



FOIA/PA REQUEST

Case No.: 2010-0014A
Date Rec'd: 4-1-10
Specialist: Dennis
Related Case: 2010-0133

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

March 31, 2010

Via Electronic Mail—FOIA.Resource@nrc.gov

Donna L. Sealing
FOIA/PA Specialist
Office of Information Services
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: FOIA/PA Appeal of Determination on FOIA/PA 2010-00133

Dear Ms. Sealing:

The Office of the Attorney General of the State of New York ("OAG") hereby appeals NRC's March 9, 2010 determination in the above referenced matter. For purposes of this administrative appeal, the OAG incorporates the following: (1) the February 5, 2010 Initial Request for Information and Fee Waiver (Exhibit A), and (2) the March 9, 2010 NRC Response to FOIA/PA Request (Exhibit B).

OAG's Initial Request for Information dated February 5, 2010 sought the production of the following documents:

- (1) **The 1968 report performed by A.V. Smith Engineering Company referenced in the Final Facility Description and Safety Analysis Report, Consolidated Edison Company of New York, Indian Point Nuclear generating Unit No.2 (Oct. 15, 1968) at section 5.1.3.12 (Cathodic Protection);**
- (2) **all documents or communications concerning work done for ConEdison, NYPA/PASNY, or Entergy (or their agents, contractors, affiliates, or subsidiaries) by the A.V. Smith Engineering Company concerning Indian Point Nuclear Power Plants Units 1,2, or 3;**
- (3) **all communications between or involving the Atomic Energy Commission (AEC) and A.V. Smith Engineering Company;**
- (4) **all communications between or involving the NRC and A.V. Smith Engineering Company;**

- (5) any communication between AEC and any owner or operator of Indian Point Nuclear Power Plants Units 1,2, or 3 concerning cathodic protection on any aboveground or underground pipes and tanks at any of the three units; and**
- (6) any communications between NRC and any owner or operator of Indian Point Nuclear Power Plants Units 1,2, or 3 concerning cathodic protection on any aboveground or underground pipes and tanks at any of the three units.**

On March 9, 2010, the NRC responded with sixteen (16) documents that were already publicly available and one (1) additional document that was not previously publicly available, but a portion of which was redacted as “outside of scope.”

Basis of Appeal

OAG believes that the NRC is in possession of a document requested on February 10, 2010, but which was not produced in NRC’s response on March 9, 2010. Specifically, the State believes that NRC has in its possession the following document that was requested by the State:

The 1968 report performed by A.V. Smith Engineering Company referenced in the Final Facility Description and Safety Analysis Report, Consolidated Edison Company of New York, Indian Point Nuclear generating Unit No.2 (Oct. 15, 1968) at section 5.1.3.12 (Cathodic Protection).

(FOIA request, item # 1). The State notes that the NRC’s March 9, 2010 response made no mention in any way of this A.V. Smith document. Specifically, the NRC did not certify that it has the A.V. Smith document or that it made a diligent search of all its documents and determined that it did or did not have this document. The State notes that the A.V. Smith document is referenced in various NRC documents and reports and that, unless NRC unconditionally certifies otherwise, it is a reasonable assumption that NRC possesses the A.V. Smith document.

In addition, the State seeks production of the entire document which NRC redacted as “outside of scope.” *See* NRC Form 464 dated March 9, 2010, referencing 5/12/09 “Email from N. McNamara, NRC to D. Lew, et al., subj: Mtg. Summary, Re: Entergy Stakeholder Mtg.” FOIA makes no provision for such a redaction, and such redaction is counter to NRC’s commitment to openness. *See, e.g.*, NRC-2010-003, Implementation of Open Government Directive (75 Fed.Reg. 1418 (Jan. 11, 2010)).

OAG hereby appeals the NRC’s response to its February 5, 2010 Request for Information as incomplete. OAG requests that the NRC conduct a new, extensive search for the 1968 report performed by A.V. Smith Engineering Company referenced in the Final Facility Description and Safety Analysis Report, Consolidated Edison Company of New York, Indian Point Nuclear Generating Unit No.2 be performed and the report

produced, and that the 5/12/09 email from N. McNamara to D. Lew be released in its entirety.

Respectfully submitted,

s/

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FOIA Resource

From: Teresa Manzi [Teresa.Manzi@ag.ny.gov]
Sent: Thursday, April 01, 2010 10:44 AM
To: FOIA Resource
Cc: Gregory Berck; Janice Dean
Subject: FOIA/PA Appeal of Determination on FOIA/PA 2010-00133
Attachments: 2010 03 31 FOIA Appeal 2010-00133.pdf

Please find attached the State of New York's FOIA/PA Appeal of Determination on FOIA/PA 2010-00133.

Thank you,

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