



March 9, 2005
AET 05-0007

Mr. Jack R. Strosnider
Director, Office of Nuclear Material Safety and Safeguards
Attention: Document Control Desk
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

**American Centrifuge Plant
Docket Number 70-7004
Responses to Request for Additional Information Regarding the License Application (TAC
Nos. L32306, L32307, and L32308) – Proprietary and Export Controlled Information**

**INFORMATION TRANSMITTED HERewith IS PROTECTED FROM PUBLIC
DISCLOSURE AS CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION
AND/OR TRADE SECRETS PURSUANT TO 10 CFR 2.390 AND 9.17(a)(4)
and
INFORMATION TRANSMITTED HERewith IS PROTECTED FROM
DISCLOSURE PURSUANT TO 10 CFR 810**

Dear Mr. Strosnider:

The purpose of this letter is to submit USEC Inc.'s (USEC) responses to the U.S. Nuclear Regulatory Commission (NRC) Request for Additional Information (RAI) on the license application for the American Centrifuge Plant.

Enclosures 1 and 2 to this letter provide USEC's responses to questions contained in Attachments 2 and 3 of NRC's RAI, respectively. Enclosure 3 provides a copy of the U.S. Department of Energy letter to USEC regarding the Price-Anderson Act indemnification under Section 170d of the *Atomic Energy Act*. In addition, USEC completed the review of Enclosures 1 through 3 in relation to the December 21, 2004 NRC Review Criteria to Identify Sensitive Information in Fuel Cycle Documents.

USEC will submit a revised license application and supporting documents that incorporate the proposed changes described in Enclosures 1 and 2 by March 14, 2005. Also, as specified in USEC's responses in Enclosures 1 and 2, additional information will be provided to the NRC by April 15, 2005.

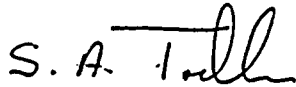
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Enclosures 1 through 3 contain USEC Proprietary Information, including information that met the criteria for withholding pursuant to the December 21, 2004 NRC Review Criteria to Identify Sensitive Information in Fuel Cycle Documents. Accordingly, USEC requests that the documents in Enclosures 1 through 3 be withheld from the public disclosure pursuant to 10 *Code of Federal Regulations* (CFR) 2.390(a)(4) and (d)(1). An affidavit required by 10 CFR 2.390(b)(1)(ii) is provided in Enclosure 4. In addition, Enclosure 2 has been determined, in accordance with the guidance provided by the U.S. Department of Energy, to contain Export Controlled Information.

If you have any questions regarding this matter, please contact Peter J. Miner at 301-564-3470.

Sincerely,

A handwritten signature in black ink, appearing to read "S. A. Toelle". The signature is fluid and cursive, with a horizontal line extending from the top of the "S".

Steven A. Toelle
Director, Nuclear Regulatory Affairs

cc: B. Smith, NRC HQ
Y. Faraz, NRC HQ
J. Henson, Region II

Enclosures: As Stated

Enclosure 4 to AET 05-0007

Affidavit

**AFFIDAVIT OF STEVEN A. TOELLE
SUPPORTING APPLICATION TO WITHHOLD FROM
PUBLIC DISCLOSURE CERTAIN INFORMATION CONTAINED IN THE LICENSE
APPLICATION REQUEST FOR ADDITIONAL INFORMATION
FOR THE AMERICAN CENTRIFUGE PLANT**

I, Steven A. Toelle, of USEC Inc. (USEC), having been duly sworn, do hereby affirm and state:

1. I have been authorized by USEC to (a) review the information owned by USEC which is referenced herein relating to the responses to the U.S. Nuclear Regulatory Commission (NRC) Request for Additional Information (RAI) for the American Centrifuge Plant, which USEC seeks to have withheld from public disclosure pursuant to section 147 of the *Atomic Energy Act* (AEA), as amended, 42 U.S.C. §2167, 10 *Code of Federal Regulations* (CFR) 2.390(a)(4), and 9.17(a)(4); and (b) apply for the withholding of such information from public disclosure by the U.S. Nuclear Regulatory Commission (NRC) on behalf of USEC.
2. Enclosures 1 and 2 contain information concerning USEC's Fundamental Nuclear Material Control Plan (FNMCP) and Security Program, which describe the measures that will be used at the American Centrifuge Plant to control, account for, and physically protect special nuclear material that USEC Inc. will use, possess, or has access to at fixed sites. 10 CFR 2.390(d)(1) states that correspondence and reports to or from the NRC containing information concerning an applicant's physical protection or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data are deemed to be confidential commercial or financial information exempt from public disclosure. Accordingly, USEC requests that such information be withheld from public disclosure pursuant to section 147 of the AEA, as amended, 42 U.S.C. §2167, 10 CFR 2.390(d)(1), and 9.17(a)(4).

