

**RESPONSE TO FREEDOM OF  
INFORMATION ACT (FOIA) / PRIVACY  
ACT (PA) REQUEST**

2014-0348

1

RESPONSE  
TYPE ☐ INTERIM ☒ FINAL

REQUESTER

David Lochbaum

DATE

MAY 01 2015

**PART I. -- INFORMATION RELEASED**

- ☐ No additional agency records subject to the request have been located.
- ☐ Requested records are available through another public distribution program. See Comments section.
- ☒ ☐ GROUP A Agency records subject to the request that are identified in the specified group are already available in public ADAMS or on microfiche in the NRC Public Document Room.
- ☒ ☐ GROUP B, C Agency records subject to the request that are contained in the specified group are being made available in public ADAMS.
- ☐ ☐ GROUP Agency records subject to the request are enclosed.
- ☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- ☐ We are continuing to process your request.
- ☒ See Comments.

**PART I.A -- FEES**

AMOUNT\*

\$

\* See comments  
for details

- ☐ You will be billed by NRC for the amount listed. ☐ None. Minimum fee threshold not met.
- ☐ You will receive a refund for the amount listed. ☒ Fees waived.

**PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE**

- ☐ We did not locate any agency records responsive to your request. *Note:* Congress allowed agencies to treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). See 5 U.S.C. 552(c). This is a standard notification that we give to all requesters; it should not be taken as an indication that any of these excluded records do, or do not, exist.
- ☒ We have withheld certain information in the records from disclosure pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- ☐ Because this is an interim response to your request, you may not appeal this determination at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination on your request.
- ☒ You may appeal this final determination within 30 calendar days of the date of this response, by writing to the FOIA Officer, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001. Please be sure to mark your letter/envelope or email that it is a "FOIA Appeal."

**PART I.C COMMENTS ( Use attached Comments continuation page if required)**

The incoming request will be made available in ADAMS as ML14210A002. Records with an ML accession number are publicly available in the NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm.html>. If you need assistance in obtaining these records, please contact the NRC's Public Document Room (PDR) at 301-415-4737, or 1-800-397-4209, or by email to PDR.Resource@nrc.gov.

To facilitate your review, comment boxes may appear on pages to refer you to documents (by their ML #) already available in public ADAMS or to otherwise provide clarification. [see continuation page]

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Roger D. Andoh

**RESPONSE TO FREEDOM OF  
INFORMATION ACT (FOIA) / PRIVACY  
ACT (PA) REQUEST (Continued)**

2014-0348

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RESPONSE  
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REQUESTER

David Lochbaum

DATE

MAY 01 2015

**PART I.C COMMENTS (Continued)**

Subsequent to the submission of your request, you agreed to narrow the scope of this request in several ways: (1) The time frame for the request is the same as a prior, identical, request, FOIA-2013-0106; (2) The responsive records include only emails (reflecting technical discussions) sent to, or by, the specified NRC staffer about Jocassee Dam and/or the flooding hazard at Oconee Nuclear Station, rather than emails this staffer may have received or sent subsequent to these technical discussions; and (3) excludes the attachments (Oconee IPEEE and an excerpt therefrom) to documents B/24a and B/25.

**RESPONSE TO FREEDOM OF INFORMATION  
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DATE

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**PART II.A -- APPLICABLE EXEMPTIONS**

- GROUP ☐ C Records subject to the request that are contained in the specified group are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).
- ☐ Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- ☐ Exemption 2: The withheld information relates solely to the internal personnel rules and practices of NRC.
- ☐ Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
- ☐ Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
- ☐ Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
- ☐ 41 U.S.C., Section 4702(b), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- ☐ Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
- ☐ The information is considered to be confidential business (proprietary) information.
- ☐ The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
- ☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
- ☐ Disclosure will harm an identifiable private or governmental interest.
- ☒ Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
- ☒ Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
- ☐ Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
- ☒ Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- ☒ Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- ☐ Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
- ☐ (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrong doing or a violation of NRC requirements from investigators).
- ☐ (C) Disclosure could constitute an unwarranted invasion of personal privacy.
- ☐ (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
- ☐ (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
- ☒ (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- ☐ OTHER (Specify)

**PART II.B -- DENYING OFFICIALS**

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission 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 the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Brian W. Sheron	Director, Office of Nuclear Regulatory Research	Group C	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

