

52-003



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20565-0001

September 25, 1998

Mr. Brian A. McIntyre, Manager
Advanced Plant Safety and Licensing
Energy Systems Business Unit
Westinghouse Electric Company
P.O. Box 355
Pittsburgh, PA 15230-0355

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
ASSOCIATED WITH WESTINGHOUSE AP600 LETTERS OF AUGUST 21, 1998,
AND JANUARY 31, 1997

Dear Mr. McIntyre:

In March of 1997 Westinghouse was informed by the staff that they had discovered information designated as proprietary in a non-proprietary letter. Specifically, Westinghouse letter NSD-NRC-97-4966 dated January 31, 1997, contained four pages marked proprietary, however, the letter did not indicate that it included proprietary material. The staff removed the material from the public document room and requested that Westinghouse submit a separate letter and affidavit justifying the proprietary nature of the information. In addition to the verbal discussions in March of 1997, the staff documented their request in a July 1, 1998, letter because at that time it did not have a record of a written response from Westinghouse on the matter.

In an August 21, 1998, letter (NSD-NRC-98-5772) you responded to the staff's request and submitted a separate letter and affidavit justifying the proprietary nature of the information. In addition, the August 21, 1998, letter provided a proprietary and non-proprietary version of the information originally submitted by your January 31, 1997, letter.

In the August 21, 1998, letter you identify information which you consider proprietary and request that it be withheld from public disclosure pursuant to 10 CFR 2.790. The subject material is provided via enclosure to the letter. Affidavit AW-98-1282 dated August 21, 1998, and executed by you claims, in part, that the information is classified as proprietary because "[t]he 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 addition, the affidavit also states that this information should be considered exempt from mandatory public disclosure for several reasons including the following:

- 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.

We have reviewed your submittal 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, we have determined that the proprietary material found in the August 21, 1998, (NSD-NRC-98-5772) and January 31, 1997, (NSD-NRC-97-4966) letters, which when submitted to the NRC were 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.

If the basis for withholding this information from public disclosure 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 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 withheld 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,
 original signed by:
 Joseph M. Sebrosky, Project Manager
 Standardization Project Directorate
 Division of Reactor Program Management
 Office of Nuclear Reactor Regulation

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cc: See next page

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Mr. B. A. McIntyre
Westinghouse Electric Company

Docket No. 52-003
AP600

cc: Mr. Nicholas J. Liparulo, Manager
Nuclear Safety and Regulatory Analysis
Nuclear and Advanced Technology Division
Westinghouse Electric Company
P.O. Box 355
Pittsburgh, PA 15230

Mr. Russ Bell
Senior Project Manager, Programs
Nuclear Energy Institute
1776 I Street, NW
Suite 300
Washington, DC 20006-3706

Ms. Cindy L. Haag
Advanced Plant Safety & Licensing
Westinghouse Electric Company
Energy Systems Business Unit
Box 355
Pittsburgh, PA 15230

Ms. Lynn Connor
Doc-Search Associates
Post Office Box 34
Cabin John, MD 20818

Mr. Sterling Franks
U.S. Department of Energy
NE-50
19901 Germantown Road
Germantown, MD 20874

Dr. Craig D. Sawyer, Manager
Advanced Reactor Programs
GE Nuclear Energy
175 Curtner Avenue, MC-754
San Jose, CA 95125

Mr. Frank A. Ross
U.S. Department of Energy, NE-42
Office of LWR Safety and Technology
19901 Germantown Road
Germantown, MD 20874

Mr. Robert H. Buchholz
GE Nuclear Energy
175 Curtner Avenue, MC-781
San Jose, CA 95125

Mr. Charles Thompson, Nuclear Engineer
AP600 Certification
NE-50
19901 Germantown Road
Germantown, MD 20874

Barton Z. Cowan, Esq.
Eckert Seamans Cherin & Mellott
600 Grant Street 42nd Floor
Pittsburgh, PA 15219

Mr. Robert Maiers, P.E.
Pennsylvania Department of
Environmental Protection
Bureau of Radiation Protection
Rachel Carson State Office Building
P.O. Box 8469
Harrisburg, PA 17105-8469

Mr. Ed Rodwell, Manager
PWR Design Certification
Electric Power Research Institute
3412 Hillview Avenue
Palo Alto, CA 94303