

Southern California Edison
SCE-SDGE Joint DCE Application A.14-12-007

DATA REQUEST SET A.14-12-007 Gilmore-SCE-001 Follow-Up 2

To: GILMORE
Prepared by: Walker Matthews
Title: Senior Attorney
Dated: 05/06/2015

Question 09 Supplemental:

Please state SCE's grounds for its claim of confidentiality with respect to this data request. Please provide Donna Gilmore with a redacted version of the contract with any confidential information removed.

Response to Question 09 Supplemental:

SCE previously objected to the request on several grounds including that the request was outside the scope of this proceeding and sought confidential information that SCE could not disclose without a non-disclosure agreement or protective order. The scoping memo provided that "the reasonableness of the Nuclear Decommissioning Cost Estimates does not include operational decisions, such as vendor selection or equipment specifications," such as SCE's selection of Holtec. SCE met and conferred with with intervenor Donna Gilmore (Gilmore) regarding this request to determine whether and to what extent SCE can provide responsive information to Gilmore. During the meet and confer process, in the spirit of cooperation, SCE agreed to provide a redacted contract containing warranty provisions.

Subject to and without waiving its objections, SCE responds as follows: See the attached redacted contract containing warranty provisions from the Holtec contract.

**ARTICLE XII.
CONTRACTOR'S WARRANTIES**

12.1 WARRANTIES.

(a) Contractor warrants to Company that all Equipment shall be (i) new and of good quality; (ii) free from improper workmanship and Defects; (iii) conform to all applicable requirements of all Applicable Laws and all Applicable Permits; and (iv) be fit for Company's use in the nuclear power industry for the intended purpose. If Contractor accepts the Existing Canisters for use, Contractor warrants that the Existing Canisters shall be free from Defects or improper workmanship to the extent caused by or due to Contractor's acts or omissions.

(b) Contractor warrants to Company that the Work will be performed in a good and workmanlike manner, and that the Work will: (i) conform to and be designed, engineered and constructed in accordance with the Drawings, Scope of Work, all Applicable Laws and Applicable Permits and other terms of the Contract Documents; (ii) conform with, and be designed and engineered according to professional standards and skill, expertise and diligence of design professionals regularly involved in decommissioning projects similar to the Project, and comply with the requirements of the relevant Government Authorities, including the NRC; (iii) be suitable for the use as set forth in the Technical Specification; (iv) be compatible with the spent fuel pools for Units 2 and 3, spent fuel, fuel handling building, the existing ISFSI, Jobsite, and the SONGS site conditions; (v) contain the Equipment, supplies and materials described in the Scope of Work, all installed in accord with the applicable Contract Documents; (vi) in the case of Apparatus be designed, engineered, licensed, fabricated and manufactured using appropriate and approved processes, procedures and materials and to comply with and satisfy all the terms of the Certificate of Compliance issued by the NRC to Contractor as modified or amended as contemplated herein; (vii) in the case of Drawings or documents required hereunder, accurately and completely present information required to be included therein or necessary to avoid misunderstandings of the included content; and (viii) at such times as the NRC issues or amends a Certificate of Compliance with respect to an Apparatus or Existing Canisters, as applicable, the Apparatus or such Existing Canister specifically approved by the NRC to perform functions required by regulation as described in such Certificate of Compliance shall perform its required functions set forth in such Certificate.

(c) Contractor warrants to Company that all of the documents prepared by Contractor for submittal to a Government Authority for review and approval shall be prepared in full compliance with Applicable Laws and in form and substance such that Company shall not be

required to modify or revise such documents due to a failure to include any required information, inaccuracies or the use of inappropriate forms or formats.

(d) Contractor warrants to Company that none of the Work, including the Equipment (but not including the Existing Canisters), the Drawings, Final Plans and the design, engineering and other services rendered by Contractor hereunder, nor the use or ownership thereof by Company in accordance with the licenses granted hereunder, infringes, violates or constitutes a misappropriation of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks.

