

RELATED CORRESPONDENCE

February 24, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

March 3, 2003 (2 23PM)

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 RESPONSE TO
THE CALIFORNIA ENERGY COMMISSION'S INTERROGATORIES AND
REQUEST 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 its response to the California Energy Commission's ("CEC") "Interrogatories and Request for Production of Documents" ("CEC Requests"), which was served on PG&E on February 14, 2003.²

I. INTERROGATORIES

Interrogatory 1

Please state the basis and explain the rationale for PG&E's position that it is financially qualified pursuant to 10 C.F.R. § 72.22(e) to own, operate

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

² PG&E received two identical CEC Requests by electronic mail on February 14, 2003, one dated February 13, 2003, and one dated February 14, 2003. Pursuant to the Licensing Board's instructions for filing set forth in its June 6, 2002, Initial Prehearing Order, PG&E is considering that service of the CEC Requests was completed on February 14, 2003.

and decommission the proposed independent spent fuel storage installation (ISFSI). Please provide a detailed summary of the facts, data, and arguments that PG&E plans to rely on at the oral argument.

PG&E Response to Interrogatory 1

PG&E will file, on April 11, 2003, its “detailed summary of the facts, data, and arguments that PG&E plans to rely on at the oral argument” in accordance with 10 C.F.R. § 2.1113(a) and the schedule previously established for this Subpart K proceeding. PG&E objects to this interrogatory to the extent it seeks to expedite PG&E’s filing date and seeks a detailed document that has not yet been prepared.

For an understanding of PG&E’s position with respect to Contention TC-2, see generally PG&E’s Response to San Luis Obispo County (“County”) Interrogatories 1 through 5,³ as well as the discussion of Contention TC-2 in PG&E’s August 19, 2002, Response to the Supplemental Request for Hearing and Petition to Intervene of San Luis Obispo Mothers for Peace, et al., in this proceeding. Moreover, the following provides an overview of PG&E’s position on Contention TC-2.

The estimated expenses associated with the design, construction, operation and decommissioning of the Diablo Canyon ISFSI are provided in PG&E’s Part 72 license application, dated December 21 2001, and in the supplemental financial information provided to the NRC by letter dated June 7, 2002. Citations to these documents were provided in the PG&E Response.

Pending the resolution of the bankruptcy proceeding, PG&E expects to pay the costs associated with the ISFSI as normal operating expenses, covered by operating revenues.

³ See “Pacific Gas and Electric Company’s Response to San Luis Obispo County’s First Set of Interrogatories and Requests for Production of Documents,” dated February 20, 2003 (“PG&E Response”).

Pursuant to the CPUC's order of April 4, 2002, returning PG&E's retained generation to the cost-of-service rate base, PG&E is, pending resolution of the bankruptcy proceeding, entitled to recovery of prudent Diablo Canyon expenses through cost-of-service rates. *See* Decision 02-04-016, Opinion Adopting Revenue Requirements for Utility Retained Generation, 2000 Cal. PUC LEXIS 1110 (Apr. 4, 2002). PG&E believes that the costs associated with the ISFSI represent reasonable and prudent Diablo Canyon operating expenses that are in the public interest and that are consistent with PG&E's obligations under the Nuclear Waste Policy Act.

PG&E is not borrowing and will not need to borrow funds to pay ISFSI expenses. Construction-work-in-progress regulations applicable to capital costs also do not apply. For rate-recovery purposes in the present CPUC rate-regulated environment, PG&E is not accounting for Diablo Canyon ISFSI expenses incurred as capital costs. Rather, it is treating those costs as operating expenses. This is reasonable, conservative accounting treatment, given that this approach matches the period for rate recovery through the rate base to the time period in which a benefit (electrical generation) is being received by rate payers. ISFSI expenses are currently reflected in PG&E's 2003 General Rate Case before the CPUC, as is discussed further below in response to Interrogatory 3.

Regardless of rate recovery and accounting treatment for ISFSI expenses, PG&E has the financial qualifications to pay costs associated with the ISFSI pending resolution of the bankruptcy proceeding. PG&E has filed for reorganization under Chapter 11 of the United States Bankruptcy Code, not for Chapter 7 liquidation. PG&E remains a going concern — a solvent debtor-in-possession — continuing to conduct day-to-day operations under the protection of the bankruptcy process. PG&E's bankruptcy filing does not reflect a shortfall in revenues to cover operating expenses. Rather, it addresses a focused problem of restructuring debt created

by the California energy crisis of 2000. The debt resulted from an imbalance between electricity costs and revenues, created by a flawed electricity deregulation plan. That imbalance has been addressed pending the resolution of the bankruptcy proceeding by measures that include rate relief, lower electricity market prices, and changes with respect to electricity procurement.

