

LAW OFFICES OF
DEBEVOISE & LIBERMAN

1200 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) 857-9800

November 9, 1982

Mr. Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

APPEAL OF INITIAL FOIA DECISION

82-A-23C(82-484)
Rec'd 11-12-82

Re: Appeal from Initial FOIA Decision
FOIA Request 82-484

Dear Mr. Chilk:

In accordance with Mr. J.M. Felton's letter of November 2, 1982, we hereby appeal your initial denial of our Freedom of Information Act Request described below.

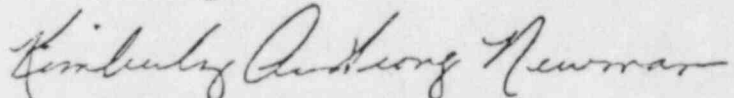
On October 12, 1982, we requested copies of Secy 82-377, "Hearing Requests on Extension of Construction Completion Dates for Washington Public Power Supply System Nuclear Projects Nos. 1 and 2," and Secy 82-377A, "Minor Revisions to Secy 82-377." This request for documents was specifically intended to aid in interpretation of the extensive Commission guidance contained in CLI-82-29. On November 2, 1982, Mr. Felton informed us that he was withholding both documents from public disclosure because these materials are protected by Exemption 5 of the Freedom of Information Act, 5 U.S.C. §552(b)(5) and 10 CFR §9.5(a)(5) of the NRC's regulations.

We believe that it is inappropriate for the NRC to withhold these documents on the basis of Exemption 5. This exemption does not permit an agency to withhold predispositional documents when those documents ultimately serve as the basis for the final document issued. 1/ In this case, the final document is the Commission's Order of October 8, 1982, CLI-82-29. We believe that it is our right to review documents which have a far-reaching effect on interpreting the Commission's guidance and which provide an explanation and precedent as to Commission limitations on public requests for hearings on construction permit amendments. We therefore feel that these documents do not fall within the scope of Exemption 5.

1/ Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980).

We would appreciate your prompt response to this appeal and in no event later than the 20 working days afforded by 10 CFR Part 9.

Sincerely,


Kimberly Armstrong Newman



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

November 2, 1982

Kimberly Armstrong Newman, Esquire
Debevoise & Liberman
1200 Seventeenth Street, N.W.
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-82-484

Dear Ms. Newman:

This is in response to your letter dated October 12, 1982, in which you requested, pursuant to the Freedom of Information Act, copies of SECY-82-377 and SECY-82-377A.

The requested SECY-82-377, "Hearing Requests Concerning Extension of Construction Completion Dates for Washington Public Power Supply System Nuclear Project Nos. 1 & 2", dated September 14, 1982, is a two-page document from the General Counsel to the Commission concerning disposition of an intervenor hearing request regarding the extension of the construction completion date for Washington Public Power Supply System Nuclear Projects Nos. 1 and 2. This document has two attachments. The first attachment, "Expeditious Conduct of Requested License Amendment Hearings", dated January 6, 1982, is a three-page memorandum from the General Counsel to the Commission. The second attachment is an eighteen-page proposed draft Commission order concerning the hearing requests which are the subject of SECY-82-377.

The requested SECY-82-377A, "Revision to Order in SECY-82-377", dated September 30, 1982, is a two-page document from the Deputy General Counsel to the Commission concerning proposed revisions of the draft order attached to SECY-82-377. Attached to SECY-82-377A are four pages of the draft order indicating the proposed revisions discussed in the SECY paper.

The requested SECY papers, the second attachment to SECY-82-377 and the attachment to SECY-82-377A contain the advice, opinions and recommendations of the NRC Office of General Counsel in an on-going deliberation, i.e., the treatment to be given the hearing requests. The first attachment to SECY-82-377 contains the General Counsel's legal analysis of options for conducting license amendment hearings and was prepared as part of the Commission's deliberations in response to Sholly v. NRC, 651 F.2d 780 (D.C. Cir. 1980), and subsequent actions in that case. It was also prepared in reasonable anticipation of litigation concerning responses to requests for construction permit extensions. None of these documents contain any reasonably segregable factual portions not already in the public record of this proceeding. Therefore, the requested SECY papers and attachments are being withheld from public disclosure as predecisional documents pursuant to Exemption (5) of the Freedom of Information Act (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5). The first attachment to SECY-82-377 is also being withheld as attorney work-product under Exemption (5) and 10 CFR 9.5(a)(5).

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PDR

Pursuant to 10 CFR 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure. Its production or disclosure is contrary to the public interest because it would impede free and frank discussions within the agency and would impede the future flow of legal advice from the General Counsel to the Commission. The person responsible for this denial is Leonard Bickwit, General Counsel.

This denial may be appealed to the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision".

Sincerely,

A handwritten signature in dark ink, appearing to read "J. M. Felton", is written over the typed name.

J. M. Felton, Director
Division of Rules and Records
Office of Administration

LAW OFFICES OF
DEBEVOISE & LIBERMAN

1200 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036
TELEPHONE (202) 857-9800

October 12, 1982

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-82-484
Rec'd 10-13-82

Mr. J. M. Felton, Director
Division of Rules and Records
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Felton:

Pursuant to the Freedom of Information Act,
Debevoise & Liberman requests copies of SECY 82-377,
entitled: "Hearing Requests on Extension of Construction
Completion Dates for Washington Public Power Supply
Systems Nuclear Project Nos. 1 and 2" and SECY 82-377(A)
entitled: "Minor Revisions to SECY 82-377."

We request that the documents be provided with
all possible speed and in no event later than the 10 working
days provided by 10 CFR 98.

Sincerely,

Kimberly Armstrong Newman

KAN:mh

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p Dr