

PDR-016



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

December 10, 1982

Ellyn R. Weiss, Esquire
Harmon & Weiss
1725 I Street, N.W.
Washington, DC 20006

IN RESPONSE REFER
TO FOIA-82-A-22
(FOIA-82-342)

Dear Ms. Weiss:

This is in response to your letter dated November 5, 1982, in which you appealed Mr. J. M. Felton's October 8, 1982 denial-in-part of your Freedom of Information Act request for all reports, memoranda or other work performed by Science Applications, Inc. (SAI) for the Clinch River Breeder Reactor (CRBR) Project. Specifically you appealed the withholding of the five documents listed in the appendix to Mr. Felton's letter.

Acting on your appeal, I have carefully reviewed the record in this case relevant to the withheld documents and have determined that portions of the previously withheld documents may be released. These portions are enclosed. The remainder of the withheld documents, for the reasons stated below, still require withholding from public disclosure pursuant to Exemption (5) of the Freedom of Information Act (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5) of the Commission's regulations. Your appeal is, therefore, partially granted and partially denied.

As stated in your appeal letter, the NRC established in its October 8, 1982, response that Exemption (5) may be used to withhold documents written at the behest of government agencies by outside consultants. Also, this ability to withhold does not have to cover everything written by such consultants. Such is the case here. In addition, Mr. Felton's partial response to you dated August 20, 1982, provided you with consultant information that did not require withholding from public disclosure. Portions of the documents in the appendix to the October 8, 1982, response, however, do continue to require such protection.

The five withheld documents are both predecisional and deliberative in nature, reflecting the give-and-take of the consultative process. Coastal States Gas Corporation v. Department of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980). These documents represent a series of communications between the NRC Staff and its contractor, Science Applications, Inc. (SAI).

More specifically Task 1-A of document 1 represents, in draft form, SAI's advice, opinions, and recommendations to the NRC Staff as to the adequacy of Section 7.1 of the FES in light of the Commission's Statement of Interim Policy dated June 13, 1980. This input was part of the NRC Staff's deliberative process in regard to whether a more detailed analysis of the probability and consequences of various accident sequences should be conducted for the FES. Mr. William Morris, Chief of Tasks and Projects, Clinch River Breeder Reactor Program Office, has stated that the SAI input on Task 1-A was predecisional and helpful to the NRC Staff, but that the final decision to revise the analysis was an agency decision that was independently generated. The final revision is not a formal or informal adoption of the SAI input. Accordingly Task 1-A of document 1 remains predecisional, and any facts represented in this draft are inextricably intertwined with the advice, opinions, and recommendations.

Task 1-B of document 1 and documents 2, 3, 4 and 5 represent SAI's and NRC Staff's interaction in the preparation of draft responses to answers to Natural Resources Defense Council's 14th Set of Interrogatories. These documents were generated at the direction of NRC hearing attorneys and represent attorney work products. The segregable portions of these documents are enclosed. The remaining factual portions, if any, are inextricably intertwined with the advice, opinions, and recommendations.

This is a final agency action. As set forth in the Freedom of Information Act (5 U.S.C. 552(a)(4)(B)), judicial review of this decision is available in a district court of the United States in either the district in which your client resides, has his principal place of business or in the District of Columbia.

Sincerely,



William J. Dircks
Executive Director for Operations

Enclosures: As stated

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July 26, 1982

FREEDOM OF INFORMATION
ACT REQUEST

J. M. Felton, Director
Division of Rules and Records
Office of Administration
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

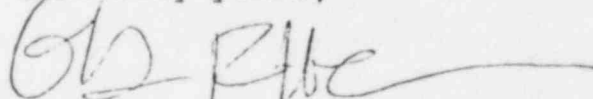
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Rec'd 7-30-82

SUBJECT: Freedom of Information Act Request

Dear Mr. Felton:

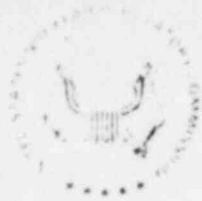
Pursuant to the federal Freedom of Information Act, 5 U.S.C. §552, please make available in NRC's Public Document Room at 1717 H Street, N.W., Washington, D.C., copies of all memoranda, reports or any other work performed by Science Applications, Inc. (SAI) for the CRBR project, including but not limited to work on the CRBR Final Environmental Statement and its Supplement, the Site Suitability Report and its Update, and the Safety Evaluation Report.

