



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

IN RESPONSE REFER TO:
NRC-2021-000150
[NRC-2020-000123]

Ken Rumelt
Environmental Advocacy Clinic
Vermont Law School
164 Chelsea Street, P.O. Box 96
South Royalton, VT 05068

Dear Mr. Rumelt:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your FOIAOnline submission, dated April 21, 2021, in which you appealed the agency's final January 21, 2021, response related to your January 17, 2020, Freedom of Information Act (FOIA) request, NRC-2020-000123.

In your FOIA request, NRC-2020-000123, you sought all records: [1] related to the "updated" modeling and corresponding results described at A-103 in the FSEIS for Turkey Point; [2] All records related to measured salinity levels in the Turkey Point cooling canal system since November 1, 2016; [3] All records related to the NRC Staff and its contractors' review of "the Tetra Tech CCS model" identified at 3-58 of the FSEIS for Turkey Point, including their review of the "underlying assumptions that formed the basis of the Tetra Tech model" or any other aspect of the model including climatic conditions; [4] All records related to the NRC Staff and its contractors' review of Tetra Tech modeling identified on pages 3-58 to 3-60 of the FSEIS; [5] All records of electronic communications between or among Florida Power & Light and the NRC Staff or its contractors since January 1, 2017 related to salinity measurements in the cooling canal system and/or the hypersaline plume emanating from the same; and [6] All records related to the impacts of sea level rise on the Turkey Point Nuclear power station, limited to sea level rise impacts on nuclear safety, plant operations, flooding, and any related environmental impacts.

Your appeal letter raises four concerns: [1] The NRC failed to conduct a reasonable search for responsive records; [2] The NRC cannot withhold allegedly "personal" records that were made during the course of, and furtherance of, agency business; [3] The NRC may not withhold responsive agency records it did not "rely" on in its decision-making; and [4] The NRC has not met its burden to demonstrate the applicability of FOIA exemptions or that segregable portions of those records cannot be disclosed.

Acting on your appeal, I have considered all four of the issues raised in your appeal. With respect to items 1 and 3 of your appeal, adequacy of search and withholding responsive agency records the NRC did not "rely" on in its decision-making, the NRC Office of Research (RES), the Office of Nuclear Material Safety and Safeguards (NMSS), the Office of Nuclear Reactor Regulation (NRR), and the Region 2 office conducted a new search for records in response to your appeal. Attached to this letter are additional records located during the search, which are redacted in part under FOIA Exemption (b)(5), deliberative process privilege. In addition, the records listed below were located in the NRC's public Agencywide Documents Access and Management System (ADAMS) at the following URLs:

ML17060A945, "NRC-014 - Reese, R.S. U.S. Geological Survey Water-Resources Investigations Report 94-4010, Hydrogeology and the Distribution and Origin of Salinity in the Floridan Aquifer System, Southeastern Florida. Tallahassee, Florida (1994) (TN1439)", 03/01/2017,
<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML17060A945>

ML17128A241, "OFFICIAL EXHIBIT - NRC-014-00-BD01 - NReese, R.S. USGS Water-Resources Investigations Report 94-4010, Hydrogeology and the Distribution and Origin of Salinity in the Floridan Aquifer System, Southeastern Florida. Tallahassee, Florida (1994) (TN1439)," 03/01/2017,
<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML17128A241>

ML18247A563, "L-2018-136-Attachment 44 Enclosure 1 - Cumulative Hypersaline Groundwater Withdrawals," 08/08/2018,
<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML18247A563>

ML16238A217, "2016/08/22 Turkey Point COL Hearing - [External_Sender] PTN 6 & 7 Sea Level Rise," 08/22/2016,
<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML16238A217>

ML16280A620, "2016/10/06 Turkey Point COL Hearing - FW: FSAR & Sea Level Rise," 10/06/2016,
<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML16280A620>

ML16280A621, "2016/10/06 Turkey Point COL Hearing - FW: FSAR & Sea Level Rise < a e>," 10/06/2016,
<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML16280A621>

ML16280A622, "2016/09/29 Turkey Point COL Hearing - [External_Sender] FSAR & Sea Level Rise," 09/29/2016,
<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML16280A622>

ML16278A751, "National Oceanic and Atmospheric Administration (NOAA) Understanding Vulnerability to Sea Level Rise in Southeast Florida," 09/15/2016,
<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML16278A751>

Therefore, this part of your appeal is being granted.

With respect to item 2 of your appeal, denial of "personal" records, we tasked the appropriate office to take another look at the records they originally deemed to be personal records. After further review, the NRC has determined that these records are agency records subject to FOIA Exemption (b)(5), deliberative process privilege. The records contain predecisional information that would reveal agency deliberations, including advice, opinions, and recommendations among NRC staff, in support of preparing environmental review documentation related to the Turkey Point Subsequent License Renewal Application. Further, withholding is appropriate as release of this information could cause foreseeable harm by discouraging the open, frank, and

candid exchange of opinions needed for good decision-making. Withholding this information would also protect against public confusion that may result from disclosure of reasons and rationale that are not in fact actual reasons for agency decisions.

With respect to item 4 of your appeal, our denial of information under FOIA Exemption (b)(5), deliberative process privilege, in response to your FOIA NRC-2020-000123 request, I have reviewed the information that we originally withheld under that exemption and have determined that the NRC was correct to withhold it. The records contain predecisional information that would reveal agency deliberations, including advice, opinions, and recommendations among NRC staff in support of preparing environmental review documentation related to the Turkey Point Subsequent License Renewal Application. Withholding is appropriate as release of this information could cause foreseeable harm by discouraging the open, frank, and candid exchange of opinions needed for good decision-making, and could result in public confusion from disclosure of reasons and rationale that are not in fact actual reasons for agency decisions. Many of the records also contain exchanges between the NRC technical staff and assigned legal staff in the NRC Office of the General Counsel, which are covered by the attorney-client privilege. Therefore, I am denying your appeal with respect to the denial of information under Exemption (b)(5), and we will continue to withhold that information.

This is the final agency decision. As set forth in the FOIA (5 U.S.C. 552(a)(4)(B)), you may seek judicial review of this decision in the district court of the United States in the district in which you reside or have your principal place of business. You may also seek judicial review in the district in which the agency's records are situated or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740
Email: ogis@nara.gov
Telephone: 202-741-5770
Toll-free: 1-877-684-6448
Fax: 202-741-5769

Sincerely,

David J. Nelson

Digitally signed by David J.
Nelson
Date: 2021.06.22 12:48:58
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David J. Nelson
Chief Information Officer
Office of the Chief Information Officer