251 and FOIA-2011-0252

#### PART I. -- INFORMATION RELEASED

You have the right to seek assistance from the NRC's FOIA Public Liaison. Contact information for the NRC's FOIA Public Liaison is available at <https://www.nrc.gov/reading-rm/foia/contact-foia.html>

- Agency records subject to the request are already available on the Public NRC Website, in Public ADAMS or on microfiche in the NRC Public Document Room.
- Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

#### PART I.A -- FEES

#### NO FEES

AMOUNT\*

\*See Comments for details

- You will be billed by NRC for the amount listed.
- You will receive a refund for the amount listed.
- Fees waived.

- Minimum fee threshold not met.
- Due to our delayed response, you will not be charged fees.

#### PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
  - We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
  - Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.
- You may appeal this final determination within 90 calendar days of the date of this response by sending a letter or e-mail to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or [FOIA.Resource@nrc.gov](mailto:FOIA.Resource@nrc.gov). Please be sure to include on your letter or email that it is a "FOIA Appeal." You have the right to seek dispute resolution services from the NRC's Public Liaison, or the Office of Government Information Services (OGIS). Contact information for OGIS is available at <https://ogis.archives.gov/about-ogis/contact-information.htm>

#### PART I.C COMMENTS ( Use attached Comments continuation page if required)

Signature - Freedom of Information Act Officer or Designee

**Stephanie A. Blaney**

Digitally signed by Stephanie A. Blaney  
DN: c=US, o=U.S. Government, ou=U.S. Nuclear Regulatory Commission, ou=NRC-PV, cn=Stephanie A. Blaney, 0.9.2342.19200300.100.1.1=20000199  
Date: 2017.04.24 10:19:40 -0400

2011-0251

1

**RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST**

RESPONSE TYPE



FINAL



PARTIAL

REQUESTER

Tom Clements

DATE

JUL 29 2011

**PART I. -- INFORMATION RELEASED**



No additional agency records subject to the request have been located.



Requested records are available through another public distribution program. See Comments section.



APPENDICES

A

Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.



APPENDICES

Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.



Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852-2738.



APPENDICES

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We are continuing to process your request.



See Comments.

**PART I.A -- FEES**

AMOUNT \*

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You will be billed by NRC for the amount listed.



None. Minimum fee threshold not met.



You will receive a refund for the amount listed.



Fees waived.

\* See comments for details

**PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE**



No agency records subject to the request have been located.



Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.



This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

**PART I.C COMMENTS (Use attached Comments continuation page if required)**

The incoming FOIA is located in ADAMS at ML11167A084.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Denma L. Sealing

**RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST**

2011-0251

JUL 29 2011

**PART II.A -- APPLICABLE EXEMPTIONS**

APPENDICES  
B

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- Exemption 2: The withheld information relates solely to the internal personnel rules and practices of NRC.
- Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
  - Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
  - Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
  - 41 U.S.C., Section 253b, subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
  - The information is considered to be confidential business (proprietary) information.
  - The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
  - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
  - Disclosure will harm an identifiable private or governmental interest.
- Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
  - Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
  - Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
  - Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
  - (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrong doing or a violation of NRC requirements from investigators).
  - (C) Disclosure could constitute an unwarranted invasion of personal privacy.
  - (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
  - (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
  - (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- OTHER (Specify)

**PART II.B -- DENYING OFFICIALS**

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Michael R. Johnson	Director, Office of New Reactors	See Appendix B	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

APPENDIX A  
RECORDS ALREADY PUBLICLY AVAILABLE

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE COUNT</u>
1.	5/16/11	ML11144A066	Presentation slides "AP1000 Shield Building Design" Meeting with the NRC staff, May 17, 2011, (Non-Proprietary), Enclosure 4 to DCP_NRC_003169 (redacted version)	87
2.	5/16/11	ML11144A068	Transmittal memorandum and affidavit for withholding of proprietary version of slides	11
3.	6/6/11	ML111460163	Letter from NRC accepting request for withholding of proprietary presentation slides. [Note that due to administrative error, the NRC letter refers in one place to Westinghouse letter number 3155; it should have said letter number 3169 as in the subject line. A correction is being made]	6

Re: FOIA/PA-2011-0251

APPENDIX B  
RECORDS BEING WITHHELD IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE COUNT</u>
1.	5/17/11	ML11144A067	Presentation slides "AP1000 Shield Building Design" Meeting with the NRC Staff, May 17, 2011 (Proprietary) (Non-Publicly Available), Ex. 4	89



