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December 3, 1992

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-92-587
Rec'd 12-7-92

VIA CERTIFIED MAIL

Mr. Donnie H. Grimsley
Director
Division of Freedom of Information
and Publications Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Grimsley:

Pursuant to 10 C.F.R. § 9.23(b) (1992) and on behalf of Scientists and Engineers for Secure Energy, Inc. ("SE₂"), I hereby request one (1) copy of all agency records (as defined at 10 C.F.R. § 9.13 (1992)) consisting of and/or relating to:

(a) The Region I enforcement conference with representatives of an unidentified licensee identified in the U.S. Nuclear Regulatory Commission ("NRC") Weekly Information Report for the week ending November 13, 1992 at enclosure T, which was scheduled for November 30, 1992, and is identified as being an enforcement conference regarding violations identified during the routine inspection conducted October 22 through October 27, 1992, if, and only if, that meeting includes in whole or part activities related to the Shoreham Nuclear Power Plant, USNRC Docket No. 50-322 ("Shoreham");

(b) The inspection report of the inspection conducted October 22 through October 27, 1992, which is referred to in (a) above;

(c) The NRC Region I Management Meeting with representatives of an unidentified licensee to discuss violations identified during inspection 92-026 which meeting was identified

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in the NRC Weekly Information Report for the week ending October 30, 1992, as being originally scheduled for November 10, 1992 at 1:30 pm in Region I, if, and only if, that meeting relates in whole or part to NRC license(s) for Shoreham;

(d) The Report of Inspection 90-026 referred to in (c) above;

(e) Meetings held, or currently scheduled, at NRC headquarters during 1992 and/or 1993 related to violations, possible or alleged violations, enforcement actions, possible or proposed enforcement actions, fines and/or possible and/or proposed fines with respect to Shoreham, its licensee(s) and/or contractors;

(f) The proposal and the decision not to identify the Docket number and/or the licensee(s) involved in the meetings described in (a) and (c) above contrary to the requirements of enclosure 1 to the Weekly Information Report and contrary to the NRC's uniform practice of such identification in all other cases;

(g) The proposal and the decision not to open the meetings referred to in (a) and/or (c) above to the public including records addressing the criteria for selecting open enforcement conferences identified by the Commission in "Two-Year Trial Program for Conducting Open Enforcement Conferences; Policy Statement", 57 Fed. Reg. 30762, 30763 col. 1 (July 10, 1992);

(h) The decision(s) not to open any meetings held at NRC Headquarters with the Shoreham licensee(s) and/or others relating to Shoreham which meetings were or will be held during 1992 and/or 1993; and

(i) An identification of all meetings with the licensee(s) and/or others relating to Shoreham which were held at NRC headquarters during 1992 and all meetings currently scheduled to be held with the licensee(s) and/or others relating to Shoreham during 1992 and/or 1993 including subject matter, dates, and any summaries of discussions and/or similar notes of what transpired at such meetings.

COMMITMENT TO PAY FEES, IF NECESSARY

I do not believe that the search for the requested records should exceed two hours or that the records are in excess of 100 pages and, therefore, I do not believe that there will be any charge for the requested search and records, pursuant to 10

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C.F.R. § 9.39(b)&(c) (1992). However, if there are fees to be charged, SE₂ hereby indicates its willingness to pay such fees in accord with 10 C.F.R. § 9.40(a) (1992) so that the search for the records and their release may proceed as expeditiously as possible.

REQUEST FOR FEE WAIVER

If fees would otherwise be charged, SE₂ also requests waiver or reduction of the fees pursuant to 10 C.F.R. § 9.41 (1992) on the basis that the records will be used to further the public understanding of the Commission's actions in connection with Shoreham and to aid SE₂ (which is a 501(c)(3) tax exempt organization) in its internal and external scientific and engineering informational analysis and dissemination purposes related to Shoreham.

It is difficult to describe precisely the likely impact on the public understanding without seeing the records themselves; however, their availability will surely improve public understanding of the Commission's processes and position on Shoreham issues.

The public affected here, in addition to SE₂ and its members, are all of the people of Long Island whose health, safety, and environmental well-being can be affected by the conduct of activities related to Shoreham.

The intended means for dissemination to the general public could include the furnishing of the records to appropriate Federal and State authorities as well as to the print, radio and television media. Public access to the information would be provided free of charge. There is no commercial or private interest which SE₂ or SE₂'s members have in those records.

