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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

August 27, 2002 (11:30AM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of )

PACIFIC GAS AND ELECTRIC CO., )  
DIABLO CANYON POWER PLANT )

(Independent Spent Fuel Storage Installation) )

) Docket No. 72-26-ISFSI

) ASLBP No. 02-801-01-ISFSI

) August 20, 2002

REQUEST OF THE DIABLO CANYON INDEPENDENT SAFETY COMMITTEE  
TO PARTICIPATE AS OF RIGHT UNDER 10 C.F.R. 2.715(c)

INTRODUCTION

The Diablo Canyon Independent Safety Committee ("Safety Committee") hereby requests to participate as an interested state agency, in accordance with 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 Safety Committee's request to participate in this matter is necessary to protect the Safety Committee's interests in the event that a hearing in this matter is granted by the

<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."

Board in response to three separate intervention petitions requesting a hearing and raising issues and contentions filed with the Nuclear Regulatory Commission (“Commission”)<sup>2</sup> by the San Luis Obispo Mothers for Peace (“SLOMFP”), *et al.*, on July 19, 2002. While the Safety Committee does not oppose the issuance of an ISFSI license to PG&E, the Safety Committee believes a hearing concerning the issuance of the ISFSI license will necessarily raise issues which are of mutual concern to the Commission and the Safety Committee.

The Safety Committee seeks to participate in this matter but does not intend to take a position on all of the issues before the Commission.

The Safety Committee, by and through its appointed Members, has an interest in participating in any hearing on this proposal for an ISFSI license. Participation by the Safety Committee is consistent with Commission policies and practices.

The Safety Committee was initially created by the California Public Utilities Commission (“CPUC”) under the terms of the Diablo Canyon Settlement Agreement (CPUC Decision D.88-12-083)<sup>3</sup> as an independent three-member committee specifically to monitor the safety of PG&E’s operation of Diablo Canyon.

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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)).

<sup>3</sup> See CPUC Decision D.88-12-083, Finding of Fact 22: “The Safety Committee will be a useful monitor of safe operation of Diablo Canyon. With competent members dedicated to achieving safety at Diablo Canyon, the committee will confer a benefit on the public, and is in the public interest.”

“An Independent Safety Committee shall be established consisting of three members, one each appointed by the Governor of the State of California, the Attorney General and the Chairperson of the California Energy Commission, respectively, serving staggered three-year terms. The Committee shall review Diablo Canyon operations for the purpose of assessing the safety of operations and suggesting any recommendations for safe operations. Neither the Committee nor its members shall have any responsibility or authority for plant operations, and they shall have no authority to direct PG&E personnel. The Committee shall conform in all respects to applicable federal laws, regulations and Nuclear Regulatory Commission ("NRC") policies.”<sup>4</sup>

As stated by the CPUC in its Decision, the Safety Committee was intended by the parties to the Settlement Agreement to provide an “added level of assurance to the public that Diablo Canyon will continue to operate safely.”<sup>5</sup> In its three subsequent decisions affecting the Safety Committee, D.90-04-008, D.91-10-020 and D.97-05-088, the CPUC has continued to affirm its original intention in establishing the Safety Committee and to act specifically to retain the Safety Committee, finding that the Safety Committee provided the public with additional assurances that the safety of Diablo Canyon’s operation would not be adversely affected by changed economic considerations and determined that the Safety Committee should be maintained indefinitely until further order of the CPUC<sup>6</sup>.

Participation by the Safety Committee is consistent with the Commission’s policies and practices. The Commission has long recognized the benefits of participation in its

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<sup>4</sup> *Id.* Attachment A to Appendix C at p. 1

<sup>5</sup> *Id.* at p.85

<sup>6</sup> CPUC Decision D.97-05-088, Ordering Paragraph 10.

proceedings by interested states, counties and local governments and the agencies thereof. *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 the ISFSI on-site at Diablo Canyon raises important and significant safety and operational concerns. The 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 and to annually report on its conclusions, concerns and recommendations concerning that assessment to the CPUC, and its Members' appointing entities. 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 Safety Committee is an "interested state agency" 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.

