

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	Docket No. 50-367
NORTHERN INDIANA PUBLIC SERVICE	)	(Construction Permit
COMPANY	)	Extension)
Bailly Generating Station	)	
<u>Nuclear 1)</u>	)	

AFFIDAVIT OF GEORGE A. ROUPE

I, George A. Roupe, being duly sworn, depose and state as follows:

1. I am General Manager, Nuclear Fuel Projects Department. I have held this position since July 1, 1979. I have been delegated the responsibility to review the documents described in paragraph 2 to determine whether they contain proprietary information.

2. I am familiar with the following documents.

- a. A draft form of proposed agreement entitled "Contract Between Northern Indiana Public Service Company and General Electric Company for Nuclear Fuel and Related Services for Bailly Generating Station, Nuclear 1" dated September 5, 1969 (Draft 1/27/72).
- b. A draft form of proposed agreement entitled "Contract Between Northern Indiana Public Service Company and General Electric Company for Initial Core of Nuclear Fuel and Related Services for Bailly Generating Station Nuclear 1" dated February 24, 1970 (Draft 7/11/73, Revised 1/3/74, Revised 7/8/74).

- c. A document entitled "8X8 C Lattice - 100 Mil Channels, Fuel Management Summary, Bailly IN Data Sheet, 994.07, Rev. 0," dated September 5, 1974.

3. In designating material as proprietary, General Electric utilizes the definition of proprietary information and trade secrets set forth in the American Law Institute's Restatement of Torts, Section 757. This definition provides:

"A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it .... A substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring information .... Some factors to be considered in determining whether given information is one's trade secret are: (1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others."

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 where prevention of its use by General Electric competitors without license from General Electric constitutes a competitive economic advantage over other companies;

- b. Information consisting of supporting data and analyses, including test data, relative to a process, method or

apparatus, the application of which provide a competitive economic advantage, e.g., by optimization or improved marketability;

c. 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;

d. Information which reveals cost or price information, production capacities, budget levels or commercial strategies of General Electric, its customers or suppliers;

e. Information which reveals aspects of past, present or future General Electric customer-funded development plans and programs of potential commercial value to General Electric;

f. Information which discloses patentable subject matter for which it may be desirable to obtain patent protection;

g. Information which General Electric must treat as proprietary according to agreements with other parties.

4. a. GE has customarily held and continues to hold its draft contracts for nuclear fuel and related services, including those it has with NIPSCO, proprietary (items a and b in paragraph 2). Within the Company, such draft contracts are provided to employees only on a need to know basis. Dissemination is restricted and distribution of the limited numbers of copies of the draft contracts is controlled.

b. GE also endeavors to maintain confidential treatment of its draft contracts for nuclear fuel and related services by its customers through explicit and implicit understandings. Negotiations concerning the exact terms and conditions of these draft contracts were conducted privately and access to these sessions was carefully controlled by both GE and NIPSCO. Draft contracts reveal the private negotiating strategies and positions of the parties to the contracts. It is a universal practice in the power generation industry, in which GE is one of the largest participants, that drafts of negotiated contracts such as those specified in paragraph 2, items a and b above are held by both parties to be confidential.

5. The draft contracts contain potential prices and terms and conditions of sale of this equipment and services by GE. The draft contracts, and the information they contain, have never been made available by GE to public sources.

6. GE can suffer two types of competitive harm if these contracts were to be released:

(a) Competitors will know what the potential terms, conditions and prices are of GE's offerings and thus obtain a competitive advantage in the marketplace. Potential prices and terms and conditions of sale are considered by GE to be proprietary information. Competitors are unable to obtain this information from any other sources. While the contracts were negotiated in the early 1970's, their age in no way lessens

their competitive value. Domestic and international competitors and potential customers can easily extrapolate current values and negotiating positions from this data.

The nuclear fuel and services businesses are extremely competitive both in this country and worldwide. While sales of nuclear power plants have slowed, sales of nuclear fuel and services have been increasing at a significant rate. Since these are now growth businesses, new competitors are entering the marketplace and any information concerning a competitor's product offering thus is extremely valuable to these new entrants. Public release of such information will enable competitors to use the information without spending resources normally required to obtain competitive intelligence -- a potential significant competitive advantage.

(b) Customers will be able to ascertain the nature of GE's bargaining positions and strategy and thus have an upper hand in negotiating for nuclear fuel and related services.

7. (a) The document entitled "8X8 C Lattice - 100 Mil Channels, Fuel Management Summary, Bailly IN Data Sheet, 994.07, Rev. 0" (item c, paragraph 2 above) is a proprietary document of GE. Dissemination of the document is restricted and the information contained in the document is provided to employees and customers only on a need to know basis.

(b) The document contains information about design and efficient operation of fuel in a nuclear power plant.



Specifically, it provides guidance concerning what enrichments of uranium to use, how much uranium to use, the number of fuel bundles that will be discharged during a refueling and the length of time fuel remains in the reactor.

(c) Competitors will be able to compete more efficiently if the information contained in this document were made public because it provides data concerning how potential customers use nuclear fuel. In addition, if this information were made public, a competitor would not have to invest the substantial amounts of money and time required to develop its own fuel management information.

8. All documents listed in paragraph 2 above were produced by NIPSCO in Westinghouse Electric Corporation v. Rio Algom (in re Uranium Antitrust Litigation) No. 76 C 3830 (N.D. Ill.). However, the documents were all labelled "highly confidential" and were produced pursuant to the terms of a Protective Order issued by the Court on September 6, 1978 which strictly limited disclosure of the documents (Attachment 1).

9. I have evaluated items a, b and c of paragraph 2 in accordance with the criteria stated in paragraphs 3 and 4 above and have found them to be information which is proprietary and which is customarily held in confidence by General Electric.

George A. Roupe, being duly sworn, deposes and says that he has read the foregoing affidavit and the matters stated

therein are true and correct to the best of his knowledge, information, and belief.

Executed at San Jose, California, this 22<sup>nd</sup> day of

June, 1981

George A. Roupe  
George A. Roupe  
General Electric Company

STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

Subscribed and sworn to before me this 22<sup>nd</sup> day of June, 1981.

Ruthe M. Kinnamon  
Notary Public



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