



*NUBOS*

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

NRC FOIA REQUEST NUMBER(S) <b>FOIA - 89-404</b>	
RESPONSE TYPE	
FINAL	<input checked="" type="checkbox"/> PARTIAL
DATE	JAN 10 1990
DOCKET NUMBER(S) (if applicable)	

REQUESTER  
*Mr. Donald R. Pepperman*

PART I. - AGENCY RECORDS RELEASED OR NOT LOCATED (See checked boxes)

- No agency records subject to the request have been located.
- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments Section.
- Agency records subject to the request that are identified on Appendix(es) *D* are already available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC 20555.
- Agency records subject to the request that are identified on Appendix(es) *E* are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.
- The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.
- Agency records subject to the request that are identified on Appendix(es) \_\_\_\_\_ may be inspected and copied at the NRC Local Public Document Room identified in the Comments Section.
- Enclosed is information on how you may obtain access to and the charges for copying records placed in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
- Agency records subject to the request are enclosed. *Appendix E*
- Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.
- You will be billed by the NRC for fees totaling \$ \_\_\_\_\_.
- In view of NRC's response to this request, no further action is being taken on appeal letter dated \_\_\_\_\_, No. \_\_\_\_\_.

PART II. A - INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

- Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, sections B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC in a folder under this FOIA number and requester name.

COMMENTS

9001120208 900110  
PDR FOIA  
PEPPERMB9-404 PDR

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

*Robert H. Hundley*

PART II. B - APPLICABLE EXEMPTIONS

Records subject to the request that are described on the enclosed Appendix(es) F are being withheld in their entirety or in part under the Exemptions and for the reasons set forth below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.17(a) of NRC Regulations.

- 1. The withheld information is properly classified pursuant to Executive Order (EXEMPTION 1)
  - 2. The withheld information relates solely to the internal personnel rules and procedures of NRC. (EXEMPTION 2)
  - 3. The withheld information is specifically exempted from public disclosure by statute indicated: (EXEMPTION 3)
    - Sections 141-145 of the Atomic Energy Act which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
    - Section 147 of the Atomic Energy Act which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
  - 4. The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated: (EXEMPTION 4)
    - The information is considered to be confidential business (proprietary) information.
    - The information is considered to be proprietary information pursuant to 10 CFR 2.790(d)(1).
    - The information was submitted and received in confidence pursuant to 10 CFR 2.790(d)(2).
  - 5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. (EXEMPTION 5). Applicable Privilege:
    - Deliberative Process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
    - Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation.)
    - Attorney-client privilege. (Confidential communications between an attorney and his/her client.)
  - 6. The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy. (EXEMPTION 6)
  - 7. The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated: (EXEMPTION 7)
    - Disclosure could reasonably be expected to interfere with an enforcement proceeding because it could reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow them to take action to shield potential wrongdoing or a violation of NRC requirements from investigators. (EXEMPTION 7 (A))
    - Disclosure would constitute an unwarranted invasion of personal privacy (EXEMPTION 7(C))
    - The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources (EXEMPTION 7 (D))
- OTHER

PART II. C - DENYING OFFICIALS

Pursuant to 10 CFR 9.25(b) and/or 9.25 (c) of the U.S. Nuclear Regulatory Commission 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 the denial are those officials identified below as denying officials and the Director, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL	
			SECRETARY	EDO
<i>B. Hayes</i>	<i>Director, OI</i>	<i>F/1</i>		<input checked="" type="checkbox"/>

PART II. D - APPEAL RIGHTS

The denial by each denying official identified in Part II. C may be appealed to the Appellate Official identified in that section. Any such appeal must be in writing and must be made within 30 days of receipt of this response. Appeals must be addressed as appropriate to the Executive Director for Operations or to the Secretary of the Commission, 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."

Re: FOIA-89-404

APPENDIX D

RECORDS MAINTAINED AMONG PDR FILES

<u>NUMBER</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1.	1/17/89	SECY-89-010 "Advance Notice of Proposed Rulemaking, 'Acceptance of Products Purchased for Use in Nuclear Power Plant Structures, Systems and Components'" (122 pages) (ANO 8901260312)

