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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 06/19/02

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Jerry R. Kline
Dr. Peter S. Lam

In the Matter of

PACIFIC GAS AND ELECTRIC CO.

(Diablo Canyon Power Plant Independent
Spent Fuel Storage Installation)

Docket No. 72-26-ISFSI

ASLBP No. 02-801-01-ISFSI

June 19, 2002

MEMORANDUM AND ORDER

(Protective Order Governing Disclosure of Proprietary Information)

Upon consideration of the June 17, 2002 motion of applicant Pacific Gas and Electric Company (PG&E) for approval of a proposed protective order to govern the use and dissemination of proprietary or other protected materials in this proceeding, and there being no opposition thereto,¹ we grant the PG&E motion and adopt a protective order, as modified by the Board, the terms of which are set forth below.

¹ Although the need to institute this protective order follows from the interest expressed by intervenors San Luis Obispo Mothers for Peace, et al., see infra note 3, in reviewing certain "Protected Information" pertaining to the PG&E license application that is the focus of this proceeding, see infra note 2, the PG&E motion does not reflect their position relative to the terms of the proposed protective order. Upon inquiry by the Board, however, counsel for these intervenors indicated they had no objection to the PG&E protective order request or the accompanying proposed protective order.

This protective order governs the disclosure and use of certain Protected Information² in or concerning the PG&E application for a license to possess spent fuel, and other radioactive materials associated with spent fuel, in an independent spent fuel storage installation (ISFSI) to be located at the Diablo Canyon Power Plant (DCPP) site in San Luis Obispo County, California. Specifically, counsel and experts for the San Luis Obispo Mothers for Peace, et al., (SLOMFP)³ who have executed a Confidentiality and Non-Disclosure Agreement, in the form provided as attachment A to this order, shall be permitted access to Protected Information upon the following conditions:

1. Only counsel and experts who have executed a Confidentiality and Non-Disclosure Agreement and Confidentiality Undertaking, in the form provided as attachment A to this protective order, may have access to Protected Information on a "need to know" basis pursuant to this protective order.

2. Counsel and experts who receive any Protected Information (including transcripts of in camera hearings, filed testimony, or any other document that reveals Protected Information) shall maintain its confidentiality as required in the annexed Confidentiality and Non-Disclosure Agreement, the terms of which are hereby incorporated in this protective order.

² "Protected Information" means the information set forth at section 1 of the Confidentiality and Non-Disclosure Agreement, annexed as attachment A to this protective order, as well as any use of or reference to that material in this proceeding, including, but not limited to, statements of contentions, written or oral testimony, or transcripts of hearings or other proceedings related to this material.

³ The organizations that have petitioned to intervene in this proceeding and that have requested access to proprietary information are: San Luis Obispo Mothers for Peace, Cambria Legal Defense Fund, Central Coast Peace and Environmental Council, Environmental Center of San Luis Obispo, Nuclear Age Peace Foundation, San Luis Obispo Chapter of Grandmothers for Peace International, San Luis Obispo Cancer Action Now, Santa Margarita Area Residents Together, Santa Lucia Chapter of the Sierra Club, and Ventura County Chapter of the Surfrider Foundation.

3. Counsel and experts who receive any Protected Information shall use it solely for the purpose of participation in this proceeding in matters directly pertaining to the Protected Information, and for no other purpose.

4. Counsel and experts shall keep a record of all documents containing Protected Information in their possession and shall, upon termination of this proceeding, account for and deliver that information for disposal or safekeeping to a person authorized to receive Protected Information on behalf of PG&E, in accordance with the Confidentiality and Non-Disclosure Agreement annexed as attachment A to this protective order.

5. There shall be a limit of two transcripts per party for any proceeding conducted on the record in which Protected Information is disclosed or discussed. Parties shall not reproduce or photocopy these transcripts without the express prior approval of the Licensing Board.

6. In addition to the requirements specified in the Confidentiality and Non-Disclosure Agreement, all pleadings and correspondence in this proceeding (including testimony) that contain any Protected Information shall be segregated, marked "Protected Information," and:

a. served only on lead counsel,⁴ the members of this Board, and the Office of the Secretary;⁵ and

⁴ The following attorneys should be considered "lead counsel" for service purposes: David A. Repka (PG&E); Diane Curran (SLOMFP); and Stephen H. Lewis (NRC Staff).

⁵ The original and two copies of the pleading or correspondence containing the Protected Information should be directed to Emile L. Julian, Assistant for Rulemakings and Adjudications, Rulemakings and Adjudications Staff, NRC Office of the Secretary.

b. served only by United States registered, express, or certified mail; by internal NRC mail; by overnight delivery (e.g., Federal Express); or by personal delivery;⁶

c. include an attached cover letter or memorandum, which shall be served on the other participants to the proceeding by United States Postal Service first-class mail, that briefly describes the contents of the pleading or correspondence without reference to any Protected Information such that the cover letter or memorandum can be placed in the public docket of the proceeding.

7. Counsel, experts, or any other individual who has reason to suspect that documents containing Protected Information may have been lost or misplaced (for example, because an expected document has not been received) or that Protected Information has otherwise become available to unauthorized persons shall notify this Board promptly of those suspicions and the reasons for them.

