

Exelon Generation  
200 Exelon Way  
KSA3-N  
Kennett Square, PA 19348

Telephone 610.765.5661  
Fax 610.765.5545  
www.exeloncorp.com

Generation

10 CFR 2.790  
Project No. 713

November 16, 2001

U.S. Nuclear Regulatory Commission  
Attn: Document Control Desk  
Washington, DC 20555

Subject: Application for Withholding Information from Public Disclosure

Dear Sir or Madam:

Exelon Generation Company (Exelon) hereby submits an application for withholding information from public disclosure pursuant to 10 CFR 2.790, (a) (4).

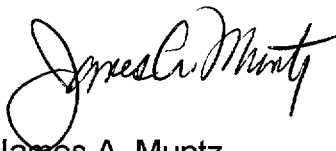
At meetings between Exelon and the US Nuclear Regulatory Commission staff on August 16, 2001 and June 13, 2001 presentations were made by Exelon regarding attributes of the Pebble Bed Modular Reactor (PBMR) heat removal capability and fuel design and qualification. Portions of these were considered by Exelon to be confidential (i.e., proprietary).

Attachment 1, "PBMR Design and Heat Removal Preliminary Description", and Attachment 2, "PBMR Nuclear Fuel", compliment these presentations. Exelon considers these documents to be confidential (i.e., proprietary).

This information is being submitted under affirmation, and the required affidavit is enclosed.

If you have any questions concerning this matter, please do not hesitate to contact us.

Very truly yours,



James A. Muntz  
Vice President, Nuclear Projects

*DD64  
Rec'd at NRC  
12/17/01*

Enclosures: Affidavit  
Attachments

cc: Thomas King, RES  
William Borchardt, Associate Director NRR  
James Lyons, NRR  
John Flack, RES  
Amy Cubbage, NRR  
Stuart Rubin, RES

Affidavit of James A. Muntz

Commonwealth of Pennsylvania:

: ss.

County of Chester

:

James A. Muntz being duly sworn, deposes and states as follows:

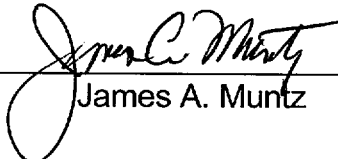
1. I am Vice President, Nuclear Projects, Exelon Generation Company, L.L.C. (Exelon), and I am authorized to execute this affidavit in support of a request to withhold certain information, described in paragraph (2) below, from public disclosure and in accordance with Section 2.790(a)(4) of the Commission's regulations.
2. The information sought to be withheld is contained in the letter, J. A. Muntz (Exelon Generation Company, L.L.C.) to the U. S. Nuclear Regulatory Commission Document Control Desk, Project No. 713.
3. The information which is sought to be withheld from public disclosure is proprietary information of Pebble Bed Modular Reactor (Pty) Limited, a Republic of South Africa corporation ("PBMR Co"), and has been provided to Exelon subject to an agreement that it will be treated as confidential and proprietary information and not be disclosed publicly. Exelon has contributed substantial funds for the development of the information and holds a beneficial ownership interest in PBMR Co.
4. In making this application for withholding of proprietary information, Exelon relies upon the exemption from disclosure set forth in the Freedom of Information Act ("FOIA"), 5 USC Sec. 552(b)(4), and the Trade Secrets Act, 18 USC Sec. 1905, and NRC regulations 10 CFR Section 9.17(a)(4) and Section 2.790(a)(4) for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." The material for which exemption from disclosure is here sought is all "confidential commercial information," and some portions also qualify under the narrower definition of "trade secret," within the meanings assigned to those terms for purposes of FOIA Exemption 4 in, respectively, Critical Mass Energy Project v. Nuclear Regulatory Commission, 975F2d871 (DC Cir. 1992), and Public Citizen Health Research Group v. FDA, 704F2d1280 (DC Cir. 1983).
5. Some examples of categories of information which fit into the definition of proprietary information and which are applicable here are:
  - a) Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by the Company's competitors without license from Exelon Generation Company, L.L.C. constitutes a competitive economic advantage over other companies;

- b) Information which, if used by a competitor, would reduce his expenditure of resources or improve his competitive position in the performance of outages or the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product.
6. The information sought to be withheld is being submitted to the U. S. Nuclear Regulatory Commission ("NRC") in confidence. The information is of a sort customarily held in confidence by Exelon, and is in fact so held. Its initial designation as proprietary information, and the subsequent steps taken to prevent its unauthorized disclosure, are as set forth in (7) and (8) following. The information sought to be withheld has, to the best of my knowledge and belief, is not available in public sources. All disclosures to third parties including any required transmittals to NRC, have been made, or must be made, pursuant to regulatory provisions or proprietary agreements which provide for maintenance of the information in confidence.
  7. Initial approval of proprietary treatment of a document is made by the Vice President, Nuclear Projects, the person most likely to be acquainted with the value and sensitivity of the information in relation to industry knowledge.
  8. The procedure for approval of external release of such a document typically requires review by a Vice President, Exelon Generation, or his designee, for technical content, competitive effect, and determination of the accuracy of the proprietary designation. Disclosures outside Exelon Generation Company, L.L.C. are limited to regulatory bodies, customers, and potential customers, and their agents, suppliers, and licensees, and others with a legitimate need for the information, and then only in accordance with appropriate regulatory provisions or proprietary agreements.
  9. The information identified in paragraph (2) is classified as proprietary because it contains core, heat removal, and fuel design information related to the Pebble Bed Modular Reactor (PBMR).
  10. Public disclosure of the information sought to be withheld is likely to cause substantial harm to Exelon's and others contributing to the PBMR Project competitive position and foreclose or reduce the availability of profit-making opportunities. The core design, heat removal design, and fuel design issues related to the PBMR provide commercial value to Exelon and its partners. The research, development, engineering, analytical, and NRC review costs comprise a substantial investment of time and money by Exelon and its partners.

Exelon's and its partners' competitive advantage will be lost if its competitors are able to use the design information.

The value of this information would be lost if the information were disclosed to the public. Making such information available to competitors without their having been required to undertake a similar expenditure of resources would unfairly provide competitors with a windfall, and deprive Exelon of the opportunity to exercise its competitive advantage to seek an adequate return on its large investment.

11. He has read the foregoing affidavit and the matters stated therein are true and correct to the best of his knowledge, information and belief.

  
James A. Muntz

Subscribed and sworn to  
before me this 16<sup>th</sup> day  
of November 2001.

  
Notary Public

Notarial Seal  
Staci L. Cooper, Notary Public  
Kennett Twp., Chester County  
My Commission Expires Sept. 20, 2004  
Member, Pennsylvania Association of Notaries