

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAN LUIS OBISPO MOTHERS FOR PEACE,

Petitioner,

v.

No. 08-75058

UNITED STATES NUCLEAR REGULATORY
COMMISSION and the UNITED STATES OF
AMERICA,

Respondents,

and

PACIFIC GAS AND ELECTRIC COMPANY,

Proposed Intervenor.

MOTION OF PACIFIC GAS AND ELECTRIC COMPANY
FOR LEAVE TO INTERVENE

Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure, and Circuit Rule 15-3.2(c) of the United States Court of Appeals for the Ninth Circuit, Pacific Gas and Electric Company ("PG&E") hereby moves for leave to intervene as a party respondent in the captioned proceeding. In support of its motion, PG&E states as follows:

1. PG&E is the owner and operator of the Diablo Canyon Power Plant ("DCPP"). DCP is a two-unit nuclear plant licensed and regulated by the United States Nuclear Regulatory Commission ("NRC" or "Commission").

2. Petitioner San Luis Obispo Mothers for Peace ("SLOMFP") is seeking review of one or more decisions of the NRC. Specifically, SLOMFP cites four decisions in the *Matter of Pacific Gas and Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)*, Docket No. 72-26-ISFSI: CLI-08-01, issued January 15, 2008; CLI-08-05, issued March 27, 2008; CLI-08-08, issued April 30, 2008; and CLI-08-26, issued October 23, 2008.

3. The NRC's decisions relate to PG&E's request for a license to construct and operate an independent spent fuel storage installation ("ISFSI") at DCP. The ISFSI would support continued operation of DCP through the term of the current NRC licenses for the plant.

4. The NRC decisions at issue result from the administrative proceeding on PG&E's ISFSI license application. In CLI-08-01, the Commission ruled that only two limited portions of SLOMFP's contentions with respect to the NRC Staff's final supplemental environmental assessment were admissible. The admitted contentions were: (1) that the NRC Staff failed to provide source documents or information underlying its analysis, and failed to identify appropriate Freedom of Information Act ("FOIA") exemption(s) for their withholding

decisions; and (2) that the environmental assessment ignores environmental effects on the surrounding land and the non-fatal health effects from a hypothetical terrorist attack. In CLI-08-05, the Commission denied a request for reconsideration of an earlier decision ruling on access to unredacted security documents and referred the FOIA dispute to a previously-designated presiding officer. In CLI-08-08, the Commission again declined to reconsider its decision to restrict access to security-related information and deemed inadmissible another late-filed contention by SLOMFP. In CLI-08-26, the Commission resolved the remaining contention, ruling that the NRC Staff was not required to prepare a full environmental impact statement.

5. PG&E, as the owner and operator of DCP, and as the applicant for the ISFSI license, participated in the administrative proceedings before the NRC. PG&E's operations are directly implicated by the proposed licensing action and would be directly affected should the Court suspend, enjoin, or set aside the NRC's orders that are the subject of the Petition for Review. Accordingly, PG&E has a direct and substantial interest in the case. Although the NRC is a Respondent with respect to the petition for review, PG&E has a separate interest apart from the regulatory interests of the NRC.

6. This Court granted PG&E's motion for leave to intervene when SLOMFP sought review of prior Commission orders in this proceeding. *See San*

Luis Obispo Mothers for Peace v. Nuclear Regulatory Comm'n, No. 03-74628
(Dkt. No. 5).

7. Counsel for the NRC and SLOMFP have indicated that they do not object to PG&E's motion for leave to intervene.

Wherefore, PG&E requests that it be granted leave to intervene as a party respondent in the captioned proceeding.

December 29, 2008

Respectfully submitted,

s/ Kathleen M. Sullivan

Kathleen M. Sullivan
QUINN EMANUEL URQUHART
OLIVER & HEDGES, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
(212) 849-7000
kathleensullivan@quinnemanuel.com

David A. Repka
WINSTON & STRAWN LLP
1400 L Street, N.W.
Washington, DC 20005-3502
(202) 371-5700
DRepka@winston.com

*Attorneys for Proposed Intervenor Pacific
Gas & Electric Company*

CERTIFICATE OF SERVICE

I, Kathleen M. Sullivan, a member of the Bar of this Court, hereby certify that on December 29, 2008, I electronically filed the foregoing "Motion Of Pacific Gas And Electric Company For Leave To Intervene" with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate ECF system.

I further certify that one of the participants in the case is not a registered CM/ECF user. I have mailed the foregoing "Motion Of Pacific Gas And Electric Company For Leave To Intervene" by first-class mail, postage prepaid, to the following non-CM/ECF participant:

Karen D. Cyr, Esq.
U.S. Nuclear Regulatory Commission
Office of the General Counsel
11555 Rockville Pike
Rockville, MD 20852

s/ Kathleen M. Sullivan