



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

2002-0337

4

RESPONSE TYPE FINAL PARTIAL

REQUESTER

James P. Riccio

DATE

APR 01 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 **I** 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 **J, K** 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 **J, K** 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)

Copies of records identified at Appendix J-1 thru J-11, J-13, and J-16 as well as records identified at Appendix K-1, attachment to K-2 & K-3, and K-4 all contain copyrighted material and are not being provided. Arrangements to view copyrighted records can be accomplished by contacting the NRC's Public Document Room (PDR) at 301-415-4737 or 1-800-397-4209, or by e-mail to pdr@nrc.gov.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

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

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PART II.A – APPLICABLE EXEMPTIONS

APPENDICES
K

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
Sandy M. Joosten	Executive Assistant	K-1-4		✓	

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 I
RECORDS ALREADY PUBLICLY AVAILABLE**

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NO.</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	06/19/00	ML030980419	Memo to Commissioners from John Larkins, ACRS/ACNW, Transmittal of Foreign Trip Report of ACRS Member (20 pgs)
2.	08/30/00	ML010360136	Ltr to Chairman Meserve from Walter A. Simon, General Atomics, regarding NRC interest in working with the South Africans on the safety and licensing evaluation of their Pebble Bed Modular Reactor (PBMR) (5 pgs)
3.	05/10/01	ML011420393	Letter to T.L. King, from J.A. Muntz, Exelon, re Regulatory Issues Related to the Pebble Bed Modular Reactor (PBMR) (44 pgs)
4.	05/25/01	ML011490393	Memo to Ashok Thadani, RES, from Stuart Rubin, RES, Notice of Meeting with the U.S. Department of Energy and Exelon Generation Company and Other Interested Stakeholders Regarding HTGR Technology and Preapplication Activities for the Pebble Bed Modular Reactor (PBMR) (4 pgs)
5.	05/25/01	ML011520376	Ltr to NRC Document Control Desk from James A. Muntz, Exelon Generation, Pebble Bed Modular Reactor (PBMR) 10 CFR Part 52 Applications and Licensing Plan (16 pgs)
6.	08/23/01	ML011910207	Ltr to Mr. James A. Muntz, Exelon Generation, from Samuel J. Collins, NRR, regarding Exelon's licensing plan for the pebble-bed modular reactor (PBMR) (6 pgs)
7.	08/31/01	ML012490160	Exelon Generation Company's Proposed Licensing Approach for the Pebble Bed Modular Reactor (PBMR) in the United States (94 pages)
8.	04/15/02	ML031430128	Ltr to Chairman Meserve, NRC, from Oliver D. Kingsley, Jr., Exelon, regarding recent developments concerning Exelon's participation in the Pebble Bed Modular Reactor (PBMR) project (1 page)

[Response #4]

APPENDIX I - continued
RECORDS ALREADY PUBLICLY AVAILABLE

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|-----|----------|-------------|---|
| 9. | 05/03/02 | ML021330170 | Ltr to Chairman Meserve, NRC, and Secretary of Energy Spencer Abraham, from Andrew Kadak, Massachusetts Institute of Technology, regarding work at MIT on the PBMR project (3 pgs) |
| 10. | 06/03/02 | ML021640672 | Ltr to NRC Document Control Desk from Kevin F. Borton, Exelon Generation, Submittal of Position Paper Addressing Selected Significant Observations and Conclusions in D. A. Powers Trip Report Covering the "High Temperature Gas-Cooled Reactor Safety and Research Issues Workshop," held October 10-12, 2001 (6 pgs) |
| 11. | 08/29/02 | ML022310097 | Ltr to Dr. George Apostolakis, ACRS, from William Travers, EDO, Draft Advanced Reactor Research Plan (5 pgs) |

