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Diablo Canyon ISFSI

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SECY-02

1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION  
3 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD  
4 PREHEARING CONFERENCE  
5

6 In the Matter of )  
7 )  
8 PACIFIC GAS & ELECTRIC ) Docket No. 72-26-ISFSI  
9 ) ASLBP No. 02-801-01-ISFSI  
10 (Diablo Canyon ISFSI) )  
11 )  
12  
13  
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16 Wednesday, September 11, 2002  
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20 Held at: The Cliffs Resort  
21 2757 Shell Beach Road, Ballrooms  
22 Shell Beach, California 93449-9985  
23  
24  
25

26 Before U.S. NRC ASLBP Administrative Judges:  
27

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29

30 Peter S. Lam, Ph.D.  
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P-R-O-C-E-E-D-I-N-G-S

(9:30 o'clock a.m.)

JUDGE BOLLWERK: Good morning. We're here this morning to continue with the initial Prehearing Conference in the Pacific Gas and Electric Company proceeding. But before we do so I think we would be remiss today if we didn't make some note of the events that transpired a year ago today in New York City, in Washington, D.C., and near Schnecksville, Pennsylvania, events that impacted the lives of all Americans.

In remembrance of those who lost their lives that day and as a sign of our respect and support for their families and loved ones, I'd ask that everyone here today join with the Licensing Board in observing a moment of silence.

(Pause for moment of silence.)

JUDGE BOLLWERK: Thank you.

Before we begin today let me deal with a couple administrative matters. First of all, again I hope everyone has turned off their cell phone at this point.

The second one I'll mention, if we have some folks that weren't out here yesterday, the security zone as you came in the door extends in that

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1 hall, along the side over there, and in the back near  
2 the restrooms and the phones. If for any reason you  
3 leave that area, go outside on the patio or back  
4 through the -- pass the table in the front, you're  
5 outside the security zone, and you'll have to be  
6 checked again as you come through.

7 Also the folks that are doing the video  
8 recording tell me that they're picking up -- these  
9 microphones are pretty sensitive -- they're picking up  
10 things that are being said. So I just warn counsel,  
11 if you're having conversations among yourselves be  
12 careful about having your microphone on because you  
13 may end up on -- I think this is -- is this public  
14 access television? -- right. So you have been warned.  
15 All right.

16 One other thing I wanted to mention  
17 briefly, I spoke yesterday about a little discussion  
18 perhaps about the subpart (k) procedures, is I'm sure  
19 counsel are aware and the parties are aware, when this  
20 proceeding was noticed there was an indication that it  
21 would be -- it could be a subpart (k) proceeding.  
22 That's subpart (k) of Part II of 10 CFR.

23 Those are a special set of procedures that  
24 apply to spent fuel pool expansion proceedings.  
25 They're part of some statutory provisions that were



1 put into the Atomic Energy Act a number of years ago.

2 Parties should be aware that when and if  
3 the Board -- when the Board makes a ruling on the  
4 contentions and standing of the various participants,  
5 if the proceeding were to go forward at that point,  
6 parties would be able to invoke the procedures in  
7 subpart (k). It has to be invoked by a party, which  
8 is what the regulation says.

9 Then there are provisions that deal with  
10 discovery, with an oral argument intended to determine  
11 whether there's any genuine and substantial disputes  
12 of fact that need to go to an adjudicatory hearing,  
13 and then a designation of issues for the adjudicatory  
14 hearing and then an adjudicatory hearing.

15 These particular provisions, if you look  
16 at Sections 2.1109, which deals with the invocation of  
17 the proceedings; 2.1111, which is the discovery  
18 provisions; 2.1113, which deals with the oral  
19 argument; and 2.1115, which deals with the designation  
20 of issues for the adjudicatory hearing, but again  
21 those procedures apply if someone -- if a party  
22 invokes them. So I just would point you to those.  
23 You can take a look at them for future reference.

24 And we -- obviously if we need to make  
25 reference to those at some point, we will do so.

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1 All right. Any other administrative  
2 matters on the part of any of the parties?

3 MR. REPKA: Yes, Judge Bollwerk, --

4 JUDGE BOLLWERK: Yes.

5 MR. REPKA: -- I have three minor matters  
6 I want --

7 JUDGE BOLLWERK: Okay.

8 MR. REPKA: -- to confirm.

9 First, yesterday we left a matter on the  
10 record regarding Mr. Temple's request for certain  
11 citations to the -- to the phased approach of  
12 constructing the ISFSI. I did just want the record to  
13 reflect that we have provided him that information.

14 JUDGE BOLLWERK: All right. Thank you.

15 MR. REPKA: Second, yesterday we discussed  
16 the Part 50 license amendment related to fuel handling  
17 in the vicinity of the spent fuel pool. I think I  
18 said it incorrectly yesterday that it was filed on or  
19 about December 21, 2001, which was the date of the  
20 Part 72 application.

21 JUDGE BOLLWERK: Um-hum.

22 MR. REPKA: The Part 50 amendment  
23 application was actually filed on April 15th, 2002.  
24 So I wanted the record to be correct then on that  
25 point.

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1           And the third thing is we had a discussion  
2 yesterday regarding the applicability of Table S-4 on  
3 transportation issues. And I stated subject to  
4 confirmation that the -- the license applications, the  
5 operating license applications for Diablo Canyon  
6 predated Table S-4. And I just wanted to confirm that  
7 we've gone back and looked, and that is indeed true.

8           And by predating Table S-4, the  
9 implication of that is that transportation, offsite  
10 transportation issues needed to be addressed case by  
11 case and they were, in fact, addressed in the NRC's  
12 May 1973 Final Environmental Statement.

13           JUDGE BOLLWERK: I think, Mr. Repka, you  
14 mean the construction permit --

15           MR. REPKA: Construction permit. That's  
16 correct.

17           JUDGE BOLLWERK: So it's the EIS for the  
18 May 1973 -- or the --

19           MR. REPKA: It's the --

20           JUDGE BOLLWERK: -- the May 1973 EIS for  
21 the construction permit; have I got it?

22           MR. REPKA: Correct.

23           JUDGE BOLLWERK: Okay. All right.

24           Anything else anyone has?

25           All right. Then why don't we go ahead and

1 move to the argument on what we've labeled as segment  
2 five of the issues.

3 This argument will probably last -- or  
4 will last most of the morning, I'm sure. We're going  
5 to deal with the some financial qualifications issues  
6 that have been labeled as San Luis Obispo Mothers for  
7 Peace TC2, -3, -4, and -5. And also some San Luis  
8 Obispo County issues that they have proffered labeled  
9 TC1 and -2, again all financial qualification issues.

10 Just for those who may be interested, we  
11 also have one more segment, number six, which is to  
12 deal with the San Luis Obispo Mothers for Peace  
13 Contention TC1, a Seismic Contention. We will be  
14 hearing that this afternoon beginning around 2:30.

15 And I should ask: Are we still on track  
16 for that, does it appear?

17 MS. CURRAN: I have -- I did speak with  
18 Dr. Legg before coming out here. And he said he'd be  
19 here. I haven't been able to get ahold of him. The  
20 problem with his schedule has been that he is in a  
21 professional meeting and has been. So I have no  
22 reason to think he won't be here.

