



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

FOIA - 95-267

RESPONSE TYPE

XX FINAL PARTIAL

DATE OCT 27 1995

DOCKET NUMBER(S) (if applicable)

REQUESTER J. Gregory Copeland

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) are already available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
XX Agency records subject to the request that are identified in Appendix(es) D & E 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.
XX Agency records subject to the request are enclosed. Appendix D documents are enclosed.
Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.
Fees SEE BELOW
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

- X 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 actual fees for processing your two FOIA requests are as follows:

Table with 4 columns: Request ID, Description, Amount, Total. Rows include FOIA-95-219 (Search, Review, Duplication) and FOIA-95-267 (Search, Review, Duplication).

The total amount of fees for processing your two requests is \$3157.14. Since you've already submitted advanced payment in the amount of \$3495.71 (\$2,083.26 for FOIA-95-219, and \$1412.45 for FOIA-95-267), you will receive a refund from the NRC Division of Accounting in the amount of \$338.57.

This completes NRC action on your request.

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

Handwritten signature

9511060278 951027
PDR FOIA
COPELAN95-267 PDR

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

FOIA NUMBER(S)

FOIA — 95-267

DATE

OCT 27 1995

PART II B — APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendix(es) F 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
William J. Olmstead	Associate General Counsel for Licensing and Regulations	Appendix F		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 D
DOCUMENTS BEING RELEASED IN THEIR ENTIRETY

NUMBER	DATE	DESCRIPTION
1.	1/28/88	Memo from J. Rosenthal to G.L. Constable, subject: AEOD SALP Input for South Texas Project, Unit 1. (2 pages)
2.	4/5/88	Letter from John Montgomery to C. Ottmers. (6 pages)
3.	1/26/89	Memo from J. Rosenthal to E. Holler, subject: Evaluation of LERs for South Texas Project Electric Generating Station Unit 1 AEOD Input to SALP Review Covering the Period from January 1, 1988 through December 31, 1988. (4 pages)
4.	1/31/90	Memo from J. Rosenthal to E. Holler, subject: Evaluation of LERs for South Texas Project Electric Generating Stations Units 1 & 2 AEOD Input to SALP Review Covering the Period from January 1, 1989 through January 31, 1990. (2 pages)
5.	5/10/91	Memo from J. Rosenthal to A. Howell, subject: AEOD Input for South Texas SALP. (4 pages)

Re: FOIA-95-267

APPENDIX E
DOCUMENTS BEING RELEASED IN THEIR ENTIRETY

NUMBER	DATE	DESCRIPTION
1.	Undated	Systematic Assessment of Licensee Performance (SALP) input, attached to memo from R. Jones to W. Beckner dated 2/5/95. (1 page)
2.	Undated	SALP input, attached to memo from C. Berlinger to W. Beckner dated 3/17/95. (1 page)
3.	Undated	SALP input, attached to memo from R. Gallo to W. Beckner dated 3/27/95. (1 page)
4.	Undated	SALP input, attached to memo from C. McCracken to W. Beckner dated 5/3/95. (1 page)

APPENDIX FDOCUMENTS TO BE WITHHELD

<u>NUMBER</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1	01/12/94	Letter from Joseph Egan to Karen Cyr enclosing an affidavit requesting the NRC to permit deposition of 3 NRC officials. Withhold under Exemption 4. (79 pages).
2	11/08/94	Letter from Joseph Egan to Karen Cyr requesting to Depose NRC Personnel. Withhold under Exemption 4. (11 pages).
3	11/18/94	Letter from Joseph Egan to Charles Mullins requesting to take Depositions in early January. Withhold under Exemption 4. (2 pages)
4	12/08/94	Telecopy from Joe Egan to Charles Mullins enclosing Sample Documents for NRC Depositions. Withhold under Exemption 4. (3 pages).
5	12/12/94	Letter from Joseph Egan to Charles Mullins enclosing a List of Documents that he intends to use for Depositions. Withhold under Exemption 4. (4 pages).
6	01/24/95	Memo from John Cordes to James Milhoan, Charles Hehl, Arthur Beach on Request for Depositions in Lawsuit between the City of Austin and the Houston Lighting and Power Company. Withhold under Exemption 4. (1 page).

