



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

2001-0029

1

RESPONSE TYPE FINAL PARTIAL

REQUESTER

James V. Vassello

DATE

JAN 05 2001

PART I. - INFORMATION RELEASED

- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- APPENDICES **B** Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- APPENDICES **A** Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC. *See Comments Below.*
- APPENDICES **A** Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

PART I.A - FEES

- AMOUNT * You will be billed by NRC for the amount listed. None. Minimum fee threshold not met.
- \$ You will receive a refund for the amount listed. Fees waived.
- * See comments for details

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- No agency records subject to the request have been located.
- Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

Records identified in Appendix B with a ML Accession Number are publicly available in the NRC's Public Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. The records identified without an ML Accession Number are publicly available through NRC's NUDOCS system.

We have enclosed a notice which provides information on the new location of the PDR and procedures for obtaining records from the PDR.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

APPENDIX A
RECORDS BEING RELEASED IN THEIR ENTIRETY
(If copyrighted identify with *)

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	09/27/99	Memo to Suzanne Black, NRR from Arthur T. Howell III, Region IV, Subject: TASK INTERFACE AGREEMENT (TIA) - EVALUATION OF WATERFORD-3 DENIAL OF A VIOLATION REGARDING AUDITOR INDEPENDENCE (99TIA021) (4 pages)

**APPENDIX B
RECORDS ALREADY AVAILABLE IN THE PDR**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	03/03/99	9903110182	Attachment 1 to 9/27/99 Memo to Suzanne Black, NRR from Arthur T. Howell III, Region IV, re: Waterford Steam Electric Station, Unit 3, Notice of Violation (2 pages)
2.	04/01/99	9904070376	Attachment 2 to 9/27/99 Memo to Suzanne Black, NRR from Arthur T. Howell III, Region IV, re: Waterford Steam Electric Station, Unit 3, Letter from E. C. Ewing, Entergy, to NRC (6 pages)
3.	05/04/99	9905100146	Attachment 3 to 9/27/99 Memo to Suzanne Black, NRR from Arthur T. Howell III, Region IV, re: Waterford Steam Electric Station, Unit 3, Letter from E. C. Ewing, Entergy, to NRC (5 pages)
4.	04/04/00	ML003699062	Memo from Suzanne Black, NRR to Arthur T. Howell III, Region IV, re: Response to Region IV Task Interface Agreement of September 27, 1999 (99TIA021) - Evaluation of Waterford Steam Electric Station, Unit 3, Denial of a Violation Regarding Auditor Independence (TAC No. MA6664) (7 pages)



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

September 27, 1999

MEMORANDUM TO: Suzanne Black, Deputy Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation (MS: 8E1)

FROM: Arthur T. Howell III, Director
Division of Reactor Safety *John J. Pellet for*

SUBJECT: TASK INTERFACE AGREEMENT (TIA) - EVALUATION OF
WATERFORD-3 DENIAL OF A VIOLATION REGARDING AUDITOR
INDEPENDENCE (99TIA021)

Region IV requests that the Office of Nuclear Reactor Regulation review and provide guidance concerning the denial of a Waterford-3 violation cited in NRC Inspection Report 50-382/99-01. It is Region IV's position that the issue has generic implications. The licensee's April 1 and May 4, 1999, response letters denied a violation (50-382/9901-01) of 10 CFR 26.80(b) and Regulatory Guide 5.66 as committed to in Paragraph 2.3.1 of the physical security plan. This violation involved the conduct of fitness-for-duty and access authorization program audits by individuals who were not independent of the program management of the audited organizations. Our understanding of the position provided in the licensee's response is that Regulatory Guide 5.66 did not specifically define "independence" as it related to audits of the access authorization program and that independence of program management was not required. Further, the licensee's response indicated that auditors of the fitness-for-duty program were independent of fitness-for-duty management because the auditors reported to the audit team leader (a member of the Waterford-3 quality assurance organization) during the 1-2 weeks of the audit detail. The violation as cited in NRC Inspection Report 50-382/99-01 is provided in Attachment 1. The licensee's response letters are enclosed as Attachments 2 and 3.

The licensee's physical security plan commits to implementing all elements of Regulatory Guide 5.66. Therefore, it is a specific requirement committed to in the physical security plan in its entirety. Regulatory Guide 5.66 requires an "independent evaluation" of the access authorization program. The access authorization requirements were incorporated into the security program through the physical security plan. The requirement to review the physical security plan requirements and the physical security audit program is defined in 10 CFR 73.55(g)(4) which states that the "program shall be reviewed at least every 12 months by individuals independent of both security program management and personnel who have direct responsibility for the implementation of the security program." Therefore, as part of the license requirements, 10 CFR 73.55(g)(4) defines "independent evaluations" pertaining to the access authorization program.