## APPENDIX E

RECORDS BEING PLACED INTO THE PDR UNDER THE ABOVE REQUEST NUMBER

<u>NUMBER</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1.	Undated	Draft Advance Notice of Proposed Rulemaking "Acceptance of Products Purchased for Use in Nuclear Power Plant Structures, Systems and Components" (24 pages)
2.	Various	Investigation Status Record Q1-86-005 (3 pages)
3.	2/5/86	OI Response/Status to Request for Investigation (1 page)
4.	2/21/86	Memo for R. K. Christopher from E. C. Gilbert re: Request for Investigation of Telemecanique Regarding the Possible Falsification of Certificates of Conformance (1 page)
5.	3/3/86	Facsimile Request to J. Hunt from Wanda (1 page)
6.	3/11/86	Investigative Work Plan (3 pages)
7.	4/27/87	Letter to G. Kline from C. W. White re: Request for documentation (1 page)
8.	2/12/88	Memo to V. Stello from C. W. White re: Administrative Closure of Case Number Q1-86-005 (Telemecanique/Suspected Falsification of Certificates of Conformance for Motor Control Centers Supplies to Various Nuclear Power Stations) (1 page)
9.	2/12/88	OI Report Q1-86-005, "Telemecanique: Suspected Falsification of Certificates of Conformance for Motor Control Centers Supplies to Various Nuclear Power Stations (3 pages)

10. 1/25/88 Memo to R. A. Fortuna from W. W. White re: Administrative Closure of OI:RI Investigations (1 page) (THE DELETED PART OF THIS DOCUMENT IS OUTSIDE THE SCOPE OF YOUR REQUEST)
11. 3/17/86 Memo for Case Files from R. A. Matakas re: Contact with Joe Petrosino, VIB (1 page) (THE DELETED PART OF THIS DOCUMENT IS OUTSIDE THE SCOPE OF YOUR REQUEST)
12. 6/1/89 Note to S. Lewis from J. Guillen re: Draft NRC Bulletin No. 88-10, Supplement 1 with enclosed draft bulletin (5 pages)

Re: FOIA-89-404

APPENDIX F

RECORDS TOTALLY WITHHELD

<u>NUMBER</u>	<u>DATE</u>	<u>DESCRIPTION &amp; EXEMPTION</u>
1.	Undated	Handwritten note from E. C. Gilbert (1 page) EX. 5

LAW OFFICES  
**BLECHER & COLLINS**  
A PROFESSIONAL CORPORATION  
TWENTY-EIGHTH FLOOR  
611 WEST SIXTH STREET  
LOS ANGELES, CALIFORNIA 90017

(213) 622-4222  
TELECOPIER (213) 622-1656

September 14, 1989

Freedom of Information Officer  
United States Nuclear Regulatory Commission  
Washington, D.C. 20555

Attention: FOIA Request

FREEDOM OF INFORMATION  
ACT REQUEST

*FOIA-89-404*  
*Rec'd 9-20-89*

Re: Freedom of Information Act Request

Dear Sir or Madam:

Under the provisions of the Freedom of Information Act, 5 U.S.C. § 552, I am hereby requesting access to the documents and materials identified in Exhibit "A" attached hereto.

If fees, if any, for searching for or copying the records I have requested will exceed \$1,000.00, please inform me before you fill the request.

If all or any part of this request is denied, please cite the specific exemption(s) or reason(s) that you contend justifies your refusal to release the information or materials and inform me of the appeal procedures available to me under the law.

I would appreciate your handling this request as quickly as possible and look forward to hearing from you within the 10-day period which the Act requires.

If you have any questions, please contact me at the address or telephone number listed above.

Very truly yours,

*Donald R. Pepperman*

DONALD R. PEPPERMAN

DRP/dc  
Enc.

*8912146636 (1pp)*

EXHIBIT "A"

DEFINITIONS AND INSTRUCTIONS

1. The term "document" shall mean all written, printed, typed, recorded or graphic matter, however produced or reproduced, of every kind and description, in whatever form (e.g., final and draft versions) in your actual or constructive possession, custody, care or control, including without limitation, all writings, correspondence, letters, telegrams, notes, mailgrams, agenda, memoranda, inter-office communications, reports, forecasts, projects, analyses, working papers, charts, requests for authorization, expense account reports, charge or credit account vouchers, calendars, appointment books, diaries, drawings, graphs, photographs, sound reproduction tapes, data compilations from which information can be obtained or can be translated through detection devices into reasonably usable form, computer inputs or outputs. The term "documents" shall include not only originals but also any copies or reproductions of all such written, printed, typed, recorded or graphic matter upon which notations in writing, print or otherwise have been made which do not appear in the originals.

2. The term "NEMA" shall mean and refer to the National Electrical Manufacturers Association, its merged or acquired predecessors, its entities, its subsidiaries, its affiliates, its divisions, its members, and all of its present or former officers, directors, employees, lawyers, agents,



investigators, representatives or other persons acting or purporting to act on its behalf.

