

May 6, 2022

FOIA Officer
Mail Stop T-2 F43^[SEP]
U.S. Nuclear Regulatory Commission
Washington, DC 20555^[SEP]
BY EMAIL: foia.resources@nrc.gov and
BY FOIAOnline

SUBJECT: *Freedom of Information Act Request*

Dear FOIA Officer:

On behalf of the Beyond Nuclear, and pursuant to the Freedom of Information Act ("FOIA") (5 U.S.C. § 552 et seq.) and U.S. Nuclear Regulatory Commission ("NRC") FOIA implementing regulations, I am writing to request access to and copies of the following records related to the NRC's regulation of the Oconee nuclear power plant, Units 1, 2 and 3 (Docket Nos. 50-269, 50-270, and 50-287) with respect to protection against flooding hazards:

1. Any and all documents on which the following January 2011 NRC statement is based: "The random sunny-day failure scenario was selected after evaluation of the failure modes determined that the potential failure of the Jocassee Dam from either an overtopping event or seismic event was not credible." See letter from Eric J. Leeds, NRC to Preston Gillespie, Duke Energy Carolinas, LLC re: Staff Assessment of Duke's Response to Confirmatory Action Letter etc. at 1 (January 28, 2011) (ML110280153). This request includes but is not limited to any documents recording the selection of the random sunny-day failure among failure modes; any documents evaluating the likelihood or credibility of Jocassee dam failure modes, including the likelihood or credibility of overtopping events and/or seismic events; and any documents establishing criteria for evaluating the credibility of overtopping events and seismic events.
2. Memorandum from Tony L. Wahl, U.S. Dept. of the Interior, Bureau of Reclamation, to US. Nuclear Regulatory Commission re: Application of Breach Parameter Prediction Equations to Jocassee Dam and Raystown Dam," (July 31, 2014). This memorandum is listed as a reference document ("Wahl, Tony L, 2014b") at page 49 of the Staff Assessment by the Office of Nuclear Reactor Regulation Related to Flooding Hazard Reevaluation Report Near-Term Task Force Recommendation 2.1 Oconee Nuclear Station, Units Nos. 1, 2, and 3, Docket No. 50-269, 50-270, and 50-287 (Apr. 14, 2016) (redacted version released by the NRC in FOIA 2018-0010 (October 26, 2017) (ML16273A128)).
3. A report by AMEC Environment and Infrastructure, Inc., entitled "Jocassee Dam Breach Parameter Analysis Report" (Nov. 24, 2014)," including all attachments. This document is listed as a reference document at page 67 of Duke Energy Carolinas, LLC's Flooding Hazard Reevaluation Report for Oconee Nuclear Station (Jan. 29, 2015) (publicly available redacted version ML16272A217) as follows: "AMEC Environment and

Infrastructure, Inc. 2014a. Jocassee Dam Breach Parameter Analysis Report. Prepared for Duke Energy Carolinas, LLC. November 24, 2014.”

4. A report by the U.S. Bureau of Reclamation (“BOR”) entitled “Technical Letter Report: Jocassee Dam, South Carolina Inundation Study Review Comments, Performed for the U.S. Nuclear Regulatory Commission, Interagency Agreement No. NRR-09-002 – Review of Hydrologic and Geotechnical Engineering Issues Associated with Dams Located Near Nuclear Power Plants – Task Order 1” (July 2009). The requested document, prepared by the BOR under an interagency agreement with the NRC’s Office of Research, reviews a 2009 study entitled “ONS Jocassee-Keowee Dam Breach Model.”
5. Any document(s) prepared in response to an internal NRC memorandum from M. Galloway, Deputy Director, Division of Risk Assessment Office of Nuclear Reactor Regulation to B. Jones, Assistant General Counsel for Rulemaking and Fuel Cycle Associate General Counsel for Licensing and Regulation Office of the General Counsel re: Request for Office of the General Counsel Assistance to Develop Guidance on the Meaning of “Adequate Protection” as Used in the Atomic Energy Act and Nuclear Regulatory Commission Regulations (TAC NO. MD9144) (July 8, 2008) (ML081830130).

If it is your position that the requested records (or portions of those records) are exempt from disclosure pursuant to the FOIA and NRC implementing regulations, please separately identify each record or portion thereof that is being withheld, and state the basis for the denial. In addition, please provide the non-exempt portions of the records.

Definition of “Records”

The term "record" should be construed to mean any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voicemails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) and other written, printed, typed, or

other graphic or recorded matter of any kind of nature. A record bearing any notation not a part of the original text is to be considered a separate record. A draft of a non-identical copy is to be construed as a separate record.

The terms "relating" and "regarding" with respect to any given subject, should be construed to mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject. The inclusion and description of particular records in this request should not be construed to eliminate other records that are not described in particular detail if they should exist in another format.

Request for Documents in Electronic Format

If possible, please provide the requested documents in electronic (pdf) format.

