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ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING 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>)	

BRIEF IN SUPPORT OF 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

STATEMENT OF JURISDICTION

Pursuant to 10 C.F.R. § 2.730(a), this brief supports the accompanying above-referenced motion for referral to the Nuclear Regulatory Commission ("NRC" or "Commission") of that part of the Atomic Safety and Licensing Board's ("ASLB") decision in 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.

Such referral for prompt decision by the Commission is clearly warranted in this case. Determination of the appropriate criteria for the admissibility of issues proffered by interested governmental entities is a generic policy matter that can fundamentally affect all NRC proceedings. Moreover, this part of LBP-02-023 affects the basic structure of this proceeding in

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a pervasive and unusual manner by requiring an interested governmental entity to be treated as a private litigant with respect to issues proffered at the start of a proceeding. *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-838, 23 NRC 585, 592 (1986). Finally, this aspect of LBP-02-023 is ripe for Commission review because it is a legal determination that has an immediate effect on substantive rights which are a predicate to holding a hearing on specific issues in any licensing proceeding. Nothing about the litigation of issues in this proceeding will affect this legal determination. Accordingly, this aspect of LBP-02-023 should be referred to the Commission.

INTRODUCTION

In LBP-02-023, the ASLB held that the stringent admissibility criteria in 10 C.F.R. § 2.714(b) for contentions proffered by private litigants apply to issues proffered at the start of a hearing by interested governmental entities who seek to participate under 10 C.F.R. § 2.715(c). The basis for this decision was a pastiche of selected NRC decisions and the Commission's policy to increase the efficiency of hearings by raising the threshold for the admission of contentions by private litigants under 10 C.F.R. § 2.714(b). No weight was given by the ASLB to the Commission's long-standing policy of encouraging interested governmental entities to participate in NRC proceedings.

Because the ASLB's decision gave precedence to one of the Commission's policies (expeditious hearings) over another (encouraging governmental participation to ensure a complete record), and because this decision will have a pervasive effect on the participation by governmental entities in all future NRC proceedings, this motion raises an issue that only the Commission can address.

Two other aspects of LBP-02-023 also can only be addressed by the Commission. First, the ASLB usurped the Commission's rulemaking authority by revising 10 C.F.R. § 2.715(c) to incorporate in it the criteria in 10 C.F.R. 2.714(b), contrary to the ASLB's obligation to apply the Commission's rules as written. Only the Commission can revise its rules. Second, the ASLB ignored controlling precedent for the admissibility of issues raised by governmental entities as established by an Atomic Safety and Licensing Appeal Board ("Appeal Board") in the licensing proceeding for River Bend. *Gulf States Utilities Company* (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760-~~1~~(1977) ("*River Bend*"). Now that the Appeal Board has been abolished, only the Commission has the necessary authority to ensure the integrity of its precedents. For all these reasons, referral to the Commission is warranted in this case.

STATEMENT OF THE ISSUES

1. Did the ASLB improperly give greater weight to the Commission's policy of streamlining participation by private parties in the hearing process at the expense of the Commission's longstanding policy of encouraging interested governments to present issues of concern to them?
2. Did the ASLB usurp the Commission's rulemaking authority by substantially modifying 10 C.F.R. § 2.715(c) instead of fulfilling its obligation to apply that regulation as adopted by the Commission?
3. Did the ASLB ignore controlling precedent regarding the criteria applicable to interested governmental entities for the admissibility of issues they proffer?

STATEMENT OF FACTS

The issue of maintaining the special status of governmental entities in NRC proceedings arose during oral argument at the pre-hearing conference on the admissibility of contentions proffered by the County of San Luis Obispo ("County") in this proceeding on Pacific Gas & Electric Company's ("PG&E") application to construct an Independent Spent Fuel Storage

Installation ("ISFSI") at the site of the Diablo Canyon Nuclear Power Plant ("Diablo Canyon"), which is located in San Luis Obispo County. During the September 10-11 prehearing conference in this proceeding, the County questioned the NRC staff's apparent position that issues proffered by an interested governmental entity should be subjected to admissibility criteria established for private litigants. The County stated:

By adopting 2.715(c), the NRC recognized that an interested governmental entity is not equivalent to other private participants in the proceeding, but they have unique contributions to make in the hearing process because of the special roles and responsibilities that they have with respect to the public that holds them in office.

Accordingly, the burden on the parties to raise an issue that then requires a hearing is not an appropriate measure for evaluating the subject matter under which an interested-governmental entity desires to participate. Such a conclusion is also inconsistent with the Commission's performance objective of enhancing public confidence in its proceedings. (September 10, 2002 Transcript at 120-21.)

