



**HITACHI**

April 5, 2011 (9:35am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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April 5, 2011

MFN 11-137

Secretary  
U.S. Nuclear Regulatory Commission  
ATTN: Rulemakings and Adjudications Staff  
Washington, DC 20555-0001

**SUBJECT: Comments on Proposed Rule; U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment; NRC-2010-0134; RIN 3150-A184; 76 Federal Register 3540 (Jan. 20, 2011)**

Dear Secretary,

General Electric Company, acting through its GE Nuclear business ("GENE") was the original applicant for the ABWR Design Certification Rule ("DCR"). GE Hitachi Nuclear Energy ("GEH"), GENE's successor business organization, appreciates the opportunity to comment on the proposed rule that would add an "option" to the ABWR DCR. Note that GEH was not involved in development of the amendment addressed by the proposed rule and, therefore, does not comment on technical issues in the proposed amendment. GEH provides comments in three topic areas below.

**Proposed Rule for Option to Address STPNOC Aircraft Impact Assessment**

GEH requests that the NRC suspend the rulemaking and review the STPNOC proposed changes to the ABWR design certification as departures in the STP Units 3 and 4 Combined License Application proceeding, as is allowed by NRC regulations associated with aircraft impact assessment ("AIA") requirements. See 10 CFR 50.150(a)(3)(v)(B) and 10 CFR 52.79(a)(47). The proposed rulemaking appears to fashion an approach solely for the purpose of supporting the STP Units 3 and 4 COLA. In fact, Chairman Jaczko made a similar observation in his voting record for the ABWR AIA amendment:

*It appears that the primary rationale for adopting branches within an appendix over separate appendices is to make it easier to justify, adopt, and use the options approach to support the licensing activities associated with the South Texas Project combined license application.*

Chairman Jaczko goes on to state:

*It should be acknowledged in the revised narrative that the use of the options approach by the NRC is not fully in the spirit of the Commission Policy Statement on*

*Nuclear Power Plant Standardization. The adoption of the options approach by the NRC, albeit permissible, will introduce complexity and does not encourage standardization within a single design.*

GEH agrees with Chairman Jaczko's assessment of both the "options" approach and the "branches" approach. GEH also suggests that the "options" approach, as well as the "branches" approach for renewal, as applied in this specific case or as may be applied in the future, undermines the protection afforded by the Commission in its decision to use rulemaking to certify standard designs. See 54 Fed. Reg. 15372, 15375 (Apr. 18, 1989).

### **"Branches" Approach for Renewing a Design Certification**

Further to the "branches" approach, GEH requests that, if the NRC proceeds with the current rulemaking, the discussion regarding renewal of a design certification rule be removed from Supplementary Information associated with the final rule, as the STPNOC request is not an application for renewal, and the NRC need not make a decision at this time regarding how it will later treat multiple renewal applications for a single design certification. GEH maintains that, regardless of NRC regulatory provisions regarding use of an alternate vendor in a Combined License application, when an original applicant (or its direct successor) continues to do business and support a design certification, the NRC should treat an alternate entity's application as a new design certification under the provisions of 10 CFR 52.59(c). If the NRC retains information discussing a design certification renewal in the final rulemaking, the NRC should remove all discussion regarding commercial value of a design certification, as the NRC has no direct knowledge regarding how potential customers would value a design certification.

GEH also suggests that, similar to the "options" approach, the "branches" approach undermines the protection afforded by the Commission in its decision to use rulemaking to certify standard designs. See 54 Fed. Reg. 15372, 15375 (Apr. 18, 1989).

### **Specific Comments**

Notwithstanding GEH's request that the NRC suspend the rulemaking, GEH provides specific comments on the proposed rule. The proposed rule includes a replacement for Paragraph VIII.B.5.d, as follows:

d. If an applicant or licensee proposes to depart from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, then the applicant or licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a). The applicant or licensee must also document how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1) in accordance with Section X of this appendix.

76 Fed. Reg. at 3560. It appears that this would replace reference to the following current requirement in Paragraph VIII.B.5.d:

d. If a departure requires a license amendment pursuant to paragraphs B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

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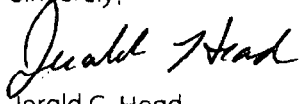
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GEH notes that the deletion of the current requirement does not seem appropriate within the context of Paragraph VIII.B.5 and suggests that current paragraphs VIII.B.5.d and VIII.B.5.e be changed to VIII.B.5.e and VIII.B.5.f, respectively. The NRC should review this change and determine if its proposed placement in the rule is correctly identified and, if so, consider changing the current paragraphs "d" and "e" to new paragraphs "e" and "f" to reflect the addition of a new requirement, rather than a replacement for the current paragraph "d."

Please contact me if you have any questions regarding the enclosed comments.

Sincerely,

A handwritten signature in cursive script that reads "Jerald G. Head".

Jerald G. Head

Cc: R. Kingston, GEH

A. Muniz, NRC

Caroline Reda, GEH

## Rulemaking Comments

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**From:** Campbell, Patricia L (GE Power & Water) [patriciaL.campbell@ge.com]  
**Sent:** Tuesday, April 05, 2011 9:21 AM  
**To:** Rulemaking Comments  
**Cc:** Gilles, Nanette  
**Subject:** Comments on NRC-2010-0134/RIN 3150-AI84  
**Attachments:** MFN 11-137.pdf