



**GE Nuclear Energy**

J. E. Quinn, Projects Manager  
LMR and SBWR Programs

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October 25, 1996

MFN 172-96  
Docket 52-004

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

Attention: Theodore E. Quay, Director  
Standardization Project Directorate

Subject: **SBWR - PANTHERS/IC Apparent Test Results (ATRs), Phase 1 Affidavit**

- Reference: 1. Letter MFN 246-95 from J. E. Quinn (GE) to T. E. Quay (NRC), *SBWR - PANTHERS/IC Apparent Test Results (ATRs), Phase 1 (Proprietary)*, dated October 25, 1995.
2. Letter from S. Q. Ninh (NRC) to J. E. Quinn (GE), *Request for Withholding Information From Public Disclosure, General Electric PANTHERS/IC Apparent Test Results, Phase 1*, dated October 2, 1996.

Reference 1 previously supplied the Apparent Test Results Reports (ATRs) for the PANTHERS/IC Phase 1 Tests and requested that the reports be withheld from public disclosure. Reference 2 indicated that Reference 1 did not include an affidavit supporting the request. This letter is to provide the affidavit and request that you accept our request to withhold these reports from public disclosure.

Please contact John Torbeck of our staff on 408-925-6101 if you have any questions regarding the attachment.

Sincerely,

for James E. Quinn,  
Projects Manager

Attachment: J. F. Quirk Affidavit, dated October 25, 1996

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cc: P. A. Boehnert (NRC/ACRS) (2 paper copies plus E-Mail w/o att.)  
I. Catton (ACRS) (1 paper copy plus E-Mail w/o att.)  
S. Q. Ninh (NRC) (2 paper copies plus E-Mail w/o att.)  
D. Scaletti (NRC) (1 paper copy. plus E-Mail w/o att.)



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bcc: (E-Mail w/o att except as noted)

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F. A. Ross (DoE)

B. Shiralkar

R. Srinivasan (EPRI)

J. E. Torbeck

GE Master File (1 paper copy plus E-Mail w/o att.)

SBWR Project File (1 paper copy plus E-Mail w/o att.)

## General Electric Company

### AFFIDAVIT

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

- (1) I am Joseph F. Quirk, 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) GE is an owner of the information sought to be withheld. The information sought to be withheld is in the SIET reports PANTHERS/IC Apparent Test Results (ATRs) Reports for tests: HSD03, HSD09, HSD10, HSD12, T02, T03, T04, T05, T06, T07\_1, T08, T09, T10, T11, T14, T15, T17\_A, T17\_B, T17\_C, T17\_D, and T17\_E. The proprietary information is delineated by a "GE PROPRIETARY" stamp on the applicable pages.
- (3) In making this application for withholding of proprietary information, 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.

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 its associates, 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 and its associates, 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 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 for use in conjunction with 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.

The development of the test evaluation process along with the interpretation and application of the test results is derived from the extensive experience database that constitutes a major asset to GE and its associates.

- (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 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 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 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 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.

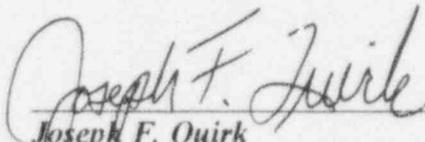
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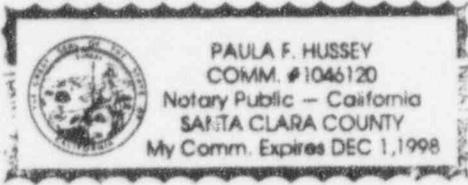
*Joseph F. Quirk*, being duly sworn, deposes and says:

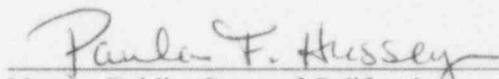
That he has read the foregoing affidavit and the matters stated therein are true and correct to the best of his knowledge, information, and belief.

Executed at San Jose, California, this 25<sup>th</sup> day of October 1996.

  
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*Joseph F. Quirk*  
General Electric Company

Subscribed and sworn before me this 25<sup>th</sup> day of October 1996.



  
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Paula F. Hussey  
Notary Public, State of California