

CASE NO: 2017-0292  
DATE REC'D: 01/26/2017  
SPECIALIST:  
RELATED CASE:

**From:** Samuel Miranda  
**To:** FOIA Resource  
**Cc:** Dave Lochbaum  
**Subject:** [External\_Sender] Freedom of Information Act Request Letter  
**Date:** Wednesday, January 25, 2017 3:57:20 PM  
**Attachments:** P-2206wx.docx

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## Freedom of Information Act Request Letter

Via E-Mail

January 25, 2017

U.S. Nuclear Regulatory Commission  
Ms. Tina Ennis, FOIA/Privacy Officer  
Mailstop: T-5 F09  
Washington, DC 20555-0001

[FOIA.resource@nrc.gov](mailto:FOIA.resource@nrc.gov)

Dear Ms. Ennis:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552), Samuel Miranda requests that the U.S. Nuclear Regulatory Commission (NRC) produce all correspondence, memoranda, documents, reports, records, statements, audits, lists of names, applications, letters, expense logs and receipts, calendar or diary logs (especially with respect to "drop-in" visits), facsimile logs, telephone records, call sheets, notes, examinations, presentations and slides, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, electronic mail, and other documents and things that refer or relate to the following in any way, within twenty (20) business days: Exelon's appeals, dated December 8, 2015 (ADAMS Accession No. ML15342A112), and June 22, 2016 (ADAMS Accession No. ML16154A254), of the NRC staff's backfit order of October 9, 2015 (ADAMS Accession No. ML14225A871) that was directed to the Braidwood Station, Units 1 and 2, Facility Operating License Nos. NPF-72 and NPF-77, located in Will County, Illinois, and the Byron Station, Unit Nos. 1 and 2, Facility Operating License Nos. NPF-37 and NPF-66, located in Ogle County, Illinois. (These plants are also known by their docket numbers: STN 50-454 through STN 50-457.) The NRC is requested to produce all the specified information for the period from October 9, 2015 to the date of this request. This information is requested, especially; but not exclusively, from the records of the following persons:

Victor M. McCree

Gary M. Holahan

Theresa V. Clark

Thomas G. Scarbrough

Michael A. Spencer

K. Steven West

Selim Sancaktar

Don Helton

James Chang

John Lane

Michael Johnson

William H. Dean

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaugh v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), cert denied, 415 U.S. 977 (1974). Additionally, any reasonably segregable portion of a responsive record must be provided to me after redaction of any all allegedly exempt material, as the law requires.

In order to help you to determine my status for purposes of determining the applicability of any fees, you should know that - - - -

I am an individual seeking information for personal use and not for a commercial use.

Furthermore, I am a retired nuclear engineer, with a PE license in mechanical engineering, and more than 40 years of professional experience in nuclear safety analysis and licensing, 25 years of which were in Westinghouse's Nuclear Safety Department, and almost 15 years of which were in the NRC's Office of Nuclear Reactor Regulation, as a Reactor Systems Engineer.

A significant part of my experience has been in the design and analysis of the very equipment that is the subject of the NRC's review and approval. I intend to use the requested information to advocate for a public review of how licensees are adopting Westinghouse's flawed advice, and they are succeeding in their licensing applications, based upon that advice.

I expect that most or all of the requested information will be provided in electronic form. Items that are publicly accessible in ADAMS can be supplied simply by noting the documents' titles, authors, dates of issue, and identifying their correspondent ADAMS accession numbers.

I request a waiver of all fees for this request under the terms of 5 U.S.C. Section 552(a)(4)(A)(iii). Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the NRC's responsibilities and its performance as the nation's regulator of commercial nuclear plants, and is not primarily in my commercial interest. I believe I meet the criteria for a fee waiver recognized by the U.S. Justice Department - in its policy guidance of April 1987 - and by the federal courts, See *Project on Military Procurement v. Department of the Navy*, 710 F. Supp. 362 363, 365 (D.C.D. 1989).