PG&E had a differing view and the NRC staff proposed to address the question in a filing. In response, on September 17, 2002, the ASLB issued a Memorandum and Order that, among other things, established a schedule for submissions regarding issues proffered by 10 C.F.R. § 2.715(c) interested governmental entities. The NRC staff filed its position on September 25, 2002. On October 9, 2002, positions were filed by PG&E, the County, the California Energy Commission, and the Port San Luis Harbor District. All of the interested governmental entities supported the County's position. On October 18, 2002, the County further addressed the issue in its 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)."

On December 2, 2002, the ASLB issued LBP-02-023, 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). In LBP-02-023, the ASLB held that the stringent admissibility criteria for contentions proffered by private litigants were applicable to interested governmental entities which proffered issues at the start of a hearing under 10 C.F.R. § 2.715(c). This motion for referral followed.

STANDARD FOR DECISION

The Commission's criteria for interlocutory review are immediate and serious irreparable impact on the adversely affected party or pervasive or unusual impact on the basic structure of a proceeding.¹ The Commission's criteria for discretionary review are established by 10 C.F.R. § 2.786(b)(4). Among the factors in that regulation which are relevant here are a "necessary legal conclusion that is without governing precedent or is a departure from or contrary to established law," 10 C.F.R. § 2.786(b)(4)(ii), a "substantial and important question of law, policy or discretion has been raised," 10 C.F.R. § 2.786(b)(4)(iii), and any other consideration which the Commission may deem to be in the "public interest," 10 C.F.R. § 2.786(b)(4)(v). Although the Commission's criteria for discretionary review are not usually considered along with the criteria for interlocutory review, the purely legal nature of the issue presented shows that it will not change as a result of the hearing process and, so, is now ripe for consideration under those criteria.

¹ *Connecticut Yankee Atomic Power Company* (Haddam Neck Plant), CLI-01-25, 54 NRC 368, 371 (2001).

ARGUMENT

I. THE ASLB ERRONEOUSLY OVERRULED THE COMMISSION'S LONGSTANDING POLICY OF ENCOURAGING INTERESTED GOVERNMENTAL ENTITIES TO PARTICIPATE IN NRC PROCEEDINGS

The Commission on many occasions has stated that participation in its hearings by states, counties and other interested governmental entities provides unique, important insights that contribute to a complete record in NRC proceedings.² To promote the realization of these benefits, the NRC has encouraged participation by interested governmental entities by adopting 10 C.F.R. § 2.715(c).

Nowhere in its decisionmaking process as documented in LBP-02-023, does the ASLB acknowledge the Commission's repeated statements regarding the value of participation by interested governmental entities. Rather, the ASLB has determined that expediency in the hearing process overcomes this long-established Commission policy. By requiring interested governments to show that issues they present at the start of a hearing meet the more stringent admissibility criteria in 10 C.F.R. § 2.714(b) for private litigants, the ASLB has acted contrary to Commission policy and precedent.

Not only does this decision deprive the Commission of insights which the Commission has declared valuable on several occasions, but it also seriously undermines the Commission's dedication to enhancing public confidence through increasing public participation in NRC proceedings. Therefore, this ASLB decision squarely faces the Commission with a policy

² 43 Fed. Reg. 17798 (1978); *Public Service Company of New Hampshire* (Seabrook Station, Units 1&2), CLI-77-25, 6 NRC 535 (1977); *Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Units 1 and 2), CLI-99-30, 50 NRC 333, 3334 (1999); *Power Authority of the State of New York, et al.* (James FitzPatrick Nuclear Power Plant; Indian Point Unit 3), CLI-00-22, 52 NRC 266, 295 (2000);

decision of either upholding its prior special treatment of governmental entities because of their special knowledge and governmental responsibilities or breaking with that history by substantially modifying 10 C.F.R. § 2.715(c) to obliterate the distinction between it and 10 C.F.R. § 2.714(b).

To support its decision, the ASLB raises a parade of horrors. In particular, the ASLB suggested that an asymmetry would arise in the level of evidence that would be required to support or rebut an issue raised by an interested governmental entity: an interested governmental entity would not be required to meet the rigorous standards for contentions by private parties but private parties and the NRC staff would be required to respond to interested government's issue with the level of evidence needed to respond to a contention. This concern is clearly misplaced because the ASLB has confused the criteria for admitting an issue with the criteria for proving an issue.

