

Oct. 26, 1981

Director, Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: FOIA Request

17.50
390 1-7-81
FREEDOM OF INFORMATION
ACT REQUEST

FOIA-81-436
Rec'd 11-3-81

Sir:

Pursuant to the guidelines of 10 CFR Part 9, the undersigned makes the following FOIA Request for the documents, items, etc. listed on the Attachment to this letter.

This requester asks that fees for the production of the requested documents be waived in accordance with 10 CFR section 9.14a. As enumerated in sub-paragraph (c) of that section:

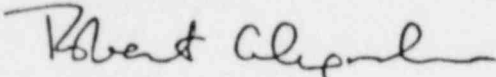
- (1) Upon this requester's review and analysis of the requested documents, that analysis will be disseminated to other members of requester's organization, the Ohio Citizens for Responsible Energy ("OCRE"). OCRE is a public interest group with approximately forty members. It is currently intervening In the Matter of Cleveland Electric Illuminating Co. (Units 1 and 2), Docket Nos. 50-440-441, to protect the health, safety, and environmental interests of its members;
- (2) The size of the benefitting audience is approximately forty members;
- (3) The tangible benefit realized by this audience is the enhanced ability to protect its interests more competently and to participate more meaningfully in that proceeding currently before the ASLB;
- (4) Requester does not foresee any immediate financial benefit (commercial or otherwise) from the use of the requested documents;
- (5) As this group is a volunteer "bootstrap" operation working entirely pro bono, payment of these fees in the course of its diligent research shall work a hardship upon OCRE; the group's resources are very limited; and
- (6) The intended use of the records requested is likely to manifest itself in the greater safety to OCRE members and to the Northeastern Ohio population in general. Once OCRE is fully aware of the potential harms connected with the Utility's planned power plant, it may then demand any necessary health, safety and environmental precautions;

- ii) and iii) Requester expects no benefits to accrue to it in these categories;
- iv) Information distilled and disseminated from the requested documents should enhance OCRE's ability to further public debate in Northeast Ohio regarding the operation of the Perry Nuclear Power Plant; and
- v) Requester expects no benefit here.

The weight of the above factors should clearly demonstrate that furnishing the documents and information contained therein can be considered as primarily benefitting the general public and that waiver of fees for search and production is proper.

Thank you very much.

Sincerely,



Robert Alexander
OCRE Interim Representative
2030 Portsmouth St. #2
Houston, TX 77098

Attachment

FOIA Request - Oct. 26, 1981
Attachment

Acc. No.	Document Description	# pages
8109110269	Annual operation of Texas A & M training reactor, Docket 50-59,	8 pages
8109110470	Docket 50-416, Grand Gulf, Additional info. on stack monitor power. Denton, NRC	7 pages
8109100002	Forwards I+E notice 81-25, O'Reilly, J. P. Region 2 (50-250)	4 pages
8109100425	Initial deficiency report re transmitter & trip units for RV water level SCRAMS. from Sherwood (G. E.) TOPREP	2 pages
8109100157	Request RE Engel letters re: extension of ECCS performance limits (From Pifferetti, G. E. Co. (TOPREP, G. E.))	6 pages
8109100413	Forwards generic rept providing bases for end-of-cycle coastdown to 40% power for BWRs. (Engel, G.E., TOPREP)	11 pages
8109170348	Info re: Hosgri earthquake fault, Docket 50-275, Diablo Canyon	9 pages
8109170297	Testimony on Rn-222 releases, Docket 50-387, Susquehanna Nuclear Plant	
8109170300	Testimony on health effects of TC ₉₉ , Docket 50-387 Susquehanna River Nuclear Plant	30 pages
7910110379	Licensee Event Report 79-056/011-0, for one of the New York State Nuclear Plants	2 pages
8109160330	Response to President's letter; Docket 50-275, Diablo Canyon.	4 pages
8109160091	Proposed FSAR changes and replies to NRC questions, Docket No-50-417, Grand Gulf Plant	10 pages
8109160218	Letter from Congressperson Aspin on moratorium on transfer of spent fuel.	2 pages
8109180405	Summary of meeting of August, 1981. Docket 50-498, South Texas Nuclear Project	5 pages
8109180014	Summary of august, 1981 meeting with utility on soil structure. Docket No. 50-498, South Texas Nuclear Project	32 Pages
8109180220	PNO-II-81-072 Report of leak in waste gas system, I & E Files	2 pages
8109110337	Part 21 rept re effects of spurious opening of turbine bypass sys valves. Docket No. 50-269 Oconee Nuclear Plant	3 pages
8109220005	Discusses recent NRC actions re pressurized thermal shock to vessals. SECY-81-286A.	4 pages
8109220483	Summary of ACRS 257th meeting; on site criteria	4 pages
8109220424	Paper entitled "corrosion of Structural & Poison Matl in Spent Fuel Storage" Docket No. 50-461, Clinton Plant.	13 pages

