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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

May 22, 2002 (4:30PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of
Pacific Gas and Electric Co.; 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

Docket No. 72-26-~~ISFSI~~

PETITION OF SAN LUIS OBISPO COUNTY SUPERVISOR PEG PINARD
AND AVILA VALLEY ADVISORY COUNCIL
FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING

I. INTRODUCTION

San Luis Obispo County Supervisor Peg Pinard and The Avila Valley Advisory Council aka AVAC ("Petitioner"), hereby petitions to intervene in the above-captioned proceeding and requests a hearing to consider contentions relevant to this proceeding. Supervisor Pinard's district includes Diablo Canyon. AVAC is an advisory council to San Luis Obispo County Supervisors, made up of local residents to represent their interests.

In this proceeding, Pacific Gas and Electric Company ("PG&E" or "Applicant") has requested that the U.S. Nuclear Regulatory Commission ("NRC" or the "Commission") issue a license for a term of twenty years for PG&E to possess spent fuel and other radioactive materials associated with spent fuel in an independent spent fuel storage installation ("ISFSI"), which

would be licensed under 10 CFR Part 72 ("Application").' The proposed ISFSI is to be constructed on the grounds of the Diablo Canyon Power Plant ("Diablo Canyon"), which is located in San Luis Obispo County. Avila Valley is within ten miles of the proposed ISFSI. Id.

The sections that follow demonstrate that the Petitioner easily satisfies the tests for intervention. The Petitioner has significant interests in the outcome of the proceeding that can only be protected by the NRC granting The Petitioner's request to intervene.

II. PETITION TO INTERVENE AND REQUEST FOR HEARING

In order to intervene and be granted a hearing in this proceeding the Petitioner must demonstrate that it has interests that may be affected by the outcome of the proceeding. 42 U.S.C. § 2239 (a) (1) (A); 10 CFR § 2.714 (a) (1). A petition to intervene "... shall [1] set forth with particularity the interest of the petitioner in the proceeding, [2] how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d) (1) of this section, and [3] the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." 10 CFR § 2.714(a) (2). The Petitioner addresses each of these requirements in the following discussion.

' Pacific Gas and Electric Co.; 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, 67

A. The Petitioner Has Significant Interests In This Proceeding

The Petitioner has numerous significant interests in the pending ISFSI licensing proceeding that are within the zone of protection provided by the Atomic Energy Act ("AEA") and the National Environmental Policy Act ("NEPA").

First, the proposed ISFSI site at Diablo Canyon is located entirely within unincorporated San Luis Obispo County. The Petitioner is the senior elected official and local representative to the County of San Luis Obispo, which is responsible for providing services to the proposed ISFSI site and the surrounding communities. Local governments have unique interests that have long been recognized by the NRC in granting standing to participate in proceedings affecting nuclear power plants. See *Ohio Edison Co. (Perry Nuclear Plant, Unit 1)*, and *Cleveland Electric Illuminating Co. and Toledo Edison Co. (Perry Nuclear Power Plant, Unit 1; Davis Bessie Nuclear Station, Unit 1)*, LBP-92-19, 36 NRC 98, 103-104 (1992) (granting a local municipal government standing where that government's future reliance on existing antitrust provisions was at stake). This NRC policy of inclusion has extended to proceedings on ISFSI. See *Private Fuel Storage L.L.C. (Independent Spent Fuel Storage)*, LBP-98-7, 47 NRC 142 (1998).

Second, The Petitioner has an interest in ensuring that there are no injuries to the health, safety, and security of residents of Avila Valley and San Luis Obispo County by virtue of the creation of an ISFSI within its borders. The Petitioner's interests are as fundamental as needing to assure that County residents and people who work near the proposed ISFSI will not be injured as a result of an avoidable accident. The Petitioner also has interests with respect to the safe construction, operation, and decommissioning of the ISFSI. The safe operation of the ISFSI is of particular concern because the Petitioner plays an integral role in the administration of San Luis Obispo County's responsibility in carrying out Diablo Canyon's

Concerns about these matters fall squarely within the "zone of interests" protected by the AEA.~
Vermont Yankee Nuclear Power Station, LBP-90-6, 31 NRC 85, 89 (1990) (hereinafter, *Vermont Yankee*), 42 U.S.C. §§ 2133(d), 2210(b).

