UNITED STATES OF AMERICA
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COMMISSIONERS

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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)	)	

CLI-02-16

MEMORANDUM AND ORDER

I. INTRODUCTION

This proceeding involves a November 30, 2001 application seeking the Commission's authorization for Pacific Gas and Electric Co. ("PG&E") to transfer its licenses for the Diablo Canyon Power Plant, Units 1 and 2 (collectively, "DCPP") in connection with a comprehensive Plan of Reorganization which PG&E filed under Chapter 11 of the United States Bankruptcy Code.[1] Under the restructuring plan PG&E submitted to the bankruptcy court, the transfer of the licenses would be to a new generating company named Electric Generation LLC ("Gen"),

[1] *See* 42 U.S.C. § 2234 (precluding the transfer of any NRC license unless the Commission both finds the transfer in accordance with the Atomic Energy Act of 1954 ("AEA") and gives its consent in writing). *See also* 10 C.F.R. § 50.80, which restates the requirements of the AEA, sets forth the filing requirements for a license transfer application, and establishes a two-part test for approval of applications: (1) the proposed transferee is qualified to hold the license and (2) the transfer is otherwise consistent with law, regulations, and Commission orders.

which would operate DCPP, and to a new wholly-owned subsidiary of Gen named Diablo Canyon LLC ("Diablo"), which would hold title to DCPP and lease it to Gen.[2]

In response to its published notice of the Diablo Canyon application,[3] the Commission received four petitions to intervene and requests for hearing. The petitioners are the Northern California Power Agency ("NCPA"); the Official Committee of Unsecured Creditors of PG&E ("Committee"); the California Public Utilities Commission ("CPUC"); and the following group: 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 (collectively, "TANC"). Two of the petitioners, TANC and NCPA, are concerned primarily with the treatment, after license transfer, of antitrust conditions in the current licenses.[4] The Committee has expressed interest in the financial qualifications of the future licensees, but supports PG&E's reorganization plan. CPUC vigorously opposes license transfer to the extent it proceeds according to PG&E's Plan. Pursuant to 10 C.F.R. § 2.1316, the NRC Staff is not a party to this proceeding.

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[2]Other components of the restructuring include separating PG&E's electric transmission business to ETrans LLC and its gas transmission assets and liabilities to GTrans LLC. ETrans and GTrans will also become indirect wholly-owned subsidiaries of PG&E 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 related customer services. After disaggregation of the businesses, PG&E Corporation will declare a dividend and distribute the common stock of PG&E to its public shareholders, thus separating PG&E from PG&E Corporation. PG&E expects that value realized will provide cash and increased debt capacity to enable it to repay creditors, restructure existing debt, and emerge from the bankruptcy. *See* "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," at 2-3 (Feb. 15, 2002).

[3]*See* 67 Fed. Reg. 2455 (Jan. 17, 2002).

[4]At our request the parties have submitted briefs regarding both the antitrust issue and developments in the bankruptcy proceeding that might affect pending motions to dismiss this license transfer proceeding or hold it in abeyance. *See* CLI-02-12, 55 NRC __ (Apr. 12, 2002).

Approximately three months after the published deadline, the County of San Luis Obispo ("County") submitted its intervention petition and request for a hearing. The County has expressed concern regarding both technical and financial qualifications of the transferees and E Trans, but has not raised any issues in the antitrust arena.

Today we consider and decide the petitions to intervene and requests for hearing of CPUC, the Committee, and the County and various requests to dismiss or abate this license transfer proceeding.[5] For the reasons set forth below, we deny the intervention petitions of CPUC and the County, but grant those entities participant status in this license transfer proceeding. We also deny the Committee's petition and the pending motions to dismiss or suspend this proceeding.

II. DISCUSSION

A. Preliminary Procedural Matters

1. Motions to Suspend or Dismiss

Three of the four timely intervention petitions and the County's petition included requests to dismiss this proceeding or hold it in abeyance because of the parallel proceedings in the bankruptcy court and at FERC. Only the petition of the Committee omitted such a request. CPUC cited the uncertainty whether PG&E's Plan is lawful until the bankruptcy court renders a ruling on various questions of state law preemption and whether to permit the filing of CPUC's alternate plan of reorganization. NCPA sought abeyance of this proceeding only until the Plan is finalized for submission to the creditors and the bankruptcy court approves such submission. Since the transfer cannot take place without confirmation of the plan, NCPA suggested that the case before the Commission is not ripe for adjudication, for it rests on

[5] In a separate order we will consider the antitrust-based intervention petitions of TANC and NCPA.

contingent future events that may not occur as anticipated, or may not occur at all. TANC emphasized the waste of resources in persisting with the license transfer adjudication because both the Federal Energy Regulatory Commission ("FERC") and the bankruptcy court need to approve PG&E's transfer plan and one of the petitioners (CPUC) is vigorously contesting the plan in both places.

To assist us in ruling on the requests to hold this proceeding in abeyance, we sought from the petitioners and the applicant briefs addressing the question, "Have recent filings and developments in PG&E's bankruptcy proceeding had any effect on the pending motions to hold this license transfer proceeding in abeyance?"[6] The responses indicate (1) that the bankruptcy court has approved the disclosure statement for PG&E's Plan; (2) that the court heard objections to CPUC's alternate plan in early May; (3) that June 17, 2002 is the target date to send ballots to creditors regarding the two proffered plans of reorganization; (4) that confirmation hearings will probably occur in September, 2002; and (5) that a plan could be confirmed by the end of the calendar year. In short, the bankruptcy matter is progressing and there have been no developments that suggest that PG&E's Plan cannot be confirmed.

Those petitioners in favor of abeyance all offered kindred reasons for their position. NCPA believed that, before proceeding with the license transfer case, we should await an indication that PG&E's plan is more likely to be confirmed than CPUC's plan. CPUC asserts that, until a plan is approved by the bankruptcy court, we should hold this proceeding in abeyance because the threshold issue of whether the Diablo Canyon plants require a license transfer remains unresolved. As no license transfer is necessary under the CPUC plan, this proceeding could become moot. TANC still desires to suspend this proceeding and states that the situation is analogous to that in *Nine Mile Point,* where we did suspend a license transfer

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[6] *See* CLI-02-12, 55 NRC at __, slip op. at 2.

proceeding in view of contractual arrangements likely to render the proposed transfer moot in the near future.[7] PG&E and the Committee oppose holding the proceeding in abeyance.

