

October 13, 1982
re: FOIA 82-477
(FOIA 81-227)

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington D.C. 20555

APPEAL OF INITIAL FOIA DECISION

82-A-20C(82-477)

Rec'd 10-15-82

58-329
58-330

Dear Secretary:

This is an appeal from an initial FOIA decision, 81-227, issued July 6, 1981 and reaffirmed Oct. 8, 1982 according to understandings reached between myself and Mr. Shomaker of OELD. The new FOIA denial, 82-477, will be issued on October 13, 1982 for procedural clarity, although the issues and responses remain the same. according to Mr. Shomaker. At my request Mr. Shomaker read me the Oct. 13, 1982 denial letter over the phone. All related correspondence is attached.

In phone conversations on Oct. 7 and 8, 1982, Mr. Shomaker and I discussed the status of the FOIA requests. Although I had originally intended to wait the outcome of the Midland CM-OL proceeding to appeal the FOIA denial (8-12-81 letter), the unexpected turn of events in this case makes the requested Confidential Proposed QA Stipulation of renewed interest to me in 1982.

Those recent events which motivate my appeal at this time include the reopening of the record on QA by the NRC so as to allow Mr. Keppler to reconsider his QA testimony of 1981 (7-7-82 ASLB memo), and the subsequent consideration by the NRC of a second stipulation or QA solution addressing the new QA problems of 1982 (7-13-82 ASLB memo).

I fear that the terms of the first QA Stipulation from 1981, in question here, will increase the likelihood of the NRC negotiating a new QA agreement with Consumers. The Confidential Proposed QA Stipulation thus has the potential to undermine the essence of the CM-OL hearings if the new NRC/CPC agreements made for confidential reasons allow the soils remedial underpinning work to proceed prior to ASLB resolution of the question of QA implementation posed in the December 6, 1979 Order regarding the soils issues.

For these ultimate public health and safety reasons, I once again seek access to the 1981 Confidential Proposed QA Stipulation as soon as possible within the twenty days from the NRC's Oct. 4, 1982 receipt of my Oct. 1, 1982 Appeal. The urgency of my request is due to the October 29, 1982 submission date for NRC QA testimony and the November 30, 1982 QA hearing dates in the CM-OL proceeding.

My responses to the cited exemptions of the 82-477 denial repeating those of the 81-227 denial will be forthcoming.

Sincerely,

Barbara Stamiris

Barbara Stamiris
5795 N. River
Freeland, Mich. 48623

cc: E. Shomaker, OELD
S. Kohn, GAP
Parties CM-OL Proceeding

8303100059 821013
PDR FOIA
STAMIR82-A-20 PDR

10/15...To OGC to Prepare Response for Signature of SECY...
Date due: Nov 15...Cpys to: EDO, RF...82-4027
Oct 28



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

October 13, 1982

Ms. Barbara Stamiris
5795 N River
Freeland, MI 48623

IN RESPONSE REFER
TO FOIA-82-477

Dear Ms. Stamiris:

This is in response to your letter dated October 1, 1982, in which you sought reconsideration of the Nuclear Regulatory Commission's July 6, 1981 response to your initial Freedom of Information Act request of June 11, 1981. In both requests you have sought a copy of an eight page CONFIDENTIAL PROPOSED QA STIPULATION -- a document proposing terms of a compromise between the NRC and Consumers Power regarding quality assurance issues in the Midland proceeding. Since requests for reconsideration are not strictly speaking a form of request for information pursuant to the Freedom of Information Act, Mr. Edward Shomaker of the Office of the Executive Legal Director contacted you on October 7, 1982, to try and clarify the scope and form of your request. Mr. Shomaker has indicated that you agreed that this office can consider your October 1, 1982 request for reconsideration as a new FOIA request for the stipulation document and that you are making this request now because (1) you wish to query whether the basis for the NRC's withholding the subject document has modified since July 6, 1981; and (2) you believe that this document would be valuable to you in preparing to comment upon some remedial QA actions that are being proposed in relation to the Midland facility.

Acting upon your request, Mr. Shomaker contacted the NRC attorney in the Midland proceeding, William Paton, and coordinated with the attorneys who generated the subject document at Isham, Lincoln & Beale in Chicago, Illinois. Both these parties have indicated that an initial decision has not been rendered in the Midland OM-OL proceeding and that the document continues to be privileged information in the form of an attorney work product which reveals strategies developed by Consumers Power Company in preparing for legal action. Accordingly, the rationale for withholding explained in my letter of July 6, 1981 (copy attached), continues to be valid. Therefore, this proposed stipulation is being withheld pursuant to exemptions (b)(4) and (b)(7)(B) of the Freedom of Information Act [5 U.S.C. 552(b)(4) and (7)(B)] and 10 C.F.R. 9.5(a)(4) and (7)(ii) of the Commission's regulations.

