

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

June 27, 2006

SUBJECT: ELECTRIC POWER RESEARCH INSTITUTE RE: REQUEST FOR  
WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE  
(TAC NO. MD0694)

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 information contained in the following document be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.390:

EPRI documentation, "Materials Reliability Program: Primary System Piping Butt Weld Inspection and Evaluation Guideline (MRP-139)."

A nonproprietary copy of this document has been placed in the U.S. Nuclear Regulatory Commission's (NRC's) Public Document Room and added to the Agencywide Documents Access and Management System (ADAMS) 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 Documentation has been held in confidence by EPRI, its owner. All those accepting copies of the Documentation must agree to preserve the confidentiality of the 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(s) 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/these Documentation(s) as a trade secret(s) 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 only be acquired and/or duplicated by others using an equivalent investment of time and effort.

Since receiving the letter dated January 12, 2006, with EPRI's affidavit, there has been additional correspondence between the NRC and NEI. Specifically, the NRC issued letters to NEI dated April 20, 2006 (ADAMS Accession No. ML060690261), and May 9, 2006 (ADAMS Accession No. ML061290357), and EPRI issued a letter to NRC dated May 11, 2006 (ADAMS Accession No. ML061720279). These letters pertain to the NRC staff's stated belief in the April 20, 2006, letter that MRP-139 should be made publicly available since the NRC is relying, in part, on the inspections of MRP-139 in lieu of taking prompt regulatory actions to ensure that a program of similar inspections is being conducted by licensees of pressurized water reactor piping.

The NRC staff has begun to develop a document that will be publicly available and provide substantial information on the technical issues associated with primary system piping butt weld inspections and the basis for reasonable assurance of public health and safety being provided by the actions underway by NRC and the industry. Much of this information is already publicly available in various documents, such as meeting summaries. The NRC staff will be issuing a single document that will facilitate public understanding of the NRC staff's regulatory approach for addressing this issue. However, this document will not contain information considered to be proprietary by EPRI, as indicated in the January 12, 2006, submittal. The NRC staff believes that this document will permit the NRC staff to provide an appropriate level of publicly available information regarding the role of MRP-139 in regulatory decision-making, consistent with the

NRC's strategic goal of openness, while protecting information which, if released, could cause substantial harm to EPRI's competitive position.

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 version of the submitted information 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 301-415-1774.

Sincerely,

**/RA by Juan Peralta for/**

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

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**/RA by Juan Peralta for/**  
Michelle C. Honcharik, Project Manager  
Special Projects Branch  
Division of Policy and Rulemaking  
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**ADAMS ACCESSION NO.: ML061720118**

**NRR-084**

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Electric Power Research Institute

Project No. 689  
Project No. 669

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