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May 5, 1988

Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

APPEAL OF INITIAL FOIA DECISION
88-A-29C(87-444)
Rec'd 5-10-88

Re: Appeal From Initial FOIA Decision
NRC FOIA No. 87-444

Dear Mr. Chilk:

On April 25, 1988, I received from the NRC a final decision on FOIA Request No. 87-444, a copy of which is attached for your reference. The response listed in Appendix E 63 documents that were withheld in their entirety under Exemption 5, 5 U.S.C. § 552(b)(5) and 10 C.F.R. § 9.17(a)(5). In Appendix F, the response listed nine documents being withheld in part under Exemption 5. In accordance with 10 C.F.R. § 9.29, I hereby appeal from the NRC's FOIA determination and request release of all documents listed in Appendices E and F that were withheld.

The document descriptions in Appendices E and F are so brief that it is impossible from my position to judge the applicability of Exemption 5. Nevertheless, the descriptions do raise a number of questions, including the following:

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1. Exemption 5 applies only to documents that are predecisional, i.e. documents leading up to an agency decision. See Wolfe v. Department of Health and Human Services, 839 F.2d 768, 774 (D.C. Cir. 1988) (en banc). Some of the withheld documents do not appear to meet this requirement, such as Appendix E, Item 50, which is dated after the last of the NRC's Diablo Canyon licensing decisions. In other cases, it is not at all clear what NRC decision is involved, such as Appendix E, Items 1, 11, 14, 15, 20, 25, 31, 34, 37, 46, 47, 48, 58, 59, 61 and 63.

2. Some documents seem unrelated to the internal agency decision-making process that Exemption 5 was designed to address. For example, Appendix E, Item 21 is described as a note to "Bill" of the "National Journal," which is unlikely to fall within Exemption 5. Similarly, several documents deal with Congressional communications, rather than agency decision-making. See, e.g., Appendix E, Items 34, 42 and 50; Appendix F, Items 4 and 5.

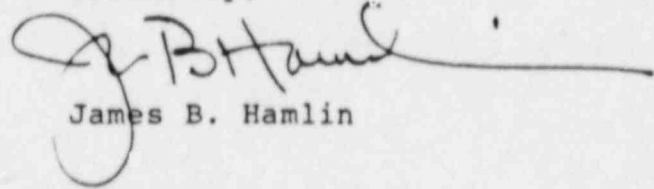
3. A principal purpose of Exemption 5 is to protect subordinates' willingness to provide decision-makers with frank opinions and recommendations. Wolfe, supra, 839 F.2d at 775. Accordingly, documents from subordinates to superior officials are more likely to be exempt than documents flowing in the opposite direction. Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 868 (D.C. Cir. 1980). So far as I can tell, none of the withheld documents is from a subordinate to his superior official.

Please review all of the withheld documents to determine whether they are actually protected by Exemption 5. Furthermore, even if you conclude that some or all of the documents literally fall within the Exemption, I request that you nevertheless release the records pursuant to 10 C.F.R. § 9.25(a) because the disclosure would not be contrary to the public interest and would not adversely affect the rights of any person. As you know, the Diablo Canyon licensing decisions have long since become final, and the authors of most of the withheld documents have left the NRC. Under the circumstances, the historical value of the documents outweighs any theoretical concerns about protecting the deliberative process.

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Please contact me if you have any questions about this appeal.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. B. Hamlin", with a long horizontal flourish extending to the right.

James B. Hamlin

JBH:af
Enclosure



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

NRC FOIA REQUEST NUMBER: **FOIA-87-444**

RESPONSE TYPE: FINAL PARTIAL

DATE: **APR 18 1988**

DOCKET NUMBER: **17-1379**

REQUESTER: **James B. Hamlin**

PART I - RECORDS RELEASED OR NOT LOCATED (See checked boxes)

- No agency records subject to the request have been located.
- No additional agency records subject to the request have been located.
- Agency records subject to the request that are identified in Appendix **C** are already available for public inspection and copying in the NRC Public Document Room, 1717 H Street, N.W., Washington, DC.
- Agency records subject to the request that are identified in Appendix **D** are being made available for public inspection and copying in the NRC Public Document Room, 1717 H Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.
- The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 1717 H Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.
- Enclosed is information on how you may obtain access to and the charges for copying records placed in the NRC Public Document Room, 1717 H Street, N.W., Washington, DC.
- Agency records subject to the request are enclosed. Any applicable charge for copies of the records provided and payment procedures are noted in the comments section.
- Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.
- In view of NRC's response to this request, no further action is being taken on appeal letter dated _____.

PART II A - INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

Certain information in the requested records is being withheld from public disclosure pursuant to the FOIA exemptions described in and for the reasons stated in Part II sections B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 1717 H Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.

Comments

The portions deleted from the document identified at Appendix D, Item 77, are outside the scope of the request.

