

November 29, 1983

Freedom of Information Officer  
US Nuclear Regulatory Commission  
Washington, DC 20555

FREEDOM OF INFORMATION  
ACT REQUEST

FOIA-83-713

Rec'd 12-1-83

Dear Sir/Madam:

Under the Freedom of Information Act (5 USC 552), we would appreciate receiving a copy of all correspondence, including requests for approved shipping routes and license amendment and federal temporary storage inquiries, between the Nuclear Regulatory Commission and the parties listed below and/or their shipper (Nuclear Assurance Corporation or Transnuclear), regarding shipment of irradiated fuel from West Valley, New York to the respective reactors or other destinations:

- a. Jersey Central Power & Light (Oyster Creek)
- b. Rochester Gas & Electric (Ginna)

If these utilities have sought guidance from the NRC regarding permission to use federal temporary storage facilities, or on the need to amend their operating licenses, we wish copies of memoes and correspondence.

In addition, we would appreciate receiving a copy of all recent correspondence between the NRC and the shipper and/or the respective laboratories listed below regarding route applications between the respective laboratories and the Savannah River Plant near Aiken, South Carolina:

- c. Atomic Energy of Canada Limited (Chalk River, Ontario reactors)
- d. Brookhaven National Laboratories (Upton, Long Island, NY)

The Office of Nuclear Material Safety and Safeguards would oversee route applications and the Office of the Executive Legal Director (John Kluscik) would be most familiar with license amendment inquiries regarding the West Valley shipments.

The information requested is needed by the Sierra Club, but would also be made available to a number of public interest organizations. Because the Sierra Club is a public interest environmental organization, we request that we not be charged for the above information.

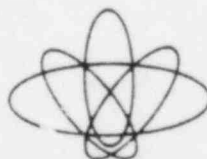
Thank you very much for your cooperation.

cc: L. Audin  
F. Millar  
L. Finaldi

Sincerely yours,

  
Marvin Resnikoff  
River Road  
Columbia, NJ 07832

8402080009 831129  
PDR FOIA  
RESNIK083-713 PDR



**sierra club  
radioactive waste  
campaign**



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

*J. J. J. J.*

MAR 14 1983

Docket Nos. 50-266  
and 50-301

Mr. C.-W. Fay  
Assistant Vice President  
Wisconsin Electric Power  
Company  
231 West Michigan Street  
Milwaukee, Wisconsin 53201

Dear Mr. Fay:

Your November 1, 1982 letter indicated your belief that paragraph 2.E of Facility Operating Licenses DPR-24 and DPR-27 for the Point Beach Nuclear Plant Units 1 and 2 authorizes your possession and storage at Point Beach Nuclear Plant of Point Beach-generated spent fuel assemblies presently stored at the West Valley Service Center and at the General Electric Morris Operations facility.

We have reviewed this letter and have been informed in subsequent discussions with your representatives that title to the fuel stored at these locations has been with Wisconsin Electric Power Company and has not passed to the Nuclear Fuel Services, Inc. nor to General Electric. A copy of an agreement between Wisconsin Electric and Nuclear Fuel Services, Inc. dated May 6, 1977 was provided to us by your representatives as support for the fact that title to the fuel at West Valley has remained with Wisconsin Electric Power Company. We understand that the arrangement with General Electric was similar in this respect.

On this basis, we agree that your present licenses need not be modified to authorize your possession and storage of such fuel in the spent fuel storage pools at Point Beach, provided such possession and storage is carried out fully in accordance with the existing provisions of the licenses and all applicable Technical Specifications and does not entail any modifications to the facility or facility procedures involving an unreviewed safety question under 10 CFR 50.59. In this connection, we note that such action was contemplated in the NRC Staff's Safety Evaluation and Environmental Impact Appraisal supporting Amendments 35 and 41 to Facility Operating Licenses DPR-24 and DPR-27 respectively for the Point Beach Units.

We remind you of the applicability of Technical Specifications 15.3.8 and 15.5.4 with regard to storage of spent fuel and heavy load handling over the spent fuel pool at Point Beach. Depending on the outcome of the NRC staff's review and resolution of Generic Task C-10 "Control of Heavy Loads Over Spent Fuel", further requirements may become applicable prior to completion of this transfer.