23 JUDGE BOLLWERK: All right. Very good.

24 Then let's go ahead and get going with the  
25 financial qualifications issues.

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1 Ms. Curran, do you want to -- we sort of  
2 lumped these all together. Do you want to deal with  
3 them in a mass, or do you want to split them out?

4 MS. CURRAN: Well, they overlap so much  
5 that I think it makes sense to deal with them all  
6 together.

7 JUDGE BOLLWERK: All right. That was sort  
8 of my impression, but --

9 MS. CURRAN: Yeah. And I would like to  
10 reserve 15 minutes for rebuttal.

11 JUDGE BOLLWERK: All right.

12 And then what about the County?

13 MR. TEMPLE: The County will deal with  
14 them all together, and I'd like to reserve eight  
15 minutes for rebuttal out of the 15.

16 JUDGE BOLLWERK: Eight minutes. All  
17 right.

18 All right. Why don't we get going then?

19 Ms. Curran.

20 MS. CURRAN: Okay. Before I start I'd  
21 like to introduce two new people who are here with me  
22 today.

23 JUDGE BOLLWERK: All right.

24 MS. CURRAN: The first is Dr. Mike  
25 Sheehan, who I think some of the Board Members are all

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1 -- Board Members know, --

2 JUDGE BOLLWERK: Currently, yes, I see  
3 him.

4 MS. CURRAN: -- who is our expert on the  
5 financial qualifications issue.

6 And to my left is Rochelle Becker, who is  
7 a member of the Mothers for Peace, who has been very  
8 active in issues before the California Public  
9 Utilities Commission regarding ratemaking and the  
10 inclusion of Diablo Canyon in the ratemaking system.

11 JUDGE BOLLWERK: Good morning.

12 MS. BECKER: Good morning.

13 JUDGE BOLLWERK: Whenever you're ready.

14 MS. CURRAN: Okay. One of our bases for  
15 the first contention challenging PG&E's financial  
16 qualifications is that PG&E is in bankruptcy.

17 PG&E argues that this by itself is not  
18 sufficient, is not a sufficient basis for the  
19 contention and gives three subsidiary reasons for that  
20 argument.

21 The first is that the NRC is still  
22 watching over PG&E and its inspectors are making sure  
23 that PG&E doesn't cut corners as it goes through this  
24 bankruptcy.

25 The second is that PG&E is a quote-unquote

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1 going concern now that it's under the protection of  
2 the Bankruptcy Court.

3 And the third is that pending the outcome  
4 of the bankruptcy case, funds necessary to cover the  
5 costs of the design, construction, and operation of  
6 the ISFSI will derive from electric rates and electric  
7 operating revenues.

8 In other words, PG&E will be able to  
9 recover the costs of building and operating the ISFSI  
10 through the ratemaking process in the state regulatory  
11 system.

12 There are significant problems with all of  
13 these arguments.

14 The first argument, that the NRC is  
15 overseeing the safety of operation of the PG&E  
16 facility, sidesteps the fact that this is a licensing  
17 case and there's a threshold standard that this  
18 applicant must meet.

19 It must show that it has the financial  
20 wherewithal to safely build and operate this ISFSI and  
21 that the NRC specifically established such a standard  
22 because it didn't have confidence that the general  
23 oversight that happens during enforcement would be  
24 sufficient to provide this guaranty.

25 Second, PG&E's argument that since it is

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1 under the protection of the Bankruptcy Court it is a  
2 going concern focuses on only one timeframe, which may  
3 be relevant here, but it's not the only timeframe  
4 that's relevant.

5 PG&E has said in its own filings that it  
6 would like to have its reorganization plan approved by  
7 the end of this year. If that happens then there are  
8 two other stages that follow.

9 The first is a rather brief stage in which  
10 PG&E reorganizes and creates new entities and divests  
11 itself of the license for the Diablo Canyon Nuclear  
12 facility.

13 And then the next stage, which we will  
14 call the equilibrium stage, is when after these new  
15 entities are created and then one must look and see  
16 whether they themselves are viable.

17 And we would assume that, I think it's  
18 reasonable to presume that these first two phases  
19 might take two years, say, but the timeframe at which  
20 this Licensing Board is looking is a much longer  
21 timeframe.

22 We're talking about a 20-year license  
23 here. So that that's the initial -- the snapshot that  
24 PG&E would like you to take of just the bankruptcy  
25 phase, is not -- is not adequate in scope to the -- to

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1 the events that are going to happen here as PG&E goes  
2 through its attempted recovery from its financial  
3 crisis.

4 So let's -- I'd like to just look -- let's  
5 assume for purposes of argument that phase one, that  
6 the bankruptcy proceeding that's going on right now is  
7 the only relevant phase. This is the premise for  
8 PG&E's argument.

9 PG&E says that it's solvent, that it's a  
10 going concern. Well, being solvent during bankruptcy  
11 is a very, very different situation than being solvent  
12 under ordinary circumstances. The reason that PG&E  
13 can pay its bills right now is it has a federal court  
14 protecting it from its creditors and directing which  
15 bills should be paid and which bills should be  
16 forestalled.

17 And PG&E doesn't intend that situation to  
18 last indefinitely. PG&E would like to be reorganized  
19 by the end of the year.

20 But let's say this stage goes on for a  
21 while and we're in -- we're in phase one. Let's have  
22 a look at whether what PG&E says about its ability to  
23 pay its costs is really reliable.

24 PG&E claims that it has access to the CPUC  
25 ratemaking system and therefore will be able to

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1 recover the costs of building and operating the ISFSI.  
2 Well, there's -- there's a couple problems with that.

3 Under the California CWIP law, PG&E can  
4 only recover costs for facilities that are used and  
5 useful. This is standard CWIP language in virtually  
6 every state in the country.

7 So even if PG&E is able at some point in  
8 the process to recover the costs of the ISFSI from the  
9 CPUC, it must first borrow the money. And, as we  
10 know, PG&E has serious credit problems, which is the  
11 reason why it's in bankruptcy.

12 Another problem is that it is not a  
13 foregone conclusion that the CPUC will reimburse PG&E  
14 for all the costs that it seeks. In fact, that is the  
15 reason that PG&E is in bankruptcy right now, and that  
16 is reflected in its most recent 10-Q form which PG&E  
17 cites in its Response to our contention, that the  
18 reason PG&E is in bankruptcy is because the costs of  
19 producing power were in excess of the revenues it was  
20 able to obtain from the CPUC.

21 And then, finally, it's not a foregone  
22 conclusion either that PG&E is going to use the money  
23 that it does recover from the CPUC to make sure that  
24 the facility is built and operated in accordance with  
25 NRC safety standards.

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1 And I would like to -- hold on one minute,  
2 please.

3 On February 17th, 2000, the CPUC issued a  
4 decision with respect to a request for return of  
5 revenue from -- from PG&E in which CPUC addressed a  
6 problem that it had found, which was that funds that  
7 it had -- that PG&E had sought for purposes of  
8 maintaining its facilities were not spent on those  
9 maintenance activities.

10 (Copies of excerpts of above decision  
11 distributed to participants.)

12 MS. CURRAN: And I would refer you, I have  
13 just passed out some excerpts of this decision, which  
14 were printed off of Lexis. And there are some little  
15 arrows on the side that my law clerk put little  
16 stickies on it and then copied the document. But  
17 these arrows refer to statements where the CPUC  
18 expressed concern that PG&E was not spending the money  
19 that it had gotten from the CPUC on maintenance.

