



Nuclear Operations Division

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February 29, 2008

08-037

Attn: Document Control Desk
Director, Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

- References:
- (1) Letter dated December 15, 1999, Sherr (NRC) to Olsen (BWXT), Revised Chapter 7, "Decommissioning" (TAC No. L31258)
 - (2) Letter dated February 4, 2002, Leach (NRC) to Olsen (BWXT), BWXT Amendment 86 (TAC No. L31544) Application Dated January 2, 2002. Revisions to Chapter 7 of the License Application
 - (3) Letter dated May 7, 2004, Janosko (NRC) to Morrell (BWXT), BWX Technologies, Inc., Amendment 104 – Decommissioning Cost Estimate (TAC L31798)
 - (4) Letter dated April 25, 2007, Janosko (NRC) to Morrell (BWXT), BWX Technologies, Inc., Amendment 1 – Update of Decommissioning Cost Estimate and Financial Assurance (TAC L32597)
 - (5) Letter dated November 14, 2007, Morrell (BWXT) to Director, NMSS (NRC), Notification of Company Name Change and Request to Revise Chapters 1 through 7, 10, and 11 of License Application SNM-42
 - (6) Letter dated January 7, 2008, Cole (BWXT) to Director, NMSS (NRC), Submittal of Financial Information for Babcock and Wilcox Nuclear Operations Group, Inc. (TAC L32657)
 - (7) Letter dated February 1, 2008, Snyder (NRC) to Cole (BWXT), 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)
 - (8) License SNM-42
 - (9) Consolidated BPMI/DOD/DOE Terms and Conditions for BWXT Contracts – Revision Original, Dated 1/25/07

Subject: BWX Technologies, Inc. Reply to NRC Letter Dated February 1, 2008 (Reference 7) in Regards to Public Disclosure Determination of BWXT Financial Information (TAC L32657)

Gentlemen:

BWX Technologies, Inc. (BWXT) is providing its response to the NRC letter dated February 1, 2008 (Reference 7) in regards to public disclosure determination of BWXT financial information that was submitted by letters dated November 14, 2007 (Reference 5) and January 7, 2008 (Reference 6). The NRC stated in the Reference 7 letter, that "*the submitted information that you [BWXT] seek to be withheld contains proprietary commercial information, with the exception of portions of Enclosure 2 of the November 14, 2007, submittal.*"

BWXT respectfully requests that the NRC consider its historical determination of past BWXT submittals of the SNM-42 license chapter for decommissioning, and follow the precedent established in which the NRC did not disagree with BWXT's request to withhold the license chapter for decommissioning from public disclosure in its entirety as confirmed by NRC letters

dated December 15, 1999 (Reference 1), February 4, 2002 (Reference 2), May 7, 2004 (Reference 3) and April 25, 2007 (Reference 4). BWXT also requests that the NRC consider that the NRC has customarily withheld decommissioning funding plans in their entirety of other fuel cycle facilities from public disclosure.

An additional reason to withhold the information from public disclosure is that the Chapter 10 document contains information that the Department of Energy (DOE) has required BWXT to withhold from public disclosure. This requirement is contained in the contract agreement document between BWXT and the DOE, "Consolidated BPMI/DOD/DOE Terms and Conditions for BWXT Contracts – Revision Original, Dated 1/25/07" under clause 31, "Public Release of Information (Sept 1996) – NRPM 4A". If BWXT violates this clause, then it automatically forfeits any profits and bonuses pertinent to the contract, and may be subject to further legal action.

The NRC states in its Reference 7 letter that "*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.*" The unclassified marking contained on this document is in reference to DOE Classification Guidance CG-RN-1 which has no bearing on proprietary information requirements. In regards to this document being already publicly available, BWXT is not allowed by contract agreement to make this document publicly available and is not in a position to address why the document is publicly available elsewhere.

The NRC also states in its Reference 7 letter that "*there are pages containing ostensibly general descriptions of aspects of decommissioning that require no particular expertise to identify or develop...Withholding of such information cannot be justified*" and "*It appears that there is a significant amount of material that could be released to the public without harm to private commercial interests.*" In response to these statements, BWXT refers back 10 CFR 2.390(b) (Note: underlining added):

(b) The procedures in this section must be followed by anyone submitting a document to the NRC who seeks to have the document, or a portion of it, withheld from public disclosure because it contains trade secrets, privileged, or confidential commercial or financial information.

(1) The submitter shall request withholding at the time the document is submitted and shall comply with the document marking and affidavit requirements set forth in this paragraph. The NRC has no obligation to review documents not so marked to determine whether they contain information eligible for withholding under paragraph (a) of this section. Any documents not so marked may be made available to the public at the NRC Web site, <http://www.nrc.gov> or at the NRC Public Document Room.

(i) The submitter shall ensure that the document containing information sought to be withheld is marked as follows:

(A) The top of the first page of the document and the top of each page containing such information must be marked with language substantially similar to: "confidential information submitted under 10 CFR 2.390"; "withhold from public disclosure under 10 CFR 2.390"; or "proprietary" to indicate it contains information the submitter seeks to have withheld.

(B) Each document, or page, as appropriate, containing information sought to be withheld from public disclosure must indicate, adjacent to the information, or at the top if the entire page is affected, the basis (i.e., trade secret, personal privacy, etc.) for proposing that the information be withheld from public disclosure under paragraph (a) of this section.

The underlined portions above clearly indicate that a submitter may request for a document to be withheld from public disclosure if it contains confidential commercial or financial information. Although Chapter 10 contains some general information that is not proprietary, it does meet the 10 CFR 2.390 criteria because it does contain confidential commercial or financial information.

The NRC states in its Reference 7 letter that "*the document [re: Mr. Cochrane's affidavit] 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.*" Again, BWXT respectfully requests that the NRC consider its historical determination of past BWXT submittals of the SNM-42 license chapter for decommissioning. BWXT maintains the Chapter 10 information privately with restricted access within the company and does not provide this information to any of its competitors. Quantification of the value of the information is an unprecedented request for BWXT and would place excessive burden on BWXT. The effort expended to develop this information has required resources from multiple departments within the company and cannot be acquired or duplicated by anyone outside of the company by lawful means without due process.

In conclusion, BWXT believes that the non-proprietary information that has been submitted to the NRC, which is the majority of the information submitted in support of the transfer of License SNM-42, provides adequate information to satisfy public interest in the transfer. The information contained in Chapter 10 has not been made available to public sources by BWXT, nor has BWXT authorized that the information be made available. In accordance with BWXT and DOE policies governing the protection and control of information, Chapter 10 information has been made available to the NRC only as required and under suitable agreement providing for nondisclosure and limited use of the information. The public disclosure of Chapter 10 information is likely to cause substantial economic harm to the competitive advantage held by BWXT. The basis for withholding the information is that it contains distinguishing aspects of a process, methodology, or component(s), the exclusive use of which provides a competitive advantage for BWXT in product optimization or marketability. BWXT respectfully requests that the NRC consider its historical determination of past BWXT submittals of the SNM-42 license chapter for decommissioning, and that the NRC consider that it has customarily withheld decommissioning funding plans in their entirety of other fuel cycle facilities from public disclosure.

Sincerely,



Barry L. Cole
Manager, Licensing & Safety Analysis
(Licensing Officer)

Cc: U.S. NRC Region II
NRC, Resident Inspector
NRC, Amy Snyder