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

MFN 09-787 Supplement 1

Docket No. 52-010

February 4, 2010

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

Subject: **Supplemental Response to Portion of NRC RAI Letter No. 369 Related to ESBWR Design Certification Application – DCD Tier 2 Section 3.6 – Protection Against Dynamic Effects Associated with the Postulated Rupture of Piping; RAI Number 3.6-6 S04 Part B**

The purpose of this letter is to submit the GE Hitachi Nuclear Energy (GEH) supplemental response to a portion of the U.S. Nuclear Regulatory Commission (NRC) Request for Additional Information (RAI) letter number 369 sent by NRC letter dated September 16, 2009 (Reference 1). Supplemental information requested by the staff to resolve RAI Number 3.6-6 S04 Part B is provided in Enclosure 1.

Enclosure 1 contains the results of the GEH Mesh Independence Study, which will be added as Appendix A to the Proprietary CFD Modeling Report (0000-0105-2955-R6) contained in LTR NEDE-33440P. The Mesh Independence Study was requested to be completed by staff reviewers to resolve questions concerning GEH's response to RAI Number 3.6-6 S04 Part B transmitted in Reference 2.

Enclosure 1 contains GEH proprietary information as defined by 10 CFR 2.390. GEH customarily maintains this information in confidence and withholds it from public disclosure. GEH has not submitted a nonproprietary version of Enclosure 1 in accordance with NRC Information Notice 2009-07, Requirements for Submittals, (2): "In instances in which a nonproprietary version would be of no value to the public because of the extent of the proprietary information, the agency does not expect a nonproprietary version to be submitted."

The affidavit contained in Enclosure 2 identifies that the information contained in Enclosures 1 has been handled and classified as proprietary to GEH. GEH hereby requests that the information in Enclosures 1 be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 9.17.

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NRO

If you have any questions or require additional information, please contact me.

Sincerely,

Richard E. Kingston

Richard E. Kingston
Vice President, ESBWR Licensing

References:

1. MFN 09-601 Letter from U.S. Nuclear Regulatory Commission to J. G. Head, GEH, *Request For Additional Information Letter No. 369 Related to ESBWR Design Certification* dated September 16, 2009

2. MFN 09-787 Letter from R. E. Kingston, GEH to U.S. Nuclear Regulatory Commission, *Response to Portion of NRC RAI Letter Nos. 369 and 386 Related to ESBWR Design Certification Application – DCD Tier 2 Section 3.6 – Protection Against Dynamic Effects Associated with the Postulated Rupture of Piping; RAI Numbers 3.6-6 S04 Part B and 3.6-24* dated December 15, 2009

Enclosures:

1. Supplemental Response to Portion of NRC RAI Letter No. 369 Related to ESBWR Design Certification Application – CFD Modeling Report (0000-0105-2955-R6) Appendix A - Mesh Independence Study for RAI Number 3.6-6 S04 Part B – GEH Proprietary Information

2. Affidavit

cc:	AE Cubbage	USNRC (with enclosures)
	JG Head	GEH/Wilmington (with enclosures)
	DH Hinds	GEH/Wilmington (with enclosures)
	HA Upton	GEH/San Jose (with enclosures)
	eDRF Section	0000-0112-8401 (Mesh Independence Study)

MFN 09-787 Supplement 1

Enclosure 2

Affidavit

GE-Hitachi Nuclear Energy Americas LLC

AFFIDAVIT

I, Larry J. Tucker, state as follows:

(1) I am the Manager, ESBWR Engineering, GE Hitachi Nuclear Energy ("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 Enclosures 1 of GEH letter MFN 09-787 Supplement 1, Mr. Richard E. Kingston to U.S. Nuclear Regulatory Commission, entitled *Supplemental Response to Portion of NRC RAI Letter Nos. 369 Related to ESBWR Design Certification Application – DCD Tier 2 Section 3.6 – Protection Against Dynamic Effects Associated with the Postulated Rupture of Piping; RAI Number 3.6-6 S04 Part B,* dated February 4, 2010. Enclosure 1, which is entitled *Supplemental Response to Portion of NRC RAI Letter No. 369 Related to ESBWR Design Certification Application - LTR Appendix A for RAI Number 3.6-6 S04 Part B - Mesh Independence Study – GEH Proprietary Information* is considered GEH Proprietary Information and the header of each page identifies this. Paragraph (3) of this affidavit provides the basis for the proprietary determination. Non-proprietary versions of this information is not provided in accordance with NRC Information Notice 2009-07, Requirements for Submittals, (2): "In instances in which a nonproprietary version would be of no value to the public because of the extent of the proprietary information, the agency does not expect a nonproprietary version to be submitted."

(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 GEH 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 which reveals aspects of past, present, or future GEH customer-funded development plans and programs, resulting in potential products to GEH;
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, 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, 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 identifies detailed GEH ESBWR design information. GEH utilized prior design information and experience from its fleet with significant resource allocation in developing the system over several years at a substantial cost.

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 4th day of February 2010.

Larry J. Tucker
GE-Hitachi Nuclear Energy Americas LLC