**Westinghouse**

ML11144A068

Westinghouse Electric Company  
Nuclear Power Plants  
1000 Westinghouse Drive  
Cranberry Township, Pennsylvania 16066  
USA

Document Control Desk  
U S Nuclear Regulatory Commission  
Two White Flint North  
11555 Rockville Pike  
Rockville, MD 20852-2738

Direct tel: 412-374-2035  
Direct fax: 724-940-8505  
e-mail: [ziesinrf@westinghouse.com](mailto:ziesinrf@westinghouse.com)

Your ref: Docket Number 52-006  
Our ref: DCP\_NRC\_003169

May 16, 2011

Subject: Presentation Slides "AP1000 Shield Building Design," Meeting with NRC Staff, May 17, 2011  
(Proprietary and Non-Proprietary)

Westinghouse is submitting the subject slides to provide information that is proprietary in nature and is not part of the DCD. A non-proprietary version has also been prepared. These slides are submitted in support of the AP1000<sup>®</sup> Design Certification Amendment Application (Docket No. 52-006). The information provided in these slides is generic and is expected to apply to all Combined Operating License (COL) applicants referencing the AP1000 Design Certification and the AP1000 Design Certification Amendment Application.

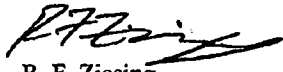
This submittal contains proprietary information of Westinghouse Electric Company LLC. In conformance with the requirements of 10 CFR Section 2.390, as amended, of the Commission's regulations, we are enclosing with this submittal one copy of the Application for Withholding, AW-11-3159 (non-proprietary, Enclosure 1), and one copy of the associated Affidavit (non-proprietary, Enclosure 2) with Proprietary Information and Copyright Notices. The affidavit sets forth the basis on which the information identified as proprietary may be withheld from public disclosure by the Commission.

Pursuant to 10 CFR 50.30(b), the proprietary and non-proprietary versions are submitted as Enclosures 3 and 4. Correspondence with respect to the proprietary aspects of this application for withholding or the accompanying affidavit should reference AW-11-3159 and should be addressed to J. A. Gresham, Manager, Regulatory Compliance, Westinghouse Electric Company LLC, Suite 428, 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.

Questions or requests for additional information related to the content and preparation of this report should be directed to Westinghouse. Please send copies of such questions or requests to the prospective applicants for combined licenses referencing the AP1000 Design Certification. A representative for each applicant is included on the cc: list of this letter.

DD63  
NRO

Very truly yours,

  
R. F. Ziesing  
Director, US Licensing

/Enclosures .

1. AW-11-3159 "Application for Withholding Proprietary Information from Disclosure," dated May 16, 2011
2. AW-11-3159, Affidavit, Proprietary Information Notice, Copyright Notice dated May 16, 2011
3. Presentation Slides "AP1000 Shield Building Design," Meeting with NRC Staff, May 17, 2011 (Proprietary)
4. Presentation Slides "AP1000 Shield Building Design," Meeting with NRC Staff, May 17, 2011 (Non-Proprietary)

cc: E. McKenna - U.S. NRC  
P. Buckberg - U.S. NRC  
B. Gleaves - U.S. NRC  
T. Spink - TVA  
P. Hastings - Duke Energy  
R. Kitchen - Progress Energy  
A. Monroe - SCANA  
P. Jacobs - Florida Power & Light  
C. Pierce - Southern Company  
G. Zinke - NuStart/Entergy  
R. Grumbir - NuStart  
S. Ritterbusch - Westinghouse

DCP\_NRC\_003169  
May 16, 2011

ENCLOSURE 1

AW-11-3159

APPLICATION FOR WITHHOLDING  
PROPRIETARY INFORMATION FROM DISCLOSURE





Westinghouse Electric Company  
Nuclear Power Plants  
1000 Westinghouse Drive  
Cranberry Township, Pennsylvania 16066  
USA

U.S. Nuclear Regulatory Commission  
ATTENTION: Document Control Desk  
Washington, D.C. 20555

Direct tel: 412-374-2035  
Direct fax: 724-940-8505  
e-mail: ziesinrf@westinghouse.com

Your ref: Docket Number 52-006  
Our ref: AW-11-3159

May 16, 2011

**APPLICATION FOR WITHHOLDING PROPRIETARY  
INFORMATION FROM PUBLIC DISCLOSURE**

Subject: Submittal of Presentation Slides "AP1000 Shield Building Design,"  
Meeting with NRC Staff, May 17, 2011 (Proprietary and Non-Proprietary)

The Application for Withholding is submitted by Westinghouse Electric Company LLC (Westinghouse), pursuant to the provisions of Paragraph (b) (1) of Section 2.390 of the Commission's regulations. It contains commercial strategic information proprietary to Westinghouse and customarily held in confidence.

