

March 20, 2003

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Samuel J. Collins, Director */RA/*
Office of Nuclear Reactor Regulation

SUBJECT: MEMORANDUM OF UNDERSTANDING WITH WESTINGHOUSE ON
SUBMITTAL OF COMPUTER CODES

Attached for your signature is the subject Memorandum of Understanding (MOU) which has been agreed to by the staff and Westinghouse in order to facilitate submittal of Westinghouse proprietary analytical computer codes. This MOU has the endorsement of the Office of the General Counsel.

Attachment: As stated

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Distribution:

SRXB/RF

*See previous concurrence page

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OFFICE	NRR/DSSA/SRXB	NRR/DSSA/SRXB	NRR/DSSA/SRXB	NRR/DSSA/D	NRR/ADPT	NRR/D
NAME	RLandry*	RCaruso*	JSWermiel*	GMHolahan*	BWSheron*	SJCollins
DATE	3/14/03	3/14/03	3/14 /03	3 /17/03	3 /17/03	3 /20/03

OFFICIAL RECORD COPY

Memorandum of Understanding
between the
United States Nuclear Regulatory Commission
and
Westinghouse Electric Company LLC

Regarding the Use of Westinghouse Proprietary Computer Codes

The Memorandum of Understanding ("MOU") covers the use and return of Westinghouse Electric Company LLC ("Westinghouse") proprietary source codes, executable codes, any associated data sets, decks or libraries and manuals (collectively "Codes") to be provided on loan by Westinghouse to the U.S. Nuclear Regulatory Commission ("NRC"). Codes are being provided by Westinghouse solely to facilitate NRC review of Westinghouse, Westinghouse Owners Group, and CE Owners Group topical reports ("Topical Reports"), and individual license amendment requests associated with such Topical Reports or with the Codes and methods ("Associated License Amendment Requests"). Such Codes will be received and handled by the NRC in accordance with the provisions of this MOU.

1. Westinghouse Codes are being provided on loan, voluntarily and as a courtesy to the NRC solely to expedite and facilitate the review of associated Topical Reports and Associated License Amendment Requests. The Codes would customarily not be released to the public by Westinghouse. Westinghouse considers the Codes to be confidential and proprietary on the basis that the Codes are customarily held in confidence by Westinghouse and that disclosure of the Codes is likely to cause substantial harm to Westinghouse.
2. Westinghouse will submit appropriate proprietary affidavits when it provides the Codes to the NRC. Source code listings are proprietary in their entirety and will not be subject to explicit delineation of proprietary coding on a line-by-line basis. Non-proprietary versions of the Codes will not be submitted.
3. Within fifteen (15) business days of Westinghouse providing Codes to the NRC, the NRC will send Westinghouse a letter affirming that the Codes provided are proprietary. If the NRC is unable to provide such a letter, the NRC will immediately return the Codes to Westinghouse unless Westinghouse agrees to extend the time within which the NRC is to provide the letter.
4. The NRC may not dispose of the Codes.

ATTACHMENT

5. The NRC will use the Codes solely on the “NRR high-performance computer network” (“NRR HPC Network”). The NRC will return all copies of the Codes to Westinghouse as soon as is practicable, and will irretrievably delete the Codes from the NRR HPC Network if Westinghouse, at any time and in its sole discretion, requests in writing that the Codes be withdrawn from the NRC, unless such return is precluded by law. With respect to system backup tapes, the NRC will overwrite those tapes so as to irretrievably delete the Codes from such tapes on the regular schedule set by the NRC Office of the Chief Information Officer (“OCIO”).
6. Notwithstanding the provisions of this MOU, after Westinghouse provides the Codes to the NRC and while the Codes are being used by the NRC in accordance with this MOU, if the NRC receives a Freedom of Information Act (“FOIA”) request for the Codes, the NRC may retain the Codes for as long as legally required. If the NRC receives any FOIA request for the Codes, the NRC will follow the procedures in its Management Directive 3.1 (or its successor), including procedures that require notification to the submitter of claimed proprietary information if such information is being considered for release. The NRC will not object to Westinghouse participating in any judicial proceeding relating to the FOIA request.
7. The Codes will be strictly controlled by the NRC in accordance with OCIO procedures. The Codes will not be left exposed or unattended by the NRC and will be stored in locked drawers or files when not in use. The NRR HPC Network on which the Codes will be loaded will be protected by group identifier, individual user identifier, and user password to preclude unauthorized access.
8. Any evaluations that the NRC derives from use of the Codes being furnished under this MOU will be used by the NRC only for purposes of development of the Safety Evaluation Reports (“SER”) relating to the Topical Reports for which the Codes were submitted or in connection with Associated License Amendment Requests. In accordance with current NRC policy, procedure, and practice, Westinghouse will be provided an opportunity to identify information it deems proprietary that is contained in any SER produced as a result of evaluations derived from the Codes furnished under this MOU prior to public disclosure of the SER.
9. Under no circumstances will the Codes be made available in the Public Document Room (“PDR”) or in the Agency Document Access and Management System (“ADAMS”), either externally or internally.
10. Access to the Codes within the NRC will be restricted by the NRC to individuals who are full or part time employees of the NRC and directly involved in the review of the related Topical Reports or Associated License Amendment Requests, and to the system administrator, who is an NRC contractor, as designated by the OCIO. The Codes will not be disclosed to individuals who are special government employees, consultants, and contractors, except the system administrator as stated above, without prior Westinghouse written approval in its sole discretion; and no such disclosure may be for other than the purposes stated in this MOU. A list of individuals with access to the Codes will be maintained by the NRC and provided to Westinghouse upon request.

11. If requested by the NRC, Westinghouse will negotiate with the NRC on the provision of technical support for the setup, training, and operation of the Codes within the NRC. Some technical support may be provided to the NRC by Westinghouse as a courtesy.
12. The NRC will exercise the Codes in a manner consistent with their intended use under this MOU. Such use includes review of the numerical methods used in the Codes, code convergence, code stability within the requested range of applicability for the Codes, and similar coding issues that may have an effect on the results of calculations derived from the Codes. The NRC may also consider whether coding is consistent with code documentation. The NRC, however, will not review design issues relating to the Codes that do not affect the results of the calculations.
13. Westinghouse will not be required to furnish or reimburse the NRC for any hardware, operating system, or additional software needed to support the use of the Codes by the NRC. However, Westinghouse will provide those files necessary to run the Codes in a manner consistent with demonstrating their intended purpose as described by the associated Topical Reports. This will include providing sufficient information from Westinghouse data libraries, data sets, or files to support the associated review of the Topical Reports.

**U.S. NUCLEAR REGULATORY
COMMISSION**

By: _____
Name: William D. Travers
Title: Executive Director for Operations

Date: _____

WESTINGHOUSE ELECTRIC COMPANY LLC

By: _____
Name: Stephen R. Tritch
Title: President and Chief Executive Officer

Date: March 11, 2003