

August 5, 2014

NRC FOIA/PA Officer  
U.S. Nuclear Regulatory Commission  
Mailstop T-5 F09  
Washington, DC 20555-0001  
By e-mail to: [FOIA.resource@nrc.gov](mailto:FOIA.resource@nrc.gov)

**FOIA/PA REQUEST**  
Case No.: 2014-0372  
Date Rec'd: 8/5/14  
Specialist: Burkharten  
Related Case: \_\_\_\_\_

SUBJECT: *Freedom of Information Act Request*

Dear NRC FOIA/PA Officer:

On behalf of San Luis Obispo Mothers for Peace ("SLOMFP"), and pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., I am writing to request you to release the following documents:

1. *PG&E's October 15, 2002, answers to NRC Staff's August 29, 2002 Request for Additional Information ("RAI") related to the U.S. Nuclear Regulatory Commission's ("NRC's") licensing proceeding for an Independent Spent Fuel Storage Installation ("ISFSI") on the site of the Diablo Canyon nuclear power plant ("DCNPP") (Docket No. 72-26), to the extent they respond to questions 2-12, 2-13, 2-14, 2-15, 2-16, 2-17, 2-18, and 2-19 of the RAI. These documents are:*

ML022950396; ML022950439; ML022960045; ML022960173; ML022960188;  
ML022970587; ML023010123; ML023010152; ML023250166.<sup>1</sup>

2. *Correspondence from management of the Center for Nuclear Waste Regulatory Analyses ("CNWRA"), written between March 17, 2004 and February 27, 2006, regarding a November 22, 2003, report by Dr. Robert L. Sewell entitled "A Preliminary Numerical Study of the Hazard from Local Landslide Tsunami Scenarios at the Diablo Canyon Site in Central California" ("Sewell Report"). This correspondence is referred to as follows in a Memorandum from E. William Brach, NMSS to Michael E. Mayfield, NRR re "Disposition of Draft Report Entitled, "A Preliminary Numerical Study of the Hazard from Local Landslide Tsunami Scenarios at the Diablo Canyon Site in Central California" (Feb. 27, 2006) ("2/27/06 Brach Memo") (ML060460441):*

Subsequent correspondence from CNWRA management has confirmed that the draft report has not been accepted by CNWRA and has not gone through the CNWRA quality assurance process. Thus, the draft report's technical basis is not supported by CNWRA.

<sup>1</sup> An index of these documents provided by the NRC's Public Document Room ("PDR") is included as Attachment 1 to this FOIA Request.



3. *Memorandum from John Moninger, NMSS to NRR (with copy to RES) transmitting draft report entitled "A Preliminary Numerical Study of the Hazard from Local Landslide Tsunami Scenarios at the Diablo Canyon Site in Central California" (Feb. 3, 2005).* The requested document is referred to in the 2/27/06 Brach Memo. It is also referred to in a Memorandum from James R. Hall, NMSS, to Brian E. Thomas, NMSS, re: Summary of Internal Meeting with NRR and RES to Discuss Contractor Report on Tsunami Hazards Analysis (May 5, 2005) (ML051290085). Finally, it is mentioned in an e-mail from Nilesh Chokshi to Patrick Hilland and Joseph Giitter re: Request to Re-open my Earlier Tsunami Assessment Recommendations (March 23, 2011) (ML1318A100).
4. *Memorandum (or other correspondence) from the Seismic Issues Technical Advisory Group (SITAG) to Michele G. Evans (Nov. 17, 2005).* According to a Memorandum from Andrew J. Murphy, SITAG, to Michele G. Evans, NRR (Jan. 17, 2006) ("1/17/06 Murphy Memo") (ML060170114), the requested document contains SITAG's evaluation of the Sewell Report.

