



August 27, 2012

R. William Borchardt
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

By e-mail co/ Donna Sealing, FOIA/Privacy Officer, donna.sealing@nrc.gov

FOIA/PA REQUEST
Case No: 2012-00009A
Date Rec'd: 8/28/12
Specialist: McCLELLAN
Related Case: 2012-0289

SUBJECT: *Appeal of Decision Refusing to Expedite FOIA Search in
FOIA/PA-2012-001289*

Dear Mr. Borchardt:

Pursuant to 10 C.F.R. § 9.29(e) and the Freedom of Information Act (“FOIA”), and on behalf of Friends of the Earth (“FoE”), I am writing to appeal FOIA/PA-2012-001289, the NRC’s decision to deny FoE’s request to expedite its response to FoE’s July 24, 2012, FOIA request for documents exchanged between the Southern California Edison Corp. (“SCE” or “Edison”), the Nuclear Regulatory Commission (“NRC”), and/or Mitsubishi Heavy Industries, Ltd. (“Mitsubishi”), regarding the San Onofre Nuclear Generating Station (“San Onofre”), with particular regard to SCE’s decision to replace steam generators in Units 2 and 3. FoE’s FOIA Request (letter from Damon Moglen and Marcie Keever to Donna L. Sealing (July 24, 2012)) is attached as Exhibit 1 and the NRC’s Denial Letter (letter from Donna L. Sealing to Kendra Ulrich (July 26, 2012)) is attached as Exhibit 2.

The Denial Letter states that while FoE qualifies as a “person ‘primarily engaged in disseminating information,’” it has not shown the existence of an “urgency to inform the public about the actual or alleged Federal Government activity.” Denial Letter (quoting 10 C.F.R. § 9.25(e)(2)). FoE respectfully requests the NRC to reconsider its determination because the circumstances of its FOIA request do in fact establish the existence of an urgent need for public release and dissemination about the proposed replacement of steam generators at San Onofre Units 2 and 3.

As illustrated by the extensive coverage in the press in Southern California, and the large attendance at the NRC’s “public meetings” about the San Onofre reactors, the public is extremely concerned about the safety of San Onofre. FoE’s request relates to the public interest in whether the steam generator tube leak and accelerated tube wear that caused Units 2 and 3 to shut down in early 2012 were caused by design flaws in the replacement steam generators that SCE installed in 2009. FoE believes that one reason for the current problems with the steam generators is that SCE made major design changes to the steam generators without obtaining a license amendment from the NRC Staff. Therefore the NRC Staff did not subject the new steam generators to a rigorous license amendment review before they were installed in 2009 and 2010, nor was the public given an opportunity to participate through a public hearing as required by the



Atomic Energy Act and 10 C.F.R. § 50.59. Instead, the NRC acceded to SCE's self-serving claim that a license amendment was unnecessary.

A recent report by the NRC's Augmented Inspection Team ("AIT") confirms the gravity of FoE's concerns regarding the San Onofre steam generators. The AIT report stated: "Although in this case the degraded condition of the tubes [in Unit 3] was manifested as a small primary to secondary leak, it is possible that a full-blown rupture could have been the first indication." Inspection Report 050000361/2012007 and 050000362/2012007 at 57 (July 18, 2012), attached to letter from Elmo E. Collins, NRC, to Peter Dietrich, SEC (July 18, 2012). A copy of the AIT Report is attached as Exhibit 3. A full-blown rupture of the steam generator tubes could result in a release of radioactivity to the environment. The AIT also found that the Unit 3 steam generators "had experienced excessive vibration of tubes in the U-bend region of the steam generators to the extent that the tubes rubbed against each other (tube-to-tube interactions) causing excessive wear and loss of structural integrity." *Id.*, cover letter at 2 (emphasis added). Thus, San Onofre poses a safety risk to the 7.2 million people who live within fifty miles of the reactors.

An expeditious release of the documents FoE requested is urgently needed in order to ensure that the public is fully and timely informed regarding these important safety issues. Once SCE has restarted the reactors, plugging tubes or making other repairs that are inadequate it will be too late for the information to affect changes in the fundamental design problems that are causing "excessive wear and loss of structural integrity". The NRC Staff also appears to be preparing to approve an inadequate fix, as documented in a Confirmatory Action Letter dated March 27, 2012 (Exhibit 4). The public needs to understand the issues *before*, not after, any decision is taken to restart the reactors.

FoE is taking all possible steps to inform the public about the reasons for the steam generator defects at San Onofre, and to demand a rigorous license amendment review from the NRC including a public hearing. In June, FoE requested the NRC Commissioners to grant it an adjudicatory hearing on whether SCE's license should have been amended to permit the use of the replacement steam generators. A copy of FoE's Petition to Intervene and Request for Hearing (June 18, 2012) is attached as Exhibit 5. FoE also asked the NRC Commissioners to stay restart of San Onofre Units 2 and 3 until the hearing is completed (Exhibit 5). In order to maximize the amount of information that is publicly available about the San Onofre steam generators, FoE also submitted its FOIA request on July 24, 2012 (Exhibit 1).

FoE respectfully submits that the public interest in the safe operation of San Onofre Units 2 and 3 urgently requires the disclosure of all documents that are relevant to the replacement of the steam generators at San Onofre, the licensee's and manufacturer's concerns about the design of the replacement steam generators, and the NRC's subsequent reviews of the reasons for the steam generator tube leaks at San Onofre. Because the government's review process to date has not been adequate to ensure the integrity of the San Onofre steam generators and the protection of the public from the unacceptable risk of steam generator tube rupture, it is essential that the public be fully informed regarding the facts surrounding the steam generator failures.



FoE also urgently seeks the requested information in order to prepare for the hearing that it has requested from the NRC Commissioners. FoE's request has been pending before the Commissioners since June, and may be ruled upon at any time. FoE will depend on access to complete information about the San Onofre steam generators in order to participate effectively in any hearing the Commissioners may grant. In addition, FoE intends to seek leave to participate in any enforcement proceedings conducted by the NRC, and seeks to be fully informed in order to participate in an effective way.

Accordingly, FoE respectfully submits that an expedited response to its FOIA request is justified.

Sincerely,

/s/

Diane Curran

Cc: Gerald McClellan, FOIA/PA Specialist, foia@nrc.gov