

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

2003-0032

13

RESPONSE
TYPE

FINAL



PARTIAL

REQUESTER

James Riccio

DATE

MAY 14 2003

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**
KK 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**
LL, MM 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.
- ☒ **APPENDICES**
LL, MM 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 *

\$

* See comments
for details☐
☐

You will be billed by NRC for the amount listed.

You will receive a refund for the amount listed.

☐
☒

None. Minimum fee threshold not met.

Fees waived.

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)

One record that was originated by the Department of State has been referred to that agency for review and direct response to you.

The following report that was written by Electric Power Research Institute, Inc. (EPRI), may be of interest to you: "Graphite for High-Temperature Reactors," Final Report, August 2001, Document #1003013. You may request copy of the report by writing to EPRI at the following address: EPRI Customer Fulfillment, 1355 Willow Way, Suite 278, Concord, CA, 94520. You can reach EPRI by telephone on (800) 313-3774, press 2.

This completes NRC action on your request.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

NRC FORM 464 Part II (6-1998)	U.S. NUCLEAR REGULATORY COMMISSION	FOIA/PA 2003-0150	DATE MAY 14 2003
RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST			

PART II.A -- APPLICABLE EXEMPTIONS

**APPENDICES
MM, NN**

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- ☐ Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- ☐ Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- ☐ Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
- ☐ Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
☐ Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
☐ 41 U.S.C., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- ☐ Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
- ☐ The information is considered to be confidential business (proprietary) information.
☐ The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.790(d)(1).
☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2).
- ☒ Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
- ☒ Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
☐ Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
☐ Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- ☐ Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- ☐ Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
- ☐ (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
☐ (C) Disclosure would constitute an unwarranted invasion of personal privacy.
☐ (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
☐ (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
☐ (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- ☐ OTHER (Specify)

PART II.B -- DENYING OFFICIALS

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Samuel J. Collins	Director, Office of Nuclear Reactor Regulation	MM/1	✓		
Ashok C. Thadani	Director, Office of Nuclear Regulatory Research	MM/2, MM/3, MM/4, MM/5, MM/7, and NN/4	✓		
Sandra Joosten	Executive Assistant, Office of the Secretary	MM/6, NN/1, NN/2, NN/3		✓	
Janice Dunn Lee	Director, Office of International Programs	MM/8	✓		

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

APPENDIX KK
RECORDS ALREADY PUBLICLY AVAILABLE

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	10/07/02	ML022130093	SECY-02-0180 - Legal and Financial Policy Issues Associated with Licensing New Nuclear Power Plants (24 pages)

**APPENDIX LL
RECORDS BEING RELEASED IN ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DOCUMENT DESCRIPTION/PAGE COUNT</u>
1.	03/13/00	OGC comments on Commission Correspondence 00-0041: Letter to Madam Phumzile Mlambo-Ngcuke, Minister of Minerals and Energy, South Africa, concerns expert team's finding regarding the Eskom's PBMR. 2 pages
2.	03/21/00	OGC comments on Commission Correspondence 00-0041 - Revised. 1 page
3.	03/27/00	Memo from Janice Dunn Lee to the Commission, subject: Recent Information on South Africa PBMR. 1 page
4.	09/18/00	OGC comments on Commission Correspondence 00-0150 - Letter from Walter Simon, General Atomics, concerns interest in working with South Africa on the safety of licensing evaluation of PBMR. 1 page
5.	01/24/01	Comm. Diaz' comments on COMJSM-00-0003 - Staff Readiness for New Nuclear Plant Construction and PBMR. 2 pages
6.	01/29/01	Comm. McGaffigan comments on COMJSM-00-0003. 2 pages
7.	01/29/01	Chairman Meserve comments on COMJSM-00-0003. 2 pages
8.	02/08/01	Memo from A. Vietti-Cook to Commissioner Merrifield, subject: COMJSM-00-0003 - Staff Readiness for New Nuclear Plant Construction and the PBMR. 2 pages
9.	03/27/01	Memo from Comm. McGaffigan to Jesse Funches, subject: Fees Related to Research Activities Supporting First-of-a-Kind Applications for a License or Certification. 2 pages
10.	04/26/01	Memo from Annette Vietti-Cook to Jesse Funches, subject: Staff Requirements - COMSECY-01-0010-Fees Related to Research Activities Supporting First-of-A-Kind Applications for a License or Certification. 1 page

