

August 16, 2002

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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

August 20, 2002 (4:00PM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of	)	
	)	Docket No. 72-26-ISFSI
PACIFIC GAS & ELECTRIC CO.	)	
	)	ASLBP No. 02-801-01-ISFSI
(Diablo Canyon Power Plant Independent	)	
Spent Fuel Storage Installation)	)	
_____	)	

**Request of the California Energy Commission  
To Participate As Of Right Pursuant To 10 C.F.R. § 2.715(c)**

**I. Introduction**

The California Energy Commission (CEC) respectfully requests to participate as an interested governmental entity pursuant to 10 C.F.R. § 2.715(c), in the Nuclear Regulatory Commission (NRC) proceeding concerning the Pacific Gas & Electric Company's (PG&E) issuance of a license under the provisions of 10 C.F.R. Part 72 to store spent fuel and radioactive material in an Independent Spent Fuel Storage Installation (ISFSI) to be constructed and operated within the State of California on site at the Diablo Canyon Nuclear Power Plant (DCPP) (Docket No. 72-26-ISFSI; Proceeding No. 02-801-01-ISFSI).

**II. Discussion**

The CEC requests to participate in this matter to ensure that the State's interest in the areas of public health and safety, natural resources, and electrical system reliability are protected. The CEC has been the State of California's State Liaison to the NRC since 1983 and coordinates California agencies' policy positions in federal proceedings affecting the State of California, such as the proposed High-Level Waste Repository at Yucca Mountain and federal nuclear waste transportation programs. A hearing on this matter will involve issues that affect the State, and as the agency designated to coordinate State concerns regarding nuclear matters, the CEC seeks to participate in the proceedings

as a State representative. The Warren-Alquist Act, allows the CEC to participate in federal proceedings and represent the interest of the CEC (Public Resources Code § 25219 and § 25220). At this time the CEC does not intend to take a position on all issues before the NRC, but does wish to participate in the proceedings to assist in developing a sound record that addresses issues of statewide importance.

The CEC has an interest in participating in any hearing on the proposal for an ISFSI. The CEC has taken the lead in coordinating State agency comments related to nuclear issues, such as in the case mentioned above concerning Yucca Mountain. Additionally, the CEC has a responsibility to ensure that the concerns of California citizens are addressed in these proceedings. The Warren- Alquist Act states:

The Legislature hereby finds and declares that electrical energy is essential to the health, safety and welfare of the people of this state and to the state economy, and that it is the responsibility of state government to ensure that a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety, for promotion of the general welfare and for environmental quality protection.

(Public Resources Code § 25001.) DCCP produces approximately 2200 MW and is located at a critical location in the statewide grid. The State of California has an interest in maintaining a reliable electrical system, while ensuring that the quality of the environment and public health and safety are protected. The ISFSI licensing proceeding may result in significant impacts in one or all of these areas. The NRC "has long recognized the benefits of participation in its proceedings by representatives of interested States. . . ." *Power Authority of the State of New York, et. al.* (James FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 295 (2000), quoting *Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Units 1 and 2), CLI-99-30, 50 NRC 333, 334 (1999).)

The PG&E proposal to construct an independent spent fuel storage facility at DCCP raises public health and safety, environmental, and electrical reliability concerns. These areas of concern more specifically include: public health and safety (design of facility, transport of radioactive waste, impact to human health and potential for

radioactive release, and susceptibility to seismic impacts and terrorist acts); environmental (impacts of potential radioactive releases to natural resources within California); and electrical reliability (impacts to the statewide electrical system if the facility is approved or denied). These are all issues that warrant a state presence in the decision making process. Significant state natural resources exist along the California coast. State citizens live on and visit for recreational purposes lands in close proximity to the proposed location for this facility. No other State of California agency has intervened in this proceeding to represent these interests. For all of these reasons, the CEC should be permitted to represent the interests of the State of California in this matter.

### **III. Good Cause for Failure to File on Time**

The CEC is aware that the Federal Register Notice for the above-captioned proceeding was released on April 22, 2002, and that petitions to intervene or request a hearing should have been filed within 30 days of that date. The CEC was unable to file during this time frame due to internal changes at the Commissioner level and of the need to reassign staff resources. The State of California has a Governor-appointed Nuclear Policy Liaison to the NRC; one of the five appointed CEC Commissioners, serves in this role. Recently, the CEC's appointee for this role resigned. As of August 6, 2002, the Governor appointed Commissioner James D. Boyd as the State Liaison to the NRC. The CEC is the appropriate agency to represent the State's interest in this matter. The CEC plans to attend the pre-hearing conference that has been scheduled for September 10, 2002, in San Luis Obispo, and will have a representative available to address any concerns of the Presiding Board. The CEC does not believe any undue prejudice to any party will result from the Presiding Board granting its request to participate as an interested governmental entity. It is the CEC's position that if it were denied such status, a decision on this matter being made without the State's participation would result in undue prejudice. The Atomic Energy Act, 42 U.S.C. § 2021, Title 10 of the C.F.R. § 2.715(c), and numerous NRC decisions recognize the importance of an interested state's participation in NRC proceedings. Examples of some cases include; *Authority of the State of New York, et. al., supra. Niagara Mohawk Power Corp., supra. Houston Lighting and Power Co.* (South Texas Projects Units 1 and 2), LBP-83-26, 17

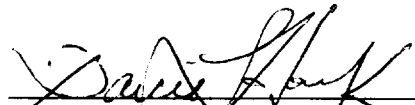
NRC 945, 947 (1983). The CEC respectfully requests that the Board find in balancing the facts set forth in 10 C.F.R. 2.714(1) (i-v) that the CEC has met its burden and should be granted an opportunity to address any issues that arise concerning public health and safety, natural resources, and electrical reliability, as well as, participate in the proceedings.

#### IV. Conclusion

For the reasons stated above the CEC requests to participate in the above-captioned proceedings as a governmental entity pursuant to 10 C.F.R. § 2.715(c).

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Dated: August 16, 2002

  
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## CERTIFICATE OF SERVICE

I, Linda Torres, hereby certify that copies of the foregoing **Request of the California Energy Commission To Participate As Of Right Pursuant To 10 C.F.R. § 2.715(c)** have been served upon the following persons by United States mail, first class, on the 16th day of August, 2002.

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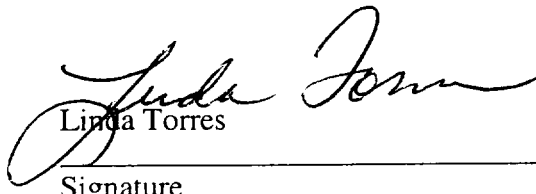
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