Please note that the requested November 17, 2005 SITAG memorandum is distinct from the "updated" version of that memorandum attached to the Murphy Memo (ML060170114).
5. *All records of interactions between SITAG and NRC managers, including Michele G. Evans regarding the Nov. 17, 2005 evaluation described in par. 5 above.* These interactions are referred to in a Memorandum from Andrew J. Murphy, SITAG, to Michele G. Evans, NRR (Jan. 17, 2006) ("1/17/06 Murphy Memo") (ML060170114), which states that "SITAG has interacted with you and other NRC managers and identified the need to update the [Nov. 17, 2005] evaluation." The interactions in question took place between Nov. 17, 2005 and Jan. 17, 2006.
6. *All documents reflecting consideration by NRC of the Sewell Report in licensing proceedings or other safety determinations or assessments for the Diablo Nuclear Power Plant and/or ISFSI, as reflected in the following statements made in an e-mail message from Jessica Kratchman, Project Manager for the Japan Lessons-Learned Project Directorate, to David Weisman, re: REPLY: Tsunami threat and Diablo Canyon vs NRC report (June 12, 2014) ("Kratchman E-mail")<sup>2</sup>:*

Diablo Canyon has been deemed safe to operate based on our current understanding of potential external hazards for the site and the design and construction of the facility. This determination considered input from a large collection of research and licensing efforts in addition to the Sewell report.

\* \* \*

Please be assured that the current safety assessment has considered not only the

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<sup>2</sup> A copy of the Kratchman E-mail is included as Attachment 2 to this FOIA Request.



Sewell report but research and input from numerous sources and experts.

\* \* \*

However, [the Sewell Report], even in its draft form, was appropriately considered during NRC licensing reviews for Diablo Canyon.

7. *All documents which describe the establishment of the "Japan FOIA Task Force" as described in the Kratchman E-mail, and its relationship to the Japan Lessons-Learned Project Directorate.* In particular, we request that you provide a copy of the charter or tasking memorandum for the Japan FOIA Task Force, a list of its members and their titles, and any document that describes the relationship between the Task Force and the Directorate.
8. *All documents which have evaluated the usefulness of the Sewell Report for regulatory purposes since the NRR dropped it from further consideration in February 2006.* See Memorandum from Michael E. Mayfield, NRR, to E. William Brach, NMSS, re: Disposition of Draft Report Entitled "A Preliminary Numerical Study of the Hazard from Local Landslide Tsunami Scenarios at the Diablo Canyon Site in Central California, Summary Report" at 2 (Feb. 27, 2006) ("Mayfield Memorandum") (ML060460441). This request does not include documents disclosed in response to FOIA/PA-2011-0119.
9. All correspondence between the NRC and any non-NRC party or parties (other than CNWRA) regarding the Sewell Report.
10. All correspondence between CNWRA and any non-CNWRA party or parties (other than NRC) regarding the Sewell Report.

If you decide to withhold any portion of the requested documents, please justify your decision and release any segregable information, as required by 10 C.F.R. §9.19(b).

## II. DEFINITION OF RECORDS

For purposes of this request, the term "record" means: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, telegrams, teletypes, facsimiles, papers, forms, records, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazines or newspaper articles or press releases; (2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail, meaning any electronically transmitted text or graphic communication created upon and transmitted or received by any computer or other electronic device, and all materials stored on compact disk, computer disk, diskette, hard drive, server, or tape; (3) any audio, aural, visual, or video records,



recordings, or representations of any kind, including without limitation all cassette tapes, compact disks, digital video disks, microfiche, microfilm, motion pictures, pictures, photographs, or videotapes; (4) any graphic materials and data compilations from which information can be obtained; (5) any materials using other means of preserving thought or expression; and (6) any tangible things from which data or information can be obtained, processed, recorded, or transcribed. The term "record" also includes any drafts, alterations, amendments, changes, or modifications of or to any of the foregoing.

If it is your position that records exist that are responsive to this request, but that those records (or portions of those records) are exempt from disclosure pursuant to 10 C.F.R. § 9.17, please identify the records that are being withheld and state the basis for the denial for each record being withheld. In addition, please provide the non-exempt portions of the records.

### III. REQUEST FOR WAIVER OF FEES

SLOMFP hereby requests that all fees in connection with this FOIA Request be waived in accordance with 10 C.F.R. §§ 9.39(a) and 9.41(c). As provided in § 9.41(c), the NRC must:

waive or reduce fees, without further specific information from the requester if, from information provided with the request for agency records made under § 9.23(b), it can determine that 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 Federal Government and is not primarily in the commercial interest of the requester.

