



Holtec Center, 1001 U.S. Highway 1 North, Jupiter, FL 33477

SMR, LLC, A Holtec International Company

Telephone (561) 427-2311

Fax (856) 797-0922

16 July, 2012

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Subject: Meeting July 26, 2012

In preparation for the Meeting on July 26 please find enclosed a proprietary and non-proprietary version of the presentation for the meeting, together with an affidavit pursuant to 10CFR2.390.

Please contact me at 856-296-9219 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Stefan Anton". The signature is fluid and cursive.

Stefan Anton
SMR LLC

Enclosures:

- Enclosure 1: Non-Proprietary Presentation
- Enclosure 2: Affidavit
- Enclosure 3: Proprietary Presentation

Document ID: 2108004

AFFIDAVIT PURSUANT TO 10 CFR 2.390

I, P Stefan Anton, being duly sworn, depose and state as follows:

- (1) I 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 Enclosure 3 to SMR LLC (A Holtec International Company) letter Document ID 2108004, which contains SMR LLC Proprietary information.
- (3) In making this application for withholding of proprietary information of which it is the owner, SMR LLC 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 SMR LLC's competitors without license from SMR LLC 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 SMR LLC, its customers, or its suppliers;
 - d. Information which reveals aspects of past, present, or future SMR LLC customer-funded development plans and programs of potential commercial value to SMR LLC;
 - 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, b, c and 4.d 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 a sort customarily held in confidence by SMR LLC, 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 SMR LLC. No public disclosure has been made, and it is not available in public sources. All disclosures to third

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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 SMR LLC 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 SMR LLC 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 SMR LLC at a significant cost to SMR LLC. 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 SMR LLC technical database and the results of evaluations performed by SMR LLC. A substantial effort has been expended by SMR LLC to develop this information. Release of this information would improve a competitor's position because it would enable SMR LLC 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 SMR LLC's competitive position and foreclose or reduce the availability of profit-making opportunities. The information is part of SMR LLC'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 SMR LLC.

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.

SMR LLC's competitive advantage will be lost if its competitors are able to use the results of the SMR LLC 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 SMR LLC 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 SMR LLC the opportunity to exercise its competitive advantage to seek an adequate return on its large investment in developing these very valuable analytical tools.

