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Re: **Pacific Gas and Electric Company**  
**(Diablo Canyon Power Plant Independent Spent Fuel**  
**Storage Installation)**  
**Docket No. 72-26-ISFSI**

Dear Administrative Judges:

The issue raised in Contention TC-2 and still pending in this case concerns the financial qualifications of Pacific Gas and Electric Company ("PG&E"), the current rate-regulated electric utility applicant, to construct, operate, and decommission the proposed Independent Spent Fuel Storage Installation ("ISFSI") at the Diablo Canyon Power Plant ("DCPP") pending the resolution of PG&E's bankruptcy case. While the ultimate resolution of the bankruptcy case and financial qualifications post-bankruptcy are beyond the current scope of the contention, the following is provided in the interest of keeping the Atomic Safety and Licensing Board ("Licensing Board") informed of developments with respect to the pending bankruptcy case.

As the Licensing Board is aware, on November 30, 2001, PG&E filed an application (the "Application") with the Commission requesting approval of the transfer of the NRC operating licenses for DCPP to Electric Generation, LLC ("Gen") and Diablo Canyon LLC ("Nuclear"). The Application specifically sought approval of transfers necessitated by certain

transactions contemplated by the Plan of Reorganization for PG&E filed by PG&E and its parent, PG&E Corporation ("PG&E Plan"), and pending in the Bankruptcy Court for the Northern District of California ("Bankruptcy Court"). In an order dated May 27, 2003 ("Order"), the NRC Staff approved the transfer of the operating licenses to Gen and Nuclear.<sup>1</sup> Although the Order is "effective upon issuance," it also conditions transfer of the DCCP operating licenses on satisfaction of seven separate conditions. 68 Fed. Reg. at 33,209.

Pursuant to settlement procedures implemented by the Bankruptcy Court,<sup>2</sup> PG&E, PG&E Corporation, and the staff of the California Public Utilities Commission ("CPUC") on June 20, 2003, announced a proposed settlement of the PG&E bankruptcy case (the "Settlement Agreement"). The Settlement Agreement provides that PG&E will seek Bankruptcy Court approval of a plan of reorganization ("Settlement Plan") in place of the PG&E Plan and the competing plan previously proposed by the CPUC and the Official Committee of Unsecured Creditors. PG&E does not anticipate that NRC approval will be required to implement the Settlement Plan. Under the Settlement Plan, PG&E will remain the licensee for DCCP and the proposed ISFSI, and will remain a vertically integrated utility subject to CPUC rate regulation.

The Settlement Agreement has not yet been executed. The Settlement Agreement provides that it will become binding only upon its approval by the board of directors of PG&E, PG&E's parent, and the CPUC, and upon its execution by PG&E, PG&E's parent, and the CPUC on or before December 31, 2003. The Settlement Plan will not be implemented until various conditions are met; these include, among other things, CPUC approval of the Settlement Agreement, CPUC approval of all rates, tariffs and agreements necessary to implement the Settlement Plan, PG&E's receipt of company credit ratings of "Investment Grade" from Standard & Poor's and Moody's Investors Service, Inc., and Bankruptcy Court confirmation of the Settlement Plan.

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<sup>1</sup> See Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments, 68 Fed. Reg. 33,208 (June 3, 2003).

<sup>2</sup> The Bankruptcy Court issued a series of orders, beginning on March 11, 2003, staying the hearings in the bankruptcy case to provide time for settlement discussions, under the supervision of a settlement judge, among PG&E, PG&E Corporation, the Attorney General of California, the CPUC, the Official Committee of Unsecured Creditors ("OCC"), and other parties. On June 20, 2003, the Bankruptcy Court issued an order staying, until further order of the Bankruptcy Court, further proceedings on the PG&E Plan and the competing plan proposed by the CPUC and OCC to allow proceedings on the settlement to go forward.

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PG&E will notify the Licensing Board promptly in the event of other developments in the bankruptcy case that may affect this proceeding or may be of interest to the Licensing Board and parties.

Respectfully submitted,

  
David A. Repka  
Counsel for Pacific Gas and Electric Company

cc: Service List (attached)

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