PG&E's recent, publicly-available financial statements demonstrate PG&E's substantial operating income and its ability to cover the much smaller anticipated costs associated with the ISFSI. In this regard, see PG&E's Response to County Interrogatory 2. While PG&E's expenses are subject to a prudence review pending resolution of the bankruptcy proceeding, this review is not unusual or unique — it is the same as would apply for any cost-of-service rate-regulated entity. Any disallowances resulting from a prudence review would not be material to PG&E's financial qualifications with respect to the ISFSI, given PG&E's operating income and available assets.

Furthermore, as discussed in PG&E's Response to County Interrogatory 1, PG&E has substantial cash in hand. This cash would be sufficient to cover operating costs associated with the development, construction, operation and decommissioning of the ISFSI during the pendency of the bankruptcy proceeding. While PG&E does not anticipate paying ISFSI expenses out of cash in hand, some portion of this cash would be available, with the approval of the Bankruptcy Court, to pay costs necessary to preserve and maintain the Diablo Canyon generating asset.

With respect to the estimated decommissioning costs for the ISFSI, as explained in the Part 72 application appropriate amounts have been included in the estimates of decommissioning costs associated with the Diablo Canyon Power Plant as submitted to the CPUC in PG&E's 1999 General Rate Case and in PG&E's 2002 Nuclear Decommissioning Cost

Triennial Proceeding. As a result, funds for decommissioning the ISFSI are included in the current Nuclear Decommissioning Trust Funds for decommissioning Diablo Canyon.

Following resolution of the bankruptcy proceeding, the financial viability of the emerging companies will have been confirmed by the Bankruptcy Court. Under the CPUC Plan of Reorganization, PG&E would be the ISFSI Part 72 licensee and would be a rate-regulated electric utility with access to the rate base. Under the PG&E Plan of Reorganization, the Part 50 power plant operating licensee and Part 72 ISFSI licensee would be Electric Generation LLC. The financial qualifications of Electric Generation LLC are currently a subject for review in the bankruptcy proceeding and in connection with the pending NRC Part 50 license transfer for the Diablo Canyon Power Plant. The qualifications of PG&E and Electric Generation LLC, post-bankruptcy resolution, are beyond the scope of this proceeding.

Interrogatory 2

PG&E has stated in its Diablo Canyon ISFSI License Application (Application) that, "The funds necessary to cover the costs in the first period [\$132 million] will be derived from electric rates and from electric operating revenues." [Footnote omitted.] Does PG&E have additional information that supports this statement, taking into account PG&E's proposed plan for reorganization in the bankruptcy proceeding? If so provide [sic] the information, and a discussion of any funding that PG&E is requesting for this facility in the current rate case before the California Public Utilities Commission (CPUC), and whether PG&E believes recovery of the \$132 million for the first period of operation will be available from ratepayer funding. Also, provide a detailed summary stating facts, data, arguments or other basis for such position. If PG&E cannot provide information to support access to rate payer funds, please explain how PG&E will fund the construction, operation, and decommissioning of the ISFSI without ratepayer funding.

PG&E Response to Interrogatory 2

With respect to PG&E's proposed Plan of Reorganization, upon confirmation and implementation of the plan the new licensee would be Electric Generation LLC. This entity

would not have access to cost-of-service rates, but would recover costs from revenues based on the sale of electricity (largely in accordance with the terms of a proposed bilateral Power Sales Agreement with Reorganized PG&E). This scenario is described in PG&E's supplemental letter to the NRC of June 7, 2002. The adequacy of the licensee's revenues to cover costs in this scenario is demonstrated by financial information that has been presented to the Bankruptcy Court and information provided to the NRC in the NRC Part 50 license transfer application related to Diablo Canyon Power Plant, dated November 30, 2001. However, the qualifications of Electric Generation LLC, after the bankruptcy reorganization, are beyond the scope of Contention TC-2 in the present proceeding.

As discussed in response to Interrogatory 1, pending the resolution of the bankruptcy proceeding, PG&E can recover prudent costs associated with DCPD — including costs associated with the ISFSI — through the cost-of-service rate process.

