

September 14, 2006

Mr. Evan Rosenbaum
Project Manager
Holtec International
555 Lincoln Drive West
Marlton, NJ 08053

SUBJECT: NRC DETERMINATION OF HOLTEC INTERNATIONAL'S REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE (TAC NO. L23850)

Dear Mr. Rosenbaum:

By your letter dated July 10, 2006, (Document ID 5014603), Holtec International (Holtec) submitted a response to the Nuclear Regulatory Commission (NRC) staff request for additional information (RAI) dated June 6, 2006, in support of an application to amend Certificate of Compliance (CoC) No. 1014 for the HI-STORM 100 Cask System (LAR 1014-3, Revision 0). Your July 10, 2006, letter included a Holtec affidavit, signed by you, dated July 10, 2006, (Attachment 5) and a General Electric (GE)/Southern Nuclear Operating Company (SNC)/Holtec Proprietary Information Agreement dated August 21, 1998, (Attachment 6). The Holtec affidavit requested that the material, which is contained in Attachments 7, 8, 9, and 10 of Holtec letter No. 5014603 be withheld from public disclosure pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.390. The GE/SNC/Holtec Proprietary Information Agreement authorizes Holtec to claim, on behalf of GE, the third party GE information (Attachment 8 to Holtec letter No. 5014603) as proprietary and to be withheld from public disclosure.

Attachment 7 contained "HI-STORM 100U Bill of Materials." Attachment 8 contained a "Letter from General Electric (GE) Nuclear Energy (BWR Grid Thickness Reference)." Attachment 9 contained Holtec Report HI-2043317, Revision 3, "License Amendment Request (LAR) 1014-3 HI-STORM Thermal-Hydraulic Analyses;" Holtec Report HI-2043168, Revision 2, "Thermal-Hydraulic Evaluation of HI-STORM 100U;" Holtec Report HI-2043285, Revision 4, "Pressure Loss Characteristics for in Cell Flow of Helium in Pressurized Water Reactor (PWR) and Boiling Water Reactor (BWR) Multi-Purpose Canister (MPC) Storage Cells;" and, Holtec Report HI-2053389, Revision 2, "Calculation Package for HI-STORM 100U." Attachment 10 contained Structural and Thermal Data Files on compact disc (CD).

Your affidavit requests that the attachments be withheld from public disclosure pursuant to 10 CFR 2.390 for the following reasons:

- (1) 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; and,

- (2) 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.

We have reviewed your application and all the supporting information in accordance with the requirements of 10 CFR 2.390. With respect to the information contained in Attachment 9 to Holtec letter No. 5014603, we have concluded that you have not marked the information, claimed as proprietary, in accordance with the requirements of 10 CFR 2.390(b)(1)(I). Specifically, the information requested to be withheld from public disclosure in Attachment 9, contained in Appendices B and D of Holtec Report HI-2043168; Appendices A, F, and H of Holtec Report HI-2043317; Appendix C of Holtec Report HI-2043285; and, all of Holtec Report HI-2053398 is not marked as Proprietary Information or otherwise annotated as privileged information. It should also be noted that the information contained on Page F-8 of Holtec Report HI-2043317 is publically available and therefore cannot be claimed as proprietary by Holtec.

With respect to the information contained in Attachment 8, "Letter from General Electric (GE) Nuclear Energy (BWR Grid Thickness Reference)," to Holtec letter No. 5014603 we have reviewed your application and the third party agreement, contained in Attachment 6, in accordance with the requirements of 10 CFR 2.390 and, on the basis of your statements, have concluded that the third party agreement between Holtec and GE does not contain the basis for GE's determination that the material in Attachment 8 is proprietary as required by 10 CFR 2.390. It should also be noted that the third party agreement provided in Attachment 6 was not signed by a GE official. Please provide the NRC with an affidavit, signed by a GE official that sets forth the basis for GE's claim that the information contained in Attachment 8 is proprietary.

Accordingly, we have concluded that the information sought to be withheld from public disclosure in Attachments 8 and 9 to Holtec letter No. 5014603, noted above, does not meet the requirements of 10 CFR 2.390.

Thirty days from the date of this letter, the subject attachments (8 and 9) will be placed in the Nuclear Regulatory Commission's Agencywide Documents Access and Management System (ADAMS) unless you respond by then to this letter. If within 30 days of the date of this letter, you request withdrawal of the documents in accordance with 10 CFR 2.390(c) and resubmit them in accordance with regulatory requirements (including appropriate markings), your request will be reviewed and a determination made whether the documents will be released to the public, withheld from public disclosure, or returned to you.

With respect to the information contained in Attachments 7 and 10 to Holtec letter No. 5014603, we have reviewed your application and the material in accordance with the requirements of 10 CFR 2.390 and, on the basis of your statements, have determined that the submitted information sought to be withheld contains proprietary commercial information and should be withheld from public disclosure.

Therefore, Attachment 7 "HI-STORM 100U Bill of Materials" and Attachment 10 "Structural and Thermal Data Files," to Holtec letter No. 5014603, marked as proprietary, will be withheld from public disclosure pursuant to 10 CFR 2.390(b)(5) and Section 103(b) of the Atomic Energy Act

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of 1954, as amended. Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the documents.

If the basis for withholding the information in Attachments 7 and 10, to Holtec Letter No. 5014603, from public inspection should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You also should understand 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 information. In all review situations, if the NRC makes a determination adverse to the above, you will be notified of the date of public disclosure, in advance, which will be a reasonable time thereafter.

If you have any questions regarding this matter, I may be reached at 301-415-1179.

Sincerely,

/RA/

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

Docket No. 72-1014
TAC No. L23850

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