



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

November 15, 2013

Mr. Wallace Taylor  
118 3rd Ave SE., Suite 326  
Cedar Rapids, IA 52401

IN RESPONSE REFER TO  
FOIA/PA-2014-0001A  
(FOIA/PA-2013-00345)

Dear Mr. Taylor:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter received on October 8, 2013, in which you appealed the agency's September 11, 2013, decision related to your September 2, 2013, Freedom of Information Act/Privacy Act (FOIA/PA) request (FOIA/PA-2013-00345). You appealed the denial of your request for a fee waiver. The NRC addresses fee waiver request under the pertinent NRC regulation (10 CFR 9.41), which implements the FOIA fee waiver standard (5 U.S.C. 552(a)(4)(A)(iii)).

Acting on your appeal, I have carefully reviewed the record in the case and have determined that the result of the initial administrative determination was correct, because not all elements necessary for obtaining a fee waiver have been met. Therefore, your appeal is denied.

The enclosure identifies the administrative record of the case. Document 1 contains your initial request, including your request for a fee waiver. Document 2 includes the administrative denial of your request for a fee waiver, which was based on your responses to the eight factors listed in NRC's regulations at 10 C.F.R. 9.41(b)—each of which requesters are required to address when seeking a fee waiver from the NRC. The NRC assesses the information a requester provides regarding these eight factors to determine whether to grant a fee waiver request under the criteria set forth at 10 CFR 9.41(d). Document 3 includes your appeal and your argument in favor of reversing the agency's denial of your fee waiver request.

In the present case, the initial request sought a fee waiver and dedicated two paragraphs from Document 1 to addressing the eight factors listed at 10 CFR 9.41(b).<sup>1</sup> At the administrative level, the original request was found not to have provided sufficient basis with respect to 10 CFR 9.41(b)(2), (b)(3), (b)(5), and (b)(8) to support granting a fee waiver. These four factors are at issue in the present administrative appeal. The first (9.41(b)(2)) requires the requester to explain the extent to which the requester will extract and analyze the substantive content of the

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<sup>1</sup> As a preliminary matter, the requester initially provided only conclusory statements in response to 10 CFR 9.41(b)(8), which asks fee waiver requesters to "[d]escribe any commercial or private interest the requester or any other party has in the agency records sought." We note that conclusory allegations are insufficient to support a fee waiver request. See Judicial Watch, Inc. v. Rossotti, 326 F.3d 1309, 1312 (D.C. Cir. 2003). See also Sierra Club Legal Defense Fund v. Bibles, 34 F.3d 1073 (Table), 1994 WL 465881, 1 (9<sup>th</sup> Cir. 1994).

agency records. The original request did not indicate any extraction or analysis that the requester would undertake of the requested records.

On appeal, you assert that “the requester and the public will extract the data from” the requested documents and that the information would be used for certain purposes. As to what those purposes would be, the appeal states that information from the first requested document (David Loveless memo to Elmo Collins) would be used “to analyze the adequacy of the flood protection measures at Fort Calhoun.” The appeal states that information from the second requested document (Stevenson and Associates geotechnical report) would be used “to determine the sufficiency of the geology beneath the reactor” and “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.” Regarding the third requested document (excerpt from Fort Calhoun Final Safety Evaluation Report (FSAR)), the appeal stated that the document’s data would be used “to determine if the construction of the Fort Calhoun reactor is sufficient to address the risks of being constructed on karst geology.” The appeal letter also states that “[w]e may also have an expert review the data and render an opinion” with respect to the various documents from which data would be extracted. Apart from the tentative references to the requester possibly obtaining expert review, it is not clear from this discussion regarding 9.41(b)(2) whether “the requester” would do anything different with the documents (in terms of extraction of data or analysis) than “the public” would.