With respect to the current rate case before the CPUC, the Interrogatory appears to be referring to PG&E's 2003 General Rate Case. In the 2003 General Rate Case, PG&E has provided estimates of nuclear operations costs for each year through 2005. The estimate of \$132 million for the "first period of operation," as referenced in the Interrogatory, is taken from PG&E's letter to the NRC dated June 7, 2002, *not* from the 2003 General Rate Case. The \$132 million estimate relates to ISFSI expenses for a period from now through 2025. In the 2003 General Rate Case, PG&E is not seeking recovery for ISFSI expenses incurred for this entire period. Rather, as can be seen in Table 4-13, "One Time O&M Forecast Adjustments," from PG&E's Exhibit 10, "2003 Test Year Retained Generation Results of Operations," filed in the 2003 General Rate Case, and included in the documents provided by the governmental entities in response to PG&E's discovery requests, PG&E has included estimates for the ISFSI only for the

years 2002 through 2005 (in 2001 dollars), based on the recorded expenses of \$8.9 million for 2001. Using the adjustments in the table, the estimates are: 2002 - \$5.9 million; 2003 - \$7.9 million; 2004 - \$8.9 million; 2005 - \$20.9 million.

As discussed in response to Interrogatory 1, any expenses associated with the ISFSI that are not recovered through "ratepayer funding" will be covered by operating income. The sufficiency of PG&E's revenues pending the resolution of the bankruptcy (and beyond) have been discussed above.

Interrogatory 3

PG&E has stated in its Application that, "PG&E's contract with Holtec related to the ISFSI, including the dry cask storage system, has been approved by the Bankruptcy Court and costs under the contract have been authorized." [Footnote omitted.] We understand that Judge Montali has signed an "Order Re Debtor's Application for Order Approving Assumption of Executory Contract and Entering Into New Contract for Licensed Used Nuclear Fuel Storage System," in the pending bankruptcy proceeding. However, the application does not discuss how, when, or to what extent the contract or expenditures have been approved by the CPUC. How, when, and to what extent has the contract or expenditures been or will be approved by the CPUC? If PG&E does not have additional information on this matter please state the basis for its position that the requirements of 10 C.F.R. § 72.22 have been met.

PG&E Response to Interrogatory 3

The Bankruptcy Court order cited in the Interrogatory reflects the approval of the Bankruptcy Court of PG&E's contract with Holtec International. Obviously, this order is not the same as the approval of the CPUC for rate recovery purposes.

As discussed in PG&E's Response to County Interrogatories 1 and 2, the Bankruptcy Court order reflects that the Bankruptcy Court has authorized PG&E to commit to incurring a substantial component of the expenditures associated with the ISFSI. With respect to rate recovery, advance CPUC authority is not required for PG&E to incur expenditures.

Operating expenditures remain subject to prudence review by the CPUC. As discussed in the response to Interrogatory 2 above, expenditures related to the ISFSI are included in PG&E's 2003 General Rate Case before the CPUC.

II. DOCUMENT PRODUCTION REQUESTS

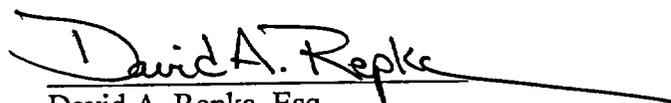
Request 1

For each interrogatory, identify all documents on which PG&E relies in support of its answer thereto. Please either provide with your response a copy of each such document or indicate where and from whom it can be obtained.

PG&E Response to Request 1

See PG&E's Response to County Interrogatory 4 and County Document Production Request 1.

Respectfully submitted,



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Dated in Washington, District of Columbia
this 24th 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, and 3, and Request for Production 1, as set forth in the "California Energy Commission Interrogatories and Request for Production of Documents to Pacific Gas and Electric Company," filed by interested governmental participant California Energy Commission on February 14, 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, 24th day of February, 2003



Elizabeth J. Diamond

 Notary Public

My Commission Expires: 05/16/2006

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
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Pacific Gas and 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 "PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO THE CALIFORNIA ENERGY COMMISSION'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS" and the AFFIDAVIT OF WALTER L. CAMPBELL" have been served as shown below by electronic mail, this 24th 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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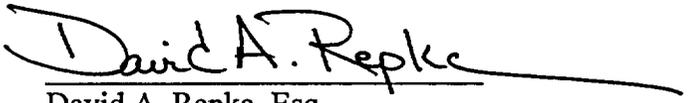
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