

April 20, 2006

Mr. Alexander Marion, Senior Director  
Engineering  
Nuclear Energy Institute  
1776 I Street, NW, Suite 400  
Washington, DC 20006-3708

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE  
(ELECTRIC POWER RESEARCH INSTITUTE)

Dear Mr. Marion:

By letter dated January 12, 2006, you submitted an affidavit dated December 8, 2005, executed by Mr. David J. Modeen of Electric Power Research Institute (EPRI), requesting that the EPRI documentation, "Materials Reliability Program: Primary System Piping Butt Weld Inspection and Evaluation Guideline (MRP-139)" be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.390. A nonproprietary version of MRP-139 was provided.

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

- (i) The documentation has been held in confidence by EPRI, its owner. All those accepting copies of the documentation must agree to preserve the confidentiality of documentation.
- (ii) The documentation is of a type customarily held in confidence by EPRI and there is a rational basis thereof. The documentation is of a type, which EPRI considers as a trade secret and is held in confidence by EPRI because to disclose it would prevent EPRI from licensing the documentation at fees, which would allow EPRI to recover its investment. If consultants and/or other businesses providing services in the electric/nuclear power industry were able to publicly obtain the documentation, 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 documentation. The rational basis that EPRI has for classifying this documentation as a trade secret is justified by 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 documentation will be transmitted to the NRC in confidence.
- (iv) The documentation is not available in public sources. EPRI developed the documentation only after making a determination that the documentation was not available from public sources. It required a large expenditure of dollars for EPRI to develop the documentation. 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 documentation, show that the documentation is highly valuable to EPRI. Finally, the documentation was developed only after a long period of effort of several years.
- (v) A public disclosure of the documentation would be highly likely to cause substantial harm to EPRI's competitive position and the ability of EPRI to license the documentation both domestically and internationally. The documentation can be properly acquired or duplicated by others using an equivalent investment of time and effort.

Section 2.390(b)(1)(ii) of 10 CFR requires that each supporting affidavit contain a full statement of the reasons on the basis of which it is claimed that the information should be withheld from public disclosure. The section further requires the statement to "address with specificity" the considerations listed in 10 CFR 2.390(b)(4).

Your affidavit has been reviewed in light of the aforementioned paragraphs of the regulations. The Nuclear Regulatory Commission (NRC) recognizes that the intent of MRP-139, "Primary System Piping Butt Weld Inspection and Evaluation Guideline," is to establish a long term mandatory inspection program under NEI-03-08, "Guideline for the Management of Materials Issues." The NRC also recognizes that MRP-139 was provided to the NRC for information only. While the MRP has spent considerable effort documenting a primary system piping butt weld inspection and evaluation (I&E) guideline, the inspection requirements of the guideline, Sections 1.2, 5, and 6 of MRP-139, contain no proprietary specifications nor sensitive test data. To effectively manage primary water stress corrosion cracking (PWSCC) in primary system piping butt welds, the NRC staff notes that a long term inspection program will be required. The industry's proposed long term inspection program is presented in Sections 1.2, 5, and 6 of the I&E guideline. As such, the NRC staff believes this document will in some manner form the basis for NRC's regulatory approach to address PWSCC in primary system piping butt welds, which will be publicly available. Therefore, the NRC staff finds that the proposed inspection plan should be publicly available. For these reasons, the NRC does not believe that Sections 1.2, 5, and 6 of MRP-139 should be withheld from the public as proprietary.

A. Marion

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In accordance with 10 CFR 2.390(c), the information sought to be withheld will be placed in the NRC's Public Document Room 30 days after your receipt of this letter unless you either provide the NRC with an amended affidavit meeting the requirements of 10 CFR 2.390(b) or seek to withdraw the information requested to be withheld. If you provide an amended affidavit, it is respectfully requested that you furnish specific factual information for your application which fully addresses the NRC staff's concerns set out above. If you request that the information be withdrawn, 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 and returned to you.

If you have any questions regarding this matter, I may be reached at 301-415-1774.

Sincerely,

**/RA/**

Michelle C. Honcharik, Project Manager  
Special Projects Branch  
Division of Policy and Rulemaking  
Office of Nuclear Reactor Regulation

Project Nos. 689 and 669

cc: See next page

A. Marion

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Michelle C. Honcharik, Project Manager  
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**NRR-084**

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Electric Power Research Institute

Project No. 689  
Project No. 669

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