

ENCLOSURE 2

MFN 10-124

Affidavit

# GE-Hitachi Nuclear Energy Americas LLC

## AFFIDAVIT

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

- (1) I am the Vice President, Regulatory Affairs, of GE-Hitachi Nuclear Energy Americas LLC (GEH), and 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's letter, MFN 10-124, Jerald G. Head (GEH) to John D. Hughey, (NRC), entitled "Response to NRC Request for Information Regarding Appeal of Denial of Request for Withholding Certain Information: Reference 1 Letter from J. Hughey (NRC) to J. Head (GEH) February 26, 2010." Enclosure 1, which is entitled "Information Regarding Treatment of Fuel Parameters," contains internal information or information shared between GEH or Global Nuclear Fuel Americas (GNF-A) and its customers, and is not information that is of the type normally submitted to the NRC. Therefore, Enclosure 1 is, in its entirety, considered business confidential, proprietary information, and is marked as such by the header on each page constituting the enclosure. The notation {3} refers to Paragraph (3) of the 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 NRC regulations 10 CFR 2.390(a)(4) for trade secrets or commercial information (Exemption 4).
- (4) The information sought to be withheld is considered to be proprietary for the reasons set forth in paragraph (4)c. 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 GEH and/or other companies.

- b. Information that, if used by a competitor, would reduce their expenditure of resources or improve their 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, that may include potential products of GEH.
  - d. Information that discloses trade secret and/or potentially patentable subject matter for which it may be desirable to obtain patent protection.
- (5) To address 10 CFR 2.390(b)(4), the information sought to be withheld is being submitted to the NRC in confidence. The information is of a sort customarily held in confidence by GEH and GNF-A, 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 and GNF-A, not been disclosed publicly, and not been made available in public sources. All disclosures to third parties, including any required transmittals to the NRC, have been made, or must be made, pursuant to regulatory provisions or proprietary and/or confidentiality agreements that provide for maintaining the information in confidence. The initial designation of this information as proprietary information, and the subsequent steps taken to prevent its unauthorized disclosure are as set forth in the following paragraphs (6) and (7).
- (6) Initial approval of proprietary treatment of a document is made by the manager of the originating component, who is the person most likely to be acquainted with the value and sensitivity of the information in relation to industry knowledge, or who is the person most likely to be subject to the terms under which it was licensed to GEH or GNF-A. Access to such documents within GEH and GNF-A is limited to 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 and/or confidentiality agreements.
- (8) The information identified in paragraph (2) above is classified as proprietary because it contains commercial 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 because release of the information could reveal internal information regarding GEH's method of conducting business and commercial information associated with customer negotiations regarding GEH or GNF-A products.

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 23<sup>rd</sup> day of March 2010.

A handwritten signature in black ink that reads "James F. Harrison". The signature is written in a cursive style with a large initial "J" and "H".

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