

May 28, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

June 7, 2002 (12:30PM)

BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)
)
Pacific Gas and Electric Co.)
)
(Diablo Canyon Power Plant,)
Units 1 and 2))

Docket Nos. 50-275-LT
50-323-LT

REPLY OF THE COUNTY OF SAN LUIS OBISPO TO THE ANSWER BY PACIFIC GAS
AND ELECTRIC COMPANY TO THE PETITION OF THE COUNTY OF SAN LUIS
OBISPO FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.1307(b), the County of San Luis Obispo ("County" or "Petitioner") hereby files its reply to the answer of Pacific Gas and Electric Company ("PG&E") to the late-filed Petition for Leave to Intervene and Request for Hearing ("Petition") filed on May 10, 2002, by the County.¹ The County's Petition relates to PG&E's application, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended ("AEA"), and 10 C.F.R. § 50.80, for Nuclear Regulatory Commission ("NRC" or "Commission") approval of a transfer of the operating licenses for the Diablo Canyon Power Plant, Units 1 and 2 ("DCPP") ("Application"). As discussed below, the County has clearly demonstrated that its late-filed request should be granted based upon the factors set forth in 10 C.F.R. § 2.1308. Moreover, the County has specified, with adequate basis and

¹ "Answer of Pacific Gas and Electric Company to the Late-Filed Petition of the County of San Luis Obispo for Leave to Intervene and Request for a Hearing, dated May 20, 2002 (*hereinafter* "Answer").

in accordance with 10 C.F.R. § 2.1306, at least one issue justifying a Subpart M hearing.

By virtue of its exclusive obligations to the citizens in the vicinity of the DCPD and its unusually extensive responsibilities for emergency preparedness related to all activities at the DCPD site, participation by the County will ensure that the NRC's decision making process has the "welcome and valuable" benefits that were explicitly recognized by the Commission almost twenty-five years ago as resulting from the participation of state, county and local governments. (43 Federal Register 17798, April 26, 1978). In that regard, it must be noted at the outset that the County's petition has not been filed to prevent the facility license from being transferred. Rather, the County believes that a license transfer may be appropriate after the NRC has had an opportunity to hear and consider the relevant issues, perspectives, and concerns that are unique to the County of San Luis Obispo. In addition, any license transfer should only be approved after the Bankruptcy Court has rendered a final decision adopting a reorganization plan for PG&E and after the Commission compels the licensee to address the County's issues as part of the NRC decision making process. Therefore, the late-filed Petition should be granted.

II. ARGUMENT

PG&E correctly states that the proposed DCPD license transfer is specifically based upon the reorganization plan submitted by PG&E in bankruptcy proceedings.² PG&E is also correct that the NRC's Notice of Consideration of Approval of the proposed DCPD license transfer addressed only the PG&E Plan because, at the time, it was the only plan proposed.³ PG&E also correctly acknowledges that, after its Application was filed, the Bankruptcy Court subsequently authorized the California Public Utilities Commission ("CPUC") to submit an alternative reorganization plan (the "CPUC Plan").⁴ In addition, PG&E correctly states that the NRC can condition the DCPD license transfer approval on receipt by PG&E of other necessary approvals for any aspect of the Plan that the NRC considers essential to the license transfer approval.

What PG&E fails to acknowledge, however, is that circumstances have changed radically

² PG&E's first Reorganization Plan was filed on September 20, 2001. PG&E Letter DCL-01-119, Enclosure 1.

³ The NRC's Notice of the proposed license transfer based on PG&E's Plan was issued on January 17, 2002, and comments were due by February 6, 2002. Pacific Gas and Electric Co., Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing, 67 Federal Register 2455 (Jan. 17, 2002).