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- 7 01/30/95 Letter from Joseph Egan to Karen Cyr enclosing an Affidavit to Support his Request to take Depositions. **Withhold under Exemption 4.** (9 pages).
- 8 03/28/95 Letter from Joseph Egan to Charles Mullins confirming the Oral Depositions of Charles Hehl and Arthur Beach. **Withhold 2 pages under Exemption 4,** Attachment not responsive. (12 pages).
- 9 06/07/95 Letter from Joseph Egan to Charles Mullins informing him of the time when he will Depose Charles Hehl. **Withhold under Exemption 4.** (2 pages).

BAKER & BOTTS

L.L.P.

ONE SHELL PLAZA

910 LOUISIANA

HOUSTON, TEXAS 77002-4995

TELEPHONE (713) 229-1234

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TELEX 76-2779

AUSTIN
DALLAS
MOSCOW
NEW YORK
WASHINGTON, D.C.

June 15, 1995

H-3991

By Federal Express

Director, Division of Freedom of
Information & Publications Services
Office of Administration
U. S. Nuclear Regulatory Commission
Two White Flint North Building
11545 Rockville Pike
Rockville, MD 20852

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-95-267

Rec'd 6-16-95

Re: Subpoena/Freedom of Information Act Request Regarding the South
Texas Project, Docket Nos. 50-498 and 50-499

Dear Sir or Madam:

This is a Freedom of Information Act request pursuant to 5 U.S.C. §552(a)(3) and 10 C.F.R. §9.23. I request that you please make available to Roy P. Lessy, Jr. the documents responsive to the attached Request for Production of Documents. The deposition of Mr. Arthur B. Beach, an NRC employee, has been approved by the Office of General Counsel of the NRC, and will probably be scheduled for some date in late summer this year. The documents need to be available in advance of that time. Of course, I agree to bear the cost of this request as per 10 C.F.R. §§9.25(4), 9.33, 9.35, 9.39, and 9.40, and I authorize you to respond to this request piecemeal as documents become available. Please contact me at (713) 229-1301 at your convenience if you have any questions about this request. Please direct your response, pursuant to 10 C.F.R. §9.27, to Mr. Roy P. Lessy, Jr., Akin, Gump, Strauss, Hauer & Feld, L.L.P., 1333 New Hampshire Avenue, N.W., Suite 400, Washington, D.C. 20036.

Thank you for your cooperation in this matter.

Very truly yours,

J. Gregory Copeland
J. Gregory Copeland

JGC:128

cc: Mr. Charles Mullins
Mr. Roy Lessy

HOU02:198644.1

9510310208 IOFP

EXHIBIT A

REQUEST FOR PRODUCTION OF DOCUMENTS

Directions and Instructions

1. The term "NRC" means the United States Nuclear Regulatory Commission, all offices and/or branches thereof specifically including but not limited to headquarters in Washington, D.C. and the Region IV office in Arlington, Texas, and also includes all employees, consultants, agents, and representatives to the maximum extent permitted by 10 C.F.R. § 9.300, unless otherwise indicated by the request.

2. The term "DET" means the Diagnostic Evaluation Team that performed an investigation at STP in 1993, including all members and/or supervisors thereof.

3. The term "Watch List" means the NRC's Problem Plant List, List of Problem Plants, or similar designation for the list of plants receiving heightened NRC scrutiny, such as was the case for STP between June 1993 and February 1995.

4. The term "Austin" refers to plaintiff, The City of Austin, and to any other name under which Austin has conducted its business, the Austin City Council, the Mayor of Austin, all city departments, and to any person or entity acting on Austin's behalf, including but not limited to all employees, agents, elected or non-elected representatives,

5. The term "Austin City Council" refers to the collective governing body, as well as individual council members and all members of their individual or collective staffs.

6. The term "Mayor of Austin" refers to any person holding this office and all members of his or her staff.

7. The term "HL&P" refers to defendant Houston Lighting & Power Company.

8. The term "San Antonio" refers to the City of San Antonio and the City Public Service Board.

9. The term "CP&L" refers to Central Power and Light Company.

10. The term "STP" refers to the two-unit, nuclear-powered electric generation plant in Matagorda County, Texas, owned by HL&P, Austin, San Antonio, and CP&L.

11. The term "Agreement" refers to the Participation Agreement, executed as of July 1, 1973, and all written amendments thereto.

