

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Department of Energy (DOE) and United States Nuclear Regulatory Commission (NRC) (hereinafter the "United States"), General Electric Hitachi Nuclear Energy Americas, LLC (GE Hitachi), and LeRay Dandy (the relator) (hereafter collectively referred to as "the Parties"), through their authorized representatives.

### RECITALS

A. GE Hitachi, an entity owned by General Electric Company and by Hitachi, Ltd. and headquartered in Wilmington, North Carolina, is a manufacturer and provider of nuclear power reactors and services. In July 2007, DOE awarded GE Hitachi DOE Cooperative Agreement DE-FC07-07ID14778 for development of the Economically-Simplified Boiling Water Reactor (the ESBWR Cooperative Agreement).

B. On January 10, 2012, the relator filed a *qui tam* action in the United States District Court for the Eastern District of North Carolina captioned *United States ex rel. Dandy v. General Electric Company, GE-Hitachi Nuclear Energy Americas, LLC*, 7:12-cv-9, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). The relator's complaint alleged that GE Hitachi submitted and caused to be submitted false claims relative to the ESBWR Cooperative Agreement by knowingly violating NRC requirements and knowingly submitting false statements and information to the NRC relative to an ESBWR component known as the steam dryer. The United States intervened in the Civil Action on October 24, 2013.



C. The United States contends that it has certain civil claims against GE Hitachi arising from knowingly making and using false and/or incomplete or inaccurate statements relative to GE Hitachi's compliance with NRC regulations found at 10 C.F.R. Parts 21, 50, and 52 and guidance promulgated by the NRC thereunder with respect to GE Hitachi's use of a methodology known as the Plant-Based Load Evaluation to evaluate the ESBWR steam dryer. The United States further contends that, because of this conduct, GE Hitachi submitted and caused to be submitted false claims to the DOE for payment for work on the ESBWR steam dryer under the ESBWR Cooperative Agreement between January 2007 and May 2012. The conduct in this paragraph is referred to below as the Covered Conduct.

D. GE Hitachi denies the allegations of the United States as set forth in Paragraph C and the claims and allegations made by the relator in the Civil Action. This Settlement Agreement is neither an admission of liability by GE Hitachi nor a concession by the United States that its claims are not well founded.

E. The relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to the relator's reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. GE Hitachi shall pay to the United States \$2,700,000 (the Settlement Amount) by electronic funds transfer pursuant to written instructions to be provided by

the United States no later than five business days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims) below, and conditioned upon GE Hitachi's full payment of the Settlement Amount, the United States releases GE Hitachi, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and officers, directors, employees, and affiliates of each of the foregoing entities; and the successors and assigns of any of them from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Contract Disputes Act, 41 U.S.C. §§ 7101-09; any other statute creating a cause of action for civil damages or civil penalties that the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. Part O, Subpart I, Section 0.45(d) (2013); or the common law theories of breach of contract, payment by mistake, unjust enrichment, misrepresentation, and fraud.

3. Subject to the exceptions in Paragraph 4 below, and conditioned upon GE Hitachi's full payment of the Settlement Amount, the relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases GE Hitachi, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and officers, directors, employees, and affiliates; and the successors and assigns of any of them, from any claims known and unknown, arising out of facts or circumstances existing prior to and through the Effective Date of this Agreement, that the relator has asserted, could have asserted, or may assert in

the future against GE Hitachi, on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733. Any claim of the relator for retaliation under 31 U.S.C. § 3730(h), or for expenses, attorney fees, and costs pursuant to 31 U.S.C. § 3730(d)(1) and (h), however, is not released by this Settlement Agreement.

4. Notwithstanding the releases given in paragraphs 2 and 3 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability arising out of the NRC's enforcement authority under the Atomic Energy Act of 1954, as amended, or Part 10 of the Code of Federal Regulations;
- e. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- f. Any liability based upon obligations created by this Agreement;
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and
- h. Any liability of individuals who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys'

Manual), are indicted or charged, or who enter into a plea agreement, related to the Covered Conduct.

5. The relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). In connection with this Agreement and this Civil Action, the relator and his heirs, successors, attorneys, agents, and assigns agree that neither this Agreement, any intervention by the United States in the Civil Action in order to dismiss the Civil Action, nor any dismissal of the Civil Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar the relator from sharing in the proceeds of this Agreement. Moreover, the United States and the relator and his heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of the share percentage, if any, that the relator should receive of any proceeds of the settlement of his claims, and that no agreements concerning the relator's share have been reached to date.

