

RELATED CORRESPONDENCE

February 11, 2003

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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

PACIFIC GAS AND ELECTRIC COMPANY'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
DIRECTED TO THE GOVERNMENTAL PARTICIPANTS

In accordance with the schedule established in the Atomic Safety and Licensing Board ("Licensing Board") Memorandum and Order LBP-02-25, dated December 26, 2002,¹ Pacific Gas and Electric Company ("PG&E") hereby requests that the interested governmental participants San Luis Obispo County ("County"), California Energy Commission ("CEC"), and Avila Beach Community Services District ("ABCSD") and, provisionally, the California Public Utilities Commission ("CPUC") (collectively, "Governmental Participants"²): (1) answer this set

¹ *Pac. Gas & Elec. Co. (Independent Spent Fuel Storage Installation), LBP-02-25, 56 NRC* (slip op. Dec. 26, 2002).

² On January 28, 2003, the interested governmental participants admitted in this proceeding (County, CEC, and ABCSD), together with the CPUC, filed a request to provide joint responses to discovery. In a February 4, 2003, opposition to the request of the CPUC to participate in the proceeding under 10 C.F.R. § 2.715(c), PG&E indicated that it did not object to the cooperation of the admitted governmental participants in the discovery process. PG&E opposes the CPUC's admission to the proceeding as an interested governmental entity. The inclusion of the CPUC as a "Governmental Participant" for the purpose of this filing is solely to ensure complete and accurate responses from the Governmental Participants. PG&E does not in any way concede that the CPUC should be, or is, an admitted participant in this proceeding.

of interrogatories fully, in writing and under oath, and (2) produce the documents requested below. These responses and documents should be provided within 10 days after service of this request pursuant to the schedule set forth in LBP-02-25.

I. DEFINITIONS AND INSTRUCTIONS

A. Scope of Discovery

These interrogatories and document production requests cover all information in the possession, custody, and control of the Governmental Participants, including information in the possession of employees, agents, representatives, attorneys, consultants, or other persons directly or indirectly employed or retained by them or voluntarily working with them, or anyone else acting on the Governmental Participants' behalf or otherwise subject to their control. The discovery sought by this request encompasses material contained in, or that might be derived or ascertained from, the personal files of the Governmental Participants' employees, agents, representatives, investigators, attorneys, consultants, or other persons directly or indirectly employed or retained by them or voluntarily working with them, or anyone else acting on the Governmental Participants' behalf or otherwise subject to their control.

B. Lack of Information

If the Governmental Participants currently lack information to answer any interrogatory completely, please state:

1. the reasons for the lack of information;
 2. the responsive information currently available;
 3. the responsive information identified but currently unavailable;
- and

4. when the Governmental Participants anticipate receiving such information currently unavailable.

Each of the following requests requires supplementation in accordance with 10 C.F.R. §§ 2.740(e)(1) – (2). PG&E therefore requests that, in the event the Governmental Participants obtain or discover any additional information that is responsive to any discovery request, the Governmental Participants promptly supplement their responses to these requests.

C. Objections

In the event that the Governmental Participants object to any interrogatory or document production request under claim of privilege, immunity, or for any other reason, please indicate the basis for asserting the objection, the person on whose behalf the objection is asserted, and describe the factual basis for asserting the objection in sufficient detail so as to permit PG&E to consider, and the Licensing Board to adjudicate, the validity of such objection.

D. Privilege Log

For any document covered by this request that is withheld under a claim of privilege, please furnish a privilege log identifying each document for which the privilege is asserted, together with the following information: date, author and affiliation, recipient and affiliation, persons to whom copies were furnished and their affiliation, the subject matter of the document, and the basis for asserting the privilege.

E. Basis and Description

When an interrogatory requires the Governmental Participants to “state the basis” or give a “description” of a claim, contention, request for remedy, allegation or the like, please provide a complete summary in which the rationale for the position and all pertinent facts, including the identify of persons, dates, documents, and events, are included.

F. Governmental Participants

References to Governmental Participants, San Luis Obispo County, County, California Energy Commission, CEC, Avila Beach Community Services District, ABCSD, California Public Utilities Commission, CPUC, “you,” and “your” refer to any branch, department, division, or other affiliate of each Governmental Participant, including its employees, agents, representatives, attorneys, consultants, or other persons directly or indirectly employed or retained by it or voluntarily working with it, or anyone else acting on the Governmental Participant’s behalf or otherwise subject to its control.

