



FOIA/PA REQUEST
Case No.: 2010-0034
Date Rec'd: 11-4-09
Specialist: Dennis
Related Case: _____

October 30, 2009

U.S. Nuclear Regulatory Commission
FOIA/Privacy Act Officer
Mailstop: T-5 F09
Washington, DC 20555-0001

**URGENT Freedom of Information Act (FOIA) Request for AP1000 Reactor Documents:
"Shield Building Experimental Program" & Results of AP1000 "Shield Building" Tests**

To Whom it Concerns:

This is a request being filed under the Freedom of Information Act (FOIA), as amended.

I am filing this request as a duly authorized employee of Friends of the Earth, a legally registered non-profit environmental organization, with which I hold the title Southeastern Nuclear Campaign Coordinator. All information gathered under this request will be used for non-profit, public education purposes only, both in South Carolina and nation-wide.

I request that all fees associated with this request be waived given the non-profit educational and scientific use which will be made of the information. My organization and I will disseminate the information obtained under this request to the benefit of public understanding of the Nuclear Regulatory Commission and the AP1000 reactor licensing process and thus request the fee waiver. I and my organization have a long-demonstrated ability to analyze and disseminate information to the public on the various nuclear programs, for non-profit, public interest use. I have recently been provided a fee waiver in another FOIA request to the NRC, thus establishing a basis for a similar fee waiver determination in this case.

Given the urgency of safety issues concerning the flawed AP1000 reactor "shield building" design, as made public on October 15, 2009 in an NRC news release, it is imperative that the NRC release the requested documents in order to more fully inform the public about critical safety issues concerning the AP1000 reactor design. Non-release of the documents will impede public understanding of critical safety issues concerning both the AP1000 design and the NRC's review process of the unlicensed AP1000 nuclear reactor.

For more background information, see AP1000 NRC news release of October 15, 2009:
NRC Informs Westinghouse of Safety Issues with AP1000 Shield Building,
<http://www.nrc.gov/reading-rm/doc-collections/news/2009/09-173.html>

And

October 15, 2009 letter to Westinghouse from Dave Matthews to Rob Sisk regarding AP1000 Shield Building Design, ML092320205

I am filing this FOIA request as the specific documents which I am requesting have been withheld from public release without clear justification and explanation as to why they contain proprietary commercial information, as claimed by Westinghouse Electric Company. The August 6, 2009 claim by Westinghouse that the documents be withheld from public disclosure is only generally substantiated and lacks details and proof as to why this should be the case. Westinghouse fails to demonstrate that the documents actually contain any information that would be useful to a competitor and appears to be withheld simply because of potentially embarrassing information from a public perspective.

As the requested documents (and test results) are key to a better understanding of AP1000 design issues and will be important in the formal review by the public of both the AP1000 reactor design and the individual combined operating license applications (COLAs) in which the AP1000 is cited, it is imperative that the NRC reverse its October 1, 2009 determination that the documents contains "proprietary commercial information and should be withheld from public disclosure." As the October 1 letter indicates to Westinghouse, the NRC may have reason "to review the determination in the future...if the scope of a Freedom of Information Act request includes your information." Given what has transpired concerning questions surrounding the flawed AP1000 shield building design, the NRC must now reverse the proprietary determination it made and release the documents in question.

For the NRC October 1, 2009 letter cited above, "AP1000 Request for Withholding Information from Public Disclosure (Table of Contents (TOC), Design Report for AP1000 Enhanced Shield Building (SB) APP-1200-S3R-003, Revision D and Shield Building Experimental Program, Keith Coogler, July 14, 2009), see ML092730229.

This request applies to the Nuclear Regulatory Commission and documents submitted to the NRC by Westinghouse Electric Company and any other contractor.

