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October 18, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
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October 28, 2002 (3:30PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:	)	
	)	Docket No. 72-26-ISFSI
Pacific Gas and Electric Co.	)	
	)	ASLBP No. 02-801-01-ISFSI
(Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)	)	

RESPONSE OF SAN LUIS OBISPO COUNTY TO REQUEST OF AVILA BEACH COMMUNITY SERVICES DISTRICT TO PARTICIPATE AS AN "INTERESTED GOVERNMENT' PURSUANT TO 10 C.F.R. 2.715(c)

San Luis Obispo County ("SLOC") hereby supports the request by the Avila Beach Community Services District ("ABCSD") to participate in this proceeding and to present its issues under 10 C.F.R. § 2.715(c). There is no question that the ABCSD is a governmental agency. As such, it takes the hearing as it finds it and is subject to the procedural rulings by the Atomic and Safety Licensing Board ("Board"). However, as a governmental entity, the substantive criteria applicable to determining the issues that ABCSD can raise are determined by 10 C.F.R. § 2.715(c), as interpreted by the Atomic Safety and Licensing Appeal Board ("Appeal Board") decision in *Gulf States*.[1] ABCSD can raise issues relevant to the proceeding as long as they are presented with sufficient detail and preciseness to permit their adjudication.[2] Those criteria have been met by ABCSD.

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1 *Gulf States Utilities Company* (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760 (1977).

2 SLOC is aware that a Licensing Board has applied the criteria in 10 C.F.R. § 2.714(b) to admit issues in proposed by the Governor of California. *Pacific Gas & Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-81-5, 13 NRC 226,

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ABCSD's issues are relevant because PG&E has introduced the viability of its Emergency Response Plan into issue in this proceeding. Moreover, the addition of a spent fuel storage facility results in the potential for additional accidents of types different from those associated with operation of the power plant. Accordingly, the specific matters raised by ABCSD regarding the continuing viability of the emergency response plan are clearly relevant to this proceeding.

(1981). In that case, the Board relied on the decision in *Gulf States* to apply those criteria and the Governor agreed with the Licensing Board that these were the appropriate criteria in that case. SLOC believes that this Licensing Board applied the wrong criteria because the *Gulf States* decision clearly applied a lesser standard than 10 C.F.R. § 2.714(b) to the admission of issues by governmental agencies. Moreover, the admissibility criteria in 10 C.F.R. § 2.714(b) in 1981, when this decision was issued, were far less stringent than the criteria that obtain today. Because the Commission has not modified 10 C.F.R. § 2.715(c) when it adopted the currently more stringent criteria for the admission of contentions, even if the Licensing Board had not applied the wrong criteria, it applied criteria that are much less stringent than those applicable to the admission of contentions. Indeed, as a result, the Licensing Board admitted several of the Governor's issues under those relaxed criteria. Finally, because the parties in that case agreed to the use of the criteria in 10 C.F.R. § 2.714(b), that decision must be confined to its facts because the issue of the appropriate criteria for the admission of governmental contentions was not properly adjudicated. No party by its concession can agree to permit a Licensing Board to apply criteria not approved by the Commission.

SLOC is also aware of the decision in *Yankee Atomic Electric Company* (Yankee Nuclear Power Station), LBP-99-14, 49 NRC 238 (1999), and considers it inapposite to this case because, while an interested governmental entity in *Yankee Atomic* was permitted to participate in the proceeding under 10 C.F.R. § 2.715(c), that entity only listed "certain areas of interest" about which it wanted to participate. *Id.* at 258. Unlike the present case, it never submitted issues for adjudication with the specificity as required under *Gulf States*. See *id.* Because "areas of interest do not qualify as contentions, [the Commission did] not admit them . . . . See Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 768-769 (1977)." *Id.*

ABCSD's issues are also raised with sufficient detail and preciseness to permit their adjudication. ABCSD has identified specific scenarios and assumptions regarding the ability to exercise the emergency plan under particular circumstances.

Finally, SLOC notes that ABCSD's filing dramatically illustrates the importance of permitting interested governments to raise issues under the Gulf States standard. ABCSD's unique governmental responsibilities enable it to bring to the Commission's attention issues that could otherwise be overlooked by parties who are not so involved with this level of detail related to such focused governmental responsibilities. The refusal to consider such issues in the interests of expediency of the hearing process would result in an incomplete record and, therefore, a decision based on less than all of the relevant facts. While SLOC appreciates the need for an efficient proceeding, it believes that efficiency must not be sacrificed on the altar of self-imposed ignorance by raising inappropriately high barriers on the admission of issues by governmental entities.

For all of these reasons, SLOC supports the admission of ABCDS and its issues.

Respectfully submitted,

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	)	
(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 'Response of San Luis Obispo County to Request of Avila Beach Community Services District to Participate as an "Interested Government' Pursuant to 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 18th day of October 2002.

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Dated at Chicago, Illinois, this 18th day of October, 2002

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