A related requirement, under 9.41(b)(3), is that a fee waiver requester must provide the requester’s qualifications for using the information for the intended use specified in the request. In conjunction with the information provided in response to 9.41(b)(2), this information helps the NRC determine whether disclosing the requested information to the particular requester who is seeking it would contribute significantly to the public’s understanding of the governmental operations or activities involved.<sup>2</sup> The original request indicated, via the request letter’s letterhead (plus a brief mention at the end of the letter that the requester has a “private interest” in “representing the Sierra Club”), that you are an attorney. The original request did not, however, provide any indication that you have any particular expertise, experience, or qualifications related to analyzing or synthesizing regulatory, geological, or engineering information pertaining to nuclear power plants. Accordingly, the original request did not support a finding that releasing the requested information to the requester would contribute significantly to the public’s understanding of the issues involved—a finding that would be necessary to support a fee waiver.<sup>3</sup>

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<sup>2</sup> See McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1286 (9<sup>th</sup> Cir. 1987) (observing, in affirming an agency’s denial of a fee waiver request and holding that the contribution to public understanding would not be significant, that “the request gives no indication of the requesters’ ability to understand and process [the] information”).

<sup>3</sup> See 10 CFR 9.41(d)(2).

For the first time on appeal, you state a belief that “all of the requested items are fairly straightforward and will be information that the general public will understand.” This suggests that the requester is not expecting to synthesize or analyze the information to a significant extent beyond what the general public itself would do. While the appeal does not rule out that the requester “may also have an expert review the data and render an opinion,” the appeal provides no specifics about that possible eventuality and is noncommittal about whether expert analysis will actually occur. Because the appeal clarifies that the documents are being requested on the Sierra Club’s behalf, rather than your own, it is also the Sierra Club’s characteristics that matter for purposes of this analysis.<sup>4</sup> Yet, the appeal does not explain the Sierra Club’s specific qualifications to undertake any of the analyses referred to in the appeal’s discussion of Factor 2. Instead, the appeal states: “[t]o 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” (emphasis added).

In addition to not committing to expert review, the appeal provides no specifics about any potential expert’s qualifications. The appeal attempts to explain this by stating: “[a]t 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.” Yet, a lack of absolute certainty would not prevent the requester from providing details regarding the requester’s likely or anticipated approach to obtaining expert review of the information, based on the requester’s apparent general familiarity with the nature of the documents (as reflected in the appeal’s discussion of Factor 2). Because a FOIA request typically seeks documents to which the requester does not yet have access, some degree of uncertainty about the precise contents of requested documents is common. Yet, where a FOIA requester seeks a fee waiver regarding a request for technical information, absent specifics about the requester’s qualifications or the qualifications of any potential experts, or any assurance that experts will, in fact, be utilized, it becomes difficult for the agency to establish that disclosing technical information to the requester will result in significant contributions to public understanding.<sup>5</sup>

In sum, while the appeal did provide some additional information to supplement the original request’s information regarding 9.41(b)(2) and (b)(3), the appeal still does not provide sufficient specifics to allow the NRC to determine that disclosure of the requested documents to this particular requester would likely contribute significantly to the public’s understanding of the issues involved.

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<sup>4</sup> See Dale v. IRS, 238 F.Supp. 2d 99, 107 (“A party’s counsel is not the ‘requester’ for purposes of a fee waiver.”).

<sup>5</sup> See Perkins v. U.S. Dept. of Veterans Affairs, 754 F.Supp.2d 1, 8 (D.D.C. 2010) (affirming fee waiver denial and contrasting requester, who had thus far only contacted a university for analytical assistance, with a requester in another case, who had already entered into a contract with appropriate experts to conduct the analysis).

The denial decision at the administrative level also identified deficiencies in the information the requester provided in response to 9.41(b)(5), which requires requesters to describe the size and nature of the public audience to which the information would be disseminated, and 9.41(b)(8), which requires the requester to identify any commercial or private interests that the requester or any other party has in the requested records. Contrary to this agency's decision in the initial determination, the request does appear to sufficiently specify the nature of the public audience whose understanding will be heightened through dissemination. Specifically, the record audience is effectively described as being individuals within Iowa and Nebraska whose safety concerns for the Fort Calhoun station would be enlightened by the records, including email-list addressees and those who attend public meetings where the records would be used. Although no specific tally of individuals who attend public meetings or subscribe to the referenced email lists is provided, we think that this demographic constitutes a "reasonably broad segment of the interested public."<sup>6</sup> However, for the reasons discussed above in connection with 9.41(b)(2) and (b)(3), denial of the fee waiver request was still the proper result.