Please take note of the Office of Management and Budget guidelines published March 27, 1987 (52 FR 10012) that include electronic publications and other nontraditional publishers as representatives of the news media. My most recent publication, on this issue, is a peer-reviewed paper in a technical journal. See ICONE24-60472, "Strategies to Prevent Benign Transients from Becoming Serious Accidents", Samuel Miranda, Proceedings of the 2016 24th International Conference on Nuclear Engineering, ICONE24, June 26-30, 2016, Charlotte, North Carolina.

In your deliberations, please take note of the following cases: *Campbell v. U.S. Department of Justice*, 334 U.S. App. D.C. (1998) (administrative and seemingly repetitious information is not exempt from fee-waiver consideration); *Project on Military Procurement* (agencies cannot reject a fee waiver based on the assumption that the information sought is covered by a FOIA exemption; and *Landmark Legal Foundation v. Internal Revenue Service*, 1998 U.S. Dist. LEXIS 21722 (D.C.D. 1998) (the fact that the information will soon be turned over to a public body does not exempt the material from fee-waiver consideration).

Consider, too the following information --.

(1) Describe the purpose for which the requester intends to use the requested information;

I intend to use the requested information to understand the rationale behind the NRC's approval of an application for a power uprating for Exelon's Byron and Braidwood plants, which was based upon erroneous and false information that was copied from certain Westinghouse letters. An Enforcement Petition (10 CFR §2.206) regarding Westinghouse Electric Corporation (attached) has been submitted.

(2) Explain the extent to which the requester will extract and analyze the substantive content of the agency record;

I will analyze the substantive content of the agency record with the aid of my 40 years of experience nuclear power plant safety and licensing, to understand the rationale the NRC used to arrive at its conclusions.

(3) Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;

Exelon's licensing rationale employed a circular logic that should have been rejected by the NRC. It was not. The specific qualifications the requester possesses to utilize information for the intended use are described in the forwarded Petition for Enforcement. Resolution of this petition will contribute to public understanding of the issue, and its potential threat to the public health and safety. Future NRC approvals, of similar applications can pose a threat to the public health and safety.

(4) Describe the likely impact on the public's understanding of the subject as compared to the level of public understanding of the subject before disclosure;

The likely impact on the public's understanding of the subject is that the NRC has not obtained evidence, from Exelon, that Exelon's plants can meet all applicable design requirements. The level of public understanding of the subject before disclosure was none. Westinghouse, and the NRC shared this lack of understanding.

(5) Describe the size and nature of the public to whose understanding a contribution will be made;

Persons who live in Braceville, IL and Byron, IL, Exelon's plants have been operating for decades, will be immediately, and directly affected. If other licensees cite the NRC's approval, and obtain similar

approvals, then the size of the affected population could significantly increase.

(6) Describe the intended means of dissemination to the general public;

The attached Petition for Enforcement is the first public disclosure. This was, by the way, copied to the Union of Concerned Scientists. It is preceded by another Petition for Enforcement, which will be discussed in **a public meeting, at the NRC offices, on February 1st.** The Illinois Department of Nuclear Safety, and the newspapers in Braceville and Byron, Illinois will also be informed. **Petition review procedures call for another public meeting, at the NRC offices, regarding the attached Enforcement Petition.**

(7) Indicate if public access to information will be provided free of charge or provided for an access fee or publication fee; and

Public access will be free of charge. Most of the requested information should be publicly available, anyway.

(8) Describe any commercial or private interest the requester or any other party has in the agency records sought.

I have no private or commercial interest in this matter. The requested information has no commercial value to the Petitioner.

I am willing to pay fees up to the amount of \$10. If the fees will exceed this amount, please inform me before fees are incurred. I can be contacted at (b) (6), if necessary to discuss any aspect of this request. I look forward to receiving the requested documents and a full fee waiver within twenty (20) business days.

Thank you for your consideration of this request.

Sincerely,

Samuel Miranda, PE

(b) (6)