We have reviewed the Uniform Freedom of Information Act Fee Schedule and Guidelines issued by the Office of Management and Budget. 52 Fed. Reg. 10012 (March 27, 1987). I suggest that this request falls squarely within the dictate of 10 C.F.R. § 9.39(a) which states: "The NRC shall search for agency records requested under § 9.23(b) without charges when agency records are not sought for commercial use and the records are requested by an educational . . . institution" since SE₂ does constitute an educational or non-commercial scientific institution.

Below I set out SE₂'s response to each of the eight elements required to be addressed by 10 C.F.R. § 9.41(b)(1990):

(1) Describe the purpose for which the requestor intends to use the requested information.

SE₂ seeks the information, first, to determine the extent to which violations by the Shoreham licensee(s) and/or others may be endangering the health, safety, and/or environmental well-being of SE₂ members and others who live and work in the vicinity of Shoreham. If appropriate, SE₂ would also use such information in communications to the Legislative and Executive Branches of the Federal Government and in its efforts to communicate to the public on Long Island and in the nation. These communications will be in a variety of modes, including communications to the media. The overall purpose for which SE₂ will use these materials is as the basis for original research and communications regarding the proper administration of relevant laws including, but not limited to, the Atomic Energy Act of 1954, as amended, and the National Environmental Policy Act of 1969, as amended, as well as studies of the functioning of the Federal bureaucracy in addressing sensitive issues.

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

SE₂, through experts including professors at SUNY (Stony Brook) and scientists at Brookhaven, and members of SE₂ and their counsel, will thoroughly review and analyze the substantive content of the agency records making extractions from those records where appropriate and using entire individual records where appropriate.

(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.

The nature of the specific activities in which the agency records will be utilized is provided in response to criterion (1) above. The specific qualifications of personnel available to the requesters includes, in the case of SE₂, former members and Chairmen of the AEC and the NRC, Nobel Laureates and others with advanced degrees in the sciences and engineering disciplines,

especially those related to nuclear energy. Undersigned counsel also has over 20 years experience in the legal aspects of nuclear energy regulation before both the AEC and the NRC. The combination of this governmental, scientific, engineering and legal knowledge should allow the records to be analyzed and explained to the various intended audiences in a way that will contribute significantly to public understanding.

(4) Describe the likely impact on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure.

SE₂ cannot say whether the impact on the public's understanding of the subject will be favorable or unfavorable to the NRC. However, it is clear that the furnishing of records not previously disclosed will greatly illuminate the NRC's decisions and its decisional process including the extent to which NRC policy has been made "on the public record" or "off the public record". Such information is important to the public's understanding of, and confidence in, the workings of the processes of our government. The fact that this request seeks only records not previously disclosed (see below) indicates that the furnishing of such records unarguably will increase the level of the public's understanding of the subject.

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

The size and nature of the public to whose understanding a contribution will be made is described in response to criterion (1) above.

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

As indicated in response to criterion (1) above, the information will be disseminated to the general public by being made available to SE₂ members across the country in abstract or full text form, by being made available to members of the Executive and Legislative Branches of the Federal Government and to members of the media on Long Island and nationally in abstract or full text form as appropriate.

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

Public access to information will be provided free of charge. SE₂ does not charge an access fee or publication fee for information distributed.

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

SE₂ is not a commercial or profit making organization. SE₂ is a tax-exempt corporation pursuant to Section 501(c)(3) of the Internal Revenue Code. SE₂ operates solely in the public interest without profit motive. There are no other parties to this request.

LIMITATION OF REQUEST

On behalf of SE₂, I exclude from the records sought any and all records that "have already been placed in the public domain" where that phrase is understood to refer to records that have already been placed in the NRC Public Document Room ("PDR"). However, if a list of such previously released records could be made available without fee, such a list would be appreciated since, as I am sure you realize, not all records placed in the PDR are reasonably accessible without the information which such a listing would provide.

For the reasons described in response to 10 C.F.R. § 9.41(b)(4), we believe that all requested records which have not already been placed in the public domain would contribute significantly to public understanding of government operations and activities by eliminating, or raising, questions about the "substantive information" previously placed in the PDR.

NEED FOR EXPEDITION

Given the fact that issues concerning violations or possible violations of NRC license(s) and/or rule(s) at Shoreham have a per se effect on risks to the health, safety, and/or environmental well-being of people living and/or working in the vicinity of Shoreham, it is respectfully requested that the release of the requested records be expedited.

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COMMUNICATIONS

If any clarification or additional information is required, please call me at (202) 857-2929.

With many thanks for your attention to this matter, I am,

Sincerely yours,


James P. McGranery, Jr.

JPM:bfm