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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 07-616

Docket No. 52-010

November 19, 2007

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

Subject: **Response to Portion of NRC Request for Additional Information Letter No. 85 Related to ESBWR Design Certification Application - RAI Number 21.6-95**

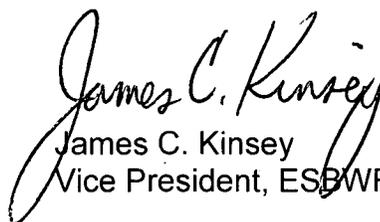
The purpose of this letter is to submit the GE Hitachi Nuclear Energy (GEH) response to the U.S. Nuclear Regulatory Commission (NRC) Request for Additional Information (RAI) sent by NRC letter dated January 19, 2007. GEH response to RAI Number 21.6-95 is addressed in Enclosure 1.

Enclosure 1 contains GEH proprietary information as defined by 10 CFR 2.390. GEH 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 GEH. GEH 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.

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

Sincerely,


James C. Kinsey
Vice President, ESBWR Licensing

DOB8
NRO

Reference:

1. MFN 07-054, Letter from U.S. Nuclear Regulatory Commission to James C. Kinsey, GEH, *Request For Additional Information Letter No. 85 Related To ESBWR Design Certification Application*, dated January 19, 2007

Enclosures:

1. Response to Portion of NRC Request for Additional Information Letter No. 85 Related to ESBWR Design Certification Application - RAI Number 21.6-95 – GEH Proprietary Information
2. Response to Portion of NRC Request for Additional Information Letter No. 85 Related to ESBWR Design Certification Application - RAI Number 21.6-95 – Non-Proprietary Version
3. Affidavit – David H. Hinds, dated November 19, 2007

cc: AE Cabbage USNRC (with enclosure)
GB Stramback GEH/San Jose (with enclosure)
RE Brown GEH/Wilmington (with enclosure)
eDRF 0000-0068-8430

MFN 07-616

Enclosure 2

**Response to Portion of NRC Request for Additional
Information Letter No. 85
Related to ESBWR Design Certification Application
RAI Number 21.6-95**

Non-Proprietary Version

This is a non-proprietary response to RAI 21.6-95 that has the proprietary information removed. Portions of the document that have been removed are indicated by open and closed double brackets as shown here [[]].

NRC RAI 21.6-95

Changes to TRACG04 versions 42 to 45

During the NRC Staff audit of TRACG as applied to ESBWR loss of coolant accident on December 11-15, and 19-20, the audit team did not locate any documented changes from TRACG04 versions 42 to 45. Verify that there were no substantial changes to TRACG04 for these versions.

GEH Response

The requested documentation that could not be located during the NRC Staff audit was subsequently found filed in the "VERSIONS ARCHIVE" for TRACG04A (neFile 0000-0036-9462). The requested information related to changes in the TRACG04 code starting from Version 42 was extracted and is summarized below.

Summary of Version 43 Changes

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Summary of Version 44 Changes

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Summary of Version 45 Changes

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All changes except for the changes in the void coefficient correction model are considered to be typical minor code maintenance items. These changes have been demonstrated to have no or minimal impact on the calculated ESBWR and operating BWR results. [[

]] None of the TRACG04 calculations for ESBWR qualification and plant application are impacted in any significant way.

DCD Impact

No DCD changes will be made in response to this RAI.

No changes to the subject LTR will be made in response to this RAI.

MFN 07-616

Enclosure 3

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”), 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 GEH’s letter, MFN 07-616, Mr. James C. Kinsey to U.S. Nuclear Energy Commission, entitled “*Response to Portion of NRC Request for Additional Information Letter No. 85 Related to ESBWR Design Certification Application – RAI Number 21.6-95*,” dated November 19, 2007. The proprietary information in enclosure 1, which is entitled “*Response to Portion of NRC Request for Additional Information Letter No. 85 Related to ESBWR Design Certification Application – RAI Number 21.6-95 – GEH Proprietary Information*,” is delineated by a [[dotted 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 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 details of GEH's evaluation methodology.

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 on this 19th day of November 2007.



David H. Hinds
GE Hitachi Nuclear Energy