

November 15, 2007

Mr. Stanley H. LaCrosse  
N1460 Highway B  
Kewaunee, WI 54216

Dear Mr. LaCrosse:

I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC) to your letter dated September 27, 2007, forwarding information about the independent spent fuel storage installation (ISFSI) being constructed at the Kewaunee Power Station (KPS). In your letter, you made a general statement that licensee representatives had convinced members of the Board of the Town of Carlton to issue a building permit for the ISFSI. You also discussed the possibility that the licensee could receive compensation from the U.S. Department of Energy (DOE) for the delay in accepting spent fuel at a waste repository in Yucca Mountain, Nevada. In this regard, you asked whether there was a way to “freeze” the action on the ISFSI construction until an understanding is reached about the licensee sharing any compensation with the residents of Carlton. Further, you spoke about the way that the current State utility tax is distributed to the municipalities in Wisconsin.

The NRC’s policy, under Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), provides members of the public with the means to request that the NRC take enforcement-related action (such as to modify, suspend, or revoke a license). The NRC would review a request for action, if the facts that constitute the basis for taking the particular action are specified and are sufficient to warrant further inquiry by the NRC. Because the basis for your request to temporarily stop the ISFSI construction in order to obtain compensation for the Town is not a safety concern and is not a violation of NRC requirements, it does not meet the NRC’s criteria for review.

Regarding the compensation for the delay in accepting spent nuclear fuel at a waste repository, DOE has noted that the litigation settlements or damages are not being paid from the Yucca Mountain Program appropriations. Rather, damages or settlement payments to utilities for DOE’s delay will be paid from a “Judgment Fund,” which is a permanent indefinite appropriation funded by taxpayer dollars. In 2002, the U.S. Court of Appeals for the 11th Circuit ruled that DOE was not authorized under the Nuclear Waste Policy Act to spend Nuclear Waste Fund monies on settlement agreements aimed at compensating utilities for onsite storage costs. For more information about DOE’s program to develop and manage a federal system for disposing of spent nuclear fuel, please see the DOE Office of Civilian Radioactive Waste Management (OCRWM) website at <http://www.ocrwm.doe.gov>.

S. LaCrosse

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Lastly, your concern about the distribution of the proceeds from the State utility tax is a matter for resolution by State and Local authorities and is outside NRC jurisdiction.

I hope that you will find that this information helpful.

Sincerely,

***/RA/***

Clifford Munson, Acting Chief  
Plant Licensing Branch III-1  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

Lastly, your concern about the distribution of the proceeds from the State utility tax is a matter for resolution by State and Local authorities and is outside NRC jurisdiction.

I hope that you will find that this information helpful.

Sincerely,

**/RA/**

Clifford Munson, Acting Chief  
Plant Licensing Branch III-1  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

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Kewaunee Power Station

cc:

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