



December 13, 1999

United States Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, D.C. 20555-0001

Braidwood Station, Units 1 and 2  
Facility Operating License Nos. NPF-72 and NPF-77  
NRC Docket Nos. STN 50-456 and STN 50-457

Byron Station, Units 1 and 2  
Facility Operating License Nos. NPF-37 and NPF-66  
NRC Docket Nos. STN 50-454 and STN 50-455

Subject: Affidavit Addressing Proprietary Information Contained Within Holtec International Report, HI-982083, "Licensing Report for Spent Fuel Rack Installation at Byron and Braidwood Nuclear Stations," Revision 6

- References:
- (1) Letter from R. M. Krich (Commonwealth Edison Company) to U.S. NRC, "Request for an Amendment to Technical Specifications to Support Installation of New Spent Fuel Pool Storage Racks at Byron and Braidwood Stations," dated March 23, 1999
  - (2) Letter from R. M. Krich (Commonwealth Edison Company) to U.S. NRC, "Response to Request for Additional and Clarifying Information Regarding Holtec International Report, HI-982083, "Licensing Report for Spent Fuel Rack Installation at Byron and Braidwood Nuclear Stations," dated October 21, 1999

In Reference 1, we submitted a request for Technical Specification changes that would reflect the installation and use of new spent fuel pool storage racks at the Braidwood and Byron Stations. A report issued by the new storage rack fabricator, Holtec International (HI), HI-982083, "Licensing Report for Spent Fuel Rack Installation at Byron and Braidwood Nuclear Stations," was submitted with Reference 1. Since the Holtec International Report, HI-982083, contained information proprietary to Holtec International, we requested that this information be withheld from public disclosure. Accordingly, an affidavit signed by a representative of Holtec International, the owner of the information, was provided with Reference 1, setting forth the basis on which the

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information may be withheld from public disclosure by the NRC and addressing the considerations listed in paragraph (b)(4) of 10 CFR 2.790.

In Reference 2, revisions to Holtec International Report, HI-982083, were submitted to the NRC to provide additional information and to clarify and correct certain items identified during a May 24, 1999 meeting between members of Commonwealth Edison (ComEd) Company and the NRC. Reference 2 stated that the proprietary information contained within was also covered by our original request to withhold this information from public disclosure for the reasons attested to in our March 23, 1999 letter; thus, a separate affidavit was not included with Reference 2. In a subsequent telephone conversation between ComEd and the NRC on December 8, 1999, the NRC requested that an updated affidavit be provided for the information submitted in Reference 2 setting forth the basis on which the information may be withheld from public disclosure by the NRC. Accordingly, an affidavit signed by a representative of Holtec International, the owner of the information, is being provided, setting forth the basis on which the information (i.e., Holtec International Report, HI-982083, Revision 6) may be withheld from public disclosure by the NRC and addressing the considerations listed in paragraph (b)(4) of 10 CFR 2.790.

Should you have any questions or concerns regarding this information, please contact Mr. J. A. Bauer at (630) 663-7287.

Respectfully,



R. M. Krich  
Vice President – Regulatory Services

Attachment: Affidavit

cc: Regional Administrator – NRC Region III  
NRC Senior Resident Inspector – Braidwood Station  
NRC Senior Resident Inspector – Byron Station

**AFFIDAVIT PURSUANT TO 10CFR2.790**

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I, Michael P. McNamara, being duly sworn, depose and state as follows:

- (1) I am the Vice President, Nuclear Projects 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 Spent Fuel Rack Installation at Byron and Braidwood Nuclear Stations", Holtec Report HI-982083, revision 6.
- (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.
- (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

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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 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.

