



**Pacific Gas and
Electric Company®**

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October 27, 2009

PG&E Letter DIL-09-008

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U.S. Nuclear Regulatory Commission
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Materials License No. SNM-2511, Docket No. 72-26
Diablo Canyon Independent Spent Fuel Storage Installation
Submittal of Holtec Affidavit Pursuant to 10 CFR 2.390 Pertaining to PG&E Letter
DIL-09-006, Enclosure 2

- References:
1. PG&E Letter DIL-08-002, "License Amendment Request 09-01, Revision to Technical Specification 3.1.1, 3.1.4, 3.2.1, 4.1, 4.3, and 5.1.3," dated April 7, 2008
 2. PG&E Letter DIL-08-006, "License Amendment Request 08-001, Proprietary and Nonproprietary Response to NRC Request for Information Pertaining to Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI) License Amendment Request 08-001," dated September 1, 2009

Dear Commissioners and Staff:

In Reference 1, Pacific Gas and Electric Company (PG&E) submitted License Amendment Request (LAR) 08-001 to the Nuclear Regulatory Commission (NRC), which proposed to revise Technical Specification (TS) 3.1.1, "Multi-purpose Canister (MPC)," TS 3.1.4, "Spent Fuel Storage Cask (SFSC) Time Limitation in Cask Transfer Facility (CTF)," TS 3.2.1, "Dissolved Boron Concentration," TS 4.1, "Design Features Significant to Safety," TS 4.3, "Cask Handling/Cask Transfer Facility," and TS 5.1.3, "MPC and SFSC Loading, Unloading, and Preparation Program."

In Reference 2, PG&E submitted proprietary and nonproprietary responses to a February 13, 2009, NRC request for additional information. The submittal included a Holtec affidavit, which set forth the basis on which Holtec Report HI-2053376, Revision 6 and the accompanying CD-ROM with computer data files may be withheld from public disclosure by the Commission.

Enclosed is an affidavit signed by Holtec, the owner of the proprietary questions and responses contained in Reference 2, Enclosure 2. The affidavit sets forth the basis on which Holtec information contained in Reference 2, Enclosure 2 may be withheld from public disclosure by the Commission; and it addresses, with specificity, the considerations listed in the Freedom of Information Act (FOIA),

NMS501



5 U.S.C. Sec. 552(b)(4) and the Trade Secrets Act, 18 U.S.C. Sec. 1905, and NRC regulations 10 CFR 9.17(a)(4), 2.390(a)(4), and 2.390(b)(1). PG&E requests that the Holtec proprietary information be withheld from public disclosure in accordance with the cited regulations.

Correspondence with respect to the proprietary aspects of the application for withholding related to the Holtec proprietary information or the enclosed Holtec affidavit should be addressed to Mr. Evan Rosenbaum, Holtec International, Holtec Center, 555 Lincoln Drive West, Marlton, New Jersey 08053.

If you have any questions regarding this response, please contact Mr. L. Jearl Strickland at (805) 545-6080.

Sincerely,

James R. Becker
Site Vice President

gwh
Enclosure

cc: Diablo Distribution
Evan Rosenbaum, Holtec International
Kelly Kozink, Holtec International
cc/enc: John M. Goshen, NRC Project Manager, Division of Spent Fuel
Storage and Transportation
Michael S. Peck, NRC Senior Resident Inspector

Holtec Affidavit



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AFFIDAVIT PURSUANT TO 10 CFR 2.390

I, Evan Rosenbaum, depose and state as follows:

- (1) I am the Holtec International Adjunct Project Manager for the Diablo Canyon Independent Spent Fuel Storage Installation Project 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 Thermal Questions 3b, 3c, 3e, 4b and the associated PG&E responses from Enclosure 2 of PG&E Letter DIL-09-006, which contain Holtec Proprietary information and are appropriately marked as such.
- (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 paragraphs 4.a and 4.b, 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



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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 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



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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.

- (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.



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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.

Executed at Marlton, New Jersey, this 21st day of October, 2009.

Evan Rosenbaum
Holtec International