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March 11, 2020

Via e-mail:

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Tina Ennis
FOIA Analyst, U.S. Nuclear Regulatory Commission
Mail Stop TWFN-6 A60M
Washington, DC 20555-0001

RE: Appeal from Final FOIA Decision
FOIA Request: NRC-2020-000163

Dear Ms. Ennis:

On February 19, 2020, I requested writings and communications regarding three questionable activities the Nuclear Regulatory Commission (NRC) engaged in with Southern California Edison (SCE) to entomb millions of pounds of nuclear waste on San Diego's eroding shoreline:

1. Records and communications related to the NRC allowing SCE to use test canisters at the San Diego nuclear waste site that were too small for downloading in January 2018. (Audio Transcript, San Onofre Special Inspection Webinar, November 8, 2018, at pg. 10-11);
2. Records and communications related to the NRC allowing SCE to use canisters that were not authorized by the NRC and have defective shims. (Audio Transcript, San Onofre Special Inspection Webinar, November 8, 2018, at pg. 52-53, 87-88); and
3. Records and communications related to the NRC allowing SCE to not formally report the August 3, 2018, near-dropping of a nuclear waste canister to the public for 44 days. (Audio Transcript, San Onofre Special Inspection Webinar, November 8, 2018, at pg. 13-14).

On February 21, 2020, you stated there were not responsive record to the third request, but would begin processing the other two requests. On March 9, 2020, the NRC provided a "Final" response to the other two requests stating: "There were no responsive records located." This letter appeals the NRC's final decisions that there are no responsive records for the three categories requested, each category will be addressed in turn.

A. First Request for Records and Communications Regarding Test Canisters at the San Diego Nuclear Waste Site that Were Too Small for Downloading

On March 9, 2020, the NRC provided a "Final" response stating, "[t]here were no responsive records located" for the other two categories in NRC-2020-00163 request. Regarding, the requests, the NRC stated:

Records that are already publicly available on our website at <https://www.nrc.gov/reactors/operating/ops-experience/songsspec-insp-activities-cask-loading-misalignment.html>, specifically, the inspection reports and the EA-18-155, Notice of Violation, contradict the assumption underlying your request; i.e., that the NRC allowed “CE [sic] to use test canisters at the San Diego nuclear waste site that were too small for downloading in January 2018, and to use canisters that were not authorized by the NRC and have defective shims.”

To clarify, this part of the request is seeking the records and communications related to the NRC’s observations during the initial dry cask runs starting in January 2018. NRC Region IV Administrator Scott Morris admitted at the November 29, 2018 Community Engagement Panel (CEP) meeting hosted by SCE, NRC inspectors observed the initial dry cask runs in January 2018:

So when I talk about performance-based, we do routine inspections and we observe performance. For example, we observe the dry runs on the loading. **And what we observed, consistent with our inspection program and procedure, and the two or three inspectors we had during that event – or during that dry run – we did not observe problems – or the problems we observed were quickly identified by the operator and corrected on their own without prompting. That’s what we want to see.**¹

Scott Morris admission there were NRC inspectors at the San Diego nuclear waste during the initial loading was affirmed by NRC Region IV Health Physicist Eric Simpson who explained during the initial dry run SCE used nuclear storage canisters smaller than the actual canisters used at the San Diego nuclear site:

Before starting downloads of lowered canisters, San Onofre trains staff using test equipment. The training canister **was smaller than the actual canisters used at San Onofre**. The training canister provided about three quarter of an inch more clearance, this made the lining and lowering the training canister much easier than would be experienced during actual downloading operations. Staff conducting downloading operations **were not trained on the differences, when training does not match the actual conditions, we refer to this as negative training.**²

Given Scott Morris’ admission the NRC inspectors observed the initial dry runs, and Eric Simpson’s explanation the training canisters SCE used were smaller than the actual canister used at San Onofre, there are likely records related to the NRC inspectors’ observations and communications related to the training canister SCE used. Please provide all records and communications related to the practice canisters used at San Onofre during the initial loading in January 2018. Additionally, please provide all communications and a detailed description regarding the NRC’s searches that resulted in its decision there are no responsive records to this part of the request and identify the individual(s) who determined there were no responsive records.

¹ The following statement was made at the November 29, 2018, Community Engagement Panel Transcript hosted by Southern California Edison. A transcript of the panel can be found at: <https://www.songscommunity.com/community-engagement/meetings/community-engagement-panel-meeting-20180914> (emphasis added).