11. 05/11/01 Memo from Jesse Funches to William Travers, subject: Fees Related to Research Activities Supporting First-of-A-Kind Applications for a License or Certification. 5 pages
12. 08/14/01 E-mail from Stuart Rubin to Bernhard Wiechers, Westinghouse, regarding Technical Documents under Know-How Transfer, Dr. Schoning. 1 page
13. 08/22/01 Letter from Chairman Meserve to Congressman Dingell responding to 8/3/01 letter from reauthorization of the Price-Anderson act. 7 pages
14. 12/06/01 Comments of Comm. Dicus on copy of first page of SECY-01-0207. 1 page
15. 12/11/01 Memo from Mabel Lee to Richard Rough, subject: RES Input to the NRC's FY 2003 Budget Estimates and Performance Plan to Congress. 5 pages
16. 12/13/01 Chairman Meserve comments on copy of first page of SECY-01-0207. 2 pages
17. 01/14/02 Memo from A. Vietti-Cook to William Travers regarding Staff Requirements - SECY-01-0207 - Legal and Financial Issues Related to Exelon's PBMR. 1 page
18. 02/01/02 Correction Notice - SECY-01-0207. 3 page
19. 03/14/02 E-mail from Stuart Rubin to Kevin Borton, Exelon, regarding AVR Melt Wire Assessment Report. 2 pages
20. 04/15/02 letter from Oliver Kingsley to Chairman Meserve regarding recent development concerning Exelon participation in PBMR. 1 page

**APPENDIX MM
RECORDS BEING RELEASED IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DOCUMENT DESCRIPTION/PAGE COUNT</u>
1.	No date	PBMR - Current NRR and RES Activities. 7 pages EX. 5
2.	02/14/01	Routing and Transmittal slip attaching draft SECY paper, Plan for Pre-Application Activities on a PBMR. 16 pages EX. 5
3.	03/16/01	Routing and Transmittal slip attaching draft SECY paper, Plan for Pre-Application activities on the PBMR. 18 pages EX. 5
4.	03/16/01	DPBA Ticket attaching draft SECY paper, Plan for Pre-Application Activities on the PBMR. 20 pages EX. 5
5.	04/11/01	Draft SECY paper, Plan for Pre-Application Activities on PBMR. 17 pages EX. 5
6.	12/27/01	E-mail from Marsha Gamberoni to A. Cubbage, J. Lyons, J. Wilson, R. Borchardt and T. Bergman. 3 pages total, 1 page released. EX. 5
7.	03/26/02	E-mail from A. Cubbage to S. Rubin regarding Exelon Paper on Fuel Qualification. 2 pages EX. 5
8.	09/19/00	Comments of Howard Falkner, Office of International Programs, on draft letter to Walter Simon, General Atomic concerning interest in working with South Africa on the safety and licensing evaluation of PBMR. 1 page EX. 5

**APPENDIX NN
RECORDS BEING WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	02/01/01	Memo from Annette Vietti-Cook to the Commission regarding Staff Requirements Memorandum COMJSM-00-0003 - Staff Readiness for New Nuclear Plant Construction and the Pebble Bed Reactor. 4 pages EX. 5
2.	08/27/01	E-mail from Donald Carlson to John Thoma, subject: For Commissioner Merrifield's trip to UK, providing background information. 2 pages EX. 5
3.	12/19/01	Commissioner Merrifield's comments on copy of first page of SECY-01-0207 - Legal and Financial Issues Related to Exelon's Pebble Bed Modular Reactor. 2 pages EX. 5
4.	06/13/02	E-mail from Charles Ader to Cathy Grimes and Karen Fitch, subject: Reimbursable Agreement for DOE Advanced Gas Reactor Technology. 1 page EX. 5