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July 19, 2002

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 Power Plant Independent	)	ASLBP No. 02-801-01-ISFSI
Spent Fuel Storage Installation)	)	

REQUEST OF PORT SAN LUIS HARBOR DISTRICT  
TO PARTICIPATE AS OF RIGHT UNDER 10 C.F.R. 2.715(c)

INTRODUCTION

Port San Luis Harbor District ("District") hereby requests to participate as an "interested party," 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").

DISCUSSION

The District's request to participate in this matter is necessary to protect the District's interests in the event that a hearing in this matter is granted by the Board. A

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<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."

hearing may well be granted because separate intervention petitions requesting a hearing have been filed with the Nuclear Regulatory Commission ("Commission").<sup>2</sup> The District believes a hearing concerning the issuance of the ISFSI license will necessarily raise issues that are of mutual concern to the Commission and the District. The District seeks to participate in this matter but does not intend to take a position on all of the issues before the Commission.

The District, by and through its elected Board of Harbor Commissioners, has an interest in participating in any hearing on this proposal for an ISFSI license. The District is a special district of the State of California, and an agent thereof with jurisdiction over significant land adjoining Diablo Canyon. The District also is the trustee on behalf of the California State Lands Commission of the tidelands and waters adjacent to Diablo Canyon. Such participation by the District is consistent with the Commission's 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's proposal to construct a highly radioactive spent fuel storage facility at the Diablo Canyon site raises public health, safety and environmental concerns. The safe operation of the ISFSI is of particular concern because the District has jurisdiction over land and state tidelands and waters adjacent to and near Diablo Canyon. The District's employees and the public enjoying the District's recreational and commercial facilities

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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)).

would necessarily be impacted by any significant issue or event resulting from the ISFSI. It is also likely that any radioactive materials transported from Diablo Canyon will pass through land or state tidelands under the District's jurisdiction. 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 District is an "interested government entity" 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.

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). Nevertheless, the District has concerns that should be appropriately addressed in these proceedings, which it will raise specifically in due course unless the Board makes a request for identification of these concerns or the related subject matter. Generally, however, the District is primarily concerned with the Safety Analysis Report ("SAR") as it relates to public safety issues, including, but not limited to the adequacy of the dated evacuation plan for Diablo Canyon, the probability of human error resulting in release of radioactive material from the ISFSI, and the susceptibility of the ISFSI to terrorist acts and seismic impacts.

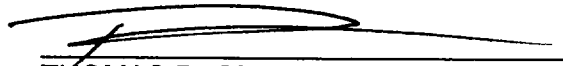

### CONCLUSION

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

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

Respectfully submitted,

ADAMSKI, MOROSKI & GREEN LLP

  
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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing REQUEST OF PORT SAN LUIS HARBOR DISTRICT TO PARTICIPATE AS OF RIGHT UNDER 10 C.F.R. 2.715(c) have been served upon the following persons by facsimile, as designated by an asterisk (\*) or through electronic mail, as designated by a double asterisk (\*\*). All persons listed below have also been served by U.S. mail, first-class, postage prepaid.

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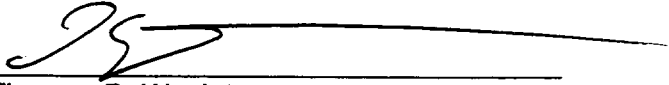
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