

February 20, 2013

Mr. Tetsuya Noda, Senior Manager
Plant Project Engineering Department
Nuclear Energy Systems & Services Division
Power Systems Company
Toshiba Corporation
1-1, Shibaura 1-Chome, Minato-Ku
Tokyo, Japan 105-8001

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
FOR TOSHIBA 4S

Dear Mr. Noda:

By letter dated January 8, 2013 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13031A049), you submitted an affidavit dated January 8, 2013, 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:

TOS-CR-4S-2012-0005, Submittal of Technical Report "Aircraft Impact Assessment for 4S" (ADAMS Accession No. ML13031A042)

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

- (i) The information sought to be withheld from public disclosure is owned and has been held in confidence by Toshiba.
- (ii) The information is of a type customarily held in confidence by Toshiba and not customarily disclosed to the public. Toshiba has a rational basis for determining types of information customarily held in confidence by it and, in that connection, utilizes a system to determine when and whether to hold certain types of information in confidence. The application of that system and the substance of that system constitute Toshiba policy and provide the rational basis required.

Under that system, information is held in confidence if it falls into one or more of several types, the release of which might result in the loss of an existing or potential competitive advantage, as follows:

- (a) The information reveals the distinguished aspects of a process (or component, structure, tool, method, etc.), where prevention of its use by any of Toshiba's competitors without license from

Toshiba constitutes a competitive economic advantage over other companies.

- (b) It consists of supporting data, including test data, relative to a process (or component, structure, tool, method, etc.), the application of which data secures a competitive economic advantage, e.g., by optimization or improved marketability.
 - (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.
 - (d) It reveals cost or price information, production capacities, budget levels, or commercial strategies of Toshiba, its customers or suppliers.
 - (e) It contains patentable ideas, for which patent protection may be desirable.
- (iii) There are sound policy reasons behind the Toshiba system for classification of proprietary information, which include the following:
- (a) The use of such information by Toshiba gives Toshiba a competitive advantage over its competitors. It is, therefore, withheld from disclosure to protect the Toshiba competitive position.
 - (b) It is information that is marketable in many ways. The extent to which such information is available to competitors diminishes the Toshiba ability to sell products and services involving the use of the information.
 - (c) Use by our competitor would put Toshiba at a competitive disadvantage by reducing his expenditure of resources at our expense.
 - (d) Each component of proprietary information pertinent to a particular competitive advantage is potentially as valuable as the total competitive advantage. If competitors acquire components of proprietary information, any one component may be the key to the entire puzzle, thereby depriving Toshiba of a competitive advantage.
 - (e) Unrestricted disclosure would jeopardize the position of prominence of Toshiba in the world market, and thereby give a market advantage to the competition of those countries.

- (f) The Toshiba capacity to invest corporate assets in research and development depends upon the success in obtaining and maintaining a competitive advantage.
- (iv) The information is being transmitted to the Commission in confidence and, under the provisions of 10 CFR Section 2.390, it is to be received in confidence by the Commission.
- (v) The information sought to be protected is not available in public sources or available information has not been previously employed in the same original manner or method to the best of our knowledge and belief.

We have reviewed your request and all of the supporting information in accordance with the requirements of 10 CFR 2.390 and have concluded that you have not provided sufficient justification for us to determine that the information sought to be withheld from public disclosure contains proprietary information. The document does not contain any portion markings indicating which sections are proprietary and which sections are public. Several of the sections contain information that has been submitted previously in publically available documents.

Accordingly, we have concluded that the information sought to be withheld from public disclosure does not meet the requirements of 10 CFR 2.390. Therefore, your request to withhold TOS-CR-4S-2012-0005, Submittal of Technical Report "Aircraft Impact Assessment for 4S" from public disclosure is denied.

After 90 days from the date of this letter, the subject document will be placed in the U.S. Nuclear Regulatory Commission's Public Document Room and made available to the public. If, within 90 days of the date of this letter, you request to withdraw the document, your request will be considered in accordance with 10 CFR 2.390(c)(3). If such request to withdraw is granted, the document will be withheld from public disclosure and returned to you.

If you have any questions regarding this matter, please contact Mr. Thomas Kevern at (301) 415-0224 or thomas.kevern@nrc.gov.

Sincerely,

/RA/

Michael E. Mayfield, Director
Division of Advanced Reactors & Rulemaking
Office of New Reactors

Project No.: 0760

cc: Kazuo Arie, Toshiba

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DATE	2/13/13	2/13/13	2/13/13	2/15/13	2/20/13