Moreover, this concern was addressed by the Appeal Board over twenty-five years ago. In ALAB-329,³ the Appeal Board stated:

However, if a state chooses to do so, it must do so in [a] timely and specific manner. The issues raised must be narrow and specific enough to be amenable to adjudication in a licensing proceeding and give a fair opportunity to other parties to know precisely what the limited issues, exactly what proof, evidence or testimony is required to meet that issue and exactly what support the State intends to adduce for its allegations. *Gulf States*, ALAB-329, 3 NRC at 610.

Similarly misplaced are the ASLB's concerns that admitting issues under 10 C.F.R. § 2.715(c) would undermine the purposes of 10 C.F.R. § 2.714(b) and remove the incentives for governmental entities to participate in proceedings as full intervenor parties. The purpose of 10

³ *Gulf States Utilities Company*, (River Bend Station, Units 1 and 2), ALAB-329, 3 NRC 607 (1976).

C.F.R. § 2.714(b) is to limit the issues that can be presented by private parties. Those purposes don't apply to interested governmental entities because they have unique knowledge of interest to the Commission and unique roles as guardians of public safety, health and welfare for the communities in which NRC-licensed facilities are located. As for removing the incentives to participate as full intervenor parties, 10 C.F.R. § 2.715(c) does not provide for discovery and other processes that are available under 10 C.F.R. § 2.714(b). Therefore, if an interested governmental entity wants to pursue an issue with the full rights of a party, that entity will have the incentive to submit contentions that meet 10 C.F.R. § 2.714(b).

As for the ASLB's concern about avoiding the litigation of unsubstantiated issues, this concern was answered in *River Bend*. In that decision, the Appeal Board established what it believed were adequate criteria to ensure that an interested government's issues were litigable. The ASLB is bound by that decision and is not free to ignore it, as it has.

As the foregoing discussion shows, the ASLB decision in LBP-02-023 results in a pervasive or unusual impact on the basic structure of all NRC proceedings and involves a "necessary legal conclusion that is without governing precedent or is a departure from or contrary to established law," 10 C.F.R. § 2.786(b)(4)(ii), raises a substantial question of policy, 10 C.F.R. § 2.786(b)(4)(iii), and affects interest by limiting the rights of the public's representative to participate in NRC proceedings, 10 C.F.R. § 2.786(b)(4)(v). Accordingly, this aspect of LBP-02-032 should be referred to the Commission.

II. THE ASLB USURPED THE COMMISSION'S RULEMAKING AUTHORITY BY SUBSTANTIALLY AMENDING 10 C.F.R. § 2.715(c) INSTEAD OF APPLYING IT AS ADOPTED BY THE COMMISSION

It is hornbook law that the ASLB must apply the Commission's regulations as adopted. Only the Commission has the statutory authority to promulgate rules and to amend them. Although the ASLB can interpret rules where they are ambiguous, it cannot rewrite rules through interpretation. However, a review of the ASLB's decision shows that it has rewritten 10 C.F.R. § 2.715(c) by importing into it the admissibility criteria in 10 C.F.R. § 2.714(b). Because such a rewrite can only be authorized by the Commission, and this rewrite has such a pervasive effect on all NRC hearings, this aspect of the decision in LBP-02-023 should be referred to the Commission for its review.

That the ASLB has rewritten 10 C.F.R. § 2.715(c) is clear from its own analysis of the situation. It recognized, but did not factor into its decision, that the Commission did not amend 10 C.F.R. § 2.715(c) when it amended 10 C.F.R. § 2.714(b) on August 11, 1989. 54 Fed. Reg. 33168. Nevertheless, the ASLB interpreted 10 C.F.R. § 2.715(c) as if the Commission had amended it in parallel with its amendment of 10 C.F.R. § 2.714(b).

In a similar manner, the ASLB also failed to acknowledge that the Commission's proposed revisions to the hearing rules⁴ preserve the essence of 10 C.F.R. § 2.715(c). Proposed new 10 C.F.R. § 2.315(c) provides, in pertinent part: "The presiding officer may require the representatives [of interested governmental entities] to indicate with reasonable specificity, in advance of the hearing, the subject matters on which each representative desires to participate." 66 Fed. Reg. at 19639. Only if an interested governmental entity desires to participate as a party

⁴ 66 Fed. Reg. 19610 (April 16, 2001).

must it meet the proposed new contention criteria in 10 C.F.R. § 2.309(d)(2)(ii). 66 Red. Reg. at 1936. Thus, the Commission's proposed amendments to the hearing process would retain the special status afforded to interested government entities to identify issues under the criteria established in *River Bend*, contrary to the results of the ASLB's decision.

