

AFFIDAVIT No. TCXNRC-11-01

Re: Request for Withholding from Public Disclosure per 10CFR2.390

STATE OF CALIFORNIA            )  
  ) ss  
COUNTY OF ORANGE            )

I, Michael Kieu, being duly sworn, hereby say and depose:

1. I am Director of Safety and Critical Control Development at Invensys, and as such I have been specifically delegated the function of reviewing company proprietary information sought to be withheld from public disclosure in connection with the nuclear safety related qualification of the TRICON Programmable Logic Controller (PLC) system and am authorized to apply for its withholding on behalf of Invensys.
2. The information sought to be withheld is contained in the document(s) described below:

- (1) *Compliance with NRC Interim Guidance ISG-2 and ISG-4 – NTX SER-09-10, Rev 2*
- (2) *Response to Request for Additional Information dated 12/8/10*

The indicated documents contain information considered to be proprietary. Proprietary material in the enclosed documents are indicated by brackets [ ] or other similar markings as required by 10CFR2.390(b)(1)(i)(B). As indicated in the associated Transmittal letter, non-proprietary versions of the documents are being provided, consistent with level of proprietary content.

This information is documentation associated with ongoing upgrade and maintenance of qualification of the Tricon PLC. This will allow the NRC to verify compliance with current regulatory requirements in support of an update to the SER for the Tricon PLC System and associated Triconex Topical Report 7286-545-1-A.

3. I am making this affidavit in conformance with the provisions of 10CFR Part 2.390 of the Commission's regulations and in conjunction with the Invensys Triconex application for withholding accompanying this Affidavit.
4. I have personal knowledge of the criteria and procedures utilized by Invensys in designating information as a trade secret, privileged, or as confidential commercial or financial information. Some examples of categories of information which fit into the definition of proprietary information are:
  - a) Information which discloses process, method, or apparatus, including supporting data and analyses, where prevention of its use by Invensys Triconex's competitors without license or contract from Invensys constitutes a competitive economic advantage over other companies in the industry.

- 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 Invensys, its customers, its partners, or its suppliers.
- d) Information which reveals aspects of past, present, or future Invensys Triconex customer-funded development plans or programs, of potential commercial value to Invensys.
- e) Information which discloses patentable subject matter for which it may be desirable to obtain patent protection.
- f) Information obtained through Invensys Triconex actions which could reveal additional insights into Nuclear safety related PLC equipment qualification processes and regulatory proceedings, and which are not otherwise readily obtainable by a competitor.

Information to be withheld is considered to be proprietary based on the reasons set forth in paragraphs 4 (a) and (b) above.

5. This document describes the details of Triconex equipment which has undergone nuclear qualification testing. Product design and development details are also represented. Invensys Triconex is the first manufacturer of a PLC to fully implement the requirements set forth in the EPRI TR-107330, which has been endorsed by the Commission in an SER. Invensys Triconex has expended a significant amount of money and effort involving numerous contractors over a 12 year time period to develop and implement an ongoing successful approach to its qualification and test program. Information developed relating to test plans, approaches, equipment, specific problems encountered, licensing perspectives, and lessons learned has significant value because of the resources expended to successfully accomplish this process and the usefulness of this knowledge to potential competitors.

Specific test data showing compliance with requirements and demonstrating technical capability of the equipment has substantial commercial value because it provides the basis for qualifying Triconex equipment to be sold for safety-related digital upgrades to nuclear plants. Existing options for digital upgrades in the nuclear industry are limited. We believe that ongoing successful nuclear qualification upgrades of the Invensys Triconex products, already well known in non-nuclear applications, will continue to give Invensys a competitive advantage in this field.

Disclosure of information in these documents would cause substantial harm to the competitive position of the Invensys, as there are other competing companies who wish to develop, qualify, and sell digital control systems for safety related application in nuclear power plants. Competing firms could use our experience, successful approaches, and technical information to facilitate their own equipment qualification efforts and/or product design without compensating Invensys.

6. Pursuant to the provisions of paragraph (b)(4) of Section 2.390 of the Commission's regulations, the following is furnished for consideration by the Commission in determining whether the information sought to be withheld from public disclosure should be withheld.
  - (i) The information sought to be withheld from public disclosure is owned and has been held in confidence by Invensys.
  - (ii) The information is of a type customarily held in confidence by Invensys and not customarily disclosed to the public. Invensys has a rational basis for determining the types of information customarily held in confidence by it and, in that connection, utilizes a system to determine when and whether to hold certain types of information in confidence. The application of that system and the substance of that system constitute Invensys policy and provide the rational basis required.

- (iii) The information is being transmitted to the Commission in confidence and, under the provisions of 10CFR Part 2.390, it is to be received in confidence by the Commission.
- (iv) This information is not readily available in public sources.
- (v) Public disclosure of this proprietary information is likely to cause substantial harm to the competitive position of Invensys, because it would enhance the ability of competitors to provide similar design of PLC or qualify similar equipment using similar project methods, equipment, testing approach, contractors, or licensing approaches. As described in section 5, this information is the result of considerable expense to Invensys and has great value in that it will assist Invensys in providing Triconex digital upgrade equipment and services to a new, expanding markets not currently served by the company.

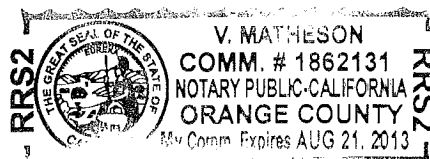
7. The foregoing statements are true and correct to the best of my knowledge, information, and belief.



Michael Kieu  
Director of Safety and Critical Control Development  
Invensys

Sworn to and subscribed before me

this 5 day of Jan., 2011

  
 \_\_\_\_\_  
 Notary Public


State of California  
 County of Orange  
 Subscribed and sworn to (or affirmed) before me  
 on this 5 day of Jan., 2011  
 by Michael Kieu  
 proved to me on the basis of satisfactory evidence  
 to be the person(s) who appeared before me.  
 Signature V. Matheson (Seal)