(e) Except as expressly stated herein to the contrary, Contractor warrants that it shall remedy, in accordance with Section 12.2, any Defects in the Work due to faulty design, materials or workmanship which appear within a period commencing upon the date of ISFSI Scope Completion and continuing for the applicable period following the ISFSI Scope Completion Date (as such period may be extended in accordance with the terms hereof, the "Warranty Period"), as follows:

- (i) with respect to the MPC-37 canisters, twenty five (25) years;
- (ii) with respect to Contractor's Work on Existing Canisters used to store non-fuel waste from the spent fuel pools, twenty five (25) years; provided that the Warranty Period with respect to such Work shall commence on the date that the last of the Existing Canisters containing non-fuel waste are loaded on the ISFSI during Post-ISFSI Scope Work and the related Milestone has been completed;
- (iii) with respect to the Contractor's Work on Existing Canisters used to store greater than class "C" radioactive waste from reactor vessel segmentation in the Post-ISFSI Scope Work, twenty five (25) years; provided that the Warranty Period with respect to such Work shall commence on the Final Acceptance Date;
- (iv) with respect to the HI-STORM UMAX System, ten (10) years;
- (v) with respect to any other Work that is required to be completed in order to achieve ISFSI Scope Completion, including Contractor's Work on any newly assembled AHSM-HS modules that are used by Contractor in the performance of the Work, two (2) years; and
- (vi) with respect to any other Work that is completed after the ISFSI Scope Completion Date, two (2) years from the Final Acceptance Date.

Contractor shall bear all costs of corrections and repairs during the Warranty Period. The provisions of this Section 12.1 apply to Work performed by Subcontractors as well as Work performed directly by Contractor. The provisions of this Article XII do not apply to corrective work caused by the acts or omissions of Company or any separate contractor of Company. If and in the event Company notifies Contractor of a Defect within the Warranty Period, Contractor, at Contractor's expense, shall perform all Work necessary to remedy the Defect, and the repair or replacement Work performed by Contractor to accomplish that purpose shall be subject to an additional express warranty from the date the repair or replacement is completed which shall continue for a duration equivalent to the original Warranty Period.

(f) Notwithstanding anything to the contrary herein, the warranties set forth in this Section 12.1 shall not apply with respect to any claims to the extent arising from (i) any use of the Work or components thereof by Company that exceeds the requirements or recommendations in Contractor's operation and maintenance manuals; (ii) the failure of any Equipment or Work to be maintained in accordance with Contractor's written instructions; or (iii) the modification of any Equipment or Work without Contractor's written consent.

(g) THE WARRANTIES OF CONTRACTOR SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE). The foregoing sentence is not intended to disclaim any other obligations of Contractor set forth herein.

12.2 REPAIR OF NONCONFORMING WORK.

(a) If any of the Work is found to contain Defects, or Contractor is otherwise in breach of any of the warranties set forth in Section 12.1 within the Warranty Period, Contractor shall at its sole cost and expense and without reimbursement hereunder correct, reperform, repair or replace such Defect or otherwise cure such breach as promptly as practicable upon being given notice thereof. Subject to Section 12.3, Company shall give notice to Contractor within two (2) Business Days of discovery of such Defect. Company shall provide Contractor with reasonable access to the Project in order to perform such corrective Work and the Parties shall schedule such corrections or replacements as necessary so as to minimize disruptions to any on-going activities at SONGS. Contractor shall bear all costs and expenses associated with correcting any Defect or breach of warranty, including necessary disassembly, transportation, reassembly and retesting, as well as reworking, repair or replacement of such Work, disassembly and reassembly of piping, ducts, machinery, Equipment or other Work as necessary to give access to improper, defective or non-conforming Work and correction, removal or repair of any damage to other work or property that arises from the Defect. If Contractor is obligated to repair, replace or renew any Equipment, item or portion of the Work hereunder, Contractor will undertake a technical analysis of the problem and correct the "root cause" unless Contractor can demonstrate to Company's satisfaction that there is not a risk of the reoccurrence of such problem. Contractor's obligations under this Section 12.2 shall not be impaired or otherwise adversely affected by any actual or possible legal obligation or duty of any Subcontractor to Contractor or Company concerning any Defect or breach of warranty.