The proprietary material for which withholding is being requested is identified in the proprietary version of the subject report. In conformance with 10 CFR Section 2.390, Affidavit AW-11-3159 accompanies this Application for Withholding, setting forth the basis on which the identified proprietary information may be withheld from public disclosure.

Accordingly, it is respectfully requested that the subject information which is proprietary to Westinghouse be withheld from public disclosure in accordance with 10 CFR Section 2.390 of the Commission's regulations.

Correspondence with respect to the proprietary aspects of this application for withholding or the accompanying affidavit should reference AW-11-3159 and should be addressed to J. A. Gresham, Manager, Regulatory Compliance, Westinghouse Electric Company LLC, Suite 428, 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. F. Ziesing'.

R. F. Ziesing  
Director, U.S. Licensing

AW-11-3159  
May 16, 2011

ENCLOSURE 2

Affidavit

AW-11-3159  
May 16, 2011


AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA:

SS

COUNTY OF BUTLER:

Before me, the undersigned authority, personally appeared R. F. Ziesing, who, being by me duly sworn according to law, deposes and says that he is authorized to execute this Affidavit on behalf of Westinghouse Electric Company LLC (Westinghouse), and that the averments of fact set forth in this Affidavit are true and correct to the best of his knowledge, information, and belief:

  
\_\_\_\_\_  
R. F. Ziesing  
Director, U. S. Licensing

Sworn to and subscribed  
before me this 16<sup>th</sup> day  
of May 2011.

**COMMONWEALTH OF PENNSYLVANIA**  
Notarial Seal  
Linda J. Bugle, Notary Public  
City of Pittsburgh, Allegheny County  
My Commission Expires June 18, 2013  
Member, Pennsylvania Association of Notaries

  
\_\_\_\_\_  
Notary Public

- (1) I am Director, U.S. Licensing, Westinghouse Electric Company LLC (Westinghouse), and as such, I have been specifically delegated the function of reviewing the proprietary information sought to be withheld from public disclosure in connection with nuclear power plant licensing and rule making proceedings, and am authorized to apply for its withholding on behalf of Westinghouse.
- (2) I am making this Affidavit in conformance with the provisions of 10 CFR Section 2.390 of the Commission's regulations and in conjunction with the Westinghouse "Application for Withholding" accompanying this Affidavit.
- (3) I have personal knowledge of the criteria and procedures utilized by Westinghouse in designating information as a trade secret, privileged or as confidential commercial or financial information.
- (4) Pursuant to the provisions of paragraph (b)(4) of Section 2.390 of the Commission's regulations, the following is furnished for consideration by the Commission in determining whether the information sought to be withheld from public disclosure should be withheld.
  - (i) The information sought to be withheld from public disclosure is owned and has been held in confidence by Westinghouse.
  - (ii) The information is of a type customarily held in confidence by Westinghouse and not customarily disclosed to the public. Westinghouse has a rational basis for determining the types of information customarily held in confidence by it and, in that connection, utilizes a system to determine when and whether to hold certain types of information in confidence. The application of that system and the substance of that system constitutes Westinghouse policy and provides the rational basis required.

Under that system, information is held in confidence if it falls in one or more of several types, the release of which might result in the loss of an existing or potential competitive advantage, as follows:

    - (a) The information reveals the distinguishing aspects of a process (or component, structure, tool, method, etc.) where prevention of its use by any of Westinghouse's competitors without license from Westinghouse constitutes a competitive economic advantage over other companies.

- (b) It consists of supporting data, including test data, relative to a process (or component, structure, tool, method, etc.), the application of which data secures a competitive economic advantage, e.g., by optimization or improved marketability.
- (c) Its use by a competitor would reduce his expenditure of resources or improve his competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing a similar product.
- (d) It reveals cost or price information, production capacities, budget levels, or commercial strategies of Westinghouse, its customers or suppliers.
- (e) It reveals aspects of past, present, or future Westinghouse or customer funded development plans and programs of potential commercial value to Westinghouse.
- (f) It contains patentable ideas, for which patent protection may be desirable.

