

February 8, 2005

Document Control Desk  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Subject: Topical Report: EPRI 1008108 "Licensing Criteria for Fuel Burnup Extension Beyond 62 GWd/tU – Industry Guide"

Gentlemen:

This is a request under 10CFR2.790(a)(4) that the NRC withhold from public disclosure the information identified in the enclosed affidavit consisting of EPRI owned Proprietary Information identified above (the "Topical Report"). Copies Topical Report and the affidavit in support of this request are enclosed.

EPRI desires to disclose, in confidence, the Topical Report for informational purposes to assist the NRC. The Topical Report is not to be divulged to anyone outside of the NRC or to any of its contractors, nor shall any copies be made of the Topical Report provided herein. EPRI welcomes any discussions and/or questions relating to the Information enclosed by the NRC.

If you have any questions about the legal aspects of this request for withholding, please do not hesitate to contact me at (704) 547-6173. Questions on the content of the Topical Report should be directed to Odelli Ozer of EPRI at (650) 855-2089.

Sincerely,



David J. Modeen  
Vice President & Chief Nuclear Officer

cc: Rosa Yang  
Odelli Ozer

## AFFIDAVIT

RE: EPRI Topical Report: EPRI 1008108 "Licensing Criteria for Fuel Burnup Extension Beyond 62 GWd/tU – Industry Guide"

I, DAVID J. MODEEN, being duly sworn, depose and state as follows:

I am a Vice President at the Electric Power Research Institute ("EPRI") and I have been specifically delegated responsibility for the topical report listed above that is sought under this affidavit to be withheld (the "Topical Report") and authorized to apply for its withholding on behalf of EPRI. This affidavit is submitted to the Nuclear Regulatory Commission ("NRC") pursuant to 10 CFR 2.790 (a)(4) based on the fact that the Topical Report consists of trade secrets of EPRI and that the NRC will receive the Topical Report from EPRI under privilege and in confidence.

The basis for which the Topical Report should be withheld from the public is set forth below:

- (i) The Topical Report has been held in confidence by EPRI, its owner. All those accepting copies of the Topical Report must agree to preserve the confidentiality of Topical Report.
- (ii) Topical Report is of a type customarily held in confidence by EPRI and there is a rational basis therefore. The Topical Report is of a type that EPRI considers to be trade secret and is held in confidence by EPRI because to disclose it would prevent EPRI from licensing the Topical Report at fees, which would allow EPRI to recover its investment. If consultants and other businesses providing services in the electric/nuclear power industry were able to publicly obtain the Topical Report, they would be able to use it commercially for profit and avoid spending the large amount of money that EPRI was required to spend in preparation of the Topical Report. The rational basis that EPRI has for classifying Topical Report as a trade secret is the Uniform Trade Secrets Act which California adopted in 1984 and which has been adopted by over twenty states. The Uniform Trade Secrets Act defines a "trade secret" as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (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 Topical Report will be transmitted to the NRC in confidence.
- (iv) The Topical Report is not available in public sources. EPRI developed the Topical Report only after making a determination that the Topical Report was not available from public sources. It required a large expenditure of dollars for EPRI to develop the Topical Report. 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 Topical Report, show that the Topical Report is highly valuable to EPRI. Finally, the Topical Report was developed only after a long period of effort of several years.
- (v) A public disclosure of the Topical Report would be highly likely to cause substantial harm to EPRI's competitive position and the ability of EPRI to license the Topical Report both domestically and internationally. The Topical Report can be properly acquired or duplicated by others only with an equivalent investment of time and effort.

I have read the foregoing and the matters stated therein are true and correct to the best of my knowledge, information and belief. I make this affidavit under penalty of perjury under the laws of the United States of America and under the laws of the State of California.

Executed at 3412 Hillview Avenue, Palo Alto, being the premises and place of business of the Electric Power Research Institute:

February 7, 2005



David J. Modeen

Subscribed and sworn before me this day:

February <sup>9th</sup> 7, 2005



\_\_\_\_\_, Notary Public

