February 11, 2009

Mr. Robert E. Brown
Senior Vice President, Regulatory Affairs
GE Hitachi Nuclear Energy
3901 Castle Hayne Rd MC A-50
Wilmington, NC 28401

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE (MFN 08-949)

Dear Mr. Brown:

By letter dated December 15, 2008, and associated affidavit executed on December 15, 2008, by David H. Hinds, Mr. Hinds indicated that the information contained in "Response to Portion of NRC Request for Additional Information Letter No. 106 – Related to ESBWR Design Certification Application – RAI Number 4.4-39 Supplement 2," should be withheld as proprietary. GE-Hitachi Nuclear Energy (GEH) requested that this information be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.390.

A nonproprietary copy of this information was provided in Enclosure 2 and was placed in the NRC Public Document Room and added to the Agencywide Documents Access and Management System Public Electronic Reading Room (ADAMS Accession No. ML083520263).

The affidavit stated that the submitted information should be considered exempt from mandatory public disclosure for the following reasons:

1. The information 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; and

2. The 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.

We have reviewed the December 15, 2008, letter and affidavit in accordance with the requirements of 10 CFR 2.390 and, on the basis of the statements contained therein, have determined that the information sought to be withheld contains proprietary commercial information and should be withheld from public disclosure. Therefore, the submitted information marked as proprietary will be withheld from public disclosure pursuant to 10 CFR 2.390(b)(5) and Section 103(b) of the Atomic Energy Act of 1954, as amended.

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the document. If the need arises, we may send copies of this information to our consultants working in this area. We will, of course, ensure that the consultants have signed the appropriate agreements for handling proprietary information.

If the basis for withholding this information from public inspection should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You also should understand that the NRC may have cause to review this determination in the future, for example, if the scope of a Freedom of Information Act request includes your information. In all review situations, if the NRC makes a determination adverse to the above, you will be notified in advance of any public disclosure.

If you have any questions regarding this matter, I may be reached at 301-415-8484.

Sincerely,

/RA/

Bruce M. Bavol, Project Manager
ESBWR/ABWR Projects Branch 1
Division of New Reactor Licensing
Office of New Reactors

Docket No. 52-010

cc: See next page

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