Rec'd
4/25/88
JBH

SIGNATURE, DIRECTOR, DIVISION OF RULES AND RECORDS

Daniel H. Hamble

~~88-505-159~~
1379

FREEDOM OF INFORMATION ACT RESPONSE

FOIA NUMBER(S):

FOIA-87-444

DATE APR 18 1982

PART II B - APPLICABLE FOIA EXEMPTIONS

Records subject to the request that are described in the enclosed Appendices E + F are being withheld in their entirety or in part under FOIA Exemptions and for the reasons set forth below pursuant to 5 U.S.C. 552(b) and 10 CFR 9.5(a) of NRC Regulations.

1. The withheld information is properly classified pursuant to Executive Order 12356 (EXEMPTION 1)
2. The withheld information relates solely to the internal personnel rules and procedures of NRC (EXEMPTION 2)
3. The withheld information is specifically exempted from public disclosure by statute indicated (EXEMPTION 3)

Section 141-145 of the Atomic Energy Act which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165)
 Section 147 of the Atomic Energy Act which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167)

4. The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated (EXEMPTION 4)

The information is considered to be confidential business (proprietary) information
 The information is considered to be proprietary information pursuant to 10 CFR 2.790(d)(1).
 The information was submitted and received in confidence from a foreign source pursuant to 10 CFR 2.790(d)(2).

5. The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency. (EXEMPTION 5)
6. The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy. (EXEMPTION 6)
7. The withheld information consists of investigatory records compiled for law enforcement purposes and is being withheld for the reason(s) indicated. (EXEMPTION 7)

Disclosure would interfere with an enforcement proceeding because it could reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow them to take action to shield potential wrongdoing or a violation of NRC requirements from investigators. (EXEMPTION 7(A))
 Disclosure would constitute an unwarranted invasion of personal privacy (EXEMPTION 7(C))
 The information consists of names of individuals and other information the disclosure of which would reveal identities of confidential sources. (EXEMPTION 7(D))

PART II C - DENYING OFFICIALS

Pursuant to 10 CFR 9.9 and/or 9.15 of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure and that its production or disclosure is contrary to the public interest. The persons responsible for the denial are those officials identified below as denying officials and the Director, Division of Rules and Records, Office of Administration, for any denials that may be appealed to the Executive Director for Operations (EO).

DENYING OFFICIAL	TITLE OFFICE	RECORDS DENIED	APPELLATE OFFICIAL	
			SECRETARY	EO
John C. Hoyle	Assistant Secretary of the Commission	App. E + F	X	

PART II D - APPEAL RIGHTS

The denial by each denying official identified in Part II C may be appealed to the Appellate Official identified in that section. Any such appeal must be in writing and must be made within 30 days of receipt of this response. Appeals must be addressed as appropriate to the Executive Director for Operations or to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

APPENDIX C

DOCUMENTS ALREADY AVAILABLE IN THE PDR

1. 10/24/79 Memo from Joseph M. Hendrie to the PDR and Parties to Diablo Canyon Licensing Proceeding. Accession No. 791031038.
2. 4/21/80 Memorandum to Counsel For The Parties From J. Hendrie. Accession No. 8204220194.
3. 7/21/81 Memo to the Files from William Manning. Accession No. 8107240080.
4. 11/20/81 Note to Parties in Diablo Canyon from Gilinsky. Accession No. 8111250371.
5. 10/30/81 Letter from Gilinsky to Stanley Mendes. Accession No. 8111200761.
6. 11/4/81 Memorandum to the Parties in Diablo Canyon from Gilinsky. Accession No. 8111090509.
7. 10/20/82 Letter from Gilinsky to Scott Schulke. Accession No. 8210220363.
8. 10/17/83 Note to the Parties in the Diablo Canyon Proceeding from Gilinsky. Accession No. 8310190054.
9. 12/16/83 Memoradum to the Files from William Manning. Accession No. 8312200121.
10. 2/28/84 Memo to the Parties in the Diablo Canyon Operating License Proceeding from Gilinsky. Accession No. 8402290084.

APPENDIX D

DOCUMENTS BEING PLACED IN THE PDR

The following records were located in former Commissioner Peter A. Bradford's files:

