

RELATED CORRESPONDENCE

February 20, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

February 26, 2003 (10:28AM)

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

CALIFORNIA ENERGY COMMISSION'S, AVILA BEACH COMMUNITY SERVICES DISTRICT'S, CALIFORNIA PUBLIC UTILITIES COMMISSION'S, AND SAN LUIS OBISPO COUNTY'S RESPONSE TO PACIFIC GAS & ELECTRIC'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION DIRECTED TO THE GOVERNMENTAL PARTICIPANTS

RESPONSES TO INTERROGATORIES

Interrogatory 1

In your Response¹ 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).²

¹ 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").

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

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"?

RESPONSE TO INTERROGATORY 1

The Board has limited the scope of this proceeding to consideration of PG&E's current financial qualifications to construct, operate, and decommission the proposed ISFSI. Currently PG&E is a regulated entity in the midst of a chapter 11 bankruptcy. The Board has stated that no party should make assumptions regarding the entity that may emerge as the successor to PG&E (as the owner and operator of the ISFSI).³ The governmental participants (California Energy Commission, Avila Beach Community Services District, California Public Utilities Commission, and San Luis Obispo County) contend that until there is certainty that the ISFSI will be constructed, operated and decommissioned by a regulated entity the required reasonable assurance finding cannot be made based on the information presented in PG&E's Application. Should the bankruptcy proceeding conclude before the NRC has taken action on PG&E's license application, additional information will need to be provided to the Board addressing the financial qualification issue, or an amendment requesting a change of applicant.

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).

³ See LBP-02-23 at p. 37 (Dec. 2, 2002) (stating that, "neither the unresolved California Attorney General's lawsuit against PG&E Corporation for alleged fraud nor the financial qualifications of any entities that may in the future construct or operate the ISFSI are litigable matters under this contention as irrelevant to and/or outside the scope of this 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.⁴

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.

RESPONSE TO INTERROGATORY 2

PG&E states in its Application that it will recover the cost for Phase I operation (construction and operation through 2025) from electric rates and from electric operating revenues. In order to recover these costs from electric rates (ratepayer funding) PG&E must have approval from the California Public Utilities Commission (CPUC). This approval would be in the form of a formal decision in the current rate case and subsequent rate cases covering future years expenditures. In the current rate case PG&E is requesting approval of \$12 million dollars towards Phase I expenses. This amount has been proposed as operation and maintenance (O/M) expenses. PG&E may also need CPUC approval of attrition year ratemaking for 2005 and of an advice letter relating to the commencement of construction of the ISFSI. In general, only expenses that are determined to be prudently incurred may be recovered from ratepayer funding.

⁴ 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.

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.⁵

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.

RESPONSE TO INTERROGATORY 3

PG&E, the currently regulated entity that has applied for the ISFSI license, has repeatedly represented in the ongoing bankruptcy proceeding and NRC license transfer proceeding that under its proposed reorganization plan it will no longer be the owner and/or operator of the ISFSI. This is the uncertainty referred to.

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.

⁵ 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.

RESPONSE TO INTERROGATORY 4

The Governmental Participants object to this interrogatory as a mischaracterization of the Governmental Participants' response to the NRC staff's interrogatories and speculation outside of the bounds of this proceeding. The Governmental Participants did not state that "there is 'no reasonable assurance' that decommissioning of the ISFSI will be carried out after the removal of spent fuel from storage." What the Governmental Participants stated, consistent with their understanding of the scope of this proceeding as established by the Board, was that "PG&E had failed to provide reasonable assurance that it will be able to make the necessary financial arrangements to provide reasonable assurance before licensing, that decommissioning of the proposed Independent Spent Fuel Storage Installation ("ISFSI") will be carried out after the removal of spent fuel from storage." (*Emphasis supplied.*) The Governmental Participants limited their answer to financial arrangements and did not address decommissioning itself.

As for the question regarding the adequacy of decommissioning funding, the Governmental Participants already explained that "as long as there is a pending bankruptcy there is uncertainty over the entity that will have final authority over the ISFSI and whether that entity will have access to the decommissioning fund held in trust by the CPUC." Accordingly, until this issue is resolved, the adequacy of the decommissioning funding is a separate matter.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

The attached documents have been determined to be responsive to your request.

Submitted by,



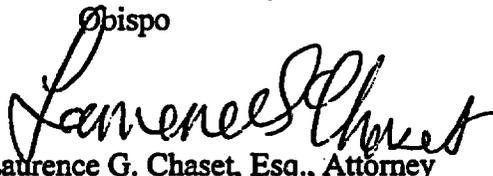
Darcie L. Houck,
Staff Counsel
California Energy Commission



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



Christopher Helenius, President
Avila Beach Community Services District



Laurence G. Chaset, Esq., Attorney
California Public Utilities Commission

UNITED STATES OF AMERICA
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Spent Fuel Storage Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "California Energy Commission's, Avila Beach Community Services District's, California Public Utilities Commission's, and San Luis Obispo County's Response to Pacific Gas & Electric Company's First Set of Interrogatories and Request for Production to the Governmental Participants" have been served upon the following persons by United States mail, first class; and by electronic mail as indicated by an asterisk (*) on this 20th day of February 2003. A copy of the documents requested by PG&E have been sent to PG&E.

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

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

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

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

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
kjerry@erols.com

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

County Supervisor Peg Pinard*
County Government Center
1050 Monterey Avenue
San Luis Obispo, California 93408
E-mail: ppinard@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

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

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

General Counsel*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-mail: OGCMailCenter@nrc.gov
ABC1@nrc.gov

Dated this 20th day of February 2003

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

Klaus Schumann
Mary Jane Adams
26 Hillcrest Drive
Paso Robles, CA 93446
e-mail: 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
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

Barbara Byron*
California Energy Commission
1516 9th Street, MS 36
Sacramento, CA 95814
E-Mail: Bbyron@energy.state.ca.us



Laurence G. Chaset, Esq., Attorney
California Public Utilities Commission
lau@cpuc.ca.gov