

**FOI/PA REQUEST**

**Case No.:** 2014-0488  
**Date Rec'd:** 9/18/14  
**Specialist:** So  
**Related Case:** \_\_\_\_\_



September 18, 2014

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

**Re: FOIA request for records regarding communications within the NRC and between NRC and PG&E about the release of the NRC's Final Decision on Dr. Michael Peck's Dissenting Professional Opinion and PG&E's Diablo Canyon Seismic Safety Report on September 10, 2014 - Expedited Processing Requested**

Dear NRC FOIA/Privacy Officer:

On behalf of Friends of the Earth (FoE), Public Employees for Environmental Responsibility (PEER), San Luis Obispo Mothers for Peace (SLOMFP), and the Santa Lucia Chapter of the Sierra Club (the "Requesting Parties"), I write to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Nuclear Regulatory Commission ("NRC") regulations at 10 C.F.R. §9.11 et seq.

Friends of the Earth (FoE) is a nonprofit organization founded in 1969, with more than 316,600 members and activists in every state in the country. FoE uses policy analysis and advocacy to work for a healthier and just world. For forty years FoE has campaigned to reduce the health and environmental risks of nuclear power.

Public Employees for Environmental Responsibility (PEER) is a national alliance of local state and federal public servants seeking to improve the environmental, public health and safety performance of governmental agencies within which they work, including the Nuclear Regulatory Commission.

San Luis Obispo Mothers for Peace is a nonprofit organization concerned with the local dangers involving the Diablo Canyon Nuclear Power Plant, and with the dangers of nuclear power, weapons and waste on national and global levels. The organization has had the status of legal intervenor regarding the licensing and operations of the Diablo Canyon nuclear plant since 1973.

The Santa Lucia Chapter of the Sierra Club, with more than 2,000 members locally,

is a nonprofit organization dedicated to the protection and preservation of the natural environment. The Chapter has consistently been opposed to Diablo Canyon nuclear plant, from its initial permits to the ongoing operation. Currently, the Chapter is focusing on advocating for public health screenings for residents living close to the facility, where there is an increased rate of ionizing radiation-caused cancers.

## **I. Description of Records Sought**

The Requesting Parties ask that the NRC provide all records<sup>1</sup> dated between and including June 1, 2014 to September 18, 2014 in NRC's possession, custody, or control that contain or reference communication<sup>2</sup> within the NRC or between the NRC (including NRC Commissioners and NRC Staff) and representatives of Pacific Gas and Electric Company "PG&E," regarding the information<sup>3</sup> that was made publicly available by the NRC and PG&E on September 10, 2014 about (1) the NRC's "Final Decision" on NRC former Diablo Canyon Power Plant senior resident inspector Dr. Michael Peck's dissenting professional opinion (DPO) and (2) the PG&E Central Coastal California Seismic Imaging Project Report ("CCCSIP Report"), on earthquake faults around the Diablo Canyon Nuclear Plant. We request records of communication regarding the timing and content of the release of the reports by each organization.

Our request includes but is not limited to records regarding any and all communications between PG&E representatives and the following NRC representatives and internal NRC communications involving:

- NRC Spokeswoman Lara Uselding
- NRC Executive Director of Operations Mark Satorius

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<sup>1</sup> The term "records" is used herein to mean anything denoted by the use of that word or its singular form in the text of FOIA. The term includes correspondence of any kind, minutes of meetings, memoranda, notes, emails, letters, cards, telegrams, teletypes, briefing papers, cables, forms, diaries, schedules, chronological data, meeting and teleconference agendas, notices, facsimiles, charts, tables, presentations, orders, filings, receipts, printed matter, checks, statements, agreements, any evidence of telephone communication, any audio, aural, visual, or video item, including without limitation all cassette tapes, compact disks, digital video disks, microfiche, pictures, photographs, or videotapes, and any writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored).

<sup>2</sup> The term "communication" must be given the broadest possible meaning and includes comments, emails, courtesy copies of emails, messages, notes, data sets, calendars, personal digital assistant entries, any record of telephone communication, any other agency record involving communication and/or record of communications, as well as the above-mentioned items considered "records" if and when they mention, are related to, have been, or are going to be, shared or communicated between PG&E and NRC representatives.