FOIA Request - Oct. 26, 1981
Attachment (cont'd)

	<u>Acc. No.</u>	<u>Document Description</u>	<u># pages</u>
21.	8109220370	Deficiency Report from Utility on drawings. Docket No. 50-498, South Texas Project	2 pages
22.	8109220337	Deficiency report on Crosby safety relief valve. Docket No. 50-518, Hartsville Nuclear Plant Unit II	2 pages
23.	8109210075	Response to Generic Ltr 81-03 on BWR Coolant Pressure Boundary Matls. Docket No. 50-387. Susquehanna Plant	4 pages
24.	8109210017	PNO-I-81-102, on Sept 10, 1981, 2 inch hole in turbine line.	1 page
25.	8104090921	Summary of 250 ACRS mtg, J. C. MARK	3 pages
26.	8104170081	Comments on ATWS by ACRS consultant, McCreless, ACRS	13 pages
27.	8104090841	Minutes on ac/dc power reliability, Jan 22, 1981 mtg of ACRS	7 pages
28.	8104100103	Comment on NUREG-0666 "Prob. Analysis of DC Power Supply Requirements of Nuclear Power Plants" (ACRS)	13 pages
29.	8104230785	RIL-110 Results of research on relative hazard of radio-iodine	3 pages
30.	8104230787	RIL-111, Results of research on acute effects of inhalation of uranium hexafluoride	5 pages
31.	8104230789	RIL-112, Results of research on effects of thorium on former industry workers.	4 pages
32.	8104230905	RIL-109, Research on WRAP-BWR-EM for LOCA prediction in BWRs.	17 pages
33.	8104220082	Forward letter responding to questions, Docket No. 50-289 Three Mile Island Unit 1	1 page
34.	8104220088	Letter recommending ASLB receive testimony on overcooling transients, Docket No. 50-289, Three Mile Island, Unit 1	2 pages
35.	8109220459	Provide summary of 257th ACRS mtg. land disposal	3 pages
36.	8109250391	Forwards Crimmins Testimony. Docket No. 50-387	1 page.
37.	8109250392	Crimmins Testimony Docket No. 50-387	11 pages
38.	8109250241	PNO-III-81-078, Damaged pipe hangers on HPCI, I & E files	2 pages
39.	8109250232	Receipt of Re. 3 to NEDO 11209-04A, File Location: TOPREP General Electric Co.	1 page
40.	8109250236	Rev. 3 to NEBG BWR QA Program. File Location: TOPREP, General Electric Co.	17 pages

FOIA Request - Oct. 26, 1981
Attachment (cont'd)

