

August 20, 2004

Mr. David J. Modeen
Vice President and Chief Nuclear Officer
Electric Power Research Institute
3412 Hillview Avenue
Palo Alto, CA 94304-1395

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
(TAC NO. MC3837)

Dear Mr. Modeen:

By letter dated June 8, 2004, the Nuclear Energy Institute (NEI) submitted an affidavit dated May 3, 2004, executed by you, requesting that information contained in the following software and reports be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.390:

- Software No. SW-1006648, PPM Version 3.1
- Software No. SW-1009209, PPM Version 3.2
- Report No. 1006206, "PPM Version 3.0 User Manual and Implementation Guide"
- Report No. 1006930, "Addendum 5 to TR-103237-R2: PPM Version 3.1 Software Changes"
- Report No. 1009032, "Addendum 6 to TR-103237-R2: PPM Version 3.2 Software Changes"

A nonproprietary copy of the reports has been placed in the Nuclear Regulatory Commission's (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 Software and Reports have been held in confidence by EPRI, its owner.
- (ii) The Software and Reports are of a type customarily held in confidence by EPRI and there is a rational basis therefor.
 - (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
 - (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

- (iii) The Software and Reports will be transmitted to the NRC in confidence.
- (iv) The Software and Reports are not available in public sources. EPRI developed the Software and Reports only after making a determination that the Software and Reports were not available from public sources. It required a large expenditure of dollars for EPRI to develop the Software and Reports. In addition, EPRI was required to use a large amount of time of EPRI employees. The money spent, plus the value of EPRI's staff time in preparing the Software and Reports, show that the Software and Reports are highly valuable to EPRI. Finally, the Software and Reports were developed only after a long period of effort of at least several months.
- (v) A public disclosure of the Software and Reports would be highly likely to cause substantial harm to EPRI's competitive position and the ability of EPRI to license the Software and Reports both domestically and internationally. The Software and Reports can only be acquired or duplicated by others using an equivalent investment of time and effort.

We have reviewed your application and the material in accordance with the requirements of 10 CFR 2.790 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, information contained in the software and reports entitled Software No. SW-1006648, PPM Version 3.1; Software No. SW-1009209, PPM Version 3.2; Report No. 1006206, "PPM Version 3.0 User Manual and Implementation Guide;" Report No. 1006930, "Addendum 5 to TR-103237-R2: PPM Version 3.1 Software Changes;" Report No. 1009032, "Addendum 6 to TR-103237-R2: PPM Version 3.2 Software Changes," marked as proprietary will be withheld from public disclosure pursuant to 10 CFR 2.790(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.

D. Modeen

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If you have any questions regarding this matter, I may be reached at 301-415-1326.

Sincerely,

/RA/

Thomas W. Alexion, Project Manager, Section 1
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Project No. 669

cc:

Mr. James Lang, Director
EPRI
1300 W.T. Harris Boulevard
Charlotte, NC 28262

Mr. Gary Vine
Sr. Washington Representative
EPRI
2000 L St. NW, Suite 805
Washington, DC 20036

Mr. Alex Marion
Director, Engineering
Nuclear Generation Division
Electric Power Research Institute
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