<sup>3</sup> The "public information" relevant to this request includes, but is not limited to:

- a. The "DPO Case File for DPO-2013-002" made publicly available by the NRC on September 10, 2014; or
- b. The Seismic Safety Report published by PG&E on September 10, 2014 as part of The Central Coastal California Seismic Imaging Project.  
<<http://www.pge.com/en/safety/systemworks/dcpp/seismicsafety/index.page?>>

- NRC Senior Public Affairs Officer of Region IV, Victor Dricks
- NRC Office of New Reactors Director, Glenn Tracy
- NRC Office of New Reactors Deputy Director, Gary Holahan
- NRC Office of Nuclear Reactor Regulation Deputy Director for Reactor Safety Programs, Jennifer Uhle

## II. Request for Justification of Any Denials and Segregation of Non-Exempt Portions

In an executive order titled "Memorandum for the heads of executive departments and agencies" published in the Federal Register on May 12, 2014, Barack Obama stated that:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails... all agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

Given the above memorandum, if any part of this request is denied, please cite the specific exemptions upon which the NRC relies in refusing to release the documents and identify which records are being withheld. Further, since the Freedom of Information Act provides that the remainder of a file must be released if only portions are exempt from disclosure, we request that we be provided with all non-exempt portions.

## III. Request for Expedited Review

Pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 10 C.F.R. § 9.25(e), the Requesting Parties ***ask for expedited processing of this FOIA request due to our compelling need for the information requested.*** A "compelling need" exists where the requester is "primarily engaged in disseminating information" and can demonstrate that "[t]he information is urgently needed ... in order to inform the public concerning actual or alleged Federal Government activity." 10 C.F.R. § 9.25(e)(1)(ii); *see also* 5 U.S.C. § 552(a)(6)(E)(v).

The Requesting Parties are non-profit organizations engaged in information dissemination, public education, and advocacy on the health and environmental risks of electricity generation from nuclear power. These organizations have websites, email lists, blogs, and other forms of mass communication with their members and the general public for the express purpose of disseminating information about important environmental issues.

The Requesting Parties urgently need this information because the records, communication, and information sought concern an “[a]ctual or alleged Federal Government activity” within the NRC related to its responsibility to objectively regulate and evaluate the seismic safety of Diablo Canyon Nuclear Power Plant. The requested documents pertain to three related NRC activities: (1) NRC’s license renewal proceeding for Diablo Canyon (in which SLOMFP is a party), (2) NRC’s decision during the summer of 2014 (first disclosed to the public on September 10, 2014) to accept changes to PG&E’s seismic design basis for Diablo Canyon, and (3) NRC’s review of a seismic study (CCCSIP Report) for Diablo Canyon, which PG&E publicly released on September 10, 2014. The CCCSIP Report evaluates seismic risks to the Diablo Canyon plant in light of recently discovered information about the nearby Shoreline and other faults. The CCCSIP Report therefore may implicate the adequacy of the seismic design basis for Diablo Canyon and the question of whether PG&E’s license should be renewed.

The NRC has given the public an opportunity to request a hearing regarding the CCCSIP Report, but any hearing request raising safety concerns about the CCCSIP Report must be submitted by October 10.<sup>4</sup> The Requesters urgently need the requested documents in order to evaluate the status and adequacy of the seismic design basis for Diablo Canyon and the degree to which it is challenged by the CCCSIP Report.

The Requesting Parties also reserve the right to appeal any denial of our request for expedited processing of this request.

### **III. Request for a Fee Waiver**

The Requesting Parties ask that NRC waive all fees for search and production of the records described above. FOIA dictates that requested records be provided without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 10 C.F.R. § 9.39(a) and 10 C.F.R. § 9.41(c). The requested disclosure meets these requirements. The request also meets the criteria of 10 C.F.R. § 9.41(d) and demonstrates the required factors listed in 10 C.F.R. § 9.41 (b).