	<u>Acc. No.</u>	<u>Document Description</u>	<u># pages</u>
41.	8109280199	Forwards eval of BWR owners group resp to TMI, Docket 50-282	9 pages
42.	8109170437	Request Comm approval to publish proposed and final amendments to 10 CFR 50 re: hydrogen control sys for Mark-III BWRs. In File makred: SECY 81-245A	37 pages
43.	8109280205	Forwards request for additional info res: structural engineering in Docket 50-440, <u>Perry</u> ,	30 pages
44.	8109280570	Forward inspection rept. 50-387/41-14, In Docket 50-387, <u>Susquehanna Plant</u>	2 PAGES
45.	8109280583	IE Inspection Report 50-387/81-14 & 50-388/81-07, in Docket 50-387, <u>Susquehanna Plant</u>	6 pages
46.	8107230026	IE Info Notice 81-26, "Compilation of Health Physics Related Info Items", Docket 50-2 U. of Michigan Res. Reactor	18 pages
47.		I & E Information Notice 81-25, "Open Equalizing Valve of Differential Pressure Transmitter Causes Reactor Scram and Loss of Redundant Safety Signals."	
48.	8109030007	Advise utility response to IE Bulletin 79-15 "Deep Draft Pump Deficiencies" is inadequate. Doc. No. 50-387, <u>Susquehanna Plant</u> ,	4 pages
49.	8109030027	Forwards std order for DOE work: "Applicability of TMI Action plan requirements to CRB & LMFBRs", File Location: ORG, Energy, Dept. of	4 pages
50.	-- 8109030030	Std order for DOE work: "Applicability of TMI Action Plan Requirements to CRBR and LMFBRs". File Location: ORG Energy, Dept of	8 pages
51.	8109030218	PNO-I-81-097: Tube leakage of reactor coolant into reactor bldg. File Location: I & E, PNO-I-81-097	2 pages

PART 9 • STATEMENTS OF CONSIDERATION

44 FR 15998
Published 3/16/79
Effective 4/16/79

PART 9—PUBLIC RECORDS

Waiver or Reduction of Fees for Searching and Reproduction of Records

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This rule amends the Commission's regulations "Public Records" by adding a new section "Waiver or Reduction of Fees." These amendments reflect the requirements of the Freedom of Information Act that documents shall be furnished without charge or at a reduced charge where an agency determines that waiver or reduction of the fee for searching and reproduction of records is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

EFFECTIVE DATE: This rule becomes effective on April 16, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. J. M. Felton, Director, Division of Rules and Records, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (telephone 301-492-7211).

SUPPLEMENTARY INFORMATION: On March 31, 1977 the Commission published in the FEDERAL REGISTER (42 FR 17131) proposed amendments to its regulation "Public Records," 10 CFR Part 9, which would add a new § 9.14a, "Waiver or Reduction of Fees." At the request of the Union of Concerned Scientists, the comment period was extended to May 23, 1977.

Comments on the proposed rule were received from the Union of Concerned Scientists (UCS) and the Rochester Gas and Electric Corporation (RG&E).

DISCUSSION OF COMMENTS

1. *Adequacy of Standards for Making Determinations to Waive or Reduce Fees.* Section 9.14a(c) of the proposed rule required a person who requests the NRC to waive or reduce fees to provide information concerning such matters as the intended use of the records, how the information would be disseminated to the public, the size of the public to be benefited, and any financial benefit the requester may receive from the use of the records. The rule repeated the Congressional mandate contained in the FOIA that records shall be furnished without charge or at a reduced charge where the agency determines "that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public." In

making this determination, the proposed rule provided that the NRC would, based upon the information submitted by the requester, balance whether the benefit to the public outweighs the cost to the public.

