



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

50-348/364

October 22, 1992

Arthur Kenny, Esquire
Licensing Administrator
Electric Power Research Institute
Office of Business Development
3412 Hillview Avenue
Post Office Box 10412
Palo Alto, California 94303

Dear Mr. Kenny:

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE -
JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2 (TAC NOS. M79818
AND M79819)

With your application and affidavit each dated August 18, 1992, you submitted Electric Power Research Institute (EPRI) Report TR-100407, (Proprietary), "PWR Steam Generator Tube Repair Limits: Technical Support Document for Outside Diameter Stress Corrosion Cracking at Tube Support Plates," dated March 1992, and requested that it be withheld from public disclosure pursuant to 10 CFR 2.790.

You stated that the submitted information should be considered exempt from mandatory public disclosure for the following reasons:

- i. The Report has been held in confidence by EPRI, its owner. All those accepting the Report must agree to preserve the confidentiality of the Report.
- ii. The Report is of a type customarily held in confidence by EPRI and there is a rational basis therefore. The Report is trade secrets and is held in confidence by EPRI because to disclose it would prevent EPRI from licensing the Report at fees which would allow EPRI to recover its investment. If consultants and other businesses providing services in the nuclear power industry were able to publicly obtain the Report, they would be able to use it commercially for profit and avoid spending the large amount of money that EPRI was required to spend to prepare the Report. The rational basis that EPRI has for classifying the Report as trade secrets is the Uniform Trade Secrets Act which California adopted in 1984 and which has been adopted by over twenty states. The Uniform Trade Secrets Act defines a "trade secret" as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

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- iii. The Report will be transmitted to the NRC in confidence.
- iv. The Report is not available in public sources. EPRI developed the Report only after making a determination that the Report was not available from public sources. It required a large expenditure of dollars for EPRI to develop the Report. In addition, EPRI was required to use a large amount of time of EPRI employees. The money spent, plus the value of EPRI's staff time in preparing the Report, show that the Report is highly valuable to EPRI. Finally, the Report was developed only after a long period of effort of at least several months.
- v. A public disclosure of the Report would cause substantial harm to EPRI's competitive position and the ability of EPRI to license the Report both domestically and internationally. The Report can be properly acquired or duplicated by others only with an equivalent investment of time and effort.

We have reviewed your application and the material based on the requirements and criteria of 10 CFR 2.790 and, on the basis of Electric Power Research Institute statements, have determined that the submitted information sought to be withheld contains trade secrets or proprietary commercial information.

Therefore, the version of the submitted information marked as proprietary will be withheld from public disclosure pursuant to 10 CFR 2.790(b)(5) and Section 103 (b) of the Atomic Energy Act of 1954, as amended.

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 inspection should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You should also understand that the NRC may have cause to review this determination in the future, such as, if the scope of a Freedom of Information Act request includes your 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:
 Stephen T. Hoffman, Project Manager
 Project Directorate II-1
 Division of Reactor Projects I/II
 Office of Nuclear Reactor Regulation

cc: See next page

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