



**Global Nuclear Fuel**

A Joint Venture of GE, Toshiba, & Hitachi

**Andy Lingenfelter**  
Manager, Engineering

Global Nuclear Fuel – Americas, LLC  
3901 Castle Hayne Road,  
Wilmington, NC 28402

T (910)675-5954  
F (910)675-6614

Andy.Lingenfelter@gnf.com

**Proprietary Notice**

This letter transmits proprietary information in accordance with 10CFR2.390. Upon removal of Enclosure 1, the balance of the letter may be considered non-proprietary.

FLN-2006-031  
November 8, 2006

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

**Subject: GESTARII Compliance Report for GNF2 and Critical Power Correlation**

During the Annual GNF/GE Technology Meeting earlier this year, Louis Quintana and I discussed the level of detail to be included in the GNF2 GESTARII compliance report (often called the Amendment 22 compliance report) with Frank Akstulewicz. At the same meeting, we discussed the GEXL correlation for the GNF2 fuel assembly. The purpose of this letter is to document and confirm the agreements of these conversations.

The Proprietary and Non-Proprietary versions of the agreements are provided in the enclosures to this letter. Enclosure 1 contains proprietary information as defined by 10CFR2.390. GNF customarily maintains this information in confidence and withholds it from public disclosure. A non-proprietary version of Enclosure 1 is provided in Enclosure 2. The affidavit in Enclosure 3 identifies that the designated information in Enclosure 1 has been handled and classified as proprietary to GNF. GNF hereby requests the information of Enclosure 1 be withheld from public disclosure in accordance with the provisions of 10CFR2.390 and 9.17.

If you have any questions, please contact James Harrison at (910) 675-6604 or myself..

Sincerely,

Andrew A. Lingenfelter  
Manager, Engineering  
Global Nuclear Fuel – Americas, LLC

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Project No. 712

Enclosures

1. GESTARII Compliance Report for GNF2 and Critical Power Correlation – Proprietary
2. GESTARII Compliance Report for GNF2 and Critical Power Correlation – Non-Proprietary
3. Affidavit, Jens G. M. Andersen, dated November 8, 2006

cc: JS Wermiel US NRC  
FM Akstulewicz US NRC  
RR Landry US NRC  
MC Honcharik US NRC  
Robert E Brown GE/Wilmington  
JF Harrison GE/Wilmington  
JF Klapproth GE/Wilmington  
RM Fawcett GNF/Wilmington  
MA Lalor GE/San Jose  
GB Stramback GE/San Jose

**ENCLOSURE 2 – REDACTED AND NON-PROPRIETARY  
INFORMATION**

**FLN 2006-031**

**GESTARII COMPLIANCE REPORT FOR GNF2 AND CRITICAL POWER  
CORRELATION**

**NON-PROPRIETARY INFORMATION NOTICE**

This is a non-proprietary version of Enclosure 1, which has the proprietary information removed. Portions of the document that have been removed are indicated by an open and closed double square brackets as shown here [[ ]].

**GESTARII Compliance Report For GNF2 And New Critical Power Correlation**

Specifically, GNF/GE is committed to provide the NRC with a GNF2 compliance report with increased level of detail in the following areas:

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**ENCLOSURE 3**

**FLN-2006-031**

**AFFIDAVIT**

## Affidavit

I, **Jens G. M. Andersen**, state as follows:

- (1) I am Consulting Engineer, Thermal Hydraulic Methods, 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 Enclosure 1 of FLN-2006-031, Andrew A. Lingenfelter (GNF) to Document Control Desk (USNRC), *GESTARII Compliance Report for GNF2 and Critical Power Correlation*, dated November 8, 2006. The proprietary information in Enclosure 1, *GESTARII Compliance Report for GNF2 and Critical Power Correlation*, is delineated by enclosure inside double square brackets. Figures and large equation objects are identified with double square brackets before and after the object. In each case, the superscript notation<sup>{3}</sup> 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 design and licensing methodology.

The development of the methods used in these analyses, along with the testing, development and approval of the supporting methodology was achieved at a significant cost, on the order of several million dollars, to GNF-A or its licensor.

- (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 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 8<sup>th</sup> day of November 2006.



Jens G. M. Andersen  
Global Nuclear Fuels – Americas, LLC