In their comments, UCS stated that the governing criteria were vague and subject to arbitrary agency determinations, and that the NRC should develop criteria to be applied in specific cases. In response to the comments, paragraph (c) of § 9.14a has been revised to require the requester to show how the intended use of the records is reasonably likely to:

(i) Result in actions to maintain or enhance the public's health, safety, or the quality of the environment;

(ii) Result in improved regulatory processes;

(iii) Reduce the cost of providing a government service;

(iv) Contribute substantially to public debate on an important policy issue; or

(v) Contribute substantially to matters of historical importance. In addition, a new paragraph (d) has been added to § 9.14a which specifies those situations in which a public benefit would not normally result. Finally, a new paragraph (e) has been added which provides that based upon the criteria in paragraph (d) and the information furnished by the requester in response to paragraph (c), the NRC will determine if waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

2. *Automatic Waiver of Fees for Public Interest Groups.* UCS proposed that non-profit organizations whose mission is to protect or enhance the public health, safety, and welfare, are automatically entitled to a waiver or reduction of fees. The Commission does not agree, and believes the proper statutory criterion is whether production of the records would primarily benefit the general public; that is, the focus of the decision to waive or reduce fees should be on the intended use of the records, and not the requester's organization affiliation, the organization's tax exempt status, or the purpose of the organization. It is recognized, however, that many non-profit organizations, whose mission is to protect or enhance the public health and safety, would qualify for a waiver or reduction of fees. In hearings before the Senate Subcommittee on Administrative Practice and Procedure in October, 1977, the head of the Freedom of Information Committee and other Department of Justice witnesses indicated in response to questions by Senator Abourezk that, although the decision would have to be made on a case-by-case basis, there would be a presumption that fees should be waived for public interest groups and media representatives. In light of these considerations, a new provision has been added to the proposed effective rule as § 9.14a(f) which

PART 9 • STATEMENTS OF CONSIDERATION

provides that the NRC, in absence of a specific request for a waiver or reduction of fees, may waive or reduce the fees if it determines, based upon information furnished by the requester in his request for access to records, that production of the records would primarily benefit the general public. This provision allows the agency to waive or reduce fees where the information provided in the request letter indicates that the requester is likely to use the records in a manner which primarily benefits the general public. It is designed to alleviate the formal showing by requester organizations that they meet the requirements of §9.14a where it is obvious a fee waiver or fee reduction is justified under the circumstances.

3. *General Waiver Provisions.* With respect to the general waiver provisions set forth in §9.14a(b) of the proposed rule, the Rochester Gas and Electric Corporation challenges the right of the NRC to waive fees for searches which do not exceed four hours or for reproduction costs which do not exceed \$10.00. The basis for the company's claim are that there has been no showing that the general waiver provisions are in the public interest and that it is unfair to assess taxpayers for work done by a public employee for the benefit of a private party. The purpose of the general waiver provisions was to eliminate the costs of billing and processing payments and responding to requests for a waiver of fees when these costs to the government were relatively small in relation to the amount of staff time that would be required to process a fee waiver request or to collect reproduction costs. In view of the NRC's practice of granting access to records by placing copies of the records in NRC Public Document Room or a Local Public Document Room, the provision granting waiver of reproduction costs not in excess of \$10.00 has been eliminated from the effective rule. The Commission believes, however, that it is in the public interest to waive the minimal costs encompassed by the search fee waiver provisions, and the effective rule continues to contain this provision. The Rochester Gas and Electric Corporation also challenges the propriety of automatically waiving search fees as provided in §9.14a(b)(4) of the proposed rule when no documents subject to the request are located or when no documents are located which can be disclosed to the requester. The Commission believes that this situation is now adequately addressed by the revised fee waiver criteria set forth in §9.14a, and this provision has been eliminated from the effective rule.

4. *Relevancy of Information Required To Be Submitted by a Requester for Waiver or Reduction of Fees.* UCS questions the right of the NRC to require organizations to submit information in order to qualify for a waiver of fees stating that "it is the responsibility of the agency to initially decide

whether a primarily public benefit will ensue from the release of the information" and the request "need only raise a substantial question as to whether the release of the information will 'primarily benefit the general public'". As noted above in item 2, §9.14a(f) provides that the NRC may waive fees on its own initiative, and the information required by §9.14a(b) would only have to be submitted when the agency has concluded that the request, on its face, does not automatically warrant waiver or reduction of fees. Under these circumstances, the Commission believes that the burden of proof properly shifts to the requester to provide NRC with sufficient information to justify that production of the records will primarily benefit the general public. UCS also questions the ability of the requester to comply with certain information requirements §9.14a(c) of the proposed rule and challenges the relevancy of others. These are discussed as follows:

