



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

March 12, 1992

Docket Nos. 50-295
and 50-304

Mr. R.P. DiPiazza, Manager
Nuclear Safety Licensing
Westinghouse Electric Corporation
P.O. Box 355
Pittsburgh, Pennsylvania 15230-0355

Dear Mr. DiPiazza,

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
(CAW-91-154)

By letter dated December 13, 1991, Commonwealth Edison Company (CECo) submitted the Westinghouse report, "EAGLE-21 Micro-Processor Based Process Protection System," WCAP-12374, September 1989, and requested that it be withheld from public disclosure pursuant to 10 CFR 2.790.

A letter and an affidavit from Westinghouse, the owner of the information, was included in the submittal. Westinghouse stated that the submitted information should be considered exempt from mandatory public disclosure for the following reasons:

- (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.

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- (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.
- (g) It is not the property of Westinghouse, but must be treated as proprietary by Westinghouse according to agreements with the owner.

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 which 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 2.790, 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 "EAGLE-21 Micro-Processor Based Process Protection System," dated September 1989, WCAP-12374, (Proprietary), for Zion Units 1 & 2, being transmitted by Commonwealth Edison Company (Zion) letter and Application for Withholding Proprietary Information from Public Disclosure, to the Attention [of] Dr. T. Murley, Director, Office of [NRR]. The proprietary information as submitted for use by Commonwealth Edison Company for Zion Units 1 & 2 is expected to be applicable in other licensee submittals in response to certain NRC requirements for justification of implementation of the EAGLE-21 Process Protection System.

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

- (a) Provide documentation which summarizes the EAGLE-21 Process Protection System design features, hardware architecture, software development and software implementation.
- (b) Provide documentation which describes the EAGLE-21 Process Protection System Equipment Qualification Program.
- (c) Provide documentation which describes the EAGLE-21 Process Protection System Design, Verification and Validation Program.
- (d) Provide documentation which describes how the EAGLE-21 Process Protection System complies with applicable regulatory criteria.

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- (e) Assist the customer to obtain NRC approval for operation of the EAGLE-21 Process Protection 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 satisfying NRC requirements for licensing documentation.
- (b) Westinghouse can sell support and defense of this licensing basis and technology to its customers to support the licensing process.

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 EAGLE-21 Process Protection System 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 for the licensing of micro-processor based reactor protection system equipment.

We have reviewed your application and the material in accordance with the requirements of 10 CFR 2.790 and, on the basis of Westinghouse's statements, have determined that the submitted information sought to be withheld contains trade secrets or proprietary commercial information.

Therefore, the version of the submitted information marked as proprietary will be withheld from public disclosure pursuant to 10 CFR 2.790(b)(5) and Section 103(b) of the Atomic Energy Act of 1954, as amended.

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the documents. If the need arises, we may send copies of this information to our consultants working in this area. We will, of course, ensure that the consultants have signed the appropriate agreements for handling proprietary information.

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If the basis for withholding this information from public inspection should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You should also understand that the NRC may have cause to review this determination in the future, for example if the scope of a Freedom of Information Act request includes your information. In all review situations, if the NRC makes a determination adverse to the above, you will be notified in advance of any public disclosure.

Sincerely,

John B. Hickman, Project Manager
Project Directorate III-2
Division of Reactor Projects III/IV/V
Office of Nuclear Reactor Regulation

cc: See next page

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Mr. R.P. DiPiazza

Zion Nuclear Power Station
Unit Nos. 1 and 2

cc:

Michael I. Miller, Esquire
Sidley and Austin
One First National Plaza
Chicago, Illinois 60690

Dr. Cecil Lue-Hing
Director of Research and Development
Metropolitan Sanitary District
of Greater Chicago
100 East Erie Street
Chicago, Illinois 60611

Phillip Steptoe, Esquire
Sidley and Austin
One First National Plaza
Chicago, Illinois 60603

Mayor of Zion
Zion, Illinois 60099

Illinois Department of Nuclear Safety
Office of Nuclear Facility Safety
1035 Outer Park Drive
Springfield, Illinois 62704

U. S. Nuclear Regulatory Commission
Resident Inspectors Office
105 Shiloh Blvd.
Zion, Illinois 60099

Regional Administrator, Region III
U. S. Nuclear Regulatory Commission
799 Roosevelt Road, Bldg. #4
Glen Ellyn, Illinois 60137

Robert Neumann
Office of Public Counsel
State of Illinois Center
100 W. Randolph
Suite 11-300
Chicago, Illinois 60601

Mr. Thomas J. Kovach
Nuclear Licensing Manager
Commonwealth Edison Company-Suite 300
OPUS West III
1400 OPUS Place
Downers Grove, Illinois 60515