

From: Pedersen, Renee
To: [Borchardt, Bill](#); [Weber, Michael](#); [Johnson, Michael](#); [Satorius, Mark](#); [Mitchell, Reggie](#)
Cc: [Leeds, Eric](#); [Howell, Art](#); [Zimmerman, Roy](#); [Uhle, Jennifer](#); [Beroman, Thomas](#); [Campbell, Andy](#); [Evans, Michele](#); [OKeefe, Neil](#); [Rutledge, Steven](#); [Trent Wertz \(Trent.Wertz@nrc.gov\)](mailto:Trent.Wertz@nrc.gov); [Solorio, Dave](#); [Sewell, Margaret](#)
Subject: Notification of New DPO on Diablo Canyon Seismic Issues (DPO-2013-002)
Date: Wednesday, July 31, 2013 5:41:00 PM

In accordance with section (D)(3)(c) of the MD 10.159 Handbook, I am notifying you that I have received, screened, and accepted a new DPO in coordination with the Director, OE, for review under the DPO process.

The DPO (DPO-2013-002) raises concerns about a 2011 Pacific Gas and Electric (PG&E) report to the NRC that included a reevaluation of the local geology surrounding the Diablo Canyon Power Plant. In particular, the DPO focuses on whether adequate action was taken to address the new seismic information into the current licensing basis and whether appropriate actions were taken to address operability.

The DPO raises concerns similar to those addressed in [NCP-2012-001](#).

We will soon be forwarding this DPO to Eric Leeds, NRR, OD for appropriate dispositioning.

Please feel free to contact me or Marge Sewell if you have any questions about this DPO or other DPO-related issues.

Renée Pedersen
Senior Differing Views Program Manager
(301) 415-2742
Renee.Pedersen@nrc.gov

Marge Sewell
Safety Culture Specialist
(301) 415-8045
Marge.Sewell@nrc.gov

From: Pedersen, Renee
To: [Peck, Michael](#)
Cc: [Sewell, Margaret](#)
Bcc: [Solario, Dave](#)
Subject: Acceptance of DPO (DPO-2013-002)
Date: Wednesday, July 31, 2013 6:06:00 PM

Michael,

In accordance with the procedures included in MD 10.159, we have received, screened, and accepted your DPO in coordination with the Director, OE, for review under the DPO process.

Your DPO has been assigned the tracking number DPO-2013-002.

We will soon be forwarding this DPO to Eric Leeds, NRR, OD for appropriate dispositioning. We will contact you when the DPO Panel has been established.

Your differing view is welcomed and valued and will be appropriately considered. An important aspect of our internal safety culture is respect. As such, all employees involved in the process are instructed to exercise discretion and treat this matter sensitively. Documents will be distributed on an as-need basis during the evaluation. In an effort to preserve your privacy and keep the focus on the issues, employees are instructed to simply refer to you as the DPO submitter. It is appropriate for you to discuss the details of the DPO with other NRC employees as part of the evaluation, however, as with other predecisional processes, you should not discuss details of the DPO outside the agency. A summary of the disposition of the DPO will be included in the Commission's Weekly Information Report (posted on the public web site) when the process is complete and will include a link to the DPO Case File (with redactions, as warranted) if you request that the case file be public.

Finally, retaliation for engaging in the DPO process is not tolerated. In the event you believe that you have been harassed, intimidated, or retaliated against for engaging in the DPO process, please contact me as soon as possible.

Thank you for pursuing your concern and engaging in the DPO process. A free and open discussion of differing views is essential to the development of sound regulatory policy and decisions.

Please feel free to contact me or Marge Sewell if you have any questions or concerns about your DPO or DPO-related issues.

Renée Pedersen
Senior Differing Views Program Manager
(301) 415-2742
Renee.Pedersen@nrc.gov

Marge Sewell
Safety Culture Specialist
(301) 415-8045
Marge.Sewell@nrc.gov

Dan Dorman Approval - ACTION Need Approval for Public Release of DPO Case File.txt

From: Dorman, Dan

Sent: Tuesday, September 09, 2014 3:35 PM

To: Pedersen, Renee

Cc: Wertz, Trent; Uhle, Jennifer; Evans, Michele; Case, Michael; Markley, Michael; Holahan, Patricia; Solorio, Dave; Sewell, Margaret

Subject: Re: ACTION: Need Approval for Public Release of DPO Case File

Renee,

I approve release of the DPO Case File as discussed below.

Thanks

Dan

From: Pedersen, Renee

Sent: Tuesday, September 09, 2014 02:53 PM

To: Dorman, Dan

Cc: Wertz, Trent; Uhle, Jennifer; Evans, Michele; Case, Michael; Markley, Michael; Holahan, Patricia;

Solorio, Dave; Sewell, Margaret

Subject: ACTION: Need Approval for Public Release of DPO Case File

Dan,

The EDO has issued his decision and the employee has asked that the DPO Case File be made available to the public.

We have previously communicated with your staff and they indicated that they did not see the need for any redactions in the DPO Case File.

In accordance with the guidance in MD 10.159, you are responsible for ensuring that information is appropriately released to the public.

Therefore, please confirm that you support public release of the complete DPO Case File.

If you have any questions, please let us know.

We are hoping to get this declared as a public OAR ASAP so it will be available to the public by tomorrow.

