

February 11, 2003

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

February 20, 2003 (3:46PM)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

RESPONSE OF SAN LUIS OBISPO COUNTY TO  
OPPOSITION OF PACIFIC GAS AND ELECTRIC COMPANY TO  
REQUEST OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION  
TO PARTICIPATE AS OF RIGHT UNDER 10 C.F.R. § 2.715(c)

INTRODUCTION

On February 4, 2003, Pacific Gas & Electric Company ("PG&E") the California Public Utilities Commission's ("CPUC") filed its request to participate as an "interested state agency" pursuant to 10 C.F.R. § 2.715(c) in the hearing granted on the single admitted contention in this proceeding.<sup>1</sup> Pursuant to the Atomic Safety and Licensing Board's ("Board") February 5, 2003 Order,<sup>2</sup> San Luis Obispo County ("SLOC") herein responds to that opposition. SLOC supports the participation of the CPUC under 10 C.F.R. § 2.715(c). SLOC continues to believe that CPUC has adequately demonstrated that its organizational interests fall within the Nuclear Regulatory Commission's ("NRC" or "Commission," as appropriate) "zone of

<sup>1</sup> See "Request of the California Public Utilities Commission to Participate as of Right Under 2.715(c)," dated January 28, 2003 ("Request").

<sup>2</sup> *Pac. Gas & Elec. Co. (Diablo Canyon Independent Spent Fuel Storage Installation), Order (Establishing Schedule for Further Filings Regarding Motions), slip op. Jan. 29, 2003.*

interests.” In particular, the CPUC’s organizational interests fall within the zone of interests created by the NRC’s statutory obligations to consider financial qualifications of its licensees, as CPUC has the authority to represent the citizens of the State of California in this regard. In the alternative, SLOC notes that the Commission, in the separate proceeding on PG&E’s request for authority to transfer PG&E’s license, has permitted CPUC to participate pursuant to 10 C.F.R. § 2.715(c), despite having concluded that CPUC failed to demonstrate standing. *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant, Units 1 & 2), CLI-02-16, xx NRC xxx (2002). Because the CPUC has demonstrated the requisite "interest" to participate under Section 2.715(c) and has committed to taking the proceeding as it finds it, and because the prudential considerations exercised by the NRC in the ISFSI proceeding are equally applicable in this proceeding, CPUC should be admitted as an interested governmental entity.

#### DISCUSSION

The CPUC, as 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 jurisdiction, is authorized to set electricity rates for PG&E that are just and reasonable. This ratemaking authority considers not only the financial impacts of rates on the ratepayer citizens of California but also the ability of those rates to enable PG&E to operate Diablo Canyon safely.

The Commission clearly recognized this role for state ratemaking authorities when it determined, as a matter of law, that a regulated utility would automatically be found to be financially qualified for the purposes of the Atomic Energy Act of 1954, as amended. 10

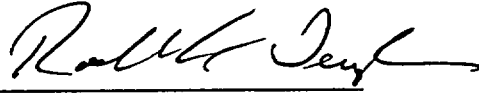
C.F.R. § 50.33(f). This regulation is based on the NRC's premise that the ratemaking process ensures that an electric utility will have funds to operate safely because rate regulators allow an electric utility to recover prudently incurred costs of operating, transmitting, and distributing electricity. 49 Fed. Reg. 35747, 35752 (September 12, 1984); NRC Administrative Letter 96-02, "Licensee Responsibilities Related to Financial Qualifications." In light of this Commission's reliance on state ratemaking authority, there is no merit to PG&E's assertion that the single admitted contention in this proceeding, pertaining to PG&E's financial qualifications, neither directly affects the interests of the CPUC nor addresses a question that is of mutual concern both to the Commission and to the CPUC. CPUC's request clearly is within the scope of the CPUC's authority to represent itself and the citizens of California on the financial qualification issue in this proceeding. Accordingly, CPUC's concern is within the zone of interest of the NRC and CPUC's request should be granted.

In the alternative, because CPUC's participation in this proceeding will result in the benefits long-recognized the Commission, the prudential considerations exercised by the Commission in the license transfer proceeding are equally applicable in this proceeding. Accordingly, even if this Board should persist in concluding that CPUC lacks standing, the Board should follow the Commission's clear direction and admit CPUC as an interested representative of the State of California.

CONCLUSION

For the reasons set forth above, the CPUC should be granted leave to participate in this proceeding pursuant to 10 C.F.R. § 2.715(c), because it has demonstrated an injury that falls within the “zone of interests” protected by either the Atomic Energy Act.

