

SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

2300 N STREET, N. W.
WASHINGTON, D. C. 20037

TELEX/CABLE
89-2692 (SHAWLAW WSH)

TELEPHONE
(202) 663-8073

VIRGINIA OFFICE
1501 FARM CREDIT DRIVE
MCLEAN, VIRGINIA 22102
(703) 790-7800

TELECOPIER
(202) 223-3760 & 223-3761

January 31, 1990

THOMAS C. HILL, P.C.

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. David Williams
Inspector General
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. James M. Taylor
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

APPEAL OF INITIAL FOIA DECISION

90-A-4(C-E-16)

Rec'd 2-2-90

(FOIA-89-284)

Re: FOIA Request No. 89-284

Gentlemen:

On January 19, 1990, I had a discussion with Ms. Linda Robinson, Chief of the NRC's Freedom of Information/LPDR Branch, regarding our written appeal of that date of FOIA Request No. 89-284. She asked that we supplement our filing, specifically identifying those documents withheld by the NRC which might be of particular interest to us, and providing other information as we deem appropriate. Although we continue to appeal in its entirety from the NRC's determination to withhold documents in whole or in part, we have identified in Attachment A hereto the most important of the documents which we believe have been improperly withheld.

We believe that the NRC erred in refusing to produce a number of documents on the ground that they are protected by FOIA Exemption 5, as "predecisional," when in fact, that exemption does not apply. Additionally, we believe that many documents were incorrectly withheld under Exemption 7 as the subject of an ongoing investigation, even though the NRC's investigation has concluded.

9003080451 900131
PDR FOIA
HILL90-A-4 PDR

U.S. Nuclear Regulatory Commission
January 31, 1990
Page Two

Exemption 5 was designed to protect from disclosure documents reflecting an agency's deliberative process, out of a concern that disclosure could chill the full and frank intra-agency discussion necessary to sound decision-making, and that disclosure of proposals that were subsequently rejected could lead to confusion as to the true state of the law. EPA v. Mink, 410 U.S. 73, 86-88 (1973). However, it is recognized that in some circumstances, disclosure will not implicate the concerns underlying the rule, and therefore is appropriate. For this reason, factual statements, as opposed to policy recommendations, are not protected, unless the facts are inextricably intertwined with the recommendations. Id. at 92. Similarly, recommendations which are subsequently incorporated in a final decision must be disclosed. NLRB v. Sears Roebuck & Co., 421 U.S. 157, 161 (1975). Disclosure of approved recommendations is appropriate because publication that a recommendation has been adopted is likely to have an encouraging or warming, rather than chilling, effect on its author. Id. Indeed, in light of the policies underlying Exemption 5, the Justice Department has determined that it will assess the degree of risk to the deliberative process inherent in each requested disclosure before deciding whether to defend against it. Department of Justice Office of Information Law and Policy "Policy Guidance - When to Assert the Deliberative Privilege under FOIA Exemption Five" at 5. (June 6, 1976).

It is apparent from the descriptions of the documents withheld that disclosure of many of them would pose little or no risk to the deliberative process. For example, it is our understanding that the document entitled "July 15, 1988, SECY-88-210 Proposed Enforcement Action Against PECO and Individual Operators" was adopted and approved in large part by the NRC Commissioners. Disclosure of that document, therefore, would have a "warming" effect on its author, and should not be forbidden. Moreover, we believe it likely that that document contains factual matter, which is not protected by Exemption 5.

Similarly, we believe that the transcripts of the two closed Commission meetings (April 10, 1987 on Peach Bottom Status and September 14, 1987 on Pending Investigations) should be released, at the very least in a redacted version. We believe it is likely that the first transcript contains factual material and thus was

U.S. Nuclear Regulatory Commission
January 31, 1990
Page Three

improperly withheld under Exemption 5 (note also that the presentation slides from this meeting were released as document A.5 in response to our FOIA request). As to both transcripts, there would be no harm resulting from their release, as all NRC actions relating to the restart and investigation of the Peach Bottom plants have concluded (we would, of course, not object to the release of only those portions of the second transcript which relate to Peach Bottom). Further, it has been the NRC's past practice to release, in whole or in part, transcripts of similar closed meetings in response to FOIA requests. See, e.g., letter from Samuel J. Chilk, Secretary, to A. C. Yahner, December 20, 1983, FOIA-83-A-27, FOIA-83-320 (Detjen) (release of closed meeting transcripts on TMI-1 Restart).

