



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

PDR-016

JUN 27 1985

Robert R. Belair, Esquire
Kirkpatrick & Lockhart
1900 M Street, NW
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-85-199 AND
FOIA-85-A-15 (85-199)

Dear Mr. Belair:

This is in final response to your letter dated March 20, 1985, in which you requested, pursuant to the Freedom of Information Act (FOIA), copies of documents related to severe accident source term data.

The 20 documents identified on enclosed Appendix G are being placed in the NRC Public Document Room (PDR) located at 1717 H Street, NW, Washington, DC 20555, in file folder FOIA-85-199 in your name.

The three documents identified on enclosed Appendix H contain the predecisional analyses, opinions and recommendations of the Commissioners on the Severe Accident Policy Statement and source term information. Because these documents reflect the predecisional process in communication among the Commissioners, the documents are exempt from mandatory disclosure pursuant to Exemption 5 of the FOIA, 5 U.S.C. §552(b)(5), and the Commission's regulations, 10 CFR §9.5(a)(5). Release of the documents would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. The documents do not contain any reasonably segregable factual portions. The documents are being withheld in their entirety.

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 John C. Hoyle, Assistant Secretary of the Commission.

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."

On April 24, 1985, we received your letter dated April 12, 1985, appealing our lack of response to this request. On April 26, 1985, May 14, 1985, and May 28, 1985, this office provided you with partial responses. Since you were given appeal rights in my letters of April 26, 1985, and May 14, 1985, and in this letter, no further action will be taken on your letter of April 12, 1985.

Sincerely,

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

Enclosures: As stated
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PDR FOIA
BELAIR85-A-15 PDR

Appendix G
Documents Being Placed in the PDR

1. 09/06/84 Memo from J. K. Asselstine to D. A. Ward, ACRS, "Severe Accident Policy Statement."
2. 11/06/84 Memo from D. A. Ward, ACRS, to J. K. Asselstine, "ACRS Reply to Questions Regarding the Proposed NRC Severe Accident Policy Statement."
3. 11/23/84 W. J. Dircks to Cmrs., "Staff Response to Commissioners' Questions on Severe Accident Policy Statement (SECY-84-370, dated September 19, 1984)."
4. 11/23/84 Memo from W. J. Dircks to Cmrs., "Follow-up to Staff Response to Commissioners' Questions on Severe Accident Policy Statement (SECY-84-370, dated September 19, 1984)."
5. 11/27/84 Letter from A. E. Scherer, Combustion Engineering, Inc. to N. J. Palladino, SECY-84-370, Severe Accident Policy."
6. 12/28/84 Letter from H. R. Denton to A. E. Scherer, Combustion Engineering, Inc., "SECY-84-370, Severe Accident Policy."
7. 02/06/85 Memo from W. J. Dircks to Cmrs., "Staff Response to Chairman Palladino's Request to Reexamine Whether 'Economic' Benefits Cause any Problems Regarding Severe Accident Policy Criteria."
8. 02/15/85 Letter from R. Wilson, The American Physical Society, to Cmrs. transmitting APS Press Release, Executive Summary and Conclusions from report on Source Terms.
9. 02/19/85 Letter from R. Alvarez, Environmental Policy Institute, to S. J. Chilk, requesting that Dr. Susan Niemczyk be permitted to speak at Commission meeting on Source terms.
10. 02/21/85 The American Physical Society Press Release, Executive Summary and Conclusions from report on Source Terms.
11. 02/21/85 Transcript of The American Physical Society on release of their report on Source Terms.
12. 03/04/85 Memo from S. J. Chilk for the Record, Staff Requirements - American Physical Society Report on Source Term, 9:30 a.m., Thursday, February 21, 1985, Commissioners' Conference Room, D.C. Office (Open to Public Attendance).
13. 03/08/85 Portion of memo from J. T. Larkins to J. E. Zerbe, subject Summary of CSNI Special Task Force on Source Term Meeting, 2/26-28/85.

