

RAS 4579

June 17, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

June 24, 2002 (11:44AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)
Pacific Gas and Electric Co.)
(Diablo Canyon Power Plant,
Units 1 and 2))

Docket No. 72-26-ISFSI

PACIFIC GAS AND ELECTRIC COMPANY'S
MOTION FOR PROTECTIVE ORDER

Pacific Gas and Electric Company ("PG&E") moves that the Licensing Board grant, for good cause, a protective order concerning the disclosure of certain confidential proprietary information previously submitted to the Nuclear Regulatory Commission ("NRC") in support of PG&E's Application under 10 C.F.R. Part 72 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 site.

Subsequent to the Licensing Board's "Memorandum and Order (Initial Prehearing Order)" dated June 6, 2002, counsel for petitioners San Luis Obispo Mothers for Peace, et al., requested access to the information, which is proprietary to PG&E's contractor, Holtec International, for purposes of preparing contentions in connection with this matter. PG&E does not oppose the disclosure of designated information to counsel and experts for these petitioners,

Template = SECY-041

SECY-02

provided that disclosure is governed by an appropriate Protective Order and Non-Disclosure Agreement. Consequently, PG&E is requesting this Protective Order.¹

Attached hereto is a copy of the proposed Protective Order, which includes a form of a Confidentiality and Non-Disclosure Agreement to be executed by any petitioner seeking access to the designated confidential proprietary information. This Protective Order does not extend to safeguards and security information.

Respectfully submitted,



David A. Repka, Esq.
Brooke D. Poole, Esq.
WINSTON & STRAWN
1400 L Street, N.W.
Washington, DC 20005-3502

William V. Manheim, Esq.
Richard F. Locke, Esq.
PACIFIC GAS & ELECTRIC COMPANY
77 Beale Street, B30A
San Francisco, CA 94105

ATTORNEYS FOR PACIFIC GAS &
ELECTRIC COMPANY

Dated in Washington, District of Columbia
This 17th day of June 2002

¹ The Staff advised counsel for PG&E via e-mail on June 17, 2002, that it had no comment on this filing.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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.)	Docket No. 72-26-ISFSI
)	
(Diablo Canyon Power Plant,)	ASLBPP No. 02-801-01-ISFSI
Units 1 and 2))	

MEMORANDUM AND ORDER
(Protective Order Governing Non-Disclosure of Proprietary Information)

This Protective Order governs the disclosure and use of certain Protected Information² in or concerning the application of Pacific Gas and Electric Company ("PG&E") 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. ("SLOMP")³ who have executed a Confidentiality

² "Protected Information" means the information set forth at Section 1 of the Confidentiality and Non-Disclosure Agreement, annexed hereto, 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

and Non-Disclosure Agreement, in the form attached, 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 attached hereto, 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.

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 hereto.

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.

Now, Santa Margarita Area Residents Together, Santa Lucia Chapter of the Sierra Club, and Ventura County Chapter of the Surfrider Foundation.

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 and:

- (a) served on lead counsel⁴ and the members of this Board only;⁵ and
- (b) served by United States registered, express, or certified mail, by internal NRC mail, by overnight delivery (*e.g.*, Federal Express), or by personal delivery, only.⁶

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

⁴ The following attorneys shall be considered "Lead Counsel" for service purposes: David A. Repka (PG&E); Diane Curran (SLOMP); and Stephen H. Lewis (NRC Staff).

⁵ The Secretary of the Commission (Rulemaking and Adjudications staff) shall not be served. Because of the nature of the subject matter, the Licensing Board will make necessary arrangements with the Office of the Secretary to ensure that material entitled to confidential treatment under 10 C.F.R. § 2.790 is not made public.

⁶ The parties shall not make any facsimile or e-mail transmission to the Licensing Board or parties of document(s) which contain or discuss Protected Information, in contrast to the procedure which has been established for the service of other documents in this proceeding. *See Memorandum and Order (Initial Prehearing Order)*, dated June 6, 2002, at 5-7. With this restriction in mind, the parties may submit copies of documents which contain or discuss Protected Information on a 3.5 diskette or a compact disc, but shall not make any e-mail or facsimile transmissions thereof.

imposition of sanctions as the Board or the Commission may deem appropriate, including but 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 BOARD

G. Paul Bollwerk III
ADMINISTRATIVE JUDGE

Rockville, Maryland
June __, 2002

**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 DCPP;" (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 (1) 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: _____
Name: _____
Title: _____

By: _____
Name: _____
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

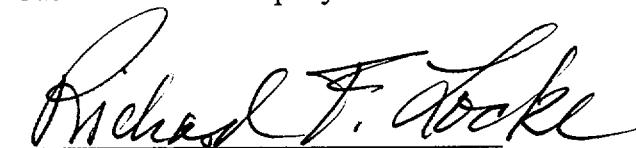
BEFORE THE COMMISSION

In the Matter of:)
Pacific Gas and Electric Co.) Docket No. 72-26-ISFSI
(Diablo Canyon Power Plant,)
Units 1 and 2))

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

Name: Richard F. Locke
Address: Pacific Gas & Electric Company
77 Beale Street B30A
San Francisco, CA 94105
E-Mail: rfl6@pge.com
Telephone Number: (415) 973-6616
Facsimile Number: (415) 973-0516
Admissions: Supreme Court of California
Name of Party: Pacific Gas & Electric Company


Richard F. Locke
Richard F. Locke

Dated at San Francisco, California
this 7th day of June, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
Pacific Gas and Electric Co.) Docket No. 72-26-ISFSI
(Diablo Canyon Power Plant,)
Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of "PACIFIC GAS AND ELECTRIC COMPANY'S MOTION FOR PROTECTIVE ORDER" and a "NOTICE OF APPEARANCE FOR RICHARD F. LOCKE" in the above captioned proceeding have been served as shown below by electronic mail, this 17th day of June 2002. Additional service has also been made this same day by deposit in the United States mail, first class, as shown below.

Administrative Judge G. Paul Bollwerk III
Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F27
Washington, DC 20555-0001
e-mail: gpb@nrc.gov

Administrative Judge Jerry R. Kline
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F27
Washington, DC 20555-0001
e-mail: jrk2@nrc.gov
kierry@erols.com

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff
(original + two copies)
e-mail: HEARINGDOCKET@nrc.gov

Administrative Judge Peter S. Lam
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop T-3F27
Washington, DC 20555-0001
e-mail: psl@nrc.gov

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop O-16C1
Washington, DC 20555-0001

Diane Curran, Esq.
Harmon, Curran, Spielberg & Eisenberg, LLP
1726 M Street N.W., Suite 600
Washington, DC 20036
e-mail: dcurran@harmoncurran.com

Lorraine Kitman
P.O. Box 1026
Grover Beach, CA 93483
e-mail: lorraine@bejoseeds.com

Karen D. Cyr, Esq.
Stephen H. Lewis, Esq.
Angela B. Coggins, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop O-15D21
Washington, DC 20555-0001
e-mail: OGCMailCenter@nrc.gov
shl@nrc.gov
abc1@nrc.gov

Seamus M. Slattery, Chairman
Avila Valley Advisory Council
P.O. Box 58
Avila Beach, CA 93424
e-mail: Jslat1@aol.com

County Supervisor Peg Pinard
County Government Center
1050 Monterey Avenue
San Luis Obispo, CA 93408

Brooke D. Poole

Brooke D. Poole, Esq.
Counsel for Pacific Gas
& Electric Company