

August 12, 2009

George Harper, Vice President of Engineering
and EPC Project Manager
AREVA Enrichment Services LLC
Solomon Pond Park
400 Donald Lynch Boulevard
Marlborough, MA 01752

SUBJECT: NUCLEAR REGULATORY COMMISSION APPROVAL OF REQUEST BY
AREVA ENRICHMENT SERVICES TO WITHHOLD INFORMATION FROM
PUBLIC DISCLOSURE (TAC L32707)

Dear Mr. Harper:

By letter dated July 7, 2009, transmitting an affidavit (Enclosure 1), also dated July 7, 2009, AREVA Enrichment Services LLC (AES) requested the U.S. Nuclear Regulatory Commission (NRC) withhold, from public disclosure, pursuant to 10 *Code of Federal Regulations* 2.390(b), certain proprietary and confidential information contained in Enclosures 2 and 3 to the letter and in accompanying input deck files.

Enclosure 2 contains Volume II, Cultural Resource Documentation from the Class III Cultural Resource Inventory of the Proposed Eagle Rock Enrichment Facility (EREF) and Enclosure 3 contains data regarding the waste materials shipped from the proposed EREF during construction, the number of personnel onsite during construction; and the consumption rate of water per person per day during construction.

The affidavit states that the submitted information should be considered exempt from mandatory public disclosure for the following reasons, among others:

1. The information sought to be withheld from public disclosure has been held in confidence by AES. The information is proprietary to AES and AES seeks to protect it as such.
2. The information is of a type customarily held in confidence by AES and not customarily disclosed to the public. The information consists of commercial and financial information that provides a competitive advantage to AES.
3. The information has been provided to the NRC in confidence and, under the provisions of 10 CFR 2.390, and is to be received in confidence by the NRC.
4. The information sought to be protected is not available in public sources to the best of AES's knowledge and belief.
5. Public disclosure of Volume II, Cultural Resource Documentation from the Class III Cultural Resource Inventory of the Proposed EREF would reveal the location of possible historic sites. Under Idaho State law, Idaho Code 9-340E(1), records, maps, or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public, are exempt from public disclosure

6. Public disclosure of the proprietary information is likely to cause substantial harm to AES's competitive position. The proprietary information has substantial commercial value to AES.

We reviewed the July 7, 2009 affidavit and the enclosures to the letter in accordance with the requirements of 10 CFR 2.390 and have concluded that enclosures may be withheld. In this regard, 10 CFR Part 2.390(a) specifies that information may be withheld from disclosure if those matters are specifically exempted from disclosure by statute. The National Historic Preservation Act, Section 304, and Idaho Code 9-340E(1), both require the withholding of locations of historic structures or archaeological sites from public disclosure. Material in Enclosure 2 contains cultural and historic resource information that, if it were disclosed, would promote trespassing, vandalism, and theft of artifacts. In addition, we have concluded that Enclosure 3 and the input deck files may be withheld in accordance with 10 CFR 2.390(b).

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the documents. If the basis for withholding this information from public inspection should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You also should understand that the NRC may have cause to review this determination in the future, for example, if the scope of a Freedom of Information Act request includes your information. In all review situations, if the NRC makes a determination adverse to the above, you will be notified in advance of any public disclosure.

If you have any questions regarding this matter, please contact me at (301) 492-3110 or via email to breeda.reilly@nrc.gov.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," copies of this letter and of your July 7, 2009 affidavit will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of the ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

M. Breeda Reilly, Senior Project Manager
Advanced Fuel Cycle, Enrichment,
and Uranium Conversion Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

cc: James Curtiss/Winston & Strawn
Sam Shakir/ AREVA Enrichment Services
Jim Kay/ AREVA Enrichment Services

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Jim Kay/ AREVA Enrichment Services

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