

March 19, 2004

Mr. Brian Gutherman
Licensing Manager
Holtec International
555 Lincoln Drive West
Marlton, NJ 08053

SUBJECT: PUBLIC DISCLOSURE DETERMINATION (TAC NO. L23657)

Dear Mr. Gutherman:

By letter dated February 2, 2004, (Document ID 5014506), Holtec International submitted information to the United States Nuclear Regulatory Commission (NRC) in accordance with 10 CFR Part 72 in response to NRC's Request For Additional Information dated January 13, 2004, associated with review of the HI-STORM 100 Certificate of Compliance No. 1014 License Amendment Request 2 (LAR 1014-2). Your letter included an affidavit dated February 2, 2004. The affidavit requests that information contained in Appendix A of Attachment 1 to the Holtec letter No. 5014506 dated February 2, 2004, entitled, "Derivation of Upper and Lower Band of Helium Backfill Including Instrument Uncertainties and Biases," be considered proprietary.

Your affidavit requests that the enclosures be withheld from public disclosure pursuant to 10 CFR 2.790 for the following reasons:

- (1) The 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.
- (2) The 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.
- (3) The information which 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 which discloses patentable subject matter for which it may be desirable to obtain patent protection.
- (5) 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.

Recent NRC rule revision to the Adjudicatory Process (69 FR 2182, January 14, 2004) has redesignated 10 CFR 2.790 as 10 CFR 2.390. This change was effective February 13, 2004. Based on your February 2, 2004, submittal, our review of the proprietary information, and the requirements of 10 CFR 2.390, we have determined that the information described above, as enclosed with your letter (Document ID 5014506), should be withheld from public disclosure pursuant to 10 CFR 2.390. It is the NRC's policy to achieve an effective balance between legitimate concerns for protection of competitive positions and the right of the public to be fully apprised of the basis for and effects of licensing and rulemaking actions.

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.

Sincerely,

/RA/

Christopher M. Regan, Project Manager
Licensing Section
Spent Fuel Project Office
Office of Nuclear Material Safety
and Safeguards

Docket No. 72-1014

TAC No. L23657

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