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SECRETARY

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SERVED October 31, 2002

The Honorable Lois Capps
United States House of Representatives
1118 Longworth House Office Building
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Dear Congresswoman Capps:

I am responding to your letter dated September 25, 2002, addressed to Chairman Richard A. Meserve regarding a number of issues raised at the September 10, 2002 prehearing conference involving the Diablo Canyon Nuclear Power Plant Independent Spent Fuel Storage Installation (ISFSI) application. Your letter also addressed issues that have been raised by petitioners in the proceeding on the license transfer application of Pacific Gas and Electric Company.

Under Nuclear Regulatory Commission procedural rules for adjudications, the Commission has an appellate role in proceedings commenced before its Atomic Safety and Licensing Boards such as the ISFSI proceeding. Because of that role, I trust that you will understand that the Commissioners must remain impartial during the pendency of a case, whether it is before a Licensing Board or on appeal to the Commission. Therefore, it would be inappropriate for Chairman Meserve or other Commissioners to discuss or comment on the issues raised at the prehearing conference on the ISFSI proceeding.

The Commission is also reviewing the petitions filed in the license transfer proceeding for the Pacific Gas and Electric Company's license transfer application. As with the ISFSI proceeding, it would be inappropriate for Commissioners to comment on issues raised in that proceeding.

A copy of your letter has been served on the participants in the ISFSI proceeding. A copy of this response will also be served in that proceeding. Additionally, your letter and this response will be served on the participants in the license transfer proceeding.

Sincerely,

Annette L. Vietti-Cook

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SECY-02

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September 25, 2002

The Honorable Richard A. Meserve
Chairman
Nuclear Regulatory Commission
Washington, DC 20555

Dear Chairman Meserve:

I am writing regarding a number of issues recently raised at the September 10th prehearing conference to consider the Diablo Canyon Nuclear Power Plant Independent Spent Fuel Storage Installation (ISFSI) application.

First, I would like to thank you for your September 5, 2002 letter outlining the Nuclear Regulatory Commission (NRC) actions following the terrorist attacks of September 11, 2001. As someone who represents a community that has a direct and immediate interest in the safety of all aspects of our nuclear facilities, I look forward to working with you to ensure the federal government is doing all it can on these issues

As you know, the NRC administrative panels are considering PG&E's applications for a transfer of ownership license and a license to build an ISFSI at its Diablo Canyon site. The NRC began the formal prehearing conference process on September 10, 2002 to consider the ISFSI. While many of the issues raised were quite technical and may be matters for legal interpretation, some are basic to the concerns of my constituents and deserve more complete and in-depth hearings

For example, many of my constituents were stunned to hear NRC officials declare that the possibility of terrorist attacks fall under the purview of the military and are not subject for consideration during ISFSI licensing approval hearings. My constituents have correctly raised concerns about the illogic approach that determines safety issues surrounding earthquakes are an issue for consideration but the threat of terrorism are not This kind of bifurcated approach to information sharing has been rightly criticized as we look into the intelligence failures preceding the 9-11 attacks. In light of those grave events and the subsequent reports that terrorists have considered targeting nuclear facilities, I believe that the NRC should expand its public scope of review regarding terrorist attacks and dry cask storage of spent nuclear fuel

Another matter concerns the appropriateness of the transfer of license application being handled separately from the dry cask storage application while PG&E remains in

bankruptcy. It is presumptive to know what actions the bankruptcy court will take on behalf of the creditors. To make matters more confusing, apparently NRC staff was not prepared to answer questions on how the two separate processes would be impacted if one or the other licenses were approved first. For example, if the license transfer was approved before the ISFSI storage license, would the process begin again with the new operator? Would the license application be amended? And, if so, would interested parties be allowed to restate previous and new contentions to the new operator? Again, I believe it is important for NRC to expand its public review of these issues.

These are just some of my concerns with the NRC's examination of the two PG&E applications. The common thread through all of them is that it is incumbant upon the NRC to do everything possible to make Diablo Canyon Nuclear Power Plant safe and secure by the most up-to-date standards. In addition, the citizens of San Luis Obispo County must be given every opportunity for input on these safety issues, and the NRC must be responsive to those concerns.

Again, thank you for your attention to this matter. I look forward to your response

Sincerely,

Lois Capps

LOIS CAPPS
Member of Congress

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	Docket Nos. 50-275/323-LT
	)	
(Diablo Canyon Power Plant, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LETTER FROM VIETTI-COOK TO REP. CAPPS RESPONDING TO 09/25/02 LETTER RE LICENSE TRANSFER PROCEEDING have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution with copies by electronic mail as indicated.

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Docket Nos. 50-275/323-LT
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RESPONDING TO 09/25/02 LETTER RE
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Docket Nos. 50-275/323-LT
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Evangeline S. Ngbea
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 31st day of October 2002