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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 22, 2018

Mr. Douglas Weaver, Vice President
Global Nuclear Regulatory Affairs
Westinghouse Electric Company LLC
11333 Woodglen Drive, Suite 202
Rockville, MD 20852

Dear Mr. Weaver:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your January 9, 2018, letter requesting that the NRC discontinue billing to CAC RP0701/EPID L-2017-LLE-0007 (docket 05200006) for staff work related to preparation of a SECY-18-0007 paper. The staff is no longer billing to this CAC because the work now has been completed. Your letter also disputes—under 10 C.F.R. § 15.31—previously issued NRC bills related to the SECY paper in question.

By brief way of background, Westinghouse submitted a request for three exemptions related to the renewal of the AP1000 design certification.¹ During the NRC staff's review, it prepared an informational SECY paper to the Commission that described the incoming Westinghouse request, explained how the staff evaluated Westinghouse's request, and discussed the staff's plans with respect to the request. The NRC billed those costs associated with preparing the SECY paper directly to Westinghouse under 10 C.F.R. Part 170.

In its dispute, Westinghouse argues that it is "unfair to charge Westinghouse for the development of an informational [SECY] paper not required for the staff to render a decision on our request." Essentially, Westinghouse believes that if the staff has the authority to act on its exemption request without Commission approval, then preparing an information SECY paper about that request is an unnecessary extravagance. Alternatively, Westinghouse posits that to the extent this SECY paper discussed the generic policy implications associated with Westinghouse's request, then 10 C.F.R. §171.15(b)(2)(iii) precludes the NRC from billing Westinghouse for the preparation of this SECY paper because generic reactor activities should be recovered through annual fees charged to power reactor licensees.

With respect to Westinghouse's latter point, we disagree with Westinghouse's assessment that the SECY paper addressed general policy issues outside the scope of the Westinghouse request. The staff developed this SECY paper only to inform the Commission of the staff's plan to deny in part, and grant in part, Westinghouse's exemption request, as it would be the first time the Staff granted an exemption to an applicant extending the timely filing period for a design certification renewal application. The paper did not discuss general policy matters, and therefore it would not be appropriate for the NRC to recoup the costs associated with developing this SECY paper through annual charges to all power reactor licensees.

¹ Letter from R. Easterling, Vice President, Westinghouse to V. Ordaz, Deputy Director, Office of New Reactors (NRO)/U.S. Nuclear Regulatory Commission (NRC), "Request for Exemptions Related to the Duration of the AP1000® Design Certification," (Dec. 2, 2016) (ADAMS Accession No. ML16342A975).

10 C.F.R. § 170.21(B) requires applicants seeking an amendment, renewal, or “other approval” with respect to a standard reference design review to pay the full cost of the NRC’s review. This regulatory provision implements the Independent Offices Appropriation Act, 1952 (IOAA) (31 U.S.C. § 9701). Under the IOAA, the NRC can assess “specific charges for specific services to specific individuals or companies.”²

Here, Westinghouse is correct that the staff has the authority to act on its exemption request without Commission approval. But that does not preclude the staff from deciding—in its discretion—that it needed to prepare an informational SECY paper to keep the Commission fully informed about Westinghouse’s request and how the staff planned to respond to Westinghouse’s request. The staff concluded that this type of communication with the Commission was an important step in completing the staff’s response to Westinghouse’s exemption request. This is because Westinghouse’s request presented novel issues regarding the extension of the filing period for a design certification renewal application. Further, despite Westinghouse’s suggestion that a Commissioner’s Assistant note would have been sufficient to convey this information to the Commission, the issues involved were too complex to use other means of communications available to the staff. For this first of its kind action, the staff considered it appropriate to communicate to the Commission not only the action the staff would be taking, but provide the Commission an opportunity to take any action it deemed appropriate. The SECY paper also provided the staff’s reasoning supporting the action, including an explanation of why the entire request was not being granted, the other options considered by the staff, and the advantages and disadvantages of the alternatives.

Westinghouse also argues that “the magnitude of the post-decision fees in this case is disproportionate” in light of the time billed relating to the SECY paper compared to the time billed for reviewing Westinghouse’s exemption request. However, although Westinghouse appears to view the Staff’s work on the SECY paper as “post-decision,” and therefore, independent of the staff’s evaluation of Westinghouse’s exemption request, the staff’s work on the SECY paper is inseparable from the Staff’s review of Westinghouse’s request. The work that the staff spent developing the paper was an essential part of the development of the analysis for the Staff’s decision on Westinghouse’s request. In particular, the content of the SECY paper overlaps and is fully consistent with the content of the response.

Ultimately, 10 C.F.R. § 170.21(B) and the IOAA authorize the NRC to recover the “full costs” associated with the NRC’s review of exemption requests. Because the preparation of the SECY paper was part of the NRC’s staff review, the NRC properly billed Westinghouse the costs associated with developing the SECY paper.

The NRC will waive all late fees if payment is received within thirty days from the date of this letter. If payment of the fees in one lump sum represents an undue financial burden, you may request a payment plan. As per 10 CFR 15.35(b), “Payments,” a debtor may arrange an installment plan with the NRC for payment of fees if the debtor is unable to pay the invoice in one lump sum. Please note that currently all installment agreements require the payment of interest at 1 percent annually and an administrative charge of \$7.00 per month.

² *Fed. Power Comm’n v. New England Power Co.*, 415 U.S. 345, 349 (1974).

If you have any technical questions regarding this matter, please contact Ms. Jennifer Dixon-Herrity, Office of New Reactors, at (301) 415-2967. Please contact Mr. William Blaney, of my staff, at (301) 415-5092 for any fee-related questions.

Sincerely,

/RA/

Maureen E. Wylie
Chief Financial Officer

SUBJECT: LETTER TO DOUGLAS WEAVER, WESTINGHOUSE IN RESPONSE TO A DISPUTED DEBT, dated, February 22, 2018

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