1. 11/30/78 Letter from Bradford to Albert Lake. (2 pages)
2. 7/18/79 Letter from Bradford to M. Brook Tice. (3 pages)
3. 1/30/81 Letter from Bradford to the Honorable John E. Bryson. (5 pages)
4. 8/7/81 Memo from Len Bickwit to the Commission. (1 page)
5. 9/22/81 Letter from Bradford to Marilyn Herlan. (2 pages)
6. 9/22/81 Letter from Bradford to Ruth Holtzman. (2 pages)
7. 9/22/81 Letter from Bradford to Pat Simonson. (1 page)
8. 9/23/81 Letter from Bradford to Lydia Pollard. (2 pages)
9. 9/23/81 Letter from Bradford to Dianne Wilson. (2 pages)
10. 9/23/81 Letter from Bradford to George Young. (2 pages)
11. 9/23/81 Letter from Bradford to Nancy Levy. (1 page)
12. 9/23/81 Letter from Bradford to Dr. Sidney Bergman. (2 pages)
13. 9/24/81 Letter from Bradford to Dr. Shirley Isaacson. (2 pages)
14. 3/24/81 Letter from Bradford to Mr. & Mrs. Weinberg. (2 pages)
15. 9/29/81 Letter from Bradford to Karen Schlaff. (2 pages)
16. 9/29/81 Letter from Bradford to Andrea Natel. (2 pages)
17. 9/29/81 Letter from Bradford to James Jobenville. (5 pages)
18. 10/2/81 Letter from Bradford to P. Kitchuck. (2 pages)
19. 10/2/81 Letter from Bradford to Mr. & Mrs. Gerald Schiller. (2 pages)
20. 10/2/81 Letter from Bradford to Suzanne Borghei. (2 pages)
21. 10/7/81 Letter from Bradford to Steve Wahl. (3 pages)

APPENDIX D

DOCUMENTS BEING PLACED IN THE PDR
(Continued)

22. 10/13/81 Letter from Bradford to Karen Calhoun. (2 pages)
23. 10/13/81 Letter from Bradford to John Weibusch. (2 pages)
24. 10/26/81 Letter from Bradford to Jay Newbern. (2 pages)
25. 10/26/81 Letter from Bradford to Ken Kucera. (4 pages)
26. 10/27/81 Letter from Bradford to Anna Collins. (2 pages)
27. 10/27/81 Letter from Bradford to Pat Dressendorfer. (2 pages)
28. 10/27/81 Letter from Bradford to Yorgos Savides. (2 pages)
29. 10/27/81 Letter from Bradford to Susan Jaffe. (2 pages)
30. 10/28/81 Letter from Bradford to William Kennedy. (2 pages)
31. 10/29/81 Letter from Bradford to Dr. J. Carson Mark. (1 page)
32. 11/2/81 Letter from Bradford to Mr. & Mrs. William Townsend. (2 pages)
33. 11/12/81 Letter from Bradford to Lorna Chaplin. (2 pages)
34. 11/12/81 Letter from Bradford to Steve and Mary Pipkin. (2 pages)
35. 11/12/81 Letter from Bradford to Sue Rutherford. (2 pages)
36. 11/12/81 Letter from Bradford to Susan Stanners. (4 pages)
37. 11/12/81 Letter from Bradford to Susan Park. (2 pages)

The following documents were located in former Commissioner John Ahearne's file:

38. 3/5/82 Letter from Ahearne to Cong. Miller. (2 pages)
39. 3/17/82 Memo from Ahearne to Commission. (1 page)
40. 4/6/83 Note from L. Van Cise to B. Hayes. (2 pages)

APPENDIX D

DOCUMENTS BEING PLACED IN THE PDR
(Continued)

The following records were located in former Commissioner Victor Gilinsky's files:

41. 5/9/80 Letter from Gilinsky to Cong. Panetta. (4 pages)
42. 10/30/81 Letter from Gilinsky to Pat Dressendorfer. (1 page)
43. 10/5/81 Note from Gilinsky to Maura Kleeman. (3 pages)
44. 11/4/81 Office of Public Affairs News Summary with Handwritten note from Gilinsky. (? pages)
45. 11/11/81 Letter to Gilinsky from Gail Jacobsen. (2 pages)
46. 11/23/81 Memo from Gilinsky to Commission. (1 page)
47. 1/20/82 Memo from Gilinsky to Commission. (2 pages)
48. 1/20/82 Letter from Gilinsky to Ruth Holtz. (2 pages)
49. 12/10/81 Letter from Gilinsky to Robert Landman. (3 pages)
50. 1/20/82 Letter from Gilinsky to Carl Mansfield. (5 pages)
51. 1/20/82 Statement of Edward C. Abbott. (1 page)
52. 2/26/82 Memo from Manning to Chilk. (7 pages)
53. 3/26/82 Letter from Gilinsky to L. D. Belveal. (2 pages)
54. 4/1/82 Note from Gilinsky to Tom Redburn. (1 page)
55. 3/11/83 Letter from Gilinsky to Cong. Udall. (28 pages)
56. 4/25/84 Letter from Gilinsky to Ronald Smutz. (2 pages)
57. 8/19/81 Notes from Abbott to Gilinsky. (10 pages)
58. 4/27/84 Letter from R. Goldsmith to Pamela Secrest. (3 pages)
59. 4/27/84 Letter from R. Goldsmith to Alejandro Gil. (2 pages)
60. 5/21/84 Letter from R. Goldsmith to Marcy Scandalis. (2 pages)
61. 10/17/83 Note to S. Chilk from Manning. (1 page)

APPENDIX D

DOCUMENTS BEING PLACED IN THE PDR
(Continued)

