

RS-05-068

10 CFR 2.390
10 CFR 50.90

May 25, 2005

U. S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555-0001

Clinton Power Station
Facility Operating License No. NPF-62
NRC Docket No. 50-461

Subject: Affidavit for Withholding of Global Nuclear Fuel Proprietary Information in Support of Onsite Spent Fuel Storage Expansion

Reference: Letter from Keith R. Jury (AmerGen Energy Company, LLC) to U. S. Nuclear Regulatory Commission, "Request for Technical Specification Change to Support Onsite Spent Fuel Storage Expansion," dated August 18, 2004

In the referenced letter, AmerGen Energy Company, LLC (AmerGen) requested a change to the Technical Specifications for Clinton Power Station (CPS), Unit 1, to reflect the addition of fuel storage capacity in the fuel cask storage pool and increased fuel storage capacity in the spent fuel pool. Specifically, the proposed expansion will increase the total storage space at CPS from 2,512 to 4,159 fuel assemblies. This extra capacity is expected to allow operation without loss of full core discharge capability until the 15th refueling outage (i.e., C1R15) in the year 2016.

The referenced letter contained information that was proprietary to Holtec International and an affidavit was provided with the referenced letter requesting the withholding of the proprietary information from public disclosure. However, a portion of this information (i.e., Table 4-1 of Attachment 5 to the referenced letter) was actually proprietary to Global Nuclear Fuel (GNF) and it was determined that a separate affidavit from GNF was required to withhold the GNF information from public disclosure. Therefore, AmerGen requests that the information be withheld from public disclosure in accordance with 10 CFR 2.390, "Public inspections, exemptions, requests for withholding," and 10 CFR 9.17, "Agency records exempt from public disclosure," paragraph (a)(4). The required affidavit is provided as Attachment 1 to this letter. Attachment 2 provides the table containing proprietary information marked in accordance with the requirements of 10 CFR 2.390. Attachment 3 provides the non-proprietary version of the table.

AP01

May 25, 2005
U. S. Nuclear Regulatory Commission
Page 2

If you have any questions concerning this letter, please contact Mr. Timothy A. Byam at (630) 657-2804.

Respectfully,

A handwritten signature in black ink that reads "Patrick R. Simpson". The signature is written in a cursive style with a large initial 'P'.

Patrick R. Simpson
Manager – Licensing

Attachments:

1. Affidavit
2. Table 4-1 "Fuel Assembly Design Specifications Used in the Analyses" (Proprietary Version)
3. Table 4-1 "Fuel Assembly Design Specifications Used in the Analyses" (Non-Proprietary Version)

ATTACHMENT 1

Affidavit

Affidavit

I, Margaret E. Harding, state as follows:

- (1) I am Manager, Fuel Engineering Services, Global Nuclear Fuel – Americas, L.L.C. (“GNF-A”) 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 attachment, “HI-2033124.” GNF proprietary information is indicated by enclosing it in double brackets. 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 or licensee, GNF-A 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 2.390(a)(4) 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 GNF-A’s competitors without license from GNF-A 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 GNF-A, its customers, or its suppliers;
 - d. Information which reveals aspects of past, present, or future GNF-A customer-funded development plans and programs, of potential commercial value to GNF-A;
 - 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 paragraphs (4)a. and (4)b., above.

- (5) To address the 10 CFR 2.390 (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 GNF-A, 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 GNF-A, 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, or subject to the terms under which it was licensed to GNF-A. Access to such documents within GNF-A 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 GNF-A 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 details of GNF-A's fuel designs.
- (9) Public disclosure of the information sought to be withheld is likely to cause substantial harm to GNF-A's competitive position and foreclose or reduce the availability of profit-making opportunities. The fuel design and licensing methodology is part of GNF-A'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 GNF-A or its licensor. 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.

GNF-A's competitive advantage will be lost if its competitors are able to use the results of the GNF-A experience to normalize or verify their own process or if

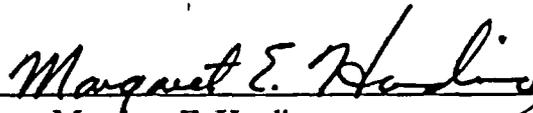
Affidavit

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 GNF-A 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 GNF-A of the opportunity to exercise its competitive advantage to seek an adequate return on its large investment in developing and obtaining 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 at Wilmington, North Carolina, this 24th day of February, 2005.



Margaret E. Harding
Global Nuclear Fuel – Americas, LLC

ATTACHMENT 3

Table 4-1
"Fuel Assembly Design Specifications Used in the Analyses"
(Non-Proprietary Version)

Table 4-1

FUEL ASSEMBLY DESIGN SPECIFICATIONS USED IN THE ANALYSES

<u>FUEL ROD DATA</u>	<u>GE-6</u>	<u>GE-7</u>	<u>GE-8</u>	<u>GE-10</u>	<u>GE-14</u>
Cladding outside diameter, in.	[[]]	[[]]	[[]]	[[]]	[[]]
Cladding inside diameter, in.	[[]]	[[]]	[[]]	[[]]	[[]]
Cladding material	[[]]	[[]]	[[]]	[[]]	[[]]
Pellet diameter, in.	[[]]	[[]]	[[]]	[[]]	[[]]
Enrichment (design basis)	[[]]	[[]]	[[]]	[[]]	[[]]
UO ₂ density (stack), g/cc UO ₂	[[]]	[[]]	[[]]	[[]]	[[]]
<u>WATER ROD DATA</u>					
Number of water rods	[[]]	[[]]	[[]]	[[]]	[[]]
Inside diameter, inch	[[]]	[[]]	[[]]	[[]]	[[]]
Outside diameter	[[]]	[[]]	[[]]	[[]]	[[]]
Material	[[]]	[[]]	[[]]	[[]]	[[]]
<u>FUEL ASSEMBLY DATA</u>					
Fuel rod array	[[]]	[[]]	[[]]	[[]]	[[]]
Number of fuel rods	[[]]	[[]]	[[]]	[[]]	[[]]
Fuel rod pitch, inch	[[]]	[[]]	[[]]	[[]]	[[]]
Fuel channel, material	[[]]	[[]]	[[]]	[[]]	[[]]
Inside dimension, inch	[[]]	[[]]	[[]]	[[]]	[[]]
Channel Thickness, inch	[[]]	[[]]	[[]]	[[]]	[[]]