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USNRC  
May 20, 2002  
2002 JUN 14 PM 12: 27  
OFFICE OF THE SECRETARY  
RULEMAKINGS AND  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	
	)	
Pacific Gas and Electric Co.	)	Docket Nos. 50-275-LT
	)	50-323-LT
(Diablo Canyon Power Plant,	)	
Units 1 and 2)	)	

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 HEARING

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.1307(a), Pacific Gas and Electric Company ("PG&E") herein answers the late-filed Petition for Leave to Intervene and Request for Hearing ("Petition") filed on May 10, 2002, by the County of San Luis Obispo ("County"). 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"). As discussed below, the County has not demonstrated that its late-filed request should be considered based upon the factors set forth in 10 C.F.R. § 2.1308. Furthermore, even if considered, the County has not specified, with adequate basis and in accordance with 10 C.F.R. § 2.1306, an issue justifying a Subpart M hearing. Therefore, the late-filed Petition must be denied.

## II. BACKGROUND

In its Application dated November 30, 2001, PG&E requested the NRC's approval of the direct transfer of the DCPD operating licenses currently held by PG&E. This request was made in support of the comprehensive Plan of Reorganization ("Plan") currently pending confirmation before the United States Bankruptcy Court. The Plan calls for reorganization and restructuring of the businesses and operations of PG&E that will allow PG&E to emerge from bankruptcy.<sup>1</sup> The proposed DCPD license transfer is specifically based upon the reorganization contemplated by this Plan.

As previously discussed in this proceeding, the Plan calls for PG&E's parent, PG&E Corporation, to divide its operations and the assets of its business lines among four separate operating companies. The majority of the assets and liabilities associated with the PG&E's electric transmission business will be contributed to ETrans LLC ("ETrans"); the majority of PG&E's gas transmission assets and liabilities will be contributed to GTrans LLC ("GTrans"); and the majority of the assets and liabilities associated with PG&E's generation business, including DCPD, will be contributed to Electric Generation LLP ("Gen") or to its subsidiaries. Ownership of DCPD will be assigned to a wholly-owned subsidiary of Gen, Diablo Canyon LLC ("Nuclear"). After some intermediate steps described in the license transfer Application, ETrans, GTrans and Gen will become indirect, wholly-owned subsidiaries of PG&E

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<sup>1</sup> The Plan (and the associated Disclosure Statement) was originally filed with the Bankruptcy Court on September 20, 2001. Various amendments to the Plan have been subsequently filed. On April 24, 2002, the Bankruptcy Court entered an Order approving PG&E's Second Amended Disclosure Statement, dated April 19, 2002, after determining that the Disclosure Statement contained "adequate information" as required under Section 1125(a) of the Bankruptcy Code to allow holders of allowed claims and allowed equity interests to make an informed judgment whether to vote to accept or reject the Plan. Subject to the scheduling of certain deadlines and other proceedings, approval of the

Corporation (which will change its name). PG&E will retain most of the remaining assets and liabilities, and will continue to conduct local electric and gas distribution operations and associated customer services. Reorganized PG&E will be separated ("spun off") from re-named PG&E Corporation.

Pursuant to 10 C.F.R. § 2.1301(b), on January 17, 2002, the NRC published its *Federal Register* notice of consideration of approval of the proposed DCCP license transfer and of an opportunity to request a hearing.<sup>2</sup> In the notice, and in accordance with clear regulations, the NRC established a twenty-day period for interested persons to file petitions to intervene and requests for hearing, such that timely petitions were due to be filed by February 6, 2002 — more than three months ago. *See* 10 C.F.R. § 2.1306(c)(1) ("Hearing requests and intervention petitions will be considered timely only if filed not later than . . . 20 days after notice of receipt is published in the *Federal Register*"). The notice specified:

Untimely requests and petitions may be denied, as provided in 10 C.F.R. 2.1208(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2).

*Id.* at 2456. Four timely petitions were filed.<sup>3</sup> Now, more than three months later, on May 10, 2002, the County filed the instant Petition.

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Disclosure Statement, a necessary predicate to solicitation of votes on the Plan, permits PG&E to move forward with confirmation proceedings for its Plan.

<sup>2</sup> Pacific Gas and Electric Company, 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 Fed. Reg. 2455 (Jan. 17, 2002).

<sup>3</sup> *See* "Petition of the Northern California Power Agency for Leave to Intervene, Conditional Request for Hearing and Suggestion that Proceeding be Held in Abeyance," dated February 6, 2002; "Petition for Leave to Intervene, Comments, Request for

### III. ARGUMENT

The Petition states that DCPD is located in the unincorporated part of San Luis Obispo County. Pet. at 4. Because of this, the County asserts that it has a " vital public safety interest in [the plant's] safe operation and eventual decommissioning." Pet. at 4-5. As a general matter, 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). 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. However, the County's intervention petition should nonetheless be denied, as discussed further below, because the County fails to demonstrate good cause for its lateness in this proceeding and because it fails to set forth at least one issue appropriate for litigation in this forum.

#### A. The Petition Does Not Meet the Standards Governing Late Filing

Pursuant to 10 C.F.R. § 2.1308(b), untimely intervention petitions or hearing requests "may be denied unless good cause for failure to file on time is established." In reviewing such untimely petitions, the Commission will also consider:

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Deferral or, in the Alternative, Request for Hearing of the Transmission Agency of Northern California, M-S-R Public Power Agency, Modesto Irrigation District, the California cities of Santa Clara, Redding, and Palo Alto and the Trinity Public Utility District," dated February 6, 2002; "Petition of the California Public Utilities Commission for Leave to Intervene, and Motion to Dismiss Application, or in the Alternative, Request for Stay of Proceedings, and Request for Subpart G Hearing Due to Special Circumstances," dated February 5, 2002 ("CPUC Petition"); and "Petition to Intervene of the Official Committee of Unsecured Creditors of Pacific Gas and Electric Company," dated February 6, 2002.

- (1) 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
- (2) 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). The "good cause" criterion is the most important when considering a late-filed petition. *See Power Auth. of N.Y.* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-01-14, 53 NRC 488, 515 (2001). NRC tribunals have regularly rejected late-filed petitions submitted without good cause for the lateness and without strong countervailing reasons that override the lack of good cause. *N. Atl. Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 223 (1999) (citing *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 172-75 (1998)).

*1. Lack of Good Cause for Untimeliness*

The Petition must be denied because it is late without good cause. The County states as justification for late filing "recent actions of the Bankruptcy Court." Pet. at 8. Specifically, the Petition points out that, on March 3, 2002, the California Public Utilities Commission ("CPUC"), another petitioner in this proceeding, requested and was authorized by the Bankruptcy Court to file an alternative competing plan of reorganization for PG&E under Chapter 11 of the Bankruptcy Code. Pet. at 9. (The alternative plan was filed on April 15, 2002.) As a result, the County asserts, "the Bankruptcy Court is now reviewing two distinctly different reorganization plans which could dramatically affect the status, structure, and financial strength of the proposed licensees." Pet. at 9. Quite simply, however, these developments are not "new". Moreover, these developments in the parallel, non-NRC bankruptcy proceeding do not constitute new information related to the DCPN NRC license transfer Application. Therefore, these matters cannot constitute good cause sufficient to support a late-filed petition.

The prospect of a CPUC alternative plan of reorganization was raised several months ago, both in the Bankruptcy Court and at the NRC by the CPUC itself. In particular, on January 16, 2002, the Bankruptcy Court held a hearing on PG&E's motion to extend the period in which it had an exclusive right to propose plans of reorganization beyond February 4, 2002. At that time, the CPUC opposed PG&E's motion, and was authorized to submit an alternative plan by February 13, 2002. CPUC Pet. at 7. The CPUC then cited this prospect in its initial filings at the NRC in February 2002. The County does not offer any explanation for its failure to raise its issue in a timely petition to intervene.

In support of the proposition that these developments in the Bankruptcy Court (referred to by the County as "new regulatory developments") provide justification for late filing, the County cites *Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Station)*, LBP-80-14, 11 NRC 570, 572-73 (1980). However, reliance on this case is misplaced. In *Zimmer*, the Licensing Board found good cause existed for a late-filed petition in an operating license proceeding with respect to emergency planning and radiological monitoring, where *NRC regulatory requirements* in these specific regulatory areas were in flux. *Id.* at 572-75. The County improperly attempts to draw a parallel between this sort of NRC regulatory development, and the extraneous procedural developments before the Bankruptcy Court related to PG&E's reorganization Plan.