Additionally, several memoranda from W. Russell, the Region I Administrator, to J. Lieberman, the Director of Enforcement, have been withheld even though the origination and destination of the memoranda outside of any single decision-chain indicate that those memoranda likely transmit factual information, rather than decisional recommendations. Similarly, the "November 15, 1988 Memorandum from Guiterrez to Taylor, Transmitting Testimony before a Senate Committee on Peach Bottom" appears to transmit factual rather than decisional information. Such factual information is not protected and must be produced.

Other documents should be produced simply because they appear to be postdecisional, rather than predecisional. NLRB v. Sears Roebuck & Co., 421 U.S. at 152-53. For example, the April 8, 1988 memorandum from W. Kane to J. Lieberman and undated draft by J. Lieberman regarding Peach Bottom Lessons Learned appear to be a retrospective discussion of insight gained from the Peach Bottom investigation, rather than a presentation of decisional alternatives which could be protected by Exemption 5. Such documents do not implicate the decision-making concerns underlying Exemption 5, and must be produced.

In addition to the documents improperly withheld on the basis of Exemption 5, the NRC has also inappropriately withheld documents under the theory that they are protected by Exemption 7 because they are in use in an ongoing investigation. In particular, we seek the release of the thirty-six operator enforcement

U.S. Nuclear Regulatory Commission
January 31, 1990
Page Four

conference transcripts. Those documents should be produced, however, because there is no longer an NRC investigation in progress. See, N.L.R.B. v. Robbins Tire & Rubber Co., 437 U.S. 214, 226-234 (1978); Coastal States Gas Corp. v. Dep't. of Energy, 617 F.2d 854, 870 (D.C. Cir. 1980); see also, letter from Hugh L. Thompson, Jr., Deputy Director for Operations for Nuclear Material, Safety, Safeguards and Operations Support to Martin L. Friedman, Sacramento, California, May 16, 1989, FOIA-89-A-7. The NRC has issued Notices of Violation to both Philadelphia Electric Company and individual Peach Bottom operators concerning the issues identified during the NRC investigation; Philadelphia Electric and the individuals have responded to those Notices and have paid the resulting Civil Penalties (which responses have been publicly released). See August 10, 1988 Notice of Violation and September 8, 1988 response to Notice of Violation from Philadelphia Electric. That matter is, therefore, closed. Thus, disclosure cannot impinge on the NRC's investigative procedures and Exemption 7(A) does not apply. Further, we would note that transcripts of similar investigative interviews have been released by the NRC upon completion of the investigation. See NRC response to FOIA-86-245 (Puntenney) (releasing transcripts of OI interviews regarding the Fermi-2 plant).

We believe that the withheld documents should be produced because they are not truly protected by Exemptions 5 or 7, and disclosure of them poses no threat to the decision-making or investigative processes at the NRC. Therefore, we ask you to reconsider your decision that these documents are protected. Additionally, even if you again decide the exemptions apply, we ask you to exercise your discretionary right to waive the protection of the exemptions, and produce the documents, because disclosure would not endanger the NRC decision-making process. See, e.g., letter from Hugh L. Thompson, Jr., Deputy Director for Operations for Nuclear Material, Safety, Safeguards and Operations Support to Douglas G. Carrey-Brewer, Commonwealth of Massachusetts, June 1, 1989, FOIA-89-A-9--13; FOIA-88-284-287; FOIA-88-519. We believe that you will conclude that the initial decision to withhold documents under the cited exemptions was incorrect and you will order the documents released.

I look forward to receiving your reply to this appeal within twenty working days.

Sincerely,


Thomas C. Hill

cc: Linda Robinson

ATTACHMENT A

(Documents withheld in whole or in part which are of particular interest to the requester)

7/15/88, SECY-88-210, Proposed Enforcement Action against PECO and Individual Operators (App. C, No. 1).

9/14/87 memo from W. Russell to J. Lieberman, Proposed Peach Bottom Violations (App. C, No. 16).

