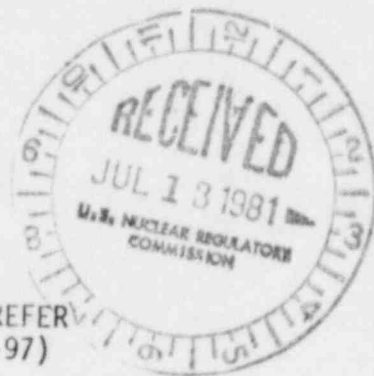




OFFICE OF THE
SECRETARY

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

July 9, 1981



Mr. Sanford L. Hartman
Debevoise & Liberman
1200 17th Street, NW.
Washington, DC 20036

IN RESPONSE REFER
TO 81-A-8(81-97)

Dear Mr. Hartman:

This letter responds to your Freedom of Information Act (FOIA) appeal of May 11, 1981 for fifteen documents withheld by the NRC in its April 29, 1981 denial letter. These documents pertain to the Commission's deliberations preceding the issuance of CLI-80-21. The Commission has determined that your appeal should be denied for the reasons discussed below. An Index describing the withheld documents is enclosed with this letter and provides a more detailed statement of denial on each document.

Fourteen documents are memoranda, prepared by Commissioners or members of their personal staffs, which contain preliminary views, analyses, and opinions of the authors on various ways in which to resolve the matters ultimately decided in CLI-80-21. They are clearly pre-decisional and part of the agency's deliberative process. Your argument for disclosure based on Coastal States Gas Corporation v. Department of Energy, 617 F.2d 854 (D.C. Cir. 1980) does not reflect the nature of the documents withheld. Coastal States indicates that the disclosure of pre-decisional documents is required if those documents are in practice used as agency administrative precedent. The documents in the present case are not a body of precedent but were generated for the singular purpose of deciding a petition for NRC action and reflect the normal give-and-take process involved in reaching a decision. Exemption 5 is intended to protect such deliberations by the agency's withholding of such documents if necessary to preserve free and candid dialogue between Commissioners and their respective staffs. The public interest in sound and complete decisionmaking outweighs any need for these internal memoranda. For these reasons, the Commission has determined that these documents are exempt from mandatory disclosure. 5 U.S.C. 552(b)(5), 10 CFR 9.5(a)(5).

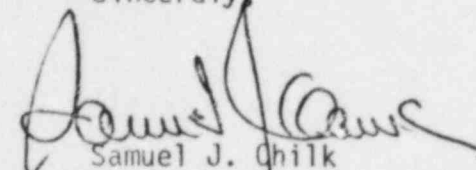
The remaining document is a draft of a revision for a Commission paper prepared by the Office of Policy Evaluation. That revision was never adopted. Exemption 5 covers such draft documents when part of the pre-decisional process. Accordingly, this document is similarly exempt from mandatory disclosure. 5 U.S.C. 552(b)(5), 10 CFR 9.5(a)(5).

Mr. Sanford L. Hartman

2

This determination is a final agency action under the Freedom of Information Act. Judicial review is available in a United States district court in either the district in which you reside or have your principal place of business, or the District of Columbia.

Sincerely,


Samuel J. Chilk
Secretary of the Commission

Enclosure: Index of Documents

INDEX OF DOCUMENTS

Document 1 is an October 8, 1980 memorandum to Commissioner Hendrie from technical assistant H. M. Fontecilla re: Environmental Qualification Order. This memorandum contains the author's advice, opinions, and recommendations regarding the implementation of CLI-80-21. The single piece of factual information recounts a selected portion of the Order, which is already a matter of public record.

Document 2 is a September 4, 1980 memorandum to Commissioner Bradford from Thomas Gibbon re: Commission Order on Environmental Qualification. This memorandum contains the author's advice, opinions, and recommendations regarding CLI-80-21. The only factual portion of the document consists of portions of CLI-80-21 which were selected and summarized in such a manner as to disclose the deliberative process. This factual information is already a matter of public record through CLI-80-21.

Document 3 is an October 1, 1980 memorandum to Commissioner Bradford from Thomas Gibbon re: Commission Order on Environmental Qualification. This memorandum consists entirely of advice, opinions, and recommendations regarding CLI-80-21.

Document 4 is a May 15, 1980 memorandum to the Commissioners from Commissioner Bradford re: UCS order on environmental qualification and fire protection. This memorandum contains a draft version of CLI-80-21 and the author's opinions and recommendations regarding the order.

Document 5 is a May 22, 1980 memorandum to Chairman Ahearne from Commissioner Bradford re: UCS Petition. This memorandum consists of the author's opinions and recommendations regarding CLI-80-21.

Document 6 is a May 14, 1980 memorandum to Commissioner Bradford from Thomas Gibbon re: Chairman Ahearne's changes to an order responding to a petition submitted by the Union of Concerned Scientists. This memorandum consists entirely of the author's advice, opinions and recommendations regarding a draft version of CLI-80-21.

Document 7 is an April 14, 1980 memorandum to Commissioner Bradford from legal assistant Thomas Gibbon re: Environmental Qualification Meeting. This memorandum contains the author's advice, opinions, and recommendations regarding a then-upcoming meeting to address the general subject.

Document 8 is a memorandum from Commissioner Bradford to the other Commissioners dated January 31, 1980 indicating Commissioner Bradford's opinions and recommendations concerning a draft version of the decision on the UCS Petition. This document is clearly part of the deliberative process which preceded the eventual decision, and contains no factual data.

Document 9 is a memorandum dated December 17, 1979 from Mr. Gibbon, Commissioner Bradford's legal assistant, to Commissioner Bradford. The memorandum contains only Mr. Gibbon's personal response to a letter from VEPCO dated June 25, 1979.

Document 10 is a memorandum dated December 10, 1979 from Mr. Gibbon to Commissioner Bradford. The memorandum compares a draft decision on the UCS petition to Document 11 below, analyzes this comparison, discusses options in ongoing discussions with other Commissioners. The memo also contains a handwritten response to Mr. Gibbon from Commissioner Bradford. The memo is in its entirety non-factual and deliberative.

Documents 11 and 12 are memoranda dated September 26, 1979 and July 20, 1979, respectively, from Commissioner Bradford's office to the other Commissioners, discussing Commissioner Bradford's positions on draft decisions. These documents are part of the exchange of views between the Commissioners regarding the decision to be made in the case.

Document 13 is a memorandum from Mr. Gibbon to Commissioner Bradford dated July 11, 1979 discussing an upcoming meeting on qualification of connectors. The memorandum summarizes Mr. Gibbon's discussions with NRC officials on the subject and Mr. Gibbon's reaction to the same.

Document 14 is another memorandum from Mr. Gibbon to Commissioner Bradford, dated June 6, 1979 concerning the UCS petition. The document is roughly divisible into two parts of equal length. The first part is analysis and comparison of various standards (i.e., IEEE-323-1971 and IEEE 323-1974), I&E Bulletin 79-01, and Reg. Guide 1.89, all of which are part of the public record. Factual descriptions of public documents are intertwined closely with Mr. Gibbon's evaluation, and thus cannot reasonably be segregated. The second half of the memorandum discusses possible Commission action on the UCS petition.

Document 15 is a draft paragraph for a suggested revision to the draft response to the UCS petition, by Bernie Snyder, OPE, for the Commissioners, dated June 5, 1979. Neither the language nor the tenor of this draft response became a part of the final response to the UCS petition [found at 11 NRC 707 (1980)].