



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

FOIA/PA REQUEST

Case No.:

2015-0443

Date Rec'd.

8/11/2015

Specialist:

Related Cases:

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

Freedom of Information Act Request

August 10, 2015

By Electronic Mail

Stephanie A. Blaney
Acting FOIA Officer
U.S. Nuclear Regulatory Commission
Mail Stop T5-F09
Washington, DC 20555-0001
FOIA.resource@nrc.gov

Dear Ms. Blaney:

Pursuant to the Freedom of Information Act (FOIA) and related regulations, I respectfully request that the U.S. Nuclear Regulatory Commission (NRC) provide copies of any and all versions of documents that pertain to a meeting held on or about June 2, 2015, between NRC staff and representatives of the Pressurized Water Reactor Owners Group (PWROG), regarding Project No. 694, as referenced in the following documents:

1. **ADAMS Accession No. ML1570A280 (Pkg. No. ML15175A378)**. This document appears to be a memorandum and enclosure thereto, from Lynnea Wilkins to Anthony J. Mendiola, dated on or about July 14, 2015, and bears the subject line: "Summary of June 2, 2015, Closed Meeting with the Pressurized Water Reactor Owners Group Regarding the Potential for Core Uncovery Following Large- and Small-Break Loss-of-Coolant Accidents."
2. **ADAMS Notice No. ML15142A831 (Pkg. No. ML15175A378)**. This document appears to be a memorandum and enclosure thereto, from Jonathan G. Rowley to Anthony J. Mendiola, dated on or about June 1, 2015, and bears the subject line: "Forthcoming Closed Meeting with the Pressurized Water Reactor Owners Group Regarding the Potential for Core Uncovery Following Large and Small Break Loss-of-Coolant Accidents."

This information is requested by the New York State Office of the 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

The New York State Office of the Attorney General hereby requests that the NRC waive all fees associated with this request pursuant to 5 U.S.C. § 552 (a)(4)(A)(iii) and 10 C.F.R. § 9.41. 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.

Congress has mandated that documents disclosed under FOIA "shall be furnished without any charge or at a charge reduced below the fees established . . . 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." 5 U.S.C. §552 (a)(4)(A)(iii). Congress intended that section 552(a)(4)(A)(iii) be liberally construed in favor of granting fee waivers. *See Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it is 'liberally construed in favor of waivers for noncommercial requesters.'"); *see also* 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). Similarly, NRC regulations provide that "[t]he NRC will waive or reduce fees, without further specific information from the requester if, from information provided with the [FOIA request], it can determine that disclosure of the information in the agency records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester." 10 C.F.R. § 9.41(c).

Plainly, 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). This FOIA request seeks information about NRC's oversight of pressurized water reactors, which include the Indian Point nuclear reactors. This information will further the public's understanding of NRC's oversight of the Indian Point Units. *See* 10 C.F.R. § 9.41(d)(1), (2). Release of these documents will further public research into the NRC's management of aging nuclear reactors in New York State and across the country. *See* 10 C.F.R. § 9.41(d)(1), (2). Finally, 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.

The Office of the Attorney General provides the following information required by 10 C.F.R. § 9.41(b) (1) through (8) in support of its fee waiver request:

(1) Describe the purpose for which the requester intends to use the requested information

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 or other administrative proceedings, offering public comments on proposed NRC regulatory activities, and evaluating documents created by NRC Staff such as Safety Evaluation Reports and Environmental Impact Statements. The overarching purpose of all these proceedings is to ensure the safety of New York State citizens and protect the environmental of the State.

(2) Explain the extent to which the requester will extract and analyze the substantive content of the agency record

The Office of the Attorney General will extract and analyze the information contained in the documents to develop a greater understanding of potential issues impacting pressurized water reactors, including the Indian Point facilities, potential material degradation mechanisms impacting such facilities, NRC's discussions with industry regarding pressurized water reactor safety issues, materials degradation and aging management, and NRC's oversight of the Indian Point facilities and other nuclear facilities in the State of New York.

(3) Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding

The Office of the Attorney General represents and protects the interests of the People of the State of New York, a sovereign state in which several nuclear generating facilities are located. The Office has experienced environmental attorneys who can review and analyze the information. The disclosed information may be used in New York State or NRC administrative proceedings (*e.g.*, 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). Additionally, employees of the Office have attended public NRC meetings regarding nuclear regulatory issues, and intend to participate in such meetings in the future. Disclosure of the requested information will assist the State in preparing for and participating in such meetings. Finally, public dissemination and outreach is an important part of the Office's mission.

(4) Describe the likely impact on the public's understanding of the subject as compared to the level of public understanding of the subject before disclosure

The likely impact of the release of the requested information will be a substantial increase in the public understanding of the issues identified in Paragraph 2, above. Inasmuch as the requested documents are not currently available to the public, the public currently has no information regarding their contents. Once released, the Office of the Attorney General can ensure that the public is aware of the information contained in those documents.

(5) Describe the size and nature of the public to whose understanding a contribution will be made

The State of New York has a population of about 20 million. Moreover, approximately 17 million people – in New York, Connecticut, and New Jersey – live within 50 miles of the Indian Point facilities. The disclosure of the requested information will contribute to an increased understanding for both of these populations of NRC’s oversight over operations at pressurized water reactors such as the Indian Point facilities.

(6) Describe the intended means of dissemination to the general public

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 state Public Service Commission (PSC) proceedings, the posting of the State’s filings in those proceedings on various web sites, and participation in NRC public meetings. Additionally, federal and state agencies typically post such filings in a publicly available docket (*e.g.*, NRC Rulemaking Docket; NRC Electronic Hearing Docket; PSC’s Electronic Database). Various media (internet, print, radio, television) may report on such filings in the future. Finally, 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.

(7) Indicate if public access to information will be provided free of charge or provided for an access fee or publication fee

None of the methods of dissemination described in Paragraph 6, above, would involve a charge to the public.

(8) Describe any commercial or private interest the requester or any other party has in the agency records sought.

The Office of the Attorney General does not have a commercial or private interest in the agency records sought, and is not aware of any other party with a commercial or private interest in such records.

Request for Vaughn Index of Any Documents Withheld

The Office of the Attorney General requests that NRC produce and release all documents responsive to this request. Should NRC withhold any documents, the Office of the Attorney General requests that NRC provide the Office of the Attorney General with an index of all documents withheld that: (1) identifies the date, author, recipients, and title or subject line of each document that has been withheld; (2) states the statutory exemption claimed; and (3) explains how disclosure would damage the interests protected by the claimed exemption. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974); *Citizens Comm’n on Human Rights v. FDA*, 45 F.3d 1325, 1326 n.1 (9th Cir. 1995).

Conclusion

As soon as possible, and within 20 business days of receipt of this letter as prescribed by FOIA, please produce all responsive documents electronically to Teresa Manzi of the Office of the Attorney General. Ms. Manzi's e-mail address is listed below. If you have any questions concerning this FOIA request, please contact me at the e-mail address or phone number below. Thank you for your attention to this matter.

Very truly yours,

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CC (by electronic mail):

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