4/28/88 note to files from J. Lieberman re Peach Bottom (App. C, No. 18).

6/3/88 memo from W. Russell to J. Lieberman, Proposed Civil Penalty, etc., against PECO and individual operators (App. C, No. 20).

8/20/87 memo from J. Fitzgerald to B. Hayes, OI Investigation No. 1-87-003 (App. C, No. 25).

8/18/88 letters to individuals from W. Kane (App. F, No. 1).

2/8/88-5/17/88, 36 transcripts of Peach Bottom operator enforcement conferences (App. F, No. 2).

11/15/88 memo from Gutierrez to Taylor, transmitting testimony before a Senate Committee on Peach Bottom (App. F, No. 3).

4/10/87 Transcript of Closed Commission Meeting on PBAPS status (App. H, No. 1).

9/14/87 Transcript of Closed Commission Meeting on Pending Investigations (App. H, No. 2).

Various records in the Office of Investigations files (App. H, No. 4).

4/8/88 memo from W. Kane to J. Lieberman re Peach Bottom Lessons Learned (App. H, No. 5) and undated draft memo on Peach Bottom Lessons Learned (apparently authored by Lieberman) (App. 1, No. 1(b)).



U.S. NUCLEAR REGULATORY COMMISSION
RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

NRC FOIA REQUEST NUMBER	
FOIA -- 89-284	
RESPONSE TYPE	
FINAL	<input checked="" type="checkbox"/> PARTIAL
DATE	
OCT 16 1989	
DOCKET NUMBER(S) (if applicable)	

REQUESTER

Nancy K. Jones

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) _____ 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) A 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 product 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.
- 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

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

Ronnie A. Brunsley

891020099 (90)

PART II B - APPLICABLE EXEMPTIONS

Records subject to the request that are described on the enclosed Appendix(es) B & C 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	IG	EDO
John C. Hoyle	Assistant Secretary of the Commission	B/1, B/2, C/1-15	X		
James Lieberman	Director, Office of Enforcement	B/3, C/16-24			X
William T. Russell	Regional Administrator, Reg. I	B/4			X
Mark E. Resner	Assistant Director for Investigations, IG	B/5		X	
James A. Fitzgerald	Assistant General Counsel for Adjudications and Opinions	C/25	X		

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."

APPENDIX A
DOCUMENTS BEING PLACED IN THE PDR

1. 3/27/87 Memo from R. S. Fleischmann, II, enclosing 3/27/87 memo from J. W. Gallagher. (2 pages)
2. 4/3/87 Memo from R. S. Fleischmann, II, to Peach Bottom Personnel, subject: Remarks by J. L. Everett. (1 page)
3. 4/7/87 Memo from D. C. Smith to Control Room Personnel, subject: Monitoring Activities in Control Room. (3 pages)
4. 4/8/87 Memo from R. Gallo to W. Kane, subject: Enforcement History - Peach Bottom Atomic Power Station. (5 pages)
5. 4/10/87 Slides: Briefing on Status of Peach Bottom - Commission Meeting. (5 pages)
6. 4/11/87 Note from "Paul" to "Bill," providing notes on the Maryland Briefing. (2 pages)
7. 4/14/87 Briefing on Status of Peach Bottom State of Maryland Meeting. (9 pages)
8. 5/6/87 Briefing on Status of Peach Bottom Commonwealth of Pennsylvania. (10 pages)
9. 7/10/87 Memo from Sharon Connelly to William Russell, subject: Investigation of Alleged NRC Inspector Misconduct, (2 pages), with the following attachments:
10. -- OIA Report of Investigation 87-21, with enclosures 1 through 8, and 10 through 12. Enclosure #9 is addressed on Appendix B, Item 5. (33 pages)
11. 6/2/87 OIA Rights Warning. (1 page)
12. 5/28/87 OIA Rights Warning. (1 page)
13. 5/28/87 Note from J. D. McGoldrick. (3 pages)
14. 6/2/87 Handwritten statement from Crescenzo. (2 pages)
15. -- Log notes. (4 pages)
16. -- Sketch of Peach Bottom Control Room. (1 page)
17. 3/27/98 Memo from C. J. Cowgill to addresses, subject: Peach Bottom Shift Inspection Watch List. (2 pages)
18. 12/29/87 Memo from J. Persensky to W. Kane, subject: Interim Inspection Report on Operator Rehabilitation Training Program. (13 pages)

