GE-Hitachi Nuclear Energy

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MFN 07-526

October 5, 2007

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

Subject: Meeting to Continue Discussions on GSTRM and Fuel Design Criteria

The subject meeting is scheduled for October 17, 2007 at the NRC offices. The meeting will include discussion of GE-Hitachi Nuclear Energy (GEH) proprietary information regarding the above subjects. Enclosure 1 provides an affidavit to support closure of the meeting because discussions will be primarily covering GEH proprietary information.

If you have any questions about the information provided here, please contact me at (910) 675-6604 or Rick Kingston at (910) 675-6192

Sincerely,

James F. Harrison
Vice President, Fuel Licensing
Regulatory Affairs

Project No. 710

Enclosures

1. Affidavit, dated October 5, 2007

cc: MC Honcharik (US NRC)
AA Lingenfelter (GNF/Wilmington)
RE Brown (GEH/Wilmington)
PL Campbell (GEH/Washington)

D065

NRR

ENCLOSURE 1

MFN 07-526

Affidavit

GE-Hitachi Nuclear Energy Americas LLC

AFFIDAVIT

I, James F. Harrison, state as follows:

(1) I am Vice President, Fuel Licensing, 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 Enclosure 1 of MFN 07-040, J.S. Post (GE) to Document Control Desk (NRC), *Part 21 Notification: Adequacy of GE Thermal-Mechanical Methodology, GSTRM*, dated January 19,2007. The proprietary information in Enclosure 1 of MFN 07-040 is identified by [[double underlines inside double square brackets{3}]]. In each case, the superscript notation {3} refer to Paragraph (3) of this affidavit, which provides the basis for the proprietary determination. This information is to be discussed at an October 17, 2007 meeting between NRC and GEH.

(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, 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 design, process, and methodology for application of GSTRM to the design and licensing of GE BWRs. This GSTRM code has been developed by GE, at a total cost in excess of three million dollars. The reporting, evaluation and interpretations of the results, as they relate to the BWR, was achieved at a significant cost to GE.

The development of the methodology 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.

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 5th day of October, 2007.

James F. Harrison

James F. Harrison
Vice President, Fuel Licensing, Regulatory Affairs
GE-Hitachi Nuclear Energy Americas LLC