



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

JUL 25 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 the seventh 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 three documents as listed on Appendix A are being withheld from disclosure because they contain the predecisional legal analysis, opinions, and recommendations of the Office of the General Counsel to the Commissioners. Documents 1 and 2 contain the Office of the General Counsel's comments on the staff's proposed no significant hazards consideration determination on GPU's request for an amendment to allow TMI-1 operation after repair of the once-through steam generator. Document 3 contains OGC's legal opinion of the staff's interpretation of 10 CFR 50.59 in dealing with replacements to BWR piping systems.

The documents do not contain any reasonably segregable factual portions. Because the documents reflect the predecisional process between the Office of the General Counsel and the Commissioners, the documents are 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). Release of the documents would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. These documents are being withheld in their entirety.

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PDR FOIA PDR
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Ms. Nina Bell

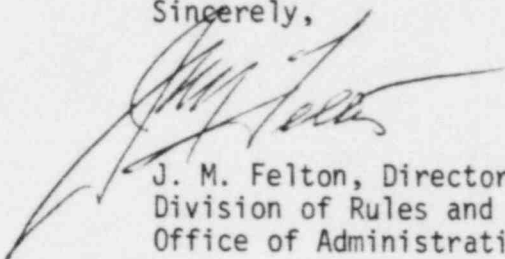
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Pursuant to 10 CFR 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure and that its production or disclosure is contrary to the public interest. The person responsible for 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 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

Enclosure: As stated

APPENDIX A

DOCUMENTS WITHHELD IN THEIR ENTIRETY

1. 12/2/83 - Memorandum (SECY-83-474A) to the Commissioners from H. Plaine, General Counsel, Subject: Comments on SECY-83-474, re: TMI Unit 1, 9 pp.

2. 1/9/84 - Memorandum (SECY-83-474B) to the Commissioners from H. Plaine, General Counsel, Subject: Additional Comments dated January 4, 1984, Concerned With No Significant Hazards Consideration in Steam Generator Repair at Three Mile Island, Unit 1, 3 pp.; attachment (1) entitled "OGC Commentary on Staff Analysis of No Significant Hazards Consideration" by Martin G. Malsch, Deputy General Counsel, 7 pp.

3. 1/31/84 - Memorandum for Commissioner Gilinsky from M. Malsch, Deputy General Counsel, Subject: NRC Staff Interpretation of 10 CFR 50.59 as Applied to BWR Piping Systems, 5 pp.



Nuclear Information and Resource Service

1346 Connecticut Avenue, NW, 4th Floor, Washington, D.C. 20036 (202) 296-7552

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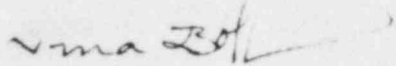
3. The implications of the application of the "Sholly Amendment" no-significant-hazards-consideration determination on the TMI-1 Steam Generator operating license amendment to any or all operating license amendments;
4. Analyses of the "Sholly Amendment" and interpretations of its application to operating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

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