APPENDIX A
DOCUMENTS BEING PLACED IN THE PDR
(Continued)

19. 5/3/88 T. Elsasser's notes from 5/3/88 meeting with PECO officials. (1 page)
20. 5/16/88 Memo from T. Elsasser to Comm. Carr, subject: Telephone Conversation with Corbin McNeil of PECO. (1 page)
21. 8/9/88 Notification of Significant Enforcement Action - EN-88-65. (1 page)
22. 10/5/88 Briefing slides of PECO representatives for 10/5/88 Commission Briefing on Peach Bottom (Chairman Carr's handwritten notes.) (39 pages)
23. 4/3/88 Memo from J. Lieberman to W. Russell. (1 page)
24. 4/13/88 Draft comments on Peach Bottom - Status of Implementation of TMI Action Plan Items. (1 page)
25. Undated Slide #5 from 12/17/88 Commission Briefing: Periodic Briefing on Status of Operating Reactors and Fuel Facilities. (Notes of Margaret Federline). (1 page)
26. Undated Viewgraphs given to Comm. Carr on 12/15/87 while visiting the Peach Bottom Station. (2 pages)
27. Undated Draft notes, subject: Opening remarks for Peach Bottom Operator Enforcement Conference. (2 pages)
28. 8/15/? Note to File. (1 page)
29. Undated Questions for Peach Bottom Operator Conferences. (2 pages)
30. Undated Questions from Operators to Management. (6 pages)
31. Undated Excerpt: 87-1 NRC Order Suspends Power Operations of Peach Bottom Facility Due to Inattentiveness of the Control Room Staff. (2 pages)
32. Undated Brent Clayton's private notes from Peach Bottom Meeting of 1/27/88.

APPENDIX B
DOCUMENTS BEING RELEASED IN PART

1. 1/5/88 Memorandum to File from T. Elsasser, subject: Commissioner Carr's Visit to the Peach Bottom Site and Speech to the Region I Residents at King of Prussia. (3 pages) Portions withheld pursuant to Exemption 5. [Some deleted portions are outside the scope of the request.]
2. Undated Memorandum to File, subject: Commissioner Curtiss' Visit to the Peach Bottom Atomic Power Station (PBAPS) on March 27, 1989. (4 pages) Portions withheld pursuant to Exemption 5.
3. Undated Enforcement Conference Package and Enforcement Conference Outline. (4 pages) Portions withheld pursuant to Exemption 5.
4. 9/29/88 Slides - Meeting with NRC on PBAPS Restart, with handwritten notes. (21 pages) Portions withheld pursuant to Exemption 5.
5. Undated Attachment 2 to OIA Report of Investigation 87-21: List of Instructions. (1 page) Portions withheld pursuant to Exemption 6.

