

July 10, 2009

Mr. Jeffrey B. Demain
177 Post Street, Suite 300
San Francisco, CA 94108

Dear Mr. Demain:

On behalf of the Nuclear Regulatory Commission (NRC), I am writing in response to your June 12, 2009 letter to Mr. Trip Rothschild, Assistant General Counsel, NRC Office of the General Counsel. In your letter, you stated that your firm represents the security officers of the Service Employees International Union Local 24/7 and requested that the NRC make a "need-to-know" determination for access to safeguards information (SGI) in an arbitration case. You also requested a determination of entitlement of access to such information under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73. The Union states that it requires these determinations in order to pursue a grievance against Pacific Gas & Electric (PG&E) through arbitration and that the case is at the final arbitration step.

The information to which you seek access appears to fit the definition of SGI as it relates to plant specific numbers of armed responders, timeliness of response, and detailed response procedures regarding armed security officers. The specific provision of the regulation supporting this finding would be 10 CFR 73.22(a)(1)(x) *"Information relating to on-site or off-site response forces, including size, armament of response forces, and arrival times of such forces committed to respond to security contingency events."*

In your letter you have requested that the NRC render a need-to-know determination on your request for access to certain SGI. Under the definition of "need-to-know" in 10 CFR 73.2, the NRC does not consider this type of SGI to be under dual possession of both the licensee and the NRC. Accordingly, under normal circumstances, the licensee and not the NRC would make the required need-to-know determination.

It appears that your request for a need-to-know determination is premature. The NRC is not a party to this dispute nor does it have any knowledge of the facts and circumstances underlying this dispute. In your letter, you assert that the parties require access to SGI to resolve the dispute. The NRC has not been provided with the views of counsel for the licensee on this issue. Accordingly, the NRC is not in a position to determine if access to SGI is required to resolve this dispute.

Based on the information that you have provided, it appears that the parties have selected an arbitrator to resolve this dispute. The arbitrator is in the best position to review all of the facts and circumstances underlying the dispute. Should the arbitrator determine on the basis of this review that the parties require access to SGI to resolve this dispute, you may renew your request at that time. The NRC will then work with all parties to develop an appropriate process for providing access to SGI.

J. B. Demain

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If you have any further questions, please contact Mr. Bern Stapleton of my staff at (301) 415-2432.

Sincerely,

/RA/

Roy P. Zimmerman, Director
Office of Nuclear Security and Incident Response

cc: R. Hulteng, Esq., PG&E

J. B. Demain

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Sincerely,

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cc: R. Hulteng, Esq., PG&E

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