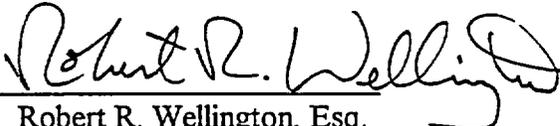
A request to participate pursuant to 10 C.F.R. §2.715(c) need not identify the subject matter which the participant intends to address in the proceeding. *Consolidated Edison Co. of N.Y.* (Indian Point, Unit No. 2) and *Power Auth. of N.Y.* (Indian Point, Unit No. 3), LBP-82-25, 15 NRC 715, 723 (1982). The Safety Committee is agreeable to take

the proceeding as it finds it<sup>7</sup> and does not intend to raise issues other than those already proffered in the contentions filed by the San Luis Obispo Mothers for Peace *et al.* in their petitions for intervention or by any of the other governmental entities granted, or who may be granted, participant status under 10 C.F.R. §2.715(c), including San Luis Obispo County, the Port of San Luis Harbor District and the California Energy Commission.

CONCLUSION

For the foregoing reasons, the Safety Committee should be admitted as an “interested state agency” to participate in any and all pre-hearing, hearing and post-hearing proceedings granted by the Board. The Safety Committee’s participation is appropriate and necessary to ensure that its state-mandated charge to monitor and assess health, safety, defense and environmental concerns regarding PG&E’s operation of Diablo Canyon is appropriately considered and addressed

Respectfully submitted,

  
Robert R. Wellington, Esq.

Legal Counsel

Diablo Canyon Independent Safety Committee

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<sup>7</sup> Memorandum and Order, July 26, 2002, Docket No. 72-26-ISFSI, ASLB No. 02-801-01-ISFSI, LBP-02-15, 56 NRC \_\_\_, \_\_\_n.3 (slip op. at 3 n 3)(July 15, 2002)).

Pursuant to 10 C.F.R. §2.708(e), the following are designated as the person on whom service of the pleadings and other papers in his proceeding should be made:

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**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

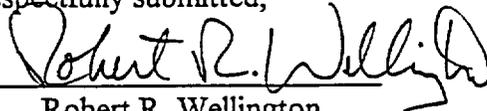
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| DIABLO CANYON POWER PLANT                     | ) |                           |
| (Independent Spent Fuel Storage Installation) | ) | ASLBP No. 02-801-01-ISFSI |
|   | ) | August 20, 2002           |

**NOTICE OF APPEARANCE**

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter in accordance with 10 C.F.R. §2.713(b), the following information is provided:

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Respectfully submitted,

  
\_\_\_\_\_  
Robert R. Wellington

Dated at Monterey, California  
this 20th day of August 2002

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

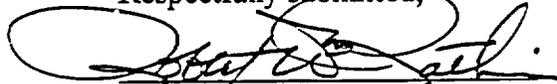
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**NOTICE OF APPEARANCE**

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter in accordance with 10 C.F.R. §2.713(b), the following information is provided:

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Respectfully submitted,



Robert W. Rathie

Dated at Monterey, California  
this 20th day of August 2002

## CERTIFICATE OF SERVICE

I, Randa Lynn Smith, hereby certify that copies of the foregoing Request of the Diablo Canyon Independent Safety Committee To Participate As Of Right Pursuant To 10 C.F.R. § 2.715(c), Notice of Appearance of Robert R. Wellington and Notice of Appearance of Robert W. Rathie have been served upon the following persons by United States mail on the 20th day of August, 2002.

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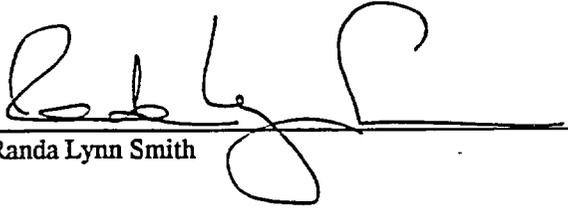
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Dated: August 20, 2002

  
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