Finally, The Petitioner has an interest in ensuring the adequacy of PG&E's evaluation of the environmental impacts and hazards associated with the construction of ISFSI. These interests are protected by NEPA. See 42 U.S.C. § 4331, *et seq.* Petitioner is obliged to protect the environment and to ensure that government approved licensing actions do not result in harm to property belonging to or enjoyed by the citizens of San Luis Obispo. *Atlas Corporation* (Moab, Utah facility), LBP-97-9, 45 NRC 414, 416 (1997). Accordingly, The Petitioner needs to be assured that the alternatives to the proposed site have been adequately evaluated and that the conclusions that the Applicant has drawn regarding the alternative selected are correct.

B. The Petitioner's Interests Will be Affected by the Results of This Proceeding.

Avila Valley's environmental, economic, and safety interests will be affected by the results of this licensing proceeding. An interest is affected, for purposes of evaluating an intervention petition, where:

[1] the action challenged could cause distinct and palpable harm that results in an injury in fact; [2] the injury can be traced to the challenged action; and [3] the injury can be redressed by a favorable decision in the proceeding. Babcock and Wilcox (Apollo, PA Fuel Fabrication Facility), LBP-93-94, 37 NRC 72, 81 (1993); *Dellums v. NRC*, 863 F. 2d 968, 971

(D.C.Cir. 1988); *Vermont Yankee*, 31 NRC at 89 (citations omitted).^z Avila Valley is threatened with suffering distinct and palpable harm as a result of the deficiencies in PG&E's Application.

^zAn examination of how a petitioner's interests will be affected by the results of a licensing proceeding, should include a consideration of the following factors: (i) the nature of the petitioner's rights 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; and (iii) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. 67 Federal Register at 19601; 10 CFR § 2.714(d) (1) (*corrected*). The nature and extent of The Petitioner's rights and interests, factors (i) and (ii), have already been incorporated into the discussion contained in section A of this pleading. Consideration of the possible effect of any NRC order on The Petitioner's interests, factor (iii), will necessarily be included in Section B of this pleading.

The Application is deficient in a number of respects. First, the Application does not adequately identify the identity, corporate structure, or financial qualifications of the ultimate licensee. Because PG&E has filed a petition for relief pursuant to Chapter 11 of the Bankruptcy Code, the identity and corporate structure of the ultimate licensee have not yet been determined. Likewise, the financial qualifications of the proposed licensee are based on assumptions about how the corporation will be reorganized by the Bankruptcy Court. If the NRC were to issue a license to a corporation with inadequate financing, the safe operation and decommissioning of the ISFSI could be compromised. Any failure by the licensee to safely operate and/or decommission the ISFSI could result in accidents, radiation exposure, or untimely decommissioning of the facility. The impacts of such a failure to the residents of Avila Valley and San Luis Obispo County would be significant and enduring.

Second, PG&E's Application fails to adequately consider available site and design alternatives for the ISFSI. In conducting site evaluations, it appears that PG&E only considered areas that had previously been evaluated and met geological standards. Use of this methodology would necessarily result in a failure to consider other significant factors, such as vulnerability to offshore attacks in selecting the best possible location for the ISFSI. Failure to consider reasonable alternatives poses a potential threat to the health and safety of the citizens of Avila Valley, San Luis Obispo County, and to the environment. It also makes it impossible for PG&E to demonstrate that the residents will be protected from unnecessary and avoidable negative environmental impacts caused by the location and design of the ISFSI.