Unlike *Nine Mile Point*, we do not here face imminent mootness, but merely the "common" situation of "multiforum" transfer reviews.[8] The Commission repeatedly has refused to suspend license transfer proceedings merely because related proceedings at the NRC, in state court, or in state or other federal agencies are pending.[9] "[I]t would be productive of little more than untoward delay were each regulatory agency to stay its hand simply because of the contingency that one of the others might eventually choose to withhold a necessary permit or approval."[10] Our general policy is to expedite our adjudicatory proceedings, particularly in the time-sensitive license transfer area.[11] PG&E's bankruptcy case is moving forward in due course; it could yield a final decision late this year. We thus see no reason here to deviate from our usual practice of completing our license transfer reviews promptly despite the pendency of related matters elsewhere. Accordingly, we deny the pending motions to hold this proceeding in abeyance. However, we instruct all remaining petitioners and parties to inform the

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[7] *See Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Units 1 and 2), CLI-99-30, 50 NRC 333, 342-44 (1999).

[8] *Id.* at 343.

[9] *See Indian Point 3*, CLI-00-22, 52 NRC at 288-90 (denying motions for stay pending decisions by New York courts, Internal Revenue Service, FERC, and New York State Department of Environmental Conservation); *Indian Point 2*, CLI-01-8, 53 NRC 225, 228-30 (2001) (denying request to suspend proceeding until completion of *Indian Point 3* license transfer and decision on 10 C.F.R. § 2.206 enforcement petition); *Nine Mile Point*, CLI-99-30, 50 NRC at 343-44 (granting short suspension pending decisions on rights of first refusal, but denying further suspension until conclusion of New York Public Service Commission proceeding).

[10] *Nine Mile Point*, CLI-99-30, 50 NRC at 344 (*quoting Southern California Edison Co.* (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-171, 7 AEC 37, 39 (1974).

[11] *See* "Final Rule: Streamlined Hearing Process for NRC Approval of License Transfers," 63 Fed. Reg. 66,721, 66,721-22 (Dec. 3, 1998); *see also Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 24 (1998).

Commission promptly of any court or administrative decision that directly impacts, or renders moot, the instant proceeding.

2. Request for Subpart G Hearing[12]

CPUC has requested that we conduct this adjudicatory proceeding under 10 C.F.R. Part 2, Subpart G, rather than under the Subpart M procedures which normally apply to license transfer adjudications. Because of the complex nature of the legal, policy and factual issues it raises, CPUC asserts that the application of Subpart M, especially in cross examination and discovery, would not serve the purposes for which the rule was intended; *i.e.,* a full and fair hearing on the license transfer on an expedited basis.

Our regulations expressly prohibit a request for a Subpart G proceeding for a license transfer adjudication.[13] Recognizing this, CPUC invokes 10 C.F.R. § 2.1329, which authorizes the Commission to waive a rule when, "because of special circumstances concerning the subject of the hearing, application of a rule or regulation would not serve the purposes for which it was adopted." In addition to its "complex nature of the ... issues" argument, CPUC contends that the "matters in this license transfer are not strictly 'financial in nature' as contemplated in the promulgation of Subpart M."[14] We have denied requests for Subpart G hearings that

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[12]NCPA has requested that we conduct this license transfer proceeding under 10 C.F.R. Part 2, Appendix A, Section X, Proceedings for the Consideration of Antitrust Aspects of Facility License Applications. We will consider that request in a later order.

[13]*See* 10 C.F.R. § 2.1322(d); *Indian Point* 2, CLI-01-19, 54 NRC at 130, and references cited therein.

[14]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," at 3 (Feb. 5, 2002) (hereinafter, "Petition").

petitioners have made on these same grounds in other license transfer proceedings.[15] Our Subpart M rules cover all license transfer issues:

> Our subpart M rules are intended to apply to more than just those cases presenting only financial issues. We expected when promulgating Subpart M that most issues would be financial ... However, we also predicted that Petitioners would raise other categories of issues as well (such as foreign ownership, technical qualifications, and appropriate critical staffing levels) ... For that reason, when promulgating Subpart M, we expressly declined to adopt [a commenter's] suggestion that we limit the scope of Subpart M proceedings to financial matters.[16]

We still consider this to be sound policy. Accordingly, we deny CPUC's request.

B. CPUC's Petition

To intervene as of right in a licensing proceeding, a petitioner must demonstrate standing; *i.e.*, that its "interest may be affected by the proceeding."[17] In a license transfer proceeding, the petition to intervene must also raise at least one admissible issue.[18] PG&E maintains in its response to CPUC's petition that CPUC has neither demonstrated its standing nor articulated an admissible issue. We agree. For the reasons set out in detail below, we deny CPUC's petition to intervene.

1. Standing of CPUC

To demonstrate standing in a Subpart M license transfer proceeding, the petitioner must

(1) identify an interest in the proceeding by
    (a) alleging a concrete and particularized injury (actual or threatened) that
    (b) is fairly traceable to, and may be affected by, the challenged action (the grant of an application), and
    (c) is likely to be redressed by a favorable decision, and

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[15] *See, e.g., Indian Point 2*, CLI-01-19, 54 NRC at 130; *Indian Point 3*, CLI-00-22, 52 NRC at 290-91 (2000); *Vermont Yankee*, CLI-00-20, 52 NRC at 162.

[16] *Indian Point 3*, CLI-00-22, 52 NRC at 290-91 (citation omitted).

[17] *See* AEA § 189a, 42 U.S.C. § 2239(a).

[18] *See* 10 C.F.R. § 2.1306.

(d) lies arguably within the "zone of interests" protected by the governing statute(s).
(2) specify the facts pertaining to that interest.[19]

"The burden of setting forth a clear and coherent argument for standing and intervention is on the petitioner."[20]

CPUC's petition says little about its standing. Without citing any California statutes, CPUC points to its responsibility for regulating electric corporations within the State of California and asserts that it has "a statutory mandate to represent the interests of electric consumers throughout California in proceedings before the Commission" and "currently exercises regulatory authority over DCPP."[21] It maintains that "these fundamental interests and responsibilities. . .are directly threatened by the proposed license transfer."[22] But CPUC provides no facts, or even legal argument, suggesting that it represents California citizens on nuclear safety issues, as opposed to electricity rate issues. The "zone of interests" test for standing in an NRC proceeding does not encompass economic harm that is not directly related to environmental or radiological harm.[23]

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[19]*See* 10 C.F.R. §§ 2.1306, 2.1308; *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 202 (2000) and references cited therein.