There are sound policy reasons behind the Westinghouse system which include the following:

- (a) The use of such information by Westinghouse gives Westinghouse a competitive advantage over its competitors. It is, therefore, withheld from disclosure to protect the Westinghouse competitive position.
- (b) It is information that is marketable in many ways. The extent to which such information is available to competitors diminishes the Westinghouse ability to sell products and services involving the use of the information.
- (c) Use by our competitor would put Westinghouse at a competitive disadvantage by reducing his expenditure of resources at our expense.
- (d) Each component of proprietary information pertinent to a particular competitive advantage is potentially as valuable as the total competitive advantage. If competitors acquire components of proprietary information, any one component

may be the key to the entire puzzle, thereby depriving Westinghouse of a competitive advantage.

- (e) Unrestricted disclosure would jeopardize the position of prominence of Westinghouse in the world market, and thereby give a market advantage to the competition of those countries.
- (f) The Westinghouse capacity to invest corporate assets in research and development depends upon the success in obtaining and maintaining a competitive advantage.
- (iii) The information is being transmitted to the Commission in confidence and, under the provisions of 10 CFR Section 2.390, it is to be received in confidence by the Commission.
- (iv) The information sought to be protected is not available in public sources or available information has not been previously employed in the same original manner or method to the best of our knowledge and belief.
- (v) The proprietary information sought to be withheld in this submittal is that which is appropriately marked in Presentation Slides "AP1000 Shield Building Design" Meeting with NRC Staff, May 17, 2011 in support of the AP1000 Design Certification Amendment Application, being transmitted by Westinghouse letter (DCP\_NRC\_003169) and Application for Withholding Proprietary Information from Public Disclosure, to the Document Control Desk. The proprietary information as submitted by Westinghouse for the AP1000 Design Certification Amendment application is expected to be applicable in all licensee submittals referencing the AP1000 Design Certification and the AP1000 Design Certification Amendment Application in response to certain NRC requirements for justification of compliance of the safety system to regulations.

This information is part of that which will enable Westinghouse to:

- (a) Manufacture and deliver products to utilities based on proprietary designs.

- (b) Advance the AP1000 Design and reduce the licensing risk for the application of the AP1000 Design Certification
- (c) Determine compliance with regulations and standards
- (d) Establish design requirements and specifications for the system.

Further this information has substantial commercial value as follows:

- (a) Westinghouse plans to sell the use of similar information to its customers for purposes of plant construction and operation.
- (b) Westinghouse can sell support and defense of safety systems based on the technology in the reports.
- (c) The information requested to be withheld reveals the distinguishing aspects of an approach and schedule which was developed by Westinghouse.

Public disclosure of this proprietary information is likely to cause substantial harm to the competitive position of Westinghouse because it would enhance the ability of competitors to provide similar digital technology safety systems and licensing defense services for commercial power reactors without commensurate expenses. Also, public disclosure of the information would enable others to use the information to meet NRC requirements for licensing documentation without purchasing the right to use the information.

The development of the technology described in part by the information is the result of applying the results of many years of experience in an intensive Westinghouse effort and the expenditure of a considerable sum of money.

In order for competitors of Westinghouse to duplicate this information, similar technical programs would have to be performed and a significant manpower effort, having the requisite talent and experience, would have to be expended.

Further the deponent sayeth not.

### **PROPRIETARY INFORMATION NOTICE**

Transmitted herewith are proprietary and/or non-proprietary versions of documents furnished to the NRC in connection with requests for generic and/or plant-specific review and approval.

In order to conform to the requirements of 10 CFR 2.390 of the Commission's regulations concerning the protection of proprietary information so submitted to the NRC, the information which is proprietary in the proprietary versions is contained within brackets, and where the proprietary information has been deleted in the non-proprietary versions, only the brackets remain (the information that was contained within the brackets in the proprietary versions having been deleted). The justification for claiming the information so designated as proprietary is indicated in both versions by means of lower case letters (a) through (f) located as a superscript immediately following the brackets enclosing each item of information being identified as proprietary or in the margin opposite such information. These lower case letters refer to the types of information Westinghouse customarily holds in confidence identified in Sections (4)(ii)(a) through (4)(ii)(f) of the affidavit accompanying this transmittal pursuant to 10 CFR 2.390(b)(1).