(b) If (i) Contractor fails to complete or commence with due diligence to complete the correction of any Defect or cure of any breach of warranty as required herein within twenty (20) days after receipt of written request from Company to perform such obligations, or (ii) a Defect cannot be corrected within twenty (20) days and Contractor fails to provide a correction plan within five (5) Business Days after receipt of Company's written request to perform such obligations or thereafter fails to implement the plan with due diligence following Company's approval of the plan, then Company may correct or cause to be corrected such Defect or cure such breach of warranty and Contractor shall be liable for all reasonable costs, charges, and expenses incurred by Company in connection therewith (including reasonable and necessary consultants' fees), and Contractor shall, within fifteen (15) days after request therefore, pay to

Company an amount equal to such reasonable costs, charges, and expenses. Any such request by Company shall be accompanied by proper documentation evidencing such reasonable costs, charges and expenses. Any amounts not paid when due shall accrue interest at the Reference Rate (established as of the first day of the month in which payment is due) from the date due until paid. Company and Contractor agree to treat (and shall cause each of their respective Affiliates to treat) any payment made to Company pursuant to this Section 12.2(b) as an adjustment to the Contract Price unless a final determination (which shall include execution of an Internal Revenue Service Form 870-AD or successor form) provides otherwise.

(c) If, during the Warranty Period, Contractor shall change, repair or replace any major Equipment item or component, Company, in its reasonable discretion and consistent with Applicable Laws or Applicable Permits, may require Contractor to assist Company in conducting any test required by any Applicable Law or Applicable Permit with respect to the affected Equipment; provided, however, in connection with any such test, appropriate allowance with respect to the performance of such Equipment shall be made for the fact that such Equipment may have operated prior thereto. If after running such test, the results indicate Contractor has not fulfilled any of its warranty obligations and there is a degradation in the performance of the Project and such degradation results from the warranty Work performed in accordance with this Article XII, then Contractor shall repair, correct or replace such affected Equipment and assist Company in re-running such test until the results no longer indicate a degradation in the performance of the Project resulting from the warranty Work performed in accordance with this Article XII. If Contractor cannot reasonably correct such degraded warranted performance condition then the Parties shall negotiate an equitable settlement of Company's damages based on the amount and scope of such deficient warranted performance, or if the amount of such deficient warranted performance is considered by Company to be a material breach of the terms of this Agreement, then Company may declare such breach to be a Contractor Event of Default pursuant to Section 15.1.

12.3 REPAIRS AND TESTING BY COMPANY.

During the Warranty Period, in the event of an emergency and if, in the reasonable judgment of Company, the delay that would result from giving notice to Contractor could cause serious loss or damage which could be prevented by immediate action, any action (including correction of Defects) may be taken by Company or a third party chosen by Company. Company shall give notice to Contractor within two (2) Business Days of discovery, and in the case of a Defect, the reasonable cost of correction shall be paid by Contractor. In the event such action is taken by Company, Contractor shall promptly respond within five (5) Business Days after correction efforts are implemented, and shall assist whenever and wherever possible in making the necessary corrections. All such warranties obtained shall be in addition to, and shall not alter the warranties of, Contractor. Upon Company's request, Contractor shall use all reasonable efforts to cause Subcontractors to honor warranties including filing suit to enforce same.

12.4 SUBCONTRACTORS. Contractor shall, for the protection of Contractor and Company, obtain from the Subcontractors such guarantees and warranties with respect to Work performed and Equipment supplied, used and installed hereunder as are reasonably obtainable, which guarantees and warranties shall equal or exceed those set forth in Section 12.1 and shall be made available and assignable to Company to the full extent of the terms thereof upon the expiration of Contractor's warranty hereunder. Company shall be an express third party

beneficiary of all such guarantees and warranties, provided such third party beneficiary rights shall not be effective unless this Agreement has been terminated. If available, Company may require Contractor to secure additional warranty or extended guarantee protection pursuant to a Change Order issued in accordance with the provisions of Article VI. Upon the earlier of the ISFSI Scope Completion Date or termination of this Agreement, Contractor shall deliver to Company copies of all relevant contracts providing for such guarantees and warranties.