[20]*Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 194 (1999). *See U.S. Enrichment Corp.* (Paducah, KY), CLI-01-23, 54 NRC 267, 272 (2001) ("petitioners bear the burden to allege facts sufficient to establish standing").

[21]Petition at 4.

[22]*Id.*

[23]*See Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 105-6 (1976) (Zone of interests created by the AEA is avoidance of a threat to health and safety of the public as a result of radiological releases). *See also International Uranium (USA) Corp.* (Receipt of Material from Tonawanda, NY), CLI-98-23, 48 NRC 259, 265 (1998) (rejecting standing for petitioners who asserted a bare economic injury, unlinked to any radiological harm); *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, NM), CLI-98-11, 48 NRC 1, 9, 11 (1998), *aff'd sub nom. Envirocare of Utah v. NRC*, 194 F.3d 72 (D.C. Cir. 1999) (Purely competitive interests, unrelated to any radiological harm to itself, do not bring petitioner within zone of interests of AEA; fact that economic interest or motivation is involved will not

The standing discussion in CPUC's petition, labeled "interests," demonstrates that the interests CPUC protects are economic in nature; *i.e.,* ratepayer interests. The nine or so pages of the "interests" discussion deal with PG&E's bankruptcy plan and submissions to FERC, CPUC's alternative reorganization plan, the preemption of California statutes sought by PG&E, and CPUC's motion to stay the NRC proceedings. The discussion contains only two references to public health and safety, the subject of the NRC's license transfer review. Both references are very general. First, CPUC states that its own alternative reorganization plan does not require the bankruptcy court or FERC to reject the application of century-old state regulatory statutes "critical to health, safety, and welfare of thirty million citizens."[24] Second, CPUC cites a case which held that the Bankruptcy Code does not preempt state statutes or regulations "intended to protect the public safety and welfare."[25] These bare mentions of health and safety cannot be used to establish standing where the essence of CPUC's concern is economics, not safety.[26]

CPUC's focus is on the alleged illegality of PG&E's bankruptcy Plan and unfairness of the power sale agreement ("PSA") on which the Plan is founded. The Plan requires preemption of certain California laws and, according to CPUC, would amount to a "regulatory jailbreak" -- PG&E's escape from CPUC and State rate regulation.[27] The preemption issue is before the

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preclude standing, but petitioner must also be threatened by environmental harm). In addition, the Commission has long held that ratepayer interests do not confer standing. *See Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-83-25, 18 NRC 327, 332 n. 4 (1983) *citing Portland General Elec. Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976).

[24]Petition at 7.

[25]*Id.* at 10.

[26]*Cf*. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999).

[27]*See* Petition at 5 and reference cited therein.

bankruptcy court. CPUC's challenge to the fairness of the PSA is before FERC, an economic regulatory agency which considers rate-related, not safety-related issues.[28] This NRC license transfer proceeding is not an appropriate forum to resolve CPUC's economic controversy with PG&E. In short, CPUC's cursory standing submission fails to show an independent health and safety interest and fails to articulate a sufficient interest in economic matters *that have a potential to produce radiological harm.*[29]

CPUC does allude generally to safety in the separate "issues" portion of its petition.[30] But, as we have seen, CPUC's "interests" (*i.e.*, standing) discussion is essentially silent on health and safety. The Commission is entitled to take CPUC's standing claim at face value. We cannot be expected "to sift through the parties' pleadings to uncover and resolve arguments not made by the parties themselves."[31] In any event, as we explain below, even if we were willing to glean from the "issues" discussion enough information to grant standing to CPUC, we could not permit CPUC to intervene because it has not submitted an admissible issue. We turn to the admissibility issue next.

2. Admissibility of CPUC's Issues

Our rules specify that, to demonstrate that issues are admissible in a Subpart M proceeding, a petitioner must

> (1) set forth the issues (factual and/or legal) that petitioner seeks to raise,
> (2) demonstrate that those issues fall within the scope of the proceeding,

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[28]The Federal Power Act, Subchapter II, 16 U.S.C. § 824 *et seq.*, gave FERC's predecessor, the Federal Power Commission, jurisdiction over the transmission of electric energy at wholesale in interstate commerce. The Act prohibits unreasonable rates with respect to any transmission or sale subject to FERC's jurisdiction. *See* 16 U.S.C. § 824d.

[29]*See* note 23, *supra*.

[30]*See* Petition at 21, 23.

[31]*See Zion Nuclear Power Station*, CLI-99-4, 49 NRC at 194.

> (3) demonstrate that those issues are relevant to the findings necessary to a grant of the license transfer application,
> (4) show that a genuine dispute exists with the applicant regarding the issues, and
> (5) provide a concise statement of the alleged facts or expert opinions supporting the petitioner's position on such issues, together with references to the sources and documents on which petitioner intends to rely.[32]

All of CPUC's proposed issues are either immaterial to license transfer or too vague to define a genuine dispute with the applicant. Commission rules require articulation of detailed threshold issues to trigger an agency hearing.[33] Vague, unparticularized issues are impermissible.[34]

We turn now to the issues CPUC has proposed in this case and consider their admissibility under 10 C.F.R. § 2.1308. For convenience, we have treated issues in the four categories CPUC enumerated: financial qualifications issues, decommissioning funding, California's regulatory responsibilities, and public safety and welfare concerns.

a. Financial Qualifications Issues

CPUC avers generally that the proposed transferee is not financially qualified to be the NRC's licensee for DCPP.[35] CPUC claims that Gen's finances are "highly questionable" and it is "uncertain that Gen will have the resources to carry out the critical plant maintenance and public safety-related functions that will enable [Diablo Canyon] to meet the Commission's rigorous regulatory requirements."[36]

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[32]*See* 10 C.F.R. § 2.1306; *Indian Point 2*, CLI-01-19, 54 NRC at 133-34 (2001) and references cited therein.