The ASLB also acknowledged that, on its face, 10 C.F.R. § 2.715(c) does not indicate the level of specificity with which interested governmental entities must plead their issues and that 10 C.F.R. § 2.714(b) nowhere mentions interested governmental entities. Accordingly, the ASLB looked to NRC precedent for guidance on how this aspect of 10 C.F.R. § 2.715(c) had been interpreted. Slip op. at II.C.3. a.⁵

Where the ASLB went wrong is how it analyzed this precedent and applied the results of that analysis. As shown below in detail in Section III, the ASLB's analysis ignored the controlling Appeal Board precedent in *River Bend* and erroneously relied on inapposite ASLB decisions to attempt to show that the NRC had consistently interpreted 10 C.F.R. § 2.715(c) to include the admissibility criteria in 10 C.F.R. 2.714(b). But even if the ASLB had convincingly demonstrated that other ASLBs had interpreted 10 C.F.R. § 2.715(c) as claimed, such a showing would not have sufficed to support the amendment to 10 C.F.R. § 2.715(c). Inferior boards cannot modify Commission rules. None of the ASLB decisions relied on by this ASLB were ever affirmed by the Commission on this issue. Thus, these decisions cannot amend the Commission's rules

For these reasons, this aspect of LBP-02-023 results in a pervasive or unusual impact on the basic structure of all NRC proceedings and is a departure from and contrary to established

⁵ References are not given to page numbers because the ASLB's Word Perfect version of its decision has been transformed into a Word version for which the pagination may differ.

law, 10 C.F.R. § 2.786(b)(4)(ii), and raises a substantial and important question of law. Accordingly, this aspect of LBP-02-023 should be referred to the Commission.

III. THE ASLB IGNORED CONTROLLING PRECEDENT ESTABLISHED BY THE APPEAL BOARD IN THE *RIVER BEND* PROCEEDING

In analyzing NRC precedent, the ASLB completely ignored the controlling, relevant precedent established by the Atomic Safety and Licensing Appeal Board (“Appeal Board”) in *River Bend*. As the Commission’s intermediate appellate panel, the Appeal Board’s decision is controlling on the ASLB. In addressing the admissibility of issues proposed to be raised by a state more than a year after the proceeding had begun and beyond those already in the case, the Appeal Board said:

As pointed out by the Appeal Board in ALAB-317 ([cf., 3 NRC at 180, n. 7]), an ‘interested State’ is not, by reason of that status, relieved of the obligation of complying with all procedural rules, and it is subject to all the same requirements which must be observed by other parties appearing before the Board. The State has now been actively participating in this proceeding for over a year. Accordingly, and to avoid proceeding by way of ‘surprise,’ the State has been advised that it must apprise the Board and all parties [within a given period] of precisely what additional issues or particular concerns it believes are directly related, i.e., relevant, to the radiological health and safety phase of this construction permit application and this particular proposed plant, beyond the contested issue already in the case. They [the additional issues] need not be in the form of specific contentions, but they must be issues that are relevant, material and narrow enough to permit evidentiary determination in an adjudicatory setting. (See Tr. 1366- 1367, 1370-1371.). *River Bend*, ALAB-444, 6 NRC at 769-70 (*emphasis supplied; citations to transcript omitted*).

The foregoing quote shows that the Appeal Board explicitly addressed the very issue of concern here, *i.e.* the admissibility criteria applicable to new issues proffered by an interested governmental entity. With regard to such issues, the Appeal Board held that they need not be contentions but are subject to three admissibility criteria: (1) relevance; (2) materiality; and (3) narrowness sufficient to permit evidentiary determination in an

adjudicatory setting. This holding was squarely presented to the ASLB in the County's brief but was totally ignored. Instead, the ASLB misread the decision in *River Bend* and relied on three ASLB decisions which are clearly distinguishable.

First, the ASLB quoted from *River Bend* that once admitted as a section 2.715(c) participant, "an 'interested state' must observe the procedural requirements applicable to other participants." *River Bend*, ALAB-444, 6 NRC at 768. As can be seen from the preceding quote, what this means in this case is the discussion that followed the word "Accordingly." That discussion includes the three admissibility criteria enumerated above. It does not include a reference to 10 C.F.R. § 2.714(b).⁶

Moreover, the Appeal Board in *River Bend* also stated that, "The Board is entitled to insist, however, that any new issue raised be framed with sufficient detail and preciseness. Cf. 10 C.F.R. § 2.714(a)." *Id.* The Appeal Board would not have used a Cf. if it believed Section 2.714(a), the precursor to today's Section 2.714(b), applied directly to evaluating admission of an interested government.

