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March 19, 2012

U.S. Nuclear Regulatory Commission
 FOIA/Privacy Officer
 Nuclear Regulatory Commission
 Mailstop: T-5 F09
 Washington, DC 20555-0001

FOIA/PA REQUEST

Case No.: 2012-0175
Date Rec'd: 3-20-12
Specialist: Kelgore
Related Case: _____

Re: Freedom of Information Act Request Pertaining to Regulatory Guide 3.74

Dear FOIA/Privacy Officer:

We are writing to request information related to the Nuclear Regulatory Commission's ("NRC") development and publication of Regulatory Guide 3.74, "Guidance for Fuel Cycle Facility Change Processes" (ML100890016). Significant concerns were raised in public comments on the proposed Regulatory Guide, which was designated Draft Regulatory Guide DG-3037. The public comments questioned the regulatory basis for certain positions stated in the draft Regulatory Guide, in particular in Sections C.5.b through C.5.e, which set forth a new change control process for certain types of licensing basis changes for fuel cycle facilities. For example, the public comments expressed concern that these new positions went beyond existing regulations without the requisite backfitting analysis, and that rulemaking would be the proper course to adopt such new regulatory requirements. A review of the final Regulatory Guide 3.74 indicates that the proposed provisions were not significantly revised in light of public comments. Accordingly, we are submitting this Freedom of Information Act ("FOIA") request to ascertain whether additional documents exist that provide a regulatory justification for the implementation of Section C.5 of the Regulatory Guide.

Pursuant to FOIA (5 U.S.C. § 552) and NRC regulations at 10 C.F.R. §§ 9.11-9.45, we respectfully request a copy of NRC documents in any form, including but not limited to memoranda, emails, written analyses and communications and all attachments thereto, generated between January 1, 2010 and the present (except as otherwise indicated) that pertain to the issuance of Regulatory Guide 3.74. More specifically, this request includes but is not limited to the following:

- All documents relied upon by the NRC when determining that the Regulatory Guide would include the provisions in Section C.5, which address "changes that are outside the provisions of [the] 10 C.F.R. § 70.72" change control process.
- All documents related to the NRC's consideration and resolution of public comments received on the provisions in Section C.5 of Draft Regulatory Guide DG-3037 (Draft Guide) (ML110960051).
- All documents relied upon by the NRC that address the agency's regulatory authority for the provisions in Section C.5 of the Regulatory Guide.

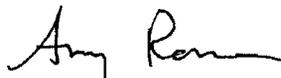
- All documents relied upon by the NRC to support its conclusion that the provisions of Section C.5 of the Regulatory Guide do not go beyond existing regulatory requirements, as stated on page 9 in the NRC's response to public comments on the Draft Guide (ML113050428).
- All documents relied upon by the NRC when analyzing whether any provision in Section C.5 of the Regulatory Guide constitutes a backfit, as defined in 10 CFR § 70.76.
- All documents related to the NRC's conclusion that the process used in adopting the Regulatory Guide satisfies the Administrative Procedure Act's notice and comment rulemaking requirements for issuing new regulatory requirements.
- All documents that discuss the intent or scope of Section 70.72 as discussed in NRC Internal Memorandum from Marissa Bailey to Mitzi Young dated September 20, 2010 (ML102280016).

We agree to pay all reasonable searching, reviewing, and copying costs associated with processing this request, pursuant to the NRC FOIA guide, up to \$600. If the NRC anticipates that costs will exceed this amount, we respectfully request that the NRC contact us so that we can decide whether to pay a greater amount or further limit the requested documents. Any questions or comments concerning this request may be directed to the undersigned. This request does not include any documents or records that are publicly available via the NRC's document management database ADAMS.

If this request is denied in whole or in part, we ask that you identify each document that falls within the scope of this request but is withheld from release, and justify each denial by reference to specific FOIA exemptions. We also request that you release all segregable portions of otherwise exempt material.

We look forward to receiving your response to this FOIA request within twenty (20) business days of your receipt of this request, as required by FOIA, and as set forth in the NRC FOIA regulations at 10 C.F.R. § 9.25 and the FOIA guide (available at <http://www.nrc.gov/reading-rm/foia/freedom-info-act-guide.pdf>).

Respectfully submitted,



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FOIA Resource

From: Roma, Amy C. [amy.roma@hoganlovells.com]
Sent: Monday, March 19, 2012 4:13 PM
To: FOIA Resource
Subject: FOIA Request
Attachments: FOIA Request.pdf

Please see attached FOIA request.

Thank you.

Amy Roma
Associate

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