[33]*See Indian Point* 3, CLI-00-22, 52 NRC at 295; *Vermont Yankee*, CLI-00-20, 52 NRC at 164.

[34]*See Indian Point* 3, CLI-00-22, 52 NRC at 295.

[35]*See* 10 C.F.R. § 50.33(f)(2)-(3).

[36]Petition at 21.

According to CPUC, it is "imprudent in the extreme to license untested, financially unstable entities" like Gen to own and operate a commercial nuclear reactor.[37] CPUC argues that FERC cannot approve the rates in the proposed PSA which underpins PG&E's bankruptcy reorganization plan. If, as CPUC urges, FERC permits the collection of only cost-based rates for the power DCPP produces, rather than the allegedly "unjust and unreasonable" rates proposed in the Plan, the "house of cards on which PG&E's applications ... are based, will quickly collapse. *In such event*, Gen will not be a financially viable entity" and thus not qualified to hold the DCPP licenses.[38]

The stressed phrase in the previous sentence is the key to our rejection of this issue. Before us is a financial plan -- albeit contingent on FERC and bankruptcy court approval -- which includes a long-term power sale contract at specified rates. Although CPUC contests this characterization, the rates, according to the applicant, are market-based; moreover, the rates are currently before FERC, the responsible agency, for approval or rejection.[39] *CPUC has not*

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[37] *Id.*

[38] *Id.* at 22-3 (emphasis added).

[39] CPUC says that the proposed rates are fundamentally unreasonable and unjust to California retail customers who will foot the bill. To support its proposed issues before the NRC, CPUC relies primarily on the "declaration" of David R. Effross, a public utilities regulatory analyst employed by CPUC, and its filings before FERC and the bankruptcy court. (Applicants have not challenged Mr. Effross' expertise.) PG&E's benchmark analysis, presented to FERC, misses the mark, according to the declaration of Mr. Effross. The PSA, he says, must be evaluated in comparison with otherwise applicable rates -- the proper comparison is with utility-retained generation (such as in the alternative reorganization plan CPUC has formulated for PG&E to emerge from bankruptcy without disposing of its electric generation assets.) Rates determined on a traditional cost-of-service basis are approximately one-half of those in the PG&E plan. According to Mr. Effross, PG&E's benchmark analysis in support of the PSA contains several defects, including the following: (1) PG&E uses a comparison period in which the California wholesale electricity markets exhibited extreme dysfunction; (2) PG&E uses comparison contracts the negotiation of which PG&E previously contended was subject to the exercise of market power; (3) PG&E used a regional market instead of the relevant national market; (4) negotiation of the comparison contracts took place in the 18 months during which the California market was at its most dysfunctional; (5) the comparison group contracts are not comparable in either size or technology; (6) in addition to the fixed high revenues it will receive

argued that the transferee's funding would be insufficient if FERC and the bankruptcy court approve the proffered PSA. For example, CPUC does not contend that the estimated capacity factors or cost estimates are unrealistic, that revenues under the PSA are insufficient for safe operation of the plants, that the PSA would be unenforceable, or that monies earned by the transferee would be uncollectible from the buyer. These are the kinds of issues the NRC typically considers in license transfer cases.[40]

CPUC, though, essentially challenges the economic reasonableness and fairness of the PSA. Indeed, in its reply to PG&E's answer in our proceeding, CPUC characterizes its financial qualifications argument succinctly as a FERC fairness issue: "[T]he proposed transferees will not be financially able to meet their basic health and safety-related obligations without approval by the Federal Energy Regulatory Commission of illegal, unjust and unreasonable rates."[41] This issue statement plainly illustrates why CPUC's financial concerns are outside NRC's bailiwick and not relevant to this license transfer proceeding. NRC's role in evaluation of the transferee's financial qualifications is to decide whether the Plan as proposed, including the PSA, will meet our financial qualifications regulations. *CPUC has made no allegation that the Plan will not do so.* CPUC asks, in essence, for a revision of the PSA, a matter not within

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for the next 12 years, Gen will receive PG&E's electric generation assets for a fraction of their value; and (7) PG&E's argument that a supplier of 7100 MW of generation in northern California does not have market power "fails the straight face test." *See* "Declaration of David R. Effross," Ex. G to Petition (Feb. 5, 2002) at ¶¶ 12, 13, 21, 24, 27, 28, 30, 32. Issues like these plainly are for FERC, not the NRC, to decide.

[40]*See, e.g., Indian Point 2*, CLI-01-19, 54 NRC at 135-38.

[41]"Reply of the California Public Utilities Commission ("CPUC") to the Answer of Pacific Gas & Electric Company to the CPUC's Petition for Leave to Intervene, Motion to Dismiss Application, Etc." at 7 (Feb. 20, 2002).

NRC's jurisdiction.[42] FERC is the appropriate forum for addressing this issue and the matter is currently pending before that agency.[43]

PG&E's license transfer application includes, as required by 10 C.F.R. § 50.33(f)(2), data regarding costs and revenues for the first five years of operation after the requested license transfer. The fact that these projections are grounded on a contested PSA does not defeat PG&E's position, for the NRC Staff can condition the license transfer on any portion of the PSA that is essential to the demonstration of financial qualifications of the proposed license transferee. Then, should FERC not approve the financial foundation of the license transfer application, the transfer will not occur.

b. Decommissioning Funding

A reactor licensee must provide assurance of adequate resources to fund the decommissioning of a nuclear facility by one of the methods described in 10 C.F.R. § 50.75(e).[44] PG&E currently has in place a Nuclear Decommissioning Trust, consisting of monies set aside for the decommissioning of the two Diablo Canyon units and the idle Humboldt Bay Nuclear Unit No. 3. PG&E desires to transfer to a newly created holding company, Diablo Canyon LLC, the beneficial interest in those portions of the decommissioning trust that are associated with the DCPP. CPUC maintains that since PG&E does not have the

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[42] *See Indian Point 2*, CLI-01-19, 54 NRC at 139-40.

[43] Mr. Effross asserts that Gen's finances are "highly questionable." *See* "Declaration of David R. Effross," Ex. G to Petition (Feb. 5, 2002) at ¶ 5. However, his analysis centers on persuading FERC that (1) it should allow Gen to collect only cost-based rates rather than market-based rates for DCPP and (2) that the benchmark analysis PG&E performed to justify its requested market-based rates is severely flawed. *See* note 39, *supra*. His declaration does not concretely challenge PG&E's financial qualifications in the event that FERC and the bankruptcy court approve, respectively, the PSA and the Plan.