⁴ On March 2, 2002, the Bankruptcy Court terminated exclusivity with respect to reorganization plans, and granted the CPUC leave to file the "CPUC Plan." Order Terminating Exclusivity with Respect to the California Public Utilities Commission and Authorizing the California Public Utilities Commission to File an Alternate Plan of Reorganization, Case No. 01-30923DM, dated February 27, 2002. On April 15, 2002, the CPUC filed the CPUC Plan with the Bankruptcy Court. California Public Utilities Commission's Plan for Reorganization under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company, dated April 15, 2002. See Order Terminating Exclusivity, dated March 11, 2002. On May 15, 2002, the Bankruptcy Court approved the CPUC Plan and set forth a schedule for the creditor vote solicitation process.

since the NRC published its Notice, requiring the County to file this intervention request.⁵ After the Notice was published, the CPUC Plan, which would not require a license transfer, was approved by the Bankruptcy Court. Now both reorganization plans are under consideration. Nonetheless, PG&E urges the NRC to speculate on the outcome of this hotly contested litigation in the Bankruptcy Court. Moreover, PG&E urges the NRC to issue an Order authorizing a license transfer, as if the implementation of PG&E's Plan by the Bankruptcy Court were a foregone conclusion, notwithstanding the uncertainty in the actual outcome of the litigation.

PG&E also erroneously suggests that the NRC could authorize a license transfer conditioned upon its Plan being approved by the Bankruptcy Court. (Answer at 18.) PG&E apparently relies on prior instances where license conditions have been issued by the NRC to obligate the new licensee to take specific actions or to await the outcome of a routine regulatory review that is part of a related transaction. By contrast, the entire proceeding before the NRC, as well as the present review of issues raised in the Commission's Order CLI-02-12, are unprecedented situations in which PG&E seeks license conditions that are contingent on the outcome of contested litigation.⁶ Not only could such action by the NRC be seen as potentially prejudicing the Bankruptcy Court's proceedings, but also, by continuing this proceeding without permitting the County to participate, the NRC would

⁵ Subsequent events, as detailed below, also include PG&E's own submission of a modified Reorganization Plan, which calls into question PG&E's commitment to the financial statements filed in support of the Application. See Plan of Reorganization under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company, dated April 19, 2002 (*hereinafter*, PG&E's April 19, 2002 Reorganization Plan).

⁶ In the closest analogous case, the NRC declined to dismiss on a summary judgment motion the contention of an intervener that the financial stability of a licensee was in question because the licensee was partially funded by a utility that was in the midst of contested bankruptcy litigation. *Gulf States Utilities Company* (River Bend Station, Unit 1),

deny the County the opportunity to ensure that its citizens are protected from the uncertainties surrounding PG&E's Plan.

PG&E acknowledges that the plant's location within the boundaries of the County is sufficient to establish *injury in fact* with respect to radiological safety matters. *See, e.g., Power Auth. of N.Y.* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 293-95 (2000) ("Indian Point 3"); (finding standing for the Town of Cortlandt, where the plant was located within the boundaries of that entity). (Answer at 4.) Therefore, PG&E does not contest the County's stated interests in this proceeding to the extent those interests relate to public health and safety or the protection of the environment. The same logic applies equally to the County's interests in the common defense and security of its citizens.

PG&E contends, however, that the County failed to meet the standards governing late-filed intervention requests and failed to set forth at least one issue appropriate for litigation in this forum. These contentions are without merit.

A. The County's Petition Meets the Standards Governing Late-Filed Intervention Requests

The Commission considers three factors when reviewing a late-filed intervention petition or hearing request:

- (1) Good cause for failure to file on time;

LBP-95-10, 41 NRC 460 (1995).

- (2) The availability of other means by which the requestor's or petitioner's interest will be protected or represented by other participants in a hearing; and
- (3) The extent to which the issues will be broadened or final action on the application delayed.

10 C.F.R. § 2.1308(b)(1)-(2). None of these factors is determinative. Pursuant to Commission practice regarding the comparable requirements in 10 C.F.R. 2.714(a), all of the factors are to be considered. *See, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1)*, ALAB-671, 15 NRC 508, 509 (1982).