Further, the Statement of Considerations for the Access Authorization Program for Nuclear Power Plants published in the Federal Register, dated April 25, 1991, Paragraph III.6 states, "The Commission believes that an independent evaluation is a reasonable requirement that could be met by a utility's quality assurance if the persons conducting the evaluation are qualified and functionally independent of those responsible for implementing the Access Authorization Program" (emphasis added). By utilizing personnel who implement the access authorization program at the Entergy plants and who work directly for the corporate director of security for program implementation, it does not appear that Entergy has demonstrated functional independence from those responsible for implementing the access authorization program.

During outages, when most fitness-for-duty and access authorization activities occur, access authorization and fitness-for-duty personnel are routinely sent from other Entergy plants to assist in handling the workload. The additional personnel are responsible for authorizing unescorted access at Waterford-3. As a result, auditors from other Entergy sites may be auditing their own work. This would also compromise the audit. The access authorization auditor (technical specialist) was from River Bend Station. She provided on-site support for an outage in March/April 1997 at Waterford-3. The medical review officer was from Arkansas Nuclear One but had not worked on site at Waterford-3.

The licensee's reply stated that the technical specialist who audited the fitness-for-duty program met the requirements of 10 CFR 26.80(b) because the individual was qualified in the subjects, independent of the fitness-for-duty management associated with the Waterford-3 program and held no authority over the direct implementation of the Waterford-3 program. However, since Entergy's access authorization and fitness-for-duty programs are directly managed by the corporate director of security, personnel who work directly for that office are not independent of program management.

Region IV requests the following guidance be provided:

- Is the licensee's interpretation of the requirements and the term "independent" consistent with the requirements?
- What is a reasonable time frame for an individual to be assigned to an audit team led by a member of an organization that is independent of the audited organization (e.g., quality assurance) if that individual works directly for the personnel directly responsible for access authorization/fitness-for-duty program implementation and, upon the completion of the detail, will return to work for the manager of the program being audited? Does the licensee's independence position extend to only a 1- or 2-week detail? If not, what length of a detail would be considered acceptable relative to demonstrating independence?
- Is an auditor independent if he/she has or is likely to audit work that he/she completed during outage work at the plant for which that plant program is being audited?

Should you have any questions concerning this request, please contact Ms. Gail Good (817/860-8215) of my staff.

Suzanne Black

-3-

The issues involved and the submittal of this TIA were discussed with Mr. R. Rosano, NRR Safeguards Section Chief; Mr. T. Quay, NRR/DIPM/QIMB Branch Chief; and Mr. C. Patel, NRR Project Manager.

Attachments: As stated

cc: w/attachments:

Director, DRP - RI, RII, RIII

Director, DRS - RI, RII, RIII

NRR/DRPW Secretary

OECB, HQ

NRR/DRPM/PECB

DRP Branch Chief/Branch D

RIV Coordinator (MS 17G21)

T. Quay, NRR/DIPM/QIMB (MS 11D2)

R. Rosano, NRR/DIPM/IOLB (MS 12E11)

C. Patel, NRR/DRPW/PDIV-1

S. Richards, NRR/DRPW

Elinor G. Adansam

-4-

bcc with Attachments:

E. W. Merschhoff, RA

T. P. Gwynn, DRA

K. E. Brockman, D/DRP

A. T. Howell, D/DRS

G. M. Good, C/DRS:PSB

P. H. Harrell, C/DRP:D

L. A. Yandell, TSS

G. F. Sanborn, EO

K. D. Smith, RIV/RC

A. B. Earnest, DRS/PSB

RIV Official File Copy

RIV Reading File Copy

L. A. Owen, DRP (DRP File Copy)

C. L. Goines, DRS (DRS File Copy)

J. Lieberman, OE (0-14E1)

R. Bechardt

DOCUMENT NAME: R:_WATWT901TIA.ABE.WPD

To receive copy of document, indicate in box: *C* = Copy without enclosures *E* = Copy with enclosures *N* = No copy

RIV:PSB	C:DRS\PSB	EO	RC	D:DRP	D:DRS
*ABEarnest:nh / /99	GMGood <i>GB</i> / /99	*GFSanborn / /99	*WLBrown / /99	*KEBrockman / /99	ATHowell <i>ml</i> 9/24/99

*Previously concurred.

OFFICIAL RECORD COPY