



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

PDR-016
LPDR

January 10, 1983

Docket No. 50-358

Mr. Tom Devine
Mr. Jay Rosenthal
Government Accountability Project
Institute for Policy Studies
1901 Que Street, NW
Washington, DC 20009

IN RESPONSE REFER
TO FOIA-82-206

Dear Messrs. Devine and Rosenthal:

This is in further response to your letter dated April 20, 1982, in which you requested, pursuant to the Freedom of Information Act (FOIA), documents concerning IE Report No. 50-358 01-13.

The documents listed on Appendix A are being placed in the NRC Public Document Room (PDR), 1717 H Street, NW, Washington, DC. The documents listed on Appendix B are being withheld in whole or in part as explained herein. Segregable nonexempt portions are being placed in the PDR. Document 9 on Appendix B is being withheld in its entirety pursuant to the exemption cited. The only segregable factual portions (the originator, the addressee, the date and the subject line) are listed on the appendix. Portions of documents 1 through 8 and 10 through 12 on Appendix B are being withheld pursuant to the exemptions cited.

Attached to document 3 on Appendix B were copies of five interview statements. One statement, the Schwiers interview, was released by NRC, as an attachment to an I&E report on Zimmer. Since you have obtained and published a copy of the Gittings interview, the NRC has chosen at this time to make that particular interview officially available to the public. However, we are continuing to withhold three other interviews. Furthermore, in the event you possess the remaining interviews, we request that you refrain from publishing them during the pendency of the ongoing Zimmer investigations. You should know that copies were also provided to the NRC oversight committee, the House Subcommittee on Energy and the Environment. NRC requested that the Subcommittee maintain the interviews in confidence so as not to interfere with the ongoing investigation of construction deficiencies at Zimmer.

Information withheld pursuant to exemption (3) consists of unclassified safeguards information. The statutory authority for withholding this information is found in Section 147 of the Atomic Energy Act (42 U.S.C. 2167). This information is being withheld from public disclosure pursuant to exemption (3) of the Freedom of Information Act (5 U.S.C. 552(b)(3)) and 10 CFR 9.5(a)(3) of the Commission's regulations.

Information withheld pursuant to exemption (5) is contained in predecisional interagency or intra-agency memoranda which contain sensitive advice about an ongoing investigation, the release of which would inhibit the exchange of views on such matters between agencies of the Federal government and within NRC. This information is 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.

Information being withheld pursuant to exemption (6) consists of names and other identifying information of persons, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This information is being withheld from public disclosure pursuant to exemption (6) of the Freedom of Information Act (5 U.S.C. 552(b)(6)) and 10 CFR 9.5(a)(6) of the Commission's regulations.

Information being withheld pursuant to exemptions (7)(A) and (C) is contained in records compiled for law enforcement purposes, the release of which would interfere with a continuing investigation by alerting the subject of the investigation to the NRC investigator's concerns and by inhibiting individuals from providing information to investigators, and would also constitute an unwarranted invasion of personal privacy. This information is being withheld from public disclosure pursuant to exemptions (7)(A) and (C) of the Freedom of Information Act (5 U.S.C. 552(b)(7)(A) and (C)) and 10 CFR 9.5(a)(7)(i) & (iii) of the Commission's regulations.

Mr. Albert Puglia, Senior Criminal Investigator, Office of Inspector and Auditor, has maintained a box of material by the side of his desk which contains duplicates of documents which have already been provided to you and a collection of his own personal notes, made for his own purposes during the course of his investigative work. Those documents not already released are not agency records and are not subject to the FOIA.

The review of three documents (approximately 100 pages) which Sargent & Lundy Engineers and Pullman Power Products Corporation claim contain confidential business (proprietary) information, and one document (several hundred pages) which consists of McCarten's notes (primarily handwritten) is ongoing. We will advise you of our disclosure determinations at a later date.

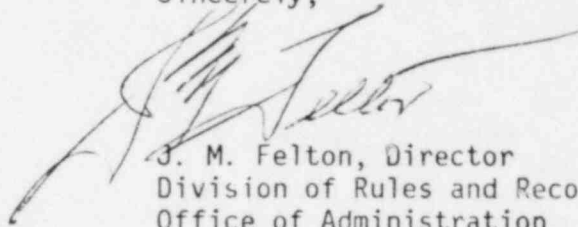
Pursuant to 10 CFR 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure and that its production or disclosure is contrary to the public interest. The person responsible for this denial is Mr. James A. Fitzgerald, Acting Director, Office of Investigations.

Messrs. Devine and Rosenthal

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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", written in dark ink. The signature is fluid and extends to the right.

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

Enclosures: As stated

Appendix A

<u>Document Description</u>	<u>Date</u>	<u>Pages</u>
1. Memo to file from D. H. Gamble re: Zimmer Plant - Allegations of Deficient Construction	6/15/81	3
2. Memo for Chairman Palladino from J. J. Cummings re: Zimmer (Attachment referred to Executive Office for United States Attorneys)	6/17/82	1
3. Letter to A. M. Tracey from J. J. Cummings re: Draft Report of Investigation Completed by NRC's Office of Inspection and Enforcement (Enclosure not found with file copy)	8/18/81	1
4. Letter to A. M. Tracey from J. J. Cummings re: List of exhibits (Enclosure not found with file copy)	8/26/81	1
5. Letter to A. M. Tracey from J. J. Cummings re: IE Report of Investigation (Enclosures not found with file copy)	12/3/81	1
6. Memo to file from J. R. Sinclair re: Region III Computer Listing of Zimmer Allegations (Enclosure not found with file copy)	5/5/82	1
7. Note to the Commission from J. J. Cummings re: May 14, 1982 letter to Congressman Ottinger from Chairman Palladino (Enclosure 1 referred to Executive Office for United States Attorneys; Enclosure 2 already in the PDR)	6/4/82	1
8. Memo for Chairman Palladino, et al., from C. Kammerer re: Request for Interview Regarding Zimmer (See B-10 for attachment)	7/12/82	1

