

May 18, 2005

Mr. U. B. Chopra
Licensing Manager
Transnuclear, Inc.
39300 Civic Center Drive, Suite 2800
Freemont, CA 94538-2324

SUBJECT: PUBLIC DISCLOSURE DETERMINATION (TAC NO. L23653)

Dear Mr. Chopra:

By letter dated October 11, 2004, Transnuclear, Inc., (TN) submitted the Thermal Test Report for the NUHOMS Horizontal Storage Module, Model HSM-H (TN Report E-21625). The report documented subject thermal test that validated the methodology used to predict the thermal performance of the NUHOMS[®]-24PTH and NUHOMS[®] HD systems. Furthermore, by letter dated January 14, 2005, TN submitted Revision 1 of the Thermal Test Report for the NUHOMS Horizontal Storage Module, Model HSM-H (TN Report E-21625). The test report addressed staff comments related to the limitations of the thermal methodology used in the safety analysis reports for the NUHOMS[®]-24PTH and NUHOMS[®] HD systems. The non-proprietary version of TN Report E-21625, has been made available electronically for public inspection in the NRC's Agencywide Documents Access and Management System (ADAMS). These documents were submitted to the United States Nuclear Regulatory Commission (NRC) in accordance with 10 CFR Part 72. Both letters included an affidavit that requested information, annotated as proprietary, which was contained in Attachment 2 of TN letters be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.390.

The letter dated October 11, 2004, included an affidavit executed by William D. Gallo that requested the Thermal Testing of the NUHOMS[®] Horizontal Storage Module, Model HSM-H, Report E-21625, be withheld from public disclosure. Additionally, the letter dated January 14, 2005, included an affidavit executed by Jayant Bondre that requested the Thermal Testing of the NUHOMS[®] Horizontal Storage Module, Model HSM-H, Report E-21625, Revision 1, be withheld from public disclosure.

The affidavits state that the submitted information should be withheld from public disclosure for the following reasons:

- a) A similar product is manufactured and sold by competitors of Transnuclear, Inc.
- b) Development of this information by Transnuclear, Inc. required considerable expenditure of man-hours and resources. To the best of my knowledge and belief, a competitor would have to undergo similar expense in generating equivalent information.
- c) In order to acquire such information, a competitor would also require considerable time and inconvenience related to the development of a design and analysis of a dry spent fuel storage system.
- d) The information required significant effort and expense to obtain the licensing approvals necessary for application of the information. Avoidance of this expense would decrease a competitor's cost in applying the information and marketing the product to which the

information is applicable.

- e) The information consists of description of the design, analysis and specific tests of a dry spent fuel storage system, the application of which provides a competitive economic advantage. The availability of such information to competitors would enable them to modify their product to better compete with Transnuclear, Inc., take marketing or other actions to improve their product's position or impair the position of Transnuclear, Inc.'s product, and avoid developing similar data and analyses in support of their processes, methods or apparatus.
- f) In pricing Transnuclear, Inc.'s products and services, significant research, development, engineering, analytical, licensing, quality assurance and other costs and expenses must be included. The ability of Transnuclear, Inc.'s competitors to utilize such information without similar expenditure of resources may enable them to sell at prices reflecting significantly lower costs.

Based on your October 11, 2004, and January 14, 2005, letters and their attachments, 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 letters, 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/

L. Raynard Wharton, Project Manager
Licensing Section
Spent Fuel Project Office
Office of Nuclear Material Safety
and Safeguards

Docket No. 72-1004
TAC No. L23653

May 18, 2005

information is applicable.

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Sincerely,
/RA/
 L. Raynard Wharton, Project Manager
 Licensing Section
 Spent Fuel Project Office
 Office of Nuclear Material Safety
 and Safeguards

Docket No. 72-1004

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