

RAS 6314

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 04/16/03
SERVED 04/16/03

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

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

April 16, 2003

MEMORANDUM AND ORDER
(Section 2.1109(b) Oral Argument Schedule)

Pending before the Licensing Board are the April 11, 2003 10 C.F.R. § 2.1113(a) initial written submissions of (1) the 10 C.F.R. § 2.715(c) interested governmental entities San Luis Obispo County, California, the California Public Utilities Commission, and the Avila Beach Community Services District (referred to collectively as the Interested Governmental Participants or IGPs) supporting a further evidentiary hearing regarding contention SLOMFP TC-2, PG&E's Financial Qualifications Not Demonstrated; (2) the California Energy Commission (CEC) supporting a merits ruling on the contention that would include imposing a license condition upon applicant Pacific Gas and Electric Co. (PG&E); (3) the 10 C.F.R. § 2.714 joint intervenors San Luis Obispo Mothers for Peace, et al., (referred to collectively as SLOMFP) indicating they will only be filing a response to the other participants' initial written submissions; and (4) PG&E and the NRC staff asserting that no further evidentiary presentations are necessary. Upon consideration of those filings, the Licensing Board establishes the following schedule for the 10 C.F.R. § 2.1109(b) oral argument:

Date/Starting Time: Monday, May 19, 2002, beginning at 9:00 a.m. PDT

Location: Embassy Suites Hotel
San Luis Obispo Room
333 Madonna Road
San Luis Obispo, California

Because a participant supporting the need for an evidentiary hearing bears the burden of establishing that need, see Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), LBP-01-9, 53 NRC 239, 248-49, petition for review denied, CLI-01-11, 53 NRC 370 (2001), petitions for review denied, Orange County, North Carolina v. NRC, 47 Fed. Appx. 1, 2002 WL 31098379 (D.C. Cir. 2002), we establish an order of argument for this proceeding in which the IGPs go first in support of a further evidentiary proceeding, followed by responses by PG&E and the staff in opposition to such a proceeding, and concluded by a reply by the IGPs to the PG&E and staff responses. Additionally, although not addressing the question of the need for an additional evidentiary hearing in their initial written presentations, SLOMFP is the sponsor of the contention at issue and CEC supports a ruling on the merits of the contention the substance of which has been opposed by PG&E in an ongoing federal bankruptcy proceeding. As a consequence, the Board includes SLOMFP and CEC on the same "side" as the IGPs for the purpose of argument on their submissions.

The Board allocates a total of three hours to each side to present their respective arguments/responses/replies. The parties/interested governmental participants are responsible for determining the argument order/allocation of time among the parties/interested governmental participants for each side and should advise the Board of their tentative order of presentation and time allocations for arguments/responses/replies at the time they file their responses to the April 11, 2003 initial written submissions. The Board anticipates this argument will be concluded on May 19, 2003.

The Board has no objection to arguments by more than one counsel on behalf of any individual party/interested governmental participant or party/interested governmental participant group so long as the "per side" time allocation is not exceeded.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

April 16, 2003

* Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant PG&E; (2) intervenors SLOMFP; (3) San Luis Obispo County, California, the California Public Utilities Commission, the CEC, the Avila Beach Community Services District, and the Diablo Canyon Independent Safety Committee; and (4) the staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
PACIFIC GAS AND ELECTRIC CO.) Docket No. 72-26-ISFSI
DIABLO CANYON POWER PLANT)
)
(Independent Spent Fuel Storage)
Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (SECTION 2.1109(B) ORAL ARGUMENT SCHEDULE) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 16th day of April 2003