



HITACHI

GE Hitachi Nuclear Energy

Proprietary Notice

This letter transmits proprietary information in accordance with 10CFR2.390. Upon removal of Enclosures 1 and 4, the balance of the letter may be considered non-proprietary.

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Vice President, Fuel Licensing,
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MFN 07-619
November 19, 2007

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

Subject: GE Hitachi Nuclear Energy Licensing Topical Report, NEDE-33284P, Revision 1, "Marathon-5S Control Rod Assembly," November 2007 (TAC No. MD3119)

This letter submits GE Hitachi Nuclear Energy (GEH) Licensing Topical Report (LTR), NEDE-33284P, Revision 1, "Marathon-5S Control Rod Assembly" and RAI responses to Reference 1. Per the NRC's request, Revision 1 of the Marathon-5S LTR includes modifications and additions per the RAI responses, as well as changes resulting from the July 30-August 3 NRC Audit at the Wilmington facility. As such, Revision 1 becomes the basis for NRC review and approval.

Please note that Enclosures 1 and 4 contain 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 affidavits. The affidavits contained in Enclosures 3 and 6 identify that the information contained in Enclosures 1 and 4 has been handled and classified as proprietary to GEH. GEH hereby requests that the information in Enclosures 1 and 4 be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 9.17. Enclosures 2 and 5 are non-proprietary versions of Enclosures 1 and 4, respectively.

If you have any questions, please contact Rick Kingston at (910) 675-6192 or myself.

Sincerely,

James F. Harrison
Vice President, Fuel Licensing,
Regulatory Affairs

DOG5
NRR

Project No. 710

References:

1. Letter from M.C. Honcharik (US NRC) to R.E. Brown (GE-Hitachi) Subject: Request For Additional Information RE: GE-Hitachi Nuclear Energy Americas LLC (GHNE) Licensing Topical Report (LTR), NEDE-33284P, Revision 0, "Marathon-5S Control Rod Assembly," (TAC NO. MD3119), July 6, 2007

Enclosures:

1. NEDE-33284P - GEH Proprietary Information (Compact Disk)
2. NEDO-33284 - Non-Proprietary Information
3. Affidavit, dated November 19, 2007.
4. RAI Responses - GEH Proprietary Information (Compact Disk)
5. RAI Responses - Non-Proprietary Information
6. Affidavit, dated November 19, 2007.

cc: MC Honcharik, USNRC
AA Lingenfelter (GNF/Wilmington)
RE Brown (GEH/Wilmington)
PL Campbell (GEH/Washington)
DS Nelson(GEH/Wilmington)

eDRF Section 0000-0056-6788 Revision 1

ENCLOSURE 1 (Compact Disk)

MFN 07-619

GEH Licensing Topical Report, NEDE-33284P, Revision 1,
“Marathon-5S Control Rod Assembly,” November 2007

GEH Proprietary Information

PROPRIETARY INFORMATION NOTICE

This enclosure contains proprietary information of GE Hitachi Nuclear Energy (GEH) and is furnished in confidence solely for the purpose(s) stated in the transmittal letter. No other use, direct or indirect, of the document or the information it contains is authorized. Furnishing this enclosure does not convey any license, express or implied, to use any patented invention or, except as specified above, any proprietary information of GEH disclosed herein or any right to publish or make copies of the enclosure without prior written permission of GEH. The header of each page in this enclosure carries the notation “GEH Proprietary Information.”

GEH proprietary information is identified by a dark red dotted underline inside double square brackets [[This sentence is an example.^{3}]]. Figures and large equation objects containing GEH proprietary information are identified with double square brackets before and after the object. In each case, the superscript notation ^{3} refers to Paragraph (3) of the affidavit in Enclosure 3, which provides the basis for the proprietary determination.

ENCLOSURE 2

MFN 07-619

GEH Licensing Topical Report, NEDO-33284, Revision 1,
“Marathon-5S Control Rod Assembly,” November 2007

Non-Proprietary Version

IMPORTANT NOTICE

This is a non-proprietary version of Enclosure 1 to MFN 07-619, from which the proprietary information removed. Portions of the enclosure that have been removed are indicated by open and closed double square brackets as shown here [[]].

ENCLOSURE 3

MFN 07-619

Affidavit

for

GEH Licensing Topical Report, NEDE-33284P, Revision 1,
“Marathon-5S Control Rod Assembly,” November 2007

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 GE proprietary report, NEDE-33284P, Revision 1, *Marathon-5S Control Rod Assembly*, Class III (GEH Proprietary Information), dated November 2007. GEH proprietary text in NEDE-33284P, Revision 1, is identified by a dark red dotted underline inside double square brackets [[This sentence is an example.^{3}]]. Figures and large equation objects containing GEH proprietary information 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, 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 including the process and methodology for the design and analysis of the GEH Marathon-5S Control Rod Assembly. The Marathon-5S Control Rod Assembly has been developed by GEH at a total cost in excess of a million dollars. The development, evaluation, and design details, as they relate to the BWR, was achieved at a significant cost to GEH.

The development of the Marathon-5S Control Rod Assembly 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.

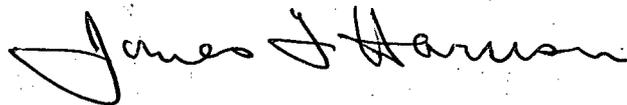
The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

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 19th day of November 2007.



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

ENCLOSURE 4 (Compact Disk)

MFN 07-619

Request For Additional Information RE: GE-Hitachi Nuclear
Energy Americas LLC (GEH) Licensing Topical Report
(LTR), NEDE-33284P, Revision 0

GEH Proprietary Information

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ENCLOSURE 5

MFN 07-619

**Request For Additional Information RE: GE-Hitachi Nuclear
Energy Americas LLC (GEH) Licensing Topical Report
(LTR), NEDE-33284P, Revision 0**

Non-Proprietary Version

IMPORTANT NOTICE

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ENCLOSURE 6

MFN 07-619

Affidavit

for

Request For Additional Information RE: GE-Hitachi Nuclear
Energy Americas LLC (GEH) Licensing Topical Report
(LTR), NEDE-33284P, Revision 0

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 4 of GEH’s letter, MFN 07-619, James F. Harrison (GEH) to Document Control Desk (USNRC), Subject: *GE Hitachi Nuclear Energy Licensing Topical Report, NEDE-33284P, Revision 1, “Marathon-5S Control Rod Assembly,” November 2007*. GEH proprietary text in Enclosure 4, which is entitled “Request For Additional Information RE: GE-Hitachi Nuclear Energy Americas LLC (GEH) Licensing Topical Report (LTR), NEDE-33284P, Revision 0”, is identified by a dark red dotted underline inside double square brackets **[[This sentence is an example.^{3}]]**. Figures and large equation objects containing GEH proprietary information 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, 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:
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 - 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;
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Executed on this 19th day of November 2007.



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