Renée

On July XX, 2014, the Executive Director for Operations (EDO) issued a decision on an appeal to a May 29, 2014, Differing Professional Opinion (DPO) Decision made by the Director, Office of Nuclear Reactor regulation (NRR). The appeal was related to an NRC employee who submitted a DPO, dated July 19, 2013, concerning seismic issues at the Diablo Canyon Nuclear Power Plant (DCNPP). The original DPO contended that there is less than adequate corrective actions to incorporate the new seismic information into the current licensing basis and that the licensee has failed to demonstrate that the plant technical specification required structures, systems, and components (SSCs) are operable

On receipt of the DPO appeal, the EDO reviewed relevant documents, met with the DPO Panel, conferred with the Office of General Counsel, and met with the DPO submitter. The technical concerns addressed the NRC decision not to issue a violation based on the inaccurate statements in the FENOC submittal. After careful review and deliberation the EDO concluded that the actions taken by staff in response to the DPO are adequate. The EDO agreed with the DPO Panel decision that based on the staff's prior understanding of the factual backdrop which attended FENOC's submittal that no additional 10 CFR 50.9 violation occurred. Additionally, the EDO verified that the Panel's recommendation, to release the initial correspondence from FENOC's general counsel addressing FENOC's submittal publically, was carried out. As such, the EDO found there was no need to reopen the DPO on the "Davis Besse Reply to a Notice of Violation." The EDO also recognized the efforts of the submitter in raising the issues and concerns, and the contribution of the employee in ensuring the agency's safety goals are achieved.

DPO-2013-002: Diablo Canyon Seismic Issues

DPO Case File – ADAMS ML14252A743 (Public)

DPO Appeal Decision

On September 9, 2014, the Executive Director for Operations (EDO) issued a decision on the appeal of DPO 2013-002, concerning seismic issues at the Diablo Canyon Nuclear Power Plant (DCNPP). The EDO's decision on the appeal supported both the DPO panel's independent technical conclusions and subsequent Office of Nuclear Reactor Regulation (NRR) Director's decision that there was not a significant or immediate concern with seismic safety at DCP, and that the licensee and staff had followed appropriate processes for technical specification operability of plant equipment and Title 10 Code of Federal Regulations 50.59 evaluations with a reasonable technical and safety rationale. The EDO noted that the DPO raised awareness of the complexity of the DCNPP seismic licensing basis, but also illustrated the need for the agency to ensure there are clear guidelines for staff and licensees regarding how changes in natural hazards should be evaluated for all licensees. The public records for this DPO are available in the DPO case file package in ADAMS ML14252A743.

Questions, comments?

Telephone (301) 415-2741

E-mail: DPOPM.Resource@nrc.gov

The purpose of this memorandum is to inform you of my considerations and conclusions regarding the appeal you submitted on June 23, 2014, on the subject Differing Professional Opinion (DPO).

BACKGROUND

Your DPO is rooted in the Diablo Canyon Power Plant (DCPP) seismic licensing history and how the licensing basis is applied to the plant today. In 1968, when the DCPP Unit 1 Construction Permit was issued, the seismic evaluation had been completed under the Atomic Energy Commission's requirements. Based on the information available at the time, the design earthquake (DE) was defined as having a peak ground acceleration of 0.2 g, and the double design earthquake (DDE) was a doubling of the DE earthquake to ensure safety-related structures, systems, and components would function as expected after the earthquake, 0.4 g. In 1973, the DCPP licensee, Pacific Gas and Electric (PG&E), became aware of the Hosgri fault. PG&E evaluated the Hosgri fault using Regulatory Guide 1.61, "Damping Values for Seismic Design of Nuclear Power Plants" October 1973. Though not included in the construction application, NRC reviewed the licensee's evaluation of the Hosgri fault and required PG&E to make plant modifications to be able to withstand the 0.75 g peak ground acceleration associated with the Hosgri fault. The operating license for Unit 1, issued in 1984, was based on review of the Updated Final Safety Analysis Report which included two different seismic methodologies, the DDE and the Hosgri evaluation. Given expected advances in the science of seismic evaluation, the license was also conditioned to require a confirmatory seismic study over the first 10 years of operation, referred to as the Long Term Seismic Program.

Commented [PR1]: Should this be "applicant" because they didn't get the license until 1984?

In November 2008, PG&E reported identification of a new offshore fault, subsequently identified as the Shoreline fault zone. The initial evaluation in Event Report No. 44675 indicated that the newly identified fault was "smaller than the Hosgri fault, which is the current bounding seismic feature for DCPP." In January 2011, PG&E submitted the "Report on the Analysis of the Shoreline Fault Zone, Central Coast California" (Agencywide Documents Access and Management System (ADAMS) Accession Number ML110140431) which documented their investigation of the Shoreline fault zone and its relationship to other seismic sources in proximity to the DCPP. In September 2012, the NRC issued Research Information Letter 12-01, "Confirmatory Analysis of Seismic Hazard at the Diablo Canyon Power Plant from the Shoreline Fault Zone" (ADAMS Accession No. ML121230035). The conclusion of the review from the executive summary is excerpted below:

Commented [PR2]: Because this will likely be a public document, should we say anything about the outcome of this study, e.g., still bounded?

Commented [M3]: For some prior DPO's the response letter has also included a brief discussion of related non-concurrences from the filer. I have not included the related non-concurrences that were filed on this issue. However, if you would like it added for completeness, I can prepare additional paragraphs to discuss the 2011 and then 2012 non-concurrences.

"In this review of the hazard from the Shoreline fault, the NRC compared the resulting deterministic seismic ground motions to loading levels for which the plant has been previously reviewed, specifically the Hosgri Earthquake (HE) ground motion response spectrum as described in NUREG-0675, "Safety Evaluation Report Related to the Operation of Diablo Canyon Power Plant, Units 1 and 2," Supplement No. 7 (NRC, 1978), and the LTSP ground motion response spectrum as detailed in NUREG-0675, Supplement No. 34 (NRC, 1991). The results indicate that deterministic seismic-loading levels predicted for all the Shoreline fault earthquake scenarios developed and analyzed by the NRC are at, or below, those levels for the HE ground motion and the LTSP ground motion. The HE ground motion and the LTSP ground motion are those for which the plant was evaluated previously and demonstrated to have reasonable assurance of safety."

Beginning in 2010, as the senior resident inspector for Diablo Canyon, you raised concerns with your Region IV management regarding the adequacy of PG&E's evaluation of the

Commented [PR4]: Check with Region IV for accuracy. He may have been voicing concerns earlier.

