

December 13, 2006

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

**Subject: Request for Withholding Proprietary Documentation of Materials Reliability Program**

To Whom It May Concern:

This is a request under 10 C.F.R. §2.390(a)(4) that the U.S. Nuclear Regulatory Commission (the "NRC") withhold from public disclosure the information identified in the enclosed Affidavit of David J. Modeen consisting of the proprietary information owned by Electric Power Research Institute, Inc. ("EPRI") and identified below (the "Draft Materials"). Copies of the Draft Materials and the Affidavit in support of this request are enclosed. The "Draft Materials" consist of the a draft Risk Based Evaluation of Recent Dissimilar Metal Weld (DMW) Inspection Results.

EPR I desires to disclose, in confidence, the Draft Materials for informational purposes to assist the NRC. The Draft Materials are not to be divulged to anyone outside of the NRC or to any of its contractors, nor shall any copies be made of the Draft Materials provided herein. EPR I welcomes any discussions and/or questions relating to the information enclosed.

If you have any questions about the legal aspects of this request for withholding, please do not hesitate to contact me at (704) 595-2173. Questions on the content of the Draft Materials should be directed to Christine King of EPR I at (650) 855-2065.

Sincerely,

ELECTRIC POWER RESEARCH INSTITUTE, INC.



David J. Modeen  
Vice President & Chief Nuclear Officer

Encl: Affidavit

D035

## AFFIDAVIT

**RE: Request for Withholding Proprietary Documentation of the Materials Reliability Program:**

- Draft Risk-Based Evaluation of Recent DMW Inspection Results

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

I am a Vice President and the Chief Nuclear Officer of Electric Power Research Institute, Inc. whose principal office is located at 3420 Hillview Avenue, Palo Alto, California (“EPRI”) and I have been specifically delegated responsibility for the above-listed draft materials that are sought under this Affidavit to be withheld (the “Draft Materials”). I am authorized to apply to the U.S. Nuclear Regulatory Commission (“NRC”) for the withholding of the Draft Materials on behalf of EPRI.

EPRI requests that the Draft Materials be withheld from the public on the following bases:

Withholding Based on Draft Materials:

EPRI requests that the Draft Materials be withheld from public release based on the fact that the documents are draft documents. Footnote 1 of 10 C.F.R. §2.390 specifically excludes draft materials from the documents which may be made available to the public. Because of the draft nature of the Draft Materials and the potential for variance from the final version of the report which will include such materials, it could be confusing, as well as potentially misleading, to the public if the Draft Materials were made publicly available.

Withholding Based Upon Privileged And Confidential Trade Secrets Or Commercial Or Financial Information:

a. The Draft Materials are owned by EPRI and have been held in confidence by EPRI. All entities accepting copies of the Draft Materials do so subject to written agreements imposing an obligation upon the recipient to maintain the confidentiality of the Draft Materials. The Draft Materials are disclosed only to parties who agree, in writing, to preserve the confidentiality thereof.

b. EPRI considers the Draft Materials and the proprietary information contained therein (the “Proprietary Information”) to constitute trade secrets of EPRI. As such, EPRI holds the Draft Materials in confidence and disclosure thereof is strictly limited to individuals and entities who have agreed, in writing, to maintain the confidentiality of the Draft Materials. EPRI made a substantial economic investment to develop the Draft Materials, and, by prohibiting public disclosure, EPRI derives an economic benefit in the form of licensing royalties and other additional fees from the confidential nature of the Draft Materials. If the Draft Materials and the Proprietary Information were publicly available to consultants and/or other businesses providing services in the electric and/or nuclear power industry, they would be able to use the Draft Materials for their own

commercial benefit and profit and without expending the substantial economic resources required of EPRI to develop the Draft Materials.

c. EPRI's classification of the Draft Materials and the Proprietary Information as trade secrets is justified by the Uniform Trade Secrets Act which California adopted in 1984 and a version of which has been adopted by over forty states. The California Uniform Trade Secrets Act, California Civil Code §§3426 – 3426.11, 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."

d. The Draft Materials and the Proprietary Information contained therein are not generally known or available to the public. EPRI developed the Draft Materials only after making a determination that the Proprietary Information was not available from public sources. EPRI made a substantial investment of both money and employee hours in the development of the Draft Materials. EPRI was required to devote these resources and effort over a period of several years to derive the Proprietary Information and the Draft Materials. As a result of such effort and cost, both in terms of dollars spent and dedicated employee time, the Draft Materials is highly valuable to EPRI.

f. A public disclosure of the Proprietary Information would be highly likely to cause substantial harm to EPRI's competitive position and the ability of EPRI to license the Proprietary Information both domestically and internationally. The Proprietary Information and Draft Materials can only be acquired and/or duplicated by others using an equivalent investment of time and effort.

I have read the foregoing and the matters stated herein 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 3420 Hillview Avenue, Palo Alto, California being the premises and place of business of Electric Power Research Institute, Inc.

Date 12/13/06

David J. Modeen



Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_, personally known to me or proved to me on the basis of  
(Signer)

satisfactory evidence to be the person(s) who appeared before me.

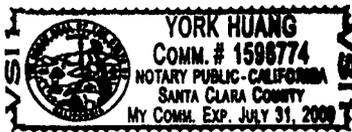
*Please see attached Jurat.*

\_\_\_\_\_  
(NOTARY'S SIGNATURE)

**JURAT**

State of California }  
County of Santa Clara } SS.

Subscribed and sworn to (or affirmed) before me on this 13th day of December, 2006, by  
David J. Modeen, personally known to me or proved to me on the basis  
(Signer)  
of satisfactory evidence to be the person(s) who appeared before me.



[Signature]  
NOTARY'S SIGNATURE

**OPTIONAL INFORMATION**

The information below is optional. However, it may prove valuable and could prevent fraudulent attachment of this form to an unauthorized document.

**CAPACITY CLAIMED BY SIGNER (PRINCIPAL)**

- INDIVIDUAL
- CORPORATE OFFICER
- \_\_\_\_\_ TITLE(S)
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- SUBSCRIBING WITNESS
- OTHER: \_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

Affidavit  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_ NUMBER OF PAGES

\_\_\_\_\_ DATE OF DOCUMENT

\_\_\_\_\_ OTHER

**ABSENT SIGNER (PRINCIPAL) IS REPRESENTING:**

NAME OF PERSON(S) OR ENTITY(IES)  
\_\_\_\_\_  
\_\_\_\_\_

RIGHT THUMBPRINT  
OF  
SIGNER