3. Enclosures 1 through 3 also contain confidential commercial or financial information exempt from public disclosure pursuant to 10 CFR 2.390.
4. Consistent with the provisions of 10 CFR 2.390(b)(4) 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 USEC.
 - ii. The information is of a type customarily held in confidence by USEC and not customarily disclosed to the public. USEC 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 USEC policy and provide the rational basis required.

Under that system, information is held in confidence if it falls in one or more of several types, the release of which might result in the loss of an existing or potential competitive advantage, as follows:

- a) The information reveals the distinguishing aspects of a process (or component, structure, tool, method, etc.) where presentation of its use by any of USEC's competitors without license from USEC constitutes a competitive economic advantage over other companies.
- b) It consists of supporting data, including test data, relative to a process (or component, structure, tool, method, etc.), the application of which data secures a competitive economic advantage (e.g., by optimization or improved marketability).
- c) Its use by a competitor would reduce their expenditure of resources or improve their

competitive position in the design, manufacture, shipment, installation, assurance of quality, or licensing a similar product.

- d) It reveals cost or price information, production capacities, budget levels, or commercial strategies of USEC, its customers or suppliers.
- e) It reveals aspects of past, present, or future USEC or customer funded development plans and programs of potential commercial value to USEC.
- f) It contains patentable ideas, for which patent protection may be desirable.

There are sound policy reasons behind the USEC system which include the following:

- a) The use of such information by USEC gives USEC a competitive advantage over its competitors. It is, therefore, withheld from disclosure to protect the USEC competitive position.
- b) It is information, which is marketable in many ways. The extent to which such information is available to competitors diminishes USEC's ability to sell products and services involving the use of the information.
- c) Use by our competitors would put USEC at a competitive disadvantage by reducing their expenditure of resources at USEC expense.
- d) Each component of proprietary information pertinent to a particular competitive advantage is potentially as valuable as the total competitive advantage. If competitors acquire components or proprietary information, any one component may be the key to the entire puzzle, thereby depriving USEC of a competitive advantage.
- e) Unrestricted disclosure would jeopardize the position of prominence of USEC in the world market, and thereby give a market advantage to the competition of those countries.
- f) The USEC capacity to invest corporate assets in research and development depends upon

the success in obtaining and maintaining a competitive advantage.

- iii. The information is being transmitted to the Commission in confidence and, under the provisions of 10 CFR Section 2.390; it is to be received in confidence by the Commission.
- iv. The information sought to be protected is not available in public sources or available information has not been previously employed in the same original manner or method to the best of our knowledge and belief.

The proprietary information sought to be withheld is contained in Enclosures 1 through 3 to USEC letter AET 05-0007. Public disclosure of this proprietary information is likely to cause substantial harm to the competitive position of USEC because it may enhance the ability of competitors to position and provide similar products. The development of the information described in part is the result of applying many hundreds of person-hours and the expenditure of hundreds of thousands of dollars.

In order for a competitor of USEC to duplicate this information, a similar process would have to be undertaken and a significant effort and resources would have to be expended.

Further the deponent sayeth not.

Steven A. Toelle, having been duly sworn, hereby confirms that I am the Director, Nuclear Regulatory Affairs of USEC, that I am authorized on behalf of USEC to review the information attached hereto and to sign and file with the U.S. Nuclear Regulatory Commission this affidavit and the attachments hereto, and that the statements made and matters set forth herein are true and correct to the best of my knowledge, information, and belief.

S. A. Toelle

Steven A. Toelle

On this 9th day of March 2005, the individual signing above personally appeared before me, is known by me to be the person whose name is subscribed to within the instrument, and acknowledged that he executed the same for the purposes therein contained. In witness hereof I hereunto set my hand and official seal.

Janet Boothe
Ja'net Boothe, Notary Public
State of Maryland, Howard County
My commission expires June 1, 2007