FOIA/PA REQUEST
Case No.: 2011-0026
Date Rec'd: 11-9-10
Specialist: Christian
Related Case:

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

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

November 8, 2010

Dear FOIA/PA Officer:

This letter is submitted pursuant to the Freedom of Information Act (or FOIA) and related regulations.

INFORMATION REQUEST

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

1. **all construction oversight reports, "CO reports," construction oversight inspection reports, "CO inspection reports," construction oversight meeting reports, or "CO meeting reports" concerning the construction of Indian Point Unit 2;**

2. **all quality control or quality assurance manuals, procedures, instructions or other documents or communications used to control, confirm or verify the quality of concrete used in the construction of Indian Point Unit 2;**

3. **all documents or communications concerning the availability, development, or distribution of quality control or quality assurance manuals, procedures, instructions, or other documents used to control, confirm or verify the quality of concrete used in the construction of Indian Point Unit 2;**

4. **all documents or communications reporting, confirming, or memorializing the results of tests performed on concrete used in the construction of Indian Point Unit 2;**

5. **all documents or communications discussing or conveying dissatisfaction, concern, reservation, or a question concerning the quality of the concrete, concrete components, handling of concrete, concrete sampling, or concrete testing at Indian Point Unit 2; and**

6. **all documents or communications describing efforts to allay or address dissatisfaction, concern, reservation or a question concerning the quality of the concrete, concrete components, handling of concrete, concrete sampling, or concrete testing at Indian Point Unit 2.**

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

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. This request is not based on a commercial interest of the requester.

REQUEST FOR WAIVER OF FEES

New York State hereby requests that the NRC waive all fees associated with this request. The public disclosure of the requested information will promote the public interest and public understanding of NRC's relationship with, or oversight of, the three Indian Point Units. 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.

The information sought by this request will contribute to the public's understanding of the operations of the federal government. *See* 10 C.F.R. § 9.41(c). New York's FOIA request seeks information about the quality of the concrete used at Indian Point Units 1, 2, and 3. This information will further the public's understanding of construction quality at existing nuclear power plants, and the operations or activities of the federal government. *See* 10 C.F.R. § 9.41(d)(1). Release of this information will allow New York State to understand the operations of the NRC and, possibly, the NRC's interactions with, and the operations of, other federal agencies (*e.g.* EPA, DOE, Army Corps of Engineers) 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 to

better assess the quality of construction at nuclear plants and how the NRC exercises it authority to assure such quality. 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 portions of the ADAMS document system.

New York State provides the following additional information that you may also wish to consider as part of the fee waiver request. 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, generic issue proceedings, and other NRC activities. The Office of the Attorney General will extract and analyze the information contained in the documents concerning various safety and environmental issues at the Indian Point facilities. The Office may use or reference information contained in the requested documents in various NRC administrative proceedings (*e.g.*, ASLBP # 07-858-03-LR-BD01) and/or to evaluate NRC staff work product (*e.g.*, Safety Evaluation Reports, Supplemental Environmental Impact Statements). The likely impact of the release of the requested information will be a substantial increase in the public understanding of AEC and NRC's oversight at the Indian Point facilities when compared to the public's understanding before the release of such documents. At present, the public does not have access to the full set of AEC and NRC documents concerning the construction activities at the Indian Point facilities.

The release of the information could increase the understanding of numerous citizens. For example, each day more than 17 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 # 07-858-03-LR-BD01). Further, as noted, if the NRC wishes, it may post the requested information at one or more locations 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.

Without seeing the quality and quantity of the information, it is difficult to guarantee the exact title, date, or length of a document that would contain the requested information. Nevertheless, the Office of the Attorney General anticipates that the information gleaned from the request would be incorporated in, for example and without limitation, the State's public petitions and other submissions to the NRC and the State Public Service Commission.

The Office of the Attorney General disseminates its filings in a variety of ways, including, but not limited to, the State's participation in NRC and PSC proceedings, the posting of the State's filings in those proceedings on various public web sites, OAG participation in NRC public meetings, and OAG press releases concerning NRC regulatory issues. Such participation, activities, and demonstrated capacity confirm that the State has satisfied the dissemination factor used in 10 C.F.R. § 9.41(b)(6). Additionally, federal agencies typically post such filings in a publicly available docket (*e.g.*, NRC Rulemaking Docket; NRC Electronic Hearing Docket, ASLBP # 07-858-03-LR-BD01). Such documents would also be available on various public web sites, including, for example, those maintained by the New York Public Service Commission and the Nuclear Regulatory Commission (*e.g.*, NRC Agencywide Documents Access and Management System (ADAMS)). None of these methods would entail a charge to a citizen who wished to review the information. Separate and apart from such postings, such documents would be available directly from the Office of the Attorney General.

The various means for dissemination identified by the State easily satisfy the applicable standard for fee waivers. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003). Thus, there is no basis to deny this Office's application that the NRC waive all fees associated with this FOIA request. The Office of the Attorney General notes that Congress intended that § 552(a)(4)(A)(iii) be liberally construed in favor of granting fee waivers. *See* 132 Cong. Record at S14, 298 (Sept. 30, 1986) (Sen. Leahy); *id.* at H9464 (Oct. 8, 1986) (Rep. English). In enacting the provision, Congress sought to ensure that noncommercial requesters would be granted fee waivers on a routine basis. *See id.* at S16496 (Oct. 15, 1986) (colloquy between Sens. Kerry and Leahy); *id.* at S14,299 (Sept. 30, 1986) (Sen. Leahy). While the applicable statutory framework authorizes an agency to charge fees in cases in which FOIA requests are made for a "commercial" purpose, the State of New York's underlying request plainly is not for a commercial purpose. New York respectfully submits that the State's underlying request, which seeks information about the operations or activities of the federal government and information within its control, will contribute to the public understanding of the government's operations and activities and will further the public interest. Accordingly, the NRC should waive any fees associated with the request. *Judicial Watch*, 326 F.3d 1309 ("Congress amended FOIA to ensure that it is 'liberally construed in favor of waivers for noncommercial requesters.'"). The State notes that the decision in *Manley v. Department of the Navy*, Civil Action No. 1:07-cv-721, slip op., 2008 WL 4326448 (S.D.Ohio Sept. 22, 2008) (overturning federal administrative decision denying a FOIA fee waiver application), further supports the State's request for a waiver of all fees associated with this request.

To reiterate, 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. Accordingly, the NRC should 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 by e-mail (Teresa.Manzi@ag.ny.gov). Thank you for your attention to this matter.

Sincerely,

s/

Teresa Manzi
Legal Assistant

FOIA Resource

From: Teresa Manzi [Teresa.Manzi@ag.ny.gov]
Sent: Monday, November 08, 2010 4:40 PM
To: FOIA Resource
Subject: FOIA Request for Documents
Attachments: 2010 11 05 FOIA Request to NRC for Indian Point Unit 2.pdf

Dear Sir/Madam:

Attached is a request for information under FOIA. Please contact me if you have any questions.

Thank you,
Teresa Manzi
Legal Assistant
Environmental Protection Bureau
Office of the Attorney General
The Capitol
Albany, NY 12224