



General Electric Company
175 Curtner Avenue, San Jose, CA 95125-1014

OG93-734-60
MFN#:133-93
September 21, 1993

Office Of Nuclear Reactor Regulation
US Nuclear Regulatory Commission
Mail Station Pl-137
Washington, DC 20555

Attention: Ashok C. Thadani, Director
Division of System Technology

The attached report, NEDC-22030 "Boron Remixing Tests", dated March 1982, is being submitted on behalf of the BWR Owners' Group. The report contains the results of tests to examine the phenomena of remixing simulated stagnant boron solution in the lower plenum region under reestablished natural circulation conditions. Interest in this material was expressed by the NRC staff and the ACRS during discussion of Emergency Procedure Guide-lines related to ATWS/Stability.

This submittal has been endorsed by a substantial number of the members of the BWR Owners' Group. However, it should not be interpreted as a commitment of any individual member to a specific course of action. Each member must formally endorse the BWR Owners' Group position in order for that position to become the member's position.

The material contained in NEDC-22030 is of the type which GE has maintained in confidence and withholds from public disclosure. It has been handled and classified as proprietary by GE as indicated in the attached affidavit and we hereby request that it be withheld from public disclosure in accordance with the provisions of 10CFR2.790.

Sincerely,

H. C. Pfefferlen, Program Manager
BWR Stability Committee
BWR Owners' Group Project
Tel: (408) 925-3392

Attachment
HCP9:HCP/ds

cc: LA England, BWROG Chairman
TJ Rausch, CECO
LE Phillips, NRC
RC Jones, NRC
PA Boehnert, NRC
BT Williamson, TVA
SJ Stark, GE

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General Electric Company

AFFIDAVIT

I, David J. Robare, being duly sworn, depose and state as follows:

- (1) I am Project Manager, Plant Licensing/Renewal Projects, 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 the GE proprietary report *Boron Remixing Tests*, NEDC-22030, GE Company Proprietary Class III, dated March 1982. This information is delineated by bars marked in the margin adjacent to the specific material.
- (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), 2.790(a)(4), and 2.790(d)(1) for "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (Exemption 4). The material for which exemption from disclosure is here sought is all "confidential commercial information", and some portions 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 cost or price information, production

capacities, budget levels, or commercial strategies of General Electric, its customers, or its suppliers;

- d. Information which reveals aspects of past, present, or future General Electric customer-funded development plans and programs, of potential commercial value to General Electric;
- e. 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 both paragraphs 4.a, 4.b and 4.d, above.

- (5) 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. Its initial designation as proprietary information, and the subsequent steps taken to prevent its unauthorized disclosure, are as set forth in (6) and (7) following. 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.
- (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) is classified as proprietary because it would provide other parties, including competitors, with a valuable data base and interpretive information regarding the remixing of stagnant boron solution in the lower plenum region of the BWR pressure vessel under re-established natural circulation conditions. A substantial effort has been

expended by General Electric to develop this information in support of the BWR Owners' Group.

- (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 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, and analytical 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.

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA) ss:

David J. Robare, 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 23RD day of SEPTEMBER 1993.

David J. Robare

David J. Robare
General Electric Company

Subscribed and sworn before me this 23rd day of September 1993.

Paula F. Hussey

Notary Public, State of California