Appendix B

<u>Document Description</u>	<u>Date</u>	<u>Pages</u>	<u>Exemptions</u>
1. Letter from P. S. Gittings to W. W. Schwiers re: NRC Audit Report 50-358/8-14-80	8/15/80	16	6
2. Two allegations and responses prepared by T. Madedo and Gerry	Undated	2	3
3. Memo to B. Davis from J. J. Cummings re: Zimmer Interviews and Corporate Correspondence (Interviews of three individuals withheld)	11/18/81	73	7(A)
4. Memo to File from J. R. Sinclair re: Meeting with Representatives of U.S. Attorney, Cincinnati, Ohio	5/5/81	3	7(A)
5. Letter to an individual from A. A. Schnebelen re: Handwritten Statement and Typed Transcript	5/27/81	12	7(A) & (C)
6. Letter to P. J. Hanley from J. J. Cummings re: Criminal/Civil Investigation (Enclosure referred to Department of Justice - DOJ Responded to you on 10/13/82; Letter from Hanley has been referred to Executive Office for United States Attorneys)	9/17/81	2	5
7. Note to J. Blaha from J. R. Sinclair re: Interview at Zimmer Site (See B-3 for attachment 1; other attachments neither identified nor found with file copy)	11/9/81	1	7(A) & (C)
8. NRC Form 218 "Telephone or Verbal Conversation Record" between P. Gwynn and D. Gamble re: Zimmer Plant - Allegations Regarding Deficient Construction	7/10/81	1	7(A)
9. Memo to A. Gauthier, OIA, from J. J. Cummings re: Zimmer	6/23/82	1	5
10. Memo for B. Davis from J. J. Cummings re: Zimmer Nuclear Plant	6/24/82	2	7(A) & (C)

Appendix B

<u>Document Description</u>	<u>Date</u>	<u>Pages</u>	<u>Exemptions</u>
11. Note to A. Schnebelen from D. Gamble re: Zimmer Investigation	5/29/81	1	7(A)
12. Memo for File from D. H. Gamble and A. Puglia re: Zimmer; Suspected Recent Etching of Heat Numbers on Pipes	6/19/81	16	7(A) & (C)
13. Heat Numbers for Weld Rod and Piping	Undated	1	7(A)

GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies

1901 Que Street, N.W., Washington, D.C. 20009

(202) 234 9382

April 20, 1982

Director
Office of Administration
Nuclear Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-82-206

Rec'd 4-22-82

To Whom It May Concern:

Pursuant to the Freedom of Information Act ("FOIA"), 5 USC §552, we request the investigative file, including all drafts, memoranda, statements, affidavits, computer printouts, notes, telephone logs, diaries, or any other information connected with NRC IE Report No. 50-358/81-13. The documents may be at Region III Nuclear Regulatory Commission ("NRC") Headquarters, the NRC Office of Inspector and Auditor ("OIA") headquarters, or retained in the personal or office files of IE and OIA investigators who worked on the Zimmer case.

Although the Zimmer investigation is ongoing, Report No. 80-358/81-13 is for all intents and purposes a finished agency product which should be open for public inspection, notwithstanding exemption #5 of the FOIA. A document that is pre-decisional at the time of preparation may lose exempt status if "adopted formally or informally, as the agency position on an issue or is used by the agency in its dealings with the public." Coastal States v. Dept. of Energy 617 F. 2d. 854,866 (D.C. Cir. 1980). Report No. 80-358/81-13 was used by the NRC as a basis for imposition of a \$200,000 civil penalty against Cincinnati Gas & Electric ("CG&E"), as well as for the agency's decision to delegate to CG&E the responsibility of conducting an in-house reinspection entitled "The Quality Confirmation Program." If the NRC can use the report to make this final agency policy commitment in its dealings with the public and the utility, then clearly the report must be post-decisional in nature.

On March 18, 1982, Mr. Bert Davis, Region III Deputy Director, told me that priorities have yet to be established for Part II of the investigation. As a result, it is unfair to characterize the ongoing investigation as a mere continuation of work on the previous issues.

In order to comply with the provisions of the Privacy Act, we would consent to deleting the names of any parties whose names are mentioned in the appeals and whose right to privacy would be threatened through public disclosure.

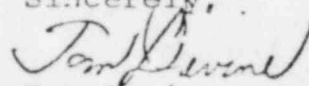
We are requesting this information as part of a monitoring project on the adequacy of the Commission's efforts to protect public safety at nuclear power plants. As a result, we request that fees be waived because "furnishing the information can be considered as primarily benefitting the general public." 5USC § 552 (a)(4)(A).

Director, Office of Administration
Nuclear Regulatory Commission
April 20, 1982
Page Two

For any documents or portions of documents that you deny due to a specific exemption, please provide any index itemizing and describing documents or portions of documents withheld. The index should provide a detailed justification of your grounds for claiming such exemption, explaining why each exemption is relevant to the document or portion withheld. This index is required under Vaughn v. Rosen (I), 484 F.2d 820 (D.C.Cir. 1973), cert. denied, 415 U.S. 977 (1974).

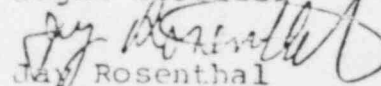
We look forward to your reply within ten working days.

Sincerely,



Tom Devine

Legal Director



Jay Rosenthal

Staff Associate

TD/jr