

August 15, 2013

Dennis Madison, Chairman
Southern Nuclear
BWR Vessel and Internals Project
3420 Hillview Avenue
Palo Alto, CA 94304-1395

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE BWRVIP [BOILING WATER REACTOR (BWR) VESSEL AND INTERNALS PROJECT]-86, REVISION 1-A, "BWR VESSEL AND INTERNALS PROJECT, UPDATED BWR INTEGRATED SURVEILLANCE PROGRAM (ISP) IMPLEMENTATION PLAN" (TAC NO. ME2154)

Dear Mr. Madison:

By letter dated June 7, 2013 (Agencywide Documents Access and Management System Accession No. ML13176A096), the Electric Power Research Institute (EPRI) submitted a June 6, 2013, letter providing an affidavit dated June 6, 2013, executed by Neil Wilmshurst, Vice President and Chief Nuclear Officer, EPRI. The affidavit 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), Part 2, Section 2.390:

BWRVIP-86, Revision 1-A, BWR Vessel and Internals Project, Updated BWR Integrated Surveillance Program (ISP) Implementation Plan.

Your reasons for requesting our withholding of this information were:

a. The Report is owned by EPRI and has been held in confidence by EPRI. All entities accepting copies of the Report do so subject to written agreements imposing an obligation upon the recipient to maintain the confidentiality of the Report. The Report is disclosed only to parties who agree, in writing, to preserve the confidentiality thereof.

b. EPRI considers the Report and the proprietary information contained therein (the "Proprietary Information") to constitute trade secrets of EPRI. As such, EPRI holds the Report in confidence and disclosure thereof is strictly limited to individuals and entities who have agreed, in writing, to maintain the confidentiality of the Report. EPRI made a substantial economic investment to develop the Report, 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 Report. If the Report and the 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 Report for their own commercial benefit and profit and without expending the substantial economic resources required of EPRI to develop the Report.

c. EPRI's classification of the Report and the 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 Report and the Proprietary Information contained therein are not generally known or available to the public. EPRI developed the Report only after making a determination that the Proprietary Information was not available from public sources. EPRI made a substantial investment of both money and employee hours in the development of the Report. EPRI was required to devote these resources and effort to derive the Proprietary Information and 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.

e. A public disclosure of the Proprietary Information would be highly likely to cause substantial harm to EPRI's competitive position and the ability of EPRI to license the Proprietary Information both domestically and internationally. The Proprietary Information and Report can only be acquired and/or duplicated by others using an equivalent investment of time and effort.

During the week of June 24, 2013, the U.S. Nuclear Regulatory Commission (NRC) staff notified Mr. Larry Steinert of EPRI that we had completed our review of the application and documents. We have concluded that not all the information provided in Appendices D, E, and F of BWRVIP-86, Revision 1-A, is proprietary, even though EPRI marked it completely as proprietary information. During the telephone call with Mr. Steinert, we provided examples of information that should not be identified as proprietary.

Based on the discussion in that telephone call, Mr. Steinert informed us that EPRI would ensure that a similar situation did not occur in future submittals but that there were no plans to correct BWRVIP-86, Revision 1-A. Subsequently via email dated July 3, 2013, Mr. Steinert was informed that the NRC staff could not accept Appendices D, E, and F because of the extensive amount of information that was nonproprietary but marked proprietary. Because a considerable amount of information in these appendices that is marked proprietary clearly is not, the NRC staff is unable to identify, with any degree of confidence, which marked information is actually viewed by EPRI as eligible for withholding under the 10 CFR 2.390 criteria and which is not.

D. Madison

- 3 -

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 BWRVIP-86, Revision 1-A, Appendices D, E, and F from public disclosure is denied.

Thirty days from the date of this letter, the subject appendices will be placed in the NRC's Public Document Room. If 30 days from the date of this letter, you request withdrawal of the documents in accordance with 10 CFR 2.390(c), your request will be considered in light of applicable statutes and regulations and a determination made whether the documents will be withheld from public disclosure and returned to you.

Sincerely,

/RA/

Joseph J. Holonich, Senior Project Manager
Licensing Processes Branch
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

Project No. 704

D. Madison

- 3 -

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Joseph J. Holonich, Senior Project Manager
Licensing Processes Branch
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JHolonich

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*concurred via e-mail

NRR-106

OFFICE	PLPB/PM	PLPB/LA	EVIB/BC	PLPB/BC	OGC*	PLPB/PM
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DATE	8/5/2013	7/31/2013	8/5/2013	8/7/2013	8/13/2013	8/15/2013

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