

January 28, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
WESTINGHOUSE ELECTRIC) Docket No. 70-36
COMPANY, LLC)
)
(Hematite Decommissioning Plan)
License Amendment Request))

NRC STAFF'S RESPONSE TO MISSOURI DEPARTMENT OF NATURAL RESOURCES
AND MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES'
REQUEST FOR EXTENSION OF TIME TO FILE COMMENTS AND
FOR THE PUBLIC TO FILE HEARING REQUESTS

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the NRC staff ("Staff") hereby responds to the request for a thirty-day extension of time to file comments and extension of time for the public to file hearing requests ("Request") filed by Eric Gilstrap, P.E., on behalf of the Missouri Department of Natural Resources and the Missouri Department of Health and Senior Services.¹ For the reasons set forth below, the request for an extension of time for comments is not necessary since comments may be filed at any time, and Mr. Gilstrap's request for an extension of time for the public to file hearing requests should be denied.

DISCUSSION

By application dated August 12, 2009, Westinghouse Electric Company, LLC (WEC) submitted a license amendment request ("Amendment") (ADAMS Accession No. ML092330136) seeking approval of its decommissioning plan for the Hematite facility located

¹ Email entitled, "Westinghouse DP plan – request for hearing and comments deadline," dated January 22, 2010.

in Festus, MO. On December 8, 2009, a notice of opportunity to request a hearing or petition for intervention was published in the Federal Register, setting the deadline for filing on February 8, 2010.² On January 22, 2010, Mr. Gilstrap requested an extension of time for the Missouri Department of Natural Resources and the Missouri Department of Health and Senior Services to file comments and an extension of time for the public to file hearing requests.³

As the basis for his requests, Mr. Gilstrap notes the complexity and size of the documents associated with the amendment request and that the review period overlapped the Thanksgiving and Christmas holidays.⁴ With regard to the submission of hearing requests, Mr. Gilstrap asserts, “[w]e feel that the public may need additional time as well”⁵ Mr. Gilstrap explains, however, that the Missouri Department of Natural Resources and the Missouri Department of Health and Senior Services do not intend to request a hearing, but instead intend to submit only “questions, comments, or position statements for [the] project staff to consider.”⁶

Generally, it is Commission practice to require those seeking extensions of time to file their own requests and demonstrate “good cause” for the extension sought, meaning that one person cannot seek an extension of time for the public. For example, in 2002 a member

² Notice of License Amendment Request of Westinghouse Electric Company, LLC for Approval of Hematite Decommissioning Plan, Festus, Missouri and Opportunity to Request a Hearing, 74 Fed. Reg. 64,765 (Dec. 8, 2009).

³ The Federal Register notice of an opportunity for hearing did not establish a deadline for filing comments to the NRC. See Opportunity to Request a Hearing, 74 Fed. Reg. at 64,765. In fact, comments will be accepted at any time and may be addressed to John Hayes, Project Manager, at John.Hayes@nrc.gov.

⁴ Request at 2.

⁵ *Id.*

⁶ *Id.*

of Congress requested “a 30-day extension to the filing period for individuals and organizations to petition to intervene in the Diablo Canyon Spent Fuel Storage application.”⁷

The Secretary of the Commission denied this request for a general extension stating that granting such an extension would be against general Commission practice because persons seeking an agency action, such as an extension of time, must file their own requests.⁸

Accordingly, to the extent Mr. Gilstrap seeks an extension of time for the general public to file requests for hearing, his request should be denied; however, comments will be accepted at any time.

/RA/

Mauri T. Lemoncelli
Counsel for the NRC Staff

Dated at Rockville, Maryland
this 28th day of January, 2010

⁷ Attachment 1 (ADAMS Accession No. ML021720689).

⁸ Attachment 2 (ADAMS Accession No. ML021720401).

Attachment 1

RAS 4565

LOIS CAPPS
22D DISTRICT, CALIFORNIA

1118 LONGWORTH BUILDING
WASHINGTON, DC 20515-0522
(202) 225-3601

COMMITTEE ON COMMERCE



Congress of the United States
House of Representatives

May 22, 2002

Ms. Annette Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C., 20555

Dear Ms. Vietti-Cook:

I am respectfully writing to request a 30-day extension to the filing period for individuals and organizations to petition to intervene in the Diablo Canyon Spent Fuel Storage application.

I have been contacted by a number of my constituents who have expressed the need for added time to prepare petitions for intervention in this matter.

Because of the seriousness of this decision to consider dry cask storage of spent nuclear fuel in San Luis Obispo County, I urge the Commission, consistent with all applicable rules and procedures, to allow the public more time to review their position and prepare petitions to intervene.

Thank you for your consideration on this urgent matter.

