

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SAN LUIS OBISPO MOTHERS FOR
PEACE; FRIENDS OF THE EARTH,

Petitioners,

v.

No. 23-3884

UNITED STATES NUCLEAR
REGULATORY COMMISSION;
UNITED STATES OF AMERICA,

Respondents.

**PACIFIC GAS AND ELECTRIC COMPANY’S
UNOPPOSED MOTION TO INTERVENE**

In accordance with 28 U.S.C. § 2348 and Federal Rule of Appellate Procedure 15(d), Pacific Gas and Electric Company (“PG&E”) hereby files this Unopposed Motion to Intervene in this appeal as a respondent in support of the U.S. Nuclear Regulatory Commission (“NRC”) order, entered on October 2, 2023, challenged by the Petition for Review. *See* Dkt. 1.1. In support, PG&E states as follows:

1. PG&E is the holder of NRC Facility Operating License Numbers DPR-80 and DPR-82, which authorize operation of Diablo Canyon Power Plant (“DCPP”) Units 1 and 2, a nuclear power plant in San Luis Obispo, California.

2. PG&E is entitled to intervene as a matter of right in this action because it is a “party in interest in the proceeding before the [NRC] whose interests will be

affected if [the] order of the agency is . . . enjoined, set aside, or suspended.” 28 U.S.C. § 2348.

3. This appeal is one of a series of challenges that petitioners have filed to the continued operation of DCPD Units 1 and 2. While PG&E had planned on retiring both units at the end of the terms of their current operating licenses, on September 2, 2022, the State of California enacted Senate Bill No. 846, which declared that seeking renewal of those operating licenses is “in the best interests of all California electricity customers,” and may be necessary for “statewide energy system reliability.” CAL. PUB. RES. CODE § 25548(b).

4. Since then, PG&E has taken several steps to secure the renewal of the operating licenses for DCPD Units 1 and 2. Petitioners oppose the continued operation of DCPD Units 1 and 2 and have attempted to prevent their continued operation in administrative and judicial forums.

5. For example, Petitioners have appealed the NRC’s prior order allowing PG&E to continue operating DCPD Units 1 and 2 beyond their licenses’ expiration dates of November 2, 2024, and August 26, 2025. *See San Luis Obispo Mothers for Peace v. NRC*, No. 23-852 (9th Cir.) (scheduled for oral argument on Jan. 10, 2024). This Court granted PG&E’s motion to intervene in that prior appeal.

6. In this case, to facilitate the license renewals, PG&E requested that the NRC approve certain revisions to the previously approved schedule for monitoring

certain conditions in the reactor vessels. The NRC staff granted PG&E's request, and Petitioners requested that the NRC (1) hold a hearing on that staff decision and (2) order the immediate closure of DCP. The NRC denied Petitioners' request for a hearing and referred their request for immediate closure to the agency's Executive Director for Operations. Petitioners now challenge the denial of their hearing request. *See* Dkt. 1.1.

7. PG&E has a direct and substantial interest in the outcome of this proceeding. Petitioners' underlying objective is to prevent the continued operation of DCP Units 1 and 2, despite the State of California's legislative determination that their continued operation is vital to "statewide energy system reliability" generally and the "interests of all California electricity customers." CAL. PUB. RES. CODE § 25548(b). Much as in Petitioners' prior appeal (where this Court granted PG&E's motion to intervene), PG&E's ability to operate, and financial interests, could be adversely affected if the NRC's October 2, 2023 order were enjoined, set aside, or suspended. PG&E has a substantial and direct interest in this Court's review of the NRC's October 2, 2023 order, and PG&E respectfully submits that it is entitled to intervene here as a matter of right. *See* 28 U.S.C. § 2348; *see also, e.g., Sierra Club, Inc. v. EPA*, 358 F.3d 516, 517-18 (7th Cir. 2004) (holding that company had sufficient legal interests at stake to intervene in defense of its construction permit for a power plant).

8. Counsel for PG&E consulted with counsel for the United States, counsel for the NRC, and counsel for Petitioners and has been authorized by all five parties to represent that those parties do not oppose PG&E's intervention in this proceeding.

For all these reasons, PG&E respectfully requests that its Motion to Intervene be granted.

Dated: December 21, 2023

Respectfully submitted,

s/ Michael E. Kenneally

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CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1, proposed intervenor Pacific Gas and Electric Company certifies that it is wholly owned by PG&E Corporation, a publicly held corporation. No publicly held corporation owns 10% or more of PG&E Corporation's stock.

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) and Circuit Rules 27-1 and 32-3 because, excluding the parts of the motion exempted by Federal Rules of Appellate Procedure 27(a)(2)(B) and 32(f), this document contains 679 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman font.

Dated: December 21, 2023

s/ Michael E. Kenneally

MICHAEL E. KENNEALLY

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