APPENDIX C
DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY

1. 7/15/88 SECY-88-201, "Proposed Enforcement Actions Against Philadelphia Electric Company and the Individuals Who Comprised the Shift Operations Staff at Peach Bottom At The Time Of The March 31, 1987 Shutdown Order. (EA-88-04, et. al.) (69 pages) Withheld pursuant to Exemption 5.
2. 7/21/88 Correction Notice for SECY-88-201, attaching draft order. (7 pages) Withheld pursuant to Exemption 5.
3. 8/2/88 Commissioner Kenneth Carr's vote sheet on SECY-88-201. (3 pages) Withheld pursuant to Exemption 5.
4. 7/26/88 Chairman Lando Zech's vote sheet on SECY-88-201. (1 page) Withheld pursuant to Exemption 5.
5. 8/1/88 Commissioner Kenneth Rogers' vote sheet on SECY-88-201. (1 page) Withheld pursuant to Exemption 5.
6. 8/3/88 Commissioner Thomas Roberts' vote sheet on SECY-88-201. (1 page) withheld pursuant to Exemption 5.
7. 8/8/88 Commissioner Thomas Robert's vote sheet on SECY-88-201. (1 page) Withheld pursuant to Exemption 5.
8. 8/8/88 Memo from S.J. Chilk to V. Stello, subject: Staff Requirements - SECY-88-201. (1 page) Withheld pursuant to Exemption 5.
9. 7/27/88 Note to Comm. Carr and his assistants from Steve Burns, regarding SECY-88-201, with Tom Elsasser's and George Felgate's comments. (1 page) Withheld pursuant to Exemption 5.
10. -- Routing slip from SECY-88-201 with Tom Elsasser's and George Felgate's comments. (1 page) Withheld pursuant to Exemption 5.
11. -- Steve Burn's comments on the routing slip on Comm. Roberts' vote sheet for SECY-88-201. (1 page) Withheld pursuant to Exemption 5.
12. 9/14/87 Note to Comm. Carr and George Felgate from Jim Milhoan regarding 9/14/87 Commission meeting on Peach Bottom. (2 pages) Withheld pursuant to Exemption 5.
13. -- Note to Comm. Carr and his assistants from Margaret Federline, regarding 7/15/87 meeting between NRC and Philadelphia Electric, attaching Federline's handwritten notes from the meeting, and George Felgate's handwritten note. (9 pages) Withheld pursuant to Exemption 5.

APPENDIX C
DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY
(Continued)

14. 10/14/88 Note to Comm. Carr and his assistants from Tom Elsasser, regarding 10/5/88 briefing on the status of Peach Bottom. (8 pages) Withheld pursuant to Exemption 5.
15. 5/2/88 Note to Comm. Carr from G. Felgate. (1 page) Withheld pursuant to Exemption 5.
16. 9/14/87 Memo from W. Russell to J. Lieberman, subject: Proposed Peach Bottom Violations. (1 page) Withheld pursuant to Exemption 5.
17. 12/18/87 Draft Notes - Peach Bottom Licensed Operator Enforcement Conference Options. (4 pages) Withheld pursuant to Exemption 5.
18. 4/28/88 Note to Files from Jim Lieberman, subject: Peach Bottom. (1 page) Withheld pursuant to Exemption 7(A).
19. 5/20/88 Memo from J. Lieberman, W. Kane and B. Boger to T. Murley, subject: Observations from the Peach Bottom Operator Enforcement Conferences. (1 page) Withheld pursuant to Exemption 5.
20. 6/3/88 Memo from W. Russell to J. Lieberman, subject: Proposed Civil Penalty and Order to Philadelphia Electric Company (Peach Bottom, Units 2 and 3) and Proposed Civil Penalties and/or Notice of Violation In Certain Licensed Individuals (Shift Superintendents, Senior Reactor Operators, and Reactor Operators) at Peach Bottom At The Time The Facility Was Shut Down By The NRC. (72 pages) Withheld pursuant to Exemption 5.
21. 8/24/88 Memo from Howard Wong to F. Miraglia, subject: Response to Rhodes (Commissioner on Penn. Public Utility Commission) letter dated 8/16/88 concerning Peach Bottom. (2 pages) Withheld pursuant to Exemption 5.
22. Undated Draft notes regarding Peach Bottom licensed operator interviews. (1 page) Withheld pursuant to Exemption 5.
23. Undated Draft Proposed Peach Bottom Notice of Violation. (2 pages) Withheld pursuant to Exemption 5.
24. Undated Draft letter to Mr. Joseph Rhodes regarding enforcement action against PECO. (4 pages) Withheld pursuant to Exemption 5.
25. 8/20/87 Memo from James Fitzgerald to Ben Hayes, subject: OI Region I Investigation No. 1-87-003 (Peach Bottom Unit 3). (5 pages) Withheld pursuant to Exemption 5.

SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

2300 N STREET, N. W.
WASHINGTON, D. C. 20037

TELEX/CABLE
89-2693 (SHAWLAW WSH)
TELEPHONE
(202) 663-8000

VIRGINIA OFFICE
1501 FARM CREDIT DRIVE
MCLEAN, VIRGINIA 22102
(703) 790-7900

TELECOPIER
(202) 223-3760 & 223-3761

WRITER'S DIRECT DIAL NUMBER

(202) 663-8398

June 26, 1989

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-89-284
Rec'd 6-27-89

Director, Division of Freedom of Information
and Publications Services
Office of Administration and Resources Management
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Freedom of Information Act Request

Dear Sir:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the NRC's implementing regulations, 10 C.F.R. § 9.11, et seq., I hereby request that the following described records be made available for inspection and copying. I agree to pay search and duplication costs, as specified in 10 C.F.R. §§ 9.33 - 9.37, up to a maximum of \$500.00.

