



GE ENERGY

Proprietary Notice

This letter transmits proprietary information in accordance with 10CFR2.390.

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MFN 07-217
April 16, 2007

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

Subject: Comments on Draft Safety Evaluation For General Electric (GE) Nuclear Energy (GENE) Licensing Topical Report (LTR) NEDC-33173P, Applicability Of GE Methods To Expanded Operating Domains (TAC No. MD0277)

In its letter of March 14, 2007 (Reference 1), the NRC issued its draft Safety Evaluation (SE) for NEDC-33173P, Applicability of GE Methods To Expanded Operating Domains (Methods LTR), and requested GE to identify (1) any factual errors or clarity concerns and (2) proprietary information. GE provides comments in this regard in the attachment, but, as noted below, will address proprietary information in a later submittal.

GE notes that a number of issues discussed in the SE will require further interactions between GE and the NRC in order to reach final resolution through NRC review and preparation of a SE for the final Methods LTR. However, the purpose of the current interim version of Methods LTR is intended as an initial step, pending GE gathering additional data, including gamma scan data, to complete the validation of its analytical methods. GE proposed the interim Methods LTR in order to advance near-term license applications for EPU and completion of NRC review of NEDC-33006P, Maximum Extended Load Line Limit Analysis Plus (MELLLA+). Those issues that require further interactions need not preclude NRC issuance of the SE for the IMLTR, but rather may be resolved through review of the final Methods LTR, which GE anticipates will be submitted by Month NN, 2008.

Accordingly, GE has limited its comments to those that could affect the implementation of the interim methods SE or that could affect the future resolution of certain statements or limitations and conditions planned for the future revision of the Methods LTR. The lack of a comment on any part of the SE does not imply final resolution of the issue for purposes of the final Methods LTR review. GE intends to address resolution of such issues once the additional technical data and associated actions are completed to support a future revision to the NEDC-33173P, as stated in response to RAI 28 in MFN 06-434.

GE discussed the enclosed editorial, grammatical and typographical errors with Michelle Honcharik, NRC Project Manager. However, as discussed with Ms. Honcharik, the identification of proprietary information has not been completed at this time and will be issued in a separate transmittal.

Please note that 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 its affidavit, also included in the report. 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 in Enclosure 1 be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 9.17. The entire submittal is deemed proprietary, therefore no non-proprietary version has been provided.

If you have any questions, please contact Mike Lalor at (408) 925-2443, Richard Kingston at (910) 675-6192, or me.

Sincerely,



Robert E. Brown
General Manager, Regulatory Affairs

Project No. 710

References:

1. Letter from SL Rosenberg, (USNRC) to RE Brown (GE), *Draft Safety Evaluation for General Electric (GE) Nuclear Energy (GENE) Licensing Topical Report (LTR) NEDC-33173P, Applicability of GE Methods to Expanded Operating Domains, (TAC No. MD0277)*, March 14, 2007.

Enclosures:

1. Comments on Draft Safety Evaluation for NEDC-33173P - GE Proprietary Information
2. Affidavit dated April 16, 2007.

cc: JS Bowman, GE/Wilmington
MJ Colby, GE/Wilmington
AA Lingenfelter, GNF/ Wilmington
JGM Andersen, GNF/ Wilmington
RE Kingston, GE/Wilmington
JF Klapproth, GE/Wilmington

GB Stramback, GE/San Jose
PT Tran, GE/Valecitos
eDRF Section 0000-0055-0354
MA Lalor, GE/San Jose

ENCLOSURE 2

MFN 07-217

Affidavit

General Electric Company AFFIDAVIT

I, Robert E. Brown, state as follows:

- (1) I am General Manager, 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 07-217, Robert E. Brown (GE) to Document Control Desk (USNRC), entitled "Comments on Draft Safety Evaluation for General Electric (GE) Nuclear Energy (GENE) Licensing Topical Report (LTR) NEDC-33173P, Applicability of GE Methods to Expanded Operating Domains," April 16, 2007. The entirety of Enclosure 1 entitled "Comments on Draft Safety Evaluation for General Electric (GE) Nuclear Energy (GENE) Licensing Topical Report (LTR) NEDC-33173P, Applicability of GE Methods to Expanded Operating Domains," is deemed proprietary and the header of each page in this enclosure carries the notation "GE Proprietary Information^{(3)}}." The superscript notation^{(3)}} refers to Paragraph (3) of this affidavit, which documents the basis for the proprietary determination.
- (3) In making this application for withholding of proprietary information of which it is the owner or licensee, 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, or subject to the terms under which it was licensed to GE. 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 detailed results and conclusions regarding GE Methods supporting evaluations of the safety significant changes necessary to demonstrate the regulatory acceptability for the expanded power/flow operating domains including Extended Power Uprates, Constant Pressure Power Uprates, and the MELLLA+ domain for a GE BWR, utilizing analytical models and methods, including computer codes, which GE has developed, obtained NRC approval of, and applied to perform evaluations of transient and accident events in the GE Boiling Water Reactor ("BWR"). The development and approval of these system, component, and thermal hydraulic models and computer codes was achieved at a significant cost to GE, on the order of several million dollars.

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 and obtaining 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 16th day of April 2007.

R. E. Brown

Robert E. Brown
General Electric Company