

RAS 4951

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY TO REQUEST OF AVILA  
BEACH COMMUNITY SERVICES DISTRICT TO PARTICIPATE AS AN  
"INTERESTED PARTY" PURSUANT TO 10 C.F.R. § 2.715(c)

I. INTRODUCTION

During the prehearing conference held on September 10-11, 2002, a representative of the Avila Beach Community Services District ("ABCSD") stated that ABCSD submitted, in mid-August, a letter to the Nuclear Regulatory Commission ("NRC") requesting to participate in the proceeding before this Atomic Safety and Licensing Board ("Licensing Board") as an interested governmental entity. Pacific Gas and Electric Company ("PG&E") never received that communication and apparently neither did the Licensing Board. (September 10, 2002 Transcript at 68-70.) The Licensing Board advised ABCSD to resubmit the request (Tr. at 71), which it did, in a filing dated September 17, 2002.<sup>1</sup> This was followed by additional

<sup>1</sup> See Transmittal of Avila Beach CSD Declaration and Request for "Interested Party" Status; Docket No. 72-26-ISFSI, ASLBP No. 02-801-01-ISFSI, dated September 17, 2002. The request is comprised of (1) the Declaration of Christopher Helenius, President of the ABCSD Board of Directors ("Helenius Declaration"); and (2) a letter from Mr. Helenius to the Commission, "Support for Petition of Intervenors and Interested Parties Relative to the Safety of the Community of Avila Beach and the Avila Beach Community Services District" dated August 14, 2002 ("ABCSD Request"). The ABCSD Request states that, in a letter dated May 17, 2002, it has "requested that hearings on the storage issue be held in San Luis Obispo County." To our knowledge, such a letter has not been

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comments on October 7, 2002.<sup>2</sup> Pursuant to the September 27, 2002, Order,<sup>3</sup> PG&E herein responds to ABCSD's request. PG&E does not object to ABCSD's participation in this proceeding under Section 2.715(c), but responds to ABCSD's "comments."

## II. DISCUSSION

### A. ABCSD's Participation

The Helenius Declaration states that ABCSD is "a governmental agency that provides water, sewer, street lighting and fire protection and other emergency services" to the community of Avila Beach. Helenius Decl. ¶ 2. The Declaration also indicates that, at an August 13, 2002, meeting, the ABCSD Board of Directors decided to submit a statement to "support the efforts of Supervisor Pinard, AVAC, other interveners [sic] and the Harbor District," and to request interested governmental entity status. Helenius Decl. ¶ 3. Based on this description of ABCSD's status, PG&E does not object to ABCSD's participation as an interested governmental entity. However, ABCSD is subject to the limitations the Commission has imposed with respect to all Section 2.715(c) participants. Specifically, it must comply with all procedural rules and is subject to the same requirements as parties appearing before the Licensing Board. *See 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); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-13, 17 NRC 469, 471 (1983).*

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served upon the Board or the other participants, and PG&E takes the position that the ABCSD Request supersedes the May 17 letter.

<sup>2</sup> *See Avila Beach Community Service District's Comments on Conference Matters; Docket Number 72-26-ISFSI, Transcripts for Pacific Gas & Electric Company (Diablo Canyon Power Plant and Independent, Spent Fuel Storage Installation), dated October 7, 2002 ("October 7 Comments").*

<sup>3</sup> *Pac. Gas & Elec. Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), Memorandum and Order (Schedule Relative to Participation by Additional 10 C.F.R. § 2.715(c) Interested Governmental Entity), slip op. Sept. 27, 2002.*

B. ABCSD's Issues

Any issue proposed by a participating governmental entity, like those proposed by intervenors seeking full party status, must meet the requirements for admissible contentions set forth in 10 C.F.R. § 2.714(b). *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-81-5, 13 NRC 226, 246-47 (1981); *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-99-14, 49 NRC 238, 258 (1999). In its October 7 Comments (at 2), ABCSD stated it did not intend to raise new matters at this time.<sup>4</sup> Accordingly, PG&E assumes that ABCSD will only participate with respect to contentions raised by others and properly admitted by the Licensing Board.<sup>5</sup>

Nonetheless, PG&E believes it necessary to respond to and clarify the record with respect to the offsite emergency preparedness comments of ABCSD. The ABCSD Request states (at 1):

[ABCSD] is the closest community to the plant and lies approximately six miles downwind from the site. Avila Drive is the only direct access route to the plant and any traffic into and out of the plant must travel through the [ABCSD]. During times of serious flooding or other emergencies, the community is essentially trapped with only a precarious road subject to landslides and flooding available to it.

