

Case No.

2014-0001A

Date Rec'd:

10/8/13

Specialist:

Shoff

Related Case:

2013-0345

WALLACE L. TAYLOR

ATTORNEY AT LAW

118 3<sup>RD</sup> AVE. S.E., SUITE 326

CEDAR RAPIDS, IOWA 52401

Phone 319-366-2428

Fax 319-366-3886

October 3, 2013

Mr. Mark A. Satorius  
Executive Director for Operations  
Nuclear Regulatory Commission  
Washington, DC 20555-0001

Re: Fee waiver appeal for FOIA request No. FOIA/PA-2013-00345

Dear Mr. Satorius:

I am appealing the denial of a fee waiver request in the above FOIA matter. My FOIA request and the fee waiver denial notice are hereto attached.

The denial notice states that of the 8 factors for a fee waiver set forth in 10 C.F.R. § 9.41, the requirements of factors 1, 4, 6 and 7 have been met. This appeal will therefore address factors 2, 3, 5, and 8, which the denial notice indicates have not been met.

#### Factor 2

Factor 2 asks for the extent to which the requester will extract and analyze the substantive content of the requested records.

The David Loveless memo to Elmo Collins analyzes the effect of upstream dam failure on the safety of the Fort Calhoun Nuclear Station. The requester and the public will extract the data as to the extent of flooding that would occur at the Fort Calhoun Station in the event of one or more upstream dam failures. The information will be used to analyze the adequacy of the flood protection measures at Fort Calhoun. We may also have an expert review the data and render an opinion.

The geotechnical report prepared by Stevenson and Associates for Fort Calhoun Station analyzes the geology

beneath the Fort Calhoun reactor. An earlier geotechnical report indicates that the geology beneath the reactor is karst, or fractured limestone. This creates a risk of insufficient support for the reactor and of a danger that leaks of radioactive material will easily disseminate into the groundwater. The Stevenson and Associates report was written and based on investigations done after the flood of 2011. The requester and the public will extract the data from the report to determine the sufficiency of the geology beneath the reactor. The information will be used to analyze the adequacy of the structures and precautions at Fort Calhoun to ensure that the support for the reactor is sound and that leaks of radioactive material from the reactor will not disseminate into the groundwater. We may also have an expert review the data and render an opinion.

The portion of the FSAR for Fort Calhoun showing the location, depth, and construction of the pilings supporting the plant is a corollary to the Stevenson and Associates report. In a conversation with NRC personnel about the geology beneath the reactor I was told that information about the construction of the plant was in the FSAR. I was further told that the FSAR is not available to the public without a FOIA request, and I was advised to make such a request. The requester and the public will extract the data from the FSAR to determine if the construction of the Fort Calhoun reactor is sufficient to address the risks of being constructed on karst geology. We may also have an expert review the data and render an opinion.

### **Factor 3**

Factor 3 asks for the nature of the specific activity in which the records will be used and the qualifications of the requester to utilize the information.

We believe all of the requested items are fairly straightforward and will be information that the general public will understand. To the extent that expert opinion will assist in a better understanding of the information, we may also have an expert review the data and render an opinion. At this point, without seeing the requested records, it is impossible to say with complete accuracy whether special qualifications will be needed to utilize the information.

### **Factor 5**

Factor 5 asks for the size and nature of the public audience to whose understanding a contribution will be made.

As noted in the fee waiver request, the public audience for this information would be the people of Nebraska and Iowa who would be affected by the safety issues surrounding Fort Calhoun. That would certainly seem to answer the question posed by Factor 5. The denial notice apparently based the denial on the statement that the information would be on e-mail lists and used at public meetings. This basis for denial is inconsistent with the acceptance of the information responding to Factor 6 about the means of dissemination of the information to the general public.


### **Factor 8**

Factor 8 asks for any commercial or private interest the requester or any other party has in the records requested.

As explained in the fee waiver request, my request is made on behalf of the Sierra Club. The Sierra Club is a non-profit public interest environmental organization. It has no commercial or private interest in the information requested. The request is made solely to serve the public interest. My status as attorney for the organization does not come within the ambit of a commercial interest that is intended to exclude a fee waiver. The exclusion for commercial interests is meant to address a private person or company that would make a profit directly from the information requested. That is clearly not the case here. My involvement is only to represent the Sierra Club in making the FOIA request. I receive no economic benefit from the information itself.

I trust that this letter will clarify and explain the justification for a fee waiver in this case. Based on the foregoing, I request that the fee be waived for the FOIA request in this case.

Very truly yours,



Wallace L. Taylor