

AUG 16 1973

Donald F. Knuth, Director, Regulatory Operations

DUKE POWER COMPANY (OCONEE 1) - REQUEST TO DELETE PROPRIETARY
INFORMATION FROM RO REPORT NO. 50-269/73-4

By letter of July 3, 1973 Duke Power Company again notified us that on the behalf of Babcox & Wilcox they were requesting that certain numbers in R. O. Inspection Report No. 50-269/73-4 be withheld from public inspection because the numbers are considered to be proprietary data the disclosure of which "could jeopardize their Competitive position". Duke asserted this same position in correspondence directed to Mr. Norman Mosely (Director of R. O. for Region II) under date of May 25, 1973. Mr. Harold Thornburg has requested OGC to express its views, as the R. O. staff does not agree with the claim of the Company.

The regulation which permits this request by a licensee for itself, or its vendors, is 10 CFR 2.790 which states in relevant part:
".....final AEC records and documents.....shall not, in the absence of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest [SIC] disclosure, and will be made available for inspection and copying in the AEC Public Document Room, except for:
.....(6) Proprietary data.."

The phrase "proprietary data is nowhere defined, and doesn't lend itself to definition. The most recent AEC decision on the question is Wisconsin Electric Power Co. - Point Beach Nuclear Plant Unit No. 2 - ALAB 137-RAI-1973 (dated July 17, 1973). In this case the Board gave close study and attached great importance to the company's procedures for supporting their claim of proprietary data. Further, the written support for the claim was in detail. This suggests a solution for this case.

A letter could be written to Duke stating that based on the present information we still do not agree with the claim for propriety information. The letter should request that a written presentation of the

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justification for such a claim be supplied. A time period should be suggested for reply, and then we can make our determination based on the reply. To be of maximum effect the letter should be written to a level of management at Duke where effective action could be taken.

We will be happy to review the proposed letter to Duke prior to dispatch or to assist in the preparation of the letter.

Original Signed by Thomas F. Engelhardt

Thomas F. Engelhardt
Chief Hearing Counsel
Office of the General Counsel

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