

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



November 30, 1988

Joseph Rhodes, Jr.
Commissioner
Pennsylvania Public Utility
Commission
Harrisburg, Pennsylvania

Re: FOIA-88-478 (88-A-47-C)

Dear Mr. Rhodes:

This is in response to your October 24, 1988 appeal of the Nuclear Regulatory Commission's decision to withhold all or portions of two documents responsive to FOIA-88-478.

The documents were re-reviewed in response to your appeal. Based on that review, I have determined that portions of the January 5, 1988 Elsasser memorandum may now be released. The document is enclosed. The excised portions of the document do not fall within the scope of your request.

The Commission is continuing to withhold the December 22, 1987 Marcus memorandum. The memorandum was withheld under Exemption 5 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(5) and 10 C.F.R. 9.5(a)(5) of the Commission's regulations. The document is a memorandum to a Commissioner from a member of his personal staff. It contains the analysis, opinions and recommendations of the staff member and is part of the agency's predecisional deliberative process. It is exempt from mandatory disclosure under Exemption 5 because it "would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5); 10 C.F.R. § 9.17(b)(5).

The purpose of the deliberative process privilege is to "prevent injury to the quality of agency decisions." NLRB v. Sears, Roebuck & Company, 421 U.S. 132, 151 (1975). Disclosure of these predecisional documents would be likely to "stifle honest and frank communication within the agency." Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980).

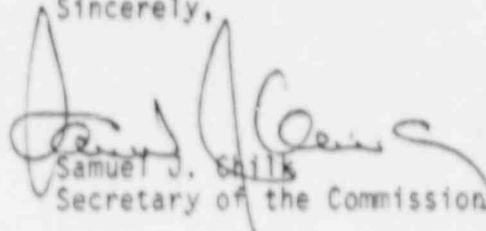
Your appeal questions the validity of characterizing the document as "predecisional" when it does not involve "an adjudication, a ruling or other decision of the Commission." The deliberative process privilege is more expansive than you suggest. The Supreme Court stated in NLRB v. Sears, 421 U.S. at 151 n.18, that:

Our emphasis on the need to protect pre-decisional documents does not mean that the existence of the privilege turns on the ability of an agency to identify a specific decision in connection with which a memorandum is prepared. Agencies are, and properly should be, engaged in a

continuing process of examining their policies; this process will generate memoranda containing recommendations which do not ripen into agency decisions; and the lower courts should be wary of interfering with this process. (Emphasis in the original)

This letter represents final agency action on your administrative appeal of October 24, 1988. Judicial review of the denial of the documents or portions of documents withheld is available in the Federal District Court in the district in which you reside or have your principal place of business, or in the Federal District Court of the District of Columbia.

Sincerely,



Samuel J. Childs
Secretary of the Commission

Enclosure:
As stated



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

OCT 4 1988

The Honorable Joseph Rhodes, Jr.
Pennsylvania Public Utility Commission
Commonwealth of Pennsylvania
P.O. Box 3265
Harrisburg, PA 17120

IN RESPONSE REFER
TO FOIA-88-478

Dear Commissioner Rhodes:

This is in response to your letter dated September 13, 1988, in which you requested, pursuant to the Freedom of Information Act (FOIA), copies of records between certain named employees of the Philadelphia Electric Company (PECO) and certain named employees of the Nuclear Regulatory Commission (NRC), and copies of records which were discussed during meetings and telephone conversations between certain named employees of PECO and certain named NRC employees.

The records which are identified on Appendix A are responsive to your request and are enclosed.

The records identified on Appendix B contain the predecisional advice, opinions and recommendations of Commissioner assistants to the Commissioners. Because the documents reflect the predecisional process between the Commissioners and their staff, the records are exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA (5 U.S.C. 552(b)(5)) and 10 CFR 9.17(a)(5) of the Commission's regulations.

Pursuant to 10 CFR 9.25(b) of the NRC'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 John C. Hoyle, Assistant Secretary of the Commission.

