

September 3, 2003

Dr. Atambir S. Rao, ESBWR Project Manager
Nuclear Plant Projects
General Electric Company
175 Curtner Avenue, M/C 365
San Jose, CA 95125-1014

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
FOR AUGUST 8, 2003, RESPONSE TO REQUESTS FOR ADDITIONAL
INFORMATION (RAIs) (MFN 03-055)

Dear Dr. Rao:

By letter dated August 8, 2003, and associated affidavit executed on the same date, by George B. Stramback, you indicated that the information contained in the General Electric (GE) proprietary report NEDC-33048P, "ESBWR Design Description," should be withheld as proprietary. You requested that this information be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations*, Section 2.790 (10 CFR 2.790).

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

- (1) the information discloses a process, method, or apparatus including supporting data and analyses, where prevention of its use by General Electric Company's competitors without license from General Electric constitutes a competitive economic advantage over other companies;
- (2) the information, 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; and
- (3) the information discloses patentable subject matter for which it may be desirable to obtain patent protection. GE is pursuing patent applications in the US Patent Office.

We have reviewed your letter and affidavit in accordance with the requirements of 10 CFR 2.790 and, on the basis of your statements, have determined that the information sought to be withheld, contains proprietary commercial information and should be withheld from public disclosure. Therefore, the version 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 document. 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 should also 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 301-415-1186.

Sincerely,

/RA/

Leslie C. Fields, ESBWR Project Manager
New Reactors Section
New, Research and Test Reactors Program
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Project No. 717

cc: See next page

A. S. Rao

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Leslie C. Fields, ESBWR Project Manager
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ESBWR

cc:

Mr. J. Alan Beard
GE Nuclear Energy
13113 Chestnut Oak Drive
Darnestown, MD 20878-3554

Dr. Atambir S. Rao
Project Manager, ESBWR
GE Nuclear Energy
175 Curtner Avenue, MC 365
San Jose, CA 95125 USA

Mr. George B. Stramback
Manager, Regulatory Services
GE Nuclear Energy
175 Curtner Avenue, MC 747
San Jose, CA 95125

Mr. David Lochbaum, Nuclear Safety Engineer
Union of Concerned Scientists
1707 H Street, NW., Suite 600
Washington, DC 20006-3919

Dr. Gail H. Marcus
U.S. Department of Energy
Office of Nuclear Energy, Science
& Technology
1000 Independence Avenue, SW
Washington, DC 20585

Mr. Paul Gunter
Nuclear Information & Resource Service
1424 16th Street, NW, Suite 404
Washington, DC 20036

Mr. James Riccio
Greenpeace
702 H Street, Suite 300
Washington, DC 20001

Mr. Ron Simard
Nuclear Energy Institute
Suite 400
1776 I Street, NW
Washington, DC 20006-3708

Mr. Thomas P. Miller
U.S. Dept. of Energy, NE-20, Rm. A286
Headquarters - Germantown
19901 Germantown Road
Germantown, MD 20874-1290

Mr. Paul Leventhal
Nuclear Control Institute
1000 Connecticut Avenue, NW
Suite 410
Washington, DC 20036

Mr. Jack W. Roe
SCIENTECH, INC.
910 Clopper Road
Gaithersburg, MD 20878

Mr. David Ritter
Research Associate on Nuclear Energy
and Environmental Program
215 Pennsylvania Avenue, SE
Washington, DC 20003

Mr. Tom Clements
6703 Gude Avenue
Takoma Park, MD 20912

Patricia Campbell
Winston & Strawn
1400 L Street, NW
Washington, DC 20005

Mr. James F. Mallay, Director
Regulatory Affairs
FRAMATOME, ANP
3315 Old Forest Road
Lynchburg, VA 24501

Mr. Vince Langman
Licensing Manager
Atomic Energy of Canada Limited
2251 Speakman Drive
Mississauga, Ontario
Canada L5K 1B2

Mr. Gary Wright, Director
Division of Nuclear Facility Safety
Illinois Emergency Management Agency
1035 Outer Park Drive
Springfield, IL 62704

Mr. Charles Brinkman
Westinghouse Electric Co.
Washington Operations
12300 Twinbrook Pkwy., Suite 330
Rockville, MD 20852

Mr. Michael M. Corletti
Passive Plant Projects & Development
AP600 & AP1000 Projects
Westinghouse Electric Company
Post Office Box 355
Pittsburgh, Pennsylvania 15230-0355

ESBWR (continued)

Mr. Ed Rodwell, Manager
Advanced Nuclear Plants' Systems
Electric Power Research Institute
3412 Hillview Avenue
Palo Alto, CA 94304-1395

Mr. Ed Wallace, General Manager
Projects
PBMR Pty LTD
PO Box 9396
Centurion 0046
Republic of South Africa