



General Electric Company
178 Curtner Avenue, San Jose, CA 95125

May 25, 1994

Docket No. 52-001

Document Control Desk
U.S. Nuclear Regulatory Commission
Washington DC 20555

Attention: R. W. Borchardt, Director
Standardization Project Directorate

Subject: Resubmittal of Affidavit for GE's ABWR SSAR, Proprietary
Information Section 18H

Reference: Submittal of Amendment 34, Proprietary Information to GE's ABWR
SSAR MFN No. 033-94, Dated March 31, 1994

Enclosed is an affidavit which supercedes the affidavit submitted by the Reference Letter and related to the same information sought to be withheld: GE ABWR SSAR Section 18H, Supporting Analysis for Emergency Control Operation Information.

Sincerely,

Joseph F. Quirk
Project Manager
ABWR Certification
MC-782, (408)925-6219

- cc: S. A. Hucik (GE)
- W. T. Russell (NRC)
- F. J. Miraglia (NRC)
- T. H. Boyce (NRC)
- D. M. Crutchfield (NRC)
- N. D. Fletcher (DOE)
- S. M. Franks (DOE)
- D. J. McGoff (DOE)
- F. A. Ross (DOE)
- K. E. Stahlkopf (EPRI)

LTRBK 94-020

9405270098 940525
PDR ADOCK 05200001
A PDR

DCSD 1/1

GENERAL ELECTRIC COMPANY

AFFIDAVIT

I, Joseph F. Quirk, being duly sworn, depose and state as follows:

- (1) I am Project Manager, ABWR Certification, 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 the attached GE ABWR SSAR Section 18H, Supporting Analysis for Emergency Control Operation Information. This affidavit supercedes the affidavit submitted by Patrick W. Marriott dated March 31, 1994 and related to the same information hereby sought to be withheld.
- (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 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 cost or price information, production capacities, budget levels, or commercial strategies of GE, its customers, or its suppliers;
 - d. Information which reveals aspects of past, present, or future GE customer-funded development plans and programs, of potential commercial value to GE;

- e. Information which discloses patentable subject matter for which it may be desirable to obtain patent protection;
- f. Information which is based on proprietary information and from which such proprietary information is discernible.

The information sought to be withheld is considered to be proprietary for the reasons set forth in paragraphs (4)a, (4)b, and (4)f 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) Section 18H identified in Paragraph (2) above is proprietary because, for example, confidential information is discernible from the detailed emergency control operation contained in Section 18H. By way of example, but not by way of limitation, the procedures set forth by GE in Section 18H necessarily are based upon the design of a control room. The control room design utilized by GE in conducting its detailed analysis and in generating Section 18H is proprietary. GE and other parties contributed to such control room design. While GE is an owner of some of the confidential information defining the control room design, other parties own other portions of the confidential information defining the control room design. GE has access to the entire control room design via various agreements which contain, among other provisions, confidentiality obligations. Confidential information is necessarily discernible from the detailed emergency control operation information contained in Section 18H. Importantly, however, and as explained in Paragraph (3) above, GE is the owner of the analysis set forth in Section 18H.

The development of Section 18H and the control room design was achieved at a significant cost, on the order of several hundred-thousand dollars, to GE. The other parties who contributed to the control room design expended substantially more resources in creating their portions of the design.

The development of the control room related study 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 includes development of the expertise to determine and apply the appropriate application of the analysis for emergency control operation information.

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 large investment in developing the supporting analysis for emergency control operation information.

STATE OF CALIFORNIA }
COUNTY OF SANTA CLARA }SS:

Joseph F. Quirk, 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,

Executed at San Jose, California, this 25th day of May, 1994

Joseph F. Quirk

Joseph F. Quirk
General Electric Company

Subscribed and sworn before me this 25 day of May, 1994

Jacqueline Ann Bradley
Notary Public, State of California