Regarding the requester's interests in the matter, the original request specified that you have a "private interest" in representing the Sierra Club. In the appeal, you clarified that his request was made on behalf of the Sierra Club, rather than for yourself. The appeal describes Sierra Club as "a non-profit public interest environmental organization." Even assuming that relying, without more, on the Sierra Club's status as a "public interest environmental organization" were sufficient to support a finding of no commercial interest, because of the findings above relating whether disclosure would contribute significantly to public understanding, I need not reach the issue of whether the requester has a commercial interest and, if so, whether the public interest in disclosure outweighs it.

Again, in the present case, because the requester did not establish that disclosing the information would contribute significantly to the public's understanding of Federal government activities or operations, I conclude that denial of the fee waiver request was the correct result.

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

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created 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. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to

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<sup>6</sup> Cnty. Legal Servs. v. HUD, 405 F. Supp. 2d 553, 557 (E.D. Pa 2005).

W. Taylor

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handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 301-837-1996  
Facsimile: 301-837-0348  
Toll-free: 1-877-684-6448

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Ash', with a long horizontal flourish extending to the right.

Darren B. Ash  
Deputy Executive Director  
for Corporate Management  
Office of the Executive Director for Operations

Enclosure:  
As stated

~~FOIA REQUEST~~  
Case No: 2013-0345  
Date Rec'd: 9/11/13  
Specialist: Traff  
Requester: \_\_\_\_\_

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

September 2, 2013

FOIA/PA Officer  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear FOIA/PA Officer:

Pursuant to the Freedom of Information Act, please provide to me the following documents:

1. The memo to Elmo Collins, Regional Administrator, Region IV, from David P. Loveless, dated July 1, 2011 re: Proposed Adequate Protection Backfit Exception at Fort Calhoun Station.
2. The geotechnical report prepared by Stevenson and Associates for Fort Calhoun Station. Although this report was apparently commissioned by Omaha Public Power District, I understand that the NRC has been given a copy, so it is now in NRC possession and is a public document.
3. The portion of the FSAR for Fort Calhoun Station showing the location, depth, and construction of the pilings supporting the plant.

I request a fee waiver and state in support thereof as follows:

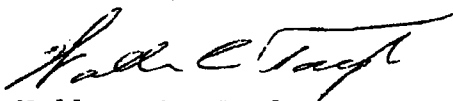
The purpose for which the requested documents will be used is to inform the public about issues surrounding the safety and reliability of the Fort Calhoun Station. The information will be used to present public comments and to support public involvement in the licensing decisions regarding Fort Calhoun. The information will be important to people in Nebraska and Iowa who are affected by the safety issues surrounding Fort Calhoun. In addition, there are many people all over the country who are interested in Fort Calhoun.

At this point, the public has little or no knowledge of the geotechnical issues at Fort Calhoun, nor the scope of the NRC's analysis of the flooding danger from the failure of upstream dams on the Missouri River above Fort Calhoun. The information from the requested documents will be disseminated to the public on e-mail lists, at public meetings, and in legal proceedings involving licensing issues with Fort Calhoun. The information will be disseminated to the public free of charge. I have no commercial interest in the information. Nor do I have any private interest, other than representing the Sierra Club, whose purpose is to serve the public interest.

Therefore, we request a fee waiver.

If you have any questions, please feel free to contact me.

Very truly yours,



Wallace L. Taylor



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

September 11, 2013

**FOIA/PA-2013-00345**

**Wallace Taylor**  
**Sierra Club, Iowa Chapter**  
**118 3rd Ave, S.E.Suite 326**  
**Cedar Rapids, IA 52401**

Dear Requester:

We received your Freedom of Information Act/Privacy Act (FOIA/PA) request on September 11, 2013.

Your request has been assigned the following reference number that you should use in any future communications with us about your request: **FOIA/PA-2013-00345**

To ensure the most equitable treatment possible of all requesters, the NRC processes requests on a first-in, first-out basis, using a multiple track system based upon the estimated time it will take to process the request. Based on your description of the records you are seeking, we estimate completion of your request will take more than 20 working days. We will advise you of any change in the estimated time to complete your request.

