



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

February 27, 1992

Mr. David J. Robare, Manager
Plant Licensing Services
General Electric Nuclear Energy
175 Curtner Avenue
San Jose, California 95125

Dear Mr. Robare

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
(TAC NO. M81253)

By your letter and affidavit dated December 28, 1990, you submitted Licensing Topical Report NEDC-31897P, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," and requested that it be withheld from public disclosure pursuant to 10 CFR 2.790.

You stated that the submitted information should be considered exempt from mandatory public disclosure for the following reasons:

The information contained in NEDC-31897P presents General Electric's approach to BWR power uprate in terms of the scope of evaluation, analytical techniques and licensing criteria. 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 it would provide other parties, including competitors, with valuable information.

The information has consistently been held in confidence by the General Electric Company. No public disclosure of the information 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.

By letter dated June 10, 1991, you submitted Revision 1 to the above topical report, designated as NEDC-31897P-1. Additionally, on November 1, 1991, you submitted a response to the NRC staff position concerning the topical reports. You indicated that the affidavit submitted with the original version of the topical report is also applicable to these documents.

We have reviewed your application and the material in accordance with the requirements of 10 CFR 2.790 and, on the basis of your statements, have determined that the submitted information sought to be withheld contains trade secrets or proprietary commercial information.

Therefore, GE Licensing Topical Reports NEDC-31897P, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," NEDC-31897P-1, and the November 1, 1991 response to NRC staff position, all 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.

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Mr. David J. Robare

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February 27, 1992

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the documents. If the need arises, we may send copies of this information to our consultants working in this area. We will, of course, ensure 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, for example, 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,

Original Signed By:

Robert Stransky, Project Manager
Project Directorate III-1
Division of Reactor Projects III/IV/V
Office of Nuclear Reactor Regulation

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2/27/92

Mr. David J. Robare, Manager

General Electric Nuclear Energy

cc:

Mr. Thomas A. McNish, Secretary
Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201

Judd L. Bacon, Esquire
Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201

Jane E. Brannon, County Clerk
County Building
Charlevoix, Michigan 49720

Office of the Governor
Room 1 - Capitol Building
Lansing, Michigan 48913

Regional Administrator, Region III
U.S. Nuclear Regulatory Commission
799 Roosevelt Road
Glen Ellyn, Illinois 60137

Nuclear Facilities and Environmental
Monitoring Section Office
Division of Radiological Health
Department of Public Health
3423 N. Logan Street
P. O. Box 30195
Lansing, Michigan 48909

U.S. Nuclear Regulatory Commission
Resident Inspector Office
Big Rock Point Plant
10253 U.S. 31 North
Charlevoix, Michigan 49720

Mr. William L. Beckman, Plant Manager
Big Rock Point Nuclear Plant
Consumers Power Company
10269 U.S. 31 North
Charlevoix, Michigan 49720

GENERAL ELECTRIC COMPANY

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I, DAVID J. ROBARE, being duly sworn, depose and state as follows:

1. I am Manager, Plant Licensing Services, General Electric Company, 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 GE report NEDC-31982P, "Fermi-2 SAFER/GESTR-LOCA Loss-of-Coolant Accident Analysis", July 1991.

3. 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 developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others."

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 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;

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8. All disclosures to third parties have been made pursuant to regulatory provisions of proprietary agreements which provide for maintenance of information in confidence.
9. The 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. A substantial effort has been expended by General Electric to develop this information.



Nuclear Information and Resource Service

1424 16th Street, N.W., Suite 601, Washington, D.C. 20036 (202) 328-0002

FREEDOM OF INFORMATION
ACT REQUEST

December 17, 1991

Mr. Donnie H. Grimsley
Division of Rules and Records
Office of Administration and Resources Management
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

FOIA 91-579
Rec'd 12-19-91

FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Grimsley:

Pursuant to the Freedom of Information Act, 5 U.S.C. 522, as amended and 10 C.F.R. 9.8 of the Commission's regulations, the Nuclear Information and Resource Service requests the following documents regarding Fermi 2, NRC Docket No. 50-341 NRC License No. NPF-43;

- 1.) General Electric Topical Report, NED C-31897P-1 "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," June 1991 (LTR1)
- 2.) General Electric Topical Report, NED C-31984P "Generic Evaluations of General Electric Boiling Water Reactor Power Uprate," July 1991 (LTR2)
- 3.) Fermi 2 Licensing Report, 91-150 "Power Uprate Safety Analyses for Fermi 2," September 1991
- 4.) General Electric Report, NED C-31982P "Fermi 2 /SAFER/GESTR-LOCA Loss of Coolant Accident," July 1991

Please consider "documents" to include reports, studies, test results, correspondence, memoranda, meeting notes, meeting minutes, working papers, graphs, charts, diagrams, notes and summaries of conversations and interviews, computer records and any other form of written communications including internal NRC memoranda.

Pursuant to this request, please provide all documents prepared or utilized by, in the possession of, or routed through the NRC related to items 1-4.

dedicated to a sound non-nuclear energy policy.

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Pursuant to and in compliance with 10 C.F.R. 9.41 of the Commission's regulations governing requests for waiver of fees, the Nuclear Information and Resource Service, herein after referred to as NIRS, puts forth the following information.

NIRS seeks the requested information solely to contribute to and help shape the public debate on nuclear issues.

NIRS intends to use the information in order to advance the concerns for public understanding and safety.

NIRS is qualified to make use of the requested information. The staff has demonstrated the ability to interpret information and communicate that information in a form comprehensible to the general public. Members of the NIRS staff have published articles in such national journals as The Progressive, Nuclear Times, Newsday and The Bulletin of Atomic Scientists.

NIRS has a working relationship with physicists, engineers, medical doctors and other respected professionals who contribute to the full understanding of technical records.

The information sought by NIRS, is not, to the best of our knowledge, in the public domain.

The general public has displayed great interest in nuclear issues and the requested information will certainly increase the public's understanding of this matter.

NIRS has demonstrated its ability and commitment to inform the public on all important nuclear issues. NIRS regularly publishes a trade journal for which this information will be of use, the Nuclear Monitor. Since 1978, NIRS has been providing information on nuclear issues to the public, the press, members of Congress, state and local government officials as well as hundreds of citizens groups across the country. NIRS provides this information free of charge and has neither a commercial nor a private interest in the agency records sought.

Under the amended fee waiver standard, NIRS is clearly entitled to a full waiver of all search, review and duplication fees. This standard calls for such a waiver, "if disclosure of the information is in the public interest because it is likely to contribute significantly to the public understanding of the operation or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. 552 (a) (4) (A) (iii).

In light of the foregoing, NIRS' request meets this standard on its face. NIRS has no commercial interest in this matter, but rather seeks this information to help the general public better understand the role of government in regulating the nuclear industry.

For all the reasons cited above, NIRS' request falls squarely within the Congressional intent in enacting the Freedom of Information Act and the fee waiver provision. We, therefore, ask that the Commission grant a full waiver for this FOIA request.

Thank you for your anticipated cooperation. If you have any questions in regards to this request, please feel free to contact me.

Sincerely,

Paul Gunter

