

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

RESPONSE OF NRC STAFF TO MOTION REGARDING BOARD’S RULING
ON STANDING OF THE ENVIRONMENTAL CENTER OF SAN LUIS OBISPO

INTRODUCTION

On December 2, 2002, the Atomic Safety and Licensing Board (“Board”) issued a “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,” LBP-02-23, 56 NRC___ (“Order”). On December 12, 2002, lead intervenor, San Luis Obispo Mothers for Peace (“SLOMFP”) filed on its own behalf and the behalf of the Environmental Center of San Luis Obispo (“ECSLO”) a “Motion for Partial Reconsideration of LBP-02-23 by San Luis Obispo Mothers for Peace and Environmental Center of San Luis Obispo,” (“Motion”). The Motion requests that the Board reconsider its denial of the intervention petition of ECSLO on the basis of additional information provided in a supplemental affidavit of one of its members. As developed below, the NRC staff (“Staff”) does not object to ECSLO’s admission as an intervenor in this proceeding, with SLOMFP continuing to represent it.¹

¹ The Staff had previously addressed SLOMFP as the petitioner for intervention on its own behalf and the behalf of other identified organizations and individuals including ECSLO. The Staff had supported the admission of SLOMFP, *et. al.*, as an intervenor. “NRC Staff’s Response to Requests for Hearing and Petitions to Intervene Filed by ... San Luis Obispo Mothers for Peace...,” May 30, 2002, at 6-7.

DISCUSSION

The Board's denial of admission of ECSLO as an intervenor was based upon the insufficiency of the facts before it: that ECSLO member Pamela Heatherington resided within 30 miles of the Diablo Canyon Power Plant ("DCPP") and that she was concerned for her safety, that of her family, and the value of her property based upon the proposed construction and operation of an Independent Spent Fuel Storage Installation ("ISFSI") at the DCPP site. LBP-02-23, *slip op.* at 18-19. The Board was using as its guide in determining the proximity of a petitioner, or a member of an organizational petitioner, that would establish presumptive standing, the 17 mile criterion enunciated in a spent fuel pool expansion proceeding. *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), LBP-99-25, 50 NRC 25, 29-31. The information initially provided by ECSLO, therefore, did not support its requested party status. Attached to the Motion, however, is a supplemental affidavit of Ms. Heatherington stating that her place of business, where she spends approximately nine hours per day, is in downtown San Luis Obispo within ten miles of the DCPP. A finding of necessary proximity may be based upon the location of a person's normal, everyday activities, such as his workplace. *Gulf States Utilities Co.* (River Bend Station, Units 1 & 2), ALAB-183, 7 AEC 222, 226 (1974); *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-91-2, 33 NRC 42, 47 (1991). Based upon the supplemental information provided by Ms. Heatherington, ECSLO meets the criteria for intervenor status in this proceeding.

CONCLUSION

For the reasons stated above, the Staff submits that the Motion should be granted and that ECSLO should be admitted as an intervenor in this proceeding, represented by SLOMFP.

Respectfully submitted,

/RA/

Stephen H. Lewis
Counsel for NRC Staff

Dated at Rockville, Maryland
this 19th day of December, 2002.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "RESPONSE OF NRC STAFF TO MOTION REGARDING BOARD'S RULING ON STANDING OF THE ENVIRONMENTAL CENTER OF SAN LUIS OBISPO" have been served upon the following persons by United States mail, first class, or through the Nuclear Regulatory Commission's internal mail distribution as indicated by an asterisk (*); and by electronic mail as indicated by a double asterisk (**) on this 19th day of December, 2002.

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