



OFFICE OF THE
GENERAL COUNSEL

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 17, 1998

G. Paul Bollwerk, III, Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Jerry Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

In the Matter of
Private Fuel Storage L.L.C.
(Independent Spent Fuel Storage Installation)
Docket No. 72-22-ISFSI

Dear Administrative Judges:

The NRC Staff has determined to grant the pending request to withhold from public disclosure, pursuant to 10 C.F.R. § 2.790, certain information which appears in the calculation package that supports the Safety Analysis Report for the Private Fuel Storage L.L.C. independent spent fuel storage installation. A copy of the Staff's letter to John D. Parkyn (PFS) dated February 12, 1998, setting forth this determination, is enclosed for your information.

This determination affects the manner in which the State's Late-Filed Contentions EE through GG should be treated in this proceeding. See Tr. at 197. Accordingly, persons in possession of this proprietary information should continue to take appropriate steps, similar to those established in the Licensing Board's Protective Order concerning Safeguards Information -- including the stamping of document cover pages with the phrase "Proprietary Information" and restricted methods of service -- to ensure proper handling and transmission of such documents.

Sincerely,

Sherwin E. Turk
Counsel for NRC Staff

cc w/encl.: Service List



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

February 12, 1998

Mr. John D. Parkyn, Chairman of the Board
Private Fuel Storage, LLC
P.O. Box C4010
La Crosse, WI 54602-4010

**SUBJECT: REQUEST TO WITHHOLD CERTAIN INFORMATION FROM PUBLIC
DISCLOSURE (TAC NO. L22462)**

Dear Mr. Parkyn:

This letter responds to the July 28, 1997, request from Mr. John Donnell of Stone and Webster Engineering Corporation and the accompanying affidavits from Dr. Alan Soler of Holtec International (Holtec) and Mr. Arthur McSherry of Sierra Nuclear Corporation (SNC), respectively dated July 21, 1997, and July 24, 1997. In those affidavits, it was requested that certain information identified in the calculation package that supports the Safety Analysis Report for the Private Fuel Storage Facility license application submitted by Private Fuel Storage, Limited Liability Company (PFS) be withheld from public disclosure pursuant to 10 CFR 2.790. PFS has identified Holtec and SNC as vendors of the cask systems that would be used at the proposed Private Fuel Storage Facility and has referenced the applicable Topical Safety Analysis Reports in its application. As a first step in its in-depth review of the PFS license application, the Nuclear Regulatory Commission staff is considering this request to withhold certain Holtec and SNC generated information from public disclosure. You also submitted a nonproprietary version (Calculation Package Volume III) which will be placed in NRC's Public Document Room for public inspection.

The Holtec affidavit states that the submitted information should be withheld from public disclosure for the following reasons:

1. The information contained within the proprietary material discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by Holtec's competitors without license from Holtec International constitutes a competitive economic advantage over other companies.
2. The information contained within the proprietary material, if used by a competitor, would reduce its expenditure of resources or improve its competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product.
3. The information contained in the proprietary material reveals aspects of past, present, or future Holtec International customer-funded development plans and programs of potential commercial value to Holtec International.
4. The information contained in the proprietary material discloses patentable subject matter for which it may be desirable to obtain patent protection.

The SNC affidavit states that the submitted information should be withheld from public disclosure for the following reasons:

1. The information has been and is held in confidence by SNC.
2. The information contained within the proprietary material is calculated data and the results of design calculations. This type of material is normally held in confidence by SNC which invests time and money in its development.
3. The proprietary material is transmitted to the NRC in confidence.
4. The proprietary material which is being claimed as trade secrets and privileged information is not available in public sources.
5. SNC has invested a considerable amount of time, engineering labor, and money in the development of the information. Public disclosure of this information would cause substantial harm to SNC's competitive position. Others, seeking to design similar systems would have to make similar investments to develop the information on their own as long as the information is not disclosed to the public.

We have reviewed your submittal in accordance with the requirements of 10 CFR 2.790, and on the basis of Holtec and Sierra Nuclear's statements, have determined that submitted information sought to be withheld contains proprietary commercial information.

Therefore, the version of the submitted information marked as proprietary will be withheld from public disclosure pursuant to 10 CFR 2.790(b)(5) and Section 103(b) of the Atomic Energy Act of 1954, as amended.

