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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'92 AUG 12 P3:19

Before Administrative Judges:

- G. Paul Bollwerk, III, Chairman
- Dr. James H. Carpenter
- Dr. Peter A. Morris

In the Matter of

ALABAMA POWER COMPANY

(Joseph M. Farley Nuclear
Plant, Units 1 and 2)

Docket No. 50-348-CivP
50-364-CivP

ASLBP No. 91-626-02-CivP

August 12, 1992

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MEMORANDUM AND ORDER
(Final Ruling on Parties'
Request to Continue Proprietary
Treatment of Certain Exhibits)

Acting upon an April 16, 1992 motion filed by licensee Alabama Power Company (APCo), which was supported by the NRC staff, we previously gave conditional approval to the parties' request to continue to treat all or portions of APCo Exhibits 16, 17, and 20, and Staff Exhibit 32 as confidential business/proprietary information.¹ Our approval was provisional, however, because we were provided with no information indicating the current reasoning supporting nondisclosure of the documents, which are between eight and twenty years old. To remedy this, we asked the

¹ Memorandum and Order (May 1, 1992) (unpublished). Although these exhibits were admitted at trial without restriction, it subsequently came to the parties' attention that portions had been classified as proprietary, prompting their April 16 request for confidential treatment. See *id.* at 2.

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parties to provide for our review any agency or vendor documentation supporting the original proprietary classification as well as contemporary written justifications from appropriate vendor officials explaining why the information at issue still is proprietary.

In filings dated June 30, 1992, both parties supplied further information regarding the confidentiality claims. In its June 30 response, APCo states that for the relevant portions of the four exhibits,² one of three vendors -- Westinghouse Electric Corporation (Westinghouse), Automatic Switch Company (ASCo), or General Electric Company (GE) -- was responsible for requesting confidential treatment. (A table identifying which vendor is responsible for which proprietary pages is set forth as Attachment A to APCo's June 30 filing.) APCo further declares that it contacted the appropriate vendors to determine whether they still claimed proprietary treatment for these portions of the documents and they responded with justifications supporting

² APCo Exhibits 16 and 17 are January 1983 Franklin Institute Technical Evaluation Reports regarding APCo's resolution of outstanding environmental qualification issues for Farley Nuclear Plant, Units 1 and 2, respectively. APCo Exhibit 20 is a February 1984 letter from APCo to NRC's Office of Nuclear Reactor Regulation concerning documentation of qualification at Farley. Staff Exhibit 32 is a July 1971 Westinghouse Electric Corporation report, WCAP-7709-L, regarding electric-1 hydrogen recombiners for water reactor containment.

continued confidential treatment for some portions of the documents. For its part, stating that it does not seek proprietary treatment for any information in the absence of a current written justification, the staff in its June 30 response provides additional historical information regarding the initial agency decisions to afford the documents proprietary treatment.

APCo reveals in Attachment B to its June 30 filing that of the eighty pages at issue in APCo Exhibits 16, 17, and 20, vendors Westinghouse and GE no longer seek protection for sixty-four pages. As a consequence, we see no reason to continue to afford those pages confidential treatment. As is described more fully infra, we will release them into the public domain as part of the record of this proceeding.

This leaves for resolution the status of some sixteen pages in APCo Exhibits 16, 17, and 20, as specified in Attachment B to APCo's June 30 filing, and Staff Exhibit 32 in its entirety.³ After reviewing the information supplied by APCo and the staff, including the recent affidavits of vendors ASCo and Westinghouse justifying continued proprietary treatment, we find this material provides a

³ Although page 2 of Attachment B to APCo's June 30 filing indicates that ASCo seeks proprietary treatment for the pages in APCo Exhibit 16 with Bates numbers 0054679-54684, as is correctly reflected on page 1 of Attachment A, the pages in question are actually those with Bates numbers 0054479-54484.

reasonable basis for affording this information confidential protection. Accordingly, the parties' request for continued proprietary treatment as to these materials is granted.

Normally, a finding that this information requires confidential treatment would mandate that the agency retain these exhibits (or, at a minimum, their proprietary portions) under seal as part of the official record of this proceeding. This is not necessary in this instance. The Board today enters an order accepting the parties' request that we approve an agreement settling this litigation. See LBP-92-21, 36 NRC ____ (Aug. 12, 1992). If the Commission takes no action regarding this decision, this proceeding will be terminated without a determination on the merits and without further judicial review. In these circumstances, there is no apparent reason to undergo the administrative burdens associated with sealing the exhibits.⁴

So that the materials we have concluded should be released are included in the expunged versions of the exhibits that are now part of the public record of this proceeding, we today provide the Office of the Secretary with copies of those exhibits with these additional pages. The information we have determined warrants proprietary

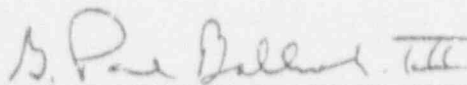
⁴ It is our understanding that the four documents, including the proprietary portions we exclude from public disclosure here, are already incorporated elsewhere in the agency's systems of records.

treatment continues to be redacted from these copies. These versions of the exhibits are to be substituted for the copies now in the agency's public records system.

As to the unexpunged versions of the exhibits, at our request the Office of the Secretary will return to the Board the three copies of APCo Exhibits 16, 17, and 20, and Staff Exhibit 32 that the parties provided for the administrative record. We will retain these, along with three unexpunged copies previously supplied to the Board members when the parties' submitted their prefiled testimony, until such time as the Commission completes its review relative to the settlement agreement. If the Commission declines review of our order accepting the settlement agreement and terminating the proceeding, we will then (at the option of the parties⁵) return or destroy the unexpunged versions of the exhibits.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD



G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland

August 12, 1992

⁵ Counsel for the parties should contact the Board Chairman within 14 days of the date of this memorandum and order to advise him of their preference in this regard.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (FINAL RULING...) 8/12 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Dated at Rockville, Maryland
12 day of August 1992

Kris Carter
Office of the Secretary of the Commission