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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 10-356

December 22, 2010

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

Subject: Response to US NRC Regulatory Issue Summary 2010-10 Process for Scheduling Acceptance Reviews of New Reactor Licensing Applications and Process for Determining Budget Needs For Fiscal Year 2013

This letter responds to the NRC request to promote early communication regarding potential 10 CFR Part 52 licensing actions and related construction activities (Reference 1). Enclosure 1 describes Licensing Topical Reports (LTRs) GEH plans to submit in 2011. These reports support ESBWR Design Acceptance Criteria (DAC) closure activities as described in References 2, 3 and discussions held with the NRC.

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

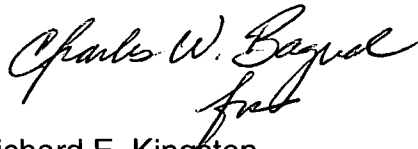
The affidavit contained in Enclosure 2 identifies that the information contained in Enclosure 1 has been handled and classified as proprietary to GEH. GEH hereby requests that the information in Enclosure 1 be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 9.17.

The information contained in Enclosure 1 is deemed proprietary in its entirety therefore no nonproprietary version is provided.

D079
NRC

If you have any questions, please contact me.

Sincerely,



Richard E. Kingston
Vice President, ESBWR Licensing

Commitments: None

References:

1. U.S. Regulatory Issue Summary 2010-10 "Process for Scheduling Acceptance Reviews of New Reactor Licensing Applications and Process for Determining Budget Needs For Fiscal Year 2013", November 15, 2010
2. ESBWR Design Control Document/Tier 2, 26A6642BN, Chapter 14, Initial Test Program, Rev.09, Section 14.3A.1, "Design Acceptance Criteria ITAAC Closure Options"
3. U.S. NRC ACRS letter to GB Jaczko, US NRC "Closure of Design Acceptance Criteria for New Reactors", August 9, 2010

Enclosures:

1. MFN 10-356, Summary of Estimated ESBWR LTR Submittals for 2011, GEH Proprietary Information
2. MFN 10-356, Affidavit

cc: AE Cabbage USNRC (with enclosures)
S Bloom USNRC (with enclosures)
AM Snyder USNRC (with enclosures)
JG Head GEH/Wilmington (with enclosures)
PL Campbell GEH/Washington (with enclosures)
MJ Colby GEH/Wilmington (with enclosures)
LF Dougherty GEH/Wilmington (with enclosures)

MFN 10-356

Enclosure 2

Affidavit

GE-Hitachi Nuclear Energy Americas LLC

AFFIDAVIT

I, **Jerald G. Head**, state as follows:

- (1) I am Senior Vice President, Regulatory Affairs, GE Hitachi Nuclear Energy Americas (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 10-356, Mr. Richard E. Kingston to U.S. Nuclear Regulatory Commission, entitled "Response to US NRC Regulatory Issue Summary 2010-10 Process for Scheduling Acceptance Reviews of New Reactor Licensing Applications and Process for Determining Budget Needs For Fiscal Year 2013" dated December 22, 2010. The proprietary information in Enclosure 1, entitled "*Summary of Estimated ESBWR LTR Submittals for 2011*" is delineated by a [[dotted underline inside double square brackets⁽³⁾]]. Figures and large equation objects 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 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) The information sought to be withheld is considered to be proprietary for the reasons set forth in paragraphs (4)a. and (4)b.
 - 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 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 secrets 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 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. 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, 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 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) is classified as proprietary because it contains detailed information regarding planned activities for future design and licensing methodology. These plans and schedules represent a significant investment to GEH and constitute 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.

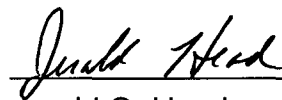
The precise value of the expertise to devise an evaluation process and apply the correct analytical methodology is difficult to quantify, but it clearly is substantial.

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 22nd day of December, 2010.



Jerald G. Head
GE-Hitachi Nuclear Energy Americas LLC