62. 11/28/83 Memo from Manning to Chilk. (6 pages)
63. 12/6/83 Letter from R. Goldsmith to Harold Hudson. (1 page)
64. 12/8/83 Memo from Gilinsky to Commission. (1 page)
65. 1/20/84 Letter from R. Goldsmith to Laurie & Amiel Needham. (2 pages)
66. 1/26/84 Letter from R. Goldsmith to Barbara Snader. (2 pages)
67. 1/26/84 Letter from R. Goldsmith to Dorothy Andersen. (5 pages)
68. 1/26/84 Letter from R. Goldsmith to Kim Burgruff. (2 pages)
69. 1/26/84 Letter from R. Goldsmith to Eleanor Lewallen. (8 pages)
70. 2/24/84 Letter from R. Goldsmith to Cary English. (4 pages)
71. 3/6/84 Letter from R. Goldsmith to Debbie Highfill. (5 pages)
72. 4/10/84 Note from Gilinsky for Jack Burby. (1 page)
73. 4/9/84 Memo from V. Gilinsky to S. Chilk (1 page) [NOTE: The attached 4/6/84 memo from Fitzgerald to Gilinsky is already in the PDR. Accession No. 8404100175.]

The following record was located in former Chairman Nunzio Palladino's files:

74. 7/31/84 Memo from Palladino to the Commissioners. (3 pages)
75. 9/17/84 Memo from Palladino to the Commissioners. (2 pages)
76. 11/2/84 Memo from Palladino to William Briggs. (1 page)
77. 3/11/85 Memo from Palladino to the Commissioners. (30 pages)
78. 4/4/85 Memo from Palladino to the Commissioners. (3 pages)
79. Indices for documents identified on Appendix C. (10 pages)
80. Indices for documents identified on Appendix D. (76 pages)
81. Indices for documents identified on Appendix E. (42 pages)
82. Indices for documents identified on Appendix F. (9 pages)

APPENDIX E

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY PURSUANT TO EXEMPTION 5

The following records are located in former Commissioner Bradford's files:

1. 10/29/81 Memo to Dircks from Bradford, subject: Diablo Canyon safety injection pump failing (PNO-V-81-60). (1 page)
2. 10/26/81 Memo to Remick from Bradford, subject: Diablo Canyon seismic. (1 page)
3. 11/10/81 Memo to Cmrs from Bradford, subject: Thoughts regarding the reassessment of the seismic issue at Diablo Canyon. (1 page)
4. 9/21/81 Memo to Cmrs from Bradford, subject: Suggest the Attached modifications to the Diablo Canyon Order. (5 pages)
5. 9/21/81 Memo to Cmrs from Bradford, Diablo Canyon fire protection provisions. (1 page)
6. 9/15/81 Bradford's comments to Chilk on Fleischaker letter subject: Response to motion of 9/11 requesting the disclosure of any discussions between J. Tourtelotte and Cmrs Roberts or other members of his staff regarding the Diablo Canyon licensing proceedings. (1 page)
7. 9/15/81 Memo to Chilk from Bradford, subject: SECY-81-508 review of ALAB-644 (In the Matter of Pacific Gas & Electric Company). (1 page)
8. 6/4/81 Memo to Bickwit from Bradford, subject: Diablo Canyon low power operating licensing proceeding. (1 page)
9. 3/31/81 Memo to Bickwit from Bradford, subject: Request for opinion on any rules of justification for the exclusion of Ms. Sandra Silver from the Diablo Canyon facility. (1 page)
10. 3/4/80 Memo to Cmrs from Bradford, subject: SECY-80-17-Request that the Commission institute proceedings to determine whether Commissioner Kennedy and Hendrie should be disqualified from further participation in the Diablo Canyon operating license proceedings. (1 page)

APPENDIX E
(Continued)

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY PURSUANT TO EXEMPTION 5

The following records are located in former Commissioner Gilinsky's files:

11. 4/11/84 Memo to W. Dircks from Gilinsky, subject: Diablo Canyon loss of ECCS. (1 page)
12. 3/28/84 Memo to Cmrs from Gilinsky, subject: Diablo Canyon low power license. (1 page)
13. 3/23/84 Memo to Cmrs from Gilinsky, subj: Diablo Canyon seismic design. (1 page)
14. 2/28/84 Memo from W. Manning to H. E. Plaine, subject: Ex Parte review of Diablo Canyon draft reports 50-275/83-37 and 50-323/83-25. (1 page)
15. 2/27/84 Memo to Cmrs from Gilinsky, subject: Diablo Canyon allegation management. (1 page)
16. 12/23/83 Memo to Cmrs from Gilinsky, subject: Commercial licensed operating experience of Diablo Canyon licensed operators. (94 pages)
17. 9/28/83 Memo from Gilinsky to J. J. Ray, ACRS subject: 9/8 request for opinion on Tau effect re Diablo Canyon. (1 page)
18. 7/8/83 Memo to J. Ray from Gilinsky ACRS subject: "TAU Effect" re Daiblo Canyon".
19. 6/3/83 Memo from W. Manning to Chilk subj: Memo to T. Moore re treatment of information contained in ALAB-653 (Diablo Canyon physical security). (1 page)
20. 5/4/83 Memo for Leonard Bickwit from Gilinsky, subject: Purging of Diablo Canyon Physical security Decision. (2 pages)
21. 3/26/82 Note to Bill of National Journal from Gilinsky, subject: Diablo Canyon and breeder study. (1 page)
22. 12/18/81 Memo to Cmrs from Gilinsky, subject: Review of ALAB-644--Diablo Canyon seismic (SECY-87-508). (1 page)
23. 12/11/81 Memo to Cmrs from Gilinsky, subject: Review of ALAB-644--Diablo Canyon seismic decision (SECY-81-508). (1 page)

