

RAS 5925

RELATED CORRESPONDENCE  
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

March 6, 2003

DOCKETED 03/06/03

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PACIFIC GAS & ELECTRIC CO.	)	Docket No. 72-26-ISFSI
	)	
(Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)	)	ASLBP No. 02-801-01-ISFSI

NRC STAFF'S ANSWERS AND OBJECTIONS TO CEC'S INTERROGATORIES  
AND REQUEST FOR PRODUCTION OF DOCUMENTS TO THE NRC STAFF

INTRODUCTION

In accordance with the Atomic Safety and Licensing Board's ("Board") Memorandum and Order (...Granting Requests to Invoke 10 C.F.R. Part 2, Subpart K Procedures and Establishing Schedule), dated December 26, 2002, LBP-02-25, 56 NRC \_\_\_\_, slip op. at 9, the NRC staff ("Staff") hereby responds to the interrogatories and document requests filed by the California Energy Commission ("CEC") on February 14, 2003. The Board required that, absent some other agreement among the parties to the discovery, responses were to be filed within ten days after service of the request. Id. at 10. The interrogatories were not served upon NRC Staff Counsel, and only came to Staff Counsel's attention on February 19, 2003, when the NRC's Office of the Secretary received its hard copy and noted that Staff Counsel had not been served. The undersigned counsel called counsel for CEC on February 20, 2003, and left a voice mail to the effect that due to the intervening depositions scheduled for February 27-28, 2003, the Staff would not be able to reply to the interrogatories until March 6, 2003. Undersigned counsel did not receive any response at that time from CEC counsel. However, at the depositions on February 27, 2003, CEC Counsel Darcie Houck advised NRC Staff Counsel Angela Coggins that the CEC did not object to the Staff's proposed response date. These answers are also filed within the March 7,

2003, date established by the Board for completion of discovery. Accordingly, these answers should be considered timely filed.

### INTERROGATORY 1

Please state the basis and explain the rationale for the NRC Staff's position that PG&E is financially qualified pursuant to 10 C.F.R. § 72.22(e) to own, operate and decommission the proposed independent spent fuel storage installation (ISFSI). Please provide a detailed summary of facts, data, and arguments that NRC Staff plan to rely on at the oral argument.

### RESPONSE

#### Objection

The Staff objects to the interrogatory in that it requests information that the Staff is not required to provide in discovery, but rather as its written presentation for oral argument in accordance with Subpart K of 10 Part 2. Pursuant to the Board Memorandum and Order), LBP-02-25, *supra*, slip op. at 9, the parties to this proceeding are not required to "provide a detailed summary of facts, data, and arguments" that they plan to rely upon at oral argument until April 11, 2003. Nevertheless, because the interrogatory can be construed, in part, as requesting information that is permissible under discovery, the Staff provides the following partial answer.

#### Partial Answer

In order to apply for an ISFSI license under 10 C.F.R. § 72.22, general and financial information must be disclosed that meets the informational requirements of section 72.22. The Staff finds that PG&E in its June 7, 2002, supplement to the December 21, 2001, application, clearly listed an answer to every part of 10 C.F.R. § 72.22, which included everything from the full name of the applicant (10 C.F.R. § 72.22(a)) to estimated decommissioning costs (10 C.F.R. § 72.22(e)(3)). Section 72.22(e) focuses on information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out, in accordance with the regulations in 10 C.F.R., Chapter I, the activities for which the license is sought. PG&E provided

information describing the type of license it is seeking, as well as the general plan for carrying out the activity. PG&E disclosed that it is in bankruptcy, and provided its best assessment of how it will emerge from bankruptcy under its Plan of Reorganization that has been filed with the Bankruptcy Court. The NRC Staff finds that PG&E's assessment of its financial situation is reasonable, as required under 10 C.F.R. § 72.22(e).

In addition, the Staff concludes that if PG&E's Plan of Reorganization were not approved by the Bankruptcy Court, then the application filed by PG&E for the ISFSI would have to be amended.

## INTERROGATORY 2

PG&E has stated in its Diablo Canyon ISFSI License 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." Does the NRC Staff have any information or reason to believe, given PG&E's position in the bankruptcy proceeding, that the California Public Utilities Commission will allow PG&E to recover the \$132 million cost for the first period of operating the proposed ISFSI? If so please provide a detailed summary stating facts, data, arguments or other basis for such a position.

## RESPONSE

### Objection

The Staff objects to the interrogatory for the same reason as it objected to Interrogatory 1. As the Staff did with respect to Interrogatory 1, it is, however, providing the following partial answer.

### Partial Answer

The Staff has no particular insight into what precise actions will be taken by the California Public Utilities Commission with respect to the funding of the proposed ISFSI. However, the NRC Staff considers reasonable PG&E's assertion that the costs of used and useful assets and expenses incurred in the construction, operation, and decommissioning of the proposed ISFSI will be recoverable in rates. As asserted in Interrogatory 2, PG&E has projected the expenses in the

first period of operating the proposed ISFSI to be \$132 million. This is covering the period of 2003 through 2025, approximately 22 years. On average, PG&E is seeking approximately \$6 million per year in rate recovery. Whether costs associated with the operation of the ISFSI during this time frame come directly from rates, or from other revenues available to PG&E, the Staff finds it reasonable that PG&E will be able to cover these costs.