In addition, the Helenius Declaration states, at ¶ 4:

We would also like to apprise you of the fact that when the nuclear power plant was first licensed, you required that a second means of egress be maintained for the safety of this community and that no such secondary method of escape exists. There have been instances in the past two

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<sup>4</sup> ABCSD concedes (October 7 Comments at 2), and we agree, that any new issues raised at this time or in the future would need to meet the requirements for late-filed contentions set forth at 10 C.F.R. § 2.714(d). *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-82-19, 15 NRC 601, 617 (1982).

<sup>5</sup> Moreover, ABCSD's "comments" are not "framed with sufficient detail and preciseness" to meet the procedural requirements for the admission of contentions in this proceeding. *See Gulf States Utils. Co.* (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 768 (1977).

decades that flooding and accident have caused the only existing road to be closed.<sup>6</sup>

Helenius Decl. ¶ 4.<sup>7</sup> PG&E does not concede that these concerns fall within the scope of this proceeding. Issues related to the DCCP Emergency Response Plan (“ERP”) are ongoing operational matters related to the power plant generally. None of the comments are directed at emergency preparedness as it relates to the proposed dry cask storage facility. Accordingly, the comments are beyond the scope of this proceeding.<sup>8</sup>

Further, contrary to the comments, neither NRC emergency planning requirements nor the DCCP ERP requires a “second means of egress” from the offsite community of Avila Beach. It appears that, in its reference to a “required” second egress road, ABCSD is likely confusing offsite roads with an unpaved north road out of the plant, through Montana D’Oro State Park. The DCCP ERP and internal procedures include this north road as an *onsite* evacuation route. This road continues to exist and to be credited in the same manner as

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<sup>6</sup> The ABCSD Request states (at 2) that it has “previously inquired as to the emergency evacuation routes and has requested the Commission’s analysis of the official plans that had been adopted at the time of original plant construction,” in a letter dated April 23, 2002. To our knowledge, such a letter has not been served on the Licensing Board and other participants in this proceeding.

<sup>7</sup> This issue is similar to a sub-issue raised by the Port San Luis Harbor District. *See* Response of Port San Luis Harbor District to Atomic Safety and Licensing Board Order of August 7, 2002, dated August 19, 2002, at 3.

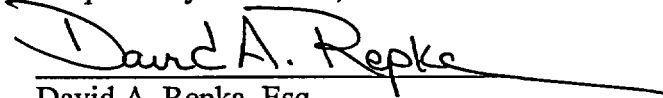
<sup>8</sup> *See* Response of Pacific Gas and Electric Company to Issues Proffered by the County of San Luis Obispo and the Port San Luis Harbor District, dated September 4, 2002, at 3-7.

at the time of licensing.<sup>9</sup> Accordingly, there is no basis for any form of hearing on this concern.<sup>10</sup>

### III. CONCLUSION

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

Respectfully submitted,



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Dated in Washington, District of Columbia  
this 15th day of October 2002

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<sup>9</sup> With respect to offsite roads out of Avila Beach, ABCSD may be under the impression that the offsite "Cave Landing Road" above Pirate's Cove was a second offsite egress route. However, this road from Avila Beach to Shell Beach was never credited in the ERP for public evacuation purposes.

<sup>10</sup> The ABCSD Request also states (at 1): "Especially since the September 11th attack, [ABCSD] is extremely concerned about the potential for an uncontrollable incident resulting in release of spent fuel, with the lack of a substantial structure to protect the spent fuel pool. Any efforts to reconfigure the storage of spent fuel to a dry cask method must take into account not only natural hazards but the potential for malicious intent." This very general statement of concern about security matters does not present an admissible contention, and should be treated by the Board as a general comment on the other proposed security contentions in this proceeding.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY TO REQUEST OF AVILA BEACH COMMUNITY SERVICES DISTRICT TO PARTICIPATE AS AN "INTERESTED PARTY" PURSUANT TO 10 C.F.R. § 2.715(c)" have been served as shown below by electronic mail, this 15th day of October 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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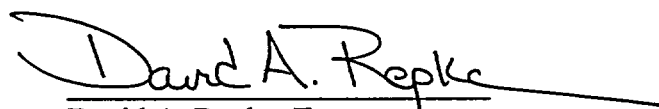
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