Shoreline fault zone. In July 19, 2013, you submitted this DPO documenting your concerns. The statement of concerns from your DPO is summarized as follows:

1. The NRC did not enforce the Diablo Canyon Technical Specifications with respect to this seismic issue, because the new seismic information showed that required structures, systems and components could be exposed to greater vibratory motion than previously considered for the safe shutdown earthquake.
2. PG&E's operability evaluation following the development of the new seismic information was inadequate, because the new seismic information was not compared correctly to the plant's licensing basis.
3. The NRC failed to enforce 10 CFR 50.59 requirements that PG&E obtain an amendment to their license, because the new seismic information showed that more than a minimal increase would occur in the likelihood of malfunction of structures, systems and components important to safety.
4. The NRC failed to adequately address the Los Osos and San Luis Bay faults, which could produce ground motions in excess of the safe shutdown earthquake ground motion.

The DPO Ad Hoc Review Panel was established on September 3, 2013. The Ad Hoc Review Panel met with you on October 23, 2013, and then periodically throughout their review to further discuss your concerns. The Ad Hoc Review Panel focused their review on the agreed to statement of concerns, as summarized above. The panels' conclusions are summarized for each concern:

1. The panel noted that your DPO was instrumental in identifying the complexity of the range of conditions considered in the DCPD Updated Final Safety Analysis Report seismic evaluation. However, the panel concluded that given appropriate comparisons, the potential ground motions from the Shoreline fault zone do not exceed the levels of acceleration considered in the design and licensing of DCPD for required structures, systems and components.
2. The panel noted that this concern is based upon your conclusion that there is only one appropriate evaluation method for new seismic information, specifically to substitute the new seismic information into the original DDE method. The panel concluded that the licensee's evaluation method was acceptable given that the Updated Final Safety Analysis Report identifies both the DDE and the Hosgri evaluation.
3. The panel concluded that an amendment to the license was not required because the Shoreline fault zone ground motions do not exceed the levels evaluated in the DCPD design and licensing. Therefore, there is no potential violation of the 10 CFR 50.59 requirements.
4. The panel agreed with you that the NRC staff did not clearly and explicitly consider the potential ground motions from the Los Osos and San Luis Bay fault. However, the panel noted that both the Los Osos and San Luis Bay faults had previously been evaluated in the Long Term Seismic Program. Additionally, these faults were evaluated from a risk perspective by NRC staff in Research Information Letter 12-01. The panel concluded that the Los Osos, San Luis Bay, and the Shoreline faults do not exceed the level of ground motion already considered in the design and licensing of DCPD.

On May 29, 2014, the Director, Office of Nuclear Reactor Regulation, provided you with his decision on your the-DPO-decision. The Office Director agreed with the Ad Hoc Review Panel's report with respect to your specific technical concerns. However, he noted that your DPO highlighted the need for the agency to further consider how new information on natural hazards should be considered in the regulatory process and his expectation that the work currently

Commented [PR5]: This is where you may want to include a short discussion of past NCPs to help tell the story that this employee has been raising issues and we have been following our processes to address his issues. Be careful in characterization because the previous NCPs may be related, but not exact issues in DPO.

underway on the Fukushima Near Term Task Force Recommendations 2.1 and 2.2, would address this issue.

On June 23, 2014, you filed a DPO appeal. In the appeal, you noted your agreement with the Panel's conclusion that issues raised in the DPO do not result in a significant or immediate safety concern. You also state agreement that the potential ground motions from the Shoreline fault zone do not exceed the levels considered during licensing of the plant. However, you have very narrowly defined the licensing basis and approved methodology for seismic evaluation as being limited to the methodology associated with the DDE from the original license application. Based on your exclusion of the Hosgri evaluation from the licensing basis, your appeal reiterates your belief that a license amendment is required to revise the DDE evaluation to the higher ground motions associated with the new seismic information. Additionally, you recommend the agency initiate enforcement action for the failure to take appropriate actions to address the new seismic information associated with the Shoreline fault zone.

EXECUTIVE DIRECTOR FOR OPERATIONS REVIEW AND DECISION

When I received your appeal, I initiated an extensive review of the available information related to DPO 2013-002. I reviewed many documents including, but not limited to, the DPO you originally submitted, the Ad Hoc Review Panel's report dated April 3, 2014, the Office Director's decision regarding your DPO, and your appeal of the Office Director's decision, and the Office Director's statement of views on the contended issues in your DPO appeal. To understand the issues fully, I met with members of the Ad Hoc Review Panel on July 28, 2014, and I met with you on July 30, 2014. My review was focused on the agreed upon issues that you raised in your DPO submittal, limited to the technical issues you raised.

I would like to commend you on a package that was well-researched, and insightful. Based on my review, discussion with the Ad Hoc Review Panel, and our interview, I agree that there is no significant or immediate safety concern associated with the issue you have raised. However, you have highlighted the complexity of the Diablo Canyon licensing basis as documented in the Updated Final Safety Analysis Report, which is a direct result of how the licensing basis was augmented during the original licensing process, between issuance of the construction permit in 1968 and issuance of the operating licensing in 1984. While I appreciate your concern with the clarity of the Updated Final Safety Analysis Report, I am unable to arrive at the same conclusion whereby you exclude the Hosgri evaluation from the licensing basis.

Nevertheless, your questioning attitude and perseverance were key to ensuring the licensee and staff fully evaluated the implications of the Shoreline fault zone. In addition to raising awareness of the complexity of the DCPD seismic licensing basis, you have illustrated the need for the agency to ensure there are clear guidelines for staff and licensees regarding how changes in natural hazards should be evaluated. This awareness is particularly timely and important as we move forward with the Fukushima Near Term Task Force Recommendations.

I want to thank you for bringing your concerns to my attention. Your DPO was well thought out and researched. As you know, our agency relies on its staff members to raise concerns regarding decisions so that they can be properly considered. Your perseverance in raising these concerns demonstrates your dedication to safety that is the foundation of the agency's excellent staff, and I applaud your efforts in this regard. I take concerns such as the ones you raised very seriously, and hope that my interactions with you have shown my complete and thorough review of your concerns in making my decision.

