NRC FORM 464 Part I
(6-1998)

U.S. NUCLEAR REGULATORY COMMISSION

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

| FOIA/PA | RESPONSE NUMBER |
|---|---|
| 2003-0398 | 3 |

RESPONSE TYPE ☑ FINAL ☐ PARTIAL

REQUESTER: Esther Suarez

DATE: JAN 22 2004

## 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 _____ 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 E & F 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 E & F 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)

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed *Carol Ann Reed*

NRC FORM 464 Part II (6-1998) U.S. NUCLEAR REGULATORY COMMISSION

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

FOIA/PA 2003-0398

DATE JAN 2 2 2004

## PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES F & G

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.
- [x] 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).
- [x] Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
  - [x] 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 |
| Hubert J. Miller | Regional Administrator, Region 1 | F/1 | ✓ | | |
| James E. Dyer | Director, Nuclear Reactor Regulation | G/1 - G/4 | ✓ | | |
| William M. Beecher | Director, Office of Public Affairs | F/2 - F/5 & G/5 - G/6 | | ✓ | |
| Sandra M. Joosten | Executive Assistant, Office of the Secretary | F/6 - F/8, G/7 - G/9 | | ✓ | |

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."

FOIA-2003-0398

# APPENDIX E
## RECORDS BEING RELEASED IN ENTIRETY

| NO. | DATE | DOCUMENT DESCRIPTION/PAGE COUNT |
|---|---|---|
| 1. | 02/03/03 | Memo from John Craig to the Commissioner Assistants, subject: Staff Comments on the Draft Report Issued by James Lee Witt Associated Entitled, "Review of Emergency Preparedness at Indian Point and Millstone-Draft," issued January 10, 2003. 6 pages |
| 2. | 02/14/03 | Memo from David Silk to Peter Eselgroth, subject: Feeder to Indian Point Unit 2 & 3 Integrated Inspection Report Nos. 50-247/03-003 & 50-286/03-002. 7 pages |
| 3. | 05/02/03 | Comment of Commissioner Merrifield at Senior Management Meeting. 1 page |
| 4. | 05/27/03 | Memo from David Silk to Peter Eselgroth, subject: Feeder to Indian Point Unit 2 & 3 Integrated Inspection Report Nos. 50-247/03-007 & 50-286/03-006. 6 pages |

Re: FOIA-2003-0398

## APPENDIX F
## RECORDS BEING WITHHELD IN PART

| NO. | DATE | DESCRIPTION/(PAGE COUNT)/EXEMPTIONS |
|---|---|---|
| 1. | No date | Handwritten notes on Viewgraphs - Emergency Planning - Indian Point Energy Center, Brian Holian & Patricia Milligan. 14 pages **EX. 5** |
| 2. | No date | Draft Press Release - NRC Finds Indian Point Meets Reasonable Assurance Criteria for Emergency Preparedness, with attached e-mail from W. Beecher to Chairman Nils Diaz. 3 pages total, 2 pages released. **EX. 5** |
| 3. | 07/23/03 | E-mail from Nils Diaz to W. Beecher regarding Final - Indian Point Documents. 2 pages total, 1 page released **EX. 5** |
| 4. | 07/23/03 | E-mail from W. Beecher to Nils Diaz regarding Matt Wald/NY Times/FEMA Decision. 2 pages **EX. 5** |
| 5. | 07/25/03 | E-mail from W. Beecher to Nils Diaz regarding FEMA/Indian Point. 1 page **EX. 5** |
| 6. | 5/2/03 | Notes from Senior Management Meeting. 1 page **EX. 5** |
| 7. | 6/9/03 | Handwritten notes from staff meeting. 1 page **EX. 5** |
| 8. | 06/26/03 | Handwritten notes from Senior Management Meeting. 3 pages **EX. 2 and EX. 5** |

Re: FOIA-2003-0398

## APPENDIX G
## RECORDS BEING WITHHELD IN THEIR ENTIRETY

| NO. | DATE | DESCRIPTION/(PAGE COUNT)/EXEMPTIONS |
|---|---|---|
| 1. | Undated | Summary of 4-county and NY State meeting held with FEMA and Entergy on April 10, 2003. 2 pages **EX. 5** |
| 2. | Undated | Draft background paper on Indian Point Emergency Plan to support brief to NRC Chairman. 4 pages **EX. 5** |
| 3. | 04/22/03 | E-mail from Patricia Milligan, NRR, to Daniel Barss, NRR, regarding "IP stuff." 1 page **EX. 5** |
| 4. | 5/05/03 | Draft of EP Review Action Steps. 5 pages **EX. 5** |
| 5. | 05/02/03 | E-mail from W. Beecher to Commissioner Jeffrey Merrifield, subject: Brief Background on Status of FEMA Indian Point 2 EP Review. 2 pages **EX. 5** |
| 6. | 07/23/03 | E-mail from W. Beecher to Chairman Diaz regarding Indian Point Documents. 1 page **EX. 5** |
| 7. | Undated | Handwritten notes dated 7/1/03 on draft press release indicating copies to M. Doane, K. Cyr, J. Gray, and EDO, and indicating comment from Commissioner McGaffigan. 1 page **EX. 5** |
| 8. | Undated | Documents regarding issue for FEMA, with handwritten note. 2 pages **EX. 5** |
| 9. | 06/03/03 | E-mail from M. Lopez-Otin to W. Kane regarding handwritten notes dated 6/3/03 by M. Lopez-Otin. 5 pages **EX. 5** |