

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)
)
PACIFIC GAS AND ELECTRIC CO.,)
DIABLO CANYON POWER PLANT)
)
(Independent Spent Fuel Storage Installation))
)
)
)

Docket No. 72-26 - ISFSI

REQUEST OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION
TO PARTICIPATE AS OF RIGHT UNDER 2.715(c)

The California Public Utilities Commission ("CPUC") respectfully requests to participate as an "interested state party," pursuant to 10 C.F.R. § 2.715(c), in the Nuclear Regulatory Commission ("Commission" or "NRC") proceeding concerning the Pacific Gas & Electric Company's ("PG&E") issuance of a license under the provisions of 10 C.F.R. Part 72 to store spent fuel and radioactive material in an Independent Spent Fuel Storage Installation ("ISFSI") to be constructed and operated within the state of California on site at the Diablo Canyon Nuclear Power Plant ("DCPP") (Docket No. 72-26-ISFSI; Proceeding No. 02-801-01-ISFSI).

Based on intervention petitions already filed in this matter,¹ a hearing has been granted on the issue of the current financial qualifications of the applicant, PG&E, in light of its pending bankruptcy.² The CPUC is the agency of the State of California with the primary responsibility to oversee the financial condition of PG&E, a public utility directly subject to the CPUC's

¹ These petitions were filed in response to the Commission's "Notice of Docketing, Notice of Proposed Action, and Notice of Opportunity for a Hearing for a Materials License for the Diablo Canyon Independent Spent Fuel Storage Installation" (67 Fed. Reg. 19,600 (April 22, 2002)).

² See the Board's Memorandum and Order in this proceeding, dated December 2, 2002.

jurisdiction. The CPUC accordingly has the broadest expertise to be able to address this question on which the Board has determined to hold hearings.

While the CPUC does not oppose the issuance of an ISFSI license to PG&E, upon a showing of adequate financial qualification as required by the Commission, the issue to be heard in this proceeding necessarily addresses a question that is of mutual concern both to the Commission and to the CPUC. Accordingly, the CPUC seeks to participate in this matter and to take a position on this one issue that will be heard.

The CPUC is aware that the Federal Register Notice for the above-captioned proceeding was released on April 22, 2002, and that petitions to intervene or request a hearing should have been filed within 30 days of that date. The CPUC did not initially file during this time frame, because the California Energy Commission ("CEC") has been the State of California's State Liaison Officer to the Commission since 1983 and coordinates California agencies' policy positions in NRC and other federal proceedings regarding nuclear matters that affect the State of California.

It was only several weeks ago, in early January of this year, that the CEC and other interested California governmental agencies that had petitioned to participate in this proceeding informed the CPUC staff that the one issue on which the Board had granted a hearing in this matter was an issue within the particular expertise of the CPUC, and those agencies accordingly requested the CPUC to provide appropriate witnesses to testify on that issue. The CPUC has agreed to provide such witnesses.

Since the hearing that the Board has determined to hold in this matter will involve an issue that directly affects the interests of the CPUC, the CPUC seeks to participate in the

proceedings as an interested state party, in coordination with the CEC and the other interested governmental parties who have already been granted the right to participate.

The Atomic Energy Act, 42 U.S.C. § 2021, Title 10 of the C.F.R. § 2.715(c), and numerous Commission decisions recognize the importance of an interested state's participation in Commission proceedings. The Commission has long recognized the benefits of participation in its proceedings by interested states, counties and local governments. *Power Auth. of N.Y.* (James A. FitzPatrick Nuclear Power plant; Indian Point, Unit 3), CLI-00-22, 52 NRC 266, 295 (2000), quoting *Niagara Mohawk Power Corp.* (Nine Mile Point Nuclear Station, Units 1 and 2), CLI-99-30, 50 NRC 333, 334 (1999); *Houston Lighting and Power Co.* (South Texas Projects Units 1 and 2), LBP-83-26, 17 NRC 945, 947 (1983).

Moreover, it has long been the practice in proceedings before the NRC to admit more than one state agency and/or representative on the grounds that different agencies and representatives of states bring different points of view to proceedings. *Consolidated Edison Company of New York* (Indian Point, Unit No.2), *Power Authority of the State of New York* (Indian Point, Unit No.3), LBP-82-25, 15 NRC 715, 719 (1982).

Finally, Commission case law supports the CPUC's petition to participate. In *Pacific Gas & Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 &2), ALAB-600, 12 NRC 3, 8 (1980), the Governor was allowed to enter the proceeding at a late date, after certain issues had already been decided, for the purposes of addressing issues that were still open. Moreover, in *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-83-13, 17 NRC 469, 471-72 (1983), the Board stressed the importance of the late participant's participation in the coordination by the interested governments which already were in the proceeding. This is identical to the situation in which the CPUC finds itself in this proceeding,

namely, the CPUC's participation will directly facilitate the coordination and presentation by the interested governments that are already in the proceeding of the issue that the Board has admitted for hearing, namely, the current financial qualifications of the applicant, PG&E, in light of its current bankruptcy.

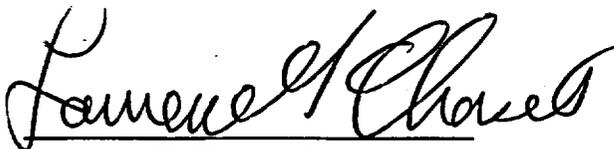
The CPUC believes that no undue prejudice to any party in this matter will result from its being permitted to participate in this proceeding as an interested governmental entity. The CPUC accepts the record of the proceeding to date in its current state, and only seeks to participate on the one issue that the Board has approved for hearing. Moreover, the witnesses to be presented on this issue by the other interested governmental agencies that are already participating in this matter will be provided by the CPUC.

For the reasons stated above the CPUC requests to be designated an "interested state party" for purposes of participating in the above-captioned proceedings.

Dated: January 28, 2003 .

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing REQUEST OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION TO PARTICIPATE AS OF RIGHT UNDER 2.715(c) have been served upon the following persons by U.S. mail, first-class, postage pre-paid.

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Dated at San Francisco, California, this 28th day of January, 2003

/s/ Laurence G. Chaset

Laurence G. Chaset

Pursuant to the Applicant's request in Section 1.7 of the Application, additional "courtesy" copies will be transmitted to:

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