



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

FOIA/PA REQUEST
Case no. 2009-0007
Date Rec'd 10-10-08
Specialist Hewitt
Related Case. _____

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

October 9, 2008

FOIA/PA Officer
U.S. Nuclear Regulatory Commission
FOIA Officer Mail Stop T5-F11
Washington, DC 20555-0001

Dear FOIA/PA Officer:

Pursuant to the Freedom of Information Act (FOIA) and related regulations, I respectfully request that the Nuclear Regulatory Commission (NRC) provide copies of any and all versions of the following documents:

Any reports and all accompanying documents prepared by, prepared for, or received by the Nuclear Regulatory Commission concerning Implications of updated probabilistic seismic hazard estimates in central and eastern United States for existing plants.

This request includes any documents or information, including, but not limited to, any memoranda, attachments, enclosures, evaluations, reports, appendices, charts, diagrams, CDs, DVDs, and/or transmittal letters that accompany/accompanied such reports.

This information is requested by the Office of the New York State Attorney General in the course of its official governmental duties on behalf of the People of the State of New York.

Request for Waiver of Fees

The public disclosure of the requested information will promote the public interest. Accordingly, the NRC should waive any fees associated with this request. Indeed, given that the requested information is in the public interest (as opposed to a commercial interest, an individual, private interest, or an academic research project), Congress has mandated that the NRC waive fees for copies of the above-requested reports and documents. See 5 U.S.C. § 552 (a)(4)(A)(iii) ("Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest

because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”). Because this request satisfies the operative statutory standard, NRC must waive any fees associated with this request. Consistent with this Congressional directive, New York State hereby requests that the NRC waive all fees associated with this request.

Plainly, the information sought by this request - which is not accessible by the public - will contribute to the public’s understanding of the operations of the federal government. *See* 10 C.F.R. § 9.41(c). The requested reports and associated documents concern an assessment of seismic hazards on existing nuclear plants in the Central and Eastern United States and thus concerns the operations or activities of the federal government. *See* 10 C.F.R. § 9.41(d)(1). Release of the information will allow New York State to understand the operations of NRC and, possibly, the NRC’s interactions with, and the operations of, other federal agencies (e.g., USGS, DOE) or private entities. *See* 10 C.F.R. § 9.41(d)(2). Release of the information will increase the ability of New York State residents and Americans across the Nation to better understand the interaction of seismic hazards and the NRC’s exercise of its authority. Finally, as noted above, the Attorney General’s Office submits this request, not as a commercial competitor, but in the exercise of its sovereign governmental functions and on behalf of the people of the State of New York. *See* 10 C.F.R. § 9.41(d)(3). If the NRC wishes, the requested information may be placed on the public portion of the ADAMS document management system.

In addition, although not required to do so by statute, New York State provides the following additional information that you are free to consider. The Office of the Attorney General intends to use the information obtained in the furtherance of its official governmental functions on behalf of the People of the State of New York. By way of example, such functions include participating in Atomic Safety and Licensing Board proceedings and other NRC activities. The Office of the Attorney General will extract and analyze the information contained in the documents to examine seismic conditions at various nuclear facilities in and around the State of New York and evaluate various NRC activities in the area. The Office may use or reference information contained in the requested documents in various New York State administrative proceedings or NRC administrative proceedings (e.g., PSC # E-08-0077, ASLBP # 50-247-LR and 50-286-LR) and/or to evaluate NRC staff work product (e.g., Safety Evaluation Reports, Supplemental Environmental Impact Statements). The Office has expert scientists and engineers on staff and consults with additional state employees who have seismic and engineering experience. The likely impact of the release of the requested information will be a substantial increase in the public understanding of the implications of seismic hazard estimates in central and eastern United States when compared to the public’s understanding before the release of such documents. At present, the public does not have access to the documents and its understanding of the seismic hazard estimates is impeded. The release of the information could increase the understanding of numerous citizens. For example, and as you may be aware, each day approximately 20 million American citizens live, work, attend school, or travel within 50 miles of the Indian Point facilities. The NRC has acknowledged that the Indian Point facilities have the highest surrounding population density of any power reactor in the Nation. The Office

may include the requested information in potential future filings or communications with the NRC and/or other federal or state governmental bodies; as such, the content of such filings would be available to the public through the operative proceeding or by request. Additionally, federal agencies typically post such filings in a publicly available docket (e.g., NRC Rulemaking Docket; NRC Electronic Hearing Docket, ASLBP # 50-247-LR and 50-286-LR). Further, as noted, if the NRC wishes, it may post the requested information at one or more location on its web site so that the public may view it. None of these methods would entail a charge to a citizen who wished to review the information. The Attorney General's Office submits this request, not as a commercial competitor, but in the exercise of its sovereign governmental functions and on behalf of the people of the State of New York.

Thus, there is no basis to deny this Office's application that the NRC waive all fees associated with this FOIA request.

Conclusion

Please produce all responsive documents within 10 days of the receipt of this letter.

If you have any questions concerning this FOIA request, please contact me directly at (518) 474-1978 or Teresa.Fountain@oag.state.ny.us. Thank you for your attention to this matter.

Sincerely,

/s/

Teresa Fountain
Legal Assistant Trainee

FOIA Resource

From: Teresa Fountain [Teresa.Fountain@oag.state.ny.us]
Sent: Friday, October 10, 2008 9:45 AM
To: FOIA Resource
Subject: Request for Information
Attachments: 2008 10 09 Request to NRC.pdf

Dear FOIA Officer:

Attached is the State of New York's request for information under FOIA. If you have any question, please contact me. No hard copy to follow.

Thank you,

Teresa Fountain
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Office of the Attorney General
The Capitol
Albany, NY 12224
(518) 474-1978
(518) 473-2534 fax