



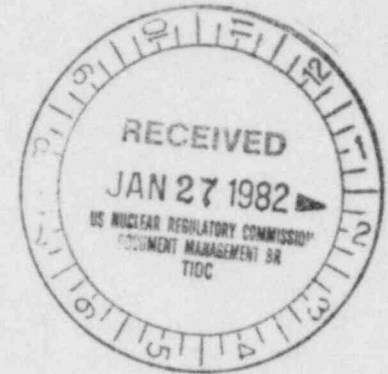
OFFICE OF THE
SECRETARY

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

PDR 376

SECRETARIAT RECORD COPY

January 22, 1982



Mr. Douglas Lowenstein
Cox Newspapers
1901 Pennsylvania Avenue, N.W.
Suite 501
Washington, D.C. 20006

Dear Mr. Lowenstein:

This is in response to your October 15, 1981 Freedom of Information Act (FOIA) appeal regarding documents relating to the report of the NRC Office of Inspector and Auditor (OIA) regarding the adequacy of the Office of Inspection and Enforcement (I&E) investigation into quality assurance/quality control problems at the William H. Zimmer Nuclear Power Station. On November 20, 1981, you were provided copies of the OIA report and six related documents. A December 30, 1981 letter from William J. Dircks, Executive Director for Operations, conveyed an additional nine Commission documents and seven I & E records with minor deletions.

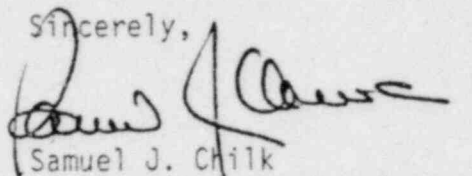
On October 27 and 28, 1981, the Commission held closed meetings to discuss potential enforcement actions stemming from the Zimmer investigations. Though these meetings post-dated your appeal, we have reviewed the transcripts under the Government in the Sunshine Act (GISA) to determine whether they should be released in whole or in part at this time. The meetings were closed pursuant to exemptions (5), (7), and (10) of the Government in the Sunshine Act, 5 U.S.C. 552b, and Commission regulations, 10 CFR 9.104, since the discussion focused on the review of investigatory reports and the consideration of potential enforcement actions, including the imposition of civil penalties, all within the context of an ongoing agency adjudication. Commission deliberations of this nature are exempt from mandatory public disclosure in the interest of avoiding interference with current and future Licensing Board proceedings and of protecting the uninhibited exchange of ideas and opinions which relate to such proceedings. For these reasons, the Commission has determined that the public interest does not require release of these transcripts and that they should be withheld in their entirety pursuant to Exemption (3) of the FOIA and Exemptions (5), (7), (10) of the GISA. (See Appendix A).

Four additional documents have been identified which, though postdating your original FOIA request, pertain to the Zimmer report. The memoranda and comments identified as items 3-6 of Appendix A reflect the authors'

advice, opinions and recommendations regarding the Commission resolution of the Zimmer matter. Withholding these documents is necessary to protect the uninhibited dialogue essential to the deliberative process. The draft letter (item No. 3) contains no factual information not also present in the letter dispatched to Congressman Udall, a copy of which you have been provided. The remaining documents contain no segregable factual portions. Accordingly, all of these documents are being withheld in their entirety pursuant to Exemption (5) of the FOIA.

This letter represents the final agency action on your FOIA appeal. I am the agency official responsible for these denials. Judicial review is available in a district court of the United States in the district in which you reside or have your principal place of business, or in the District of Columbia.

Sincerely,



Samuel J. Chilk
Secretary of the Commission

Enclosure:

Appendix A - List of Documents Withheld

REF: SECY-81-703

APPENDIX A

1. Transcript of Closed Commission Meeting held on October 27, 1981 Regarding Proposed Enforcement Matters. Pages 78-128 are relevant to the William H. Zimmer Nuclear Power Station.
2. Transcript of Closed Commission Meeting held on October 28, 1981, a continuation of the Discussion of Proposed Enforcement Matters. 44 pages.
3. October 29th draft letter to Congressman Udall with handwritten comments from Commissioner Bradford's office at the top.
4. October 30, 1981 memo to Chairman Palladino from Commissioner Bradford re: Proposed Draft Letter to Congressman Udall regarding Zimmer.
5. October 21, 1981 memo to Commissioner Bradford from Legal Assistant Thomas R. Gibbon re: Udall letter on Zimmer, with handwritten comments.
6. September 29, 1981 memo to Commissioner Bradford from Thomas R. Gibbon re: OIA Report on Zimmer.