### **COPYRIGHT NOTICE**

The reports transmitted herewith each bear a Westinghouse copyright notice. The NRC is permitted to make the number of copies of the information contained in these reports which are necessary for its internal use in connection with generic and plant-specific reviews and approvals as well as the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, order, or regulation subject to the requirements of 10 CFR 2.390 regarding restrictions on public disclosure to the extent such information has been identified as proprietary by Westinghouse, copyright protection notwithstanding. With respect to the non-proprietary versions of these reports, the NRC is permitted to make the number of copies beyond those necessary for its internal use which are necessary in order to have one copy available for public viewing in the appropriate docket files in the public document room in Washington, DC and in local public document rooms as may be required by NRC regulations if the number of copies submitted is insufficient for this purpose. Copies made by the NRC must include the copyright notice in all instances and the proprietary notice if the original was identified as proprietary.



2011-0252

1

**RESPONSE TO FREEDOM OF  
INFORMATION ACT (FOIA) / PRIVACY  
ACT (PA) REQUEST**

RESPONSE  
TYPE

FINAL

PARTIAL

REQUESTER

Tom Clements

DATE

JUL 27 2011

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**PART I.C COMMENTS (Use attached Comments continuation page if required)**

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SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Donna L. Sealing *Donna L. Sealing*

**RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST**

2011-0252

JUL 27 2011

**PART II.A -- APPLICABLE EXEMPTIONS**

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  - The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
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  - Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
  - Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
  - Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
  - (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrong doing or a violation of NRC requirements from investigators).
  - (C) Disclosure could constitute an unwarranted invasion of personal privacy.
  - (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
  - (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
  - (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- OTHER (Specify)

**PART II.B -- DENYING OFFICIALS**

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Michael R. Johnson	Director, Office of New Reactors	See Appendix B	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

**APPENDIX A  
RECORDS ALREADY PUBLICLY AVAILABLE**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE COUNT</u>
1.	11/22/10	ML103340060	Chapter 3 ADSE Proprietary Information	11
2.	12/03/10	ML103370648	Redacted Version of Dissenting * View on AP1000 Shield Building Safety Evaluation Report With Respect to the Acceptance of Brittle Structural Module to be Used for the Cylindrical Shield Building Wall	68
3.	05/03/11	ML11129A099	Chapter 3 AFSE Proprietary Information Review	11
4.	05/18/11	ML111300435	Response to Requests for Withholding of Proprietary Information in Accordance with 10 CFR Part 2, Section 2.390, "Chapter 3 Advanced Final Safety Evaluation Proprietary Information Review" (DCP_NRC_003167	7

**APPENDIX B  
RECORDS BEING WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE COUNT</u>
1.	11/4/10	ML103020288	Non-Concurrence Form 757 – Safety Evaluation Report for AP1000 SB, <b>Exemption 4</b>	6
2.	11/4/10	ML103020232	Enclosure 1 – Dissenting View on the AP1000 SB SER with Respect to the Acceptance of Bridle Structural Module to be Used for the Cylindrical SB Wall, Exemption 4	34
3.	11/8/10	ML103020239	Enclosure 2 - Staff Response to Dissenting View on the SER for the Design of the AP1000 SB, <b>Exemption 4</b>	21
4.	11/4/10	ML103081056	Enclosure 3 - Rebuttal to the Staff Response to Dissenting View on the SER for the Design of the AP1000 Shield Building, <b>Exemption 4</b>	23



ML11129A099  
Publicly available (11 pgs)

Westinghouse Electric Company  
Nuclear Power Plants  
1000 Westinghouse Drive  
Cranberry Township, Pennsylvania 16066  
USA

U.S. Nuclear Regulatory Commission  
ATTENTION: Document Control Desk  
Washington, D.C. 20555

Direct tel: 412-374-2035  
Direct fax: 724-940-8505  
e-mail: ziesinrf@westinghouse.com

Your ref: Docket No. 52-006  
Our ref: DCP\_NRC\_003167

May 3, 2011

Subject: Chapter 3 AFSE Proprietary Information Review

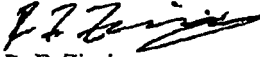
Westinghouse has completed the proprietary review of the Advanced Final Safety Evaluation (AFSE) for Chapter 3 "Design of Structures, Components, Equipment and Systems" including the non-concurrence package. Westinghouse identified proprietary information in Sections 3.7, "Seismic Design", 3.8, "Design of Category I Structures", and the "non-concurrence package". This transmittal supersedes the previously submitted letter identifying proprietary information in the Chapter 3 AFSE (Letter no. DCP\_NRC\_003083), as some corrections have been made.

