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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION '88 APR -1 P3:55

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	Docket No. 50-275 - OCA
PACIFIC GAS AND ELECTRIC COMPANY)	
)	Facility License DPR-80
)	(License Amendment)
(Diablo Canyon Nuclear Power Plant,)	
Unit No. 1))	
_____)	

ANSWER OF PACIFIC GAS AND ELECTRIC COMPANY
TO PETITION TO INTERVENE IN LICENSE AMENDMENT
PROCEEDINGS OF THE SAN LUIS OBISPO MOTHERS FOR PEACE

I. INTRODUCTION

Pacific Gas and Electric Company ("PG&E") is the owner and operator of the Diablo Canyon Nuclear Power Plant Unit 1 located approximately 12 miles southwest of San Luis Obispo, California. Unit 1 is a 1,084 Mwe Westinghouse pressurized water reactor.¹ On October 21, 1987, pursuant

¹Unit 1 received a full-power license on November 2, 1984. That license contained several conditions, one of which required PG&E to conduct a Seismic Design Bases Reevaluation Program and file a Final Report with the NRC three years following approval of the program by the NRC staff. PG&E submitted its program plan for the so-called Long Term Seismic Program (LTSP) in January 1985 which was approved by the NRC staff on July 31, 1985. Accordingly, the Final Report was required to be filed by July 31, 1988 (DPR-80, Section 2.c.(7)). Since the Unit 2 Operating License did not contain a similar provision, this license amendment request pertains only to Unit 1.

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1 to 10 C.F.R. § 2.104, the NRC published in the Federal
2 Register a "Notice of Consideration of Amendment to Facility
3 License and Proposed No Significant Hazards Consideration
4 and Opportunity for Hearing," 52 Fed. Reg. 39296, 39304.
5 The proposed amendment would revise License
6 Condition 2.c.(7) of the Unit 1 License, DPR-80, to allow
7 submittal of the Long-Term Seismic Program ("LTSP") final
8 report by July 31, 1989, rather than July 31, 1988.

9 Pursuant to that notice the Sierra Club - Santa
10 Lucia Chapter, San Luis Obispo Mothers for Peace ("SLOMFP")
11 and Mothers for Peace² sent letters to the Commission
12 responding to the Federal Register notice.³ In its
13 Memorandum and Order of March 1, 1988, granting PG&E and the
14 NRC staff the opportunity to file answers to the Petition of
15 SLOMFP, the Board noted that its examination of the Sierra
16 Club filing convinced it that the Club merely wished to
17 submit comments on the proposed amendment and did not
18 request a hearing or petition to intervene. Accordingly,
19
20

21 ²The two documents from the San Luis Obispo Mothers for
22 Peace and the Mothers for Peace (November 20, 1987, and
November 21, 1987) appear to be from the same organization.

23 ³Both letters refer to the Mothers for Peace as
24 "intervenors" in the licensing process since 1973 which
25 would appear to confirm this conclusion. In its Order of
26 March 11, 1988, the Board also concluded that the two
letters were separate communications from the San Luis
Obispo Mothers for Peace.

1 the Board only sought an answer with regard to the filings
2 of SLOMFP.

3 II. DISCUSSION

4 A. Petitioner Must Meet the Requirements of
5 10 C.F.R. § 2.714

6 Section 189a of the Atomic Energy Act of 1954, as
7 amended, 42 U.S.C. § 2239(a), provides that:

8 In any proceeding under [the] Act, for
9 the granting, suspending, revoking, or
10 amending of any license . . . the
11 Commission shall grant a hearing upon
the request of any person whose interest
may be affected by the proceeding, and
shall admit any such person as a party
to such proceeding.

12 Section 2.714(a)(2) of the Commission's Rules of Practice
13 requires that a petition to intervene in a Commission
14 proceeding set forth with particularity:

- 15 o the interest of the petitioner in the
16 proceeding;
17 o how that interest may be affected by the
results of the proceeding; and
18 o the specific aspect or aspects of the
19 subject matter of the proceeding as to
which petitioner wishes to intervene.

20 In order for intervention to be granted, the Atomic Safety
21 and Licensing Board designated to rule on petitions to
22 intervene and/or requests for hearing must find that the
23 petition satisfies these standards.

