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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Unit Nos. 1 and 2
Independent Spent Fuel Storage Installation

Docket # 72-26

July 8, 2002

**PETITIONERS' AMENDED HEARING REQUEST
AND PETITION TO INTERVENE**

As permitted by 10 C.F.R. § 2.714(a)(3), Petitioners Peg Pinard and the Avila Valley Advisory Council hereby amend their hearing request and petition to intervene in this proceeding. *See* Petition of San Luis Obispo County Supervisor Peg Pinard and Avila Valley Advisory Council for Leave to Intervene and Request for Hearing (May 22, 2002) (hereinafter "Hearing Request"). This Amended Hearing Request and Petition to Intervene is being filed in response to arguments raised in Answer of Pacific Gas and Electric Company to the Petition for Leave to Intervene and Request for Hearing of San Luis Obispo County Supervisor Peg Pinard and Avila Valley Advisory Council (June 3, 2002) (hereinafter "PG&E Answer") and NRC Staff's Response to Requests for Hearing and Petitions to Intervene Filed by Lorraine Kitman, San Luis Obispo Mothers for Peace, and San Luis County Supervisor Peg Pinard and Avila Valley Advisory Council (May 30, 2002) (hereinafter "NRC Staff Response").

In addition, Lorraine Kitman has requested undersigned counsel to inform the Licensing Board that she does not intend to participate in this proceeding as an independent party, but rather will participate as a member of the San Luis Obispo Mothers for Peace.

Petitioners Peg Pinard and Avila Valley Advisory Council ("AVAC") amend their Hearing Request in the following respects:

1. Peg Pinard now seeks to intervene as a private citizen, rather than in her capacity as a member of the San Luis Obispo Board of Supervisors. A copy of her declaration is attached. This amendment should resolve the challenge to Ms. Pinard's ability to obtain standing as an elected official that were raised in PG&E's Answer at 4-5 and the NRC Staff's Response at 7-8. Nevertheless, Ms. Pinard wishes that it remain clear on the record that she is an elected representative of the Third District of San Luis Obispo County.

2. In response to PG&E's Answer at 6-7, AVAC seeks to clarify that it is petitioning to intervene as a private entity, not a governmental organization. Moreover, AVAC is submitting the attached Declaration of Seamus Slattery, which demonstrates that AVAC has representational standing through Mr. Slattery. Mr. Slattery, who is a member of AVAC and also its Chairman, resides within ten miles of the Diablo Canyon Nuclear Power plant, and has authorized AVAC to represent him in this proceeding.

Finally, AVAC is attaching a copy of its by-laws, which show that, contrary to arguments made in PG&E's Answer at 6, the organization's purposes lie within the zone of interest protected by the Atomic Energy Act. In particular, Section 5 of Article III states that AVAC's purposes include:

To advocate for the interest of the residents of Avila Valley in public hearings, legal proceedings and other civic decisionmaking processes related to land uses, natural resource conservation, zoning, public services, circulation, public improvements, public safety and other aspects of harmonious community life and orderly development.

Thus, AVAC has standing to participate in this proceeding.

Respectfully submitted,



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July 8, 2002

Counsel to Peg Pinard, AVAC, and San Luis Obispo Mothers for Peace

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of: :
: :
PACIFIC GAS & ELECTRIC CO. : Docket No. 72-26 - ISFSI
(Diablo Canyon Nuclear Power Plant :
Unit Nos. 1 and 2) :

DECLARATION OF PEG PINARD

Under penalty of perjury, I, Peg Pinard, declare as follows:

1. My name is Peg Pinard. I live at 714 Buchon Street in San Luis Obispo, California. My home lies within ten to 15 miles of the Diablo Canyon Nuclear Power Plant.
2. I live with my husband and children. We own our home.
3. In addition to being a resident of San Luis Obispo, I am a Supervisor of the San Luis Obispo County Board of Supervisors. I am the senior county official for the Third District, in which the Diablo Canyon nuclear power plant lies.
4. For the reasons set forth in the Petition of San Luis Obispo Supervisor Peg Pinard and Avila Valley Advisory Council for Leave to Intervene and Request for Hearing (docketed by NRC on May 14, 2002), I am concerned that the construction and operation of a proposed Independent Spent Fuel Storage Installation at the Diablo Canyon Nuclear Power Plant will jeopardize the health and safety of myself and my family, and the value of our property. Therefore, I have decided to intervene on my own behalf in this adjudicatory proceeding.



Peg Pinard

Dated: 6/17/02

AVILA VALLEY ADVISORY COUNCIL BYLAWS

Article I

Name of the Organization

Section 1: The name of this organization shall be the Avila Valley Advisory Council

Article II

Form of organization

Section 1: The Avila Valley Advisory Council is a private organization formed to advise the San Luis Obispo County Board of Supervisors and other public decision-making bodies which may have jurisdiction over any aspect of planning and development in the Avila Valley Area.

