



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.

James C. Kinsey
Project Manager, ESBWR Licensing

PO Box 780 M/C J-70
Wilmington, NC 28402-0780
USA

T 910 675 5057
F 910 362 5057
jim.kinsey@ge.com

MFN 07-185

Docket No. 52-010

April 2, 2007

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

Subject: **Response to Portion of NRC Request for Additional Information
Letter No. 85 Related to ESBWR Design Certification Application –
TRACG User's Manual – RAI Number 21.6-97**

Enclosure 1 contains GE's response to the subject NRC RAI transmitted via the Reference 1 letter. RAI 21.6-97 stated "Step 5 of the CSAU methodology requires that complete code documentation be provided for the frozen code version. The staff currently has NEDC-32956P, Rev. 0, "TRACG04A,P User's Manual," DRAFT July 2005. Please provide the updated version of this document."

Enclosure 1 contains a compact disc (CD) that is entirely 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 available since the contents of the CD are entirely proprietary.

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

D068

Sincerely,



James C. Kinsey
Project Manager, ESBWR Licensing

Reference:

1. MFN 07-054, Letter from U.S. Nuclear Regulatory Commission to David Hinds, *Request for Additional Information Letter No. 85 Related to ESBWR Design Certification Application*, January 19, 2007

Enclosures:

1. MFN 07-185– Partial Response to Portion of NRC Request for Additional Information Letter No. 85 Related to ESBWR Design Certification Application – TRACG User's Manual – RAI Number 21.6-97 – Contains GNF Proprietary Information
2. Affidavit – David H. Hinds dated April 2, 2007

cc: AE Cubbage USNRC (w/enclosures)
GB Stramback GE/San Jose (w/enclosures)
BE Brown GE/Wilmington (w/enclosures)
eECPER 0009-7163

Enclosure 1

MFN 07-185

Response to Portion of NRC Request for Additional Information Letter No. 85 Related to ESBWR Design Certification Application

RAI Number 21.6-97

Contains GE Proprietary Information

PROPRIETARY INFORMATION NOTICE

This enclosure contains proprietary information of the General Electric Company (GE) and is furnished in confidence solely for the purpose(s) stated in the transmittal letter. No other use, direct or indirect, of the document or the information it contains is authorized. Furnishing this enclosure does not convey any license, express or implied, to use any patented invention or, except as specified above, any proprietary information of GE disclosed herein or any right to publish or make copies of the enclosure without prior written permission of GE. The proprietary information is in dark red font enclosed within double brackets. [[This sentence is an example.^{3}]] Figures and large equation objects are enclosed in double brackets. Each page contains the designation "GE Proprietary Information." The superscript notation {3} refers to Paragraph (3) of the enclosed affidavit, which provides the basis for the proprietary determination. The Compact Disk enclosed is entirely proprietary; therefore no public version is available.

[[Compact Disk "TRACG04A,P USER'S MANUAL" dated March 2007]]

Enclosure 2

MFN 07-185

Affidavit

General Electric Company

AFFIDAVIT

I, David H. Hinds, state as follows:

- (1) I am Manager, New Units Engineering, 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 07-185, James C. Kinsey to NRC, *Partial Response to Portion of NRC Request for Additional Information Letter No. 85 Related to ESBWR Design Certification Application – TRACG User's Manual – RAI Number 21.6-97* dated April 2, 2007. The proprietary information in Enclosure 1, *Partial Response to Portion of NRC Request for Additional Information Letter No. 85 Related to ESBWR Design Certification Application – TRACG User's Manual – RAI Number 21.6-97* is delineated by a double underline inside double square brackets. Figures and large equation objects are identified with double square brackets before and after the object. In each case, 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 contains GE computer code user's manual that constitutes a major GE asset along with the interpretation and application of the analytical results. The TRACG computer code was developed at considerable cost in the millions of dollars and represents a significant GE asset. The CD containing the user's manual is entirely proprietary.
- (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 2nd day of April 2007.



David H. Hinds
General Electric Company