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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

February 25, 2003 (11:31AM)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)	
)	
Pacific Gas and Electric Co.)	Docket No. 72-26-ISFSI
)	
(Diablo Canyon Power Plant Independent Spent Fuel Storage Installation))	ASLBP No. 02-801-01-ISFSI

PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO
SAN LUIS OBISPO COUNTY'S FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS

In accordance with the schedule established in Atomic Safety and Licensing Board ("Licensing Board") Order LBP-02-25, dated December 26, 2002,¹ Pacific Gas and Electric Company ("PG&E") hereby files an initial response to the County of San Luis Obispo's ("County") "First Set of Interrogatories and Requests for Production of Documents," ("County Requests") which was served on PG&E on February 10, 2003.

I. INTERROGATORIES

Interrogatory 1

State whether PG&E 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 explain why PG&E believes 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

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

decommissioning of the proposed independent spent fuel storage installation ("ISFSI")[sic].

PG&E Response to Interrogatory 1

PG&E currently has substantial cash on hand that would be sufficient to cover ongoing costs associated with development, construction, operation, and decommissioning of the Diablo Canyon ISFSI during the pendency of the bankruptcy proceeding. (PG&E does not expect to decommission the ISFSI during the pendency of the bankruptcy proceeding.) PG&E's current cash on hand is in excess of \$3 billion. The majority of this cash is ear-marked to repay creditors. However, some portion of this cash would be available, with the approval of the Bankruptcy Court, to pay costs necessary to preserve and maintain the estate. PG&E believes that preserving the Diablo Canyon Power Plant would fall in this category, and that ISFSI-related costs could therefore be paid.

Furthermore, PG&E expects to pay the costs associated with the ISFSI during the pendency of the bankruptcy proceeding out of normal operating revenues rather than funds on hand. PG&E's recent, publicly-available financial statements demonstrate PG&E's operating income and its ability to cover the anticipated costs associated with the ISFSI. The Bankruptcy Court does not review all of PG&E's operating expenses and PG&E does not believe Bankruptcy Court approval is necessary for PG&E to pay ongoing ISFSI expenses. The procedures requiring notification and approval of the Creditors Committee and Bankruptcy Court for new capital projects do not apply to ongoing, non-capital ISFSI expenses.

The Bankruptcy Court has, however, already approved PG&E's contract with its primary ISFSI vendor, Holtec International. On October 6, 2001, the Bankruptcy Court issued an order authorizing PG&E to (1) assume a Letter Agreement, between PG&E and Holtec, for licensing support and engineering work related to the ISFSI; and (2) enter into a new contract

under which Holtec will complete the design and licensing work for the ISFSI and deliver to Diablo Canyon casks, canisters, and related equipment. Therefore, the Bankruptcy Court has previously authorized PG&E to commit to incurring a substantial component of the expenditures associated with the ISFSI.

Interrogatory 2

State the basis for PG&E's belief that it 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 explain why PG&E believes that until the ongoing bankruptcy proceeding is concluded, either the California Public Utilit[ies] 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") [sic].

PG&E Response to Interrogatory 2

With respect to the basis for PG&E's belief that it has or will have sufficient revenue or operating income to cover ISFSI costs during the pendency of the bankruptcy proceeding, see the response to Interrogatory 1 above.

Moreover, anticipated ISFSI costs are described in the aggregate for project phases in PG&E's Part 72 license application and the supplement of June 7, 2002. More specifically, costs related to development and licensing of the ISFSI project for 2002 and 2003, as estimated in Exhibit 10 of PG&E's filing in support of its 2003 General Rate Case before the CPUC, are less than \$6.0 million and \$8.0 million, respectively. See Exhibit 10, Table 4-13, "One Time O&M Forecast Adjustments," filed in PG&E's 2003 General Rate Case (and included in the documents provided by the governmental entities in response to the NRC's discovery request). In contrast, PG&E's most recent Form 10-Q, dated November 12, 2002, shows for

PG&E, the utility, earnings available for common stock of over \$1.5 billion, for the nine month period ending September 30, 2002.

Although PG&E is not accounting for the ISFSI expenses as capital costs (see Response to Interrogatory 3, below), PG&E incurred capital expenditures of over \$1.1 billion during the nine month period ending September 30, 2002. PG&E's annual capital expenditures for 2003 are expected to total approximately \$1.75 billion. For comparison purposes, the 2002 and 2003 ISFSI expenses are less than 1 percent of PG&E's capital budget for those years.

