

Fort Calhoun Station
P.O. Box 550
Fort Calhoun, NE 68023

LIC-08-0076
July 2, 2008

U. S. Nuclear Regulatory Commission
Attn: Document Control Desk
Rockville, MD 20852-2738

Reference: Docket No. 50-285

SUBJECT: Transmittal of Affidavit to Withhold Proprietary Information Enclosed in NRC Trip Report Regarding Fort Calhoun Station Sump Strainer Head Loss Testing During February 18-19, 2008

The NRC technical staff observed sump strainer head loss testing being performed for Fort Calhoun Station (FCS) by General Electric (GE) during their trip to the Continuum Dynamics, Inc. (CDI), facility from February 18-19, 2008. The NRC staff observations of this Generic Safety Issue (GSI) 191 sump strainer head loss testing have been documented in a trip report. In an email dated June 3, 2008, the NRC requested that the Omaha Public Power District (OPPD) perform a proprietary review and document any proprietary claims on information in the draft trip report by FCS or any of its contractors associated with the GSI-191 testing (GE and CDI).

Attachment 1 contains the proprietary version of the draft trip report and a corrected proprietary version of the draft trip report where GE-Hitachi Nuclear Energy America, LLC ("GEH") proposed corrections to the NRC verbiage. The proprietary information is identified by a dotted underline inside double square brackets. OPPD requests that Attachment 1, which contains information that is proprietary to GEH, be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 9.17. For information on the proprietary aspects of the items contained in Attachment 1, please reference the affidavit and address any correspondence to Mr. Bob E. Brown, General Manager, Regulatory Affairs, GE Nuclear Energy, PO Box 780, Mail Code A-30, Wilmington, NC, 28401, (910) 675-5242.

The non-proprietary version of the draft NRC trip report and a corrected non-proprietary version of the draft trip report containing GEH proposed corrections to the NRC verbiage are provided in Attachment 2.

AOO!
NRR

Attachment 3 provides the GEH proprietary authorization affidavit supporting the review of the draft NRC trip report regarding FCS strainer testing during February 18-19, 2008. This affidavit will form the basis on which the NRC may withhold the information from public disclosure based on considerations listed in 10 CFR 2.390. The affidavit applies to the NRC's trip report as written and to the trip report with GEH's identified corrections.

If you should have any questions regarding this submittal or need additional information, please contact Mr. Bill R. Hansher at (402) 533-6894.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard P. Clemens', followed by a long horizontal line extending to the right.

Richard P. Clemens
Division Manager
Nuclear Engineering

RPC/DLL/dll

- Attachments:
1. Proprietary Version of Draft NRC Trip Report and Corrected Proprietary Version of Trip Report
 2. Non-Proprietary Version of Draft NRC Trip Report and Corrected Non-Proprietary Version of Trip Report
 3. Affidavit to Withhold Proprietary Information

- c:
- E. E. Collins, NRC Regional Administrator, Region IV (w/o attachments)
 - M. T. Markley, NRC Sr. Project Manager (w/o attachments)
 - J. D. Hanna, NRC Sr. Resident Inspector (w/o attachments)

AFFIDAVIT

GE-Hitachi Nuclear Energy Americas LLC

To Withhold Information Contained in

NRC Trip Report

Regarding Fort Calhoun Station Sump Strainer Head Loss Testing

During February 18-19, 2008

ENCLOSURE 3

GEH Letter, E. Klien (GEH) to T Matthews (Fort Calhoun), dated
June 16, 2008

Affidavit

GE-Hitachi Nuclear Energy Americas LLC

AFFIDAVIT

I, **Tim E. Abney**, state as follows:

- (1) I am Vice President, Services 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 1 of GEH’s letter, E. Klien (GEH) to T. Matthews (Fort Calhoun), dated June 16, 2008, entitled "GEH Proprietary Mark-ups of NRC Staff Trip Report regarding Fort Calhoun Strainer Testing during February 18-19, 2008". GEH proprietary information in Enclosure 1, which is entitled “GEH Proprietary Mark-ups of NRC Staff Trip Report regarding Fort Calhoun Strainer Testing during February 18-19, 2008”, is identified by a dotted underline inside double square brackets. [[This sentence is an example.^{3}]]. 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 of analytical model and method, as well as testing methods, applied to perform evaluations of emergency core cooling system and containment sprays strainers in Boiling Water Reactors ("BWR") and Pressurized Water Reactors. The development and approval of these models and methods 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 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.

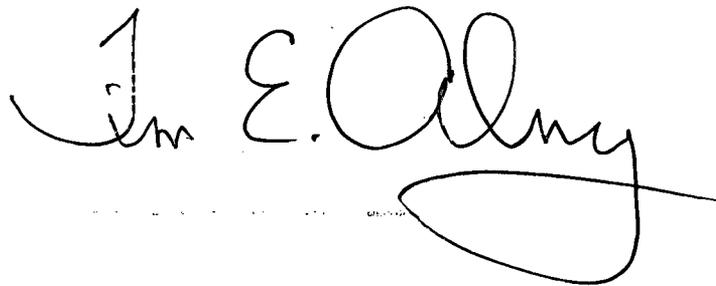
The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

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 16th day of June 2008.

A handwritten signature in black ink, appearing to read "Tim E. Abney". The signature is written in a cursive style with a large, sweeping flourish at the end.

Tim E. Abney
Vice President, Services Licensing
GE-Hitachi Nuclear Energy Americas LLC