FOIA/PA REQUEST
Case No: 2000-0129
Date Rec'd: 2-4-00
Action Off: Pugh
Related Case:

Nuclear Information and Resource Service

1424 16th St. NW, Suite 404, Washington, DC 20036; 202-328-0002; Fax: 202-462-2183; E-mail: nirsnet@nirs.org; Web: www.nirs.org

February 3, 2000

Russell Powell, Chief
FOIA-LPDR Branch
Division of Freedom of Information and Publication Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555

BY FAX: (301) 415-5130

Dear Mr. Powell:

On behalf of Nuclear Information and Resource Service (NIRS), and pursuant to the Freedom of Information Act, 5 U.S.C. 552(b), et. seq., I hereby request that you make available copies of all documents in the U.S. Nuclear Regulatory Commission's possession which describe or discuss the takings of endangered and threatened species and other marine life, as described more fully below. This request covers but is not limited to all draft and final reports, correspondence, memoranda, notes, records of telephone contacts, all types of camera images, electronic communications including fax transmissions and Email, or other written records, whether in paper or computer files, preserved via the use of any medium (e.g., paper documents, final notes, or word processors or computer discs, diskettes, hard drives, or network systems.) In addition, this request includes studies, analyses, work papers, internal or external communications of any sort, testimony, press releases, reports, memoranda of the like concerning, recording or in any way related to:

1) All communications between <u>Pacific Gas and Electric's</u> Diablo Canyon nuclear generating station and the Nuclear Regulatory Commission pertaining to reports of "incidental capture" of threatened and endangered sea turtles, marine mammal life and fish for the years 1996, 1997, 1998, 1999 and to date 2000. These documents would not only include actual reports not publicly filed, but also documents referencing reports and reporting requirements for both live and dead marine life captures. "Incidental captures" shall include, but not be limited to incidental captures,

unintentional or intentional captures, detainment, maiming, injuries, killings, and/or explained or unexplained death.

2) All camera documentation (video, 16 mm,slides, disc images and photographs) of live and dead captures of threatened and endangered sea turtles and marine life beginning with the commercial operation of the Diablo Canyon units in 1969 to present in 2000.

3) All correspondence between PG&E and NRC staff pertaining to proposed limits for incidental taking, capturing and/or killing of endangered and threatened species and other marine life for the years 1996, 1997, 1998, 1999 and to date 2000.

4) All documents between PG&E and any state representative or employee of any state agency pertaining to the reports or communications of incidental captures of threatened or endangered sea turtles for the years from and including 1996 to and including 2000 that are in the possession of any employee of the NRC.

5) All documents between the NRC and the United States Fish and Wildlife Service (USFWS) pertaining to the reports or communications of incidental captures of threatened or endangered sea turtles for the years from and including 1996 to and including to date 2000 pertaining toDiablo Canyon units.

6) All documents and correspondence between the NRC and the USFWS concerning the number of permitted takes under any federal law or statute allocated to PG&E.

7) All documents between the NRC and the United States National Marine Fisheries Service (NMFS) pertaining to reports or communications of incidental captures of threatened or endangered species and other marine life for the years from and including 1996 to and including to date 2000 at PG&E.

8) All documents and correspondence between the NRC and the NMFS concerning the number of permitted takes under any federal law or statute allocated to PG&E.

9) All documents and correspondence exchanged within the NRC between the Office of General Counsel, the various NRC Project Managers for Diablo Canyon and Nuclear Reactor Regulation staff pertaining to the kill or capture of endangered or threatened species and other marine life at Diablo Canyon station.

Pursuant to this request, please provide all documents and communications prepared or utilized by, in the possession of, or routed through the NRC related to items 1-9.

For any portion of the request that you deem appropriate to deny, NIRS requests that you describe the information that is denied, identify the exception to the FOIA on which you rely, and explain how that exception applies to the withheld information.

Pursuant to NRC regulations at 10 CFR 9.41, NIRS requests that any searching and copying fees incurred as a result of this search be waived, and provides the following information in response to the eight criteria listed in Section 9.41(b):

1) Purpose of request:

The purpose of the request is to gather information on the protection from capture of endangered and threatened species and regulatory compliance at nuclear power stations. The requested information is currently not available in the NRC's Public Document Room.

2) Extent to which NIRS will extract and analyze the substantive content of the records:

NIRS is qualified to make use of the requested information. The staff has demonstrated the ability to interpret information and communicate that information in a form comprehensible to the general public. Members of the NIRS staff have published articles in such national journals as The Progressive, Nuclear Times, Newsday and Bulletin of Atomic Scientists. NIRS is quoted as a reliable source of information on nuclear issues and environmental protection in newspapers across the country, including the New York Times, The Washington Post, and The San Francisco Chronicle.

NIRS has a working relationship with attorneys, physicists, nuclear engineers, medical doctors, biologists and other respected professionals who contribute to the full understanding of nuclear regulatory compliance and endangered or threatened species.

3) Nature of the specific activity or research in which the records will be used and NIRS's qualifications to utilize the information for the intended use in such a way that it will contribute to public understanding:

NIRS seeks the requested information solely to contribute to and help shape the public debate on regulatory compliance and the protection of endangered or threatened species. NIRS intends to use the information in order to advance the concerns for public understanding of nuclear regulatory compliance and protection of endangered and threatened species.

4) Likely impact on the public's understanding of the subject as compared to the level of understanding of the subject prior to disclosure:

The public understanding of the issues of nuclear regulatory compliance and environmental protection will be enhanced by the contribution of this information.

5) Size and nature of the public to whose understanding a contribution will be made:

NIRS has an active subscribing membership of over 1500 throughout the United States. Several thousand additional members periodically receive mailings from NIRS. NIRS provides resource material to electronic and print media outlets with very broad outreach to an environmentally conscious audience. Additionally, NIRS has a web site (www.nirs.org) which receives on average of 700 visitors per day where postings on this issue will be made available.

6) Means of distribution of the requested information:

NIRS will use its own newsletter publication The Nuclear Monitor and our media contacts in both the electronic and print media outlets to provide very broad outreach to the environmentally conscious public. NIRS will also share information with other interested parties concerned about regulatory compliance and endangered or threatened species. Additionally, NIRS will post information on its web site (www.nirs.org) which receives on average of 700 visitors per day.

7) Whether free access to information will be provided:

NIRS will provide the information without charge to all members of the public. Information prepared from the FOIA requested will be posted on the web site for downloading free of charge. NIRS will also provide a copy of information to all interested parties without charge.

8) No commercial interest by NIRS or any other party:

NIRS has no commercial interest in obtaining the requested information. This information is provided to all public requests without charge. The sole interest of NIRS is to promote a policy debate on nuclear regulatory compliance and the protection of endangered and threatened species.

Sincerely,

Paul Gunter, Director
Reactor Watchdog Project
Nuclear Information and Resource Service
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Washington, DC 20036
202-328-0002