Commented [PR6]: OK, time for candid feedback. If it was me, I'd be frustrated that you are telling me what I agreed with rather than capturing the 2 issues I clearly identified as the reason for the appeal that support my statement that the panel report had insufficient detail to support its conclusion. I'm not suggesting that you don't include the "it's safe" message, just be mindful of identifying his issues. This has been a repeated frustration by the employee. Include the evaluation of his issues in the next section

Commented [M7]: This para is fairly standard boilerplate from prior appeal responses.

Commented [PR8]: Editorial comment—if you include one date, include them all

Commented [PR9]: The current wording may lead others to believe that the submitter raised other issues to the EDO, such as the possibility of retaliation

Commented [PR10]: Once again, it's OK to highlight the "it's safe" message, but clearly articulate the rationale for the outcome of his issues. The results of our targeted survey indicated that 33% of submitters didn't think the rationale for DPO decisions were clearly stated.

Commented [M11]: Are there any potential additional actions that need to be considered for NRR's follow-up?

Commented [M12]: This para is fairly standard boilerplate from prior appeal responses.

Extension Approval 5-30-14 - STARS OEDO ACS Notification (OEDO-14-00211-NRR).txt
From: ADAMS p8_icm_service
Sent: Friday, May 09, 2014 2:11 PM
To: ICM-STARS-OEDO-ACS@nrc.gov; Pedersen, Renee; Sewell, Margaret;
Foster, Jack
Subject: STARS OEDO ACS Notification (OEDO-14-00211-NRR)

A new OEDO Ticket has been assigned to you by Brock, Kathryn (kmb3) on 05/09/2014.

Last User Comment has been added to a Ticket by Brock, Kathryn (kmb3) on 05/09/2014.
The

comment was -

Extension approved per request. To Whom It May Concern, In accordance with
Management

Directive 10.159, Handbook (D)(5)(b), DPOs are expected to be completed within 120
days and

the 120-day time frame may only be extended with the approval of the EDO through the

DPOPM for offices that report to the EDO. The purpose of this email is to request an
extension

for DPO-2013-002. In particular, please revise the current due date from April 30,
2014 to May

30, 2014. The schedule has been impacted by the complex nature of the issue, the
need to gather

information from the licensee, and competing schedule commitments. The DPO process
affords

employees an opportunity to have their views expressed to and considered by high
level

managers. Ensuring that managers have sufficient time to fully consider the issues
is critical to

the success of the process. We have reviewed the extension request and think that it
is reasonable

and consistent with the goals of the DPO Program. Thank you for your consideration
of this

request. Eric J. Leeds Director, Office of Nuclear Reactor Regulation U.S. Nuclear
Regulatory

Commission 301-415-1270

The Ticket information is below.

Ticket Info

Activity

Information

Case Number

OEDO-14-00211-NRR

Extension Approval 5-30-14 - STARS OEDO ACS Notification (OEDO-14-00211-NRR).txt
Status
Approved by DAO

Activity Type
Task

EDO Due Date
04/30/2014

SECY Due Date

Requested Due
Date

Assigned Offices
NRR

Routing Copies
to
OE

EDO Point of
Contact
Pedersen, Renee (rmp) | Sewell, Margaret (mhs1) | Foster, Jack
(jwf)

Other Parties

Incoming
ADAMS
Accession
ML13213A248

Date of
Incoming
08/02/2013
Incoming
ADAMS
Package
ML14087A354

Frequency

Incoming

Extension Approval 5-30-14 - STARS OEDO ACS Notification (OEDO-14-00211-NRR).txt
Information

Originator
Michael Peck

Originator
Organization
Other NRC Offices - OCHCO

Task
DPO

Addressee Name
Peck M S

Addressee
Affiliation
NRC/OCHCO

Incoming
Received Date
08/09/2013

Subject
Differing Professional Opinion (DPO) Involving Diablo
Canyon Seismic Issues (DPO-2013-002)

Description

Process
Information

Special
Instructions
Type

Special
Instructions
Please process DPO and associated actions in accordance with
guidance included in ML13213A248. (1) Decision for DPO-
2013-002 is due April 30, 2014 and (2) Follow-up action
memorandum and Weekly Information Report Summary is due
two weeks after DPO decision.

Extension Approval 5-30-14 - STARS OEDO ACS Notification (OEDO-14-00211-NRR).txt

Near Term
Comment

Requested
Action Type
Memo

Cross Reference
Numbers
DPO-2013-002

Signature Level
Direct Reply - NRR

OIG
Recommend

OEDO
Concurrence

OCM
Concurrence

OCA
Concurrence

EDO Approval -5-30-14 - STARS OEDO Office Notification OEDO-14-00211-NRR.txt

From: ADAMS p8_icm_service
Sent: Friday, May 09, 2014 2:20 PM
To: ICM_STARS_NRR; Pedersen, Renee; Sewell, Margaret; Foster, Jack
Subject: STARS OEDO Office Notification (OEDO-14-00211-NRR)

A new OEDO Ticket has been assigned to you by Jones(NRR), Latoya (ldj) on 05/09/2014.

Last User Comment has been added to a Ticket by Jones(NRR), Latoya (ldj) on 05/09/2014. The comment was - OEDO approved an extension request to 05/30/14.

The Ticket information is below.

