



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

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DEC 21 1979

Docket Nos. STN 50-592
and STN 50-593

Mr. W. J. Johnson
Controller
El Paso Electric Company
Post Office Box 982
El Paso, Texas 79999

Dear Mr. Johnson:

SUBJECT: REQUEST FOR WITHHOLDING FINANCIAL INFORMATION FROM PUBLIC DISCLOSURE

By your letter, dated April 9, 1979, you submitted financial schedules and forecasts relating to the El Paso Electric Company's share of the Palo Verde Nuclear Generating Station, Units 4 and 5, and requested that they be withheld from public disclosure pursuant to 10 CFR 2.790.

Your reasons for requesting our withholding of this information were that (1) the information was prepared from data available for internal use only, (2) such data have been and will continue to be held in confidence by your company, and (3) substantial harm may be caused to the company if the submitted information is made publicly available.

Subsequently, by letter, dated September 7, 1979, from E. E. Van Brunt, Jr., we were requested that concurrent with the withdrawal of the application for Palo Verde, 4 and 5, we return the above financial information to you. In compliance with this request, we are returning the subject information since it is no longer necessary for us to make a finding regarding your financial qualifications for the withdrawn application.

Prior to the withdrawal of the application, a meeting was held with your representatives on May 23, 1979, to discuss your reasons for requesting our withholding of the financial information. Since your representatives stated that the concern about releasing the information was the potential harm from a third party action (not the SEC), we agreed to look into this concern before acting on your request. We subsequently met with the Division of Corporation Finance of the SEC to discuss the above concern and would like to provide for your information what we learned from the SEC.

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Mr. W. J. Johnson

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At the meeting held with the SEC, the SEC informed us of the following:

- (1) It is the opinion of the SEC's Division of Corporation of Finance that disclosure of the projections to a regulatory agency such as the NRC are distinguishable from the type of projections presented in a prospectus for the marketing of securities.
- (2) Notwithstanding the above, the SEC is encouraging the disclosure of projections and forward looking information both in SEC filings and, in general, through its safe harbor rule effective July 30, 1979.
- (3) The SEC stated that it felt that disclosure of financial projections and prediction of dividends would be "deemed not to be false or misleading under the federal securities laws unless they were prepared without a reasonable basis or disclosed other than in good faith".
- (4) Consequently, the SEC felt that there would be no viable liability to an NRC applicant in its projections being made public by the NRC.

Please advise us if you have any questions regarding this letter.

Sincerely,

Olan D. Parr

Olan D. Parr, Chief
Light Water Reactors, Branch No. 3
Division of Project Management

Enclosure:
As Stated

cc: w/o Enclosure:
See Next Page

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Mr. E. E. Van Brunt, Jr.
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