

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S RESPONSE TO REQUEST OF AVILA BEACH
COMMUNITY SERVICES DISTRICT TO PARTICIPATE UNDER 2.715(C)INTRODUCTION

On October 7, 2002, the Avila Beach Community Services District ("ABCSD") requested to participate as an interested governmental entity under 10 C.F.R. § 2.715(c) in this Independent Spent Fuel Storage Facility ("ISFSI") proceeding. As developed below, the NRC staff ("Staff") does not object to ABCSD's request.

DISCUSSION

ABCSD had filed previous letters with either the Atomic Safety and Licensing Board ("Board")¹ or the "Nuclear Regulatory Commission," without further designation.² The Board addressed ABCSD's requests at the Prehearing Conference held on September 10, 2002, at which Mr. Wallace, General Manager of ABCSD, made a brief presentation to the Board. See Tr. 68-70. Because the Board had not received the previous letters, the Board Chairman indicated that

¹ Letter, dated September 17, 2002, from John L. Wallace, General Manager of ABCSD to Administrative Judge G. Paul Bollwerk, III, the Chairman of this Board, "Subject: Transmittal of Avila Beach CSD Declaration and Request for 'Interested Party' Status...."

² Letter, dated August 14, 2002, from Christopher Helenius, President of the Board of Directors of ABCSD, to the Nuclear Regulatory Commission, "Subject: Support for Petition of Intervenors and Interested Parties relative to the safety of the Community of Avila Beach and the Avila Beach Community Services District."

ABCSD could resubmit its request directly with the Board and that ABCSD should consider in that request the matters discussed at the Prehearing Conference held on September 10-11, 2002. See Tr. 70-72. The Board's actions with respect to ABCSD were documented in a "Memorandum and Order (Schedule Relative to Participation by Additional 10 C.F.R. § 2.715(c) Interested Governmental Entity)," dated September 27, 2002. That order also provided that the other participants in this proceeding could respond to ABCSD's request by October 15, 2002.

Community Service Districts are governmental entities under California law that may be formed to exercise such purposes as: water supply; collection, treatment, or disposal of sewage, waste and storm water; fire protection; police protection; and construction and maintenance of streets.³ ABCSD states that it "is the closest community to the [Diablo Canyon] plant and lies approximately six miles downwind from the site."⁴ In the view of its governmental responsibilities and proximity to the plant, the Staff does not contest that ABCSD is an interested governmental entity under section 2.715(c) of the Commission's regulations.

The Board's September 27, 2002, order, *supra*, also afforded ABCSD the opportunity to respond by October 9, 2002, along with the other participants, to the "NRC Staff's Position Regarding Issues Proffered By 10 C.F.R. § 2.715(c) Interested Governmental Entities," dated September 25, 2002. In its October 7, 2002, letter, ABCSD acknowledges this opportunity and states that the letter is also responsive to the question of whether it is raising any new issues of its own in this proceeding. On this point, ABCSD states:

"We do not believe that there are new matters being raised at this time by the ABCSD which would require the District to further meet the contention requirements of 10 CFR 2.714(b)(2) at this time."

³ West's Ann. Cal. Gov. Code. § 61600, "Government Code: Title 6. Districts: Division 3. Community Service Districts; Part 5. Purposes and Powers; Chapter 1. Purposes."

⁴ August 14, 2002, letter, footnote 2, *supra*.

Accordingly, the Staff believes that the ABCSD has satisfied the provisions of 10 C.F.R. § 2.715(c) for participation in this proceeding as an interested governmental entity with respect to such contentions which the Board may admit that have been raised by other parties.

CONCLUSION

For the reasons set forth above, the Staff does not oppose the ABCSD's request.

Respectfully submitted,

/RA/

Stephen H. Lewis
Counsel for NRC Staff

Dated at Rockville, Maryland
this 10th day of October, 2002

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO REQUEST OF AVILA BEACH COMMUNITY SERVICES DISTRICT TO PARTICIPATE UNDER 2.715(C)" 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 19th day of September, 2002.

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