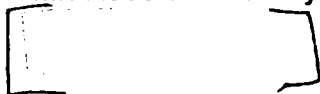




UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001

May 3, 2001

Mr. Robert T. Norway



Dear Mr. Norway:

I am responding to your letter dated January 24, 2001, received on February 13, 2001. You stated that your letter was a request for correction of a record under the Privacy Act. Although you stated that the Freedom of Information Act provides for correction of records, this provision is actually found in the Privacy Act, 5 U.S.C. 552a, and not in the Freedom of Information Act, 5 U.S.C. 552.

Under the Privacy Act and NRC's Privacy Act regulations, a person has the right to determine the existence of, seek access to, and request correction of NRC records concerning themselves if the records are retrievable by the person's name or an identifying number, symbol, or other identifier assigned to a person and are located in a system of records which is controlled by the NRC (5 U.S.C. 552a(a)(5)). The record you have asked us to correct was not found in a system of records and was not retrieved by your name or other identifying information. Since neither the Privacy Act nor NRC's Privacy Act implementing regulations apply to this record, I cannot grant your request.

You also requested that NRC notify anyone who has seen the record that it contains inaccurate information and mark the record to inform those who will see it of its inaccuracy. This is a right conferred by the Privacy Act and, since the Privacy Act does not apply to the record, the NRC cannot use the Privacy Act (nor is there another mechanism available) to make the notification(s) you requested. Therefore, I cannot grant this request.

You cite 10 CFR 9.19(b)(2), NRC's Freedom of Information Act regulation, as the basis for your claim that we should have redacted the licensee's enforcement conference handout. The Freedom of Information Act (5 U.S.C. 552(b)(5)) and NRC's regulation at 10 CFR 9.17(a)(5) state that information in "interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency" can be withheld from public disclosure. This is the exemption used to withhold advice, opinions, and recommendations from public disclosure. However, the licensee's handout is not an interagency or intra-agency record. This handout is owned by the licensee, Niagra Mohawk Power Corporation, and, therefore, NRC could not use this exemption to correct any alleged misinformation contained in the handout.

In addition, although you have not specifically made this claim, I believe you have submitted what could be considered a "statement of disagreement." Again this is a right conferred by the Privacy Act and under that Act I cannot grant your request. However, I will make a copy of your January 24, 2001, letter and this letter publicly available.

I have been informed that a U.S. Department of Labor (DOL) Administrative Law Judge (ALJ) issued a Recommended Decision and Order on March 15, 1996, which found that you were discriminated against by Niagra Mohawk Power Corporation (NMPC) for raising safety concerns at the Nine Mile Point (NMP) facility. Based on the ALJ's Recommended Decision, the NRC issued a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty to NMPC on July 24, 1996. The enforcement conference in which NMPC submitted the information you reference was held on May 10, 1996, prior to issuance of the NOV. In the letter transmitting the NOV to NMPC, the NRC stated that "the circumstances surrounding the violation are described in detail in the ALJ's Recommended Decision and Order." Thus, the official agency enforcement action clearly indicates the enforcement decision was based on the ALJ's decision and that the agency's decision was not affected by any potentially misleading written information presented by NMPC at the enforcement conference.

I have also been informed that on April 5, 1999, you petitioned the NRC to take enforcement action against NMPC for, in part, allegedly altering and causing public release of documents about your performance and for misrepresenting the findings of an ALJ in the related DOL case. The NRC's Director's Decision (DD) 99-13, dated October 28, 1999, considered each document and concluded in each case that enforcement action was not warranted. In fact, regarding the handout page you have asked the NRC to redact, which discussed the ALJ's findings, the Director of the Office of Nuclear Reactor Regulation stated in DD 99-13 that "when viewed in context with the other documents placed in the public record, the record is sufficiently clear that the document in question presents the views of NMPC management about the ALJ's decision. The staff concludes that NMPC did not submit a false written record of the ALJ's determination in the DOL proceeding in 95-ERA-005 and, therefore, *no action to correct, clarify, or otherwise alter the public record is warranted*" [emphasis added]. This Director's Decision was published in the *Federal Register* and is also available on the NRC Web site.

Additionally, on May 3, 1999, James Lieberman, then the Director of the NRC's Office of Enforcement, wrote you a letter about your request that the two documents provided by NMPC to the NRC during the May 10, 1996, enforcement conference be removed from the NRC's Public Document Room (PDR). As Mr. Lieberman noted, documents submitted by licensees are generally matters of public record and are placed in the NRC's PDR. Mr. Lieberman also noted that "in light of the discussion by NMPC management at the PEC [predecisional enforcement conference], and [the fact] that the ALJ was made aware of the issue related to an allegedly fraudulent document during the DOL hearing process, there is no basis to remove the documents in question from the PDR." This letter is also referenced in DD 99-13.

In summary, the publically available NOV issued to NMPC explicitly stated that the enforcement action was based on the ALJ's Recommended Decision and Order. In response to your April 5, 1999, petition, the NRC concluded, in a Director's Decision, that the NRC knew of the issues

regarding the documents in question when the enforcement action was taken and that no further action was necessary. This Director's Decision (DD 99-13) is widely available to the public through the NRC's PDR, the *Federal Register*, and the NRC Web site. Finally, the May 3, 1999, letter from Mr. Lieberman also responds to your request to remove the two documents from the PDR. Therefore, the staff has concluded that the enforcement action issued to NMPC was appropriately documented; the information contained in NMPC's enforcement conference presentation was understood at the time the enforcement decision was issued; the public has adequate access to all of the records documenting the agency's position regarding the documents you wish to redact or remove; and that there is no basis for removal of the documents in question from the PDR.

Your April 5, 1999, petition also requested that a complaint be referred to the NRC's Office of Inspector General (IG) for an investigation of possible deliberate misconduct by NRC employees for allowing NMPC's May 10, 1996, enforcement conference handout to be released for public review. DD-99-13 stated that the referral to the IG was made on May 17, 1999. In your January 24, 2001, letter, you made several allegations concerning the actions of NRC. Therefore, that letter will also be forwarded to the Office of Inspector General for whatever action it deems appropriate. The Office of the Inspector General will respond directly to you regarding your allegations of NRC wrongdoing.

Sincerely,

A handwritten signature in black ink, appearing to read "Carol Ann Reed". The signature is fluid and cursive, written in a professional style.

Carol Ann Reed  
Freedom of Information and  
Privacy Act Officer  
Office of the Chief Information Officer