SLOMFP addresses the NRC's eight requirements for a fee waiver below:

**Factor (1): Describe the purpose for which the requester intends to use the requested information.**

SLOMFP's purpose in making this FOIA request is to educate its members and the general public regarding the adequacy of the NRC's response to the risk of a tsunami to the safety of the Diablo Canyon nuclear power plant. The tsunami risk was evaluated in 2003 by Dr. Robert L. Sewell, a consultant to the NRC, in the licensing proceeding for the Diablo Canyon ISFSI. While Dr. Sewell's report has not been released publicly, the NRC has described its conclusions as follows: "the DCNPP design basis wave heights may not be conservative, and that more detailed probabilistic tsunami hazard analysis should be performed to evaluate the DCNPP safety." Staff Evaluation of "A Preliminary Numerical Study of the Hazard from Local Landslide Tsunami Scenarios at the Diablo Canyon Site in Central California, Summary Report (Draft) ("SITAG Evaluation"), Enclosure to Murphy Memo.<sup>3</sup> Such a conclusion raises very serious safety and environmental concerns for members of the public who live near DCNPP.

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<sup>3</sup> See also par. 5 above.

Based on the Kratchman E-mail, it appears that the NRC Staff may have considered the Sewell Report in a number of licensing and other safety reviews for DCNPP. Nevertheless, some NRC documents indicate that the agency considered it to be inadequate for regulatory purposes and dropped it from consideration. For instance, the 2006 SITAG Evaluation disparages the Sewell Report, stating that its results “have significant uncertainties, may not be realistic, and cannot be relied on for making conclusions on tsunami hazard for the DCNPP site.” *Id.* at 3. A subsequent memorandum states that the report was not accepted by the originating agency (the CNWRA), that it is “speculative,” and that the office of Nuclear Reactor Regulation decided to terminate its consideration. Mayfield Memorandum at 2.

SLOMFP seeks the requested documents in order to illuminate, for its members and the public, the source of this discrepancy. SLOMFP believes the public has a strong interest in knowing exactly what safety significance the NRC attributes to the Sewell Report and whether the NRC has, as it claims, considered the report in its safety determinations for DCNPP. And if the NRC has indeed considered the Sewell Report, the public has a strong interest in knowing when and why the NRC changed its previous opinion of the document as useless for regulatory purposes.

In addition, SLOMFP seeks additional information on the basis for NRC’s decision to withhold the Sewell Report from public disclosure. For instance, SLOMFP requests any documents that would show the Sewell Report has been shared with outside parties, which would render it non-exempt as a pre-decisional document.

**Factor (2): Explain the extent to which the requester will extract and analyze the substantive content of the agency records.**

SLOMFP’s members and their undersigned attorney will carefully analyze the requested documents to evaluate the question of how or whether Dr. Sewell’s report has been used to evaluate the safety of DCNPP and/or the ISFSI. In addition, SLOMFP will extract and analyze the requested information to evaluate the extent to which the NRC’s technical understanding of tsunami risks has changed since receiving Dr. Sewell’s report in 2003.

**Factor (3): 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.**

SLOMFP will post its analysis of the NRC’s use of the Sewell Report on its website, [www.mothersforpeace.org](http://www.mothersforpeace.org) and on its FaceBook page, which has 1,770 “likes.”

In addition to posting information on its website, SLOMFP communicates with its members and the general public in a variety of other ways:

- a) SLOMFP has 1,326 recipients on its mailing list, comprised of households requesting an annual mailing that updates the readers on issues and invites financial contributions.



- b) SLOMFP sends two or three email alerts a week to 400 individuals and organizations regarding safety and environmental concerns raised by Diablo Canyon and other reactors.
- c) SLOMFP has a weekly reach of over a thousand people on social media. Facebook readership totaled 1,400 during the week 7/29/2014-8/4/2014. SLOMFP has 399 followers on Twitter.
- d) SLOMFP frequently has opinion pieces and letters to the editor printed in local news media, specifically the San Luis Obispo Tribune daily newspaper and New Times, a weekly newspaper.
- e) Spokesperson Jane Swanson does interviews with King Harris on AM 920 every six weeks.
- f) Spokespersons Jane Swanson and Linda Seeley participate in speaking engagements about the hazards of Diablo Canyon in San Luis Obispo and Santa Barbara Counties approximately once a month. Among the groups they speak to are: an annual summer class of young adults at University of California at Santa Barbara, classes at Cal Poly State University in San Luis Obispo, local social action groups within churches and political organizations, and supporters of SLOMFP who attend educational forums sponsored by SLOMFP. SLOMFP Spokesperson Jane Swanson participated in a debate about Diablo Canyon on May 4, 2014. Spokesperson Linda Seeley was interviewed by the Cal Poly Mustang on issues surrounding Diablo Canyon on July 28, 2014. Spokesperson Linda Seeley was interviewed on "WomenSpaces" radio show in San Jose, CA on July 29, 2014. No compensation was received for any of these appearances.