Respectfully submitted,



---

Robert K. Temple, Esq.  
Sheldon L. Trubatch,  
Counsel for the County of  
San Luis Obispo

Dated this 11th day of February 2003

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: )  
)  
Pacific Gas and Electric Co. ) Docket No. 72-26-ISFSI  
)  
(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 "Response of San Luis Obispo County to Opposition of Pacific Gas and Electric Company to Request of the California Public Utilities Commission to Participate as of Right under 10 C.F.R. § 2.715(c)" have been served as shown below by electronic mail, this 11<sup>th</sup> day of February 2003. Additional service has also been made this same day by deposit in the United States mail, first class, as shown below.

G. Paul Bollwerk, III  
Administrative Judge\*  
Atomic Safety & Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3F23  
Washington, D.C. 20555  
E-mail: [gpb@nrc.gov](mailto:gpb@nrc.gov)

Jerry R. Kline\*  
Administrative Judge\*  
Atomic Safety & Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3F23  
Washington, D.C. 20555  
E-mail: [jrk2@nrc.gov](mailto:jrk2@nrc.gov)  
[kjerry@erols.com](mailto:kjerry@erols.com)

Atomic Safety & Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3F23  
Washington, D.C. 20555

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16C1  
Washington, D.C. 20555

Peter S. Lam  
Administrative Judge\*  
Atomic Safety & Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3F23  
Washington, D.C. 20555  
E-mail: [psl@nrc.gov](mailto:psl@nrc.gov)

Office of the Secretary\*  
ATTN: Rulemakings & Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16C1  
Washington, D.C. 20555  
E-mail: [HEARINGDOCKET@nrc.gov](mailto:HEARINGDOCKET@nrc.gov)

County Supervisor Peg Pinard\*  
County Government Center  
1050 Monterey Avenue  
San Luis Obispo, California 93408  
E-mail: [ppinard@co.slo.ca.us](mailto:ppinard@co.slo.ca.us)

Lorraine Kitman\*  
P.O. Box 1026  
Grover Beach, CA 93483  
E-mail: [lorraine@bejoseeds.com](mailto:lorraine@bejoseeds.com)  
[l.kitman@bejoseeds.com](mailto:l.kitman@bejoseeds.com)

Seamus M. Slattery  
Chairman  
Avila Valley Advisory Council  
P.O. Box 58  
Avila Beach, CA 93424

General Counsel\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
E-mail: [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov)  
[ABC1@nrc.gov](mailto:ABC1@nrc.gov) ; [SHL@nrc.gov](mailto:SHL@nrc.gov)

Diane Curran\*  
Harmon, Curran, Spielberg, & Eisenberg,  
LLP  
1726 M Street N.W., Suite 600  
Washington, D.C. 20036  
E-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

Klaus Schumann  
Mary Jane Adams  
26 Hillcrest Drive  
Paso Robles, CA 93446  
e-mail: [jayklaus@email.msn.com](mailto:jayklaus@email.msn.com)

David A. Repka,\* Brooke D. Poole\*  
Winston & Strawn  
1400 L Street N.W.  
Washington, D.C. 20005-3502  
E-Mail: [bpoole@winston.com](mailto:bpoole@winston.com)  
[drepka@winston.com](mailto:drepka@winston.com)

Robert R. Wellington, Esq.\*  
Robert W. Rathie, Esq.\*  
Wellington Law Offices  
857 Cass Street, Suite D  
Monterey, California 93940  
E-Mail: [info@dcisc.org](mailto:info@dcisc.org)

Lawrence F. Womack  
Vice President  
Nuclear Services  
Diablo Canyon Power Plant  
P.O. Box 56  
Avila Beach, CA 93424

Darcie L. Houck, Staff Counsel  
California Energy Commission  
Chief Counsel's Office  
1516 Ninth Street, MS 14  
Sacramento, CA 95814  
e-mail: [Dhouck@energy.state.ca.us](mailto:Dhouck@energy.state.ca.us)

Christopher Helenius, President  
Avila Beach Community  
Services District  
P.O. Box 309  
Avila Beach, CA 93424  
e-mail: [AVILACSD@aol.com](mailto:AVILACSD@aol.com)

Laurence G. Chaset  
Legal Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
e-mail: [lau@cpuc.ca.gov](mailto:lau@cpuc.ca.gov)

Barbara Byron  
Nuclear Policy Advisor  
California Energy Commission  
1516 Ninth Street, MS 36  
Sacramento, CA 95814  
e-mail: [Bbyron@energy.state.ca.us](mailto:Bbyron@energy.state.ca.us)

San Luis Obispo Mothers for Peace\*  
P.O. Box 164  
Pismo Beach, CA 93448  
E-Mail: [beckers@thegrid.net](mailto:beckers@thegrid.net)  
[Jzk@charter.net](mailto:Jzk@charter.net)

Dated this 11<sup>th</sup> day of February 2003



Robert K. Temple, Esq.