3. The term "GE" shall mean and refer to General Electric Company, its merged or acquired predecessors, its entities, its subsidiaries, its affiliates, its divisions, including but not limited to its GESCO Division, and all of its present and former officers, directors, employees, lawyers, agents, investigators, representatives or other persons acting or purporting to act on its behalf.

4. The term "Westinghouse" shall mean and refer to Westinghouse Electric Corporation, its merged or acquired predecessors, entities, its subsidiaries, its affiliates, its divisions, including, but not limited to its WESCO Division, and all of its present and former officers, directors, employees, lawyers, agents, investigators, representatives or other persons acting or purporting to act on its behalf.

5. The term "Square D" shall mean and refer to Square D Company, its merged or acquired predecessors, entities, its subsidiaries, its affiliates, its divisions, and all of its present and former officers, directors, employees, lawyers, agents, investigators, representatives or other persons acting or purporting to act on its behalf.

6. The term "UL" shall mean and refer to Underwriters Laboratories, Inc., its merged or acquired predecessors, entities, its subsidiaries, its affiliates, its divisions, and all of its

present and former officers, directors, employees, lawyers, agents, investigators, representatives or other persons acting or purporting to act on its behalf.

7. The term "Romac" shall mean and refer to Romac Supply Company located in Commerce, California, its merged or acquired predecessors, entities, its subsidiaries, its affiliates, its divisions, and all of its present and former officers, directors, employees, lawyers, agents, investigators, representatives or other persons acting or purporting to act on its behalf.

8. The term "General Circuit Breaker" shall mean and refer to General Circuit Breaker and Electric Supply, Inc. located in Arcadia, California, its merged or acquired predecessors, entities, its subsidiaries, its affiliates, its divisions, and all of its present and former officers, directors, employees, lawyers, agents, investigators, representatives or other persons acting or purporting to act on its behalf.

9. The term "U. S. Navy" shall mean and refer to the United States Department of Navy.

10. The term "NAED" shall mean and refer to the National Association of Electrical Distributors.

11. The term "NRC" shall mean and refer to the United States Nuclear Regulatory Commission.

12. The term "DOE" shall mean and refer to the United States Department of Energy.

13. The term "NASA" shall mean and refer to the National Aeronautics and Space Administration.

14. The term "NUMARC" shall mean and refer to the Nuclear Management and Resources Council.

15. The term "circuit breaker" shall be construed to mean any molded case circuit breaker designed for residential, commercial or governmental use, and shall include any circuit breaker components or circuit breaker parts separately offered for sale or sold by a manufacturer.

16. As used herein the term "obsolete circuit breaker" is a circuit breaker that the manufacturer is no longer producing as new.

17. As used herein the term "recondition" shall mean opening the case of a circuit breaker, removing the backshield of a circuit breaker, modifying the external configuration of a circuit breaker, making internal modifications to the circuit breaker, repairing or replacing component parts of a circuit breaker, or adjusting the calibration of a circuit breaker.

18. The term "person" means any natural person, corporation, partnership, association, business trust or other form of legal entity.

19. The term "communication" shall include but is not limited to oral communications, correspondence, memoranda, reports and records of telephone calls and reports of meetings.

20. Each of the definitions above and each of the instructions below is hereby incorporated into each of the requests to which it may pertain.

21. In producing these documents, you are requested to furnish all documents known or available to you regardless of whether these documents are possessed directly by you or your agents, employees, partners, representatives, investigators, or by your attorneys or their agents, employees, representatives or investigators.

22. If any of these documents cannot be produced in full, produce them to the fullest extent possible, specifying clearly the reasons for your inability to produce the remainder and stating whatever information, knowledge or belief you do have concerning the unproduced portion.

23. If any documents or things required were at one time in existence, but are no longer in existence, please so state specifying for each document or thing, (a) the type of document or thing, (b) the types of information contained thereon, (c) the date upon which it ceased to exist, (e) the identity of all persons having knowledge of the circumstances under which it ceased to exist, and (f) the identity of all persons having knowledge of who had knowledge of the contents thereof.

24. With respect to any documents called for by this Request but withheld due to any claim of privilege, list for each such document:

- a. The document request to which the document is otherwise responsive;
- b. Its title and general subject matter;
- c. Its date;
- d. The name(s) and title(s) of its authors or preparer;
- e. The name(s) and title(s) of the person(s) for whom it was prepared and all persons to whom it was sent or shown; and
- f. The nature of the privilege claimed.

