



## Department of Energy

Washington, DC 20585

QA: N/A

DOCKET NUMBER 63-001

July 1, 2009

**ATTN: Document Control Desk**

John H. (Jack) Sulima, Project Manager  
Project Management Branch Section B  
Division of High-Level Waste Repository Safety  
Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
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YUCCA MOUNTAIN - REQUEST FOR ADDITIONAL INFORMATION RE:  
LICENSE APPLICATION (SAFETY ANALYSIS REPORT SECTION 2.2.1.2),  
SAFETY EVALUATION REPORT, VOLUME 3 – POSTCLOSURE CHAPTER  
2.2.1.2.1 (SCENARIO ANALYSIS), FOURTH SET – SUBMITTAL OF  
PROPRIETARY DATA UNDER 10 CFR 2.390

REQUEST TO WITHHOLD INFORMATION FROM PUBLIC DISCLOSURE  
PURSUANT TO 10 CFR 2.390

Reference 1: Ltr, Williams to Sulima, dtd 02/23/09, "Yucca Mountain - Request for Additional Information Re: License Application (Safety Analysis Report Section 2.2.1.2), Safety Evaluation Report, Volume 3 – Postclosure Chapter 2.2.1.2.1 (Scenario Analysis), Fourth Set"

Reference 2: Ltr, Williams to Sulima, dtd 06/19/09, "Yucca Mountain - Request for Additional Information Re: License Application (Safety Analysis Report Section 2.2.1.2), Safety Evaluation Report, Volume 3 – Postclosure Chapter 2.2.1.2.1 (Scenario Analysis), Fourth Set – Submittal of Proprietary Reports Under 10 CFR 2.390"

The purpose of this letter is to transmit the electronic data files, identified in Reference 1 above as containing proprietary information, to the U. S. Nuclear Regulatory Commission (NRC). These data files are an integral part of the four (4) proprietary documents that were previously submitted to NRC in Reference 2.

The Department of Energy requests, pursuant to 10 CFR 2.390, that NRC withhold the optical storage media, identified as Enclosure 2, from public disclosure. The enclosed affidavit (Enclosure 1), executed by AREVA NC SA, provides the necessary information required in accordance with the Commission's regulations and specifically applicable to Docket Number 63-001.

Enclosure 2 provides data files that are not compliant with NRC's Electronic Information Exchange guidance. The data files are usable to the Office of Nuclear Material Safety and Safeguards staff and contractors.



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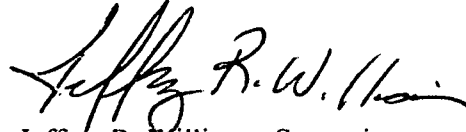
NM5525

John H. (Jack) Sulima

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July 1, 2009

There are no commitments in this letter. If you have any questions regarding this letter, please contact me at (202) 586-9620, or by email to [jeff.williams@rw.doe.gov](mailto:jeff.williams@rw.doe.gov).



Jeffrey R. Williams, Supervisor  
Licensing Interactions Branch  
Regulatory Affairs Division  
Office of Technical Management

OTM: SEG-0854

Enclosures (2):

1. Affidavit of Gilles Clement, AREVA NC SA, in Support of Request to Withhold Reports From Disclosure to the Public, Executed on May 26, 2009.
2. Electronic Data to Support PROPRIETARY References for Fernex 2006, Programme HTC, Phases 1. through 4. [One DVD identified as DVD-02]

cc w/Encl 1 only:

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R. K. Johnson, NRC, Rockville, MD  
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United States  
Nuclear Regulatory Commission  
Washington, DC

REPORTS, from disclosure to the public  
pursuant to 10 CFR § 2.390

Affidavit of Gilles Clement in Support of  
Request to Withhold PROPRIETARY

State of Maryland )  
County of Montgomery ) SS.

NRC Docket Number 63-001

Pursuant to 10 C.F.R. § 2.390, Gilles Clement submits this affidavit in support of AREVA NC SA and Institut de Radioprotection et de Sureté Nucléaire ("IRSN")'s Request to Withhold The High Burn-Up (or HTC, the French contraction for Haut Taux de Combustion) Actinide Criticality Program Experimental Data consisting of the following four experimental reports (the Reports") from disclosure to the public pursuant to 10 CFR § 2.390.

