



Holtec Center, 555 Lincoln Drive West, Marlton, NJ 08053

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BY OVERNIGHT MAIL

September 24, 1999

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

Subject: USNRC Docket Nos. 72-1008 and 72-1014
High-Seismic Topical Report Review, TAC No. L22966

- References:
1. Holtec Project Nos. 71178 and 5014
 2. Letter dated August 24, 1999 from Ms. Marissa Bailey, USNRC to Mr. Brian Gutherman, Holtec International and attachment thereto.
 3. Letter dated September 7, 1999 from Mr. Brian Gutherman, Holtec International to the USNRC

Dear Sir:

As committed in our September 7, 1999 letter (Ref. 3), Holtec International is pleased to forward our responses to the NRC's Request for Additional Information (RAI) on our topical report regarding deployment of the HI-STAR 100 and HI-STORM 100 spent fuel dry storage systems at ISFSIs located in high seismic regions. The responses to the RAI are provided in the enclosure to this letter. As previously discussed with the NRC project manager and review staff, following the NRC's review of the responses and other material, we will mutually decide on the scope of the sensitivity studies discussed in Response 11-1. At that time we will proceed to prepare the sensitivity studies and a corresponding revision to the topical report.

Please note that the enclosed three (3) "ZIP" disks contain information which is commercially sensitive to Holtec International and is treated by us with strict confidentiality. This information is of the type described in 10 CFR 2.790(b)(4). This information is considered proprietary to Holtec. The attached affidavit sets forth the bases for which the information is required to be withheld from public disclosure, consistent with these considerations and pursuant to the provisions of 10 CFR 2.790(b)(1). It is therefore requested that the proprietary information contained in the enclosed "ZIP" disks be withheld from public disclosure in accordance with applicable NRC regulations.

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enclosures
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Document ID 5014340
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If you have any questions or require additional information, please contact us.

Sincerely,

Brian Gutherman
Licensing Manager

Cc: Ms. Marissa Bailey, USNRC (14 copies w/attachment, enclosure, 3 "ZIP" disks, 1 floppy disk, and one parallel port security device)
Dr. Stan Turner, Holtec International (cover letter only)

Document ID 5014340

Attachment: Affidavit Pursuant to 10 CFR 2.790

Enclosures: 1. Response to NRC Request for Additional Information
2. Three (3) "ZIP" disks
3. One (1) floppy disk
4. One (1) parallel port security device

Approval:

K. P. Singh, Ph.D., PE
President and CEO

Technical Concurrence:

Dr. Alan Soler (Structural Evaluation)



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Client Distribution (cover letter only, except as noted):

Recipient

Utility

Mr. David Bland	Southern Nuclear (HUG Chairman)
Mr. J. Nathan Leech	Commonwealth Edison
Mr. Bruce Patton	Pacific Gas & Electric Co. - Diablo Canyon (w/Enclosure 1)
Mr. Mark Smith	Pacific Gas & Electric Co. - Humboldt Bay (w/Enclosure 1)
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Mr. Ron Bowker	IES Utilities
Mr. William Swantz	Nebraska Public Power District

AFFIDAVIT PURSUANT TO 10CFR2.790

I, Alan I. Soler, being duly sworn, depose and state as follows:

- (1) I am Executive Vice President of Holtec International 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 electronic data contained in three (3) "ZIP" disks enclosed with Holtec Document No. 5014340, which is a letter to the Nuclear Regulatory Commission providing responses to Requests for Additional Information regarding Holtec's High-Seismic Topical Report (Holtec Report No. HI-982004 (Ref. TAC L22966)). This data is considered proprietary to Holtec International.
- (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), 2.790(a)(4), and 2.790(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).
- (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;

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- 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, 4.b, 4.d, and 4.e, 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 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.

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- (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 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. Release of this information would improve a competitor's position without the competitor having to expend similar resources for the development of the database. A substantial effort has been expended by Holtec International to develop this information.
- (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

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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.

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.

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STATE OF NEW JERSEY)
)
COUNTY OF BURLINGTON) ss:

Dr. Alan I. Soler, being duly sworn, deposes and says:

That he has read the foregoing affidavit and the matters stated therein are true and correct to the best of his knowledge, information, and belief.

Executed at Marlton, New Jersey, this 24th day of September, 1999.



Dr. Alan I. Soler
Holtec International

Subscribed and sworn before me this 24th day of September, 1999.



**ORRIG SMITH
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES MAY 23, 2002**