~~8211050033~~
POR/LPOR

Pursuant to 10 C.F.R. 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure and that its production or disclosure is contrary to the public interest. The person responsible for this denial is Mr. Guy Cunningham, the Executive Legal Director.

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,



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

Enclosure:
7/6/81 letter



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

July 6, 1981

Ms. Barbara Stamiris
5795 N River
Freeland, MI 48623

IN RESPONSE REFER
TO FOIA-81-227

Dear Ms. Stamiris:

This is in response to your letter dated June 11, 1981, in which you requested pursuant to the Freedom of Information Act, the document proposing terms of a compromise between the NRC and Consumers Power regarding quality assurance issues in the Midland proceeding.

The NRC is in possession of an eight page CONFIDENTIAL PROPOSED QA STIPULATION which is the subject of your request. This document is a record which is part of the NRC's ongoing enforcement proceeding involving Consumers Power Company and their Midland Plants.

As you may be aware, exemption (b)(7)(B) of the Freedom of Information Act protects from disclosure material which would "deprive a person of a right to a fair trial or an impartial adjudication." This protection extends to corporations as well as individuals. See, 5 USC section 551(2). As the Attorney General's Memorandum on the 1974 Amendments explains, the provision operates to safeguard a litigant when "the release of damaging and unevaluated information may threaten to distort an administrative judgment in a pending case." 1974 Attorney General Memorandum at 8.

The facts in the Midland case threaten such a distortion. In the present case a quality assurance stipulation, signed by the NRC and Consumers Power Company and submitted to the licensing board, still awaits approval. The stipulation the board has before it is the result of several months of negotiations between the NRC and Consumers Power Company. Exposure of previous drafts of stipulations without exposure to the process under which those drafts were developed can severely distort the perception of the board as to the merits of the present stipulation. It may prompt the board to second guess the posture of the parties and involve the board in the negotiation process. This is the type of situation exemption (b)(7)(B) was intended to prevent. Therefore, this Proposed Stipulation is being withheld pursuant to exemption (b)(7)(B) of the Freedom of Information Act (5 U.S.C. 552(b)(7)(B)) and 10 CFR 9.5(a)(7)(ii) of the Commission's regulations.

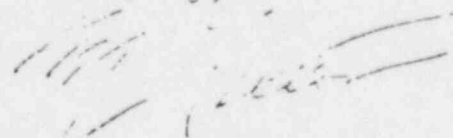
~~8107230240~~
PDR

1
Additionally, the Proposed Stipulation is being withheld pursuant to exemption (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and 10 CFR 9.5(a)(4) of the Commission's regulations. Exemption (b)(4) is applicable here as the Proposed Stipulation is privileged information in the form of an attorney work product which reveals strategies developed by Consumers Power Company in preparing for legal action.

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 and that its production or disclosure is contrary to the public interest. The person responsible for this denial is Mr. Thomas F. Engelhardt, Acting Executive Legal Director.

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,



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

June 11, 1981

Joseph M Felton
Director, Division Rules & Records
Nuclear Regulatory Commission

Dear Mr. Felton,

This is a Freedom of Information Act Request for a document in possession of the NRC, which came from Consumers Power Company as a part of the 50-329 50-330 OM & OL Proceeding for the Midland Plant.

I first learned of the existence of this document on May 6, 1981 from Mr. Wm. Paton. It is a proposed stipulation or document proposing terms of a compromise or agreement between the NRC and Consumers regarding Quality Assurance issues in this "soil settlement" hearing. As a pro se Intervenor, and full party to this proceeding, I believe I have every right to see this document and consider it essential to my case, despite its being stamped "confidential" and considered as such. I believe this document was received by Mr. Paton of the NRC sometime between April 29, 1981 and May 6, 1981, although I cannot be certain of these dates.

I have waited until I was sure that the "QA Stipulation" proposed and its affect on my interests did take place. Having received the proposed stipulation today, I have been given until June 24, 1981 by Judge Bechhoefer of the ASLE, to set forth my objections to it in writing. Due to these time constraints, I would appreciate your reply as soon as possible, to this FOIA request.

Sincerely,

Barbara Starni

~~407230242~~
PDR