

RAS 5820

RELATED CORRESPONDENCE

February 21, 2003
DOCKETED 02/24/03

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 SAN LUIS OBISPO COUNTY'S
FIRST SET OF INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENT DIRECTED TO THE NRC STAFF

INTRODUCTION

In accordance with the Atomic Safety and Licensing Board's ("Board") Memorandum and Order (...Establishing Schedule), dated December 26, 2002, LBP-02-25, 56 NRC ____, the NRC staff ("Staff") hereby responds to the interrogatories and document requests filed by San Luis Obispo County ("SLOC") on February 7, 2003. The Board required that responses be filed within ten days after service of the request. Working from a filing date of February 7th, Staff Counsel has calculated a Staff response date of February 25th, so these answers are timely filed.

INTERROGATORY 1

State and explain the extent to which the NRC staff's determination of PG&E's financial qualifications under 10 C.F.R. § 72.22(e) will rely on statements by PG&E that it currently has funds on hand to cover ongoing capital investments and costs associated with development, construction, operation and/or decommissioning of the ISFSI during the pendency of the bankruptcy proceeding and that until the ongoing bankruptcy proceeding is concluded, the Bankruptcy Court will permit PG&E to disburse those funds to pay for the design, construction, operation or decommissioning of the proposed independent spent fuel storage installation ("ISFSI").

RESPONSE

The NRC staff did not rely on statements by PG&E that it currently has funds on hand to cover ongoing investments and costs associated with development, construction, and operation of the ISFSI. Section 72.22 of 10 C.F.R. Part 72 does not dictate the method by which funding will be used to accomplish the financial requirements of designing, building, and operating an ISFSI. Section 72.22(e) requires that the applicant provide “information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out. . . the activities for which the license is sought.” In addition, “The information must show that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds...” In the PG&E December 21, 2001, application, under section 1.5, Financial Qualifications, PG&E stated that “the funds necessary to cover the costs... will be derived from electric rates and from electric operating revenues.” The Staff finds this statement to meet the requirements of section 72.22(e).

Additionally, the Staff finds the estimated decommissioning costs reasonable and the financial arrangements to provide reasonable assurance of obtaining the necessary funds for decommissioning, reasonable. The NRC staff did caution PG&E that decommissioning costs for the ISFSI cannot come from decommissioning trust funds dedicated toward the eventual decontamination of Diablo Canyon Power Plant Units 1 & 2. PG&E stated that the decommissioning funds will come from other decommissioning trust funds.

INTERROGATORY 2

State and explain the extent to which the NRC staff’s determination of PG&E’s financial qualifications under 10 C.F.R. § 72.22(e) will rely on statements by PG&E that it either has or will have sufficient revenue or operating income to cover ongoing capital investments and costs associated with development, construction, operation and/or decommissioning of the ISFSI during the pendency of the bankruptcy proceeding and that until the ongoing bankruptcy proceeding is concluded, either the California Public Utility Commission (“CPUC”), in the pending or subsequent

rate proceeding, and/or the Bankruptcy Court will permit PG&E to apply revenues derived from electric rates to pay for the design, construction, operation or decommissioning of the proposed independent spent fuel storage installation ("ISFSI").

RESPONSE

The NRC staff did rely on statements by PG&E that it will have the funds necessary to cover the costs associated with the ISFSI derived from electric operating revenue. Section 72.22 does not dictate the method by which funding will be used to accomplish the financial requirements of designing, building and operating an ISFSI. It requires that the applicant provide "information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out . . . the activities for which the license is sought." In addition, "The information must show that the applicant either possesses the necessary funds, or that the applicant has reasonable assurance of obtaining the necessary funds..." In the PG&E December 21, 2001, application, under section 1.5, Financial Qualifications, PG&E stated that "the funds necessary to cover the costs... will be derived from electric rates and from electric operating revenues."

The Staff finds this statement to be reasonable, and representative of a normal source of funds for the conduct of a business of this type. The Staff is aware that on September 20, 2001, PG&E filed for reorganization under Chapter 11 of the Bankruptcy Code and subsequently filed with the Bankruptcy Court a comprehensive plan of reorganization. However, the application pending before the NRC only deals with obtaining a license for the ISFSI under the current organization of the corporation. A deviation from the assumptions and assertions provided in the December 21, 2001, ISFSI application, as supplemented in the June 7, 2002 submittal, resulting from any Bankruptcy Court rulings or rulings from any other governmental entities with jurisdiction over PG&E's rates, would require an amendment of the information submitted to the NRC. That information would need to reflect the transfer of the ISFSI application or license to another asset or subsidiary of the reorganized PG&E. Even so, the possible future actions stated by the

applicant do not negate the fact that PG&E, as it currently exists, may properly obtain an ISFSI license.

The NRC does not regulate commerce, but does have regulations in order to comprehend and examine the financial qualifications of an applicant seeking a license for an ISFSI, so as to validate the commitment and ability of the applicant to provide reasonable assurance of funding and maintaining safety.

INTERROGATORY 3

Identify the expert(s) and document(s) on which the NRC Staff intends to rely in responding to the questions raised in Interrogatories 1 - 2, and in establishing its position with respect to the contention admitted in Licensing Board Memorandum and Order LBP-02-23 ("SLOMFP Contention TC-2").