Unlike in *Zimmer*, where NRC requirements and guidance affecting the proposed NRC licensing action changed over the course of the NRC proceeding, the requirements governing license transfers are unchanged. Likewise, PG&E's license transfer Application is unchanged. The ongoing proceedings (the purportedly "new regulatory developments") in the Bankruptcy Court do not affect the substance of the NRC license transfer Application. The

pending license transfer Application was, and remains, premised on PG&E's Plan. The proposed license transfers will only be implemented if the Plan is ultimately approved by the Bankruptcy Court.<sup>4</sup> The developments in the bankruptcy proceeding related to the CPUC plan are matters completely beyond the scope of the NRC review that is based upon the PG&E Plan and the PG&E Application. The matters cited in the Petition should be disregarded by the NRC as irrelevant to the substantive findings that must be made regarding PG&E's Application pursuant to AEA Section 184 and 10 C.F.R. § 50.80.<sup>5</sup>

In sum, the County has plainly not demonstrated good cause for late filing. If the County were interested in the financial qualifications of Gen, it could have filed a timely petition based on PG&E's Application. The same goes for off-site power issues such as those stated in the County's Petition. These are not new issues and are not created in any way by the allegedly "new" developments in the bankruptcy proceeding. The late-filed Petition should not be accepted.

2. *The Availability of Other Means for Protecting the Petitioner's Interest*

The County states that its interest cannot be adequately represented by the four other parties that have petitioned to intervene in this proceeding, as none of those entities is a

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<sup>4</sup> As discussed in PG&E's prior filings in this proceeding, the Bankruptcy Court had set June 17, 2002, as the target date for the beginning of solicitation of creditors' votes for PG&E's Plan, as well as the CPUC alternative plan if its Disclosure Statement was approved. On May 15, 2002, the Bankruptcy Court confirmed that the creditor vote solicitation process for both plans of reorganization will begin in June and established August 12, 2002, as the date on which voting ballots are due. PG&E continues to believe that the CPUC plan is neither feasible nor confirmable, that the creditors will accept the PG&E Plan, and that the Bankruptcy Court will confirm the Plan. Accordingly, PG&E is moving toward confirmation of its Plan and is continuing to seek the necessary regulatory approvals to implement the Plan expeditiously upon confirmation.

<sup>5</sup> To the extent these developments are relevant to the NRC proceeding, it is only insofar as they relate to the County's request for a stay of the NRC license transfer proceeding pending the outcome of the bankruptcy proceedings, discussed further below.

government agency "charged with protecting the health and safety of the public living around [DCPP]." Pet. at 11. This factor may weigh in favor of the County insofar as its interests are not otherwise represented (although the CPUC claims to represent such interests). However, this factor is entitled to relatively less weight. *See Texas Utils. Elec. Co. (Comanche Peak Steam Elec. Station, Units 1 & 2), CLI-92-12, 36 NRC 62, 74 (1992).*

3. *The Effect of Participation on the Scope of the Issues and Final Action on the Application*

The County asserts that its input on certain "matters of first impression" will "help to ensure that a complete record is made without resulting in significantly broadening the scope of the proceedings because they are directly related to issues currently before the NRC and subject to the NRC's jurisdiction." Pet. at 10-11. These "matters" include:

- (1) the impact of designating two limited liability companies as the licensed facility owner and operator where their predecessor in interest is currently the subject of bankruptcy proceedings;
- (2) the financial and technical wherewithal of the successor licensees and affiliates under two different currently proposed comprehensive Plans of Bankruptcy Reorganization ("reorganization plans"); and
- (3) public policy and decision-making in those collateral proceedings.

Pet. at 10. However, nowhere in its Petition does the County offer any indication of expertise on these issues or explain how it will help to ensure a complete record.<sup>6</sup> Consequently, it is not at all clear that the County's participation would indeed assist in developing a sound record in the proceeding.

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<sup>6</sup> By analogy, under Subpart G (*see* 10 C.F.R. § 2.714(a)(1)(iii)), a late petitioner must specify the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony. *Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 & 2), CLI-86-8, 23 NRC 241, 246 (1986)*. The County does not even attempt such a showing, making only vague assertions that its "input" will help to ensure a complete record.