Ticket Info
Activity
Information

Case Number
OEDO-14-00211-NRR

Status
Due Date Extended

Activity Type
Task

EDO Due Date
05/30/2014

SECY Due Date

Requested Due
Date

Assigned Offices
NRR

Routing Copies
to
OE

EDO Point of

EDO Approval -5-30-14 - STARS OEDO Office Notification OEDO-14-00211-NRR.txt

Contact

Pedersen, Renee (rmp) | Sewell, Margaret (mhs1) | Foster, Jack
(jwf)

Other Parties

Incoming

ADAMS

Accession

ML13213A248

Date of

Incoming

08/02/2013

Incoming

ADAMS

Package

ML14087A354

Frequency

Incoming

Information

Originator

Michael Peck

Originator

Organization

Other NRC Offices - OCHCO

Task

DPO

Addressee Name

Peck M S

Addressee

Affiliation

NRC/OCHCO

Incoming

Received Date

08/09/2013

Subject

Differing Professional Opinion (DPO) Involving Diablo
Canyon Seismic Issues (DPO-2013-002)

Description

Process

Information

Special

Instructions

Type

Special

Instructions

Please process DPO and associated actions in accordance with
guidance included in ML13213A248. (1) Decision for DPO-
2013-002 is due April 30, 2014 and (2) Follow-up action
memorandum and Weekly Information Report Summary is due
two weeks after DPO decision.

Near Term

Comment

Requested

Action Type

Memo

Cross Reference

Numbers

DPO-2013-002

Signature Level

Direct Reply - NRR

OIG

Recommend

OEDO

Concurrence

EDO Approval -5-30-14 - STARS OEDO Office Notification OEDO-14-00211-NRR.txt
OCM
Concurrence

OCA
Concurrence

RE QUESTION DPO-2013-00 - Extension Requested for Appeal Opportunity.txt

From: DPOPM Resource
Sent: Monday, June 02, 2014 11:25 AM
To: Peck, Michael
Cc: Pedersen, Renee; Solorio, Dave; Hilton, Nick; Sewell, Margaret
Subject: RE: QUESTION: DPO-2013-00 - Extension Requested for Appeal Opportunity

Michael,

Your request for an appeal extension has been granted and the deadline is now June 30, 2014.

If you have any additional questions, please feel free to contact us.

Thanks you.

From: Peck, Michael
Sent: Friday, May 30, 2014 8:50 AM
To: DPOPM Resource
Cc: Pedersen, Renee; Solorio, Dave; Hilton, Nick; Sewell, Margaret
Subject: QUESTION: DPO-2013-00 - Extension Requested for Appeal Opportunity

Ms. Pedersen,

I received Mr. Leeds' DPO 2013-002 decision memo this morning. I understand that MD 10.159 provides 21 calendar days for me to appeal the decision. May I have an extension to the appeal deadline until June 30, 2014?

I request the additional time to comprehensively address the highly complex issues involved in the DPO Panel Report and to compensate for my unavailability during the first two weeks in June due to official travel.

Thank you,
Michael

From: DPOPM Resource
Sent: Thursday, May 29, 2014 5:56 PM
To: Peck, Michael
Cc: Pedersen, Renee; Solorio, Dave; Hilton, Nick; Sewell, Margaret
Subject: DPO-2013-002 - Diablo Canyon Seismic Issues - Opportunity to Appeal

Michael,

RE QUESTION DPO-2013-00 - Extension Requested for Appeal Opportunity.txt

By now you should have received the DPO Decision dated May 29, 2014. In accordance with the guidance in MD 10.159, "The NRC Differing Professional Opinions Program," you have 21 calendar days from the date you received the DPO Decision to submit an appeal if you choose.

If you have questions about the appeal process or any other DPO-related questions or concerns, please feel free to contact us.

If you do not send an appeal by June 30 19, 2014, we will assume that you do not want to submit an appeal. At this point, the DPO process will be considered complete. When the DPO process is complete, we will contact you about whether you would like to request that the DPO Case File be made public or remain non-public. The DPO Case File serves as a valuable KM tool. The DPO Case File will be posted on the internal Web site and the ADAMS accession number (if public) will be included in the summary of the case that is included in the Commission's Weekly Information Report (e.g., <http://www.internal.nrc.gov/OE/dpo/dpo-2012-003.html>).

As a reminder, we are still in a predecisional process and you should not release or discuss documents until the process is complete and records are reviewed in accordance with procedures for discretionary release.

Thank you for exercising your responsibility as an NRC employee and ensuring that agency decision-makers have all the information they need to make well-informed decisions that help us fulfill our regulatory mission. We understand that the DPO process can be an emotional journey and we appreciate your professionalism during the process.

Please feel free to call Renée Pedersen or Marge Sewell if you have any questions.

Renée Pedersen
OE/CRB
Senior Differing Views Program Manager
301-415-2742

RE QUESTION DPO-2013-00 - Extension Requested for Appeal Opportunity.txt

Marge Sewell

OE/CRB

Safety Culture Specialist

301-415-8045

Summary of Appeal of DPO 2013-002 Diablo Canyon Seismic Issues.txt

From: Peck, Michael
Sent: Monday, July 07, 2014 1:51 PM
To: Pedersen, Renee
Subject: Summary of Appeal of DPO 2013-002, Diablo Canyon Seismic Issues

Summary of Appeal of DPO 2013-002, Diablo Canyon Seismic Issues

Mr. Leeds endorsed (ref. 1) the following conclusions from the DPO Panel Report:

- * The DPO issues did not represent a significant or immediate safety concern,
- * The Diablo Canyon licensing seismic history is complex, and
- * The potential ground motions from nearby faults would not exceed the levels of ground motion already considered during the design and licensing of the plant.

I am in full agreement with Mr. Leeds and the DPO Panel on all of these conclusions. However, none of these points were raised as concerns in the DPO.

In contrast, the DPO did address the following issues:

* The licensee failed to obtain an amendment to the operating license prior to adding the new seismic information to the FSAR. The new seismic information (ground motions) were beyond the boundary of the existing GDC 2 design bases and safety analysis. The failure of the licensee to correct the non-conforming safety analysis was a violation of 10 CFR 50, Appendix B, and failure to obtain NRC approval prior to the FSAR update was a violation of 10 CFR 50.59.

* The NRR PM provided direction to the licensee to directly place the new seismic information into the FSAR after the agency rejected the license amendment request. As a result, the notice and hearing opportunity requirements per 10 CFR 50.91 were bypassed for this controversial change to the facility as described in the FSAR.

