



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

PDR-016

Cross-reference

50-329/330

CF
NSIC
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LPR

October 13, 1982

Ms. Barbara Stamiris
5795 N River
Freeland, MI 48623

IN RESPONSE REFER
TO FOIA-82-477

Dear Ms. Stamiris:

This is in response to your letter dated October 1, 1982, in which you sought reconsideration of the Nuclear Regulatory Commission's July 6, 1981 response to your initial Freedom of Information Act request of June 11, 1981. In both requests you have sought a copy of an eight page CONFIDENTIAL PROPOSED QA STIPULATION -- a document proposing terms of a compromise between the NRC and Consumers Power regarding quality assurance issues in the Midland proceeding. Since requests for reconsideration are not strictly speaking a form of request for information pursuant to the Freedom of Information Act, Mr. Edward Shomaker of the Office of the Executive Legal Director contacted you on October 7, 1982, to try and clarify the scope and form of your request. Mr. Shomaker has indicated that you agreed that this office can consider your October 1, 1982 request for reconsideration as a new FOIA request for the stipulation document and that you are making this request now because (1) you wish to query whether the basis for the NRC's withholding the subject document has modified since July 6, 1981; and (2) you believe that this document would be valuable to you in preparing to comment upon some remedial QA actions that are being proposed in relation to the Midland facility.

Acting upon your request, Mr. Shomaker contacted the NRC attorney in the Midland proceeding, William Paton, and coordinated with the attorneys who generated the subject document at Isham, Lincoln & Beale in Chicago, Illinois. Both these parties have indicated that an initial decision has not been rendered in the Midland OM-OL proceeding and that the document continues to be privileged information in the form of an attorney work product which reveals strategies developed by Consumers Power Company in preparing for legal action. Accordingly, the rationale for withholding explained in my letter of July 6, 1981 (copy attached), continues to be valid. Therefore, this proposed stipulation is being withheld pursuant to exemptions (b)(4) and (b)(7)(B) of the Freedom of Information Act [5 U.S.C. 552(b)(4) and (7)(B)] and 10 C.F.R. 9.5(a)(4) and (7)(ii) of the Commission's regulations.

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Pursuant to 10 C.F.R. 9.15 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 person responsible for this denial is Mr. Guy Cunningham, the Executive Legal Director.

This denial may be appealed to the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed 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."

Sincerely,

A handwritten signature in cursive script, appearing to read "J. M. Felton", is written over the typed name and title.

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

Enclosure:
7/6/81 letter

July 6, 1981

Ms. Barbara Stamiris
5795 N River
Freeland, MI 48623

IN RESPONSE REFER
TO FOIA-81-227

Dear Ms. Stamiris:

This is in response to your letter dated June 11, 1981, in which you requested pursuant to the Freedom of Information Act, the document proposing terms of a compromise between the NRC and Consumers Power regarding quality assurance issues in the Midland proceeding.

The NRC is in possession of an eight page CONFIDENTIAL PROPOSED QA STIPULATION which is the subject of your request. This document is a record which is part of the NRC's ongoing enforcement proceeding involving Consumers Power Company and their Midland Plants.

As you may be aware, exemption (b)(7)(B) of the Freedom of Information Act protects from disclosure material which would "deprive a person of a right to a fair trial or an impartial adjudication." This protection extends to corporations as well as individuals. See, 5 USC section 551(2). As the Attorney General's Memorandum on the 1974 Amendments explains, the provision operates to safeguard a litigant when "the release of damaging and unevaluated information may threaten to distort an administrative judgment in a pending case." 1974 Attorney General Memorandum at 8.

The facts in the Midland case threaten such a distortion. In the present case a quality assurance stipulation, signed by the NRC and Consumers Power Company and submitted to the licensing board, still awaits approval. The stipulation the board has before it is the result of several months of negotiations between the NRC and Consumers Power Company. Exposure of previous drafts of stipulations without exposure to the process under which those drafts were developed can severely distort the perception of the board as to the merits of the present stipulation. It may prompt the board to second guess the posture of the parties and involve the board in the negotiation process. This is the type of situation exemption (b)(7)(B) was intended to prevent. Therefore, this Proposed Stipulation is being withheld pursuant to exemption (b)(7)(B) of the Freedom of Information Act (5 U.S.C. 552(b)(7)(B)) and 10 CFR 9.5(a)(7)(ii) of the Commission's regulations.

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Additionally, the Proposed Stipulation is being withheld pursuant to exemption (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and 10 CFR 9.5(a)(4) of the Commission's regulations. Exemption (b)(4) is applicable here as the Proposed Stipulation is privileged information in the form of an attorney work product which reveals strategies developed by Consumers Power Company in preparing for legal action.

Pursuant to 10 CFR 9.15 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 person responsible for this denial is Mr. Thomas F. Engelhardt, Acting Executive Legal Director.

This denial may be appealed to the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed 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."

Sincerely,

~~(Signed) J. M. Felton~~

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