November 13, 2007

Mr. Robert E. Brown
Senior Vice President, Regulatory Affairs
GE-Hitachi Nuclear Americas LLC
3901 Castle Hayne Rd MC A-45
Wilmington, NC 28401

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE (MFN 06-313, SUPPLEMENT 5)

Dear Mr. Brown:

By letter dated June 27, 2007, and associated affidavit executed on June 27, 2007, by James C. Kinsey, he indicated that the information contained in "Response to Portion of NRC Request for Additional Information Letter No. 40 Related to ESBWR Design Certification Application, RAI Number 19.2-23S01," should be withheld as proprietary. He requested that this information be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.390.

A nonproprietary copy of this information was provided in Enclosure 2 and was placed in the Nuclear Regulatory Commission (NRC) Public Document Room and added to the Agencywide Documents Access and Management System Public Electronic Reading Room (ADAMS Accession No. ML071930286).

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

1. The information discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by GE-Hitachi Nuclear Americas, LLC's (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 June 27, 2007, letter and affidavit in accordance with the requirements of 10 CFR 2.390 and, on the basis of the statements therein, 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 301-415-2875.

Sincerely,

***/RA/***

Amy E. Cubbage, Senior Project Manager
ESBWR/ABWR Projects Branch 1
Division of New Reactor Licensing
Office of New Reactors

Docket No. 52-010

cc: See next page

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