### 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." 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. Does NRC Staff believe the CPUC has or will authorize these expenditures? If so how, when and to what extent does NRC Staff believe the contract or expenditures will be approved by the CPUC? If the NRC Staff does not have additional information please state the basis for the NRC Staff's position that PSE&G meets the requirements of 10 C.F.R. § 72.22 without providing additional information to verify the statements presented in the Application.

### RESPONSE

The Staff has no particular insight into what precise actions the California Public Utilities Commission will take with respect to cost recovery for the ISFSI. In addition, regardless of whether recovery of costs associated with the ISFSI during this time frame comes directly from rates, or from other revenues available to PG&E, the Staff finds it reasonable that PG&E will be able to cover the ISFSI costs.

PG&E in its December 21, 2001, and June 7, 2002, submittals, fulfilled the requirements of 10 C.F.R. § 72.22. No additional information was needed to support the Application. If PG&E as the applicant for the ISFSI license does not emerge from bankruptcy as it anticipates, then the application will need to be amended.

The Staff thoroughly reviewed the ISFSI Application and finds the statements reasonable, and in compliance with the requirements of 10 C.F.R. § 72.22.

#### REQUEST FOR PRODUCTION OF DOCUMENTS

For each interrogatory, identify all documents on which the NRC Staff 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.

#### RESPONSE

The following documents were relied upon by the Staff in its answers. These documents are in the record of this proceeding and should be available to CEC.

- 1) December 12, 2001, Diablo Canyon Power Plant Independent Spent Fuel Storage Installation License Application.
- 2) June 7, 2002, Diablo Canyon Independent Spent Fuel Storage Installation Supplemental General and Financial Information.

#### EXPERT:

Michael A. Dusaniwskyj. See, statement of professional qualifications attached to Staff's response to San Luis Obispo County's interrogatories, dated February 21, 2003. Pursuant to 10 C.F.R. § 2.740b(b), Mr. Dusaniwskyj has signed as the person who provided the answers to the interrogatories and request for production of documents. See, attached Affidavit of Michael A. Dusaniwskyj.

CONCLUSION

The above constitutes the Staff's answers to CEC's interrogatories and document request. By his signature below, Staff Counsel Stephen H. Lewis, indicates that he is the person responsible for the objections posed to the interrogatories.

Respectfully submitted,

***/RA/***

Stephen H. Lewis  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 6<sup>th</sup> day of March, 2003.

March 6, 2003

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
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PACIFIC GAS & ELECTRIC CO.	)	Docket No. 72-26-ISFSI
	)	
(Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)	)	ASLBP No. 02-801-01-ISFSI
	)	

AFFIDAVIT OF MICHAEL A. DUSANIWSKYJ

I, Michael A. Dusaniwskyj, being duly sworn, hereby state as follows:

1. I have provided the information which forms the basis for the answers to Interrogatories 1, 2, and 3 and the request for production of documents contained in the "NRC Staff's Answers to CEC's Interrogatories and Request for Production of Documents to the NRC Staff," dated March 6, 2003.

2. The information contained in the interrogatory answers and responses to request for documents is true and correct to the best of my knowledge and belief.

*/RA/*

\_\_\_\_\_  
Michael A. Dusaniwskyj

Sworn and subscribed to before  
me this 6<sup>th</sup> day of March, 2003

**Circe E. Martin**

\_\_\_\_\_  
Notary Public

**3/7/2007**

My Commission Expires: \_\_\_\_\_

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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 "NRC STAFF'S ANSWERS AND OBJECTIONS TO CEC'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO THE NRC STAFF" have been served upon the following persons by United States mail, first class, or through the Nuclear Regulatory Commission's internal mail distribution as indicated by an asterisk (\*); and by electronic mail as indicated by a double asterisk (\*\*) on this 6<sup>th</sup> day of March, 2003.

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

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

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

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

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

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

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)

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)

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)

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)

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

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)

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)

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

Klaus Schumann\*\*  
Mary Jane Adams  
26 Hillcrest Drive  
Paso Robles, CA 93446  
E-mail: [jayklaus@msn.com](mailto:jayklaus@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](mailto:jlindholm@co.slo.ca.us)

Robert K. Temple, Esq.\*\*  
2524 N. Maplewood Avenue  
Chicago, IL 60647  
E-mail: [nuclaw@mindspring.com](mailto:nuclaw@mindspring.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)

John L. Wallace\*\*  
General Manager & District Engineer  
Avila Beach Community Services District  
P.O. Box 309  
Avila Beach, CA 93424  
E-mail: [JohnW@lwa.com](mailto:JohnW@lwa.com)

Laurence G. Chaset \*\*  
Legal Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
E-mail: lau@cpuc.ca.gov

*/RA/*

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Stephen H. Lewis  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 6<sup>th</sup> day of March, 2003