RESPONSE

DOCUMENTS:

- 1) December 12, 2001, Diablo Canyon Power Plant Independent Spent Fuel Storage Installation License Application.
- 2) June 7, 2002, Diablo Canyon Independent Spent Fuel Storage Installation Supplemental General and Financial Information.

EXPERT:

Michael A. Dusaniwskyj. See, attached statement of professional qualifications.

DOCUMENT PRODUCTION REQUESTS

Request 1

All documents that are identified, or referred to, in responding to Interrogatory 3.

Answer

SLOC should already have the documents referenced in the response to Interrogatory 3.

Request 2

All documents that PG&E [the Staff has taken this to be an inadvertent carryover from another document and interpreted SLOC as meaning the Staff] intends to use, exhibit, or otherwise rely upon in this Subpart K proceeding to support its position on SLOMFP Contention TC-2.

Answer

The Staff does not intend, at this time, to rely in this proceeding on any other documents.

Respectfully submitted,

/RA/

Stephen H. Lewis
Counsel for NRC Staff

Dated at Rockville, Maryland
this 21st day of February, 2003

MICHAEL A. DUSANIWSKYJ

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SUMMARY:

Extensive international and domestic experience managing economic research and financial risk evaluation for corporate strategic planning, investment in energy projects and government policy assessments. Experienced Economic Advisor and Financial Consultant; Instructor of Engineering Economics; Adjunct Professor of Economics; Fluent in Ukrainian.

PROFESSIONAL EXPERIENCE:

UNITED STATES NUCLEAR REGULATORY COMMISSION, Washington DC **Current**
Office of Nuclear Reactor Regulation, *Senior Economist*

Conduct reviews and make policy recommendations, prepare rules, regulations and principal correspondence. Conduct investigations on licensees' financial qualifications and decommissioning funding assurances to determine compliance with NRC regulations for review by Commissioners. Prepare Safety Evaluations on license amendment applications. Support United States initiative to assist Ukrainian and Russian nuclear regulatory authorities through professional contacts with government ministries and agencies. Detailed as Project Manager for AP600 certification. Provides economic consultations for AEOD and NMSS.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT, Kyiv, Ukraine **1996**
Economic Restructuring, Energy Advisor

Formulate policies, procedures and programs supporting United States Strategic Objectives for Ukrainian Economic Restructuring in Energy for the Ukrainian Government by managing the objectives, goals and work assignments of American consultants while teaching free market economics to Ukrainian counterparts. Participate in senior level discussions relating to energy programs, policies and future directions. Provide guidance on USAID regulations and procedures.

COMMUNITY ENERGY ALTERNATIVES, INC., Ridgewood, New Jersey **1994 to 1995**
(A subsidiary of Public Service Energy Group)

Project Finance/International Investment Development, Senior Project Analyst

Evaluate cogeneration, independent power projects, acquisitions and privatization options by performing extensive economic research, financial studies and risk assessment. Judge international currency and political risks. Support, advise and participate in high-level negotiations for project investment and development.

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PROFESSIONAL EXPERIENCE continued:

PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Newark, New Jersey **1986 to 1994**
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Electric Business Development, *Engineering Economist*

Authored and updated latest version of PSE&G's Engineering Economics Manual, standardizing both financial and economic analyses and studies by writing, reviewing and maintaining updated computer programs required for engineering economic analyses and strategic financial planning. Initiated standards and practices in performing economic analyses by conducting educational and training programs in engineering economics to over 380 engineers and senior managers.

Developed, coordinated, and executed sophisticated economic and financial studies for maximizing and maintaining the electric system through Least Cost Planning, with the goal of reducing tariffs. Determined economic viability of various marketing and Demand Side Management programs, resulting in the adaptation of appliance control program. Review Company budgets for Senior Management.

PEPSI-COLA BOTTLING GROUP, Moonachie, New Jersey **1984 to 1986**

Financial Planning and Analysis, *Senior Financial Analyst*

READER'S DIGEST ASSOCIATION, Pleasantville, New York **1981 to 1984**

Circulation/Direct Marketing Analysis Department, *Financial Analyst*

EDUCATION:

COLUMBIA UNIVERSITY SCHOOL OF CONTINUING EDUCATION

Certificate December 1981

Post-MBA in Structure COBOL Programming and Application Design

FORDHAM UNIVERSITY GRADUATE SCHOOL OF BUSINESS ADMINISTRATION

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Finance & International Business

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February 21, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)	

AFFIDAVIT OF MICHAEL A. DUSANIWSKYJ

I, Michael A. Dusaniwskyj, being duly sworn, hereby state as follows:

1. I have provided the information which forms the basis for the answers to Interrogatories 1, 2, and 3 contained in the "NRC Staff's Response to San Luis Obispo County's First Set of Interrogatories and Requests for Production of Document Directed to the NRC Staff," dated February 21, 2003.

2. The information contained in the interrogatory answers and responses to request for documents is true and correct to the best of my knowledge and belief.

/RA/

Michael A. Dusaniwskyj

Sworn and subscribed to before
me this 21st day of February, 2003

Tommy Le
/RA/

Notary Public

My Commission Expires: 7/1/2006

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF RESPONSE TO SAN LUIS OBISPO COUNTY'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENT DIRECTED TO THE NRC STAFF" 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 21st day of February, 2003.

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/RA/

Stephen H. Lewis
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Dated at Rockville, Maryland
this 21st day of February, 2003