



**Pacific Gas and
Electric Company**

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December 21, 2001

PG&E Letter DIL-01-008

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

Docket No. 72-26
Diablo Canyon Independent Spent Fuel Storage Installation
Submittal of Holtec Proprietary and Non-Proprietary Drawing Packages

Dear Commissioners and Staff:

By letter dated December 21, 2001, Pacific Gas and Electric Company (PG&E) submitted an application to the Nuclear Regulatory Commission (NRC) requesting a site-specific license for an Independent Spent Fuel Storage Installation (ISFSI) at the Diablo Canyon Power Plant (DCPP). The application included a Safety Analysis Report, Environmental Report, and other required documents in accordance with 10 CFR 72.

Proprietary and non-proprietary versions of two Holtec drawings prepared in support of the Diablo Canyon ISFSI license application are transmitted in Enclosure 1, Attachments 1 through 4, for use by the NRC staff in their review of the application. Enclosure 2 contains an affidavit signed by Holtec, the owner of the proprietary information in the design drawings. The affidavit sets forth the basis on which the Holtec information contained in the subject drawings may be withheld from public disclosure by the Commission, and it addresses with specificity the considerations listed in the Freedom of Information Action ("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(b)(1). PG&E requests that the Holtec proprietary information be withheld from public disclosure in accordance with the cited regulations.

Correspondence with respect to the proprietary aspects of the application for withholding related to the Holtec proprietary information or the Holtec affidavit provided in Enclosure 2 should be addressed to Brian Gutherman, Licensing Manager, Holtec International, Holtec Center, 555 Lincoln Drive West, Marlton, New Jersey 08053.

If you have any questions regarding the enclosed drawings, please contact Mr. Terence Grebel at (805) 595-6382.



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Sincerely,

A handwritten signature in black ink, appearing to read 'L. F. Womack'.

Lawrence F. Womack

cc: Timothy J. Kobetz
Ellis W. Merschoff
David L. Proulx
Girija S. Shukla w/o Enclosures
David A. Repka
Brian Gutherman w/o Enclosures
Thomas A. Moulia w/o Enclosures
Roy B. Willis w/o Enclosures
Diablo Distribution w/o Enclosures

Enclosures

**LIST OF HOLTEC PROPRIETARY AND NON-PROPRIETARY
DRAWING PACKAGES**

1. Drawing 3438, Revision 4, 125 Ton HI-TRAC 125D Assembly (Proprietary)
2. Drawing 3768, Revision 0, 125 Ton HI-TRAC 125 D Assembly (Non-Proprietary)
3. Drawing 3437, Revision 4, Mating Device – Pool Lid Remover Main Assembly (Proprietary)
4. Drawing (SAR Figure 4.2-11), Mating Device (Non-Proprietary)

HOLTEC AFFIDAVIT FOR PROPRIETARY DESIGN DRAWING PACKAGES

AFFIDAVIT PURSUANT TO 10CFR2.790

I, Brian Gutherman, being duly sworn, depose and state as follows:

- (1) I am Licensing Manager of Holtec International and have reviewed the information described in paragraph (2) which is sought to be withheld, and am authorized to apply for its withholding.
- (2) The information sought to be withheld is the following Holtec International Drawings:
 - Holtec Drawing No. 3437, Mating Device Pool Lid Remover Main Assembly, Rev. 4.
 - Holtec Drawing No. 3438, 125 Ton HI-TRAC 125D Assembly, Rev. 4.

This information is considered proprietary to Holtec International.

- (3) In making this application for withholding of proprietary information of which it is the owner, Holtec International 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 10CFR Part 9.17(a)(4), 2.790(a)(4), and 2.790(b)(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 Holtec's competitors without license from Holtec International constitutes a competitive economic advantage over other companies;

AFFIDAVIT PURSUANT TO 10CFR2.790

- 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 Holtec International, its customers, or its suppliers;
- d. Information which reveals aspects of past, present, or future Holtec International customer-funded development plans and programs of potential commercial value to Holtec International;
- 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, 4.b, 4.d, and 4.e, above.

- (5) The information sought to be withheld is being submitted to the NRC in confidence. The information (including that compiled from many sources) is of a sort customarily held in confidence by Holtec International, 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 Holtec International. No public disclosure has been made, and it is not 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 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.

AFFIDAVIT PURSUANT TO 10CFR2.790

Access to such documents within Holtec International 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 designee), and by the Legal Operation, for technical content, competitive effect, and determination of the accuracy of the proprietary designation. Disclosures outside Holtec International 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 classified as proprietary was developed and compiled by Holtec International at a significant cost to Holtec International. This information is classified as proprietary because it contains detailed descriptions of analytical approaches and methodologies not available elsewhere. This information would provide other parties, including competitors, with information from Holtec International's technical database and the results of evaluations performed by Holtec International. Release of this information would improve a competitor's position without the competitor having to expend similar resources for the development of the database. A substantial effort has been expended by Holtec International to develop this information.
- (9) Public disclosure of the information sought to be withheld is likely to cause substantial harm to Holtec International's competitive position and foreclose or reduce the availability of profit-making opportunities. The information is part of Holtec International's comprehensive spent fuel storage 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, and analytical costs comprise a substantial investment of time and money by Holtec International.