[44] *See* 10 C.F.R. § 50.75(a). The regulations also specify the minimum amount of funds necessary to demonstrate reasonable assurance of funds for decommissioning. *See* 10 C.F.R. § 50.75(c).

legal authority to make this transfer, the proposed licensee will have no decommissioning funding assurance, and, therefore, the Commission cannot approve the requested license transfer.[45]

CPUC also argues that the bankruptcy court cannot require CPUC to authorize a transfer, as PG&E has requested. (This issue is now before the bankruptcy court for consideration.) Further, the funds are not transferable, except on sale of a plant, and then only with prior approval of CPUC. According to CPUC, the trust monies cannot be assigned without its approval, and it will not give that approval because it believes that assignment is not in the public interest.[46]

In addition, CPUC argues that since the trust also provides for decommissioning of the Humboldt Bay unit, as well as the two Diablo Canyon units, there are practical difficulties and potential inequities in allocating the trust among the three nuclear units. The trust documents themselves do not provide for such an allocation. CPUC asserts that a detailed study of likely decommissioning costs is needed to apportion the trust monies. Otherwise, CPUC says, it is likely that a facility will have inadequate funds to decommission properly, resulting in impact on ratepayers and potential health, safety, and welfare concerns.

When we examine CPUC's concerns relating to decommissioning funding, we find no litigable issue. CPUC's argument focuses principally on whether PG&E should be permitted to transfer the beneficial interests in the trust fund to a non-CPUC regulated entity and who has the authority to permit such transfers.[47] As with its financial qualifications issue, CPUC does

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[45] *See* Petition at 12-13.

[46] *See* Petition at 13.

[47] *See* Petition at 15-19. PG&E has asked the bankruptcy court to compel CPUC to approve the transfer. *Id*. at 14; PG&E's Answer at 17. PG&E is also seeking approval from FERC of the transfer of those portions of the trust under FERC jurisdiction. *Id.*

not assert that, if the license transfer application were approved as proposed by PG&E, the transferee would not meet the Commission's decommissioning funding requirements. CPUC's concerns about maintaining its regulatory authority over the decommissioning trusts are not within the NRC's area of expertise and are more appropriately resolved by the bankruptcy court and FERC. Nor are they issues that the NRC need decide in considering the transfer application. Licensee's application proposes to transfer the beneficial interests in the trust fund to Diablo Canyon LLC. Thus the Staff's review is based on the assumption that this transfer will take place. The NRC can condition the license transfer on PG&E's lawful transfer of the decommissioning funds (through the bankruptcy proceeding or otherwise) and segregation from the trust of the proper decommissioning funding amount, as described in our regulations.

CPUC's request for a detailed study of the likely actual costs of decommissioning amounts to an impermissible challenge to a generic decision made by the Commission in its decommissioning rulemaking not to require site-specific cost estimates.[48] We do not permit attacks on our regulations in a licensing proceeding, absent a proper request for a waiver of a regulation, pursuant to 10 C.F.R. § 2.1329.[49] Absent such a waiver, a showing of compliance with 10 C.F.R. § 50.75 conclusively demonstrates sufficient assurance of decommissioning

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[48]*See Indian Point 2,* CLI-01-19, 54 NRC at 143; *North Atlantic Energy Service Corp.* (Seabrook Station, Unit 1), CLI-99-6, 49 NRC 201, 217, n.8 (1999); *Indian Point 3*, CLI-01-19, 52 NRC at 303; *Vermont Yankee*, CLI-00-20, 52 NRC at 165-6.

[49]Based on its argument regarding conducting these proceedings under 10 C.F.R. Part 2, Subpart G, we conclude that CPUC is aware of the requirements of 10 C.F.R. § 2.1329. *See* Section II.A.2 of this order, *supra*.

funding.[50] We therefore decline to admit this aspect of CPUC's decommissioning funding issue.

We turn briefly to another facet of CPUC's decommissioning funding issue -- namely, the allegation that assignment of the trusts' assets pursuant to the PG&E Plan, and, presumably, the associated license transfers themselves, would not be in the "public interest."[51] The public interest is not a suitable standard for an NRC hearing:

> This issue is too broad and vague to be suitable for adjudication. Moreover, NRC's mission is solely to protect the public health and safety. It is not to make general judgments as to what is or is not otherwise in the public interest -- other agencies, such as the Federal Energy Regulatory Commission and state public service commissions, are charged with that responsibility.[52]

Accordingly, we decline to admit the public interest aspects of the decommissioning funding issue.

c. California's Regulatory Responsibilities

CPUC asserts that transfer of the DCPP licenses would reduce California's regulatory responsibilities over nuclear power to the detriment of the public health, safety and welfare of the citizens of California. But issues regarding preemption of certain California laws must be resolved by the bankruptcy court, for PG&E's Plan requires either approvals by CPUC that it is loath to give or a court decision to allow PG&E to implement its plan notwithstanding CPUC's opposition. These are not matters for the NRC.

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[50] *See Indian Point 2*, CLI-01-19, 54 NRC at 142; *Seabrook*, CLI-99-6, 49 NRC at 217 (1999). PG&E proposes to meet § 50.75 by prepaying, by means of existing trust funds, an amount sufficient to cover the decommissioning costs at the expected time of termination of operation. *See* 10 C.F.R. § 50.75(e)(1)(i). Prepayment is the strongest and most reliable of the funding devices described in 10 C.F.R. § 50.75(e)(1). *See Seabrook*, CLI-99-6, 49 NRC at 218.

[51] *See* Petition at 17-19.

[52] *Indian Point 2*, CLI-01-19, 54 NRC at 149.

CPUC cites numerous state interests in regulating utilities that PG&E is seeking to "trump" through bankruptcy court approval of its Plan and FERC approval of the rates proposed in the PSA. These include (1) a basic interest in regulating public utilities (which would be thwarted by a transfer of the Diablo Canyon licenses to an unregulated limited liability company); (2) an interest in ensuring universal service and fair and just utility rates; (3) an interest in protecting financial integrity and dedication of service; (4) an interest in preventing loss of in-state generation facilities; (5) an interest in preventing, through affiliate transaction rules, improper inter-company transactions; (6) an interest in preventing misuse of the holding company structure; and (7) an interest in requiring utilities to share gains on sale with ratepayers. According to CPUC, state regulation has significant advantages over federal regulation.