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the documents. If the need arises, we may send copies of this information to our consultants working in this area. We will, of course, ensure that the consultants have signed the appropriate agreements for handling proprietary information.

If the basis for withholding this information from public disclosure should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. Please be advised that the NRC may have cause to review this determination in the future, for example, if the scope of a Freedom of Information Act request includes your withheld information. In all review situations, if the NRC makes a determination adverse to the above, you will be notified in advance of any public disclosure.

Mr. J. D. Parkyn

-3-

If you have any questions, please contact Mr. Mark Delligatti of my staff. Mr. Delligatti is the Senior Project Manager assigned to the review of the PFS application. He can be reached at 301-415-8518.

Sincerely,

[original signed by /s/]

Charles J. Haughney, Acting Director
Spent Fuel Project Office
Office of Nuclear Material Safety
and Safeguards

Dockets 72-22, 72-1023, 72-1008

cc: PFS Service List
OGC List

Distribution: (Control No. 010S)

Dockets NRC File Center
SFLS R/F SShankman
DReid MGBailey
VEverett, RIV BSpitzberg, RIV

PUBLIC
FSturz
STurk, OGC
SDroggittis, OSP

NMSS R/F SFPO R/F
EShum TKobetz
CMarco, OGC TMadden, OCA

*see previous concurrence

OFC	SFPO	C	SFPO*	C	OGC*	C	SFPO	C	SFPO
NAME	MSDelligatti:dd		VTharpe		MPSiemien		EJLeeds		CJHaughney
DATE	02/5/98		01/21/98		02/04/98		02/6/98		02/10/98

C = COVER

E = COVER & ENCLOSURE

N = NO COPY

OFFICIAL RECORD COPY

G:\PFS\CALC\PROP. OGC

2/12/98 :dd

Private Fuel Storage

cc:

**Mr. Scott Northard
Project Manager
Private Fuel Storage, L.L.C.
c/o NSP, 414 Nicollet Mall, RS&
Minneapolis, MN 55401**

**The Honorable Michael O. Leavitt
Governor of Utah
Salt Lake City, UT 84114-0601**

**Mr. Leon D. Bear, Chairman
Skull Valley Band of Goshute Indians
P. O. Box 150
Grantsville, UT 84029**

**Mr. Jack Gerard
McClure, Gerard and Neunschwander
201 Maryland Avenue, NE
Washington, DC 20002**

**Dr. Diane R. Nielson, Executive Director
Utah Department of Environmental Quality
16 North 1950 West
Salt Lake City, UT 84116**

**Mr. David Allison, Superintendent
Uintah and Ouray Agency
Bureau of Indian Affairs
Dept. of Interior
Fort Duchesne, UT 84026**

OGC LIST OF THIRD PARTIES FOR CERTIFICATE OF SERVICE

Jay E. Silberg, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, NW
Washington, DC 20037-8007

Professor Richard Wilson
Department of Physics
Harvard University
Cambridge, MA 02138

Jean Belille, Esq.
Land and Water Fund of the Rockies
2260 Baseline Road, Suite 200
Boulder, CO 80302

Martin Kaufman, Esq.
Atlantic Legal Foundation
205 E. 42nd Street, 9th Floor
New York, NY 10017

Clayton J. Parr, Esq.
Parr, Waddoups, Brown, Loveless & Gee
185 S. State St., Suite 1300
P.O. Box 11019
Salt Lake City, UT 84147-0019

John Paul Kennedy, Sr., Esq.
1385 Yale Ave.
Salt Lake City, UT 84105

Danny Quintana, Esq.
Danny Quintana & Associates, P.C.
50 West Broadway
Fourth Floor
Salt Lake City, UT 84101

Denise Chancellor, Esq.
Fred G. Nelson, Esq.
160 East 300 South, 5th Floor
P.O. Box 140873
Salt Lake City, UT 84114-0873

Connie Nakahara, Esq.
Utah Dept. of Environmental Quality
168 North 1950 West
P.O. Box 144810
Salt Lake City, UT 84114-4810

Diane Curran, Esq.
Harmon, Curran & Spielberg
2001 "S" Street, NW
Suite 430
Washington, DC 20009