



**Nebraska Public Power District**

"Always there when you need us"

50.46(a)(3)(ii)

NLS2008070  
August 18, 2008

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

**Subject:** Failure to Include Error in Emergency Core Cooling System Evaluation Model in Annual Report for 2006  
Cooper Nuclear Station, Docket No. 50-298, DPR-46

**Reference:** Letter from Paul Fleming, Nebraska Public Power District, to U.S. Nuclear Regulatory Commission, dated December 28, 2006, "Annual Report of Changes in Emergency Core Cooling System Evaluation Models"

Dear Sir or Madam:

The purpose of this letter is for the Nebraska Public Power District (NPPD) to report an error in an acceptable Emergency Core Cooling System (ECCS) evaluation model that was inadvertently not included in the 2006 annual report for the Cooper Nuclear Station (CNS). The 2006 annual report was submitted pursuant to 10 CFR 50.46(a)(3)(ii) by the Reference.

NPPD recently discovered that an error in an acceptable ECCS evaluation model reported by Global Nuclear Fuel (GNF) in 2006 had not been included in the 2006 annual report for CNS. GNF originally transmitted the error notification to an individual who was no longer an employee of NPPD. As a result the notification was not received by NPPD and not included in the 2006 annual report. This error involved a 0°F change in the value of the Peak Clad Temperature.

The nature of the change is discussed in the General Electric Hitachi (GEH) 10 CFR 50.46 Notification Letter 2006-01, dated July 28, 2006, provided as Enclosure 1. This enclosure contains information considered by GEH to be proprietary as defined by 10 CFR 2.390. GEH therefore requests that this information be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 9.17. As the owner of the proprietary information, GEH has executed an affidavit which identifies that the information has been classified and handled as proprietary, is customarily held in confidence, and has been

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withheld from public disclosure. That affidavit is provided as Enclosure 2. The proprietary information was provided to NPPD in the transmittal that is referenced in the affidavit. Because this is a type of document not normally submitted and the information is predominantly proprietary, a non-proprietary version is not provided.

If you have any questions regarding this issue please call Christine Parkyn, Acting Fuels and Reactor Engineering Manager, at (402) 825-5487.

Sincerely,



David Van Der Kamp  
Licensing Manager

/rr

Enclosures

cc: Regional Administrator (w/o Enclosures)  
USNRC - Region IV

Cooper Project Manager (w/ Enclosures)  
USNRC - NRR Project Directorate IV-1

Senior Resident Inspector (w/o Enclosures)  
USNRC - CNS

CNS Records (w/o Enclosures)

NPG Distribution (w/o Enclosures)

ENCLOSURE 2

VSP-NPP-HP1-08-053

Affidavit

## GE-Hitachi Nuclear Energy Americas LLC

### AFFIDAVIT

I, **James F. Harrison**, state as follows:

- (1) I am Vice President, Fuel 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 GNF letter, VSP-NPP-HP1-08-053, Vickie S. Perry (GNF) to Ms. Christine Parkyn, Nebraska Public Power District, Subject: *10 CFR 50.46 Notification Letter 2006-01, Cooper Nuclear Station, July 28, 2006*, dated July 23, 2008. The GEH proprietary information in Enclosure 1, which is entitled *10 CFR 50.46 Notification Letter 2006-01, Cooper Nuclear Station, July 28, 2006*, is proprietary in its entirety. The header of each page in Enclosure 1 carries the notation “GEH Proprietary Information <sup>(3)</sup>.” The superscript notation <sup>(3)</sup> 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 the detailed results and conclusions from evaluations, utilizing analytical models and methods, including computer codes, which GEH has developed, obtained NRC approval of, and applied to perform evaluations of transient and accident events in the GEH Boiling Water Reactor ("BWR"). The development and approval of these system, component, and thermal hydraulic modes and computer codes were achieved at a significant cost to GE, on the order of several million dollars..

The development of the methodology 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.

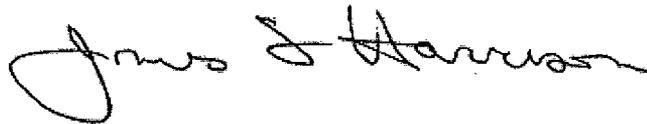
The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

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 23<sup>rd</sup> day of July 2008.



James F. Harrison  
Vice President, Fuel Licensing  
Regulatory Affairs  
GE-Hitachi Nuclear Energy Americas LLC

0.ATTACHMENT 3 LIST OF REGULATORY COMMITMENTS©

Correspondence Number: NLS2008070

The following table identifies those actions committed to by Nebraska Public Power District (NPPD) in this document. Any other actions discussed in the submittal represent intended or planned actions by NPPD. They are described for information only and are not regulatory commitments. Please notify the Licensing Manager at Cooper Nuclear Station of any questions regarding this document or any associated regulatory commitments.

COMMITMENT	COMMITMENT NUMBER	COMMITTED DATE OR OUTAGE
None		