Finally, if the ISFSI is designed and operated to meet increased security concerns in a way that disrupts Avila Valley's emergency preparedness plan, costly additional planning requirements and

exercises will be imposed upon San Luis Obispo County and its citizens. This constitutes direct but avoidable economic harm.

If the NRC grants a license that is supported by an inadequate Application, Avila Valley and the County of San Luis Obispo are threatened with distinct palpable harm that constitutes an injury in fact. The NRC's decision in this matter could protect the interests of Avila Valley and San Luis Obispo County residents by ensuring that the Applicant takes the measures necessary to address deficiencies in the Application and thereby avoid such injuries. *Quivara Mining Corp.* (Ambrosia Lake Facility Grants, New Mexico), LBP-97-20, 46 NRC 257, 262 (1997), *aff'd* CLI-98-11, 48 NRC 1 (1998), *aff'd sub nom. Envirocare Inc. v. NRC*, 194 F.3d 72 (D.C. Cir. 1999). Clearly, the potential injury in fact is redressable in the present proceedings. *See North Atlantic*, CLI-99-06, 49 N.R.C. at 215 ("The threatened injury is fairly traceable to the challenged action [here the grant of the ISFSI license application] because the alleged increase in risk . . . could not occur without Commission approval of the application.").

C. Petitioner Intends to Raise Particularized Contentions to Protect Avila Valley and the Citizens of San Luis Obispo County from Specific Injuries

The Petitioner has identified the distinct and palpable harms that constitute injuries in fact, both to residents of Avila Valley and San Luis Obispo County that arise out of the deficiencies identified in the application for the ISFSI at Diablo Canyon. *Sequoyah Fuels corp.* (Gore; Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 47-48, *of'd*, ALAB-549, 9 NRC 644 (1979). In order to protect residents of Avila Valley and San Luis Obispo County from the identified injuries, The Petitioner intends to raise the following contentions;

The County will timely submit its actual list of contentions in a supplement to this Petition should it be

- The impacts of the current uncertainty over the corporate identity of the ultimate ISFSI licensee.
- The uncertainties regarding the financial assurance of the ultimate licensee with respect to safe construction, operation and decommissioning of the proposed ISFSI.
- The inadequacy of the site and design selection process in its failure to consider alternatives.
- The inadequately supported conclusions in the licensee's Environmental Report supporting the Application.
- The inadequately supported selection of security and emergency plan measures in support of the proposed ISFSI.

Contentions raised related to these topics would fall squarely within the scope of this ISFSI licensing proceeding and would be subject to the NRC's jurisdiction in this proceeding.

1. Corporate Identity and Financial Assurance Resulting from Bankruptcy

Pacific Gas & Electric Company's voluntary bankruptcy and ongoing proceeding in the Bankruptcy Court raise issues regarding the corporate identity and financial qualifications of the licensee ultimately responsible for the Independent Spent Fuel Storage Installation (ISFSI). First, until the Bankruptcy Court approves of a reorganization plan, it will be impossible to identify the corporate organization that will be responsible for construction, operation and decommissioning of the ISFSI. In the absence of a clear identification of the proposed licensee, it is impossible for the NRC to determine whether the licensee will be financially or technically qualified to construct, operate or

admitted as a party to this proceeding. See 67 Federal Register at 19601. The list of issues discussed here should not be considered exhaustive. If, for any reason, the NRC determines that it will not admit the Petitioner as a Party to this proceeding, the Petitioner hereby makes a timely request to participate in any hearing held in proceeding as provided for in 10 CFR § 2.715 (c). Moreover, if the Petitioner is admitted as a Party to this proceeding for a hearing on its contentions, the Petitioner reserves the right to request to participate on other matters of concern under 10 C.F.R. 2.715(c).

decommission the facility. Gulf States Utilities Co. (River Bend Station, Unit 1), LBP-94-2, 39 NRC 31, 39 (1994).