Finally, whatever the scope of the Appeal Board's statement may be, the basic principles of administrative law do not permit this statement by an inferior board to overrule Commission rules. Because 10 C.F.R. § 2.714(b), by its terms, does not apply to interested governmental

⁶ That the need to observe procedural requirements is somewhat flexible for interested governmental entities was discussed in *Houston Lighting and Power Company*, (South Texas Project, Units 1 and 2), LBP-83-26, 17 NRC 945 (1983). The ASLB stated: "Although an interested State must observe applicable procedural requirements, including time limits, the facts and circumstances which would constitute 'good cause' for extending the time available to a State may not be co-extensive with those warranting that action for another party. The Commission itself has recognized such factors, and it has permitted States to participate even where contrary to a procedural requirement which may bar another party's participation." *Houston Lighting and Power Company*, 17 NRC at 947.

entities, an Appeal Board could not modify the regulations to reach the opposite conclusion. Only the Commission could modify the regulations, as it has proposed to do. 66 Fed. Reg. 19610 (April 16, 2002).

Second, the *Shoreham*⁷ decision does not support the ASLB's position. *Shoreham* was clearly an unusual circumstance involving contentions that were filed more than a year after the hearing had begun. Thus, in *Shoreham*, the issue was the admissibility criteria for issues filed late by an interested government. In this case there is no question that the County has proffered its issues on time.

Although the interested government in *Shoreham* had been participating as a full party, it also argued that its late-filed contentions should not be subjected to the admissibility criteria for late-filed contentions if they were proffered by it as an interested governmental entity. The ASLB rejected that distinction but noted that the last sentence in 10 C.F.R. § 2.715(c) requires an interested governmental entity to "indicate with reasonable specificity, in advance of the hearing, the subject matters on which [it] desires to participate." Therefore, late-filed contentions are clearly not governed by 10 C.F.R. § 2.715(c). In the absence of explicit guidance on how to treat late-filed contentions proffered by an interested governmental entity, the ASLB turned to the general criteria for late filed contentions. Without taking a position on whether this decision by the ASLB was correct, the County simply notes that this decision does not apply to the issues which it proffered in a timely manner to the ASLB "in advance of the hearing."

⁷ *Long Island Lighting Company* (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132 (1983) ("*Shoreham*").

Third, the *Diablo Canyon*⁸ proceeding involved a situation in which the Governor of California agreed with the ASLB's reading of *River Bend*, a reading which the County challenged in detail in its filing of October 18, 2002. In particular, the County noted that the ASLB's imposition of the admissibility criteria in 10 C.F.R. § 2.714(a) did not support this ASLB's decision for several reasons. The admissibility criteria under 10 C.F.R. § 2.714(a) at that time were far less stringent than they have become since the Commission amended 10 C.F.R. § 2.714(b) and were far more consistent with the criteria established in *River Bend*. Indeed, several of the Governor's contentions were admitted under these criteria. More importantly, because the parties in that proceeding agreed to the use of the criteria in 10 C.F.R. § 2.714(a) the issue of the appropriateness of the application of Section 2.714 criteria to a contention proffered by a Section 2.715(c) participant was not litigated in the *Diablo Canyon* proceeding. Finally, because the *Diablo Canyon* is clearly based on a misreading of the decision in *River Bend*, it is plain wrong. Accordingly, it should be confined to its facts.

Fourth, the *Seabrook*⁹ decision was characterized as providing "some support" for applying 10 C.F.R. 2.714(b) to interested governmental entities even though it, too, addressed an unusual situation that arose well after a proceeding was underway. Slip op. at II.C.3.a. *Seabrook* also involved an attempt by an interested governmental entity to adopt an issue dropped by another intervenor long after the proceeding had begun. Thus, this case also is inapposite to the situation here and, so, does not provide any support for the ASLB's assertion that, "This post-1989 rule change determination provides some support for holding interested

⁸ *Pacific Gas & Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-81-25, 13 NRC 226 (1981).

⁹ *Public Service Company of New Hampshire*, (Seabrook Station, Units 1 and 2), LBP-90-12, 31 NRC 427 (1990).

governmental entities to the contention admissibility standards of Section 2.714(b) for any new issues they wish to litigate.” Slip op. at II.C.3.a.

For these reasons, this aspect of LBP-02-023 results in a pervasive or unusual impact on the basic structure of all NRC proceedings and is a departure from and is contrary to established law, 10 C.F.R. § 2.786(b)(4)(ii) and should be referred to the Commission.

CONCLUSION

For all of the foregoing reasons, the ASLB should refer this issue to the Commission for its review and decision.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
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PACIFIC GAS & ELECTRIC CO.)	Docket No. 72-26-ISFSI
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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 "Brief in Support of 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" have been served upon the following persons by United States mail, first class; and by electronic mail as indicated by an asterisk (*) on this 11th day of December 2002.

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