November 29, 2004

Dr. Robert E. Gamble
Manager, ESBWR
General Electric Company
175 Curtner Avenue, M/C 365
San Jose, CA 95125-1014

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE FOR OCTOBER 22, 2004, DRAWING OF ESBWR LOWER BYPASS AND LOWER PLENUM, (MFN-04-114)

Dear Dr. Gamble:

By letter dated October 22, 2004, and associated affidavit executed on October 22, 2004, by George B. Stramback, you indicated that information contained in a drawing of the ESBWR lower bypass and lower plenum, that was submitted 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 2.390 (10 CFR 2.390).

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. ML043030500).

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 2.390 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 2.390(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 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. 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

cc: See next page

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NAME	ACubbage	JWermiel	LDudes
DATE	11/22/04	11/22/04	11/29/04

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