We decline to admit this issue for two reasons. First, NRC approval of the license transfers would not alter the regulatory role of the CPUC. It is true that the bankruptcy court and/or FERC might make decisions preliminary to the license transfers that would alter the CPUC's role. But the Commission's possible endorsement of an application that is based on receiving those preliminary approvals is obviously not the root of CPUC's apparent discomfiture. Second, there is no basis for CPUC's argument that its oversight is necessary for the protection of public health and safety with respect to radiological risks. This role is reserved to the NRC.[53]

d. Public Safety and Welfare Concerns

CPUC alleges generally that the public safety and welfare are threatened by the proposed license transfers. Through deprivation of concurrent state jurisdiction over an NRC-

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[53]*See Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Dev. Comm.*, 461 U.S. 190, 205-13 (1983) (Federal government maintains complete control of safety and "nuclear" aspects of energy generation, whereas states exercise their traditional authority over economic questions such as ratemaking and the need for additional generating capacity).

regulated facility, says CPUC, important safeguards to public health and safety will be lost.[54] CPUC's generalized complaint that public health and safety will suffer in the absence of concurrent state jurisdiction over an NRC-regulated facility cites no safety concern that is directly connected to the proposed license transfers. To support this issue, CPUC offers only speculation and suspicions about several marginally related topics. As an example, CPUC refers to the threat of terrorist attacks, but such attacks are neither caused by nor result from the proposed license transfers. Plant security is an ongoing operational issue and is decidedly outside the scope of a license transfer proceeding.[55]

CPUC also contends that the transferee "will *certainly* attempt to reduce operating expenses, which, in turn, could *very conceivably* affect plant safety and reliability, and lead to disaster."[56] The challenge regarding the cost-cutting that CPUC predicts is insufficient, as it is mere guess, unrooted in factual information, and it does not specifically dispute any information in the license transfer application.[57] CPUC has provided no support other than conjecture for its thesis that the transferee will subordinate safety to profits. Moreover, if the plants' safety becomes compromised, our enforcement and investigation programs are sufficient to identify the problem and prescribe corrective action (including, in extreme cases, plant shutdown).[58]

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[54]This issue overlaps significantly with the issue described immediately above (in Section II.B.2.c.)

[55]In the aftermath of the September 11, 2001, attacks on New York City and the Pentagon, the NRC has undertaken a comprehensive review of all aspects of security at nuclear facilities. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 378-9 (2001).

[56]Petition at 54 (emphasis added).

[57]*See Dominion Nuclear Connecticut Inc.*, CLI-01-24, 54 NRC at 361 (2001).

[58]*See Oyster Creek*, CLI-00-6, 51 NRC at 209.

As another example, CPUC says that it can "safely presume" that the transferee will try to downsize its workforce, follow the "industry trend" and not hire the full complement of staff from the current owner, and probably increase its use of overtime. According to CPUC, "[s]afety and reliability can only be negatively affected by the *likely* implementation of such policies."[59] But PG&E's license application itself states that, after license transfer, there will be no operational changes and essentially no staff or management changes. CPUC has not provided a sound basis to dispute the information provided in the application.[60] Accordingly, we decline to admit this issue.

We also note that the NRC has regulations requiring specific staffing levels and qualifications for the key positions necessary to operate a plant safely.[61] We will not assume that licensees will contravene our regulations.[62] And CPUC's reference to the purported "industry trend" on staffing after license transfers is a bare assertion, without supporting documentation. Moreover, we are reviewing the proposed Diablo Canyon license transfer in this proceeding, not the entire nuclear power generation industry.

Further, CPUC distrusts the relationship between the transferee and its parent, and alleges that profits will flow upward to the parent, which is isolated from responsibility for plant operation and safety.[63] CPUC asserts that "Diablo, as a nested LLC, will provide a source of profit to Parent in good times, but will be forced to stand on its own when profits go negative . . .

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[59]Petition at 55 (emphasis added).

[60]*See Oyster Creek*, CLI-00-6, 51 NRC at 209; *Dominion Nuclear Connecticut, Inc.*, CLI-01-24, 54 NRC at 363 (generalized challenges regarding cost-cutting are insufficient without specifically disputing the information in the application).

[61]*See* 10 C.F.R. § 50.54(m).

[62]*See Indian Point 3*, CLI-00-22, 52 NRC at 313; *Oyster Creek,* CLI-00-6, 51 NRC at 207.

[63]*See* Petition at 54-55, 56.

the LLC structure will allow the holding company to bankrupt Diablo and avoid financial responsibility."[64] To the extent that CPUC is raising an issue concerning Diablo's financial qualifications to be a licensee, CPUC fails to provide any specific challenge to the financial information provided in the transfer application. As such, this issue is inadmissible. Further, to the extent that CPUC is raising a challenge to the fact that Diablo will be a limited liability company, we note that the Commission has consistently ruled that limited liability companies are not precluded from owning and operating nuclear power plants.[65] Vague allegations about the "character" of the transferee and its business relationships are insufficient to support admissibility of this issue.[66]

Lastly, CPUC states that the proposed license transfers will signal the "death knell" of the Diablo Canyon Independent Safety Committee. CPUC's concerns about the possible dissolution of the Diablo Canyon Independent Safety Committee -- which does not operate under the auspices of the NRC -- are beyond the scope of NRC's authority. Thus, this issue is not admissible.

e. Summary

In summary, for the reasons given above, we find that CPUC has not submitted any admissible issues. Every issue that CPUC has proffered is either too broad and vague for our consideration or simply lies outside the scope of an NRC license transfer review. Ratepayers'

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[64]*Id.* at 56.

[65]*See Vermont* Yankee, CLI-00-20, 52 NRC at 173; *Oyster Creek*, CLI-00-6, 51 NRC at 208 (limited liability companies are no different from corporations in that both are structured to limit the liability of their shareholders); *Northern States Power Co.* (Monticello Nuclear Generating Plant, Units 1 and 2; Prairie Island Independent Spent Fuel Storage Installation), CLI-00-14, 52 NRC 37, 57 (2000).

