



GE Energy

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MFN 06-238

Docket No. 52-010

July 20, 2006

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

**Subject: Proposed Agenda for NRC/GE Meeting to Discuss ESBWR HFE  
Plans – August 3, 2006**

A meeting is scheduled at the NRC offices in White Flint on August 3, 2006 for the purpose of discussing the submitted ESBWR HFE Plans. Enclosure 1 contains a proposed agenda for this meeting. During the final portion of the meeting, the discussions will include areas that GE customarily maintains in confidence and withholds from public disclosure.

The affidavit contained in Enclosure 2 identifies that this information, which will be discussed, has been handled and classified as proprietary to GE. GE hereby requests that this portion of the meeting be closed to members of the public. Although the final discussions will include proprietary information, there will be no proprietary presentation material associated with this meeting.

A list of GE participants is given below:

David Hinds  
Donald Taylor  
Thomas Jenkins  
et al.

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If you have any questions about the information provided here, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Kathy Sedney for".

David H. Hinds  
Manager, ESBWR

Enclosures:

1. MFN 06-238 – Proposed Agenda for NRC/GE Meeting to Discuss ESBWR HFE Plans – August 3, 2006.
2. Affidavit – George B. Stramback – July 20, 2006

cc: WD Beckner USNRC (w/o enclosures)  
AE Cubbage USNRC (with enclosures)  
LA Dudes USNRC (w/o enclosures)  
GB Stramback GE/San Jose (with enclosures)

**ENCLOSURE 1**

**MFN 06-238**

**Proposed Agenda for NRC/GE Meeting to Discuss**

**ESBWR HFE Plans**

**August 3, 2006**

# **PROPOSED AGENDA FOR ESBWR HFE PLANS**

(AUGUST 3, 2006; WITH THE NRC; PUBLIC MEETING EXCEPT AS NOTED)

<b>ITEM</b>	<b>TOPIC</b>
<b>10.0</b>	<b>HFE Program Plan Overview</b>
10.1	Review of the Highlights of each HFE Plan
10.2	COL Applicant's Involvement in HFE Plan
	<b>Agenda Items for Closed Session</b>
11P	HFE Baseline Review Record
12P	HFE Project Organization and Qualifications
13P	Nexus of HFE Plans and Software Management Plans
14P	HFE Plan Execution and DAC Closure

**ENCLOSURE 2**

**MFN 06-238**

**Affidavit**

# **General Electric Company**

## **AFFIDAVIT**

**I, George B. Stramback, state as follows:**

- (1) I am Manager, Regulatory Services, General Electric Company ("GE"), 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 consists of discussions that will take place during a portion of the NRC/GE meeting scheduled for August 3, 2006, on the ESBWR HFE Plans. The proprietary discussion topics include HFE Baseline Review Record, HFE Project Organization and Qualifications, Nexus of HFE Plans and Software Management Plans, and HFE Plan Execution and DAC Closure.
- (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 2.790(a)(4) for "trade secrets" (Exemption 4). The material for which exemption from disclosure is here sought also qualify 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 aspects of past, present, or future General Electric customer-funded development plans and programs, resulting in potential products to General Electric;
  - d. 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 paragraphs (4)a. and (4)b. 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 relates to HFE plans and equipment that may be implemented on the ESBWR as well as personnel qualifications, schedules and status. This knowledge would lead a competitor or others to have knowledge of which specific designs and plans GE is considering and therefore affect GE's competitive position. Development and evaluation of these designs and plans was achieved at, and disclosure could lead to additional, significant cost to GE, on the order of hundreds of thousands of dollars.
- (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. The information is part of GE's comprehensive BWR safety and technology base, and its commercial value extends beyond the original development cost. The value of the technology base goes beyond the extensive physical database and analytical methodology and includes development of the expertise to determine and apply the appropriate evaluation

process. In addition, the technology base includes the value derived from providing analyses done with NRC-approved methods.

The research, development, engineering, analytical and NRC review costs comprise a substantial investment of time and money by GE.

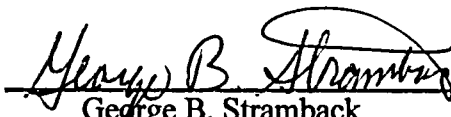
The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

GE's competitive advantage will be lost if its competitors are able to use the results of the GE experience to normalize or verify their own process or if they are able to claim an equivalent understanding by demonstrating that they can arrive at the same or similar conclusions.

The value of this information to GE would be lost if the information were disclosed to the public. Making such information available to competitors without their having been required to undertake a similar expenditure of resources would unfairly provide competitors with a windfall, and deprive GE of the opportunity to exercise its competitive advantage to seek an adequate return on its large investment in developing these very valuable analytical tools.

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 20<sup>th</sup> day of July 2006.

  
George B. Stramback  
General Electric Company