



7/2005

# RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

ELGMLD

|                                  |  |
|----------------------------------|--|
| NRC FOIA REQUEST NUMBER(S)       |  |
| <b>FOIA — 95-262</b>             |  |
| RESPONSE TYPE                    |  |
| FINAL                            | <input checked="" type="checkbox"/> PARTIAL #4 |
| DATE                             | NOV 02 1995                                    |
| DOCKET NUMBER(S) (if applicable) |  |

REQUESTER  
**Scott J. Patterson**

## PART I.—AGENCY RECORDS RELEASED OR NOT LOCATED (See checked boxes)

- No agency records subject to the request have been located.
- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- Agency records subject to the request that are identified in Appendix(es) E are already available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
- Agency records subject to the request that are identified in Appendix(es) F are being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.
- The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.
- Agency records subject to the request that are identified in Appendix(es) \_\_\_\_\_ may be inspected and copied at the NRC Local Public Document Room identified in the Comments section.
- Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
- Agency records subject to the request are enclosed.
- Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.
- Fees**
- You will be billed by the NRC for fees totaling \$ \_\_\_\_\_.
- You will receive a refund from the NRC in the amount of \$ \_\_\_\_\_.
- In view of NRC's response to this request, no further action is being taken on appeal letter dated \_\_\_\_\_, No. \_\_\_\_\_.

## PART II. A—INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

- Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC in a folder under this FOIA number.

### COMMENTS

The NRC is continuing to review records subject to your request. We will notify you upon completion of the review.

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

9511060154 951102  
PDR FOIA  
PATTERS95-262 PDR

**RESPONSE TO FREEDOM OF  
INFORMATION ACT (FOIA) REQUEST  
(CONTINUATION)**

FOIA NUMBER(S)

**FOIA — 95-262**

DATE

**NOV 02 1995**

**PART II. B — APPLICABLE EXEMPTIONS**

Records subject to the request that are described in the enclosed Appendix(es) G are being withheld in their entirety or in part under the Exemption No.(s) and for the reason(s) given below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.17(a) of NRC regulations.

1. The withheld information is properly classified pursuant to Executive Order. (Exemption 1)

2. The withheld information relates solely to the internal personnel rules and procedures of NRC. (Exemption 2)

3. The withheld information is specifically exempted from public disclosure by statute indicated. (Exemption 3)

Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).

Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).

4. The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated. (Exemption 4)

The information is considered to be confidential business (proprietary) information.

The information is considered to be proprietary information pursuant to 10 CFR 2.790(d)(1).

The information was submitted and received in confidence pursuant to 10 CFR 2.790(d)(2).

5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. (Exemption 5). Applicable Privilege:

Deliberative Process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.

Attorney work product privilege. (Documents prepared by an attorney in contemplation of litigation.)

Attorney-client privilege. (Confidential communications between an attorney and his/her client.)

6. The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy. (Exemption 6)

7. The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated. (Exemption 7)

Disclosure could reasonably be expected to interfere with an enforcement proceeding because it could reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators. (Exemption 7 (A))

Disclosure would constitute an unwarranted invasion of personal privacy. (Exemption 7 (C))

The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources. (Exemption 7 (D))

OTHER

**PART II. C — DENYING OFFICIALS**

Pursuant to 10 CFR 9.25(b) and/or 9.25(c) of the U.S. Nuclear Regulatory Commission 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 persons responsible for the denial are those officials identified below as denying officials and the Director, Division of Freedom of Information and Publications Services, Office of Administration, for any denials that may be appealed to the Executive Director for Operations (EDO).

| DENYING OFFICIAL | TITLE/OFFICE                    | RECORDS DENIED | APPELLATE OFFICIAL |           |    |
|------------------|---------------------------------|----------------|--------------------|-----------|----|
|                  |                                 |                | EDO                | SECRETARY | IG |
| James Lieberman  | Director, Office of Enforcement | Appendix G     | X                  |           |    |
|                  |                                 |                |                    |           |    |
|                  |                                 |                |                    |           |    |
|                  |                                 |                |                    |           |    |
|                  |                                 |                |                    |           |    |
|                  |                                 |                |                    |           |    |

**PART II. D — APPEAL RIGHTS**

The denial by each denying official identified in Part II.C may be appealed to the Appellate Official identified there. Any such appeal must be made in writing within 30 days of receipt of this response. Appeals must be addressed, as appropriate, to the Executive Director for Operations, to the Secretary of the Commission, or to the Inspector General, 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."

