



Department of Energy
Washington, DC 20585

November 29, 2012

Mr. Steven P. Nesbit
Duke Energy Corporation
550 South Tryon Street
Charlotte, NC 28202

Re: HQ-2013-00157-F

Dear Mr. Nesbit:

This is a final response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested “[a]ll reports provided to the Department of Energy (DOE) by the Rand Corporation about types of management entities for the spent nuclear fuel/high-level radioactive waste (HLW) program.”

Your request was assigned to DOE’s Office of Nuclear Energy to conduct a search of their files for responsive documents.

The Office of Nuclear Energy conducted a search of its files and located one document responsive to your request, a draft report entitled “Choosing a New Organization for Management and Disposition of Used Fuel and Defense High-Level Nuclear Waste.” DOE has determined that this document should be withheld in its entirety pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5). The document is described in the accompanying index.

Exemption 5 protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” This Exemption protects those documents normally privileged in the civil discovery process, such as pre-decisional, deliberative process material. The deliberative process protects advice, recommendations, and opinions that are pre-decisional and part of the decision-making process of the Government. This privilege protects not merely the documents, but also the integrity of the deliberative process itself where the exposure of that process, or an element thereof, would result in harm. The material being withheld as deliberative is a draft of the policy document requested and does not reflect final, official DOE policy or guidance. It includes information provided to government personnel regarding official decisions not yet made and remains the subject of intra-governmental negotiations. It is reasonably foreseeable that release of such information could cause the harm of chilling open and frank discussions, limit government personnel’s range of options to consider, and thus detract from the quality of Agency decisions. For these reasons, the information is being withheld.

This satisfies the standard set forth in the Attorney General’s March 19, 2009 memorandum that when a FOIA request is denied, agencies will be defended and justified in not releasing the material on a discretionary basis “if (1) the agency reasonably foresees that disclosure will harm



an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law.” This also satisfies DOE’s regulations at 10 C.F.R. Part 1004.1 to make records available which it is authorized to withhold under 5 U.S.C. § 552 when it determines that such disclosure is in the public interest. Accordingly, we will not make discretionary disclosure of this information.

Pursuant to 10 C.F.R. Part 1004.7(b)(2), I am the individual responsible for the determination to withhold the information described above.

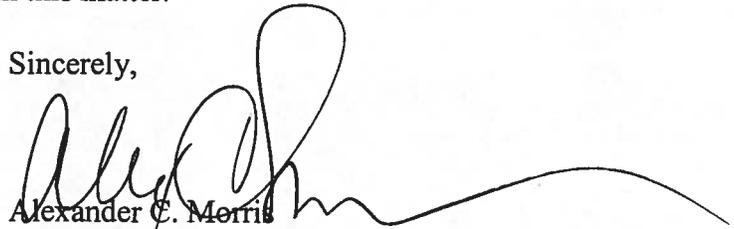
This decision, as well as adequacy of the search, may be appealed within 30 calendar days from your receipt of this letter pursuant to 10 C.F.R. Part 1004.8. Appeals should be addressed to Director, Office of Hearings and Appeals, HG-1, L'Enfant Plaza, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. The appeal must contain all the elements required by 10 C.F.R. Part 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where DOE's records are situated, or (4) in the District of Columbia.

If you have any questions about the processing of the request or this letter, you may contact Ms. Vera Dunmore or Mr. Jason Trigger at:

MA-90/ Forrestal Building
1000 Independence Avenue, SW
Washington, DC 20585
(202) 586-5955

I appreciate the opportunity to assist you with this matter.

Sincerely,



Alexander C. Morris
FOIA Officer
Office of Information Resources

Enclosures

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A search was conducted by the Office of Nuclear Energy. The Office of Nuclear Energy located one document responsive to your request.

- One document (100 pages) entitled “Choosing a New Organization for Management and Disposition of Used Fuel and Defense High-Level Nuclear Waste” *is being withheld pursuant to Exemption (b)(5)* – The withheld information consists of a report in draft format.