#### *A. Subject of the request relates directly to the operations or activities of the government*

The records requested herein pertain to the activities of the NRC in regulating seismic safety issues at the Diablo Canyon Nuclear Power Plant. Furthermore, part of the matter relates to the NRC conduct of a review of a DPO by Michael Peck that was released by the NRC on September 10; part of it relates to a seismic review conducted

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<sup>4</sup> *In re Pacific Gas & Electric Co. (DCPP Units 1 and 2)*, ASLBP No. 10-890-01-LR-BD01, Second Revised Scheduling Order (March 26, 2014) at 1.

by the NRC's licensee PG&E and submitted to the NRC for review pursuant to its regulatory function. NRC is a government agency. The requested records thus directly concern "the operations or activities of the government." See 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 9.41(d)(1).

*B. Contribution to an understanding of the subject by the public is likely to result from disclosure.*

The requested records are "likely to contribute" to the public's understanding of government operations and activities. 5 U.S.C. § 552(a)(4)(A)(iii); 10 C.F.R. § 9.41(d)(2). There is intense public concern about the NRC regulation of the Diablo Canyon Nuclear Plant, and NRC relationship with its Licensee PG&E. The allegations raised by NRC Expert Michael Peck are very serious and have already produced significant news coverage because of the issues raised. Similarly, the PG&E CCCSIP Report submitted to NRC on the same day as the NRC DPO Final Decision indicates a possible relationship between the regulator and its licensee that has brought widespread public concern regarding the independence of the regulator. There have been numerous concerns as to how the two documents could have been released simultaneously given that the DPO operation has been kept secret. Therefore, transparency is essential in this case.

The records requested shed light on a matter of considerable public interest and concern: NRC's actions, contacts and assessments have received worldwide attention. This is demonstrated by the following examples of media coverage:

- <http://www.latimes.com/local/lanow/la-me-ln-diablo-canyon-earthquake-20140825-story.html>
- <http://www.sfgate.com/business/article/Petition-seeks-closure-of-Diablo-Canyon-nuclear-5714455.php>
- <http://www.cbsnews.com/news/california-earthquake-expert-urges-nuclear-plant-closure-over-threat/>
- <http://www.sacbee.com/2014/09/06/6683447/other-view-is-diablo-canyon-nuclear.html>
- <http://www.pacbiztimes.com/2014/08/29/editorial-earthquake-worries-rattle-future-of-diablo-canyon/>
- <http://www.reuters.com/article/2014/08/27/us-nuclear-earthquake-diablocanyon-idUSKBN0GR1XL20140827>

Public understanding of NRC's actions regarding Diablo would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate NRC's recent and future decision-making procedures regarding Diablo Canyon's Seismic Safety Analysis. Disclosure would also help the public to better understand and evaluate NRC's actions regarding the legally binding safety regulations established for the operability of Diablo Canyon.

*C. Extent to which the requester has a commercial interest that would be furthered by disclosure of the requested agency records; and whether that commercial interest exceed the public interest in disclosure*

The Requesting Parties are nonprofit environmental organizations with no commercial interest in obtaining the requested information. Rather, these organizations intend to use the requested information to inform the public, so the public can meaningfully participate in the public health, environmental, and safety risks posed by the Diablo Canyon Nuclear Power Plant. The Requesting Parties believe that transparency of the relationship between the NRC and its licensee is essential to the NRC's obligation "to protect public health and safety, the environment, and the common defense and security."

"Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters,'" *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003); The Requesting Parties wish to serve the public by reviewing, analyzing and disclosing newsworthy and presently non-public information about NRC and PG&E relations regarding Diablo Canyon's seismic safety. Any communication by NRC with PG&E regarding seismic safety relates to a matter of considerable public interest and concern because the public is possibly at risk of a nuclear disaster if an earthquake were to happen today. Disclosure of the requested records will contribute significantly to public understanding of the true operability of Diablo Canyon, associated threats to human health and the environment, and the NRC's regulatory options.

The Requesting Parties thus satisfy the criteria of 10 C.F.R. § 9.41(d). We further demonstrate below each of the eight factors required by NRC under 10 C.F.R. § 9.41(b) to evaluate whether a fee waiver is appropriate for this request.

