

STATEMENT OF CONSIDERATIONS

REQUEST BY GENERAL ELECTRIC COMPANY FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN INVENTION RIGHTS UNDER DOE COOPERATIVE AGREEMENT NO. DE-FC26-05NT42643; W(A)-06-002, CH-1350

The Petitioner, General Electric Company, (GE), was awarded a cooperative agreement for the performance of work entitled, "Advanced IGCC/Hydrogen Gas Turbine Development." The purpose of the cooperative agreement is to develop, validate, and accelerate the commercial application for a hydrogen-fueled gas turbine for use in Integrated Gasification Combined Cycle (IGCC) and FutureGen type plants. The proposed gas turbine will support high efficiency, low NOx, and competitive cost goals as identified by the Department of Energy. This waiver is only for inventions of GE made under its cooperative agreement.

The total estimated cost of the cooperative agreement is \$65,199,369 with the DOE share being \$45,639,558 or 70%. The remaining cost-share of \$19,599,811 or 30% will be provided by GE. The period of performance is from October 1, 2005 through September 30, 2012.

In its response to question 5 of the attached waiver petition, GE has described its technical competence in the field of gas turbines. GE is an international leader in energy products and services, serving power generation, industrial, marine, oil and gas and distributed generation markets. GE is the industrial leader for heavy-duty gas turbines installed worldwide. GE states that it has the gas turbine engineering expertise, the analytical capability, the full-scale test facilities, and the corporate commitment required to develop the technologies outlined in the scope of work. Exhibit A to the waiver petition provides a representative sample of patents and publications demonstrating GE's technical competence of gas turbines. Exhibit B provides a sampling of GE published papers pertaining to IGCC and the use of hydrogen fuel in a gas turbine. GE's response demonstrates its technical competency in the field of gas turbines.

In its response to questions 9 and 10 of the attached waiver petition, GE states the waiver will not hinder competition in the marketplace. DOE's solicitation resulted in multiple competitive awards. GE states that granting the requested waiver will promote the development of, and commercial utilization of inventions that GE intends to use and license. Therefore grant of the waiver will have a positive effect on competition and market concentration.

The subject contract will be modified to add the Patent Rights--Waiver clause in conformance with 10 CFR 784.12, wherein GE has agreed to the provisions of 35 U.S.C §§ 202, 203, and 204. This waiver clause will also include a paragraph entitled U.S. Competitiveness, in which GE agrees to substantial U.S. manufacture of subject inventions (attached hereto). Additionally, GE agrees not to transfer subject inventions to any other entity unless that other entity agrees to these same requirements.

Considering the foregoing, it is believed that granting the waiver will provide the Petitioner with the necessary incentive to invest resources in the commercialization of the results of the agreement in a fashion which will make the agreement's benefits available to the public in the shortest practicable time. In addition, it would appear that grant of the above requested waiver would not result in an adverse effect on competition nor result in excessive market concentration. Therefore, 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, as set forth above, be granted.

[REDACTED]
Mark P. Dvorscak
Assistant Chief Counsel
Intellectual Property Law Division

Date Mar 22 2004

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

CONCURRENCE:

[REDACTED]

Victor Der
Office of Clean Energy Systems
Office of Fossil Energy, FE-22

Date 4/12/04

APPROVAL:

[REDACTED]

Paul A. Gottlieb
Assistant General Counsel
for Technology Transfer and
Intellectual Property, GC-62

Date 4-13-06

(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)-06-002 (CH-1350)

<u>REQUESTOR</u>	<u>CONTRACT SCOPE OF WORK</u>	<u>RATIONALE FOR DECISION</u>	<u>DISPOSITION</u>
General Electric Company under DOE Contract No. DE-FC26-05NT42643	Advanced IGCC/Hydrogen Gas Turbine Development	30% cost share	