



50-482

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

November 5, 1996

Mr. N. J. Liparulo, Manager
Regulatory and Engineering Networks
Westinghouse Electric Corporation
Nuclear Technology Division
P.O. Box 355
Pittsburgh, Pennsylvania 15230-0355

SUBJECT: REQUEST TO WITHHOLD INFORMATION FROM PUBLIC DISCLOSURE, WOLF CREEK
NUCLEAR OPERATING CORPORATION (CAW-96-944) (TAC NO. M94764)

Dear Mr. Liparulo:

By letter dated March 14, 1996, you requested that the U.S. Nuclear Regulatory Commission (NRC) withhold from public disclosure the proprietary version of a report entitled "Incomplete Rod Insertions During Cycle 8 - Interim Report on Inspection Plan, Inspection Results and Root Cause," dated March 1996. In a letter dated June 24, 1996, the NRC staff made the following statement:

We do not believe that all the designated information includes distinguishing aspects or would improve a competitor's economic advantage. With the exception of the following numerical data, we do not believe the information constitutes trade secret or proprietary commercial information:

- 1) Page 10 Under Observations [xxxxxx] and [xx]
- 2) Page 11 Under Observations [xx].

The staff further requested that you review your claim and provide within 30 days a detailed justification as to why the information is considered proprietary.

In your letter of July 19, 1996, you responded to the NRC's June 24, 1996, letter and continued to assert that the bracketed information in the revised report, forwarded by a letter dated April 9, 1996, was proprietary.

The staff has reviewed your July 19 letter and all the supporting information in accordance with the requirements of 10 CFR 2.790 and has concluded that you have not provided sufficient justification for the NRC to conclude that the information you seek to withhold from public disclosure is proprietary. In addition, the staff has concluded that the right of the public to be fully apprised as to the basis for and the effects of the failure of the control rods to fully insert at Wolf Creek outweighs your concern for protection of your competitive position.

Although the staff agrees that a small portion of the information may be proprietary (see the enclosed June 24 letter from W. Russell to N. Liparulo), control rod operability is crucial to the safety of pressurized-water reactors (PWRs) and availability of this information is necessary so that PWR licensees can adequately assess the operability of their control rods and recognize the

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potential for safety-significant precursor phenomenology. Further, information must be made available to other fuel manufacturers so that they can assess the susceptibility of their fuel to similar conditions.

The staff also notes that the majority of the information in question has been released in subsequent public meetings and other non-proprietary submittals to the NRC.

In your July 19 letter, you requested withdrawal of the document in question. The NRC is unable to permit withdrawal of this document. Information in the document formed, in part, the bases for NRC's allowing Wolf Creek to restart after completion of its refueling outage. Also, the NRC decision to allow other plants with Westinghouse-designed fuel to continue to operate without requiring them to shut down and perform testing was partially based on the information in the document.

Accordingly, the staff has concluded that your wish to withhold the information from public disclosure is overridden by public health and safety considerations, except as detailed in the NRC's June 24 letter. Therefore, your request to withhold the report entitled "Incomplete Rod Insertions During Cycle 8 - Interim Report on Inspection Plan, Inspection Results and Root Cause," dated March 1996, is denied.

Ten (10) days from the date of this letter, the subject document will be placed in the public document rooms. If you have any questions about this letter, please contact Margaret Chatterton at (301) 415-2889 or James Stone at (301) 415-3063.

Sincerely, Original signed by

Frank J. Miraglia, Jr., Acting Director
Office of Nuclear Reactor Regulation

Docket No. 50-482

Enclosure: Letter dtd. 6/24/96 to
N. J. Liparulo

cc w/encl: See next page

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PDIV-2 Reading	MChatterton
FMiraglia	MPSiemien, OGC
RZimmerman	JDyer, RIV
JRoe	
EGA1	
WBateman	

DOCUMENT NAME: CAW96944.WC

*See previous concurrence

OFC	PDIV-2/LA	PDIV-2/PM	TECH ED	PDIV-2/D	SRXB #95FA
NAME	EPeyton	JStone	BCalure*	WBateman	RJones
DATE	10/15/96	10/15/96	10/9/96	10/29/96	10/19/96
OFC	OGC	DRPW/B	ADP	NRR/D	
NAME	MPSiemien	JRoe	RZimmerman	FMiraglia	
DATE	10/15/96	10/30/96	11/14/96	11/1/96	

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DATE	10/15/96	10/30/96	11/14/96	11/12/96	

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cc:

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Burlington, Kansas 66839



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

June 24, 1996

N. J. Liparulo, Manager
Regulatory and Engineering Networks
Westinghouse Electric Corporation
P.O. Box 355
Pittsburgh, Pennsylvania 15230-0355

Dear Mr. Liparulo:

In your letter of March 14, 1996, you requested that the Nuclear Regulatory Commission (NRC) withhold the following document from public disclosure pursuant to 10 CFR 2.790:

- Enclosure 1, revised (Incomplete Rod Insertions During Cycle 8 - Interim Report on Inspection Plan, Inspection Results and Root Cause (Proprietary)) to the letter from Otto L. Maynard, Wolf Creek Nuclear Operating Corporation, to NRC Document Control Desk dated March 20, 1996.

The Westinghouse Electric Corporation affidavit executed by you on March 14, 1996, forwarded with the proprietary document, 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) It consists of supporting data, including test data, relative to a process (or component, structure, tool, method, etc.), the application of which data secures a competitive economic advantage, e.g., by optimization or improved marketability.
- (c) Its use 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 a similar product.

The NRC staff has reviewed your application and the information according to the requirements and criteria of 10 CFR 2.790 and conducted a telephone conference with your representatives on April 4, 1996, to discuss this material and the propriety of the Westinghouse proprietary claim. The NRC staff reviewed the revised Westinghouse submittal dated April 9, 1996, and held additional telephone conferences on April 24 and May 2, 1996 with your representatives. Although the staff agrees that a small portion of the information may be proprietary, control rod operability is crucial to the safety of pressurized water reactors (PWRs) and availability of this information is necessary so that PWR licensees can adequately assess the operability of their control rods and recognize the potential for safety-

significant precursor phenomenology.

We do not believe that all the designated information includes distinguishing aspects or would improve a competitor's economic advantage. With the exception of the following numerical data, we do not believe the information constitutes trade secret or proprietary commercial information:

- 1) Page 10 Under Observations [] and []
- 2) Page 11 Under Observations []

You are requested to review your claim and provide a detailed justification as to why the information is considered proprietary. In accordance with 10 CFR 2.790(c), please provide the results of your reevaluation within 30 days of this letter, otherwise the document in question will be placed in the NRC Public Document Room.

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. 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.

Because the submittal enclosed with your March 9, 1996 letter is superceded by the April 9, 1996 revised submittal, the Commission deems the original version of the Interim Report on Inspection Plan, Inspection Results and Root Cause no longer relevant and is returning this document to you. Any additional copies of this document will be appropriately destroyed.

Sincerely,

/s/

William T. Russell, Director
Office of Nuclear Reactor Regulation