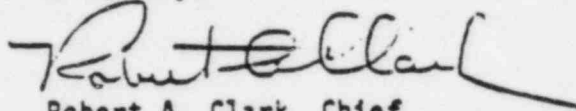
~~8303230231~~

Mr. C. W. Fay

- 2 -

The handling of such fuel at West Valley must be carried out in accordance with the governing procedures applicable at that facility and any transportation must be carried out in accordance with all applicable regulations. Moreover, the disposal of such spent fuel should be included in arrangements made by Wisconsin Electric Power Company with DOE in connection with the Nuclear Waste Policy Act of 1982.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert A. Clark". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Robert A. Clark, Chief  
Operating Reactors Branch #3  
Division of Licensing

cc: See next page

Wisconsin Electric Power Company

cc:

Mr. Bruce Churchill, Esquire  
Shaw, Pittman, Potts and Trowbridge  
1000 M Street, N. W.  
Washington, D. C. 20036

USNRC Resident Inspectors Office  
6612 Nuclear Road  
Two Rivers, Wisconsin 54241

Mr. James J. Zach, Manager  
Nuclear Operations  
Wisconsin Electric Power Company  
Point Beach Nuclear Plant  
6610 Nuclear Road  
Two Rivers, Wisconsin 54241

Mr. Gordon Blaha  
Town Chairman  
Town of Two Creeks  
Route 3  
Two Rivers, Wisconsin 54241

Ms. Kathleen M. Falk  
General Counsel  
Wisconsin's Environmental Decade  
114 N. Carroll Street  
Madison, Wisconsin 53703

U. S. Environmental Protection Agency  
Federal Activities Branch  
Region V Office  
ATTN: Regional Radiation  
Representative  
230 S. Dearborn Street  
Chicago, Illinois 60604

Chairman  
Public Service Commission of Wisconsin  
Hills Farms State Office Building  
Madison, Wisconsin 53702

Regional Administrator  
Nuclear Regulatory Commission, Region III  
Office of Executive Director for Operations  
799 Roosevelt Road  
Glen Ellyn, Illinois 60137

April 12, 1983

Howard A. Jack, Esq.  
First Deputy Counsel  
N.Y. State Energy Research  
& Development Authority  
Two Rockefeller Plaza  
Albany, NY 12223

In the Matter of  
GENERAL PUBLIC UTILITIES NUCLEAR CORPORATION  
(Oyster Creek Nuclear Power Plant, Unit No. 1)  
Docket No. 50-219

Dear Mr. Jack:

This responds to your letter of January 12, 1983 in which you inquired as to the licensed authority of General Public Utilities Corporation to store at the Oyster Creek Nuclear Generating Station spent fuel from that facility currently at West Valley.

Your inquiry is similar to your inquiry of November 8, 1982, relating to the Wisconsin Electric Corporation's Point Beach facilities. The NRC Staff has recently completed our review of this question for the Point Beach facilities and has provided you with a copy of the NRC's letter to Wisconsin Electric Company dealing with this matter (letter dated March 14, 1983, Robert Clark to C. W. Fay, copy attached).

If the circumstances concerning Oyster Creek fuel are the same as those discussed in our letter concerning the Point Beach facilities, our response involving Oyster Creek would be the same; however, it will be necessary for us to be provided with the same type of information relating to Oyster Creek as that provided to us with respect to Point Beach before we can give you a definitive response.

Sincerely,

Guy H. Cunningham, III  
Executive Legal Director

Attachment

~~8304180733~~



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

November 17, 1983

Dave Scott  
New Jersey Department of  
Environmental Protection  
Bureau of Radiation Protection  
380 Scotch Road  
Trenton, New Jersey 08628

In the Matter of  
GENERAL PUBLIC UTILITIES NUCLEAR CORPORATION  
(Oyster Creek Nuclear Power Plant, Unit No. 1)  
Docket No. 50-219

---

Dear Mr. Scott:

This letter responds to your telephone inquiry of September 21, 1983 regarding NRC licensing requirements for the proposed return to the Oyster Creek Nuclear Generating Station of 224 spent fuel assemblies, presently in storage at the West Valley Service Center. Your specific questions were (1) whether a license amendment is required to authorize receipt of the spent fuel by GPU and (2) whether an inspection of the spent fuel is required prior to its deposit in the spent fuel pool at the Oyster Creek facility.