*D. Describe the purpose for which the requester intends to use the requested information.*

The Requesting Parties intend to use the requested information to understand and analyze the relationship between the licensee for Diablo Canyon, PG&E, and the NRC with respect to coordination on the content and timing of the public release of the DPO and the CCCSIP Report. The Requesting Parties intend to make such understanding and analysis available to their members and the general public. Where relevant, the Requesting Parties may also use the requested information in licensing proceedings for Diablo Canyon to which they are a party.

*E. Explain the extent to which the requester will extract and analyze the substantive content of the agency records.*

The Requesting Parties' members and attorneys will carefully analyze the requested documents to evaluate the extent to which the licensee and NRC coordinated the content and timing of the public release of the DPO and CCCSIP

reports.

*F. Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to the public understanding.*

The Requesting Parties intend to use the requested information to educate their members about the NRC's relationship with PG&E as it bears on issues central to the ongoing licensing reviews for Diablo Canyon (both the license renewal proceeding and the *de facto* license amendment proceeding). This may be through public dissemination to the Requesting Parties' members through news releases, blog posts, emails, or other electronic media or legal filings on behalf of the organizations in the licensing proceedings.

FoE is qualified to analyze and disseminate the requested information, as demonstrated by FoE's multi-decade campaigning on nuclear energy issues, particularly with respect to Diablo Canyon. Most recently, FoE successfully petitioned the Commission to establish a license amendment proceeding for the San Onofre Nuclear Generating Station. FoE's advocacy in that case increased awareness and engagement by the public on a critical issue of safety that ultimately resulted in the licensee's decision to shutter the plant.

The qualifications of SLOMFP to analyze the requested documents are demonstrated by their long and successful track record of using technical information about the Diablo Canyon reactors to advocate for public safety and environmental protection in the operation of the Diablo Canyon reactors. SLOMFP has been an active intervenor in NRC licensing cases for Diablo Canyon since 1973, including appeals of adverse decisions to the U.S. Court of Appeals. SLOMFP's attorney has represented the organization in NRC and court proceedings involving Diablo Canyon for over 20 years. SLOMFP's cases, which have covered highly complex technical and legal issues, include *San Luis Obispo Mothers for Peace v. NRC*, 751 F.2d 1287 (D.C. Cir. 1984); *San Luis Obispo Mothers for Peace v. NRC*, 789 F.2d 26, (D.C. Cir.) (en banc); and *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006). These cases have set precedents and have raised general public awareness about nuclear regulation in the United States.

SLOMFP also has a long history of educating the public through its website and the news media. The organization is well respected in the community for the accuracy and comprehensiveness of its analyses of nuclear safety and environmental issues raised by Diablo Canyon.

PEER intends to use the requested information to the benefit of its members, mission, and the general public. PEER works nation-wide with government scientists, land managers, environmental law enforcement agents, field specialists and other resource professionals committed to responsible management of America's public resources. PEER's stated objectives include commitments to serve as a "watch dog"

for the public interest, inform the federal government, media, and public about substantive environmental issues of concern to PEER members, and defend and strengthen the legal rights of public employees who speak out about issues concerning environmental protection.

The Santa Lucia Chapter of the Sierra Club is qualified to analyze the requested information and in turn inform and educate its members about the NRC's relationship with PG&E with respect to study of the seismic risks presented by the Shoreline and other recently discovered faults near Diablo Canyon.

*G. Describe the likely impact on the public's understanding of the subject as compared to the level of public understanding of the subject before disclosure*

It is presently unclear whether PG&E and the NRC are being transparent about the safety risks presented by the Shoreline and other newly discovered faults. The requested information will aid the Requesting Parties and their members in determining whether the regulator has adequately and independently examined the risks without undue influence from the licensee.

*H. Describe the size and nature of the public audience to whose understanding a contribution will be made.*

FoE has over 300,000 members across the country. Many of its members are engaged in the safety issues presented by Diablo Canyon. FoE keeps an up-to-date website and often releases press statements on important developments in the safety of Diablo Canyon, such as the issues raised in this request. National newspapers such as the LA Times often pick up the releases. FoE's analysis of the requested information could therefore reach anyone with a computer and an internet connection.

