



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

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50-447

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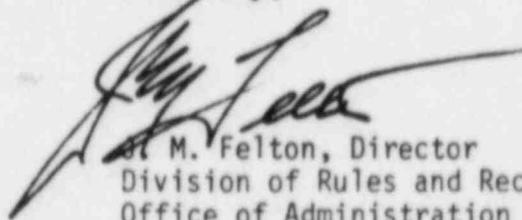
IN RESPONSE REFER  
TO FOIA-84-A-66  
(FOIA-84-175)

Dear Ms. Curran and Mr. Jordan:

This is in further response to your letter dated August 6, 1984, in which you appealed the partial denial of Mr. Steven Sholly's Freedom of Information Act request for documents concerning General Electric Company's (GE) Probabilistic Risk Assessment (PRA) for the GESSAR-II standardized plant design.

GE recently informed us that it was relinquishing its proprietary claim to additional information contained in some of the documents subject to your request. The enclosed appendix to this letter identifies the specific documents. Accordingly, NRC is releasing the pages that contain the information for which GE has relinquished its claim. These pages are enclosed.

Sincerely,



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

Enclosures:  
As stated

APPENDIX

1. Undated GESSAR II Appendix 15D.3-BWR/6 Probabilistic Risk Assessment
2. 7/16/82 Letter to R. Frahm from K. W. Holtzclaw re: 238 Nuclear Island Probabilistic Risk Assessment Report
3. 12/3/82 PRA Update - revision pages
4. 5/17/84 Letter to D. G. Eisenhut from J. F. Quirk re: Source Term Sensitivity Study

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TELEPHONE  
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HAND DELIVERED  
August 6, 1984

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

APPEAL OF INITIAL FOIA DECISION  
84-A-66E(84-175)  
Rec'd 8-9-84

SUBJECT: Appeal of Denial of FOIA-84-175

Dear Mr. Dircks:

On March 13, 1984, Steven Sholly of the Union of Concerned Scientists (UCS) submitted to NRC a Freedom of Information Act request for the Probabilistic Risk Assessment (PRA) performed by the General Electric Company for its GESSAR II standardized plant design, for any NRC-sponsored reviews of the PRA, and for identification of the reviewing organizations and contract details. A copy of that letter is attached.

When the NRC did not respond to Mr. Sholly's request in a timely manner, UCS appealed the failure to respond in a letter to you dated April 5, 1984. J. M. Felton of the Division of Rules and Records finally responded to Mr. Sholly's original request and to the April 5 appeal on June 25, 1984. Mr. Felton's response identified and denied four documents, and stated that the review of additional documents responsive to Mr. Sholly's request was "continuing." Mr. Sholly has received no further correspondence from Mr. Felton.

Having appealed the NRC's original failure to make a timely response to Mr. Sholly's FOIA request, UCS is entitled to bring this matter directly before a federal District Court. 5 U.S.C. § 552(a)(6)(C). However, we have chosen to take an additional administrative appeal of Mr. Felton's response letter, because we believe you will agree that he has not provided adequate or consistent justification for denial of these documents. We also appeal once more the Commission's failure to complete its response to this request within the statutory time frame required by the Freedom of Information Act, 5 U.S.C. § 552(a)(6)(A)(i).

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Mr. Felton's June 25 letter identifies and denies in their entirety four documents: the PRA and three reviews of the PRA by the Brookhaven National Laboratory. Although Mr. Felton's letter does not specifically identify the FOIA exemption claimed, he apparently invokes exemption 4 of the Act, which protects

trade secrets and commercial or financial information obtained from a person and privileged or confidential.

5 U.S.C. § 552(b)(4). Mr. Felton does not claim that the documents constitute "trade secrets," and none of the documents fits the description of a trade secret given by the U.S. Court of Appeals for the District of Columbia:

an unpatented, commercially valuable plan, appliance, formula, or process, which is used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities.

Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1287 (D.C. Cir. 1983). Rather, Mr. Felton claims that disclosure of the materials could cause "substantial harm to the competitive position of the General Electric Company." Thus, he appears to invoke the second prong of exemption 4, for confidential commercial or financial information that is obtained from a person.