A. UCS questions the ability of the requester to respond to the requirements in §9.14a(c)(1) of the proposed rule regarding the "intended use of the records", and states that the exact use cannot be determined until the requested documents are reviewed. The information required by this provision is *intended* use of the records, not *exact* use. Failure of a requester to have some idea in mind as to how the records requested will be used would be persuasive evidence that the requester is on a fishing expedition and that providing the records would not primarily benefit the general public. This provision has been retained in the effective rule.

B. UCS also questions the ability of a requester to respond to the requirement "why all the requested documents are necessary to accomplish the requester's intended use" (§9.14a(c)(2) of the proposed rule). UCS points out that in most FOIA cases, "all" the requested documents are never necessary. The Commission agrees with this comment and feels that this information is not necessary. Where an issue is raised regarding the scope of a request, it has been the experience of the Commission that a negotiated resolution can be reached with the requester.

C. UCS questions the requirement to provide information concerning how the documents will be reviewed or analyzed and the results thereof disseminated to the public (§9.14a(c)(3) of the proposed rule), and argues that a specific use cannot be meaningfully presented until the documents are read. As stated in item 3.A above, the Commission believes there should be an intended use of the documents at the time a request for waiver is made. Further, the requirement for review and analysis of the documents reinforces that belief, as provided in §9.14a(d)(5) of the effective rule, that the intent to distribute copies of the records to the public does not, by itself, constitute public benefit.

D. UCS, while questioning the relevancy of the requirement to provide information regarding what financial benefit, if any, the requester will receive from use of the requested records (§9.14a(c)(6) of the proposed rule), acknowledges the relevancy of the requirement if direct financial benefit is the only motivating factor in making the request. The ability of the requester to pay for the records also was acknowledged by Congress as being relevant to a determination of whether to waive or reduce fees. The Senate Report on the 1974 Amendments to the FOIA indicated that if a requester was indigent, a waiver or reduction of fee would be in the public interest. The Commission has, however, deleted the requirement regarding the requesters "willingness to pay" for the requested documents.

It should be noted that the specific items of information required to be furnished by requesters is based upon the guidelines contained in the Attorney General's Memorandum on the 1974 Amendments. In the Justice Department's recent testimony before the Abourezk Subcommittee, it was stated that these guidelines were coordinated with both the House and Senate committees responsible for the FOIA legislation.

The Commission believes that in the absence of clear Congressional guidance as to what was the intent of the term "primarily benefiting the general public", and in light of the diversity of requesters and type of records requested, the standards and criteria set forth in §9.14a of the effective rule are sufficient to assure that the agency makes a fair and equitable determination with respect to any request for a waiver or reduction of fees.

5. *Adequacy of Procedures for Processing Requests for Waiver or Reduction of Fees.* UCS alleges that the proposed rule did not set forth an adequate administrative structure to assure fair and efficient processing of FOIA requests and requests for waiver or reduction of fees. UCS questions whether NRC has the right, if a request for records does not qualify for a waiver of fees, to deem the request not received, for purposes of complying with the ten-day FOIA response deadline, until a deposit equal to the estimated costs is received or the requester has agreed to bear the anticipated costs. UCS also states that requesters should be allowed to initiate fee waiver requests on appeal.

In response to UCS's comments, a new §9.14b has been added to the effective rule which specifies the procedures which will be followed in processing an FOIA request for a waiver or reduction of fees. The procedures provide that if the request involves more than four hours of search time, and the requester does not qualify for a waiver of fees under §9.14a(f), the NRC will notify the requester within 10 working days of the estimated costs of complying with the request. Thereafter, the requester may agree to pay

PART 9 • STATEMENTS OF CONSIDERATION

for the records or request a waiver or reduction of fees. If the NRC refuses to waive or reduce the fees, it will provide a statement to the requester as to why the request does not meet the requirements of § 9.14a, and this determination may be appealed to the EDO or to the Commission, as appropriate. Where the request does qualify for waiver or reduction of fees, § 9.14b provides that records will be promptly provided.