20 And I would refer you, in particular, to  
21 -- it's actually the third page of this document I  
22 passed out, but it says "page 1" in the upper right-  
23 hand corner.

24 JUDGE BOLLWERK: I think you're going to  
25 have to identify it. The page numbers got -- it looks

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1 like when it was xeroxed, they were --

2 MS. CURRAN: Okay. This is -- I'm  
3 referring to the third page of the -- of the excerpt  
4 that I provided you.

5 JUDGE BOLLWERK: That has star 41 in the  
6 top paragraph?

7 MS. CURRAN: Yes. It has a star 41.

8 JUDGE BOLLWERK: Right. Okay. Those are  
9 the --

10 MS. CURRAN: Okay.

11 JUDGE BOLLWERK: -- at least the Lexis  
12 jumpsites, or whatever, but --

13 MS. CURRAN: I'd like to refer you to the  
14 fourth paragraph in which the CPUC says:

15 "Part of the reason why we are concerned  
16 about inflated cost projections is that  
17 over the eight-year period between 1987  
18 and 1995, PG&E consistently spent less on  
19 electric and gas facility maintenance  
20 than we had authorized in previous GRCs  
21 to the tune of nearly \$550 million. This  
22 could have reflected a consistent error  
23 in forecasting that led to our granting  
24 authorized revenues above those necessary  
25 for adequate service. If so, we should

1 be especially vigilant in this case in  
2 our application of estimating  
3 methodologies. It also could reflect  
4 diversion by PG&E of maintenance funds to  
5 other programs and possibly systematic  
6 underfunding of maintenance. This could  
7 further suggest that PG&E's maintenance  
8 and capital expenditures in recent years,  
9 1996, '7, and '98, reflect in part catch-  
10 up activities and therefore should  
11 arguably be disregarded in determining  
12 the revenues needed to supply adequate  
13 service for that test year and in the  
14 future. This cancels further vigilance."

15 Well, this -- the purpose of providing you  
16 with this is to -- is to demonstrate that the mere  
17 fact that PG&E has access to the CPUC does not assure  
18 that the funds that it recovers will be spent on the  
19 -- on the safe construction and maintenance of this  
20 facility.

21 And this is of course a very serious  
22 concern for a company that is as troubled as PG&E, has  
23 many, many debts and obligations outstanding. And the  
24 temptation is probably fairly high to use some of  
25 those revenues to pay off some of its debt.

1 JUDGE LAM: Ms. Curran, would you identify  
2 for the record what you just read, who wrote the  
3 opinion and under what context?

4 MS. CURRAN: This was an opinion by the  
5 California Public Utilities Commission in Response to  
6 an Application of Pacific Gas and Electric Company for  
7 Authority, Among Other Things, to Increase Rates and  
8 Charges for Electric and Gas Service Effective on  
9 January 1st, 1999.

10 The title further states: "Investigation  
11 into the Reasonableness of Expenses Related to the  
12 Out-of-Service Status of Pacific Gas and Electric  
13 Company's El Dorado Hydroelectric Project and the Need  
14 to Reduce Electric Rates Related to this  
15 Nonfunctioning Electric-generating Facility;  
16 Application of Pacific Gas and Electric Company for  
17 Authority, Among Other Things, to Decrease its Rates  
18 and Charges for Electric and Gas Services, and  
19 Increase Rates and Charges for Pipeline-Expansion  
20 Service, Electric, and Gas (U 39m); Order Instituting  
21 Investigation into Rates, Charges, and Practices of  
22 Pacific Gas and Electric Company."

23 This is numbered Decision Number 00-02-  
24 046, Application Number 97-12-020, filed December  
25 12th, 1997.

1 JUDGE BOLLWERK: Maybe I can just -- I  
2 think 2000 California PUC Lexis 239 and 199 P.U.R. 4th  
3 177. That ought to --

4 MS. CURRAN: Yeah. That might be simpler.

5 JUDGE BOLLWERK: This is a published  
6 decision, I take it, so it's -- it's out there.

7 MS. CURRAN: And, you know, this was a  
8 situation in which the PUC had -- was discussing a  
9 situation where it had given PG&E the money and was  
10 concerned about how it had been misused.

11 Of course, there's no guaranty that CPUC  
12 will give PG&E the money that it seeks for the  
13 construction and operation of the ISFSI.

14 Okay. So moving on from this initial  
15 phase where PG&E is under the protection of the  
16 Bankruptcy Court, PG&E has said that it would like to  
17 have approval of its reorganization plan by the end of  
18 the year.

19 And PG&E has said it has enough money to  
20 continue through the end of the year, but has not made  
21 any statements about its ability to continue to  
22 function after the end of the year.

23 So then it raises a question as to whether  
24 PG&E is going to be able to carry out this  
25 reorganization. And I thought it might help if I

1 passed out a diagram that shows the reorganization  
2 that PG&E wants to carry out. I think it helps to see  
3 it laid out.

4 I am passing out a one-page document that  
5 is entitled, "Enclosure 2 to PG&E Letter DCL 01-119."

6 (Copies of Enclosure 2 distributed to  
7 participants.)

8 MS. CURRAN: Now PG&E Letter DSL 01-119 is  
9 the coverletter that PG&E submitted with its license  
10 transfer application. And if you look at Exhibit 5 to  
11 our contentions, we included, I think it was, one or  
12 two other enclosures from that application there, but  
13 this is a different enclosure, Number 2.

14 Currently PG&E owns the Diablo Canyon  
15 facility. It's not a hundred percent -- I'm sorry.

16 (Counsel briefly confers with Mr.  
17 Sheehan.)

18 MS. CURRAN: Well, okay, I'm not going to  
19 start trying to use the correct vocabulary which will  
20 help us maintain a distinction between PG&E Utility,  
21 which is the PG&E Company, the applicant for the ISFSI  
22 license here, and PG&E Corporation, because it makes  
23 it easier to follow what's going on.

24 PG&E Utility currently owns Diablo Canyon.  
25 And if this reorganization plan is approved, PG&E



1 plans to set up a set of new subsidiaries --

2 (Counsel briefly confers with Mr.  
3 Sheehan.)

4 MS. CURRAN: Okay.

5 -- and these subsidiaries that PG&E is  
6 going to set up include --

7 (Counsel briefly confers with Mr.  
8 Sheehan.)

9 MS. CURRAN: -- that the PG&E Utility is  
10 going to set up, include Newco Energy Corporation, and  
11 then its subsidiaries, Electric Generation LLC, ETrans  
12 LLC, and GTrans LLC. And then Electric Generation  
13 LLC, which is known as "Gen," will own Diablo Canyon  
14 LLC, which will own --

15 (Counsel briefly confers with Mr.  
16 Sheehan.)

17 MS. CURRAN: -- what -- the Power Plant.

18 Now it's not a hundred percent clear who's  
19 going to own the ISFSI, but it appears it may be Gen.

20 Now then Gen -- okay. Then -- so PG&E  
21 Utility is going to set those up. And then it's going  
22 to transfer them to PG&E Corporation, which now is  
23 PG&E Utility's parent.

