

October 24, 2008

Mr. Robert E. Brown
Senior Vice President, Regulatory Affairs
GE Hitachi Nuclear Energy
3901 Castle Hayne Rd MC A-50
Wilmington, NC 28401

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE
(MFN 08-771)

Dear Mr. Brown:

By letter dated October 8, 2008, and associated affidavit executed on October 8, 2008, by David H. Hinds, Mr. Hinds indicated that the information contained in GE Hitachi Nuclear Energy (GEH) MFN 08-771, Enclosure 1, Initial Licensing Topical Report (LTR) NEDE-33279P, "ESBWR Containment Fission Product Removal Evaluation Model, October 2006," should be withheld as proprietary. GEH requested that this information be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.390.

In the cover letter, you indicated that the executive summary constitutes the extent of available non proprietary information.

This submittal is a follow-up action of staff's review of MFN 06-205, Supplement 1, dated October 18, 2006. In addition to transmitting Licensing Topical Report (LTR) NEDE-33278P, Revision 0, this October 18, 2006, letter also requested withholding this LTR as proprietary. However, GEH did not provide a non-proprietary version and staff concluded that Enclosure 1 to MFN 06-205, Supplement 1 contained information that were public domain. As a result, GEH is resubmitting the proprietary version and the non-proprietary version of NEDE-33278P, Revision 0.

The nonproprietary version of LTR NEDE-33279P was provided in Enclosure 2 and was placed in the Nuclear Regulatory Commission's (NRC's) Public Document Room and added to the Agencywide Documents Access and Management System Public Electronic Reading Room (ADAMS Accession No. ML082880111).

The affidavit stated that the submitted information should be considered exempt from mandatory public disclosure for the following reasons:

1. The information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by GEH's competitors without license from GEH constitutes a competitive economic advantage over other companies; and

2. The 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.

We have reviewed the October 8, 2008, letter and affidavit in accordance with the requirements of 10 CFR 2.390 and, on the basis of your statements, have determined that the information sought to be withheld contains proprietary commercial information and should be withheld from public disclosure. Therefore, the submitted information marked as proprietary will be withheld from public disclosure pursuant to 10 CFR 2.390(b)(5) and Section 103(b) of the Atomic Energy Act of 1954, as amended.

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the document. If the need arises, we may send copies of this information to our consultants working in this area. We will, of course, ensure that the consultants have signed the appropriate agreements for handling proprietary information.

If the basis for withholding this information from public inspection should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You also should understand that the NRC may have cause to review this determination in the future, for example, if the scope of a Freedom of Information Act request includes your information. In all review situations, if the NRC makes a determination adverse to the above, you will be notified in advance of any public disclosure.

If you have any questions regarding this matter, I may be reached at 301-415-8484.

Sincerely,

/RA/

Tom M. Tai, Project Manager
ESBWR/ABWR Projects Branch 1
Division of New Reactor Licensing
Office of New Reactors

Docket No. 52-010

cc: See next page

2. The 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.

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cc:

Ms. Michele Boyd
Legislative Director
Energy Program
Public Citizens Critical Mass Energy
and Environmental Program
215 Pennsylvania Avenue, SE
Washington, DC 20003

Mr. Ray Ganthner
Senior Vice President
AREVA, NP, Inc. 3315
Old Forest Road
P.O. Box 10935
Lynchburg, VA 24506-0935

