

December 10, 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 NOVEMBER 6, 2003, RESPONSE TO REQUEST FOR ADDITIONAL  
INFORMATION (RAI) (MFN-03-140)

Dear Dr. Rao:

By letter dated November 6, 2003, from Sandra A. Delvin and associated affidavit executed on November 6, 2003, by George B. Stramback, you indicated that information contained in the response to Request for Additional Information (RAI) numbers 15, 259, 286, and 292 for the ESBWR Pre-application Review 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).

A nonproprietary copy of this document has been placed in the Nuclear Regulatory Commission's (NRC's) Public Document Room and added to the Agencywide Documents Access and Management System Public Electronic Reading Room (ADAMS Accession No. ML033170074).

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; and
- (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.

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.

A. Rao

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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 301-415-2875.

Sincerely,

*/RA/*

Amy E. Cabbage, ESBWR Project Manager  
New Reactors Section  
New, Research and Test Reactors Program  
Division of Regulatory Improvement Program  
Office of Nuclear Reactor Regulation

Project No. 717

cc: See next page

A. Rao

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*/RA/*

Amy E. Cubbage, ESBWR Project Manager  
New Reactors Section  
New, Research and Test Reactors Program  
Division of Regulatory Improvement Program  
Office of Nuclear Reactor Regulation

Project No. 717

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ESBWR

cc:

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

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. Ronald P. Vijuk  
Manager of Passive Plant Engineering  
AP1000 Project  
Westinghouse Electric Company  
P. O. Box 355  
Pittsburgh, PA 15230-0355

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