24 But at that point PG&E -- PG&E Utility  
25 will step out of the picture and go over here on the

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1 side, you see on the left-hand side of the diagram.  
2 PG&E Utility at that point will be a separate  
3 corporation, entirely independent of PG&E Corporation,  
4 have no further corporate ties.

5 At that point, once Diablo Canyon LLC  
6 becomes a subsidiary of Gen, then Gen will lease  
7 Diablo Canyon LLC back to PG&E Corporation. So that's  
8 the plan.

9 (Counsel briefly confers with Mr.  
10 Sheehan.)

11 MS. CURRAN: And PG&E Utility would like  
12 this plan to be confirmed very soon.

13 Well, this raises the question: How  
14 likely is this to happen? And if you -- if you look  
15 at the 10-Q that is referenced in PG&E's Response to  
16 our Contention, this was a 10-Q report filed with the  
17 Securities and Exchange Commission on June -- June  
18 30th, 2002. And I'm going to get copies of --  
19 excerpts of that 10-Q and have them passed out.

20 (Copies of said document distributed to  
21 participants.)

22 JUDGE BOLLWERK: I take it these weren't  
23 part of the original exhibits to your contentions?

24 MS. CURRAN: No. We were -- PG&E said  
25 that in their Response -- we cited an earlier 10-Q.

1 And PG&E cited in their Response a more recent 10-Q,  
2 which we went and got, which provides a lot more  
3 information.

4 Now the cover -- the copies you have don't  
5 have cover pages, do they? They -- they don't --

6 JUDGE BOLLWERK: They have -- the page  
7 starts, it looks like a Bates number 7015?

8 MS. CURRAN: Yeah. Okay. Well, after the  
9 next break, I'll -- I'll make sure --

10 JUDGE BOLLWERK: They're still warm, too.  
11 I guess these just were made.

12 MS. CURRAN: -- you get a -- yeah. I'll  
13 make sure you get a cover page. This was a 10-Q filed  
14 with the SEC on -- for the period ending June 30th,  
15 2002.

16 Now if you look at pages 20 to 21, and  
17 that's not the Bates paging -- pagination but the  
18 pagination that is used in the printout, PG&E Utility  
19 lists some conditions under which it's willing to go  
20 forward with the reorganization. The reorganization  
21 is not without condition.

22 PG&E Utility does not want to proceed with  
23 it unless PG&E Utility and the new subsidiaries that  
24 it intends to create have investment-grade credit  
25 rating.

1           And so you'll see that in -- at the very  
2 bottom of page 20 it says, "In order to ensure the  
3 financial viability of the Utility's plan, the plan  
4 provides that the following conditions must be  
5 fulfilled before the reorganized Utility will reassume  
6 the responsibility to purchase power to meet the net  
7 open position not already provided through the DWR's  
8 power purchase contracts."

9           And the first -- the first condition under  
10 there is that the reorganized Utility receives an  
11 investment-grade credit rate and "receives assurances  
12 from the rating agencies that its credit rating will  
13 not be downgraded as a result of the reassumption of  
14 the obligation to meet the net open position."

15           Now the net open position refers to a  
16 proceeding that the CPUC has instituted in which it is  
17 considering requiring PG&E Utility to resume  
18 purchasing extra power that -- that it is not able to  
19 generate from its own facility. That is, net open.

20           At the moment, apparently the Department  
21 of Water Resources is advancing those costs, has paid  
22 for those costs on PG&E Utility's behalf. But the  
23 CPUC is considering having PG&E resume paying those  
24 costs and possibly picking up costs that were  
25 previously advanced by the DWR.

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1 (Counsel briefly confers with Mr.  
2 Sheehan.)

3 MS. CURRAN: Okay. And that is discussed  
4 on page 18 in more detail, the CPUC proceeding.

5 Now if you go back to page -- go back to  
6 page 21 and read further down the page, there's  
7 another set of conditions. About a third of the way  
8 down the page it says, "The Utility's plan provides  
9 that it will not become effective unless and until the  
10 following conditions have been satisfied or waived."

11 And Condition Number 4 says that -- that  
12 condition is that Standard and Poor's, S&P, and  
13 Moody's Investor Service shall have established credit  
14 ratings for each of the securities to be issued by the  
15 reorganized Utility, ETrans, GTrans, and Gen of not  
16 less than BBB and Baa3 respectively.

17 So there is a condition in there for going  
18 forward with this reorganization.

19 (Counsel briefly confers with Mr.  
20 Sheehan.)

21 MS. CURRAN: Of course Gen is the entity  
22 that's supposed to own the Diablo Canyon facility.

23 JUDGE BOLLWERK: I should just mention,  
24 you have about five minutes left of your original 30.  
25 I don't know where...

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1 MS. CURRAN: Okay. I'll take an  
2 additional five off of my rebuttal.

3 JUDGE BOLLWERK: All right.

4 MS. CURRAN: Okay. There is a -- there  
5 are a number of factors that affect PG&E Utility's  
6 creditworthiness. And that would -- that would affect  
7 not just its own credit worthiness, but also the  
8 creditworthiness that it is able to pass on to these  
9 new subsidiaries.

10 For instance, PG&E states in its Response  
11 to our Contention at page 25, note 32, that it intends  
12 to pay off all allowed claims. And then PG&E cites a  
13 disclosure statement made on April 19th, 2002 for the  
14 proposition that it's made a reasonable estimate of  
15 allowed claims.

16 So if -- the question there is whether the  
17 claims that have been filed compare with the claims  
18 that PG&E considers would be allowed.

19 And if you -- I have --

20 (Counsel briefly confers with Mr.  
21 Sheehan.)

22 MS. CURRAN: Well, I've you look at the  
23 disclosure statement, what PG&E considers to  
24 constitute allowed claims add up to about \$14 billion.

25 If you look at the 10-Q on page 18, you

1 will see that that is about half of what -- of what  
2 the outstanding claims are that haven't been waived by  
3 the Bankruptcy Court.

4 So if PG&E is wrong about the amount of  
5 the claims that are going to be allowed, and they're  
6 greater than what PG&E has set aside, then that again  
7 is going to depress PG&E's creditworthiness.

8 So there's a real question as to whether  
9 PG&E is going to come out of this, is whether the  
10 reorganization is going to occur.

11 Then if you look at the new entities, and  
12 in our contention we included an enclosure that --  
13 it's a disclosure statement for Gen.

14 Gen is described there as having over a  
15 billion dollars in negative equity. And then -- and  
16 it's also described as having \$2.4 billion in debt.

17 Now it raises the question whether a  
18 company with that much negative equity could raise  
19 that much money by borrowing it. So -- and then we  
20 also have in the 10-Q a discussion of PG&E Corp.'s own  
21 credit problems, which PG&E Corp. and its subsidiary,  
22 NEG, the National Energy Group, have significant  
23 credit problems --

24 (Counsel briefly confers with Mr.  
25 Sheehan.)

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1 JUDGE BOLLWERK: This is the 10-Q you just  
2 passed out?

3 MS. CURRAN: Yes. And let me give you a  
4 page number. That's page 30.

5 And the -- the problems of the subsidiary  
6 redound to the parent corporation. So you've got --  
7 if you look at this reorganization chart that I passed  
8 out, you've got the -- you've got the parent  
9 corporation with significant -- of the new -- of the  
10 new structure with significant financial problems.