1. *Good Cause to Intervene Late was Clearly Demonstrated by the County*

Newly arising information has long been recognized as providing good cause for admission of late-filed contentions. *Private Fuel Storage, L.L.C., (Independent Spent Fuel Storage Installation)*, CLI-00-02, 51 NRC 77 (2000); *Consumers Power Co. (Midland Plant, Units 1 and 2)*, LBP-82-63, 16 NRC 571, 577 (1982). Because requests for late-filed intervention are evaluated under the same criteria that are applied in evaluating admissibility of late-filed contentions, newly arising information also provides good cause for granting a late-filed intervention petition. *Private Fuel Storage, L.L.C., (Independent Spent Fuel Storage Installation)*, LBP 99-03, 49 NRC 40, 46 (1999).

In this case developments in the bankruptcy proceeding occurred after the close of the comment period. This new information radically changed the posture of PG&E's Application and necessitated the County's intervention. Those developments are as follows:

- On March 2, 2002, the Bankruptcy Court terminated exclusivity and granted the CPUC leave to file an alternative reorganization plan;⁷
- On April 15, 2002, the CPUC filed an alternative reorganization plan in the Bankruptcy Court;⁸
- On April 19, 2002, PG&E filed a significantly revised reorganization plan;⁹ and
- On May 15, 2002, the Bankruptcy Court approved the CPUC Plan and set forth a schedule for the creditor vote solicitation process.¹⁰

In bankruptcy proceedings, the debtor is normally entitled to a 120-day period in which only the debtor may submit a reorganization plan for consideration by the Court. 11 U.S.C. § 1121(b).

This period is referred to as the exclusivity period and may be extended by the Court. *Id.* at 11 U.S.C. § 1121(d). As a result of these exclusivity provisions, PG&E's Reorganization Plan was the only plan being considered by the Court until March 2, 2002, when the Bankruptcy Court terminated exclusivity and granted the CPUC leave to file a competing plan. Subsequently, on April 15, 2002, the CPUC filed an alternative reorganization plan in the Bankruptcy Court. Only after the County had an opportunity to review the CPUC Plan, was it possible to determine that intervention was necessary and appropriate. *See id.* at 47-48 (finding late-filing reasonable where an intervener needs

⁷ Order Terminating Exclusivity with Respect to the California Public Utilities Commission and Authorizing the California Public Utilities Commission to File an Alternate Plan of Reorganization, Case No. 01-30923DM, dated February 27, 2002 (filed March 2, 2002) (*hereinafter* March 2, 2002 Bankruptcy Court Order).

⁸ California Public Utilities Commission's Plan for Reorganization under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company, dated April 15, 2002.

⁹ PG&E's April 19, 2002 Reorganization Plan. This reorganization plan is accompanied by a new disclosure statement that includes so many caveats that it calls into question the reliability of PG&E's financial projections even if its latest reorganization plan was approved. *See, e.g.*, Disclosure Statement for Plan of Reorganization, pp. 250-267 (April 19, 2002); Modifications to the Disclosure Statement for Plan of Reorganization under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company Proposed by Pacific Gas and Electric Company and PG&E Corp. [Dated April 19, 2002] filed May 14, 2002.

¹⁰ Case No. 01-30923DM, Bankruptcy Court Order dated May 15, 2002.

specifics of a proposed action in order to prepare to intervene intelligently). The two reorganization plans are quite different because the CPUC Plan, unlike the PG&E Plan, does not call for any license transfer with respect to DCCP. The CPUC Plan would render PG&E's request for a license transfer moot. With two plans under consideration, the County also recognized that the Bankruptcy Court might adopt a modified plan, with terms different from either the PG&E or the CPUC Plans. Therefore, CPUC's filing of the alternative reorganization plan was the appropriate "trigger point" for the County's decision to file an intervention petition. *Private Spent Fuel*, 49 NRC at 48.

