

RAS 5151

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 12/27/02
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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

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

December 27, 2002

NOTICE OF HEARING

(Application to Construct and Operate an
Independent Spent Fuel Storage Installation)

This proceeding concerns the December 21, 2001 application of Pacific Gas and Electric Company (PG&E) under 10 C.F.R. Part 72 for permission to construct and operate an independent spent fuel storage installation (ISFSI) at its Diablo Canyon Power Plant (DCPP) site near San Luis Obispo, California. On April 12, 2002, the NRC staff issued a notice that the agency is (1) considering this license amendment application; and (2) affording the opportunity for an adjudicatory hearing on the PG&E application. That notice was published in the Federal Register on April 22, 2002. (67 Fed. Reg. 19,600 (Apr. 22, 2002).) Responding to the April 2002 notice of opportunity for a hearing, various petitioners, including the San Luis Obispo Mothers for Peace (SLOMFP), which by consent is acting as a lead petitioner, Peg Pinard, the Avila Valley Advisory Council, and nine other organizations, including the Santa Lucia Chapter of the Sierra Club, San Luis Obispo Cancer Action Now, the Cambria Legal Defense Fund, the Central Coast Peace and Environmental Council, the Environmental Center of San Luis Obispo, Nuclear Age Peace Foundation, the San Luis Obispo Chapter of Grandmothers for Peace

International, Santa Margarita Area Residents Together, and the Ventura County Chapter of the Surfrider Foundation filed timely requests for hearing and petitions to intervene in accordance with 10 C.F.R. § 2.714 that, as supplemented, seek to interpose various joint contentions challenging the application. In response to those hearing requests, on May 29, 2002, the Secretary of the Commission referred the petitions to the Atomic Safety and Licensing Board Panel to conduct any subsequent adjudication. On May 31, 2002, this Licensing Board was appointed to preside over this proceeding. (67 Fed. Reg. 39,073 (June 6, 2002).) The Board consists of Dr. Jerry R. Kline, Dr. Peter S. Lam, and G. Paul Bollwerk, III, who serves as Chairman of the Board. In addition, San Luis Obispo County, California (SLOC), the Port San Luis Harbor District (PSLHD), the California Energy Commission, the Diablo Canyon Independent Safety Committee (DCISC), and the Avila Beach Community Services District (ABCSD) filed requests to participate in any hearing as interested governmental entities in accordance with 10 C.F.R. § 2.715(c) and, in the case of SLOC and PSLHD, proffered particular issues they wished to have litigated in the proceeding.

Beginning on September 10, 2002, the Board conducted a two-day initial prehearing conference, during which it heard oral presentations regarding the standing of each of the petitioners, the participation of DCISC as an interested governmental entity, and the admissibility of the eight contentions and four issues raised by the section 2.714 intervenors and section 2.715(c) interested governmental entities SLOC and PSLHD. Additionally, in response to an appearance at the initial prehearing conference by an ABCSD representative regarding the status of a request for admission as a section 2.715(c) participant that it previously had submitted to the agency, the Board requested that ABCSD resubmit such a request directly to the Board, which it subsequently did, stating that it did not have any new issues it wished to raise on its own. Thereafter, in a December 2, 2002 issuance the Board

ruled on the various outstanding matters, concluding that (1) although some of the section 2.714 petitioners lacked standing, the remainder not only fulfilled that jurisprudential requirement, but also set forth one admissible contention so as to warrant admission as parties, with SLOMFP as the lead intervenor; and (2) with the exception of DCISC, section 2.715(c) interested government entity status should be afforded to those requesting that designation, but that the SLOC and PSLHD-proffered issues did not meet the section 2.714 standards governing contention admissibility. (Pacific Gas and Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC __ (Dec. 2, 2002), requests for partial referral and reconsideration denied, LBP-02-25, 56 NRC __ (Dec. 26, 2002).)

In light of the foregoing, please take notice that a hearing will be conducted in this proceeding. This hearing will be governed by the formal hearing procedures set forth in 10 C.F.R. Part 2, Subpart G (10 C.F.R. §§ 2.700-.790), subject to the election that has been made by applicant Pacific Gas & Electric Company and the NRC staff to utilize the hybrid hearing procedures in 10 C.F.R. Part 2, Subpart K (10 C.F.R. §§ 2.1101-.1117).

During the course of the proceeding, the Board may conduct an oral argument, as provided in 10 C.F.R. §§ 2.755, 2.1113, may hold additional prehearing conferences pursuant to 10 C.F.R. § 2.752, and may conduct evidentiary hearings in accordance with 10 C.F.R. §§ 2.750-.751, 2.1115. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing. Notices of those sessions will be published in the Federal Register and/or made available to the public at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC web site, www.nrc.gov.

Additionally, as provided in 10 C.F.R. § 2.715(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position

on the issues in this proceeding. These statements do not constitute evidence, but may assist the Board and/or parties in defining the issues being considered. Persons wishing to submit a written limited appearance statement should send by mail to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC. 20555-0001, Attention: Rulemakings and Adjudications Staff or by e-mail to hearingdocket@nrc.gov. A copy of the statement also should be served on the Chairman of this Atomic Safety and Licensing Board by mail to the Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001 or by e-mail to gpb@nrc.gov. At a later date, the Board may entertain oral limited appearance statements at a location or locations in the vicinity of the Diablo Canyon facility. Notice of any oral limited appearance sessions will be published in the Federal Register and/or made available to the public at the NRC PDR and on the NRC website, www.nrc.gov.

Documents relating to this proceeding are available for public inspection at the Commission's PDR or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC web site at www.nrc.gov/reading-rm/adams.html (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in

ADAMS should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr@nrc.gov.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

December 27, 2002

* Copies of this notice of hearing were sent this date by Internet e-mail transmission to counsel for (1) applicant PG&E; (2) petitioners SLOMFP, et al.; (3) SLOC, PSLHD, CEC, ABCSD, and DCISC; and (4) the staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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PACIFIC GAS AND ELECTRIC CO.) Docket No. 72-26-ISFSI
DIABLO CANYON POWER PLANT)
)
(Independent Spent Fuel Storage)
Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB NOTICE OF HEARING (APPLICATION TO CONSTRUCT AND OPERATE AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 27th day of December 2002