

April 24, 2003

Mr. John L. Skolds, President
Exelon Nuclear
Exelon Generation Company, LLC
4300 Winfield Road
Warrenville, IL 60555

SUBJECT: BYRON STATION, UNITS 1 AND 2 - REQUEST FOR WITHHOLDING
INFORMATION FROM PUBLIC DISCLOSURE (TAC NOS. MB7371 AND
MB7372)

Dear Mr. Skolds:

By letter from Exelon Generation Company, LLC dated January 17, 2003, and Westinghouse's affidavit, executed by Henry A. Sepp, dated January 3, 2003, requesting that the following attachments to your letter be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.790:

Attachment 1 - Request for Exemption from the Provisions of 10 CFR 50.44, 10 CFR 50.46 and 10 CFR 50 Appendix K For Replacement Fuel Rods in One Lead Test Assembly (LTA) with Supporting Justification.

Attachment 2 - Request for Approval of Fuel Rod Burnup Beyond the Current Licensing Basis.

A nonproprietary copy of this document has been placed in the U. S. Nuclear Regulatory Commission's (NRC's) Public Document Room and added to the Agencywide Documents Access and Management System Public Electronic Reading Room.

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

- a) The information reveals the distinguishing aspects of a process (or component, structure, tool, method, etc.) where prevention of its use by any of Westinghouse's competitors without license from Westinghouse constitutes a competitive economic advantage over other companies
- b) The use of such information by Westinghouse gives Westinghouse a competitive advantage over its competitors. It is, therefore, withheld from disclosure to protect the Westinghouse competitive position.
- c) It is information which is marketable in many ways. The extent to which such information is available to competitors diminishes the Westinghouse ability to sell products and services involving the use of the information.
- d) Use by our competitor would put Westinghouse at a competitive disadvantage by reducing his expenditure of resources at our expense.

- e) Each component of proprietary information pertinent to a particular competitive advantage is potentially as valuable as the total competitive advantage. If competitors acquire components of proprietary information, any one component may be the key to the entire puzzle, thereby depriving Westinghouse of a competitive advantage.
- f) Unrestricted disclosure would jeopardize the position of prominence of Westinghouse in the world market, and thereby give a market advantage to the competition of those countries.
- g) The Westinghouse capacity to invest corporate assets in research and development depends upon the success in obtaining and maintaining a competitive advantage.

A telephone conference was held on March 10, 2003, with the representatives of Exelon and Westinghouse to address the concerns of NRC staff regarding blank paragraphs in the non-proprietary version of the document, and lack of adequate information required for preparation of the safety evaluation report (SER). In their supplemental non-proprietary submittal, dated March 24, 2003, Exelon has provided the additional information required.

We have reviewed your application and the material in accordance with the requirements of 10 CFR 2.790 and, on the basis of your statements, 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 2.790(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 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.

If you have any questions regarding this matter, I may be reached at 301-415-8371.

Sincerely,

/RA/

Mahesh Chawla, Project Manager, Section 2
Project Directorate 3
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. STN 50-454 and STN 50-455

cc: See Next Page

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.

If you have any questions regarding this matter, I may be reached at 301-415-8371.

Sincerely,

/RA/

Mahesh Chawla, Project Manager, Section 2
Project Directorate 3
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. STN 50-454 and STN 50-455

cc: See Next Page

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*See previous concurrences

NRR-084

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DATE	4/22/03	4/03/03	4/21/03	4/17/03	4/15/03	4/24/03

OFFICIAL AGENCY RECORD

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