² Transcript for NRC’s November 8, 2018 Webinar, pp. 10-11, available at <https://www.nrc.gov/docs/ML1905/ML19057A256.pdf> (emphasis added).

B. Second Request for Records and Communications Regarding Canisters that Have Defective Shim and Were Not Authorized by the NRC

The NRC also stated there were no responsive records regarding the design canisters (including defective shims pins) used by SCE that were not approved by the NRC. However, this is inconsistent with what the NRC previously stated about SCE's initial shim design. During the November 8, 2018, NRC virtual webinar NRC Chief of the Inspection and Operations Branch Division of Spent Fuel Management Office of Nuclear Material Safety and Safeguards Patricia Silva stated:

Holtec changed their design to the shim standoff pins, which are shown on the right hand of the, the right picture. The pin design has a possibility of failing during fabrication process, and during transportation of the canister, and since this issue had been identified, Holtec has ceased application of the pin, of the pin design, and replaced existing and new canisters with the original monolithic standoff design. **This change to the shims was the subject of an NRC inspection done by headquarters, by my team, out at the Holtec Camden, New Jersey facility. Results of the inspection are still pending,** we reviewed the thermal analysis that had been provided by Holtec.³

SCE also admitted there were broken and defective shims in the first four canisters downloaded at the San Diego nuclear waste site. Please provide all records or communications related to the initial shim design used by SCE, the NRC's observations and inspections of the unapproved design, and the results of the review and inspection. Additionally, please provide all communications and a detailed description regarding the NRC's searches that resulted in its decision there are no responsive records to this part of the request and identify the individual(s) who determined there were no responsive records.

C. Third Request for Records and Communications related to the formal reporting of the August 3, 2018, Near-Dropping of a Nuclear Waste Canister

On February 21, 2020, you sent an Acknowledgement Letter stating: "In regard to the third item of your request, there will be no responsive records, as the NRC did not allow SCE to not formally report the August 3, 2018 incident for 44 days." However, what the third request is seeking are records and communications related to the multiple phone calls between the NRC and high-ranking SCE officials regarding a nuclear waste storage canister's near-dropping on August 3rd. At the CEP meeting hosted by SCE on November 29, 2018, NRC Regional IV Administrator Scott Morris admitted he had material communications with SCE Vice President of Decommissioning, Tom Palmisano:

So this is just a quick chronology: NRC became aware of this on Monday, August 6th. Informally, we got a call explaining what happened. That began – that raised some concerns, as you might expect – I – **I actually was a part of that initial call – and we elected to begin daily communications with the facility operator and**

³ *Id.*

internally to determine what next steps we needed to take to plan our enhanced oversight activities.

The next day in a subsequent phone call I had with Tom, Tom committed on behalf of Southern California Edison to cease all fuel loading operations or fuel handling until such time as the NRC had the opportunity to come out and inspect.⁴

What the third request is looking for are those daily communications and phone calls referred to by Scott Morris including, but not limited to, communications related to why SCE failed to formally report the event for 39 days (from August 6 to September 14, 2018). Scott Morris' statement is inconsistent with the information provided in the NRC Special Inspection Report, dated November 28, 2018 (ML18332A357) that "...from August 6 to September 14, 2018, the licensee failed to notify the NRC after discovery of important to safety equipment being disabled and failing to function as designed when required by the Certificate of Compliance to provide redundant drop protection features to prevent and mitigate the consequences of a drop accident and no redundant equipment was available and operable to perform the required safety function."

In light of these clarifications, please provide the records referred to by Scott Morris as well as any other communications between the NRC and SCE, as well as internal communications between NRC officers, staff, and other agents, regarding the August 3rd near-dropping incident. Additionally, please provide all communications and a detailed description regarding the NRC's searches that resulted in its decision there are no responsive records to this part of the request and identify the individual(s) who determined there were no responsive records.

Prompt disclosure of these records are critical to the public and are necessary in light of the NRC allowing SCE to resume entombing nuclear waste on an eroding San Diego shoreline. The information sought would reveal whether individuals charged with regulatory oversight over ultrahazardous activities are properly carrying out their duties to ensure the safety of those working at the site, the millions of people living in the counties surrounding the site, and the environment.

Very truly yours,

/s/ Michael J. Aguirre
Michael J. Aguirre

cc: Maria C. Severson, Esq.

⁴ The following statement was made at the November 29, 2018, Community Engagement Panel Transcript hosted by Southern California Edison. A transcript of the panel can be found at: <https://www.songscommunity.com/community-engagement/meetings/community-engagement-panel-meeting-20180914> (emphasis added).