

June 28, 1988

Docket No. 50-440

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Mr. Alvin Kaplan, Vice President
Nuclear Group
The Cleveland Electric Illuminating
Company
10 Center Road
Perry, Ohio 44081

Dear Mr. Kaplan:

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE

By your letter dated May 11, 1988 and General Electric Company's affidavit dated May 6, 1988, you submitted a document entitled "Perry 1 Reactor Internals Vibration Measurements," NEDE-31557-P," dated April 1988, and requested it be withheld from public disclosure pursuant to 10 CFR 2.790.

General Electric Company stated that the information should be considered exempt from mandatory public disclosure for the following reasons:

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."

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Some examples of categories of information which fit into the definition of proprietary information are:

- a. Information that discloses 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;
- 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.

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 completed 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 to the general public 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.

Initial approval of proprietary treatment of a document is typically made by the Subsection manager of the originating component, the man 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 at all times are clearly identified as proprietary.

The procedure for approval of external release of such a document is reviewed by the Section Manager, Project manager, Principal Scientist or other equivalent authority, by the Section 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 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 only in accordance with appropriate regulatory provisions or proprietary agreements.

The document mentioned ... 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.

The document NEDE-31567-P is considered proprietary since it contains information which reflects specific test data to be used in General Electric's product design improvement, and which was obtained and generated at considerable expense to General Electric. Fuel induced behavior which is considered a proprietary feature is also revealed. The analysis of the test data and the use of the analyses in mathematical models is also considered proprietary.

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.

Public disclosure of the information 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:

- a. The estimated cost of obtaining the test data and generating the report is over \$1,960,000...
- b. The design information and product behavior features are a part of the General Electric Technological base which is sold in the form of licensee agreements. The precise value of this information is difficult to assess, but it clearly can be substantial. The value to GE would be lost if the information were disclosed to the public.
- c. Research, development, engineering, and analytical cost and expenses must be reflected in the price of General Electric's products, and making such information available to competitors without similar expenditure of resources provides competitors with an advantage.

We have reviewed your submittal and the material based on the requirements and criteria of 10 CFR 2.790 and, on the basis of General Electric Company's statements, have determined that the submitted information sought to be withheld contains trade secrets or proprietary commercial information.

Therefore, we have determined that the document entitled "Perry 1 Reactor Internals Vibration Measurements," NEDE-31567-P, dated April 1988, marked as proprietary will be withheld from public disclosure pursuant to 10 CFR 2.790(b)(5) and Section 103(b) of the Atomic Energy Act of 1954, as amended.

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the document. If the need arises, we may send copies of this information to our consultants working in this area. We will, of course, insure that the consultants have signed the appropriate agreements for handling proprietary information.

If the basis for withholding this information from public inspection should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You should also understand that the NRC may have cause to review this determination in the future, such as if the scope of a Freedom of Information Act request includes your information. In all review situations, if the NRC needs additional information from you or makes a determination adverse to the above, you will be notified in advance of any public disclosure.

Sincerely, *151*

Timothy G. Colburn, Project Manager
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IV, V and Special Projects

cc: See next page

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