



GE Energy

Proprietary Notice

This letter forwards proprietary information in accordance with 10CFR2.390. Upon the removal of the Proprietary Information in Enclosures 1 and 2, the balance of this letter may be considered non-proprietary.

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MFN 06-294

Docket No. 52-010

August 23, 2006

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

**Subject: Information to Support Licensing Topical Report, NEDE-33279P,
“ESBWR Containment Fission Product Removal Evaluation Model**

GE is currently in the process of finalizing the subject topical report. In a meeting held on August 8 and 9, 2006, GE committed to provide the NRC with some interim information before the report is finalized, to facilitate NRC review. This information is contained in Enclosures 1 and 2 and also will be included in the final report.

Enclosures 1 and 2 contain GE proprietary information as defined by 10 CFR 2.390. GE customarily maintains this information in confidence and withholds it from public disclosure. The first two pages of the Enclosure 1 cover page reproduce the non proprietary “Introduction” and “Conclusions and Future Work” sections of the proprietary VTT Report. This reproduction represents the extent of non proprietary information available for Enclosure 1. Due to the nature of the flow path data files contained in Enclosure 2, it is not possible to provide a non proprietary version. Therefore, the Enclosure 2 cover page, which contains a list of the files, represents the extent of non proprietary information available for Enclosure 2.

The affidavit contained in Enclosure 3 identifies that the information contained in Enclosures 1 and 2 has been handled and classified as proprietary to GE. GE hereby requests that the information of Enclosures 1 and 2 be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 9.17.

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

Sincerely,



David H. Hinds
Manager, ESBWR

Enclosures:

1. MFN 06-294 – Research Report No. VTT-R-07050-06, “Status Report on Aerosol Removal Model for PCC,” August 2006 – GE Proprietary Information
2. MFN 06-294 – Flow Paths Connecting the RPV to the Containment (CD) – GE Proprietary Information
3. Affidavit – George B. Stramback – dated August 23, 2006

cc: WD Beckner USNRC (w/o enclosures)
AE Cabbage USNRC (with enclosures)
LA Dudes USNRC (w/o enclosures)
GB Stramback GE/San Jose (with enclosures)
eDRF 0000-0057-3590

ENCLOSURE 3

MFN 06-294

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 is contained in Enclosures 1 and 2 of GE letter MFN 06-294, David H. Hinds to NRC, *Information to Support Licensing Topical Report, NEDE-33279P, "ESBWR Containment Fission Product Removal Evaluation Model*, dated August 23, 2006. The proprietary information in Enclosure 1, *Research Report No. VTT-R-07050-06, "Status Report on Aerosol Removal Model for PCC," August 2006*, contains the designation "GE Proprietary Information ^{3}" on each page. The proprietary information in Enclosure 2, *Flow Paths Connecting the RPC to the Containment*, (CD) contains the designation "GE Proprietary Information ^{3}" on the CD label. The superscript notation {3} refers to Paragraph (3) of this affidavit, which 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 2.790(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 describes the models and methodologies GE uses in evaluating the dose consequences of design basis accidents (DBAs) for the ESBWR. GE and its partners performed significant additional research and evaluation to develop a basis for these revised methodologies to be used in evaluating the ESBWR over a period of several years at a cost of over one million 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.

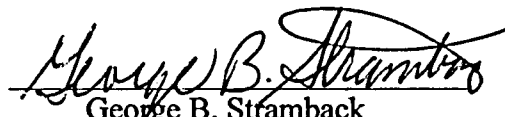
The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

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 23rd day of August 2006


George B. Stramback
General Electric Company