12. The term "Management Committee" means the committee created by the Agreement.

13. The term "documents" includes, but is not limited to, any complete original or a true, correct, and complete copy, and any non-identical copy (whether different from the original by reason of notations or otherwise), of all matters and things within the possession, custody, or control of the NRC (within the meaning of Tex. R. Civ. P. 166b(2)(b)), examples of which include, but are not limited to, all writings, transcripts of conversations, written or recorded statements, bills, invoices, drafts, receipts, memoranda, correspondence, minutes, notes, contracts, notebooks, ledgers, photographs, recording (including without limitation audio and video tapes), electronic data, microfilm, and microfiche. The request for production of non-identical copies, in addition to production of an original or a true, correct, and complete copy, does not require NRC to search for and produce every copy of a responsive document, but rather requires only that NRC produce every non-identical copy found in the course of a reasonable search for responsive documents.

14. The term "electronic data" means writings of every kind and description, in forms other than ordinary paper records, whether inscribed by mechanical, facsimile, electronic,

magnetic, digital, video, or other means. Such writings may include, but are not limited to, computer programs (whether private, commercial, or work-in-progress), programming notes or instructions; electronic mail messages, receipts, and/or transmittals; data files; output resulting from the use of any software program, including word processing documents, computer printouts, spreadsheets, data sheets, data base files, charts, graphs, and outlines; source code of all types; programming languages; linkages and compilers, peripheral drivers; any and all ASCII files, and any and all miscellaneous files and/or file fragments, regardless of the media on which they reside and regardless of whether said electronic data consists in an active file, deleted file, or file fragment. Electronic data includes any and all items stored on computer memories, hard disks, floppy disks, CD-ROM drives, Bernoulli Box drives, optical storage devices, and their equivalent; magnetic tape of all types; data processing cards; punched cards; punched tape; computer chips (including but not limited to EPROM, PROM, RAM, and ROM, to the extent that such chips are used for purposes other than computer systems functions at levels involving machine language or operating systems); facsimile transmission machines; or on or in any other vehicle for digital data storage and/or transmittal. The term "electronic data" also includes the file, folder tabs, and/or containers and labels appended to, or associated with, any physical storage device associated with any of the other items and materials identified in this paragraph. Unless otherwise noted in a particular interrogatory, if a document is produced in hard-page format, that document does not need to be produced in electronic data format. However, documents are requested to be produced in electronic data format when the documents constitute a database, spreadsheet, information or records management, financial accounting or analysis, and/or other similar electronic data files and programs that are available for use in the ordinary course of business and which can be produced in electronic format without undue burden or expense. If such

documents in electronic data format are produced, all programming and other information necessary to read and/or view the documents is also to be produced. Notwithstanding the foregoing, all requests for production call for production of any document that exists in electronic data format if that document does not list in a hard-page format.

15. The term "person" when used herein includes any natural person, as well as any entity such as a corporation, partnership, proprietorship, or business association.

16. The term "communications" includes all verbal, written, or electronic transmissions and/or exchanges of information.

17. Documents "concern" or are "concerning" the matters at issue in a request for production when they contain any matters, facts, or events that discuss, describe, depict, consider, refer to, relate to, or are in any way connected to or with, the matters at issue in the request for production, and shall be interpreted as broadly as possible to promote the full disclosure of information.

18. The term "INPO" means Institute for Nuclear Power Operations.

19. If any document is withheld, please prepare a privilege log as to which a claim of privilege or statutory or other authority is made as a ground for non-production. "Prepare a privilege log" means to provide the following information:

- (a) date;
- (b) title;
- (c) author and addressee of any other recipient;
- (d) type of document (*e.g.*, memorandum, report, chart, etc.);

- (e) subject matter (without revealing the information as to which privilege or statutory authority is claimed);
- (f) factual and legal basis for the privilege claimed or the specific statutory or other authority that provides the claimed ground for non-production;
- (g) the place, including the name and the entity or office, in which the document is located.

Documents Requested

1. All documents concerning the NRC's Diagnostic Evaluation Team's investigation of STP, especially including but not limited to:
 - a. The reasons why the NRC decided to do a DET;
 - b. Communications with HL&P employees during the DET investigation;
 - c. Communications with others during the DET investigation, especially including but not limited to communications with the City of Austin, the City of San Antonio, and Central Power & Light Company;
 - d. The basis for each of the findings in the DET report;
 - e. Region IV's view of the necessity of a DET for STP;
 - f. Internal Region IV communications with NRC about STP during the period 1988 to 1995;
 - g. Region IV's knowledge of issues raised in the DET report;
 - h. Region IV's knowledge of HL&P's plans to address issues raised in the DET;
 - i. Region IV's acquiescence and HL&P's plans to address issues raised in the DEI report before the DET inspection or report;

