

PDR-016



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

OFFICE OF THE
SECRETARY

March 11, 1986

Marya C. Young, Esquire
Government Accountability Project
1555 Connecticut Avenue, N.W.
Suite 202
Washington, DC 20036

Re: FOIA APPEAL 85-A-42C 85-101

Dear Ms. Young:

This letter responds to your December 11, 1985 appeal from the initial denial of documents on Appendices O, P, and Q of FOIA-85-101. In response to your appeal, we are releasing portions of Documents 2 and 5 on Appendix P, and all of Document 1 on Appendix Q. Certain of these documents are exempt from release under the provisions of the Freedom of Information Act, but the Commission is releasing them at its discretion. Copies of these documents are being placed in the NRC's Public Document Room located at 1717 H Street, N.W., Washington, DC and may be obtained by presentation of this letter or under the file designation FOIA-85-A-42C/FOIA-85-101.

We affirm our earlier decision to withhold the remainder of the documents listed on Appendices O and P. The release of these predecisional documents would inhibit the open and frank exchange of ideas, views, advice and recommendations between the Office of Investigations, the Office of the General Counsel, and the Commission. Since the documents are both predecisional and deliberative, and since their release could, in the Commission's view, adversely affect the quality of the agency's future deliberation, they are of the type of documents contemplated by Congress as exempt from mandatory disclosure under the FOIA. See NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150 (1975); Coastal States Gas Corp. v. Dept. of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980); Jordan v. Dept. of Justice, 591 F.2d 753, 774 (D.C. Cir. 1978) (*en banc*); Vaughn v. Rosen, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975). For these same reasons, the Commission has decided that the release of these documents is not in the public interest. Moreover, the documents contain no reasonably segregable factual portions. See Ryan v. Dept. of Justice, 617 F.2d 781, 790-91 (D.C. Cir. 1980); Mead Data Central, Inc. v. Dept. of the Air Force, 506 F.2d 242, 256 (D.C. Cir. 1977); Williams v. Dept. of Justice, 556 F. Supp. 63, 65 (D.D.C. 1982). Accordingly, the Commission has determined that the documents should continue to be withheld in their entirety pursuant to the "deliberative process" privilege incorporated by Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), and the Commission's regulations, 10 CFR 2.5(a)(5). The three paragraphs being withheld on page 2, Document 5, Appendix P do not contain any reasonably segregable factual portions because any facts are inextricably intertwined with exempt portions.

8604090176 860311
PDR FOIA
YOUNG85-A-42 PDR

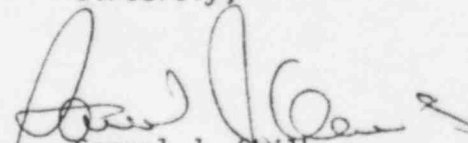
Marya C. Young, Esq.

- 2 -

Additionally, the names and titles of certain persons have been deleted from Documents 2 and 5 on Appendix P because the release of these names would be an unwarranted invasion of personal privacy. These portions are exempt under Exemptions 6 and 7(c), 5 U.S.C. § 552(b)(6) and (b)(7)(c).

This letter represents final agency action on your December 11, 1985 FOIA appeal. Judicial review of this decision is available in Federal district court in the district in which you reside, have your principal place of business, or in the District of Columbia.

Sincerely,

A handwritten signature in dark ink, appearing to read "Samuel J. Chalk", is written over the typed name.

Samuel J. Chalk
Secretary of the Commission



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

NOV 7 1985

Ms. Michele Varricchio
Mr. Thomas Devine
Government Accountability Project
1555 Connecticut Avenue, NW, Suite 202
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-85-101

Dear Ms. Varricchio and Mr. Devine:

This is the fourth partial response to your letter dated February 6, 1985, in which you requested, pursuant to the Freedom of Information Act (FOIA), six categories of documents regarding the Wolf Creek Generating Station.

The documents listed on the enclosed Appendices M through Q are responsive to your request. The documents are already in the NRC Public Document Room (PDR), are being released in their entirety or in part, or are being withheld in their entirety, as noted on each appendix. The applicable FOIA exemptions for withheld information are noted next to the document descriptions on the appendices.

Copies of the documents released in whole or in part are being placed in the PDR. You may obtain access to these records by requesting PDR folder FOIA-85-101 under your names. Documents already available for public inspection in the PDR may be obtained by referring to the file location which is noted next to the description of each document.

Information withheld pursuant to Exemption (5) consists of predecisional analyses, opinions and recommendations of members of the staff, the General Counsel and Commissioners. Release of this information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. There are no reasonably segregable factual portions of the documents identified on Appendix P. This information is being withheld from public disclosure pursuant to Exemption (5) of the FOIA (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5) of the Commission's regulations.

Information withheld pursuant to Exemption (2) of the Government in the Sunshine Act (5 U.S.C. 552b(c)(2)) and 10 CFR 9.104(a)(2) of the Commission's regulations consists solely of internal personnel rules and practices of the agency.

