

August 17, 2004

The Honorable Maurice D. Hinchey  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Hinchey:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your July 14, 2004, letter to Hubert Miller, Regional Administrator, Region I, regarding Entergy Nuclear Northeast's plans to construct an independent spent fuel storage installation (ISFSI) at the Indian Point Nuclear Generating Station in Buchanan, New York. In your letter, you requested the NRC consider public hearings on the proposed ISFSI, expressed concerns regarding the vulnerability of the ISFSI to acts of terrorism, and questioned whether the ISFSI will serve as a permanent storage facility. You also urged the NRC to consider recommendations proposed by the Indian Point Safe Energy Coalition, and others, to improve safety and security of the ISFSI.

Let me assure you that the NRC always considers new information and recommendations relative to the safety and security of the facilities we regulate, which includes ISFSIs. The NRC maintains multiple avenues, including public meetings, correspondence, email, web-site, and toll-free telephone numbers, for individuals to bring forth their safety and security concerns. All issues brought to the NRC are carefully evaluated and, if necessary, prompt action is taken to ensure the safety and security of the public.

With regard to your specific request for public hearings, Entergy is proceeding with plans for a dry cask storage facility under the General License provisions of NRC regulations in 10 CFR Part 72. Under this regulation, a General License for the storage of spent fuel in an ISFSI at power reactor sites licensed under 10 CFR Part 50 is already authorized. Therefore, there is no additional NRC licensing proceeding in which to offer the opportunity for a hearing. However, the NRC staff has conducted several meetings near Indian Point to discuss the regulatory oversight of ISFSIs, the safety and security of these facilities, and concerns raised by some stakeholders. Most recently, at a meeting on July 15, 2004, NRC technical experts and senior managers provided information about the agency's oversight and inspection of dry cask systems, and responded to questions from concerned citizens and local community leaders.

The NRC established the general license provisions for ISFSIs in 1990 in response to Congressional direction in the Nuclear Waste Policy Act (NWPA) of 1982, as amended. One of the provisions of the NWPA directed the NRC to develop a streamlined process for licensing dry cask storage at reactor sites, specifying that dry cask storage technologies should be established which, "... the Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Regardless of whether a hearing is conducted, the NRC remains committed to evaluating any concerns regarding the safety and security of

nuclear facilities. Upon consideration of those concerns, the NRC will take appropriate action to fulfill our mission to protect public health and safety.

The NRC has regulatory requirements specifically for the physical protection of irradiated reactor fuel in 10 CFR Part 73. These regulations require licensees to develop and implement security plans that include minimizing the possibilities for radiological sabotage. Since September 11, 2001, the NRC has issued advisories and Orders calling for ISFSI licensees to enhance security measures at their facilities. These heightened security measures include increased security patrols, augmented security forces and weapons, additional security posts, heightened coordination with law enforcement and military authorities, and additional limitations on access of personnel in vehicles. The extensive security measures required by the NRC minimize the likelihood of a successful sabotage event. However, the NRC has also recognized the need to re-examine basic assumptions underlying the current civilian nuclear facility security and safeguards programs, and has embarked upon a thorough review of these programs. The NRC staff's initial review of these programs has determined that a terrorist attack would not cause a significant release of radioactive material. As these reviews progress, the NRC will continue to reevaluate existing security measures and assess whether additional mitigative strategies or security enhancements are needed.

With regard to whether the proposed ISFSI is a permanent storage facility, NRC regulations in 10 CFR Part 72, which control the design, licensing, and operation of an ISFSI, clearly establish that an ISFSI is for the interim storage of spent nuclear fuel. Congress gave the U.S. Department of Energy responsibility for developing permanent disposal capacity for the spent fuel and other high-level nuclear waste, and the Department is currently pursuing Yucca Mountain, Nevada, as the site for a proposed disposal facility. Dry cask storage provides for interim storage of spent fuel until a geologic repository is available.

If you have further questions, please feel free to contact me.

Sincerely,

**/RA/**

Luis A. Reyes  
Executive Director  
for Operations

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