However, Mr. Felton has not satisfied the second prong of exemption 4 because he has not shown that the materials are actually confidential, *i.e.*, that the release of the materials would cause substantial harm to GE's competitive position. Id. at 1290. A significant amount of the information being withheld is already available to the public, and thus disclosure of these documents would have little effect on the ability of competitors to obtain the information they contain. "Clearly, if the information is already available to competitors, then it does not qualify as confidential." United Technologies Corp. v. Marshall, 464 F. Supp. 845, 852 (D. Ct. 1979), citing Hughes Aircraft Company v. Schlesinger, 384 F. Supp. 292, 297 (C.D. Cal. 1974).

GE and the NRC have already released -- and thus made available to GE competitors -- a significant amount of information related to the GESSAR PRA. The NRC released one of

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the Brookhaven review documents, virtually in its entirety, to another FOIA requester\*, and it has held at least one open meeting discussing the contents of the GESSAR PRA in detail. The Brookhaven document that has been released discusses the contents of the PRA in detail and demonstrates that GE's claim to a level of "detail, sophistication, and NRC acceptance which is not remotely approached with respect to BWR's by GE's present or potential competitors" is highly inflated. According to Brookhaven, GE used the MARCH, CORRAL, and CRAC codes as the bases for its source term and consequence analyses. All three of these codes were developed for NRC and are available in NRC publications and technical literature. The versions of these codes used by GE are not highly sophisticated, state-of-the-art codes, but have been used for many years. There is thus simply no basis to GE's claim that release of these materials will have a substantial detrimental effect on its competitive position in the marketplace.

Moreover, some of the methodologies that GE would like the NRC to protect as proprietary information were developed at government expense. Such government-generated information is not exempt from disclosure under the Freedom of Information Act. Consumers Union of United States, Inc. v. Veterans' Administration, 301 F. Supp. 796, 803 (S.D.N.Y. 1969). If anything, the NRC's refusal to disclose GE's use of PRA-related codes developed at government expense constitutes an illegal and unwarranted subsidy of GE.

The Brookhaven report also discusses some of the PRA's input assumptions in great detail. Many of these assumptions are not design-specific, but relate to standardized concepts regarding nuclear power plant accidents. Other assumptions, although somewhat design-dependent, do not involve the use of detailed design information which might be proprietary or confidential. Their disclosure would reveal little information that is not already widely known in the industry. Moreover,

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\* "Review and Evaluation of the GESSAR-II Probabilistic Risk Assessment - Containment Failure Modes and Fission Product Release," Letter Report by Accident Analysis Group, Department of Nuclear Energy, Brookhaven National Laboratory (July 27, 1983). This is identified as document # 3 in Mr. Felton's June 25 response to Mr. Sholly. It was released to Susan Hiatt on January 3, 1984 in FOIA-83-460.

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any design-specific assumptions should be available to the public, since GE has not claimed the plant design itself as proprietary information.

The Brookhaven report also contains a great deal of information on the results of the PRA. Although specific figures have been deleted from the tables, PRA results are described and discussed in the text. In any event, competitors could obtain approximately the same results by using the methodologies and assumptions as described in the Brookhaven study.

Inconsistent positions taken in the past by GE and NRC with regard to the confidentiality of the GESSAR PRA and related documents raise serious questions about the sincerity and veracity of GE's claim that release of the information will cause "substantial" harm to its competitive position. GE and NRC officials have orally stated to UCS that they are not interested in protecting the results of the PRA, but only the methodology. Yet, the Brookhaven Laboratory study released by the NRC discusses the methodology in great detail, but it omits many of the results. Although GE and NRC now claim complete confidentiality for the PRA, they participated in an open ACRS meeting on April 22, 1983, in which the methodology and assumptions used in the PRA were discussed in great detail. The transcript of that meeting is publicly available. Having permitted the release of so much of the PRA-related information in the past, GE and NRC are no longer in a position to claim that the requested materials are confidential.

