



OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

July 3, 1985

Nina Bell
Nuclear Information and Resource
Service
1346 Connecticut Avenue, N.W.
4th Floor
Washington, D.C. 20036

IN RESPONSE REFER
TO FOIA-84-A-78(84-795)

RE: APPEAL FROM FOIA-84-795

Dear Ms. Bell:

This letter responds to your November 5, 1984 appeal of an initial decision by James A. Fitzgerald under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, withholding, in whole or in part, three documents described in Appendix B of the NRC's October 26, 1984 response to FOIA-84-795. In addition, you appealed the effective withholding of Commission transcripts on emergency planning and earthquakes at the Diablo Canyon facility due to a failure by the NRC to respond to your request within the time frames provided in the FOIA. For the reasons set out below, the Commission denies your appeal in part and grants your appeal in part.

The Commission has determined that Attachments 2 and 3 to document 1 of Appendix B are not entitled to further confidentiality under the FOIA. According, those portions will be made available to you as described below.

The remaining portions of the documents described in Appendix B of the October 26 letter were prepared by the Office of the General Counsel ("OGC") for the purpose of assisting the Commission in resolving a disputed issue in a formal agency adjudication under Section 189 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2239. These documents reflect OGC's analysis of legal issues raised in the adjudication and contain OGC's candid evaluation and recommendations regarding the resolution of these issues. The release of these predecisional documents would inhibit the open and frank exchange of ideas, views, advice and recommendations between OGC and the Commission. Since the documents are both predecisional and deliberative, and since their release could, in the Commission's view, adversely affect the quality of the agency's future deliberation, they are of the type of documents contemplated by Congress as exempt from mandatory disclosure under the FOIA. See, NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150 (1975);

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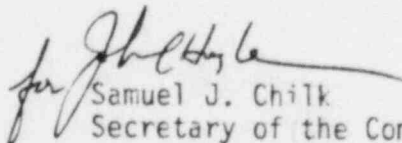
Bell 84-A-78

Coastal States Gas Corp. v. Dept. of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980); Jordan v. Dept. of Justice, 591 F.2d 753, 774 (D.C. Cir. 1978) (en banc); Vaughn v. Rosen, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975). For these same reasons, the Commission has decided that the release of these documents is not in the public interest. Moreover, the documents contain no reasonably segregable factual portions. See, Ryan v. Dept. of Justice, 617 F.2d 781, 790-91 (D.C. Cir. 1980); Mead Data Central, Inc. v. Dept. of the Air Force, 506 F.2d 242, 256 (D.C. Cir. 1977); Williams v. Dept. of Justice, 556 F. Supp. 63 65 (D.D.C. 1982). Accordingly, the Commission has determined that the document should continue to be withheld in their entirety pursuant to the "deliberative process" privilege incorporated by Exemption 5 of the FOIA, 5 U.S.C. 552(b)(5), and the Commission's regulations, 10 CFR 9.5(a)(5).

Your appeal as to transcripts of the Commission's July 25, July 30 and August 3, 1984 meetings on emergency planning and earthquakes at the Diablo Canyon facility was mooted by your filing of San Luis Obispo Mothers for Peace v. NRC, D.D.C. No. 84-3884, an action seeking the release of the same transcripts sought by your appeal. In settlement of that lawsuit, you obtained an authenticated copy of all three transcripts (excluding page 70 of the July 30, 1984 transcript) which had been improperly "leaked" to a third party. However, in light of the absence of the page noted above and in order to provide the general public with the same opportunity to review the transcripts as was provided to selected members of the public, the Commission has decided to release, under its discretionary authority, copies of the three transcripts in connection with this appeal. Copies of the transcripts and Attachments 2 and 3 to document 1 of Appendix B are being placed in the NRC's Public Document Room located at 1717 H Street, N.W., Washington, D.C. and may be obtained by presentation of this letter or under the file designation FOIA-84-A-78C/FOIA-84-795.

This letter represents final agency action on your November 5, 1984 FOIA appeal. Judicial review of this decision is available in Federal district court in the district in which you reside, have your principal place of business, or in the District of Columbia.

