



GE Energy

Proprietary Notice

*This letter forwards proprietary information in accordance with 10CFR2.390. Upon the removal of Enclosure 1, the balance of this letter may be considered non-proprietary.*

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MFN 07-074

Docket No. 52-010

February 8, 2007

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

**Subject: ESBWR HFE Audit Proprietary Presentation Material**

During the NRC's audit of the ESBWR Human Factors Engineering process conducted on January 16 through 18, 2007, some GE presentations described proprietary methods and results. The proprietary presentation material is hereby submitted to the NRC.

Enclosure 1 contains proprietary information as defined in 10CFR2.390. 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 proprietary information in Enclosure 1 be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 9.17. A non-proprietary version is not provided as it would consist of blank slides.

If you have any questions or require additional information regarding the information provided here, please contact me.

Sincerely,

  
James C. Kinsey  
Project Manager, ESBWR Licensing

DO68

Enclosures:

1. MFN 07-074 – ESBWR HFE Audit Proprietary Presentation Material – GE  
Proprietary Information
2. Affidavit – David Hinds – dated February 8, 2007

cc: AE Cabbage USNRC (with enclosures)  
David Hinds GE/Wilmington (with enclosures)

**Enclosure 2**

**MFN 07-074**

**David Hinds**

**Affidavit**

# General Electric Company

## AFFIDAVIT

**I, David H. Hinds, state as follows:**

- (1) I am Manager, New Units Engineering , 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 07-074, James Kinsey to NRC, entitled “ESBWR HFE Audit Proprietary Presentation Material”, dated February 8, 2007. The proprietary information in the Enclosure 1, which is entitled “ESBWR HFE Audit Proprietary Presentation Material”, is delineated by a proprietary information notice on each slide.
- (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 GE's competitors without license from GE 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 GE customer-funded development plans and programs, resulting in potential products to GE;
  - 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 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 the methodology for and results of development activities for the ESBWR Human System Interface. Development of these methods, techniques, and information and their application for the design of the ESBWR HSI was achieved at a significant cost to GE.

The development of the evaluation process along with the interpretation and application of the analytical results is derived from the extensive experience database that constitutes a major GE asset.

- (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 8<sup>th</sup> day of February 2007.

A handwritten signature in black ink, appearing to read 'D. H. Hinds', with a stylized flourish at the end.

David H. Hinds  
General Electric Company