The County also realized that the introduction of a competing plan in the bankruptcy proceeding provided PG&E with an incentive to make modifications to its Plan. Because the proponents of a plan solicit votes from the creditors, plan proponents, like PG&E, may make modifications to satisfy creditors. 11 U.S.C. § 1125-1126. Reorganization plans are also susceptible to modification because, before any plan can be implemented, it must be confirmed by the Bankruptcy Court. 11 U.S.C. § 1120. Accordingly, the Bankruptcy Code permits a proponent of a plan to modify it without leave of court prior to confirmation and with leave of court after confirmation and before substantial consummation. 11 U.S.C. § 1127. In this case, the date of the confirmation hearing on PG&E's Plan has not even been set. Obviously, modifications to PG&E's Plan could alter the corporate structure and/or financing upon which the NRC currently relies in considering PG&E's Application.

In light of the increased threat of modification and the uncertain nature of PG&E's Plan, the County filed its Petition for Intervention on May 10, 2002. Thus, because the County took

substantially less than the 45 days from the appropriate trigger point to file its petition, the County did not sleep on its rights. *Private Spent Fuel*, 49 at 47. Moreover, in order to file its Petition earlier, the County would have had to speculate that: (1) the Bankruptcy Court would terminate the period of exclusivity and consider an alternative reorganization plan; and (2) the contents of an unknown and then as-yet-unfiled CPUC Plan would be very different from the plan filed by PG&E. Only after the details of the alternative reorganization plans could be compared, was it possible to determine that the County needed to petition to intervene in this proceeding. For these reasons, the subsequent developments in the Bankruptcy Court established good cause for this late intervention.

Even if there is still some question about whether good cause for delay has been shown, the NRC may consider whether lateness will result in a substantial delay to the proceedings. If no substantial delay will occur, this fact may be considered by the NRC in assigning the relative weight to be given to the good cause demonstration. *Puget Sound Power and Light Co.*, (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 985 (1982). Granting the County's request for intervention at this early stage in the proceeding will not result in substantial delay. *Private Fuel Storage*, 49 NRC at 49. Intervention by the County will simply ensure the timely consideration of relevant issues.

2. *No Other Adequate Means are Available for Protecting the Petitioner's Interest*

PG&E illustrates its failure to appreciate the unique role and obligations of the County by summarily suggesting that the availability of other means to protect the County's interest is a fact that is entitled to relatively less weight. In support of its position PG&E relies on *Texas Utilities Elec. Co.* (Comanche Peak Steam Elec. Station, Units 1 & 2), CLI-92-12, 36 NRC 62, 74 (1992). Its reliance on *Texas Utilities* is misplaced for a number of reasons.

First, *Texas Utilities* involved private petitioners. The limited interests of private petitioners are clearly much narrower than the broad public interests which arise from the obligations of a public entity like the County of San Luis Obispo. Although the Commission may have acknowledged the value of specific contributions from intervention by a private party, the Commission has repeatedly acknowledged the unqualified value of intervention by an interested public entity. Accordingly, San Luis Obispo should be accorded greater weight in recognition of its efforts to protect the public's interests as opposed to a private petitioner's efforts to protect a private interest.

Second, *Texas Utilities* involved an intervention request made pursuant to 10 C.F.R. § 2.714(a) which calls for a Subpart G hearing. This request is brought pursuant to 10 C.F.R. § 2.1306(b), which calls for a Subpart M hearing. Because a Subpart G hearing is more formal than a Subpart M hearing, the weight given to a Subpart G factor may not be the same in an informal Subpart M hearing. The informality of the Subpart M hearing suggests that when intervening late, but well in advance of a hearing, the same level of detail required to intervene in a formal Subpart G

hearing need not be required.

Finally, *Texas Utilities* involved balancing the five factors in 10 C.F.R. § 2.714(a). By contrast, this case involves balancing the three factors in 10 C.F.R. § 2.1306(b). Consistent with the above discussion, the Commission's reduction in the number of factors to be considered in determining whether to admit a late-filed intervention petition in a Subpart M proceeding as compared with a Subpart G proceeding is a clear indication of the Commission's intent to modify the evaluation process. Accordingly, weights on factors considered under Subpart G are not appropriately applied to comparable factors in a Subpart M hearing.

