

Case No.:

2014-0006A

Date Rec'd:

12/13/13

Specialist:

Graff

Related Case:

2014-00078

AG E

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

December 12, 2013

Dear Mr. Satorius:

On December 6, 2013, I submitted a request for information under the Freedom of Information Act. As part of our request, I asked for a fee waiver, and was subsequently notified by Donna L. Sealing, FOIA/Privacy Act Officer, that a fee waiver has been denied based on insufficient information on two of the eight criteria. I am writing to appeal this decision. I believe that my organization, Alliance for a Green Economy, does qualify for a fee waiver. I would like the opportunity to reiterate and supplement the information I provided in the original FOIA request for those two criteria: our specific qualifications to utilize the requested information and our lack of commercial or private interest in obtaining the requested information.

In Factor 3, I was asked to describe "the 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 the public understanding." It was said that the information provided was not sufficient to meet this factor. The issue seems to be that I did not provide specific enough information about myself as the requester, although I did provide some information about the organizations I would be working with to analyze the information requested. We were also cited for primarily intending to advance our 2.206 petition related to these documents, rather than public awareness and education.

I am happy to provide more information about my own qualifications. My own expertise is at the helm of Alliance for a Green Economy since 2011, where I have been consistently engaged in public interest research on nuclear power. For over a year, my research has centered on nuclear economics and the Nuclear Regulatory Commission's financial qualifications regulation. I have a degree from Sarah Lawrence College, where my studies focused on economics. I am regularly asked to speak as an expert at public events, NRC hearings and to media organization. I am well qualified to read and understand documents requested from your agency regarding the agencies investigation into and enforcement of financial qualifications requirements at nuclear plants. I would also point out that Alliance for a Green Economy is a coalition of organizations, all of which retain expert staff with combined decades of experience in nuclear and regulatory issues. The organization would not just rely on my expertise for analyzing the requested documents. The member organizations include Citizens Awareness Network (which I noted in my original request is one of the nation's expert public organizations on the NRC's enforcement of the financial qualifications regulations). Other member organizations are Atlantic Chapter of the Sierra Club and Citizens Environmental Coalition, both of which have a long history of staff expertise in regulatory and nuclear issues.

As for the claim that we are requesting these documents primarily to advance our 2.206 petition, rather than public awareness and education, I could not disagree more. The fact that we are engaged in a 2.206 petition process with the Nuclear Regulatory Commission should not disqualify us from a fee waiver designed to promote government transparency and public access to agency documents. As I wrote in my original request, "the information we are requesting will be used to help the public understand the NRC's enforcement of the financial qualifications of companies operating merchant nuclear reactors. It will be used to inform media organizations, elected officials and the general public about the activities of the NRC staff in investigating the intersecting issues of nuclear economics and nuclear safety." This is the primary purpose behind our request.

There is major public interest in gaining access to this information. Multiple media outlets have covered the issue of financial strain on nuclear power plants and the potential financial qualifications regulation enforcement by the Nuclear Regulatory Commission. We receive regular media requests and requests from elected officials for further information, particularly for the information we are requesting.

In Factor 8, I was asked to "describe any commercial or private interest the requester or any other party has in the agency records sought."

My simple response that we had no commercial or private interest in this information was deemed insufficient. Alliance for a Green Economy is not-for-profit as are the organizations that make up its membership. No one involved in the organization stands to gain monetarily by accessing this information, or by any other activity our group is involved in. Nor would we gain personally, other than by enhancing our own knowledge on the issues at hand along with other members of the public. In denying our request for a fee waiver, Donna L. Sealing wrote that accessing this information would directly enhance the interests of our organization, because we are engaged in advocacy on a subject we are requesting information about. Denying a fee waiver based on this criteria sets a dangerous precedent and goes against the criteria for a fee waiver as described on your agency's website at: <http://www.nrc.gov/reading-rm/doc-collections/cfr/part009/part009-0041.html>

Donna L. Sealing wrote that "Whether or not a profit is gleaned from the requested records is not the determining factor of whether or not a requester has a commercial or private interest in the records being sought. Rather, public advocacy groups that seek records regarding the subject matter for which they advocate are, by nature, seeking records that advance the own organization's interests."

I wish to argue strenuously with this supposition. When the mission of an organization is public information and public interest advocacy (as ours is), it will inevitably further the mission of the organization to gain access to and publicly disseminate information related to the topics that the organization works on. To use this against an organization in denying a fee waiver is unfair.

The key is not whether an organization's interests will be advanced, but whether that organization's interests are commercial in nature. The NRC's webpage on the subject states, "The NRC will waive or reduce fees, without further specific information from the requester if, from information provided with the request for agency records made under § 9.23(b), it can determine that disclosure of the information in the agency records is in the public interest because *it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.*" (Emphasis added).

It further states that "In making a determination regarding a request for a waiver or reduction of fees, the NRC will consider the following factors: (1) How the subject of the requested agency records concerns the operations or activities of the Federal Government; (2) How the disclosure of the information is likely to contribute significantly to public understanding of Federal Government operations or activities; (3) The extent to which, the requester has a commercial interest that would be furthered by the disclosure of the requested agency records; and whether that commercial interest exceeds the public interest in disclosure."

We have clearly demonstrated that we are seeking this information primarily for the purpose of public disclosure and advancing public understanding of the NRC's regulatory process as it relates to its financial qualifications regulation. This is described in more detail in my answer to Factor 4, in which I describe in detail how the public's understanding will be enhanced as compared to current understanding.

We have further demonstrated that we have no commercial interest in obtaining this information as we are not-for-profit (not a commercial enterprise) and no one involved in our organization will profit financially from the release of this information. Even if you were to consider the idea that gaining access to this information will advance the interests of our organization (which Donna L. Sealing says are private, but which we argue are not), I believe it is still clear that this interest does not exceed the public interest in disclosure.

Thank you for considering this appeal. I do hope that with this additional information, you will see fit to grant us a fee waiver.

Sincerely,

-----/s/-----

Jessica Azulay
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Attachments:
Original FOIA Request Filed December 6, 2013
Response from Donna L. Sealing