APPENDIX E
(Continued)

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY PURSUANT TO EXEMPTION 5

The following records are located in former Commissioner Gilinsky's files:

24. 11/27/81 Memo to Cmrs from Gilinsky subject: Commission review of Diablo Canyon Seismic issue. (1 page)
25. 11/9/81 Memo to Cmr from Gilinsky, subject: Diablo Canyon. (1 page)
26. 10/19/81 Memo to Cmrs from Gilinsky subject: Diablo Canyon seismic analysis and resolution of design problems.
27. 9/23/81 Memo to Cmrs from Gilinsky, subject: Commission review of Diablo Canyon seismic decision (ALAB-644). (1 page)
28. 9/8/81 Memo to N. Palladino from Gilinsky, subject: Diablo Canyon low-power decision. (1 page)
29. 9/4/81 Memo to Chairman Palladino from Gilinsky, subject: Diablo Canyon low power decision. (1 page)
30. 6/3/81 Memo to Bickwit from Gilinsky, subject: Diablo Canyon low power license proceeding. (1 page)

The following records are located in former Chairman Palladino's files:

31. 11/10/81 Memorandum to Cmrs from Palladino, subject: Diablo Canyon. (1 page)
32. 11/18/81 Note to Gilinsky from Palladino, subject: TMR Proposal for Diablo Canyon Order. (2 pages)
33. 11/7/83 Memo to Cmrs from Palladino, subject: Diablo Canyon Order. (10 pages)
34. 12/27/83 Memo to Cmrs from Palladino, subject: Proposed Response to Congress Markey re NRC handling of Working Paper for Diablo Canyon case study. (CR-87-173). (1 page)
35. 1/13/84 Memo to Zerbe from Palladino, subject: Commercial Licensed Operating Experience of Diablo Canyon Licensed Operators. (1 page)

APPENDIX E
(Continued)

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY PURSUANT TO EXEMPTION 5

The following records are located in former Chairman Palladino's files:

36. 1/23/84 Memo to H. E. Plaine from Palladino, subject: Diablo Canyon. (1 page)
37. 1/30/84 Memo to Asselstine from Palladino, subject: Diablo Canyon. (1 page)
38. 4/3/84 Memo to Gilinsky from Palladino, subject: COMVG-87-4-Diablo Canyon Low Power License. (1 page)
39. 4/4/84 Memo to J. Ebersole from Palladino, subject: ACRS Review of Diablo Canyon Issues. (1 page)
40. 4/13/84 Memo to Cmrs from Palladino, subject: Draft Order on Diablo Canyon. (6 pages)
41. 4/13/84 Memo to J. Ebersole from Palladino, subject: ACRS Review of Diablo Canyon Issues. (2 pages)
42. 6/13/84 Memo to Cmrs from Palladino, subject: Revised Response to Congressman Panetta (CR-84-43 Diablo Canyon). (3 pages)
43. 6/19/84 Memo to Dircks from Palladino, subject: Response to 2/8 Ltr re Diablo Canyon. (4 pages)
44. 6/29/84 Memo from Palladino to W. J. Dircks, subject: ACRS Review of Diablo Canyon SSER. (1 page)
45. 8/24/84 Memo to Plaine from Palladino, subject: Diablo Canyon. (2 pages)
46. 10/9/84 Memo to J. K. Asselstine from Palladino, subject: Concur with F. Bernthal's suggestion re 9/1/84 ltr from Richard Parks re Diablo Canyon. (1 page)
47. 10/9/84 Memo to J. K. Asselstine from Palladino, subject: Diablo Canyon. (1 page)
48. 10/11/84 Memo to Plaine from Palladino, subject: Review of Transcripts of Meetings on Diablo Canyon. (1 page)
49. 11/2/84 Memo to Briggs from Palladino subject: NRC Brief in Diablo Canyon Case. (2 pages)
50. 11/8/85 Memo to Cmrs from Palladino, subject: Response to Rep Markey's Ltr re Earthquake and Emergency Planning at Diablo Canyon (CR-85-74A).

