



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 31, 2016

Mr. Joseph W. Shea
Vice President, Nuclear Licensing
Tennessee Valley Authority
1101 Market Street, LP 3R-C
Chattanooga, TN 37402-2801

SUBJECT: BROWNS FERRY NUCLEAR PLANT, UNITS 1, 2, AND 3 – REQUEST FOR
WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
(CAC NOS. MF6741, MF6742, AND MF6743)

Dear Mr. Shea:

By letter dated October 28, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16302A441), Tennessee Valley Authority (the licensee) submitted affidavits dated October 17 and October 13, 2016, to the U.S. Nuclear Regulatory Commission (NRC), executed by Mr. Kurt Edsinger, Director, Electric Power Research Institute, Inc. (EPRI), and Ms. Lisa K. Schichlein, Senior Project Manager, General Electric-Hitachi Nuclear Energy Americas LLC (GEH), respectively, requesting that the information contained in the following Proprietary document (Enclosure 1 of the letter dated October 28, 2016) be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 2, Section 2.390:

- NEDC-33860P, Revision 1, "Safety Analysis Report for Browns Ferry Nuclear Plant Units 1, 2, and 3 Extended Power Uprate," October 2016.

A nonproprietary copy of the document NEDO-33860, Revision 1 (Enclosure 2 of the letter dated October 28, 2016), entitled "Safety Analysis Report for Browns Ferry Nuclear Plant Units 1, 2, and 3 Extended Power Uprate," October 2016, has been placed in the NRC's Public Document Room and added to the NRC Library in the ADAMS (ADAMS Accession No. ML16302A441).

The EPRI affidavit dated October 17, 2016, stated that the submitted information should be considered exempt from mandatory public disclosure for the following reasons:

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

- b. EPRI considers the Proprietary Information contained therein to constitute trade secrets of EPRI. As such, EPRI holds the Information in confidence and disclosure thereof is strictly limited to individuals and entities who have agreed, in writing, to maintain the confidentiality of the Information.
- c. The information sought to be withheld is considered to be proprietary for the following reasons. EPRI made a substantial economic investment to develop the Proprietary Information 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 Proprietary Information. If 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 Proprietary Information for their own commercial benefit and profit and without expending the substantial economic resources required of EPRI to develop the Proprietary Information.
- d. EPRI's classification of 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."
- e. The Proprietary Information contained therein are not generally known or available to the public. EPRI developed the Information 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 Proprietary Information. EPRI was required to devote these resources and effort to derive the Proprietary Information. As a result of such effort and cost, both in terms of dollars spent and dedicated employee time, the Proprietary Information is highly valuable to EPRI.
- f. 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 can only be acquired and/or duplicated by others using an equivalent investment of time and effort.

The GEH affidavit dated October 13, 2016, stated that the submitted information should be considered exempt from mandatory public disclosure for the following reasons:

- a. Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by GEH's competitors without license from GEH 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 design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product.

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 affidavits, have determined that the submitted information sought to be withheld contains proprietary commercial information and should be withheld from public disclosure.

Therefore, 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.

J. Shea

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If you have any questions, please contact me at (301) 415-1447 or Farideh.Saba@nrc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Saba P. Saba" followed by a flourish.

Farideh E. Saba, Senior Project Manager
Plant Licensing Branch II-2
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-259, 50-260, and 50-296

cc: Mr. Kurt Edsinger
Director of PWR and BWR Materials
Electric Power Research Institute, Inc.
3420 Hillview Avenue
Palo Alto, CA 94304

Ms. Lisa K. Schichlein
Senior Project Manager, NPP/Services Licensing
Regulatory Affairs
GE-Hitachi Nuclear Energy Americas LLC
3901 Castle Hayne Road
Wilmington, NC 28401

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J. Shea

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Sincerely,

/RA/

Farideh E. Saba, Senior Project Manager
Plant Licensing Branch II-2
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

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Ms. Lisa K. Schichlein
Senior Project Manager, NPP/Services Licensing
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