



HITACHI

GE Hitachi Nuclear Energy

James C. Kinsey
Vice President, ESBWR Licensing

PO Box 780 M/C A-55
Wilmington, NC 28402-0780
USA

T 910 675 5057
F 910 362 5057
jim.kinsey@ge.com

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 08-351

Docket No. 52-010

May 08, 2008

U.S. Nuclear Regulatory Commission

Document Control Desk
Washington, D.C. 20555-0001

Subject: Response to Portion of NRC Request for Additional Information Letters No. 120 – Related to ESBWR Design Certification Application – RAI Number 21.6-107

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 the Reference 1 NRC letter. GEH response to RAI Number 21.6-107 is addressed in Enclosures 1, 2, and 3.

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 10 CFR 9.17.

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

Sincerely,

James C. Kinsey
Vice President, ESBWR Licensing

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NRO

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Reference:

1. MFN 07-717, Letter from U.S. Nuclear Regulatory Commission to Robert E. Brown, GEH, *Request For Additional Information Letter No. 120 Related To ESBWR Design Certification Application*, dated December 19, 2007

Enclosures:

1. MFN 08-351 – Response to Portion of NRC Request for Additional Information Letter No. 120 – Related to ESBWR Design Certification Application – RAI Number 21.6-107 – GEH Proprietary Information
2. MFN 08-351 – Response to Portion of NRC Request for Additional Information Letter No. 120 – Related to ESBWR Design Certification Application – RAI Number 21.6-107 – Non-Proprietary Version
3. MFN 08-351 – Response to Portion of NRC Request for Additional Information Letter No. 120 – Related to ESBWR Design Certification Application – RAI Number 21.6-107 – Affidavit

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

eDRF 0000-0083-0603

Enclosure 2

MFN 08-351

Response to Portion of NRC Request for

Additional Information Letter No. 120

Related to ESBWR Design Certification Application

RAI Number 21.6-107

Non-Proprietary Version

NRC RAI 21.6-107

Justify the removal of the figures, or include the updated figures and associated description back into the report

This RAI is concerning Confirmatory Item No. 4 in NEDC-33083P-A, "TRACG Application for ESBWR," March 2005:

GEH had taken the entire Section 7.1 1 (Containment Components) out of the "Component Model" section in Licensing Topical Report, TRACG Model Description (NEDE-32176P), Rev. 1. As a result, the information on Drywell, Wetwell Air Space, Suppression Pool, and Main Vents, such as included in Table 6.5-3 in Rev. 1, was not present in Rev. 2. Though, GEH has put back Section 7.1 1 in Rev. 3, the Rev. 1 sub-section "Model Assessment" has been significantly shortened to "7.1 1.7.7 Model Applicability" in Rev. 3, by removing three figures (Figure 7.1 1-5 Pressure Suppression Test Facility; Figure 7.1 1-6 Drywell Pressure Response; and Figure 7.1 1-7 Vent Flow Transient), and the related description. The staff considers these figures to be important as they showed the facility schematics and dimensions; and compared the TRACG predictions with the measured drywell pressure and vent flow rate data.

Please justify the removal of these figures, or include the updated figures and associated description back into the report.

GEH Response

The Figures 7.11-5, 7.11-6, and 7.11-7 [[
]] This rationale provides justification for not including these Figures in the TRACG model description report.

Items a) and b) below provide suitable alternative locations for these Figures.

a) Figure 7.11-5 of Reference [1] is [[
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b) The TRACG vs. PSTF data comparisons previously reported in Figures 7.11-6 (Drywell pressure) and 7.11-7 (Vent flow rate) of Reference [1] have been [[

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Figure 21.6-107-1 Drywell Pressure Response (PSTF Test 5703-1)

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Figure 21.6-107-2 Vent Flow Transient (PSTF Test 5703-1)

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.

References

1. TRACG Model Description, NEDE-32176P, Revision 1, Class 3, February 1996.
2. TRACG Qualification for SBWR, NEDC-32725P, Class 3, September 1997.
3. MFN 02-053, Enclosure 1, TRACG Qualification for SBWR, NEDC-32725P, Revision 1, August 2002

Enclosure 3

MFN 08-351

Response to Portion of NRC Request for

Additional Information Letter No. 120

Related to ESBWR Design Certification Application

RAI Number 21.6-107

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 08-351, Mr. James C. Kinsey to U.S. Nuclear Energy Commission, entitled “*Response to Portion of NRC Request for Additional Information Letter No. 120 Related to ESBWR Design Certification Application – RAI Number 21.6-107*,” dated May 08, 2008. The proprietary information in enclosure 1, which is entitled “*Response to Portion of NRC Request for Additional Information Letter No. 120 Related to ESBWR Design Certification Application – RAI Number 21.6-107 – 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 8th day of May 2008.

A handwritten signature in black ink, appearing to read 'D. Hinds', with a stylized flourish at the end.

David H. Hinds
GE Hitachi Nuclear Energy