Moreover, if — as indicated by the passage above — the County's fundamental concern is that the financial viability of Gen is uncertain until the Plan is confirmed, this is not an issue that needs to be addressed in a hearing. The proposed license transfer would not be required and would not go into effect unless and until the Plan is confirmed. And, as is discussed further below, confirmation of the Plan would assure the viability of Gen. Otherwise, the County proposes several issues and sub-issues discussed below. While these issues lack merit, addressing them would certainly have the effect of broadening this proceeding should the Commission find any of those issues admissible. This could delay final action on the Application. Accordingly, this factor weighs heavily against the County.

Upon balancing all the required factors, and giving the greatest weight to the lack of good cause, the Commission must reject the late-filed Petition.

B. The County Has Failed to Identify a Litigable Issue

Even if the County's late-filed Petition were considered by the Commission, the County has nonetheless failed to make the showing necessary to justify an oral hearing under Subpart M. The Commission's rules specifically require, among other things, that an intervention petition set forth the issues sought to be raised and:

- Demonstrate that such issues are relevant to the findings the NRC must make to grant the application for license transfer;
- Provide a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issues and on which the petitioner intends to rely at hearing, together with references to specific sources and documents on which the petitioner intends to reply to support its position on the issues; and
- Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

10 C.F.R. §§ 2.1306(b)(2)(ii) - (iv). *See also Consol. Edison Co. of N.Y.* (Indian Point, Units 1 and 2), CLI-01-19, 54 NRC 109, 133-34 (2001) (“Indian Point 2”); *GPU Nuclear, Inc.* (Oyster

Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 203 (2000) (“Oyster Creek”); *Indian Point 3*, CLI-00-22, 52 NRC at 295.

The County's Petition fails to provide the specificity and the basis for its issues as necessary to make the showing required by the Commission's regulations, and accordingly fails to demonstrate that a genuine dispute exists. Moreover, with respect to its request for a stay pending the outcome of the ongoing Bankruptcy Court proceeding, the County merely echoes similar requests by other petitioners in this matter. This is not an issue for a hearing. The request has, in any event, been previously addressed by PG&E and should be denied.

1. *Financial Qualifications for Operations*

In its first proposed issue, the County argues that in, several respects, Gen and Nuclear have failed to demonstrate the requisite financial qualifications to own and operate DCP. However, it is in fact the County's Petition — not PG&E's Application — that is completely lacking. No basis is provided by the County for the contention; no facts or expert opinions are identified; and no references to specific sources or documents are made. In the end, it is the County that has failed to demonstrate that there is a genuine dispute on the issue of financial qualifications.

The County in its first of four sub-issues argues that "Gen and Nuclear have no basis for providing a projected income statement or other projection of costs and revenues for the five year period following the transfer because the bankruptcy court has not approved a plan [of reorganization], therefore, there are no rate-setting directions from either the FERC or the CPUC to make such projections possible." Pet. at 18-19. However, there is no issue here at all. PG&E in its license transfer Application, and the Application supplements, has provided the required projections of costs and revenues for DCP for five years following implementation of PG&E's

Plan. As is abundantly clear in the Application, the financial projections are forecasts based on the Plan. The projections are based on assumptions inherent to the Plan and are consistent with the financial projections provided to the Bankruptcy Court to support the Plan. The County's assertion that there can be no projection of costs and revenues at this time (*i.e.*, prior to Plan confirmation) is simply wrong.

The County in its next sub-issue asserts that the financial projections included in the DCPD license transfer Application "appear to be based on above-market-price Power Purchase Agreements" and that it "is not clear that these rates would be approved by the FERC or CPUC." Pet. at 19. These assertions also fail to raise a genuine dispute on a material issue before the NRC. As is again clear in PG&E's license transfer Application and the supplements, the financial projections provided to the NRC are based on PG&E's Plan. That Plan includes, as a key element, a Power Purchase and Sale Agreement between Gen and Reorganized PG&E. The Plan must be confirmed by the Bankruptcy Court and the Power Purchase and Sales Agreement must be approved by the Federal Energy Regulatory Commission ("FERC"). The County does not challenge the projections submitted to the NRC; rather, the County implicitly questions the viability of the Plan at the Bankruptcy Court and the acceptability of the Power Purchase and Sale Agreement to FERC. These questions, however, are not before the NRC and need not (indeed, they cannot) be decided by the NRC. As discussed by PG&E in reference to similar issues raised at the NRC by the CPUC, the acceptability of the Plan and the economic terms of the long term Power Purchase and Sale Agreement will be decided by the Bankruptcy Court and by FERC, respectively. *See, e.g.*, "Answer of Pacific Gas and Electric Company to California Public Utilities Commission Petition for Leave to Intervene, Motion to Dismiss Application or, in the Alternative, Request for Stay of Proceedings, and Request for Subpart G

Hearing," dated February 15, 2002, at 22-25. The NRC, for its part, has the inherent authority to condition the DCPP license transfer approval on receipt by PG&E of other necessary approvals for any aspect the Plan (including the Power Purchase and Sale Agreement) that the NRC considers essential to the license transfer approval.

