

STATEMENT OF CONSIDERATIONS

PETITION FOR ADVANCE WAIVER OF PATENT RIGHTS BY GE
NUCLEAR ENERGY ("GE") UNDER SUBCONTRACT NO. QZ002
UNDER PRIME CONTRACT NO. DE-FC07-05ID14636 BETWEEN
NUSTART ENERGY DEVELOPMENT ("NUSTART") AND DOE; W(A)-05-
026; CH-1292

The Petitioner, GE, has requested a waiver of domestic and certain foreign patent rights for all subject inventions that may be conceived or first actually reduced to practice by GE or its subcontractors, arising from its participation under the above referenced cooperative agreement entitled "NuStart Energy Construction and Operating License Demonstration Project."

The objective of the cooperative agreement is to demonstrate the combined Construction and Operating License ("COL") process under 10 CFR 52 to promote new Nuclear Power Plant ("NPP") construction in the United States. This work is funded under DOE's Nuclear Power 2010 Program, which is a government/industry cost-shared effort to identify sites for new nuclear power plants, develop and bring to market advanced nuclear plant technologies, evaluate the business case for building new nuclear power plants, and demonstrate untested regulatory processes leading to an industry decision in the next few years to seek Nuclear Regulatory Commission (NRC) approval to build and operate new advanced nuclear power plants in the United States.

Petitioner's subcontract is designed to further develop GE's Economic Simplified Boiling Water Reactor ("ESBWR"), and support site evaluations, licensing efforts, and business assessments that utility companies need to determine whether to build new NPPs.

The total cost of the project with NuStart is approximately \$519 million. The anticipated cost of the subcontract with Petitioner is approximately \$330 million, with the Petitioner providing about fifty percent (50%) cost sharing. This waiver is contingent upon the Petitioner maintaining, in aggregate, the above cost sharing percentage over the course of its subcontract. The programs are divided into two phases. Phase 1 will be performed in 2005 and will include detailed planning for the program. Phase 2 will be performed in the years 2006-2011.

As noted in its waiver petition, Petitioner is a pioneer and worldwide leader in designing and supplying Boiling Water Reactors ("BWR"). Petitioner supplied the first commercial BWR to generate electricity in 1960 and has since supplied BWRs in ten different countries. Petitioner continues to design and supply BWRs around the world and has been assigned numerous patents for BWR technology over the past five decades, including several patents related to the development of the ESBWR and its predecessors. Petitioner's financial and technological investment in the present technology has been substantial, spanning several decades and totaling hundreds of millions of dollars.

Considering Petitioner's technical expertise, established market position, and significant investment in this technology including sizable cost sharing in this cooperative agreement, it is reasonable to conclude that Petitioner will continue to develop and ultimately commercialize the technology and products which may arise from this cooperative agreement.

Petitioner has agreed that this waiver shall be subject to the march-in and preference for U.S. industry provisions, as well as the U.S. Government license, comparable to those set out in 35 U.S.C. 202-204. Further, Petitioner has agreed to the attached U.S. Competitiveness provision paragraph (t). In brief, Petitioner has agreed that products embodying a waived invention or produced through the use of a waived invention will be manufactured substantially in the United States unless the Petitioner can show to the satisfaction of the DOE that is not commercially feasible to do so. Additionally, Petitioner has agreed to certain special data provisions previously negotiated and attached hereto. Specifically, Petitioner will have the right to copyright data generated under its subcontract. The government will have a paid-up nonexclusive license in the copyrighted data subject to certain release restrictions. Petitioner has also agreed to execute a royalty repayment agreement with DOE prior to release of any DOE funding for phase II of this project

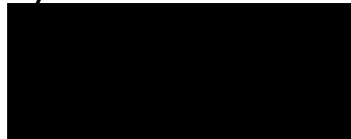
Referring to item 10 of the waiver petition, granting this waiver is not anticipated to have any adverse impact on competition. If anything, the technology forming the subject matter of the collaboration can be expected to stimulate competition among the several companies including Westinghouse and Areva which are also developing new NPPs. It should be noted that Westinghouse has also been granted a sub-award for the NuStart Project.

Considering the foregoing, it is believed that granting this waiver will provide Petitioner with the necessary incentive to invest its resources in the commercialization of the results of the cooperative agreement in a fashion which will make the above technology available to the public in the shortest practicable time. Therefore, upon evaluation of the waiver petition and in view of the objectives and considerations set forth in 10 CFR 784, all of which have been considered, it is recommended that the requested waiver be granted.



Brian J. Lally
Patent Attorney
Office of Intellectual Property Law

Date: 8/9/05



Daniel D. Park
Assistant Chief Counsel
Office of Intellectual Property Law

Date: 8/11/05

Based upon the foregoing Statement of Considerations and representations in the attached waiver petition, it is determined that the interests of the United States and the general public will best be served by a waiver of patent rights of the scope described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of the cooperative agreement, where through such modification or extension, the purpose, scope or cost of the subcontract has been substantially altered.

CONCURRENCE:



Rebecca F. Smith-Kevern
Associate Director
Nuclear Power Technology
Safety and Security
Office of Nuclear Power Systems
NE-30

Date: 31 October 2005

APPROVAL:



Paul A. Gottlieb
Assistant General Counsel
for Technology Transfer and
Intellectual Property

Date: 11-4-05

(t) U. S. Competitiveness

The Contractor agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of the DOE that it is not commercially feasible to do so. In the event the DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The Contractor agrees that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by the DOE.

WAIVER ACTION - ABSTRACT
W(A)-05-026

REQUESTOR
GE Nuclear Energy

CONTRACT SCOPE
Development of new advanced
nuclear power plants in the U.S.

RATIONALE FOR DECISION
50% Cost Sharing