

Sealing, Donna

~~FOIA Request~~
~~Case No:~~ 2013-0264
~~Date:~~ 6/17/13
~~Requester:~~ Kelgore
~~Request Date:~~

From: Criscione, Lawrence
Sent: Saturday, June 15, 2013 1:06 PM
To: FOIA Resource; Sealing, Donna
Cc: Hirsch, Pat; Albert, Michelle
Subject: FW: FOIA Request for Correspondence Concerning ML13084A022

Ms. Sealing,

Please disregard my last sentence in the FOIA request below (i.e. "I will pay whatever fees are required to obtain the requested document."). I copied and pasted the final paragraph from an earlier FOIA request and neglected to delete the last sentence.

I do not intend to pay any fees for the information requested below. I apologize for any confusion.

Larry

From: Lawrence Criscione (b)(6)
Sent: Friday, June 14, 2013 11:58 PM
To: Sealing, Donna; FOIA Resource
Cc: Dave Lochbaum; (tom.zeller@huffingtonpost.com); Jim Riccio; Jeff Ruch; Kit Douglass; Louis Clark; Tom Devine; Billie Garde; sshepherd@cliffordgarde.com; Colleen Payne; Hirsch, Pat; Albert, Michelle
Subject: FOIA Request for Correspondence Concerning ML13084A022

Ms. Sealing:

Please process this email as a FOIA request.

On March 8, 2013 Jim Riccio of Green Peace, who is well aware of my concerns regarding flooding at the Oconee Nuclear Station, forwarded me a meeting notice for a March 19, 2013 NRC public meeting with Duke Energy concerning the flooding evaluation for Oconee Nuclear Station.

At some point, the March 19th meeting was moved to March 25, 2013. On the morning of March 25th, Jim forwarded me the Duke Energy slide presentation which apparently the NRC had sent to him (see the email below). These slides were presented at the March 25th public meeting. In addition to Mr. Riccio, I believe there was at least one other member of the public present at that meeting: Colleen Payne, who has worked, lived and run for public office in South Carolina. There was at least one member of the public on the phone line: a South Carolina resident who was a member of Friends of the Earth.

At the meeting, NRR informed the participants that Duke Energy's slide presentation was posted on the NRC's public website and could be found by referencing ADAMS Accession Number ML13084A022. The link for ML13084A022 no longer functions.

ML13084A022 still exists in ADAMS. The current document assigned that ADAMS Accession Number is the same as the one which Jim sent me except it contains the following statement on each and every slide:

Withhold from Public Disclosure under 10 CFR 2.390

The statement above comes from 10 CFR § 2.390(b)(1)(i)(A). 10 CFR § 2.390(b) states:

The procedures in this section must be followed by anyone submitting a document to the NRC who seeks to have the document, or a portion of it, withheld from public disclosure because it contains trade secrets, privileged, or confidential commercial or financial information.

I am not an attorney, but my interpretation of 10 CFR § 2.390(b) is that its subsections apply to "anyone submitting a document to the NRC" and not to NRC staff. That is, the request to withhold Duke Energy's 2013-03-25 public slide presentation "from public disclosure under 10 CFR 2.390" should have been made by Duke Energy, not the NRC. Obviously though, it was not made by Duke Energy. That is, Duke Energy would have no reason to prepare a slide presentation for a PUBLIC meeting and then request to withhold that already presented presentation from the public.

It appears that the NRC staff has added the statement "Withhold from Public Disclosure under 10 CFR 2.390" to the 2013-03-25 slide presentation in order to justify withdrawing it from the public domain.

In 10 CFR § 2.390(b)(1)(i)(A) it states:

Each document or page, as appropriate, containing information sought to be withheld from public disclosure must indicate, adjacent to the information, or as specified in paragraph (b)(1)(i)(A) of this section if the entire page is affected, the basis (i.e., trade secret, personal privacy, etc.) for proposing that the information be withheld from public disclosure under paragraph (a) of this section.

Despite the "Withhold from Public Disclosure under 10 CFR 2.390" markings, the basis for proposing that the information be withheld from public disclosure is nowhere indicated. It is therefore not clear why the NRC has withdrawn, in its entirety, ML13084A022 from the public domain. For example, slide 2 lists the Duke Energy team members who participated at the March 25, 2013 meeting and slide 3 lists the meeting agenda. It is unclear why the meeting attendees and the agenda for a PUBLIC meeting (i.e. a meeting open to the public which was attended by at least two members of the public in person and at least one more on the bridge line) must be withheld from the public.

Per the Freedom of Information Act and 10 CFR § 9.25, please provide me copies of the following:

1. All internal NRC correspondence concerning the public distribution of ML13084A022, the decision to remove it from the public domain, and the decision to justify that removal by claiming Duke Energy requested it be withheld under 10 CFR § 2.390.
2. All NRC correspondence with Duke Energy concerning ML13084A022.
3. All NRC correspondence with members of the public concerning ML13084A022.
4. Any and all affidavits pertaining to the supposed Duke Energy 10 CFR § 2.390 request for withholding of ML13084A022.
5. The version of ML13084A022 sent by NRR to Jim Riccio of Green Peace.
6. The current version of ML13084A022.