Your questions are similar to those raised in connection with shipments of certain spent fuel from West Valley to Wisconsin Electric Company and Commonwealth Edison Company. In a Director's Decision dated September 30, 1983 (copy attached), the Director, Office of Nuclear Materials Safety and Safeguards, indicated that no license amendment was needed in the case of those shipments. We understand the situation in connection with shipment for Oyster Creek to be similar to that discussed in the Director's Decision. If the facts are the same the result would be the same.

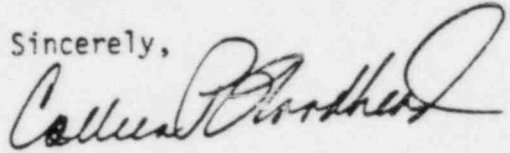
Earlier in the year we received an inquiry from the New York State Energy Research Development Authority, concerning the licensed authority of General Public Utilities Corporation to store at the Oyster Creek facility spent fuel from that facility, then in storage at West Valley. Enclosed is a copy of our response dated April 12, 1983 addressed to Mr. Howard Jack.

With respect to your question concerning inspection of the spent fuel prior to deposit in the spent fuel pool at Oyster Creek, it is our understanding that the fuel will be visually inspected by an underwater video camera at West Valley before loading into casks for transport back to Oyster Creek.

~~8312050462~~

I trust this letter responds fully to your inquiry. If I may be of further assistance, please do not hesitate to inform me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colleen P. Woodhead". The signature is written in dark ink and is positioned above the typed name.

Colleen P. Woodhead  
Counsel for NRC Staff

Enclosures (2) as stated

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS  
John G. Davis, Director

In the Matter of	)	50-10, 50-237
	)	50-249
COMMONWEALTH EDISON COMPANY,	)	
	)	
NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY,	)	50-201
	)	
WISCONSIN ELECTRIC POWER COMPANY	)	50-266, 50-301
	)	
(Shipment of Irradiated Nuclear Fuel from West Valley, N.Y.)	)	(10 CFR 2.206)
	)	

DIRECTOR'S DECISION UNDER 10 CFR 2.206

By letter dated August 24, 1983, Marvin Resnikoff, on behalf of the Sierra Club requested that the NRC require any licensee prospectively involved in the shipment of irradiated reactor fuel from the Western New York Nuclear Service Center in West Valley, New York, to submit a license amendment application, a safety evaluation and other reports with respect to the fuel shipment. In support of its request, the Sierra Club identifies several "[i]mportant safety, environmental and policy issues [which] need to be resolved before these shipments take place." Resnikoff Letter at 1.

On September 9, 1983, the State of Ohio, through its Attorney General, requested, pursuant to 10 C.F.R. § 2.206:

~~8310070171~~



1. That the NRC institute a show cause proceeding pursuant to 10 C.F.R. § 2.202 to modify, revoke, or suspend the licenses of the New York State Energy Research and Development Authority, Wisconsin Electric Power Company and Commonwealth Edison Company in connection with the transport of spent nuclear fuel from West Valley, N.Y.;
2. That NRC prepare an Environmental Impact Statement with respect to transportation of the spent fuel from West Valley; and
3. That NRC stay the transport of spent fuel from West Valley pending the resolution of issues the Attorney General would raise.

Both the Sierra Club's and the Ohio Attorney General's letters are being treated as requests for action under 10 C.F.R. § 2.206. <sup>1/</sup> The requests are being handled by the Office of Nuclear Material Safety and Safeguards in view of this office's primary responsibility in matters concerning the West Valley facility and in questions concerning the shipment and transport of radioactive material. For the reasons stated in this decision, the requests are denied.