## APPENDIX E

## Records Available in the PDR

| <u>Number</u> | <u>Date</u> | <u>Accession No.</u> | <u>DESCRIPTION</u>  |
|---------------|-------------|----------------------|---|
| 1.            | 11/03/92    | 9211060010           | Letter from A. Beach to G. Horn, forwarding Inspection Report 50-298/92-019   |
| 2.            | 12/21/92    | 9212290039           | Letter from A. Beach to G. Horn, that acknowledges Nebraska Public Power District's (NPPD) 12/01/92 letter (the NPPD's 12/01/92 Letter is Attached, Accession No. 9212070209) |
| 3.            | 02/26/93    | 9303030007           | Letter from A. Beach to G. Horn, forwarding Inspection Report 50-298/93-006   |
| 4.            | 03/25/93    | 9304070134           | Enforcement Notification 93-24 that describes an action taken against Cooper Nuclear Station (EA 93-030)  |
| 5.            | 03/30/93    | 9304050114           | Letter from J. Sniezek to G. Horn, that proposed civil penalties against Nebraska Public Power District Re: EA 93-030   |
| 6.            | 04/29/93    | 9305040369           | Letter from G. Horn to J. Lieberman, that replies to an NOV (EA 93-030)   |
| 7.            | 06/23/93    | 9306250045           | Letter from J. Sniezek to G. Horn, that imposes civil penalties against Nebraska Public Power District Re: EA 93-030  |
| 8.            | 06/23/93    | 9306250070           | Enforcement Notification 93-24A that describes an action taken against Cooper Nuclear Station (EA 93-030)   |
| 9.            | 07/20/93    | 9307290159           | Letter from G. Horn to J. Lieberman, that pays civil penalties imposed by EA 93-030   |
| 10.           | 03/15/94    | 9403230014           | Letter from A. Beach to G. Horn, forwarding Inspection Report 50-298/93-028   |
| 11.           | 05/20/94    | 9405270057           | Letter from A. Beach to G. Horn, forwarding Inspection Report 50-298/93-202   |

## APPENDIX E

|     |           |            |   |
|-----|-----------|------------|---|
| 12. | 09/26/94  | 9410040006 | Letter from A. Beach to G. Horn, that discusses Nebraska Public Power District's enforcement conference with the NRC Re: EAs 94-164, 94-165, and 94-166                         |
| 13. | 12/01/94  | 9412050008 | Letter from J. Gray to R. Green, Acting General Counsel for Nebraska Public Power District, providing OI transcripts for three individuals issued DFIs (EA 94-177) <sup>1</sup> |
| 14. | 12/12/94  | 9412140022 | Letter from J. Milhoan to G. Horn, that transmits an NOV to Nebraska Public Power District for action taken for violations identified in EAs 94-164, 94-165, and 94-166         |
| 15. | 12/12/94  | 9412220163 | Enforcement Notification 94-130 that describes an action taken against Cooper Nuclear Station (EAs 94-164, 94-165, and 94-166)  |
| 16. | 01/18/95  | 9501260384 | Letter from G. Horn to J. Lieberman, that replies to NOVs (EAs 94-164, 94-165, and 94-166)  |
| 17. | 02/13/95  | 9503030226 | Enforcement Notification 95-12 that describes an action taken against Cooper Nuclear Station (EA 95-012)  |
| 18. | 02, 21/95 | 9502270027 | Letter from L. Callan to G. Horn, that transmits a Notice of Violation (NOV) to Nebraska Public Power District for action taken for violations identified in EA 95-012          |
| 19. | 03/16/95  | 9503220113 | Letter from G. Horn to J. Lieberman, that replies to an NOV (EAs 94-164, 94-165, and 94-166)  |
| 20. | 03/23/95  | 9505050069 | Letter from G. Horn to J. Lieberman, that replies to an NOV (EA 95-012)   |
| 21. | 04/04/95  | 9504110014 | Letter from A. Beach to G. Horn, that acknowledges Nebraska Public Power District's 03/16/95 letter   |

APPENDIX E

|     |          |            |   |
|-----|----------|------------|---|
| 22. | 04/28/95 | 9505050063 | Letter from A. Beach to G. Horn,<br>that acknowledges Nebraska Public<br>Power District's response to an NOV<br>(EAs 94-177 and 95-012) |
|-----|----------|------------|---|