* The licensee omitted information from two of the three reanalyzed (and more limiting) earthquake faults.

* The licensee failed to adequately demonstrate operability for technical specification required structure, system and components for the new higher ground motions. Region

Summary of Appeal of DPO 2013-002 Diablo Canyon Seismic Issues.txt

IV failed to initiate enforcement action following the licensing failure to meet technical specification requirements.

The DPO Panel Report redefined the Diablo Canyon design and licensing bases. This redefined design and licensing bases was different than described in the DPO and the facility FSAR. This redefined design and licensing bases was necessary to support the Panel's conclusions on the DPO issues. Prior to the DPO Panel Report, the facility seismic design and licensing based had not been in dispute. Both the DPO and DPO Appeal included actual pages from the FSAR to ensure a consistent understanding of the facility design and licensing bases. The Panel Report did not include the rationale or justification for using the redefined design and licensing based.

Consequence of the issued raised in the DPO:

* Bypassing the license amendment process subverted the required notice and herring opportunity for a controversial action.

* Several violations of NRC requirements continued to be uncorrected. Some of these violations are potential escalated traditional enforcement and potential greater than Green findings.

* The failure to correct noncompliance with NRC regulations undermines both agency credibility and public confidence that safety is maintained.

(Ref 1: Memorandum to MS Peck, From EJ Leeds, DPO Involving Seismic Issues at the Diablo Canon, May 29, 2014)

Michael Peck, Ph.D.
Senior Reactor Technology Instructor
TTC, 432-855-6515

FW WIR input - EDO Decision on Diablo Canyon DPO Appeal.txt
From: Pedersen, Renee
Sent: Thursday, September 11, 2014 2:09 PM
To: Sewell, Margaret
Cc: Solorio, Dave
Subject: FW: WIR input - EDO Decision on Diablo Canyon DPO Appeal

Marge,

Please use this summary and have the case placed on the DPO web site. You can also include the summary in the assessment appendix.

Thanks!
Renée

From: Segala, John
Sent: Thursday, September 11, 2014 1:46 PM
To: Cianci, Sandra; Schumann, Stacy
Cc: Pedersen, Renee; Sampson, Michele; Galloway, Melanie; Bowers, Anthony
Subject: WIR input - EDO Decision on Diablo Canyon DPO Appeal

Sandy/Stacy,

Melanie has approved the following WIR input.

Per our discussion yesterday, please add it to the September 12th WIR.

Please let me know if you have any questions.

Thanks, John

Office of the Executive Director for Operations (EDO)
Items of Interest

EDO Decision on Differing Professional Opinion (DPO) 2013-002 Appeal: Diablo Canyon
Seismic Issues (DPO 2013-002)

On September 9, 2014, the Executive Director for Operations (EDO) issued a decision on the appeal of DPO 2013-002, concerning seismic issues at the Diablo Canyon Nuclear Power Plant (DCNPP). The EDO's decision on the appeal supported both the DPO panel's independent technical conclusions and subsequent Office of Nuclear Reactor Regulation (NRR) Director's decision that there was not a significant or immediate concern with seismic safety at DCP, and

FW WIR input - EDO Decision on Diablo Canyon DPO Appeal.txt
that the licensee and staff had followed appropriate processes for technical
specification
operability of plant equipment and Title 10 Code of Federal Regulations 50.59
evaluations with
a reasonable technical and safety rationale. The EDO noted that the DPO raised
awareness of
the complexity of the DCNPP seismic licensing basis, but also illustrated the need
for the
agency to ensure there are clear guidelines for staff and licensees regarding how
changes in
natural hazards should be evaluated for all licensees. The public records for this
DPO are
available in the DPO case file package in ADAMS (ML14252A743).

FW RES Follow Up From Diablo Canyon Seismic DPO Discussion.txt
From: Pedersen, Renee
Sent: Thursday, October 30, 2014 10:17 AM
To: Holahan, Patricia
Cc: Sosa, Belkys; Solorio, Dave; Sewell, Margaret
Subject: FW: RES: Follow Up From Diablo Canyon Seismic DPO Discussion

FYI...

From: Peck, Michael
Sent: Thursday, October 30, 2014 9:37 AM
To: Satorius, Mark
Cc: Pedersen, Renee
Subject: RES: Follow Up From Diablo Canyon Seismic DPO Discussion

Mr. Satorius,

Thank you for recognizing my contribution to the agency's Differing Professional Opinions (DPO) Program. I also appreciated the consolatory language used in your reply to my appeal and the opportunity to discuss the Diablo Canyon DPO issues with you in person.

During our meeting this past Friday and in late July, I understood you to say that the agency will focus forward rather than expending resources on past issues that have been corrected. After considering your feedback, I wanted to ensure that you understood that I view the issues identified in the DPO and Appeal as ongoing violations of NRC Rules and Diablo Canyon license requirements. I believe these uncorrected violations do have an impact on plant safety.

During 2013, Pacific Gas and Electric (PG&E) made changes to the Diablo Canyon FSARU. These changes were sufficient to lead the DPO Panel to conclude that the Hosgri Event was the/a facility safe shutdown earthquake for the facility. Since these changes would require an amendment to the Operating License, and no amendment was approved by the agency, PG&E's action represents an ongoing violation of 10 CFR 50.59 and should be promptly addressed in accordance with the NRC Enforcement Policy.

I realize enforcing the Diablo Canyon seismic design basis would result agency challenges. The most obvious corrective action would include agency approval of the Hosgri as the facility safe shutdown earthquake. However, this proposed action was previously considered and rejected by agency technical staff. Without a safe shutdown

FW RES Follow Up From Diablo Canyon Seismic DPO Discussion.txt

earthquake methodology that is both acceptable to the staff and can accommodate the new higher seismic loading results in ongoing violation of NRC 10 CFR 50, Appendix B, quality assurance requirements and should be promptly addressed in accordance with the NRC Enforcement Policy.

