

**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST**

2019-000390

1

RESPONSE
TYPE☐

INTERIM

☒

FINAL

REQUESTER:

Robert Leyse

DATE:

10/02/2019

DESCRIPTION OF REQUESTED RECORDS:

Each of the listed INPO, NSAC, or NSAC/INPO records referenced in ESBWR Licensing Topical Report NEDO-33262 (Rev. 2), submitted by GE Hitachi Nuclear Energy, which may be found in ADAMS as ML081560316.

PART I. – INFORMATION RELEASED

- ☐ The NRC has made some, or all, of the requested records publicly available through one or more of the following means. (1) <https://www.nrc.gov>; (2) public ADAMS, <https://www.nrc.gov/reading-rm/adams.html>; (3) microfiche available in the NRC Public Document Room; or FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/home>
- ☐ Agency records subject to the request are enclosed
- ☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (See Part I.D – Comments) for a disclosure determination and direct response to you.
- ☐ We are continuing to process your request
- ☒ See Part I.D – Comments.

PART I.A – FEES**AMOUNT**☐

You will be billed by NRC for the amount indicated.

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You will receive a refund for the amount indicated.

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Fees waived

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Since the minimum fee threshold was not met, you will not be charged fees.

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Due to our delayed response, you will not be charged search and/or duplication fees that would otherwise be applicable to your request.

PART I.B – INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- ☐ We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). See 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
- ☒ We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- ☐ Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.
- ☒ You may appeal this final determination within 90 calendar days of the date of this response. If you submit an appeal by mail, address it to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Mail Stop T-2 F43, Washington, D.C. 20555-0001. You may submit an appeal by e-mail to FOIA_resource@nrc.gov. You may fax an appeal to (301) 415-5130. Or you may submit an appeal through FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/home>. Please be sure to include on your submission that it is a "FOIA Appeal."

PART I.C -- REFERENCES AND POINTS OF CONTACT

You have the right to seek assistance from the NRC's FOIA Public Liaison by submitting your inquiry at <https://www.nrc.gov/reading-rm/foia/contact-foia.html>, or by calling the FOIA Public Liaison at (301) 415-1276.

If we have denied your request, you have the right to seek dispute resolution services from the NRC's Public Liaison or the Office of Government Information Services (OGIS). To seek dispute resolution services from OGIS, you may e-mail OGIS at ogis@nara.gov, send a fax to (202) 741-5789, or send a letter to: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. For additional information about OGIS, please visit the OGIS website at <https://www.archives.gov/ogis>.



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PART I.D – COMMENTS

As an initial matter, we note that you requested these same records many years ago; in response to that request, which was designated FOIA/PA-2008-0322, our office withheld in their entirety the records that the NRC was able to locate under FOIA exemption 4, and identified identified 13 records that the NRC was unable to locate.

Upon receipt of this request, we reached out to staff in the Office of Nuclear Reactor Regulation (NRR) to ascertain whether the NRC now has copies of these 13 records. NRR staff informed our office that, under the Memorandum of Agreement with the Institute of Nuclear Power Operations (INPO), the NRC is not provided access to INPO Nuclear Network OE reports, nor does the NRC have access to the records originated by the Nuclear Science Advisory Committee (NSAC). (We note that, according to its website, the NSAC is an advisory committee that provides official advice to the Department of Energy and the National Science Foundation on the national program for basic nuclear science research. See <https://www.energy.gov/science/np/nuclear-science-advisory-committee-nsac>). NRR staff informed us that they were unable to locate an INPO Significant Event Report with the title "In Preparation - Inventory Drain Down " NRR staff also informed us that, although they were not able to locate a joint NSAC/INPO report entitled Significant Event Report 56-81, "Loss of Station and Reserve Auxiliary Power," they did locate an INPO Significant Event Report 56-81 with the same name NRR staff is unfamiliar with any publication called an INPO Nuclear Network WE entry or report and NRR staff reached out to their point of contact at INPO who informed them that there is no such publication.

With respect to the INPO records that NRC does maintain, as required by our FOIA regulations, we reached out to INPO representatives to ascertain their disclosure views INPO confirmed that these reports are considered to be confidential commercial information Accordingly, they are being withheld in their entirety under FOIA exemption 4. See Part II.

Signature - Freedom of Information Act Officer or Designee

Stephanie A. Blaney

Digitally signed by Stephanie A. Blaney
Date: 2019.10.02 10:41:23 -04'00'

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PART II.A – APPLICABLE EXEMPTIONS

Records subject to the request are being withheld in their entirety or in part under the FOIA exemption(s) as indicated below (5 U.S.C. 552(b)).

- ☐ Exemption 1 The withheld information is properly classified pursuant to an Executive Order protecting national security information
- ☐ Exemption 2 The withheld information relates solely to the internal personnel rules and practices of NRC
- ☐ Exemption 3. The withheld information is specifically exempted from public disclosure by the statute indicated
- ☐ Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
- ☐ Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
- ☐ 41 U.S.C. 4702(b), which prohibits the disclosure of contractor proposals, except when incorporated into the contract between the agency and the
- ☐ Other
- ☒ Exemption 4 The withheld information is a trade secret or confidential commercial or financial information that is being withheld for the reason(s) indicated.
- ☐ The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
- ☒ The information is considered to be another type of confidential business (proprietary) information.
- ☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2)
- ☐ Exemption 5 The withheld information consists of interagency or intraagency records that are normally privileged in civil litigation.
- ☐ Deliberative process privilege
- ☐ Attorney work product privilege
- ☐ Attorney-client privilege
- ☐ Exemption 6: The withheld information from a personnel, medical, or similar file, is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy
- ☐ Exemption 7 The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated
- ☐ (A) Disclosure could reasonably be expected to interfere with an open enforcement proceeding.
- ☐ (C) Disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- ☐ (D) The information consists of names and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
- ☐ (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
- ☐ (F) Disclosure could reasonably be expected to endanger the life or physical safety of any individual.
- ☐ Other

PART II.B – DENYING OFFICIALS

In accordance with 10 CFR 9.25(g) and 9.25(h) of the U.S. Nuclear Regulatory Commission regulations, the official(s) listed below have made the determination to withhold certain information responsive to your request.

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL	
			EDO	SECY
Stephanie A. Blaney	FOIA Officer	INPO reports	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	Select Title/Office from drop-down list		<input type="checkbox"/>	<input type="checkbox"/>
	Select Title/Office from drop-down list		<input type="checkbox"/>	<input type="checkbox"/>
	Select Title/Office from drop-down list		<input type="checkbox"/>	<input type="checkbox"/>