SLOMFP's primary target audience is the population of San Luis Obispo and Santa Barbara Counties, which totals over 700,000 people and which would be in the direct line of a radioactive release in the event of an accident at Diablo Canyon. In addition, SLOMFP reaches out to California residents as far away as the Los Angeles basin, with a population of over 11 million. This population also would be affected by an accidental release of radiation at Diablo Canyon. Finally, SLOMFP shares information with environmental organizations around the country. SLOMFP does not charge for the information it provides, and therefore its distribution is wide.

PEER's members consist of government scientists, law enforcement officers, land managers, and other environmental professionals at all levels of state and federal government. The requested information will be quickly analyzed and disseminated to these professionals who are committed to transparency and integrity in the environmental regulatory process.

The Santa Lucia Chapter of the Sierra Club provides valuable environmental analysis to the population of San Luis Obispo and Santa Barbara Counties, which totals



over 700,000 people and which would be in the direct line of a radioactive release in the event of an accident at Diablo Canyon. The information provided would be conveyed to their members and the general public quickly and widely.

*I. Describe the intended means of dissemination to the general public*

The means by which the Requesting Parties intend to disseminate the information yielded by this FOIA request are described above in *F*. In addition, if the requested documents reveal that the NRC has not attended adequately to the risk of a seismic activity on the Shoreline and other newly discovered faults near Diablo Canyon, the Requesting Parties will evaluate whether to raise the issue in the licensing proceedings.

*J. Indicate if public access to information will be provided free of charge or provided for an access fee or public education.*

Public access to the requested information will be provided completely free of charge.

*K. Describe any commercial or private interest the requester or any other party has in the agency records sought*

The Requesting Parties are non-profit organizations whose sole purpose in requesting the documents is to educate themselves, their members, and the general public regarding the seismic risks at Diablo Canyon. The Requesting Parties plan to publish the requested information in correspondence with their members and supporters and to post the information on their website. The requested materials will not be used for the Requesting Parties' commercial use or gain.

**IV. Willingness to Pay Fees Under Protest**

Please provide the records requested above irrespective of the status and outcome of your evaluation of the Requesting Parties' fee category assertion and fee waiver request. In order to prevent delay in NRC's provision of the requested records, the Requesting Parties state that they will, if necessary and under protest, pay fees in accordance with NRC's FOIA regulations at 10 C.F.R. § 9.33 for all or a portion of the requested records. Please consult with the Requesting Parties, however, before undertaking any action that would cause the fee to exceed **\$100.00**. Such payment will not constitute any waiver of the Requesting Parties' right to seek administrative or judicial review of any denial of its fee waiver request and/or rejection of its fee category assertion.

**VI. Conclusion**

We trust that, in responding to this request, NRC will comply with all relevant deadlines and other obligations set forth in FOIA and NRC's FOIA regulations. *See,*

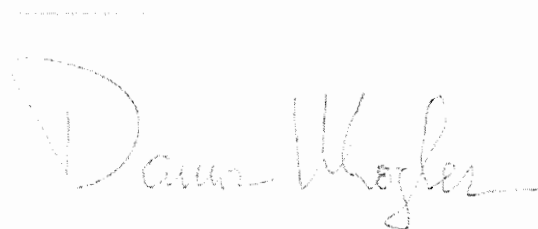
*e.g.*, 5 U.S.C. § 552(a)(6); 10 C.F.R. § 9.25. .

Please produce the records above by emailing or mailing them to me at the FoE office address listed below. Please produce them on a rolling basis; at no point should NRC's search for--or deliberations concerning--certain records delay the production of others that NRC has already retrieved and elected to produce. In the event that NRC concludes that some of the records requested above may already be publicly available, we will be happy to discuss those conclusions.

Please respond within 20 business days, as provided by 5 U.S.C. § 552(a)(6)(A)(i). If you have any questions regarding this request, please contact me at (202) 587-5242.

Thank you for your prompt attention to this request.

Sincerely,

A handwritten signature in cursive script that reads "Damon Moglen". The signature is written in dark ink and is positioned below the word "Sincerely,".

Damon Moglen  
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