PG&E's failure to adequately demonstrate operability of important to safety SSCs also remains as an ongoing issue. ASME, Section III, Code acceptance limits are exceeded when the new seismic loads are summed with the required load combinations using the NRC approved safe shutdown earthquake methodology (considering the new maximum capable ground motion). The NRC requires that licensee satisfy Code acceptance limits for operability of reactor coolant pressure boundary components. PG&E's failure to demonstrate that Code requirements were met was not addressed in either the DPO Panel Report or your DPO Appeal response letter. The failure to meet Code acceptance limits represents an ongoing violation of 10 CFR 50.55a and the facility Technical Specifications and should be promptly addressed in accordance with the NRC Enforcement Policy.

I appreciated the summary of the Diablo Canyon seismic licensing bases included in your September 9, 2014 memorandum. This summary acknowledged the original design bases as presented in the Preliminary Safety Analysis Report, NRC review of the Hosgri Evaluation provided in Supplemental Safety Evaluation Report 7, a description of the NRC review of Long Term Seismic Program provided in Supplemental Safety Evaluation Report 34, and requested actions associated with Recommendation 2.1 from the Near-Term Task Force Review of the Fukushima Accident. While this information provides insight into the Diablo Canyon seismic licensing bases and may be used to support future NRC licensing actions, none of this information may be used by the licensee as a bases to change the facility safe shutdown earthquake methodology without prior NRC approval. 10 CFR 50.59 and agency endorsed guidance established the threshold for facility changes that require an amendment to

FW RES Follow Up From Diablo Canyon Seismic DPO Discussion.txt

the
Operating License. This threshold was based on the methodology described in the
FSAR for
meeting regulatory driven design bases requirements, such as General Design Criteria
(GDC) 2
for protection against earthquakes. Prior to the 2013 changes, the Diablo Canyon
FSARU
clearly stated that the GDC 2 facility safe shutdown earthquake requirement was met
by the
Double Design Earthquake safety analysis. The FSARU went on to explicitly state
that the
Hosgri Evaluation methodology did not satisfy NRC GDC 2 design bases requirements
for the
facility safe shutdown earthquake.

I would like to thank you again for your time and attention to the Diablo Canyon
issues raised in
DPO 2013-02. Please feel free to contact me if I can provide any additional
information
regarding ongoing compliance issues at Diablo Canyon.

Thank you,
Michael Peck, Ph.D.
Senior Reactor Technology Instructor
TTC, 423-855-6515

Non-concurrence and DPO Questions

[NOTE - this information is generally NON-PUBLIC, but is provided as background only]

NOTE: General FAQs on the DPO Program are included on the DPO Web site (look under Employee Resources—Employee Concerns).

1. Was the former DCPD SRI reassigned because he filed two non-concurrences?

No. Michael Peck was not reassigned. He applied for an instructor position in his area of expertise at the NRC's technical training center in Chattanooga, TN, at about the time he ~~submitted~~ wrote his non-concurrence in accordance with the Non-Concurrence Process described in MD 10.158, Non-Concurrence Paper (NCP). He was competitively selected for this sought-after position, and reported to his new assignment in September 2012. Resident inspector assignments are limited to 7 years to ensure objectivity. It is common for resident inspectors to apply for their next job when a desirable position comes open.

2. When were the non-concurrences filed?

Two non-concurrences were filed by the DCPD SRI.

11/7/11. The DCPD SRI submitted NCP 2011-103, on inspection report 05000275; 323/201104.

1/26/12. The DCPD SRI submitted NCP 2012-01, on inspection report 05000275; 323/201105.

3. What were the non-concurrences?

Both non-concurrences involve the same subject; regulatory actions in response to the discovery of the Shoreline Fault.

NCP 2011-103 was filed by the DCPD SRI on the basis that no violation was issued (as he had submitted in the draft report) related to operability evaluation of the Shoreline fault in Report 2011-04. NCP 2011-103 was dispositioned finalizing the violation in IR 2011-05 issued on 2/14/12. (The employee requested that the NCP be non-public.)

NCP 2012-01 was filed by the DCPD SRI because the SRI believed the violation in NRC IR 2011-05 should be for an inadequate operability evaluation of the Shoreline Fault rather than not doing an operability evaluation until June 2012. The SRI believed the facility should be shutdown or the license amended to reflect the Shoreline fault. NCP 2012-01 was discussed with NRC stakeholders representing NRR/DE, NRR/DORL, RIV, and RES. NCP 2012-01 was dispositioned as a multi-office staff position which concluded that a violation for having no operability evaluation from January 2011 to June 2011 existed because the licensee completed the RIS 2005-020 immediate (interim) operability evaluation in June 2011. Additionally, the offices involved in NCP 2012-01 acknowledged that a final operability evaluation could not be completed by the licensee until the NRC decided what requirements and methods should be applied to new seismic information. At the time of Inspection Report 2011-05 issuance it was expected that the requirements and methods would be addressed in a License Amendment Request that

was under consideration. However, by 3Q/2012, enough progress had been made on RIL 2012-01 for NRR and RES to conclude that the LTSP method of analysis used in the immediate operability assessment was sufficient to evaluate the Shoreline fault and that the Shoreline Fault should be considered a lesser included case of the Hosgri event. (The employee supported public release of the NCP ADAMS ML121A173.)

4. When was the DPO filed?

July 18, 2013. The former DCPD SRI filed Differing Professional Opinion (DPO) 2013-02 associated with the regulatory response following the discovery of the Shoreline Fault.

NRC employees are encouraged to file a DPO if they believe an agency decision is in error. The DPO process is in keeping with the agency's open and collaborative working environment.

5. What is the DPO?

DPO 2013-02 restated the issues presented in NCP 2012-01 and added a concern that a license amendment was needed incorporate the shoreline fault into Diablo Canyon's FSAR as described in the RIL 12-01 cover letter. The added concern was that the NRC did not review or take action on the Los Osos and San Luis Bay faults.