---

<sup>1/</sup> In connection with their requests for the initiation of appropriate proceedings, the Sierra Club and the Ohio Attorney General also request that the Commission provide proper notice of such proceeding and grant an opportunity to intervene in the proceeding. The Ohio Attorney General also requests that a hearing be held in connection with the proceeding. Since these requests concern the procedural aspects of any proceeding that might be instituted as a result of this decision under 10 C.F.R. § 2.206, such questions as the sufficiency of notice and standing to participate are addressed more appropriately in the context of any such proceeding and need not receive further consideration in this decision. Consideration of a request for action under 10 C.F.R. § 2.206 does not initiate any formal proceeding or give rise to any hearing or intervention rights under the Atomic Energy Act. See Illinois v. NRC, 591 F.2d (7th Cir. 1979).

The Sierra Club letter also requests the initiation of a proceeding to cover any movements of fuel by a utility whether specifically identified in its petition or not. The NRC has no indication of a plan to move spent fuel from the Center to other reactors, except possible movements to General Public Utilities' Oyster Creek Station or Rochester Gas and Electric Company's Ginna plant. Therefore modification of the Oyster Creek or Ginna licenses are not within the scope of the Sierra Club's request. Nor are they within the scope of the Attorney General's petition. If we read the Sierra Club request to include Oyster Creek and Ginna, we would deny it as premature.

To put the requests of the Sierra Club and the Attorney General and this decision in context, a discussion of past and present activity at the Western New York Nuclear Service Center is appropriate.

#### BACKGROUND

The Center was established as a cooperative venture by New York State (NYSERDA) and Nuclear Fuel Services, Inc. (NFS) to commercially reprocess irradiated nuclear reactor fuel. Under contract with the State, NFS built and operated the reprocessing facilities at the Center. The construction and operation of the Center was licensed by the Atomic Energy Commission. <sup>2/</sup> The Center's features include a Fuel Receiving Facility, at which irradiated (spent) nuclear reactor fuel was received and stored pending reprocessing. Spent fuel was reprocessed at the Center from 1966 until March 1972, when reprocessing was suspended to permit enlargement and modification of the Center's facilities. While NFS sought NRC approval for the facility modifications, it formed agreements with Wisconsin Electric Power Company, Commonwealth Edison Company, General Public Utilities Service Corporation (as agent for Jersey Central Power & Light Company), and Rochester Gas and Electric Company to receive and store spent fuel owned by the utilities pending the resumption of reprocessing. The anticipated reprocessing never occurred and the spent fuel remains in storage at the Center's Fuel Receiving Facility.

---

<sup>2/</sup> The New York State Energy Research and Development Authority (NYSERDA) is the successor to the New York State Atomic Research and Development Authority, to which the Atomic Energy Commission (AEC) issued a construction permit in 1963, and the New York State Atomic and Space Development Authority, to which the AEC issued a provisional operating license, CSF-1, in 1966. Nuclear Fuel Services was also a licensee under the provisional operating license.

As a result of the reprocessing which occurred before its permanent cessation, a substantial quantity of high-level liquid radioactive waste was generated at the Center. In 1980, the Congress enacted the West Valley Demonstration Project Act, which directs the U.S. Department of Energy (DOE) to solidify and remove this high level waste from the Center. NYSERDA has placed the Center in the exclusive possession and control of DOE. To comply with the Congressional directive to solidify the high level liquid waste, DOE plans to use the Fuel Receiving Facility where the utilities' spent fuel is now stored.

NYSERDA, which owns the Center, has demanded that the utilities remove their spent fuel from the Fuel Receiving Facility. A federal court has held that the utilities involved in the litigation have a duty to heed that demand and remove the spent fuel as expeditiously as is reasonably possible.<sup>3/</sup> Although the court has held that Wisconsin Electric and Commonwealth Edison have a duty to remove the spent fuel at NYSERDA's request, neither the court nor the NRC has ordered the utilities to remove their fuel from the Center. Wisconsin Electric and Commonwealth Edison have taken action in preparation for returning the spent fuel to their nuclear reactor sites in Wisconsin and Illinois. One hundred fourteen spent fuel shipments are planned for

---

<sup>3/</sup> New York State Energy Research and Development Authority v. Nuclear Fuel Services, Inc., CIV 82-426 (W.D.N.Y., filed June 30, 1983). See also, New York State Energy Research and Development Authority v. Nuclear Fuel Services, Inc., 561 F. Supp. 954 (W.D.N.Y. 1983). Rochester Gas and Electric Company reached an agreement with NYSERDA on the removal of Rochester's spent fuel from the Center and was not a party to the litigation.

