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Ralph E. Beedle
Executive Vice President
Nuclear Generation

August 17, 1993
JPN-93-059

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

SUBJECT: James A. Fitzpatrick Nuclear Power Plant
Docket No. 50-333
**Proposed Changes to the Technical Specifications
Regarding Power Uprate (JPTS-91-025)
Revision 2 to NEDC-31317P**

REFERENCES: See page 3.

Dear Sir:

The Authority submitted a proposed amendment to the James A. FitzPatrick Technical Specifications to increase the authorized maximum power level by approximately 4.1 percent to 2536 megawatts thermal (Reference 1). A detailed LOCA analysis was performed by the General Electric Company and summarized in a proprietary report entitled, "James A. FitzPatrick Nuclear Power Plant SAFER/GESTR-LOCA Loss-of Coolant Accident Analysis," NEDC-31317P-1, Revision 1 (Reference 2). The Authority submitted this report with the proposed amendment. The NRC reviewed General Electric's report along with the associated affidavits and was unable to conclude that the report contains proprietary information (Reference 3).

General Electric has revised the report and the associated affidavit to conform to 10 CFR 2.790. Two copies of the revised report supporting our proposed Technical Specification change are enclosed (Attachment 1). This report supersedes and replaces the report included with Reference 2.

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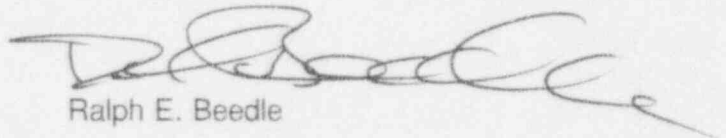
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The changes in Revision 2 are limited to those necessary to identify information considered proprietary by General Electric. The technical information included in Revision 2 is the same as in Revision 1. Information marked with vertical lines in the margin of the report is of the type which General Electric maintains in confidence and withholds from public disclosure.

The Authority requests that this report be withheld from public disclosure in accordance with the provisions of 10 CFR 2.790. It has been handled and classified as proprietary by General Electric as indicated in the enclosed affidavit. An affidavit for this revised report is also enclosed (Attachment 2). Please return all copies of NEDC-31317P, Revision 1 held by the NRC to the Authority.

If you have any questions, please contact Mr. J. A. Gray, Jr.

Very truly yours,



Ralph E. Beedle

cc: Regional Administrator
U.S. Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, PA 19406

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Mr. Brian C. McCabe
Project Directorate I-1
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- References:
1. NYPA letter, R. E. Beedle to USNRC dated June 5, 1992, JPN-92-028 regarding proposed changes to the Technical Specifications regarding power uprate (JPTS-91-025).
 2. General Electric Co. Report "James A. FitzPatrick Nuclear Power Plant SAFER/GESTR-LOCA Loss-of-Coolant Accident Analysis," NEDC-31317P-1, Revision 1 dated August 1991.
 3. NRC letter, B. C. McCabe to D. J. Robare (GE) dated March 4, 1993 regarding request for withholding information from public disclosure, TAC M83182.

- Attachments:
1. General Electric Report, "James A. FitzPatrick Nuclear Power Plant, SAFER/GESTR-LOCA Loss-of-Coolant Analysis," NEDC-31317P, Revision 2, DRF-A00-03843, Class III, April 1993.
 2. Affidavit by David J. Robare, General Electric Project Manager, Plant Licensing, regarding GE proprietary report NEDC-31317P-2, Revision 2, signed May 7, 1993.

GENERAL ELECTRIC COMPANY

AFFIDAVIT

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

- (1) I am Project Manager, Plant Licensing, 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 GE proprietary report NEDC-31317P, "James A. FitzPatrick Nuclear Power Plant SAFER/GESTR-LOCA Loss-of-Coolant Accident Analysis", Revision 2, Class III, dated April 1993.
- (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), 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 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. and (4)b., 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. Its initial designation as proprietary information, and the subsequent steps taken to prevent its unauthorized disclosure, are as set forth in (6) and (7) following. 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.
- (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) is classified as proprietary because it contains detailed results of analytical models, methods and processes, including computer codes, which GE has developed, obtained NRC approval of, and applied to perform evaluations of the loss-of-coolant accident for the BWR.

The development and approval of the loss-of-coolant accident computer codes used in this analysis was achieved at a significant cost, on the order of several million dollars, 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 similiar 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.

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

David J. Robare, 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 7TH day of MAY, 1993

David J. Robare
David J. Robare
General Electric Company

Subscribed and sworn before me this 7th day of May, 1993

Paula F. Hussey
Notary Public, State of California

