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USA

Director, Office of Nuclear Material Safety and Safeguards and
Environmental Review
U. S. Nuclear Regulatory Commission
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Your ref:
Our ref: LTR-RAC-18-01

January 5, 2018

SUBJECT: Westinghouse Response to Request for Additional Information (TAC # L33317)

Westinghouse Electric Company LLC (Westinghouse) is pleased to provide the enclosed response to your Request for Additional Information (RAI) dated December 13, 2017 regarding its License Renewal Application for the Columbia Fuel Fabrication Facility (CFFF).

This response demonstrates the financial qualification of Westinghouse to engage in authorized activities for the SNM-1107 license renewal as required by 10 CFR 70.23(a)(5). Specifically, the response demonstrates the current and continuing availability of sufficient financial resources to operate the CFFF. In addition, the response provides an assessment of the impact on the availability of financial resources to operate the CFFF subsequent to Westinghouse's voluntary petition for relief under Chapter 11 of Title 11 of the United States Code filed on March 29, 2017.

In conformance with the requirements of 10 CFR 2.390, as amended, of the Commission's regulations, an Application for Withholding Proprietary Information from Public Disclosure, with Proprietary Information and Copyright Notice, and an Affidavit are submitted as Enclosure 1. The Affidavit sets forth the basis on which the information identified as proprietary may be withheld from public disclosure by the Commission.

Enclosure 2 is Westinghouse's non-proprietary response to the RAI. Enclosure 3 is a non-proprietary organizational chart supporting the RAI response. Enclosure 4 provides proprietary Westinghouse financial information to support the RAI response, and is covered by the Application and Affidavit in Enclosure 1. Enclosure 4 is proprietary in its entirety, and a non-proprietary version is not submitted.

Should you have any questions or require additional information, please telephone me directly at (803) 647-3338.

Sincerely,

A handwritten signature in black ink that reads 'Nancy Blair Parr'.

Nancy Blair Parr, Manager
CFFF Licensing
Westinghouse Electric Company LLC

Enclosures

1. Application for Withholding Proprietary Information from Public Disclosure with Affidavit (Non-Proprietary)
2. Response to December 13, 2017 Columbia Fuel Fabrication License Renewal Application Request for Additional Information (Non-Proprietary)
3. Simplified Organizational Chart (Non-Proprietary)
4. Columbia Fuel Consolidated Income Statement (Proprietary)

cc: w/o enclosures

U. S. Nuclear Regulatory Commission, Region II
245 Peachtree Center Avenue NE, Suite 1200
Atlanta, GA 30303-1257
Attn: Mr. Thomas Vukovinsky

U. S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852-2738
Attn: Ms. Marilyn Diaz, Mail Stop T-4B60

Enclosure 1:

APPLICATION FOR WITHHOLDING PROPRIETARY
INFORMATION FROM PUBLIC DISCLOSURE

Subject: Westinghouse Response to Request for Additional Information; Columbia Fuel Consolidated Income Statement (Proprietary)

Reference: Letter from Nancy Blair Parr to Director, Office of Nuclear Material Safety and Safeguards and Environmental Review, LTR-RAC-18-01, dated January 5, 2018

The Application for Withholding Proprietary Information from Public Disclosure 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 sensitive commercial information proprietary to Westinghouse and is customarily held in confidence.

The information for which withholding is being requested is identified in my accompanying Affidavit. In conformance with 10 CFR Section 2.390 of the Commission's regulations, that Affidavit accompanies this Application for Withholding Proprietary Information from Public Disclosure, setting forth the basis on which the identified proprietary information may be withheld from public disclosure by the Commission and addresses with specificity the considerations listed in paragraph (b)(4) of 10 CFR Section 2.390.

Westinghouse requests that the information identified in the Affidavit be considered proprietary and confidential in its entirety. Westinghouse submits that any part of such information that may be considered as non-exempt is "inextricably intertwined" with that information which may be considered as exempt. Accordingly, it is respectfully requested that the subject information which is proprietary to Westinghouse be withheld from public disclosure in its entirety in accordance with 10 CFR 2.390 of the Commission's regulations.

Should you have any questions or require any additional information, please telephone Ms. Nancy Parr of my staff at (803) 647-3338.

Sincerely,



Michael J. Annacone
Vice President, Columbia Fuel Operations
Westinghouse Electric Company LLC

AFFIDAVIT

- (1) I am the Vice President of Columbia Fuel Operations, within Nuclear Fuel, 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 Columbia Fuel Fabrication Facility (CFFF) submittals to the NRC, 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 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 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.
- (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 competitors 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, it 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 Enclosure 4, "Columbia Fuel Consolidated Income Statement" (Proprietary), for submittal to the Commission, being transmitted by Westinghouse letter, LTR-RAC-18-01 and the Application for Withholding Proprietary Information from Public Disclosure. The proprietary information as submitted by Westinghouse is that associated with its past, current and future commercial business costs and revenues to demonstrate financial qualification for renewal of license SNM-1107.

