



**HITACHI**

**GE Hitachi Nuclear Energy**

**Proprietary Notice**

This letter transmits proprietary information in accordance with 10CFR2.390. Upon the removal of Enclosure 1, the balance of the letter may be considered non-proprietary.

**James F. Harrison**

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MFN 09-362  
June 19, 2009

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

Subject: Accepted Version of GE Licensing Topical Report NEDC-33006P-A, Revision 3  
(TAC No. MD0277)

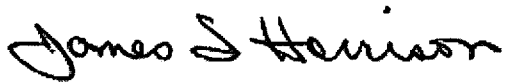
By References 1 and 2, the NRC issued the final Safety Evaluation for GE Hitachi Nuclear Energy (GEH) Licensing Topical Report (LTR) NEDC-33006, "*Maximum Load Limit Line Analysis Plus.*" The NRC requested in Reference 1 that GEH publish the accepted proprietary and non-proprietary versions of the LTR incorporating the Safety Evaluation and GEH's responses to the associated NRC requests for additional information. As requested, enclosed is the '-A' (accepted) version of the subject LTR.

Enclosure 1 contains the proprietary version of the LTR and Enclosure 2 contains the non-proprietary version. The designated information contained in Enclosure 1 is of the type that GEH maintains in confidence and withholds from public disclosure. The information has been handled and classified as proprietary to GEH as indicated in the affidavit provided in Enclosure 3. A copy of the affidavit is also contained in the proprietary report. GEH hereby requests that the information Enclosure 1 be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 9.17.

DC65  
NRO

If you have any questions, please contact Mike Lalor at (408) 925-2443 or me.

Sincerely,



James F. Harrison  
Vice President, Fuel Licensing  
Regulatory Affairs  
GE Hitachi Nuclear Energy

Project No. 710

References:

1. NRC letter, H. Hieh (NRC) to R. Brown (GEH), "Final Safety Evaluation for GE-Hitachi Nuclear Energy Americas, LLC (GHNE) Topical Report (TR) NEDC-33006P, 'Maximum Extended Load Line Limit Analysis Plus'," MFN 07-517, dated September 17, 2007.
2. NRC letter, T. Blount (NRC) to R. Brown (GEH), "Correction of Final Safety Evaluation for General Electric (GE)-Hitachi Nuclear Energy Americas LLC (GEH) Licensing Topical Report (LTR) NEDC-33006P, 'Maximum Extended Load Line Limit Analysis Plus'," MFN 08-837, dated October 15, 2008.

Enclosures:

1. NEDE-33006P-A - Proprietary
2. NEDO-33006-A - Non-proprietary
3. Affidavit

cc: MC Honcharik, US NRC  
SS Philpott, US NRC  
JS Bowman, GEH/Wilmington  
PT Tran, GEH/Vallecitos  
JGM Andersen, GEH/ Wilmington  
MA Lalor, GEH/San Jose  
JG Head, GEH/Wilmington  
eDRF Section 0000-0100-3392  
eDRF 0000-0009-3764

ENCLOSURE 3

MFN 09-362

Affidavit

# GE Hitachi Nuclear Energy Americas LLC

## AFFIDAVIT

I, **James F. Harrison** state as follows:

- (1) I am Vice President, Fuels Licensing, Regulatory Affairs, 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 GEH proprietary report NEDC-33006P-A, General Electric Boiling Water Reactor Maximum Extended Load Line Limit Analysis Plus, Revision 3, Class III (GEH Proprietary Information), dated June 2009. Except for Enclosure 2 of Appendix A and the NRC's SE, the GEH proprietary information is identified by a double underline inside double square brackets. [[This sentence is an example.<sup>(3)</sup>]] Regarding Enclosure 2 of Appendix A, the entirety of each page of the enclosure is proprietary. Therefore, the header of each page of Enclosure 2 of Appendix A carries the notation "GE Proprietary Information<sup>(3)</sup>." In each case, the superscript notation<sup>(3)</sup> refers to Paragraph (3) of this affidavit, which provides the basis for the proprietary determination. Note that the GEH proprietary information in the NRC's Final Safety Evaluation, which is enclosed in NEDE-33006P-A, Rev. 3, is identified with single square brackets and a bold font. **[This sentence is an example.]**
- (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 General Electric's competitors without license from General Electric 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 General Electric customer-funded development plans and programs, resulting in potential products to General Electric;
- 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. 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 contains detailed results of analytical models, methods and processes, including computer codes, which GEH has developed, and applied to perform stability evaluations using the detection and suppression capability of the confirmation density algorithm for the BWR.

The development of the detection and suppression capability of the confirmation density algorithm for the BWR was achieved at a significant cost, in excess of ¼ million dollars, to GEH.

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.

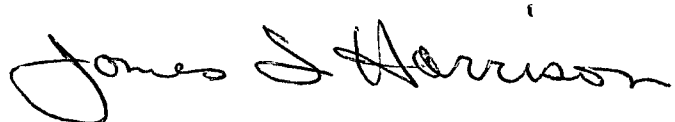
The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

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 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.



James F. Harrison  
Vice President, Fuel Licensing,  
Regulatory Affairs  
GE-Hitachi Nuclear Energy Americas LLC

## ENCLOSURE 2

MFN 09-362

NEDO-33006-A - Non-proprietary

Non-Proprietary Version

### IMPORTANT NOTICE

This is a non-proprietary version of NEDC-33006P-A, Revision 3, from which the proprietary information has been removed. Portions of the enclosure that have been removed are indicated by an open and closed bracket as shown here [[            ]]. Note the NRC's Final Safety Evaluation is enclosed in NEDO-33006-A, Revision 3. Portions of the Safety Evaluation that have been removed are indicated with a single square bracket as shown here. [            ]

# ENCLOSURE 1

MFN 09-362

NEDC-33006P-A - Proprietary

## GEH Proprietary Information

### PROPRIETARY INFORMATION NOTICE

This enclosure contains proprietary information of General Electric Hitachi Nuclear Energy America LLC (GEH) and is furnished in confidence solely for the purpose(s) stated in the transmittal letter. No other use, direct or indirect, of the document or the information it contains is authorized. Furnishing this enclosure does not convey any license, express or implied, to use any patented invention or, except as specified above, any proprietary information of GEH disclosed herein or any right to publish or make copies of the enclosure without prior written permission of GEH.

The header of each page in this document carries the notation "GEH Proprietary Information." Except for Enclosure 2 of Appendix A and the NRC's SE, GE proprietary information is identified by a double underline inside double square brackets. [[This sentence is an example.<sup>{3}</sup>]] In each case, the superscript notation<sup>{3}</sup> refers to Paragraph (3) of the enclosed affidavit, which provides the basis for the proprietary determination.

Regarding Enclosure 2 of Appendix A, the entirety of each page of the enclosure is proprietary. Therefore, the header of each page of Enclosure 2 of Appendix A carries the notation "GEH Proprietary Information<sup>{3}</sup>." The superscript notation<sup>{3}</sup> refers to Paragraph (3) of the enclosed affidavit, which documents the basis for the proprietary determination.

Regarding the NRC's SE, which is enclosed in NEDE-33006P-A, Rev. 3, the GEH proprietary information is identified with single square brackets and a bold font. [**This sentence is an example.**].