



GE Nuclear Energy

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November 29, 1995

MFN 264-95
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 - Proprietary Handouts From the November 28 & 29, 1995, ACRS
Thermal Hydraulic Subcommittee Meeting In San Jose, CA**

Enclosed are the proprietary handouts presented by GE during the November 28 and 29, 1995, ACRS Thermal Hydraulic Subcommittee Meeting in San Jose, CA. The non-proprietary handouts are supplied under a separate cover letter. Non-proprietary discussions of the SBWR Test and Analysis Program Description is contained in GE Licensing Topical Report NEDO-32391.

Please note that these handouts contain information of the type which GE and its associates maintain in confidence and withhold 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. The handout pages with proprietary information are specifically identified as proprietary.

Sincerely,

James E. Quinn
Projects Manager

Enclosure: Proprietary Handouts From the November 28 & 29, 1995, ACRS Thermal Hydraulic Subcommittee Meeting In San Jose, CA

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|-----|----------------|------------|--|
| cc: | P. A. Boehnert | (NRC/ACRS) | (2 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) | (2 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.) |

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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 the GE proprietary version of the meeting handouts presented during the November 28 and 29, 1995, Advisory Committee on Reactor Safeguards Thermal Hydraulic Subcommittee meeting in San Jose, California. Handout pages containing the proprietary information are specifically identified as proprietary.
- (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 ("FOE"), 5 US Sec. 552(b)(4), and the Trade Secrets Act, 18 US 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 FOE 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 component to whom the work was provided, 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 and its associates 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 SBWR test facility test results, TRACG Qualification Analysis results, and scaling information on SBWR Testing. The SBWR TRACG and

Testing programs have been under development by GE and its associates for more than seven years, at a total cost of tens of millions of dollars.

A substantial effort has been expended by GE and its associates to perform and evaluate tests, perform TRACG qualification analyses for the tests, and perform scaling analyses to ensure the validity of the tests.

- (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 and its associates' 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. This includes the development of the expertise to analyze the facilities, and determine, scale and evaluate the appropriate tests.

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

The precise value of the expertise to devise a test program, and apply the correct analytical methodology and design changes (as needed) is difficult to quantify, but it clearly is substantial.

GE's and its associates' competitive advantage will be lost if its competitors are able to use the testing and code qualification results of GE and its associates to determine or verify their own designs, or if they are able to claim an equivalent understanding by demonstrating that they can perform the same or similar tests and analyses.

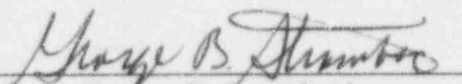
The value of this information to GE and its associates would be lost if the information were disclosed to the public. Making such information available to competitors without their having been required to undertake a similar expenditure of resources would unfairly provide competitors with a windfall, and deprive GE and its associates of the opportunity to exercise its competitive advantage to seek an adequate return on its large investment in developing these very valuable testing and qualification programs.

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

George B. Stramback, being duly sworn, deposes and says:

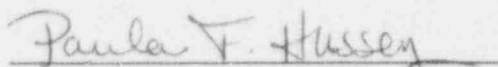
That he has read the foregoing affidavit and the matters stated therein are true and correct to the best of his knowledge, information, and belief.

Executed at San Jose, California, this 29th day of November 1995.


George B. Stramback
General Electric Company

Subscribed and sworn before me this 29th day of November 1995.




Notary Public, State of California