

October 9, 2002

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

In the Matter of )  
 )  
PACIFIC GAS & ELECTRIC CO. )  
 )  
(Diablo Canyon ISFSI) )

Docket No. 72-26-ISFSI  
ASLBP No. 02-801-01-ISFSI

October 17, 2002 (1:11PM)  
OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

POSITION OF THE PORT SAN LUIS HARBOR DISTRICT  
REGARDING THE CRITERIA FOR CONSIDERING ISSUES  
RAISED BY GOVERNMENTAL ENTITIES UNDER 10 C.F.R. § 2.715(c)

Port San Luis Harbor District ("District") hereby responds to the Atomic Safety and Licensing Board's ("Board") invitation to address the issue of the appropriate standard for the presentation of information and admission of issues proffered by interested governmental entities under 10 C.F.R. § 2.715(c) in hearings conducted by the Nuclear Regulatory Commission ("NRC or "Commission").<sup>1</sup> The District hereby adopts the position and argument of the County of San Luis Obispo ("SLOC") filed in response to the Board's request, which demonstrates that the NRC's standard for evaluating admissibility of issues under Section 2.715(c) is a finding that the issue is relevant to the proceeding and is framed with sufficient detail and preciseness to permit adjudication. SLOC also demonstrates that adoption of the NRC's criteria in 10 C.F.R. § 2.714(b)(2) for private parties would impede realization of the Commission's regulatory purposes for 10 C.F.R. § 2.715(c) and would be contrary to long-established NRC law. The District submits that it complied with the appropriate standard in its August 19, 2002 Response to the Board's invitation to raise issues in addition to those raised by those proffered by the San Luis Obispo Mothers for Peace ("SLOMFP") ("Issue Response").

<sup>1</sup> Memorandum and Order (Schedules for Submissions Regarding Issues Proffered by 10 C.F.R. Section 2.715(c) Interested Governmental Entities; Forwarding Additional Participant Submissions for Record Inclusion) (September 17, 2002).

## II. DISCUSSION

As stated at the pre-hearing conference on this matter, the District had no intention of framing its Issue Response as a contention pursuant to 10 C.F.R. § 2.714(b)(2). The District's review of 10 C.F.R. § 2.715(c) and the case law interpreting that section resulted in an understanding that the purpose of 10 C.F.R. § 2.715(c) is to allow local government entities, due to their responsibilities and ongoing familiarity with issues of local concern, to advise the Board of facts and issues relevant to the proceeding. The District, in its Issue Response, sought to fulfill that purpose in advising the Board of an issue it believes is extremely relevant to this proceeding, which had not been raised by SLOMFP. In raising that issue, the District did not seek to proffer a contention, in that the District had not had the time or the resources to fully develop the issue as a contention or to arrive at a conclusion regarding the issue. In submitting its Issue Response, the District advised the Board of an issue: "whether or not the current emergency response plan is adequate". This issue is clearly relevant to the proceeding and precise enough to be adjudicated by the Board.

Whether or not the Board ultimately admits the issue raised in the District's Issue Response, the District's situation is illustrative of the general application 10 C.F.R. § 2.714(b)(2) criteria to issues raised by local government entities. The District, as with most other local government entities, has limited staff, time and budget resources with which to meet its responsibilities to the public it serves. These limitations may and have resulted in local government entities possessing knowledge of important and legitimate issues concerning public safety which are relevant to a proceeding before the NRC that they have been unable to internally resolve or frame and support sufficiently to comply with 10 C.F.R. § 2.714(b)(2). That local government entities may be unable to develop such concerns sufficiently to comply with 10 C.F.R. § 2.714(b)(2), should not, however, result in the NRC ignoring legitimate and relevant issues.

Applying such a standard is fundamentally adverse to the underlying purpose of 10 C.F.R. § 2.715(c) in that it forces local governments out of their role of advising the Board and into the role of an intervenor unless a private party has already articulated

the government entity's concerns. As local government entities are likely to have different concerns from, and more particularized knowledge than, private parties, such parties may be unaware or otherwise unwilling to advance the concerns of local government entities. Given this, application of 10 C.F.R. § 2.714(b)(2) criteria to local government entities will inevitably lead to the NRC turning a blind eye to legitimate issues of public safety and concern which are relevant to proceedings before the NRC. While this may result in a more manageable hearing process for the Board, NRC staff and applicant, it certainly does not advance the NRC's responsibility to protect the public.

As the NRC staff's response to this issue illustrates, the regulations and case law on this issue are not directly on point, leaving the Board considerable discretion in its determination of this issue. Without more direct support for the NRC staff's position of applying 10 C.F.R. § 2.714(b)(2) criteria to local government entities, the Board's analysis of this issue should militate towards the more liberal standard to ensure the most complete review of relevant issues.

#### IV. CONCLUSION

For the foregoing reasons, the Board should apply a liberal criteria to the admission of all issues proffered by interested governmental entities, admitting all such issues provided they are relevant to the proceeding and framed with sufficient detail and preciseness to permit determination in an adjudicatory proceeding. As the District has met these criteria in its Issue Response, the Board should admit the District's issue for adjudication.

Respectfully submitted,



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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Position of the Port San Luis Harbor District Regarding the Criteria for Considering Issues Raised By Governmental Entities Under 10 C.F.R. § 2.715(c)" have been served upon the following persons by United States mail, first class; and by electronic mail as indicated by an asterisk (\*) on this 9<sup>th</sup> day of October 2002.

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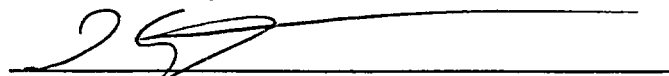
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