

April 26, 2004

Mr. James A. Gresham, Manager
Regulatory Compliance and Plant Licensing
Westinghouse Electric Company
P.O. Box 355
Pittsburgh, PA 15230-0355

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
(CAW-03-1747) (TAC NOS. MC2024 AND MC2025)

Dear Mr. Gresham:

By letter dated February 13, 2004, Pacific Gas and Electric Company, the licensee for the Diablo Canyon Power Plant, Unit Nos. 1 and 2, submitted an affidavit dated December 4, 2003, executed by J. S. Galembush, Acting Manager, Regulatory Compliance and Plant Licensing, requesting that the following document be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.790:

Topical Report Applicability Determination

This document is part of Pacific Gas and Electric Company's application for amendment for the Diablo Canyon Power Plant, Unit Nos. 1 and 2 to revise their technical specifications to adopt completion time, test bypass time, and surveillance frequency changes that have approved by the Nuclear Regulatory Commission (NRC) in WCAP-14333-P-A, Revision 1, "Probabilistic Risk Analysis of the RPS and ESFAS Test Times and Completion Times," October 1998 and WCAP-15376-P-A, Revision 1, "Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times," March 2003.

A nonproprietary copy of the document has been placed in the NRC's Public Document Room and added to the Agencywide Documents Access and Management System Public Electronic Reading Room.

The affidavit stated that the submitted information should be considered exempt from mandatory public disclosure for the following reasons:

- (i) The information sought to be withheld from public disclosure is owned and has been held in confidence by Westinghouse.
- (ii) The information is of a type customarily held in confidence by Westinghouse and not customarily disclosed to the public.
 - (a) The information reveals the distinguishing aspects of a process (or component, structure, tool, method, etc.) where prevention of its use by any of Westinghouse's competitors without license from Westinghouse constitutes a competitive economic advantage over other companies.

- (c) Its use by a competitor would reduce his expenditure of resources or improve his competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing a similar product.

On February 13, 2004, certain revisions of the NRC's regulations went into effect that renumbered 10 CFR 2.790 as 10 CFR 2.390. We have reviewed your application and the material in accordance with the requirements of 10 CFR 2.390 and, on the basis of your statements, have determined that the submitted information sought to be withheld contains proprietary commercial information and should be withheld from public disclosure.

Therefore, the information in the document entitled "Topical Report Applicability Determination," marked as proprietary, will be withheld from public disclosure pursuant to 10 CFR 2.390(b)(5) and Section 103(b) of the Atomic Energy Act of 1954, as amended.

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 inspection should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You also 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 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.

If you have any questions regarding this matter, I may be reached at (301) 415-1307.

Sincerely,

/RA/

Jack Donohew, Senior Project Manager, Section 2
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-275 and 50-323

cc: See next page

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 Project Directorate IV
 Division of Licensing Project Management
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NAME	JDonohew	EPeyton:esp	EMarinos	SDembek
DATE	4/23/04	4/22/04	4/26/04	4/26/04

Diablo Canyon Power Plant, Units 1 and 2

cc:

NRC Resident Inspector
Diablo Canyon Power Plant
c/o U.S. Nuclear Regulatory Commission
P.O. Box 369
Avila Beach, CA 93424

Sierra Club San Lucia Chapter
c/o Henriette Groot
1000 Montecito Road
Cayucos, CA 93430

Ms. Nancy Culver
San Luis Obispo
Mothers for Peace
P.O. Box 164
Pismo Beach, CA 93448

Chairman
San Luis Obispo County Board of
Supervisors
Room 370
County Government Center
San Luis Obispo, CA 93408

Mr. Truman Burns
Mr. Robert Kinoshian
California Public Utilities Commission
505 Van Ness, Room 4102
San Francisco, CA 94102

Diablo Canyon Independent Safety
Committee
ATTN: Robert R. Wellington, Esq.
Legal Counsel
857 Cass Street, Suite D
Monterey, CA 93940

Regional Administrator, Region IV
U.S. Nuclear Regulatory Commission
Harris Tower & Pavillion
611 Ryan Plaza Drive, Suite 400
Arlington, TX 76011-8064

Richard F. Locke, Esq.
Pacific Gas & Electric Company
P.O. Box 7442
San Francisco, CA 94120

Mr. David H. Oatley, Vice President
and General Manager
Diablo Canyon Power Plant
P.O. Box 56
Avila Beach, CA 93424

City Editor
The Tribune
3825 South Higuera Street
P.O. Box 112
San Luis Obispo, CA 93406-0112

Mr. Ed Bailey, Radiation Program Director
Radiologic Health Branch
State Department of Health Services
P.O. Box 942732 (MS 178)
Sacramento, CA 94234-7320

Mr. James D. Boyd, Commissioner
California Energy Commission
1516 Ninth Street (MS 31)
Sacramento, CA 95814

Mr. James R. Becker, Vice President
Diablo Canyon Operations
and Station Director
Diablo Canyon Power Plant
P.O. Box 3
Avila Beach, CA 93424

Mr. Gregory M. Rueger
Senior Vice President, Generation and
Chief Nuclear Officer
Pacific Gas and Electric Company
Diablo Canyon Power Plant
P.O. Box 3
Avila Beach, CA 93424