



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

AUG 02 1991

John C. Person, Esquire  
Newman and Holtzinger, P.C.  
1615 L Street, NW  
Washington, DC 20036

IN RESPONSE REFER  
TO FOIA-91-A-3  
(FOIA-90-270)

Dear Mr. Person:

I am writing in response to your letter dated January 14, 1991, in which you appealed Mr. Donnie H. Grimsley's response dated September 20, 1990, regarding your initial request number FOIA-90-270. A separate response will be made to your appeal of records denied under number FOIA-90-269. Mr. Grimsley's partial response denied in whole or in part records subject to your Freedom of Information Act (FOIA) request for copies of records related to 52 specified categories of records pertaining to the design and construction of the Nine Mile Point 2 nuclear power plant. You specifically appealed the denial of records numbered G-2, H-1, and H-2 of Mr. Grimsley's response dated September 20, 1990. You also appealed the adequacy of search to locate records responsive to your request.

Acting on your appeal, I have carefully reviewed the record in this case and have determined that some additional information can now be made publicly available. Your appeal is, therefore, partially granted and partially denied.

Also, in response to your concern about an overly restrictive definition of agency records, employees have searched their files again to be certain that all responsive agency records were considered for release, wherever they were maintained. Two additional records identified on the enclosed Appendix A were found and are enclosed. They are responsive to categories 46 and 52 of your initial request. No additional records were located that are responsive to categories 1, 2, 5, 10, 11, 14, 15, 17, 18, 21, 22, 28, 31, 33, 34, 35, 36, 37, 39, 42, 43, 44, 45, 47, 48, 49, 50 and 51. Only the final Systematic Assessment of Licensee Performance reports exist for categories 21, 34, 36, 45, 48 and 50 which you have indicated you already possess.

Certain additional portions of the previously partially withheld records identified at number 1 on the enclosed Appendix B and portions of the previously wholly denied records identified at numbers 2 and 3 on Appendix B can now be made publicly available and are enclosed. The remaining denied information will continue to be withheld from public disclosure pursuant to Exemption (5) of the FOIA (5 U.S.C. 552(b)(5)) and 10 CFR 9.17(a)(5) of the Commission's regulations. The predecisional information that continues to be withheld pursuant to Exemption (5) consists of preliminary advice, opinions and recommendations of the staff. Release of this information would tend to inhibit the open and frank expression of ideas essential to the deliberative process.

John C. Person, Esquire

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This is a final agency decision on this appeal. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B)), judicial review of this decision is available in a district court of the United States in the district in which you reside or have your principal place of business or in the District of Columbia.

Sincerely,



Hugh L. Thompson, Jr.  
Deputy Executive Director for  
Nuclear Materials Safety, Safeguards  
and Operations Support

Enclosures:

1. Appendices A and B
2. Released records

Re: FOIA-91-A-3  
(FOIA-90-270)

APPENDIX A  
RELEASED RECORDS

1. 10/30/84 Notice of Significant Licensee Meeting (1 page) ITEM 46
2. 1/21/86 Letter from S. D. Ebner to B. G. Hooten, re: Inspection No. 50-410/85-43, with enclosures (27 pages) ITEM 52

APPENDIX B

INFORMATION RELEASED AND  
PORTIONS CONTINUED TO BE WITHHELD

1. 2/23/83 Memo from Region I to IE, subject: Niagara Mohawk Power Corporation (Nine Mile Point 2) - Proposed Civil Penalty (1 page) - additional information released. Portions continued to be withheld - Exemption 5. Attachment: Draft letter and draft Notice of Violation and Proposed Imposition of Civil Penalty (7 pages) released in part - portions continued to be withheld - Exemption 5.
2. 8/4/83 Memo from Daniel Holody to Jane Axelrad, subject: Niagara Mohawk Power Corporation (Nine Mile Point 2) - Proposed Order Imposing a Civil Penalty, with attachments: draft letter and Order Imposing a Civil Monetary Penalty, and Appendix - Evaluation and Conclusions (10 pages) - released in part - portions continued to be withheld - Exemption 5.
3. 12/14/83 Memo from Daniel Holody to Jane Axelrad, subject: Niagara Mohawk Power Corporation (Nine Mile Point 1) Proposed "Notice of Violation and Proposed Imposition of Civil Penalty," with attachment: Draft Proposed Notice of Violation and Proposed Imposition of Civil Penalty (8 pages) - released in part - portions continued to be withheld - Exemption 5.