

# CATEGORY 1

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ACCESSION NBR: 9904130221      DOC. DATE: 99/04/05      NOTARIZED: YES      DOCKET # 05000400  
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 AUTH. NAME: SCAROLA, J.      AUTHOR AFFILIATION: Carolina Power & Light Co.  
 RECIP. NAME:      RECIPIENT AFFILIATION: Records Management Branch (Document Control Desk)

SUBJECT: Forwards non-proprietary App 4A, pages 20-25 & proprietary page 4-6 to re-issued rev 3 of Holtec International licensing rept HI-971760. Proprietary encl withheld.

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Carolina Power & Light Company  
PO Box 165  
New Hill NC 27562

James Scarola  
Vice President  
Harris Nuclear Plant

APR 5 1999

SERIAL: HNP-99-059

United States Nuclear Regulatory Commission  
ATTENTION: Document Control Desk  
Washington, DC 20555

SHEARON HARRIS NUCLEAR POWER PLANT  
DOCKET NO. 50-400/LICENSE NO. NPF-63  
SPENT FUEL STORAGE  
PAGE ADDITIONS - HOLTEC REPORT

Dear Sir or Madam:

By letter dated March 15, 1999 (SERIAL: HNP-99-032), Carolina Power & Light Company (CP&L) provided re-issued (Revision 3) proprietary and non-proprietary versions of a licensing report prepared by Holtec International (Holtec) to support the addition of rack modules to spent fuel pools C and D. The Holtec licensing report was re-issued merely to reflect a reduction in the amount of information previously designated by Holtec as proprietary. Page 4-6 of the proprietary version and Appendix 4A, pages 20 through 25 of the non-proprietary version, however, were inadvertently omitted from the re-issued copies of the report. The omitted pages (7 pages total) are enclosed and should be inserted in the appropriate locations within the re-issued copies of the report. Please note that enclosed page 4-6 includes information considered by Holtec as proprietary pursuant to 10 CFR 2.790. In this regard, CP&L requests enclosed page 4-6 be withheld from public viewing. A re-issued affidavit, prepared by Holtec to document the reasons for requesting the proprietary information be withheld from public viewing and included in our March 15, 1999 letter, is enclosed.

Please refer any questions regarding this information to Mr. Steven Edwards at (919) 362-2498.

Sincerely,

AP01

D. B. Alexander  
for J. Scarola

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Page 2

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Mr. J. B. Brady, NRC Senior Resident Inspector

Mr. Mel Fry, Acting Director, N.C. DEHNR

Mr. R. J. Laufer, NRC Project Manager

Mr. L. A. Reyes, NRC Regional Administrator

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Page 3

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FEB 2 1999

## AFFIDAVIT PURSUANT TO 10CFR2.790

I, Scott H. Pellet, being duly sworn, depose and state as follows:

- (1) I am the Project Manager for Holtec International and have been delegated the function of reviewing the information described in paragraph (2) which is sought to be withheld, and have been authorized to apply for its withholding.
- (2) The information sought to be withheld is contained in the document entitled Licensing Report for Expanding Capacity in Harris Spent Fuel Pools C and D, Holtec Report HI-971760, Revision 3. The proprietary material in this document is delineated by proprietary designation on specific pages or by shaded text identified as being proprietary.
- (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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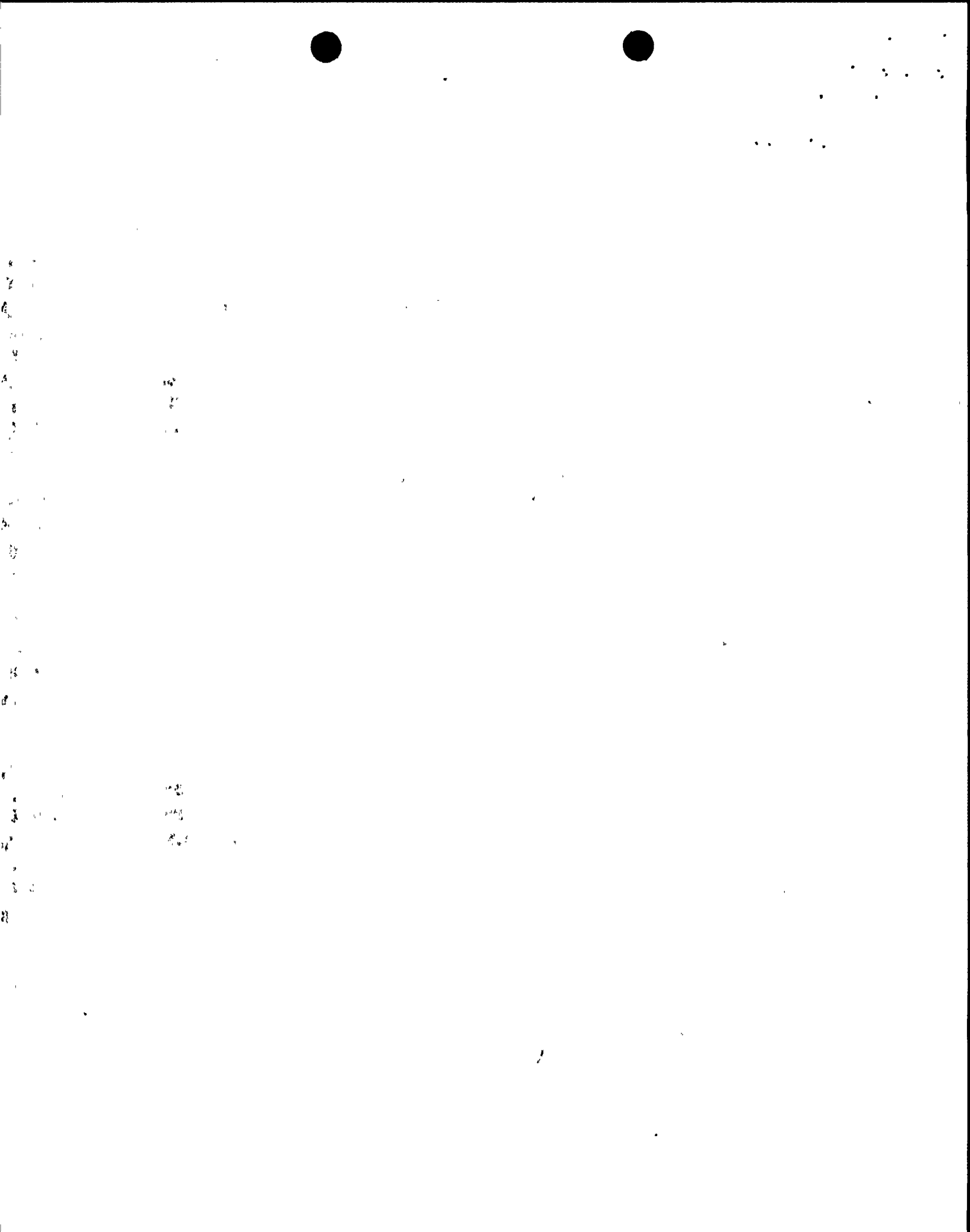
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- b. Information which, if used by a competitor, would reduce his expenditure of resources or improve his competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product.
- c. Information 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.
- (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.



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- (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 historical data and analytical results 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 using codes developed 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 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.

AFFIDAVIT PURSUANT TO 10CFR2.790

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.

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

Scott H. Pellet, 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 18th day of February 1999.

  
\_\_\_\_\_  
Scott H. Pellet  
Holtec International

Subscribed and sworn before me this 18<sup>th</sup> day of February 1999.

