



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

2010-0145

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RESPONSE TYPE FINAL PARTIAL

REQUESTER

Eliza Brown

DATE

JUN 11 2010

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 A** 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 B&C** 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, 11555 Rockville Pike, Rockville, MD 20852-2738.
- APPENDICES B&C** 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)

The incoming FOIA/PA is located in ADAMS at ML100600345.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Donna L. Sealing
Donna L. Sealing

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PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES
C

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.
 - Low 2 Internal matters of a relatively trivial nature.
 - High 2 Disclosure would risk circumvention of a legal requirement.
- 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 253b, 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 2.390(d)(1).
 - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
 - Disclosure will harm an identifiable private or governmental interest.
- 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 |
| Michael R. Johnson | Director, Office of New Reactors | See Appendix C | <input checked="" type="checkbox"/> | | |
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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 A
RECORDS ALREADY PUBLICLY AVAILABLE

| <u>NO.</u> | <u>DATE</u> | <u>ACCESSION NUMBER</u> | <u>DESCRIPTION</u> | <u>PAGE COUNT</u> |
|------------|-------------|-----------------------------|--|-----------------------|
| 1. | 5/22/09 | ML091490723 | Public Version of NEI 07-13, Rev. 7, "Methodology for Performing Aircraft Impact Assessments for New Plant Designs" | 61 |
| 2. | 7/27/09 | ML092080568 | NRC Staff's Answer to Petitioners' Brief Regarding 11Contention Seven's Mootness" | 11 |
| 3. | 7/30/09 | ML092110756 | "NRC Staff's Unopposed Motion for Leave to Reply to Petitioners' Brief Regarding Contention Two's Mootness" and NRC Staff's Reply to Petitioners' Brief Regarding Contention Two's Mootness" | 13 |

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

| <u>NO.</u> | <u>DATE</u> | <u>DESCRIPTION</u> | <u>PAGE COUNT</u> |
|------------|-------------|---|-----------------------|
| 1. | 8/3/09 | "Petitioners' Consolidated Response to NRC Staff's Answer and Applicant's Answer to Petitioners' Brief Regarding Contention Seven's Mootness," | 13 |
| 2. | 11/6/09 | "Luminant's Answer Opposing Motion to Make Public the Oral Arguments and Documents Related to the Large Fires and Explosions Contentions," | 10 |
| 3. | 11/6/09 | "STP Nuclear Operating Company's Answer Opposing Motion to Make Public the Oral Arguments and Documents Related to the Large Fires and Explosions Contentions," | 12 |
| 4. | 2/19/10 | "NRC Staff's Brief in Opposition to Intervenors' Appeal of LBP-10-02," | 28 |
| 5. | 2/19/10 | "STP Nuclear Operating Company's Brief Opposing Intervenors' Appeal of LBP-10-02," | 24 |
| 6. | 2/24/10 | "Intervenors' Consolidated Reply to Applicant's and Staff's Responses to the Appeal of ASLB's Order of January 29, 2010," | 9 |

**APPENDIX C
RECORDS BEING WITHHELD IN PART***

| <u>NO.</u> | <u>DATE</u> | <u>DESCRIPTION</u> | <u>PAGECOUNT/EXEMPTION</u> |
|------------|-------------|---|----------------------------|
| 1. | 7/20/09 | "Petitioners' Brief Regarding Contention Seven's Mootness," | 11 pages, Ex. 4 |
| 2. | 7/27/09 | "Luminant's Response to Petitioners' Brief Regarding Mootness of Contention 7," | 13 pages, Ex. 4 |
| 3. | 8/03/09 | "Intervenors' Contentions Regarding Applicant's Submittal Under 10 CFR 52.80 and 10 CFR 50.54(hh)(d) and Request for Subpart G Hearing," | 13 pages, Ex. 4 |
| 4. | 9/04/09 | "Luminant's Answer Opposing Late-filed Contentions Regarding the Mitigative Strategies Report," | 35 pages, Ex. 4 |
| 5. | 9/04/09 | "NRC Staff's Answer to Intervenors' Contentions and Request for Subpart G Hearing," | 29 pages, Ex. 4 |
| 6. | 9/11/09 | "Intervenors' Consolidated Response to the Answers of Applicant and NRC Staff to the Intervenors' Contention Regarding Applicant's Submittal Under 10 CFR 52.80 and 10 CFR 50.54(hh)(2)," | 24 pages, Ex. 4 |
| 7. | 11/02/09 | "Motion for Order that Arguments/Hearing Related to the Fires and Explosions Contentions that Address Factual and Legal Arguments Related Thereto and NEI 06-12 Be Conducted in Public Pursuant to 10 CFR 2.328," | 12 pages, Ex. 4 |
| 8. | 11/12/09 | Transcript of the Closed Portion of the Comanche Peak Oral Arguments held in Rockville, Maryland | 193 pages, Ex. 4 |

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|-----|----------|--|------------------|
| 9. | 7/21/09 | "Petitioners' Brief Regarding Contention Two's Mootness," | 12 pages, Ex. 4 |
| 10. | 8/14/09 | "Intervenors' Contentions Regarding Applicant's Submittal Under 10 CFR 52.80 and 10 CFR 50.54(hh)(2) and Request for Subpart G Hearing," | 25 pages, Ex. 4 |
| 11. | 9/04/09 | "STP Nuclear Operating Company's Answer Opposing Late-Filed Contentions Regarding the Mitigative Strategies Report, | 43 pages, Ex. 4 |
| 12. | 9/08/09 | "NRC Staff's Answer to Intervenors' Contentions and Request for Subpart G Hearing," | 35 pages, Ex. 4 |
| 13. | 9/15/09 | "Intervenors' Consolidated Response to the Answers of Applicant and NRC Staff to the Intervenors Contentions Regarding Applicant's Submittal under 10 CFR 52.80 and 10 CFR 50.54(hh)(2)," | 32 pages, Ex. 4 |
| 14. | 11/02/09 | "Motion for Order that Arguments/Hearing Related to the Fires and Explosions Contentions that Address Factual and Legal Arguments Related Thereto and NEI 06-12 Be Conducted in Public Pursuant to 10 CFR 2.328" | 13 pages, Ex. 4 |
| 15. | 11/13/09 | Closed portion of the Transcript from South Texas Project Oral Arguments held in Rockville, Maryland | 164 pages, Ex. 4 |
| 16. | 1/29/10 | Entire ASLB Order, LBP-10-02 | 36 pages, Ex. 4 |
| 17. | 2/09/10 | "Brief in Support of Intervenors' Appeal of Atomic Safety and Licensing Board's Order of January 29, 2010" | 20 pages, Ex. 4 |