

GOVERNMENT ACCOUNTABILITY PROJECT

Institute for Policy Studies
1901 Que Street, N.W., Washington, D.C. 20009

(202) 234-9382

August 10, 1983

Mr. William Dircks
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

APPEAL OF INITIAL FOIA DECISION

83-A-20E(83-397)

Rec'd 8-12-83

Dear Mr. Dircks:

This is an appeal pursuant to subsection (a)(6) of the Freedom of Information Act (FOIA) as amended by 5 U.S.C. §552. By letter dated July 11, 1983 (attached and incorporated as Exhibit #1), the Government Accountability Project requested documents (outlined below) now designated as FOIA 83-397.

Specifically, those documents were any and all other records relevant to and/or generated in connection with the Case Load Forecast Panel Meeting held April 19, 1983 regarding the construction of the Midland Nuclear Power Plant. This included all items above regarding preparation for the meeting, the meeting itself, and items made subsequent to the meeting. GAP requested all documents between the Office of Nuclear Reactor Regulations (NRR) the Office of Inspection and Enforcement (IE) and the Region III Office of Inspection and Enforcement (RIII), and Consumers Power Company regarding the Case Load Forecast Panel Meeting. This should include the drafts and any final -- but unreleased -- NRC analysis of the Consumers proposals, as well as any notes, letters, telephone logs, etc. generated by Consumers Power contacts with the NRC.

We defined the request to include copies of any and all agency records and information, including but not limited to notes, letters, memoranda, drafts, minutes, diaries, logs, calendars, tapes, transcripts, summaries, interview reports, procedures, instructions, engineering analyses, drawings, files, graphs, charts, maps, photographs, agreements, handwritten notes, studies, data sheets, notebooks, books, telephone messages, computations, voice recordings, and other data compilations, interim and/or final reports and status reports relevant to the Case Load Forecast Panel meeting and subsequent discussions.

In an August 9, 1983 letter Mr. J. M. Felton, Director of the Division of Rules and Records of the Office of Administration released to Billie Garde of the Government Accountability Project 71 documents in their entirety, but denied one document pursuant to exemption (5) of the Freedom of Information Act (5 U.S.C. §552(b)(5)) and 10 C.F.R. 9.5(a)(5) of the Commission's regulations, as well as 10 C.F.R. 9.9 of the Commissions regulations. (Exhibit #2)

We are appealing the effective denial of the bulk of the documents which were neither identified nor produced in response to our request, as well as the denial of a DRAFT MEMO prepared by the Regional Staff specifically responsive to our request. The documents identified in Mr. Felton's response do not reflect a complete list of documents or a complete search of agency records. Identification of a complete list of all relevant documents is required under the VAUGHN case with specific requirements for identification of what material is being withheld and under what exemptions.

8310190300 830810
PDR FOIA
GARDB3-A-20E PDR

Mr. William Dircks
Page two.

August 10, 1983

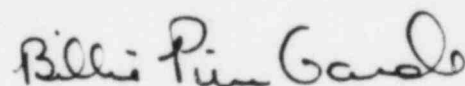
The denial of document three, "DRAFT Letter to J.W. Cook from Thomas Novack re: CASELOAD FORECAST PANEL ESTIMATE OF CONSTRUCTION COMPLETION SCHEDULE," appears to be an arbitrary and capricious use of Exemption 5 of the FOIA and appropriate exemptions under 10 CFR. Rather the document contains information already known to the utility, and information which was prepared by NRC staff with the full knowledge that such information would be publicly released. Essentially the public has been kept in the dark about facts and information available to the NRC in their role as defenders of the public trust, and in this case public health and safety issues. Further, the information sought by our FOIA request clearly is information which is of interest to the ratepayers and taxpayers of Central Michigan who must continually make cost and benefit analysis about the Midland Nuclear Power Plant.

The Commission has failed on numerous occasions since the April 19-21, 1983 meeting in Midland to inform the Atomic Safety and Licensing Board, the Commissioners, and even the Congress at the June 16, 1983 Congressional hearing about the Midland Plant. On numerous occasions the question of completion date and the NRC estimates have been raised by the Board, the public, the press, our organization, the intervenors, and the Michigan Public Service Commission. The failure of the agency to disclose some draft comments, but not all draft comments negates the legitimacy of the arguments as presented in the August 9, 1983 denial letter.

This appeal requests that the Executive Director for Operations (1) Identify all documents relevant to this request, and (2) release those documents which are responsive to this request, and (3) cite a specific exemption for all documents withheld.

Your reply is expected within 20 working days. You may contact me at the above address and phone number. Thank you.

Sincerely,



BILLIE PIRNER GARDE
CITIZENS CLINIC DIRECTOR

CC: MR. HAROLD DENTON
MR. DARYL EISENHUT
MR. J.M. FELTON
MR. T. REHM
MR. T. NOVACK