



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

MAY 22 1984

Ms. Nina Bell
Nuclear Safety Analyst
Nuclear Information and Resource Service
1346 Connecticut Avenue, NW
4th Floor
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-84-148

Dear Ms. Bell:

This is a fourth partial response to your letter dated March 1, 1984, in which you requested, pursuant to the Freedom of Information Act, six categories of information pertaining to the application of the "Sholly Amendment" to the consideration of the Three Mile Island-1 Steam Generator operating license amendment.

The documents listed on Appendix A are already available in the PDR. You may request copies of these documents from the PDR as indicated on the appendix.

The document, memo from Zerbe to Commission dated December 2, 1983, as listed on Appendix B, is being withheld in its entirety for the reason cited below.

The document contains predecisional advice, recommendations, and analysis of the Director, Office of Policy Evaluation, to the Commission concerning the Staff's proposal on a "no significant hazard consideration determination" regarding the TMI steam generator repair program. The factual contents in this document are already in the public record in SECY-83-474 which is available in the Public Document Room and release of the factual portions in this document would reveal a predecisional evaluation of which facts are important. See Russell v. Department of the Air Force, 2 GDS 81.123 (D.D.C. 1981), aff'd, 682 F.2d 1045 (D.C. Cir. 1982). Therefore, the document does not contain any reasonably factual portions. Release of the document would tend to inhibit the open and frank exchange of ideas essential to the deliberative process, therefore, the document is exempt from mandatory disclosure pursuant to Exemption 5 of the Freedom of Information Act (5 U.S.C. 552(b)(5)), and the Commission's regulations, 10 CFR 9.5(a)(5).

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Ms. Nina Bell

-2-

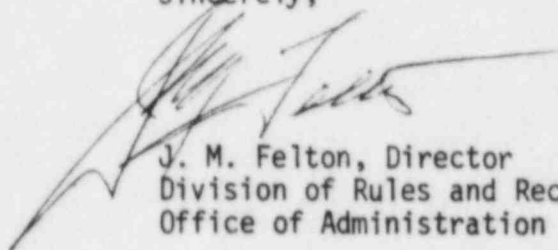
MAY 22 1984

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. John E. Zerbe, Director, Office of Policy Evaluation.

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."

The review of additional documents subject to your request has not been completed. As soon as the review is completed, we will advise you of our disclosure determination.

Sincerely,

A handwritten signature in dark ink, 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

Enclosures: As stated

APPENDIX A

DOCUMENTS ALREADY IN THE PDR

1. July 8, 1983, letter to N. Palladino from Alice Herman, re: Three Mile Island Unit 1 Restart - Accession No. 8307130204.
2. Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289, available in collection entitled "Nuclear Regulatory Commission Issuances" Volume #18 NRC Page No. 1266 (November 29, 1983) (available in PDR).
3. February 22, 1983, transcript entitled "Discussion of SECY-83-16A Regulations to Implement Public Law 97-414, Accession No. 8303040204 PDR/10 CFR/PT 9.7.
4. January 13, 1983, SECY-83-16 from W. Dircks, to the Commission, Subject: Regulations to Implement Legislation on (1) Temporary Operating Licensing Authority and (2) No Significant Hazards Consideration (the "Sholly Amendment"), Contact: Thomas Dorian, ELD.
5. February 1, 1983, SECY-83-16A from W. Dircks to the Commission, Subject: Revised Regulations to Implement Legislation on (1) Temporary Operating Licensing Authority and (2) No Significant Hazards Consideration (the "Sholly Amendment") SECY-83-16, Contact: Thomas Dorian, ELD.
6. March 4, 1983, SECY-83-16B from W. Dircks to the Commission, Subject: Revised Regulations to Implement Legislation on (1) Temporary Operating Licensing Authority and (2) No Significant Hazards Consideration (the "Sholly Amendment") SECY-83-16 and SECY-83-16A, Contact: Thomas Dorian, ELD.

