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RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

FOIA — 91-579

RESPONSE TYPE

FINAL

☒ PARTIAL

DATE

JUN - 8 1992

DOCKET NUMBER(S) (if applicable)

REQUESTER

Mr. Paul Gunter

PART I.—AGENCY RECORDS RELEASED OR NOT LOCATED (See checked boxes)

☐ No agency records subject to the request have been located.☐ No additional agency records subject to the request have been located.☐ Requested records are available through another public distribution program. See Comments section.☐ Agency records subject to the request that are identified in Appendix(es) _____ are already available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.☐ Agency records subject to the request that are identified in Appendix(es) _____ are being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.☐ The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.☐ Agency records subject to the request that are identified in Appendix(es) _____ may be inspected and copied at the NRC Local Public Document Room identified in the Comments section.☐ Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.☒ Agency records subject to the request are enclosed. * (Appendix D)☐ Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.

Fees

☐ You will be billed by the NRC for fees totaling \$ _____.☐ You will receive a refund from the NRC in the amount of \$ _____.☐ In view of NRC's response to this request, no further action is being taken on appeal letter dated _____, No _____.

PART II. A—INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

☒ Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC in a folder under this FOIA number.

COMMENTS

*A copy of the report identified on enclosed Appendix D is enclosed. The records identified on enclosed Appendix E are being withheld in their entirety. The review of additional records responsive to your request is continuing.

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PDR FOIA
GUNTER91-579 PDR

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

Donna R. Brunsley

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**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST
(CONTINUATION)**

FOIA NUMBER(S)

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PART II. B — APPLICABLE EXEMPTIONS

Records subject to the request that are described in the enclosed Appendix(es) E are being withheld in their entirety or in part under the Exemption No.(s) and for the reason(s) given below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.17(a) of NRC regulations.

1. The withheld information is properly classified pursuant to Executive Order. (Exemption 1)

2. The withheld information relates solely to the internal personnel rules and procedures of NRC. (Exemption 2)

3. The withheld information is specifically exempted from public disclosure by statute indicated. (Exemption 3)

Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).

Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).

4. The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated. (Exemption 4)

The information is considered to be confidential business (proprietary) information.

The information is considered to be proprietary information pursuant to 10 CFR 2.790(d)(1).

The information was submitted and received in confidence pursuant to 10 CFR 2.790(d)(2).

☒ 5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. (Exemption 5). Applicable Privilege:

☒ Deliberative Process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.

☒ Attorney work product privilege. (Documents prepared by an attorney in contemplation of litigation.)

☒ Attorney-client privilege. (Confidential communications between an attorney and his/her client.)

6. The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy. (Exemption 6)

7. The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated. (Exemption 7)

Disclosure could reasonably be expected to interfere with an enforcement proceeding because it could reveal the scope, direction, and focus of enforcement efforts, and thus, could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators. (Exemption 7 (A))

Disclosure would constitute an unwarranted invasion of personal privacy. (Exemption 7(C))

The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources. (Exemption 7 (D))

OTHER

PART II. C — DENYING OFFICIALS

Pursuant to 10 CFR 9.25(b) and/or 9.25(c) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is "adversely to the public interest." The persons responsible for the denial are those officials identified below as denying officials and the Director, Division of Freedom of Information Publications Services, Office of Administration, for any denial that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECRETARY	IG
Thomas E. Murley	Director, NRC	App. E	X		

PART II. D — APPEAL RIGHTS

This denial by each denying official identified in Part II.C may be appealed to the Appellate Official identified there. Any such appeal must be made in writing within 30 days of receipt of this response. Appeals must be addressed, as appropriate, to the Executive Director for Operations, to the Secretary of the Commission, or to the Inspector General, 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."

Re: FOIA-91-579

APPENDIX D

NUMBER	DATE	DESCRIPTION
1.	3/92	Licensing Topical Report Generic Evaluations of GE Boiling Water Reactor Power Uprate, (Vol. 1), NEDO-31984, (non- proprietary version).

APPENDIX E
RECORDS BEING WITHHELD IN THEIR ENTIRETY

NUMBER	DATE	DESCRIPTION
1.	2/7/91	Memo for Ledyard B. Marsh from Robert C. Jones, subject: "Request for Additional Information Regarding: NEDC-31897P, Generic Guidelines for GE Boiling Water Reactors Power Uprate," (1 pg.) with enclosure: Request for Additional Information, (2 pgs.) - EXEMPTION 5.
2.	3/18/91	Memo for L. B. Marsh from James A. Norberg, subject: "EMEB Comments on GE Proposed Guidelines for BWR Power Uprate," (2 pgs.) - EXEMPTION 5.
3.	3/27/91	Memo for L. B. Marsh from Ashok Thadani, subject: "Review of General Electric Proposed Guidelines for BWR Power Uprate Submittal," (1 pg.) - EXEMPTION 5.
4.	4/4/91	Memo for S. Richardson from L. B. Marsh, subject: "Tentative Schedule for BWR Power Uprate Program Development," (1 pg.) with attachment: BWR Power Uprate Program Development Plan, (2 pgs.) - EXEMPTION 5.
5.	4/18/91	Memo for Bruce Boger from Frank J. Congel, subject: "Comments on BWR Power Uprate Program," (1 pg.) with enclosures: Comments of the Risk Applications Branch, (2 pgs.); Comments of the Radiation Protection Branch, (2 pgs.) - EXEMPTION 5.
6.	8/11/91	Memo for Ledyard B. Marsh from James A. Norberg, subject: "Review of Rev. 1 to GE Licensing Topical Report NEDC-31897P, 'Generic Guidelines for GE BWR Power Uprate,' (1 pg.) with enclosure: Comments on Appendix K, Methods and Assumptions for Piping, (1 pg.) - EXEMPTION 5.