Sincerely yours,


Ellyn R. Weiss

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

October 8, 1982

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Ellyn R. Weiss, Esquire
Harmon & Weiss
1725 I Street, N.W.
Washington, DC 20006

IN RESPONSE REFER
TO FOIA-82-342

Dear Ms. Weiss:

This is in final response to your letter dated July 26, 1982 in which you requested, pursuant to the Freedom of Information Act, that the NRC make available all reports, memoranda or other work performed by Science Applications, Inc. (SAI) for the Clinch River Breeder Reactor (CRBR) Project.

As you are aware, one of the areas SAI is working on for the NRC is probabilistic risk assessment for the CRBR. The staff believed that a scoping level probabilistic analysis of the CRBR plant needed to be performed to estimate the frequency and consequences of core melt accident sequences prior to supplementing the existing FES.

The CRBR Program Office sought technical assistance in this area after it was determined that NRR did not have available staff capability to perform the above analysis. After exploring a number of contractual possibilities, NRR determined that SAI was the only identifiable firm that had the available expertise required and could perform the work without impacting the schedule for the FES supplement.

The principal reason SAI was selected was the availability of Dr. Edmund Rumble and his associates at SAI to participate in the project, as well as his ability to provide overall technical direction. Dr. Rumble's experience in performing significant portions of the SNR 300 (German LMFBR) probabilistic risk assessment, coupled with his broad knowledge of domestic LWR safety and risk analysis, made him uniquely qualified to assist the NRC in certain risk related portions of the CRBR environmental review. Specifically, Dr. Rumble's team has been instrumental in preparing suggested answers to interrogatories in conjunction with the LWA hearing, performing a review of Section 7.1 of the FES, and in assisting the staff in preparing Appendix J of the FES Supplement. He has also testified in his area of expertise at the site suitability portion of the LWA hearing.

Since beginning work in April, 1982, Dr. Rumble has been in regular and frequent contact with the NRC staff to carry out the above described work assignments. Further, in providing input for lawyer work products and testifying at the LWA hearing, Dr. Rumble has essentially functioned as another member of the review staff. Indicative of this arrangement,

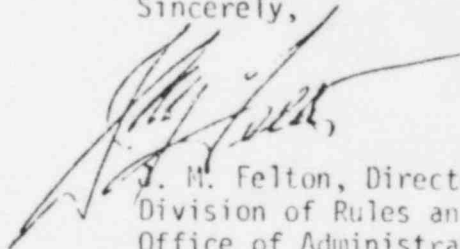
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as listed in the appendix, are memoranda of two telephone conversations between members of NRR staff and Dr. Rumble. [These memoranda represent a sharing of ideas between scientists and by no means are final technical positions. Also, the other documents listed on the appendix constitute input to the staff (in some cases draft input) to be used as part of the decision making process in taking final position on various technical questions and issues.] Consequently, these documents are being withheld from public disclosure pursuant to Exemption (5) of the Freedom of Information Act (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5) of the Commission's regulations. (See Wu v. National Endowment for Humanities (460 F.2d 1030 (5th Cir. 1972)); Soucie v David (448 F.2d 1157 (D.C. Cir. 1971)), Hoover v U.S. Department of Interior (611 F.2d 1132 (5th Cir. 1980)) and Ryan v Department of Justice (617 F.2d 781 (D.C. Cir. 1980)).

Pursuant to 10 CFR 9.9 of the Commission's 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 this denial are the undersigned and Mr. Harold R. Denton, Director, Office of Nuclear Reactor Regulation.

This denial may be appealed to the Commission's Executive Director for Operations within 30 days from the receipt of this letter. As provided in 10 CFR 9.11, any such appeal must be in writing, addressed to the Executive Director for Operations, 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"

Sincerely,



J. M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosures: As stated

Appendix

1. Task 1-A - Review of Section 2.1 of the IIS, and Task 1-E-Preliminary Review of NRC Staff Answers to NRDC 14th Set of Interrogatories (December 6, 1976), transmitted with the May 26, 1982 ITC identified in 1. above.
2. ITC dated June 8, 1982 from F. Ruckle/B. Johnson to W. Morris/J. Swift and the attached telecon summary.
3. ITC dated June 14, 1982 from R. Limer to H. Silver and the attached telecon summary.
4. ITC dated July 7, 1982 from B. Johnson to J. Swift and the attached draft suggested answers to interrogatories.
5. Letter dated August 3, 1982, B. Johnson to H. Silver transmitting the report "Suggested Answers to Questions.....Interrogatories".