

April 22, 1983

United States Nuclear Regulatory Commission
Region I
631 Park Avenue
King of Prussia, Pennsylvania 19406

Subject: Investigation No. 50-410/1-82-078
Application to Withhold Information From
Public Disclosure

Attn: Mr. Richard W. Starostecki, Director
Division of Project and Resident Programs

Gentlemen:

Pursuant to Section 2.790(b)(1) of the Regulations of the Nuclear Regulatory Commission, 10 CFR § 2.790(b)(1), Niagara Mohawk Power Corporation hereby makes application to withhold from public disclosure portions of written statements provided to NRC Investigators by certain employees of Stone and Webster Engineering Corporation during the subject investigation and transmitted by letter to Niagara Mohawk Power Corporation on March 24, 1983. Specifically, Niagara Mohawk Power Corporation requests that certain portions of the statements that disclose information which might reasonably lead to the ascertainment of the identities of the individuals providing the statements be withheld from disclosure.

Disclosure of the identities of the individuals providing statements to the Commission would be an unwarranted invasion of their privacy and would disclose the identity of confidential sources. That the Commission chose to expunge the names and some of the identifying information in the statements evidences the Commission's intention to protect the confidentiality and privacy of these individuals. We believe, however, that the deletions performed by the Commission do not adequately protect

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Ex. 61
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Mr. R. Starostecki

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April 22, 1983

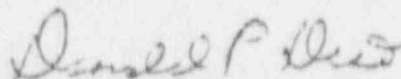
the identity of the individuals concerned. Indeed, some of the deleted material is still readable. For example {

been "expurgated". even though both have

In support of this application, please find enclosed three copies of our affidavit detailing the reasons for our request. This letter and the attached affidavit contain information exempt from disclosure under the provisions of 10 CFR § 2.790(a)(7)(iii) and (iv). Exemption from disclosure for this letter and the attached affidavit is therefore requested.

Legal argument and matters of law discussed in this affidavit were prepared with the assistance of legal counsel.

Very truly yours,



Donald P. Dise
Vice President Quality Assurance

DPD/GDW/gma
Attachments

R-205

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

Niagara Mohawk Power Corporation)

Docket No. 50-410

AFFIDAVIT IN SUPPORT OF APPLICATION
FOR WITHHOLDING OF INFORMATION FROM
PUBLIC DISCLOSURE

I, Donald P. Dise, being duly sworn depose and say that I am Vice President, Quality Assurance for Niagara Mohawk Power Corporation (NMPC), that I have been specifically delegated the function of reviewing the information sought to be withheld, that I am authorized to apply for its withholding on behalf of NMPC, and that on information and belief:

1) On March 24, 1983, Region 1 of the Nuclear Regulatory Commission sent to Niagara Mohawk Power Corporation, Attn. Mr. Gerald K. Rhode, a letter and accompanying enclosures, Subject: Investigation No. 50-410/1-82-078, signed by Mr. Edward G. Guenman for Richard W. Starostecki, Director, Division of Project and Resident Programs. This letter forwarded written statements obtained as the result of interviews conducted during the course of the investigation. Certain portions of the written statements were expunged from the documents by the Commission

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for the apparent purpose of protecting the identity and privacy of the individuals involved in the investigation. NMPC requests that additional portions of the statements that disclose information which might reasonably lead to an ascertainment of the identities of individuals involved in the investigation be withheld from public disclosure. For purposes of clarity, those portions of the statements for which withholding from disclosure has been requested have been underlined in red. Copies of the appropriately marked statements are attached as exhibit A. NMPC requests that the indicated portions of the statements be withheld from public disclosure for the following reasons:

The identities of the individuals interviewed and the identities of the individuals named in the interviews are exempt from disclosure under the provisions of the Freedom of Information Act by 10 CFR § 2.790(a)(7)(iii)¹ in that publication will constitute an unwarranted invasion of personal privacy. This exemption from disclosure applies not only to the names of the individuals but also to information that could plausibly reveal their identities. Pacheco v. Federal Bureau of Investigation, 470 F.Supp. 1091, 1098 (D.C. Puerto Rico, 1979),

1. 10 CFR § 2.790(a)(7)(iii) exempts from disclosure under the FOIA "[I]nvestigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would . . . constitute an unwarranted invasion of privacy . . ."

public benefit derived from disclosure, release of information that could reasonably lead to the identification of these individuals would be arbitrary, capricious and an abuse of discretion.

I have read the foregoing document entitled "AFFIDAVIT IN SUPPORT OF APPLICATION FOR WITHHOLDING OF INFORMATION" and I know the contents thereof; the same is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief and as to these matters I believe it to be true; and except as to matters therein stated as matters of law or legal argument, which matters have been provided by legal counsel, and as to those matters, I believe them to be true.

Donald P. Dize

Donald P. Dize
Vice President Quality Assurance
Niagara Mohawk Power Corporation

Subscribed and sworn before
me this 22nd day of April, 1983

Cail M. Ahern

CAIL M. AHERN
Notary Public in the State of New York
Qualified in Chautauque County
My Commission Expires March 30, 1985