



Global Nuclear Fuel

A Joint Venture of GE, Toshiba, & Hitachi

Proprietary Notice

This letter transmits proprietary information in accordance with 10 CFR 2.390. Upon the removal of Enclosures 1 and 2, the balance of the letter may be considered non-proprietary.

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MFN 11-012
January 25, 2011

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

Subject: Transmittal of Revision to Safety Classification of GNF Fuel Assembly and Related Components

Global Nuclear Fuel–Americas (GNF-A) is voluntarily submitting the enclosed information for NRC’s information. No review or approval is required. The subject matter has a history extending back to 1996. Enclosure 1 contains the letter MFN-134-96, which transmitted the report titled “Safety Classification of GE Fuel Assembly and Related Components.” MFN-134-96 was in response to an NRC question, from the 1995 NRC inspection report 99900003/95-01, concerning fuel assembly safety classification. The Fuel Assembly Safety Classification basis has been revised and Enclosure 2 of this letter contains this revision.

Please note that Enclosures 1 and 2 contain proprietary information of the type that GNF-A maintains in confidence and withholds from public disclosure. The information has been handled and classified as proprietary to GNF-A as indicated in the enclosed affidavit. The affidavit contained in Enclosure 3 identifies that the information contained in Enclosures 1 and 2 has been handled and classified as proprietary to GNF-A. GNF-A hereby requests that the information in Enclosures 1 and 2 be withheld from public disclosure in accordance with the provisions of 10 CFR 2.390 and 9.17. Enclosures 1 and 2 are of a type not typically provided to the NRC and contain detailed fuel assembly information. Please note that Enclosures 1 and 2 contain detailed fuel assembly information and are deemed proprietary in their entirety; thus non-proprietary versions of these enclosures have not been provided in accordance with NRC Information Notice 2009-07, Requirements for Submittals, (2), which states: "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."

Dobb
NRC

If you have any questions about the information provided here, please contact me at (910) 819-5954 or Jim Harrison at (910) 819-6604.

Sincerely,



Andrew A. Lingenfelter
Vice President, Fuel Engineering
Global Nuclear Fuel-Americas, LLC

Project No. 712

Enclosures

1. MFN-134-96, Letter to Mr. Steven Matthews, US NRC, dated August 22, 1996 – GNF Proprietary Information
2. Safety Classification of GNF Fuel Assembly and Related Components - GNF Proprietary Information
3. Affidavit

cc: SS Philpott, NRC
AA Lingenfelter, GNF Wilmington
JF Harrison, GEH Wilmington
Doug Crawford, GNF Wilmington
Gerald Latter, GNF Wilmington
eDRF Section 0000-0065-9001 R2

ENCLOSURE 1

MFN 11-012

MFN-134-96, Letter to Mr. Steven Matthews, US NRC,
dated August 22, 1996

GNF Proprietary Information—Class III (Confidential)

PROPRIETARY INFORMATION NOTICE

This enclosure contains proprietary information of the Global Nuclear Fuels-Americas, LLC (GNF) and is furnished in confidence solely for the purpose(s) stated in the transmittal letter. No other use, direct or indirect, of the document or the information it contains is authorized.

Furnishing this enclosure does not convey any license, express or implied, to use any patented invention or, except as specified above, any proprietary information of GNF disclosed herein or any right to publish or make copies of the enclosure without prior written permission of GNF.

The header of each page in this enclosure carries the notation "GNF Proprietary Information {3}—Class III (Confidential)." The superscript notation {3} refers to Paragraph (3) of the affidavit provided in Enclosure 3, which provides the basis for the proprietary determination.

ENCLOSURE 2

MFN 11-012

Safety Classification of GNF Fuel Assembly and Related Components

GNF Proprietary Information–Class III (Confidential)

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The header of each page in this enclosure carries the notation “GNF Proprietary Information {3} –Class III (Confidential).” The superscript notation {3} refers to Paragraph (3) of the affidavit provided in Enclosure 3, which provides the basis for the proprietary determination.

ENCLOSURE 3

MFN 11-012

Affidavit

Global Nuclear Fuel – Americas

AFFIDAVIT

I, **Andrew A. Lingenfelter**, state as follows:

- (1) I am Vice President, Fuel Engineering, 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 in Enclosures 1 and 2 of GNF's letter, MFN 11-012, A. A. Lingenfelter (GNF-A) to Document Control Desk (US NRC), entitled "Transmittal of Revision to Safety Classification of GNF Fuel Assembly and Related Components," dated January 25, 2011. GNF-A proprietary information in Enclosures 1 and 2, which are respectively entitled "MFN-134-96, Letter to Mr. Steven Matthews, US NRC, dated August 22, 1996," and "Safety Classification of GNF Fuel Assembly and Related Components," is proprietary in its entirety. The header of each page in Enclosures 1 and 2 carries the notation "GNF Proprietary Information {3} –Class III (Confidential)." 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, 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 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 GNF-A's competitors without license from GNF-A 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 GNF-A customer-funded development plans and programs, resulting in potential products to GNF-A;

- 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 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, 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 GNF-A. Access to such documents within GNF-A 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 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 agreements.
- (8) The information identified in paragraph (2) is classified as proprietary because it contains details of GNF-A's fuel design and licensing methodology. The development of this methodology, along with the testing and development, was achieved at a significant cost to GNF-A or its licensor.

The development of the fuel design and licensing methodology along with the interpretation and application of the analytical results is derived from an 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 information 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 at Wilmington, North Carolina this 25th day of January 2011.



Andrew A. Lingenfelter
Vice President, Fuel Engineering
Global Nuclear Fuel - Americas, LLC