Public disclosure of this proprietary information is likely to cause substantial harm to the competitive position of Westinghouse because it would provide business sensitive cost and revenue information that is not publicly available.

The averments of fact set forth in this Affidavit are true and correct to the best of my knowledge, information, and belief.



Michael J. Annacone, Vice President
Columbia Fuel Operations
Westinghouse Electric Company LLC

PROPRIETARY INFORMATION NOTICE

Transmitted herewith is a proprietary version of a document furnished to the NRC in connection with SNM-1107 License Renewal, and may be used only for that purpose. The document is to be considered proprietary in its entirety.

COPYRIGHT NOTICE

If any document transmitted herewith bears a Westinghouse copyright notice, the NRC is permitted to make the number of copies of the information contained in this report which are necessary for its internal use in connection with review of the submittal, "*Westinghouse Response to Request for Additional Information*" 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. Copies made by the NRC must include the copyright notice in all instances and the proprietary notice if the original was identified as proprietary.

Enclosure 2:

Response to December 13, 2017 Columbia Fuel Fabrication License Renewal Application
Request for Additional Information

Request:

General Information

Title 10 of the Code of Federal Regulations (CFR) 70.23(a)(5) states that, for applications concerning activities that require such consideration, the Commission must determine whether the applicant appears to be financially qualified to engage in the proposed activities. The activities that would be authorized by renewal of Westinghouse Electric Co. LLC SNM-1107 for the Columbia Fuel Fabrication Facility (CFFF) require consideration of financial qualifications. Therefore, in accordance with 10 CFR 70.22(a)(8), you are requested to provide additional information to demonstrate that Westinghouse CFFF is financially qualified to engage in the proposed activities in accordance with 10 CFR 70.23(a)(5).

As stated in NUREG-1520 "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility," section 1.2.4.3, the staff's acceptance criteria include a finding that the description of the applicant's financial qualifications demonstrates the applicant's current and continuing access to the financial resources necessary to engage in the proposed activity. The financial information you provide should address the current and continuing availability of sufficient financial resources to operate the Columbia Fuel Fabrication Facility (CFFF). Please include information addressing the impact of Westinghouse Electric Co. LLC's voluntary petition for relief under Chapter 11 of Title 11 of the United States Code filed on March 29, 2017, on the availability of financial resources to operate Westinghouse CFFF.

Response:

Westinghouse Electric Company LLC (Westinghouse) will continue in the renewal period to be, financially qualified to engage in licensed activities at the Columbia Fuel Fabrication Facility (CFFF).

Currently, the U.S. Bankruptcy Court for the Southern District of New York in New York City (Bankruptcy Court) is overseeing Westinghouse's reorganization under Chapter 11 of Title 11 of the U.S. Code. During this period of restructuring under the supervision of the Bankruptcy Court, Westinghouse has, and will continue to have, access to the financial resources to support safe operation of CFFF because: (1) Westinghouse enjoys protection at CFFF today as a "Debtor In Possession" (DIP) during the Chapter 11 restructuring process, subject to the Bankruptcy Court's supervision; (2) activities undertaken by Westinghouse at CFFF are now, and are projected in the future to be, net cash positive, *i.e.*, providing greater revenue than expenses; and (3) at the time of emergence from bankruptcy protection, Westinghouse will have been relieved of significant structural debt on a going forward basis. Westinghouse's plans for emergence contemplate a sale of the Company which will necessitate NRC consent, and another NRC review of its financial qualification pursuant to 10 CFR 70.36 as a condition to closing on that sale.

As to the first point above, Westinghouse has continued to operate CFFF as a DIP since filing for bankruptcy protection on March 29, 2017. As shown in the simplified organizational chart (Enclosure 3 in this package) Westinghouse and its immediate corporate parent, Toshiba Nuclear Energy Services Inc., are under bankruptcy protection. CFFF is held directly as an asset of Westinghouse and is not operated or owned by a separate entity. Since filing for bankruptcy protection, Westinghouse has continued to operate CFFF in a manner that protects the public health and safety. Westinghouse has also continued to make significant commitments of capital to improvements of the CFFF facility since the bankruptcy filing. During (and after) restructuring, NRC retains the regulatory authority to address any unanticipated change in financial circumstances. During the Chapter 11 proceeding, NRC also has the access to the Bankruptcy Court for any additional relief it considers necessary.

