

**Rare Element Resources, Inc.**

**AFFIDAVIT OF RANDALL J. SCOTT**

I, Randall J Scott, President and Chief Executive Officer, Rare Element Resources, Inc., (Rare Element) do hereby affirm and state:

- (1) I have reviewed the information described in paragraph 3 which Rare Element requests be withheld from public disclosure or publication and I am authorized to execute this affidavit on behalf of Rare Element.
- (2) The affidavit is submitted under the provisions of 10CFR Part 2.390 in order to withhold the enclosed/attached confidential commercial and proprietary information (as described in paragraph 3 below) of Rare Element from public disclosure or publication.
- (3) The information sought to be withheld is Rare Element's intellectual property relating to the Company's patents, patents-pending, and technical information associated with the processing of rare element ores, concentrates and related materials which the technology is applied.

The information sought to be withheld is contained in Appendix C of the License Application for Source Material Possession Technical Report (TR) presented to the U.S. Nuclear Regulatory Commission by Rare Element on May 4, 2022. All process-related information in Appendix C of the TR, "Detailed Process Description and Diagrams" is proprietary material that is "business sensitive" and/or "trade secret", such as detailed descriptions of hydrometallurgical processing and rare earth separation, facility process layout and process flow diagrams, and mass balance information. These processes contain Rare Element's Intellectual Property, and some have been patented, or are in the process of being patented, by Rare Element.

Non-proprietary descriptions of processes are provided in Section 9, "Facilities and Equipment," of the TR.

- (4) In making this application for withholding of proprietary information of which it is the owner, Rare Element relies upon the exemption from disclosure set forth in the Freedom of Information Act ("FOIA"), 5 USC Sec. 552(b)(4) and the Trade Secrets Act, 18 USC Sec. 1905, and NRC regulations 10CFR Part 9.17(a)(4) and 2.390(a)(4) for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." The material for which exemption from disclosure is hereby sought is all "confidential commercial information," and/or also qualify under the narrower definition of "trade secret," within the meanings assigned to those terms for purposes of FOIA Exemption 4 in, respectively, Critical Mass Energy Project v. Nuclear Regulatory Commission, 975F2d871 (DC Cir. 1992), and Public Citizen Health Research Group v. FDA, 704F2d1280 (DC Cir. 1983).
- (5) Some examples of categories of information which fit into the definition of proprietary information are:

- a. Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by Rare Elements' competitors without license from Rare Element constitutes a competitive economic advantage over other companies.
  - b. Information which, if used by a competitor, would reduce his or her expenditure of resources or improve his or her competitive position in the design, manufacture, shipment, installation, assurance or quality, or licensing of a similar product.
  - c. Information which discloses patentable subject matter for which it may be desirable to obtain patent protection.
- (6) The information sought to be withheld is being submitted to the NRC in confidence. The information is of a sort customarily held in confidence, is of a sort customarily held in confidence by Rare Element and is in fact so held. The information sought to be withheld has, to the best of my knowledge and belief, consistently been held in confidence by Rare Element. No public disclosure has been made, and it is not available in public sources. All disclosures to third parties, including any required transmittals to the NRC, have been made, or must be made, pursuant to regulatory provisions or proprietary agreements which provide for maintenance of the information in confidence.
- (7) Initial approval of proprietary treatment of a document is made by the manager of the originating business unit, the person most likely to be acquainted with the value and sensitivity of the information in relation to industry knowledge. Access to such documents within General Atomics is limited on a "need to know" basis.

Disclosures outside Rare Element are limited to regulatory bodies, licensees, and others with a legitimate need for the information, and then only in accordance with appropriate regulatory provisions or proprietary non-disclosure agreements for protecting the information from further disclosure.

- (8) The information classified as proprietary was developed and compiled by Rare Element at a significant cost to Rare Element. This information is classified as proprietary because it contains detailed data and analytical results not available elsewhere. This information would provide other parties, including competitors, with information from Rare Elements' technical database and the results of evaluations performed by Rare Element. Release of this information would improve a competitor's position without the competitor having to expend similar resources for the development of the database. A significant effort has been expended by Rare Element to develop this information.
- (9) Public disclosure of the information sought to be withheld is likely to cause substantial and irreparable harm to Rare Elements' competitive position. The information is part of Rare Elements' rare earth element extraction technology base, and its commercial value extends beyond the original development cost.



The research, development, engineering, and analytical costs associated with Rare Elements' Rare Earth Element extraction process comprise a substantial investment of time and resources by Rare Element.

RARE ELEMENT RESOURCES, INC.



Randall J Scott, President and Chief Executive Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Colorado  
County of Jefferson

On 23<sup>rd</sup> day of May 2022, before me, Jessica Gay (Notary Public), personally appeared Randall Scott, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Colorado that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
(Signature of Notary)