

September 13, 1984

Mr. William J. Dircks
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

APPEAL OF INITIAL FOIA DECISION
84-A-70E(84-563)
Rec'd 9-18-84

APPEAL FROM AN INITIAL FOIA DECISION

Dear Mr. Dircks:

By this letter I am appealing, pursuant to 10 CFR Part 9, the NRC's response to my July 7, 1984 FOIA request (FOIA-84-563) dated August 31, 1984. Therein was identified a document responsive to my request: an undated draft memorandum to B.J. Youngblood from John J. Stefano on the Caseload Forecast Team Site Visit to the Perry site. This document was withheld as predecisional pursuant to Exemption 5 of the FOIA. I have attached the NRC's August 31, 1984 letter hereto.

You will note the stated reasoning for the withholding of this document: "(t)his draft of the Caseload Forecast team report has not yet been completed due to the pending receipt of updated information . . . Consequently, the draft document reflects the predecisional process . . ." You should be aware that on August 28, 1984 the Caseload Forecast panel report was issued and sent to the applicant and to those on the Perry service list. Thus, the major premise of the above-quoted reasoning is no longer valid. Of course, if this draft report was incorporated into the final report, it loses its protection under Exemption 5. NLRB v. Sears, Roebuck, & Co. 421 US at 161.

You should also recall that, if a document, even though predecisional when generated, is released or exposed to persons outside the agency, it loses its exempt status. Chilivis v. SEC, 673 F2d at 1205.

You should also keep in mind that FOIA was intended to benefit the public, and that exemptions are to be narrowly construed. The unambiguous thrust of FOIA is toward complete disclosure. Great specificity and detail are required to support an Exemption 5 claim. The agency has the burden of proof; it must show that the information it seeks to withhold would not flow freely within the agency unless protected from public exposure. See Ohio Citizens for Responsible Energy v. NRC, Order of February 24, 1984, slip op. at 9 (U.S. District Court, Northern District of Ohio, Eastern Division).

It is therefore necessary that you examine the present circumstances with regard to the document in question. I suspect that it has lost all protection under Exemption 5 and now must be released.

Sincerely,



Susan L. Hiatt
OCRE Representative
8275 Munson Rd.
Mentor, OH 44060
(216) 255-3158

8503010031 840913
PDR FOIA PDR
HIATT84-A-70



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

Rec 9-8-84

AUG 31 1984

Ms. Susan Hiatt
OCRE
8275 Munson Road
Mentor, OH 44060

IN RESPONSE REFER
TO FOIA-84-563

Dear Ms. Hiatt:

This is in response to your letter dated July 7, 1984, in which you requested, pursuant to the Freedom of Information Act (FOIA), documents other than those in the Perry OL Proceeding or those available in the PDR, concerning the scheduling of the Perry Proceeding or the disposition, settlement, or resolution of any contested issue therein.

In response to your request, enclosed are copies of the ASLBP Monthly Hearing Status Reports for the months of January, February, March, April, May, June, and July 1984. Also responsive to your request is the document identified below:

Undated draft memorandum to B. J. Youngblood from John J. Stefano,
Subject: "Report of Caseload Forecast Team Visit to the Perry
Nuclear Plant Site on March 6-8, 1984".

This draft of the Caseload Forecast team report has not yet been completed due to the pending receipt of updated information which the Perry applicant has advised is forthcoming in support of the applicant's projected fuel load date of Perry in June 1985. Consequently, the draft document reflects the predecisional process and is being withheld pursuant to Exemption (5) of the FOIA (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5).

Pursuant to 10 CFR 9.9 of the Commission's regulations, it has been determined that the information is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The persons responsible for this denial are the undersigned and Mr. Harold R. Denton, Director, Office of Nuclear Reactor Regulation.

Ms. Susan Hiatt

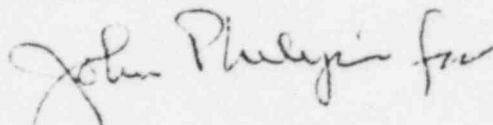
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AUG 31 1984

This denial may be appealed to the Commission's Executive Director for Operations within 30 days from the receipt of this letter. As provided in 10 CFR 9.11, any such appeal must be in writing, addressed to the Executive Director for Operations, 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 staff continues to search for additional documents subject to your request. You will be notified at the completion of the search.

Sincerely,



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

Enclosures: As stated

1984

MR. FELTON
DIRECTOR
OFFICE OF
U.S. NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C.

FREEDOM OF INFORMATION ACT REQUEST

DEAR MR. FELTON:

PURSUANT TO THE FREEDOM OF INFORMATION ACT, 5 USC 552, AS AMENDED, AND THE PROVISIONS OF 10 CFR PART 9, THE UNDERSIGNED HEREBY REQUESTS THE FOLLOWING:

ANY DOCUMENTS, OTHER THAN THOSE ON THE RECORD IN THE PERRY OIL PROCEEDING OR AVAILABLE IN THE PDR, CONCERNING OR REFLECTING THE SCHEDULING OF SAID PROCEEDING OR THE DISPOSITION, SETTLEMENT, OR RESOLUTION OF ANY CONTESTED ISSUE THEREIN, INCLUDING BUT NOT LIMITED TO ANY DOCUMENTS CONCERNING AGREEMENTS OR NEGOTIATIONS BETWEEN THE NRC AND THE APPLICANT, THE CLEVELAND ELECTRIC ILLUMINATING CO.

I AGREE TO ACCEPT THE CHARGES FOR THE SEARCH AND PRODUCTION OF THESE ITEMS.

FREEDOM OF INFORMATION ACT REQUEST

FOIA-84-563
Rec'd 7-10-84

Susan L. Hiatt
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