

February 26, 2009

Mr. Scott P. Murray, Manager  
Licensing and Liabilities COE  
Global Nuclear Fuel  
P.O. Box 780 M/C K-84  
Wilmington, NC 28402

SUBJECT: ACCEPTANCE OF ISA SUMMARY UPDATES AND REQUEST FOR  
WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE PER 10 CFR  
70.72(d) (TAC NO. L32818)

Dear Mr. Murray:

By letter dated January 30, 2009, you submitted an update to your Integrated Safety Analysis Summary. You requested that Attachments 1, 2, 3, and 4 to the letter be withheld from public disclosure pursuant to Regulatory Issue Summary 2005-31 in that they contain security-related sensitive information, and that Attachment 4 be withheld from public disclosure in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.390 in that it also contains proprietary information. You provided an affidavit, executed by Louis M. Quintana on January 30, 2009, stating that Attachment 4 contains proprietary commercial information that should be considered exempt from mandatory public disclosure for the following reasons:

(1) I, the Program Manager, EHS Licensing, GE-Hitachi Global Laser Enrichment LLC ("GLE"), 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 Attachment 4 of Global Nuclear Fuel-Americas, LLC (GNF-A) letter, SPM-09-003, S. P. Murray to Document Control Desk, U.S. Nuclear Regulatory Commission, entitled "Revised ISA Summary per 10 CFR 70.72(d)", January 30, 2009. The proprietary information in Attachment 4, which is entitled "Updated ISA Summary for the Laser Enrichment Test Loop, Rev. 2", is in general also sensitive security-related information and is commingled with other sensitive, security-related and export-controlled information. Pages of the Attachment 4 contain the warning header of "GLE Proprietary Information, Export Controlled\*, and Security-Related Information, Withhold from Public Disclosure per 10 CFR 2.390 - \*Distribution Limited per CFR 810.8(b)&(c)". Paragraph (3) of this affidavit below 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, GLE 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 qualifies 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 GLE's competitors without license from GLE 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 or process; c. Information which reveals aspects of past, present, or future GLE customer-funded development plans and programs, resulting in potential products to GLE; 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., (4)b., and (4)d. 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 GLE 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 GLE, 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 GLE. Access to such documents within GLE 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 GLE 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 nonpublic details of uranium enrichment technology and of safety analyses of equipment to be used to develop and test such technologies, both developed by GLE. Development of this technology and these methods, techniques, and information and their application for the GLE uranium enrichment program has been and is being achieved at a significant cost to GLE, on the order of several millions of dollars. The development of the enrichment technology, the safety analysis techniques, and the analyses themselves are derived from the extensive experience database that constitutes a major GLE asset.

(9) Public disclosure of the information sought to be withheld is likely to cause substantial harm to GLE's competitive position and foreclose or reduce the availability of profit-making opportunities. The information is part of GLE's comprehensive 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 experience and includes development of the expertise to determine and apply the appropriate safety 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 GLE. The precise value of the expertise to devise a uranium enrichment process is difficult to quantify, but it clearly is substantial. GLE's competitive advantage will be lost if its competitors are able to use the results of the GLE experience to develop 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 GLE 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 GLE of the opportunity to exercise its competitive advantage to seek an adequate return on its large investment in developing and obtaining this very valuable technology.

We have reviewed your application and submittal in accordance with the requirements of 10 CFR 2.390 and, on the basis of your statements, have determined that the submitted information sought to be withheld contains proprietary commercial information. Therefore, the submitted information marked as proprietary will be withheld from public disclosure pursuant to 10 CFR 2.390(b), 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 documents.

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 should also 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 letter, please contact me at 301-492-3113 or via e-mail to [Mary.Adams@nrc.gov](mailto:Mary.Adams@nrc.gov).

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the NRC Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web Site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

*/RA/*

Mary T. Adams, Senior Project Manager  
Fuel Facilities Licensing Directorate  
Division of Fuel Cycle Safety  
and Safeguards  
Office of Nuclear Material Safety  
and Safeguards

Docket: 70-1113  
License: SNM-1097

analyses done with NRC-approved methods. The research, development, engineering, analytical and NRC review costs comprise a substantial investment of time and money by GLE. The precise value of the expertise to devise a uranium enrichment process is difficult to quantify, but it clearly is substantial. GLE's competitive advantage will be lost if its competitors are able to use the results of the GLE experience to develop 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 GLE 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 GLE of the opportunity to exercise its competitive advantage to seek an adequate return on its large investment in developing and obtaining this very valuable technology.

We have reviewed your application and submittal in accordance with the requirements of 10 CFR 2.390 and, on the basis of your statements, have determined that the submitted information sought to be withheld contains proprietary commercial information. Therefore, the submitted information marked as proprietary will be withheld from public disclosure pursuant to 10 CFR 2.390(b), 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 documents.

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 should also 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 letter, please contact me at 301-492-3113 or via e-mail to [Mary.Adams@nrc.gov](mailto:Mary.Adams@nrc.gov).

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the NRC Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web Site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

*/RA/*

Mary T. Adams, Senior Project Manager  
 Fuel Facilities Licensing Directorate  
 Division of Fuel Cycle Safety  
 and Safeguards  
 Office of Nuclear Material Safety  
 and Safeguards

Docket: 70-1113  
 License: SNM-1097

**DISTRIBUTION:**

FCFB r/f R. Gibson, RII M. Baker

**ML090500788**

<b>OFC</b>	<b>FFLD</b>	<b>FFLD</b>	<b>FFLD</b>
<b>NAME</b>	M. Adams	V. Williams	P. Habighorst
<b>DATE</b>	02/24/09	02/25/09	02/ 26 /09

**OFFICIAL RECORD COPY**