

## General Electric Company

### AFFIDAVIT

I, Robert C. Mitchell, being duly sworn, depose and state as follows:

1. I am Manager, Product Licensing, General Electric Company, 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 the Attachment (Final Report of GE Type AK-2-25 Circuit Breaker\Serial Number 228A4389-200-8MG, Failure at Florida Power & Light Company's St. Lucie Nuclear Plant Unit 1 - November 27, 1990) to the letter from General Electric Company, G.B. Stramback, to US NRC, K.R. Naidu, dated December 4, 1990, MFN No. 149-90.
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 disclosed a process, method or apparatus 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 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;

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- 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.
5. In addition to proprietary treatment given to material meeting the standards enumerated above, General Electric customarily maintains in confidence preliminary and draft material which has not been subject to complete proprietary, technical and editorial review. This practice is based on the fact that draft documents often do not appropriately reflect all aspects of a problem, may contain tentative conclusions and may contain errors that can be corrected during normal review and approval procedures. Also, until the final document is complete it may not be possible to make any definitive determination as to its proprietary nature. General Electric is not generally willing to release such a document in such a preliminary form. Such documents are, however, on occasion furnished to the NRC staff on a confidential basis because it is General Electric's belief that it is in the public interest for the staff to be promptly furnished with significant or potentially significant information. Furnishing the document on a confidential basis pending completion of General Electric's internal review permits early acquaintance of the staff with the information while protecting General Electric's potential proprietary position and permitting General Electric to insure the public documents are technically accurate and correct.
  6. Initial approval of proprietary treatment of a document is typically made by the Subsection manager of the originating component, who is most likely to be acquainted with the value and sensitivity of the information in relation to industry knowledge. Access to such documents within the Company is limited on a "need to know" basis and such documents are clearly identified as proprietary.
  7. The procedure for approval of external release of such a document typically requires review by the Subsection Manager, Project manager, Principal Scientist or other equivalent authority, by the Subsection Manager of the cognizant Marketing function (or delegate) and by the Legal Operation for technical content, competitive effect and determination of the accuracy of the proprietary designation in accordance with the standards enumerated above. Disclosures outside General Electric are generally limited to regulatory bodies, customers and potential customers and their agents, suppliers and licensees then only with appropriate protection by applicable regulatory provisions or proprietary agreements.
  8. The document mentioned in paragraph 2 above has been evaluated in accordance with the above criteria and procedures and has been found to contain information which is proprietary and which is customarily held in confidence by General Electric.
  9. The information to the best of my knowledge and belief has consistently been held in confidence by the General Electric Company, no public disclosure has been made, and it is not available in public sources. All disclosures to third parties have been made pursuant to regulatory provisions of proprietary agreements which provide for maintenance of the information in confidence.

10. Public disclosure of the information, as called out in paragraph 2, sought to be withheld is likely to cause substantial harm to the competitive position of the General Electric Company and deprive or reduce the availability of profit making opportunities because it contains details of General Electric design which are not available to other parties without prior proprietary agreement. This information would provide other parties, including competitors, with valuable information associated with technical and business practices of the General Electric Company. This information is of a type customarily held in confidence by General Electric since it reveals valuable design information obtained at considerable expense to the General Electric Company.

STATE OF CALIFORNIA     )  
COUNTY OF SANTA CLARA   ) ss:

Robert C. Mitchell, 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 4<sup>th</sup> day of DECEMBER 1990.

Robert C. Mitchell  
Robert C. Mitchell  
General Electric Company

Subscribed and sworn before me this 4<sup>th</sup> day of December 1990.



Paula F. Hussey  
Notary Public - California  
Santa Clara County



TELECOPIED 11/27/90

GE Nuclear Energy

General Electric Company  
22 Technology Park, Norwalk, GA 30062

JMA90130  
November 27, 1990

Mr. W.A. Busch  
Florida Power & Light Co.  
P.O. Box 14000  
Juno Beach, FL 33408-0420

Subject: GE Type AK-2-25 Circuit Breaker Failure

Dear Mr. Busch:

Attached please find a report concerning the failure of the GE Type AK-2-25 Circuit Breaker serial number 228A4389-200-8MG.

Should you have any questions, please call.

Sincerely,

J. M. Austin, Manager  
Electrical/I&C Services  
(404) 447-7271

JMA:ds

Attachment

cc: R.P. Daly  
G.R. Stramback