If for any reason CFFF were to experience significant additional unexpected operating expenses during the Chapter 11 proceeding, Westinghouse has access to an \$800 million DIP loan. NRC has previously reviewed similar bases

for financial qualification during restructuring.¹ Moreover, in the unlikely event that unforeseen structural market changes preclude continued long-term economic operation of CFFF, Westinghouse has a separately provided decommissioning funding assurance that is bankruptcy remote, *i.e.*, assurance that is not part of the assets that are subject to the bankruptcy process.

Second, Westinghouse's business activity at CFFF is net cash positive. Westinghouse expects that this cash positive operation will continue going forward, as shown by the attached Columbia Fuel Consolidated Income Statement, showing CFFF's actual income in FY 2014, FY 2015 and FY 2016, and projected income from FY 2017 to FY 2020 (Enclosure 4). As shown by this income statement, CFFF has generated an operating profit of at least \$14 million each year since 2014 and is projected to generate an operating profit in excess of \$75 million per year for 2018 and beyond. Enclosure 4 is considered Westinghouse Proprietary Class 2 Information, and an affidavit requesting withholding of Enclosure 4 pursuant to 10 CFR 2.390 is included as Enclosure 1.

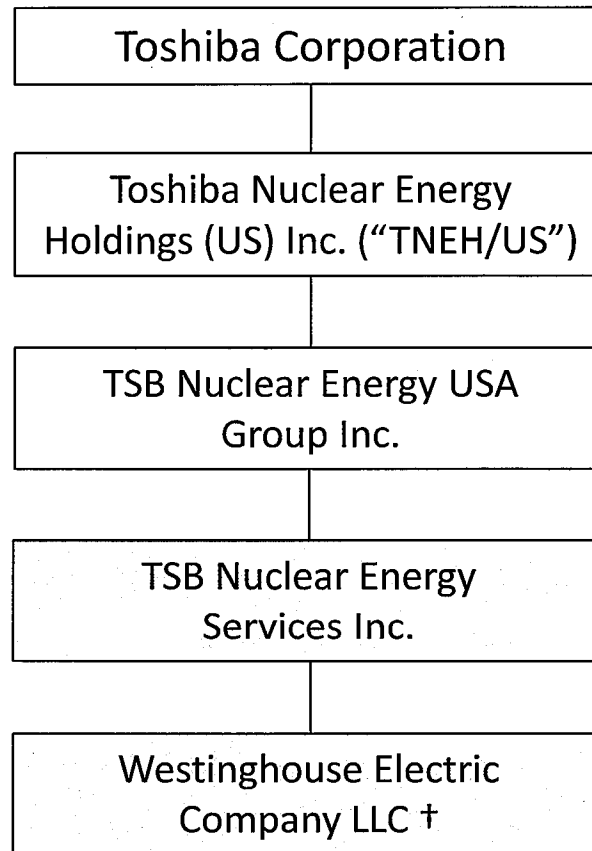
Third, Westinghouse's filing for bankruptcy protection is intended to further strengthen the financial health of Westinghouse. The restructuring process ensures that the emerging debtor is financially viable before approving emergence. Combined with the net cash positive operations of CFFF, Westinghouse will continue to be financially qualified post-emergence from bankruptcy protection. In addition, at the time of Westinghouse's emergence from bankruptcy, NRC will have an opportunity to review Westinghouse's financial qualifications in its review of its application for consent to the transfer of control of the CFFF license. Looking ahead, during the post-emergence period, NRC will have the same authority to monitor financial qualifications under the renewed license as it has today under the existing license.

Westinghouse anticipates a timely, orderly emergence from bankruptcy. However, even if the time in restructuring were extended, NRC need not consider now, for the license renewal period, the post emergence period. Specifically, the NRC's license transfer consent process required by 10 CFR 70.36 ensures that the licensee is financially qualified to meet its health and safety obligations prior to execution of any planned emergence.

For all of these reasons, Westinghouse is now, and will continue to be, financially qualified to engage in licensed activities at CFFF during the period of renewal of the CFFF license.

¹ See *e.g.*, Letter from M. Watford to K. Peters, "Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2 and Independent Spent Fuel Storage Installation – Order Approving Transfer of Licenses and Conforming Amendments (CAC Nos. MF7075 and MF7076)" (May 6, 2016) (ML16096A266) (approving license transfers upon emergence from bankruptcy of operators of Comanche Peak Nuclear Power Plant, Units 1 and 2, during which bankruptcy proceeding owner was DIP operator of Comanche Peak).

Enclosure 3: Simplified Corporate Structure



Shaded entities in restructuring

† DIP Borrower

Westinghouse Non-Proprietary Class 3