



November 8, 2006
AET 06-0109

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
Submission of Information Concerning Liability Insurance for the American Centrifuge Plant
(TAC Nos. L32306, L32307, and L32308) – Proprietary 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)**

Dear Mr. Strosnider:

Pursuant to USEC Inc.'s (USEC) commitment and proposed license condition, enclosed is information concerning liability insurance for the American Centrifuge Plant. In part, the license condition states, "USEC shall notify the Commission within 30 days upon receiving notification of denial or approval of commercial liability insurance for the ACP." Enclosure 1 contains correspondence from American Nuclear Insurers regarding their determination concerning insurance for the ACP.

Enclosure 1 contains USEC Proprietary Information and USEC requests that this enclosure be withheld from public disclosure pursuant to 10 *Code of Federal Regulations* (CFR) 2.390(a)(4). An affidavit required by 10 CFR 2.390(b)(1)(ii) is provided in Enclosure 2.

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

Sincerely,

Steven A. Toelle
Director, Regulatory Affairs

Enclosure: As Stated

cc: S. Echols, NRC HQ
B. Smith, NRC HQ

Enclosure 2 of AET 06-0109

Affidavit

**AFFIDAVIT OF STEVEN A. TOELLE
SUPPORTING APPLICATION TO WITHHOLD FROM
PUBLIC DISCLOSURE CERTAIN INFORMATION CONTAINED IN
ENCLOSURE 1 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 and is referenced herein relating to Enclosure 1 regarding the status of USEC's liability insurance for the American Centrifuge Plant (ACP), 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, and 10 CFR 2.390(a)(3), 2.390(a)(4), 2.390(d)(1) 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. 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.
 - 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 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.
- 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 in Enclosure 1 to USEC letter AET 06-0109. Specifically, the enclosure contains correspondence regarding American Nuclear Insurer's determination concerning USEC's pursuit of liability insurance for the ACP. The proprietary information submitted by USEC is information required to be submitted to the Commission pursuant to NUREG-1851, *Safety Evaluation Report for the American Centrifuge Plant (ACP) in Piketon, Ohio*, concerning the proposed license condition related to liability insurance for the ACP. In part, the license condition states, "USEC shall notify the Commission within 30 days upon receiving notification of denial or approval of commercial liability insurance for the ACP." The information contained within Enclosure 1 has not been previously disclosed and is likely to cause substantial harm to the competitive position of USEC because it contains

forward-looking statements (within the meaning of the *Private Securities Litigation Reform Act* of 1995) that involve risks and uncertainty. This information may be disclosed to the U.S. Department of Energy consistent with on-going discussion concerning deployment of the American Centrifuge Plant and likewise, will be requested to be withheld from public disclosure.

Further the deponent sayeth not.

Steven A. Toelle, having been duly sworn, hereby confirms that I am the Director, 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 8th day of November 2006, 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.

Rita L. Peak

Rita L. Peak, Notary Public
State of Maryland, Montgomery County
My commission expires December 1, 2009

