

Enclosure 4 of ACO 21-0002

Affidavit

**Information Contained Within
Does Not Contain
Export Controlled Information**

Reviewing

Official: #1014

Date: 1/7/21

**AFFIDAVIT OF LARRY B. CUTLIP
SUPPORTING APPLICATION TO WITHHOLD FROM
PUBLIC DISCLOSURE CERTAIN INFORMATION PROVIDED TO NRC IN
LETTER ACO 21-0002**

I, Larry B. Cutlip, of American Centrifuge Operating, LLC (ACO), having been duly sworn, do hereby affirm and state:

1. I have been authorized by ACO to (a) review the information owned by ACO which is referenced herein relating to ACO's responses to the U.S. Nuclear Regulatory Commission's (NRC) request for additional information (RAIs) in relation to the License Amendment Requests for the American Centrifuge Plant (NRC Materials License SNM-2011) as the described in letter ACO 21-0002, which ACO seeks to have withheld from public disclosure pursuant to section 147 of the Atomic Energy Act (AEA), as amended, 42 U.S.C. § 2167, and 10 CFR 2.390(a)(4), and 9.17(a)(4), and (b) apply for the withholding of such information from public disclosure by the Nuclear Regulatory Commission (NRC) on behalf of ACO.
2. 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 ACO.
 - ii. The information is of a type customarily held in confidence by ACO and not customarily disclosed to the public. ACO 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 ACO 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 ACO's competitors without license from ACO 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 ACO, its customers or suppliers.
 - e) It reveals aspects of past, present, or future ACO or customer funded development plans and programs of potential commercial value to ACO.
 - f) It contains patentable ideas, for which patent protection may be desirable.
 - g) It reveals information concerning the terms and conditions, work performed, administration, performance under or extension of contracts with its customers or suppliers.
- iii. There are sound policy reasons behind the ACO system which include the following:
- a) The use of such information by ACO gives ACO a competitive advantage over its competitors. It is, therefore, withheld from disclosure to protect the ACO competitive position.
 - b) It is information, which is marketable in many ways. The extent to which such

information is available to competitors diminishes ACO's ability to sell products and services involving the use of the information.

- c) Use by our competitors would put ACO at a competitive disadvantage by reducing their expenditure of resources at ACO 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 ACO of a competitive advantage.
 - e) Unrestricted disclosure would jeopardize the position of prominence of ACO in the world market, and thereby give a market advantage to the competition of those countries.
 - f) The ACO capacity to invest corporate assets in research and development depends upon the success in obtaining and maintaining a competitive advantage.
- iv. 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.
- v. 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.
3. The proprietary information sought to be withheld is contained within Enclosures 1, 2, and 3 of letter ACO 21-0002. Enclosure 1 provides ACO's responses to the NRC's request for additional information. Enclosure 2 provides proposed changes to NR-3605-0005, *Fundamental Nuclear Material Control Plan for the American Centrifuge Plant*. Enclosure 3 provides proposed changes to NR-3605-0005B, *Addendum 1 of the Fundamental Nuclear Material Control Plan for the American Centrifuge Plant - HALEU Demonstration*. These enclosures provide details of the Nuclear Material Control and Accountability (NMC&A) Program needed for the deployment of

ACO's high-assay, low enriched uranium (HALEU) Demonstration Program and American Centrifuge Plant; therefore, determined to be proprietary.

Public disclosure of this proprietary information is likely to cause substantial harm to the competitive position of ACO because it may enhance the ability of competitors to position and provide similar products. Further, this information has substantial commercial value as follows:

- The development of the information described in part is the result of applying many hundreds of person-hours and the expenditure of thousands of dollars on design and analysis activities to achieve the information that is sought to be withheld; and
- In order for a competitor of ACO to duplicate the information sought to be withheld, a similar process would have to be undertaken and a significant effort and resources would have to be expended.

Moreover, disclosure of this information may provide insights into the ACO's NMC&A Program for Special Nuclear Material categorized as Security-Related Information, Official Use Only (Exemption 7, Law Enforcement), and Export Controlled Information. Therefore, these enclosures should also be withheld from public disclosure pursuant to 10 CFR 2.390(d)(1) and 10 CFR Part 810.


Further the deponent sayeth not.

Larry B. Cutlip, having been duly sworn, hereby confirms that I am the Senior Vice President, Field Operations of American Centrifuge Operating, LLC, that I am authorized on behalf of ACO 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.


Larry B. Cutlip

On this 14th day of January 2021, Larry B. Cutlip 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.


Kathy Richer
State of Tennessee Notary Public
Anderson County
My commission expires October 26, 2024

