

BWR OWNERS' GROUP

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Proprietary Notice

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

DRAFT FOR BWROG REVIEW

Project Number 691

BWROG-09078
October 29, 2009

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

Attention: Chief, Information Management Branch
Division of Program Management:

SUBJECT: Submittal of GE-Hitachi (GEH) Boiling Water Reactor Owners' Group (BWROG) Topical Report NEDO-33526P, "Assessment of NRC Generic Issue, GI-193"

Enclosed please find the GEH BWROG Licensing Topical Report NEDO-33526, "Assessment of NRC Generic Issue, GI-193." The purpose of the report is to respond to NRC staff requests for information, which were provided informally to the BWROG.

The BWROG, after reviewing this issue and developing this report, suggests NRC use the information in the licensing topical report to re-evaluate GI-193 using the present process for screening generic issues. The BWROG believes that sufficient information is now available for NRC to close GI-193.

Enclosure 1 is the proprietary version of the Licensing Topical Report and the affidavit.
Enclosure 2 is a non-proprietary version of the report.

Please note that Enclosure 1 contains proprietary information of the type that GEH maintains in confidence and withholds from public disclosure. The affidavit contained in Enclosure 1 identifies that the information contained in Enclosure 1 has been handled and classified as

D044
NRO

BWROG-09078
October 29, 2009
Page 2

proprietary to GEH. The BWROG hereby requests that the information in Enclosure 1 be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 9.17.

Should you have additional questions please contact Ron Willems (BWROG Project Manager) at 910-819-3630.

Respectfully,

A handwritten signature in black ink that reads "Douglas W. Coleman". The signature is written in a cursive, flowing style.

Douglas W. Coleman, Chairman
BWR Owners' Group

Enclosures:

1. Licensing Topical Report NEDO-33526P
2. Licensing Topical Report NEDO-33526
3. Affidavit

cc: F. P. "Ted" Schiffler, BWROG Vice Chairman
C. J. Nichols, BWROG Program Manager
BWROG Primary Representatives
Michelle Honcharik, USNRC
John Lane, USNRC
BWROG ECCS GI 193 Committee

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 GEH proprietary report, NEDC-33526P Revision 1, *Assessment of NRC Generic Issue #193*, Class III (GEH Proprietary Information), dated October, 2009. The GEH proprietary information within text is identified by a dotted underline within double square brackets. [[This sentence is an example.^{3}]] In all cases, the superscript notation ^{3} refers to Paragraph (3) of the enclosed 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, 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, 975 F2d 871 (DC Cir. 1992), and Public Citizen Health Research Group v. FDA, 704 F2d 1280 (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 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;

NEDC-33526P Rev. 1
GEH Proprietary Information

- c. Information that reveals aspects of past, present, or future General Electric customer-funded development plans and programs, resulting in potential products to General Electric;
- 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 that 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 and conclusions regarding GE Methods supporting evaluations of the emergency core cooling system for GE BWRs, utilizing analytical models and methods, including computer codes, which GEH has developed, obtained NRC approval of, and applied to perform evaluations of transient and accident events in the GE Boiling Water Reactor ("BWR"). The development and approval of these system, component and computer codes was achieved at a significant cost to GEH.

NEDC-33526P Rev. 1
GEH Proprietary Information

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 28th day of October 2009.



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