This submittal contains proprietary information of Westinghouse Electric Company LLC. In conformance with the requirements of 10 CFR Section 2.390, as amended, of the Commission's regulations, we are enclosing with this submittal one copy of the Application for Withholding, AW-11-3097 (non-proprietary, Enclosure 1), and one copy of the associated Affidavit (non-proprietary, Enclosure 2) with Proprietary Information and Copyright Notices. The affidavit sets forth the basis on which the information identified as proprietary may be withheld from public disclosure by the Commission. Correspondence with respect to the proprietary aspects of this application for withholding or the accompanying affidavit should reference AW-11-3126 and should be addressed to J. A. Gresham, Manager, Regulatory Compliance, Westinghouse Electric Company LLC, Suite 428, 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.

Enclosures 3 through 6 provide those pages of the AFSE for Chapter 3 and the non-concurrence package that contain proprietary information.

Questions or requests for additional information related to the content and preparation of these reports should be directed to Westinghouse. Please send copies of such questions or requests to the prospective applicants for combined licenses referencing the AP1000 Design Certification.

Very truly yours,

  
R. F. Ziesing  
Director, U.S. Licensing

DU63  
NRC

/Enclosures

1. AW-11-3126 "Application for Withholding Proprietary Information from Disclosure," dated May 3, 2011
2. AW-11-3126, Affidavit, Proprietary Information Notice, Copyright Notice dated May 3, 2011
3. Westinghouse Markup of NRC Chapter 3 (Sections 3.7 & 3.8) AFSER Indicating Proprietary Sections
4. Westinghouse Markup of Dissenting View on the AP1000 Shield Building SER With Respect to the Acceptance of Brittle Structural Module to be used for the Cylindrical Shield Building Wall Indicating Proprietary Information
5. Westinghouse Markup of NRC Staff Response to Dissenting View on the Safety Evaluation Report for the Design of the AP1000 Shield Building (SRP Section 3.8.4) Indicating Proprietary Information
6. Westinghouse Markup of Rebuttal to the Staff Response to Dissenting View on the SER on the Design of the AP1 000 Shield Building Indicating Proprietary Information

cc: D. Jaffe - U.S. NRC  
E. McKenna - U.S. NRC  
B. Gleaves - U.S. NRC  
P. Clark - U.S. NRC  
E. Schmiech - Westinghouse  
J. DeBlasio - Westinghouse  
D. Lindgren - Westinghouse

DCP\_NRC\_003167  
May 3, 2011

ENCLOSURE 1

AW-11-3126

APPLICATION FOR WITHHOLDING  
PROPRIETARY INFORMATION FROM DISCLOSURE



Westinghouse Electric Company  
Nuclear Power Plants  
1000 Westinghouse Drive  
Cranberry Township, Pennsylvania 15066  
USA

U.S. Nuclear Regulatory Commission  
ATTENTION: Document Control Desk  
Washington, D.C. 20555

Direct tel: 412-374-2035  
Direct fax: 724-940-8505  
e-mail: ziesinrf@westinghouse.com

Your ref: Docket No. 52-006  
Our ref: AW-11-3126

May 3, 2011

**APPLICATION FOR WITHHOLDING PROPRIETARY  
INFORMATION FROM PUBLIC DISCLOSURE**

Subject: Chapter 3 (Sections 3.7 & 3.8) AFSE Review

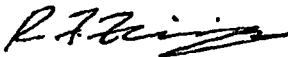
The Application for Withholding is submitted by Westinghouse Electric Company LLC (Westinghouse), pursuant to the provisions of Paragraph (b) (1) of Section 2.390 of the Commission's regulations. It contains commercial strategic information proprietary to Westinghouse and is customarily held in confidence.

The proprietary material for which withholding is being requested is identified in the proprietary version of the subject report. In conformance with 10 CFR Section 2.390, Affidavit AW-11-3126 accompanies this Application for Withholding, setting forth the basis on which the identified proprietary information may be withheld from public disclosure.

Accordingly, it is respectfully requested that the subject information which is proprietary to Westinghouse be withheld from public disclosure in accordance with 10 CFR Section 2.390 of the Commission's regulations.

