

## **STATEMENT OF CONSIDERATIONS**

**PETITION FOR ADVANCE WAIVER OF PATENT RIGHTS BY  
WESTINGHOUSE ELECTRIC CORP ("WESTINGHOUSE") UNDER  
SUBCONTRACT NO. QZ001 UNDER PRIME CONTRACT NO. DE-FC07-  
05ID14636 BETWEEN NUSTART ENERGY DEVELOPMENT  
("NUSTART") AND DOE; W(A)-05-027; CH-1293**

The Petitioner, Westinghouse, has requested a waiver of domestic and certain foreign patent rights for all subject inventions that may be conceived or first actually reduced to practice by Westinghouse or its subcontractors, arising from its participation under the above referenced cooperative agreement entitled "NuStart Energy Construction and Operating License Demonstration Project."

The objective of the cooperative agreement is to demonstrate the combined Construction and Operating License ("COL") process under 10 CFR 52 to promote new Nuclear Power Plant ("NPP") construction in the United States. This work is funded under DOE's Nuclear Power 2010 Program, which is a government/industry cost-shared effort to identify sites for new nuclear power plants, develop and bring to market advanced nuclear plant technologies, evaluate the business case for building new nuclear power plants, and demonstrate untested regulatory processes leading to an industry decision in the next few years to seek Nuclear Regulatory Commission (NRC) approval to build and operate new advanced nuclear power plants in the United States.

Petitioner's subcontract is designed to further develop Westinghouse's AP1000 Nuclear Reactor Design (AP1000), and support site evaluations, licensing efforts, and business assessments that utility companies need to determine whether to build new NPPs.

The total cost of the project with NuStart is approximately \$519 million. The anticipated cost of the subcontract with Petitioner is approximately \$400 million, with the Petitioner providing about fifty percent (50%) cost sharing. This waiver is contingent upon the Petitioner maintaining, in aggregate, the above cost sharing percentage over the course of its subcontract. The programs are divided into two phases. Phase 1 will be performed in 2005 and will include detailed planning for the program. Phase 2 will be performed in the years 2006-2011.

As noted in its waiver petition, Petitioner is recognized world leader in nuclear power plant technology. Petitioner has developed several nuclear power plant designs including advanced pressurized water reactors, pebble bed reactors and Generation IV reactor designs. Petitioner's technology has been utilized in over 150 nuclear power plants around the world, including 40 plants within the United States. Petitioner has been assigned numerous patents for its nuclear reactor technology over the past forty years, including patents related to the development of the AP 1000 and its predecessors. Petitioner's financial and technological investment in the present technology has been substantial, spanning several decades and totaling hundreds of millions of dollars.

Considering Petitioner's technical expertise, established market position, and significant investment in this technology including sizable cost sharing in this cooperative agreement, it is reasonable to conclude that Petitioner will continue to develop and ultimately commercialize the technology and products which may arise from this cooperative agreement.

Petitioner has agreed that this waiver shall be subject to the march-in and preference for U.S. industry provisions, as well as the U.S. Government license, comparable to those set out in 35 U.S.C. 202-204. Further, Petitioner has agreed to the attached U.S. Competitiveness provision paragraph (t). In brief, Petitioner has agreed that products embodying a waived invention or produced through the use of a waived invention will be manufactured substantially in the United States unless the Petitioner can show to the satisfaction of the DOE that is not commercially feasible to do so. Additionally, Petitioner has agreed to certain special data provisions previously negotiated and attached hereto. Specifically, Petitioner will have the right to copyright data generated under its subcontract. The government will have a paid-up nonexclusive license in the copyrighted data subject to certain release restrictions. Petitioner has also agreed to execute a royalty repayment agreement with DOE prior to release of any DOE funding for phase II of this project

Referring to item 10 of the waiver petition, granting this waiver is not anticipated to have any adverse impact on competition. If anything, the technology forming the subject matter of the collaboration can be expected to stimulate competition among the several companies including General Electric (GE) and Areva which are also developing new NPPs. It should be noted that GE has also been granted a sub-award for the NuStart Project.

Considering the foregoing, it is believed that granting this waiver will provide Petitioner with the necessary incentive to invest its resources in the commercialization of the results of the cooperative agreement in a fashion which will make the above technology available to the public in the shortest practicable time. Therefore, upon evaluation of the waiver petition and in view of the objectives and considerations set forth in 10 CFR 784, all of which have been considered, it is recommended that the requested waiver be granted.



Brian J. Lally  
Patent Attorney  
Office of Intellectual Property Law

Date: 8/9/05

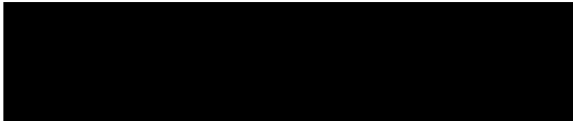


Daniel D. Park  
Assistant Chief Counsel  
Office of Intellectual Property Law

Date: 8/11/05

Based upon the foregoing Statement of Considerations and representations in the attached waiver petition, it is determined that the interests of the United States and the general public will best be served by a waiver of patent rights of the scope described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of the cooperative agreement, where through such modification or extension, the purpose, scope or cost of the subcontract has been substantially altered.

CONCURRENCE:

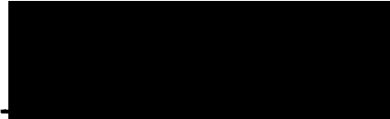


Rebecca F. Smith-Keever  
Associate Director  
Nuclear Power Technology  
Safety and Security  
Office of Nuclear Power Systems  
NE-30

Date:

31 October 2005

APPROVAL:



Paul A. Gottlieb  
Assistant General Counsel  
for Technology Transfer and  
Intellectual Property

Date:

11-4-05

(t) U. S. Competitiveness

The Contractor agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of the DOE that it is not commercially feasible to do so. In the event the DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The Contractor agrees that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by the DOE.

WAIVER ACTION - ABSTRACT  
W(A)-05-027

REQUESTOR

Westinghouse  
Electric Corp.

CONTRACT SCOPE

Development of new advanced  
nuclear power plants in the U.S.

RATIONALE FOR DECISION

50% Cost Sharing