As discussed above, Mr. Felton has failed to provide adequate justification for the denial of the requested documents under exemption 4 of the FOIA. Moreover, he has failed to satisfy the Act's requirement to release "reasonably segregable" portions of the documents. 5 U.S.C. § 552(b). Any changes that GE has made to publicly available assumptions and methodologies could easily be segregated from other parts of the PRA. Yet, the NRC has not made the slightest attempt to identify releasable portions of the documents.

In addition to the requirements of the Freedom of Information Act, strong policy reasons compel the release of

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these documents to the public. The GESSAR PRA is being used to obtain a generic license that will be valid over the next ten years. The quality of this license application will therefore be critical to the safety and reliability of any individual plants that are licensed pursuant to this standardized design. For this reason, it should be opened to the closest scrutiny possible. GE's sudden and inconsistent attempts to protect the confidentiality of its PRA and related review documents may demonstrate more of a wish to hide flaws in the GESSAR PRA from public scrutiny than a need to protect valuable business secrets. As a matter of policy, the NRC should make the GESSAR PRA and related review documents available to the public, with the exception of only those limited portions that GE can demonstrate are truly confidential. The NRC must not endorse and promote GE's blanket attempts to shield this vital safety information from the public eye.

Moreover, although no regulatory requirement for PRAs exists now, we understand that the NRC intends to use the GESSAR PRA to evaluate and perhaps require changes in the GESSAR standardized plant design. If this is true, then the PRA is a part of the design application that must be made available for public review and comment under the hearing requirement of the Atomic Energy Act, 42 U.S.C. § 2239(a)(1). The public's right to a hearing on the safety of the standardized plant design will effectively be denied if important supporting information is withheld from public scrutiny.

As far as we know, this is the first PRA that has been withheld by NRC as confidential commercial information. If, as recent NRC regulatory proposals indicate, the Commission intends to use PRAs to evaluate design adequacy in the future, it should be prepared to share that information with the public as required by the hearing provision of the Atomic Energy Act. If it intends to protect such information from public scrutiny, it should reconsider its intention to use PRAs as licensing documents.

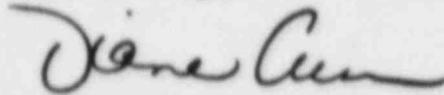
We look forward to receiving your response within the 20 working days permitted by the statute. If UCS does not receive a full response, with either complete disclosure or substantial

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justification for deletion of minor portions of the documents,  
we intend to pursue this matter in federal court.

Sincerely,



Diane Curran



William S. Jordan, III  
Attorneys for Union of  
Concerned Scientists



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

JUN 25 1984

Mr. Steven Sholly  
Technical Research Associate  
Union of Concerned Scientists  
1346 Connecticut Avenue, NW  
Washington, DC 20036

IN RESPONSE REFER  
TO FOIA-84-175

Dear Mr. Sholly:

This is in further response to your letter dated March 13, 1984, and your April 5, 1984 appeal, requesting documents relating to GESSAR-II.

The four documents listed on Appendix A are being withheld in their entirety as release of this information could cause substantial harm to the competitive position of the General Electric Company in that GE maintains:

1. The GESSAR-II PRA is the only Level 3 PRA which has been performed by an NSSS vendor at its own cost. The GESSAR-II PRA will be the first Level 3 PRA approved for a Standard Nuclear Island Design. As such, its market value far exceeds the total cost. GE intends to utilize the information and analyses in the PRA as the major portion of plant-specific analyses for BWR/6 plants which are currently operating, are under construction, and for future plant sales. Total resources expended by GE in performing the PRA, preparing the required submittals, and supporting the PRA review amount to millions of dollars;
2. The performance of probabilistic risk assessments is a highly competitive market. The information in this PRA represents a level of expenditure, detail, sophistication, and NRC acceptance which is not remotely approached with respect to BWR's by GE's present or potential competitors. Accordingly, public disclosure of this information would permit competitors or potential customers to utilize this information at no cost and would thereby deprive GE not only to seek reimbursement of its expenditures but also an economic competitive advantage by allowing competitors to copy the design at little or no cost; and

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3. The three NRC contractor (Brookhaven National Laboratory) reports also contain GE proprietary information and are being withheld in their entirety for the same reasons stated above.