G. Documents

References to “documents” mean the complete original or a true, correct, and complete copy and any non-identical copies, whether different by reason of any notation or otherwise, of any written or graphic matter of any kind, or any data compilation, no matter how produced, recorded, stored, or reproduced (including electronic or mechanical records or representation of any kind) including, but not limited to, any writing, letter, telegram, facsimile, meeting minutes, meeting notes, memorandum, statement, computer file, book, record, survey, map, study, handwritten note, working paper, chart, tabulation, graph, tape, data sheet, database, data processing card, printout, microfilm or microfiche, interoffice and intraoffice communications, instructions, reports, demands, schedules, notices, recordings, analyses, sketches, manuals, brochures, telephone minutes, calendars, accounting ledgers, invoices, indices, notebooks, personal notes, diary entries, electronic mail, notes of interview, communication, contracts, any other agreements, data compilations, and all other writings and papers similar to any of the foregoing, however designated by you, including all drafts of all such documents.

H. Date

“Date” means the specific day, month, and year, if ascertainable, or if not, the best approximation thereof (including by relationship to other events), and the basis for such approximation.

I. Person

“Person” means any individual, association, group, corporation, partnership, joint venture, or any other business or legal entity.

J. Describe or Identify

The words “describe” or “identify” shall have the following meanings:

1. In connection with a person, the words “describe” or “identify” mean to state the name, last known business address, last known business telephone number, and last known place of employment and job title;
2. In connection with a document, the words “describe” or “identify” mean to give a description of each document sufficient to uniquely identify it among all of the documents related to this matter, including, but not limited to, the name of the author of the document, the name of each person or entity signing or approving the document, the date on which the document was prepared, signed, and/or executed, and any other information necessary to adequately identify the document;
3. In connection with any activity, occurrence, or communication, the words “describe” or “identify” mean to describe the activity,

occurrence, or communication, the date of its occurrence, the identity of each person alleged to have had any involvement with or knowledge of the activity, occurrence, or communication, and the identity of any document recording, referencing or documenting such activity, occurrence, or communication; and

4. In connection with an entity other than a natural person (e.g., corporation, partnership, limited partnership, association, institution, etc.), the words “describe” or “identify” mean to state the full name, address, and telephone number of the principal place of business of such entity.

II. INTERROGATORIES

Interrogatory 1

In your Response³ to NRC Staff Interrogatory 2(A), you state:

CEC, ABCSD, CPUC and SLOC contend that Pacific Gas & Electric Company (“PG&E”) has failed to provide the Board a basis for making the required reasonable assurance finding, during the pendency of the bankruptcy proceeding, that PG&E will be able to fund the estimated construction costs of the proposed Independent Spent Fuel Storage Installation (“ISFSI”) in the manner specified in 10 C.F.R. § 72.22(e).⁴

³ See “California Energy Commission’s, Avila Beach Community Services District’s, California Public Utilities Commission’s, and San Luis Obispo County’s Response to NRC Staff’s Interrogatories and Request for Production,” dated January 31, 2003 (“Response”).

⁴ A substantively identical statement is made in response to NRC Staff Interrogatory 2(B), as follows, with respect to operating costs:

CEC, ABCSD, CPUC and SLOC contend that Pacific Gas & Electric Company (“PG&E”) has failed to provide reasonable assurance that it will be able to fund the estimated operating costs of the proposed Independent Spent Fuel Storage Installation (“ISFSI”) in the manner specified in 10 C.F.R. § 72.22(e).

Please explain this response. Specifically, is it your contention in this case that the “failure” to provide a basis for the required reasonable assurance finding exists *only* during the “pendency of the bankruptcy proceeding”?

Interrogatory 2

In the Response to NRC Staff Interrogatory 2(A), you state:

Specifically, absent formal approval from the CPUC, PG&E will not be able to fund construction of the ISFSI from rates.⁵

Please identify and describe the referenced “formal approval” from the CPUC. In responding to this question, include a discussion of any and all formal approvals required from the CPUC, assuming expenses related to the ISFSI are determined to be prudently incurred.

Interrogatory 3

In the Response to NRC Staff Interrogatory 2(A), you state:

PG&E has represented itself to this proceeding as a CPUC-regulated utility, however, its position in the bankruptcy proceeding makes it uncertain whether PG&E will have access to ratepayer funding for the ISFSI.⁶

Please identify and describe any and all representations and/or positions taken by PG&E that create “uncertainty” with respect to PG&E’s access to rate-recovered funds for the ISFSI.

⁵ A substantively identical statement is made in response to Staff Interrogatory 2(B), with respect to ISFSI operation, as follows:

Specifically, absent formal approval from the CPUC, PG&E will not be able to fund operation of the ISFSI from rates.

⁶ A substantively identical statement is made in response to Staff Interrogatory 2(B), as follows:

PG&E has represented itself in this proceeding as a CPUC-regulated utility, however, given its representations in the bankruptcy proceeding, it is uncertain whether PG&E will have access to ratepayer funding for operation of the ISFSI.