7. 8/21/91 Memo for L. B. Marsh from Robert C. Jones, subject: "Review of GE Topical Report NEDC 31897P-1 on Generic Guidelines for GE BWR Power Uprate," (1 pg.) - EXEMPTION 5.
8. 8/30/91 Memo for L. B. Marsh from C. E. McCracken, subject: "Review of Rev. 1 to GE Licensing Topical Report NEDC-31897, 'Generic Guidelines for GE BWR Power Uprate,' (2 pgs.) - EXEMPTION 5.
9. 9/11/91 Memo for Ledyard B. Marsh from Frank J. Congel, subject: "Review of Rev. 1 to GE Licensing Topical Report NEDC 31897P-1," (1 pg.) with enclosure: Questions/Comments NEDC-3189P-1, (2 pgs.) - EXEMPTION 5.



Nuclear Information and Resource Service

1424 16th Street, N.W., Suite 601, Washington, D.C. 20036 (202) 328-0002

December 17, 1991

Mr. Donnie H. Grimsley
Division of Rules and Records
Office of Administration and Resources Management
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA 91-579
Rec'd 12-19-91

FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Grimsley:

Pursuant to the Freedom of Information Act, 5 U.S.C. 522, as amended and 10 C.F.R. 9.8 of the Commission's regulations, the Nuclear Information and Resource Service requests the following documents regarding Fermi 2, NRC Docket No.50-341 NRC License No. NPF-43;

- 1.) General Electric Topical Report, NED C-31897P-1 "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate," June 1991 (LTR1)
- 2.) General Electric Topical Report. NED C-31984P "Generic Evaluations of General Electric Boiling Water Reactor Power Uprate," July 1991 (LTR2)
- 3.) Fermi 2 Licensing Report, 91-150 "Power Uprate Safety Analyses for Fermi 2," September 1991
- 4.) General Electric Report, NED C-31982P "Fermi 2 /SAFER/GESTR-LOCA Loss of Coolant Accident," July 1991

Please consider "documents" to include reports, studies, test results, correspondence, memoranda, meeting notes, meeting minutes, working papers, graphs, charts, diagrams, notes and summaries of conversations and interviews, computer records and any other form of written communications including internal NRC memoranda.

Pursuant to this request, please provide all documents prepared or utilized by, in the possession of, or routed through the NRC related to items 1-4.

dedicated to a sound non-nuclear energy policy.

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ZPP

Pursuant to and in compliance with 10 C.F.R. 9.41 of the Commission's regulations governing requests for waiver of fees, the Nuclear Information and Resource Service, herein after referred to as NIRS, puts forth the following information.

NIRS seeks the requested information solely to contribute to and help shape the public debate on nuclear issues.

NIRS intends to use the information in order to advance the concerns for public understanding and safety.

NIRS is qualified to make use of the requested information. The staff has demonstrated the ability to interpret information and communicate that information in a form comprehensible to the general public. Members of the NIRS staff have published articles in such national journals as The Progressive, Nuclear Times, Newsday and The Bulletin of Atomic Scientists.

NIRS has a working relationship with physicists, engineers, medical doctors and other respected professionals who contribute to the full understanding of technical records.

The information sought by NIRS, is not, to the best of our knowledge, in the public domain.

The general public has displayed great interest in nuclear issues and the requested information will certainly increase the public's understanding of this matter.

NIRS has demonstrated its ability and commitment to inform the public on all important nuclear issues. NIRS regularly publishes a trade journal for which this information will be of use, the Nuclear Monitor. Since 1978, NIRS has been providing information on nuclear issues to the public, the press, members of Congress, state and local government officials as well as hundreds of citizens groups across the country. NIRS provides this information free of charge and has neither a commercial nor a private interest in the agency records sought.

Under the amended fee waiver standard, NIRS is clearly entitled to a full waiver of all search, review and duplication fees. This standard calls for such a waiver, "if disclosure of the information is in the public interest because it is likely to contribute significantly to the public understanding of the operation or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. 552 (a) (4) (A) (iii).

In light of the foregoing, NIRS' request meets this standard on its face. NIRS has no commercial interest in this matter, but rather seeks this information to help the general public better understand the role of government in regulating the nuclear industry.

For all the reasons cited above, NIRS' request falls squarely within the Congressional intent in enacting the Freedom of Information Act and the fee waiver provision. We, therefore, ask that the Commission grant a full waiver for this FOIA request.

Thank you for your anticipated cooperation. If you have any questions in regards to this request, please feel free to contact me.

Sincerely,

Paul Gunter