DC GE - ESBWR Mailing List

Email

aec@nrc.gov (Amy Cubbage)
APH@NEI.org (Adrian Heymer)
art.alford@ge.com (Art Alford)
awc@nei.org (Anne W. Cottingham)
bevans@enercon.com (Bob Evans)
bob.brown@ge.com (Robert E. Brown)
BrinkmCB@westinghouse.com (Charles Brinkman)
cberger@energetics.com (Carl Berger)
charles.bagnal@ge.com
charles@blackburncarter.com (Charles Irvine)
chris.maslak@ge.com (Chris Maslak)
CumminWE@Westinghouse.com (Edward W. Cummins)
cwaltman@roe.com (C. Waltman)
dan1.williamson@ge.com (Dan Williamson)
david.hinds@ge.com (David Hinds)
david.lewis@pillsburylaw.com (David Lewis)
David.piepmeyer@ge.com (David Piepmeyer)
dlochbaum@UCSUSA.org (David Lochbaum)
don.lewis@ge.com (Don Lewis)
erg-xl@cox.net (Eddie R. Grant)
Eugene_Grecheck@dom.com (Eugene S. Grecheck)
Frostie.white@ge.com (Frostie White)
gcesare@enercon.com (Guy Cesare)
GEH-NRC@hse.gsi.gov.uk (Geoff Grint)
george.honma@ge.com (George Honma)
george.wadkins@ge.com (George Wadkins)
GovePA@BV.com (Patrick Gove)
greshaja@westinghouse.com (James Gresham)
gzinke@entergy.com (George Alan Zinke)
hickste@earthlink.net (Thomas Hicks)
james.beard@gene.ge.com (James Beard)
jeff.waal@ge.com (Jeff Waal)
jgutierrez@morganlewis.com (Jay M. Gutierrez)
Jim.Kinsey@inl.gov (James Kinsey)
jim.riccio@wdc.greenpeace.org (James Riccio)
JJNesrsta@cpsenergy.com (James J. Nesrsta)
joel.Friday@ge.com (Joel Friday)
John.O'Neill@pillsburylaw.com (John O'Neill)
john.sorensen@ge.com (John Sorensen)
Joseph_Hegner@dom.com (Joseph Hegner)
junichi_uchiyama@mnes-us.com (Junichi Uchiyama)
kenneth.ainger@exeloncorp.com (Kenneth Ainger)
kimberly.milchuck@ge.com (Kimberly Milchuck)
KSutton@morganlewis.com (Kathryn M. Sutton)

DC GE - ESBWR Mailing List

kurt.schaefer@ge.com (Kurt Schaefer)
kwaugh@impact-net.org (Kenneth O. Waugh)
laura.bello@ge.com (Laura Bello)
lchandler@morganlewis.com (Lawrence J. Chandler)
lee.dougherty@ge.com
lou.lanese@ge.com (Lou Lanese)
Marc.Brooks@dhs.gov (Marc Brooks)
maria.webb@pillsburylaw.com (Maria Webb)
mark.beaumont@wsms.com (Mark Beaumont)
Marvin.Smith@dom.com (Marvin L. Smith)
matias.travieso-diaz@pillsburylaw.com (Matias Travieso-Diaz)
media@nei.org (Scott Peterson)
mike_moran@fpl.com (Mike Moran)
MSF@nei.org (Marvin Fertel)
mwetterhahn@winston.com (M. Wetterhahn)
nirsnet@nirs.org (Michael Mariotte)
PAC2@nrc.gov (Peter Cochran)
pareez.golub@ge.com (Pareez Golub)
patriciaL.campbell@ge.com (Patricia L. Campbell)
paul.gaukler@pillsburylaw.com (Paul Gaukler)
Paul@beyondnuclear.org (Paul Gunter)
peter.jordan@ge.com (Peter Jordan)
phinnen@entergy.com (Paul Hinnenkamp)
pshastings@duke-energy.com (Peter Hastings)
randy.newton@ge.com (Randy Newton)
rick.kingston@ge.com (Rick Kingston)
RJB@NEI.org (Russell Bell)
RKTemple@cpsenergy.com (R.K. Temple)
roberta.swain@ge.com (Roberta Swain)
Russell.Wells@Areva.com (Russell Wells)
sabinski@suddenlink.net (Steve A. Bennett)
sandra.sloan@areva.com (Sandra Sloan)
SauerB@BV.com (Robert C. Sauer)
sfrantz@morganlewis.com (Stephen P. Frantz)
steven.hucik@ge.com (Steven Hucik)
tdurkin@energetics.com (Tim Durkin)
tom.childress@ge.com
tom.miller@hq.doe.gov (Tom Miller)
trsmith@winston.com (Tyson Smith)
Vanessa.quinn@dhs.gov (Vanessa Quinn)
VictorB@bv.com (Bill Victor)
Wanda.K.Marshall@dom.com (Wanda K. Marshall)
wayne.cutright@ge.com (Wayne Cutright)
wayne.marquino@ge.com (Wayne Marquino)
whorin@winston.com (W. Horin)