This denial may be appealed to the Secretary of the Commission within 30 days from the receipt of this letter. As provided in 10 CFR 9.29(a), 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."

Sincerely,

A handwritten signature in cursive script, reading "Donnie H. Grimsley".

Donnie H. Grimsley, Director
Division of Freedom of Information and
Publications Services
Office of Administration and
Resources Management

Enclosures: As stated

88-10201-3 51P

APPENDIX A

DOCUMENTS BEING RELEASED

1. Undated Memorandum to William F. Kane from J. C. Linville, with enclosure, re: Peach Bottom Atomic Power Station Status Report for the Period February 4 - February 24, 1988. (5 pages)
2. Undated Letter to John S. Kemper from William F. Kane, with enclosure, re: Combined Inspection 20-277/88-01 and 50-278/88-01. (38 pages)
3. 12/11/87 Letter to J. H. Austin, Jr. from Victor Stello, Jr. (2 pages)
4. 12/15/87 Notice of Licensee Meeting with Philadelphia Electric Company at Peach Bottom Atomic Power Station. (2 pages)
5. 12/15/87 Viewgraphs Given to Commissioner Carr While Visiting the Peach Bottom Station.
6. 12/21/87 Memorandum to William F. Kane from J. C. Linville, with enclosure, re: Peach Bottom Atomic Power Station Status Report for the Period December 4, 1987 - December 17, 1987 (6 pages)
7. 12/22/87 Transcript of Enforcement Conference Concerning Peach Bottom Atomic Power Station.
8. 1/22/88 Notice of Licensee Meeting with Philadelphia Electric Company at Peach Bottom Atomic Power Station (PBAPS). (2 pages)
9. 1/25/88 Letter to J. S. Gallagher from William F. Kane, with enclosure, re: Combined Inspection 50-277/87-29 and 50-278/87-29. (33 pages)
10. 1/28/88 Letter to William T. Russell from John S. Kemper. (1 page)
11. 2/9/88 Memorandum to William F. Kane from J. C. Linville, with enclosure, re: Peach Bottom Atomic Power Station Status Report for the Period January 21 - February 4, 1988. (4 pages)
12. 2/18/88 Notice of Management Meeting with Philadelphia Electric Company at Region I Administrator's Office, King of Prussia, PA. (2 pages)
13. 2/26/88 Letter to W. T. Russell from John S. Kemper. (1 page)
14. 3/10/88 Notice of Licensee Meeting with Peach Bottom Co-owners at NRC Region I, DRP Conference Room, King of Prussia, PA. (2 pages)
15. 3/15/88 Letter to Corbin A. McNeill from W. F. Kane, re: Meeting Summary. (2 pages)

APPENDIX A

DOCUMENTS BEING RELEASED

16. 3/17/88 Memorandum to William F. Kane from J. C. Linville, with enclosure, re: Peach Bottom Atomic Power Station Status Report for the Period February 24 - March 14, 1988. (5 pages)
17. 3/24/88 Notice of Licensee Meeting with Philadelphia Electric Company at Peach Bottom Atomic Power Station Presidents Conference Center. (2 pages)
18. 3/31/88 Agenda of NRC Panel/PE Discussion meeting. (1 page)
19. 4/4/88 Letter to J. S. Kemper, Sr. from William F. Kane, with enclosure, re: Combined Inspection 50-277/88-02 and 50-278/88-02. (38 pages)
20. 4/7/88 Memorandum to William F. Kane from J. C. Linville, with enclosure, re: Peach Bottom Atomic Power Station Status Report for the Period March 14 - March 31, 1988. (4 pages)
21. 4/8/88 Letter to William T. Russell from J. F. Paquette, Jr., with enclosure (10 pages), re:
 1. Letter from J. F. Paquette, Jr., to W. T. Russell dated March 18, 1988.
 2. Letter from J. H. Austin, Jr., to W. T. Russell dated November 25, 1987.
 3. Letter from J. H. Austin, Jr., to W. T. Russell, dated February 12, 1988.
22. 4/11/88 Letter to Corbin A. McNeill from W. F. Kane, with enclosure, re: Meeting Summary. (3 pages)
23. 4/14/88 Memorandum to File from Victor Stello, Jr. (1 page)
24. May 1988 Pertinent Portion of Commissioner Roberts' Appointment Schedule for May 1988.
25. 5/3/88 Tom Elsasser's Notes from Meeting with PECO Officials.
26. 5/5/88 Letter to William T. Russell from C. A. McNeill, Jr., with enclosure, re: Letter from J. F. Paquette, Jr., to W. T. Russell dated April 8, 1988. (12 pages)
27. 5/9/88 Letter to Corbin A. McNeill from William T. Russell, with enclosure, re: Meeting Summary. (3 pages)
28. 5/13/88 Memorandum to Walter R. Butler from Robert E. Martin, re: Forthcoming Meeting with Philadelphia Electric Co. at Peach Bottom Atomic Power Station. (3 pages)

