

October 7, 2005

Document Control Desk
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Washington, DC 20555

Subject: Submission of CDROM containing back-up data files for EPRI Reports #1012044 / 1012045, *Assessment of a Performance-Based Approach for Determining Seismic Ground Motions for New Plant Sites, V.1: Performance-Based Seismic Design Spectra and V.2: Seismic Hazard Results at 28 Sites* under request of nondisclosure pursuant 10 CFR 2.390

This is a request under 10 CFR 2.390 that the United States Nuclear Regulatory Commission (the "NRC") withhold from public disclosure all information and data (collectively, the "Data") contained in the enclosed CDROM (the "CD ROM") identified in the Subject line hereof and as also identified in the attached affidavit, all of which information and data are trade secrets proprietary to EPRI.

The CD ROM contains a Word file entitled, "Contents of EPRI_hazard," and a WinZip archive entitled "EPRI_hazard." The files in the WinZip archive extract to three folders as explained in the Word file.

EPRI desires to provide the Data to the NRC on conditions of nondisclosure under 10 CFR 2.390 as a means of exchanging information in support of EPRI 1012044 / 1012045, "Assessment of a Performance-Based Approach for Determining Seismic Ground Motions for New Plant Sites, V.1: Performance-Based Seismic Design Spectra and V.2: Seismic Hazard Results at 28 Sites"—a copy of which the NRC already has received without any conditions as to use or disclosure.

Further, EPRI welcomes any discussion with the NRC regarding the Data and/or the reports that the NRC desires to conduct.

The Data is for the NRC's internal use and may be used only for the purposes for which it is disclosed by EPRI. The Data should not be otherwise used or disclosed to any person outside the NRC.

If you have any questions about the legal aspects of this request for withholding, please do not hesitate to contact me at (650) 855-2340. Questions on the contents of the reports should be directed to Bob Kassawara of EPRI at (650) 855-2775.

YGOI
Add: Eugene Imbro

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Sincerely,

A handwritten signature in black ink, appearing to read "Warren J. Bilanin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Warren J. Bilanin
Director, Business Operations & Development
Nuclear Power Sector

Enclosure (1)

c: Joe Cademartori, EPRI Legal
 Adrian Heymer, NEI (w/o CD file)
 Mr. Eugene V. Imbro (w/o CD file)
 Chief, Mechanical and Civil Engineering Branch
 Office of Nuclear Reactor Regulation
 U.S. Nuclear Regulatory Commission
 Washington, DC 20555-0001

AFFIDAVIT

RE: **Submission of CDROM containing back-up data files for EPRI Reports #1012044 / 1012045, *Assessment of a Performance-Based Approach for Determining Seismic Ground Motions for New Plant Sites, V.1: Performance-Based Seismic Design Spectra* and *V.2: Seismic Hazard Results at 28 Sites* under request of nondisclosure pursuant 10 CFR 2.390**

I, Warren J. Bilanin, being duly sworn, depose and state as follows:

I am a Director at the Electric Power Research Institute ("EPRI") and I have been specifically delegated responsibility for the information and data (collectively, the "Data") contained in the CDROM (the "CD ROM") identified in the Subject line hereof and that are provided under this affidavit, and I am authorized to apply for their withholding from public disclosure on behalf of EPRI.

This affidavit is submitted to the United States Nuclear Regulatory Commission ("NRC") pursuant to 10 CFR 2.390 based on the fact that the Data is proprietary to EPRI and consists of trade secrets of EPRI and that the NRC will receive the Data from EPRI under privilege and in confidence.

The basis for withholding such Data from the public is set forth below:

(i) The Data has been held in confidence by EPRI, its owner. All recipients of the Data must agree to preserve the confidentiality of the Data under express conditions of confidentiality and prohibitions against disclosure (This includes EPRI employees and consultants, all of which are parties to confidentiality/nondisclosure agreements).

(ii) The Data is of a type customarily held in confidence by EPRI and there is a rational basis therefore. The Data is of a type, which EPRI considers as a trade secret(s) and is held in confidence by EPRI because to disclose it could prevent EPRI from licensing the Data at fees and undermine the expectations of those whose funding produced the Data that such Data would be maintained as trade secrets. If consultants and/or other businesses providing services in the electric/nuclear power industry were able to publicly obtain the Data, they would be able to use it commercially for profit and avoid spending the large amount of money that EPRI was required to spend in preparation of the Data. The rational basis that EPRI has for classifying this/these Data as a trade secrets is justified by 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.

(iii) The Data will be transmitted to the NRC in confidence.

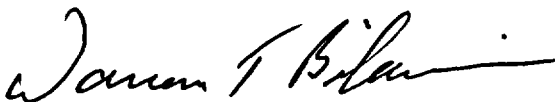
(iv) The Data is not available in public sources. EPRI developed the Data only after making a determination that the Data was not available from public sources. It required a large expenditure of dollars for EPRI to develop the Data. In addition, EPRI was required to use a large amount of time of EPRI employees. The money spent, plus the value of EPRI's staff time in preparing the Data, show that the Data is highly valuable to EPRI. Finally, the Data was developed only after a long period of effort of at least several months.

(v) A public disclosure of the Data would be highly likely to cause substantial harm to EPRI's competitive position and the ability of EPRI to license the use of the Data both domestically and internationally, as well as undermining the expectations of those whose funding produced the Data that such Data would be maintained as trade secrets. The Data can only be acquired and/or duplicated by others using an equivalent investment of substantial time and effort.

I have read the foregoing and the matters stated therein are true and correct to the best of my knowledge, information and belief. I make this affidavit under penalty of perjury under the laws of the United States of America and under the laws of the State of California.

Executed at 3412 Hillview Avenue, Palo Alto, being the premises and place of business of the Electric Power Research Institute:

October 7, 2005



Warren J. Bilanin

State of California

County of Santa Clara

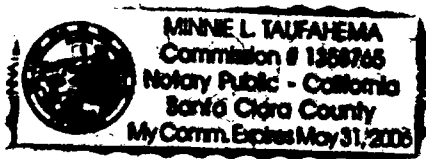
}

SS.

On October 7, 2005 before me, Minnie Taufahema, personally appeared Warren J. Bilanin

☒ personally known to me -OR- ☐

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Minnie Taufahema
Minnie Taufahema