



Westinghouse
Electric Corporation

Water Reactor
Divisions

Nuclear Technology Division

Box 355
Pittsburgh Pennsylvania 15230

October 11, 1983

CAW-83-87

Mr. Harold Denton, Director
Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

APPLICATION FOR WITHHOLDING PROPRIETARY
INFORMATION FROM PUBLIC DISCLOSURE

Reference: Indiana and Michigan Electric Company letter to U.S. NRC,
Alexich to Denton, dated October, 1983

The proprietary material transmitted by the reference letter for which withholding is being requested by Indiana and Michigan Electric Company (I and ME) is of the same type as the proprietary material previously submitted in connection with NRC Staff reviews of WCAP-9401/9402 and WCAP-9500. A previous Application for Withholding, AW-78-23, was accompanied by a non-proprietary Affidavit signed by the owner of the proprietary information, Westinghouse Electric Corporation. The proprietary material is being submitted in support of transition reload analysis associated with the I and ME Donald C. Cook Nuclear Plant Unit No. 2.

Accordingly, this letter authorizes the use of the previously furnished affidavit, a copy of which is attached.

Correspondence with respect to the proprietary aspects of this application for withholding or the Westinghouse affidavit should reference CAW-83-87 and should be addressed to the undersigned.

Very truly yours,


Robert A. Wiesemann, Manager
Regulatory & Legislative Affairs

MMS:pj

Attachment

cc: E. C. Shomaker, Esq.

Office of the Executive Legal Director, NRC

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AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA:

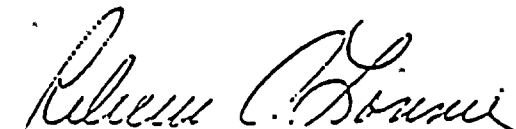
SS

COUNTY OF ALLEGHENY:

Before me, the undersigned authority, personally appeared Robert A. Wieseemann, who, being by me duly sworn according to law; deposes and says that he is authorized to execute this Affidavit on behalf of Westinghouse Electric Corporation ("Westinghouse") and that the averments of fact set forth in this Affidavit are true and correct to the best of his knowledge, information, and belief:


Robert A. Wieseemann, Manager
Licensing Programs

Sworn to and subscribed
before me this 10 day
of March 1978.


- Notary Public
REC'D

- (1) I am Manager, Licensing Programs, in the Pressurized Water Reactor Systems Division, of Westinghouse Electric Corporation 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 nuclear power plant licensing or rulemaking proceedings, and am authorized to apply for its withholding on behalf of the Westinghouse Water Reactor Divisions.
- (2) I am making this affidavit in conformance with the provisions of 10 CFR Section 2.790 of the Commission's regulations and in conjunction with the Westinghouse application for withholding accompanying this Affidavit.
- (3) I have personal knowledge of the criteria and procedures utilized by Westinghouse Nuclear Energy Systems 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 2.790 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 constitutes Westinghouse policy and provides the rational basis required.

Criteria and Standards Utilized

In determining whether information in a document or report is proprietary, the following criteria and standards are utilized by Westinghouse. Information is proprietary if any one of the following are met:

- (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 of 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.
- (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 is not available in public sources to the best of our knowledge and belief.
- (v) The proprietary information sought to be withheld in this submittal are the copies of slides utilized by Westinghouse in its presentation to the NRC at the March 21, 1978 meeting concerning the Westinghouse optimized fuel assembly. The letter and the copies of slides are being submitted in preliminary form to the Commission for review and comment on the Westinghouse optimized fuel assembly in advance of a formal submittal for NRC approval.

Public disclosure of this information is likely to cause substantial harm to the competitive position of Westinghouse as it would reveal the description of the approved design, the comparison of the improved design with the standard design, the nature of the tests conducted, the test conditions, the test results and the conclusions of the testing program,

all of which is recognized by the Staff to be of competitive value and because of the large amount of effort and money expended by Westinghouse over a period of several years in carrying out this particular development program. Further, it would enable competitors to use the information for commercial purposes and also to meet NRC requirements for licensing documentation, each without purchasing the right from Westinghouse to use the information.

Information regarding its development programs is valuable to Westinghouse because:

- (a) Information resulting from its development programs 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) The Westinghouse capacity to invest corporate assets in research and development depends upon the success in obtaining and maintaining a competitive advantage.

Being an innovative concept, this information might not be discovered by the competitors of Westinghouse independently. To duplicate this information, competitors would first have to be similarly inspired and would then have to expend an effort similar to that of Westinghouse to develop the design.

Further the deponent sayeth not.

A F F I D A V I T

STATE OF Washington)
COUNTY OF Benton) ss.

I, Richard B. Stout, being duly sworn, hereby say and depose:

1. I am Manager, Licensing and Safety Engineering, for Exxon Nuclear Company, Inc. ("ENC"). and as such I am authorized to execute this Affidavit.

2. I am familiar with ENC's detailed document control system and policies which govern the protection and control of information.

3. I am familiar with the document XN-NF-739(P) entitled "Seismic Evaluation of Exxon Nuclear 17x17 Assemblies in Westinghouse PWR's", referred to as "Document". Information contained in this Document has been classified by ENC as proprietary in accordance with the control system and policies established by ENC for the control and protection of information.

4. The Document contains information of a proprietary and confidential nature and is of the type customarily held in confidence by ENC and not made available to the public. Based on my experience, I am aware that other companies regard information of the kind contained in the Document.

5. The Document has been made available to American Electric Power Service Corporation in confidence, with the request that the information contained in the Document not be disclosed or divulged.

6. The Document contains information which is vital to a competitive advantage of ENC and would be helpful to competitors of ENC when competing with ENC.

7. The information contained in the Document is considered to be proprietary by ENC because it reveals certain distinguishing aspects of PWR seismic analysis methods which secure competitive economic advantage to ENC for fuel design optimization and improved marketability, and includes information utilized by ENC in its business which affords ENC an opportunity to obtain a competitive advantage over its competitors who do not or may not know or use the information contained in the Document.

8. The disclosure of the proprietary information contained in the Document to a competitor would permit the competitor to reduce its expenditure of money and manpower and to improve its competitive position by giving it extremely valuable insights into PWR seismic analysis methods, and would result in substantial harm to the competitive position of ENC.

9. The Document contains proprietary information which is held in confidence by ENC and is not available in public sources.

10. In accordance with ENC's policies governing the protection and control of information, proprietary information contained in the Document has been made available, on a limited basis, to others outside ENC only as required and under suitable agreement providing for non-disclosure and limited use of the information.

11. ENC policy requires that proprietary information be kept in a secured file or area and distributed on a need-to-know basis.

12. This Document provides information which reveals PWR seismic analysis methods developed by ENC over the past several years. ENC has invested millions of dollars and many man-years of effort in developing the analysis methods revealed in the Document. Assuming a competitor had available the same background data and incentives as ENC, the competitor might, at a minimum, develop the information for the same expenditure of manpower and money as ENC.

13. Based on my experience in the industry, I do not believe that the background data and incentives of ENC's competitors are sufficiently similar to the corresponding background data and incentives of ENC to reasonably expect such competitors would be in a position to duplicate ENC's proprietary information contained in the Documents.

THAT the statements made hereinabove are, to the best of my knowledge, information, and belief, truthful and complete.

FURTHER AFFIANT SAYETH NOT.

Richard B. Stant

SWORN TO AND SUBSCRIBED

before me this 11 day of

October, 1983

Thomas K. Felts

NOTARY PUBLIC

