

August 26, 2002

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

September 4, 2002 (3 29PM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of: )

Pacific Gas and Electric Co. )

Docket No. 72-26-ISFSI

(Diablo Canyon Power Plant Independent )  
Spent Fuel Storage Installation) )

ASLBP No. 02-801-01-ISFSI

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY TO  
REQUEST OF CALIFORNIA ENERGY COMMISSION TO PARTICIPATE  
AS OF RIGHT PURSUANT TO 10 C.F.R. § 2.715(c)

I. INTRODUCTION

On August 16, 2002, the California Energy Commission ("CEC") filed a request to participate as an interested governmental entity pursuant to 10 C.F.R. § 2.715(c) in any hearing granted in this proceeding ("CEC Request"). Applicant Pacific Gas and Electric Company ("PG&E") does not object to the CEC's participation in this proceeding, subject to the limitations of Section 2.715(c). As discussed further below, the CEC has not proffered any admissible issues. Its participation must, therefore, be limited to those issues timely raised by other participants in the proceeding.

II. DISCUSSION

A. CEC's Participation

The CEC Request indicates that 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," and that the CEC has "taken the lead in coordinating State agency comments related to nuclear issues." (CEC Request at 1, 2.) Citing

the Warren-Alquist Act, the CEC contends that it has the responsibility to ensure that “the concerns of California citizens” are represented. (*Id.* at 2.) Specifically, CEC cites to California’s interest “in maintaining a reliable electrical system, while ensuring that the quality of the environment and public health and safety are protected.” (*Id.*)

Based on this description of CEC’s status and authority, PG&E does not object to the CEC’s participation as an interested governmental entity. However, the CEC is subject to the limitations the Commission has imposed with respect to all Section 2.715(c) parties. Specifically, once in the proceeding, a governmental participant must comply with all procedural rules and is subject to the same requirements as parties appearing before the Licensing Board. *See Gulf States Utils. Co.* (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760 (1977); *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), LBP-90-12, 31 NRC 427, 430-31, *aff’d in part on other grounds*, ALAB-934, 32 NRC 1 (1990).

B. CEC’s Areas of Concern

In its August 7, 2002, Memorandum and Order, the Licensing Board set forth a schedule requiring the interested governmental entities in the proceeding to identify, by August 21, 2002, any issues they wish to raise other than those proffered in the contentions filed by petitioners San Luis Obispo Mothers for Peace *et al.* (“SLOMFP”).<sup>1</sup> Any issue proposed by a participating governmental entity, like those proposed by intervenors seeking full party status, must “be framed with sufficient detail and preciseness” to define the “concrete issues which are appropriate for adjudication in the proceeding.” *See* August 7 Order, slip op. at 2; *citing River*

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<sup>1</sup> *See Pac. Gas & Elec. Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), Memorandum and Order (Establishing Schedule for Identification of Issues by Interested Governmental Entities; Limited Appearance Participation), slip op. Aug. 7, 2002 (“August 7 Order”).

*Bend*, ALAB-444, 6 NRC at 768-69 (quoting 10 C.F.R. § 2.714(a), then the provision setting forth the requirements for the submission of contentions). *See generally* 10 C.F.R. § 2.714(b). Following the filing of the CEC Request, the Licensing Board issued on August 19, 2002, a Memorandum and Order reiterating this requirement as applied to CEC.<sup>2</sup> In accordance with agency precedent, once the time for identification of new issues has passed, any new contention thereafter advanced by the governmental entity must meet the test for late-filed contentions. *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1140 (1983).

The CEC Request does not identify any specific issues of interest within the scope of this proceeding. It identifies only several broad “areas of concern,” as follows:

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).

(CEC Request, at 2-3.) Without more, these nonspecific “areas of concern” are not “framed with sufficient detail and preciseness” to meet the procedural requirements for the admission of contentions in this proceeding.<sup>3</sup> *See* 10 C.F.R. § 2.714(b); *River Bend*, ALAB-444, 6 NRC at 768. The CEC declined to submit new issues or elaborate on the “areas of concern” listed above by the date appointed by the Licensing Board in this proceeding. Thus, the CEC must “take the proceeding as [it] finds it.” *Pac. Gas & Elec. Co.* (Diablo Canyon Power Plant Independent

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<sup>2</sup> *See Pac. Gas & Elec. Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), Memorandum and Order (Schedule for Responses to Request to Participate as Interested Governmental Entity), slip op. August 19, 2002.

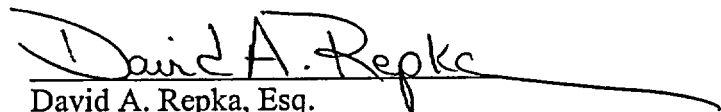
<sup>3</sup> Procedural requirements aside, PG&E does not concede that all of the CEC’s “areas of concern” fall within the scope of this proceeding or within the jurisdiction of the NRC.

Spent Fuel Storage Installation), LBP-02-15, 56 NRC \_\_, slip op. at 3 n.3 (July 15, 2002); *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Units 1 & 2), CLI-86-20, 24 NRC 518, 519 (1986). Moreover, its participation must be limited to issues already raised by SLOMFP, San Luis Obispo County, and the Port San Luis Harbor District in this proceeding.<sup>4</sup> Any future issues raised by the CEC will be subject to the standards for late-filed contentions.

### III. CONCLUSION

For the reasons set forth above, PG&E does not object to the participation of the CEC as an interested governmental entity pursuant to 10 C.F.R. § 2.715(c). However, the scope of the CEC's participation cannot exceed the issues already raised by others in this proceeding.

Respectfully submitted,



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ATTORNEYS FOR PACIFIC GAS &  
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Dated in Washington, District of Columbia  
this 26th day of August 2002

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<sup>4</sup> See "Subject Matter Upon Which the County of San Luis Obispo Desires to Participate Pursuant to 10 C.F.R. § 2.715(c)," dated August 21, 2002; "Response of Port San Luis Harbor District to Atomic Safety and Licensing Board Order of August 7, 2002," dated August 19, 2002.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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In the Matter of:	)	
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Spent Fuel Storage Installation)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY TO REQUEST OF CALIFORNIA ENERGY COMMISSION TO PARTICIPATE AS OF RIGHT PURSUANT TO 10 C.F.R. § 2.715(c)" have been served as shown below by electronic mail, this 26th day of August 2002. Additional service has also been made this same day by deposit in the United States mail, first class, as shown below.

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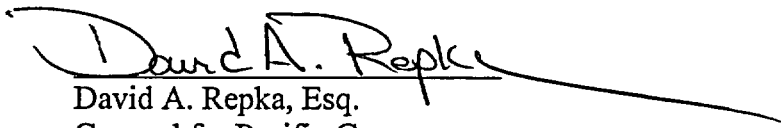
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