



HITACHI

GE Hitachi Nuclear Energy

Richard E. Kingston
Vice President, ESBWR Licensing

P.O. Box 780 M/C A-65
Wilmington, NC 28402-0780
USA

T 910.675.6192
F 910.362.6192
rick.kingston@ge.com

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 10-093

Docket No. 52-010

March 25, 2010

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

Subject: Transmittal of Licensing Topical Report (LTR) NEDE-33440P and NEDO-33440, "ESBWR Safety Analysis - Additional Information," Revision 2, March 2010

The purpose of this letter is to submit the GE Hitachi Nuclear Energy (GEH) Licensing Topical Report (LTR), NEDE-33440P (proprietary) and NEDO-33440 (public), "ESBWR Safety Analysis - Additional Information," Revision 2, March 2010. This LTR presents a compilation of the information requested and commitments made in miscellaneous Requests for Additional Information (RAIs) resulting from the NRC review of the ESBWR design certification. Those RAIs and associated GEH MFN letters are listed in Table 1.1 of the LTR with details of the information presented in subsequent LTR sections.

Only the material included in each RAI submittal is presented in this LTR. There is no computer analysis or technical evaluation required to support this report. No conclusions or recommendations are included in this report.

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. Enclosure 2 is a non-proprietary version that is suitable for public disclosure. Please note that Appendix B of Enclosure 1 is proprietary in its entirety; thus a non-proprietary version of that appendix only has not been provided in Enclosure 2 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."

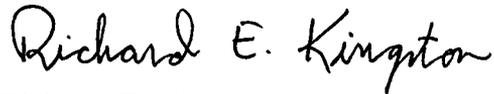
The affidavit contained in Enclosure 3 identifies that the information contained in Enclosure 1 has been handled and classified as proprietary to GEH. GEH hereby

DD68
NRO

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.

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

Sincerely,



Richard E. Kingston
Vice President, ESBWR Licensing

Enclosures:

1. GEH Licensing Topical Report LTR NEDE-33440P, "ESBWR Safety Analysis - Additional Information," Revision 2, March 2010 – GEH Proprietary Information
2. GEH Licensing Topical Report LTR NEDO-33440, "ESBWR Safety Analysis - Additional Information," Revision 2, March 2010 – Public Version
3. Transmittal of Licensing Topical Report (LTR) NEDE-33440P and NEDO-33440, "ESBWR Safety Analysis - Additional Information," Revision 2, March 2010 - Affidavit

cc: AE Cabbage USNRC (with enclosures)
JG Head GEH/Wilmington (with enclosures)
DH Hinds GEH/Wilmington (with enclosures)
TL Enfinger GEH/Wilmington (with enclosures)
eDRF Section 0000-0089-0134, R3

Enclosure 3

MFN 10-093

**Transmittal of Licensing Topical Report (LTR) NEDE-33440P
and NEDO-33440, "ESBWR Safety Analysis - Additional
Information," Revision 2, March 2010**

Affidavit

GE-Hitachi Nuclear Energy Americas LLC

AFFIDAVIT

I, **Larry J. Tucker**, state as follows:

- (1) I am the Manager, ESBWR Engineering 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 10-093, Mr. Richard E. Kingston to U.S. Nuclear Regulatory Commission, entitled Transmittal of Licensing Topical Report (LTR) NEDE-33440P and NEDO-33440, "ESBWR Safety Analysis - Additional Information," Revision 2, March 2010, dated March 25, 2010. GEH text proprietary information in Enclosure 1, which is entitled "GEH Licensing Topical Report LTR NEDE-33440P, "ESBWR Safety Analysis - Additional Information," Revision 2, March 2010 – GEH Proprietary Information", is identified by a dotted underline inside double square brackets. [[This sentence is an example.⁽³⁾]] Figures and large equation objects containing GEH proprietary information are identified with double square brackets before and after the object. In each case, the superscript notation ⁽³⁾ 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 qualifies 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) The information sought to be withheld is considered to be proprietary for the reasons set forth in paragraphs (4)a. and (4)b. 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 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, 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. Access to such documents within GEH 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 details of GEH's design and licensing methodology. 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.

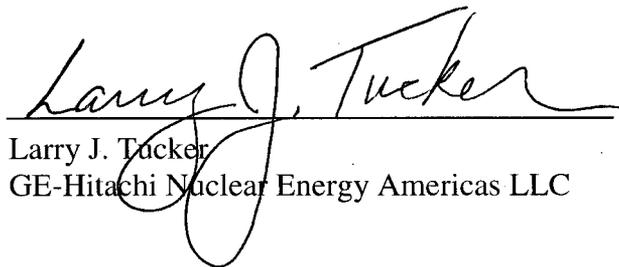
The research, development, engineering, analytical and NRC review costs comprise a substantial investment of time and money by GEH. The precise value of the expertise to

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 25th day of March 2010.


Larry J. Tucker
GE-Hitachi Nuclear Energy Americas LLC