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

MFN 07-223

Docket No. 52-010

May 3, 2007

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

Subject: **Transmittal of Licensing Topical Reports (LTRs) NEDC-33237P "GE14 for ESBWR – Critical Power Correlation, Uncertainty, and OLMCPR Development", Revision 2 and NEDC-33239P "GE14 for ESBWR Nuclear Design Report", Revision 2**

Revisions to the subject LTRs incorporated responses to Request for Additional Information (RAI) numbers 4.4-26S01, 4.4-27S01, 4.4-28S01 and 4.4-54S01. The referenced RAIs required the following revisions to the subject LTRs:

1. RAI 4.4-26S01 – include the 95/95 Confidence level calculations (submitted in reference 2).
2. RAI 4.4-27S01 – provide quantitative R-factor results for GE14E fuel and GE14 fuel comparison (submitted in reference 3).
3. RAI 4.4-28S01 – revise Table 4-2 (not yet submitted; however, commitment revision provided in reference 1).
4. RAI 4.4-54S01 – include a statement in NEDC-33239P that indicates: "The MLHGR limit used in the calculation of the MFLPD is reported in NEDC-33242P" (submitted in reference 3).

Enclosure 1 contains GNF proprietary information as defined by 10 CFR 2.390. GNF customarily maintains this information in confidence and withholds it from public disclosure. A non-proprietary version is provided in Enclosure 2.

The affidavit contained in Enclosure 3 identifies that the information contained in Enclosure 1 has been handled and classified as proprietary to GNF. GE hereby requests that the information of Enclosure 1 be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 9.17.

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NRO

If you have any questions about the information provided here, please let me know.

Sincerely,

James C. Kinsey

James C. Kinsey
Project Manager, ESBWR Licensing

Reference:

1. MFN 06-405, Letter from Mr. David H. Hinds to U. S. Nuclear Regulatory Commission, *Response to Portion of NRC Request for Additional Information Letter No. 53 Related to ESBWR Design Certification Application – DCD Chapter 4 and GNF Topical Reports – RAI Numbers 4.4-26, 4.4-28 and 4.4-29,* October 18, 2006
2. MFN 06-405, Supplement 1, Letter from Mr. James C. Kinsey to U. S. Nuclear Regulatory Commission, *Response to Portion of NRC Request for Additional Information Letter No. 53 Related to ESBWR Design Certification Application – DCD Chapter 4 and GNF Topical Reports – RAI Number 4.4-26S01,* March 21, 2007
3. MFN 06-297, Supplement 7, Letter from Mr. James C. Kinsey to U. S. Nuclear Regulatory Commission, *Response to Portion of NRC Request for Additional Information Letter No. 53 Related to ESBWR Design Certification Application – DCD Chapter 4 and GNF Topical Reports – RAI Numbers 4.4-2S01, 4.4-27S01, 4.4-31S01 and 4.4-54S01,* April 10, 2007

Enclosures:

1. MFN 07-223 - Transmittal of Licensing Topical Reports (LTRs) NEDC-33237P "GE14 for ESBWR – Critical Power Correlation, Uncertainty, and OLMCPR Development", Revision 2 and NEDC-33239P "GE14 for ESBWR Nuclear Design Report", Revision 2 – GNF Proprietary Information
2. MFN 07-223 - Transmittal of Licensing Topical Reports (LTRs) NEDO-33237 "GE14 for ESBWR – Critical Power Correlation, Uncertainty, and OLMCPR Development", Revision 2 and NEDO-33239 "GE14 for ESBWR Nuclear Design Report", Revision 2 – Non Proprietary Version
3. Affidavit – Jens G. M. Andersen – dated May 3, 2007.

cc: AE Cubbage USNRC (w/enclosures)
AA Lingenfelter GNF/Wilmington (w/o enclosures)
GB Stramback GE/San Jose (w/enclosures)
RE Brown GE/Wilmington (w/o enclosures)
eDRFs 0051-6039 and 0066-9031, respectively

Enclosure 3

MFN 07-223

Affidavit

Global Nuclear Fuel – Americas
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 MFN 07-223, James C. Kinsey (GE) to Document Control Desk (USNRC), *Transmittal of Licensing Topical Reports (LTRs) NEDC-33237P "GE14 for ESBWR – Critical Power Correlation, Uncertainty, and OLMCPR Development", Revision 2 and NEDC-33239P "GE14 for ESBWR Nuclear Design Report", Revision 2, Compact Disc* dated May 3, 2007. The proprietary information in Enclosure 1, *Transmittal of Licensing Topical Reports (LTRs) NEDC-33237P "GE14 for ESBWR – Critical Power Correlation, Uncertainty, and OLMCPR Development", Revision 2 and NEDC-33239P "GE14 for ESBWR Nuclear Design Report", Revision 2, Compact Disc* is identified by [[dotted underline inside double square brackets{3}]]. Figures and other large objects are identified with double square brackets before and after the object. In each case, the superscript notation {3} 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" (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 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 aspects of past, present, or future GNF-A customer-funded development plans and programs, resulting in potential products to GNF-A;

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 GNF-A, 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 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. 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 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 information 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.

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 on this 3rd day of May 2007.

Jens G. M. Andersen
Consulting Engineer, Thermal Hydraulic Methods
Global Nuclear Fuel – Americas, L.L.C.