



**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 08-169, Supplement 2

Docket No. 52-010

December 15, 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. 178 Related To NEDE-33295P, "Cyber Security Program Plan" – RAI Number 7.1-80, Supplement 1 -- Revised**

GEH would like to retract the response to RAI 7.1-80 Supplement 1 submitted via the Reference 1 letter. After additional evaluation, GEH has revised the position on remote access to safety systems as presented in NEDE-33295P, *ESBWR Cyber Security Program Licensing Topical Report (LTR)*. Enclosure 1 contains the revised response to the subject RAI. The subject NRC RAI was transmitted via the Reference 2 letter.

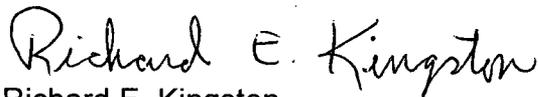
Enclosure 2 contains GEH proprietary information. GEH customarily maintains this information in confidence and withholds it from public disclosure. A non-proprietary version is provided in Enclosure 3.

The affidavit contained in Enclosure 4 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.

DOB  
HRO

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

Sincerely,



Richard E. Kingston  
Vice President, ESBWR Licensing

References:

1. MFN 08-169, Supplement 1, Letter from Richard E. Kingston to U.S. Nuclear Regulatory Commission, *Response to Portion of NRC Request for Additional Information Letter No. 178 Related To NEDE-33295P, "Cyber Security Program Plan"* – RAI Number 7.1-80, Supplement 1, August 1, 2008
2. MFN 08-460, Letter from U.S. Nuclear Regulatory Commission to Robert E. Brown, *Request for Additional Information Letter No. 178 Related To ESBWR Design Certification Application*", May 6, 2008

Enclosures:

1. Response to Portion of NRC Request for Additional Information Letter No. 178 Related To NEDE-33295P, "Cyber Security Program Plan" – RAI Number 7.1-80, Supplement 1 -- Revised -
2. Response to Portion of NRC Request for Additional Information Letter No. 178 Related To NEDE-33295P, "Cyber Security Program Plan" – RAI Number 7.1-80, Supplement 1 -- Revised – GEH Proprietary Information
3. Response to Portion of NRC Request for Additional Information Letter No. 178 Related To NEDE-33295P, "Cyber Security Program Plan" – RAI Number 7.1-80, Supplement 1 -- Revised - Non-Proprietary Version
4. Affidavit – David H. Hinds – December 15, 2008

cc:

AE Cabbage	USNRC (with enclosure)
RE Brown	GEH/Wilmington (with enclosure)
DH Hinds	GEH/Wilmington (with enclosures)
eDRF Section:	0000-0092-0858

**MFN 08-169, Supplement 2**

**Enclosure 1**

**Response to Portion of NRC Request for Additional  
Information Letter No. 178 Related To NEDE-33295P, "Cyber  
Security Program Plan"**

**RAI Number 7.1-80, Supplement 1 -- Revised --**

**NRC RAI 7.1-80 Supp 1**

*This RAI refers to LTR NEDE-33295P.*

*In the original RAI, the staff requested that GEH specifically verify that there will be no remote access to any safety systems. This part of the RAI was not addressed in the GEH response.*

**GEH Response**

In the GEH response to RAI 7.1-80, as per the request of the NRC, we will include the following clarifying statements in NEDE-33295P: "There will be no remote access to safety-related systems."

For further clarification on this same subject, the original response in Enclosure 1 is also being updated. The definition of "Remote Access" was modified in NEDE-33295P, *ESBWR Cyber Security Program Licensing Topical Report (LTR)*, Appendix A – Definitions, as follows:

"Communications with assets that are outside the perimeter of the Security Level being addressed."

The definition of remote access is being modified in Enclosure 2 to address the consideration of access by computer, node or network resource and security levels, as follows:

"Remote access is the ability to access a computer, node, or network resource located within an identified defensive level from a computer or node that is physically located in a less secure defensive level."

Communications between security levels are addressed through the controls identified in Section 4 of NEDE-33295P as part of the GEH scope of supply, which complies with RG 1.152, Rev. 1 and DI&C ISG-04, Section 1.

**DCD / Licensing Topical Report Impact**

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

LTR NEDE-33295P, Rev 0, will be revised as noted in the attached markup.

**MFN 08-169, Supplement 2**

**Enclosure 3**

**Response to Portion of NRC Request for Additional  
Information Letter No. 178 Related To NEDE-33295P,  
“Cyber Security Program Plan”**

**RAI Number 7.1-80, Supplement 1 -- Revised –  
Non-Proprietary Version**

Non-Proprietary Version

**NON-PROPRIETARY INFORMATION NOTICE**

This is a non-proprietary version of the document RAI 7.1-80 S01 markups. Portions that have been removed are identified by white space within double square brackets, as shown here [[ ]].

The revised Section 4.1.2 in Cyber Security LTR (NEDE-33295), Revision 1, will read as follows:

**4.1.2 Communication Pathways**

[[

]]

The revised Appendix A (Excerpt only) in Cyber Security LTR (NEDE-33295), Revision 1, will read as follows:

**NEDE-33295-P Portion of Appendix A - Definitions**

<b>Term</b>	<b>Definition</b>
Remote Access	<p><del>Communication with assets that are outside the perimeter of the Security Level being addressed.</del></p> <p><u>Remote access is the ability to access a computer, node, or network resource located within an identified defensive level from a computer or node that is physically located in a less secure defensive level.</u></p>

**MFN 08-169 Supplement 2**

**Enclosure 4**

**Affidavit**

# GE-Hitachi Nuclear Energy Americas LLC

## AFFIDAVIT

I, **David H. Hinds**, state as follows:

- (1) I am the General Manager, New Units Engineering, 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 2 of GEH letter MFN 08-169, Supplement 2, Mr. Richard E. Kingston to U.S. Nuclear Regulatory Commission, "Response to Portion of NRC Request for Additional Information Letter No. 178 Related To NEDE-33295P, "Cyber Security Program Plan" – RAI Number 7.1-80, Supplement 1 -- Revised," dated December 15, 2008. GEH Proprietary Information is identified in Enclosure 2, "Response to Portion of NRC Request for Additional Information Letter No. 178 Related To NEDE-33295P, "Cyber Security Program Plan" – RAI Number 7.1-80, Supplement 1 -- Revised - Proprietary Version," in dark red font and a dashed underline inside double square brackets. ~~[[This sentence is an example.<sup>(3)</sup>]]~~ Figures and large equation objects are identified with double square brackets before, and after the object. In each case, the superscript notation <sup>(3)</sup> 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 3, "Response to Portion of NRC Request for Additional Information Letter No. 178 Related To NEDE-33295P, "Cyber Security Program Plan" – RAI Number 7.1-80, Supplement 1 -- Revised - 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 detailed GEH ESBWR procedures and assumptions related to its cyber security program. The information is consistent in its scope of application with information in NEDE-33295P, "Cyber Security Program Plan," October 2007, which is maintained as proprietary.

The development of the evaluation process along with the interpretation and application of the regulatory guidance 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 15<sup>th</sup> day of December 2008.



David H. Hinds  
GE-Hitachi Nuclear Energy Americas LLC