12.5 CONDITIONS OF WARRANTIES. The warranties set forth in this Article XII are subject to the following conditions applicable to the item for which Company claims a breach of warranty exists:

(a) Company shall notify Contractor in writing of any Defect in the Work as soon as reasonably practicable after Company becomes aware of such Defect.

(b) Company shall have the right to continue to use the Equipment, including the Apparatus, as applicable, or any part thereof, which may require warranty correction or repair until such time as Company elects to remove such Equipment, or part thereof, as applicable, from service; provided, however, in such event, Company shall release Contractor from any additional claims for further defects or damage incurred as a result of such continued operation.

(c) Company shall use and maintain the Equipment, including the Apparatus, in accordance with the operation and maintenance procedures agreed upon by the Parties pursuant to this Agreement (these procedures shall be written by Contractor as part of Contractor's Work so as to integrate (where applicable) or replace and supersede (where not applicable) the operations and maintenance procedures required by the original manufacturer for the Existing Equipment and Existing Canisters such that Contractor may not assert that Company's failure to comply with any separate requirements from the existing manufacturer limits the warranty provided herein by Contractor).

(d) Completion of payments by Company shall not relieve Contractor of any of its warranty obligations.

12.6 ASSIGNMENT OF WARRANTIES. Contractor shall assign to Company or obtain for Company's benefit the manufacturer's warranties for all of the Equipment, including the Apparatus and other deliverables, which are provided in connection with the Work, but which are not manufactured by Contractor, including for Work performed under Section 12.3. Such assignment of warranties to Company must also allow Company to further assign such warranties.

12.7 SURVIVAL OF WARRANTIES. The provisions of this Article XII shall survive the expiration or termination of this Agreement.

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DATA REQUEST SET A.14-12-007 Gilmore-SCE-001 Follow-Up 2

To: GILMORE
Prepared by: Walker Matthews
Title: Senior Attorney
Dated: 05/06/2015

Question 10 Supplemental:

Please state SCE's grounds for its claim of confidentiality with respect to this data request. Please provide Donna Gilmore with a redacted version of the requested manufacturer's warranties with any confidential information removed.

Response to Question 10 Supplemental:

Please see SCE's response to Question No. 9 Supplemental.

In addition, SCE provides the following additional information regarding the warranties, and what the warranties provide:

As defined by the final safety analysis report (SAR) for the UMAX system, the UMAX Design Life is the minimum duration for which the component is engineered to perform its intended function set forth in this SAR, if operated and maintained in accordance with this SAR. The design life of the HI-STORM UMAX System is 60 years. This is accomplished by using materials of construction with a long proven history in the nuclear industry, specifying materials known to withstand their operating environments with little to no degradation, and protecting material from corrosion by using appropriate mitigation measures.

Where the design life of the system is founded in technical basis, the warranty life is a solely contractual item determining which party holds responsibility for necessary repairs or rework should the need arise. The warranty for the system is a written guarantee by Holtec promising to remedy any Defects in the Work due to faulty design, materials or workmanship which appear within a period beginning on the date of ISFSI Scope Completion and continuing for a contractually agreed upon duration following the ISFSI Scope Completion Date.

NOTE: For the MPC-37s, the warranty period is 25 years. For the UMAX system, the warranty period is 10 years.

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To: GILMORE
Prepared by: Walker Matthews
Title: Senior Attorney
Dated: 05/06/2015

Question 11 Supplemental:

Please state SCE's grounds for its claim of confidentiality with respect to this data request. Please provide Donna Gilmore with a redacted version of the requested manufacturer's warranties with any confidential information removed.

Response to Question 11 Supplemental:

Please see SCE's response to Question No. 10 Supplemental.

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DATA REQUEST SET A.14-12-007 Gilmore-SCE-001 Follow-Up 2

To: GILMORE
Prepared by: Walker Matthews
Title: Senior Attorney
Dated: 05/06/2015

Question 12 Supplemental:

Please state SCE's grounds for its claim of confidentiality with respect to this data request. Please provide Donna Gilmore with a redacted version of the builder's warranties with any confidential information removed.

Response to Question 12 Supplemental:

Please see SCE's response to Question No. 10 Supplemental.