

## FOIA Resource

**From:** Kit Douglass <kdouglas@peer.org>  
**Sent:** Tuesday, May 07, 2013 1:00 PM  
**To:** FOIA Resource  
**Subject:** FOIA request

**FOIA REQUEST**  
**Case No.:** 2013-0239  
**Date Recd:** 5/7/13  
**Specialist:** Kulgore  
**Related Case:**

U.S. Nuclear Regulatory Commission  
FOIA/Privacy Officer  
Mailstop: T-5 F09  
Washington, DC 20555-0001

May 7, 2013

RE: Freedom of Information Act Request

### VIA EMAIL

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests information in the possession of the Nuclear Regulatory Commission (NRC) regarding the risk of inundation from dam failure to operating commercial nuclear reactors. Specifically, we request the following:

1. ML110740482, Analysis Report for the Proposed Generic Issue on Flooding of Nuclear Power Plant Sites Following Upstream Dam Failures;
2. ML101900305, Identification of a Generic External Flooding Issue Due to Potential Dam Failures;
3. ML100780084, Generic Failure Rate Evaluation for Jocassee Dam Risk Analysis;
4. ML091170104, Oconee Nuclear Station, Units 1, 2 And 3 - Non-concurrence on Evaluation of Duke Energy Carolinas, LLC September 26, 2008, Response to Nuclear Regulatory Commission Letter Dated August 15, 2008 Related to External Flooding;
5. ML101610083, Oconee Nuclear Station, Units 1, 2, and 3, - External Flood Commitments;
6. ML081640244, Information Request Pursuant to 10 CFR 50.54(F) Related to External Flooding, Including Failure of the Jocassee Dam at Oconee Nuclear Station, Units 1, 2, and 3 (TAC Nos. MD8224, MD8225, and MD8226);
7. ML081750106, Oconee, Units 1, 2 and 3 - Response to 10 CFR 50.54(f) Request;
8. ML090570779, Oconee Nuclear Station Units 1, 2, and 3, Evaluation of Duke Energy Carolinas September 26, 2008, Response to External Flooding, Including Failure of the Jocassee Dam;
9. ML091170104, Oconee Nuclear Station, Units 1, 2 And 3 - Non-concurrence on Evaluation of Duke Energy Carolinas, LLC September 26, 2008, Response to Nuclear Regulatory Commission Letter Dated August 15, 2008 Related to External Flooding;
10. ML111460063, Oconee Nuclear Site, Units 1, 2, and 3. Response to Confirmatory Action Letter (CAL) 2-10-003, dated April 29, 2011;

11. The 19- page letter from NRC employee (b)(6) to the NRC Chairman dated September 18, 2012; and

12. The email dated September 18, 2012 from (b)(6) to the NRC Chairman.

PEER requests that all records be provided electronically, preferably via ADAMS, so there should be no duplication necessary.

In a January 21, 2009 memo, President Barack Obama declared the following policy for the Executive Branch:

“The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.”

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)). We address the eight factors laid out in 10 CFR 9.41 to clearly demonstrate that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester, as follows:

*(1) Purpose for which the requester intends to use the requested information;*

PEER seeks the requested information solely to contribute to and help shape the public debate concerning the NRC’s role in the regulation of the nuclear industry. The information provided by the NRC will be analyzed to evaluate the NRC’s effectiveness for responding to flooding concerns at the Oconee Nuclear Station and similarly vulnerable reactors.

*(2) Extent to which the requester will extract and analyze the substantive content of the agency record;*

The requested information and the requesters’ analysis of the NRC’s response to flooding concerns at Oconee and other sites will greatly contribute to the public’s understanding of the Commission’s role in regulating the nuclear industry. The requested documents detail the NRC’s knowledge of these inundation risks as well as its response to those risks. As such, these documents are the most meaningful indices of how this vital public agency is addressing this extremely serious issue.

*(3) Nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;*

PEER is national alliance of local state and federal resource professionals. PEER's environmental work is solely directed by the needs of its members. As a consequence, we have the distinct honor of serving resource professionals who daily cast profiles in courage in cubicles across the country. Public employees are a unique force working for environmental enforcement. In the ever-changing tide of political leadership, these front-line employees stand as defenders of the public interest within their agencies and as the first line of defense against the exploitation and pollution of our

environment. Their unmatched technical knowledge, long-term service and proven experiences make these professionals a credible voice for meaningful reform.

PEER is working with government scientists, engineers and other agency specialists to obtain and analyze what we believe are important agency documents which should – but have not yet – reached the public domain.

*4) The likely impact on the public's understanding of the subject as compared to the level of public understanding of the subject before disclosure;*

The vast majority of the documents PEER is requesting have not yet been released outside the NRC and thus the public has little idea of their content. With the context provided by PEER, these documents would help the public understand in a new, far more detailed way –

- The extent of flood inundation risks to American reactors –what reactors are at what level of risk;
- What has the NRC done about known risks – especially severe risks whose existence has been known for years; and
- The options available for minimizing or eliminating these risks.

These issues are important planks in a larger public debate about the safety and reliability of nuclear-generated power and the professionalism and judgment exercised by the key regulatory agency.

*(5) The size and nature of the public to whose understanding a contribution will be made;*

The bulk of the requested document consists of a formal screening evaluation conducted by a federal regulator (i.e. the NRC) on a potentially serious public safety concern (i.e. the vulnerability of nuclear power plants to flooding due to the failure of upstream dams). Thus, the most directly affected segment of the public will be those living within the evacuation zones of at-risk reactors. Since it is our understanding that the portion of at-risk reactors may be as large as one-third of the nation's nuclear capacity, several to tens of millions of the American public will be vitally concerned with the information contained in the requested documents.

Given the potential magnitude of worst-case-scenario consequences outlined in the requested documents, it would not be an exaggeration to say that all U.S. residents will have their understanding of the vulnerabilities outlined within these documents heightened.

*(6) Intended means of dissemination to the general public;*

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in PEER's newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

Through these methods, PEER generates an average of 1.5 mainstream news articles per day. Moreover, PEER has repeatedly demonstrated the ability to generate nationwide news coverage concerning activities occurring within federal agencies, such as the NRC.

In addition, this topic –without the benefit of all the documents PEER is requesting – has already been the subject of national media coverage. We would anticipate even greater coverage once the requested documents are disclosed.

*(7) Public access to information will be provided free of charge; and*

As indicated above, the requested documents will be available to the general public without charge and in the most accessible manner possible.

*(8) PEER has no commercial or private interest in the agency records sought.*

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c) (3) of the Internal Revenue code.

As detailed above, these documents concern the activities of a federal agency, the NRC; will contribute significantly to public understanding of this agency's operations and activities; and the requestor has no commercial interest in their release. Unquestionably, the public interest strongly militates for their full disclosure.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER. I look forward to receiving the agency's final response within 20 working days.

Sincerely,

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