6. What is the status of the DPO?

The DPO is still being reviewed consistent with the NRC's process included in MD 10.159. In particular, a decision was issued by the Office Director for NRR on May 29, 2014. The employee appealed the decision to the EDO on June 23, 2014, and the issue is currently being evaluated by the EDO. On August 2, 2013, DPO-2013-002 was assigned to NRR for review. The DPO Panel was established on September 3, 2013.

As part of the agency's open and collaborative work environment, the NRC has established the DPO program as a means for employees to have their concerns reviewed by high level managers. The DPO Program is a formal process that allows all employees and contractors to have their differing views on established, mission-related issues considered by the highest level managers in their organizations, i.e., Office Directors and Regional Administrators. The process also provides managers with an independent, three-person review of the issue (one person chosen by the employee). After a decision is issued to an employee, he or she may appeal the decision to the Executive Director for Operations (or the Chairman for those offices reporting to the Commission).

7. Will the decision regarding the DPO be made public?

The NRC supports openness and will include a summary of the disposition of the DPO in the Commission's Weekly Information Report included on the NRC Web site (see Commission Documents under the Document Collections in the NRC Library). If the submitter supports public release, the DPO Case File (with appropriate redactions) will be included. Maybe. The DPO process is discussed in Management Directive 10.159 (a publically available document). However, the DPO process for a

specific review is an internal, non-public process. The DPO petitioner has rights, including the right to privacy over any issues raised in the process. The DPO petitioner has a key role in determining whether or not the DPO and Director's decision become available publicly.

8. Was the SRI wrongfully reassigned after filing two non-concurrences and a DPO?

No. The SRI's wording in the DPO could be viewed by some to mean he was reassigned following the filing of the non-concurrences against his will. As noted in Q&A #1 above, the SRI applied for and was selected to a highly sought instructor position at the NRC's Technical Training Center. The NRC does not tolerate retaliation for engaging in the NCP or the DPO Program and both MDs reiterate this policy and direct employees to resources in the event they believe that they have been retaliated against.

9. Timeline of Events associated with the NCPs and DPO:

- 11/7/11 [NON-PUBLIC] DCPPI SRI submits Non-Concurrence NCP 2011-103. The SRI non-concurs on Inspection Report 05000275; 323/2011004 because the proposed violation involving the Shoreline Fault operability evaluation was not issued.
- 11/9/11 [NON-PUBLIC] NCP 2011-103 is dispositioned by Region IV. The operability evaluation issue was documented as an Unresolved Item in Inspection Report 05000275; 323/2011002 and dispositioned as a violation in Inspection Report 05000275; 323/2011005.
- 4Q/2011 [NON-PUBLIC] The DCPPI SRI continues to question the enforcement action associated with the Shoreline Fault operability evaluation. Several meetings between multiple NRC offices are conducted to discuss the Shoreline Fault.
- 1/26/12 [NON-PUBLIC ML121A173] DCPPI SRI submits NCP 2012-01, non-concurring on inspection report 05000275; 323/201105. The SRI believed the violation in NRC Report 2011-05 should be for an inadequate operability evaluation of the Shoreline Fault rather than not doing an operability evaluation until June 2012. The SRI believed the facility should be shutdown or the license amended to reflect the Shoreline fault.
- Feb 2012 [NON-PUBLIC] DCPPI SRI applies for instructor position vacancy at the Technical Training Center (TTC).
- 02/12-07/13 [NON-PUBLIC] RIV management frequently encourages the DCPPI SRI to submit a Differing Professional Opinion (DPO) during several discussions involving seismic issues.
- May 2012 [NON-PUBLIC] DCPPI SRI is selected for instructor position at the Technical Training Center (TTC).
- Sept 2012 [NON-PUBLIC] The (now former) DCPPI SRI reports to the TTC as a training instructor.
- Oct-1, Feb. 13 2012 [NON-PUBLIC ML121A173] Response to NCP 2012-01 issued. NCP 2012-01 was discussed with NRC stakeholders representing NRR/DE, NRR/DORL, RIV, and RES. NCP 2012-01 was dispositioned as a multi-office staff position which concluded that a violation for having no operability evaluation from January 2011 to June 2011 existed because the licensee completed the RIS 2005-020 immediate (interim) operability evaluation in June 2011. Additionally, the offices involved in NCP 2012-01 acknowledged that a final operability evaluation could not be completed by the licensee until the NRC decided what requirements and methods should be applied to new seismic information. At the time of Report 2011-05 issuance it was expected that the requirements and methods would be addressed in a License Amendment Request that was under consideration. However, by 3Q/2012, enough progress had been made on RIL 2012-01 for NRR and RES to conclude that the LTSP

Commented [A2]: The submittal and 2/13/2012 response are included in the completed NCP Form for NCP-2012-001.

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method of analysis used in the immediate operability assessment was sufficient to evaluate the Shoreline fault and that the Shoreline Fault should be considered a lesser included case of the Hosgri event.

- 7/18/13 [NON-PUBLIC] Former SRI submits a DPO regarding the agency's regulatory actions associated with the Shoreline Fault.
- 8/2/13 [NON-PUBLIC] DPO 2013-002 was assigned to NRR for an independent review.
- 9/3/13 [NON-PUBLIC] Director, NRR establishes a DPO Ad Hoc Review Panel (DPO Panel) for DPO 2013-002 with three NRC staff members who have been independent of the initial concerns raised by the former DCPD SRI.
- 4/3/14 [NON-PUBLIC] DPO Panel completes its review of DPO 2013-002 and submits its report to the Director, NRR.
- 5/29/14 [NON-PUBLIC] Director, NRR issues his decision on DPO 2013-002 by memo to the former DCPD SRI.
- 6/23/2014 Employee submits DPO appeal.
- 6/27/2014 Director, NRR provided Statement of Views on contested issues in appeal.
- 7/7/2014 DPO appeal package provided to EDO for disposition and decision.
- 8/25/14 Associated Press article released discussing the DPO.