The qualifications of SLOMFP and its undersigned attorney to analyze the requested documents is 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 undersigned 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 DCNPP.

**Factor (4): 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.**

As discussed above with respect to Factor 1, the Sewell Report appears to raise very serious safety and environmental concerns about the risks of a tsunami to the DCNPP. Yet, the NRC has not taken a consistent approach to the information presented by Dr. Sewell. Does the NRC consider Dr. Sewell's report to be unreliable or not? Is the NRC attending to Dr. Sewell's concerns or not? SLOMFP believes that the documents it has requested will help to answer these questions and thereby contribute significantly to the public's understanding of the NRC's performance with respect to the regulation of safety at DCNPP.

**Factor (5): Describe the size and nature of the public audience to whose understanding a contribution will be made.**

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. As discussed below with respect to Factor 7, SLOMFP does not charge for the information it provides, and therefore its distribution is wide.

**Factor (6): Describe the intended means of dissemination to the general public:**

The means by which SLOMFP intends to disseminate the information yielded by its FOIA request are described above with respect to Factor (3). In addition, if the requested documents reveal that the NRC has not attended adequately to the risk of a tsunami to the DCNPP, SLOMFP will evaluate whether to raise the issue in the license renewal proceeding.

**Factor (7): 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.

**Factor (8): Describe any commercial or private interest the requester or any other party has in the agency records sought.**

SLOMFP is a non-profit organization whose sole purpose in requesting the documents is to educate itself, its members, and the general public regarding the risks of spent fuel storage and NRC's regulatory process. SLOMFP plans to publish the requested information in correspondence with its members and supporters and to post the information on its website, mothersforpeace.org. The requested materials will not be used for SLOMFP's commercial use or gain.



Accordingly, we request that you waive all fees for locating and duplicating the requested records. If, however, a waiver is not granted, then please advise me of the amount of any proposed search, review, and reproduction charges before those activities are carried out.

Please respond to this FOIA Request 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 202-328-3500.

Thank you very much for your consideration.

Sincerely,

/s/

Diane Curran

[dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

Counsel to SLOMFP



Accession Number ML022950396  
Case/Reference Number DIL-02-009  
TAC L23399  
Document Title Response to NRC Request for Additional Information for Diablo Canyon Independent Spent Fuel Storage  
Installation Application (TAC No. L23399).  
Document Date 10/15/02 12:00AM  
Availability Non-Publicly Available  
Docket Number 05000275  
05000323  
07200026

Accession Number ML022950439  
Case/Reference Number -nr  
DIL-02-009  
TAC L23399  
Document Title Response to NRC Request for Additional Information for Diablo Canyon Independent Spent Fuel Storage  
Installation Application (TAC No. L23399) - Figure 1  
Document Date 10/15/02 12:00AM  
Availability Non-Publicly Available  
Docket Number 05000275  
05000323  
07200026

Accession Number ML022960045  
Case/Reference Number DIL-02-009  
TAC L23399  
Document Title Response to NRC Request for Additional Information for Diablo Canyon Independent Spent Fuel Storage  
Installation Application (TAC No. L23399), Appendix EPad-TH to Calculation PGE-009-CALC-006.  
Document Date 10/15/02 12:00AM  
Availability Non-Publicly Available  
Docket Number 05000275  
05000323  
07200026

Accession Number ML022960173  
Case/Reference Number DIL-02-009  
TAC L23399  
Document Title Response to NRC Request for Additional Information for Diablo Canyon Independent Spent Fuel Storage  
Installation Application (TAC No. L23399), Appendix SH-Loads to Calculation PGE-009-CALC-006 -  
Appendix FTPad-SH.  
Document Date 10/15/02 12:00AM  
Availability Non-Publicly Available  
Docket Number 05000275  
05000323  
07200026