APPENDIX E
(Continued)

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY PURSUANT TO EXEMPTION 5

The following records are located in former Commissioner Ahearne's files:

51. 6/5/80 Memo to SECY from Ahearne, subject: SECY-A-80-57AL Diablo Canyon - Release of Physical Security Plan to Intervenors. (1 page)
52. 3/9/81 Memo to the Chairman and Commissioners from Ahearne, subject: SECY-81-115A - Diablo Canyon Prehearing Conference Order. (3 pages)
53. 3/24/81 Memo to Chairman and Commissioners from Ahearne, subject: Revised Diablo Canyon Order (SECY-81-115A). (2 pages)
54. 3/30/81 Memo from V. Harding to Commissioners' Assistants, subject: Revised Diablo Canyon Order - March 28, OGC Version (See SECY-81-115A). (2 pages)
55. 8/6/81 Memo from Ahearne to OGC, subject: Diablo Canyon low power contentions. (2 pages)
56. 9/1/81 Memo from Ahearne to Commission, subject: Contentions not admitted in Diablo Canyon low power proceeding (COMYG-81-6). (10 pages)
57. 9/4/81 Memo from Ahearne to Chairman Palladino, subject: Diablo Canyon low-power decision. (1 page)
58. 9/14/81 Memo from Ahearne to OPE, subject: Seismic consultant for Diablo Canyon. (1 page)
59. 11/12/81 Memo from Ahearne to OPE, subject: Diablo Canyon proceeding. (1 page)
60. 12/23/81 Memo from V. Harding to T. Rothschild, subject: Newmark issue in Diablo Canyon. (1 page)
61. 2/8/82 Memo from Ahearne to Commission, subject: Diablo Canyon notice of violation. (4 pages)
62. 4/30/82 Ahearne's comments on 4/22/82 memo from Bickwit to Commission, subject: Diablo Canyon physical security. (2 pages)
63. 7/13/82 Memo from Ahearne to Commission, subject: Diablo Canyon Phase II. (1 page)

APPENDIX F

DOCUMENTS BEING WITHHELD IN PART

1. 8/27/81 Memo from Gilinsky to Commission, subject: Diablo Canyon power decision (3 pages), Exemption 5, entirety, with attachments: SECY-81-115, dated 2/23/81, portions withheld, Exemption 5; SECY-81-115A, dated 3/6/81, Exemption 5, entirety; SECY-81-329, dated 5/27/81, Exemption 5, with attachment: Order CLI-81-5, released.
2. 10/19/83 Memo from Gilinsky to Commissioners, subject: Diablo Canyon "TAU-Effect", (3 pages) Exemption 5; with attachments: Letters to Byron Georgiou and Lawrence Lanpher with views of individual Commissioners re: decision of Commission review of ALAB-644 (in PDR Accession Nos. 8203230111, and 8203230121).
3. 11/13/81 Memo to Commissioners from Palladino, subject: Diablo Canyon (1 page) release; with attached Approach for the Independent Reverification of the Diablo Canyon Design (1 page) withheld, Exemption 5.
4. 7/31/84 Memo from Palladino to Commission, subject: Diablo Canyon (1 page) withheld, Exemption 5; with attachment: Letter from Representatives Patterson and Panetta. Released.
5. 10/5/84 Memo from Palladino to Commission, subject: Telecon-Congressman Markey (2 pages), withheld, Exemption 5, with attachment: 9/17/84 letter from Rep. Markey and 9/21/84 response (2 pages) Released.
6. 11/12/81 Memo from Palladino to Remick, subject: OPE Analysis of Diablo Canyon Seismic Issues (1 page) release, handwritten notes of P. Bradford's being withheld, Exemption 5.
7. 1/28/81 Memo from Ahearne to L. Bickwit, subject: Diablo Canyon Scheduling Estimates (1 page), withheld Exemption 5, with attachment: 1/23/81 memo from Denton to Ahearne. (3 pages), released.
8. 2/19/81 Memo from Ahearne to Chilk, subject: SECY-81-76: Diablo Canyon (1 page) released, attached draft additional views being withheld, Exemption 5. (1 page)
9. 4/20/82 Memo from Ahearne to SECY, subject: Diablo Canyon Physical Security Order (1 page) released, attached draft additional views (1 page) withheld, Exemption 5.

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WRITERS DIRECT DIAL NUMBER

(202) 663-8127

July 10, 1987

Director, Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Freedom of Information Act Request

Gentlemen:

This is a follow-up to my Freedom of Information Act request dated March 27, 1987, to which you assigned FOIA No. 87-174. A copy of my request and your response (dated May 19, 1987) are attached for your reference. In the course of discussions with Linda Robinson, I agreed to narrow and refine the scope of my request to facilitate the NRC's search for records.

