

April 15, 2002

Mr. Lawrence F. Womack  
Vice President  
Nuclear Services  
Diablo Canyon Power Plant  
P.O. Box 56  
Avila Beach, CA 93424

SUBJECT: NOTICE OF DOCKETING OF DIABLO CANYON INDEPENDENT SPENT FUEL  
STORAGE INSTALLATION LICENSE APPLICATION

Dear Mr. Womack:

By letter dated December 21, 2001, you submitted an application, in accordance with 10 CFR Part 72, for a materials license for an Independent Spent Fuel Storage Installation (ISFSI) at the Diablo Canyon Power Plant (DCPP). The staff has completed its acceptance review of the application and has determined that it contains sufficient information for the staff to begin its technical review. By letter dated April 1, 2002, I forwarded a copy of the proposed Federal Register Notice of Docketing. The April 1, 2002, version needed some additional words and did not get published in the Federal Register. This letter supercedes my April 1, 2002, letter with enclosures thereto.

For your information, I am enclosing a copy of the Notice of Docketing, Notice of Consideration of Issuance, and Notice of Opportunity for a Hearing for the proposed licensing action. The notice has been forwarded to the Office of the Federal Register for publication.

If you have any questions regarding this matter, you may contact me at (301) 415-8584. Please refer to Docket No. 72-26 and TAC No. L23399 in future correspondence related to our review of the request.

Sincerely,

*/RA/*

Steven L. Baggett, Senior Project Manager  
Licensing Section  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-26  
TAC No. L23339

Enclosure: Federal Register Notice

cc: Service List

April 15, 2002

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Vice President  
Nuclear Services  
Diablo Canyon Power Plant  
P.O. Box 56  
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Dear Mr. Womack:

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Sincerely,  
*(Original Signed by:)*  
Steven L. Baggett, Senior Project Manager  
Licensing Section  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

Docket No. 72-26  
TAC No. L23339  
Enclosure: Federal Register Notice

cc: Service List

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<b>NAME:</b>	SBaggett		EZiegler		JMonninger	
<b>DATE:</b>	4/12/2002		4/12/2002		4/12/2002	

OFFICIAL RECORD COPY

U.S. NUCLEAR REGULATORY COMMISSION

DOCKET NO. 72-26

PACIFIC GAS AND ELECTRIC COMPANY

NOTICE OF DOCKETING, NOTICE OF PROPOSED ACTION, AND NOTICE OF

OPPORTUNITY FOR A HEARING FOR A MATERIALS LICENSE FOR THE

DIABLO CANYON

INDEPENDENT SPENT FUEL STORAGE INSTALLATION

The Nuclear Regulatory Commission (NRC or Commission) is considering an application dated December 21, 2001, for a materials license under the provisions of 10 CFR Part 72, from Pacific Gas and Electric (the applicant or PG&E) to possess spent fuel and other radioactive materials associated with spent fuel in an independent spent fuel storage installation (ISFSI) located in San Luis Obispo County. If granted, the license will authorize the applicant to store spent fuel in a dry storage cask system at the applicant's Diablo Canyon Power Plant (DCPP) site. Pursuant to the provisions of 10 CFR Part 72, the term of the license for the ISFSI would be twenty (20) years.

This application was docketed under 10 CFR Part 72. The ISFSI Docket No. is 72-26.

Prior to issuance of the requested license, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The issuance of the materials license will not be approved until the NRC has

reviewed the application and has concluded that approval of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public. The NRC will complete an environmental evaluation, in accordance with 10 CFR Part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and finding of no significant impact are appropriate. This action will be the subject of a subsequent notice in the Federal Register.

By thirty (30) days from the date of publication of this notice in the Federal Register, the applicant may file a request for a hearing; and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the subject materials license. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714<sup>1</sup>, which is available at the

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<sup>1</sup> The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on--

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site <http://www.nrc.gov/reading-rm/doc-collections/cfr>. If there are problems in accessing the document, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdrr@nrc.gov](mailto:pdrr@nrc.gov). If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, the NRC may, upon satisfactory completion of all required evaluations, issue the materials license without further prior notice.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without requesting leave of the Atomic Safety and Licensing Board up to 15 days prior to the holding of the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk or may be delivered to the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested

that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to Lawrence F. Womack, Vice President, Nuclear Services, Diablo Canyon Power Plant, P.O. Box 56, Avila Beach, California 93424. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the NRC by a toll-free telephone call (800-368-5642 Extension 415-8500) to E. William Brach, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, with the following message: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding Officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the

request of any party to the proceeding, must use hybrid hearing procedures with respect to “any matter which the Commission determines to be in controversy among the parties.”

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission’s rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission’s rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, “Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors” (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this application, see the application dated December 21, 2001, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 15th day of April 2002.

FOR THE NUCLEAR REGULATORY COMMISSION

*/RA/*

E. William Brach, Director  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

For further details with respect to this application, see the application dated December 21, 2001, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 15th day of April 2002.

FOR THE NUCLEAR REGULATORY COMMISSION

*(Original Signed by:)*

E. William Brach, Director  
Spent Fuel Project Office  
Office of Nuclear Material Safety  
and Safeguards

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\*see previous concurrence

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Diablo Canyon Power Plant, Units 1 and 2

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County Government Center, Room 310  
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The Honorable Lois Capps  
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House of Representatives  
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