APPENDIX A

DOCUMENTS BEING RELEASED

29. 5/13/88 Memorandum for Commissioner Carr from Tom Elasser,
re: Telephone Conversation with Corbin McNeill of PECO.
30. 5/18/88 Letter to C. A. McNeill from William F. Kane, with enclosure,
re: Combined Inspection 50-277/88-10 and 50-278/88-10.
(43 pages)
31. 6/2/88 Letter to William T. Russell from C. A. McNeill, Jr., with
enclosure, re: Letter from J. F. Paquette, Jr., to
W. T. Russell dated April 8, 1988. (13 pages)
32. 6/7/88 Memorandum to William F. Kane from J. C. Linville, with
enclosure, re: Peach Bottom Atomic Power Station Status
Report for the Period May 18 - June 3, 1988. (4 pages)
33. 6/13/88 Letter to C. A. McNeill from William F. Kane, with enclosure,
re: Combined Inspection 50-277/88-13 and 50-278/88-13.
(39 pages)
34. 7/5/88 Letter to William T. Russell from C. A. McNeill, Jr., with
enclosure, re: Letter from J. F. Paquette, Jr., to
W. T. Russell dated April 8, 1988. (12 pages)
35. 7/8/88 Letter to Joseph Paquette from Victor Stello, Jr. (2 pages)
36. 7/11/88 Memorandum to William F. Kane from J. C. Linville, with
enclosure, re: Peach Bottom Atomic Power Station Status
Report for the Period June 20 - July 8, 1988. (4 pages)
37. 7/26/88 Notice of Licensee Meeting with Philadelphia Electric Company
at Peach Bottom Atomic Power Station Presidents Conference
Center. (2 pages)
38. 7/28/88 Letter to C. A. McNeill from William F. Kane, with enclosure,
re: Combined Inspection 50-277/88-18 and 50-278/88-18.
(37 pages)
39. 7/28/88 Summary of Meeting on May 19, 1988 to Discuss the Plan for
Restart, re: Peach Bottom Atomic Power Station Units 1 and 2.
(26 pages)
40. 8/3/88 Letter to William T. Russell from C. A. McNeill, Jr., with
enclosure, re: Letter from J. F. Paquette, Jr. to
W. T. Russell dated April 8, 1988. (12 pages)
41. 9/12/88 Letter to William T. Russell from C. A. McNeill, Jr., with
enclosure, re: Letter from J. F. Paquette, Jr. to
W. T. Russell dated April 8, 1988. (13 pages)

APPENDIX B

DOCUMENTS BEING WITHHELD IN WHOLE OR IN PART PURSUANT TO EXEMPTION 5

1. 12/22/87 Memorandum from Gail H. Marcus to Commissioner Rogers,
re: "CR-87-210-Response to Senator Mikulski on Peach Bottom"
(1 page) Withheld in entirety.
2. 1/5/88 Memorandum to File from Tom Elsasser, re: Commissioner Carr's
Visit to the Peach Bottom Site and Speech to the Region I
Residents at King of Prussia" (3 pages) Withheld in part.



PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

September 13, 1988

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-88-478

Rec'd 9-16-88

Director, Office of Administration
U.S. Nuclear Regulatory Commission
Washington D.C. 20555

Re: FREEDOM OF INFORMATION ACT REQUESTS
Peach Bottom Units 2 and 3
NRC Docket Nos. 050-277 and 050-278
Restart Investigation and
Mismanagement Investigation

Dear Sir:

As a Commissioner of the Pennsylvania Public Utility Commission, I have a statutory responsibility for the public health and safety in regards to the operation of electric generating stations operating within the Commonwealth. My specific concerns about the future operation of the Peach Bottom Nuclear Generating Facility in York County run deep.

I have serious questions concerning the relationship between the announcement of the proposed fines for mismanagement at Peach Bottom and the schedule for restart of Peach Bottom Units 2 and 3. Accordingly, I am hereby requesting disclosure of the following records pursuant to the Freedom of Information Act:

1. The dates and topics of discussion of all meetings and telephone calls from November 25, 1987 to September 13, 1988 between or among NRC Chairman Lando W. Zech, Jr., Commissioner Thomas Roberts, Commissioner Kenneth Carr or Commissioner Kenneth Rogers, and PECO Chairman and CEO, Joseph F. Paquette, Mr. Corbin McNeill (PECO Senior Vice-President, Nuclear Operations), Mr. Dickinson Smith (Vice-President, Peach Bottom), or Mr. James Watkins (Member, PECO Board of Directors) concerning the issues of the restart schedule for the Peach Bottom Nuclear Generating Facility or the imposition of fines for mismanagement at the Peach Bottom Nuclear Generating Facility.
- 2 All documents, including, but not limited to notes, agendas, minutes, correspondence and memoranda, that were reviewed, exchanged, produced, or discussed during any meeting or telephone call from November 25, 1987 to September 13, 1988, between or among NRC Chairman Lando W. Zech, Jr.,

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Commissioner Thomas Roberts, Commissioner Kenneth Carr, or Commissioner Kenneth Rogers, PECO Chairman and CEO Joseph F. Paquette, Mr. Corbin McNeill (PECO Senior Vice-President, Nuclear Operations), Mr. Dickinson Smith (Vice-President, Peach Bottom) or Mr. James Watkins (Member, PECO Board of Directors) concerning either the issues of the restart schedule for Peach Bottom Nuclear Generating Facility or the imposition of fines for mismanagement at the Peach Bottom Nuclear Generating Facility.

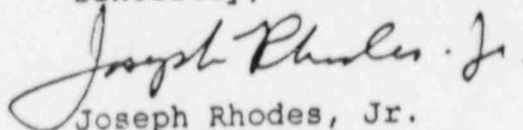
3. The dates and topics of discussion of all meetings and telephone calls from November 25, 1987 to September 13, 1988 between or among Joseph F. Paquette (PECO Chairman and CEO), Mr. Corbin McNeill (PECO Senior Vice-President, Nuclear Operations), Mr. Dickinson Smith (Vice-President, Peach Bottom), Mr. James Watkins (Member, PECO Board of Directors) or other senior Philadelphia Electric Company executives and Nuclear Regulatory Commission senior management, including William T. Russell, William Kane, James Linville, or Jay Gutierrez, concerning either the issues of the restart schedule or the imposition of fines for mismanagement at the Peach Bottom Nuclear Generating Facility.
4. All documents, including, but not limited to notes, agendas, minutes, correspondence, and memoranda, that were reviewed, exchanged, produced or discussed during any meeting or telephone call from November 25, 1987 to September 13, 1988 between or among Joseph F. Paquette (PECO Chairman and CEO), Mr. Corbin McNeill (PECO Senior Vice-President, Nuclear Operations), Mr. Dickinson Smith (Vice-President, Peach Bottom), Mr. James Watkins (Member, PECO Board of Directors) or other senior Philadelphia Electric Company executives and Nuclear Regulatory Commission senior management, including William T. Russell, William Kane, James Linville, or Jay Gutierrez, concerning either the issues of the restart schedule or the imposition of fines for mismanagement at the Peach Bottom Nuclear Generating Facility.
5. The dates and topics of all meetings and telephone calls from November 25, 1987 to September 13, 1988 between or among James Everett (former Chairman and CEO of PECO), John Austin (former President of PECO), or John S. Kemper (former PECO Senior Vice-President, Nuclear Operations) and NRC Chairman Lando W. Zech, Jr., Commissioner Thomas Roberts, Commissioner Kenneth Carr or Commissioner Kenneth Rogers concerning issues of the restart schedule for Peach Bottom Nuclear Generating Facility or fines for mismanagement at the Peach Bottom Nuclear Generating Facility.