Second, in the absence of an approved reorganization plan, it is impossible to determine whether the funds will be available to safely construct, operate and decommission the ISFSI. Even if the Bankruptcy Court approves a reorganization that is similar to the one proposed by PG&E, there are significant questions about the ability of the successor organization to safely operate and decommission the ISFSI. If adequate financial assurance and liability are not provided, Avila Valley and San Luis Obispo County residents as taxpayers could bear a substantial financial burden should they be required to fund the decommissioning of the facility and decontamination and restoration of the site.

2. Environmental Evaluations

PG&E's environmental analysis in the Environmental Report ("ER") and site selection process for the ISFSI are a source of concern to The Petitioner, Avila Valley residents, and San Luis Obispo County residents. In particular, the ER does not consider security issues for all components of the ISFSI facility, and does not include evaluations of security-related features for alternative sites or alternative designs for the spent fuel storage casks. Moreover, the Application includes too few details with respect to evaluation of environmental alternatives to enable The Petitioner and the NRC to understand PG&E's decision making process and to determine that this process resulted in an outcome that will offer adequate protection for the health and safety, common defense and security, and the environment of local residents. In that regard, PG&E, in this Application and in its Coastal Development Permit Application ("CDPA") appears to have considered only those sites for which the geology is

understood to the exclusion of other sites that may be preferable if other factors such as vulnerability to offshore attacks were considered.

These issues need to be fully explored by The Petitioner in order to enable the NRC to determine whether the Application conforms to applicable requirements. Exploration of these issues will also assist the NRC in evaluating whether PG&E has adequately supported its contention that construction and operation of an ISFSI will result in no significant environmental impact.

The NRC's inability to make an informed decision is a cognizable injury under NEPA. *Committee to Save the Rio Hondo v. Lucero*, 102 F.3d 445, 451 (10th Cir. 1996). PG&E's license submittal does not contain sufficient information for the NRC to make an informed decision, or for The Petitioner, or other interested parties, to make a meaningful, substantive evaluation of specific aspects of the proposed licensing action. Such shortcomings threaten to irreparably harm the interests of The Petitioner, Avila Valley and San Luis Obispo County residents.

3. Emergency Preparedness and Security

For The Petitioner to fully implement its lead responsibility for emergency preparedness in the vicinity of Diablo Canyon, The Petitioner must have adequate resources and be fully apprized of PG&E's emergency response plans in the event of a natural emergency or deliberate attack. Since the events of September 11, 2001, The Petitioner is legitimately concerned that an ISFSI may well present an attractive target for attack. To ensure that the emergency preparedness plans for the ISFSI properly contemplate a deliberate attack and to prepare The Petitioner to respond should such an attack occur, PG&E's security plans and emergency response plans for the ISFSI should be made available to The Petitioner for review. Such review is especially important because, based on the information made available to The Petitioner, the ISFSI Physical Security Plan appears to rely exclusively, on control of access to the ISFSI protected area, despite the exposure of the ISFSI to off-shore attack. Such a review is also necessary because it is not apparent that the Applicant's evaluation of alternative security measures and related alternative emergency response plans took into account the implementation costs that would be borne by citizens of Avila Valley and San Luis Obispo County. It is also unclear whether the Applicant considered the increased security training that would be required by siting the ISFSI at Diablo Canyon.

In the absence of this information, The Petitioner cannot fulfill its obligations to citizens to ensure that PG&E's ISFSI Application appropriately considers all required issues. Based on the current application, the Petitioner is also unable to ensure that its emergency responders are properly equipped and trained to fulfill their obligations as described in PG&E's security plans and emergency response plans.

I3. The Potential Injuries That Could Result From Licensine The ISFSI As Proposed Are Redressable By The NRC

The potential injuries to the Petitioner and citizens of San Luis Obispo County and Avila Valley are fully redressable by the NRC through: (1) its insistence that PG&E provide a legally complete ER that considers all reasonable alternatives and demonstrates how they were evaluated to determine the appropriateness of the alternative selected; and (2) its imposition of appropriate alternative license conditions that would be determined through hearings on the issues identified above.