In this Subpart M hearing, San Luis Obispo's need to protect its interests should be heavily weighed because of the integral role San Luis Obispo plays in emergency response procedures. San Luis Obispo, as a California county, is charged with the leadership role in implementing the PG&E Emergency Plan and in coordinating off-site response agencies. In other states, this is not a responsibility that falls on local government. These unique obligations support the Commission's longstanding appreciation of the value of participation by state, county and local governments, as discussed above. Moreover, none of the other organizations that filed timely petitions to intervene represents the citizens of the county in which DCPD is located or shares all of the County's views with respect to the contentions the County intends to raise. The County's responsibility for the health and welfare of its citizens requires the County to ensure that whoever is licensed to operate DCPD has the appropriate financial qualifications. Accordingly, contrary to PG&E's opinion regarding the value of the County's participation, the Commission's stated policy shows that this factor is entitled

to great weight.

3. *The County's Participation Will Enhance the NRC's Consideration of the Proper Scope of the Issues and Will Not Unduly Delay Final Action on the Application*

In its Petition for Leave to Intervene, the County identified unique issues and their affect upon the citizens of the County. By contrast, PG&E summarily asserts that the issues raised by the County are irrelevant because it believes that its Plan will be confirmed and implemented by the Bankruptcy Court. PG&E refuses to consider the reality that the viability of the proposed new entities is by no means assured.

The Bankruptcy Court proceeding is in an early stage. Currently, there are two reorganization plans making their way to a confirmation hearing, but the date for such a hearing has not been set. Discovery has not yet begun in that proceeding. As is typical in bankruptcy proceedings, it is quite possible that neither reorganization plan currently under consideration, PG&E's or the CPUC's, will be confirmed as currently configured. *See* 11 U.S.C. § 1127 (providing that the proponent of a plan may seek to modify its reorganization plan and any holder of a claim or interest may accept or reject a plan as modified).¹¹ The NRC proceeding cannot, therefore, be treated as a mere formality that rubber stamps PG&E's representations regarding the ultimate structure of the entity that emerges from Bankruptcy Court. The County must be permitted to adequately represent its citizens to assure that the corporate structure ultimately accepted by the NRC is one that adequately protects the citizens' health, welfare and environment. The County can best accomplish this by intervening in this proceeding to ensure that these concerns are included in the scope of the

issues to be considered at hearing. Because those issues are important, any time taken to consider them cannot be treated as delay but must be considered as appropriate to the process.

The County's participation will also contribute to the making of the record. The County will use its resources to bring the appropriate expertise to bear with respect to the contentions it has raised at the appropriate time. The County has a fiduciary obligation to spend taxpayers' money responsibly and as necessary for effective participation in the NRC's hearing. At this early stage of the proceeding, there is no need to identify the experts on whom the County will rely because the County has appropriately identified facts and matters of law that alone are sufficient to support admissible contentions. As demonstrated in the County's Petition, and as further discussed below, the County has met the requirements of 10 C.F.R. § 2.1306(b). Any suggestion that it must also meet heightened requirements in 10 C.F.R. § 2.714(a)(iii), (Answer at 8), is incorrect.

Upon balancing these factors, the Commission should, consistent with its policy, give the greatest weight to the inability of any other Party to adequately represent the County's obligation to protect the health, welfare and environment of its citizens. Since the County has also identified several litigable issues appropriately addressed in this proceeding, the Commission should admit the County as a Party to this proceeding.

¹¹ Indeed, PG&E is on at least its second revision of its own reorganization plan. PG&E's April 19, 2002 Reorganization Plan.