Correspondence with respect to the proprietary aspects of this application for withholding or the accompanying affidavit should reference AW-11-3126 and should be addressed to J. A. Gresham, Manager, Regulatory Compliance, Westinghouse Electric Company LLC, Suite 428, 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 15066.

Very truly yours,

  
R. F. Ziesing  
Director, U.S. Licensing



AW-11-3126  
May 3, 2011

ENCLOSURE 2

AFFIDAVIT

AW-11-3126  
May 3, 2011

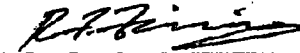
AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA:

ss

COUNTY OF BUTLER:

Before me, the undersigned authority, personally appeared R. F. Ziesing, who, being by me duly sworn according to law, deposes and says that he is authorized to execute this Affidavit on behalf of Westinghouse Electric Company LLC (Westinghouse), and that the averments of fact set forth in this Affidavit are true and correct to the best of his knowledge, information, and belief:



R. F. Ziesing  
Director, U.S. Licensing

Sworn to and subscribed  
before me this 3rd day  
of May 2011.

**COMMONWEALTH OF PENNSYLVANIA**  
Notarial Seal  
Linda J. Bugle, Notary Public  
City of Pittsburgh, Allegheny County  
My Commission Expires June 18, 2013  
Member, Pennsylvania Association of Notaries



Notary Public

- (1) I am Director, U. S. Licensing, Westinghouse Electric Company LLC (Westinghouse), and as such, I have been specifically delegated the function of reviewing the proprietary information sought to be withheld from public disclosure in connection with nuclear power plant licensing and rule making proceedings, and am authorized to apply for its withholding on behalf of Westinghouse.
- (2) I am making this Affidavit in conformance with the provisions of 10 CFR Section 2.390 of the Commission's regulations and in conjunction with the Westinghouse "Application for Withholding" accompanying this Affidavit.
- (3) I have personal knowledge of the criteria and procedures utilized by Westinghouse in designating information as a trade secret, privileged or as confidential commercial or financial information.
- (4) Pursuant to the provisions of paragraph (b)(4) of Section 2.390 of the Commission's regulations, the following is furnished for consideration by the Commission in determining whether the information sought to be withheld from public disclosure should be withheld.
  - (i) The information sought to be withheld from public disclosure is owned and has been held in confidence by Westinghouse.
  - (ii) The information is of a type customarily held in confidence by Westinghouse and not customarily disclosed to the public. Westinghouse has a rational basis for determining the types of information customarily held in confidence by it and, in that connection, utilizes a system to determine when and whether to hold certain types of information in confidence. The application of that system and the substance of that system constitutes Westinghouse policy and provides the rational basis required.

Under that system, information is held in confidence if it falls in one or more of several types, the release of which might result in the loss of an existing or potential competitive advantage, as follows:

- (a) The information reveals the distinguishing aspects of a process (or component, structure, tool, method, etc.) where prevention of its use by any of Westinghouse's competitors without license from Westinghouse constitutes a competitive economic advantage over other companies.

- (b) It consists of supporting data, including test data, relative to a process (or component, structure, tool, method, etc.), the application of which data secures a competitive economic advantage, e.g., by optimization or improved marketability.
- (c) Its use by a competitor would reduce his expenditure of resources or improve his competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing a similar product.
- (d) It reveals cost or price information, production capacities, budget levels, or commercial strategies of Westinghouse, its customers or suppliers.
- (e) It reveals aspects of past, present, or future Westinghouse or customer funded development plans and programs of potential commercial value to Westinghouse.
- (f) It contains patentable ideas, for which patent protection may be desirable.

There are sound policy reasons behind the Westinghouse system which include the following:

- (a) The use of such information by Westinghouse gives Westinghouse a competitive advantage over its competitors. It is, therefore, withheld from disclosure to protect the Westinghouse competitive position.
- (b) It is information that is marketable in many ways. The extent to which such information is available to competitors diminishes the Westinghouse ability to sell products and services involving the use of the information.
- (c) Use by our competitor would put Westinghouse at a competitive disadvantage by reducing his expenditure of resources at our expense.
- (d) Each component of proprietary information pertinent to a particular competitive advantage is potentially as valuable as the total competitive advantage. If competitors acquire components of proprietary information, any one component

may be the key to the entire puzzle, thereby depriving Westinghouse of a competitive advantage.