Sincerely,

A handwritten signature in cursive script that reads "Lois Capps".

LOIS CAPPS
Member of Congress

DISTRICT OFFICES:

- 1411 MARSH STREET, STE. 205
SAN LUIS OBISPO, CA 93401
(805) 546-8348
- 1428 CHAPALA STREET
SANTA BARBARA, CA 93101
(805) 730-1710
- 910 E. STOWELL ROAD, STE. 111
SANTA MARIA, CA 93454
(805) 349-9313

DOCKETED
USNRC

May 22, 2002 (4:00PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SERVED June 21, 2002

Docket No. 72-26-ISFSI

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
PACIFIC GAS AND ELECTRIC CO.) Docket No. 72-26-ISFSI
DIABLO CANYON POWER PLANT)
)
(Independent Spent Fuel Storage)
Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LETTER FROM REP. LOIS CAPPS TO THE SECRETARY REQUESTING AN EXTENSION OF TIME have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
G. Paul Bollwerk, III, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Stephen H. Lewis, Esq.
Angela B. Coggins, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Lorraine Kitman
P.O. Box 1026
Grover Beach, CA 93483

Docket No. 72-26-ISFSI
LETTER FROM REP. LOIS CAPPAS TO THE
SECRETARY REQUESTING AN EXTENSION
OF TIME

Peg Pinard
San Luis Obispo County Supervisor
County Government Center
1050 Monterey Avenue
San Luis Obispo, CA 93408

Diane Curran, Esq.
Harmon, Curran, Spielberg
& Eisenberg, L.L.P.
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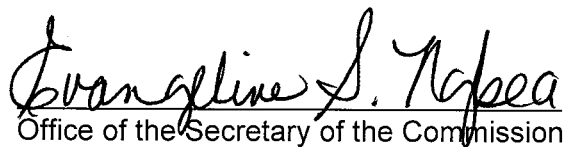
David A. Repka, Esq.
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Nuclear Services
Diablo Canyon Power Plant
P.O. Box 56
Avila Beach, CA 93424

Richard F. Locke, Esq.
Pacific Gas & Electric Company
77 Beale Street, B30A
San Francisco, CA 94105


Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 21st day of June 2002

Attachment 2

RAS 4566

DOCKETED 05/30/02
SERVED 06/21/02

May 30, 2002

The Honorable Lois Capps
United States House of Representatives
1118 Longworth Building
Washington, D.C. 20515-0522

Dear Congresswoman Capps:

I have received your letter dated May 22, 2002, requesting an extension of time for the filing period for individuals and organizations to request hearings and to petition to intervene in a proceeding concerning the application for the Diablo Canyon Spent Fuel Storage Facility. For the reasons stated below, the Commission has denied your request.

Initially, Commission practice generally requires that persons seeking an agency action, such as an extension of time, file their own requests. In other words, one person cannot seek an extension of time for another person. In addition, while the Commission's Rules do provide for granting extensions of time, the Rules require that those extensions be granted for "good cause." See 10 C.F.R. §2.711(a). Your letter does not provide any specific "good cause" why the time specified in the Federal Register Notice should be extended. Finally, the Commission has already received at least three Requests for Hearing and Petitions to Intervene related to this matter. So at least some of the persons interested in requesting a hearing and intervening in the proceeding have filed timely requests.

While the NRC appreciates your interest in this matter, your request for an extension of time is denied.

Sincerely,

/RA/

Annette Vietti-Cook
Secretary to the Commission

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NUCLEAR REGULATORY COMMISSION

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Washington, DC 20555-0001

Lorraine Kitman
P.O. Box 1026
Grover Beach, CA 93483

Docket No. 72-26-ISFSI
RESPONSE OF THE SECRETARY TO THE
EXTENSION REQUEST OF REP. LOIS CAPPS

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Seamus M. Slattery, Chairman
Avila Valley Advisory Council
P.O. Box 58
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Lawrence F. Womack, Vice President
Nuclear Services
Diablo Canyon Power Plant
P.O. Box 56
Avila Beach, CA 93424

Richard F. Locke, Esq.
Pacific Gas & Electric Company
77 Beale Street, B30A
San Francisco, CA 94105

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 21st day of June 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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COMPANY, LLC)
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License Amendment Request))

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

Name: Mauri T. Lemoncelli
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Admissions: District of Columbia
Name of Party: NRC Staff

Respectfully submitted,

/RA/

Mauri T. Lemoncelli
Counsel for the NRC Staff

Dated at Rockville, Maryland
this 28th day of January, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Office of the Secretary * **
ATTN: Rulemakings and Adjudication Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555
E-mail: HEARINGDOCKET@nrc.gov

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/RA/

Mauri T. Lemoncelli
Counsel for the NRC Staff