14. 03/26/85 Letter from B. G. Levi, Physics Today, requesting comment on draft article reviewing American Physical Society report on source term.
15. 03/27/85 Letter from W. R. Stratton and R. L. Seale to N. J. Palladino comparing two American Physical Society reports on source term.
16. 04/04/85 Letter to Sen. Alan Cranston from W. J. Dircks regarding use of severe accident research results in reactor regulation w/3/1/85 incoming.
17. 04/08/85 Letter from Steven Aftergood, Committee to Bridge the Gap, re: Commission meeting on source terms, April 3, 1985.
18. 04/12/85 Letter from R. E. Deem, New York Power Authority, to N. J. Palladino providing additional information from 4/3/85 Commission meeting on source term.
19. 04/15/85 Letter from D. A. Ward, ACRS, to N. J. Palladino, "Severe Accident Policy - Systematic Review of Nuclear Power Plants."
20. 06/00/85 NUREG/CR-4050, "A Review of the Shoreham Nuclear Power Station Probabilistic Risk Assessment."

Appendix H
Documents Being Withheld

1. 10/17/84 Memo from F. M. Bernthal to W. J. Dircks, "Questions on the Severe Accident Policy Statement." (3 pgs).
2. 02/04/85 Response from T. M. Roberts on 1/25/85 memo from F. Bernthal to N. J. Palladino, "Procedure for Commission Consideration of New Source Term Information, (Reference: SECY-85-17)." (1 pg).
3. 02/27/85 Memo from N. J. Palladino to W. J. Dircks, "Source Term." (1 pg).

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WRITER'S DIRECT DIAL NUMBER

(202) 452-7023

March 20, 1985

FOIA-85-199

rec'd 03/26/85

FREEDOM OF INFORMATION
ACT REQUEST

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

Re: Freedom of Information Act Request

Gentlemen:

On behalf of our client, Suffolk County, we request, pursuant to the Freedom of Information Act, as amended, 5 U.S.C. § 552 ("FOIA"), and the rules of the Nuclear Regulatory Commission ("NRC"), issued thereunder, 10 CFR Part 9, copies of written materials in the possession or control of the NRC, whether in the Commissioners' offices, the Office of General Counsel, the Office of the Executive Director of Operations, or any other other NRC office, which relate in any manner to the following:

1. Any investigation or analysis of severe accident source terms for BWR reactors with Mark II containments designed by Stone & Webster Engineering Corporation;
2. Any investigation or analysis of severe accident source terms for the Shoreham Nuclear Power Plant performed by Stone & Webster Engineering Corporation, or any other persons or entities, including the NRC or its contractors;
3. Any probabalistic risk data or analysis, or severe accident consequence data or analysis, for the Shoreham Nuclear Power Plant (other than the document entitled, "Probabalistic Risk Assessment Shoreham Nuclear Power Station Long Island Lighting Company Final Report, Revision 1" by Science Applications, Inc., submitted to the NRC on June 24, 1983);

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4. Any studies, reviews, analyses, comments, discussions, questions, reports, testimony, or other documents relating to any probabilistic risk data or analysis, or severe accident consequence data or analysis, for the Shoreham Nuclear Power Plant;
5. Any documents relating to:
 - a. possible or proposed regulatory changes;
 - b. proposed or possible exemptions from or exceptions to regulatory requirements; or
 - c. proposed or possible waivers of regulatory requirementsarising out of, or based upon, in whole or in part, severe accident source term data or analyses;
6. Any documents relating to:
 - a. possible applications or interpretations of regulatory requirements; or
 - b. exemptions from, exceptions to, or waivers of regulatory requirements,for the Shoreham Nuclear Power Plant, arising out of or based upon, in whole or in part, severe accident source term data or analyses;
7. Any correspondence or other materials exchanged between or among
 - a. the NRC, and
 - b. LILCO or Stone & Webster Engineering Corporation, or any agent, employee or representative of either LILCO or Stone & Webster Engineering Corporation,pertaining to severe accident source term data or analyses relating to the Shoreham Nuclear Power Plant.

