

RELATED CORRESPONDENCE

January 31, 2003

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

February 10, 2003 (11:05AM)

OFFICE OF 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

ASLBP No. 02-801-01-ISFSI

**SAN LUIS OBISPO MOTHERS FOR PEACE ET AL'S RESPONSE TO
PACIFIC GAS AND ELECTRIC COMPANY'S FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Intervenors, San Luis Obispo Mothers for Peace, Santa Lucia Chapter of the Sierra Club, San Luis Obispo Cancer Action Now, Peg Pinard, Avila Valley Advisory Council, and Central Coast Peace and Environmental Council hereby respond to Pacific Gas & Electric Company's First Set of Interrogatories and Request for Production of Documents (January 17, 2003).

At the outset, Intervenors wish to point out that, as discussed in response to Interrogatories 2 and 4, Intervenors do not expect to provide sworn affidavits or declarations by any witnesses of their own in the hearing on Contention TC-2. Intervenors expect to rely on witnesses provided by the California Energy Commission ("CEC") and the California Public Utilities Commission ("CPUC"). In addition, Intervenors do not expect to submit any documents containing factual information, but rather intend to rely on factual submissions by the CEC and CPUC.

I. INTERROGATORIES

Interrogatory 1

Identify each person who supplied information for responding to these interrogatories and requests for the production of documents. Specifically note the interrogatories for which each such person supplied information.

RESPONSE TO INTERROGATORY NO. 1: No person provided information responsive to these interrogatories, except that Diane Curran, counsel to Intervenors, pointed to places in the existing record where the requested information can be found.

Interrogatory 2

Identify each person whom Intervenors expect to provide sworn affidavits or declarations in connection with the written filing for this Subpart K proceeding, and each person who would testify in any subsequent evidentiary hearing. For each person identified, describe that person's professional affiliation, address, area of professional expertise, qualifications, and educational and scientific experience. Also, describe the general subject matter on which each such identified person is expected to provide sworn affidavits or testimony in this proceeding.

RESPONSE TO INTERROGATORY NO. 2: Intervenors do not expect to provide sworn affidavits or declarations by any witnesses of their own. Intervenors expect to rely on witnesses provided by the California Energy Commission and the California Public Utilities Commission. Please see their discovery responses for information relevant to this interrogatory.

Interrogatory 3

For each person identified under Interrogatory 2, provide a list of all publications authored by the expert within the preceding 10 years, and a listing of any other cases in which the expert has testified as an expert at a trial or hearing, or by deposition within the preceding four years.

RESPONSE TO INTERROGATORY NO. 3: See response to Interrogatory No. 2.

Interrogatory 4

Identify each document that Intervenors expect to submit, reference, cite, or otherwise rely upon in the written filing in this Subpart K proceeding on SLOMFP Contention TC-2.

RESPONSE TO INTERROGATORY NO. 4: Intervenors do not expect to submit cite, or reference any documents containing factual information, but rather intend to rely on factual

submissions by the CEC and CPUC. To the extent that this interrogatory requests Intervenors to identify statutes, regulations, decisions, or legal guidance documents, Intervenors object on the ground that the interrogatory calls for a legal conclusion.

Interrogatory 5

Identify and give a description of any specific relief, remedy, corrective actions, order, or other action (other than an evidentiary hearing) that Intervenors will request in connection with SLOMFP Contention TC-2 in this Subpart K proceeding and state the basis for such request.

RESPONSE TO INTERROGATORY NO. 5: Intervenors intend to request the denial of PG&E's license application because PG&E has not demonstrated that it complies with the NRC's financial assurance requirements. The reasons for Intervenors' position are stated in Contention TC-2.

Interrogatory 6

Identify and describe the "substantial indications that PG&E will not have normal recourse to the ratemaking system" (as referenced in SLOMFP Contention TC-2, page 14) and state any other basis for concluding that independent spent fuel storage installation ("ISFSI") costs to the present utility applicant PG&E will not be covered by revenues derived from electric rates.

RESPONSE TO INTERROGATORY NO. 6: The indications relied on by Intervenors are found in the contention, and also discussed in the transcript of the September 11, 2002, prehearing conference at pages 254-60 and 331-34. At this time, Intervenors have identified no additional bases for believing that ISFSI costs to the PG&E may not be covered by revenues derived from electric rates. Also, see response by CEC, CPUC, and San Luis Obispo County ("SLOC") to NRC Staff's Interrogatory No. 2.

Interrogatory 7

Explain the connection that the Intervenors perceive (as reflected in SLOMFP Contention TC-2, page 15) between the "enormous debts" being addressed in the bankruptcy case and PG&E's current and ongoing cost recovery in the rate base. This explanation should include a description as to how the ability to cover ISFSI costs will be affected by such "debts."

RESPONSE TO INTERROGATORY NO. 7: See response by CEC, CPUC, and SLOC to NRC Staff's Interrogatory No. 2.

Interrogatory 8

Provide the basis (including citation to regulations) for the Intervenor's assertion that California regulations prevent recovery of Construction Work in Progress costs as related to the proposed Diablo Canyon ISFSI. See SLOMFP Contention TC-2, page 14.

RESPONSE TO INTERROGATORY NO. 8: Intervenor's object to this interrogatory on the ground that it calls for a legal conclusion. Without waiving their objection, Intervenor's respond that it is their understanding that the prohibition against CWIP is standard in virtually every state of the U.S., including California.

