

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 08/27/02

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 REQUESTS OF THE
CALIFORNIA ENERGY COMMISSION AND THE DIABLO CANYON INDEPENDENT
SAFETY COMMITTEE TO PARTICIPATE AS OF RIGHT UNDER 10 C.F.R. § 2.715(c)

I. INTRODUCTION

On August 16, 2002, and August 20, 2002, respectively, the California Energy Commission (“CEC”) and the Diablo Canyon Independent Safety Committee (“DCISC”) filed requests to participate in this proceeding as interested governmental entities under the provisions of 10 C.F.R. § 2.715(c).¹ For the following reasons, the NRC staff (“Staff”) does not object to the requests.

II. DISCUSSION

A. California Energy Commission

The CEC sets forth in its request the specifics as to its governmental nature and areas of responsibility. According to the request, 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.” (CEC Request at 1). CEC’s authority to do so comes from the Warren-Alquist Act which “...allows the CEC to participate in federal proceedings and represent the interest of the CEC.” (CEC Request at 2). As the agency designated to coordinate State concerns

¹ See Request of the California Energy Commission to Participate As of Right Pursuant to 10 C.F.R. § 2.715(c), dated August 16, 2002 (“CEC Request”); and see Request of the Diablo Canyon Independent Safety Committee to Participate as of Right Under 10 C.F.R. 2.715(c), dated August 20, 2002 (“DCISC Request”).

regarding nuclear matters, the CEC expresses an interest in various aspects of the proposed ISFSI including: design of the facility; transport of radioactive waste; impact of potential radioactive release on human health and natural resources; susceptibility to seismic impacts and terrorist acts; and impacts of approval or denial of the ISFSI to the statewide electrical system.² (CEC Request at 2-3). Based upon the above information, the Staff contends that the CEC is an “interested state agency” that should be accorded an opportunity to participate pursuant to 10 C.F.R. § 2.715(c). *Power Authority of New York*, (James A. Fitzpatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 295 (2000).³

B. Diablo Canyon Independent Safety Committee

The DCISC, in its request, explains that it was originally created by the California Public Utilities Commission under the terms of a Diablo Canyon Settlement Agreement as an independent three-member committee specifically to monitor the safety of PG&E’s operation of Diablo Canyon. (DCISC Request at 2). The DCISC was intended to provide an “...added level of assurance to the public that Diablo Canyon will continue to operate safely.” (DCISC Request at 3). Moreover, DCISC states that, “[t]he safe operation of the ISFSI is of particular concern to the Safety Committee because its design, location, construction and subsequent operation and integration into Diablo Canyon’s existing systems falls squarely within the Safety Committee’s state-mandated responsibility to assess the safety of operations at Diablo Canyon...”⁴ (DCISC Request at 4). Based upon the above information, the Staff submits that DCISC is an “interested state agency”

² While indicating general areas of concern, neither the CEC nor DCISC has chosen to submit their own contentions in this proceeding.

³ Although CEC raises a concern regarding the timeliness of its Request, CEC acknowledges that it must take the proceeding as it finds it. Moreover, CEC submitted its request prior to the Board’s deadline of August 21, 2002, for interested parties to submit their contentions. Thus, in this instance, the Staff does not view CEC’s request as untimely.

⁴ See footnote 2, *supra*.

that should be accorded an opportunity to participate pursuant to 10 C.F.R. § 2.715(c). *Power Authority of New York*, (James A. Fitzpatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 295 (2000).

III. CONCLUSION

Based on the foregoing, the Staff does not oppose CEC's or DCISC's Requests to be permitted to participate in this proceeding as interested governmental entities under 10 C.F.R. § 2.715(c).

Respectfully submitted,

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Angela B. Coggins
Counsel for NRC Staff

Dated at Rockville, Maryland
this 26th day of August, 2002.

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Spent Fuel Storage Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO REQUESTS OF THE CALIFORNIA ENERGY COMMISSION AND THE DIABLO CANYON INDEPENDENT SAFETY COMMITTEE TO PARTICIPATE AS OF RIGHT UNDER 10 C.F.R. § 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 this 26th day of August, 2002.

G. Paul Bollwerk, III
Administrative Judge* **
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555
E-mail: gp@nrc.gov

Atomic Safety and Licensing Board Panel*
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555

Office of Commission Appellate Adjudication*
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555

Lorraine Kitman**
P.O. Box 1026
Grover Beach, CA 93483
E-mail: lorraine@bejoseeds.com
l.kitman@bejoseeds.com

Peter S. Lam
Administrative Judge* **
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555
E-mail: psl@nrc.gov

Jerry R. Kline
Administrative Judge* **
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555
E-mail: jrk2@nrc.gov
kjerry@erols.com

Office of the Secretary* **
ATTN: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555
E-mail: HEARINGDOCKET@nrc.gov

County Supervisor Peg Pinard**
County Government Center
1050 Monterey Avenue
San Luis Obispo, California 93408
E-mail: ppinard@co.slo.ca.us

Lawrence F. Womack
Vice President
Nuclear Services
Diablo Canyon Power Plant
P.O. Box 56
Avila Beach, CA 93424

Klaus Schumann
Mary Jane Adams
26 Hillcrest Drive
Paso Robles, CA 93446

James B. Lindholm, Jr. Esq. **
County Counsel for San Luis Obispo County
County Government Center
1050 Monterey Avenue, Room 386
San Luis Obispo, CA 93408
E-Mail: jlindholm@co.slo.ca.us

Robert K. Temple, Esq. **
2524 N. Maplewood Avenue
Chicago, IL 60647
E-mail: nuclaw@mindspring.com

San Luis Obispo Mothers for Peace**
P.O. Box 164
Pismo Beach, CA 93448
E-Mail: beckers@thegrid.net
Jzk@charter.net

Darcie L. Houck, Staff Counsel**
California Energy Commission
Chief Counsel's Office
1516 Ninth Street, MS 14
Sacramento, CA 95814
E-Mail: Dhouck@energy.state.ca.us

Seamus M. Slattery
Chairman
Avila Valley Advisory Council
P.O. Box 58
Avila Beach, CA 93424

David A. Repka**
Brooke D. Poole**
Winston & Strawn
1400 L Street N.W.
Washington, D.C. 20005-3502
E-Mail: bpoole@winston.com
drepka@winston.com

Thomas D. Green, Esq. **
Thomas D. Waylett, Esq. **
Counsel for Port San Luis Harbor District
Adamski, Moroski & Green, L.L.P.
444 Higuera Street, Suite 300
San Luis Obispo, CA 93401-3875
E-Mail: green@adamskimoroski.com
waylett@adamskimoroski.com

Diane Curran**
Harmon, Curran, Spielberg, & Eisenberg, LLP
1726 M Street N.W., Suite 600
Washington, D.C. 20036
E-mail: dcurran@harmoncurran.com

Robert R. Wellington, Esq.**
Robert W. Rathie, Esq.**
Wellington Law Offices
857 Cass Street, Suite D
Monterey, California 93940
E-Mail: info@dcisc.org

Barbara Byron**
Nuclear Policy Advisor
California Energy Commission
1516 9th Street, MS 36
Sacramento, CA 95814
E-Mail: Bbyron@energy.state.ca.us

/RA/

Angela B. Coggins
Counsel for NRC Staff