



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

JUL 27 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-84-470

Dear Ms. Bell:

This is a third partial response to your letter dated June 1, 1984, in which you requested, pursuant to the Freedom of Information Act, copies of documents prepared or utilized by, in the possession of, or routed through the NRC related to:

1. The March 20, 1984, memorandum from Chairman Palladino to the Commissioners Re: Licensing Delays, including, but in no way limited to, the "briefing sheets" alluded to in paragraph two of the memo; and
2. The legal authority, and justification for, expedited hearings held by Atomic Safety and Licensing Board Panel, Atomic Safety and Licensing Appeal Panel, and the Commission.

The documents listed on Appendix A are responsive to your request and are being placed in the NRC Public Document Room (PDR), 1717 H Street, NW, Washington, DC 20555. You may obtain access to these records by presenting a copy of this letter to the PDR or by requesting folder FOIA-84-470 under your name.

The three documents listed on Appendix B are being withheld pursuant to Exemption (5) of the Freedom of Information Act (5 U.S.C. 552(b)(5) and 10 CFR 9.5(a)(5) of the Commission's regulations for the following reasons:

The April 2, 1984 memorandum to the Commissioners from Herzel Plaine contains the legal analysis, opinions, and recommendations of the Office of the General Counsel to the Commissioners regarding proposals for hearings on the Shoreham facility. The document is part of the deliberative process of the agency in an ongoing adjudicatory proceeding. Release of the factual portions of this document would reveal a predecisional evaluation of which facts are important. Therefore, the document contains no reasonably segregable

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factual portions. Release of this document would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. For these reasons, this document is exempt from disclosure pursuant to Exemption (5) of the Freedom of Information Act and should be withheld in its entirety.

The April 5, 1984 draft memo to Chairman Palladino from James A. Fitzgerald was never forwarded to the Commission. The document remains in draft form. Because the draft document is predecisional and has not been adopted by the Commission as formal agency action, it is exempt from disclosure pursuant to Exemption (5) of the Freedom of Information Act. Release of the draft document would tend to inhibit the open and frank exchange of ideas essential to the deliberative process and therefore is being withheld in its entirety.

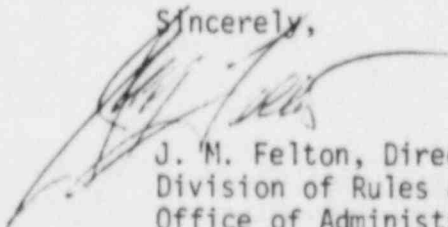
The May 9, 1984 memo to the Commissioners contains the legal analysis, opinion, and recommendations of the Office of the General Counsel. The memo weighs the pros and cons of various issues related to an ongoing adjudicatory matter. Release of this document would tend to inhibit the open and frank discussions between the Commission and its legal advisors which is necessary in making sound agency decisions. For these reasons, the May 9 memo is being withheld in its entirety pursuant to Exemption (5) of the Freedom of Information Act. There are no reasonably segregable factual portions.

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. James A. Fitzgerald, Assistant General Counsel.

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 Decision."

The search for and review of additional documents subject to your request have not been completed. As soon as the search and review are completed, we will advise you of our disclosure determination.

Sincerely,



J. M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosures: As stated

APPENDIX A

DOCUMENTS BEING PLACED IN THE PDR

1. 5/17/84 Statement of Nunzio J. Palladino, Chairman U.S. Nuclear Regulatory Commission Before The Subcommittee On Energy and The Environment Committee On Interior and Insular Affairs, U.S. House of Representatives. (10 pages)
2. 5/17/84 Statement of Commissioner James K. Asselstine, U.S. Nuclear Regulatory Commission Before The Subcommittee On Energy and The Environment Committee On Interior Affairs, U.S. House of Representatives. (5 pages)

APPENDIX B

DOCUMENTS WITHHELD IN ENTIRETY

1. 4/2/84 Memorandum to Commissioners from Herzel H. E. Plaine, General Counsel, Subject: Shoreham Low Power Proceeding (5 pages)
2. 4/5/84 Draft of memorandum to Chairman Palladino from James A. Fitzgerald, Assistant General Counsel, Subject: Licensing Delays (1 page)
3. 5/9/84 Memorandum to the Commissioners from Herzel H. E. Plaine, General Counsel, Subject: Issues for Decision in Shoreham (Adjudication -- Limited Distribution) (12 pages)