

**Proprietary Notice**

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

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MFN 07-452  
August 29, 2007

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

Subject: Transmittal of GEH Topical Report, NEDE 32177P, Revision 3, *TRACG Qualification*, August 2007

This transmittal provides the subject document requested by RAI 13 of Reference 1 and RAI 21.6-75 of Reference 2

Please note that Enclosure 1 contains proprietary information of the type that GE-Hitachi Nuclear Energy (GEH) maintains in confidence and withholds from public disclosure. The information has been handled and classified as proprietary to GEH as indicated in the enclosed affidavit. The affidavit contained in Enclosure 3 identifies that the information contained in Enclosure 1 has been handled and classified as proprietary to GEH. GEH hereby requests that the information in Enclosure 1 be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 9.17. Enclosure 2 is a non-proprietary version of Enclosure 1.

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

Sincerely,



Richard Kingston  
Project Manager, Regulatory Affairs

Project No. 710

DD65  
NRR

Reference:

1. Letter, M. C. Honcharik (USNRC) to R. E. Brown (GEH), "Request for Additional Information RE: General Electric Nuclear Energy (GENE) Topical Report (TR) NEDE-32906P, Supplement 3, *Migration to TRACG04/PANAC11 from TRACG02/PANAC10 for TRACG AOO and ATWS Overpressure Transients*, (TAC No. MD2569) March 5, 2007, MFN 07-144
2. Letter, Martha C. Barillas (USNRC) to David Hinds (GEH), *Request for Additional Information Letter NO. 66 related to ESBWR Design Certification Application*, October 10, 2006, MFN 06-377

Enclosures:

1. GEH Topical Report NEDE-32177P, Revision 3, August 2007, *TRACG Qualification*, GEH Proprietary Information
2. GEH Topical Report NEDO-32177, Revision 3, August 2007, *TRACG Qualification*, Non-proprietary version
3. Affidavit, Richard E. Kingston, dated August 29, 2007

cc: JM Andersen (GNF/Wilmington)  
MC Barillas (NRC)  
FT Bolger (GEH/Wilmington)  
RE Brown (GEH/Wilmington)  
Scott Bowman (GEH/Wilmington)  
PL Campbell (GEH/Washington)  
MJ Colby (GEH/Wilmington)  
MC Honcharik (NRC)  
JC Kinsey (GEH/Wilmington)  
JF Klapproth (GEH/Wilmington)  
MA Lalor (GEH/San Jose)  
GB Stramback (GEH/San Jose)  
PT Tran (GEH/Vallecitos)  
eDRF Section 0000-0072-9149

**ENCLOSURE 3**

**MFN 07-452**

**Affidavit**

# GE-Hitachi Nuclear Energy Americas LLC

## AFFIDAVIT

I, Richard E. Kingston, state as follows:

- (1) I am Project Manager, Regulatory Affairs, GE-Hitachi Nuclear Energy Americas LLC (GEH), 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. GE Topical Report NEDE-32177P, Revision 3, "TRACG Qualification" Class III (GEH Proprietary Information), dated August 2007. The proprietary information is delineated by a [[dotted underline inside double square brackets<sup>131</sup>]] In each case, the superscript notation <sup>131</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, GEH 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" (Exemption 4). The material for which exemption from disclosure is here sought 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 GEH's competitors without license from GEH 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 aspects of past, present, or future GEH customer-funded development plans and programs, resulting in potential products to GEH;
  - d. 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 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 GEH,

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and is in fact so held. The information sought to be withheld has, to the best of my knowledge and belief, consistently been held in confidence by GEH, 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. Its initial designation as proprietary information, and the subsequent steps taken to prevent its unauthorized disclosure, are as set forth in paragraphs (6) and (7) following.

- (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 GEH. Access to such documents within GEH 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 for technical content, competitive effect, and determination of the accuracy of the proprietary designation. Disclosures outside GEH 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) above is classified as proprietary because it contains detailed results and conclusions including the process and methodology for application of TRACG to the performance evaluations of BWRs. This TRACG code and associated methodology has been developed by GEH for over fifteen years, at a cost of several million dollars. The reporting, evaluation, and interpretations of the results, as they relate to the BWR, was achieved at significant cost to GEH.

The development of the evaluation process along with the interpretation and application of the analytical results is derived from the extensive experience database that constitutes a major GEH asset.

- (9) Public disclosure of the information sought to be withheld is likely to cause substantial harm to GEH's competitive position and foreclose or reduce the availability of profit-making opportunities. The information is part of GEH'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 GEH.

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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.

GEH's competitive advantage will be lost if its competitors are able to use the results of the GEH 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 GEH 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 GEH 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 on this 29th day of August, 2007.

  
Richard E. Kingston  
GE-Hitachi Nuclear Energy