Request for Waiver of Fees

Pursuant to federal regulations at 10 CFR 9.41, Beyond Nuclear requests that any searching and copying fees incurred as a result of this search be waived. Beyond Nuclear satisfies all of the NRC's criteria in 10 C.F.R. § 9.41(b) for this FOIA request:

- 1) *Purpose of request:* The purpose of the request is to gather information on the risk of a core melt accident caused by flooding at the Oconee nuclear power plant, so that it may be disseminated to the public for a more complete understanding of the safety risks. This information is highly relevant to Duke Energy Corporation's recent application for Subsequent License Renewal of the three Oconee operating licenses, which would permit extended operation of the reactors for twenty years beyond their current 60-year terms.
- 2) *Extent to which Beyond Nuclear will extract and analyze the substantive content of the records:* Beyond Nuclear is qualified to make use of the requested information. Its staff has demonstrated the ability to interpret information and communicate that information in a form comprehensible to the general public. Beyond Nuclear is quoted in national and international media and has been cited as a reliable source of information on NRC oversight and enforcement of regulation regarding the operation of nuclear power generating stations and public safety in electronic and print media including newspapers such as the New York Times and the Washington Post. Beyond Nuclear is recognized and utilized as a reliable source of information in the broadcast media of television, radio and the worldwide web. Beyond Nuclear has a working relationship with physicists, structural and nuclear engineers, federal policy analysts and other respected professionals who contribute to the full understanding of the NRC oversight and regulation of operational safety and reliability of nuclear power generating stations seeking Subsequent License Renewal, including Oconee.
- 3) *Nature of the specific activity or research in which the records will be used and Beyond Nuclear qualifications to utilize the information for the intended use in such a way that it will contribute to public understanding:* Beyond Nuclear seeks the requested information for

three purposes: (a) general dissemination to the public via Beyond Nuclear's website and other communications; (b) comments on the updated Generic Environmental Impact Statement for License Renewal of Nuclear Plants (NUREG-1437) ("License Renewal GEIS"), which is anticipated to be issued by the NRC in the coming year (*see* Memorandum from Annette L. Vietti-Cook to Daniel E. Dorfman re: Staff Requirements – SECY-21-0066 – rulemaking Plan for Renewing Nuclear Power Plant Operating Licenses – Environmental Review (RIN 3150 AD32; NRC 2018 0296) (Feb. 24, 2022); and (c) participation in the NRC's adjudicatory proceeding on whether and under what conditions the Oconee reactors should be allowed to operate for an additional twenty years. While the proceeding was suspended pending completion of the updating of the License Renewal GEIS, it is expected to resume after the generic proceeding has concluded.

- 4) *Likely impact on the public understanding of the subject as compared to the level of understanding of the subject prior to disclosure:* The vulnerability of the Oconee reactors to a core melt accident caused by flooding due to breach of the upstream Jocassee Dam has been a controversial issue within the NRC for more than a decade. While NRC initially kept many of these documents out of the public record, a significant number have now been released under the FOIA. Unfortunately, these released documents demonstrate that the issue of flooding risk to the Oconee reactors remains unresolved. Through this FOIA request, Beyond Nuclear seeks documents that are likely to enhance public understanding of the process by which the NRC identified flooding as a significant safety issue with the Oconee reactors, attempted to address it by imposing additional safety requirements, and then backed off those requirements while hiding the documents that would allow the public to understand what had happened.
- 5) *Size and nature of the public to who's understanding a contribution will be made:* Beyond Nuclear has a membership of approximately 28,000 individuals and organizations who periodically receive communications from Beyond Nuclear. Beyond Nuclear provides resource material to electronic and print media outlets with very broad outreach to a constituency and the interested public. Additionally, Beyond Nuclear maintains a web site at www.BeyondNuclear.org, where postings on this issue will be made available.
- 6) *Means of distribution of the requested information:* As discussed above, Beyond Nuclear intends to use the requested information in comments on the draft environmental impact statement for subsequent license renewal, and in the adjudicatory proceeding for subsequent renewal of the Oconee operating licenses. In addition, Beyond Nuclear will use its publications and media contacts in both electronic and print media outlets to provide very broad outreach to the public on this issue. Beyond Nuclear will also share information with other interested parties concerned about NRC oversight and enforcement of public safety requirements. Additionally, Beyond Nuclear will post information on its web site.
- 7) *Whether free access to information will be provided:* Beyond Nuclear will provide the information without charge to all members of the public. Information from the FOIA requested will be prepared for printed material and electronically posted on the web site for

downloading free of charge. Beyond Nuclear will provide a copy of information to all interested public without charge.

- 8) *No commercial interest by Beyond Nuclear or any other party:* Beyond Nuclear is a nonprofit charitable organization and therefore has no commercial interest in obtaining the requested information. This information is provided to all public requests without charge. The sole interest of Beyond Nuclear is to promote an open policy debate on the quality of NRC oversight, operational licensing and enforcement of requirements for the protection of public safety.

Thank you very much for your prompt attention to this request. We look forward to receiving your response within 20 working days, as required by 10 C.F.R. § 9.25(a). In the meantime, please call me at if you have any questions regarding this request.

Sincerely,



Diane Curran

Counsel to Beyond Nuclear

Cc: Paul Gunter, Beyond Nuclear