Accession Number ML022960188  
Case/Reference Number DIL-02-009  
Document Title Response to NRC Request for Additional Information for Diablo Canyon Independent Spent Fuel Storage  
Installation Application (TAC No. L23399), Attachments 6-1 - 18-1.  
Document Date 10/15/02 12:00AM  
Availability Non-Publicly Available  
Docket Number 05000275  
05000323  
07200026

Accession Number ML022970587  
Case/Reference Number -nr  
DIL-02-009  
TAC L23399  
Document Title Response to NRC Request for Additional Information for Diablo Canyon Independent Spent Fuel Storage  
Installation Application (TAC No. L23399), Attachment 18-2 - Figure RAI 5-11-5.  
Document Date 10/15/02 12:00AM  
Availability Non-Publicly Available  
Docket Number 05000275  
05000323  
07200026

Accession Number ML023010123

Case/Reference Number DIL-02-009  
TAC L23399  
Document Title Response to NRC Request for Additional Information for Diablo Canyon Independent Spent Fuel Storage  
Installation Application (TAC No. L23399), Attachment 5-2.  
Document Date 10/15/02 12:00AM  
Availability Non-Publicly Available  
Docket Number 05000275  
05000323  
07200026

Accession Number ML023010152

Case/Reference Number DIL-02-009  
TAC L23399  
Document Title Response to NRC Request for Additional Information for Diablo Canyon Independent Spent Fuel Storage  
Installation Application (TAC No. L23399), Appendix TPad-TH - Calculation PGE-009-CALC-006 -  
Appendix STPad-TH.  
Document Date 10/15/02 12:00AM  
Availability Non-Publicly Available  
Docket Number 05000275  
05000323  
07200026

Accession Number ML023250166

Case/Reference Number DIL-02-009  
TAC L23399  
Document Title Response to NRC Request for Additional Information for Diablo Canyon Independent Spent Fuel Storage  
Installation Application (TAC No. L23399), Attachments 2-5 - 5-1.  
Document Date 10/15/02 12:00AM  
Availability Non-Publicly Available  
Docket Number 05000275  
05000323  
07200026

**From:** JLD\_Public Resource <[JLD\\_Public.Resource@nrc.gov](mailto:JLD_Public.Resource@nrc.gov)>  
**Subject:** **REPLY: Tsunami threat and Diablo Canyon vs NRC report**  
**Date:** June 12, 2014 12:17:53 PM PDT  
**To:** "[davidjayweisman@gmail.com](mailto:davidjayweisman@gmail.com)" <[davidjayweisman@gmail.com](mailto:davidjayweisman@gmail.com)>

Mr. Weisman,

This email is in response to your inquiry to Mary Woollen in the NRC's Office of the Chairman on May 14, 2014, subject: "unresolved tsunami threat at Diablo Canyon vs redacted NRC reports".

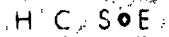
The NRC is working diligently to ensure the safe operation of nuclear power facilities from hazards such as the tsunami that struck the Fukushima Daiichi Power Station on March 11, 2011. Diablo Canyon has been deemed safe to operate based on our current understanding of potential external hazards for the site and the design and construction of the facility. This determination considered input from a large collection of research and licensing efforts in addition to the Sewell report. The Near Term Task Force Report (ADAMS accession number ML111861807) provided the NRC confidence to conclude that an accident with consequences similar to the Fukushima accident is unlikely to occur in the US. The NRC further concluded that plant operation and the continuation of licensing activities do not pose an imminent risk to public health and safety. Until Diablo Canyon completes its flooding hazard re-analysis, it will continue to fall under this general determination. If the re-analysis identifies a potentially higher flooding hazard, the licensee will also propose any appropriate interim actions for flood hazard mechanisms (e.g., precipitation, storm seiche, tsunami) that exceed the current design basis. The reevaluated flood hazard report is due March 12, 2015. Please be assured that the current safety assessment has considered not only the Sewell report but research and input from numerous sources and experts.

As for the FOIA determination for the Sewell report, the NRC previously determined that this document falls under relevant FOIA exemptions for draft documents. The decision to withhold this document was made by the Japan FOIA Task Force. However, this report, even in its draft form, was appropriately considered during NRC licensing reviews for Diablo Canyon.

Thank you for your interest. If you have any further questions you can reply to this email address or contact me directly at [Jessica.Kratchman@nrc.gov](mailto:Jessica.Kratchman@nrc.gov).

