



HITACHI

GE Hitachi Nuclear Energy

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Proprietary, Security-Related, & Export-Controlled Information Notice

This letter forwards sensitive proprietary information that is to be withheld from public disclosure in accordance with 10CFR2.390. When separated from the enclosure, this letter is non-sensitive.

September 7, 2010

MFN 10-246

Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Submittal of Review Panel Assessment of GE Hitachi Global Laser Enrichment

As discussed during our meetings at the NRC during the week of August 9, 2010, GE Hitachi Global Laser Enrichment (GLE) commissioned a review by an independent panel of experts to determine whether the development and deployment of laser enrichment presented nuclear nonproliferation risks. I am hereby submitting the Review Panel Assessment (Enclosure 1) for your information.

Please note that Enclosure 1 contains sensitive Proprietary Information and should be withheld from public disclosure. Enclosure 2 contains the affidavit in support of the withholding the information from public disclosure. When separated from the Enclosures, this letter is considered non-sensitive.

Information in this record was deleted in
accordance with the Freedom of Information Act.
Exemptions 4
FOIA/PA 2012-0066

Review panel biographies

Dr. Donald M. Kerr, George Mason University.

Dr. Kerr most recently served as Principal Deputy Director of National Intelligence, a position he held from October 2007 to January 2009. In March 2009, he received the National Intelligence Distinguished Service Medal. From 2005 to 2007, he was the director of the National Reconnaissance Office. He serves as a Trustee for the MITRE Corporation and on the board of directors of U. S. Space LLC.



Dr. Kerr served as Deputy Director for Science and Technology at the CIA from 2001 to 2005. Prior to that, he was an assistant director of the FBI in charge of the Laboratory Division from 1997 to 2001. His earlier government service was with the Department of Energy (DOE), first in Las Vegas as deputy manager of Nevada Operations and subsequently in Washington, D.C., as the Deputy Assistant Secretary and Acting Assistant Secretary for Defense Programs and later for Energy Technology.

From 1979 to 1985, Dr. Kerr served as the fourth director of the Los Alamos National Laboratory (LANL). Prior to becoming director, he conducted and led LANL research in high altitude weapons effects, nuclear test detection and analysis, weapons diagnostics, ionospheric physics, and alternative energy programs.

Dr. Kerr held several executive positions in the private sector, including executive vice president and director at Information Systems Laboratories, Inc., corporate executive vice president and director at Science Applications International Corporation, and president and director of EG&G, Inc.

A fellow of the American Physical Society and the American Association for the Advancement of Science, Dr. Kerr has published frequently on nuclear weapons efforts, national security and arms control, energy technology, and ionospheric research. He has received several awards for his public service, including the CIA Distinguished Intelligence Medal and the DOE Outstanding Service Award.

Dr. Kerr received his Bachelor's degree in electrical engineering from Cornell University in 1963 and went on to earn an M.S. in microwave electronics and a Ph.D. in plasma physics and microwave electronics at Cornell.

Dr. Gordon Oehler

Gordon Oehler received both a B.S. in Electrical Engineering and a Ph.D. in physics from Rensselaer Polytechnic Institute. He is a 1981 graduate of the National War College.



After receiving his Ph.D., Dr. Oehler worked for a small firm in upper New York where he designed instrumentation for metallurgical applications. He subsequently joined the CIA in 1972 and served in a variety of analytical and managerial positions involving weapons systems and foreign policy analysis. Included in these assignments were the Chief of the Technology Transfer Assessment Center (responsible for impeding the flow of Western technology into Soviet weapons programs) and the Director of the Office of Scientific and Weapons Research (responsible for all analysis and reporting relating to foreign weapon systems and technology developments).

In May 1992, Dr. Oehler was appointed the Director of the Nonproliferation Center. In this capacity, he was the senior intelligence Community spokesman on proliferation issues.

After leaving the CIA in October 1997, he served as corporate vice president for corporate development at Science Applications International Corporation. Subsequent to that, he was a deputy staff director for the president's WMD commission that examined the intelligence failures leading up to the second Gulf war. The commission made seventy-three recommendations to improve intelligence capabilities—most of which have been adopted. He is a Senior Fellow at the Potomac Institute for Policy Studies.

Dr. Susan Jane Koch

Dr. Susan J. Koch is an independent consultant, specializing in policy issues regarding the proliferation of weapons of mass destruction



From 1982 until 2007, she held a series of senior positions in the White House National Security Council Staff, the Office of the Secretary of Defense, the Department of State and the U.S. Arms Control and Disarmament Agency, focused on nonproliferation and arms reduction policy.

Dr. Koch began her government career in the Directorate of Intelligence of the Central Intelligence Agency, studying West European political issues. Dr. Koch has received the Presidential Distinguished Executive Award, the Presidential Meritorious Executive Award, the Department of Defense Distinguished Civilian Service Medal five times, the Arms Control and Disarmament Agency Distinguished Honor Award, and the Department of State Meritorious Honor Award.

Before her government service, she taught international and comparative politics at Mount Holyoke College and the University of Connecticut. Dr. Koch received a B.A. from Mount Holyoke College and an M.A. and Ph.D. in political science from Harvard University.

GE-Hitachi Nuclear Energy Americas LLC

AFFIDAVIT

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

- (1) I am the Senior Vice President of Regulatory Affairs 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 10-246, from myself to NRC Chairman Jaczko, NRC Commissioner Svinicki, NRC Commissioner Apostolakis, NRC Commissioner Magwood, NRC Commissioner Ostendorff, entitled *Submittal of Review Panel Assessment of GE Hitachi Global Laser Enrichment*, September 7, 2010.
- (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 paragraph (4)c. 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 information that reveals aspects of past, present, or future GEH customer-funded development plans and programs, that may include potential products of GEH. 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 GLE 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.

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 7th day of September, 2010.



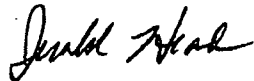
Jerald Head
GE-Hitachi Nuclear Energy Americas LLC

September 7, 2010

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If you have any questions about this letter or its enclosure, please contact myself or Julie Olivier of my staff at 910-819-4799 or by email at Julie.Olivier@GE.com.

Sincerely,



Jerald Head
Senior Vice President
GE Hitachi Regulatory Affairs

Enclosures:

1. Review Panel Assessment (contains sensitive Proprietary information)
2. Affidavit in support of withholding information from public disclosure

CC:

Bill Borchard (NRC)
Tim Johnson (NRC)
Kevin Walsh (GEH)
Tammy Orr (GLE)
Lori Butler (GEH)