Enclosure 3

MFN 12-075

GEH Reply to NRC Notice of Violation Docket Number 05200010/2012-201-01, 05200010/2012-201-02, 05200010/2012-201-03

Affidavit

GE-Hitachi Nuclear Energy Americas LLC

AFFIDAVIT

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

(1) I am the Senior Vice President, 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 and have determined that it should be withheld from public disclosure.

(2) The information sought to be withheld is contained in enclosure 1 of GEH's letter, MFN 12-075, Mr. Jerald G. Head to U.S. Nuclear Regulatory Commission, entitled "Reply to a Notice of Violation, NRC Inspection Report 05200010/2012-201," dated August 3, 2012. The proprietary information in enclosure 1, entitled "GEH Reply to NRC Notice of Violation Docket Number 05200010/2012-201-01, 05200010/2012-201-02, 05200010/2012-201-03 - Proprietary Version," 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 and determination 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 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 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 communicates sensitive business information regarding commercial communications, plans, and strategies associated with future actions related to GEH's extensive body of technology, design, and regulatory information.

(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 3rd day of August 2012.

Jerald G. Head
GE-Hitachi Nuclear Energy Americas LLC