Article III

Purposes of the Council

Section 1: To represent the interests of the residents and engaged stakeholders for furthering sound planning and development in the unincorporated area of San Luis Obispo County known in general as the Avila Valley area which lies between the incorporated areas of Pismo Beach and San Luis Obispo.

Section 2: To provide a venue through which the community can reach a consensus on issues s

Section 3: To foster a coherent planning framework for the Avila Valley, as reflected in County plans, that responds to thee values and standards of the Community and that can be applied to specific development proposals that come before the Council for review.

Section 4: To hold public hearings and conduct studies on all matters brought to he Council and/or selected by the Council so as to aid in formulating sound recommendations to the County Board of Supervisors and the County Planning Commission as well as to other public agencies with relevant jurisdiction on the issues in question.

Section 5 To advocate for the interest of the residents of Avila Valley in public hearings, legal proceedings and other civic decision making processes related to land uses, natural resource conservation, zoning, public services, circulation, public improvements, public safety and other aspects of harmonious community life and orderly development.

**Article V
Membership on the Council**

- Section 1: The Council will be composed of representatives of the residents and stakeholders in the Avila Valley, chosen by the community's established collective decision-making bodies for each Area of the Valley:
- Area 1. For Avila Beach: The Avila Beach Civic Association.
Area 2. For Squire Canyon: The Community Services District
Area 3. For See. Canyon: The See Canyon Home Owners Association
Area 4. For San Luis Bay Estates: The Master Home Owners Association
Area 5. For Avila Valley and the Bassi Ranch: The Avila Valley Association
- Section 2: Each of the Council-recognized bodies for an area will select representatives who are chosen to act on behalf of their community and its interests in considering all matters before the Council. Qualifications for such representatives shall be that they are residents and registered voters in a precinct in the Avila Valley.
- Section 3: The manner of selection of representatives will be determined by the governing board of each body.
- Section 4: Representation on the Avila Valley Advisory Council shall be in the following numbers:
- Area 1. The Avila Beach Civic Association 3 Members and 1 Alternate.
Area 2. Squire Canyon CSD: 2 Members and 1 Alternate.
Area 3. See Canyon Association 2 Members and 1 Alternate
Area 4. SLBE -Master Association: 5 Members and 2 Alternates
Area 5. Avila Valley Association: 2 Members and 1 Alienate
- Section 5: AVAC may adjust the number of representatives allocated to each area or change the recognition of the governing body for an area when the construction of residences, changes in land use, or changes in legally constituted community organizations, or other factors make such adjustments warranted.
- Section 6: To provide continuity to the Council, it is recommended that the area bodies select their representatives for teams of service of two or three years each, staggered so that only half to one third of the Council membership is renewed each year. However, terms of service and how representatives are selected remain at the discretion of each area's governing body. Selection of members should be made so that new terms of service can begin on the first Monday of December.
- Section 7: In the absence of any regular representative to the Council, an Area Alternate shall be seated as a full voting member of the Council for that meeting.
- Section 8: When a representative has been absent from 3 consecutive meetings, the position shall be considered vacant and an alternate will be seated as the regular representative. Should any vacancy remain unfilled for two meetings after the Council Chairperson has notified the Area governing body of a vacancy, the chairperson may appoint to that vacancy any qualified person in that area until such time as an area governing body acts to fill it.

**Article V
Officers**

- Section 1: All officers shall be elected by majority vote of the Area representatives at the Annual Public Meeting on the Second Monday of December to serve until the next Annual meeting one year thereafter.
- Section 2: Officers of the Council shall consist of Chairperson, Vice-Chairperson and Secretary.
- Section 3: These officers plus any currently active committee chairs or heads of task forces –if any - will constitute the executive committee.

**Article VI
Terms of Office**

- Section 1: No Council member may serve more than two (2) consecutive one-year terms in the same Office
- Section 2: A Council office vacated during its term shall be filled for the balance of that term by election of the Council at any meeting following notice of the vacancy.

**Article VII
Committees and Sub-Committees of the Council**

- Section 1: Working Committees or Task Forces may be created either by appointment by the Chairperson of the Council or by a majority approved Council resolution.
- Section 2: Committees may be composed of any resident voter in the Avila Valley, though normally the Chairperson of the committee will be a duly selected AVAC member.
- Section 3: Such committees or task forces shall prepare recommendations to the Council as a whole, for action by the members.
- Section 4: The chairperson of a committee or task force can, as necessary to expedite investigations, studies or to prepare draft materials for the Council, create sub Committees.

Article VIII

Meetings

- Section 1: The Council will hold regular meetings, open to the public on the second Monday of every month-unless rescheduled at Least 7 days prior by posted public notice.
- Section 2: Special meetings may be called by the chairperson with a two-thirds Agreement from the Executive Committee or whenever 5 Council members request one.
- Section 3: Five days in advance of all meetings, in an accessible public place, such as the Avila Beach Community Center, as made known at regular Council meetings, notice shall be posted with time and place of the meeting along with an agenda.