Interrogatory 4

Regarding your response to NRC Staff Interrogatory 3, please state the basis for your contention that there is no “reasonable assurance” that decommissioning of the ISFSI will be carried out after the removal of spent fuel from storage. In your response, please specifically identify and describe the basis for any contention that the decommissioning funding being provided for the Diablo Canyon Power Plant will be inadequate to complete decommissioning of the ISFSI.

III. DOCUMENT PRODUCTION REQUEST

Request 1

Please provide copies of any and all testimony, affidavits, and other documents prepared or otherwise provided by Mr. Truman Burns for use before the California Public Utilities Commission or any other forum, including the United States Bankruptcy Court for the Northern District of California, relating to PG&E. These documents should include, but are not limited to, the testimony "relating to Pacific Gas & Electric Company's Nuclear Power Plant" referred to on page A-1 of Mr. Burns' statement of professional qualifications, testimony in PG&E's Nuclear Decommissioning Triennial Proceeding, and testimony in PG&E's 2003 General Rate Case.

Respectfully submitted,



David A. Repka, Esq.
Brooke D. Poole, Esq.
WINSTON & STRAWN
1400 L Street, N.W.
Washington, DC 20005-3502

William V. Manheim, Esq.
Richard F. Locke, Esq.
PACIFIC GAS & ELECTRIC COMPANY
77 Beale Street, B30A
San Francisco, CA 94105
ATTORNEYS FOR PACIFIC GAS &
ELECTRIC COMPANY

Dated in Washington, District of Columbia
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 "PACIFIC GAS AND ELECTRIC COMPANY'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED TO THE GOVERNMENTAL PARTICIPANTS" have been served as shown below by electronic mail, this 11th 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.

Administrative Judge G. Paul Bollwerk, III
Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F23
Washington, DC 20555-0001
e-mail: gpb@nrc.gov

Administrative Judge Peter S. Lam
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F23
Washington, DC 20555-0001
e-mail: psl@nrc.gov

Administrative Judge Jerry R. Kline
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F23
Washington, DC 20555-0001
e-mail: jrk2@nrc.gov
kjerry@comcast.net

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop O-16C1
Washington, DC 20555-0001

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff
(original + two copies)
e-mail: HEARINGDOCKET@nrc.gov

Diane Curran, Esq.
Harmon, Curran, Spielberg & Eisenberg, LLP
1726 M Street N.W., Suite 600
Washington, DC 20036
e-mail: dcurran@harmoncurran.com

Lorraine Kitman
P.O. Box 1026
Grover Beach, CA 93483
e-mail: lorraine@bejoseeds.com
l.kitman@bejoseeds.com

Seamus M. Slattery, Chairman
Avila Valley Advisory Council
P.O. Box 58
Avila Beach, CA 93424
e-mail: Jslat1@aol.com

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

James B. Lindholm, Jr., Esq.
County Counsel for San Luis Obispo County
County Government Center
1050 Monterey Avenue, Room 386
San Luis Obispo, CA 93408
e-mail: jlindholm@co.slo.ca.us

San Luis Obispo Mothers for Peace
P.O. Box 164
Pismo Beach, CA 93448
e-mail: beckers@thegrid.net
jzk@charter.net

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

Karen D. Cyr, Esq.
Stephen H. Lewis, Esq.
Angela B. Coggins, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop O-15D21
Washington, DC 20555-0001
e-mail: OGCMailCenter@nrc.gov
shl@nrc.gov
abc1@nrc.gov

Peg Pinard
714 Buchanan Street
San Luis Obispo, CA 93401

Thomas D. Green, Esq.
Thomas D. Waylett, Esq.
Adamski, Moroski & Green LLP
444 Higuera Street, Suite 300
San Luis Obispo, CA 93401-3875
e-mail: green@adamskimoroski.com
waylett@adamskimoroski.com

Robert K. Temple, Esq.
2524 N. Maplewood Avenue
Chicago, IL 60647
e-mail: nuclaw@mindspring.com

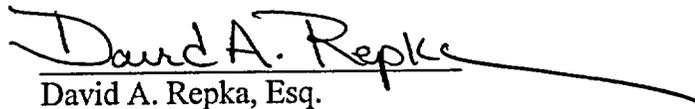
Barbara Byron
Nuclear Policy Advisor
California Energy Commission
1516 Ninth Street, MS 36
Sacramento, CA 95814
e-mail: Bbyron@energy.state.ca.us

Robert R. Wellington, Esq.
Robert W. Rathie, Esq.
Wellington Law Offices
857 Cass Street, Suite D
Monterey, CA 93940
e-mail: info@dcisc.org

Christopher Helenius, President
Avila Beach Community
Services District
P.O. Box 309
Avila Beach, CA 93424
e-mail: 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

Sheldon L. Trubatch, Esq.
4222 River Road
Washington, DC 20016
e-mail:
lawofficesofsheldontrubatch@starpower.net


David A. Repka, Esq.
Counsel for Pacific Gas
& Electric Company