

RAS 5103

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December 12, 2002

DOCKETED
USNRC

December 18, 2002 (11:29AM)

Emile Julian, Director
Rulemakings and Adjudications Staff
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SUBJECT: *Diablo Canyon ISFSI Licensing Proceeding, Docket No. 72-26*

Dear Mr. Julian,

Enclosed for filing please find Motion for Partial Reconsideration of LBP-02-23 by San Luis Obispo Mothers for Peace and Environmental Center of San Luis Obispo, with the supporting Declaration of Pamela M. Heatherington. Due to time constraints, I am filing a faxed copy of Ms. Heatherington's declaration. I will send the original signed declaration as soon as I receive it.

Sincerely,



Diane Curran
Counsel to San Luis Obispo Mothers for Peace

Template = SECY-041

SECY-02

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Unit Nos. 1 and 2
Independent Spent Fuel Storage Installation

Docket # 72-26

December 12, 2002

**MOTION FOR PARTIAL RECONSIDERATION OF LBP-02-23
BY SAN LUIS OBISPO MOTHERS FOR PEACE
AND ENVIRONMENTAL CENTER OF SAN LUIS OBISPO**

The San Luis Obispo Mothers for Peace (“SLOMFP”) and the Environmental Center Of San Luis Obispo (“ECOSLO”) hereby request the Atomic Safety and Licensing Board (“ASLB”) to reconsider that portion of its December 2, 2002, decision which denies intervenor status in this proceeding to ECOSLO. *See* LBP-02-23, Memorandum and Order (Ruling on Standing and Contentions of 10 C.F.R. § 2.714 Petitions and Admission of 10 C.F.R. § 2.715(c) Interested Government Entities and Their Issues at 17-18. In LBP-02-23, the ASLB ruled that standing to intervene in the instant proceeding could be established by residence within a 17-mile radius of the Diablo Canyon nuclear plant. *Id.*, slip op. at 15. The ASLB found that ECOSLO lacked standing because Pamela Heatherington, the individual ECOSLO member on whose declaration ECOSLO relied to establish standing, lived more than 17 miles from the plant.

SLOMFP is acting as lead intervenor in this case, and filed Ms. Heatherington’s declaration on behalf of ECOSLO. Recently, Ms. Heatherington informed SLOMFP that while she lives more than 17 miles from the Diablo Canyon nuclear plant, her office is in downtown San Luis Obispo, which lies within ten miles of the plant. She had not previously provided this information to SLOMFP because she had believed that the location of her workplace was not

relevant for purposes of establishing standing. A new declaration is attached for Ms. Heatherington, which demonstrates that she has standing through the location of her workplace within ten miles of the Diablo Canyon nuclear power plant. *See* Declaration of Pamela M. Heatherington (December 12, 2002). Based on this new information, SLOMFP and ECOSLO jointly seek reconsideration of the ASLB's order denying standing to ECOSLO.

SLOMFP and ECOSLO recognize that the NRC does not ordinarily consider motions for reconsideration which are based on new information. *See Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2)*, LBP-93-21, 38 NRC 143, 145 (1993). However, as the ASLB recognized in *Vogtle*, an exception may be made where reconsideration would not cause unwarranted delay. *Id.* Here, admission of ECOSLO as a named intervenor will not delay the progress of this case, because all of the petitioner organizations, including ECOSLO, have agreed to be represented by SLOMFP in this proceeding. ECOSLO seeks to be included as a named intervenor in order to be able to pursue its interests in the case throughout the entire legal process, including court appeals. If ECOSLO is denied intervention status, it will not have that option.

Respectfully Submitted,



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December 12, 2002

Counsel to San Luis Obispo Mothers for Peace

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of:

PACIFIC GAS & ELECTRIC CO.
(Diablo Canyon Nuclear Power Plant
Unit Nos. 1 and 2)

Docket No. 72-26 - ISFSI

DECLARATION OF PAMELA M. HEATHERINGTON

Under penalty of perjury, I, Pamela M. Heatherington declare as follows:

1. My name is Pamela M. Heatherington. I am executive Director of the Environmental Center of San Luis Obispo. Our office is located at 1204 Nipomo Street, in downtown San Luis Obispo, California. Our office, where I spend about nine hours a day, lies within ten miles of the Diablo Canyon nuclear plant.
2. For the reasons set forth in the Request for Hearing and Petition to Intervene submitted to the NRC by the Environmental Center and the San Luis Obispo Mothers for Peace on May 22, 2002, I am concerned that the construction and operation of a proposed Independent Spent Fuel Storage Installation at the Diablo Canyon Nuclear Power Plant will jeopardize my health and safety.
3. Therefore, I have authorized the Environmental Center of San Luis Obispo to intervene on my behalf in this adjudicatory proceeding. I understand that the interests of the Environmental Center of San Luis Obispo will be represented in the proceeding by the San Luis Obispo Mothers for Peace.


Pamela M. Heatherington

Dated: December 12, 2002

CERTIFICATE OF SERVICE

I certify that on December 12, 2002, copies of the foregoing Motion for Partial Reconsideration of LBP-02-23 by San Luis Obispo Mothers for Peace and Environmental Center of San Luis Obispo were served on the following by electronic mail and/or first-class mail, as indicated below:

Administrative Judge G. Paul Bollwerk, III, Chair Atomic Safety and Licensing Board Panel Mail Stop-T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-00001 By e-mail: gpb@nrc.gov	Stephen H. Lewis, Esq. Angela B. Coggins, Esq. Office of General Counsel Mail Stop – 0-15 D21 U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: shl@nrc.gov , abcl@nrc.gov
Administrative Judge Jerry R. Kline Atomic Safety and Licensing Board Panel Mail Stop-T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-00001 By e-mail to: jrk2@nrc.gov	Thomas D. Green, Esq. Thomas D. Waylett, Esq. Adamski, Moroski & Green, L.L.P. 444 Higuera Street, Suite 300 San Luis Obispo, CA 93401-3875 By e-mail: green@adamskimoroski.com waylett@adamskimoroski.com
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<p>Rochelle Becker San Luis Obispo Mothers for Peace 1037 Ritchie Grover Beach, CA 93433 By e-mail to: beckers@thegrid.net</p>	<p>Secretary of the Commission Attention: Rulemakings and Adjudications Staff U.S. Nuclear Regulatory Commission Washington, D.C. 20555 E-mail: hearingdocket@nrc.gov</p>
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<p>Robert R. Wellington, Esq. Diablo Canyon Independent Safety Committee Office of Legal Counsel 857 Cass Street, Suite D Monterey, CA 93940 dcsafety@dcisc.org</p>	



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