Jessica Kratchman  
Project Manager

U.S. Nuclear Regulatory Commission  
-Japan Lessons-Learned Project Directorate



**FOI/PA REQUEST**

Case No.: 2015-0001A  
Date Rec'd: 11/3/14  
Specialist: Burkhalter  
Related Case: 2014-0372

October 31, 2014

Mark Satorius, Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
By e-mail to: [Mark.Satorius@nrc.gov](mailto:Mark.Satorius@nrc.gov)

SUBJECT: *Appeal of FOIA/PA 2014-0372*

Dear Mr. Satorius:

On behalf of San Luis Obispo Mothers for Peace (“SLOMFP”), and pursuant to the Freedom of Information Act (“FOIA”) (5 U.S.C. § 552) and applicable Nuclear Regulatory Commission (“NRC”) regulations 10 C.F.R. §§ 9.29 and 9.6, I hereby appeal NRC’s failure to make a complete or meaningful response to SLOMFP’s August 5, 2014, FOIA Request No. FOIA/PA 2014-0372. In FOIA/PA 2014-0372, SLOMFP requested ten sets of documents related to a 2010 report by Dr. Robert Sewell regarding the risk of a tsunami at the Diablo Canyon nuclear power plant site.<sup>1</sup> SLOMFP appeals the NRC’s failure to provide virtually any of the documents requested in paragraphs 2 through 6 and 8 through 10 of FOIA/PA 2014-0376. SLOMFP does not appeal the NRC’s response to the first and seventh sets of requested documents, which are described in paragraphs 1 and 7, respectively.

**Timeliness of Appeal**

This FOIA appeal is timely, because it is being filed within 30 days of the date on which the FOIA Office mailed its FOIA Response.

NRC regulations allow 30 days from the date of a FOIA response for administrative FOIA appeals. 10 C.F.R. § 9.29(a). In this case, the FOIA Response is dated September 26, 2014. Inexplicably, however, the FOIA Response was not mailed to SLOMFP until October 1, 2014, five days later. (A copy of the postmarked envelope is attached as Exhibit 1.) SLOMFP did not receive it until October 2.

SLOMFP respectfully submits that the timing requirements in the NRC’s FOIA regulations are based on a presumption of fairness and regularity. Thus, for example, NRC counts the time for its own response to a FOIA appeal to start on the date that the FOIA Officer actually receives the appeal. See 10 C.F.R. § 9.29(d). By the same token, it is fair and reasonable to expect that a FOIA requester will be given a full 30 days -- or at least most of that period -- to submit an administrative FOIA appeal. Where the agency delays sending its FOIA Response, it is only fair to measure the time period from the date the FOIA response was mailed. SLOMFP’s appeal is

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<sup>1</sup> A copy of SLOMFP’s FOIA Request is attached as Exhibit 2.



timely because it is being filed within 30 days of October 1, when the FOIA Response was mailed.<sup>2</sup>

### Grounds for Appeal of FOIA Response

Despite SLOMFP's provision of a substantial amount of documentation of the existence and nature of the documents requested in paragraphs 2 through 6 and 8 through 10 (including ADAMS Accession Numbers for all documents cited), the Staff has disclosed virtually none of the requested documents. Instead, the Staff has simply sent SLOMFP the publicly available documents cited by SLOMFP in FOIA 2014-0372. It does not appear that the NRC made any effort to identify the requested documents, let alone make a determination of whether they were subject to disclosure under the FOIA. As a result, the FOIA Response amounts to a denial.

**Paragraph 2.** In paragraph 2 of FOIA/PA 2014-0376, SLOMFP requested “[c]orrespondence from management of the Center for Nuclear Waste Regulatory Analyses (“CNWRA”), written between March 17, 2004 and February 27, 2006, regarding a November 22, 2003, report by Dr. Robert L. Sewell entitled “A Preliminary Numerical Study of the Hazard from Local Landslide Tsunami Scenarios at the Diablo Canyon Site in Central California” (“Sewell Report”).” FOIA/PA 2014-0376 at 1. To assist in the identification of this correspondence, SLOMFP explained that the requested correspondence is described as follows in an internal NRC memorandum dated February 27, 2006:

*Subsequent correspondence from CNWRA management has confirmed that the draft report has not been accepted by CNWRA and has not gone through the CNWRA quality assurance process. Thus, the draft report's technical basis is not supported by CNWRA.*

FOIA/PA 2014-0376 at 1 (emphasis added) (quoting Memorandum from Michael E. Mayfield, NRR to E. William Brach, NMSS to re “Disposition of Draft Report Entitled, “A Preliminary Numerical Study of the Hazard from Local Landslide Tsunami Scenarios at the Diablo Canyon Site in Central California” (Feb. 27, 2006) (“2/27/06 Mayfield Memo”) (ML060460441)).