The NRC's response (page 3) identifies "30 boxes" of former NRC Commissioners' files, which are "indexed by date and subject." I request that you provide me with copies of all documents in those 30 boxes that from the index listing or otherwise can be readily identified as relating specifically to Diablo Canyon Nuclear Power Plant, Units 1 and/or 2. I also request a copy of the index for the 30 boxes.

I hereby commit to pay the costs of processing this request up to \$1,000.00. If the costs are estimated to exceed that amount, please contact me in advance of expending any funds.

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-87-444
Rec'd 7-13-87

89-130167
29

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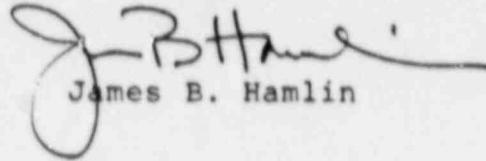
Director, Office of Administration

July 10, 1987

Page 2

After further consideration, I may have additional refinements of the original request. I would ask, however, that you begin now to process the request with respect to the 30 boxes of Commissioners' files described above. Please call me if there are any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. B. Hamlin".

James B. Hamlin

JBH:af
Attachments



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20566

May 19, 1987

James B. Hamlin, Esquire
Shaw, Pittman, Potts & Trowbridge
2300 N Street, NW.
Washington, DC 20037

IN RESPONSE REFER
TO FOIA-87-174

Dear Mr. Hamlin:

This is in response to your letter dated March 27, 1987, in which you requested, pursuant to the Freedom of Information Act (FOIA), "copies of all records relating in any way to Diablo Canyon Nuclear Power Plant, Units 1 and/or 2, that were created at any time from January 1, 1966 through March 31, 1986." You expressed an interest in a search of all Nuclear Regulatory Commission (NRC) and Atomic Energy Commission (AEC) files that may contain responsive records, excluding records already publicly available at the NRC's Public Document Room (PDR).

After careful consideration, we have determined that your request does not "reasonably describe" the records sought, but rather is a broad, sweeping, indiscriminate request for production, lacking reasonable specificity. As such, the request fails to meet the threshold requirements of 5 U.S.C. 552(a)(3).

The NRC headquarters offices are not consolidated in a single location; staff members are presently housed in rented spaces in seven separate buildings in various locations. In addition, the NRC maintains regional offices and onsite Resident Inspector offices. There is no "master file" containing all records that the NRC has directly pertaining to a particular power plant. In each of the various offices, records may be filed by a number of subjects, instead of or in addition to plant names, according to activities and functions of particular offices, such as reviews of generic issues, evaluations related to construction of plants and licensing activities, inspections, and investigations.

It is reasonable to assume the files located throughout various Offices and Divisions of the NRC contain records that might fall within the scope of your request for records "relating in any way to Diablo Canyon...." We could not, however, short of examining every file possessed by the NRC, state with any degree of confidence that all records that directly pertain to Diablo Canyon have been located and could not, even after examining every file, be confident that we could identify every record which you might construe as "relating in any way to Diablo Canyon...."

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The House Report on the 1974 amendments to the FOIA provides that:

"A 'description' of a requested document would be sufficient if it enabled a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort." (H. Rpt. 93-876 at 5-6.)

As indicated above, much more than a reasonable amount of effort would be required to attempt to comply with your request.

Likewise, the Senate Report indicates that the 1974 amendments to the FOIA were not intended "to authorize broad categorical requests where it is impossible for the agency reasonably to determine what is sought. (See Irons v. Schuyler, 465 F.2d 608 (DC Cir. 1972))...." (S. Rpt. 93-834 at 10.)

In view of the scope and nature of your request, the documentary material being sought, and the considerations expressed above, we conclude that your request does not meet the requirements of 5 U.S.C. 552(a)(3). Accordingly, no further action will be taken with respect to your present request.

If you consider this response to be a denial of your request, you may appeal this determination within 30 days to the Executive Director for Operations. As provided in 10 CFR 9.11, any such appeal must be in writing, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should clearly state on the envelope and in the letter that it is an "Appeal from an Initial FOIA Decision."

We are providing the following information concerning persons and offices specified in your letter in an effort to assist you in redefining a new request so that the NRC may, with a reasonable amount of effort, locate records on the specific subject(s) in which you are interested.

We are enclosing a list of FOIA requests pertaining to the Diablo Canyon plant which were not included in your letter. Our responses to these requests are maintained in the PDR. With regard to these previous related FOIA requests, please note that NRC project managers transfer their files to new project managers. Therefore, existing project manager files on the Diablo Canyon plant are subject to previous requests FOIA-86-151 and FOIA-86-197. Also, Mr. Yin's existing records were incorporated with additional records on the Diablo Canyon plant into files which are subject to pending request FOIA-84-21. Mr. Bishop is no longer working for the NRC; his existing files were incorporated into regional files. Such files, as noted above, are generally organized by subjects.