Due to the unexpected events in Japan in March 2011, the NRC is processing a larger than normal volume of FOIA requests including some that have qualified for expedited processing and have therefore been placed at the front of the queue. We are doing our best to process all requests in a timely manner but our response times are being affected. We appreciate your understanding.

For purposes of assessing fees in accordance with our regulations (10 CFR 9.33), we have placed your request in the following category: **Non-Excepted**. If applicable, you will be charged appropriate fees for: **Search and Duplication of Records**.

A sheet has been enclosed that explains in detail the fee charges that may be applicable. **Please do not submit any payment unless we notify you to do so.**

You requested that fees be waived for your request, and I have determined that your request for a waiver of fees does not meet the criteria required under 10 CFR 9.41 (copy attached) for the reasons shown on the attached fee waiver denial notice. You may appeal this determination. Any such appeal must be made in writing within 30 calendar days by addressing the appeal to the Executive Director for Operations.

The following person is the FOIA/PA Specialist who has been assigned responsibility for your request: **Mark Graff at 301-415-8154**.



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If you have questions on any matters concerning your FOIA/PA request please feel free to contact the assigned FOIA/PA Specialist or me at (301) 415-7169.

Sincerely,

*/S/*

Donna L. Sealing  
FOIA/Privacy Act Officer  
Office of Information Services

Enclosures:

Incoming Request  
Explanation of Fees  
Fee Waiver Justification Requirements

## EXPLANATION OF FEES

### Requester Fee Categories

**Commercial:** Fees are charged for document search, duplication, and review, when records are requested for commercial purposes. Fees (above the minimum fee charge) cannot be waived for this category of requester.

**Educational, Non-Commercial Scientific, News Media and Privacy Act:** Fees may be charged only for document duplication when records are not sought for commercial use and the request is made by an Educational or Non-Commercial Scientific Institution, whose purpose is scholarly or scientific research; or a Representative of the News Media; or a person requesting his/her own records that are in a Privacy Act system of records. No fee is charged for the first one hundred pages of duplication for this category of requester.

**Non-Excepted:** For any request not described above (Non-Excepted), fees may be charged for document search and duplication. No fee is charged for the first two hours of search time or for the first one hundred pages of duplication for this category of requester.

### Fee Schedules

Fee schedules provide only for the recovery of the direct costs of search, duplication, or review. Review costs include only the costs for initial examination of a document to determine whether it must be disclosed and to determine whether to withhold portions that are exempt from disclosure. The fee schedule is as follows:

<u>Search &amp; Review Conducted By</u>	<u>Rate</u>	
● SES/COMMISSIONER	\$90.53/hour	(ES-maximum)
● PROFESSIONAL	\$56.36/hour	(GG-13, Step 6)
● CLERICAL	\$25.16/hour	(GG-7, Step 6)
<b><u>Duplication Charges</u></b>	\$ .20 per page	

Fees for non-standard search or duplication will be charged at the actual cost (e.g. providing copying of audio tapes or conducting computer searches).

**Minimum Fee:** No fee will be charged unless the fee is equal to or greater than \$25.00.

### When to Pay Fees

If we estimate that fees will not exceed \$25.00 or you have stated in your request a higher amount that you are willing to pay, we assume your willingness to pay up to \$25 or the amount stipulated and you will be billed after we have completed your request.

If we estimate that fees will exceed \$25.00 or any amount that has been stated by you in your request, we will not proceed with your request until we have notified you and obtained your agreement to pay the estimated fees.

If we estimate fees will exceed \$250, you will be required to pay the estimated fees in advance before we proceed further with your request. If, while processing your request, we find that the actual fees exceed the estimated fee, we will obtain your consent to pay the additional fees before continuing to process your request. If the actual fees to process your request are less than any advance payment you have made, you will be refunded the overpayment amount.

