

**POLICY ISSUE
(Notation Vote)**

March 31, 2015

SECY-15-0047

FOR: The Commissioners

FROM: Mark A. Satorius
Executive Director for Operations

SUBJECT: REQUEST FOR APPROVAL OF STAFF RECOMMENDATION TO
AUTHORIZE SAN ONOFRE NUCLEAR GENERATING STATION AND
DIABLO CANYON POWER PLANT TO USE SECTION 161A
PREEMPTION AUTHORITY

PURPOSE:

The purpose of this paper is to seek Commission approval for the U.S. Nuclear Regulatory Commission (NRC) staff's recommendation to approve the individual requests of Southern California Edison and Pacific Gas and Electric Company to use the preemption authority granted to the Commission under Section 161A of the Atomic Energy Act of 1954, as amended, at the San Onofre Nuclear Generating Station (SONGS) and the Diablo Canyon Power Plant and Diablo Canyon specific-license independent spent fuel storage installation (hereafter referred to jointly as DCPD), respectively. In accordance with Staff Requirements Memorandum (SRM) SECY-12-0027, "Preemption Authority Pursuant to Section 161A, 'Use of Firearms by Security Personnel,' of the Atomic Energy Act of 1954, as Amended," dated May 3, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12124A377), this paper includes the staff's technical evaluation and draft confirmatory order for SONGS (Enclosures 1 and 2), technical evaluation and draft confirmatory order for DCPD (Enclosures 3 and 4). In addition, a draft letter to the Governor of California is proposed for signature by the Chairman (Enclosure 5), informing the Governor that the NRC is granting Section 161A preemption authority to SONGS and DCPD should the Commission approve the staff's recommendation.

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There are no resource implications as a result of commitments made in this paper.

BACKGROUND:

SRM-SECY-12-0027, Task 2, requires the staff to submit, individually to the Commission for review and approval, a recommendation to approve or deny each request for Section 161A preemption authority, to include the staff's technical evaluations and draft orders designating facilities as receiving preemption authority if the staff's recommendation is to grant the request.

To accomplish this, the staff submitted for Commission approval, SECY-12-0125 (ADAMS Accession No. ML12164A839), which provided two draft orders addressing the need to take interim action prior to the completion of the final rulemaking on enhanced weapons for a limited class of NRC licensed facilities. In SRM-SECY-12-0125 (ADAMS Accession No. ML12326A653), the Commission approved the staff's proposed six-step process for dispositioning licensee preemption requests, which included issuance of a designation order followed by a confirmatory order.

Following the Commission-approved six-step process, in SECY-13-0006 (ADAMS Accession No. ML12339A053), the staff submitted for Commission approval a draft final order designating an interim class of NRC-licensed facilities as eligible to apply for preemption authority. In SRM-SECY-13-0006 (ADAMS Accession No. ML13121A322), the Commission approved the staff recommended draft order and on June 5, 2013, the staff issued Enforcement Action 13-092, "Order Designating an Interim Class of NRC Licensed Facilities That Are Eligible To Apply to the Commission for Authorization To Use the Authority Granted Under the Provisions of Section 161A of the Atomic Energy Act of 1954, as Amended" (hereafter referred to as the "designation order" (ADAMS Accession No. ML13121A459). Specifically, the designation order provides a process through which the licensee of each eligible facility may apply for Section 161A preemption authority, as well as requiring the security personnel at each designated facility to be subject to a firearms background check.

DISCUSSION:

In response to the June 5, 2013, designation order on August 28, 2013, and September 24, 2013, respectively, Southern California Edison (ADAMS Accession No. ML13242A277) and Pacific Gas and Electric Company (ADAMS Accession No. ML13268A398) submitted their requests for preemption authority and identified specific state firearms laws that could restrict or prohibit the possession and use of firearms at their sites. In SRM-SECY-12-0125, the Commission approved the staff recommendation, set forth in Step 5 of the six-step process, to revise the confirmatory order template as needed if the staff's recommendation is to approve a licensee request for preemption authority. Therefore, in Section 4 of the enclosed draft confirmatory orders, the staff has provided two provisions that would, if the Orders are approved by the Commission, require the licensee to: (1) review and revise their NRC approved security plans, as needed, to describe how the licensee will implement Section 161A preemption authority; and (2) continue to subject all personnel who require access to firearms in the performance of their official duties to a firearms background

check, in accordance with the requirements in the designation order. In addition, the staff made minor clarifying and editorial changes to the confirmatory order template.

If approved, a final confirmatory order would designate these two NRC-licensed facilities as receiving preemption authority. In addition, if the Commission grants the licensee's request for authorization to use Section 161A preemption authority at SONGS and DCPD, the staff will implement inspection activities through region-based inspection staff to confirm licensee compliance with the final confirmatory orders, as well as the June 5, 2013, designation order.

