



April 6, 1990

ABB-90-114

Mr. Lester S. Rubenstein, Director
Standardization & Non-Power Reactor Project Directorate
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Reference: LETTER TO ROBERT C. JONES, ABB-90-115 DATED APRIL 6, 1990

Dear Mr. Rubenstein:

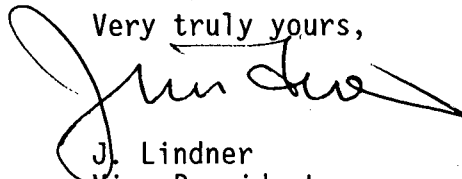
Subject: Submittal of Information Presented at Meeting with the NRC
on Cracks in Dresden 3 Control Rods

The subject report transmitted by the referenced letter contains information proprietary to ASEA Brown Boveri Atom.

We request that the material be treated as proprietary information within the provisions of 10CFR9.17(4), "Freedom of Information Act Regulations".

Correspondence with respect to the proprietary aspects of this submittal should reference ABB-90-114 and should be addressed to the undersigned.

Very truly yours,



J. Lindner
Vice President
U.S. Fuel Operations

cc: E. C. Shomaker, Esq.
Office of the General Counsel, NRC

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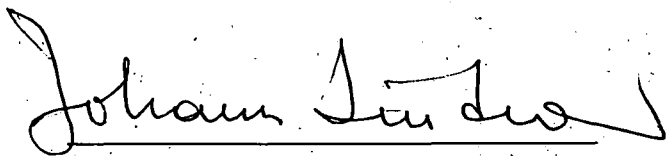
AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA:

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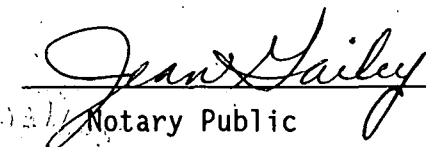
COUNTY OF ALLEGHENY:

Before me, the undersigned authority, personally appeared Johann Lindner, who, being by me duly sworn according to law, deposes and says that he is authorized to execute this Affidavit on behalf of ASEA Brown Boveri Atom (ABB Atom) and that the averments of fact set forth in this Affidavit are true and correct to the best of his knowledge, information, and belief:

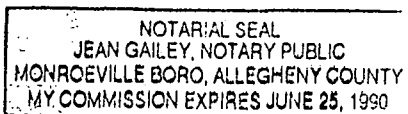


Johann Lindner
Vice President, ABB Atom Inc.

Sworn to and subscribed
before me this 6 day
of April, 1990.



Notary Public



- (1) I am Vice President, U. S. Fuel Operations, ASEA Brown Boveri (ABB) Atom Inc., in the ABB Atom Fuel Division of ABB and as such, I have been specifically delegated the function of reviewing the proprietary information sought to be withheld from public disclosure in connection with nuclear power plant licensing and rulemaking proceedings, and am authorized to apply for its withholding on behalf of ABB Atom.
- (2) I am making this Affidavit in conformance with the provisions of 10CFR Section 2.790 of the Commission's regulations and in conjunction with the ABB Atom application for withholding accompanying this Affidavit.
- (3) I have personal knowledge of the criteria and procedures utilized by ABB Atom in designating information as a trade secret, privileged or as confidential commercial or financial information.
- (4) Pursuant to the provisions of paragraph (b)(4) of Section 2.790 of the Commission's regulations, the following is furnished for consideration by the Commission in determining whether the information sought to be withheld from public disclosure should be withheld.
 - (i) The information sought to be withheld from public disclosure is owned and has been held in confidence by ABB Atom.

- (ii) The information is of a type customarily held in confidence by ABB Atom and not customarily disclosed to the public. ABB Atom has a rational basis for determining the 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 constitutes ABB Atom policy and provides the rational basis required.

Under that system, information is held in confidence if it falls in 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 distinguishing aspects of a process (or component, structure, tool, method, etc.) where prevention of its use by any of ABB Atom's competitors without license from ABB Atom 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 ABB Atom, its customers or suppliers.
- (e) It reveals aspects of past, present, or future ABB Atom or customer funded development plans and programs of potential commercial value to ABB Atom.
- (f) It contains patentable ideas, for which patent protection may be desirable.
- (g) It is not the property of ABB Atom, but must be treated as proprietary by ABB Atom according to agreements with the owner.

There are sound policy reasons behind the ABB Atom system which include the following:

- (a) The use of such information by ABB Atom gives ABB Atom a competitive advantage over its competitors. It is, therefore, withheld from disclosure to protect the ABB Atom competitive position.

- (b) It is information which is marketable in many ways. The extent to which such information is available to competitors diminishes the ABB Atom ability to sell products and services involving the use of the information.
 - (c) Use by our competitor would put ABB Atom 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 ABB Atom of a competitive advantage.
 - (e) The ABB Atom capacity to invest corporate assets in research and development depends upon the success in obtaining and maintaining a competitive advantage.
- (iii) The information is being transmitted to the Commission in confidence and, under the provisions of 10CFR Section 2.790, it is to be received in confidence by the Commission.

- (iv) 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.
- (v) The proprietary information sought to be withheld in this submittal is ABB Atom Report BX 90-37, "Meeting with the NRC Regarding Cracks in Dresden 3 Control Rods" dated March 27, 1990. The report contains information presented at a meeting with the NRC on ABB Atom's control rods held in Washington on March 22, 1990.

The information is from a demonstration project financed by a third party and at present the results of the inspection which produced the information have not yet been formally reported to and approved by the third party. The information is requested to be withheld from public disclosure according to the criterion described in Paragraph (4)(ii)(g) of this Affidavit.

Public disclosure of this proprietary information is likely to cause substantial harm to the competitive position of ABB Atom because it would enhance the ability of competitors to determine the performance characteristics of ABB Atom's control rods without commensurate expenses.

The development of the technology described by the information is the result of applying the results of many years of experience in an intensive ABB Atom effort and the expenditure of a considerable sum of money for this effort.

Further the deponent sayeth not.