Wisconsin's Point Beach plant and 30 shipments for Commonwealth Edison's Dresden station. In accordance with 10 C.F.R. § 73.37, the NRC on September 14, 1983, approved transportation routes in connection with these shipments.

NYSERDA LICENSE AUTHORITY

The Sierra Club and the Attorney General assert that NYSERDA presently has no license to ship nuclear fuel and that a license amendment is needed if NYSERDA is to ship spent fuel from the Center.

NYSERDA does not appear to have any plan for nor any interest in directly participating in any handling of spent fuel at the Center. The utilities' agreement with DOE, which is addressed more fully later, confirms our understanding. In the absence of any indication that NYSERDA plans to play an active role in the operation of the facility, the handling of the fuel, or its shipment from the Center, the Sierra Club's request to initiate a proceeding to modify NYSERDA's license is denied.

UTILITY LICENSE AUTHORITY

The Sierra Club's request and the Attorney General's petition for amendment of the utility licenses are based on the conclusion that the utilities do not have sufficient authority to undertake or complete the shipment of spent fuel from West Valley to the utilities' reactor sites.

The utilities on September 21, 1983, by letter from legal counsel to the NRC, informed the Commission that the utilities will rely on DOE to undertake all activities at the Center in connection with loading the spent fuel for shipment. <sup>4/</sup> These activities include removing the empty shipping cask from the truck upon arrival at the Center; performing necessary pre-load surveys; moving and loading the fuel into the cask; installing the cask

---

<sup>4/</sup> Letter from Gerald Charnoff, Counsel for Wisconsin Electric Power Company and Commonwealth Edison Company to Charles E. MacDonald, Chief, Transportation Certification Branch, NRC (Sept. 21, 1983).

cover; purging and drying the cask; conducting a contamination survey and reloading the cask on the truck. DOE will prepare procedures for the handling and loading of the casks and for related quality assurance and quality control activities. The utilities have determined that the DOE procedures for handling and loading the spent fuel are consistent with the utilities' NRC approved quality assurance programs. DOE will certify to a utility representative that each shipment has been prepared and loaded in accordance with these procedures. DOE will also certify that the shipping package has been prepared, marked and labeled in accordance with applicable Department of Transportation (DOT) regulations. Upon review of the certifications, a utility representative will execute the shipping papers.

Together, the Sierra Club and the Attorney General assert that neither utility has authority to package, or load the spent fuel at the Center, or to transport it from the Center. The Sierra Club and the Attorney General conclude that a license amendment authorizing these activities is required.

It is noted, however, that the utilities will neither package nor load the spent fuel. DOE, through its contractor, is performing those activities. The West Valley Demonstration Project Act directs DOE to solidify the high-level liquid waste at the Center and to do certain other tasks associated with the solidification project. <sup>5/</sup> DOE has retained a contractor to perform

---

<sup>5/</sup> Pub. L. 96-368, 94 Stat. 1347 (1980).

the solidification and other necessary tasks. DOE has determined that the Fuel Receiving Facility will be needed in the course of the West Valley Demonstration Project. As a result, the DOE contractor must remove the spent fuel from the Fuel Receiving Facility.

Except with respect to a few clearly defined actions (e.g., decontamination and decommissioning of the facilities used in the course of the project), NRC has a limited role at West Valley. That role does not include deciding whether DOE needs the Fuel Receiving Facility to conduct the West Valley Demonstration Project. Neither does it include licensing or regulating the activities of DOE's prime contractor. Under the provisions of 10 C.F.R. § 30.12 and § 70.11 the activities of DOE's prime contractor are presently exempt from NRC license requirements.

