

February 06, 2002

Kevin Borton, Licensing Manager
Exelon Generation
200 Exelon Way
Kennett Square, Pennsylvania 19348

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC
DISCLOSURE, EXELON GENERATION LETTER OF NOVEMBER 16, 2001

Dear Mr. Borton:

By letter dated November 16, 2001, from James A. Muntz, Vice President, Nuclear Projects, Exelon Generation submitted proprietary Exelon reports entitled "PBMR Nuclear Fuel" and "PBMR Design and Heat Removal Preliminary Description." In the November 16, 2001, letter, James A. Muntz requested the proprietary reports be withheld from public disclosure in accordance with 10 CFR 2.790. Exelon Generation did not submit non-proprietary versions of the these reports. This is in response to the request to withhold the proprietary material from public disclosure.

In Mr. Muntz's request, he stated that he considered the information in these reports to be proprietary and requested that it be withheld from public disclosure pursuant to 10 CFR 2.790. The affidavit, subscribed and sworn to by Staci L. Cooper on November 16, 2001, states that this information is proprietary information of Pebble Bed Modular Reactor (Pty) Limited, a Republic of South Africa Corporation ("PBMR Co"), and has been provided to Exelon subject to agreement that it will be treated as confidential and proprietary. Mr. Muntz further states in the affidavit that Exelon has contributed substantial funds for the development of the information and holds a beneficial ownership interest in PBMR Co. Mr. Muntz states that this information fits into the definition of proprietary information, and examples of categories which are specifically applicable are:

- (a) The information discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by the Company's competitors without license from Exelon Generation Company, LLC constitutes a competitive economic advantage over other companies.
- (b) The information which, if used by a competitor, would reduce his expenditure of resources or improve his competitive position in the performance of outages or the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product.
- (c) The information sought to be withheld was submitted to the U.S. Nuclear Regulatory Commission (NRC) in confidence and is of the sort customarily held in confidence by Exelon.

- (d) The information sought to be withheld, to the best of Mr. Muntz's knowledge and belief, is not available in public sources.

We have carefully reviewed Mr. Muntz's November 16, 2001, letter and the information contained in the request. We have concluded that only limited material in "PBMR Nuclear Fuel" may be withheld in accordance with 10 CFR 2.790(a)(6), and that most of the material should be released and placed in the Public Document Room (PDR). We do not believe that the information includes distinguishing aspects, would improve a competitor's economic advantage, or involves information that constitutes either trade secrets or proprietary commercial information. We have concluded that the material in "PBMR Design and Heat Removal Preliminary Description," generally does contain information that should be withheld from public disclosure.

On January 15, 2001, the NRC and Exelon conducted a telephone conference call to discuss the November 11, 2001, letter and the results of the NRC's review of Exelon's request for withholding information from public disclosure. During the call, the NRC explained that almost all of the material in the Exelon report entitled "PBMR Nuclear Fuel" is currently available in public documents. Several specific examples were provided citing the public sources where the information is currently available. The attachment to this letter provides additional examples of publicly available reference documents where specific information in this report is already publicly available. During the call, NRC also explained that the material in "PBMR Design and Heat Removal Preliminary Description," generally does contain information that should be withheld from public disclosure. However, much of the information could be documented and presented in a manner which provides the public with an understanding of the material, but is presented in a non-proprietary manner. Accordingly, Exelon agreed to review and revise both documents and to resubmit them in both proprietary and non-proprietary versions.

Additionally, based on the results of the staff's review of these documents and the issues raised in connection with the review, Exelon agreed to re-review the proprietary slide presentation materials submitted and presented in connection with all NRC/Exelon meetings during CY 2001. Exelon agreed to resubmit revised proprietary and non-proprietary versions of these presentation materials based on a reassessment of information now known to be publicly available and to effectively present the material to provide the public with an understanding of the material.

In accordance with 10 CFR 2.790(c), this information is being forwarded to you as notice that the information will be placed in the PDR thirty (30) days from the date of this letter. If within thirty (30) days of this letter, you request withdrawal of these documents in accordance with 10 CFR 2.790(c), or provide additional reasons for the withholding of information not already expunged from the documents, your request will be considered in light of applicable statutes and regulations and a determination made whether the documents will be withheld from public disclosure or returned to you.

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the documents. If the need arises, we may send copies of this information to our consultants working in this area. We will, of course, ensure that the consultants have signed the appropriate agreements for handling proprietary information.

If the basis for withholding this information from public disclosure should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You should understand that the NRC may have cause to review this determination in the future, for example, if the scope of a Freedom of Information Act request includes your withheld information. In all review situations, if the NRC makes a determination adverse to the above, you will be notified in advance of any public disclosure.

