



GE Energy Nuclear

Proprietary Notice

This letter forwards proprietary information in accordance with 10 CFR 2.390. Upon the removal of Enclosure 1, the balance of this letter may be considered non-proprietary. However, both Enclosure 1 and Enclosure 2 contain security-related information withheld Under 10 CFR 2.390(d).

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MFN 07-002

10 CFR Part 52 and Part 73

52-010
52-001

January 3, 2007

U. S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

Subject: Presentation Concerning Security-Related Information for the ESBWR and ABWR

Enclosure 1 contains a presentation regarding security-related information, which is to be presented to the NRC in briefings scheduled for January 3 and January 4, 2007. The presentation is provided to facilitate discussion during the NRC briefings.

Enclosure 1 contains proprietary information of the type that GE maintains in confidence and withholds from public disclosure. The information has been handled and classified as proprietary to GE as indicated in the affidavit. The affidavit contained in Enclosure 3 identifies that the information contained in Enclosure 1 has been handled and classified as proprietary to GE. GE hereby requests that the information in Enclosure 1 be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 10 CFR 9.17. Enclosure 2 is a non-proprietary version of Enclosure 1. In addition to the information being proprietary, both Enclosure 1 and Enclosure 2 contain security-related information withheld under 10 CFR 2.390(d)(1).

D050
D068
Add: George Wunder

Please contact me should you have any questions regarding the information provided herein.

Sincerely,

A handwritten signature in black ink that reads "R. E. Brown". The signature is written in a cursive, flowing style.

Robert E. Brown
General Manager
Regulatory Affairs

CC:

P. Campbell (GE)
S. Hucik (GE)
C. Monetta (GE)
J. A. Beard (GE)
A. Cabbage (NRC)
G. Wunder (NRC)

Enclosures:

Enclosure 1: Proprietary Presentation

Enclosure 2: Non-Proprietary Version of Presentation

Enclosure 3: Affidavit, Patricia L. Campbell, dated January 3, 2007

Note

01/04/2007

Document Control Desk,

Note that the document attached is to be withheld for both proprietary and security-related reasons. If you have any questions, we went through the document with Ms. Amy Cabbage, NRC Project Manager for the ESBWR, and she can explain why neither Enclosure 1 nor Enclosure 2 should be disclosed.

Call me if you have any questions.

Patricia L. Campbell

GE Energy

Washington Regulatory Affairs Director

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General Electric Company



Enclosure 3: Affidavit, Patricia L. Campbell, dated January 3, 2007

MFN 07-002

PRESENTATION CONCERNING SECURITY-RELATED INFORMATION FOR THE ESBWR AND ABWR

AFFIDAVIT

General Electric Company

AFFIDAVIT

I, Patricia L. Campbell, state as follows:

- (1) I am Director, Washington Regulatory Affairs, 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 Enclosure 1 of GE's letter, MFN 07-002, Robert E. Brown to U.S. Nuclear Regulatory Commission, entitled "Presentation Concerning Security-Related Information for the ESBWR and ABWR", January 3, 2007. The proprietary information in the Enclosure 1, which is entitled "Presentation Concerning Security-Related Information for the ESBWR and ABWR", is delineated by a footnote on the particular slide which contains proprietary information. In each case, the footnote is based on 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 2.390(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;

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 contains information regarding structural integrity analyses performed for the GE advanced boiling water reactor ("ABWR") and economic simplified boiling water reactor ("ESBWR") which related to a potential competitive issue concerning the safety features of the two reactor designs. This is in addition to the enclosure containing security-related information which is withheld under 10 CFR 2.390(d)(1).
- (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.

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 3rd day of January 2007.


Patricia L. Campbell
General Electric Company