

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

September 3, 2002

MEMORANDUM AND ORDER
(Initial Prehearing Conference Argument Schedule)

To ensure the efficient conduct of the initial prehearing conference scheduled for September 10 and 11, 2002, and bearing in mind that the participants need not reiterate orally what is already in their various filings, the Licensing Board has been considering establishing the following order of presentation/time limits for oral arguments regarding the pending standing/interested governmental entity participation and contentions/issue statements admissibility matters:¹

A. Tuesday -- September 10, 2002

Segment 1 AVAC Standing/DCISC Participation: SLOMFP Argument/Rebuttal - 7 minutes; DCISC Argument/Rebuttal - 7 minutes; SLOC - 2 minutes; PSLHD - 2 minutes; CEC - 2 minutes; PG&E - 7 minutes; NRC Staff - 7 minutes.

¹ The acronyms that are used in the foregoing schedule represent the following entities: AVAC - Avila Valley Advisory Council; DCISC - Diablo Canyon Independent Safety Committee; SLOMFP - San Luis Obispo Mothers for Peace, et al.; SLOC - San Luis Obispo County, California; PSLHD - Port San Luis Harbor District; CEC - California Energy Commission; PG&E - Pacific Gas and Electric Co.

- Segment 2 SLOMFP EC-1, ER Failure to Address Destructive Acts of Malice: SLOMFP Argument/Rebuttal - 30 minutes; SLOC - 5 minutes; PSLHD - 5 minutes; CEC - 5 minutes; DCISC - 5 minutes; PG&E - 20 minutes; Staff - 20 minutes.
- Segment 3 SLOMFP EC-2, ER Failure to Describe Purposes or Evaluate All Impacts/Alternatives and SLOMFP EC-3, Transportation Impacts: SLOMFP Argument/Rebuttal - 30 minutes; SLOC - 5 minutes; PSLHD - 5 minutes; CEC - 5 minutes; DCISC - 5 minutes; PG&E - 20 minutes; Staff - 20 minutes.
- Segment 4 SLOC EC-1, Alternative Sites and Security Plans, and PSLHD EP-1, Emergency Response Plan Adequacy: SLOC Argument and Rebuttal - 15 minutes; PSLHD Argument/Rebuttal - 15 minutes; SLOMPF - 5 minutes; CEC - 5 minutes; DCISC - 5 minutes; PG&E - 20 minutes; Staff - 20 minutes.

B. Wednesday -- September 11, 2002

- Segment 5 SLOMFP TC-2 to TC-5, Financial Qualifications, and SLOC TC-1 and TC-2, Financial Qualifications: SLOMFP Argument/Rebuttal -- 45 minutes; SLOC Argument/Rebuttal - 15 minutes; PSLHD - 5 minutes; CEC - 5 minutes; DCISC - 5 minutes; PG&E - 30 minutes; Staff - 30 minutes.
- Segment 6 SLOMFP TC-1, Seismic: SLOMFP/Argument Rebuttal -- 45 minutes; SLOC - 5 minutes; PSLHD - 5 minutes; CEC - 5 minutes; DCISC - 5 minutes; PG&E - 30 minutes; Staff - 30 minutes.

Under this schedule, a participant would specify the amount of time saved for rebuttal at the beginning of its argument on that segment. Moreover, 10 C.F.R. § 2.715(c) interested governmental entities could, if they wished, appoint a "lead" governmental entity for any particular segment that could utilize the combined time of all authorizing entities.

Although participant efficiencies could shorten the conference somewhat, in accord with the Board's July 26, 2002 scheduling order, under this schedule the prehearing conference would be concluded in the late afternoon of September 11. Nonetheless, in an August 30, 2002 motion petitioners SLOMFP, et al., have requested that the Board schedule an evening session of the prehearing conference beginning at 7:00 p.m. Pacific Daylight Time (PDT) on Wednesday, September 10, 2002, so that Dr. Mark R. Legg, SLOMFP technical advisor

regarding the seismic contention that would be considered in schedule Segment 6, can be present to advise SLOMFP counsel in responding to PG&E and staff technical arguments regarding the admissibility of that issue statement. According to the SLOMFP motion, this request is compelled by Dr. Legg's need to attend and fulfill unspecified "substantial responsibilities" at a professional meeting at a location some 2.5 hours drive from the prehearing conference site during the work day on September 10 and the morning of September 11, thereby making him available to SLOMFP counsel only during the evening of September 10 and after 3:00 p.m. PDT on September 11. The staff apparently has no objection to the SLOMFP request. In a same-day response, however, applicant PG&E declares that (1) Dr. Legg's presence is unnecessary because the argument on the admissibility of the SLOMFP seismic contention raises legal, not technical, questions; (2) it opposes the evening session request as an unjustified imposition on counsel and supporting witnesses for PG&E and the other participants and on the Board; and (3) it would have difficulty accommodating a September 11 post-3:00 p.m. consideration of the issue because, among other things, PG&E counsel needs to leave San Luis Obispo by 5:45 p.m. PDT for travel to a Thursday, September 12, 2002 hearing at NRC Headquarters in Rockville, Maryland. PG&E indicates further that if the Board is considering accommodating Dr. Legg's schedule, it would agree to deferring the entire prehearing conference for a week or two.

Given that the two-day schedule for the prehearing conference has been in place for a month and Dr. Legg's significant professional meeting commitment must be a relatively longstanding one, it is not apparent why this scheduling concern has first been brought to the Board's attention now. At the same time, and notwithstanding PG&E's assertion that the SLOMFP seismic issue statement involves only a "legal" concern, having Dr. Legg available could provide significant assistance to SLOMFP counsel so as to merit some reasonable

schedule adjustment. Looking at the available alternatives, we find PG&E's suggestion to postpone the prehearing conference to be the least desirable. The other alternatives are (1) for an evening session on Segment 6 on September 10 (with a possible revision to the September 11 session 9:30 a.m. PDT starting time to accommodate those involved in the September 10 evening session); or (2) to begin the SLOMFP presentation on that segment at 2:30 p.m. PDT on September 11 (Dr. Legg, who is needed for rebuttal purposes, need not be present for the SLOMFP argument in support of the contention), with the goal of completing any consideration of the contention by no later than 4:30 p.m. PDT, the time originally specified by the Board in its July 26, 2002 scheduling order.

From the Board's perspective, it can accommodate either approach. Accordingly, it requests that SLOMFP and PG&E counsel consult on these two options and by no later than 4:30 p.m. Eastern Daylight Time on Wednesday, September 4, 2002, advise the Board and the other participants in writing about which of these two options they prefer. If they cannot agree, then they should so inform the Board and it will make a determination regarding further scheduling for Segment 6.

Absent further Board order, the argument order and time allocation for Segment 1 through Segment 5 will be as outlined above. Additionally, counsel for the section 2.715(c) participants should consult among themselves and be prepared to advise the Board at the

beginning of the prehearing conference whether they wish to utilize a "lead" interested governmental entity approach for any or all of the segments.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

September 3, 2002

² Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant PG&E; (2) petitioners SLOMFP, et al.; (3) SLOC, PSLHD, CEC, and DCISC; and (4) the staff.

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 (INITIAL PREHEARING CONFERENCE ARGUMENT SCHEDULE) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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LB MEMORANDUM AND ORDER (INITIAL
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Dated at Rockville, Maryland,
this 3rd day of September 2002