I believe that the NRC removed ML13084A022 from the public domain in order to justify redactions it made to ML100780084 as released under [ML13039A084](#) as well as to justify redactions it made to other documents requested under the Freedom of Information Act. I find it mind boggling that the NRC--whose mission includes TRANSPARENCY--is removing a utility's publicly presented slide presentation from its website and justifying

that removal with a claim that the utility requested the information it already publicly presented be withheld from the public. I would like the six items requested above so that I might better understand this issue and, if warranted, include it in my OSC Form 12 disclosure concerning the NRC's intentional violation of the Freedom of Information Act.

I do not intend to pay any fees for the requested information.

Describe the purpose for which you intend to use the requested information.

I intend to use the information to assist in developing an OSC FORM 12 disclosure for submission to the US Office of Special Counsel concerning wrong doing at the Nuclear Regulatory Commission.

Describe the nature of the specific activity or research in which you will use the requested records and the specific qualifications you possess to utilize information for the intended purpose in such a way that it will contribute to public understanding.

I hold a Professional Engineer's (PE) license in the State of Iowa in the Nuclear Engineering Branch. I am a former NRC licensed Senior Reactor Operator (SRO) and was formerly a Prospective Nuclear Engineer Officer (PNEO) in the US Navy's submarine force. I am a Risk Professional and current work as a Risk & Reliability Engineer in the NRC's Office of Nuclear Regulatory Research (RES). I intend to use the information to assist in developing an OSC FORM 12 disclosure for submission to the US Office of Special Counsel concerning wrong doing at the Nuclear Regulatory Commission. Assuming the Office of Special Counsel investigates my disclosure, the NRC will be required to submit a report on the matter to the OSC. The OSC will then report the findings to me and I will share these findings with Mr. Riccio of Green Peace, Mr. Lochbaum of the Union of Concerned Scientists, Mr. Zeller of the Huffington Post, Mr. Ruch of Public Employees for Environmental Responsibility, Mr. Devine of the Government Accountability Project and with any other member of the public, member of the press, or member of a public watchdog group who expresses interest in the matter.

Describe the likely impact on the public's understanding of the subject, compared to the level of public understanding of the subject before disclosure of the requested information.

I think that when the public realizes the manner in which the NRC withholds important safety information from them, they will have a better understanding that the NRC does not have a serious commitment to Transparency.

Describe the size and nature of the public segment whose understanding will be increased by disclosing the requested information.

Possibly a dozen individuals due to my efforts.

Describe the means by which you intend to disseminate the requested information to the general public.

I do not intend to directly disseminate the requested information to the general public. I intend to file an OSC Form 12. I intend to share the documents pertaining to my OSC disclosure with Mr. Riccio, Mr. Zeller, Mr. Lochbaum, Mr. Ruch, Mr. Devine, and anyone else interested.

Indicate whether you will provide public access to the requested information free of charge or in return for an access or publication fee.

I do not intend to provide the public any access to the requested information either free or for a fee. I intend for the NRC to disseminate this information free of charge by making it publicly available in ADAMS.

Describe any commercial or private interest that you or any other party may have in the requested records.

I have no commercial interest in these records. My private interest is I am a believer in Open Government and I have been harassed by the NRC's Office of the Inspector General for providing "Official Use Only - Security-Related Information" to Congressional staffers and the US Special Counsel.

There are some within the NRC who might claim this FOIA request contains "allegations". This email is merely a request for documents under the Freedom of Information Act. Although I believe the Office of Nuclear Reactor Regulation is inappropriately withholding safety related information from the American public, the intent of this email is not to make that allegation. The purpose of this FOIA request is to obtain documents to refine my understanding of why ML13084A022 has been withdrawn from the public domain. Once I believe I have a sufficient understanding of the manner in which ML13084A022 was withdrawn from the public domain after being presented at a public meeting, I intend to make an allegation to the US Office of the Special Counsel via an OSC Form 12 disclosure. Please process this email as a request under the Freedom of Information Act and do not waste the taxpayers' money by submitting yet another allegation to the Office of the Inspector General.

I work in (b)(6) and make it home to (b)(6) infrequently. Please correspond with me via email regarding this matter or call/text me at (b)(6) If there are documents you must provide to me as hardcopies, please contact me by phone or email and I will come by the FOIA desk to pick them up. I will pay whatever fees are required to obtain the requested document.

V/r,

Larry Criscione

(b)(6)

- > Date: Mon, 25 Mar 2013 09:57:52 -0400
- > From: jriccio@greenpeace.org
- > To: (b)(6) dlochbaum@ucsusa.org; tom.zeller@huffingtonpost.com
- > Subject: Duke's slides for today @ 2
- >
- > Gents,
- >
- > Here are Duke's slides for today
- > Courtesy of NRC staff
- >
- > JPR
- > --
- > Jim Riccio Nuclear Policy Analyst Greenpeace (o) 202-319-2487 (email)
- > jim.riccio@greenpeace.org