Sincerely,


 Samuel J. Chilk
 Secretary of the Commission



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OCT 26 1984

Ms. Nina Bell
Assistant Director
Nuclear Information and Resource Service
1346 Connecticut Avenue, NW, 4th Floor
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-84-795

Dear Ms. Bell:

This is in response to your letter dated October 9, 1984, in which you requested, pursuant to the Freedom of Information Act (FOIA), four categories of documents regarding the Diablo Canyon Nuclear Power Plant.

Copies of the documents listed on enclosed Appendix A are being placed in the NRC (PDR).

Documents 1 through 3 listed on enclosed Appendix B contain the predecisional legal analyses, opinions, and recommendations of the Office of the General Counsel for the Commissioners' consideration of the effects of earthquakes on emergency planning for the Diablo Canyon Nuclear Power Facility. These documents are being withheld from public disclosure pursuant to Exemption (5) of the FOIA (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5) of the Commission's regulations. Document 4 of Appendix B, contains the predecisional advice, opinions, and recommendations of the Office of Policy Evaluation to the Commissioners regarding the effects of earthquakes on emergency planning for the Diablo Canyon Nuclear Power Plant and is being withheld from public disclosure pursuant to Exemption (5) of the FOIA (5 U.S.C. 552(b)(5)) and 10 CFR 9.5(a)(5) of the Commission's regulations. The withheld documents do not contain any reasonably segregable factual portions, and their release would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. The documents are being withheld in their entirety.

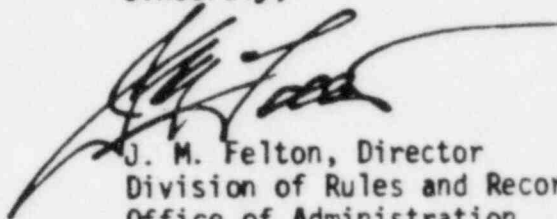
Pursuant to 10 CFR 9.15 of the Commission's regulations, it has been determined that the information withheld is exempt from production or disclosure and that its production or disclosure is contrary to the public interest. The person responsible for the denial of documents 1 through 3 is Mr. James A. Fitzgerald, Assistant General Counsel, Office of the General Counsel. The person responsible for the denial of document 4 is Mr. John E. Zerbe, Director, Office of Policy Evaluation.

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This denial may be appealed to the Commission within 30 days from the receipt of this letter. Any such appeal must be in writing, addressed 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."

The NRC has not completed its review of the documents subject to items 1 and 4 of your request. We will respond as soon as that review is completed.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. M. Felton', with a long horizontal flourish extending to the right.

J. M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosures: As stated

Appendix A

1: Attachments A - H to SECY-84-291

- Attachment A - 11/3/80 Memo for John McConnell from Brian K. Grimes
re: Request for FEMA Assistance to Review Effects of
Earthquake and Volcanic Eruption on State/Local
Emergency Plans
- Attachment B - 11/24/80 Letter to Bart D. Withers from R. A. Clark
re: Effect of Volcanic Eruption on Emergency Responses
at Trojan Nuclear Plant
- Attachment C - 12/23/80 Letter to Bart D. Withers from Neale V.
Chaney re: Revise Emergency Plan with Respect to the
Effects of Volcanic Eruptions from Mount St. Helens
- Attachment D - 2/7/83 Letter to Bart D. Withers from Robert A. Clark
re: Volcanic Eruptions Around Trojan
- Attachment E - 4/23/81 Letter to Robert A. Clark from Bart D. Withers
re: Trojan Radiological Emergency Plan Evacuation
Analysis Report
- Attachment F - 9/83 Various Tables--Initiating Condition and
Emergency Action Levels
- Attachment G - Letter to William Dircks from Lee M. Thomas re: Local
Plans Related to the Trojan Commercial Nuclear Power
Station dated 7/6/82
- Attachment H - 2/23/83 Memo for Dave McLoughlin from W. H. Mayer re:
Findings and Determinations for Portland General
Electric's Trojan Nuclear Power Plant

APPENDIX 3

1. February 10, 1984

SECY-84-70, February 10, 1984 memorandum to the Commissioners from H. Plaine, General Counsel, Subject: Consideration of the Complicating Effects of Earthquakes on Emergency Planning at Diablo Canyon, 6 pp.; Attachment 1, paper entitled "OGC Analysis," 9 pp; Attachment 2, June 22, 1982 memorandum to the Commissioners from W. Dircks, EDO, Subject: Emergency Planning and Natural Hazards, 2 pp.; enclosure to Attachment 2, paper entitled "Basis for Consideration of Natural Hazards in Emergency Planning," 5 pp.; Attachment 3, January 13, 1984 memorandum to N. Palladino from W. Dircks, EDO Subject: Emergency Planning and Seismic Hazards, 6 pp.; Attachment 4, draft commission order, 3 pp.

