

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

In the Matter of )  
 )  
PACIFIC GAS AND ELECTRIC CO., )  
DIABLO CANYON POWER PLANT )  
 )  
(Independent Spent Fuel Storage Installation) )  
 )  
 )

Docket No. 72-26 - ISFSI

**REQUEST OF SAN LUIS OBISPO COUNTY  
TO PARTICIPATE AS OF RIGHT UNDER 2.715(c)**

San Luis Obispo County ("County") hereby requests to participate as an "interested county," pursuant to 10 C.F.R. § 2.715(c), in any hearing granted by the Atomic Safety and Licensing Board ("Board")<sup>1</sup> regarding Pacific Gas & Electric Company's ("PG&E") Application for the issuance of a license under the provisions of 10 C.F.R. Part 72, to store spent fuel and other radioactive material in an Independent Spent Fuel Storage Installation ("ISFSI") to be constructed and operated on the site of the Diablo Canyon Nuclear Power Plant ("Diablo Canyon").

The County's request to participate in this matter is necessary to protect the County's interests in the event that a hearing in this matter is granted by the Board. A hearing may well be granted because three separate intervention petitions requesting a

<sup>1</sup> Established by the Chairman of the Board's Panel for the above-captioned matter on May 31, 2002. "Establishment of Atomic Safety and Licensing Board."

*NMSSO / Public*

hearing have been filed with the Nuclear Regulatory Commission ("Commission").<sup>2</sup> While the County does not oppose the issuance of an ISFSI license to PG&E, a hearing concerning the issuance of the ISFSI license will necessarily raise issues which are of mutual concern to the NRC and the County. Accordingly, the County seeks to participate in this matter but does not intend to take a position on all of the issues before the Commission.

The County, by and through its Board of Supervisors, has an interest in participating in any hearing on this proposal for an ISFSI license. Participation by the County is consistent with Commission policies and practices. The Commission has long recognized the benefits of participation in its proceedings by interested states, counties and local governments. *Power Auth. of N.Y.* (James A. FitzPatrick Nuclear Power plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 295 (2000).

PG&E has also recently acknowledged that the County has vital interests in Commission proceedings involving Diablo Canyon. In a Diablo Canyon license transfer proceeding, currently pending before the Commission, PG&E conceded that the location of Diablo Canyon, within the boundaries of the County, is sufficient to establish injury in fact with respect to radiological safety matters.<sup>3</sup> PG&E further conceded that the location of Diablo Canyon within San Luis Obispo County established the County's standing to

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<sup>2</sup> These petitions were filed in response to the Commission's "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 Fed. Reg. 19,600 (April 22, 2002)).

<sup>3</sup> Answer of Pacific Gas and Electric Company to the late-filed Petition of the County of San Luis Obispo for Leave to Intervene and Request for a Hearing, In the Matter of Pacific Gas & Electric Co., Diablo Canyon Power Plant, Units 1 and 2, Docket Nos. 50-275-LT; 50-323-LT, 4 (May 20, 2002).

intervene as a party with respect to public health, safety and environmental protection concerns. *Id.*

PG&E's proposal to construct a radioactive spent fuel storage facility at the Diablo Canyon site raises public health and environmental concerns. The safe operation of the ISFSI is also of particular concern because the County plays an integral role in carrying out Diablo Canyon's emergency plan and providing security support. Concerns about these matters fall squarely within the "zone of interests" protected by the Atomic Energy Act. *Vermont Yankee Nuclear Power Station*, LBP-90-6, 31 NRC 85, 89 (1990), 42 U.S.C. §§ 2133(d), 2210 (b). Therefore, the County is an "interested county" that should be accorded an opportunity to participate pursuant to 10 C.F.R. § 2.715(c) in any hearing that is granted in this matter.

Absent a request by the Board, the County's concerns will be raised in due course during these proceedings. A request to participate pursuant to 10 C.F.R. § 2.715(c) need not identify the subject matter which the participant intends to address in the proceeding. *Consolidated Edison Co. of N.Y.* (Indian Point, Unit No. 2) and *Power Auth. of N.Y.* (Indian Point, Unit No. 3), LBP-82-25, 15 N.R.C. 715, 723 (1982).

For the foregoing reasons, the County should be admitted as an "interested county" to participate in any and all pre-hearing, hearing, and post-hearing proceedings granted by the Board. The County's participation is appropriate and necessary to ensure

that the health, safety, defense, security and environmental concerns of the County are appropriately considered and addressed.

Respectfully submitted,



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

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing REQUEST OF SAN LUIS OBISPO COUNTY TO PARTICIPATE AS OF RIGHT UNDER 2.715(c) have been served upon the following persons by U.S. mail, first-class, postage pre-paid.

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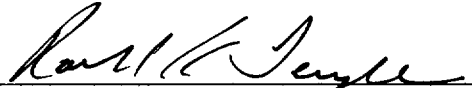
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Dated at Chicago, Illinois, this 20<sup>th</sup> day of June, 2002



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

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