Interrogatory 9

State the basis for Intervenor's argument that PG&E will require debt financing to cover ongoing expenses to develop, construct, operate and/or decommission the ISFSI.

RESPONSE TO INTERROGATORY NO. 9: Intervenor's believe that PG&E will require debt financing because of the large cost of the ISFSI, and because they cannot recover from the rate base for CWIP.

Interrogatory 10

State the basis for Intervenor's argument that PG&E has or will have insufficient revenue or operating income to cover ongoing expenses associated with development, construction, operation and/or decommissioning of the ISFSI.

RESPONSE TO INTERROGATORY NO. 10: The reasons for Intervenor's argument are stated in Contention TC-2, and in the transcript of the September 11, 2002, prehearing conference at pages 254-60 and 331-34. Also, see response by CEC, CPUC, and SLOC to NRC Staff's Interrogatory No. 2.

III. DOCUMENT PRODUCTION REQUESTS

Request 1

All documents that are identified, or referred to, in responding to all of the above interrogatories.

RESPONSE TO REQUEST NO. 1: In Contention TC-2 and during the September 11, 2002, prehearing conference, Intervenors identified and/or produced copies of a number of documents that they were relying on in submitting the contention. Intervenors have not identified or referred to any other relevant documents in the course of responding to these interrogatories.

Request 2

All documents that Intervenors intend to use, exhibit, or otherwise rely upon in this Subpart K proceeding to support their position on SLOMFP Contention TC-2.

RESPONSE TO REQUEST NO. 2: See response to Interrogatory No. 4.

Request 3

All documents suggesting that PG&E will be unable to provide ongoing funding to design, construct, operate and/or decommission the ISFSI because it cannot recover costs as a rate-regulated utility.

RESPONSE TO REQUEST NO. 3: In Contention TC-2 and in the September 11, 2002, prehearing conference, Intervenors identified all documents, of which it is aware, that suggest PG&E will be unable to provide ongoing funding to design, construct, operate and/or decommission the ISFSI because it cannot recover costs as a rate-regulated utility.

Request 4

All documents suggesting that PG&E will be unable to provide ongoing funding to design, construct, operate and/or decommission the ISFSI based on PG&E's lack of access to credit markets.

RESPONSE TO REQUEST NO. 4: In Contention TC-2 and in the September 11, 2002, prehearing conference, Intervenors identified all documents, of which it is aware, that suggest PG&E will be unable to provide ongoing funding to design, construct, operate and/or decommission the ISFSI based on PG&E's lack of access to credit markets.

Request 5

All documents that demonstrate a nexus between PG&E's current access to credit markets and its financial qualifications to develop, construct, operate and decommission the ISFSI.

RESPONSE TO REQUEST NO. 5: In Contention TC-2 and in the September 11, 2002, prehearing conference, Intervenor identified all documents, of which it is aware, that demonstrate a nexus between PG&E's current access to credit markets and its financial qualifications to develop, construct, operate and decommission the ISFSI.

Respectfully submitted,



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January 31, 2003

CERTIFICATE OF SERVICE

I certify that on January 31, 2003, copies of San Luis Obispo Mothers for Peace et al's responses to PG&E's and NRC Staff's First Sets of Discovery Requests were served on the following by electronic mail and/or first-class mail, as indicated below:

<p>Administrative Judge G. Paul Bollwerk, III, Chair Atomic Safety and Licensing Board Panel Mail Stop-T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-00001 By e-mail: gpb@nrc.gov</p>	<p>Stephen H. Lewis, Esq. Angela B. Coggins, Esq. Office of General Counsel Mail Stop – 0-15 D21 U.S. Nuclear Regulatory Commission Washington, D.C. 20555 By e-mail to: shl@nrc.gov, abcl@nrc.gov</p>
<p>Administrative Judge Jerry R. Kline Atomic Safety and Licensing Board Panel Mail Stop-T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-00001 By e-mail to: jrk2@nrc.gov</p>	<p>Thomas D. Green, Esq. Thomas D. Waylett, Esq. Adamski, Moroski & Green, L.L.P. 444 Higuera Street, Suite 300 San Luis Obispo, CA 93401-3875 By e-mail: green@adamskimoroski.com waylett@adamskimoroski.com</p>
<p>Administrative Judge Peter S. Lam Atomic Safety and Licensing Board Panel Mail Stop-T-3 F23 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-00001 By e-mail to: psl@nrc.gov</p>	<p>Peg Pinard 714 Buchon Street San Luis Obispo, CA 93401 ppinard@co.slo.ca.us</p>
<p>Seamus M. Slattery, Chairman Avila Valley Advisory Council P.O. Box 58 Avila Beach, CA 93424 By e-mail to: jslat@aol.com</p>	<p>David A. Repka, Esq. Brooke D. Poole, Esq. Winston & Strawn 1400 L Street N.W. Washington, D.C. 20005-3502 By e-mail to: drepka@winston.com, Bpoole@winston.com</p>
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<p>Rochelle Becker San Luis Obispo Mothers for Peace 1037 Ritchie Grover Beach, CA 93433 By e-mail to: beckers@thegrid.net</p>	<p>Secretary of the Commission Attention: Rulemakings and Adjudications Staff U.S. Nuclear Regulatory Commission Washington, D.C. 20555 E-mail: hearingdocket@nrc.gov</p>
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Diane Curran