

December 17, 2002

The Honorable Lois Capps
United States House of Representatives
Washington, DC 20515-0522

Dear Congresswoman Capps:

I am responding to your letter dated September 25, 2002, to Chairman Richard A. Meserve of the U.S. Nuclear Regulatory Commission (NRC), which expressed concerns related to the Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI) application. You specifically commented on two issues discussed at the Atomic Safety and Licensing Board (ASLB) prehearing conference, held on September 10 and 11, 2002, in Shell Beach, California. The Secretary of the Commission, Ms. Annette Vietti-Cook, replied to you in her letter dated October 28, 2002, which explained that the Commission may not comment on issues that are subject to pending NRC adjudicatory proceedings. However, the NRC staff may discuss such matters, as appropriate. Therefore, I am responding to the two issues you identified.

In referring to the matters discussed at the ASLB prehearing conference for the Diablo Canyon ISFSI application, you stated in your letter, "... 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." You also stated, "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."

It is important to recognize the extensive actions NRC has undertaken to address security concerns, as Chairman Meserve described in his September 5, 2002, letter to you and others. The issue of what constitutes appropriate consideration of terrorist acts in NRC licensing actions has been raised not only in the Diablo Canyon ISFSI proceeding, but in four separate NRC proceedings, and that issue has been referred to the Commission for review in each of the other four cases. All parties involved in the Diablo Canyon ISFSI prehearing conference acknowledged that fact. The ASLB is considering the arguments presented in this case and has not yet reached a decision. Regardless of how the ASLB rules on this issue for this case, this important question is being considered at the highest level of the agency.

The NRC staff is currently reviewing the Diablo Canyon ISFSI application, and as part of that review, it will evaluate the physical protection measures proposed for the facility. These measures address the objective, in current NRC regulations, of providing high assurance that activities involving spent nuclear fuel do not constitute an unreasonable risk to public health and safety. On October 16, 2002, NRC issued Orders to current licensees of spent fuel dry cask

L. Capps

-2-

storage facilities requiring them to implement interim compensatory measures specifically for those facilities. The measures imposed by the Orders will be considered and applied, if and when appropriate, to the proposed Diablo Canyon ISFSI.

With respect to NRC's separate reviews of the Diablo Canyon power plant license transfer application and the ISFSI application, the NRC staff did answer questions at the prehearing conference on how the two separate processes would be impacted, "if one or the other licenses were approved first [sic]." The NRC staff indicated that if the Commission gives its consent to the power plant license transfer while the ISFSI application is still pending, then the ISFSI application would need to be revised to reflect the fact that the new holder of the power plant licenses would be the new applicant for the ISFSI license. The staff further indicated that if the ISFSI license is approved first, and the transfer of the power plant license is approved later, then there would also be a need for an application to transfer the ISFSI license, which would be noticed in accordance with applicable rules at 10 CFR 2.1301 et seq.

I trust this letter addresses your concerns. If you have further comments or questions, please feel free to contact Dennis Rathbun, Director, Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

/RA/

William D. Travers
Executive Director
for Operations

Docket Nos.: 72-26, 50-275, 50-323

storage facilities requiring them to implement interim compensatory measures specifically for those facilities. The measures imposed by the Orders will be considered and applied, if and when appropriate, to the proposed Diablo Canyon ISFSI.

With respect to NRC's separate reviews of the Diablo Canyon power plant license transfer application and the ISFSI application, the NRC staff did answer questions at the prehearing conference on how the two separate processes would be impacted, "if one or the other licenses were approved first [sic]." The NRC staff indicated that if the Commission gives its consent to the power plant license transfer while the ISFSI application is still pending, then the ISFSI application would need to be revised to reflect the fact that the new holder of the power plant licenses would be the new applicant for the ISFSI license. The staff further indicated that if the ISFSI license is approved first, and the transfer of the power plant license is approved later, then there would also be a need for an application to transfer the ISFSI license, which would be noticed in accordance with applicable rules at 10 CFR 2.1301 et seq.

I trust this letter addresses your concerns. If you have further comments or questions, please feel free to contact Dennis Rathbun, Director, Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

/RA/
 William D. Travers
 Executive Director
 for Operations

Docket Nos.: 72-26, 50-275, 50-323

DISTRIBUTION: (closes EDO Ticket No. G20020626) **PkgML023230062(ML023230053,ML023090093)**
 NRC File Center PUBLIC EDO r/f NMSS Dir Off r/f
 NMSS r/f SFPO r/f Dockets PShea, EDO
 CJensen, SFPO NJensen, OGC DSpitzberg, RIV TCombs, OCA
 SDroggitis, OSP GShukla, NRR BFleming SLewis, OGC
 ACoggins, OGC VOrdaz, NSIR BManili, NSIR
 C:\ORPCheckout\FileNET\ML023230053.wpd *see previous concurrence

OFC:	SFPO		SFPO	C	SFPO		OGC		PMDA		SFPO:DD		SFPO:D	
NAME:	JRHall*		EZiegler*		JMonninger*		SHLewis/NLO*		EKraus* by fax		CLMiller*		EWBrach	
DATE:	11/ 12 /02		11/ 13 /02		11/ 14 /02		11/ 20 /02		11/ 12 /02		11/14/02		11/19/02	
OFC:	NMSS:DD		NMSS:D		NSIR		DEDMRS		EDO		OCA			
NAME:	MEderline		MVirgilio		GMGood*		CPaperiello		WTravers		DRathbun			
DATE:	11/ /02		11/ 22 /02		12/11/02		11/13/02		12/17/02		12/17/02			

OFFICIAL RECORD COPY