

July 14, 2004

Mr. A. Christopher Bakken, III  
President & Chief Nuclear Officer  
PSEG Nuclear, LLC - X04  
Post Office Box 236  
Hancocks Bridge, NJ 08038

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC  
DISCLOSURE, SALEM NUCLEAR GENERATING STATION, UNIT NO. 1  
(TAC NO. MC0967)

Dear Mr. Bakken:

By letter dated September 24, 2003, as supplemented by letters dated March 2, March 31, April 16, and April 29, 2004, PSEG Nuclear LLC (PSEG) submitted Relaxation Request S1-RR-I3-B21 to the Nuclear Regulatory Commission (NRC or the Commission) requesting relaxation from the nondestructive examination requirements specified in Sections IV.C.(5)(b)(i) and IV.C.(5)(b)(ii) of the First Revised Order Modifying Licenses (EA-03-009) for Salem Nuclear Generating Station, Unit No. 1. The March 31, 2004, letter included a proprietary version of a Westinghouse Electric Company, LLC (Westinghouse) report titled, "Structural Integrity Evaluation of Reactor Vessel Upper Head Penetrations to Support Continued Operation: Salem Units 1 and 2," WCAP-16214-P, Revision 0, dated February 2004. Enclosed with the March 31, 2004, letter was a Westinghouse affidavit dated March 29, 2004, requesting that the Westinghouse report be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 2, Section 2.390(b)(4). A nonproprietary version of WCAP-16214-P, Revision 0, was not included with the March 31, 2004, letter.

The March 29, 2004, affidavit stated that the submitted information should be considered exempt from mandatory public disclosure. Among the reasons provided were:

- (1) The information sought to be withheld from public disclosure is owned and has been held in confidence by Westinghouse.
- (2) The information is of a type customarily held in confidence by Westinghouse and not customarily disclosed to the public. Westinghouse has a rational basis for determining the types of information customarily held in confidence by it and, in that connection, utilizes a system to determine when and whether to hold certain types of information in confidence.
- (3) The information was transmitted to the Commission in confidence and, under the provisions of 10 CFR 2.390, it is to be received in confidence by the Commission.
- (4) The information sought to be protected is not available in public sources or available information has not been previously employed in the same manner or method to the best of Westinghouse's knowledge and belief.

The introductory section of the WCAP further specified that the information sought to be withheld is considered by Westinghouse to be proprietary because:

- (a) The information reveals the distinguishing aspects of a process or component, structure, tool, method, etc., and the prevention of its use by Westinghouse's competitors, without license from Westinghouse, gives Westinghouse a competitive advantage.
- (c) The information, if used by a competitor, would reduce the competitor's expenditure of resources or improve the competitor's advantage in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product.
- (e) The information reveals aspects of past, present, or future Westinghouse or customer funded development plans and programs of potential commercial value to Westinghouse.

The NRC staff's review of WCAP-16214-P, Revision 0, identified portions of the report where information was incorrectly designated as proprietary. For example, general information that is already publicly available regarding results of vessel head inspections at plants such as Oconee, Arkansas Nuclear One, Davis-Besse, and foreign plants was designated as being proprietary. Additionally, statements in the report that provided general descriptions of some figures in the report were designated as proprietary while the figures themselves, which provided detailed information, were not designated as being proprietary. The NRC staff communicated to PSEG that the general information regarding results of vessel head inspections within the nuclear industry cannot be withheld from public disclosure since that information is already in the public domain and the information contained within the report merely provided that information as background material rather than use the information in any unique manner. The NRC staff also expressed doubt that information regarding inspection results at several NRC licensee facilities is "owned" by Westinghouse, as the affidavit claimed, rather than by the licensees themselves. Furthermore, the NRC staff noted that general descriptions of figures in the report cannot be withheld if the figures themselves are releasable, as indicated by the lack of a claim to those figures being proprietary. Finally, the NRC staff noted that, notwithstanding these issues, the NRC must make a redacted (i.e., non-proprietary) version of the WCAP publicly available given that the report contains some nonproprietary information. The NRC staff, therefore, requested that PSEG submit a version of the WCAP that appropriately designates proprietary information, and that a redacted version be docketed as well.

By letter dated April 29, 2004, PSEG submitted proprietary and non-proprietary versions of WCAP-16214-P, Revision 1, dated April 2004. That letter included Westinghouse's affidavit dated April 20, 2004, requesting that the proprietary Westinghouse report be withheld from public disclosure pursuant to 10 CFR 2.390(b)(4). The reasons cited in the April 20, 2004, affidavit for withholding information from public disclosure are the same reasons listed above from the March 29, 2004, affidavit. This revision updated the designations of proprietary information within the WCAP but did not alter any of the technical content. The nonproprietary version, WCAP-16214-NP, has been placed in the NRC's Public Document Room and added to the Agencywide Documents Access and Management Systems Public Electronic Reading Room.

We have reviewed WCAP-16214-P, Revision 1, dated April 2004, and the associated affidavit 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 version of the submitted WCAP-16214-P, Revision 1, 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. The copies of WCAP-16214-P, Revision 0, dated February 2004, are being returned to you and are enclosed with this letter.

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 301-415-1427.

Sincerely,

Daniel S. Collins, Senior Project Manager, Section 2  
Project Directorate I  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

Docket No. 50-272

Enclosure: As stated

cc w/out encl: See next page

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**/RA/**

Daniel S. Collins, Senior Project Manager, Section 2  
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Office of Nuclear Reactor Regulation

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