The West Valley Demonstration Project Act limits NRC review of DOE's activities at the Center to informal, consultative procedures. By law, the Commission may not examine DOE's administration of the project in formal proceedings. Nuclear Fuel Services, Inc. and New York State Energy Research and Development Authority (Western New York Nuclear Service Center) ALAB-679, 16 NRC 121, 126 (1982).

To the extent that the utilities take action with respect to the spent fuel at the Center, they are within NRC's jurisdiction. The utility contractors (Nuclear Assurance Corporation and Transnuclear, Inc.) will



provide an NRC approved shipping cask and the utility carriers will haul the loaded casks from the Center. The utilities' representatives will execute the shipping papers and authorize the loaded casks to be delivered to the carriers' vehicles.

Wisconsin Electric and Commonwealth Edison, both NRC licensees, do need authority to deliver the spent fuel to a carrier for transport. That authority is provided by 10 C.F.R. § 71.12, as amended, 48 Fed. Reg. 35600, 35610, August 5, 1983. That section of the Commission's regulations provides a general license to any licensee of the Commission to transport or deliver to a carrier for transport certain radioactive material including irradiated reactor fuel in packages for which a Certificate of Compliance has been issued by the NRC. The general license of § 71.12 authorizes the delivery of spent fuel to a carrier for transport if the requirements of the general license are met. A principal requirement of the general license is that the licensee have a Commission approved quality assurance program satisfying the provisions of 10 C.F.R. Part 71, Subpart H. Both utilities have NRC approved quality assurance programs which satisfy the requirements of Part 71, Subpart H. As noted above, the handling and loading procedures to be used at the Center are consistent with the approved quality assurance plans. The casks to be used have been previously certified by the NRC for use.

#### THE TRANSPORT ROUTE

Both the Sierra Club and the Attorney General have expressed concern over the routes selected for transport of the spent fuel from the Center. To the

extent that the concern arises from questions of highway safety, it is within the jurisdiction of the DOT. See, 49 U.S.C. §§ 1801-1812. The Sierra Club's concern appears to focus on the ability of the roads in and around West Valley to accommodate a loaded transport vehicle. This is clearly a highway safety issue of the type governed by DOT regulations. DOT has established specific requirements for the carriers of spent fuel in transport, including routing requirements. <sup>6/</sup> The NRC's regulatory process does not require examination in advance of any particular transportation route as to its degree of risk to the public health and safety. To the extent that the Sierra Club's highway safety concern has implications for radiological safety, those implications have been considered and judged to be of small potential risk. The casks in which the spent fuel will move are designed to withstand both the normal conditions of transport and specified

---

<sup>6/</sup> Under the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. §§ 1801-1812, the DOT is authorized, among other things, to issue routing regulations for the safe transportation of radioactive materials. The DOT issued regulations for driver training of carrier personnel and for the highway routing of radioactive material shipments, including spent fuel, on January 19, 1981 (46 Fed. Reg. 5298). The regulations became effective on February 1, 1982. These routing requirements are set forth in 49 C.F.R. § 177.825. Under 49 C.F.R. § 177.825(b), a carrier or any person who operates a motor vehicle containing a package of large quantity radioactive material (spent fuel is a "large quantity", see 49 C.F.R. § 173.389(b)), shall operate over a preferred route. Preferred routes are interstate highways and state-designated routes. Carriers are allowed off the interstate system only to follow a state-designated route, in a documented case of emergency, to obtain necessary fuel or vehicle repairs, or to travel to and from a pick-up or delivery site not located on an interstate highway. Variations are also permitted from the preferred routes for security purposes and as otherwise imposed by the NRC in 10 C.F.R. Part 73. See, 49 C.F.R. § 177.825(e).

