

November 9, 2005

Jay M. Gutierrez, Esq.  
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1111 Pennsylvania Avenue, NW  
Washington, DC 20004

SUBJECT: DISCLOSURE OF MATERIAL SUBMITTED BY FIRSTENERGY NUCLEAR  
OPERATING COMPANY (FENOC) IN THE MATTER OF NRC INVESTIGATION  
CASE NO. 3-2002-006

Dear Mr. Gutierrez:

As you may know, the stay of the enforcement proceeding against Mr. Andrew Siemaszko, which was extended by the Atomic Safety Licensing Board on September 29, 2005, expires on November 30, 2005. In anticipation of the expiration of the stay, the NRC is in the process of reviewing documents, submitted by FENOC in the above referenced investigation, for public release. FENOC previously requested withholding of a portion of these documents pursuant to 10 C.F.R. § 2.790(a)(4) (currently § 2.390(a)(4)). NRC is evaluating the information disclosed by FENOC during the course of the above referenced investigation in order to determine whether the information that FENOC seeks to have withheld under § 2.390(a)(4) contains trade secrets, or confidential or privileged commercial or financial information and, if so, whether such information should be withheld from public disclosure.

To this end, we are requesting that FENOC submit affidavits supporting its previous claims that certain information disclosed to NRC during the above referenced investigation should be withheld from public disclosure due to its proprietary nature, as required by § 2.390(b)(1). Several cover letters, under which potentially proprietary information was submitted, stated that FENOC would submit these affidavits, however the NRC has not received any such affidavits to date. All information to be withheld as proprietary should be supported and marked in accordance with the requirements set forth in § 2.390. Assuming the staff agrees that the material is eligible for withholding under § 2.390(a)(4), the staff will pursue making the material available to parties to NRC enforcement proceedings resulting from the above referenced investigation, pursuant to protective orders under § 2.390(b)(6).

The NRC has to date also withheld information from public disclosure pursuant to 10 C.F.R. § 2.790(a)(7) (currently § 2.390(a)(7)) and § 9.17(a)(7), which relates to ongoing investigatory matters. In light of the pending hearing request by Mr. Siemaszko, the NRC may no longer be able to withhold some of this information pursuant to this exemption.

J. Gutierrez, Esq.

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Please contact me if you have any questions regarding this request.

Sincerely,

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Sara E. Brock  
Counsel for NRC Staff

cc: Richard Paul, Region III