The County in this sub-issue also makes some further generalized statements regarding the "susceptibility" of Gen and Nuclear to "financial difficulty in the event of poor operational performance of the [DCPP] generating units." No basis is provided for these concerns. Indeed, the County ignores the financial qualifications discussion provided in the Application itself. The Application specifically explains (at page 10) that Gen will be a financially robust entity due to its diversified generation portfolio (including hydroelectric assets and entitlements in addition to DCPP) and the terms of the Power Purchase and Sale Agreement.<sup>7</sup> The assets of Gen, along with substantial non-nuclear generation revenues, will provide reasonable assurance of Gen's financial capability to withstand the County's hypothesized "poor operational performance," including — as specifically discussed in the Application — an extended plant shutdown. The County has provided no basis to challenge these facts and conclusions, and has therefore completely failed to demonstrate a genuine issue for a Subpart M hearing.

In a third sub-issue, the County similarly argues with the ability of Gen and Nuclear to pay fixed operating costs at DCPP during an outage of at least six months, at least "in the absence of a specific ruling by the Federal Bankruptcy Court." Pet. at 19. The concern here again ignores the Application itself, which — as discussed above — fully demonstrates Gen's

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<sup>7</sup> The conclusion is amply supported by the information included in Enclosure 8 to the Application.

ability to fund a six-month DCPD outage. *See* Application at 10.<sup>8</sup> Furthermore, it appears that the County's issue is in reality simply another statement of the argument that the NRC should not approve the transfer until the Bankruptcy Court approves PG&E's Plan. This is not a litigable issue of fact or law.<sup>9</sup>

As a fourth sub-issue under financial qualifications, the County argues that "in the absence of a ruling from the Bankruptcy Court, Gen and Nuclear cannot submit sufficient information as to their proposed financial and legal relationships with their owner to demonstrate that their corporate structure would provide adequate protection of public health and safety in the event of a radiological accident or premature shutdown." Pet. at 20. This contention again ignores the information that is indeed provided in the Application related to the proposed licensees and the relevant corporate relationships. Application at 1-7 and Enclosure 2. Obviously, Plan confirmation is not required to provide this information. The County next seems to challenge the mere fact that Gen and Nuclear are limited liability companies ("LLCs"). As a remedy to this "problem," the County seeks a condition on the license transfer "requiring Gen and Nuclear to obtain guarantees from the parent company ... that in all events, the parent will be financially responsible for providing whatever funds are necessary to provide reasonable

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<sup>8</sup> While the County cites Section III.1.b of NUREG-1577, Rev. 1, "Standard Review Plan on Reactor License Financial Qualifications and Decommissioning Funding Assurance" (March 1999) ("SRP"), as the basis for a six-month outage test, this liquid assets test actually does not appear to apply where the applicant will be investment grade. SRP, Section III.1.b, at 5. PG&E's Plan is intended to result in new businesses, including Gen, that will be investment grade. Gen will therefore have the ability to take on debt.

<sup>9</sup> The County also raises the issue of Gen's financial qualifications to build or operate an Independent Spent Fuel Storage Installation ("ISFSI") at DCPD. Petition, at 19-20. PG&E has filed a separate application related to the ISFSI, and the financial issues for that facility are beyond the present scope of review. Nonetheless, as noted in Enclosure 8 (page 4, note 19) of the DCPD license transfer Application, the estimated nuclear costs

occurrences of public health and safety." *Id.* However, no basis is provided for either the perceived issue or the requested relief.

From the standpoint of financial responsibility and liability, the fact that Gen and Nuclear are LLCs makes them no different from any other corporate licensee. The Commission has specifically rejected challenges regarding the propriety of transferring an NRC license to an LLC. *See N. States Power Co.* (Monticello Nuclear Generating Plant; Prairie Island Nuclear Generating Plant, Units 1 & 2; Prairie Island Indep. Spent Fuel Storage Installation), CLI-00-14, 52 NRC 37, 57 (2000); *Oyster Creek*, CLI-00-06, 51 NRC at 208.

