

52-003



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 30, 1995

Mr. Arthur Kenny
Licensing Administrator
Intellectual Property
Electric Power Research Institute
P.O. Box 10412
Palo Alto, California 94303

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE,
WESTINGHOUSE AP600 DESIGN LETTER OF MAY 15, 1995

Dear Mr. Kenny:

By letter dated May 15, 1995, (NTD-NRC-95-4462) Westinghouse submitted a copy of the following Electric Power Research Institute (EPRI) document: EPRI Report RA-93-10, "GOTHIC Design Review, Final Report," dated September 30, 1993.

The Westinghouse letter requested that the EPRI proprietary information be withheld from public disclosure pursuant to 10 CFR Section 2.790. Included in the Westinghouse letter was an application and affidavit from EPRI, the owner of the Information, dated May 12, 1995.

In the application, you stated that the Information was considered proprietary and requested that it be withheld from public disclosure pursuant to 10 CFR 2.790. The EPRI affidavit dated May 11, 1995, executed by Arthur Kenny stated that the Information should be exempt from mandatory public disclosure for the following reasons:

- a. The Information has been held in confidence by EPRI. EPRI intends to provide copies of the information to EPRI members and to one or more EPRI contractors. EPRI members and contractors are bound by confidentiality agreements to preserve the confidentiality of proprietary and confidential documents received from EPRI. Receipt of the Information by such members and contractors will not impair the proprietary and confidential nature of the Information nor will such receipt impair the value of the Information as trade secrets. In addition, EPRI may license the Information to organizations that are not EPRI members.
- b. The Information is of a type of customarily held in confidence by EPRI and there is a rational basis therefor. The Information is of a type that EPRI considered to be trade secrets. Such Information is customarily held in confidence by EPRI because to disclose it would prevent EPRI from licensing the Information at fees which would allow EPRI to recover its investment. If consultants and other businesses providing services in the electric power industry were able to obtain the Information, they would be

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able to use it commercially for profit and avoid spending the large amount of money that EPRI was required to spend to obtain the Information.

- c. The Information will be transmitted and received by the NRC in confidence. The purpose is to maintain the confidentiality of the Information.
- d. The Information is not available in public sources. EPRI developed the Information only after making a determination that the Information was not available from public sources. EPRI was required to spend a large amount of money through payments to contractors. In addition, EPRI was required to use a large amount of time of EPRI employees. Finally, the Information was developed only after a long period of effort.
- e. A public disclosure of the Information would be highly likely to cause substantial harm to EPRI's competitive position. The Information can be properly acquired or duplicated by others only with an equivalent investment of time and effort.

We have carefully reviewed the request and affidavit and have consulted with our Office of General Counsel on this matter. In a telephone conference held on October 5, 1995, between representatives from your office, the NRC, and Westinghouse, the staff asked questions related to your application. It is the staff's understanding that EPRI's statement that "the Information...is to be returned after the NRC completes its review" is interpreted by EPRI to mean the information is to be returned when the NRC no longer has any need for the information.

While some of the information is proprietary, the staff notes a number of questionable portions, e.g., Section 1 and Appendix F, that do not contain trade secrets or proprietary commercial information. Therefore, we are not able to support your claim that the subject document in its entirety is proprietary.

You are requested to review your claim and provide a detailed justification as to why the information is considered to be proprietary within 30 days of the date of this letter. In addition, please furnish a non-proprietary version of the document. The staff believes that this information is required to be provided to support the AP600 design certification, and that as much information as possible should be included in the non-proprietary version.

If we do not hear from you within 30 days of the date of this letter, the information considered non-proprietary by the NRC will be placed in the Public Document Room. If you request that the information be withdrawn, you may do so within the 30 day time period, pursuant to 10 CFR Section 2.790(c).

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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 disclosure 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. You should understand that the Nuclear Regulatory Commission (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 withheld 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.

Sincerely,

Original signed by

Diane T. Jackson, Project Manager
Standardization Project Directorate
Division of Reactor Program Management
Office of Nuclear Reactor Regulation

Docket No. 52-003

cc: See next page

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Mr. Arthur Kenny
EPRI

Docket No. 52-003

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