B. The County's Petition Has Clearly Identified Litigable Issues

Contrary to PG&E's assertion, the Petition satisfies the Commission's criteria in 10 C.F.R. § 2.1306 with respect to the issues raised for review in this forum. Adequate specificity and bases have been provided to demonstrate the presence of genuine disputes. PG&E's challenges to these issues are addressed below.

1. *Genuine Disputes Exist Regarding Financial Qualifications for Operation*

PG&E disagrees with the County's contention that the Application fails to provide sufficient information upon which the NRC could reasonably conclude that the new entities will have sufficient funding to maintain operations. However, PG&E's only response to this assertion is a statement that the assumptions on which it relies in making its five-year projections are internally consistent. (Answer at 11.) PG&E unreasonably concludes that the County is mistaken in claiming that no projections of costs and revenues can be made at this time. (*Id.*)

The problem with PG&E's conclusion is that it does not address the County's contention. Clearly, PG&E is entitled to make assumptions and perform mechanical calculations based on its assumptions. The County questions the adequacy and correctness of those assumptions. The adequacy and correctness of PG&E's assumptions and projections are the types of issues that should be raised at hearing. No additional expertise or specificity is needed regarding the explication of these issues at this time, especially since PG&E's Application is currently a moving target. Once the target has reached a final resting place, the County will rely on appropriate experts as needed at the hearing.

The County is also legitimately concerned about PG&E's reliance on above-market prices in the unapproved Power Purchase Agreements. PG&E contends that no issue is presented because the Bankruptcy Court and the Federal Energy Regulatory Commission ("FERC") will decide those rates and the NRC can condition the license transfer on PG&E's obtaining the approvals of those rates. (Answer at 11-12.) Here, again, PG&E side-steps the real issue by assuming that the Bankruptcy Court and FERC will do its bidding by setting rates consistent with PG&E's requests.

The County's concern is that PG&E's Plan may not one approved by the Bankruptcy Court and FERC.¹² To ensure that the proposed transferee is financially viable, the NRC must consider the possibility that rates will be set lower than PG&E has requested and whether license conditions can adequately address this possibility.

With regard to the County's concerns about the financial robustness of Gen, PG&E's answer suffers the same infirmities as discussed above. (Answer at 12.) Once again PG&E unreasonably assumes the eventual approval of its unadopted Plan by the Bankruptcy Court and FERC. A hearing before the NRC is needed to consider whether, in the absence of definitive decisions by other regulatory and judicial bodies, the NRC can make the necessary findings and proceed to grant a license transfer consistent with the uncertainty presented by the range of possible alternatives that may be approved outside the NRC proceeding. Moreover, PG&E's reliance on hydroelectric resources for power production and financial stability also presents an issue in view of California's history of cyclical droughts that have substantially reduced hydroelectric production. (*See id.*)

The remaining issues raised by PG&E, with respect to contentions regarding its financial stability, also assume that the PG&E Plan will be accepted. However, the NRC cannot make a reasoned decision if it limits the scope of this proceeding to a review of a PG&E Plan that is subject to modification and is competing with another plan for confirmation.

2. *Genuine Disputes Exist Regarding the Availability of Off-Site Power*

In response to the County's concern regarding the availability of reliable sources of off-site power, PG&E again assumes that its Plan will be implemented as proposed in support of its claim that ETrans will be financially viable. (Answer at 17.) This response once again ignores the uncertainties raised by the alternative plan under active consideration outside the NRC proceeding.

PG&E describes in great detail the physical facilities that would be transferred to ETrans under its Plan and leaves to an innocuous looking footnote the observation that "implementation of the Plan primarily involves legal paperwork such as establishing contracts and agreements." (Answer at 16, n. 10.) The details of these contracts are important issues for hearing. In particular, because the California Independent System Operator ("ISO") uses economic and not safety criteria to dispatch electrical load, the contract between the ISO and ETrans must recognize the need for DCCP, as a nuclear power plant, to have uninterruptible power supplied through properly maintained transmission facilities.

