

August 13, 2008

Vice President, Operations
Grand Gulf Nuclear Station
Entergy Operations, Inc.
P. O. Box 756
Port Gibson, MS 39150

SUBJECT: GRAND GULF NUCLEAR STATION, UNIT 1 - REQUEST FOR WITHHOLDING
INFORMATION FROM PUBLIC DISCLOSURE ON THE GEXL97
CORRELATION LICENSE AMENDMENT REQUEST (TAC NO. MD7493)

Dear Sir or Madam:

By letter dated July 21, 2008 (GNRO-2008/00053, Agencywide Documents Access and Management System (ADAMS) Accession No. ML082070087), Entergy Operations, Inc. (EOI), submitted two affidavits, executed by (1) Mr. Anthony P. Reese, Reload Licensing Manager, Fuel Engineering, and (2) Mr. Andrew A. Lingenfelter, Vice President, Fuel Engineering, of Global Nuclear Fuel-Americas, LLC ("GNF-A"), dated July 9 and June 23, 2008, respectively. The two affidavits requested that certain information contained in the following two proprietary topical reports be withheld from public disclosure pursuant to Section 2.390 of Part 2, "Rules of practice for domestic licensing proceedings and issuance of orders," in Title 10 of the *Code of Federal Regulations* (10 CFR 2.390):

GNF S-0000-0086-4470P, "GE14 Thermal Hydraulic Compatibility With Grand Gulf Legacy Fuel," Revision 1, Class III, proprietary version, dated July 2008, Enclosure 3 to the above EOI letter dated July 21, 2008. (Reese affidavit)

NEDC-33383P, "GEXL97 Correlation Applicable to ATRIUM-10 Fuel," Revision 1, Class III, proprietary version, dated June 2008, Enclosure 1 to the above EOI letter dated July 21, 2008. (Lingenfelter affidavit)

Nonproprietary copies of the above two topical reports designated as non-proprietary versions, Class I, are Enclosures 2 and 4 to the above EOI letter dated July 21, 2008. These two topical reports are available to the public, and have been placed in the U.S. Nuclear Regulatory Commission's (NRC's) Public Document Room and added to the ADAMS Public Electronic Reading Room (ADAMS Accession Nos. ML082070089 and ML082070088, respectively).

In the above two affidavits executed by Mr. Reese and Mr. Lingenfelter, GNF-A stated that it considered the information designated proprietary in the above topical reports exempt from mandatory public disclosure for the following reason:

- (3) In making this application for withholding of proprietary information of which it is the owner or licensee, GNF-A 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).

Although the information designated proprietary in the above topical reports was identified in brackets with only the above number 3, the affidavit in accordance with 10 CFR 2.390(b)(1)(iii) listed the following specific reasons as the basis for withholding this information from public disclosure under 10 CFR 2.390:

- (4)a. Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by GNF-A's competitors without license from GNF-A constitutes a competitive economic advantage over other companies.
- (4)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.
- (8) The information identified in [the two topical reports] is classified as proprietary because it contains details of GNF-A's fuel design and licensing methodology.

The development of the methods used in these analyses, along with the testing, development and approval of the supporting methodology was achieved at a significant cost, on the order of several million dollars, to GNF-A or its licensor.

- (9) Public disclosure of the information sought to be withheld is likely to cause substantial, harm to GNF-A's competitive position and foreclose or reduce the availability of profit-making opportunities. The information is part of GNF-A's comprehensive BWR [boiling-water reactor] 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 GNF-A.

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.

GNF-A's competitive advantage will be lost if its competitors are able to use the results of the GNF-A 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 GNF-A 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 GNF-A 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.

Although normally the designated numbers in the affidavit for the specific reasons given for withholding proprietary information from the public should be listed on each page containing such information in topical reports, the NRC staff concludes that marking the pages in the above two topical reports with the "3" and the listing of the specific reasons in the affidavit meets the marking requirements in 10 CFR 2.390(b)(1)(i).

We have reviewed the affidavit and the material designated as proprietary in the topical reports (1) GNF S-0000-0086-4470P, Revision 1, dated July 2008 and (2) NEDC-33383P, Revision 1, dated June 2008, Class III, proprietary version, in accordance with the requirements of 10 CFR 2.390 and, on the basis of the two affidavits and topical reports, have determined that the submitted information sought to be withheld contains proprietary commercial information and should be withheld from public disclosure. Therefore, the information marked as proprietary in topical reports (1) GNF S-0000-0086-4470P, Revision 1, dated July 2008 and (2) NEDC-33383P, Revision 1, dated June 2008, Class III, proprietary version, will be withheld from public disclosure pursuant to 10 CFR 2.390(b)(5) and Section 103(b) of the Atomic Energy Act of 1954, as amended.

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect these topical reports. If the need arises, we may send copies of this information to our consultants working in this area. We will, of course, ensure that the consultants have signed the appropriate agreements for handling proprietary information.

If the basis for withholding this information from public inspection should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You also should understand that the NRC may have cause to review this determination in the future, for example, if the scope of a Freedom of Information Act request includes your information. In all review situations, if the NRC makes a determination adverse to the above, you will be notified in advance of any public disclosure.

If you have any questions regarding this matter, I may be reached at 301-415-1307.

Sincerely,

/RA/

Jack Donohew, Senior Project Manager
Plant Licensing Branch IV
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-416

cc: See next page

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Jack Donohew, Senior Project Manager
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OFFICIAL AGENCY RECORD

Grand Gulf Nuclear Station

(7/2/2008)

cc:

Senior Vice President
Entergy Nuclear Operations
P.O. Box 31995
Jackson, MS 39286-1995

Office of the Governor
State of Mississippi
Jackson, MS 39201

Vice President, Oversight
Entergy Nuclear Operations
P.O. Box 31995
Jackson, MS 39286-1995

Attorney General
Department of Justice
State of Louisiana
P.O. Box 94005
Baton Rouge, LA 70804-9005

Senior Manager, Nuclear Safety
& Licensing
Entergy Nuclear Operations
P.O. Box 31995
Jackson, MS 39286-1995

President
Claiborne County
Board of Supervisors
P.O. Box 339
Port Gibson, MS 39150

Senior Vice President
& Chief Operating Officer
Entergy Operations, Inc.
P.O. Box 31995
Jackson, MS 39286-1995

Richard Penrod, Senior Environmental
Scientist/State Liaison Officer
Office of Environmental Services
Northwestern State University
Russell Hall, Room 201
Natchitoches, LA 71497

Associate General Counsel
Entergy Nuclear Operations
P.O. Box 31995
Jackson, MS 39286-1995

Chief, Energy and Transportation Branch
Environmental Compliance and
Enforcement Division
Mississippi Department of Environmental
Quality
P.O. Box 10385
Jackson, MS 39289-0385

Manager, Licensing
Entergy Operations, Inc.
Grand Gulf Nuclear Station
P.O. Box 756
Port Gibson, MS 39150

Regional Administrator, Region IV
U.S. Nuclear Regulatory Commission
612 E. Lamar Blvd., Suite 400
Arlington, TX 76011-4125

State Health Officer
State Health Board
P.O. Box 1700
Jackson, MS 39215

Senior Resident Inspector
U.S. Nuclear Regulatory Commission
P.O. Box 399
Port Gibson, MS 39150

Attorney General
Asst. Attorney General
State of Mississippi
P.O. Box 22947
Jackson, MS 39225-2947