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April 16, 1992
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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'92 APR 16 P4:31

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
NUCLEAR REGULATORY COMMISSION

In the Matter of:)	
ALABAMA POWER COMPANY)	Docket Nos. 50-348-CivP
)	50-364-CivP
(Joseph M. Farley Nuclear)	
Plant, Units 1 and 2))	
)	(ASLBP No. 91-626-02-CivP)

MOTION TO CONTINUE PROPRIETARY
TREATMENT OF CERTAIN EXHIBITS

I. INTRODUCTION

On April 9, 1992, counsel for Alabama Power Company (APCo) and the Nuclear Regulatory Commission (NRC) Staff became aware that Alabama Power Company Exhibits 16 and 17, already admitted into evidence in this proceeding, include several pages designated as containing proprietary information. Counsel for the parties discussed this matter among themselves, and again during a conference call with Judge Bollwerk on April 10, 1992. Subsequently, counsel for both parties undertook a review of the record in this proceeding for other proprietary material and, as a result, identified other exhibits including proprietary material. Based on these reviews, and in accordance with the discussions with the Board, Alabama Power Company herein moves that the Board accord continued proprietary treatment to those portions of APCo Exhibits 16, 17, and 20, and Staff Exhibit 32, that have previously been

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designated as containing proprietary information. The NRC Staff supports this motion.

II. BACKGROUND

APCo Exhibits 16 and 17 are the Franklin Research Center (Franklin) Technical Evaluation Reports (TERs) on equipment qualification for Farley Nuclear Plant Units 1 and 2, respectively. The TERs are dated January 14, 1983 (Unit 1) and January 17, 1983 (Unit 2). The exhibits have been admitted into evidence in this proceeding (Tr. 947), in their entirety.

On April 9, counsel for the parties were notified that the admitted exhibits include pages previously designated as containing proprietary information. This has been confirmed. A listing of the pages in the two exhibits designated as proprietary is included in Attachment A to this Motion.

When issued by Franklin and the NRC Staff in 1983, the TERs were issued in both proprietary and non-proprietary versions, based on licensees' requests on behalf of certain equipment vendors who wished proprietary treatment of information concerning their equipment. This treatment was in accordance with NRC procedures (10 C.F.R. Part 9, Subpart A and 10 C.F.R. § 2.790). The versions of the Farley TERs placed in the NRC's Public Document Room (PDR) -- and that are presently in the PDR -- are the non-proprietary versions. These publicly available TERs have had the designated proprietary pages redacted.

Counsel for Alabama Power Company and the NRC Staff have also reviewed the record in this proceeding in order to identify any other exhibits or testimony which include or discuss proprietary information. Based on this review, counsel identified the following as including proprietary information:

- APCo Exhibit 20, Supplements 1, 2, 3 and 4. This exhibit is APCo's submittal to the NRC of February 29, 1984. As shown by Attachment 3 (Bates # 0057665), Westinghouse requested that the four supplements be treated as proprietary. The copy of this correspondence in the PDR had had the four supplements redacted.
- Staff Exhibit 32 (APCo Exhibit 44), in its entirety. This is a Westinghouse qualification report (WCAP-7709-L) for the Hydrogen Recombiners. It is regarded by Westinghouse as proprietary. As reflected in the cover page (Bates # 0677244) of APCo Exhibit 48 (the NRC's evaluation of WCAP-7709-L), the NRC has treated the report as proprietary.

Relevant portions of each exhibit are identified in Attachment A. Apart from these exhibits, the parties have identified no testimony or other portions of the record that contain proprietary information.^{1/}

^{1/} There is one page of APCo Exhibit 64 relating to Raychem NEIS kits that is stamped as proprietary. However, this page is included in the copy of the document housed in the PDR. Similarly, APCo Exhibit 48 is marked as being "Westinghouse Proprietary Class II." Nevertheless, it too is available, in its entirety, in the PDR. Finally, Staff Exhibit 31 (APCo
(continued...)