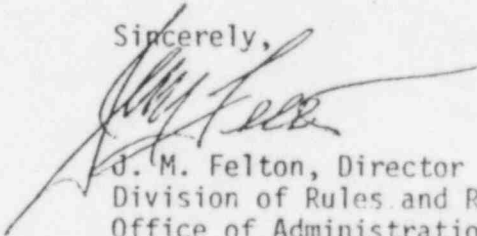
8511210006 PDR

7pp

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 the denial of a portion of the document listed on Appendix O, the documents numbered 2, 3, 5 and 6 on Appendix P, and the document listed on Appendix Q is Mr. John C. Hoyle, Assistant Secretary of the Commission. The person responsible for the denial of document number 1 on Appendix P, is Mr. Ben B. Hayes, Director, Office of Investigations. The person responsible for the denial of document number 4 of Appendix P is Mr. James A. Fitzgerald, Assistant General Counsel.

This denial may be appealed to the Secretary of 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."

Sincerely,



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

Enclosures: As stated

APPENDIX M

RECORDS BEING PLACED IN PDR

1. 07/27/84 Notice of Significant Licensee Meeting (1 page)
2. 08/07/84 Enforcement Conference Agenda (1 page)
3. 08/07/84 Attendance KG&E Enforcement Conference (1 page)
4. 08/15/84 Ltr from Glenn Koester to John T. Collins, re: James E. Wells, Jr. (1 page)
5. 09/24/84 Memo from R. Denise to R. DeYoung, subject: Wolf Creek Allegation Program Assessment (Q-4-85-001) (2 pages)
6. 09/24/84 Notification of Significant Enforcement Action (1 page)
7. 10/19/84 Memo from R. DeYoung to R. Denise, subject: Status of NRC/RIV Processing of Allegations - Wolf Creek (Q-4-85-001) (1 page)
8. 10/26/84 Ltr from R. Denise to G. Koester w/enclosure; (Q-4-84-052) and (Q-4-84-053) (16 pages)
9. 11/13/84 Memo from R. Martin to R. Kerr, subject: Questionable Weld Record - Wolf Creek (Q-84-052 & 053) (1 page)
10. 11/19/84 Memo from R. Martin to R. Kerr, subject: Questionable Weld Record - Wolf Creek (Q4-84-053) (1 page)
11. 11/19/84 Memo from R. Martin from R. Kerr, subject: Questionable Weld Record - Wolf Creek (Q4-84-052) (1 page)
12. 11/20/84 Memo from R. Martin to S. Connelly, subject: NRCM 0702 Notification (Q-84-052) (2 pages)
13. 11/21/84 Ltr to G. Koester from R. Martin, subject: Notice of Violation and Proposed Imposition of Civil Penalty (Q-4-84-053) (7 pages)
14. 02/01/85 Ltr from D. Glickman to N. Palladino (Q-4-85-001) (1 page)
15. 02/08/85 Ltr from J. Slattery to N. Palladino (Q-85-001) (4 pages)
16. 02/19/85 Memo from Chilk to Asselstine, subject: OI Request for Commission Guidance on Initiating Investigations of Senior Managers at the Wolf Creek Generating Station (Q4-85-001) (1 page) Note: Attachment 1 is the 2/19/85 memo from Chilk to Hayes (Doc # 17 of this Appendix) Attachment 2 is the transcript - See Appendix Q.
17. 02/19/85 Memo from Chilk to Hayes, subject: Guidance on Initiating Investigations at Wolf Creek (Q-4-85-001) (1 page)

Re: FOIA-85-101
(Fourth Response)

APPENDIX N

DOCUMENTS ALREADY IN PDR

1. 01/09/85 Ltr from J. Dingell to N. Palladino, PDR/COMMS/NRCC #8501290750 (Q-4-85-001) (2 pages)
2. 01/23/85 Letter from Palladino to R. Dingell PDR #8501290745
3. 03/11/85 Dircks to Glickman (22 pages) ANO: 8503250387, PDR/ADOCK/50-482 U
4. 03/20/85 Ltr from D. Glickman to N. Palladino (1 page) (Q4-85-001) PDR/ADOCK/50-482U, PDR #8503270690
5. 04/23/85 Ltr from N. Palladino to D. Glickman, (1 page) (Q4-84-052 & 053) PDR/ADOCK/50-482 U, PDR #8505170545

Re: FOIA-85-101
(Fourth Response)

APPENDIX 0

PORTIONS OF RECORD DELETED

EXEMPTION

1. 11/24/82 Memo from Chilk to Fitzgerald,
subject: Staff Requirements - Discussion
of Office of Investigations Policy and
Procedures (Cont'd), 10:00 A.M., Monday
November 8, 1982, Commissioners' Conference
Room, D.C. Office (Closed--Exemption 2)
(2 pages)