8. This protective order does not encompass any safeguards or security information protected in accordance with the requirements of 10 C.F.R. Part 73.

9. Any violation of the terms of this protective order or a Confidentiality and Non-Disclosure Agreement executed in furtherance of this protective order may result in the imposition of sanctions as the Board or the Commission may deem appropriate, including but

⁶ In contrast to the procedure that has been established for the service of other documents in this proceeding, see Licensing Board Memorandum and Order (Initial Prehearing Order) (June 6, 2002) at 5-7, the parties shall not make any facsimile or e-mail transmission to the Licensing Board or parties of any document that contains or discusses Protected Information. Nonetheless, these documents should be served by one of the methods outlined in paragraph 6.b above so as to ensure receipt by the next business day. Further, the parties should serve copies of a document that contains or discusses Protected Information on a 3.5 inch diskette or a compact disc, along with a paper copy of the document.

not limited to referral of the violation to appropriate bar associations and/or other disciplinary authorities.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁷

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

June 19, 2002

⁷ Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel or the representative for (1) applicant PG&E; (2) petitioners Lorraine Kitman, County Supervisor Peg Pinard and the Avila Valley Advisory Council, and SLOMFP; and (3) the staff.

ATTACHMENT A

CONFIDENTIALITY AND
NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (Agreement) entered into as of this _____ day of June, 2002, by and among Pacific Gas and Electric Company, a California corporation (PG&E); Holtec International, a privately-held entity (Holtec); and the San Luis Obispo Mothers for Peace, a non-profit organization, together with other organizations (Cambria Legal Defense Fund, Central Coast Peace and Environmental Council, Environmental Center of San Luis Obispo, Nuclear Age Peace Foundation, San Luis Obispo Chapter of Grandmothers for Peace International, San Luis Obispo Cancer Action Now, Santa Margarita Area Residents Together, Santa Lucia Chapter of the Sierra Club, and Ventura County Chapter of the Surfrider Foundation) (collectively SLOMFP).

In consideration of the mutual promises contained herein, the parties agree as follows:

1. PG&E or Holtec intends to disclose to SLOMFP the following proprietary information, prepared and/or submitted to the U.S. Nuclear Regulatory Commission (NRC) in support of PG&E's License Application for Diablo Canyon Independent Spent Fuel Storage Installation, dated December 21, 2001 (ISFSI Application):
 - a. The following proprietary drawings, submitted to the NRC with PG&E Letter DIL-01-008, "Submittal of Holtec Proprietary and Non-Proprietary Drawing Packages," dated December 21, 2001: (1) Holtec Drawing No. 3437, Mating Device Pool Lid Remover Main Assembly, Rev. 4; (2) Holtec Drawing No. 3438, 125 HI-TRAC 125D Assembly, Rev. 4.
 - b. The following proprietary calculations, submitted to the NRC with PG&E Letter DIL-01-007, "Submittal of Holtec Proprietary Calculation Packages," dated December 21, 2001: (1) Calculation HI-2012626, "Structural Evaluation of Diablo Canyon Cask Transfer Facility"; (2) Calculation HI-2012634, "Analysis of Transmission Tower Collapse Accidents at the Diablo Canyon ISFSI Pad and CTF"; (3) Calculation HI-2002563, "Dose Evaluation for the ISFSI at the Diablo Canyon Power Station;" (4) Calculation HI-2002513, "Diablo Canyon ISFSI Site Boundary Confinement Analysis"; (5) Calculation HI-2012618, "Analysis of Anchored HI-STORM Casks at the Diablo Canyon ISFSI"; (6) Calculation HI-2012768, "Transporter Stability on Diablo Canyon Dry Storage Travel Paths"; (7) Calculation HI-2002497, "Design Basis Wind and Tornado Evaluation for DCPD"; (8) Calculation HI-2002512, "Evaluation of Site-Specific Blasts and Explosions for the Diablo Canyon ISFSI"; (9) Calculation HI-2002559, "Evaluation of the Effects of Lightning and a 500 kV Line Break on Holtec Casks"; and (10) Calculation HI-2012615, "Evaluation of Site-Specific Wild Fires for the Diablo Canyon ISFSI."
 - c. The following proprietary reports, submitted to the NRC with PG&E Letter DIL-02-007, "Submittal of Holtec Proprietary Reports and Non-Proprietary Document," dated June 4, 2002: (1) Holtec International Report No. HI-2002474, "Analysis of the Loaded HI-STORM 100 System Under Drop and Tipover Scenarios," Revision 2; (2) Holtec International Report No. HI-992252, "Topical Report on the HI-STAR/HI-STORM Thermal Model and its Benchmarking with Full-Size Cask Test Data," Revision 1.

Collectively, the disclosed information shall be referenced in this Agreement as the "Protected Information."

