



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

FEB 23 1981



80-A-1(79-483)

John D. Woliver, Esq.
Legal Aid Society of Clermont County
550 Kilgore Street
P.O. Box 47
Batavia, OH 45103

Subject: Woliver v. NRC, D.D.C. Civil Action No. 2627

Dear Mr. Woliver:

In connection with this case, the NRC staff conducted a review of the documents which were the subject of your Freedom of Information Act request -- the 1969 Sargent & Lundy Engineers (S&L) report to the Cincinnati Gas & Electric Company (CG&E) entitled "An Economic Evaluation of Alternatives," associated transmittal letter, and companion summary report. Based upon the staff review and the administrative record which has been accumulated to date, I have determined that the documents in question should be disclosed. CG&E's attorneys had been informed that CG&E could supplement its submissions to the record if it so wished, but the company presented no additional factual support for its claim that the documents are confidential in nature.

I recognize that the staff's conclusions in their most recent review of the S&L report are different from conclusions recited in my letter of February 26, 1980. This is due to the fact that the person who was primarily responsible for the first review of the S&L report is no longer with the agency. As a result, a team of staff members from various branches of the agency conducted a very detailed and in-depth review of the report in preparation for defending this lawsuit. The team members reached the conclusion that there is no basis for determining that disclosure of the documents at issue is likely to cause substantial competitive harm to CG&E. Because the staff reached this conclusion, I have performed a redetermination of your request to disclose the documents considering the factors required by Commission regulations at 10 CFR 2.790.

Applying those standards to this case, I have determined that: (1) the documents have been held in confidence by CG&E; (2) the documents are of a type customarily held in confidence by their owner; and (3) the information was transmitted to and received by the Commission in confidence subject to a determination that the documents were proprietary. This does not end the inquiry, however.

Based on the staff's review of the documents, I have also determined that information contained in portions of the documents is available in public sources. Since that information is publicly available, it should not be withheld from disclosure. In addition, those portions of the documents which

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are not publicly available are not likely to cause substantial competitive harm to CG&E. Because of changes in federal government policies, changes in the designs of various components, and changes in techniques described in the CG&E documents, the economic and technical data on which the S&L report are based are no longer sensitive and disclosure of the documents would be of little competitive value. Also, given the nature of the market for nuclear supply systems at this time, it is highly unlikely that as a result of the release of this report a vendor would forego an opportunity to bid on another CG&E proposal and thus make CG&E's procurement process more expensive and difficult as CG&E claims. Assertions by CG&E of harm to Sargent & Lundy or to nuclear supply system vendors are too vague and speculative to serve as a basis for withholding these documents. Therefore, the information contained in these twelve-year-old documents appears to have little current value and has significance only for historical purposes.

There is some concern within the agency that disclosure of these documents will have a chilling effect on the relations between the NRC and its licensees and will make it more difficult to obtain information from our licensees in the future. However, given the broad investigatory powers of the NRC (See 10 CFR 50.70), the availability of our subpoena authority, and the nature of the documents at issue -- twelve years old and of historical rather than of competitive interest, I do not think there is a sufficiently strong likelihood of impairment of our regulatory ability to warrant nondisclosure of these documents on that ground. See National Parks and Conservation Ass'n v. Morton, 498 F.2d 755 (D.C. Cir. 1974), among other cases.

Since the disclosure of these documents is unlikely to cause substantial competitive harm to CG&E, information contained in portions of the documents is already publicly available and disclosure is not likely to impair the NRC's ability to obtain similar information and documents in the future, I have concluded that the public interest would not be served if the NRC were to continue to withhold these documents. Therefore, the documents you requested will be disclosed to you in thirty (30) days from the date of this determination. The documents will be transferred to the NRC Public Document Room at 1717 H Street, NW., Washington, DC, 20555, from which you can obtain copies.

Sincerely,

(Signed) William J. Dircks

William J. Dircks
Executive Director
for Operations

POOR ORIGINAL



Legal Aid Society of Clermont County

a branch office of the Legal Aid Society of Cincinnati

550 KILGORE STREET P.O. BOX 47

BATAVIA, OHIO 45103

(513) 732-2422

January 19, 1980



A United Appeal agency

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

APPEAL OF INITIAL FOIA DECISION

80-A-1 (79-483)
Rec'd 1-22-80

Re: Appeal from Initial FOIA Decision
79-483

Dear Sir:

Enclosed please find my appeal from the above-referenced FOIA decision.

Sincerely,

John Woliver

DUPLICATE DOCUMENT

Entire document previously
entered into system under:

AND 8103040346

No. of pages: 5



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

December 21, 1979

John Woliver, Esquire
Legal Aid Society of Clermont County
550 Kilgore Street
P.O. Box 47
Batavia, OH 45103

IN RESPONSE REFER
TO FOIA-79-483

Dear Mr. Woliver:

This is in response to your letter dated November 5, 1979 in which you requested, pursuant to the Freedom of Information Act, a copy of the 1969 Sargent & Lundy Engineers (S&L) report entitled, "An Economic Evaluation of Alternatives," associated transmittal letter, and companion summary report.

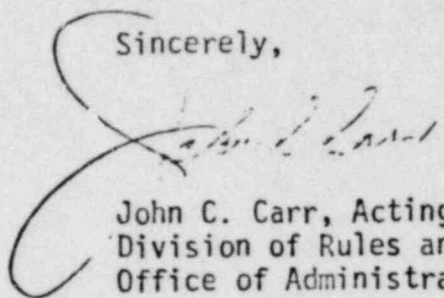
The requested documents contain information which the licensee, Cincinnati Gas & Electric Company, indicates may be confidential and proprietary. In addition, the documents were submitted and received by the NRC with the understanding that they were being supplied to accommodate an NRC investigation; they would be reviewed to determine whether proprietary; and, if determined to be non-proprietary would be returned without making copies. Under these conditions the documents are protected from mandatory public disclosure under the alternate test set out in National Parks and Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974). Under that test, a record can be withheld because disclosure would impair the Government's ability to obtain necessary information in the future. It is my view that breach of the understanding between the NRC and the licensee in this situation could in the future inhibit the free flow of information to the NRC and could interfere with the investigatory process. Therefore, this information is being withheld from public disclosure pursuant to Exemption (4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and 10 CFR 9.5(a)(4). We have asked the originators of this information to review their proprietary claim, and will let you know as soon as possible whether the documents, or any portions thereof, may be disclosed to the public.

Pursuant to 10 CFR 9.9 of the Commission's 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 persons responsible for this denial are the undersigned and Mr. Victor Stello, Jr., Director, Office of Inspection and Enforcement.

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- Duplicate of 7912280685 (2pp)

This denial may be appealed to the Commission's Executive Director for Operations within 30 days from the receipt of this letter. As provided in 10 CFR 9.11, any such appeal must be in writing, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

Sincerely,

A handwritten signature in dark ink, appearing to read "John C. Carr", is written over a large, stylized, handwritten flourish that loops around the signature.

John C. Carr, Acting Director
Division of Rules and Records
Office of Administration



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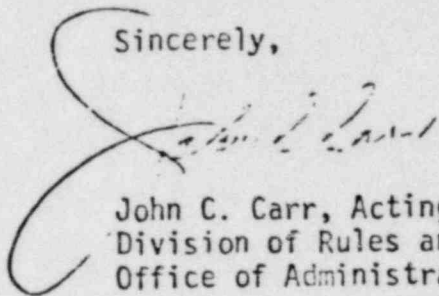
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