

**BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION**

In the Matter of)	
NEW YORK POWER AUTHORITY)	Docket No. 50-333
James A. FitzPatrick Nuclear Power Plant)	

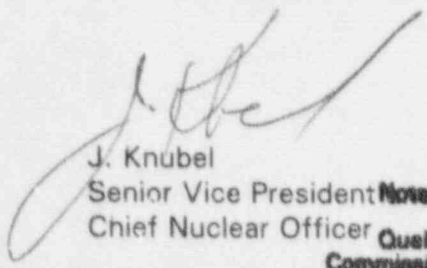
APPLICATION FOR AMENDMENT TO OPERATING LICENSE

The New York Power Authority requests an amendment to the Technical Specifications contained in Appendix A to Facility Operating License DPR-59 for the James A. FitzPatrick Nuclear Power Plant. This application is filed in accordance with Section 10 CFR 50.90 of the Nuclear Regulatory Commission's regulations.

This application for an amendment to the James A. FitzPatrick Technical Specifications proposes revisions to the Design Features section including revised limits for fuel storage. The changes correct the maximum exposure dependent, infinite lattice multiplication factor for fuel bundles and provide for installation of additional storage racks to increase spent fuel pool capacity.

Attachment I is the proposed Technical Specification pages. Attachment II is the Safety Evaluation for the proposed changes. Attachment III is a markup of the affected Technical Specification pages. Attachment IV is the proprietary licensing report for the addition of storage racks. Attachment V is an evaluation of the decay heat removal system. Attachment VI is an affidavit signed by Holtec describing the proprietary nature of Attachment IV and addressing the considerations listed in 10 CFR 2.790. Attachment VII is a non-proprietary copy of the licensing report for the addition of the storage racks.

New York Power Authority


J. Knubel


Senior Vice President
Chief Nuclear Officer

**STATE OF NEW YORK
COUNTY OF WESTCHESTER**

Subscribed and sworn to before me

this 14th day of Oct, 1997.

EILEEN E. O'CONNOR
Notary Public, State of New York
No. 4991062
Qualified in Westchester County
Commission Expires January 21, 1998


Notary Public

AFFIDAVIT

PROPOSED TECHNICAL SPECIFICATION
CHANGES REGARDING DESIGN FEATURES

New York Power Authority

JAMES A. FITZPATRICK NUCLEAR POWER PLANT

Docket No. 50-333

DPR-59

AFFIDAVIT PURSUANT TO 10CFR2.790

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

- (1) I am Senior Project Manager, 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 Reracking of J.A. FitzPatrick Spent Fuel Pool, Holtec Report HI-971661. The following pages are identified as proprietary: 2-8, 2-9, 3-2, 3-3, Figures 2.1, 3.2, 3.3, 3.4, and 3.5, and Appendix A of Chapter 4.
- (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;
 - 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.

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- 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 (through the New York Power Authority) in confidence. 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.

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- (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.

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.

AFFIDAVIT PURSUANT TO 10CFR2.790

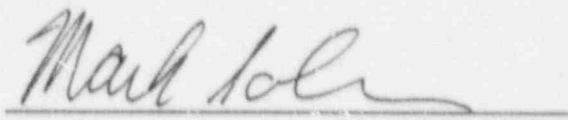
The value of this information to Holtec International would be lost if the information were disclosed to the public. Making such information available to competitors without their having been required to undertake a similar expenditure of resources would unfairly provide competitors with a windfall, 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)
)
COUNTY OF BURLINGTON) ss:

Mr. Mark Soler, being duly sworn, deposes and says:

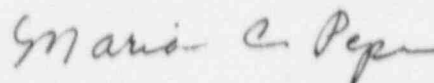
That he has read the foregoing affidavit and the matters stated therein are true and correct to the best of his knowledge, information, and belief.

Executed at Marlton, New Jersey, this 1st day of October, 1997.



Mr. Mark Soler
Holtec International

Subscribed and sworn before me this 1st day of October, 1997.



MARIA C. PEPE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 25, 2000