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Springfield Daily News
Springfield Sun
Tempe Daily News
Waco Tribune-Herald

Oct. 15, 1981

Hon. Nunzio Palladino
Chairman, Nuclear Regulatory Commission
1717 H St. NW
Washington, D.C.

Dear Mr. Chairman:

This is an appeal under the Freedom of Information Act, 5 U.S.C. 552.

On Sept. 18, I made an FOI request to the NRC for a copy of the report by the Office of Inspector-Auditor reviewing the adequacy of work performed by the Region III Office of Inspection and Enforcement at the William Zimmer Nuclear Power Station in Ohio.

I further requested copies of letters, documents, reports and any other written material by and or between OIA, Region III and NRC in Washington/Bethesda regarding the aforementioned report, as well as transcripts of any meetings held by the NRC, OIA or the NRC staff at which said report was discussed. A copy of my original request is enclosed.

As of this writing, this request has not been acted upon, nor have I received a formal, written request for an extension of the statutorily mandated ten day time period for a response to a properly filed FOI.

Therefore, the NRC is in clear violation of the law. Please be advised that I consider the requested information clearly releasable under the FOI Act and consider your agency's failure to respond to my request in a timely manner to be irresponsible and illegal.

Further, I believe there are compelling public policy reasons for releasing the requested material, to wit: questions regarding the integrity of both the construction and quality control work at Zimmer have been publicly and frequently raised, as have doubts about the adequacy of the NRC's own I&E activity. Obviously, issues relating to the safety of a plant which is soon scheduled to receive an operating license deserve a full and complete public airing and the NRC has a responsibility to provide all the material in its possession to the public to insure a full and informed discussion about matters regarding the safety of the facility.

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10-15-81

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Port Arthur News
Springfield Daily News
Springfield Sun
Tempe Daily News
Waco Tribune-Herald

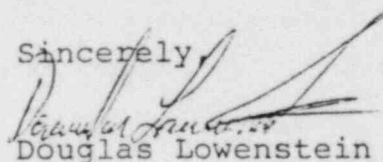
It is my feeling that the requested material is essential to a complete public airing of the safety of the Zimmer plant. I would regard denial of this request as arbitrary and capricious.

I trust that upon re-examination, you will correct both your failure to respond to my request and your failure to release the report and material requested. However, if you deny this appeal, and continue to ignore your statutory responsibility, I intend to initiate a lawsuit to compel disclosure.

As I have made my initial request, as well as this one, in a timely manner, and this information is of timely value, I would appreciate your expediting the consideration of my appeal in every way possible. In any case, I will expect to receive your decision within 20 business days, as required by law.

Thank you for your assistance.

Sincerely,



Douglas Lowenstein

cc: J. M. Felton
Samuel Chilk

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Palm Beach Post
Palm Beach Times
Port Arthur News
Springfield Daily News
Springfield Sun
Tempe Daily News
Waco Tribune-Herald

Sept. 18, 1981

John Carr
Chief, Freedom of Information Branch
Division of Rules and Records
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Carr:

I would like to request that the following material be made available to me, pursuant to the Freedom of Information Act. Please inform me of any costs associated with fulfilling this request.

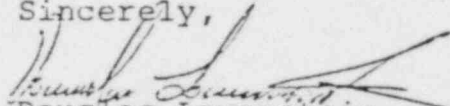
If this request is denied, please inform me as to the reasons in writing within ten days, as required by law.

The material I am seeking is:

- 1) A copy of the report by the Office of Inspector-Auditor reviewing the adequacy of work performed by the Region III Office of Inspection and Enforcement at the William Zimmer Nuclear Power Station in Ohio. The OIA report was at least in part in reference to I&E Report No. 50-358/80-09, an investigation conducted by Region III on April 7-9, April 30, May 1-2 and May 20, 1980.
- 2) A copy of all letters, documents, reports and any other written material by and/or between OIA, Region III and NRC in Washington/Bethesda regarding the aforementioned OIA report.
- 3) A transcript of any meetings held by the NRC, the OIA or the NRC staff at which the aforementioned OIA report was discussed.

Thank you for your cooperation.

Sincerely,


Douglas Lowenstein

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