If the NRC continues to maintain that the documents are proprietary and will be withheld in response to this request, I expect a full justification be made for such a claim and that applicable FOIA exemptions, Council on Environmental Quality regulations, as well as other applicable regulations be cited. As the information being sought is strictly related to a licensing process which impacts the public and is being reviewed and regulated by the U.S. Nuclear Regulatory Commission, any claim of withholding of what is claimed to be commercial information must be fully explained and justified.

I maintain the right to appeal any aspect of your decisions regarding this request, particularly if a less than full justification is made concerning a claim that the documents have a proprietary status.

The requested information which can be provided in printed form, via a CD or DVD, or via e-mail.

I request that the information be provided as it becomes available and that you do not wait until all the information is accumulated to provide it to me.

The NRC office which is likely holding the documents in question is the Division of New Reactor Licensing in the Office of New reactors. Contacts in that office would be Ms. Phyllis Clark, Project Manager, AP1000 Project Branch 2, and Mr. Robert Sisk, AP1000 Licensing and Customer Interface, as well as Mr. Michael Johnson, director of the Office of New Reactors (and who was quoted in the October 15 NRC news release on the AP1000 flaws.)

I hereby request the following documents, including any appendices:

- 1. *Shield Building Experimental Program*, by Keith Coogler, July 14, 2009, proprietary version. (Non-proprietary version is in ADAMS at ML092230121)**
- 2. Documents filed with the NRC which reflect any aspect of the status of any or all of the tests mentioned in the *Shield Building Experimental Program* document cited above.**
- 3. APP-1200-S3R-003, Revision D, "Table of Contents (TOC), Design Report for AP1000 Enhanced Shield Building"**

Thank you very much for your timely attention to this FOIA request, which is important to public interest groups monitoring the AP1000 reactor and applicable COLAs. Time is of the essence in your response.

If you have further questions or want to discuss this request, please contact me at your convenience via telephone at 803-834-3084 or via e-mail at tomclements329@cs.com.

Sincerely,



Tom Clements

cc: Robert Guild, Esq.

October 1, 2009

Mr. James A. Gresham, Manager
Regulatory Compliance and Plant Licensing
Westinghouse Electric Company, LLC
P.O. Box 355
Pittsburgh, PA 15230-0355

SUBJECT: AP1000 REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE (TABLE OF CONTENTS (TOC), DESIGN REPORT FOR AP1000 ENHANCED SHIELD BUILDING (SB) APP-1200-S3R-003, REVISION D AND SHIELD BUILDING EXPERIMENTAL PROGRAM, KEITH COOGLER, JULY 14, 2009)

Dear Mr. Gresham:

By letter dated August 6, 2009, Westinghouse Electric Company, LLC (Westinghouse) submitted an affidavit dated August 6, 2009, executed by Mr. Robert B. Sisk, which requested that the information contained in the following documents be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 2, Section 2.390:

APP-1200-S3R-003, Revision D, "Table of Contents (TOC), Design Report for AP1000 Enhanced Shield Building" and

"Shield Building Experimental Program" Keith Coogler, July 14, 2009.

A nonproprietary copy of this document, which was submitted on August 6, 2009, has been placed in the Nuclear Regulatory Commission's (NRC) Public Document Room and added to the Agencywide Documents Access and Management System Public Electronic Reading Room.

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

- (a) The information reveals the distinguishing aspects of a process (or component, structure, tool, method, etc.) where prevention of its use by any of Westinghouse's competitors without license from Westinghouse constitutes a competitive advantage economic advantage over other companies; and
- (c) Its use 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 a similar product.

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

2 Requested Documents



J. A. Gresham

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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 301-415-6447.

