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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.

GE Hitachi Nuclear Energy

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

Subject: Re-Transmittal of Accepted Versions (Proprietary and Non-proprietary) of GE Licensing Topical Report NEDC-32938P-A / NEDO-32938-A, Revision 2, "Generic Guidelines and Evaluations for General Electric Boiling Water Reactor Thermal Power Optimization," May 2003

References:

1. Letter from G. Stramback (GE) to NRC Document Control Desk, "Accepted Versions (Proprietary and Non-proprietary) of GE Licensing Topical Report NEDC-32938P-A / NEDO-32938-A, Revision 2, 'Generic Guidelines and Evaluations for General Electric Boiling Water Reactor Thermal Power Optimization,' May 2003," June 13, 2003
2. Letter from H.N. Berkow (NRC) to J.F. Klapproth (GE), "Review of General Electric Nuclear Energy Licensing Topical Report, NEDC-32938P, 'Generic Guidelines and Evaluations for General Electric Boiling Water Reactor Thermal Power Optimization,' (TAC No. MA9537)," April 1, 2003

It has come to the attention of GE-Hitachi Nuclear Energy Americas LLC (GEH) that the subject document is not retrievable in ADAMS. GEH is hereby re-transmitting NEDC-32938-A, Revision 2 (Enclosure 1) and NEDO-32938-A, Revision 2 (Enclosure 2) originally provided by General Electric Company (GE) Nuclear Services via Reference 1 in response to Reference 2.

Please note that Enclosure 1 (NEDC-32938-A, Revision 2) 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 GE (and thus now GEH) as indicated in its affidavit. GEH 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.

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Enclosure 2 (NEDO-32938-A, Revision 2) is the non-proprietary version with the proprietary information redacted, and is acceptable for public release. Enclosure 3 provides an affidavit which sets forth the basis for requesting that Enclosure 1 be withheld from the public.

If you have any questions concerning this letter, please contact Tim Enfinger at 910-819-4881.

I declare under penalty of perjury that the foregoing information is true and correct to the best of my knowledge, information, and belief.

Sincerely,



Jerald G. Head
Senior Vice President, Regulatory Affairs

Commitments: No commitments are made in this letter.

Enclosures:

1. NEDC-32938P-A, "Generic Guidelines and Evaluations for General Electric Boiling Water Reactor Thermal Power Optimization," Revision 2 – Proprietary Version
2. NEDO-32938-A, "Generic Guidelines and Evaluations for General Electric Boiling Water Reactor Thermal Power Optimization," Revision 2 – Public Version
3. Affidavit for NEDC-32938P-A, Revision 2

cc: Rick Ennis, NRC
Tim Enfinger, GEH

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Enclosure 3

Affidavit for NEDC-32938P-A, Revision 2

General Electric Company

AFFIDAVIT

I, **George B. Stramback**, state as follows:

- (1) I am Project Manager, Regulatory Services, General Electric Company ("GE") 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 the GE proprietary report *NEDC-32938P-A, Licensing Topical Report Generic Guidelines and Evaluations for General Electric Boiling Water Reactor Thermal Power Optimization, Revision 2, Class III (GE Proprietary Information)*, dated May 2003. The proprietary information is delineated by double underlines inside square brackets.
- (3) In making this application for withholding of proprietary information of which it is the owner, GE 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), 2.790(a)(4), and 2.790(d)(1) for "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (Exemption 4). The material for which exemption from disclosure is here sought is all "confidential commercial information", and some portions 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 General Electric's competitors without license from General Electric 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 cost or price information, production capacities, budget levels, or commercial strategies of General Electric, its customers, or its suppliers;
- d. Information which reveals aspects of past, present, or future General Electric customer-funded development plans and programs, of potential commercial value to General Electric;
- e. 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) The information sought to be withheld is being submitted to NRC in confidence. The information is of a sort customarily held in confidence by GE, 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 GE, 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. Access to such documents within GE 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 GE 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), above, is classified as proprietary because it contains detailed results and conclusions from evaluations, utilizing analytical models, methods and processes, including computer codes, which GE has developed, obtained NRC approval of, and applied to perform evaluations of transient and accident events in the GE Boiling Water Reactor ("BWR").

The development and approval of these system, component, and thermal hydraulic models and computer codes was achieved at a significant cost to GE, on the order of several million dollars.

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 GE asset.

- (9) Public disclosure of the information sought to be withheld is likely to cause substantial harm to GE's competitive position and foreclose or reduce the availability of profit-making opportunities. The information is part of GE'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 GE.

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.

GE's competitive advantage will be lost if its competitors are able to use the results of the GE 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 GE 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 GE of the opportunity to exercise its competitive advantage to seek an adequate return on its large investment in developing 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 13th day of May 2003.


George B. Stramback
General Electric Company