### Fee Waivers

A waiver or reduction of fees may be granted for furnishing documents if a requester, by fully addressing the eight factors in 10 CFR 9.41, clearly demonstrates that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

## SECTION 9.41- REQUESTS FOR WAIVER OR REDUCTION OF FEES

### (a) FOIA Fee Waivers

(1) The NRC shall collect fees for searching for, reviewing, and duplicating agency records, unless a requester submits a request in writing for a waiver or reduction of fees. To assure that there will be no delay in the processing of Freedom of Information Act requests, the request for a waiver or reduction of fees should be included in the initial Freedom of Information Act request letter.

(2) Each request for a waiver or reduction of fees must be addressed to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

### (b) A person requesting the NRC to waive or reduce search, review, or duplication fees shall:

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyze the substantive content of the agency record;

(3) 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 public understanding;

(4) Describe the likely impact on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure;

(5) Describe the size and nature of the public to whose understanding a contribution will be made;

(6) Describe the intended means of dissemination to the general public;

(7) Indicate if public access to information will be provided free of charge or provided for an access fee or publication fee; and

(8) Describe any commercial or private interest the requester or any other party has in the agency records sought.

(c) The NRC will waive or reduce fees, without further specific information from the requester if, from information provided with the request for agency records, 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 Government and is not primarily in the commercial interest of the requester.

(d) In making a determination regarding a request for a waiver or reduction of fees, the NRC shall consider the following factors:

(1) How the subject of the requested agency records concerns the operations or activities of the Government;

(2) How the disclosure of the information is likely to contribute to an understanding of Government operations or activities;

(3) If disclosure of the requested information is likely to contribute to public understanding;

(4) If disclosure is likely to contribute significantly to public understanding of Government operations or activities;

(5) If, and the extent to which, the requester has a commercial interest that would be furthered by the disclosure of the requested agency records; and

(6) If the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(e) Within 10 working days after receipt of a request for access to agency records for which the NRC agrees to waive fees, the NRC shall respond to the request.

(f) If the written request for a waiver or reduction of fees does not meet the requirements of this section, the NRC will inform the requester that the request for waiver or reduction of fees is being denied. The requester will be informed of the right to appeal a denial of a request to waive or reduce fees to the Secretary of the Commission within 30 days from the date of the denial.

### Fee Waiver Denial Notice

At this time, your request for a waiver of fees is being denied because your justification has not satisfied all of the factors required under 10 CFR 9.41. The specific factors and reasons why they have not been satisfied are explained below.

**Factor (1): Describe the purpose for which the requester intends to use the requested information.**

Your answer to this question was to review for legal proceedings, present at public meetings, and email lists. **This factor has been met.**

**Factor (2): Explain the extent to which the requester will extract and analyze the substantive content of the agency records.**

Your justification for this question was not provided. **This factor has not been met.**

**Factor (3): 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.**

Your justification for this question was that these documents would be used in legal proceedings involving licensee issues, and through public meetings. The requester provided no background of their qualification or capability in disseminating the information in such a forum other than being legal counsel for the Sierra Club. **This factor has not been met.**

**Factor (4): Describe the likely impact on the public's understanding of the subject as compared to the level of public understanding of the subject before disclosure.**

You justified that the disclosure of the records would inform the public of the geotechnical issues at Fort Calhoun and the NRC's analysis of the flooding danger from the failure of the upstream dams. **This factor has been met.**

**Factor (5): Describe the size and nature of the public audience to whose understanding a contribution will be made.**

Your justification was the people of Nebraska and Iowa affected by the safety issues surrounding Fort Calhoun who would be on the unspecified law firm's email lists, or who attend the unspecified public meetings where they would be used. **This factor has not been met.**

**Factor (6): Describe the intended means of dissemination to the general public.**

Your justification was through email lists and public meetings. **This factor has been met.**

**Factor (7): Indicate if public access to information will be provided free of charge or provided for an access fee or publication fee.**

You justified that the information would be provided free of charge. **This factor has been met.**

**Factor (8): Describe any commercial or private interest the requester or any other party has in the agency records sought.**

Your answer to this question was that you had no commercial interest in the information, but separately indicated that you represent the Sierra Club. This constitutes a commercial interest in your representative capacity for your client. **This factor has not been met.**

This denial may be appealed by writing to the Executive Director of Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 calendar days from date of receipt. It should clearly state on the envelope and in the letter, "Fee Waiver Appeal."

**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