6. GE Hitachi waives and shall not assert any defenses GE Hitachi may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the

characterization of the Settlement Amount for purposes of the Internal Revenue laws,  
Title 26 of the United States Code.

7. GE Hitachi fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that GE Hitachi has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of GE Hitachi, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audits and civil investigations of the matters covered by this Agreement;
- (3) GE Hitachi's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigations in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment GE Hitachi makes to the United States pursuant to this Agreement and any payments that GE

Hitachi may make to the relator, including costs and attorneys fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by GE Hitachi, and GE Hitachi shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, GE Hitachi shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by GE Hitachi or any of its subsidiaries or affiliates from the United States. GE Hitachi agrees that the United States, at a minimum, shall be entitled to recoup from GE Hitachi any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine GE Hitachi's books and records and to disagree with any calculations submitted by GE Hitachi or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by GE Hitachi, or the effect of any such Unallowable Costs on the amount of such payments.

9. This Agreement is intended to be for the benefit of the Parties and other released persons and entities only.

10. Upon receipt of the payment described in Paragraph 1, above, the United States shall promptly sign and file in the Civil Action a Notice of Dismissal of the Civil Action pursuant to Rule 41(a)(1). The Dismissal shall not include any claims of the relator for attorneys fees, costs, and expenses pursuant to 31 U.S.C. § 3730(d), the share, if any, due the relator, pursuant to 31 U.S.C. § 3730(d), and any claim of the relator for retaliation pursuant to 31 U.S.C. § 3730(h).

11. The United States and GE Hitachi shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

13. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of North Carolina. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

14. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

15. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.




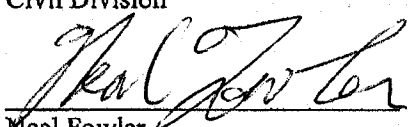
16. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
17. This Agreement is binding on GE Hitachi's successors, transferees, heirs, and assigns.
18. This Agreement is binding on the relator's successors, transferees, heirs, and assigns.
19. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.
20. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 11/22/2013

BY:

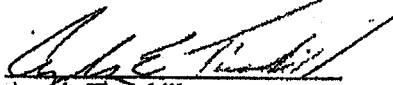
  
Daniel Hugo Fruchter  
Trial Attorney  
Commercial Litigation Branch  
Civil Division

  
Neal Fowler  
Assistant United States Attorney  
Eastern District of North Carolina

GENERAL ELECTRIC HITACHI NUCLEAR ENERGY AMERICAS, LLC


DATED: 11/22/13

BY:

  
Angela Thornhill  
General Counsel  
General Electric Hitachi  
Nuclear Energy Americas, LLC

DATED: 11/24/13

BY:

  
Mark Srege  
Bryan Cave LLP  
Counsel for General Electric Hitachi  
Nuclear Energy Americas, LLC

LERAY DANDY - RELATOR

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

LeRay Dandy

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Counsel for LeRay Dandy

GENERAL ELECTRIC HITACHI NUCLEAR ENERGY AMERICAS, LLC

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Angela Thornhill  
General Counsel  
General Electric Hitachi  
Nuclear Energy Americas, LLC

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Mark Srere  
Bryan Cave LLP  
Counsel for General Electric Hitachi  
Nuclear Energy Americas, LLC

LERAY DANDY - RELATORDATED: 11/21/13

BY: \_\_\_\_\_

LeRay Z. Dandy  
LeRay Dandy

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Counsel for LeRay Dandy

GENERAL ELECTRIC HITACHI NUCLEAR ENERGY AMERICAS, LLC

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Angela Thornhill  
General Counsel  
General Electric Hitachi  
Nuclear Energy Americas, LLC

DATED: \_\_\_\_\_

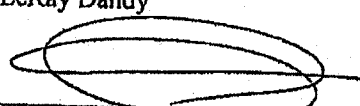
BY: \_\_\_\_\_  
Mark Srere  
Bryan Cave LLP  
Counsel for General Electric Hitachi  
Nuclear Energy Americas, LLC

LERAY DANDY - RELATOR

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
LeRay Dandy

DATED: 11-21-13

BY:   
Counsel for LeRay Dandy  
Anthony G. Scheer  
Rawls, Scheer, Foster, Mingo & Culp,  
P.L.L.C.