

# EXXON NUCLEAR COMPANY, INC.

P. O. Box 130, 2101 Horn Rapids Road, Richland, WA 99352 Telephone (509) 375-8610

R. W. McCULLUGH  
Vice President, Engineering and Production

April 27, 1983

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

Re: FOIA-83-9

Dear Mr. Felton:

With respect to the referenced FOIA request, Exxon Nuclear Company, Inc. was copied on your letter of April 1, 1983 to Mr. L. E. Wheeler of Union Carbide Corporation and to Wayne B. Harbarger of Goodyear Atomic Corporation seeking information justifying continued withholding of DOE/NRC Form 741 from disclosure. Exxon Nuclear requested and the NRC granted until May 10, 1983 for the submission of Exxon Nuclear's response, which follows:

Exxon Nuclear believes that Form 741 contains commercially sensitive business (proprietary) information. This information should not be disclosed for the following reasons:

1. Exxon Nuclear consistently has transmitted information contained in Form 741 to its customers and to the government with the express understanding that the information would be maintained in confidence. Exxon Nuclear's contracts with its customers explicitly provide for the proprietary treatment of such information in those contracts. Information supplied upon government request similar to that contained in Form 741 is supplied to the government with the express understanding that it is to be treated as confidential pursuant to 10 CFR 2.790. Similar data provided in response to requests for uranium price survey information by the Department of Energy and its predecessors have been supplied with the stated understanding that the data would be maintained in confidence. When Exxon Nuclear has been involved in litigation involving discovery of such information, that information has been supplied under protective order limiting its disclosure.
2. To the best of Exxon Nuclear's knowledge, such information is not currently available in public sources, primarily because of the precautions just outlined which Exxon Nuclear takes to prevent disclosure of this information.

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3. Exxon Nuclear consistently treats the information contained in Form 741 as proprietary because it includes enrichments, quantities of uranium and other sensitive information regarding Exxon Nuclear's fuel design, its customers and suppliers, which, if known by Exxon Nuclear's competitors, could be used by them to establish features of Exxon Nuclear's fuel design for specific customers.
4. This information in the hands of competitors would enable them to duplicate features of Exxon Nuclear's design, thereby effectively destroying competitive commercial advantages in technology developed with great effort and expense by Exxon Nuclear. The confidentiality of such information has been recognized in the past by the NRC, and has resulted in proprietary treatment being afforded to similar information contained in reports of inspections of Exxon Nuclear fabrication facilities.

A primary purpose of Form 741 is to support licensee and government programs of material control and accountability. 10 CFR 2.790(d)(1) specifies that:

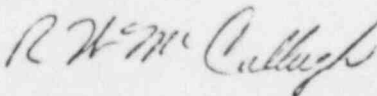
"The following information shall be deemed to be commercial or financial information within the meaning of §9.5(a)(4) of this chapter and shall be subject to disclosure only in accordance with the provisions of §9.12 of this chapter;

- (1) Correspondence and reports to or from the NRC which contain information or records concerning a licensee's or applicant's physical protection or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data."

Exxon Nuclear has assumed and believes that the kind of information contained in Form 741 is subject to the protection of the provision quoted and therefore that Form 741 is automatically exempt from public disclosure. If there are additional actions that you believe should be taken to assure that such information will continue to be withheld from public disclosure, we would appreciate such advice.

Exxon Nuclear appreciates the opportunity to submit this statement. In the event that a decision is made to disclose information contained in Form 741, Exxon Nuclear would appreciate receiving written notice 30 days prior to any planned disclosure.

Sincerely,



R. W. McCullugh

clc

5/3 Talked to Felton - If I think okay he will be  
has no problem. Just be sure to talk to  
Ed re. what is needed in future on 741 in  
general

5/4<sup>5</sup> Talked to Donnie - If I think okay he has  
no problem either.

TC Sparks - We discussed contents of letters  
and he agrees with statements made.

Left message for Ed to call