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FOIA/PA REQUEST

Case No.: 2006-009A
Date Rec'd: 7-20-06
Specialist: Paul
Related Case: 2006-0175

By Certified Mail

FOIA/PA Officer

U.S. Nuclear Regulatory Commission

Washington, D.C 20555-0001

Re: FOIA/PA Appeal to FOIA/PA 2006-0175 Response # 2

This is an appeal under the Freedom of Information Act 5 U.S.C. § 552.

On April 11, 2006, I requested documents under the Freedom of Information Act and my request was assigned identification number 2006-0175.

In essence, the FOIA request asked for documents prepared in response to, referring, responding, rebutting, relating to or discussing the August 7, 2002 Report by Synapse Energy Economics, Inc. prepared for STAR Foundation and Riverkeeper, "Financial Insecurity: The Increasing Use of Limited Liability Companies and Multi-tiered Holding Companies to Own Nuclear Power Plants." (Hereinafter "the Synapse Report").

On June 23, 2006, I received two responses to my request in letters from Mr. Russell A. Nichols, FOIA Officer and I hereby appeal the partial response given in Response number 2 where certain requested information was withheld because the withheld information purportedly is part of the deliberative process (Exemption 5).

The documents that were withheld must be disclosed under the FOIA because exemption 5 is intended to protect information about an agency's decision-making process and advice involving a "deliberative process" on legal and policy matters may be withheld, but the segregable, factual portions of documents should be disclosed.

We acknowledge that as the information relates to consideration of SECY-03-0195 which was being considered during this time period it would be exempt. But, as for the

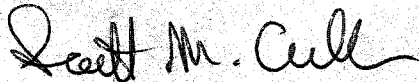
information in these documents relating to the Synapse Report the protection for the decision-making process is not appropriate.

The exemption also incorporates some of the privileges that apply in litigation involving the government and this privilege cannot be claimed in this instance because the authors are not the government's lawyers and the contained material will in now way "reveal the attorney's tactical and strategic thinking regarding the litigation."¹ Moreover, the withheld materials do not appear to be prepared for *any* litigation or trial, nor do they deal with essentially similar cases or decisions on enforcement litigation.² Thus, based on our limited knowledge of the information, it appears not be predecisional.³

Moreover, I was the Executive Director of STAR in 2002 and worked on the report that is the subject of this request. Furthermore, I am presently working with David Schlissel one of the primary authors of the Synapse report to reconsider the issues raised in the original report and being able to better understand the NRC analysis of these issues will further the value of our analysis to the substantive debate. In particular, we believe that the Draft memo to the Commissioners from W. Travers, EDO, Re: Recently Raised Issues Regarding the Role of Limited Liability Companies dated 1/8/03 and 2/2003 as well as any of the undated earlier drafts would likely be informative and illustrative of the agency response to the issues raised in the report.

Thank you for your consideration of this appeal.

Sincerely,

A handwritten signature in dark ink, appearing to read "Scott M. Cullen". The signature is fluid and cursive, with the first name "Scott" and last name "Cullen" clearly distinguishable.

Scott M. Cullen

¹ See *Mervin v. FTC*, 591 F.2d 821, 826-27 (D.C. Cir. 1978) (facts "seldom can be separated from the attorney's thoughts").

² See *FTC v. Grolier, Inc.*, 103 S. Ct. 2209, 3 GDS 83,193 (1983)

³ *Carter v. United States Dep't of the Census*, 307 F. 3d 1084 (9th Cir. 2002)