Moreover, with respect to the request for parent guarantees, there is no regulatory basis for such relief and thus there is no genuine issue for hearing. The financial showing required for an NRC license transfer is specified by 10 C.F.R. § 50.33(f)(2), with additional guidance provided in Section III.1.e of the SRP. Specifically, PG&E is required to provide a five-year projection of costs related to operation of the nuclear plants and to demonstrate the source of funds and the ability to cover these costs. PG&E — in its license transfer Application — has made fully the showing required by the regulations and consistent with the SRP guidance for a non-electric utility licensee. Gen will own a portfolio of approximately 7,100 MW of nuclear and hydroelectric assets and entitlements (*e.g.*, irrigation district power purchase agreements), essentially all of which would be under long term contract to Reorganized PG&E. Therefore, consistent with NRC requirements, Gen will have substantial revenues and assets to back its financial responsibilities for DCPD.

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accrued by Gen include, as an operating expense, costs related to the DCPD ISFSI. These costs are more than covered by revenues.

The County in its Petition has not provided any specific basis to challenge Gen's financial qualifications. In fact, it is not at all clear what additional financial assurance the County would have imposed. A parent guarantee as requested would exceed NRC requirements and guidance and is not justified in any way by the facts. NRC rules do not mandate supplemental funding. *Indian Point 3*, CLI-00-22, 52 NRC at 299-300; *see Vt. Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI-00-20, 52 NRC 151, 175 (2000) (citing *Oyster Creek*, CLI-00-06, 51 NRC at 205). Because the adequacy of supplemental funding is not an issue in an NRC license transfer review, this issue cannot constitute a basis for granting a hearing. *See* 10 C.F.R. § 2.1306(b)(2).

In summary, the County has not provided any basis for any of its proposed financial qualifications issues and has not demonstrated that any genuine issue of law or fact exists with respect to the financial qualifications of Gen and Nuclear. There is no issue here to support the request for a Subpart M oral hearing.

## 2. *Provision of Off-Site Power*

The County next identifies a vague issue regarding "adequate assurance of the availability of off-site power and grid stability." Pet. at 21. No detail, however, is provided, and no support for an issue is identified. The County's statement of issue appears to be little more than a statement of the converse of a proposition stated in the Application. This is not by any measure a showing that meets the Commission's rules in 10 C.F.R. §2.1306(b)(2).

Off-site power is specifically addressed in the license transfer Application. *See* Application, at 15-16. As is presently the case, off-site power will be provided to DCPD through transmission facilities operated by the California Independent System Operator ("ISO"). Nuclear protocols are presently in place related to the ISO's operation of the transmission system and will

remain in place. The fact that the transmission facilities will be owned by ETrans rather than by PG&E does not represent a material change to either the facilities or their operation.<sup>10</sup>

At most, the County in its Petition argues that the Application "does not provide sufficient information to demonstrate compliance with the applicable requirements, based on the lack of reliable detail on the financial strength of ETrans and assets which will be available for ETrans to maintain transmission lines and facilities necessary to reliably supply off-site power to Diablo Canyon." Pet. at 21. However, this argument disregards the detailed description of ETrans included in the Plan and the Disclosure Statement provided as Enclosure 1 to the Application.<sup>11</sup> These documents, among other things, describe the substantial assets that will be transferred to ETrans. Specifically, this will include approximately 18,650 circuit miles of electric transmission lines and cables located in California, as well as the towers, poles, underground conduit, and associated equipment used to support the lines and cables. In addition, ETrans and its subsidiaries will receive all transmission substations, transmission control centers and associated operations systems, junctions and transmission switching stations and associated equipment necessary to support the lines and cables, and all the other land, entitlements, rights of way, access rights, personal, real, and intellectual property necessary to operate the electric transmission business. *See* Disclosure Statement (Application Enclosure 1) at 70; *see also* Application, at 13. ETrans will thus be an entity with substantial assets.

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<sup>10</sup> With respect to the off-site power issue, implementation of the Plan primarily involves legal paperwork such as establishing contracts and agreements between the relevant entities rather than any equipment or operational changes. Further, as stated in the Application, certain maintenance agreements related to transmission equipment will be established between Gen and ETrans.