Instead of identifying and disclosing the requested correspondence, the NRC sent SLOMFP a copy of the publicly available 2/27/06 Mayfield Memo quoted in SLOMFP's FOIA request. The FOIA Response gives no indication that any attempt was made to identify or locate the “[s]ubsequent correspondence” identified in the 2/27/06 Mayfield Memo, let alone make a determination of whether such documents were subject to disclosure under the FOIA. Thus, the Response amounts to a denial.

**Paragraph 3.** In paragraph 3 of FOIA/PA 2014-0376, SLOMFP requested the following document: Memorandum from John Moninger, NMSS to NRR (with copy to RES) transmitting draft report entitled “A Preliminary Numerical Study of the Hazard from Local Landslide

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<sup>2</sup> In the alternative, should you determine this appeal is not timely, for the reasons discussed above we request that you grant a five-day extension of the time period to correspond with the five-day delay in the mailing of the agency's FOIA Response.

Tsunami Scenarios at the Diablo Canyon Site in Central California” (Feb. 3, 2005). FOIA/PA 2014-0376 at 2. In order to assist the FOIA Office in locating this document, SLOMFP pointed out that the requested document is referred to in several publicly available documents: the 2/27/06 Mayfield Memo; a Memorandum from James R. Hall, NMSS, to Brian E. Thomas, NMSS, re: Summary of Internal Meeting with NRR and RES to Discuss Contractor Report on Tsunami Hazards Analysis (May 5, 2005) (ML051290085) (“5/5/05 Hall Memo”); and an e-mail from Nilesh Chokshi to Patrick Hilland and Joseph Giitter re: Request to Re-open my Earlier Tsunami Assessment Recommendations (March 23, 2011) (ML1318A100) (“3/23/11 Chokshi E-mail”). FOIA/PA 2014-0376 at 2.

Instead of disclosing the requested document, the NRC sent SLOMFP two of the publicly available documents that SLOMFP had already described in its FOIA request: the 2/27/06 Mayfield Memo and the 5/5/05 Hall Memo. The FOIA Response gives no indication that any attempt was made to locate or release the specific document requested by SLOMFP; nor does the FOIA Response state that the document was intentionally withheld. Thus, effectively it is a non-response.

**Paragraph 4.** In paragraph 4 of FOIA/PA 2014-0376, SLOMFP requested the following document: Memorandum (or other correspondence) from the Seismic Issues Technical Advisory Group (SITAG) to Michele G. Evans (Nov. 17, 2005). In order to assist the FOIA Office in locating this document, SLOMFP pointed out that the requested document is referred to in a publicly available Memorandum from Andrew J. Murphy, SITAG, to Michele G. Evans, NRR (Jan. 17, 2006) (“1/17/06 Murphy Memo”) (ML060170114). SLOMFP also pointed out that the 1/17/06 Murphy Memo identifies the requested document and asserts that the requested document contains SITAG’s evaluation of the Sewell Report. Finally, SLOMFP noted that the requested November 17, 2005 SITAG memorandum is distinct from the “updated” version of that memorandum attached to the Murphy Memo.

Instead of disclosing the requested document, the NRC sent SLOMFP the publicly available 1/17/06 Murphy Memo. The FOIA Response gives no indication that any attempt was made to locate or release the specific document requested by SLOMFP; nor does the FOIA Response state that the document was intentionally withheld. Thus, effectively it constitutes a denial.