E. Service for Pleadings Resulting from Intervention

Pursuant to 10 C.F.R. §§ 2.708(e) and 2.1306(b)(1), the following are designated as the persons on whom service of the pleadings and other papers in this proceeding should be made:

Seamus M. Slattery
Chairman
Avila Valley Advisory Council
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Avila Beach, CA 93424
Jslat1@aol.com
(805)471-6427

County Supervisor Peg Pinard
County Government Center
1050 Monterey Avenue,
San Luis Obispo, California 93408

III. CONCLUSION

The Petitioner has demonstrated that it has significant interests that will be affected by the outcome of these licensing proceedings. PG&E's licensing Application provides inadequate information with respect to the corporate identity and financial capability of the proposed facility licensee, the environmental impacts and alternatives to the ISFSI, and the potential security and sabotage issues. The Petitioner, Avila Valley and San Luis Obispo County residents are subject to a particularized harm should the ISFSI be licensed based

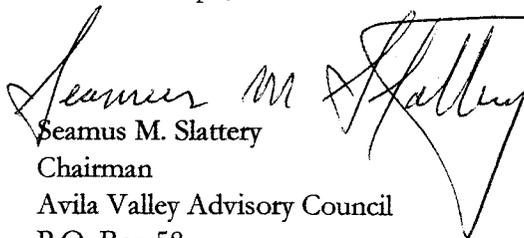
on a deficient Application. Only through NRC action can these deficiencies be resolved.

Accordingly, the Commission should grant this request for intervention and a hearing to resolve these issues.

Respectfully submitted,



County Supervisor Peg Pinard
County Government Center
1050 Monterey Avenue,
San Luis Obispo, California 93408



Seamus M. Slattery
Chairman
Avila Valley Advisory Council
P.O. Box 58
Avila Beach, CA 93424

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CERTIFICATE OF SERVICE

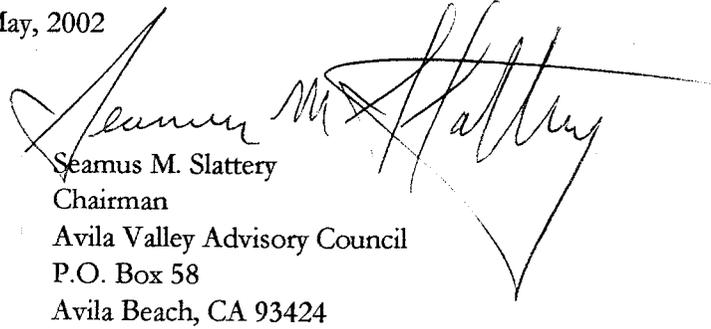
I HEREBY CERTIFY that true and correct copies of the foregoing PETITION OF AVILA VALLEY ADVISORY COUNCIL AND SAN LUIS OBISPO COUNTY SUPERVISOR PEG PINARD FOR LEAVE TO INTERVENE AND A HEARING were served upon the following persons by e-mail delivery for those whose e-mail addresses we have been supplied, with a follow-on copy by regular mail, in accordance with the requirements of 10 C.F.R §§ 2.701, 2.712:

Mr. Lawrence F. Womack
Vice President, Nuclear Services
Diablo Canyon Power Plant
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Avila Beach, California 93424

Secretary of the Commission
Attn: Document Control Desk
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Washington, D.C. 20555-0001

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Dated at Avila Beach, California on this 22 day of May, 2002



Seamus M. Slattery
Chairman
Avila Valley Advisory Council
P.O. Box 58
Avila Beach, CA 93424

Pursuant to the Applicant's request in Section 1.7 of the Application, additional "courtesy" copies will be transmitted to:

Mr. Gregory M. Rueger
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