- j. Communications with the DET concerning Region IV's acquiescence and HL&P's plans to address issues raised in the DET report;
 - k. Whether Region IV expressed any of the views in the DET report to HL&P;
 - l. Communications between NRC and Region IV concerning consistencies or inconsistencies between the DET and the prior Inspection Reports;
 - m. Internal Region IV discussions concerning the findings and conclusions expressed in the DET report, especially including but not limited to any documents prepared or relied upon by Arthur B. Beach or any member of his staff relating to his or the staff's role in the DET process;
 - n. To the extent not covered by a previous request, all other documents that relate in any way to the DET report concerning STP.
2. All documents concerning the NRC's placement of STP on the Watch List, especially including but not limited to:
- a. The reason(s) why the NRC placed STP on the Watch List;
 - b. The manner and process by which the decision to place STP on the Watch List was made;
 - c. Communications with HL&P or its employees about placing STP on the Watch List;
 - d. Communications with others about placing STP on the Watch List, especially including but not limited to the City of Austin, the City of San Antonio, and Central Power & Light Company;
 - e. Internal communications concerning placing STP on the Watch List;
 - f. Internal Region IV communications concerning placing STP on the Watch List;
 - g. Transcript(s), summaries, and all handouts of the Commission meeting whereby it was recommended and/or decided that STP be placed on the Watch List.
 - h. Transcripts, summaries, and all handouts of the Commission meeting(s) whereby it was recommended and/or decided that STP be removed from the Watch List.
 - i. To the extent not already covered by a previous request, all other documents that relate in any way to STP's placement on the Watch List.

3. All documents concerning the NRC's Confirmatory Action Letters of February 5, 1993; May 7, 1993; and October 15, 1993; including but not limited to:
 - a. Communications with HL&P concerning the Confirmatory Action Letters;
 - b. Communications with others concerning the Confirmatory Action Letters, especially including but not limited to the City of Austin, the City of San Antonio, and Central Power & Light Company;
 - c. Internal NRC discussions concerning the Confirmatory Action Letters;
 - d. Discussions with Region IV concerning non-final drafts of the Confirmatory Action Letters;
 - e. Discussions with Region IV concerning final drafts of the Confirmatory Action Letters;
 - f. Region IV's knowledge of the issues raised in NRC's Confirmatory Action Letters;
 - g. Region IV's knowledge of HL&P's plans to address issues raised in the NRC's Confirmatory Action Letters.

4. All documents concerning NRC's Systematic Assessment of Licensee Performance reviews from 1988 (the beginning of STP's commercial operations) through the present, especially including but not limited to:
 - a. Variances, differences or changes between consecutive reports;
 - b. Internal NRC discussions about interim drafts of the SALP reports
 - c. Internal NRC discussions about final drafts of the SALP reports;
 - d. Internal NRC discussions about variances, differences or changes between interim reports and the final SALP reports;
 - e. The basis for each of the findings in the SALP reports;
 - f. Internal Region IV communications with NRC about STP during the period 1988 to the present;
 - g. Region IV's knowledge of issues raised in the SALP reports;

- h. Region IV's knowledge of HL&P's plans to address issues raised in the various SALP reports;
 - i. Whether Region IV ever expressed any concerns about declining performance or the like with HL&P prior to the issuance of the DET report in June, 1993;
 - j. Communications between NRC and Region IV personnel concerning consistencies or inconsistencies between the various SALP reports;
 - k. Internal Region IV discussions concerning the findings and conclusions expressed in the SALP reports;
 - l. All documents setting forth or discussing the deliberations and considerations of the SALP boards reviewing STP performance from 1988 to the present, especially for the last two SALP periods prior to the DET in June, 1993.
 - m. To the extent not covered by previous requests, all other documents regarding the SALP reports concerning STP;
- 5. All documents concerning communications with the City of Austin,
 - 6. All documents concerning communications with the City of San Antonio;
 - 7. All documents concerning communications with Central Power & Light Company;
 - 8. All documents concerning communications with Susman Godfrey, L.L.P.;
 - 9. All documents concerning communications with Egan & Associates;
 - 10. All documents concerning communications with Miller, Canfield, Paddock and Stone;
 - 11. All documents concerning communications with Matthews & Branscomb;
 - 12. All documents concerning communications with current or former STP employees;