

February 1, 2008

Mr. Barry Cole
Licensing Officer
BWX Technologies, Inc.
1570 Mt. Athos Rd - Rte 726
P.O. Box 785
Lynchburg, VA 24505-0785

SUBJECT: PUBLIC DISCLOSURE DETERMINATION REQUEST FOR NUCLEAR REGULATORY COMMISSION CONSENT TO THE TRANSFER OF CONTROL OF BWX TECHNOLOGIES, INC., TO BABCOCK & WILCOX NUCLEAR OPERATIONS GROUP, INC. (TAC L32657)

Dear Mr. Cole:

This letter is in response to BWX Technologies, Inc.'s (BWXT's), affidavits, dated November 14, 2007, and January 7, 2008, requesting that Chapter 10, "Decommissioning," of Enclosure 2 to letter dated November 14, 2007, "L.R. Morrell to Director, NMSS: Notification of Company Name Change and Request to Revise Chapters 1 through 7, 10, and 11 of License Application SNM-42 and the Five Year *pro forma* and Projected Opening Balance Sheet," respectively, be withheld from public disclosure pursuant to 10 CFR 2.390.

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

1. To protect financial information that could be of great value to your competitors and may result in the loss of competitive advantage that BWXT has when bidding for contracts.
2. Public disclosure of the information contained in the cited documents would cause substantial economic harm to the competitive advantage held by BWXT.
3. The information contained in the documents described above has been held in confidence by BWXT, in that it is financial information, as specified in 10 CFR 2.390(a).

We have reviewed your affidavits and the material in accordance with the requirements of 10 CFR 2.390 and the Office of Nuclear Material Safety and Safeguards' Policy and Procedures 1-85, and, on the basis of your statements, have determined that the submitted information that you seek to be withheld contains proprietary commercial information, with the exception of portions of Enclosure 2 of the November 14, 2007, submittal.

Upon review of the affidavit and Chapter 10 of the BWXT submittal requesting to be withheld, in its entirety, from public disclosure under 10 CFR 2.390, the staff has determined that the affidavit fails to adequately support that request. The affidavit merely recites the proposition that the financial information contained therein "could be of great value to [BWXT's] competitors" and its

disclosure would be "likely to cause substantial economic harm to BWXT's competitive advantage." However, the document provides no details that might be examined under 10 CFR 2.390 (b)(4)(v) to consider the quantification of the value of the information, such as the amount of money or effort expended to develop it and the ease or expense that would be required for others to acquire or duplicate the information.

Furthermore, pages 10-9 through 10-12 of Chapter 10, consisting of an unclassified copy of a contract award document between BWXT and the Department of Energy, is already publicly available. Withholding such information cannot be justified. Also, there are pages containing ostensibly general descriptions of aspects of decommissioning that require no particular expertise to identify or develop (see pages, 10-i and pages 10-1 through 10-7). Withholding of such information cannot be justified. However, there is some basis for withholding the details of cost estimates, consistent with the way the U.S. Nuclear Regulatory Commission (NRC) has handled such information in the past. Therefore, the staff does not plan to release the individual cost estimate from each plant area, on Table 10.3, on page 10-6, and all information contained in Appendix 10-2 through 10-6. The staff does plan to release the total Letter of Credit Assurance aggregate amount on Table 10.3 on page 10-6.

It appears that there is a significant amount of material that could be released to the public without harm to private commercial interests. The NRC is providing you with the opportunity to revise your request to provide additional justification for the portions deemed truly proprietary, (i.e., the "core" proprietary material pursuant to 10 CFR 2.390(a)(4) and Section 103(b) of the Atomic Energy Act of 1954, as amended). Provide any additional justification no later than 30 calendar days from the date of this letter for NRC consideration. If we do not hear from BWXT within this timeframe, the staff will release the information as stated above. The staff cannot return any portion of the document in question, because the NRC needs to retain the information in the document to make official licensing decisions for your November 14, 2007, name change request and your associated January 7, 2007, request to transfer control of special nuclear materials License No. SNM-42.

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the documents. 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 should also 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, please contact me at (301) 492-3225, or via e-mail to, ams3@nrc.gov. Please reference the above TAC number in future correspondence related to this review.

B. Cole

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In accordance with 10 CFR 2.390 of the NRC's Rules of Practice, a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Amy M. Snyder, Senior Project Manager
Fuel Manufacturing Branch
Fuel Facility Licensing Directorate
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Docket No.: 70-27
License No.: SNM-42

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Sincerely,

/RA/

Amy M. Snyder, Senior Project Manager
 Fuel Manufacturing Branch
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 and Safeguards
 Office of Nuclear Material Safety
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