11 So there's a real question as to how these  
12 entities are going to emerge or whether they're going  
13 to emerge intact from this reorganization.

14 Thus the bankruptcy raises real -- the  
15 bankruptcy, and PG&E Utility's, and PG&E Corporation's  
16 financial situation raise serious questions about  
17 whether PG&E Utility has the financial qualifications  
18 to build and operate this facility safely.

19 And I'd also just like to mention that  
20 there's another plan that's been presented by the CPUC  
21 in which PG&E Utility would remain the licensee of the  
22 nuclear facility.

23 But PG&E says in its 10-Q that it doesn't  
24 believe that plan will work. It doesn't believe that  
25 PG&E can be a viable utility and do what it needs to

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1 do under the CPUC's reorganization plan.

2 So any -- any way you go, PG&E Utility and  
3 the new organizations that it sees to -- seeks to  
4 create have significant financial problems that raise  
5 serious questions about their ability to comply with  
6 the NRC's financial qualifications requirements.

7 And, finally, there's one more point. I  
8 think I'm probably close to the end of my initial  
9 time.

10 We raised a concern about the -- a suit by  
11 the attorney general against the parent, PG&E  
12 Corporation, for \$4 billion, which the attorney  
13 general alleges has been unlawfully diverted from PG&E  
14 Utility to the Corporation, and seeks to have a large  
15 part of it returned to state agencies and the  
16 ratepayers.

17 And PG&E responds that that money would  
18 actually help PG&E in terms of having sufficient  
19 resources to build the ISFSI because it would go back  
20 to PG&E Utility.

21 But the problem is that under the  
22 reorganization plan, in another year or two, PG&E  
23 Utility doesn't plan to exist as a -- as the licensee  
24 and owner of this facility. So if the money goes back  
25 to PG&E Utility, it won't do Gen any good. And, in

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1 fact, the parent of Gen, PG&E Corp. will have -- PG&E  
2 Corp. will have been impoverished by that much money.

3 This concludes my initial presentation.

4 JUDGE BOLLWERK: All right. At this point  
5 let me kind of ask a procedural question here.

6 San Luis Obispo County can now go forward  
7 and talk about theirs if the staff and the applicant  
8 feel they don't mind dealing with both those  
9 arguments, or would you rather we deal with these  
10 contentions first?

11 MR. REPKA: Because of the overlap I had  
12 anticipated dealing with them together, so I'm happy  
13 to have the County go ahead.

14 JUDGE BOLLWERK: All right.

15 Is that all right?

16 MR. LEWIS: That's also staff's position.

17 JUDGE BOLLWERK: All right.

18 Mr. Temple then.

19 MR. TEMPLE: Thank you.

20 Notwithstanding the complexity of the  
21 corporate reorganization that's intended, the issue is  
22 clear: The ISFSI application filed by Pacific Gas and  
23 Electric Company is a company -- is from a company  
24 that is now in bankruptcy. That company's going  
25 through reorganization either under its own plan or by

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1 some other plan. But, as a result, the company which  
2 is the applicant will not be the same company that  
3 builds, operates, and decommissions the ISFSI.

4 Under any bankruptcy scenario the company  
5 will be substantially different. Under the CP- -- or  
6 under the PG&E plan, as you just heard, you're going  
7 to have at least a couple of different limited  
8 liability companies responsible for ownership and  
9 operation of the facility.

10 Under the competing CPUC plan, the  
11 California Public Utility plan, the PG&E Company will  
12 have a different financial and credit structure. Thus  
13 under any scenario the ISFSI builder and operator will  
14 not be the company that now exists.

15 It cannot be the law that the ISFSI  
16 applicant can be other than the company that will  
17 build and operate the facility for which the licensed  
18 application has been filed.

19 Under these circumstances, the Board  
20 should not consider issuing a license to the PG&E  
21 Company which presently exists.

22 There's also an inherent problem with  
23 trying to address the financial qualifications of a  
24 moving target: The application and PG&E's  
25 supplemental general and financial information, dated

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1 June 7th of this year, address financial  
2 qualifications for the bankrupt applicant, for the  
3 holding company, for Gen, and for Diablo Canyon LLC.  
4 This is misleading if what we must focus on here is  
5 the applicant.

6 The applicant is an entity in bankruptcy.  
7 If -- in the NRC staff's view, we must look only at  
8 the applicant's financial qualification and not that  
9 of any other entity.

10 But PG&E has submitted financial data on  
11 its parent PG&E Corporation as well as these other  
12 entities. We are not aware of any guaranty from the  
13 parent holding company to PG&E Company that would  
14 survive bankruptcy.

15 In its application the applicant claims to  
16 be an electric utility, albeit a bankrupt one. Does  
17 an electric utility in bankruptcy meet the NRC's  
18 requirements for financial qualifications? This  
19 question is suitable for hearing.

20 10 CFR 72.22(e) requires that the  
21 applicant must show that it either possesses the funds  
22 necessary to build, operate, and decommission an  
23 ISFSI; or that it has reasonable assurance of  
24 obtaining those funds; or a combination of the two.

25 The applicant has failed to supply the

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1 Commission with the information necessary to  
2 demonstrate it is financially qualified to carry out  
3 the activity for which the license is sought.

4 Accordingly, the NRC must conduct further  
5 analysis to determine whether the bankruptcy applicant  
6 is financially qualified.

7 Thank you.

8 JUDGE BOLLWERK: All right. Let me move  
9 then down the line here with the interested-  
10 governmental entities.

11 Does the Harbor District wish to say  
12 anything about what they've heard thus far?

13 MR. WAYLETT: We would support the  
14 admission of both the County's and the Mothers for  
15 Peace's Contentions.

16 JUDGE BOLLWERK: All right.  
17 The California Energy Commission.

18 MS. HOUCK: The CEC would also support  
19 admission of the Contentions from the County and  
20 Mothers for Peace.

21 JUDGE BOLLWERK: All right. And the  
22 Independent Safety Committee.

23 MR. WELLINGTON: No position.

24 JUDGE BOLLWERK: No position.

25 All right. Then, Mr. Repka, I'll turn to

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1 Pacific Gas and Electric.

2 MR. REPKA: Judge Bollwerk, of my 30  
3 minutes I'd like to save three minutes for  
4 surrebuttal.

5 JUDGE BOLLWERK: Okay.

6 MR. REPKA: Let me begin by addressing a  
7 couple of the matters brought up this morning by Ms.  
8 Curran. And then what I would like to do is I think  
9 proceed really through some of the specific arguments  
10 made in the proposed contentions that perhaps were not  
11 touched on this morning.

12 First, I think a substantial portion of  
13 this discussion was related to the proposed license  
14 transfer and restructuring of PG&E.

15 Ms. Curran presented the flowchart, the  
16 organizational chart that was included in PG&E's  
17 November 30th, 2001 license transfer application filed  
18 with the Commission. And in a tone of shock and  
19 surprise presented this as if it's some kind of new  
20 information.

21 The fact of the matter is this is not new  
22 information. It's information that has been presented  
23 to the NRC. It's the subject of a completely separate  
24 license transfer application. It's been the subject  
25 of a subpart (m) license transfer proceeding before

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1 the Commission, a proceeding that the Mothers for  
2 Peace did not seek to participate in.

