

August 11, 2008

Vice President, Operations
Entergy Nuclear Operations, Inc.
James A. FitzPatrick Nuclear Power Plant
P.O. Box 110
Lycoming, NY 13093

SUBJECT: JAMES A. FITZPATRICK NUCLEAR POWER PLANT - REQUEST FOR
WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
(TAC NO. MD8556)

Dear Sir or Madam:

By letter dated July 22, 2008, Entergy Nuclear Operations, Inc. (ENO) submitted the following three affidavits:

1. Executed by Mr. Christian B. Larsen, Vice President and the Chief Nuclear Officer of Electric Power Research Institute, Inc. (EPRI), (Attachment 2) dated July 18, 2008;
2. Executed by Mr. Kurt Edsinger, senior program manager, EPRI. (Attachment 6) dated July 11, 2008; and
3. Executed by Mr. Tim E. Abney, Vice President, Services Licensing, GE-Hitachi Nuclear Energy Americas LLC ("GEH") (Attachment 8), dated July 9, 2008.

All above listed affidavits requested 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:

Attachments 2, 6, and 8 to the letter from ENO (Mr. Pete Dietrich, Site Vice President, JAF), JAFP-08-0067, dated July 22, 2008, "Response to Request for Additional Information Regarding Relocation of Pressure and Temperature Curves to the Pressure and Temperature Limits Report (TAC No. MD8556)."

The affidavits from Mr. Larsen and Mr. Edsinger of EPRI stated that the submitted information should be considered exempt from mandatory public disclosure for the following reasons:

EPRI requests that the EPRI Proprietary Information be withheld from the public on the following bases:

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

- a. The EPRI Proprietary Information is owned by EPRI and has been held in confidence by EPRI. All entities accepting copies of the EPRI Proprietary Information therein do so subject to written agreements imposing an obligation upon the recipient to maintain the confidentiality thereof.

- b. EPRI considers the EPRI Proprietary Information to constitute trade secrets of EPRI. As such, EPRI holds the EPRI Proprietary Information in confidence and disclosure thereof is strictly limited to individuals and entities who have agreed, in writing, to maintain the confidentiality of the EPRI Proprietary Information. EPRI made a substantial economic investment to develop the EPRI Proprietary Information, 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 EPRI Proprietary Information. If the EPRI 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 EPRI Proprietary Information for their own commercial benefit and profit and without expending the substantial economic resources required of EPRI to develop the EPRI Proprietary Information.
- c. EPRI's classification of the EPRI 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 EPRI Proprietary Information is not generally known or available to the public. EPRI developed the EPRI Proprietary Information only after making a determination that it was not available from public sources. EPRI made a substantial investment of both money and employee hours in the development of the EPRI Proprietary Information. As a result of such effort and cost, both in terms of dollars spent and dedicated employee time, the EPRI Proprietary Information is highly valuable to EPRI.
- e. A public disclosure of the EPRI Proprietary Information would be highly likely to cause substantial harm to EPRI's competitive position and the ability of EPRI to license the EPRI Proprietary Information both domestically and internationally. The EPRI Proprietary Information can only be acquired and/or duplicated by others using an equivalent investment of time and effort.

The affidavit from Mr. Abney of GEH stated that the submitted information should be considered exempt from mandatory public disclosure for the following reasons:

- (4)a. Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by GEH's competitors without license from GEH constitutes a competitive economic advantage over other companies;
- (4)b. Information which, if used by a competitor, would reduce his expenditure of resources or improve his competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product;
- (8) The information identified in paragraph (2) above is classified as proprietary because it contains results and details of fracture mechanics analysis methods and techniques developed by GEH for evaluation of the Fitzpatrick feedwater nozzle. Development of these methods, techniques, and information and their application for the analyses methodologies and processes for the Fitzpatrick feedwater nozzle was achieved at a significant cost to GEH.

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 versions 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.

The nonproprietary copies of these documents have been placed in the NRC's Public Document Room and added to the Agencywide Documents Access and Management System Public Electronic Reading Room.

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 301-415-3308.

Sincerely,

/RA/

Bhalchandra K. Vaidya, Project Manager
Plant Licensing Branch I-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-333

cc: See next page

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