¹² Under the CPUC Plan, the CPUC, not the FERC, would have ratesetting authority for the bulk of PG&E's generating assets.

3. *The Appropriateness of a Stay Presents a Litigable Issue*

Contrary to PG&E's assertion, neither a prior request for relief in the form of a stay by other participants nor PG&E's claim to have addressed this issue in prior pleadings preclude the consideration of a stay request as a proper matter upon which to have a hearing. (Answer at 10, 17-18.) Indeed, the Commission's Order in CLI-02-12 requesting the parties' views on the impacts of recent developments on the pending stay motions clearly shows that the appropriateness of a stay and the terms and conditions under which it should be granted are proper subjects for a hearing in this proceeding. As noted above, PG&E has relied on conclusory arguments to contend that a request for a stay does not present a litigable issue. (Answer at 17-18.) Consistent with the rest of its Answer, PG&E buttresses its view with yet another affirmation of its belief that the unadopted PG&E Plan will be confirmed. As a result, PG&E concludes that because a stay is not necessary, it is not necessary to litigate the stay issue. PG&E believes that the NRC should remain narrowly focused on its initial hearing Notice despite the fact that events outside the NRC could radically change the very foundation of the Application that the NRC is being asked to approve. To support that narrow view, PG&E just repeats the mantra that its Plan will be confirmed.

The County is concerned that the NRC may reach a decision which cannot accommodate the uncertainty associated with PG&E's Plan. Because the contents of the initial hearing Notice were established before that uncertainty arose, the County has tried to balance this NRC proceeding by requesting that it be stayed until the uncertainty, created by events outside of PG&E's and the NRC's control, is resolved. The County believes that a stay is necessary to give the NRC time to issue a new Notice that recognizes the current reality and gives everyone with standing and a legitimate interest

an adequate opportunity to protect their interests.

The NRC's Notice of this license transfer application dated January 17, 2002, has been rendered inadequate by subsequent developments in the Bankruptcy Court. Because the license transfer application relies on a corporate and financial structure that may be modified substantially or rejected in its entirety by the Bankruptcy Court, the NRC hearing will need to be terminated or renoticed. Persons whose interests may be affected by the NRC's adoption of the new restructuring were not given adequate notice and have consequently been denied an opportunity to address the NRC regarding those issues as required. 10 C.F.R. § 2.1036(b)(2)(ii). It is important to note that because PG&E does not take issue with this contention it is no longer at issue in this proceeding. *Private Spent Fuel*, 49 NRC at 50. Accordingly, opposition to this argument appears to have been waived.

III. CONCLUSION

For the foregoing reasons, the County's petition for intervention should be granted and this proceeding should be stayed until the details of what the NRC is being asked to approve are understood and the NRC has had a chance to re-notice the proceeding. The County has provided adequate justification to support its late-filed Petition. The County has demonstrated the unique interests which it has to protect in this proceeding, and it has raised issues appropriate for resolution here. On this basis, the County renews its request for intervention and for a stay in this proceeding pending a decision regarding the Bankruptcy Court's confirmation of a reorganization plan for PG&E. In the event that a stay is not granted, the County again requests that it be permitted to participate as a Party in a hearing with respect to the issues it has identified.

Respectfully submitted,



Robert K. Temple, Esq.
Sheldon L. Trubatch, Esq.
Attorneys for the County of San Luis Obispo

James B. Lindholm, Jr., Esq.
Timothy McNulty, Esq.
Stacy Millich, Esq.
Office of the County Counsel for the
County of San Luis Obispo

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of)
)
Pacific Gas and Electric Company)
Consideration of Approval of Transfer)
of Facility Operating Licenses and Conforming) Docket Nos. 50-275 & 50-323
Amendments)
(Diablo Canyon Nuclear Power Plant, Units 1 & 2))
)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing REPLY OF THE COUNTY OF SAN LUIS OBISPO TO THE ANSWER BY PACIFIC GAS AND ELECTRIC COMPANY TO THE PETITION OF THE COUNTY OF SAN LUIS OBISPO FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING were served upon the following persons by e-mail delivery, if an e-mail address is available, with a follow-on copy by regular mail posted on the same day, in accordance with the requirements of 10 C.F.R. § 2.1313:

Richard A. Meserve, Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Edward McGaffigan, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Nils J. Diaz, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Jeffrey S. Merrifield, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Greta J. Dicus, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff
(original + two copies)
HEARINGDOCKET@nrc.gov
secy@nrc.gov

Richard F. Locke, Esq.
Pacific Gas & Electric Company
77 Beale Street, B30A
San Francisco, CA 94105
rfl6@pge.com

Laurence G. Chaset
Public Utilities Commission of
the State of California
505 Van Ness Avenue, Room 5131
San Francisco, CA 94102
lau@cpuc.ca.gov

Gregory Heiden
Public Utilities Commission of
the State of California
505 Van Ness Avenue, Room 5024
San Francisco, CA 94102
gxh@cpuc.ca.gov

George A. Fraser, General Manager
Northern California Power Agency
180 Cirby Way
Roseville, CA 95678
george@ncpa.com

Steven M. Kramer
Carla J. Urquhart
Milbank, Tweed, Hadley & McCloy LLP
1825 I Street, N.W., Suite 1100
Washington, DC 20006
skramer@milbank.com
curquhart@milbank.com

Lawrence J. Chandler, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ogclt@nrc.gov
ljc@nrc.gov

David A. Repka, Esq.
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005
drepka@winston.com

David Effross
Public Utilities Commission of
the State of California
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102
dre@cpuc.ca.gov

William C. Walbridge, General Manager
M-S-R Public Power Agency
P.O. Box 4060
Modesto, CA 95352

Edwin F. Feo
Milbank, Tweed, Hadley & McCloy LLP
601 South Figueroa Street, 30th Floor
Los Angeles, CA 90017
efeo@milbank.com

James H. Pope, Chairman
Maury A. Kruth, Executive Director
Transmission Agency of Northern California
P.O. Box 15129
Sacramento, CA 95851-0129

Wallace L. Duncan, Esq.
James D. Pembroke, Esq.
Michael R. Postar, Esq.
Lisa S. Gast, Esq.
Sean M. Neal, Esq.
Peter J. Scanlon, Esq.
Derek A. Dyson, Esq.
Duncan, Weinberg, Genzer & Pembroke, P.C.
1615 M Street, N.W., Suite 800
Washington, DC 20036-3203
ndr@dwgpc.com

Robert C. McDiarmid
Ben Finkelstein
Lisa G. Dowden
Meg Meiser
Tracy E. Connor
Spiegel & McDiarmid
1350 New York Avenue, N.W.
Washington, DC 20005-4798
robert.mcdiarmid@spiegelmc.com
ben.finkelstein@spiegelmc.com
lisa.dowden@spiegelmc.com
meg.meiser@spiegelmc.com
tracy.connor@spiegelmc.com

James C. Feider
Director, Electric Department
City of Redding
777 Cypress Avenue
Redding, CA 96049-6071

James H. Pope
Director of Electric Utility
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Grant Kolling
Senior Assistant City Attorney
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303

Roger VanHoy
Assistant General Manager, Electric Resources
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352

Rick Coleman, General Manager
Trinity Public Utility District
P.O. Box 1216
Weaverville, CA 96093-1216

Roland D. Pfeifer, Esq.
Assistant City Attorney
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Harrison Call
Call Company
130 S. Cloverdale Blvd.
P.O. Box 219
Cloverdale, CA 95425

Girish Balachandran
Assistant Director of Utilities
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303

Scott Steffen, Esq.
Assistant General Counsel
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352

Dated at Chicago, Illinois, this 28th day of May, 2002



Robert K. Temple, Esq.
2524 N. Maplewood Avenue
Chicago, IL 60647
nuclaw@mindspring.com