



Case No.: **FOIA REQUEST**
Date Recd: 2013-0207
Specialist: 4/4/13
Related Case: Phelps

April 4, 2013

FREEDOM OF INFORMATION ACT REQUEST

U.S. Nuclear Regulatory Commission
FOIA/Privacy Officer
Mailstop: T-5 F09
Washington, DC 20555-0001

Re: Freedom of Information Act request for records relating to meetings with Southern California Edison regarding the replacement steam generators at the San Onofre Nuclear Generating Station

Dear NRC FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the United States Nuclear Regulatory Commission's (NRC) implementing regulations, 10 C.F.R. Part 9, Friends of the Earth (FoE) requests records from the NRC relating to the following subjects:

- (A) Any and all meetings between Southern California Edison (SCE) and the NRC Commissioners related to the replacement steam generators at the San Onofre Nuclear Generating Station from November 8, 2012, the date of the Commission's Order CLI-12-20¹ establishing an Atomic Safety and Licensing Board in this matter, and the present. FoE requests that the NRC produce a complete record of any such meetings, including a description of the subjects discussed and any materials provided to the Commissioners by SCE; and
- (B) Any and all meetings between SCE and the Executive Director for Operations (EDO) and the Office of Nuclear Reactor Regulation (NRR) related to the replacement steam generators at the San Onofre Nuclear

¹ U.S. Nuclear Regulatory Commission, CLI-12-20 Memorandum and Order (Nov. 8, 2012) (referring a portion of Friends of the Earth's Petition to Intervene to the Atomic Safety and Licensing Board, and another portion to a 2.206 Petition Review Board, in Docket Nos. 50-361-CAL & 50-362-CAL).

Generating Station from November 8, 2012 to the present, including a description of the subjects discussed and any materials provided to NRC personnel by SCE.

Records Requested

Friends of the Earth seeks the following records from the NRC:

All documents, including but not limited to meeting notes, presentation materials by SCE, correspondence, memoranda, electronic files and electronic mail, and any other applicable or relevant information concerning the subjects set forth above.

Fee Waiver Request

Pursuant to FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and the NRC's implementing regulations, 10 C.F.R. § 9.41, FoE requests that all charges incurred in connection with this request be waived. The legislative history of FOIA indicates that the fee waiver provision "is to be liberally construed in favor of waivers for noncommercial requesters." McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing 132 Cong. Rec. S16496 (1986)). Friends of the Earth is a nonprofit environmental advocacy organization dedicated to improving the environmental, health, and safety conditions at civil nuclear facilities. Known for its leadership role on nuclear power issues, FoE uses a combination of public outreach and education, litigation, and advocacy to advance its mission.

As discussed below, FoE satisfies the two-pronged test for a fee waiver established in the FOIA and outlined in the NRC's implementing regulations for two reasons: (i) "disclosure of the information in the agency records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government"; and (ii) disclosure "is not primarily in the commercial interest of the requester," 10 C.F.R. § 9.41(c).

I. Disclosure of the requested information is in the public interest because it will contribute significantly to public understanding of the operations or activities of government.

FoE qualifies for the fee waiver because the requested information will contribute significantly to public understanding of the operations or activities of the government." See 10 C.F.R. § 9.41(c).

A. The subject of the request concerns the operations and activities of the government.

Friends of the Earth seeks information concerning any meetings and communications between SCE and the NRC Commissioners, as well as the NRC's Executive Director for Operations (EDO) and the Office of Nuclear Reactor Regulation (NRR), as specified above. Because these entities are employees or offices of the NRC, the federal agency responsible for

regulating nuclear power, the information requested concerns the operations and activities of the federal government. *See* 10 C.F.R. § 9.41(c).

B. The disclosure is likely to contribute significantly to a public understanding of the government's operations or activities.

④ The guiding test to determine whether or not the disclosure of the requested information will contribute significantly to public understanding of the government's operations or activities is "whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject." Carney v. U.S. Dept. of Justice, 19 F.3d 807, 815 (2d Cir. 1994). After reviewing the information provided, FoE intends to use its expertise in nuclear advocacy and its communications resources to inform and educate the public about the NRC's interactions with SCE, a licensee, in the present situation concerning a damaged and offline nuclear plant presenting serious public health and safety considerations.

More specifically, FoE will use the requested records to: (1) determine whether the Commission and its staff are in compliance with the NRC's regulations governing communications with licensees involved in current proceedings before the NRC; and (2) inform FoE's more than 9,100 members through its websites, including a website devoted to the San Onofre Nuclear Generating Station, about the effect of the NRC's actions regarding the plant on public health and safety, particularly, its consideration of SCE's proposal to restart the damaged reactors.

II. Obtaining the information is of no commercial interest to Friends of the Earth.

The second element of the fee waiver analysis concerns the requester's "commercial interest" in the requested information. As a 501(c)(3) non-profit organization, Friends of the Earth has no commercial, trade, or profit interest in the material requested. FoE will not be paid for or receive other commercial benefits from the publication or dissemination of the information requested.

FoE's primary interest in the disclosure is to add to public awareness of the communications between the NRC and a licensee on this important matter of public safety. Accordingly, the disclosure of the information is not primarily in FoE's commercial interest and a fee waiver is warranted. 5 U.S.C. § 552(a)(4)(A)(iii).

Conclusion

In light of the foregoing, the requested records bear directly on specific operations and activities of the NRC, will contribute significantly to a broad public understanding of important matters relating to government functioning and compliance with federal laws, and will not serve any commercial interest on the part of Friends of the Earth. Therefore, a fee waiver is appropriate.

Thank you for your assistance with this request. If I can provide any additional information or answer any questions, please do not hesitate to contact me.

Sincerely,

/s/ Richard Ayres
Richard Ayres

Counsel for Friends of the Earth

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