With respect to the second part of Interrogatory 2, PG&E believes that, during the pendency of the bankruptcy proceeding, neither the CPUC nor the Bankruptcy Court must approve or permit PG&E to apply revenues derived from electric rates to pay for costs associated with the ISFSI. Expenses paid by PG&E, for which rate recovery is sought by PG&E, remain subject to a prudence review by the CPUC. PG&E believes that costs associated with the ISFSI, as set forth in the application and supplement, are prudently incurred, in the public interest, and consistent with PG&E's obligations under the Nuclear Waste Policy Act. Irrespective of such rate recovery, CPUC authority is not required for PG&E to incur the expenditures.

Interrogatory 3

Describe the extent to which PG&E expects to rely on debt financing to pay for ISFSI-related capital investments and expenses until the bankruptcy proceeding is concluded, why PG&E believes that such financing can be obtained despite the pendency of the bankruptcy proceeding, and why PG&E believes that the bankruptcy court will approve such financing.

PG&E Response to Interrogatory 3

PG&E does not expect to rely on debt financing to pay ISFSI-related expenses during the pending bankruptcy proceeding.

Interrogatory 4

Identify the expert(s) and document(s) on which PG&E intends to rely in responding to the questions raised in Interrogatories 1-3, and in establishing its position with respect to the contention admitted in Licensing Board Memorandum and Order LBP-02-23 ("SLOMFP Contention TC-2").

PG&E Response to Interrogatory 4

PG&E currently expects to rely upon the following experts to establish its position with respect to SLOMFP Contention TC-2:

- Mr. Walter Campbell, Director, Business and Financial Planning
- Mr. Robert Kapus, Lead Staff Budget Coordinator

Mr. Campbell will support PG&E's position with respect to its financial qualifications to pay for costs associated with the design, construction, operation, and decommissioning of the ISFSI. In accordance with 10 C.F.R. § 2.740b(b), Mr. Campbell provided information for responding to the Interrogatories discussed in this response.

Mr. Kapus will be offered for the limited purpose of sponsoring the statements of cash flow associated with the cost estimates for the design, construction, operation, and decommissioning of the ISFSI as presented in PG&E's application of December 21, 2001, and supplemental letter of June 7, 2002.

PG&E generally expects to rely upon the testimony of the witnesses above and upon publicly available documents to establish its position with respect to SLOMFP Contention TC-2. The publicly available documents may include some or all of the following:

- PG&E's December 21, 2001 application to the NRC for a Part 72 license (NRC ADAMS accession numbers ML020180341 (package) and ML020440701 (package)).
- PG&E Letter DIL-02-008, "Supplemental General and Financial Information — 10 C.F.R. 72.22," dated June 7, 2002 (NRC ADAMS accession number ML021680332).

- Decisions of the CPUC, including: (1) Application of Pacific Gas and Electric Company for Authority to Establish Its Authorized Rates of Return on Common Equity for Electric Utility Operations and Gas Distribution for Test Year 2003, Dec. 02-11-027, 2002 Cal. PUC LEXIS 718 (2002); (2) Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development, Dec. 02-10-062, 220 P.U.R. 4th 377 (2002); and (3) Application of Southern California Edison Company for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs, Dec. 02-04-016, 2000 Cal. PUC LEXIS 1110 (2002).
- Orders of the Bankruptcy Court and related filings in case no. 01-30923, including: (1) "Order Re: Debtor's Application for Order Approving Assumption of Executory Contract and Entering Into New Contract for Licensed Used Nuclear Fuel Storage System," dated October 6, 2001; and (2) "Order Approving Motion for Authority to Resume Power Procurement, Including Procurement of the Residual Net Short Position, and to Incur Post-Petition Secured Debt Related Thereto," dated December 23, 2002. These materials are available through the web site for the U.S. Bankruptcy Court for the Northern District of California, /<http://www.canb.uscourts.gov/>.
- The "Decommissioning Cost Estimate for the Diablo Canyon Power Plant, Units 1 and 2," prepared for PG&E by TLG Services, Inc. (July 1997),* filed with the CPUC as part of PG&E's 1999 General Rate Case, as well as related portions of PG&E's rate case submittal to the CPUC.*
- The "Decommissioning Cost Study for the Diablo Canyon Power Plant, Units 1 and 2," prepared for PG&E by TLG Services, Inc. (February 2002),* filed with the CPUC as part of PG&E's 2002 Triennial Decommissioning proceeding, as well as related portions of PG&E's submittal to the CPUC in that proceeding.*
- The "Summary of Financial Status" for PG&E, for the month ending November 30, 2002, filed with the Bankruptcy Court in connection with case no. 01-30923.*
- Relevant portions of Exhibit 10, "Pacific Gas and Electric Company, 2003 Test Year, Retained Generation Results of Operation," from PG&E's filings with the CPUC in the 2003 General Rate Case associated with nuclear operations at Diablo Canyon.
- Recent public financial disclosure statements, including Securities and Exchange Commission ("SEC") Form 10-Q for the period ending September 30, 2002, dated November 12, 2002 (available through the SEC website, <http://www.sec.gov/edgar/searchedgar/webusers.htm/>). By the date of the submittal of the written filing in this NRC Subpart K proceeding, it is possible that PG&E may have filed its SEC Form 10-K for the year ending December 31, 2002, in which case this reference would be updated.

