



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
REGION II
245 PEACHTREE CENTER AVENUE N.E., SUITE 1200
ATLANTA, GEORGIA 30303-1200

November 21, 2022

EA-21-035

Mr. James J. Bittner
Vice President and General Manager
BWXT Nuclear Operations Group, Inc.
P.O. Box 785
Lynchburg, VA 24505-0785

**SUBJECT: RESPONSE TO THE REQUEST TO WITHHOLD CLOSED PREDECISIONAL
ENFORCEMENT CONFERENCE MEETING TRANSCRIPT - BWXT NUCLEAR
OPERATIONS GROUP, INC.,**

Dear Mr. Bittner:

We have reviewed your October 5, 2022, letter requesting that the information transcribed during the closed portion of the Predecisional Enforcement Conference (PEC) conducted on September 22, 2022, be withheld from public disclosure. Upon completion of our review, we have concluded that BWXT Nuclear Operations Group, Inc., has not met the criteria listed in 10 CFR 2.390 and therefore, the transcript will be made publicly available.

10 CFR 2.390 requires that records be made public unless they meet one of the nine criteria listed in subparagraph (a). In your letter, you asserted that two of the criteria apply to the transcript.

First, you stated that 10 CFR 2.390(a)(6) applies because "the information presented during the closed portion of the PEC was specific to potential human performance failures predicated on personnel (employee) files. The dissemination of such information would be an invasion of the personal privacy of our deceased employee." We have concluded that this criterion does not apply. 10 CFR 2.390(a)(6) exempts "Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." During the closed portion of the PEC, the deceased employee's name was not mentioned and there was no discussion of the employee's personnel, medical, or similar files. Additionally, although you spoke generally about the individual's job duties, we do not consider the discussion anything that would rise to an "invasion of personal privacy."

Second, you requested that the NRC withhold the closed PEC transcript from public disclosure because it “relates to issues that are the subject of separate non-public legal proceedings. As a result, disclosure of this information could also interfere with these separate proceedings, as well as prejudice BWXT in connection with these proceedings.” We have concluded that this criterion also does not apply. 10 CFR 2.390(a)(7) exempts from public disclosure “Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: (i) Could reasonably be expected to interfere with enforcement proceedings; (ii) Would deprive a person of a right to a fair trial or an impartial adjudication; [or] (iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy[.]” Based on your October 5 letter, it is unclear how the information presented during the closed portion of the PEC would interfere with separate proceedings or deprive BWXT of a right to a fair trial or an impartial adjudication. There is no additional reasoning in the October 5 letter explaining how the release of the closed PEC transcript would prejudice BWXT. Additionally, the content of the transcript does not constitute an unwarranted invasion of personal privacy for the reasons outlined in the previous paragraph.

Although BWXT has not met the criteria for withholding under 10 CFR 2.390(a), consistent with agency practice, we plan to withhold the transcript until after we issue our final enforcement action.

Finally, the NRC has not received an affidavit that meets the requirements set forth in 10 CFR 2.390(b)(1) regarding your letter dated September 1, 2022. As stated in the NRC’s September 12, 2022, response letter, we will proceed in making your September 1, 2022, letter publicly available. We also have not received an affidavit that meets the requirements set forth in 10 CFR 2.390(b)(1) regarding your October 5, 2022, letter, which is labeled, “Withhold from Public Disclosure under 10 CFR 2.390.” Therefore, your October 5, 2022, letter will also be made publicly available unless you provide an affidavit that meets the requirements set forth in 10 CFR 2.390(b)(1) within 30 days of today’s date.

If you have any questions regarding this matter, please contact Eric Michel of my staff at 404-997-4555.

Sincerely,



Signed by Dudes, Laura
on 11/21/22

Laura A. Dudes
Regional Administrator

SUBJECT: RESPONSE TO THE REQUEST TO WITHOLD CLOSED PREDECISIONAL
ENFORCEMENT CONFERENCE MEETING TRANSCRIPTS DATED
NOVEMBER 21, 2022

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