[66]*See Dominion Nuclear Connecticut, Inc.*, CLI-01-24, 54 NRC at 365-7.

economic interests, without specific ties to radiological risk, are not cognizable in an NRC license transfer proceeding.

3. Status of CPUC

Although CPUC has raised no issues within the scope of a license transfer review with the level of specificity required under Subpart M,[67] the Commission "has long recognized the benefits of participation in our proceedings by representatives of interested states, counties, municipalities, etc."[68] We believe that the CPUC, as a California state agency representing the interests of consumers of electricity, might provide us with useful insights. We therefore permit the CPUC to participate in this proceeding as an agency of an interested State, in a manner analogous to that described in 10 C.F.R. § 2.715(c),[69] if we grant a hearing after considering the still-pending petitions of NCPA and TANC or if timely filed and admissible late issues arise. In this Subpart M proceeding, participation may include introduction of evidence on admitted issues, submitting proposed questions to the presiding officer, and filing proposed findings.

C. Committee's Petition

In its petition, the Committee has recited its interests in this proceeding, but has not even attempted to formulate an admissible issue for our consideration. Indeed, the Committee, which has entered into an agreement with PG&E in which the Committee pledged to support the Plan, has no dispute with the applicant.

The gist of the Committee's petition is:

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[67] *See* 10 C.F.R. § 2.1306(b)(2)(iv).

[68] *Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Units 1 and 2), CLI-99-30, 50 NRC 333, 344 (1999); *Indian Point 3*, CLI-00-22, 52 NRC at 295.

[69] *Cf.* 10 C.F.R. § 2.715(c). In proceedings conducted under 10 C.F.R. Part 2, Subpart G, the presiding officer will afford representatives of an interested State, county, or agencies thereof a reasonable opportunity to participate.

> As the representative of the collective interests of PG&E's unsecured creditors, the Committee has an interest in ensuring that [the Diablo Canyon power plants'] operating licenses are transferred to a financially capable licensee that has all the necessary qualifications to continue to operate [the power plants] in a safe, reliable and efficient manner, particularly in light of the fact that approximately 40% of the consideration to be received ... by unsecured creditors under the [reorganization plan] will be in the form of long-term notes of at least 10 years in duration (including long-term notes in [one of the transferees]). The Committee submits that it is entitled to intervene in this proceeding as a matter of right because its interests in ensuring the financial capability of the transferee could be directly impacted if the license transfers adversely affect health and safety.[70]

Although the Committee alludes generally to health and safety considerations, it points to no likely adverse effects of the proposed license transfers. In short, it does not challenge any part of the application. Accordingly, we deny the Committee's petition to intervene without reaching the question of its standing.

The Committee has requested that we exercise our power to allow discretionary intervention. Our policy is to allow such discretionary intervention for a petitioner who is not entitled to intervention as a matter of right but who may nevertheless make some contribution to the proceeding. We have long permitted such intervention for petitioners who lack standing and we have set out factors bearing on the exercise of this discretion.[71] We have never, however, endorsed this practice for petitioners who do not specify any issues of concern to them. As opined by a Licensing Board 20 years ago, we did not intend that a petitioner should be entitled to discretionary intervention without an issue of its own worthy of exploration in an

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[70] "Petition to Intervene of the Official Committee of Unsecured Creditors of Pacific Gas and Electric Company," at 4 (Feb. 6, 2002).

[71] *See Pebble Springs*, CLI-76-27, 4 NRC at 614-17 (1976) (Answering in the affirmative a certified question whether intervention may be permitted as a matter of discretion to petitioners who lack standing to intervene in a proceeding as a matter of right); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 177-78 (1998), *aff'd* CLI-98-13, 48 NRC 26, 34-35 (1998).

adjudication.[72] Accordingly, we deny the Committee discretionary intervention in this proceeding. Nevertheless, we wish to point out that there are other means by which the Committee can contribute to this proceeding if we grant a hearing; specifically, by serving as witnesses for other parties or by *amicus* filings at appropriate times.[73]

D. The County's Petition

We turn finally to the County's late-filed intervention petition. The County undoubtedly has governmental standing.[74] As the Diablo Canyon nuclear units are located within its boundaries, the County, as it points out, has a vital public safety interest in the plants' safe operation and eventual decommissioning. If the licensee is not financially qualified, unsafe conditions could threaten the health and safety of the County's citizens. The County's position is analogous to that of an individual living or working within a few miles of the plant.[75] Nevertheless, we deny the County's intervention petition, as the County has not advanced a legitimate reason for the tardy filing of its petition.

Our Subpart M regulations provide that untimely intervention petitions may be denied unless the petitioner establishes good cause for failure to file on time.[76] In addition to good cause, 10 C.F.R. § 2.1308(b) provides that, in reviewing a late petition, the Commission will consider "(1) The availability of other means by which the ... petitioner's interest will be protected or represented by other participants in a hearing; and (2) The extent to which the

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[72]*See Commonwealth Edison Co.* (Dresden Nuclear Power Station, Unit No. 1), LBP-82-52, 16 NRC 183, 194 (1982).

[73]*See Private Fuel Storage*, CLI-98-13, 48 NRC at 35.

[74]PG&E does not contest the County's standing in this proceeding.

[75]*See Indian Point 3*, CLI-01-19, 54 NRC at 295; *Vermont Yankee*, CLI-00-22, 52 NRC at 164.

[76]*See* 10 C.F.R. § 2.1308(b); *Seabrook*, CLI-99-6, 49 NRC at 222-23 (denying late-filed intervention petition alleging failure to read regulations carefully as reason for tardiness).

issues will be broadened or final action on the application delayed."[77] However, good cause is the most important element of our late-filing standards.[78]

The County says that the trigger point for its untimely filing was a bankruptcy court decision permitting CPUC to file an alternate plan of reorganization that is distinctly different from PG&E's Plan. The County asserts that the new "regulatory" developments governing a proceeding amount to "good cause" justifying late intervention. To support its position, the County cites *Cincinnati Gas and Electric Co.* (William H. Zimmer Nuclear Station), LBP-80-14, 11 NRC 570 (1980). But that case is inapposite. In *Zimmer,* the Licensing Board considered a situation where the NRC's criteria for emergency planning had undergone vast changes since the beginning of the proceeding, and the scope of relief that the Commission could consider had expanded accordingly. In other words, the emergency planning questions at issue in *Zimmer* had changed materially. Here, by contrast, there has been no change in the PG&E license transfer application. It is impossible to see how CPUC's submission of a competing bankruptcy plan changes the license transfer plan before us.