The parties have agreed to retain the proprietary version of the TERS in evidence in this proceeding, as well as the other proprietary material in APCo Exhibit 20 and Staff Exhibit 32. For example, the listed proprietary pages from the TERS include pages related to the Westinghouse Hydrogen Recombiners. Interfaces for that equipment are currently at issue in this proceeding. Pages of the TERS related to this equipment have been specifically cited by Alabama Power Company witnesses in both Direct Testimony and Surrebuttal Testimony.

Alabama Power Company has not contacted all of the vendors affected by proprietary pages of the TERS to determine whether they would voluntarily withdraw their prior requests for non-disclosure. Rather, since the Hydrogen Recombiners are the equipment predominantly affected by this issue, APCo has contacted representatives of Westinghouse. Westinghouse will not consent to relinquish proprietary status of its information. Given this state of affairs, Alabama Power Company believes it appropriate to treat all the designated proprietary pages alike -- allowing continued proprietary treatment for all information which to date the NRC has treated as proprietary.

Counsel for Alabama Power Company and the NRC Staff have also reviewed the proprietary material at issue. In general, the pages

¹/ (...continued)

Exhibit 47) bears a stamp of "Westinghouse Proprietary Class 3" (obscured on some copies by the exhibit label). However, this exhibit appears to be a redacted version of the proprietary Westinghouse qualification report. Accordingly, proprietary treatment is not requested here for any of these three exhibits.

and documents subject to proprietary treatment reflect performance characteristics of the equipment involved and the environmental qualifications for that equipment. The TERs, for example, summarize information available in prior qualification reports which were also accorded proprietary status at the vendors' request. Similarly, Staff Exhibit 32 is a proprietary qualification report, treated as proprietary by the NRC as reflected in APCo Exhibit 48. Although counsel are not privy to the reasoning of the equipment vendors involved, and may not fully appreciate the vendors' basis for treatment of the information as proprietary, the information has been accorded longstanding proprietary status and does appear to be of a type that in good faith can be treated as proprietary.

III. MOTION

Alabama Power Company respectfully moves that this Board, in accordance with 10 C.F.R. § 2.790, accord continued proprietary treatment to the exhibits, and portions thereof, listed in Attachment A. This would involve sealing one exhibit and designated pages of other exhibits, and placing in the PDR only redacted, non-proprietary versions of the exhibits (with appropriate reference to the proprietary status of the remaining pages).^{2/} Because the NRC has previously determined that this

^{2/} With this Motion, Alabama Power Company is serving upon the NRC's Office of the Secretary, at the request of the Board, three copies of redacted versions of APCo Exhibits 16, 17 and 20. Since Staff Exhibit 32 is proprietary in its entirety, a redacted version has not been provided.

information is proprietary, no new finding should be required. This Motion requires only that the designated pages and the designated exhibit be treated in a fashion consistent with prior and current NRC practice with regard to the same documents.

Respectfully submitted,


David A. Repka

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Dated at Washington, D.C.
this 16th day of April 1992.

ATTACHMENT A

Proprietary Pages in APCo and Staff Exhibits

APCo Exhibit No. 16

APCo Exhibit No. 17

Bates Nos.	0054479 - 54484	0054936 - 54941
	*0054527 - 54544	*0054976 - 54983
	0054556 - 54564	0054998 - 55007
	0054569	0055084 - 55090
	0054580 - 54590	
	0054624	
	0054674 - 54680	

* Westinghouse Hydrogen Recombiners

APCo Exhibit No. 20

Staff Exhibit No. 32

Supplements 1, 2, 3 and 4
(Bates Nos. 0057651 - 57656)

Entire document

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(ASLBP No. 91-626-02-CivP)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Motion to Continue Proprietary Treatment of Certain Exhibits" in the above-captioned proceeding have been served on the following by hand delivery as indicated by an asterisk, by Federal Express (morning delivery) as indicated by two asterisks, or otherwise through deposit in First Class United States Mail, this 16th day of April, 1992:

G. Paul Bollwerk, III*
Administrative Judge
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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Office of the Secretary (2)*
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Attn: Docketing and Service
Section

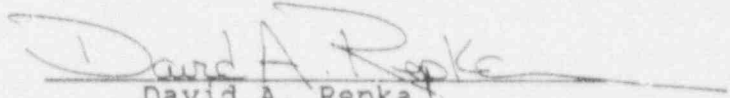
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