



HITACHI

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Proprietary Notice

This letter forwards proprietary information in accordance with 10 CFR § 2.390. Upon the removal of the Enclosures, the balance of this letter may be considered non-proprietary. In addition, information in the Enclosures is applied technology/export controlled in accordance with 10 CFR Part 810.

MFN-08-567

July 10, 2008

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

Subject: GE Hitachi Nuclear Energy Presentations on Advanced Fuel Cycle Facilities

In a closed meeting on April 29, 2008, GE Hitachi Nuclear Energy (GEH) presented information to the NRC Staff regarding advanced fuel cycle facilities concepts. The information is considered proprietary and applied technology/export controlled as described in the attached Affidavit.

Please contact me if you have any questions regarding this information.

Sincerely,



Christopher J. Monetta

Enclosures

Cc: Y. Faraz, NRC (w/encl.)

YGO1
Add: Y. Faraz
ERIDS

GE-Hitachi Nuclear Energy Americas LLC

AFFIDAVIT

I, **Christopher J. Monetta**, state as follows:

- (1) I am the Sr. Vice President, Advanced Fuel Programs, GE-Hitachi Nuclear Energy Americas LLC ("GHNEA"). I have been delegated the function of reviewing the information described in paragraph (2) which is sought to be withheld, and I am authorized to apply for its withholding.
- (2) The information sought to be withheld is contained in Enclosures 1 and 2 of GHNEA's letter, MFN-08-567, Christopher J. Monetta to the NRC Document Control Desk, entitled "GE Hitachi Nuclear Energy Presentations on Advanced Fuel Cycle Facilities," July 9, 2008. The proprietary information in Enclosures 1 and 2, which are GE-Hitachi presentations, are considered in their entirety as proprietary information as well as applied technology/export controlled information (10 CFR Part 810), as part of work supported by Department of Energy Award Number DE-FC01-07NE24504.
- (3) In making this application for withholding of proprietary information of which it is the owner or licensee, GHNEA 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). If at a later time, the Department of Energy and GHNEA determine that the information is no longer considered to be of a proprietary nature, GHNEA will so inform the Nuclear Regulatory Commission.
- (4) Some examples of categories of information that 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 GHNEA's competitors without license from GHNEA 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 GHNEA customer-funded development plans and programs, resulting in potential products to GHNEA;
 - 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 GHNEA, and is in fact so held, and is currently being withheld by the Department of Energy as part of its Global Nuclear Energy Partnership program. The information sought to be withheld has, to the best of my knowledge and belief, consistently been held in confidence by GHNEA, 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. In addition, based on the nature of the information, the enclosures are considered to contain applied technology/export controlled information pursuant to 10 CFR Part 810.
- (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 GHNEA. Access to such documents within GHNEA 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 GHNEA 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 results and details of models, plans, analyses, methods and techniques developed by GHNEA for work under Department of Energy Award Number DE-FC01-07NE24504 associated with advanced fuel cycle facilities. Development of these models, plans, analyses, methods, techniques, and information and their application for the Department of Energy Global Nuclear Energy Partnership was achieved at a substantial cost to GHNEA, on the order of approximately several thousands of dollars, in addition to the funding supported by the Department of Energy.

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 GHNEA asset that is not itself part of the Department of Energy award.

- (9) Public disclosure of the information sought to be withheld is likely to cause harm to GHNEA's competitive position and foreclose or reduce the availability of profit-making

opportunities associated with future commercialization of the advanced fuel cycle facilities. The information is part of GHNEA's comprehensive 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 analyses and planning done with and under the direction of GHNEA expertise.

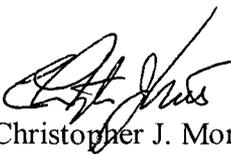
The research, development, engineering, and analytical costs comprise a substantial investment of time and money by GHNEA. The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

Even as part of a Department of Energy program, GHNEA's competitive advantage will be lost if its competitors are able to use the results of the GHNEA 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 for commercialization of advanced fuel cycle facilities.

The value of this information to GHNEA would be lost if the information were disclosed to the public prematurely and while still in the development stage of a Department of Energy program. 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 GHNEA 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 associated with future commercialization of advanced fuel cycle facilities.

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 10th day of July 2008.



Christopher J. Monetta
GE-Hitachi Nuclear Energy Americas LLC