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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 07-321, Supplement 3

Docket No. 52-010

August 18, 2008

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

Subject: **Response to Portion of NRC Request for Additional Information Letter No. 127 Related to ESBWR Design Certification Application – RAI Number 7.2-20, Supplement 1 Part G**

Enclosure 1 contains GEH's response to the subject NRC RAI transmitted via the Reference 1 letter.

Enclosure 1 contains GEH proprietary information. 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 9.17.

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

Sincerely,

Richard E. Kingston

Richard E. Kingston
Vice President, ESBWR Licensing

D068
NRO

Reference:

1. MFN 07-460, Letter from U.S. Nuclear Regulatory Commission to Robert E. Brown, *Request for Additional Information Letter No. 105 Related To ESBWR Design Certification Application*, August 16, 2007

Enclosures:

1. MFN 07-321, Supplement 3 - Enclosure 1 - Response to Portion of NRC Request for Additional Information Letter No. 127 Related To Related to ESBWR Design Certification Application – RAI 7.2-20, Supplement 1 Part G (Proprietary Version)

2. MFN 07-321, Supplement 3 - Enclosure 2 - Response to Portion of NRC Request for Additional Information Letter No. 127 Related To Related to ESBWR Design Certification Application – RAI 7.2-20, Supplement 1 Part G (Non-Proprietary Version)

3. Affidavit

cc:	AE Cubbage	USNRC (with enclosures)
	RE Brown	GEH/Wilmington (with enclosures)
	DH Hinds	GEH/Wilmington (with enclosures)
	eDRF	0000-0087-5108

Enclosure 2

MFN 07-321, Supplement 3

Response to Portion of NRC Request for

Additional Information Letter No. 127

Related to ESBWR Design Certification Application

RAI 7.2-20, Supplement 1 Part G

(Non-Proprietary Version)

RAI 7.2-20 Supplement 1 Part G

G. The staff finds this response to be inconsistent with general adaption practices and the uncertainly analysis provided in NEDE-33197P. First, the response indicates that [[ ]], is this practice proposed for the ESBWR? Second, the use of [[ ]], therefore the uncertainty analysis should consider LPRM uncertainties associated with LPRM drift between calibrations. Please clarify this response.

GEH Response

The power monitoring system for the ESBWR will perform calibration of the LPRMs only [[ ]] as outlined in the response to RAI 7.2-59 S02 (submitted via MFN 07-613 Supplement 1, dated July 3, 2008). The current power monitoring function of the LPRMs is maintained for the ESBWR operation.

The power monitoring system for the ESBWR will perform calibration of the GTs only [[

]].

It is worthy to note that GEH is [[

]]

There is a minimum monitoring configuration (described in the response to RAI 7.2-66 submitted via MFN 08-621, dated August 18, 2008) that is required to maintain the uncertainty in the LPRM calibration update that is explained in the response to RAI 7.2-18 S02 (submitted via MFN 07-544, Supplement 1, dated August 18, 2008). Also, prior to a LPRM calibration, specific

The uncertainty values associated with LPRM calibration update and failed GT instruments are also discussed in the response to the RAI 7.2-18 S02. [[

]]

DCD Impact

No changes will be made to the DCD.

The description of the calibration process will be included in NEDE-33197P, Revision 2.

MFN 07-321, Supplement 3

Enclosure 3

Affidavit

GE-Hitachi Nuclear Energy LLC

AFFIDAVIT

I, Larry J. Tucker, state as follows:

(1) I am the ESBWR Engineering Manager, 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 letter MFN 07-321, Supplement 3, Mr. Richard E. Kingston to U.S. Nuclear Regulatory Commission, "Response to Portion of NRC Request for Additional Information Letter No. 127 Related to ESBWR Design Certification Application – RAI Number 7.2-20, Supplement 1 Part G," dated August 18, 2008. GEH Proprietary Information is identified in Enclosure 1, "Response to Portion of NRC Request for Additional Information Letter No. 127 Related To Related to ESBWR Design Certification Application – RAI Number 7.2-20, Supplement 1 Part G (Proprietary Version)," in dark red font and a dashed underline inside double square brackets. [[This sentence is an example.{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 of the proprietary determination. Specific information that is not so marked is not GEH proprietary. A non-proprietary version of this information is provided in Enclosure 2, "Response to Portion of NRC Request for Additional Information Letter No. 127 Related To Related to ESBWR Design Certification Application – RAI Number 7.2-20, Supplement 1 Part G (Non-Proprietary Version)."

(3) In making this application for withholding of proprietary information of which it is the owner, 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, by the manager of the cognizant marketing function (or his delegate), and by the Legal Operation, 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 identifies the detailed GEH ESBWR methods, techniques, information, procedures, and assumptions related to its gamma thermometer system.

The development of the models and methodologies along with their application 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 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 18t^{h} day of August 2008.

Larry J. Tucker
GE-Hitachi Nuclear Energy LLC.