24 In determining whether the requisite interest
25 prescribed by both Section 189a of the Atomic Energy Act and
26

1 Section 2.714 of the Commission's Rules of Practice is
2 shown, contemporaneous judicial concepts of standing are
3 controlling. Portland General Electric Co. (Pebble Springs
4 Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14
5 (1976). Thus, there must be a showing (1) that the action
6 being challenged could cause "injury-in-fact" to the person
7 seeking to intervene⁴ and (2) that such injury is arguably
8 within the "zone of interests" protected by the Atomic
9 Energy Act⁵ and the National Environmental Policy Act.⁶ Id.
10 See also Warth v. Seldin, 422 U.S. 490 (1975); Sierra Club
11 v. Morton, 405 U.S. 727 (1972); Association of Data Process-
12 ing Service Organizations, Inc. v. Camp, 397 U.S. 150, 153
13 (1970). Close proximity of a petitioner's residence,
14 standing alone, is sufficient to satisfy the interest
15 requirements. Virginia Electric and Power Company (North
16 Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC
17 54, 56 (1979).

18
19
20 ⁴"Abstract concerns" or a "mere academic interest" in
21 the matter which are not accompanied by some real impact on
22 a petitioner will not confer standing. Pebble Springs,
23 CLI-76-27, supra, 4 NRC at 613. Rather the asserted harm
24 must have some particular effect on a petitioner, and a
25 petitioner must have some direct stake in the outcome of the
26 proceeding. See Allied-General Nuclear Services, et al.
(Barnwell Fuel Receiving and Storage Station), ALAB-328, 3
NRC 420, 422 (1976).

⁵42 U.S.C. § 2011 et seq.

⁶42 U.S.C. § 4321 et seq.

1 While an organization may gain standing to inter-
2 vene based on injury to itself, Edlow International Company,
3 CLI-76-6, 3 NRC 563, 572-74 (1976), it must establish that
4 it will be injured and that the injury is not a generalized
5 grievance shared in substantially equal measure by all or a
6 large class of citizens. Transnuclear, Inc., CLI-77-24,
7 6 NRC 525, 531 (1977). On the other hand, an organization
8 may establish standing through members of the organization
9 who have an interest which may be affected by the outcome of
10 the proceeding. Public Service Co. of Indiana, Inc. (marble
11 Hill Nuclear Generating Station, units 1 and 2), ALAB-322,
12 3 NRC 328, 330 (1976). When an organization claims that its
13 standing is based on the interests of its members, the
14 organization must identify one or more individual members
15 (by name and address) whose interests may be affected and
16 give some concrete indication that such members have au-
17 thorized the organization to represent their interests in
18 the proceeding. Houston Lighting and Power Company (Allens
19 Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC
20 377, 393-97 (1979); Virginia Electric and Power Company
21 (North Anna Nuclear Power Station, Units 1 and 2), ALAB 536,
22 9 NRC 402, 404 (1979); Duquesne Light Company, et al.
23 (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC
24 243, 244 at n.2 (1973). Specific representational au-
25 thorization of a member with personal standing is not
26 required where the sole or primary purpose of the

1 petitioning organization is to oppose nuclear power in
2 general or the particular facility at bar. Allens Creek,
3 ALAB-535, supra, at 396.⁷

4 In addition to demonstrating "interest," a peti-
5 tioner must set forth "the specific aspect or aspects of the
6 subject matter of the proceeding as to which petitioner
7 wishes to intervene." 10 C.F.R. § 2.714(a)(2).⁸ Petitioner
8 may satisfy this requirement by identifying general
9 potential effects of the licensing action or areas of
10 concern which are within the scope of matters that may be
11 considered in the proceeding. See Virginia Electric and
12 Power Company, (North Anna Power Station, Units 1 and 2),
13 ALAB-146, 6 AEC 631, 633-634 (1973).

16
17 ⁷Further, under Section 2.713 of the Commission's Rules
18 of Practice, a "partnership, corporation or unincorporated
19 association may be represented by a duly authorized member
20 or officer, or by an attorney-at-law." 10 C.F.R. § 2.713(b)
21 (emphasis added). Thus, where an organization is
22 represented by one of its members, the member must
demonstrate authorization by that organization to represent
it. It is clear that groups may not represent persons other
than their own members, and individuals may not assert the
interest of other persons. Long Island Lighting Co.
(Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC
481, 438 (1977).

