



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

June 29, 2004

Mr. Robert Norway
[HOME ADDRESS DELETED]
PURSUANT TO 10 CFR 2.390]

Dear Mr. Norway:

This letter is in response to your undated letter received by the Office of Enforcement on April 28, 2004. In your letter, you state that certain documents released to the public by the NRC should not have been released. Specifically, you refer to (1) a job performance evaluation; (2) evidence from a Department of Labor (DOL) case; and (3) pages from certain DOL hearing transcripts. According to your letter, you have previously asked the NRC to remove these documents from the public record, but your requests have been denied.

I have reviewed the relevant records and the circumstances surrounding their disclosure. The first record you refer to was provided to the NRC by Niagara Mohawk Power Corporation (NMPC) at a May 10, 1996, predecisional enforcement conference regarding Department of Labor decision number 95-ERA-005. In accordance with agency practice and applicable law, the NRC placed this document in the public domain after redacting all information that might personally identify the subject of the document.

The NRC previously addressed disclosure of this record in response to a petition pursuant to 10 CFR 2.206 (2.206 petition) you filed on April 5, 1999. In Director's Decision 99-13, dated October 28, 1999, then Director of Nuclear Reactor Regulation Samuel J. Collins explained that the document was placed in the public domain only after the NRC redacted all information that might personally identify the subject of the document. Mr. Collins concluded that the record was appropriately disclosed, and I agree with his assessment.

The second and third documents you refer to were provided to the NRC by NMPC in response to a request for information generated by your 2.206 petition dated May 10, 2000. Your petition requested the NRC obtain these documents from NMPC, which include a piece of evidence and a hearing transcript from a DOL adjudicatory proceeding. Such records are normally publicly available through DOL. Even if these particular documents were not publicly available through DOL, our records show that you knew the NRC would make them publicly available.

During a teleconference held to discuss your May 10, 2000, petition, the NRC explained that the petition review process under 10 CFR 2.206 is an open process based on a publicly available record. The NRC stated that it planned to place information related to your petition in the public domain. You agreed to this approach. Documents 2 and 3 referenced above formed part of the NRC's administrative record regarding your May 10, 2000, 2.206 petition, and were properly made publicly available.

Finally, your recent letter requests the NRC to confirm that (1) NMPC could have requested that the above-referenced documents be withheld from public disclosure; (2) release of the

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documents was made with the knowledge and request of NMPC; (3) release of the records was not required of the NRC; and (4) NMPC maintains authority to have the documents removed from the public record.

The NRC has no legal requirement that licensees request documents be withheld from the public. When documents are submitted to the NRC, they are generally made public unless there is a compelling reason to prohibit disclosure. While the law may prohibit the NRC from disclosing documents in some circumstances, none of those circumstances apply here.

NMPC does not have the authority to control disclosure of NRC records or remove records appropriately placed in the public domain. It is the NRC's responsibility to ensure that records in its possession are treated appropriately under the law. After carefully considering your recent letter and reviewing the relevant documents, I conclude that the NRC has met that responsibility here.

In accordance with NRC policy under 10 CFR 2.390, this correspondence will be made publicly available.

Sincerely,

/RA/

Frank J. Congel, Director
Office of Enforcement

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