GE Energy

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MFN 05-040

May 20, 2005

U.S. Nuclear Regulatory Commission
Document Control Desk
Washington, D.C. 20555-0001

Attention: Mr. James E. Dyer, Director
Office of Nuclear Reactor Regulation

Subject: **ESBWR Standard Design Approval & Certification**

Enclosure 1 to this letter contains commercial information regarding GE's planned Standard Design Approval & Certification Application for the ESBWR.

Enclosure 1 contains GE proprietary information as defined by 10 CFR 2.390. GE customarily maintains this information in confidence and withholds it from public disclosure.

The affidavit contained in Enclosure 2 identifies that the information contained in Enclosure 1 has been handled and classified as proprietary to GE. GE hereby requests that the information of Enclosure 1 be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 9.17. GE considers Enclosure 1 to be proprietary in its entirety, and a non proprietary version is not available.

If you have any questions about the information provided here, please contact Dr. R.E. Gamble, GE Energy's Manager of ESBWR Engineering. He may be reached at 1-408-925-3352 or Robert.Gamble@GE.com.

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Sincerely,

Louis Quintana
Manager, Licensing

Project: 717

Enclosure 1 (proprietary)
Enclosure 2 Affidavit

cc:	WD Beckner	USNRC (w/o enclosures)
	AE Cubbage	USNRC (with enclosures)
	NJ Diaz	USNRC (w/o enclosures)
	MB Fields	USNRC (with enclosures)
	E McGaffigan, Jr.	USNRC (w/o enclosures)
	GB Jaczko	USNRC (w/o enclosures)
	PB Lyons	USNRC (w/o enclosures)
	JS Merrifield	USNRC (w/o enclosures
	RE Gamble	GE (with enclosures)
	SA Hucik	GE (with enclosures)
	JF Klapproth	GE (w/o enclosures)
	GB Stramback	GE (with enclosures)
	AC White	GE (w/o enclosures)

General Electric Company

AFFIDAVIT

I, Louis M. Quintana, state as follows:

(1) I am Manager, Licensing, General Electric Company ("GE") and have been delegated the function of reviewing the information described in paragraph (2) which is sought to be withheld, and have been authorized to apply for its withholding.

(2) The information sought to be withheld is contained in Enclosure 1 of GE letter MFN 05-040, Louis M. Quintana to NRC, *ESBWR Standard Design Approval & Certification,* dated May 20, 2005. The proprietary information is Enclosure 1 in its entirety and is marked with the designation "GE Proprietary Information{3}." Paragraph (3) of this affidavit provides the basis for the proprietary determination.

(3) In making this application for withholding of proprietary information of which it is the owner, GE relies upon the exemption from disclosure set forth in the Freedom of Information Act ("FOIA"), 5 USC Sec. 552(b)(4), and the Trade Secrets Act, 18 USC Sec. 1905, and NRC regulations 10 CFR 9.17(a)(4), and 2.390(a)(4) for "commercial or financial information obtained from a person and privileged or confidential" (Exemption 4). The material for which exemption from disclosure is here sought also qualifies under the narrower definition of "trade secret", within the meanings assigned to those terms for purposes of FOIA Exemption 4 in, respectively, Critical Mass Energy Project v. Nuclear Regulatory Commission, 975F2d871 (DC Cir. 1992), and Public Citizen Health Research Group v. FDA, 704F2d1280 (DC Cir. 1983).

(4) Some examples of categories of information which fit into the definition of proprietary information are:

a. Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by General Electric's competitors without license from General Electric constitutes a competitive economic advantage over other companies;

b. Information which, 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;

c. Information which reveals cost or price information, production capacities, budget levels, or commercial strategies of General Electric, its customers, or its suppliers;

d. Information which reveals aspects of past, present, or future General Electric customer-funded development plans and programs, resulting in potential products to General Electric;

e. Information which discloses patentable subject matter for which it may be desirable to obtain patent protection.

The information sought to be withheld is considered to be proprietary for the reasons set forth in paragraph (4)c, above.

(5) To address 10 CFR 2.390 (b) (4), the information sought to be withheld is being submitted to NRC in confidence. The information is of a sort customarily held in confidence by GE, and is in fact so held. The information sought to be withheld has, to the best of my knowledge and belief, consistently been held in confidence by GE, no public disclosure has been made, and it is not available in public sources. All disclosures to third parties including any required transmittals to NRC, have been made, or must be made, pursuant to regulatory provisions or proprietary agreements which provide for maintenance of the information in confidence. Its initial designation as proprietary information, and the subsequent steps taken to prevent its unauthorized disclosure, are as set forth in paragraphs (6) and (7) following.

(6) Initial approval of proprietary treatment of a document is made by the manager of the originating component, the person most likely to be acquainted with the value and sensitivity of the information in relation to industry knowledge. Access to such documents within GE is limited on a "need to know" basis.

(7) The procedure for approval of external release of such a document typically requires review by the staff manager, project manager, principal scientist or other equivalent authority, by the manager of the cognizant marketing function (or his delegate), and by the Legal Operation, for technical content, competitive effect, and determination of the accuracy of the proprietary designation. Disclosures outside GE are limited to regulatory bodies, customers, and potential customers, and their agents, suppliers, and licensees, and others with a legitimate need for the information, and then only in accordance with appropriate regulatory provisions or proprietary agreements.

(8) The information identified in paragraph (2), above, is classified as proprietary because it represents GE commercial strategy information and that of its customers, and 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 an advanced power reactor.

(9) Public disclosure of the information sought to be withheld is likely to cause substantial harm to GE's competitive position and foreclose or reduce the availability of profit-making opportunities.

I declare under penalty of perjury that the foregoing affidavit and the matters stated therein are true and correct to the best of my knowledge, information, and belief.

Executed on this 20th day of May 2005.

Louis M. Quintana
General Electric Company