accident conditions.<sup>7/</sup> The designs for the casks proposed for use in the West Valley fuel move have been certified by the Commission as meeting the Commission design criteria. <sup>8/</sup> To the extent that the Sierra Club and Attorney General's concern arises from questions of physical security, they are within the jurisdiction of the Commission. Nuclear Assurance Corporation and Transnuclear, Inc., applied to the Commission for route approvals for the spent fuel movements from West Valley. The Governor of Ohio, through the Ohio Adjutant General's Disaster Service Agency, requested a change in the proposed route through Ohio. The Commission's route survey team surveyed the routes and found that they satisfied the requirements for physical protection of irradiated reactor fuel in transit found at 10 C.F.R. § 73.37. Based on the team's findings and the Governor's request, the route proposed by the Governor was approved on September 14, 1983, as the primary route through Ohio. <sup>9/</sup> There is no safeguards (i.e., physical security) reason to reject

---

<sup>7/</sup> See 10 C.F.R. Part 71, Subparts D through H for NRC's package approval requirements; package approval standards; package tests; operating controls and procedures; and quality assurance requirements.

<sup>8/</sup> See Certificate of Compliance for Radioactive Materials Packages No. 9010, Revision 12 (Docket No. 71-9010) and No. 9016, Revision 5 (Docket No. 71-9016).

<sup>9/</sup> Letter from Theodore S. Sherr, Material Transfer Safeguards Licensing Branch, NRC, to F.L. Danese, Supervisor, Cask Operations, Nuclear Assurance Corp. (Sept. 14, 1983). Letter from Theodore S. Sherr, to John Mangusi, General Manager, Operations, Transnuclear, Inc. (Sept. 14, 1983).

the route proposed by Nuclear Assurance and Transnuclear. Their route was approved as an alternate route. Neither the Sierra Club nor the Attorney General suggest any threat of radiological sabotage, theft or diversion which would cause us to doubt the correctness of the route approvals.

The Attorney General suggests that an Environmental Impact Statement should be prepared with respect to the transport of the spent fuel. The Attorney General concedes that the proposed fuel move "does not fall really within any of the specified circumstances requiring the preparation of an environmental impact statement." The National Environmental Policy Act of 1969 requires the preparation of an Environmental Impact Statement in connection with a major Federal action significantly affecting the quality of the human environment. The NRC is taking no action significantly affecting the environment. The NRC has examined the environmental impact of its transportation regulations and has found the regulations to be adequate.

On June 2, 1975 (40 Fed. Reg. 23768), the NRC announced that it was reevaluating its then existing regulations concerning the air transportation of radioactive materials, including packaging. As part of the rulemaking, the Commission prepared an Environmental Impact Statement on the subject which included consideration of other transport modes because of the requirement to consider alternatives contained in the National Environmental Policy Act of 1969. Comments were sought on the draft EIS and the

Final Environmental Statement, "Transportation of Radioactive Material By Air and Other Modes" (NUREG-0170), issued in December 1977. The Commission concluded, based upon the analysis developed in the rulemaking proceeding, the public comments received, the safety record of transportation of licensed materials and other information, that present regulations were adequate to protect the public against unreasonable risk from the transport of radioactive materials. See, Withdrawal of Advance Notice of Rulemaking, 46 Fed. Reg. 21619 (April 13, 1981). The Commission specifically reaffirmed this conclusion on the adequacy of existing 10 C.F.R. Part 71 with respect to the safety of radioactive material transportation in a subsequent rulemaking on Advance Notification. 47 Fed. Reg. 596 (January 6, 1982).

Both the Attorney General and the Sierra Club raise the question of whether the entities involved in the spent fuel move would be indemnified in the event of a transport accident. Because of amendments to the Price-Anderson Act in 1975, public injury and damage claims would be paid through private insurance rather than government indemnity. In those amendments, the Congress recognized that under a newly adopted system, government indemnity would eventually be phased out. In the event of a nuclear incident, funds available to pay personal injury and property damage claims would come from three sources:

(1) third party liability insurance (a primary layer of financial protection) purchased from the nuclear insurance pools (this amount is currently \$160 million);

(2) retrospective premium insurance (a secondary layer of financial protection) to be collected from the utilities by the insurance pools at the rate of \$5 million per large nuclear power plant licensed to operate (with 82 such plants licensed to operate the amount of this layer is currently \$410 million); and

