



**HITACHI**

GE Hitachi Nuclear Energy

**Richard E. Kingston**  
Vice President, Methods Licensing  
Regulatory Affairs

**Proprietary Notice**

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

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MFN 07-561  
November 9, 2007

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

Subject: Transmittal of Draft GEH Topical Report NEDC-33173P Supplement 2, Part 1, *Power Distribution Validation for Cofrentes Cycle 13*, October 2007 (TAC No. MD0277)

In Reference 1, GE Hitachi Nuclear Energy (GEH) provided a plan and schedule for obtaining gamma scan data and performing analysis to confirm the accuracy of GEH analytical methods in expanded operating domains. The enclosed Supplement 2 draft report is the first of three parts providing the data. GEH plans to submit the remaining two parts of the report by the end of the first quarter of 2008.

In Reference 2, GEH, at NRC request, agreed to provide additional validation information to support the Findlay-Dix void correlation as applied to advanced fuel designs and expanded operating domains. The first of two parts of a supplemental report regarding this data was transmitted in Reference 3. GEH plans to submit the second part of the report by the end of the first quarter of 2008.

The intent of the information and analyses provided and committed in References 1-3 is to support removal of adders to GEH's SLMCPR and OLMCPR calculation, imposed by the NRC in Safety Evaluations of NEDC-33173P to address uncertainties in GEH analytical methods in expanded operating domains. The Reference 3 transmittal requested NRC review and approval of the first part of the report and removal of the 0.01 OLMCPR adder. However, if additional data is determined necessary prior to NRC's formal review, GEH will provide a schedule for submitting such data.

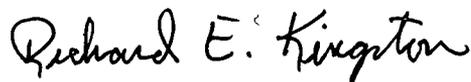
Enclosure 1 contains proprietary information of the type that GEH maintains in confidence and withholds from public disclosure. The information has been handled and classified as

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proprietary to GEH as indicated in the affidavit. The affidavit contained in Enclosure 3, a copy of which is provided in the proprietary version of the report, 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 Mike Lalor at (408) 925-2443 or me.

Sincerely,



Richard E. Kingston  
Vice President, Methods Licensing  
Regulatory Affairs  
GE Hitachi Nuclear Energy

Project No. 710

References:

1. Letter from R.E. Brown (GE) to NRC, *Updated Response to RAI 28-2 – NEDC-33173P (TAC No. MD0277)*, MFN 06-434, dated November 22, 2006.
2. Letter from R.E. Brown (GE) to NRC, *Commitment to Update GE's Void Fraction Data*, MFN 06-435, dated November 3, 2006.
3. Letter from R.E. Kingston (GEH) to NRC, *Transmittal of Supplement 1 to NEDC-33173P, Void Fraction Error Based on 10x10 Fuel Pressure Drop Data (TAC No. MD0277)*, MFN 07-478, dated August 29, 2007.

Enclosures:

1. NEDC-33173P, Supplement 2, Part 1 Draft - Proprietary
2. NEDO-33173, Supplement 2, Part 1 Draft - Non-Proprietary
3. Affidavit

cc: JS Bowman, GEH/Wilmington  
PT Tran, GEH/Vallecitos  
AA Lingenfelter, GNF/ Wilmington  
JGM Andersen, GNF/ Wilmington  
BR Moore, GNF/Wilmington  
RE Brown, GEH/Wilmington  
eDRF Sections 0000-0075-8559/0000-0077-4230

ENCLOSURE 3

MFN 07-561

AFFIDAVIT

# GE Hitachi Nuclear Energy Americas LLC

## AFFIDAVIT

I, **Richard E. Kingston**, state as follows:

- (1) I am Vice President, Methods Licensing, Regulatory Affairs, 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 GEH Licensing Topical Report, NEDC-33173P, Supplement 2, Part 1 Draft, *Power Distribution Validation for Cofrentes Cycle 13*, Class III (Proprietary Information), Revision 0, October 2007. The proprietary information in NEDC-33173P, Supplement 2, Part 1 Draft, is identified by a single dotted line inside double square brackets. [[This sentence is an example<sup>{3}</sup>]]. Figures and large equation objects are identified with double square brackets before and after the object. In each case, the superscript notation <sup>{3}</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, 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 GHE, 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, 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 contains detailed results and conclusions regarding GEH Methods supporting evaluations of the safety-significant changes necessary to demonstrate the regulatory acceptability for the expanded power/flow operating domains including Extended Power Uprates, Constant Pressure Power Uprates, and the MELLLA+ domain for a GEH Boiling Water Reactor ("BWR"), utilizing analytical models and methods, including computer codes, which GEH has developed, obtained NRC approval of, and applied to perform evaluations of transient and accident events in the GEH BWR. The development and approval of these system, component, and thermal hydraulic models and computer codes was achieved at a significant cost to GEH, on the order of several million dollars.

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.

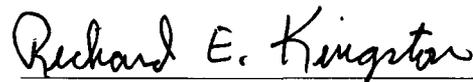
The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

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 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 this 9th day of November 2007.



Richard E. Kingston  
Vice President, Methods Licensing  
Regulatory Affairs  
GE Hitachi Nuclear Energy Americas