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Your ref: Docket 05200006
Our ref: LTR-NRC-18-3

Exemption Request for AP1000 Design Certification (CAC
RP0701/EPID L-2017-LLE-0007) disputed debt per 10 CFR 15.31

January 9, 2018

Westinghouse respectfully requests that the NRC discontinue billing to CAC RP0701/EPID L-2017-LLE-0007 (docket 05200006) for staff work related to, but not required to render a decision on, the subject exemption request, and waive or refund the fees the NRC has already charged for such work. In particular, Westinghouse understands that the NRC has developed a SECY paper to inform the Commission of its decision to grant in part and deny in part this exemption request. We understand that this SECY paper was recently sent to the Commission but is not yet publically available.

Fundamentally we believe it is unfair to charge Westinghouse for the development of an informational paper not required for the staff to render a decision on our request. In addition, we understand that the development of the informational SECY paper alone cost significantly more than the effort to make the underlying technical and regulatory decisions. This does not appear to us to be consistent with the NRC's Principles of Good Regulation, because the staff had other, less costly alternatives, to inform the Commission of its intended action.

Background:

On December 2, 2016, Westinghouse Electric Company LLC (Westinghouse) submitted an Exemption Request regarding the expiration and renewal of the AP1000 design certification (DC).¹ Specifically, Westinghouse asked the NRC to extend the validity of the AP1000 DC for an additional five years, from February 27, 2021 until February 27, 2026. Approval of the exemption would allow for the incorporation of lessons learned from domestic AP1000 construction projects into a subsequent DC renewal application, which would now also be due in 2025, five years later than the original deadline.

In early August 2017, Westinghouse discussed the disposition of this request in a teleconference with the NRC staff. The staff explained its intention to grant the exemption request in part and deny it in part. The staff would grant the request to allow Westinghouse to submit a DC renewal application up until 2025, but would deny the request to the extent it would allow any applicants to reference the DC after the original expiration date, until a DC renewal application is submitted. The NRC staff informed Westinghouse that this decision was made because Westinghouse does not own the DC Rule in 10 CFR Part 52, Appendix D. The staff acknowledged that this decision was not mandated as a matter of law based on any determination that Westinghouse was not an "interested person" with respect to the DC

¹ Westinghouse Letter DCP_NRC_003303, "Subject: Request for Exemptions Related to the Duration of the AP1000® Design Certification" (Dec. 2, 2016) (*available in ADAMS at Accession No. ML16342A975*).

under 10 CFR 52.7 and 50.12, but instead was based on policy considerations, apparently associated with Westinghouse's lack of ownership of the AP1000 DC.

The staff afforded Westinghouse the opportunity to amend its exemption request to remove the portion that would be denied. Westinghouse declined that opportunity, primarily because it understood this to be the quickest path to obtain NRC approval of the remainder of the exemption request, which would provide certainty to Westinghouse regarding its the ability to submit a DC renewal application that will take into account domestic construction experience. Secondly, this choice would allow Westinghouse to review and evaluate the staff's regulatory and policy basis for its partial denial of the exemption request.

During this discussion, the staff informed Westinghouse that it intended to present and had already drafted an informational SECY paper to the Commission on this matter. At that time, the NRC staff had expended a total of approximately 144.5 hours (~ \$40K) for the staff's technical review of the exemption request, and apparently also for the preparation of an initial draft of the informational SECY paper. Since that time, the staff has recorded an additional 198.5 hours (~ \$55K) for the continued development and finalization of the informational SECY paper. As of the date of this letter, Westinghouse has not yet received the official response to its exemption request.

On November 16, 2017, Westinghouse requested (via email) that the Office of New Reactors (NRO) review the charges to determine the amount of time related to establishing policy versus directly responding to Westinghouse's exemption request. NRC responded to that request (via email) on December 14, 2017, stating that the purpose of the SECY paper was to communicate to the Commission, not to communicate a policy decision to the industry and as such, the staff determined that the invoice should not be changed.

Discussion:

Westinghouse respectfully requests that the NRC determine it should not be billed for an informational SECY paper intended to ensure that the decision on the exemption was communicated to the Commission. The staff has the authority to grant or deny the exemption request and therefore the creation of a SECY paper is not required to complete action on our request. Moreover, the magnitude of the post-decision fees in this case is disproportionate. The NRC staff has now apparently spent more time refining and finalizing the informational SECY paper than evaluating Westinghouse's exemption request and reaching a determination on it. If the staff's intent were to merely communicate their decision to the Commission, they had the option of using a more expedient method such as a Commissioners' Assistants Note.

Alternatively, if the staff felt that the generic and policy implications of this action warranted a SECY paper, then Westinghouse still should not be charged because those fees are covered under 10 CFR Part 171. Under 10 CFR 171.15(b)(2)(iii), generic activities required for the NRC to regulate power reactors under 10 CFR Parts 50 and 52, including "new reactor regulatory infrastructure," should be paid for from base fees charged to power reactor licensees. Likewise, under 10 CFR 171.5 (definition of "*Overhead and General and Administrative costs*"), the costs of "NRC central policy direction" are considered overhead costs and should not be recovered through hourly review fees. Hourly fees under 10 CFR Part 170, on the other hand, are intended to cover "individually identifiable services to specific applicants and

licensees.”² Considering the staff’s authority to dispose of Westinghouse’s exemption request, and considering also the magnitude of the effort expended to develop it, the development of the informational SECY paper appears to be an exercise to establish, communicate, and/or clarify new reactor regulatory infrastructure and obtain NRC central policy direction, not work directly related to an identifiable service specific to Westinghouse’s exemption request. Therefore, Westinghouse should not be required to pay fees under 10 CFR Part 170 for the development of the informational SECY paper.

To address similar matters in the future, Westinghouse respectfully suggests that the NRC develop publically available guidance to the staff on billing practices for matters related to, but not required, to complete requests by the regulated community for exemptions, license amendments and other billable actions, such as generic activities for existing plant regulation and new reactor regulatory infrastructure. In response to the NRC staff’s December 14, 2017 initial denial described above, Westinghouse formally submits this 10 CFR 15.31 “Disputed debts” request. If additional details are needed to make a determination on the disputed debt, please contact myself or Paul Russ of my staff at (412) 374-3382, or russpa@westinghouse.com.

Regards,



Douglas Weaver
Vice President, Global Nuclear Regulatory Affairs

cc: Maureen Wylie
Fred Brown
Vonna Ordaz
Jennifer Dixon-Herrity
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² NRC Performance and Accountability Report, Fiscal Year 2014, Chapter 3, “Financial Statements and Auditors’ Reports” (2014) at 77 (*available in ADAMS at Accession No. ML14332A014*); *see also* Final Rule, Revision of Fee Schedules; Fee Recovery for Fiscal Year 2017, 82 Fed. Reg. 30,682, 30,696 (June 30, 2017) (“The NRC staff charges to direct billable CACs only when that work benefits a single, identifiable licensee.”).