(3) if the sum of the primary and secondary layers is less than \$560 million, government indemnity, which would fill the gap between the limits of private insurance coverage and \$560 million, the indemnity ceiling. <sup>10/</sup>

Both Wisconsin Electric and Commonwealth Edison are presently required to and do maintain \$570 million in financial protection through the primary and secondary levels of private insurance. Under the private insurance policies, (the Nuclear Energy Liability Policy, Facility Form), a shipment of spent fuel to a covered facility from any location except an indemnified facility is an insured shipment. See, 10 C.F.R. § 140.91 Appendix A. The shipment of spent fuel from the Center, whose indemnity coverage has been suspended for the duration of the West Valley Demonstration Project, to a utility reactor site, a covered facility, is thus an insured shipment covered by \$570 million in nuclear liability insurance.

---

<sup>10/</sup> See [1975] U.S. Code Cong. and Ad. News 2259-2262.

ACTIVITY AT THE REACTOR SITE

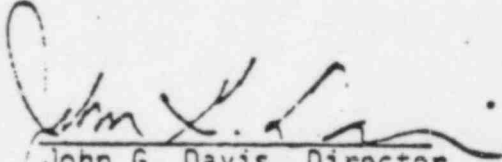
The Attorney General asserts that the utility licenses contain no language allowing receipt of irradiated spent nuclear fuel at the respective reactor sites. The Attorney General suggests that this absence of license language requires the conclusion that authority to receive the spent fuel is also absent. The licenses authorize the utilities, pursuant to the Atomic Energy Act and 10 C.F.R. Parts 30 and 70, to possess such byproduct and special nuclear material as may be produced by the operation of their respective reactor facilities. Section 30.34 of the Commission's regulations provides that, except as otherwise provided in the license, a license issued pursuant to Part 30 shall carry with it the right to receive by-product material. Similarly, section 70.41 of the Commission's regulations provides that, except as otherwise provided in the license, each license issued pursuant to Part 70 shall carry with it the right to receive special nuclear material. The utility licenses contain no provision which suggests that § 30.34 or § 70.41 do not apply or do not operate as their language suggests. The utilities are authorized by the Commission's regulations to receive the byproduct and special nuclear material which constitute the spent fuel to be removed from the Center.

The Sierra Club raises questions regarding the need for a safety evaluation addressing receipt of the spent fuel. The Commission's regulations at 10 C.F.R. § 50.59 permit licensees to change procedures described in the safety analysis report unless the change involves a change in the technical specifications of the license or an unreviewed safety question. An unreviewed safety question exists if the probability or consequences of a previously evaluated accident or safety equipment malfunction increase; if the possibility for an accident or malfunction of a type not previously evaluated may be created; or if the margin of safety defined in the basis for any technical specification is reduced. The Safety Analysis Reports for the units at Wisconsin's Point Beach plant and Commonwealth Edison's Dresden station cover the proper functioning of fuel handling equipment and spent fuel movement. The possibility of malfunction, and a fuel drop accident were considered in the safety analysis reports. The Sierra Club presents no evidence of increased probability or consequences of a fuel handling accident or of a type of accident not previously considered; or of any reduction in the margins of safety in fuel handling from the receipt of spent fuel from the Center. The actions involved in receipt of spent fuel and the potential accidents and their consequences of these actions are similar to those involved in the packaging and loading of spent fuel for transport away from a reactor. These actions, potential accidents and consequences have been evaluated. There is no need for a new safety evaluation to address the receipt of spent fuel at the reactor site.



CONCLUSION

For the reasons stated in this decision, no license amendment or further authorization is required to permit the transfer of spent fuel from the West Valley facility to the Point Beach and Dresden facilities. Accordingly, the requests of the Sierra Club and the Ohio Attorney General for initiation of proceedings and other relief in connection with the transfer of spent fuel is denied. The Attorney General's request for preparation of an environmental impact statement and a stay of the shipments is also denied. A copy of this decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 C.F.R. § 2.206(c).

  
John G. Davis, Director  
Office of Nuclear Material  
Safety and Safeguards

Dated at Silver Spring, Maryland  
this 30th day of September, 1983.