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April 18, 2014

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

Dear Mr. Satorius:

On behalf of the Union of Concerned Scientists and several other organizations and individuals listed below, I request a public meeting with the Nuclear Regulatory Commission staff about the agency's procedures and practices for withholding documents from public disclosure and the redaction of information of information from documents released in response to requests under the Freedom of Information Act (FOIA). As I will be participating in a Commission briefing on NFPA 805 on June 4, 2014, I would appreciate it if this meeting could be conducted in the NRC's headquarters offices on either June 3 or June 5.

The individuals who have expressed interest in attending this meeting and discussing this topic with the NRC staff are:

Dave Lochbaum	Union of Concerned Scientists
Ed Lyman	Union of Concerned Scientists
Paul Gunter	Beyond Nuclear
Lucas W. Hixson	www.enformable.com (by phone bridge, if available)
Jim Riccio	Greenpeace
Diane Curran	Harmon, Curran, Spielberg, & Eisenberg, L.L.P.
Tim Judson	Nuclear Information and Resource Service
Lawrence Criscione ¹	Nuclear Regulatory Commission

I recognize that neither you nor any member of the EDO staff will likely be the person to engage me and my colleagues about these topics. But because I was uncertain whether that person or persons was within the Office of Nuclear Security and Incident Response, the Office of Nuclear Reactor Regulation, the Office of Information Services, or other office, I felt contacting you would be the least inappropriate means of arranging this meeting with the proper NRC staff members.

¹ Mr. Criscione would not represent the NRC during this meeting and would be attending while on vacation from his NRC job and his official duties with the agency.

To further assist the NRC in determining the individuals to represent the agency during this meeting and to help them prepare for it, I solicited questions from my own experience and from my colleagues that we would like covered during this meeting. The questions are:

1. What management directives and procedures are used by the NRC staff in determining whether documents can be publicly released?
2. What management directives and procedures are used by the NRC staff in determining whether information should be redacted from documents being provided in response to FOIA requests?
3. What formal training (i.e., number of hours, frequency, and classroom vs. computer-based training vs. read and sign) is provided by the NRC to staff who make determinations about publicly releasing documents and redacting information from documents being provided in response to FOIA requests?
4. What administrative controls does the NRC use to check whether its management directives and procedures governing about public release of documents and redaction of information from documents being provided in response to FOIA requests are being consistently applied?
5. The NRC staff has withheld documents from the public on grounds they contained security sensitive information. Yet such documents have been publicly released in response to FOIA requests without any information being redacted and the "*This letter contains security sensitive information. Withhold from Public Disclosure under 10 CFR 2.390*" headers and footers lined through. Because no information, security sensitive or otherwise, was redacted from these documents, what was the legitimate basis for initially withholding them in the first place? [Some among many examples: Duke letter dated 11/29/2010 to NRC, ML103490330; Duke letter dated 06/24/2010 to NRC, ML10183007; Duke letter dated 10/03/2011 to NRC which merely sought a deadline extension; ML11278A173; and Duke letter dated 11/17/2011 to NRC, ML11294A341]
6. If the NRC staff withholds a document on grounds it contains information about a security problem to be resolved in the near future, does the NRC make the document publicly available, without a FOIA request for it, after the problem is corrected to the agency's satisfaction? If not, why not?
7. The Southern Alliance for Clean Energy (SACE) submitted a FOIA request (FOIA/PA-2014-0208) for portions of the St. Lucie Updated Final Safety Analysis Report (UFSAR) and asked for both expedited handling and a fee waiver. The NRC denied both the original request and also SACE's appeal of the denial. The bases for both the expedited handling request and fee waiver appear comparable to similar requests granted by the NRC. Why is the NRC not treating such requests in a fair and consistent manner?
8. SACE's FOIA/PA-2014-0208 sought portions of a 2012 update to the UFSAR. That this information was not already publicly available, or made readily available upon request from the public, seems contrary to the policy espoused in SECY-04-191 which states "*Information related to the general workings of a nuclear power plant such as the descriptions usually provided in licensing documents (e.g., updated final*

safety analysis reports, license renewal applications) are released since similar information (at the level useful to a potential adversary) is available in open source literature such as text books and internet sites.” Why did the NRC staff not make the requested UFSAR information readily available upon public request?

9. In response to ASLB’s order dated April 7, 2014, in the MOX case (Docket No. 70-3098-MLA, ASLBP No. 07-856-02-MLA-BD01), the NRC staff proposed redaction of considerable information from LBP-14-01, the ASLB’s Initial Decision dated March 27, 2014. The basis for such redactions is questionable given that virtually all of this information has already been publicly released by MOX Services, Inc. in unprotected filings during the proceeding and have already been posted, in unredacted form, in NRC’s ADAMS. Why is the NRC staff now seeking to withhold information that is publicly available through the NRC’s electronic library?
10. The third paragraph of the form letter used by the NRC to acknowledge receipt of FOIA requests states: “*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*” (e.g., NRC letter dated 02/14/2014 to UCS regarding FOIA/PA-2014-00148). But this first-in, first-out multi-track process often seems violated. For example:
 - a. On October 9, 2012, UCS submitted a FOIA request (FOIA/PA-2013-008) for a single document of approximately 18 pages. That document (ML13256A370 and ML13256A372) was provided to another requester (PEER) who submitted a request for it many months after UCS did. NRC mailed a response dated September 25, 2013, to UCS indicating that the documents sought by FOIA/PA-2013-0008 were already publicly available. Why didn’t UCS receive the requested document first?
 - b. During the week of September 14, 2012, Greenpeace submitted a FOIA request (FOIA/PA-2012-0325) for records related to flooding hazards at Oconee. By letters dated February 6, 2013 (ML13052A790) and February 4, 2014 (ML14055A411), the NRC provided documents. But document ML110260443, which directly related to the flooding hazard at Oconee, was not included in either response package. Instead, it was released on February 27, 2014 – after both of the responses to the Greenpeace FOIA – to Larry Criscione, who requested it during the week of April 12, 2013 (FOIA/PA-2013-0213), nearly 28 weeks after Greenpeace’s FOIA. Why didn’t Greenpeace receive the requested document first?

Our needs would be met during the meeting by the NRC staff either directly providing answers to these questions or by the NRC staff describing its processes and addressing the questions indirectly.

We look forward to discussing these issues with the NRC staff and better understanding the information redaction and FOIA response processes.

Sincerely,

A handwritten signature in blue ink that reads "David A. Lochbaum".

David Lochbaum
Director, Nuclear Safety Project
Union of Concerned Scientists
PO Box 15316
Chattanooga, TN 37415
423-468-9272, office
dlochbaum@ucsusa.org

From: Dave Lochbaum [<mailto:DLochbaum@ucsusa.org>]
Sent: Friday, April 18, 2014 7:10 AM
To: Satorius, Mark
Cc: Edwin Lyman; Gunter, Paul; lukehixson@gmail.com; Jim Riccio; Curran, Diane; timj@nirs.org
Subject: Request for meeting regarding withholding and FOIA response processes

Hello Mark:

Attached is a letter requesting a meeting with the NRC staff regarding its processes for determining when to withhold documents from the public and for reviewing and redacting information from documents when responding to FOIA requests. This request is on behalf of UCS and several other organizations and individuals as listed in the letter.

I would be glad to follow-up this electronic letter with a hard copy upon request.

I was not sure which office or offices are best suited for addressing the questions we would like to see answered during the meeting; hence the request to you.

Thanks,
David Lochbaum
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