APPENDIX B

DOCUMENT WITHHELD - EXEMPTION 5

1. 12/2/83 Memo for Chairman Palladino et. al. from J. Zerbe re:
TMI STEAM GENERATOR REPAIR PROGRAM, NO SIGNIFICANT HAZARD
CONSIDERATION DETERMINATION (SECY-83-474)



Nuclear Information and Resource Service

1500 Clarendon Blvd., N.W., Washington, D.C. 20044-2001

March 1, 1984

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

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-84-148
Rec'd 3-2-84

FREEDOM OF INFORMATION ACT REQUEST

To whom it may concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. 522, as amended, the Nuclear Information and Resource Service requests the following documents regarding the application of the "Sholly Amendment" to the consideration of the Three Mile Island-1 Steam Generator operating license amendment. Please consider "documents" to include reports, studies, test results, correspondence, memoranda, meeting notes, meeting minutes, working papers, graphs, charts, diagrams, notes and summaries of conversations and interviews, computer records, and any other forms of written communication, including internal NRC Staff memoranda. The documents are specifically requested from, but not limited to, the following offices of the NRC: Office of the Executive Legal Director (OELD), Office of the General Counsel (OGC), and Office of Nuclear Reactor Regulation (NRR). In your response, please identify which documents correspond to which requests set out below.

Pursuant to this request, please provide all documents prepared or utilized by, in the possession of, or routed through the NRC related to:

1. The impact of the application of the "Sholly Amendment" no-significant-hazards-consideration determination on the TMI-1 Steam Generator operating license amendment to other operating license amendments currently under consideration by the Staff;
2. The impact of the application of the "Sholly Amendment" no-significant-hazards-consideration determination on the TMI-1 Steam Generator operating license amendment to other operating license amendments which have received no significant hazards consideration determinations by the NRC Staff;

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3. The implications of the application of the "Sholly Amendment" no-significant-hazards-consideration determination on the TMI-1 Steam Generator operating license amendment to any or all operating license amendments;

4. Analyses of the "Sholly Amendment" and interpretations of its application to operating license amendments;

5. Instructions to the staff for making "Sholly Amendment" proposed and final no-significant-hazards-consideration determinations; and

6. Any other documents which could be construed to be directives, analyses or interpretations of NRC's current "working law" with respect to "Sholly Amendment" no-significant-hazards-consideration determinations.

The documents requested must be made available under the Freedom of Information Act and are not exempt under Exemption 5. The Supreme Court recognized a distinction between pre-decisional documents, which are exempted, and post-decisional documents which are not exempted. NLRB v. Sears, Roebuck & Co., 421 U.S. at 151-53. The Court noted that it would be reluctant to consider "statements of policy and interpretations which have been adopted by the agency" and "instructions to staff that affect a member of the public" to be exempt under Exemption 5. Sears, supra. This is consistent with numerous court interpretations that the FOIA's Exemption 5 does not exist to protect an agency's "secret law." The statements made by the Office of General Counsel at recent Commission meetings demonstrate clearly that the counsel to the Commissioners believes that such a secret law is in effect. This law is currently governing decisions made by the staff of the agency in interpretation of the Sholly amendment and its implementing regulations. Moreover, it has the effect of affecting many members of the public, namely those who may be deprived of representation of their interests in a prior hearing on an operating license amendment. When such a hearing is being denied in favor of merely a right to a post hearing, it is not on the basis of existing law as written, but on the "secret" or "working" law interpretation presently being utilized by the NRC Staff.

In our opinion, it is appropriate in this case for you to waive copying and search charges, pursuant to 5 U.S.C. 552(a)(4)(A) "because furnishing the information can be considered as primarily benefiting the general public." The Nuclear Information and Resource Service is a non-profit organization serving local organizations concerned about

- 3 -

nuclear power and providing information to the general public.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nina Bell".

Nina Bell
Nuclear Safety Analyst

cc: File