**Paragraph 5.** In paragraph 5 of FOIA/PA 2014-0376, SLOMFP requested: “[a]ll records of interactions between SITAG and NRC managers, including Michele G. Evans regarding the Nov. 17, 2005 evaluation described in par. 5 above.<sup>3</sup> FOIA/PA 2014-0376 at 2. SLOMFP pointed out that these interactions are referred to in the 1/17/06 Murphy Memo, which states that “SITAG has interacted with you and other NRC managers and identified the need to update the [Nov. 17, 2005] evaluation.” *Id.* SLOMFP also pointed out that the interactions in question took place between Nov. 17, 2005 and Jan. 17, 2006. *Id.*

Instead of disclosing the requested documents, the NRC sent SLOMFP the publicly available 1/17/06 Murphy Memo. The FOIA Response gives no indication that any attempt was made to

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<sup>3</sup> The reference to “paragraph 5 above” was erroneous and should have been “paragraph 4.”

identify or locate the documents requested by SLOMFP, let alone determine whether they were subject to disclosure under the FOIA. Thus, effectively it is a non-response.

**Paragraph 6.** In paragraph 6 of FOIA/PA 2014-0376, SLOMFP requested:

All documents reflecting consideration by NRC of the Sewell Report in licensing proceedings or other safety determinations or assessments for the Diablo Nuclear Power Plant and/or ISFSI, as reflected in the following statements made in an e-mail message from Jessica Kratchman, Project Manager for the Japan Lessons-Learned Project Directorate, to David Weisman, re: REPLY: Tsunami threat and Diablo Canyon vs NRC report (June 12, 2014) (“Kratchman E-mail”)<sup>4</sup>:

Diablo Canyon has been deemed safe to operate based on our current understanding of potential external hazards for the site and the design and construction of the facility. This determination considered input from a large collection of research and licensing efforts in addition to the Sewell report.

\* \* \*

Please be assured that the current safety assessment has considered not only the Sewell report but research and input from numerous sources and experts.

\* \* \*

However, [the Sewell Report], even in its draft form, was appropriately considered during NRC licensing reviews for Diablo Canyon.

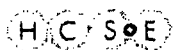
FOIA/PA 2014-0376 at 2. Despite SLOMFP’s documentation of NRC Staff assertions that the Sewell Report has been considered in certain specific NRC licensing proceedings, the FOIA Response does not identify or disclose a single document in response to this request. Nor does the FOIA Response state that no documents could be located. Thus, effectively it constitutes a denial.

**Paragraph 8.** In paragraph 8 of FOIA/PA 2014-0376, SLOMFP requested “[a]ll documents which have evaluated the usefulness of the Sewell Report for regulatory purposes since the NRR dropped it from further consideration in February 2006.” FOIA/PA 2014-0376 at 3. In order to assist the FOIA Office in locating these documents, SLOMFP cited the 2/27/06 Mayfield Memo. *Id.*

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<sup>4</sup> A copy of the Kratchman E-mail was included as an attachment to the FOIA Request.





The FOIA Response gives no indication that any attempt was made to locate documents responsive to this aspect of FOIA/PA 2014-0376, let alone determine whether such documents were subject to disclosure under the FOIA. Thus, effectively it constitutes a denial.

**Paragraph 9.** In paragraph 9 of FOIA/PA 2014-0376, SLOMFP requested “[a]ll correspondence between the NRC and any non-NRC party or parties (other than CNWRA) regarding the Sewell Report.” While some correspondence from the year 2014 is provided in the FOIA Response, the FOIA Response gives no indication as to whether the NRC Staff searched its files for all other years since the Sewell Report was prepared. Given the lack of evidence that the Staff has done any search at all for most of the documents requested in FOIA/PA 2014-0376, we request that you provide a representation as to whether the NRC has, in fact, attempted to locate documents responsive to paragraph 9 of the FOIA request.

**Paragraph 10.** In paragraph 10 of FOIA/PA 2014-0376, SLOMFP requested “[a]ll correspondence between CNWRA and any non-CNWRA party or parties (other than NRC) regarding the Sewell Report.” No documents at all are provided in response to this aspect of FOIA/PA 2014-0376, and the FOIA Response does not state whether any attempt was made to identify or locate the requested documents. Given the lack of evidence that the Staff has done any search at all for most of the documents requested in FOIA/PA 2014-0376, we request that you provide a representation as to whether the NRC has, in fact, attempted to locate documents responsive to this part of the FOIA request.

Thank you for your consideration. I look forward to your response within 20 working days, as required by NRC regulations.

Sincerely,

/s/

Diane Curran

[dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

Counsel to SLOMFP

Cc: Nina Argent, FOIA Officer, [foia@nrc.gov](mailto:foia@nrc.gov)