5

Re: FOIA-85-101
(Fourth Response)

APPENDIX P

RECORDS DENIED IN ENTIRETY - EXEMPTION 5

1. 12/10/84 Memo from Hayes to H.H.E. Plaine, subject: Reportability of Wrongdoing to NRC (Q-4-85-001) (1 page)
2. 12/24/84 Memo from Hayes to Palladino and Cmmrs., subject: Wolf Creek Generating Station - Character Issues Pertaining to Two Senior Managers (Q4-85-001) (3 pages)
3. 01/08/85 Memo from T. Roberts to Hayes, subject: OI's December 24, 1984 Request for Commission Guidance (Q4-85-001) (2 pages)
4. 01/09/85 Memo from Fitzgerald to Hayes, subject: Reportability of Wrongdoing to NRC (Q-4-85-001) (4 pages)
5. 01/15/85 Memo from Hayes to Roberts, subject: OI's December 24, 1984 Request for Commission Guidance (Q4-85-001) (5 pages)
6. 01/16/85 Memo from Palladino to Hayes, subject: Your December 24, 1984 Memorandum Regarding Wolf Creek (Q4-85-001) (1 page)

Re: FOIA-85-101
(Fourth Response)

APPENDIX Q

RECORD DENIED UNDER GOVERNMENT IN THE SUNSHINE ACT
EXEMPTION 2

1. 11/08/82 Commission Meeting Transcript pages 72, 73 and 74 (3 pages)

GOVERNMENT ACCOUNTABILITY PROJECT

1555 Connecticut Avenue, N.W., Suite 202
Washington, D.C. 20036

(202) 232-8550

February 6, 1985

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

**FREEDOM OF INFORMATION
ACT REQUEST**

FOIA-85-101
rec'd 02/11/85

To Whom It May Concern:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, the Government Accountability Project (GAP) requests copies of any and all agency records and information, including but not limited to notes, inter-office memoranda, letters, memoranda, drafts, minutes, diaries, logs, calendars, tapes, transcripts, summaries, interview reports, procedures, instructions, engineering analyses, drawings, files, graphs, maps, photographs, agreements, handwritten notes, studies, data sheets, notebooks, telephone messages, books, computations, voice recordings, computer run-offs, representative records, interim and/or final reports, status reports, and any and all other records relevant to and/or generated in connection with the Wolf Creek Generating Station STN-50-482 in the following areas:

- * Institute of Nuclear Power Operations 1983 (INPO) Report on Wolf Creek. This report, referred to in an October 9, 1984 letter from Darrel G. Eisenhut, Director of the Office of Nuclear Reactor Regulation, to Michele Varricchio of the Government Accountability Project, was received on the Wolf Creek site by NRC Office of Inspection and Enforcement and NRC Region IV representatives,

- * Investigations conducted during construction and licensing of the Wolf Creek Generating Station by the NRC Office of Investigations,

- * NRC meeting of January 15, 1985 with Kansas Gas and Electric to discuss the operational readiness of Wolf Creek and a February 6, 1985 meeting held for the same purpose,

- * NRC meeting held in Bethesda Maryland on November 28, 1984 to discuss the status of completion and future schedule for licensing of Wolf Creek,

~~8507170625 PRR~~
2PP

Director
Office of Administration

Page two
February 6, 1985

* NRC investigations and inspections regarding the allegations of James Wells, employee at Wolf Creek.

* NRC Region IV meeting October 29, 1984, Enforcement Conference

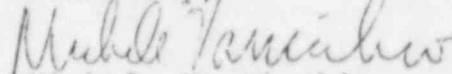
If any records as defined in 10 CFR §9.3(b) and the NRC Manual, supra, and covered by this request have been destroyed and/or removed after this request, please provide all records which have been or are destroyed and/or removed, a description of the action(s) taken relevant to, generated in connection with, and/or issued in order to implement the action(s).

GAP requests that fees be waived, because providing the requested information "can be considered as primarily benefitting the general public," 5 U.S.C. 552(a)(4)(A). GAP is a non-profit, non-partisan public interest organization concerned with honest and open government. Through legal representation, advice, national conferences, films, publications, and public outreach, GAP promotes whistle-blowers as agents of governmental accountability. GAP is currently working with citizens groups in the Kansas area concerning the Wolf Creek Generating Station.

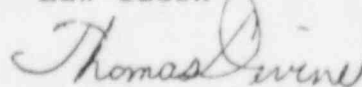
For any documents or portions of documents that you deny access to, please provide an index, as required by Vaughn v. Rosen, 484 F.2d 820 (D.C.Cir. 1973), cert. denied, 415 U.S. 977 (1977), itemizing and describing the documents or portions of documents withheld, and providing a detailed justification of your grounds for claiming each exemption.

Thank you for your prompt response to this request. We look forward to such a response within ten days.

Sincerely,



Michele Varricchio
Law Clerk



Thomas Devine
Legal Director