



OFFICE OF THE  
SECRETARY

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

March 29, 1990

*NUCORS P-37*

Thomas C. Hill, Esquire  
Shaw, Pittman, Potts, & Trowbridge  
2300 N Street, N.W.  
Washington, D.C. 20037

RE: FOIA 90-A-4

Dear Mr. Hill:

This letter responds in part<sup>1</sup> to your January 31, 1990 appeal of the Agency's denial of all or portions of documents identified in our October 16, 1989, November 6, 1989 and December 16, 1989 responses to FOIA Request No. 89-284 regarding the Peach Bottom Nuclear Power Plant.

In response to your appeal, the withheld information was again reviewed. On the basis of this review, it has been determined that the documents identified as appendix items B-1, B-2, C-8, C-10, C-11, C-12, and C-15 should be released in their entirety. It has also been determined that the documents identified as appendix items C-1 and C-14 should be released in part. This material is enclosed with this letter. With respect to the balance of denied material, I affirm the agency's action in this matter.

Document C-1 is a paper that was prepared for Commission review and approval. The issues discussed in this document relate to the enforcement staff's proposal to take various actions against the Philadelphia Electric Company for its operation of the Peach Bottom Nuclear Power Plant. The portions of C-1 which remain withholdable consist of staff's recommendations, analyses, and proposals for disposition of the enforcement proceeding. Other portions which remain withholdable relate to the staff's analysis of the basis, purpose and intent of proposed penalties and their recommendations regarding the classification of penalties. Also withheld are various draft notices and orders. Document C-2 is a draft order which should have been included with the other draft notices and orders submitted as enclosures to document C-1.

Documents C-3 through C-7 are vote sheets which reflect the "pre-vote" views of the individual Commissioners on the staff's proposed enforcement actions. These views are preliminary and do not reflect the final vote of the Commission on the enforcement matter. Rather, the vote sheets constitute the means by which each Commissioner can make his views and ideas known to the other Commissioners in advance of the final vote. Through this process, the

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<sup>1</sup>Specifically, this letter constitutes the Secretary's decision on the documents denied by the Assistant Secretary of the Commission and the Assistant General Counsel for Adjudications and Opinions.

Commissioners are able to exchange opinions and ideas. Document C-9 is a memorandum prepared by a Commissioner's legal assistant. The document contains this individual's analysis of the issues presented in document C-1 and his recommendations regarding the possible courses of action the Commissioner might choose to take in response to the staff's proposals and recommendations.

Documents C-13 and C-14 are briefing notes prepared by a member of a Commissioner's personal staff for the Commissioner's use in the Peach Bottom enforcement proceeding and in meetings with officials from the Philadelphia Electric Company. C-13 and the portions of C-14 which remain withholdable contain discussions of relevant issues and an assessment of how these issues might be resolved.

Document C-25 is an inter-office memorandum from the Assistant General Counsel to the Director, Office of Investigations (OI). This document was prepared in response to a request by the Director of OI for legal advice regarding the applicability of certain NRC regulations.

Document E-1 is an unsigned draft which was submitted to the Commission as an enclosure to a paper which discussed the Peach Bottom incident.

All of the above material was properly withheld pursuant to Exemption 5 of the FOIA. The material is predecisional in that it was prepared in advance of the agency's adoption of a course of action regarding the Peach Bottom plant. The material is also deliberative as it contains analyses, impressions, opinions, and recommendations on the issues presented by the staff's proposed enforcement action.<sup>2</sup> Release of this information could impair the Agency's decision-making process by stifling candor and inhibiting the free and open exchange of ideas. All factual information is being released.

You have also appealed the agency's decision to withhold two transcripts from closed Commission meetings which are identified as appendix items H-1 and H-2. These documents were properly withheld pursuant to section 5 and sections 7A, 7D and 7E of the Government in the Sunshine Act. Both transcripts, which relate to the Peach Bottom enforcement proceeding as well as independent OI investigations, contain candid and sensitive discussions regarding these matters. Moreover, these transcripts disclose the identity of confidential sources, investigative techniques and procedures, and reveal the identities of persons who were censured as a result of the incidents which occurred at Peach Bottom. Because of the nature of the matters discussed in the transcripts, the Agency's decision to completely withhold them was appropriate. See, Clark Cowlitz Joint Operating Agency v. FERC, 798 F.2d 499, 502 n.3 (D.C. Cir. 1986) (en banc).

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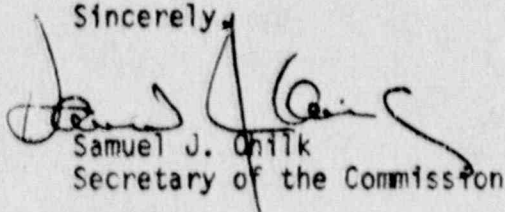
<sup>2</sup>Document C-25 is protected by the attorney client privilege of Exemption 5 because it concerns the "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice." See, Mead Data Cent., Inc. v. Department of the Air Force, 566 F.2d 242, 252 (D.C. Cir. 1977).

Thomas C. Hill

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This letter represents final Agency action on your January 31, 1990 appeal. Judicial review of the denial of documents or portions of documents is available in Federal District Court 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

Enclosures: As stated