This list is subject to change, in that discovery is ongoing and PG&E is in the process of developing its written filing for this matter. PG&E will supplement its response as necessary pursuant to 10 C.F.R. §§ 2.740(e)(1) and (2).

Interrogatory 5

Describe how PG&E will demonstrate financial qualification under 10 C.F.R. § 72.22(e) during the pendency of the bankruptcy proceeding if the CPUC does not have ratepayer funding available for ISFSI-related expenditures.

PG&E Response to Interrogatory 5

PG&E expects to have access to ratepayer funding with respect to costs associated with the ISFSI during the pendency of the bankruptcy proceeding. See Response to Interrogatory 2, above. Pending the outcome of the bankruptcy proceeding, PG&E's retained generation was specifically returned to the cost-of-service rate base by the CPUC order of April 4, 2002, Decision 02-04-016 (cited above).

If rate recovery were not available with respect to ISFSI expenses, for some reason, PG&E would pay costs associated with the design, construction, and operation of the ISFSI from other operating revenues. See Responses to Interrogatories 1 - 3, above, and the publicly available financial documents identified in Response to Interrogatory 4.

II. DOCUMENT PRODUCTION REQUESTS

Request 1

All documents that are identified, or referred to, in responding to Interrogatory 4.

PG&E Response to Request 1

All documents identified above are publicly available documents or decisions. PG&E is, for convenience, providing copies of the documents identified in response to Interrogatory 4 that are identified by an asterisk (*).

Request 2

All documents that PG&E intends to use, exhibit, or otherwise rely upon in this Subpart K proceeding to support its position on SLOMFP Contention TC-2.

PG&E Response to Request 2

See Response to Request 1, above.

Request 3

All documents suggesting that PG&E will be able to provide ongoing funding to design, construct, operate and/or decommission the ISFSI during the pendency of the bankruptcy proceeding, because PG&E either already has the funds, can obtain the funds through the rate-making process and will be permitted to expend those funds by the bankruptcy court, or can obtain the funds through debt financing and will be permitted to expend those funds by the bankruptcy court.

PG&E Response to Request 3

See Response to Request 1, above. To the extent that this request might be construed as requesting more than those documents identified, which provide the basis for

PG&E's position with respect to the single admitted contention in this proceeding, PG&E objects to the request as duplicative, vague, and overbroad.

Respectfully submitted,

A handwritten signature in black ink that reads "David A. Repka". The signature is written in a cursive style and is positioned above a horizontal line.

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ATTORNEYS FOR PACIFIC GAS &
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Dated in Washington, District of Columbia
this 20th 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 Spent Fuel Storage Installation))	ASLBP No. 02-801-01-ISFSI

AFFIDAVIT OF WALTER L. CAMPBELL

I, Walter L. Campbell, being duly sworn, state as follows:

1. I am currently employed by Pacific Gas and Electric Company ("PG&E") as Director of Business and Financial Planning. In this capacity, I supervise preparation of financial forecasts, rate of return testimony, analysis of financial policies and other economic analyses. I also coordinate preparation of major business planning studies, such as the annual business plan. I report to the Chief Financial Officer of PG&E.
2. I have been employed by PG&E or one of its affiliates since 1985.
3. I provided input to PG&E's responses to Interrogatories 1, 2, 3, 4, and 5, and Request for Production 1, as set forth in the "San Luis Obispo County's First Set of Interrogatories and Requests for Production of Documents Directed to Pacific Gas and Electric Company," filed by interested governmental participant San Luis Obispo County on February 10, 2003. These interrogatories and requests for production relate to Contention TC-2, as admitted by the NRC Atomic Safety and Licensing Board in its December 2, 2002, Memorandum and Order in this proceeding.

4. The information presented in the discovery references identified in paragraph 3 is true and correct to the best of my knowledge and belief.

Walter L. Campbell
WALTER L. CAMPBELL

Sworn and subscribed before me on this 18th day of February, 2003



Elizabeth J. Diamond
Notary Public

My Commission Expires: May 16, 2006

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 RESPONSE TO SAN LUIS OBISPO COUNTY'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS" and the "AFFIDAVIT OF WALTER L. CAMPBELL" have been served as shown below by electronic mail, this 20th 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.

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