## APPENDIX F

## DOCUMENTS BEING PLACED IN THE PDR

| NUMBER | DATE     | DESCRIPTION  |
|--------|----------|--|
| 1.     | 06/07/93 | Memorandum from Partlow to Lieberman (1 page)                                |
| 2.     | 06/23/93 | Memorandum from Lieberman to Lesar (1 page)                                  |
| 3.     | 07/28/93 | Invoice with attached copy of check (2 pages)                                |
| 4.     | 08/05/93 | Letter from Gray to Horn (1 page)  |
| 5.     | 10/25/94 | Note from Gray to EA 94-177 File (1 page)                                    |
| 6.     | 11/10/94 | Letter from Milhoane to Horn with attached Demand for Information (15 pages) |
| 7.     | 02/16/95 | Letter from Gray to Horn (2 pages)   |

## APPENDIX G

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY

| <u>NUMBER</u> | <u>DATE</u> | <u>EXEMPTION</u> | <u>DESCRIPTION</u>   |
|---------------|-------------|------------------|--|
| 1.            | 03/18/93    | 5                | Note From J. McGurren to D. Spaulding<br>Re: Proposed Enforcement Action<br>Involving EA 93-030 (4 Pages)                        |
| 2.            | 03/24/93    | 5                | E-Mail Message from G. Sanborn Re:<br>Proposed Enforcement Action Involving<br>EA 93-030 (1 Page)                                |
| 3.            | 11/08/94    | 5                | Note from Karla to Joe Re: Proposed<br>Enforcement Action Involving EAs 94-<br>164, -165, -166 (22 pages)                        |
| 4.            | 11/10/94    | 5                | E-Mail Message from G. Sanborn to M.<br>Satorius Re: Proposed Enforcement<br>Action Involving EAs 94-164, -165,<br>-166 (1 Page) |
| 5.            | 11/16/94    | 5                | Note from J. Longo to M. Satorius Re:<br>Proposed Enforcement Action Involving<br>EAs 94-164, -165, -166 (23 Pages)              |
| 6.            | 02/07/95    | 5                | Note From J. Longo to J. Beall Re:<br>Proposed Enforcement Action Involving<br>EA 95-012 (8 Pages)                               |
| 7.            | 02/08/95    | 5                | Note from R. Zimmerman to J.<br>Lieberman Re: Proposed Enforcement<br>Action Involving EA 95-012 (1 Page)                        |
| 8.            | Undated     | 5                | OGC Draft Comments on Proposed<br>Enforcement Action Involving EA 94-<br>177 (9 Pages)   |
| 9.            | Undated     | 5                | Draft Copy of Proposed Enforcement<br>Actions Involving EAs 94-164, -165,<br>-166 (5 Pages)                                      |
| 10.           | Undated     | 5                | Draft Copy of Proposed Enforcement<br>Action Involving EA 93-030 (7 Pages)   |

NOTE: Documents 2, 4, 7, 9, and 10  
are being withheld under Ex-5  
(Deliberative Process)

Documents 1, 3, 5, 6, and 8  
are being withheld under Ex-5  
(Deliberative Process and  
Attorney-client privilege)

**MORGAN, LEWIS & BOCKIUS**

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HARRISBURG  
LONDON  
FRANKFURT  
TOKYO

June 9, 1995

FREEDOM OF INFORMATION  
ACT REQUEST

FOIA-95-262  
Rec'd 6-12-95

Carlton Kammerer  
Director, Division of Freedom of  
Information & Publications Services  
U.S. Nuclear Regulatory Commission  
Office of Administration  
Mail Stop T6E4  
Washington, D.C. 20555

Re: Freedom of Information Act Request

Dear Mr. Kammerer:

Pursuant to 5 U.S.C. § 552(a)(3) and 10 CFR § 9.23(b), I request copies of any NRC documents to include, but not limited to, notes, meeting minutes, transcripts, recordings, summaries, electronic messages (E-mail), drafts, reports, and memoranda that contain factual information that formed the basis of, or relate to, the following reports or other documents regarding Nebraska Public Power District's ("NPPD") Cooper Nuclear Power Station (Docket No. 50-298):

- (1) NRC Systematic Assessment of Licensee Performance ("SALP") report issued to NPPD in June 1993 for the period January 19, 1992 to April 24, 1993;
- (2) Notice of Violation and Proposed Imposition of Civil Penalties, dated March 30, 1993, regarding licensee letter of December 1, 1992 to NRC that was inaccurate and incomplete in material respects;
- (3) Notice of Violation and Proposed Imposition of Civil Penalties, and Inspection Report No. 50-298/93-17, dated October 12, 1993;
- (4) NRC Operational Safety Team Inspection ("OSTI") Report No. 50-298/93-202, dated December 28, 1993;
- (5) Letter from NRC to NPPD, dated January 25, 1994, regarding declining trend in Cooper's performance;