Sincerely,

/RA/

Stuart D. Rubin, Senior Technical Advisor
Regulatory Effectiveness Assessment
and Human Factors Branch
Division of Systems Analysis and Regulatory Effectiveness
Office of Nuclear Regulatory Research

Project No. 713

Attachment: As stated

cc w/att.: See attached list

Letter Dated: February 06, 2002

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC
DISCLOSURE, EXELON GENERATION LETTER OF NOVEMBER 16, 2001

cc w/att.:

Ralph Beedle
Senior Vice President and Chief Nuclear Officer
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Washington, DC 20006-3708

Marilyn Kray
Vice President Special Projects
Exelon Generation
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Kenneth Square, PA 19348

Edward F. Sproat, III
Vice President-International Projects
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Union of Concerned Scientists
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Washington, DC 20006-3919

Dr. Gail Marcus
U.S. Department of Energy
Office of Nuclear Energy, Science and Technology
NE-1, Room 5A-143
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William D. Magwood, IV
U.S. Department of Energy
Office of Nuclear Energy, Science and Technology
NE-1, Room 5A-143
1000 Independence Avenue, SW
Washington, DC 20585

Letter Dated: February 06, 2002

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE,
EXELON GENERATION LETTER OF NOVEMBER 16, 2001

cc w/att. (continued):

Mr. Paul Gunter
Nuclear Information & Resource Service
1424 16th Street, NW, Suite 404
Washington, DC 20036

Mr. James Riccio
Public Citizen's Critical Mass Energy Project
211 Pennsylvania Avenue, SE
Washington, DC 20003

Mr. Ron Simard
Nuclear Energy Institute
Suite 400
1776 I Street, NW
Washington, DC 20006-3708

Stephen Antonelli
Research Associate on Nuclear Energy
Public Citizen's Critical Mass Energy & Environment Program
215 Pennsylvania Avenue, SE
Washington, DC 20003

If the basis for withholding this information from public disclosure should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You should understand that the NRC may have cause to review this determination in the future, for example, if the scope of a Freedom of Information Act request includes your withheld information. In all review situations, if the NRC makes a determination adverse to the above, you will be notified in advance of any public disclosure.

Sincerely,

/RA/

Stuart D. Rubin, Senior Technical Advisor
Regulatory Effectiveness Assessment
and Human Factors Branch
Division of Systems Analysis and Regulatory Effectiveness
Office of Nuclear Regulatory Research

Project No. 713

Attachment: As stated

cc w/att.: See attached list

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EXAMPLES RELATED TO PROPRIETARY FINDING ON “PBMR NUCLEAR FUEL”

- 1) Sections 2.1, Fuel element Design, Pages 8

(This information is published in the September 2001 issue of *Nuclear News*).
- 2) Section 2.2, Fuel Manufacture. Pages 8 and 9

(This information is published in the September 2001 issue of *Nuclear News* and provided in statements made by Exelon in the non-proprietary portion of June 12-13, 2001 NRC/Exelon public meeting).
- 3) Section 2.3, Process Description, Page 10

(This information is published in IAEA TECDOC-978, Fuel Performance and Fission Product Behaviour in Gas Cooled Reactors and the September 2001 issue of *Nuclear News*).
- 4) Section 2.4, Kernel Formation, Pages 11 and 12

(This information is generally published in the September 2001 issue of *Nuclear News*, IAEA TECDOC-978, Fuel Performance and Fission Product Behaviour in Gas Cooled Reactors and *Nuclear Technology*, Volume 69, April 1985, pages 44-53).
- 5) Section 2.5, Coating of Kernels to Make Coated Particles Pages 12 and 13

(This information is generally published in IAEA TECDOC-978, Fuel Performance and Fission Product Behaviour in Gas Cooled Reactors and *Nuclear Engineering and Design*, Volume 78, 1984, pages 155-166).
- 6) Section 2.6, Mixing of Graphite Powder, Page 13

(Parts of this section is published in the *Journal of Nuclear Materials*, Volume 171, 1990, Pages 9-18).
- 7) Section 2.7, Fuel Sphere Manufacture, Pages 14 and 15

(Parts of this section is published the September 2001 issue of *Nuclear News*, *Nuclear Engineering and Design*, Volume 78, 1984, pages 155-166 and IAEA TECDOC-978, Fuel Performance and Fission Product Behaviour in Gas Cooled Reactors).
- 8) Section 2.8, Graphite Sphere Manufacture, Page 15

(This information is generally publically available and is not considered privileged, confidential or involve trade secrets).

- 9) Section 2.9, Manufacturing Defects, Page 16

(This information is published in IAEA TECDOC-978, Fuel Performance and Fission Product Behaviour in Gas Cooled Reactors).

- 10) Section 2.11, PBMR Fuel Specifications and Measurements, Pages 18-21

(The information on the fuel element component, property and specified quantity is generally published in the *Journal of Nuclear Materials*, Volume 171, 1990, Pages 9-18. Selected specifications are also published in the September 2001 issue of *Nuclear News* and the *Journal of Nuclear Materials*, Volume 171, 1990, Pages 9-18. Selected information in Tables 2 and 3 were provided in the non-proprietary portion of June 12-13, 2001 NRC/Exelon public meeting).

- 11) Section 3. Fuel Development History and Irradiation Testing, Pages 22-30

(This information is generally published in the above referenced publically available documents and Nuclear engineering Design Volume 121, 1990 pages 199-210 and *Journal of Nuclear Materials Volume* 124, 1884, 25-32).