- (e) Unrestricted disclosure would jeopardize the position of prominence of Westinghouse in the world market, and thereby give a market advantage to the competition of those countries.
  - (f) The Westinghouse capacity to invest corporate assets in research and development depends upon the success in obtaining and maintaining a competitive advantage.
- (iii) The information is being transmitted to the Commission in confidence and, under the provisions of 10 CFR Section 2.390, it is to be received in confidence by the Commission.
- (iv) The information sought to be protected is not available in public sources or available information has not been previously employed in the same original manner or method to the best of our knowledge and belief.
- (v) The proprietary information sought to be withheld in this submittal is that which is appropriately marked in attachment to DCP\_NRC\_003167, Chapter 3 (Sections 3.7 & 3.8) AFSE Review, being transmitted by Westinghouse letter (DCP\_NRC\_003167) and Application for Withholding Proprietary Information from Public Disclosure, to the Document Control Desk. The proprietary information as submitted by Westinghouse for the AP1000 Design Certification Amendment application is expected to be applicable in all license submittals referencing the AP1000 Design Certification and the AP1000 Design Certification Amendment Application in response to certain NRC requirements for justification of compliance of the safety system to regulations.

This information is part of that which will enable Westinghouse to:

- (a) Manufacture and deliver products to utilities based on proprietary designs.
- (b) Advance the AP1000 Design and reduce the licensing risk for the application of the AP1000 Design Certification

- (c) Determine compliance with regulations and standards
- (d) Establish design requirements and specifications for the system.

Further this information has substantial commercial value as follows:

- (a) Westinghouse plans to sell the use of similar information to its customers for purposes of plant construction and operation.
- (b) Westinghouse can sell support and defense of safety systems based on the technology in the reports.
- (c) The information requested to be withheld reveals the distinguishing aspects of an approach and schedule which was developed by Westinghouse.

Public disclosure of this proprietary information is likely to cause substantial harm to the competitive position of Westinghouse because it would enhance the ability of competitors to provide similar digital technology safety systems and licensing defense services for commercial power reactors without commensurate expenses. Also, public disclosure of the information would enable others to use the information to meet NRC requirements for licensing documentation without purchasing the right to use the information.

The development of the technology described in part by the information is the result of applying the results of many years of experience in an intensive Westinghouse effort and the expenditure of a considerable sum of money.

In order for competitors of Westinghouse to duplicate this information, similar technical programs would have to be performed and a significant manpower effort, having the requisite talent and experience, would have to be expended.

Further the deponent sayeth not.

### **PROPRIETARY INFORMATION NOTICE**

Transmitted herewith are proprietary and/or non-proprietary versions of documents furnished to the NRC in connection with requests for generic and/or plant-specific review and approval.

In order to conform to the requirements of 10 CFR 2.390 of the Commission's regulations concerning the protection of proprietary information so submitted to the NRC, the information which is proprietary in the proprietary versions is contained within brackets, and where the proprietary information has been deleted in the non-proprietary versions, only the brackets remain (the information that was contained within the brackets in the proprietary versions having been deleted). The justification for claiming the information so designated as proprietary is indicated in both versions by means of lower case letters (a) through (f) located as a superscript immediately following the brackets enclosing each item of information being identified as proprietary or in the margin opposite such information. These lower case letters refer to the types of information Westinghouse customarily holds in confidence identified in Sections (4)(ii)(a) through (4)(ii)(f) of the affidavit accompanying this transmittal pursuant to 10 CFR 2.390(b)(1).

### **COPYRIGHT NOTICE**

The reports transmitted herewith each bear a Westinghouse copyright notice. The NRC is permitted to make the number of copies of the information contained in these reports which are necessary for its internal use in connection with generic and plant-specific reviews and approvals as well as the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, order, or regulation subject to the requirements of 10 CFR 2.390 regarding restrictions on public disclosure to the extent such information has been identified as proprietary by Westinghouse, copyright protection notwithstanding. With respect to the non-proprietary versions of these reports, the NRC is permitted to make the number of copies beyond those necessary for its internal use which are necessary in order to have one copy available for public viewing in the appropriate docket files in the public document room in Washington, DC and in local public document rooms as may be required by NRC regulations if the number of copies submitted is insufficient for this purpose. Copies made by the NRC must include the copyright notice in all instances and the proprietary notice if the original was identified as proprietary.