



**HITACHI**

**GE Hitachi Nuclear Energy**

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MFN 10-276

Docket No. 52-010

September 28, 2010

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

Subject: **Submittal of Accepted Versions of NEDC-33326P, "GE14E for ESBWR Initial Core Nuclear Design Report"**

By Reference 1, the NRC issued the final Safety Evaluation for Global Nuclear Fuel (GNF) Licensing Topical Report (LTR) NEDC-33326P, Revision 1, "GE14E for ESBWR Initial Core Design Report." The NRC requested in Reference 1 that GE Hitachi Nuclear Energy (GEH) publish accepted proprietary and non-proprietary versions of the LTR incorporating the Safety Evaluation. As requested, enclosed are the -A versions of the subject LTR.

Enclosure 1 contains proprietary information of the type that GNF maintains in confidence and withholds from public disclosure. The affidavit contained within Enclosure 3 identifies that the information contained in Enclosure 1 has been handled and classified as proprietary to GNF. GEH 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. Enclosure 2 is a non-proprietary version of Enclosure 1.

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

Sincerely,

Richard E. Kingston  
Vice President, ESBWR Licensing

DOG8  
NRD

Reference:

1. MFN 10-255, Letter from U.S. Nuclear Regulatory Commission to Jerald G. Head, *Final Safety Evaluation Revision 1 for GE Hitachi Nuclear Energy Licensing Topical Report NEDC-33326P Revision 1, "GE14E for the Economic Simplified Boiling Water Reactor Initial Core Nuclear Design Report"*, September 7, 2010

Enclosures:

1. NEDC-33326P-A, Revision 1, "GE14E for ESBWR Initial Core Nuclear Design Report"– GNF Proprietary Information
2. NEDO-33326-A, Revision 1, "GE14E for ESBWR Initial Core Nuclear Design Report"– Non-Proprietary Information
3. Affidavit

cc: AE Cabbage USNRC (with enclosures)  
JG Head GEH (with enclosures)  
DH Hinds GEH (with enclosures)  
SR Andersen GEH (with enclosures)  
eDRFsection 0000-0068-2487 Revision 4

# Global Nuclear Fuel - Americas LLC

## AFFIDAVIT

I, Phillip D. Ollis, state as follows:

- (1) I am the Licensing Engineer, Licensing & Liabilities, Global Nuclear Fuel – Americas, LLC (GNF-A), 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 Enclosure 1 of GEH's letter, MFN 10-276, Mr. Richard E. Kingston to U.S. Nuclear Energy Commission, entitled *Submittal of Accepted Versions of NEDC-33326P, "GE14E for ESBWR Initial Core Nuclear Design Report,"* dated September 28, 2010. GNF-A text proprietary information in Enclosure 1, which is entitled *NEDC-33326P-A, Revision 1, "GE14E for ESBWR Initial Core Nuclear Design Report"* is identified by a dark red dotted underline inside double square brackets. [[This sentence is an example.<sup>{3}</sup>]] Figures and large equation objects containing GNF-A proprietary information are identified with double square brackets before and after the object. In each case, the superscript notation <sup>{3}</sup> refers to Paragraph (3) of this affidavit that provides the basis for the proprietary determination. Note that the GNF-A proprietary information in the NRC's Final Safety Evaluation, which is enclosed in NEDC-33326P-A, Revision 1, is identified with red text inside double square brackets, and the text is underlined. [[This sentence is an example.]]
- (3) In making this application for withholding of proprietary information of which it is the owner or licensee, GNF-A 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 GNF-A's competitors without license from GNF-A constitutes a competitive economic advantage over GNF-A 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 GNF-A customer-funded development plans and programs, that may include potential products of GNF-A.
  - 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 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 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 GNF-A. Access to such documents within 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 GNF-A 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 GNF-A's fuel design and licensing methodology. The development of the methods used in these analyses, along with the testing, development and approval of the supporting methodology was achieved at a significant cost, on the order of several million dollars, to GNF-A or its licensor. 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 GNF-A asset.
- (9) Public disclosure of the information sought to be withheld is likely to cause substantial harm to GNF-A's competitive position and foreclose or reduce the availability of profit-making opportunities. The fuel design and licensing methodology is part of GNF-A's

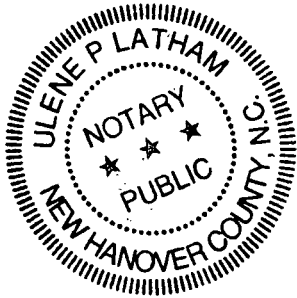
comprehensive BWR safety and technology base, and its commercial value extends beyond the original development cost. The value of the technology base goes beyond the extensive physical database and analytical methodology and includes development of the expertise to determine and apply the appropriate 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 GNF-A. 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. GNF-A's competitive advantage will be lost if its competitors are able to use the results of the GNF-A 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 GNF-A 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 GNF-A 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 28<sup>th</sup> day of September, 2010.



A handwritten signature in cursive script, appearing to read "Phillip D. Ollis".

Phillip D. Ollis  
Licensing Engineer, Licensing & Liabilities  
Global Nuclear Fuel - Americas LLC

Subscribed and sworn to me, a Notary Public, in and for the State of North Carolina, this 28<sup>th</sup> day of September, 2010.

Ulene P. Latham  
State of NC  
New Hanover County

My Commission Expires June 23, 2013