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DOCKETED
USNRC

December 19, 2002 (11:35AM)

December 11, 2002

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)	
)	Docket No. 72-26-ISFSI
PACIFIC GAS & ELECTRIC CO.)	
)	ASLBP No. 02-801-01-ISFSI
(Diablo Canyon Nuclear Power Plant)	
<u>Independent Spent Fuel Storage Installation)</u>)	

MOTION BY THE COUNTY OF SAN LUIS OBISPO UNDER 10 C.F.R. § 2.730(a) FOR REFERRAL TO THE COMMISSION OF THAT PART OF LBP-02-23 THAT AMENDED 10 C.F.R. § 2.715(c) TO IMPROPERLY APPLY TO ISSUES PROFFERED BY INTERESTED GOVERNMENTAL ENTITIES THE CRITERIA IN 10 C.F.R. § 2.714(b) FOR THE ADMISSIBILITY OF CONTENTIONS PROFFERED BY PRIVATE LITIGANTS

Pursuant to 10 C.F.R. § 2.730(a), the County of San Luis Obispo ("County") hereby files this motion requesting the Atomic Safety and Licensing Board's ("ASLB") to refer to the Nuclear Regulatory Commission ("NRC" or "Commission") that part of LBP-02-023¹ which interpreted 10 C.F.R. § 2.715(c) to apply to issues proffered by interested governmental entities the criteria in 10 C.F.R. § 2.714(b) for the admissibility of contentions proffered by private litigants.

Such referral is clearly warranted in this case because only the Commission can address this generic policy matter and determine the appropriate criteria for the admissibility of issues proffered by interested governmental entities in all NRC

¹ Memorandum and Order (Ruling on Standing and Contentions of 10 C.F.R. § 2.714 Petitioners and Admission of 10 C.F.R. § 2.715(c) Interested Governmental Entities and Their Issues), (December 2, 2002).

proceedings.² Moreover, this part of LBP-02-023 affects the basic structure of this proceeding in a pervasive and unusual manner by requiring an interested governmental entity to be treated as a private litigant with regard to issues presented at the start of a hearing. A brief in support of this motion is attached.

Respectfully submitted,



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San Luis Obispo

² See *Connecticut Yankee Atomic Power Company* (Haddam Neck Plant), CLI-01-25, 54 NRC 368, 371 (2001).