23 ⁸In this connection, an "aspect" is generally
24 considered to embrace a broader concept than a "contention"
25 but at the same time have a narrower focus than a mere
26 general reference to the NRC's organic statutes. Consumers
Power Co. (Midland Plants, Units 1 and 2) LBP-78-27; 8 NRC
275,278 (1978).

1 B. Petition of San Luis Obispo Mothers for Peace

2 The San Luis Obispo Mothers for Peace ("SLOMFP")
3 has petitioned for leave to intervene in this license
4 amendment proceeding. SLOMFP's "petition" to intervene
5 consists of letters from Edie Clark (November 20, 1987) and
6 Sandra A. Silver (November 21, 1987 and February 7, 1988)
7 asserting that it has participated as an intervenor in the
8 Diablo Canyon licensing process since 1973 and that various
9 of its members live within 12 miles of the plant. However,
10 these documents, as such, do not demonstrate standing of the
11 organization through its members because they do not
12 indicate the local addresses of any individual members of
13 the organization nor do they establish that SLOMFP has
14 authorized these individuals to act on behalf of the
15 organization. Mere assertions that a petitioner's members
16 live near a facility are not sufficiently particularized to
17 predicate a finding of standing. See Public Service Company
18 of Oklahoma (Black Fox Station, Units 1 and 2). ALAB-397, 5
19 NRC 1143, 1150 (1977). Moreover, the generalized assertions
20 in the two documents do not predicate any injury sufficient
21 to satisfy the criteria for establishing the interest and
22 standing of the organization that these individuals purport
23 to represent. Transnuclear, Inc., supra, at 531; Consumers
24 Power, supra, at 277, 280. Presumably, though, SLOMFP can
25 identify at least one of its members by name and address who
26

1 resides within the proximity of the plant and who has
2 authorized the filing of a petition. Assuming that this
3 information is provided, SLOMFP could establish its claim of
4 derivative standing.

5 C. Specific Aspects of the Subject Matter of This
6 Proceeding

7 As noted above, in addition to meeting the stand-
8 ing and interest requirements of 10 C.F.R. § 2.714, SLOMFP
9 must also "set forth with particularly...the specific aspect
10 or aspects of the subject matter of the proceeding as to
11 which [it] wishes to intervene." 10 C.F.R. § 2.714 (a) (2).

12 Arguably, SLOMFP has set forth one "aspect" to
13 support its petition. Briefly, SLOMFP appears to question
14 the need for a one-year extension asserting that PG&E does
15 not need any additional time to prepare its prudency case
16 now pending before the California Public Utility Commission.
17 SLOMFP states that since ". . . PG&E has already prepared
18 and submitted its rate case . . . [it cannot] understand why
19 it is necessary to delay for one year the completion of the
20 [LTSP]" In its view, if the license condition is
21 not met as originally scheduled, the plant should be shut
22 down because SLOMFP "relied on that condition" in some
23 undemonstrated manner. These statements of "concern"
24 regarding the need for the extension would appear to satisfy
25 the "aspect" provisions of § 2.714(a) (2).
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III. CONCLUSION

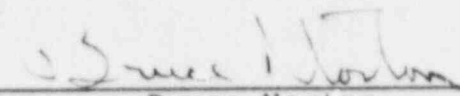
Based on the foregoing, PG&E believes that SLOMFP has failed to satisfy the technical standing requirements of 10 C.F.R. 2.714 and, accordingly, the petition to intervene should be denied unless those defects are cured.

Respectfully submitted,

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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5 In the Matter of)
6 PACIFIC GAS AND ELECTRIC COMPANY)
7 (Diablo Canyon Nuclear Power)
8 Plant Units 1))

Docket No. 50-275 - *DLA*

(License Amendment)

9 CERTIFICATE OF SERVICE

10
11 I hereby certify that on March 29, 1988, copies of
12 the following document in the above-captioned proceeding
13 have been served on the following by deposit in the United
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THE SAN LUIS OBISPO MOTHERS FOR PEACE.

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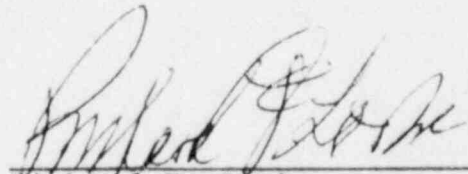
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Dated at San Francisco, California, this 29th day of March 1988.