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April 13, 2005

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

Subject: SFPO/Holtec Meeting scheduled for 21 April 2005

- References:
1. USNRC Docket No. 72-1014, TAC L23799
 2. HI-STORM 100 Certificate of Compliance 72-1014
 3. Holtec Project 5014
 4. NRC Letter Dated 23 March 2005

Dear Sir:

The purpose of this letter is to request that a portion of the meeting between Holtec International and the SFPO, scheduled for 21 April 2005 be closed to public participation. The reason for this request is that the topic to be discussed, our soon-to-be amended license amendment that includes the HI-STORM 100U overpack, contains material for which we are currently seeking both domestic and international patent protection. Public disclosure of the features of certain HI-STORM 100U design features could preclude our obtaining such patent protection.

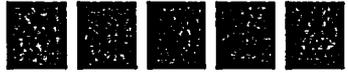
Please recall that portions of the current submittal have been withheld from public disclosure and that a portion of a previous meeting that occurred on February 16th of this year was closed to public participation. We are requesting that discussions and presentations on the previously withheld topics continue to be withheld from public disclosure.

As was done in the February 16th meeting, it would be our intention to give a summary presentation in an initial open session. The summary presentation would touch upon all topics to be addressed in the closed session, without disclosing patentable features of the HI-STORM 100U overpack design. Any presentation materials used in the open session would be immediately available for release to the public and could be distributed to any members of the public in attendance. Presentations relating to topics discussed in a 23 March 2005 NRC letter (Reference 4), and any subsequent discussions, would also occur in the open session.

A closed session would then commence where we would give more detailed presentations to the SFPO Staff. Any presentation materials used in the closed session would be available for the SFPO Staff, but would be withheld from public disclosure. If necessary, the meeting could conclude with another open session to discuss any remaining issues not related to the design of the HI-STORM 100U.

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HOLTEC
INTERNATIONAL

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We understand that, at the completion of the licensing process, all material in the proposed FSAR must be released for public disclosure. We would propose that the presentation materials used in the planned April 21st meeting only be withheld until the end of the licensing process and could be released to the public at the same time as the information in the proposed FSAR.

Please contact me if you require additional information.

Sincerely,

Evan Rosenbaum, P.E.
Project Manager, LAR 1014-3

Attachment: Affidavit Pursuant to 10 CFR 2.390

cc: Mr. Christopher Regan, USNRC (w/attach.)

AFFIDAVIT PURSUANT TO 10 CFR 2.390

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

- (1) I am the Holtec International Project Manager for LAR 1014-3 and am familiar with the information described in paragraph (2) which is sought to be withheld from public disclosure, and am authorized to apply for its withholding.
- (2) The information sought to be withheld is presentations and discussions pertaining to the design features of the Holtec International HI-STORM 100U overpack that will take place in a meeting scheduled for April 21, 2005 at the NRC's White Flint offices. The information to be discussed is considered proprietary to Holtec International for reasons discussed below.
- (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 discussed with 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 information 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 information 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.