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

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	09/1997	* Paper from The Uranium Institute, Twenty-Second Annual Symposium, 3-5 September 1997:London, The Modular Helium Reactor for the Twenty-First Century, M. P. La Bar & W. A. Simon (12 pgs)
2.	08/17/98	* Article entitled Planned nuclear reactor - is it going to generate foreign exchange? (2 pgs) [www.woza.co.za]
3.	09/1998	* Paper from The Uranium Institute, Twenty-Third Annual Symposium, 10-11 September 1998:London, The Role of Small and Medium-Sized Reactors, J. Kupitz & V. Mourgov (11 pgs)
4.	00/1999	* Article from The Star, Earthlife to join worldwide protest (1 pg) [www.saep.org]
5.	02/1999	* Arguments on the Construction of PBMR Reactors in South Africa, Steve Thomas, SPRU (University of Sussex) (16 pgs) [www.earthlife.org.za]
6.	03/03/99	* Meeting to discuss nuclear development, Notes on Minutes, Mark Keilthy, SAEP (3 pgs) [www.saep.org]
7.	June-Aug/99	* CORE Issues, The Journal of the Uranium Institute, Prospects for nuclear power: potential of the PBMR, John Gittus (7 pgs) [www.uilondon.org]
8.	10/29/99	* Article from the Daily Mail & Guardian, Eskom chief has stake in nuclear reactor company (3 pgs) [www.mg.co.za]
9.	05/2000	* Article from Nuclear News, Eskom's pebble bed reactor presented to government (2 pgs)
10.	12/01/00	* Article from The Energy Daily, Exelon Exec: Nuclear's Future Lies in Pebble Bed Reactor by Tina Davis (1 pg)
11.	01/22/01	* Article from Dow Jones Newswires, South African Meltdown-Proof Nuclear Reactor Has Power Industry Abuzz (4 pgs)

APPENDIX J- continued
RECORDS BEING RELEASED IN THEIR ENTIRETY
(If copyrighted identify with *)

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
12.	06/06/01	EXM Vote on SECY-01-0070, Plan for Preapplication Activities on the Pebble Bed Modular Reactor (PBMR) (2 pgs)
13.	09/24/01	* Inside NRC article, entitled, "Exelon Scales Up PBMR, Continues Development of Licensing Plan (2 pages)
14.	10/18/01	Ltr to Commissioner Edward McGaffigan from David C. Brown, Exelon, requesting a meeting to update the Commissioner on the status of the Pebble Bed Modular Reactor (PBMR) project (1 pg)
15.	04/16/02	Exelon News Release, Exelon PBMR Announcement (1 pg)
16.	09/09/02	* Article from ABC News, Pebble Problems Next-Generation Nuclear Technology Hits Stumbling Block (5 pgs) [http://abcnews.go.com]

**APPENDIX K
RECORDS BEING WITHHELD IN PART
(* Indicates copyrighted information)**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	03/13/00	* Article from COMTEX Newswire, South Africa: Eskom Briefs Cabinet on Project, with handwritten annotations [Ex. 5] (1 pg)
2.	11/7/00	Note to Commissioner Assts from John Craig, OEDO, The Modular Pebble Bed Reactor Concept (1 page released) Attach: * Slide Presentation on The Modular Pebble Bed Reactor Concept, with handwritten annotations [Ex. 5] http://milkyway.mie.uc.edu (58 pages) Attach: * Article from CORE issues, The Journal of the Uranium Institute, June-August 1999, no. 2 on "Pebble beds for the future?" http://www.uilondon.org (5 pages) Attach: * 11/03/00 Information paper from Eskom web site on pebble bed reactor technology www.eskom.co.za (6 pages) Attach: * 11/03/00 Information paper from Toyo Tanso USA, Inc., re chemical properties of graphite www.ttu.com (5 pages)
3.	04/16/01	E-mail from Linda Lewis, OCM, to edo_visitors, et al., Subj: Visit by Prof. Andy Kadak, MIT, w/Cmr McGaffigan [Ex. 6] (1 page) Attach: * Resume of Andrew C. Kadak http://web.mit.edu [Ex. 6] (2 pages)
4.	Undated	* Article from Wall Street Journal, U.S. Backing for Nuclear-Power Project in South Africa Raises Hope and Dissent, with handwritten annotations [Ex. 5] (1 pg)