



GE Nuclear Energy

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Project 717

MFN 03-104
September 24, 2003

U.S. Nuclear Regulatory Commission
Document Control Desk
Washington, D.C. 20852-2738

Attention: Chief, Information Management Branch
Program Management
Policy Development and Analysis Staff

Subject: **Response to Request for Additional Information (RAI) numbers (306 and 339) for ESBWR Pre-application Review.**

GE Nuclear Energy is submitting, in enclosures 1 and 2, revisions and additional information to the submitted responses (MFN 03-100 and MFN 03-79) to NRC RAI numbers 306 and 339. The original RAIs were included in the referenced letters.

Enclosure 1 contains the responses with GE proprietary information as defined by 10CFR2.790. GE customarily maintains this information in confidence and withholds it from public disclosure. Enclosure 1 also includes RAI responses, which contain no proprietary information in order to form a complete package. A non-proprietary version of the responses to the NRC's requests are provided in Enclosure 2.

The affidavit contained in Enclosure 3 identifies that the information contained in Enclosure 1 has been handled and classified as proprietary to GE. GE hereby requests that the information of Enclosure 1 be withheld from public disclosure in accordance with the provisions of 10 CFR 2.790 and 9.17.

If you have any questions about the information provided here, please let me know.

Sincerely,

Sandra A. Delvin
Manager, ESBWR
Engineering & Technology

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Reference:

1. MFN 03-054, Letter From Amy E. Cubbage (NRC) To Atam S. Rao (GE), July 17, 2003, SUBJECT: REQUEST FOR ADDITIONAL INFORMATION LETTER NO. 6 RELATED TO ESBWR PRE-APPLICATION REVIEW (TAC NO. MB6801)
2. MFN 03-066, Letter From Amy E. Cubbage (NRC) To Atam S. Rao (GE), July 17, 2003, SUBJECT: REQUEST FOR ADDITIONAL INFORMATION LETTER NO. 8 RELATED TO ESBWR PRE-APPLICATION REVIEW (TAC NOS. MB6280 AND MB6281)

Enclosures:

1. MFN 03-104 Response to NRC RAI numbers (306 and 339) - Proprietary Information
2. MFN 03-104 Response to NRC RAI numbers (306 and 339) - Non-proprietary Information
3. Affidavit, George B. Stramback, dated September 24, 2003

cc:	A. Cubbage	USNRC (with enclosure)
	J. Lyons	USNRC (w/o enclosure)
	G.B. Stramback	GE (with enclosure)

General Electric Company

AFFIDAVIT

I, **George B. Stramback**, state as follows:

- (1) I am Manager, Regulatory 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) The information sought to be withheld is contained in the Enclosure 1 of GE letter MFN 03-104, Sandra A. Delvin to NRC, *Response to Request for Additional Information (RAI) numbers (306 and 339) for ESBWR Pre-application Review*, dated September 24, 2003. The proprietary information is in Enclosure 1, *Response to NRC RAI numbers (306 and 339)*. For text and text contained in tables, GE proprietary information is identified by a double underline inside double square brackets. Figures and large equation objects are identified with double square brackets before and after the object. In each case, the superscript notation⁽³⁾ refers to Paragraph (3) of this affidavit, which provides the basis for the proprietary determination.
- (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), and 2.790(a)(4) for "trade secrets" (Exemption 4). The material for which exemption from disclosure is here sought 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 aspects of past, present, or future General Electric customer-funded development plans and programs, resulting in potential products to General Electric;
- d. 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 paragraphs (4)a., and (4)b, above.

- (5) To address 10 CFR 2.790 (b) (4), 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 details for licensing application of TRACG to the ESBWR passive safety system design of the BWR. This TRACG code has been developed by GE for over fifteen years, at a total cost in excess of three million dollars. The reporting, evaluation and interpretations of the results, as they relate to the ESBWR, was achieved at a significant cost, to GE.

The development of the evaluation process along with the interpretation and application of the analytical results 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 analytical methodology and includes development of the expertise to determine and apply the appropriate evaluation process. In addition, the technology base includes the value derived from providing analyses done with NRC-approved methods.

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

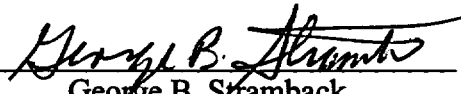
The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

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 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 competitive advantage to seek an adequate return on its large investment in developing these very valuable analytical tools.

I declare under penalty of perjury that the foregoing affidavit and the matters stated therein are true and correct to the best of my knowledge, information, and belief.

Executed on this 24th day of September 2003.


George B. Stramback
General Electric Company

MFN 03-104
Enclosure 2

ENCLOSURE 2

MFN 03-104

Response to NRC RAI numbers (306, and 339)

MFN 03-104

Enclosure 2

RAIs NEDE-32176P, "TRACG Model Description"

Additional information to R306. [[

MFN 03-104
Enclosure 2

RAIs NEDE-32176P, "TRACG Model Description"

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Q339. Please provide Paul Sherrer Institute (PSI) document ALPHA-703-0, "PANDA P-Series Test Specification," Dec. 5, 1997. Is there a PSI/TEPSS document comparing pretest predictions with PANDA P-series tests? If so, please provide the document. (Note that on ALPHA-716-0/Page13 for Test P1, it is stated that the global DW/WW pressure response of test data was as expected from pretest calculations.)

R339 Rev1.

Since these tests were used as additional data for TRACG qualification, the key reports were the results, which were provided. The reports readily available to GE on the Panda P series tests have been provided in the ESBWR Test Report NEDC-33081, Rev 0. All the References were not available to GE but the final version of the Test Specification has been sent to GE's office in Washington, D.C. and will be available for review by the NRC.

The pretest predictions that were done for the program were documented in the "Technology Enhancement for Passive Safety Systems - TEPSS: Final Report", INNO-TEPSS(99)-D20, European Commission, Fourth Framework Programme on Nuclear Fission Safety, Contract FI4I-CT95-0008. Since these tests were used as additional data for the qualification of TRACG after the tests were run, the pretest predictions were of limited interest. Since GE does not own the rights to this report we are contacting NRG and the EU to obtain permission to distribute it to the NRC. We also suggest that the NRC attempt to obtain permission themselves directly from NRG and the EU.