The Commission believes that the new procedures for processing requests are responsive to UCS's concerns and provide a reasonable balance between the rights of the requester, the resources available to the NRC, and the rights of the general public. The Commission further believes that the NRC has an obligation not to expend public funds to search for records requested under the FOIA when the request does not either qualify for an automatic waiver of fees or the requester does not agree to pay the costs of the search. Congress, in permitting agencies to charge fees to cover costs of searching for records, implied that where production of the records would not primarily benefit the general public, search costs should be assessed. It would be a misuse of public funds to divert the staff from other important activities to conduct a search for records which a requester may never agree to pay for or may never make the showing that waiver of the fees is justified under the circumstances. In view of these considerations, the Commission continues to believe that a request for access to records should not be deemed to have been received until the fee issue is resolved by the requester either agreeing to pay for the records or by qualifying for a waiver or reduction of fees. In addition, the Commission does not agree with UCS's recommendation that documents be made available to the requester at the initial stage and that a requester then be permitted to request a fee waiver on appeal "even though no such initial request was made." The Commission has, however, agreed on a trial basis to provide in § 9.14b(d) that, in those cases where a waiver of fees was requested and denied and the requester agreed to bear the estimated cost, the requester may, within 30 days of receipt of the requested documents, resubmit a request for a waiver or reduction of fees if the receipt of the documents has materially changed the information originally furnished by the requester.

With respect to the waiver or reduction of fees for reproduction costs, the majority of NRC requesters, as a matter of practice, accept access to requested records at the NRC Public Document Room in Washington, D.C. or at a Local Public Document Room in cases where the requested documents pertain to a specific facility. The requester may then examine the records which have been made available, and make copies of just those records in which he is interested. The

Commission believes this procedure is in the public interest and represents a reasonable balance between the rights of the public and the rights of the individual requester. The Commission also believes that this procedure is in accord with the broad purpose of the FOIA by providing general public access to agency records. Under the circumstances when access to records can be provided to a requester at a PDR or LPDR, to also waive reproduction costs would result in a private benefit only to the requester. This practice has now been incorporated into the regulations by adding a sentence to § 9.10(a) of the effective rule that provides that copies of documents disclosed in response to FOIA requests will normally be placed in the NRC PDR or local PDR, and by providing in § 9.14a(g) that the NRC will not waive reproduction costs for documents located in the PDR or LPDR in the absence of a compelling reason to do so. A "compelling reason" could be, for example, if the requester were both indigent and required the documents for intervention in an NRC licensing proceeding.

6. *Charging Professional and Clerical Rates for Searching.* UCS states that the present rule does not adequately indicate when clerical rates or when professional rates for search will be applied, and recommends that professional search charges should only be applied in those instances where it is absolutely essential for professionals to search for documents due to the nature and content of the requested document. The Commission believes that the proposed rule, as published, is adequate, and that this matter is properly left to the discretion of the responsible operating official. Decisions regarding who will conduct the search are dependent upon subject matter of the request, familiarization of staff with subject matter, and the necessity to assure an adequate and timely search within the FOIA statutory deadlines. FOIA requests received by the NRC are normally related to specific technical issues and, in many cases, only a member of the professional staff is capable of assuring that all records within the scope of the request are identified. The diversity of the subject matter of FOIA requests received by NRC would make it virtually impossible to establish general criteria applicable to all requests. It is expected, however, that the responsible operating official will use clerical staff to conduct the search where it is feasible to do so in order not to unnecessarily divert the technical staff from their regulatory functions or to increase costs to the requester.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 9 are published as a document subject to codification: