



Holtec Center, 555 Lincoln Drive West, Marlton, NJ 08053

Telephone (856) 797-0900

Fax (856) 797-0909

February 22, 2005

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

Subject: Proprietary Information Markings in Submittal of License Amendment Request #3 to HI-STORM 100 CoC

Reference: 1. USNRC Docket No. 72-1014 (HI-STORM 100)
2. Holtec Letter 5014549 from E. Rosenbaum, dated 30 December 2004
3. USNRC Letter from C. Regan, dated 11 February 2005

Dear Sir:

We have previously submitted (Reference 2) a request to amend the Certificate of Compliance for the HI-STORM 100 System (CoC 72-1014). This previous submittal included a request, pursuant to 10 CFR 2.390, to withhold portions of the submittal from public disclosure. The request for withholding only applied to those portions of the submittal, specifically portions of Attachments 4 and 5 to Reference 2, which were specifically marked as "Holtec Proprietary Information" or "Holtec Proprietary". This request was accompanied by a notarized affidavit, as required, which gave the basis for our request as an ongoing patent process on the new HI-STORM 100U overpack model.

We have recently been notified (Reference 3) that our request for withholding the marked information has been denied. It is our understanding that the basis for this denial is that our markings of proprietary status were not applied narrowly enough and that some pages marked as proprietary contained no actual proprietary information.

In accordance with 10 CFR 2.390(c)(3), we request that the previously submitted documents (Attachments 4 and 5 to Reference 2) be returned to us (or destroyed) and not placed in the Public Document Room. We believe that the submitted documents meet the criteria in 10 CFR 2.390(c)(3) that would allow their return. We have prepared a new version of the submittal documents with proprietary markings more narrowly applied. Other than the changes to the proprietary markings, these documents were not modified in any way. We herein submit these replacement submittal documents along with a new affidavit.

To simplify document handling by the NRC, we have prepared a complete replacement submittal, including both the documents affected by the proprietary marking changes and the unaffected documents. To assist the NRC's placement of the non-proprietary information into the Public Document Room, we have prepared two versions of this request package. The first version contains

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all proprietary information and is appropriate for SFPO review of the CoC amendment request. The second version is identical except that all proprietary information has been removed, and is appropriate for placement in the Public Document Room.

The following attachments are provided:

Attachment 1: Summary of Proposed Changes. This document is not affected by the proprietary marking changes.

Attachment 2: Proposed CoC Changes in Markup Format – Deletions are shown in strikeout. All changes are marked by vertical bars in the right margin. This document is not affected by the proprietary marking changes.

Attachment 3: Proposed CoC Changes, Revised Format – Deletions are not shown. All changes are marked by vertical bars in the right margin. This document is not affected by the proprietary marking changes.

Attachment 4: Proposed Revised FSAR – This is a complete document, including both changed and unchanged sections. Changed sections are labeled as “Rev. L3” in the footer. Unchanged sections are not labeled with a revision number. Information on the new HI-STORM 100U overpack is compiled in supplements to each chapter, each numbered as xx.I where xx is the chapter that is supplemented. With the exception of the numbered supplements, which are all new, and Chapter 4, which is heavily modified, deletions are shown in strikeout and insertions are shown in italics. Withholding from public disclosure of portions of this attachment is requested (see Attachment 6).

Attachment 5: Proposed Revised FSAR, Supplements Only – This is a collection of the numbered supplements 1.I through 13.I. This compiles all new information for the HI-STORM 100U in a single location for ease of reference. Withholding from public disclosure of portions of this attachment is requested (see Attachment 6).

Attachment 6: Affidavit Pursuant to 10CFR2.390 – Affidavit requesting that information in Attachments 4 and 5 claimed as proprietary and appropriately marked as such be withheld from public disclosure.



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We appreciate the SFPO's ongoing attention to this application.

Sincerely,

Evan Rosenbaum, P.E.
Project Manager, LAR 1014-3
Docket No. 72-1014

cc: Mr. Christopher Regan, NRC

AFFIDAVIT PURSUANT TO 10CFR2.390

I, Evan Rosenbaum, being duly sworn, depose and state as follows:

- (1) I am the Holtec International Project Manager for LAR 1014-3 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 portions of Attachments 4 and 5 to Holtec letter Document ID 5014561 containing information for which we are currently seeking patent protection. The affected portions are appropriately annotated as Holtec Proprietary information.
- (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), 2.390(a)(4), and 2.390(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).

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- (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;
 - 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 paragraph 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

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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. 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. A substantial effort has been expended by Holtec International to develop this information. Release of this information would improve a competitor's position because it would enable Holtec's competitor to copy our technology and offer it for sale in competition with our company, causing us financial injury.

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- (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.

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.

Holtec International's competitive advantage will be lost if its competitors are able to use the results of the Holtec International 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 Holtec International 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 Holtec International of the opportunity to exercise its competitive advantage to seek an adequate return on its large investment in developing these very valuable analytical tools.