In each submittal, the respective licensee has identified specific state firearms laws that the licensee has determined would restrict or prohibit the possession and use of firearms, or access to firearms, at its site. As directed by the Commission in SRM-SECY-12-0027 Task 2, the staff has reviewed each submittal to ensure that these facilities meet the requirements contained in the designation order and the staff developed review criteria entitled "Preemption Authority, Content of Application" (ADAMS Accession No. ML111650348), dated February 27, 2012, as set forth in Step 4 of the six-step process approved by the Commission in SRM-SECY-12-0125. The enclosed technical evaluations address, by site, the staff's review of each submittal.

As provided in their submittals, SONGS and DCPD were previously granted exemption from California State firearms laws in letters from the then California Deputy Attorney General, Firearms Division, for the State of California, dated January 15, 2004, and October 22, 2002, respectively. Also, as provided in their submittals, the licensees have stated that the current California Attorney General does *not* intend to issue a new letter to these licensees affirming that the determinations made in the 2002 and 2004 letters remain in effect. Consequently, these licensees may not be able to purchase certain firearms or devices at a sufficient rate to meet Commission requirements contained in Title 10 of the *Code of Federal Regulations* Section 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors against Radiological Sabotage," specifically, the requirement to maintain security equipment in a manner that ensures security equipment is in sufficient supply, is maintained in operable condition, and is readily available to perform its required function when needed.

Based on the staff's technical review, the staff has determined that current California State firearms laws and associated regulations would prohibit or restrict the use of the firearms and devices currently used to implement the licensee's protective strategy at SONGS and DCPD. As described in the submittals, these licensees are requesting that the Commission grant Section 161A preemption authority to SONGS and DCPD to ensure regulatory certainty and to provide an explicit authority under which these licensees may purchase, possess, use, and maintain firearms and devices that are needed to implement their protective strategy at these facilities and that would otherwise not be permitted under existing California State firearms laws.

In accordance with SRM-SECY-12-0027, the staff is submitting the enclosed items for Commission review and approval: (1) staff's technical evaluation and draft final confirmatory order for SONGS (Enclosures 1 and 2); (2) staff's technical evaluation and draft final confirmatory order for DCPD (Enclosures 3 and 4); and (3) a draft letter to the Governor of California for signature by the Chairman (Enclosure 5), informing the Governor that the NRC is granting Section 161A preemption authority to SONGS and DCPD should the Commission approve the staff's recommendation.

COMMITMENTS:

The staff is committed to the following activities in this paper. Should the Commission grant Section 161A preemption authority to these NRC-licensed facilities, the staff will implement associated inspection activities through the Baseline Inspection Program. The objective of these inspections would be to confirm licensee compliance with the final confirmatory orders and designation order. The staff will develop inspection guidance to facilitate these inspection activities. The staff will also review any applicable security plan changes made by each licensee describing how Section 161A preemption authority will be implemented at each facility, as required by the confirmatory order.

RECOMMENDATIONS:

That the Commission:

1. Approve, Southern California Edison and the Pacific Gas and Electric Company authorization to use Section 161A preemption authority at the SONGS and DCPD facilities.
2. Approve, authorization for the Office Directors responsible for licensing these facilities to complete the required license amendment actions and issue the attached draft final confirmatory orders for these facilities.
3. Approve, the Chairman's finalization and issuance (on behalf of the Commission) the enclosed letter to the Governor of California informing the Governor that the Commission is granting Section 161A preemption authority to SONGS and DCPD.
4. Approve, staff coordination with SECY to support the Chairman's issuance of the Governor's letter concurrent with the issuance of the Final confirmatory orders and the associated *Federal Register* notice.

The Commissioners

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COORDINATION:

The Office of the General Counsel has reviewed this package and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objection.

/RA/

Mark A. Satorius
Executive Director
for Operations

Enclosures:
As stated

The Commissioners

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Enclosures:
As stated

ADAMS Accession No.: ML15050A519

WITS W201200098

OFFICE	NSIR/DSP	QTE	NSIR/DSP	NSIR/DSO	NSIR/DSP	OCFO
NAME	DGordon	C. Hsu	DHuyck	MLayton	CLui	MWylie SHa for
DATE	2/25/15	2/03/15	2/25/15	2/25/15	2/25/15	2/27/15
OFFICE	NRR	OE	NMSS	OGC	NSIR	EDO
NAME	WDean	PHolahan	CHaney	MDoane	JWiggins	MSatorius
DATE	3/06/15	2/26/15	3/06/15	3/23/15	3/24/15	03 /31 /15

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