Description of Requested Records: Any and all internal NRC memoranda, notes, records of telephone conversations, meeting minutes or any other documents not presently included in the NRC's Public Document Room files that pertain to, relate to or discuss or otherwise refer to the NRC-ordered shutdown of Units 2 and 3 of the Peach Bottom Atomic Power Station (NRC Docket Nos. 50-277 and 50-278) on March 31, 1987, the post-shutdown investigations conducted by the NRC or the bases for the shutdown and post-shutdown investigations. The scope of this request includes, but is not limited to, any records memorializing the views, observations or perceptions of NRC personnel regarding the performance of Philadelphia Electric Company, specifically as it relates to the management of the Peach Bottom Station during the period from January, 1983 through March, 1988 (unless otherwise noted below). In particular, this request seeks any such records contained in the files of the following NRC personnel:

~~8910200093~~ (4pp)

- the NRC Project Manager for the Peach Bottom Station;
- the NRC Project Director for the Peach Bottom Station;
- the Assistant Director for Region I Reactors, Office of Nuclear Reactor Regulation;
- the Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation;
- the Director, Office of Nuclear Reactor Regulation;
- the Director, Office of Investigations;
- the Director, Office for Analysis and Evaluation of Operational Data;
- the Executive Director for Operations and his staff;
- the NRC Resident Inspector(s) stationed at the Peach Bottom Station;
- the Chief of the NRC Region I Project Branch having cognizance over the Peach Bottom Station;
- the Director, Division of Reactor Projects, Region I;
- the Director, Division of Reactor Safety, Region I;
- the Director, Division of Radiation Safety and Safeguards, Region I;
- the Region I Deputy Regional Administrator;
- the Region I Regional Administrator;
- the NRC Chairman, Commissioners and their staffs.

Further, this request includes, but is not limited to, the following described records:

Materials prepared by the various NRC Offices, including the Office of Nuclear Reactor Regulation ("NRR"), the Office for Analysis and Evaluation of Operational Data ("AEOD"), the Office of Investigations ("OI") and the Region I Office, in preparation for the NRC Semi-Annual Senior Management Meetings for the period 1986 through the present relating to the Peach Bottom Station.

Materials prepared for Commission Meetings regarding troubled or "problem" plants, to the extent that those materials discuss, refer or relate to the Peach Bottom Station.

Materials prepared in conjunction with operating reactor events meetings held by NRR, to the extent that those materials discuss, refer or relate to the Peach Bottom Station.

Summaries of the daily events phone calls between NRC Headquarters and Region I which discuss, refer or relate to the Peach Bottom Station.

Materials prepared by, or in the possession of, OI regarding the "sleeping operator" issue at Peach Bottom.

Materials, documents or records prepared by AEOD in connection with PECO's performance at Peach Bottom and/or such performance as it compares with other nuclear power plants.

All records provided to the NRC by the Institute of Nuclear Power Operations ("INPO"), or relating to briefings, meetings or discussions with the NRC by INPO which discuss, refer or relate to the Peach Bottom Station.

All records, notes, summaries and telephone log entries relating to discussions between NRC senior management and INPO personnel (particularly Messrs. Dennis Wilkerson and Zack Pate) which discuss, refer or relate to the Peach Bottom Station.

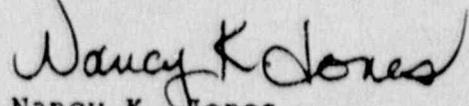
SHAW, PITTMAN, POTTS & TROWBRIDGE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

This request does not encompass documents presently included in the NRC Public Document Room docket files on Peach Bottom, Units 2 and 3.

Please feel free to contact me should you have any questions regarding the scope of this request.

Sincerely,



Nancy K. Jones
Legal Assistant

NKJ/lbp