



HITACHI

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MFN 08-741

Docket No. 52-010

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U.S. Nuclear Regulatory Commission
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**Subject: Response to Portion of NRC Request for Additional Information
Letter No. 228 Related to the ESBWR Design Certification
Application – Nuclear Boiler System - RAI Number 5.2-73**

The purpose of this letter is to submit the GE Hitachi Nuclear Energy (GEH) response to the U.S. Nuclear Regulatory Commission (NRC) Request for Additional Information (RAI) sent by NRC letter 228 dated August 6, 2008 (Reference 1).

Enclosure 1 contains the GEH response to RAI Number 5.2-73.

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

Sincerely,

Richard E. Kingston
Vice President, ESBWR Licensing

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NKO

Reference:

1. MFN 08-623, Letter from U.S. Nuclear Regulatory Commission to Robert E. Brown, GEH, *Request For Additional Information Letter No. 228 Related To ESBWR Design Certification Application*, dated August 6, 2008

Enclosure:

1. Response to Portion of NRC Request for Additional Information Letter No. 228 Related to ESBWR Design Certification Application – Nuclear Boiler System- RAI Number 5.2-73

cc: AE Cabbage USNRC (with enclosure)
 RE Brown GEH/Wilmington (with enclosure)
 DH Hinds GEH/Wilmington (with enclosure)
 eDRF 0000-0091-1680- RAI 5.2-73

Enclosure 1

MFN 08-741

**Response to Portion of NRC Request for
Additional Information Letter No. 228
Related to ESBWR Design Certification Application**

Nuclear Boiler System

RAI Number 5.2-73

NRC RAI 5.2-73:

The last sentence in Subsection 5.2.1.2 in ESBWR DCD (Revision 5) Tier 2 states that annulled cases are considered active for equipment that has been contractually committed to fabrication prior to annulment. The NRC regulations in 10 CFR 50.55a specify conditions for the use of ASME Code Cases. GEH is requested to clarify that the requirements in 10 CFR 50.55a take precedence over the discussion in Subsection 5.2.1.2 on the use of ASME Code Cases.

GEH Response:

The statement quoted from DCD Tier 2, Revision 5, Subsection 5.2.1.2, "Applicable Code Cases," is a restatement of 10 CFR Part 50.55a, Paragraph (b)(4)(iii), which specifically addresses the use of annulled Code cases. The DCD statement in Subsection 5.2.1 discusses how the ESBWR meets the requirements of GDC 1 and 10 CFR 50.55a.

Per 10 CFR Part 50.55a, Paragraph (b)(4)(iii), an annulled Code case may continue to be applied, if it was applied prior to being listed as annulled in RG 1.84. It further allows the application of the annulled Code case until the applicant or licensee updates the Code of Record for the component being constructed.

DCD Tier 2, Revision 5, Subsection 5.2.1.2, third paragraph, last sentence accurately restates the criteria in 10CFR 50.55a(b)(4)(iii) regarding the annulled Code case application. The precedence of GDC 1 and 10CFR 50.55a requirements regarding the application of Code cases is inherent in the Subsection 5.2.1 discussion.

DCD Impact:

No DCD changes will be made in response to this RAI.