

Case No.: 2015-0002A

Date Rec'd: 11/24/14

Specialist: Stevens

Case: 2015-0044

**FOIA Resource**

**From:** Lawrence Criscione (b) (6)  
**Sent:** Monday, November 24, 2014 10:11 AM  
**To:** Satorius, Mark; Ash, Darren  
**Cc:** Stevens, Margo; Andoh, Roger; FOIA Resource; Tom Devine; Alicia Reaves; Eric Connor; smith1jd@westinghouse.com; dickmangrum@wgog.com; Jim Riccio; Dean.Hubbard@duke-energy.com  
**Subject:** Appeal for FOIA/PA-2015-0044 Final Response

Mark,

Please treat this email as a FOIA Appeal in accordance with 10 CFR 9.29.

The courtesy of a prompt response is requested. Please meet your regulatory obligation for providing me a response within 20 working days, as set forth in 10 CFR 9.29(d).

On November 2, 2014 I requested under the Freedom of Information Act:

The Duke Energy Power Point presentation that was originally made public [as] ML13084A022

My November 2, 2014 FOIA request was assigned tracking number FOIA 2015-0044.

The version of the power point requested under FOIA 2015-0044 is the one that:

1. Was originally posted by the NRC on its public website in March and April 2013 at <http://pbadupws.nrc.gov/docs/ML1308/ML13084A022.pdf>
2. Was presented by Duke Energy during the NRC's public meeting on March 25, 2013
3. Was sent by the NRC to Jim Riccio of Greenpeace on March 25, 2013
4. Was sent by the NRC to Eric Connor of The Greenville News on March 25, 2013
5. Was sent by the NRC to James Smith of the Westinghouse Electric Company on March 25, 2013
6. Was sent by the NRC to Dick Mangrum of radio station WGOG on March 25, 2014
7. Contained a cross-sectional drawing of the Lake Jocassee Dam on slide 18

On April 23, 2013, at the request of the NRC, Duke Energy re-submitted a version of their publicly presented March 25, 2013 power point presentation which had the cross-sectional drawing of the Lake Jocassee Dam redacted. The reason Duke Energy redacted this drawing is because the NRC informed them that the drawing is "Security Sensitive".

On November 5, 2014, I received a final response to FOIA 2015-0044 which referred me to a version of the March 25, 2013 power point in which the cross sectional drawing of the Lake Jocassee Dam was redacted. The justification for this redactions is FOIA Exemption 7(F):

*Disclosure could reasonably be expected to endanger the life or physical safety of an individual.*

Note that there are two parts to FOIA Exemption 7(F):

- (a) "*endanger the life or physical safety of an individual*"
- (b) "*reasonably be expected*"

With regard to (a), the redacted portion is merely a generic cross-sectional drawing of a rock filled dam with a concrete core, similar to what can be found in any engineering text on dam construction. It appears to me that the NRC staff is withholding this drawing because some members of the staff believe that (1) the lives of people downstream of the Lake Jocassee Dam would be endangered were saboteurs to destroy the dam AND (2) the drawing could be useful to saboteurs wishing to attack the Lake Jocassee Dam.

With regard to (b), another wording of "*reasonably be expected*" is "*credible*".

So, by applying Exemption 7(F) to the cross sectional drawing of the Lake Jocassee Dam, it appears to me that some members of the NRC staff believe that saboteurs destroying the Lake Jocassee Dam is a credible scenario.

Please affirm to me whether or not my logic is correct. That is, please answer the following question in your response to this FOIA appeal:

**Is the destruction of the Lake Jocassee Dam by saboteurs a credible scenario?**

Hopefully you recognize the implications of the above question. That is, if the hostile destruction of an offsite facility that could catastrophically flood the Oconee Nuclear Station is a credible scenario, then the Oconee Nuclear Station needs to show adequate protection from that flooding scenario.

Please note that there are some within the national nuclear enterprise (e.g. me) who, although we believe the hostile destruction of the Lake Jocassee Dam to be theoretically possible, do not find it credible. And we do not reasonably believe that the mere discussion of safety-related concerns surrounding the Lake Jocassee Dam (e.g. the probability of its failure due to extreme weather events or latent engineering flaws)--including a generic drawing of how the dam is constructed--could reasonably be expected to endanger the life or physical safety of anyone.

In accordance with 10 CFR 9.29(d) I am appealing the use of Exemption 7(F) to redact the cross sectional drawing of the Lake Jocassee Dam. I would like the NRC's Executive Director for Operations to:

- either direct your staff to publicly release ML13084A022 (the unredacted version of the 2013-03-25 power point)
- or to affirm to me that you agree with the assessment of the NRC staff that hostile destruction of the Lake Jocassee Dam poses a credible security risk

Thank you,

Larry  
Lawrence S. Criscione

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