

October 10, 2012

Dennis Madison
Southern Nuclear
Chairman, BWR Vessel and Internals Project
3420 Hillview Avenue
Palo Alto, CA 94304-1395

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
OF ELECTRIC POWER RESEARCH INSTITUTE "BWRVIP RESPONSE TO
NRC REQUEST FOR ADDITIONAL INFORMATION ON BWRVIP-234"

Dear Mr. Madison:

By letter dated September 18, 2012 in the (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12265A078), the Electric Power Research Institute (EPRI) submitted a September 11, 2011 letter providing an affidavit executed by Mr. Neil Wilmshurst also dated September 11, 2012. The affidavit requested that the information contained in the following document be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 2, Section 2.390:

"Request for Additional Information on BWRVIP-234: Thermal Aging and Neutron Embrittlement Evaluation of Cast Austenitic Stainless Steel for BWR Internals."

A nonproprietary copy of this document (ADAMS Accession No. ML12265A078) has been placed in the U.S. Nuclear Regulatory Commission's (NRC's) Public Document Room and added to the NRC Library in ADAMS.

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

a. The Response is owned by EPRI and has been held in confidence by EPRI. All entities accepting copies of the Response do so subject to written agreements imposing an obligation upon the recipient to maintain the confidentiality of the Response. The Response is disclosed only to parties who agree, in writing, to preserve the confidentiality thereof.

b. EPRI considers the Response and the proprietary information contained therein (the "Proprietary Information") to constitute trade secrets of EPRI. As such, EPRI holds the Response in confidence and disclosure thereof is strictly limited to individuals and entities who have agreed, in writing, to maintain the confidentiality of the Response. EPRI made a substantial economic investment to develop the Response, and, by prohibiting public disclosure, EPRI derives an economic benefit in the form of licensing royalties and other additional fees from the confidential nature of the Response. If the Response and the Proprietary Information were publicly available to consultants and/or other businesses providing services in the electric and/or nuclear power industry, they would be able to use the Response for their own commercial benefit and profit and without expending the substantial economic resources required of EPRI to develop the Response.

c. EPRI's classification of the Response and the Proprietary Information as trade secrets is justified by the Uniform Trade Secrets Act which California adopted in 1984 and a version of which has been adopted by over forty states. The California Uniform Trade Secrets Act, California Civil Code §§3426 -3426.11, 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."

d. The Response and the Proprietary Information contained therein are not generally known or available to the public. EPRI developed the Response only after making a determination that the Proprietary Information was not available from public sources. EPRI made a substantial investment of both money and employee hours in the development of the Response. EPRI was required to devote these resources and effort to derive the Proprietary Information and the Response. As a result of such effort and cost, both in terms of dollars spent and dedicated employee time, the Response is highly valuable to EPRI.

e. A public disclosure of the Proprietary Information would be highly likely to cause substantial harm to EPRI's competitive position and the ability of EPRI to license the Proprietary Information both domestically and internationally. The Proprietary Information and Response can only be acquired and/or duplicated by others using an equivalent investment of time and effort.

We have reviewed your application and the material in accordance with the requirements of 10 CFR 2.390 and, on the basis of the statements in the affidavit, have determined that the submitted information sought to be withheld contains proprietary commercial information and should be withheld from public disclosure.

Therefore, the version(s) of the submitted information marked as proprietary will be withheld from public disclosure pursuant to 10 CFR 2.390(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 also should understand that the 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 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.

D. Madison

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If you have any questions regarding this matter, I may be reached at 301-415-7297.

Sincerely,

/RA/

Joseph J. Holonich, Project Manager
Licensing Processes Branch
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

Project No.: 704

D. Madison

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JHolonich

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NRR-106

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DATE	9/19/2012	10/2/2012	10/4/2012	10/4/2012	10/10/2012

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