3 It's one that the County filed to  
4 participate in late, without good cause, and also  
5 failed to raise any litigable issue with respect to  
6 the financial qualifications of the proposed  
7 reorganized entities.

8 The facts of the matter here are really  
9 that there are two situations. There is the current  
10 PG&E Utility applicant, which may or may not be the  
11 long-term licensee, depending upon whether the plan of  
12 reorganization is approved, and that -- the financial  
13 qualifications of that entity I think are really  
14 clear. And there is no material issue of fact in  
15 dispute.

16 PG&E the Utility is an electric utility  
17 subject to cost-of-service ratemaking. And I'll get  
18 into this in more detail. But there really has been  
19 no -- no rationale, reasonable material or substantial  
20 issue raised with respect to the ability of the  
21 Utility to recover costs related to the ISFSI or any  
22 aspect of operation of the Power Plant.

23 With respect to the reorganized entity  
24 that's proposed, that really is the subject of a  
25 separate proceeding. We can argue here about the --

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1 the competing plans of reorganization.

2 Those are matters that are before the  
3 Bankruptcy Court. Whether or not the entity that will  
4 emerge -- will emerge investment grade and have the  
5 capacity to borrow funds, those are issues to be  
6 addressed by the Bankruptcy Court.

7 And, by definition, the entities that  
8 emerge will have been determined by the Bankruptcy  
9 Court to be viable concerns going forward with  
10 restructured debt and able to have access to the  
11 credit markets.

12 Just as a point of fact, the plan of  
13 reorganization that PG&E has proposed has been  
14 presented to the major-investment rating companies,  
15 and Moody's, and Standard and Poor's. And based upon  
16 the elements in that plan, including the proposed  
17 bilateral power sales agreement, there have been  
18 indications that those would be creditworthy entities.

19 The fact remains that those are issues,  
20 however, before the Bankruptcy Court.

21 With respect to the NRC's license transfer  
22 application, there are income projections. And the  
23 financial viability of the company is specifically an  
24 issue that is being addressed there. And, again,  
25 neither -- neither of the parties here, the County nor

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1 the Mothers for Peace, has -- has presented a  
2 litigable contention in that context.

3 I don't think that this is the time or the  
4 place to -- to reopen the license transfer case or to  
5 duplicate the license transfer case. I'm going to get  
6 into more detail in a minute.

7 But the fact of the matter is the ISFSI is  
8 a very minor expense item related to the Power Plant  
9 that's included in the projections for -- for the  
10 operating entity going forward.

11 The second item that came up this morning  
12 was a February 17th, 2000 CPUC rate decision. I just  
13 want to point out that this decision, which really is  
14 part of the routine rate process, was addressing  
15 PG&E's 1999 rate case.

16 It relates to expense costs, not capital  
17 costs. In that sense, it really reflects an  
18 assessment of PG&E's balancing of priorities related  
19 to those expense costs, which I would submit is a  
20 normal part of the ratemaking process.

21 But even more importantly it's important  
22 to understand and recognize that Diablo Canyon is not  
23 mentioned in this decision. Diablo Canyon at that  
24 time was on a completely separate incentive-based  
25 cost-recovery or pricing regime, regulatory regime,

1 and was not in the traditional cost-of-service  
2 ratemaking process and is not addressed in any way in  
3 this decision.

4 This decision also relates to some issues  
5 that really were the product of the 1999 San Francisco  
6 blackout and simply really do not have any -- any  
7 clear relevance to this particular proceeding.

8 Having said that, I want to turn to some  
9 of the specific proposed contentions. I think it's  
10 fair to say that the general theme of the Mothers for  
11 Peace and the County Contentions are that bankruptcy  
12 and the pending plan of reorganization somehow make  
13 the financial qualifications of PG&E and perhaps the  
14 proposed generating company uncertain, unknowable, not  
15 valid, questionable. All of those concerns fail to  
16 raise any -- any specific dispute of fact.

17 The fact of the matter is PG&E is a  
18 solvent debtor-in-possession. It's filed for  
19 voluntary Chapter 11 reorganization, not Chapter 7  
20 liquidation.

21 The company is in bankruptcy because of a  
22 specific focused problem related to the price of  
23 energy during the -- during and leading up to the  
24 California energy crisis and the -- and the cap on  
25 what could be recovered through electric rates.

1                   This is not a situation of overinvestment.  
2                   It's a situation of a specific problem that has since  
3                   -- has since passed due to rate relief and the  
4                   lowering of electric prices on the -- on the short-  
5                   term market.

6                   The question in the bankruptcy is the debt  
7                   that was created as a result of that focused problem,  
8                   how best to restructure that debt and how best to have  
9                   the company emerge from bankruptcy as a viable  
10                  business going forward. The Bankruptcy Court will  
11                  address precisely what the best way to do that is.

12                  There are -- two plans of reorganization  
13                  are currently before the Bankruptcy Court. Both are  
14                  intended to create -- to pay allowed claims. Both are  
15                  intended to allow the company in whatever form to  
16                  emerge from bankruptcy as a viable, going-forward  
17                  concern.

18                  Again those aren't matters the Licensing  
19                  Board here needs to decide. By definition, whichever  
20                  plan is confirmed will have been determined by the  
21                  Bankruptcy Court to meet appropriate viability  
22                  standards.

23                  In that regard I think it is important to  
24                  note that the PG&E plan received a significant boost  
25                  this week when the -- the independent voting agent

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1 submitted the results of the creditors' votes on the  
2 competing plans of reorganization earlier this week.  
3 And the -- the creditors overwhelmingly supported the  
4 PG&E plan and reject- -- overwhelmingly rejected the  
5 CPUC plan. But, again, that's just a -- that's not an  
6 issue before the Board. That's just a point of  
7 reference.

8 Now with respect to the fact that PG&E has  
9 filed for bankruptcy, on -- April 6th, 2002 was the  
10 date of the bankruptcy filing. And on that very day  
11 Chairman Meserde wrote a letter to -- to Governor Gray  
12 Davis in which the Chairman noted, and I quote:

13 "The NRC is closely monitoring day-to-day  
14 operations. Our ongoing regulatory  
15 oversight and our inspections today  
16 confirm that the present financial  
17 situation has had no impact on PG&E's  
18 ability to operate its unit safely and in  
19 accordance with our requirements. Our  
20 inspectors are particularly sensitive to  
21 signs of curtailment of required  
22 activities that may impinge on safety,"  
23 end quote.

24 The point of this letter is not that we're  
25 ignoring financial qualifications. The point -- the

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1 point that we cite this letter for is the fact that  
2 because of the bankruptcy one doesn't presume that  
3 there are financial qualifications deficiencies.

4 The NRC doesn't presume that the Power  
5 Plant can no longer operate because of bankruptcy.  
6 The NRC simply recognizes that some increased  
7 oversight may be necessary, but the fact of the matter  
8 is day-to-day operations are continuing. The NRC does  
9 -- the Plant doesn't stop operating. The NRC doesn't  
10 stop regulating. And the NRC doesn't stop licensing.

11 Now there's been a lot of reference to the  
12 10- -- the most recent 10-Q filing. And that is  
13 indeed something that we cited in our Response to the  
14 proposed Contentions. And I think this vividly shows  
15 that there is no real, genuine dispute with respect to  
16 the ability to fund the ISFSI in the current -- the  
17 current regime.