- a. Water-moderated and water-reflected arrays of HTC pins with varying pin pitch (18 experiments);
- b. Water-moderated and water-reflected arrays of HTC Pins with varying pin pitch and either boron added to the water (20 experiments) or gadolinium, added to the water (21 experiments);
- c. Water-moderated and water-reflected 2 x2 array of assemblies containing HTC pins on a 1.6 cm pitch (15 experiments with varying assembly size and assembly water gap) and additional experiments with each assembly placed within a borated steel (5 experiments, boral (1 experiment), or cadmium (5 experiments);
- d. Water moderated 2 x 2 array of 25 x 25 HTC pin lattices (1.6 cm pitch) with and without absorbing containers (borated steel, boral, cadmium) surrounding the assemblies and reflected with either a lead shield (38 experiments) or a steel shield ( 33experiments); criticality of fuel assemblies in 38 different shipping cask configurations.

The above experiments were carried out with mixed oxide fuel rods with the following composition: (PU/U+PU)) = 1.1% and 235U/UT = 1.57%. The U and PU isotopic composition is equal to UOX spent fuel enriched to 4.5% with a burn up of 37,000MWd/t without fission products.

1. My name is Gilles Clement.

2. This affidavit is submitted in support of AREVA NC SA and IRSN's request that the Reports, be withheld from public disclosure. This affidavit is consistent with the

requirements in 10 CFR § 2.390(b) for withholding pursuant to 10 CFR § 2.390(a)(4) and is consistent with Department of Energy ("DOE") regulation 10 CFR §1004.10.

3. I am presently employed by AREVA NC INC, affiliate of AREVA NC SA, as Vice President, Recycling Technologies. I was duly authorized by AREVA NC SA and IRSN to request withholding of the Reports.

4. In November 2008, NRC staff submitted a Request for Additional Information ("RAI") to the DOE Yucca Mountain Project. The RAI apparently requested that DOE provide the Reports to NRC Staff for its review in support of the Yucca Mountain License Application.

5. As the owner of the Reports, AREVA NC SA and IRSN request that the Reports be withheld from public disclosure in order to protect the information from being available to the public which would cause substantial harm to the competitive position of AREVA NC SA and IRSN because:

- a) Development of the Reports required expenditure of considerable resources. To the best of our knowledge and belief, a competitor would have to undergo similar expense in generating equivalent information.
- b) In order to develop such Reports, a competitor would also require considerable time and inconvenience related to the development of a design and analysis of a dry spent fuel transportation system and the generation of criticality data.
- c) If the information is made available without charge, AREVA NC SA and IRSN would lose the opportunity to gain significant economic consideration from the sale thereof. In addition, it would deprive AREVA NC SA and IRSN of the right to exercise their discretion as to whom to license or sell the information to.
- d) If the Reports were available to competitors, it would enable them to modify their products and be in a strong competitive position, without having incurred the time and expenses for the Reports.

6. AREVA NC SA and IRSN maintain copies of the Reports as confidential documents. The DOE Yucca Mountain Project Office maintains copies of the Reports in its records management system technical information center as a confidential document pursuant in accordance with the executed NDA.

7. With respect to the considerations listed in 10 CFR § 2.390(b)(4):

- a. The Reports have and presently are maintained in confidence by AREVA NC SA and IRSN.
- b. The Reports, and similar information of this type, are customarily held in confidence by AREVA NC SA and IRSN. When the NRC requests this type of

information (i.e. proprietary/business sensitive), AREVA NC SA and IRSN routinely request that it be withheld from public disclosure.

c. We have been assured by the DOE Yucca Mountain Project Office that it will transmit the Reports to NRC in confidence.

d. The Reports are not available in public sources.

e. Public disclosure of the Reports is likely to cause substantial harm to AREVA NC SA and IRSN position:

- (i) Development of the Reports required expenditure of considerable resources. To the best of our knowledge and belief, a competitor would have to undergo similar expense in generating equivalent information.
- (ii) In order to develop such Reports, a competitor would also require considerable time and inconvenience related to the development of a design and analysis of a dry spent fuel transportation system and the generation of criticality data.
- (iii) If the information is made available without charge, AREVA NC SA and IRSN would lose the opportunity to gain significant economic consideration from the sale thereof. In addition, it would deprive AREVA NC SA and IRSN of the right to exercise their discretion as to whom to license or sell the information to.
- (iv) If the Reports were available to competitors, it would enable them to modify their products and be in a strong competitive position, without having incurred the time and expenses for the Reports.

Executed this 26<sup>th</sup> day of May, 2009.

  
Gilles

Subscribed and sworn to me before this 26<sup>th</sup> day of May, 2009.

  
Notary Public

My Commission expires

Steven H. Bullock  
Notary Public  
Prince George's County  
State of Maryland  
Commission Expires June 28, 2010

