



HITACHI

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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 08-642

Docket No. 52-010

August 20, 2008

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

Subject: Transmittal of CONTAIN Computer Code Input/Output Files for Reactor Building and Control Building Heat-Up Calculation - Control Building and Reactor Building File Directories

Attached are compact discs (CDs) with GE Hitachi Nuclear Energy (GEH) CONTAIN computer code input and output files for the reactor building and control building heat-up calculations. During discussions with NRC Staff regarding reactor building and control building heat-up during accident conditions, the Staff requested that GEH provide the input and output files for the heat-up calculation in order to confirm GEH's results.

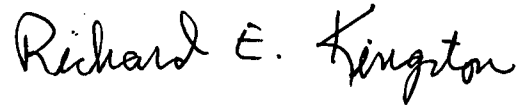
Enclosure 1 is the CDs with the subject input and output files that are entirely GEH proprietary information as defined by 10 CFR 2.390. GEH customarily maintains this information in confidence and withholds it from public disclosure. A non-proprietary version of the files is not available as the files are entirely proprietary.

The affidavit contained in Enclosure 2 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.

D068
NRO

Sincerely,

Handwritten signature of Richard E. Kingston in black ink.

Richard E. Kingston
Vice President, ESBWR Licensing

Enclosures:

1. CONTAIN Computer Code Input/Output Files for Reactor Building and Control Building Heat-Up Calculation - Control Building and Reactor Building File Directories – Compact Discs – GEH Proprietary Information
2. Affidavit – Larry J. Tucker – Executed August 20, 2008

cc: AE Cabbage USNRC (with enclosure)
RE Brown GEH/Wilmington (with enclosure)
eDRF 0000-0084-3844 R1

Enclosure 2

MFN 08-642

Affidavit – Larry J. Tucker

Executed August 20, 2008

GE-Hitachi Nuclear Energy Americas LLC

AFFIDAVIT

I, **Larry J. Tucker**, state as follows:

- (1) I as Manager, ESBWR Engineering, 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 to be discussed and sought to be withheld is delineated in the letter from Mr. Richard E. Kingston to U.S. Nuclear Regulatory Commission, entitled "Transmittal of CONTAIN Computer Code Input/Output Files for Reactor Building and Control Building Heat-Up Calculation - Control Building and Reactor Building File Directories," dated August 20, 2008. The Compact Discs in Enclosure 1, which is entitled *MFN 08-642 CONTAIN Computer Code Input/Output Files for Reactor Building and Control Building Heat-Up Calculation – Control Building and Reactor Building File Directories – Compact Discs – GEH Proprietary Information*, contains entirely proprietary information. Paragraph (3) of this affidavit 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 compact discs identified in paragraph (2) above are classified as entirely proprietary because they contain computer code input and output files utilized in developing heat-up calculations for assessing temperature increases in the reactor building and the control building during accident conditions. Development of this heat-up calculation was achieved at a significant cost to GEH, on the order of hundred thousand dollars.
- (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.

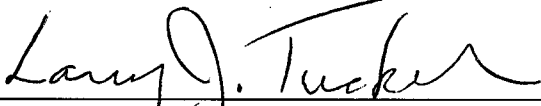
The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

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 20th day of August 2008.



Larry J. Tucker
GE-Hitachi Nuclear Energy Americas LLC

Enclosure 1

MFN 08-642

CONTAIN Computer Code Input/Output Files for Reactor Building and Control Building Heat-Up Calculation - Control Building and Reactor Building File Directories

Compact Discs

GEH Proprietary Information

PROPRIETARY INFORMATION NOTICE

These compact discs contain GE Hitachi Nuclear Energy (GEH) proprietary information and are furnished in confidence solely for the purpose(s) stated in the transmittal letter. No other use, direct or indirect, of the document or the information it contains is authorized. Furnishing this enclosure does not convey any license, expressed or implied, to use any patented invention or, except as specified above, any proprietary information of GEH disclosed herein or any right to publish or make copies of the enclosure without prior written permission of GEH. Paragraph (3) of the enclosed affidavit provides the basis for the proprietary determination.