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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 08-691

Docket No. 52-010

October 17, 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. 208 RELATED TO NEDE-33338P, "ESBWR FEEDWATER TEMPERATURE OPERATING DOMAIN FOR TRANSIENT AND ACCIDENT ANALYSIS" – Operating Limit Minimum Critical Power Ratio – RAI Number 15.2-40**

The purpose of this letter is to submit the GE Hitachi Nuclear Energy (GEH) responses to the U.S. Nuclear Regulatory Commission (NRC) Request for Additional Information (RAI) sent by NRC letter dated June 3, 2008. GEH response to RAI Number 15.2-40 is addressed in Enclosures 1 and 2.

Enclosure 1 contains GEH proprietary information as defined by 10 CFR 2.390. GEH customarily maintains this information in confidence and withholds it from public disclosure. Enclosure 2 is a non-proprietary version that is suitable for public disclosure.

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

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NRO

Reference:

1. MFN 08-508, Letter from U.S. Nuclear Regulatory Commission to Robert E. Brown, GEH, *Request For Additional Information Letter No. 208 RELATED TO NEDE-33338P, "ESBWR FEEDWATER TEMPERATURE OPERATING DOMAIN FOR TRANSIENT AND ACCIDENT ANALYSIS*, dated June 3, 2008

Enclosures:

1. Response to Portion of NRC Request for Additional Information Letter No. 208 RELATED TO NEDE-33338P, "ESBWR FEEDWATER TEMPERATURE OPERATING DOMAIN FOR TRANSIENT AND ACCIDENT ANALYSIS – Operating Limit Minimum Critical Power Ratio – RAI Number 15.2-40 – GEH Proprietary Information
2. Response to Portion of NRC Request for Additional Information Letter No. 208 RELATED TO NEDE-33338P, "ESBWR FEEDWATER TEMPERATURE OPERATING DOMAIN FOR TRANSIENT AND ACCIDENT ANALYSIS – Operating Limit Minimum Critical Power Ratio – RAI Number 15.2-40 – Public Version
3. Affidavit – Larry J. Tucker

cc: AE Cubbage USNRC (with enclosures)
RE Brown GEH/Wilmington (with enclosures)
DH Hinds GEH/Wilmington (with enclosures)
eDRFs 0000-0088-5559

Enclosure 2

MFN 08-691

Response to NRC Request for Additional Information Letter No. 208 RELATED TO NEDE-33338P, "ESBWR FEEDWATER TEMPERATURE OPERATING DOMAIN FOR TRANSIENT AND ACCIDENT ANALYSIS"

Operating Limit Minimum Critical Power Ratio (OLMCPR)

RAI Numbers 15.2-40

Public Version

NRC RAI 15.2-40:

Describe how limiting power shapes and rod patterns are determined for the ESBWR at any allowed operating point to ensure that the OLMCPR includes adequate margin to account for operational flexibility.

In defining cycle specific operating limit minimum critical power ratios (OLMCPRs), limiting transient ΔCPRs are calculated using TRACG. For operating reactors, initial conditions are set to limiting control rod patterns to develop enveloping power shapes for the evaluations (i.e. MOC to EOC HBB or black and white rod patterns).

Please describe how limiting power shapes and rod patterns are determined for the ESBWR at any allowed operating point to ensure that the OLMCPR includes adequate margin to account for operational flexibility.

Please evaluate analysis assumptions for conservatism considering effects such as SCRAM worth and transient varying axial power shape to justify that the cycle analyses are adequately conservative to bound potential operating conditions.

GEH Response:

A) *Please describe how limiting power shapes and rod patterns are determined for the ESBWR at any allowed operating point to ensure that the OLMCPR includes adequate margin to account for operational flexibility.*

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B) *Please evaluate analysis assumptions for conservatism considering effects such as SCRAM worth and transient varying axial power shape to justify that the cycle analyses are adequately conservative to bound potential operating conditions.*

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The 3D transient neutron kinetics code that is included in TRACG calculates the SCRAM worth based on the assumed control rod pattern in place at the start of the event analyses. The different bounding core patterns are evaluated for the pressurization and cool-down events. Therefore, TVAPS is already inherently part of the ESBWR TRACG 3D transient neutron kinetics.

DCD Impact:

No changes to the subject LTR will be made in response to this RAI.

Enclosure 3

MFN 08-691

Affidavit

GE-Hitachi Nuclear Energy Americas LLC

AFFIDAVIT

I, Larry J. Tucker, state as follows:

(1) I am 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 "*Response to Portion of NRC Request for Additional Information Letter No. 208 RELATED TO NEDE-33338P, "ESBWR FEEDWATER TEMPERATURE OPERATING DOMAIN FOR TRANSIENT AND ACCIDENT ANALYSIS" – Operating Limit Minimum Critical Power Ratio (OLMCPR) – RAI Number 15.2-40,*" dated October 17, 2008. The information in Enclosure 1, which is entitled "*Response to Portion of NRC Request for Additional Information Letter No. 208 RELATED TO NEDE-33338P, "ESBWR FEEDWATER TEMPERATURE OPERATING DOMAIN FOR TRANSIENT AND ACCIDENT ANALYSIS" – Operating Limit Minimum Critical Power Ratio (OLMCPR) – RAI Number 15.2-40" – GEH Proprietary Information,* contains proprietary information, and is identified by [[dotted underline inside double square brackets$^{\{3\}}$]]. Figures and other large 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 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 OLMCPR development methodology developed by GEH. Development of this OLMCPR methodology was achieved at a significant cost to GEH, and is considered 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 17th day of October 2008.

Larry J. Tucker
GE-Hitachi Nuclear Energy Americas LLC