



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

PDR-016

JUN 30 1986

Albert V. Carr, Jr., Esquire  
Duke Power Company  
Legal Department  
P.O. Box 33189  
Charlotte, NC 28242

IN RESPONSE REFER  
TO FOIA-86-A-69  
(FOIA-85-584)

Dear Mr. Carr:

This is in response to your letter dated April 30, 1986, in which you appealed Mr. D. H. Grimsley's letter dated April 1, 1986, which denied-in-part your Freedom of Information Act (FOIA) request for documents regarding Enforcement Action No. EA-84-93 concerning the Catawba Nuclear Station.

Acting on your appeal, I have carefully reviewed the record in this case and have determined, for the reasons stated below, that the previously withheld annotations will continue to be 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. Therefore, your appeal is denied.

As you are aware, the base document upon which the annotations were made is identified as an attachment to document U-3 and has been addressed in my letter to you dated May 5, 1986. The annotations on the document are clearly predecisional because they were prepared prior to and in the course of reaching final agency decisions. These annotations describe preliminary staff thinking and, therefore, contain preliminary advice, opinions, and recommendations. Exemption (5) was intended to permit an agency's withholding of such information to preserve the free and candid internal dialogue necessary for the careful formulation of agency decisions. (See Jordan v. Department of Justice, 591 F.2d 753, 774 (D.C. Cir. 1978) and Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980)). Segregation and disclosure of the factual information contained in the annotations would reveal the staff's evaluations of which facts were important and thereby expose to public scrutiny their thought processes. Thus, the annotations may be withheld (See Russell v. Department of the Air Force, 682 F.2d 1048 (D.C. Cir. 1982)). Consequently, I have determined that the release of these annotations would adversely affect the agency's deliberative process.

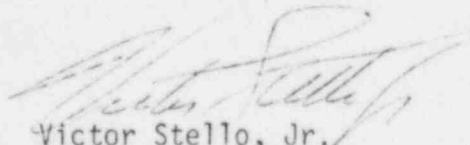
In your April 30, 1986 letter, you requested that the author of the annotations be identified. It appears that several different people annotated the base document and we are unable to identify the individual annotators.

Mr. Carr

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This is a final agency action. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B)), judicial review of this decision is available in a district court of the United States in either 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 "Victor Stello, Jr.", is written over the typed name.

Victor Stello, Jr.  
Executive Director for Operations