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- (6) Confirmatory Action Letter ("CAL") issued to NPPD on May 27, 1994;
- (7) Confirmatory Action Letter issued to NPPD on June 16, 1994;
- (8) Letter from the NRC to NPPD, dated June 21, 1994, regarding declining trend in Cooper's performance;
- (9) Confirmatory Action Letter issued to NPPD on July 1, 1994;
- (10) Letter from the NRC to NPPD, dated July 29, 1994, formalizing plans to conduct a special evaluation of Cooper Nuclear Station;
- (11) Confirmatory Action Letter issued to NPPD on August 3, 1994;
- (12) NRC Inspection Report 50-298/94-14, dated September 2, 1994;
- (13) NRC Inspection Report 50-298/94-19, dated September 9, 1994;
- (14) NRC Inspection Report 50-298/94-16, dated September 12, 1994;
- (15) NRC Inspection Report 50-298/94-18, dated September 14, 1994;
- (16) Letter from the NRC to NPPD, dated November 29, 1994, and the Special Evaluation Team ("SET") report regarding interviews and inspections performed from May to September 1994;
- (17) Notice of Violation and Proposed Imposition of Civil Penalties, dated December 12, 1994; and
- (18) NRC letter to NPPD regarding declining trend in Cooper's performance, dated February 1, 1995.

In addition, please provide any documents that contain factual information that formed the basis of, or relate to, statements made to NPPD officials during discussions between NRC officials and NPPD on the following dates (a brief description of the discussions and persons believed to be involved are indicated in parentheses):

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- (1) February 18, 1994 (Ronald W. Watkins, NPPD President and CEO, and Leonard J. Callan, NRC Region IV Administrator);
- (2) June 23, 1994 (Guy R. Horn, NPPD Vice President nuclear, and Leonard J. Callan, NRC Region IV Administrator);
- (3) Week ending July 29, 1994 (NRC Headquarters meeting with NPPD attended by Region IV representatives, including Leonard J. Callan, NRC Region IV Administrator);
- (4) September 1, 1994 (Public meeting of NPPD Board of Directors attended by the Cooper Special Evaluation Team Manager);
- (5) November 8, 1994 (NRC public meeting held at the Cooper Nuclear Station to discuss NPPD's work to resolve issues necessary for restart of the Cooper plant);
- (6) November 17, 1994 (NRC public exit meeting at which SET results were presented by Ellis W. Merschhoff, NRC SET Manager, and the Executive Director For Operations, James M. Taylor);
- (7) Any enforcement conferences held between NPPD and the NRC between January 1, 1992 and February 21, 1995; and
- (8) All NRC restart panel meetings regarding Cooper.

Finally, I request any NRC documents that contain factual information relating to the following NPPD documents, or any versions of these documents:

- (1) The Cooper Nuclear Station Near Term Integrated Enhancement Program, dated May 20, 1994.
- (2) NPPD draft Business Plan dated May 21, 1994;
- (3) NPPD's internal Diagnostic Self-Assessment Team report dated September 1, 1994;
- (4) The Cooper Nuclear Station Startup Plan, Revision 1, dated September 15, 1994; and
- (5) Cooper Nuclear Station Performance Improvement Plan, Phase 1, Revision 2, dated October 6, 1994;

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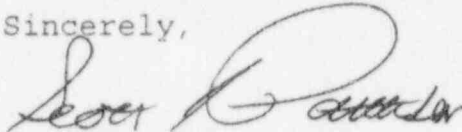
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- (6) Cooper Nuclear Station Performance Improvement Plan, Phase 2/3, Revision 1, dated December 9, 1994; and
- (7) Cooper Nuclear Station Startup and Power Ascension Plan, Revision 3, dated January 31, 1995.

To the extent that the requested information is included in documents or records that contain the advice, opinions or recommendations of NRC staff, please produce all factual information that can be reasonably segregated, in accordance with 10 CFR § 9.19(b).

I agree in advance to pay any fees associated with this request up to \$ 500.00. I request that you notify me if the costs will be more than \$ 500.00. I can be reached by telephone at (202) 467-7541. Thank you in advance for your assistance.

Sincerely,



Scott J. Patterson  
Legal Assistant

sjp