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- Section 4: No less than one week in advance of all regular meetings, Council members will be mailed the draft agenda and, as can be prepared, copies of the last meeting's minutes and any deliberative materials to be considered by the Council.
- Section 5: A quorum shall consist of a majority of Council members, not counting unfilled vacancies for which a new member or an alternate has not been seated
- Section 6: The Council will deliberate on issues at the regular monthly public meetings, allowing appropriately limited time for expert testimony and public comment and the opportunity for Committees and task forces to report findings and recommendations. Any vote taken by the Council on actions or recommendations shall be at these public meetings and shall be limited to agenda items unless an urgent matter is approved by a two-thirds vote of members present. Normal items must be approved by majority vote of those members in attendance. No vote by the Council is valid, failing a quorum present

**Article IX
Duties of Officers**

- Section 1: The Chairperson shall preside at all meetings, appoint all committees and task forces and shall unless a Council member is delegated by the Chairperson to serve- represent the Council at meetings of other public bodies. The Chairperson will transmit in writing and orally, as may be appropriate, the resolutions or formal actions approved by the Council.
- Section 2: In the chairperson's absence or disability to serve, the Vice-chairperson or the Secretary shall, in that order, perform the Chairperson's duties.
- Section 3: The Vice-chairperson, in addition to serving in the Chairperson's absence, has the duties of Council Treasurer and in this capacity shall account to the Council for any and all funds received for the Council as well as for funds disbursed in the Council's name.
- Section 4: The Secretary is responsible for the notes of all meetings and for the preparation of the minutes to be presented at the following meeting. Unless other arrangements are made with Council officers, the Secretary is responsible for receiving, preparing and transmitting the Council's correspondence.
- Section 5: The three elected officers, plus currently active committee chairs, shall serve as the Council executive committee which will meet regularly no later than ten days prior to the monthly Council meetings to discuss and approve the agenda An that meeting.
- Section 6: The Chairperson is responsible for order at all meetings and may request any person who is disrespectful of that order to leave the meeting. The Chairperson may limit the period for public comment as well as the time allowed for each individual commentary as deemed necessary for the orderly conduct of the business of that day.

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Article X

Section 1. Unless otherwise provided herein or by amendment hereto, the proceedings of the Council shall be governed by "Robert's Rules of Order, Revised."

Section 2: The disbursement of funds, authorized by the Council, shall require the signature of the Vice-Chairperson acting as Treasurer and one of the other two elected officers.

Article XI

Amendments

Section 1: Amendments to these By-Laws are to be proposed and read at a regular meeting for consideration on the agenda at the next regular meeting. When so presented, an amendment shall be approved when a two-thirds majority of the members present vote in the affirmative.

CERTIFICATE OF SERVICE

I certify that on July 8, 2002, copies of the foregoing Petitioners' Amended Hearing Request and Petition to Intervene were served on the following by first-class mail and/or e-mail, as indicated below:

Administrative Judge G. Paul Bollwerk, III, Chair Atomic Safety and Licensing Board Panel Mail Stop-T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-00001 By e-mail: gpb@nrc.gov	Stephen H. Lewis, Esq. Angela B. Coggins, Esq. Office of General Counsel Mail Stop – 0-15 D21 U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: shl@nrc.gov , abcl@nrc.gov
Administrative Judge Jerry R. Kline Atomic Safety and Licensing Board Panel Mail Stop-T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-00001 By e-mail to: jrk2@nrc.gov	Lorraine Kitman P.O. Box 1026 Grover Beach CA 93483 l.kitman@bejoseeds.com
Administrative Judge Peter S. Lam Atomic Safety and Licensing Board Panel Mail Stop-T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-00001 By e-mail to: psl@nrc.gov	Peg Pinard 714 Buchanan Street San Luis Obispo, CA 93401 ppinard@co.slo.ca.us
Seamus M. Slattery, Chairman Avila Valley Advisory Council P.O. Box 58 Avila Beach, CA 93424 By e-mail to: jslat@aol.com	David A. Repka, Esq. Brooke D. Poole, Esq. Winston & Strawn 1400 L Street N.W. Washington, D.C. 20005-3502 By e-mail to: drepka@winston.com , Bpoole@winston.com
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<p>Rochelle Becker San Luis Obispo Mothers for Peace 1037 Ritchie Grover Beach, CA 93433 By e-mail to: beckers@thegrid.net</p>	<p>Secretary of the Commission Attention: Rulemakings and Adjudications Staff U.S. Nuclear Regulatory Commission Washington, D.C. 20555 E-mail: hearingdocket@nrc.gov</p>
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Diane Curran