What the County seemingly ignores is that no license transfer at all will be needed if the bankruptcy court approves CPUC's plan of reorganization. The critical -- and unchanged -- fact is that PG&E's license transfer application at the NRC is still founded on its own Plan, which is independent of the new development in the bankruptcy case. Moreover, nothing in the County's petition to intervene depends on the CPUC plan; all of the County's objections are associated with PG&E's license transfer application, which has been before the Commission for

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[77] 10 C.F.R. § 2.1308(b)(1)-(2).

[78] *See Power Authority of N. Y.* (James A FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-01-14, 53 NRC 488, 515 (2001). *Cf.* 10 C.F.R. § 2.714(a) for 10 C.F.R. Part 2, Subpart G proceedings and *Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1; Davis-Besse Nuclear Power Station, Unit 1), LBP-91-38, 34 NRC 229, 246-47 (1991); *aff'd in part on other grounds and appeal denied*, CLI-92-11, 36 NRC 47 (1992).

many months. Recent developments in the bankruptcy proceeding, while new to the bankruptcy case, simply do not constitute *new information related to the Diablo Canyon license transfer application.*[79] Thus, the County has not established good cause -- or, indeed, any cause -- for untimely presentation of its issues, all of which the County could have filed long ago in a timely petition based on PG&E's application, which incorporated the Plan the County opposes.[80]

In the absence of good cause for its late filing, the County must show strong countervailing reasons that override the lack of good cause.[81] But the County has not provided such reasons. The other Subpart M factors -- the factor relating to the broadening of issues or the delaying of final action and the factor relating to the adequacy of existing participants to represent the petitioner's interests -- cut in opposite directions, as they frequently do. The issues would be broadened by the County's participation, possibly resulting in a delay of the final action by lengthening any potential hearing. On the other hand, the County's interests, essentially the same as CPUC's, would not be represented at the hearing because we have rejected CPUC's intervention petition.[82] The County, in any event, raises no litigable issues. General concerns about Gen's financial viability and about ETrans' financial ability to provide

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[79]We note also that changes in the bankruptcy case are not "regulatory" developments, the basis of the Licensing Board's holding in *Zimmer*.

[80]In its reply to PG&E's answer to the County's intervention petition, the County adds that PG&E's Plan has undergone significant revision; however, the County describes neither the nature of the changes nor their significance. *See* Reply at 7. The County does not illuminate how these changes justify its tardy filing and we are not willing to guess. The County also tries to justify its late attempt to intervene by speculating that the bankruptcy court *could* adopt a modified plan, different from either of the two pending plans. If that happens, though, and material alterations in PG&E's transfer application result, the County is free to submit late-filed issues at the appropriate time.

[81]*See Seabrook*, CLI-99-6, 49 NRC at 223.

[82]The two timely intervention petitions we do not decide today, NCPA's and TANC's, primarily involve antitrust issues.

offsite power at Diablo Canyon do not suffice for intervention.[83] We will, however, refer the County's petition to the NRC Staff as comments, pursuant to 10 C.F.R. § 2.1305. We direct the Staff to consider whether the County's comments call into question the proposed license transferees' ability to operate the Diablo Canyon power plants safely.[84]

In summary, besides having no tenable cause for its delay in filing an intervention petition, the County has provided no admissible issues. Accordingly, we deny the County's untimely petition. For reasons similar to those given above, we afford the County, like CPUC, participant status if we grant a hearing later in this proceeding.

III. CONCLUSION

For the reasons set forth above, the Commission (1) *denies* CPUC's petition to intervene and request for hearing; (2) *denies* the Committee's petition to intervene and alternative request for discretionary intervention; (3) *denies* the County's late-filed petition to

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[83]The County contradicts statements (regarding, for example, cost and revenue projections, ability to weather financially a 6-month outage, and ability to fund a planned independent spent fuel storage installation) that PG&E made in its license transfer application, but provides no foundation for its opposition. The County merely states that, in the interest of saving time, it has not had its experts prepare supporting affidavits, but its experts allegedly have performed a review of the application and support the County's issues. *See* "Petition of the County of San Luis Obispo for Leave to Intervene and Request for Hearing" at 17, note 4 (May 10, 2002). In its Reply, the County continues to insist that it will bring the "appropriate expertise" to bear with respect to its contentions "at the appropriate time." *See* Reply at 13. The appropriate time has come and gone. A late petitioner "should set out with as much particularity as possible the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony." *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), CLI-93-4, 37 NRC 156, 166, and references cited therein. "Vague assertions regarding petitioner's ability or resources ... are insufficient." *Id.* When an applicant makes a statement that, for example, it is financially qualified to be the licensee and provides the required 5-year cost and revenue projections, it is insufficient for an intervention petitioner to state, without more, that the applicant is not financially qualified. That is essentially what the County does in this case.

[84]Likewise, we refer CPUC's petition to the Staff, with the same instructions for its consideration. *See Duquesne Light Co.* (Beaver Valley Power Station, Units 1 and 2), CLI-99-23, 50 NRC 21, 22 (1999); CLI-99-25, 50 NRC 224, 226 (1999).

intervene; (4) *denies* CPUC's motion that any hearing be conducted under 10 C.F.R. Part 2, Subpart G; (5) *denies* all motions to abate or dismiss this proceeding; (6) *directs* the remaining petitioners and parties to inform the Commission promptly of any court or administrative decision that directly impacts this proceeding; (7) *reserves* ruling on the remaining petitions to intervene; (8) *permits* CPUC and the County to participate as governmental entities if we grant a hearing in this proceeding; and (9) *refers* the petitions of the County and CPUC to the NRC Staff as comments for appropriate consideration.

IT IS SO ORDERED.

For the Commission

/RA/

_____
Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 25th day of June, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	Docket Nos. 50-275/323-LT
	)	
(Diablo Canyon Power Plant, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-02-16) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution with copies by electronic mail as indicated.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 25th day of June 2002