2. July 18, 1984

SECY-84-291, July 18, 1984 memorandum to the Commissioners from H. Plaine, General Counsel, Subject: Diablo Canyon - Commission Decision on the Need to Consider the Complicating Effects of Earthquakes on Emergency Planning, 13 pp.; Attachment 1, paper entitled "Analysis, Views of the Parties and OGC's Analysis of Them," 24 pp.

3. August 3, 1984

Memorandum to the Commissioners from M. Malsch, Deputy General Counsel, Subject: Diablo Canyon - Order on Effects of Earthquakes on Emergency Planning, 1 p; Attachment, draft commission order, 11 pp.

4.

Attachment 2 to SECY-84-291, OPE comments regarding consideration of earthquake effects on emergency planning for the Diablo Canyon facility, 3 pp.



Nuclear Information and Resource Service

1346 Connecticut Avenue NW, 4th Floor, Washington, D.C. 20036 (202) 296-7550

October 9, 1984

HAND DELIVERED

James M. Felton, Director
Division of Rules and Records
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-84-795

Rec'd 10-10-84

FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Felton:

Pursuant to the Freedom of Information Act, 5 U.S.C. 522, as amended, the Nuclear Information and Resource Service requests the following documents regarding the Diablo Canyon nuclear power plant. This request is made on behalf of the San Luis Obispo Mothers for Peace Inc., intervenors in the Diablo Canyon Operating License proceedings, docket nos. 50-275, 323. Please consider "documents" to include reports, studies, test results, correspondence, memoranda, meeting notes, meeting minutes, working papers, graphs, charts, diagrams, notes and summaries of conversations and interviews, computer records, and any other forms of written communication, including internal NRC Staff memoranda. The documents are specifically requested from, but not limited to, the Office of General Counsel (OGC). In your response, please identify which documents correspond to which requests below.

Pursuant to this request, please provide:

1. All transcripts of closed Commission meetings held during June, July, and August of 1984 concerning the complicating effects of earthquakes on emergency preparedness at the Diablo Canyon plant;
2. SECY-84-70;
3. SECY-84-291; and
4. Copies of all drafts of the Commission's final order CLI-84-12, and closely related documents.

In our opinion, it is appropriate in this case for you to waive search charges, pursuant to 5 U.S.C. 552(a)(4)(A) "because furnishing the information can be considered as primarily benefiting the general public." The Nuclear Information and Resource Service is a non-profit organization serving local

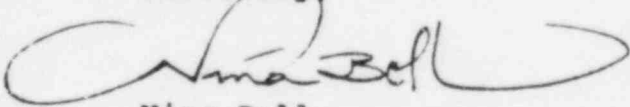
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organizations concerned about nuclear power and providing information to the general public. Information required by 10 CFR 9.14a was provided by letter dated August 3, 1984. This FOIA request is submitted on behalf of the San Luis Obispo Mothers for Peace, a non-profit organization involved in intervention and litigation on the Diablo Canyon plant. Information sought pursuant to this request will be used in these proceedings and thus will benefit the public interest. If you should desire to contest the matter of the fee waiver, NIRS and the Mothers for Peace request immediate notification.

I expect a response within the ten working days allowed by law. If you do not intend to make this deadline, I request that a written statement to that effect be provided by you no later than that same date.

If you have any questions regarding this request you may contact Sandy Silver of the Mothers for Peace at 805-543-7748 or me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nina Bell", written in dark ink.

Nina Bell
Assistant Director

cc: File
Sandy Silver
1760 Alisal Street
San Luis Obispo, CA 93401