



HITACHI

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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.

MFN 07-502

Docket No. 52-010

November 9, 2007

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

Subject: **Submittal of Presentation Slides to be made for Support of ESBWR Design Certification Application – Human Factors Engineering**

The purpose of this letter is to submit a copy of the GEH presentation slides used in the NRC audit of Human Factors Engineering (HFE) in Wilmington, NC during July 25 through July 27, 2007.

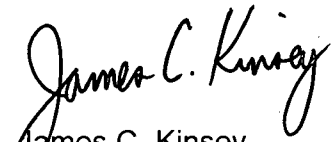
This letter is to support NRC review of the GEH application for final design approval and standard design certification of the ESBWR standard plant design pursuant to 10 CFR Part 52 (Reference 1).

Enclosure 1 contains proprietary information of the type that 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 required by 10 CFR 2.390(b)(1) (Enclosure 3). 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 the non-proprietary version of the presentation slides, which do not contain proprietary information and are suitable for public disclosure.

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If you have any questions or require additional information, please contact me.

Sincerely,



James C. Kinsey
Vice President, ESBWR Licensing

Reference:

1. MFN 05-084 - Letter from Steven A. Hucik, GE, to William D. Beckner, NRC, *General Electric Company Application for Final Design Approval and Design Certification of ESBWR Standard Plant Design*, dated August 24, 2005

Enclosures:

1. Presentation Slides from NRC Audit of HFE (Proprietary)
2. Presentation Slides from NRC Audit of HFE (Non-Proprietary version)
3. Affidavit signed by David H. Hinds (GEH) dated November 9, 2007

cc: AE Cabbage USNRC (with enclosures)
RE Brown GEH/Wilmington (with enclosures)
GB Stramback GEH/San Jose (with enclosures)

Enclosure 3

MFN 07-502

Affidavit

GE Hitachi Nuclear Energy

AFFIDAVIT

I, **David H. Hinds**, state as follows:

- (1) I am General Manager, New Units Engineering, GE Hitachi Nuclear Energy ("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 GEH letter MFN 07-502, Mr. James C. Kinsey to U.S. Nuclear Regulatory Commission, entitled *Submittal of Presentation Slides to be made for Support of ESBWR Design Certification Application – Human Factors Engineering*, dated November 9, 2007. The proprietary information in Enclosure 1, *Presentation Slides from NRC Audit of HFE*, is delineated by a [[underline inside double square brackets^{3}]]. Figures and large equation 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, 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. 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, 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 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 identifies detailed GEH ESBWR methods, techniques, information, procedures and assumptions related to its Human Factors technology. Development of these methods, techniques, information, procedures and assumptions and their application for the design, modification, and analyses methodologies and processes for Human Factors Engineering and Software Management was achieved at a significant cost to GEH and would result in a significant economic and competitive advantage to a competitor.

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.


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 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 9th day of November 2007.



David H. Hinds
GE Hitachi Nuclear Energy