The NRC has reviewed General Electric's proprietary claim and agrees that the information involved is proprietary.

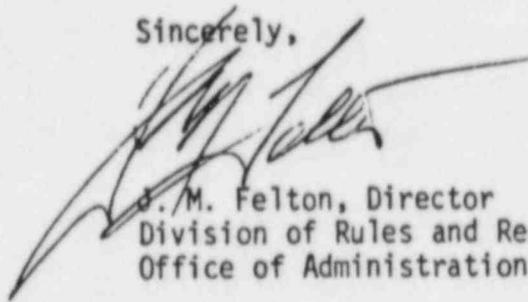
These documents are being withheld from public disclosure pursuant to Exemption (4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and 10 CFR 9.5(a)(4) of the Commission's regulations. These documents do not contain any reasonably segregable factual portions.

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.

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 review of additional documents related to your request is continuing. You will be notified at the completion of this review.

Sincerely,



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

Enclosure: Appendix A

APPENDIX A

1. GESSAR II Probabilistic Risk Assessment (PRA)
2. BNL Memo dated 5/5/83 "Status of GESSAR PRA Review."
3. BNL Letter Report "Review and Evaluation of the GESSAR II PRA - Containment Failure Modes and Fission Product Release." 7/27/83.
4. BNL Letter Report "Review of GESSAR II Probabilistic Risk Assessment," undated.

# UNION OF CONCERNED SCIENTISTS

1346 Connecticut Avenue, N.W. • S. 1101 • Washington, DC 20036 • (202) 296-5600

13 March 1984

FREEDOM OF INFORMATION  
ACT REQUEST

FOIA-84-175  
Rec'd 3-15-84

Mr. J. M. Felton, Director  
Division of Rules and Records  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

RE: Freedom of Information Act Request for the GESSAR-II  
Probabilistic Risk Assessment and Associated NRC  
and NRC-contractor Reviews of that Report (Sholly  
FOIA Request Number 84-07)

Dear Mr. Felton:

Pursuant to the Freedom of Information Act, please make  
available at the Commission's Public Document Room at 1717 H Street,  
N.W., Washington, D.C., copies of documents in the following  
categories:

- A. A copy of the General Electric Probabilistic Risk Assessment for the GESSAR-II standard plant design (BWR/6 Mark III), and all updates, amendments, appendices, addenda, supplements, and all other changes thereto.
- B. Copies of all NRC staff reviews of the documents described above in "A".
- C. Copies of all NRC contractor reviews of the documents described above in "A".
- D. For any review identified under "C" above, provide the name of the reviewing organization, the lead investigators, all other investigators, the NRC Contract and FIN numbers assigned to the review project, the funding provided for the review project, and the NRC Form 189 for each such project.

If there are any questions regarding this request, please contact me at 296-5600. It is my understanding that a proprietary claim has been made with respect to some or all of the documents identified in "A" above. This request specifically includes a request to review the bases for the proprietary claim and release all of the documents discussed in "A" above.

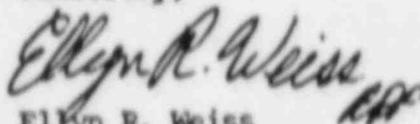
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The definition of "trade secret" is also relatively narrow. It has been defined as an "unpatented, secret, commercially valuable plan, appliance, formula or process which is used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities. Consumers Union, supra, 31 F.Supp. at 81.

It is impossible to believe that all of the Gessar PRA is legally exempt from disclosure under this standard. For one thing, the Gessar design is not "secret" since it is subject to NRC review and public scrutiny. In addition, it is my understanding that the codes being used are primarily publicly-available codes.

I would appreciate your response as soon as possible.

Sincerely,



Ellyn R. Weiss  
General Counsel  
Union of Concerned Scientists

Enclosure 1