6. All documents, including, but not limited to notes, agendas, minutes, correspondence, and memoranda, that were reviewed, exchanged, produced, or discussed during any meeting or telephone call from November 25, 1987 to September 13, 1988 between or among James Everett (former Chairman and CEO of PECO), John Austin (former President of PECO), or John S. Kemper (former PECO Senior Vice President, Nuclear Operations) and NRC Chairman Lando W. Zech, Jr., Commissioner Thomas Roberts, Commissioner Kenneth Carr or Commissioner Kenneth Rogers concerning issues of the restart schedule for Peach Bottom Nuclear Generating Facility or fines for mismanagement at the Peach Bottom Nuclear Generating Facility.
7. The dates and topics of all meetings and telephone calls from November 25, 1987 to September 13, 1988 between or among James Everett (former Chairman and CEO of PECO), John Austin (former President of PECO), or John S. Kemper (former PECO Senior Vice-President, Nuclear Operations) and Bill Kane, NRC Director, Reactor Projects, Region I; Bruce Bogar, NRC Assistant Director, Nuclear Reactor Regulation; Robert Martin, NRC Project Manager, Nuclear Reactor Regulation; William T. Russell, NRC Administrator, Region I; Thomas Murley, NRC Director, Nuclear Reactor Regulation; or Victor Stello, Jr., NRC Executive Director of Operations concerning the issues of the restart schedule for Peach Bottom Nuclear Generating Facility or the imposition of fines for mismanagement at the Peach Bottom Nuclear Generating Facility.
8. All documents, including but not limited to notes, agendas, minutes, correspondence, and memoranda, that were reviewed, exchanged, produced, or discussed during any meeting or telephone call from November 25, 1987 to September 13, 1988 between or among James Everett (former PECO Chairman and CEO); John Austin (former PECO President); or John S. Kemper (former PECO Senior Vice President, Nuclear Operations) and Bill Kane, NRC Director, Reactor Projects, Region I; Bruce Bogar, NRC Assistant Director, Nuclear Reactor Regulation; Robert Martin, NRC Project Manager, Nuclear Reactor Regulation; William T. Russell, NRC Administrator, Region I; Thomas Marley, NRC Director, Nuclear Reactor Regulations; or Victor Stello, Jr., NRC Executive Director of Operations, concerning the issues of the restart schedule for Peach Bottom Nuclear Generating Facility or the imposition of fines for mismanagement at the Peach Bottom Nuclear Generating Facility.

You are hereby advised that whatever cost is involved in disclosing these records is acceptable.

Public disclosure of this information will go a long way towards restoring and assuring public confidence in the NRC's oversight role vis-a-vis Peach Bottom and PECO. I respectfully await your reply.

Sincerely,

A handwritten signature in cursive script, reading "Joseph Rhodes, Jr.", written in dark ink.

Joseph Rhodes, Jr.

Commissioner

Pa. Public Utility Commission

cc: Joseph F. Paquette Philadelphia Electric Company
Daniel P. Delaney, Chief Counsel