**Group A**

**FOIA/PA NO: 2014-0348**

**RECORDS ALREADY PUBLICLY AVAILABLE**

- 1. ML12188A239 – Screening Analysis Report for the Proposed Generic Issue on Flooding of Nuclear Power Plant Sites Following Upstream Dam Failures (July 2011) (attachment to document B/11).**
- 2. ML13039A084 – Generic Failure Rate Evaluation, dated March 15, 2010 (attachment to documents B/12 and B/20).**
- 3. ML110260443 – Form 757, Non-Concurrence Process, prepared by Jeff Mitman, on the subject of “Confirmatory Action Letter – Oconee Commitments to Address External Flooding Concerns” (attachment to document B/13)**
- 4. ML091170104 – Form 757, Non-Concurrence Process, prepared by Melanie Galloway, on the subject of “Evaluation of Duke Energy’s September 26, 2008 Response Related to External Flooding at Oconee” (attachment to document B/14).**
- 5. ML090570779 - NRC letter to Duke Energy, dated April 30, 2009, subject: “Evaluation of Duke Energy’s September 27, 2008 Response to NRC letter dated 08/15/2008 related to External Flooding at Oconee Nuclear Station, Units 1, 2, and 3” (attachment to document B/20).**
- 6. ML061180451 - NRC letter to Duke Energy, dated April 28, 2006, subject: “Oconee Nuclear Station – Integrated Inspection Report 05000269/2006002, 05000270/2006002, 05000287/2006002 w/ enclosed report (attachment to document B/20).**

- 7. ML101900305 - Memorandum from Lois James, Chief, Probabilistic Risk Assessment Operational Support Branch, Division of Risk Assessment, NRR, to Benjamin Beasley, Chief, Operating Experience and Generic Issues Branch, Division of Risk Analysis, RES, dated July 19, 2010, subject: "Identification of a Generic External Flooding Issue Due to Potential Dam Failures." (attachment to document B/20).**
- 8. ML10343007 - Duke Energy letter to NRC, dated March 5, 2010, subject: "Oconee Nuclear Station, Units 1, 2, and 3, Regarding External Flood Response to Request for Additional Information" (attachment to document B/20).**
- 9. ML093080034 - Duke Energy-prepared slides on the subject of: "Oconee Nuclear Station, External Flood NRC Technical Meeting, Rockville, MD October 28, 2009" (attachment to document B/21).**
- 10. ML15111A052 - NRC-prepared slides on the subject of "Pre-GI-009 Internal Panel Briefing, Summary of Screening Analysis, dated April 29, 2011 (attachment to document B/42).**
- 11. ML13256A370 – Email from Lawrence Criscione to Chairman Allison Macfarlane, NRC, and others, dated September 18, 2012, which attaches a Letter, also dated September 18, 2012, to the Chairman (ML13256A372).**
- 12. ML090570779 – NRC Letter to Duke Energy, dated April 30, 2009, subject: "Evaluation of Duke Energy Carolinas, LLC (Duke), September 26, 2008 Response to NRC Letter dated August 15, 2008, related to External Flooding at Oconee Nuclear Station, Units 1, 2, and 3 (Oconee) (TAC NOS. MD8224, MD8225, and MD8226)" (attachment to document B/20).**
- 13. ML081640244 - NRC Letter to Duke Energy, dated August 15, 2008, subject "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 with enclosure, "Documents Related to Failure of the Jocassee Dam at Oconee Nuclear Station, Units 1, 2, and 3" w/ enclosure, "Documents Reviewed Related to Failure of the Jocassee Dam at Oconee Nuclear Station" (ML12363A132) (both are included in the attachment referred to as References.pdf in item 11, above).**
- 14. ML12363A129 - Duke Energy letter to NRC, dated September 27, 2008, subject: Duke Energy Carolinas, LLC, Oconee Nuclear Site, Units 1, 2, and 3, Renewed Facility Operating license, DPR-38, DPR-47, and DPR-55, Docket Numbers 50-269. 50-270, and 50-287, Response to 10 CFR 50.54(f)**

**Request” w/ Attachment 1 (Jocassee Project Description and Oconee Flooding Licensing Basis History, Attachment 2 (Duke Response to NRC Questions), Attachment 3 (Current and Planned Actions), and Attachment 4 (Regulatory Commitments).”**

**15. ML12054A735 – Issuance of Order to Modify Licenses with regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events, EA-12-049, dated March 12, 2012 (attachment to document B/16).**

**16. ML12053A340 – Request for Information Pursuant to Title 10 of the Code of Federal Regulations 50.54(f) Regarding Recommendations 2.1, 2.3, and 9.3 of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident, dated March 12, 2012 (attachment to document B/16).**

**17. ML11187A122 – NRC News Release No. II-11-042, “NRC Begins Special Inspection at Oconee Nuclear Plant,” issued July 6, 2011 (attachment to document B/16).**

**18. ML15096A120 - NRC-prepared slides on the subject of “Flooding of U.S. Nuclear Power Plant Sites Following Upstream Dam Failure: Generic Issue Screening Analysis Method” (attachment to document C/23).**