

## STATEMENT OF CONSIDERATIONS

REQUEST FOR ADVANCE WAIVER OF PATENT RIGHTS BY  
WESTINGHOUSE ELECTRIC COMPANY, LLC, UNDER DOE AWARD NO.  
DE-NE0008222; W(A)-2015-007, CH-1729

The Petitioner, the Westinghouse Electric Company, LLC (Westinghouse), has requested a waiver of domestic and foreign patent rights for all subject inventions arising under the above referenced award and lower tiered subcontracts entered thereunder. The award is entitled "Continuation Award For Commercial Accident Tolerant Fuels." This waiver will not impact the rights of those parties subject to Public Law 96-517, as amended, nor shall it grant any rights in inventions made by employees of the National Laboratories.

The objective of the Petitioner's award is to develop light water reactor fuels with enhanced accident tolerance. The Petitioner intends to introduce lead test rods or assemblies for an accident tolerant fuel into a commercial reactor within ten years. Following a test phase, prototype rods will be scaled and exposed to reactors for analysis. Fully viable enhanced accident tolerant fuels will then be licensed and loaded into commercial reactors.

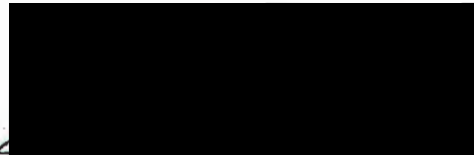
The total anticipated cost of the award is \$11,695,416.00 including the Petitioner's contribution of \$2,339,083.20, or about twenty percent (20%) of the total cost of the work under the award. This waiver is contingent upon the Petitioner maintaining, in aggregate, the above cost sharing percentage over the course of the award.

As noted in its waiver petition, the Petitioner has extensive experience in the design of complex commercial energy systems and their optimization relative to system performance and cost. The Petitioner has researched advanced fuel cladding for greater than a decade and has invested greater than \$7 million during this period. Further, the Petitioner supplies greater than fifty percent of the nuclear fuel produced in the U.S. for use in commercial nuclear power generation facilities. To ensure commercialization of the technology, the Petitioner has outlined clear steps towards the manufacture and distribution of accident tolerant fuels. Considering the Petitioner's technical expertise and significant investment in this technology including cost sharing in this award, it is reasonable to conclude that the Petitioner will continue to develop and ultimately commercialize the technology and products which may arise from this award.

The 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, the Petitioner has agreed to the U.S. competitiveness provisions as attached to this Statement. In brief, the Petitioner has agreed that products embodying a waived invention or produced through the use of a waived invention will be substantially manufactured in the United States, and that the Petitioner will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements.

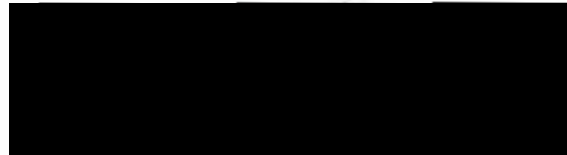
Referring to item 10 of the waiver petition, granting this waiver is not expected to have an adverse impact on competition. The Petitioner cites to a competitive market with both domestic and international parties working to improve accident tolerant fuels. Additionally, the Petitioner notes there are multiple paths toward safe fuel technologies, only some of which may be arrived at by the Petitioner. As a result, the success of this award can be expected to stimulate further investment and competition in this technology.

Considering the foregoing, it is believed that granting this waiver will provide the Petitioner with the necessary incentive to invest its resources in the commercialization of the results of the award in a fashion which will make the 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.



Jacob A. Heafner  
Patent Attorney  
Intellectual Property Law Division  
Integrated Support Center

Date: 3/12/15



Daniel D. Park  
Assistant Chief Counsel  
Intellectual Property Division  
Integrated Support Center

Date: 3/12/15



Based upon the foregoing Statement of Considerations and representations in the attached waiver petition, it is determined that the interests of the U.S. 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 will not apply to any modification or extension of the award, where through such modification or extension, the purpose, scope or cost of the award has been substantially altered.

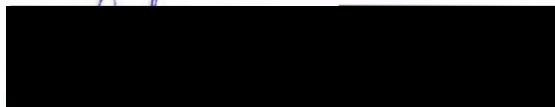
CONCURRENCE:



David Henderson  
Director of Fuel Cycle Research and  
Development, NE-52

Date: 6/5/15

APPROVAL:



John T. Lucas  
Assistant General Counsel for Technology  
Transfer and Intellectual Property, GC-62

Date: 6/10/2015

WAIVER ACTION - ABSTRACT

W(A)-2015-007

REQUESTOR

Westinghouse  
Electric  
Company LLC.

CONTRACT SCOPE

Continuation Award For Commercial  
Accident Tolerant Fuels.

RATIONALE FOR DECISION

Westinghouse has been researching advanced fuel cladding for greater than a decade and has invested greater than \$7 million during this period. Further, the Petitioner is supplies greater than fifty percent of the nuclear fuel produced in the U.S. for use in commercial nuclear power generation facilities and has established commercialization goals for any developed products.

(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.