2. With respect to the Protected Information, SLOMFP agrees to:
 - a. restrict disclosure only to SLOMFP's employees or representatives with a need to know such information for purposes of evaluating the above-referenced ISFSI Application, and only after advising them of the requirements of this Agreement and having them sign an undertaking in the form of Exhibit A agreeing to be bound by the terms of this Agreement;
 - b. not disclose the Protected Information to third parties unless required to do so by law, regulation or legal process and only after notifying PG&E prior to disclosure of the requirement and providing PG&E with the opportunity to seek an appropriate protective order;
 - c. use the Protected Information only for the purpose of evaluating the above-referenced ISFSI Application;
 - d. use the same degree of care with respect to the Protected Information as it uses to protect its own confidential and private information which standard of care shall be no less than reasonable care;
 - e. return the Protected Information to PG&E promptly upon SLOMFP completing its review and, in any event, no later than thirty (30) days after the date of final NRC action on the ISFSI Application, including any and all copies thereof containing Protected Information then in the possession of SLOMFP or its representatives, and shall ensure the destruction of any summaries, notes or extracts thereof.
3. Should SLOMFP desire to rely upon, reference, or cite the Protected Information, or any part thereof, in any comments to the NRC or proceeding at the NRC in connection with the ISFSI Application, SLOMFP agrees to utilize appropriate NRC procedures, including those outlined in 10 C.F.R. § 2.790, to assure that the Protected Information is treated by the NRC as confidential proprietary information.
4. SLOMFP agrees that any threatened or existing violation of this Agreement would cause PG&E and/or Holtec irreparable harm for which it would not have an adequate remedy at law, and that PG&E and/or Holtec shall be entitled to seek immediate injunctive relief prohibiting such violation in addition to any other rights or remedies. If a party is liable to the other on account of this Agreement, the measure of damages shall include any amount for indirect, incidental, consequential, or punitive damages and/or lost profits.
5. The parties recognize that the NRC has been asked by PG&E to decide on the confidential status of the Protected Information, and all parties will undertake to provide the level of confidentiality determined by the NRC to be appropriate. PG&E, Holtec, and SLOMFP each has the right to seek changes in the level of confidentiality to be afforded by the NRC, subject to the following:

- a. Nothing in this Agreement shall be deemed to preclude SLOMFP from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Agreement. Accordingly, nothing in this Agreement shall be deemed to preclude any party in any other administrative or judicial proceeding from seeking protected status for any such information or materials.
- b. Nothing in this Agreement shall be deemed to preclude any party from pursuing any available administrative or judicial appeals with respect to any NRC decision regarding the appropriate confidential treatment to be afforded the Protected Information by the NRC under 10 C.F.R. § 2.790. If at any time the NRC finds that the Protected Information need not be protected, SLOMFP agrees that the Protected Information will continue to be protected under this Agreement for an additional fifteen (15) days pending an appeal of the NRC decision. Nothing in this Agreement shall be deemed to preclude any party from seeking additional administrative or judicial appeals of NRC decisions with respect to the confidential treatment of Protected Information.

6. This Agreement shall be governed and construed in accordance with the laws of the State of California without giving effect to its principles of conflict of laws. The parties shall submit to the exclusive jurisdiction of the state and federal courts located in the State of California for any dispute arising out of this Agreement.

7. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable and this Agreement shall be construed as if the illegal, invalid or unenforceable provision had never been a part of this Agreement and the remaining provisions of this Agreement shall be given full force and effect.

8. No party shall assign its rights or delegate its duties hereunder to a third party without the prior written consent of the other party.

9. Holtec shall retain all rights, title, and interest in and to the Protected Information that is transmitted subject to this Agreement.

10. This Agreement shall become effective as of the date first written above. This Agreement contains the entire agreement between the parties concerning the confidentiality and

non-disclosure of the Protected Information and no modifications of this Agreement or waiver of its terms and conditions shall be binding unless agreed to in writing by each party hereto.

PACIFIC GAS AND ELECTRIC COMPANY

SAN LUIS OBISPO MOTHERS FOR PEACE,
ET AL.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

HOLTEC INTERNATIONAL

By: _____

Name: _____

Title: _____

EXHIBIT A

CONFIDENTIALITY UNDERTAKING

With reference to the Confidentiality and Non-Disclosure Agreement by and among Pacific Gas and Electric Company, Holtec International, and the San Luis Obispo Mothers for Peace, et al., dated as of June __, 2002 (the Agreement), the undersigned affirms that he has read the Agreement and agrees to be bound by the terms and provisions thereof as if he were himself a party thereto.

Date: _____, 2002

By: _____

Name: _____

Title: _____

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
PACIFIC GAS AND ELECTRIC CO.) Docket No. 72-26-ISFSI
DIABLO CANYON POWER PLANT)
)
(Independent Spent Fuel Storage)
Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (PROTECTIVE ORDER GOVERNING DISCLOSURE OF PROPRIETARY INFORMATION) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
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Washington, DC 20555-0001

Administrative Judge
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U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Peter S. Lam
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Administrative Judge
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Docket No. 72-26-ISFSI
LB MEMORANDUM AND ORDER (PROTECTIVE
ORDER GOVERNING DISCLOSURE OF
PROPRIETARY INFORMATION)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 19th day of June 2002