Mr. James B. Hamlin

-3-

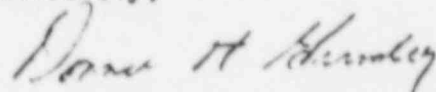
I have been informed by the staff that the NRC does not maintain files of former AEC Commissioners but that some then-existing files of AEC Commissioners may have been transferred from AEC to the Department of Energy (DOE), a successor organization of the AEC. You may wish to submit an FOIA request to the DOE official whose name and address are provided below.

John H. Carter
Department of Energy
Chief, FOI/PA
Division of Reference & Information
1000 Independence Avenue, SW.,
Washington, DC 20585

With regard to former NRC Commissioners' files, I have been informed that the NRC maintains only incomplete files, only chronological files rather than subject files, for only a few former Commissioners. There are approximately 30 boxes of such records, which are indexed by date and subject.

If you have any questions regarding this response to your FOIA request, you may telephone Ms. Linda Robinson at 492-8133.

Sincerely,



Donnie H. Grimsley, Director
Division of Rules and Records
Office of Administration and
Resources Management

Enclosure: As stated

Re: FOIA-87-174

FOIA REQUESTS PERTAINING TO DIABLO CANYON

FOIA-81-15	FOIA-81-249	FOIA-81-342	FOIA-81-431	FOIA-81-435
FOIA-81-482	FOIA-81-517	FOIA-82-051	FOIA-82-159	FOIA-82-503
FOIA-84-21	FOIA-84-247	FOIA-84-643	FOIA-86-50	FOIA-86-123
FOIA-86-151	FOIA-86-197			

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TELEX/CABLE
89-2693 (SHAWLAW WSH)

WRITERS DIRECT DIAL NUMBER

(202) 663-8127

March 27, 1987

Director, Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Freedom of Information Act Request

Gentlemen:

Pursuant to 5 U.S.C. § 552 and 10 C.F.R. Part 9, I hereby request copies of all records relating in any way to Diablo Canyon Nuclear Power Plant, Units 1 and/or 2, that were created at any time from January 1, 1966 through March 31, 1986. As used in this request, the term "record" has the meaning specified in 10 C.F.R. § 9.3a. In processing this request, please search all files of the Nuclear Regulatory Commission and the Atomic Energy Commission that may contain records responsive to the request. The search should cover all files including, but not limited to, those of the Advisory Committee on Reactor Safeguards, Region V, all Diablo Canyon project managers, all AEC and NRC Commissioners, the Office of Congressional Affairs, Isa Yin, and Thomas Bishop.

I am aware that the following Freedom of Information Act requests relating to Diablo Canyon have already been made:

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Director, Office of Administration

March 27, 1987

Page 2

<u>FOIA Docket No.</u>	<u>Requester</u>
76-411	Rushforth
79-464	Fleischaker
80-10	Fleischaker
80-43	Varon
80-222	Varon
80-269	Johnston
80-383	Eissler
80-588	McCarthy
80-600	Brown
81-72	Jordan
81-84	Hanback
81-406	Schweigert
82-151	Kronzek
82-160	Fleischaker
82-286	Eissler
83-130	Reynolds
83-267	Reynolds
83-483	Calsoyas
83-599	Calsoyas
84-73	Reynolds
84-208	Bell
84-247	Calsoyas
84-259	Pedro
84-269	Calsoyas
84-289	Buckles
84-400	Williams
84-470	Bell
84-740	Devine/Dixon
84-741	Devine
84-742	Devine
84-745	Devine
84-795	Bell
84-809	Bell
84-814	Bell
84-925	Bell
85-81	Devine
85-240	Freire
85-354, 355, 356	Devine
85-690	Holmes
85-691	Holmes
85-770	Devine
86-29	Manning
86-106	Hanauer
86-141	Holmes
86-142	Holmes
86-143	Holmes

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Director, Office of Administration

March 27, 1987

Page 3

86-144	Holmes
86-146	Holmes
86-147	Holmes
86-148	Holmes
86-173	Harding
86-371	Hough
86-391	Hough
86-412	Hough
86-489	Hale
86-585	Sholly
86-652	Individual
86-679	Bishop
86-699	Dickey

To the extent records have been made available in response to the above requests, they need not be produced again and should be treated as outside the scope of this request. In addition, all records that are already on file in the NRC Public Document Room in Washington, D.C. should likewise be considered outside the scope of this request.

I hereby commit to pay the costs of processing this request up to \$5,000.00. If the costs are estimated to exceed that amount, please contact me in advance of expending any funds.

It is important that this request be processed promptly. To that end, I would be pleased to work closely with you to clarify and prioritize the request, or to take other steps that my facilitate the handling of this request. Please call me if you have any questions.

Sincerely yours,



James B. Hamlin

JBH:af

bcc: B.W. Churchill
P.W. Hanschen
C. Killefer
R.F. Locke

J. Loring
D.G. Lubbock
A.B. Norton
M.F. Travieso-Diaz