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To assist you in your search, but not to limit that search or this request in any way, we believe that such documents may be in the possession of the Office of Policy Evaluation, the Office of Nuclear Regulatory Research, the Office of Nuclear Reactor Regulation, including the Reliability and Risk Assessment Branch, the Systems Integration Division, and the Severe Accident Research Program.

In the event that access is denied to any part of the requested materials, please supply the following information:

- A. Identify the withheld or deleted material and specify the statutory basis for the denial, as well as your reasons for believing that an exemption applies, as required by 10 CFR § 9.10(b).
- B. Segregate the non-exempt from the allegedly exempt portions of all materials and release the former, as required by 10 CFR § 9.5(b).
- C. Supply a detailed statement of the content of the withheld or deleted material, along with the date on which the material was written; its title or section heading; its author; the author's title; and the identification of any persons or entities who have received copies of such material, as required by applicable case law. Vaughn v. Rosen, 484 F.2d 820, 826 - 827 (D.C. Cir. 1973).
- D. Separately state your reasons for not invoking your discretionary power to release the allegedly exempt materials. 10 CFR § 9.9.

The undersigned is willing to inspect the requested material prior to its reproduction in order to identify specific material for reproduction.

The undersigned will pay charges for search time and copying fees as provided by NRC regulations at 10 CFR § 9.14. If search and copying fees to be incurred by the undersigned will exceed \$500, please notify the undersigned before this sum is exceeded.

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Page Four

We expect to receive your response to this FOIA request within ten (10) working days of your receipt of this request, as required under the FOIA and as set forth at 10 CFR § 9.8.

Sincerely,

Robert R. Belair
Robert R. Belair

RRB:so

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ROBERT R. BELAIR
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April 12, 1985

APPEAL OF INITIAL FOIA DECISION

Executive Director for Operations
U. S. Nuclear Regulatory Commission
7735 Old Georgetown Road
Bethesda, Maryland 20814

FOIA-85-A-15EC(85-199)
rec'd 4/24/85

Re: Appeal from Initial FOIA Decision No. FOIA 85-199

Dear Sir:

This is an appeal pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a)(6), and the Nuclear Regulatory Commission's ("NRC") regulations thereunder, 10 C.F.R. § 9.11. On behalf of our client, Suffolk County, we submitted an FOIA request dated March 20, 1985 seeking any written materials in the possession or control of the NRC relating to source terms, probabilistic risk data or analysis, or severe accident consequence data or analysis for the Shoreham Nuclear Power Plant, including correspondence and other materials exchanged between or among the NRC, LILCO and any other agency or entity.

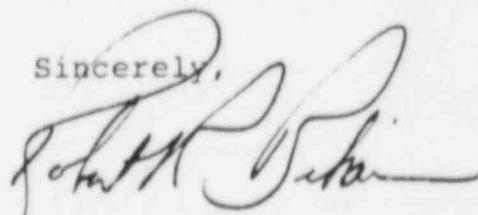
A copy of this request has been marked "Received" by the NRC as of March 26, 1985.

The NRC's regulations at 10 C.F.R. § 9.9 require the NRC to respond to an FOIA request within ten working days. That ten-day period has expired and as yet we have not received a response from the NRC. Furthermore, the NRC has not sent us a written notice advising us of an extension of the ten-day response, as permitted under the FOIA and the NRC's regulations, 10 C.F.R. § 9.13.

Under the FOIA and the NRC's regulations at 10 C.F.R. § 9.9(e), we are entitled to treat this failure to make a timely response as a denial of our request and to immediately appeal to the NRC's Executive Director for Operations. Accordingly, by this letter we hereby appeal the denial of the above-referenced FOIA request.

DR 8507270086

Sincerely,



Robert R. Belair

bcc/Tip Letsche