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LTR-NRC-17-38

May 16, 2017

Subject: Westinghouse Affidavit Previously Sent to the NRC

Case ID: RII-2016-A-0203

As a result of a review of the internal Westinghouse signature authority and affidavit process, it was determined that one affidavit was inadvertently submitted to U.S. Nuclear Regulatory Commission (NRC) by a Westinghouse employee who had not been specifically delegated authority pursuant to 10 CFR 2.390(b)(1)(iii) (Reference 1). The individual mistakenly believed she was authorized to sign affidavits. Westinghouse entered the issue into its corrective action program.

The attached Affidavit (AW-17-4575) is signed by a Westinghouse upper-level management official who has been specifically delegated the authority to review information for submittal under 10 CFR 2.390. That official, Mr. Ferguson, reviewed the original submittal (RII-2016-A-0203) to confirm it contains proprietary information and is appropriately marked. Consistent with the Affidavit, Westinghouse requests that the proprietary information in the original submittal continue to be withheld from public disclosure.

A handwritten signature in black ink, appearing to read "J. A. Gresham".

James A. Gresham, Manager
Regulatory Compliance

Reference:

1. Affidavit of Cheryl Peed, signed March 2, 2017

Enclosure

cc: Dori Willis, Allegations Team


AFFIDAVIT

COMMONWEALTH OF NORTH CAROLINA:

COUNTY OF MECKLENBURG:

I, Jeffery B. Ferguson, am authorized to execute this Affidavit on behalf of Westinghouse Electric Company LLC ("Westinghouse") and declare that the averments of fact set forth in this Affidavit are true and correct to the best of my knowledge, information, and belief.

Executed on: 5/15/17


Jeffery B. Ferguson, Director
Nuclear Safety Culture, Americas

- (1) I am Director, Nuclear Safety Culture, Americas, 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 Westinghouse’s response to the Nuclear Regulatory Commission’s Request for Information (RFI) RII-2016-A-0203 pertaining to Westinghouse’s Columbia, South Carolina location, 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 Nuclear Regulatory Commission’s (“Commission’s”) regulations and in conjunction with the Westinghouse Application for Withholding Proprietary Information from Public Disclosure 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 constitute Westinghouse policy and provide 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.
- (iii) 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.
- (iv) The information is being transmitted to the Commission in confidence and, under the provisions of 10 CFR Section 2.390, is to be received in confidence by the Commission.
- (v) 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.
- (vi) The proprietary information sought to be withheld in this submittal is that which is appropriately marked in "Request for Information (RFI) RII-2016-A-0203" (Proprietary), for submittal to the Commission. The proprietary information as submitted by Westinghouse is that associated with Westinghouse's response to RFI RII-2016-A-0203, and may be used only for that purpose. This information is part of that which will enable Westinghouse to maintain and protect a competitive position.

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 technical evaluation justifications 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.

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