

February 24, 2011

David Modeen  
Director, External Affairs  
Electric Power Research Institute  
1300 West W. T. Harris Boulevard  
Charlotte, North Carolina 28262-8550

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE

Dear Mr. Modeen:

By letter dated October 28, 2010, you submitted an affidavit dated October 28, 2010, requesting 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), Part 2, Section 2.390:

*EPRI 1019181 "Guidelines on the Use of Field Programmable Gate Arrays (FPGAs) in Nuclear Power Plant I&C Systems"*

The letter and affidavit were received and entered into the NRC's Agencywide Documents Access and Management System (ADAMS) on January 10, 2011, and can be accessed at Accession Number ML110100655. The affidavit stated that the submitted information should be considered exempt from mandatory public disclosure for the following reasons:

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

a. The Report is owned by EPRI and constitutes commercial information which has not been placed in the public domain by EPRI.

b. EPRI made a substantial economic investment to develop the Report and, by prohibiting public disclosure, EPRI derives an economic benefit in the form of fees charged for the sale of the Report. The Report is entitled to the protection of the United States copyright laws. If the Report were publicly available to consultants and/or other businesses providing services in the electric and/or nuclear power industry at no cost, these entities would be able to use the Report for their own commercial benefit and profit and without expending the substantial economic resources required of EPRI to develop the Report.

c. EPRI made a substantial investment of both money and employee hours over an extended period of time in the development of the Report. As a result of such effort and cost, both in terms of dollars spent and dedicated employee time, the Report is highly valuable to EPRI.

d. A public disclosure of the Report would be highly likely to cause substantial harm to EPRI's competitive position and the ability of EPRI to sell the Report both domestically and internationally. If a party does not purchase the Report from EPRI, it would require an investment of money, time and effort equivalent to that expended by EPRI for the party to duplicate the Report."

We have reviewed your application and the material in accordance with the requirements of 10 CFR 2.390 and, on the basis of the statements in the affidavit and review by NRC staff, have determined that the submitted information sought to be withheld contains proprietary commercial information and should be withheld from public disclosure.

However, the NRC has noted and confirmed with EPRI that the affidavit was incorrectly notarized with a notary expiration shown of August 25, 2010, when it should have been August 25, 2014. In accordance with 10 CFR 2.390(b)(1)(ii) and based on the submittal provided, the NRC has determined it is appropriate to waive the affidavit requirement.

Therefore, the *EPRI 1019181 "Guidelines on the Use of Field Programmable Gate Arrays (FPGAs) in Nuclear Power Plant I&C Systems"* report 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 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 Nuclear Regulatory Commission (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 301-415-1847.

Sincerely,

**/RA/**

Sheldon D. Stuchell, Senior Project Manager  
Licensing Processes Branch  
Division of Policy and Rulemaking  
Office of Nuclear Reactor Regulation

Project No. 669

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Sincerely,

/RA/

Sheldon D. Stuchell, Senior Project Manager  
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