

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

NRC STAFF RESPONSE TO "REQUEST OF CALIFORNIA PUBLIC UTILITIES
COMMISSION TO PARTICIPATE AS OF RIGHT UNDER 2.715(C)" AND MOTION OF
CEC, SLOC, ABCSD, AND CPUC TO PROVIDE JOINT RESPONSES TO DISCOVERY

INTRODUCTION

On January 28, 2003, the California Public Utilities Commission ("CPUC") filed a "Request...to Participate as of Right under 2.715(c)" ("Request") in this proceeding. On that same date, the three existing 10 C.F.R. § 2.715(c) participants in this proceeding,¹ joined by CPUC, filed a "Motion...to Provide Joint Responses to Discovery" ("Motion"). By Order (Schedule for Responding to Motions), dated January 29, 2003, the Atomic Safety and Licensing Board ("Board") directed that responses to the Request and Motion be filed by February 4, 2003. Based upon the CPUC's representations in the Request, the NRC staff ("Staff") does not object to the CPUC's participation in this proceeding as a 10 C.F.R. § 2.715(c) interested governmental entity. Nor does the staff oppose the Motion.

DISCUSSION

This proceeding is in the discovery stage under 10 C.F.R. Part 2, Subpart K. The CPUC states that it was only within the last several weeks that the CEC, and the other section 2.715(c)

¹The three existing participants under section 2.715(c) are: the County of San Luis Obispo ("SLOC"), the Avila Beach Community Services District ("ABCSD"), and the California Energy Commission ("CEC").

participants in this proceeding approached the CPUC with the request that the CPUC provide an expert to prepare and sponsor the “sworn written testimony or other sworn written submission” that each party is required to file under 10 C.F.R. § 2.1113 prior to oral argument. The CEC, SLOC, and ABCSD have indicated that they jointly intend to rely upon an expert from the CPUC in support of their oral arguments under section 2.1113.² This position is also supported by their Motion which is the subject of this response. The CPUC commits to accept the proceeding in its current state and to only seek to participate on the one admitted issue.³ Under these circumstances, the Staff does not object to the CPUC’s admission into this proceeding as an additional 10 C.F.R. § 2.715(c) participant.

In view of the Staff’s position that the CPUC should be admitted, the Staff also does not oppose the Motion of the three existing section 2.715(c) participants, joined by the CPUC, to provide joint responses to the discovery propounded by the Staff. As noted above, the discovery responses were, in fact, filed jointly.

CONCLUSION

For the reasons developed above, the Staff does not oppose the Request or the Motion.

Respectfully submitted,

/RA/

Stephen H. Lewis
Counsel for NRC Staff

Dated at Rockville, Maryland
this 4th day of February, 2003

²See CEC’s, ABCSD’s, CPUC’s, and SLOC’s “Response to NRC Staff’s Interrogatories and Request for Production,” dated January 31, 2003, Response to Interrogatory 3.

³Request, at 4.

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Spent Fuel Storage Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF RESPONSE TO "REQUEST OF CALIFORNIA PUBLIC UTILITIES COMMISSION TO PARTICIPATE AS OF RIGHT UNDER 2.715(C)" AND MOTION OF CEC, SLOC, ABCSD, AND CPUC TO PROVIDE JOINT RESPONSES TO DISCOVERY" 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 4th day of February, 2003.

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Dated at Rockville, Maryland
this 4th day of February, 2003