18 We are having copies of this entire  
19 document made to distribute to the Board because Ms.  
20 Curran has handed out some excerpts. This is a public  
21 document. It's filed with the SEC.

22 I think it's significant to note in here

23 --

24 JUDGE BOLLWERK: The SEC? I'm sorry.

25 MR. REPKA: Securities and Exchange

1 Commission, SEC.

2 JUDGE BOLLWERK: Securities and Exchange,  
3 right.

4 MR. REPKA: It's significant to note in  
5 here that if you focus on -- on the Utility, PG&E the  
6 Utility, for the six months ended June 30th it shows  
7 operating income of over \$2.3 billion. This is not a  
8 case of a bankrupt entity that has no -- no money, as  
9 Ms. Curran would portray it. This is a very viable  
10 going-forward debtor-in-possession.

11 In addition to the \$2.3 million --  
12 billion-dollar operating income, the -- the 10-Q shows  
13 income available to common stock of over a billion  
14 dollars for that same six-month period.

15 In this context I think it's quite clear  
16 that the mere fact of bankruptcy does not raise a  
17 valid financial qualifications issue.

18 Next, the Mothers for Peace questioned  
19 PG&E's electric utility status and its access to the  
20 rate process. Again this basis fails to raise a  
21 genuine issue. The costs associated with the ISFSI  
22 are described in the application.

23 To give you some rough numbers, the  
24 application states that between now and 2025 the cost  
25 -- construction costs associated with the facility are

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1 \$63 million. That includes the pad, the transporter,  
2 and the cask transfer facility.

3 The operating costs over the same period  
4 are \$69 million. That includes the cost of 50 casks.  
5 Again, the initial plan, consistent with what we  
6 discussed yesterday, does not call for the full 138  
7 casks, but 50 casks at approximately a million dollars  
8 a cask. That's \$69 million.

9 Those costs would not be paid all at once.  
10 They would be paid as the facility is developed  
11 obviously and as casks are -- are procured.  
12 Essentially the projections are for something on the  
13 order of five to \$20 million per year, with a \$20  
14 million year being in the first campaign years, in  
15 which there are greater costs associated with  
16 transfers of spent fuel.

17 But here we're looking at costs ranging  
18 from five million to \$20 million a year. Much of the  
19 argument here this morning is about PG&E's ability to  
20 borrow money to pay costs. It simply is not true that  
21 PG&E has to borrow money. Again we're talking about  
22 revenues, operating income of over \$2 billion in a  
23 six-month period. These are costs of five million to  
24 \$20 million per year.

25 They're not being capitalized. They're

1 being treated as expense costs and dealt with through  
2 the rate process. In fact, they are being addressed  
3 right now in the -- the company's 2003 general rate  
4 case.

5 JUDGE LAM: Now you -- if I may interrupt,  
6 Mr. Repka. I think one of the points that Ms. Curran  
7 made is you do have a huge amount of allowed claims  
8 out there, in the amount of 20 to 30,000 -- million  
9 dollar out there.

10 Now admittedly you just showed us that you  
11 had an operating revenue and profit of about one to \$2  
12 billion, and the facility cost is only in the 50 to  
13 \$60 million range. But the point is there other  
14 creditors out there who have claims to that money.

15 Would you explain how all this would fit  
16 together?

17 MR. REPKA: Yes. The -- and, again, now  
18 you're looking at the post -- post-reorganization plan  
19 confirmation period. And the allowed claims have been  
20 identified. That's a known universe of claims.

21 It's precisely those claims that the  
22 bankruptcy process is designed to assure that they're  
23 -- they're paid in full and that debt is restructured  
24 in a way that allows the company to go forward as a  
25 going concern. All of that is addressed inherently

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1 and in detail in the bankruptcy process.

2 The income projections for Gen are  
3 premised upon -- and right now I'm talking about PG&E,  
4 and I'll get to Gen -- but is premised upon the plan  
5 of reorganization, which includes the power sales  
6 agreement that's an important part of PG&E's plan.

7 But the fact of the matter is the plan  
8 incorporates those claims and deals with it and allows  
9 for it to be restructured in a way that will still  
10 allow the operating revenues and the operating income  
11 shown in the license transfer income projections.

12 JUDGE LAM: But will the bankruptcy  
13 process protect the ISFSI budget from creditors'  
14 claims?

15 MR. REPKA: The claims and the budget go  
16 forward are really two -- two different things. The  
17 -- the plan is based upon dealing with and  
18 restructuring the allowed claims, paying them off.

19 And then what's -- what's left is based  
20 upon projections that are included in both the plan  
21 itself, the disclosure statement, and they're all --  
22 the similar projections are used in the NRC license  
23 transfer application. The ISFSI expenses are already  
24 included in those income projections as operating  
25 expenses.

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1           So they're not protected, but just like  
2           any other operating expense, they're -- they're  
3           addressed and they're projected. And those expenses  
4           are, for the ISFSI again, are a very small percentage  
5           of the operating expenses related to the entire Power  
6           Plant.

7           JUDGE LAM: Thank you.

8           MR. REPKA: The Mothers for Peace raised  
9           an issue about construction work in progress. It's  
10          simply not applicable because these items aren't being  
11          addressed as capital costs.

12          There's -- they next raise a bunch -- a  
13          number of issues related to electric generation in the  
14          plan of reorganization. I'd emphasize again that that  
15          will occur only if the plan is confirmed and  
16          implemented.

17          But, in any event, those qualifications  
18          are being addressed in the license transfer context.  
19          And it's really not appropriate to address those here.

20          But I did mention that there are income  
21          projections that support the license transfer  
22          application and that support the plan of  
23          reorganization, PG&E's plan of reorganization.

24          To give you some numbers from the  
25          disclosure statement, just again to put this into

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1 perspective, the projected revenues per year for the  
2 generating company are in the order of \$450 million  
3 with capital spending of approximately \$140 million  
4 and surplus cash in the neighborhood of \$300 million.

5 The ISFSI again is already included in  
6 those numbers as an operating expense. But with  
7 numbers on the order of 2.5 million to 20-some million  
8 per year for the ISFSI, it's simply not a material or  
9 a substantial issue.

10 The -- one of the bases for TC2 addresses  
11 -- again goes to the ability to -- to borrow funds.  
12 Again I'd emphasize that there's -- there's no  
13 expectation of capitalizing any of these costs.  
14 They're being addressed as operating funds, so the  
15 argument is -- is inapposite.

16 There are some statements extracted from  
17 public documents about capital investments being under  
18 the supervision of the Bankruptcy Court. That's true,  
19 but we're not talking capital expenses here. And it's  
20 irrelevant anyway because the company is indeed making  
21 substantial capital investments under the supervision  
22 of the Court on the order of 1.3 to \$1.5 billion a  
23 year, in fact.

24 In fact, that's entirely consistent with  
25 the entire concept of the Bankruptcy Court protection.

1 It's -- investment in the asset is important and  
2 necessary to maintain and maximize the value of the  
3 asset to protect the creditors. That's what the  
4 bankruptcy process is doing.

5 And to simply say the company's in  
6 bankruptcy, therefore it can't make capital investment  
7 is, A, wrong as a factual matter; but, B, reflects  
8 just a complete misunderstanding of the bankruptcy  
9 process.