25. If you assert a privilege as to a portion of any category of the materials described, please produce the remainder of that category as to which you do not assert a privilege.

26. The terms "and" and "or" shall be construed either disjunctively or conjunctively so as to bring within the scope of this Request all documents which might otherwise be construed to be outside its scope.

27. The specificity of any request herein should not be construed to limit the generality or reach of any other request herein.

28. Unless otherwise specified, the relevant time period for purposes of this document request shall be from January 1, 1983 to the present.

DOCUMENTS REQUESTED

DOCUMENT REQUEST NO. 1:

All documents which discuss, refer or relate to the purchase, sale, distribution, labeling, testing or manufacture of reconditioned, surplus, obsolete, used, refurbished, counterfeit, defective, rebuilt, substandard or misrepresented circuit breakers.

DOCUMENT REQUEST NO. 2:

All documents which constitute, refer or relate to correspondence or communications between the NRC and any representative of the following entities concerning reconditioned, surplus, obsolete, used, refurbished, counterfeit, defective, rebuilt, substandard or misrepresented circuit breakers:

- a) Any nuclear power plant or utility;
- b) NUMARC;
- c) NAED;
- d) DOE;
- e) NASA;
- f) Westinghouse;
- g) GE;
- h) Square D;
- i) UL;
- j) Romac;
- k) U. S. Navy; and

1) NEMA.

DOCUMENT REQUEST NO. 3:

All documents which discuss, refer or relate to any investigation, probe, inquiry or vendor inspection concerning circuit breakers purchased for nuclear power plant structures, systems and components.

DOCUMENT REQUEST NO. 4:

All documents, including but not limited to articles, videotapes, photographs, test results and circuit breakers reviewed, analyzed or seized by the NRC as part of any investigation, probe, inquiry or vendor inspection concerning circuit breakers.

DOCUMENT REQUEST NO. 5:

All documents which constitute, refer or relate to correspondence or communications between the NRC and any governmental department or agency, federal, state or otherwise, concerning reconditioned, surplus, obsolete, used, refurbished, counterfeit, defective, rebuilt, substandard or misrepresented circuit breakers.

DOCUMENT REQUEST NO. 6:

All documents which constitute, refer or relate to any complaints or petitions submitted to the NRC concerning circuit breakers manufactured by Westinghouse, GE or Square D.

DOCUMENT REQUEST NO. 7:

All documents which discuss, refer, relate or relate to

General Circuit Breaker, its officers, including Xavier Contreras, its employees, its products or its facilities.

DOCUMENT REQUEST NO. 8:

All documents which reflect, constitute, refer or relate to any communication or correspondence between any representative of the NRC and any representative of the law firm of Munger, Tolles & Olson, Los Angeles, California, concerning circuit breakers or any actual or proposed investigation or litigation concerning circuit breakers.

DOCUMENT REQUEST NO. 9:

All documents which identify or list persons or entities believed to be engaged in the practice of purchasing, manufacturing, distributing or selling suspect, counterfeit, misrepresented, reconditioned or rebuilt circuit breakers.

DOCUMENT REQUEST NO. 10:

All NRC Advance Notices of Proposed Rulemaking ("ANPR's") which discuss, refer or relate to circuit breakers.

DOCUMENT REQUEST NO. 11:

All NRC Information Notices which discuss, refer or relate to circuit breakers, including, but not limited to Notice Nos. 88-19 and 88-36 through 88-46.

DOCUMENT REQUEST NO. 12:

All NRC Bulletins which discuss, refer or relate to circuit breakers, including, but not limited to Bulletin Nos. 88-05 and 88-10.



DOCUMENT REQUEST NO. 13:

All documents which constitute, refer or relate to construction, performance or test standards or specifications for circuit breakers.

DOCUMENT REQUEST NO. 14:

All documents in the files of the following NRC representatives which discuss, refer or relate to circuit breakers:

- a) Victor Stello, Jr.;
- b) Max J. Clausen, NRR;
- c) Donald S. Brinkman, NRR;
- d) Charles E. Rossi, NRR;
- e) J. T. Conway, NRR;
- f) Edward T. Baker, NRR;
- g) Ray Cilimberg, NRR;
- h) Thomas T. Martin, NRR;
- i) Paul Gill, NRR;
- j) Jaime Guillen, NRR;
- k) Joseph J. Petrosino, NRR; and
- l) K. R. Naidu, NRR.