



## Nebraska Public Power District

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NLS2009044

June 12, 2009

U.S. Nuclear Regulatory Commission  
Attention: Document Control Desk  
Washington, D.C. 20555-0001

**Subject:** Response to Nuclear Regulatory Commission Request Regarding Withholding Information from Public Disclosure (TAC No. MD9921)  
Cooper Nuclear Station, Docket No. 50-298, DPR-46

- References:**
1. Letter from Stewart B. Minahan, Nebraska Public Power District, to the U.S. Nuclear Regulatory Commission, dated October 13, 2008, "License Amendment Request for Application of the Alternative Source Term for Calculating Loss-of-Coolant Accident Dose Consequences"
  2. Letter from David Van Der Kamp, Nebraska Public Power District, to the U.S. Nuclear Regulatory Commission, dated March 5, 2009, "Response to Nuclear Regulatory Commission Request Regarding Withholding Information from Public Disclosure"
  3. Letter from Carl F. Lyon, U.S. Nuclear Regulatory Commission, to Stewart B. Minahan, Nebraska Public Power District, dated April, 29, 2009, "Cooper Nuclear Station – Request for Withholding Information from Public Disclosure (TAC No. MD9921)"

Dear Sir or Madam:

The purpose of this letter is for the Nebraska Public Power District (NPPD) to provide the Nuclear Regulatory Commission (NRC) an affidavit from General Electric (GE) to address the request to withhold specific information from public disclosure pursuant to the provisions of 10 CFR 2.390 and 9.17.

Enclosure 1 of Reference 1 contained information considered to be proprietary to Alion Science and Technology Corporation (ALION).

Reference 2 resubmitted a revised affidavit (provided by ALION) which supported the original request to withhold from public disclosure. That affidavit also described that ALION is obliged to protect the non-disclosure of General Electric proprietary information for the condenser model.

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Reference 3 acknowledged that Attachment 1 of the affidavit provided in Reference 2 stated "...some of the information provided in the calculation is proprietary to GE/BWROG [General Electric/Boiling Water Reactor Owners Group] and as such, Alion Science and Technology was protecting the interests of those entities from public disclosure." Reference 2 did not include an affidavit from GE as required by Paragraph 2.390(b)(1)(iii) of 10 CFR Part 2.

It has since been determined that the Enclosure is not proprietary to ALION. However, the Enclosure does contain information that is proprietary to GE.

NPPD is resubmitting Enclosure 1 of Reference 1 which contains information considered to be proprietary to GE. Therefore, in accordance with the provisions contained in 10 CFR 2.390 and 9.17, it is requested that the NRC withhold Enclosure 1 from public disclosure. As required by 10 CFR 2.390(b)(1)(ii), Enclosure 2 is an affidavit supplied by GE supporting this request for withholding Enclosure 1 from public disclosure. The non-proprietary version of the Loss-of-Coolant Accident dose analysis is provided as Enclosure 3.

Should you have any questions concerning this matter, please contact David Van Der Kamp, Licensing Manager, at (402) 825-2904.

Sincerely,



Stewart B. Minahan  
Vice President – Nuclear and  
Chief Nuclear Officer

/jo

Enclosures

cc: Regional Administrator w/enclosures  
USNRC - Region IV

Cooper Project Manager w/enclosures  
USNRC - NRR Project Directorate IV-1

Senior Resident Inspector w/enclosures  
USNRC - CNS

Nebraska Health and Human Services w/enclosures  
Department of Regulation and Licensure

NPG Distribution w/o enclosures

CNS Records w/enclosures

Correspondence Number: NLS2009044

The following table identifies those actions committed to by Nebraska Public Power District (NPPD) in this document. Any other actions discussed in the submittal represent intended or planned actions by NPPD. They are described for information only and are not regulatory commitments. Please notify the Licensing Manager at Cooper Nuclear Station of any questions regarding this document or any associated regulatory commitments.

COMMITMENT	COMMITMENT NUMBER	COMMITTED DATE OR OUTAGE
None		

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Enclosure 2

**General Electric – Hitachi Corporation Affidavit as Required by 10 CFR 2.390**

## GE-Hitachi Nuclear Energy Americas LLC

### AFFIDAVIT

I, **Edward D. Schrull, PE**, state as follows:

- (1) I am Vice President, Regulatory Affairs, Services Licensing, 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 sought to be withheld is contained in Enclosure 1 of GEH letter, CNS-CPR-01, Jeff Hren (GEH) to David Van Der Kamp (NPPD), "ALION Calculation ALION-CAL-NPPD-3236-002," dated June 10, 2009. GEH proprietary text in Enclosure 1, which is located in sections 2.4.3, A1.0, A3.1, A4.2, and A5.2 of the subject calculation, is identified by a dark red, dotted underline inside double square brackets [[This sentence is an example<sup>(3)</sup>]]. The superscript notation <sup>(3)</sup> 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 that 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 that reveals aspects of past, present, or future GEH customer-funded development plans and programs, resulting in potential products to GEH;

- d. Information that 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 information regarding proprietary radiological dose assessment calculational methodology and proprietary seismic experience data base methodology and data applicable to GEH capabilities to justify BWR plant specific regulatory license changes which can increase MSIV leakage rate limits and eliminate requirements for leakage control systems. The development of this information and the methods was achieved at a significant cost to GEH and the BWR Owners' Group.

The development of the evaluation process along with the interpretation and application of the analytical results 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.

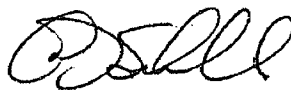
The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

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 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 10<sup>th</sup> day of June 2009.



Edward D. Schrull, PE  
Vice President, Regulatory Affairs  
Services Licensing,  
GE-Hitachi Nuclear Energy Americas LLC