



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

PDR - 076
CPDR

JAN 31 1984

Docket No. 50-528

Ms. Lynne Bernabei
Government Accountability Project
Institute for Policy Studies
1901 Que Street, NW
Washington, DC 20009

IN RESPONSE REFER
TO FOIA-83-A-36
(FOIA-83-450)

Dear Ms. Bernabei:

This responds to your letter dated December 5, 1983 in which you appeal the denial of a memorandum to Jane Axelrad from Allen D. Johnson dated April 11, 1983. This memorandum was denied to GAP in a letter dated November 4, 1983 from J. M. Felton to Billie Garde.

The document denied in Mr. Felton's letter consists of a one-page memorandum from Mr. Johnson to Ms. Axelrad regarding "Proposed Enforcement Action Related to False Information Contained in Records of Electrical Terminations at Palo Verde Unit No. 1," and a proposed Notice of Violation consisting of nine pages. The one-page memorandum consists entirely of Region V staff's evaluations of Mr. Gunderson's allegations and that staff's recommendations regarding actions the NRC should take as a result of the NRC's review of Mr. Gunderson's allegations. The proposed Notice of Violation is a draft submitted by the Region V staff to the NRC's Division of Enforcement for review and approval. It consists of proposed findings, evaluations, and proposed supporting documentation to be included in a final Notice of Violation. This memorandum and proposed Notice of Violation are clearly predecisional in nature in that they were generated as part of the agency's deliberative process for taking an enforcement action. There are no reasonably segregable factual portions in the memorandum which are not already a matter of public record. Disclosure of factual content of the memorandum and proposed Notice of Violation would reveal the agency's preliminary selection of which facts are important, and these facts are inextricably intertwined with the evaluations and recommendations. Disclosure of the memorandum and the proposed Notice of Violation is not in the public interest because disclosure of these documents would tend to inhibit the open and frank exchange of ideas, evaluations, and suggestions which are essential to the agency's decision making process on enforcement actions. Therefore, even though the enforcement proceedings have been completed, the memorandum

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Ms. Lynne Bernabei

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and proposed notice of violation continue to be exempt from mandatory disclosure pursuant to Exemption 5 of the Freedom of Information Act (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5) of the Commission's regulations.

This is a final agency action. As set forth in the Freedom of Information Act (5 U.S.C. 552(a)(4)(B)), judicial review of this decision is available in a district court of the United States in either the district in which you reside, have your principal place of business, or in the District of Columbia.

Sincerely,

A handwritten signature in dark ink, appearing to read "William J. Dircks", is written over the typed name.

William J. Dircks
Executive Director for Operations

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