



GE Nuclear Energy

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August 28, 1995

MFN 167-95
Docket STN 52-004

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

Attention: Theodore E. Quay, Director
Standardization Project Directorate

Subject: **SBWR - Test and Analysis Program Description Supplement 1 - Discussion of PIRT Parameters, NEDC-32391P, Supplement 1 (Proprietary)**

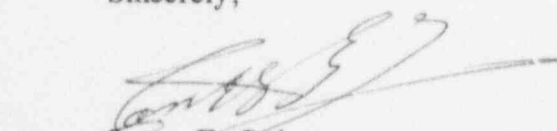
Reference: 1. MFN 166-95, J. E. Quinn (GE) to T. E. Quay (NRC), *SBWR - Test and Analysis Program Description*, NEDC-32391P, Revision C (Proprietary), August 28, 1995.

This letter transmits Supplement 1 of the *SBWR Test and Analysis Program Description* (TAPD) report (Reference 1), for your review. This supplemental report provides details of the method of development and supporting data and analyses relative to the Phenomena Identification and Ranking Tables (PIRT) parameters, which were developed for and used in SBWR Test Program. The PIRT parameters are essential in ensuring the validity of the SBWR Test Program. GE-NE requests NRC concurrence that these PIRT parameters satisfactorily address the phenomena to be evaluated during the test program.

Please note that Supplement 1 of NEDC-32391P contains information of the type which GE maintains in confidence and withholds from public disclosure. They have been handled and classified as proprietary to GE as indicated in the attached affidavit. We hereby request that this information be withheld from public disclosure in accordance with the provisions of 10CFR2.790. Supplement 1 to NEDC-32391P provides sidebars in the right-hand margins to distinguish those parts of the document which are deemed Proprietary to the General Electric Company. A non-proprietary version of the subject report will be supplied under a separate cover letter.

If you have any questions regarding this report, please contact John Leatherman of our staff on (408) 925-2023.

Sincerely,


James E. Quinn,
Projects Manager

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Enclosure: *Test and Analysis Program Description Supplement 1 - Discussion of PIRT Parameters, NEDC-32391P, Supplement 1, August 1995*

cc: P. A. Boehnert (NRC/ACRS) - [7 paper copies w/encl., plus E-Mail w/o encl.]
I. Catton (ACRS) - [1 paper copy w/encl., plus E-Mail w/o encl]
S. Q. Ninh (NRC) - [21 paper copies w/encl., plus E-Mail w/o encl]
J. H. Wilson (NRC) - [1 paper copy w/encl., plus E-Mail w/o encl]

General Electric Company

AFFIDAVIT

I, **George B. Stramback**, being duly sworn, depose and state as follows:

- (1) I am Project Manager, Licensing Services, 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) GE is an owner of the information sought to be withheld. The information sought to be withheld is contained in the GE report, NEDC-32391P, *SBWR Test and Analysis Program Description Supplement 1 - Discussion of PIRT Parameters*, Supplement 1, Class 3 (GE Proprietary Information), dated August 1995. The proprietary information is delineated by bars in the right-hand margin adjacent to the specific material.
- (3) In making this application for withholding of proprietary information of which it is an 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. 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. 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), above, is classified as proprietary because it contains details of the method of development and supporting data and analyses relative to

the Phenomena Identification and Ranking Tables (PIRT) parameters developed for and used in SBWR Test Program. The PIRT parameters are essential in ensuring the validity of the SBWR Test Program. This test program has been under development by GE and its associates for more than seven years at a total cost of tens of millions of dollars.

- (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 the value derived from providing analyses done with NRC-approved methods.

The research, development, engineering, and NRC review costs comprise a substantial investment of time and money by GE and its associates.

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 testing program 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 the large investment in developing these essential testing data.

STATE OF CALIFORNIA

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COUNTY OF SANTA CLARA

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ss:

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George B. Stramback, 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 24th day of August, 1995

George B. Stramback
George B. Stramback
General Electric Company

Subscribed and sworn before me this 24th day of August, 1995

Julie A. Curtis
Notary Public, State of California