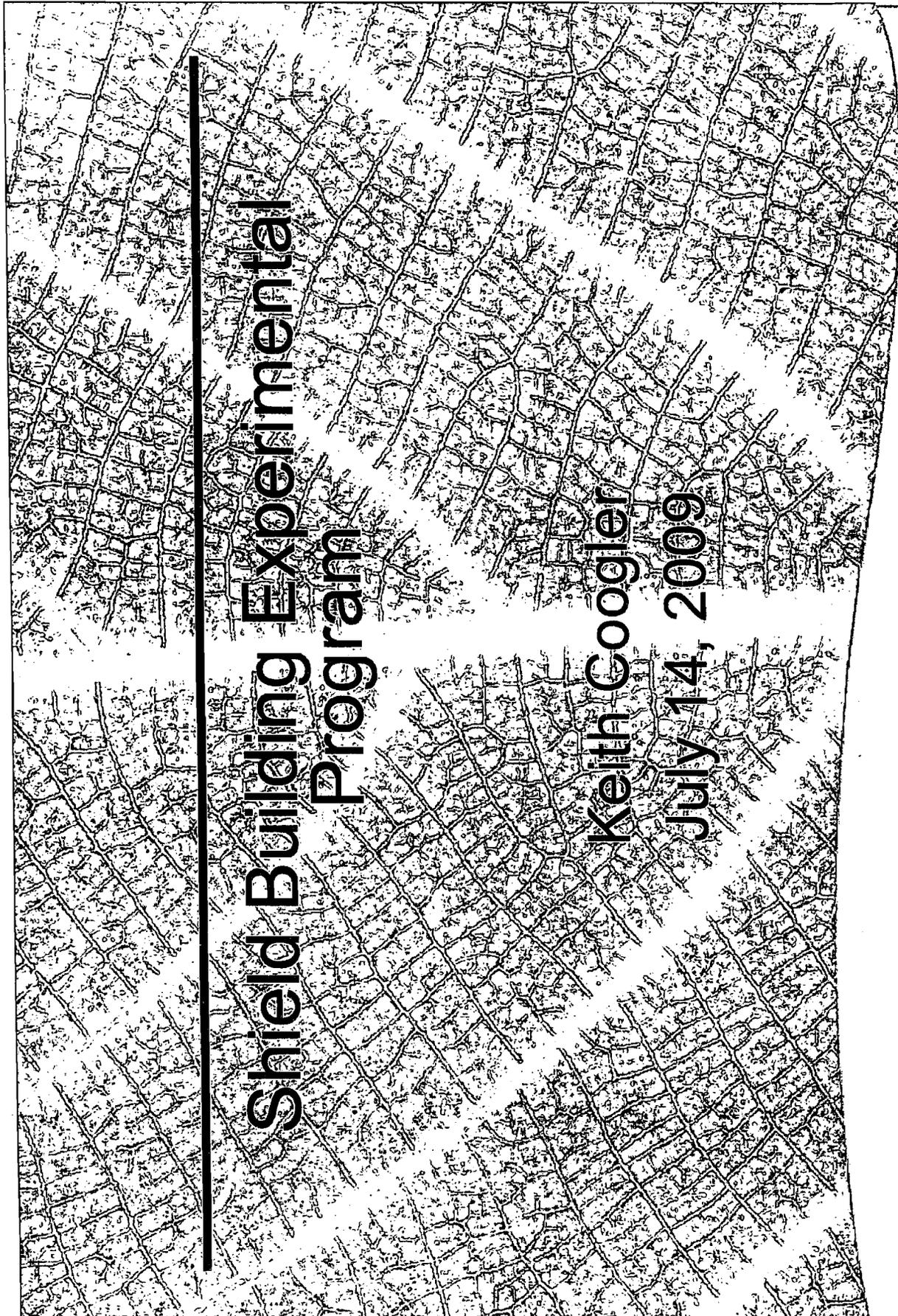
Sincerely,

/RA/

Phyllis M. Clark, Project Manager
AP1000 Project Branch 2
Division of New Reactor Licensing
Office of New Reactors

Docket No. 52-006

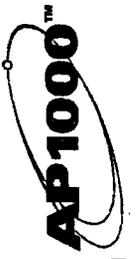
cc: See next page



Shield Building Experimental Program

Keith Gogler

July 14, 2009



Westinghouse Non-Proprietary Class 3



< Request is for proprietary version >