<sup>11</sup> The amended Plan and the amended Disclosure Statement as approved by the Bankruptcy Court were filed on April 19, 2002, and are available at <http://www.canb.uscourts.gov/>.

In addition, while the NRC has no financial qualifications requirements (or even guidance) related to transmission entities, Exhibit C to the Disclosure Statement nonetheless provides a three-year projected income statement and a balance sheet for ETrans, demonstrating the financial viability of ETrans. Indeed, confirmation of the Plan by the Bankruptcy Court will also effectively confirm the ability of PG&E to pay valid creditor claims and emerge from bankruptcy with sound businesses — including ETrans — going forward. The County, beyond its superficial claim, has not identified any substantive issue (or basis) with respect to the ability of ETrans to fulfill the necessary electric transmission function as necessary to assure the continuing ability of DCPD to meet applicable NRC requirements. The Commission will not accept "the filing of a vague, unparticularized" issue, unsupported by alleged fact or expert opinion and documentary support. *Indian Point 3*, CLI-00-22, 52 NRC at 295, citing *Seabrook*, CLI-99-6, 49 NRC at 219 (citation and internal quotation marks omitted).

In sum, the County's issue related to ETrans lacks basis. ETrans will be a robust entity with a sound financial foundation. Moreover, there is no regulatory basis to require a financial qualifications showing for a non-operator. The NRC will instead retain the ability to oversee maintenance of the transmission system and the reliability of off-site power supply as an ongoing regulatory matter — as it would for any operating power reactor. There is no basis for a Subpart M hearing on this issue.

3. *Stay Pending Outcome of Bankruptcy Court Proceeding*

The County's third proposed "issue" is a request "that the NRC proceedings [on the proposed license transfer] should be stayed pending the outcome of the bankruptcy proceeding." Pet. at 21. This, of course, does not present a hearing issue at all. It merely restates similar requests made by other petitioners in this matter. PG&E has addressed these

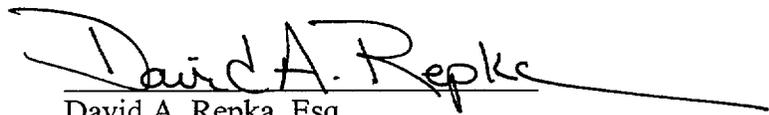
requests previously, most recently in the May 10, 2002 "Brief of Pacific Gas and Electric Company in Response to Commission Memorandum and Order CLI-02-12." Consistent with NRC precedent in connection with license transfer applications, PG&E has requested that the NRC continue and complete its review of the DCPD license transfer Application. There have been no decisions by the Bankruptcy Court or any other developments in that proceeding that suggest that the PG&E Plan cannot be confirmed.

The County's apparent preference for the CPUC alternative plan of reorganization is irrelevant in this NRC forum. PG&E is continuing to pursue all regulatory approvals that will be required to promptly implement its Plan upon confirmation by the Bankruptcy Court. Timely regulatory approvals, including the approval from the NRC, will allow PG&E to move forward with the financial and other administrative matters related to the Plan (such as arrangements for financing of the restructuring of the PG&E's businesses) promptly, if and when the Plan is confirmed. The County's request for a stay — like the other similar requests before it — does not raise an issue for oral hearing and should be denied.

IV. CONCLUSION

For the reasons set forth above, the County's late-filed request for hearing and petition for leave to intervene should be denied. The County's request to stay this proceeding should also be denied.

Respectfully submitted,

A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive style and is positioned above a horizontal line.

David A. Repka, Esq.  
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Dated in Washington, District of Columbia  
This 20<sup>th</sup> day of May 2002

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of: )  
)  
Pacific Gas and Electric Co. ) Docket Nos. 50-275-LT  
) 50-323-LT  
(Diablo Canyon Power Plant, )  
Units 1 and 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "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 HEARING" in the above captioned proceeding have been served as shown below by electronic mail, this 20<sup>th</sup> day of May 2002. Additional service by deposit in the United States mail, first class, has also been made this same day as shown below.

Richard A. Meserve, Chairman  
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Washington, DC 20555-0001

Edward McGaffigan, Commissioner  
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Washington, DC 20555-0001

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

Office of Commission Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
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Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Attn: Rulemakings and Adjudications Staff  
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A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive style with a horizontal line underneath the name.

David A. Repka, Esq.  
Counsel for Pacific Gas  
& Electric Company