

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 08/06/02

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

RESPONSE OF NRC STAFF TO REQUEST OF PORT SAN LUIS
HARBOR DISTRICT TO PARTICIPATE AS OF RIGHT UNDER 2.715(C)

I. INTRODUCTION

The Port San Luis Harbor District ("District") filed, on July 19, 2002, a request to participate in this proceeding as an interested governmental entity under the provisions of 10 C.F.R. § 2.715(c). The NRC staff ("Staff") does not object to the District's request.

II. DISCUSSION

The District sets forth in its request the specifics as to its governmental nature and its areas of responsibility. According to the request, it is "...a special district of the State of California, and an agent thereof with jurisdiction over significant land adjoining Diablo Canyon." Request at 2. The District further states that it is "...the trustee on behalf of the California State Lands Commission of the tidelands and waters adjacent to Diablo Canyon." *Id.* As a governmental authority with jurisdiction over some activities in the geographic area where the Diablo Canyon Power Plant ("DCPP") and the proposed Independent Spent Fuel Storage Installation ("ISFSI") are, or would be, located, the District falls within the scope of governmental entities covered by 10 C.F.R. § 2.715(c) and should be admitted as a party under that regulation. *Power Authority of New York*, (James A. Fitzpatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 295 (2000).

The District also provides information on matters of concern to it with respect to the proposed ISFSI. Mentioned in the request are: safe operation of the ISFSI, transportation of radioactive material from DCP, the licensee/applicant's Safety Analysis Report ("SAR") for the ISFSI, the adequacy of the DCP evacuation plan, human error that may result in radioactive releases from the ISFSI, and terrorism and seismic events as they may impact the ISFSI. Request at 2-3.

While this articulation of its areas of concern is useful, as the Staff reads section 2.715(c), the Atomic Safety and Licensing Board ("Board") has not yet required the petitioners under that paragraph of the Commission's regulations to:

indicate with reasonable specificity, in advance of the hearing, the subject on which [the petitioner] desires to participate.

See last sentence of 10 C.F.R. § 2.715(c). Pacific Gas and Electric Co. (Licensee/Applicant) asserts in its "Response...to Request of Port San Luis Harbor District to Participate As of Right Under 10 C.F.R. 2.715(c)," (July 29, 2002), at 2, that "...the District's participation will be limited to issues already raised and properly within the scope of this NRC licensing proceeding." Licensee/Applicant cites to *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB 600, 12 NRC 3, 8 (1980) as support for this asserted limitation on the District. The facts of that case, however, involved the Governor of California seeking in a significantly belated manner to participate under section 2.715(c). The Staff does not consider the timing here to be similar in that the Board has not yet required the 10 C.F.R. § 2.715(c) petitioners to identify the subjects on which they desire to participate.

The Staff also does not perceive the District to be tardy in this proceeding with respect to any of its obligations. We note that the District's Request was filed on July 19, 2002, the date by which the Board required petitioners for intervention to file any supplements on standing and to set

forth their contentions. The Staff considers this filing to be a not unreasonable response by the District to the Board's order.

The District has not yet been required to set forth its areas of concern regarding the application that forms the basis of this proceeding. For this reason, the Staff does not believe it yet has to take a position as to whether the concerns set forth in its Request are litigable as being within the scope of this proceeding. Therefore, the Staff does not take any position at this time with respect to the District's concerns. The District states that it:

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.

Request, at 3. Consistent with this commitment, the Staff will respond to the admissibility of the subject matters on which the District desires to participate in this proceeding at such time as they are pleaded.

III. CONCLUSION

The Staff does not oppose the District's Request to be permitted to participate in this proceeding as an interested governmental entity under 10 C.F.R. § 2.715(c).

Respectfully submitted,

/RA/

Stephen H. Lewis
Counsel for NRC Staff

Dated at Rockville, Maryland
this 5th day of August, 2002.

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Spent Fuel Storage Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "RESPONSE OF NRC STAFF REQUEST OF PORT SAN LUIS HARBOR DISTRICT TO PARTICIPATE AS OF RIGHT UNDER 2.715(C)" have been served upon the following persons by United States mail, first class, or through the Nuclear Regulatory Commission's internal mail distribution as indicated by an asterisk (*); and by electronic mail as indicated by a double asterisk (**) on the 5th day of August, 2002.

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