10 The Mothers for Peace next mention the  
11 California attorney general's lawsuit. That argument  
12 is simply speculative at best. The case is in the  
13 very early phases of litigation in state court. In  
14 fact, the company filed its answer to that complaint  
15 on Friday this past week.

16 If -- although certainly the company does  
17 not expect the attorney general to -- to receive  
18 awards, much less awards on the magnitude that are  
19 mentioned by the Mothers for Peace, the fact of the  
20 matter that's an entirely speculative development that  
21 would be addressed like any other future development  
22 as part of the ongoing regulatory process.

23 There is no reason or basis to presume  
24 that that relief will be awarded at this point.  
25 There's no relief that could be granted in this

1 proceeding.

2 The next Contention, TC3, is very similar  
3 to the County's Contention TC1. That talks about  
4 applying for a license for a third party. Well,  
5 that's simply not true. I think the County here this  
6 morning talked again about this situation being  
7 misleading.

8 I can't imagine that anything could be  
9 less misleading. All of these plans have been  
10 described in detail in the NRC applications, both the  
11 license transfer application and in the ISFSI license  
12 application. They're addressed in detail in the  
13 bankruptcy context. There's simply nothing misleading  
14 here. There's been nothing but full disclosure. And  
15 the argument does not raise any valid contention,  
16 neither a dispute in fact or anything with a valid  
17 legal basis for relief.

18 Mothers for Peace Contention TC4 is one  
19 that really goes directly to the financial  
20 qualifications of the gen- -- the proposed generating  
21 company. Again this would occur only if the plan of  
22 reorganization is confirmed, only if the plan of  
23 reorganization, PG&E's plan of reorganization, is  
24 implemented.

25 Again, that's an issue being directly

1 addressed by the Commission in the subpart (m)  
2 context. There has been no valid contentions raised  
3 there by the Mothers for Peace or the County.

4 There are some statements made by both the  
5 County and the Mothers for Peace in their filings that  
6 the income projections are sketchy, are blank, are  
7 nominal, are -- are unclear. While the fact of the  
8 matter is they simply didn't read the proprietary  
9 versions of the projections and didn't ask for it in  
10 the license transfer context and didn't read it.

11 But, in any event, the income projections  
12 are -- are based upon the same numbers as have been  
13 presented in the Bankruptcy Court. Those numbers are  
14 -- and projections are in the disclosure statements.  
15 They are public in that context. They're available on  
16 PG&E's webpage, so the -- there's nothing, nothing  
17 sketchy about the income projections. The only thing  
18 sketchy is about the -- the petitioner's willingness  
19 or ability to read what's in the public domain.

20 One aspect of TC4 was that the  
21 relationships between the proposed entities are not  
22 clearly explained. That contention is a little bit  
23 ironic, given that the Mothers for Peace handed out  
24 the organization chart this morning and proceeded to  
25 explain it. So there's clearly no valid issue there.

1 Mothers for Peace Contention TC5 talks  
2 about the failure to provide sufficient description of  
3 construction and operation costs. Again that  
4 information, and I just highlight -- I just gave the  
5 summary totals earlier this morning about the  
6 construction and operation costs of the ISFSI. That  
7 is information that's specifically incorporated in the  
8 application, specifically incorporated in a  
9 supplemental letter of June 7th of this year on the  
10 ISFSI docket.

11 Nowhere do the Mothers for Peace or the  
12 County ever explain what further information they  
13 would like to see or of what value that information  
14 would be, given that the total construction and  
15 operation costs given are so minor compared to the  
16 budget, overall budget, for the Power Plant, and the  
17 overall budget of both -- and revenues of both PG&E,  
18 the Utility presently, and of the proposed generation  
19 company down the road.

20 The Mothers for Peace do talk about 10 CFR  
21 Part 50 Appendix C and argue that the -- that the  
22 information required for a power plant should be  
23 required. However, as we explained in our filing,  
24 that provision simply does not apply here.

25 The last strand of a contention I'll

1 address is County TC2. This really raises issues very  
2 similar to what's in Mothers for Peace Contention TC2  
3 and TC5. It really goes to the ability of the  
4 successor entity to borrow funds; and claims of the  
5 successor entity is not an electric utility and  
6 therefore PG&E is trying to avoid something.

7 Well, the fact of the matter is the  
8 successor company would not be an electric utility.  
9 We've never hidden that fact.

10 In fact, in the license transfer  
11 application it's -- it's explained in detail that the  
12 generating company will -- will cover its costs based  
13 upon its revenues from power under the bilateral --  
14 proposed bilateral power sales agreement.

15 And the income projections are therefore  
16 the income projections specifically required for a  
17 nonelectric utility applicant for a power -- for an  
18 operating license.

19 There has been no specific challenge to  
20 any of that data. This is not the right forum to  
21 challenge it. And there simply doesn't -- does not  
22 raise a valid, or legitimate, or defined issue in any  
23 way.

24 That's all I have unless there's some  
25 questions.



1 JUDGE BOLLWERK: All right. Let me just  
2 explore with you for a second the procedural  
3 relationship between the license transfer case and  
4 this case, the one that's pending before the  
5 Commission.

6 The license transfer case deals with the  
7 operating license for Diablo Canyon. This is  
8 obviously a license application; there has been no  
9 license issued.

10 If the Commission were to approve that  
11 license transfer would you then have to amend this  
12 application?

13 MR. REPKA: That's true.

14 JUDGE BOLLWERK: And that would happen --

15 MR. REPKA: Well, it's a matter of timing.  
16 If this -- if this license were issued before that  
17 transfer is implemented, then -- then the Part 72  
18 license would be transferred as well. And we would --  
19 we would apply to do that. It's a matter of timing.

20 JUDGE BOLLWERK: So -- I just want to  
21 understand. So the license transfer case that's  
22 pending with the Commission includes a request to  
23 transfer this license if it's issued before?

24 MR. REPKA: That's true, it does. There's  
25 a reference to, I believe, in that application to the

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1 pending ISFSI. I'd have to go back and check that,  
2 but I believe that's in there.

3 There the income projections for the Power  
4 Plant in that license application specifically include  
5 the ISFSI, and that point is noted in the application.  
6 It's one of many operating expenses for the facility  
7 obviously.

8 JUDGE BOLLWERK: All right. The staff may  
9 want to think about that. I'm going to ask them the  
10 same question in terms of the relationship between the  
11 two of them.

12 MR. REPKA: But the point to be made is  
13 simply that the ISFSI is a co-located facility.

14 JUDGE BOLLWERK: Um-hum.

15 MR. REPKA: Its operating budget is part  
16 of the Power Plant operating budget. And the  
17 financial qualifications of the proposed generating  
18 company to operate the Power Plant is -- clearly  
19 bounds and encompasses the operation of the ISFSI.  
20 That really is our point. And the projections are  
21 made based upon that.

22 And in this proceeding, if you wanted to  
23 explore, say, the ability of the generating company to  
24 finance -- to cover the costs of the ISFSI, there's no  
25 new material issue that's not already addressed,

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1 because the numbers are bounding and include the ISFSI  
2 in the Part 50 context. So if you can cover it in  
3 that context, there's -- there's no issue here.

4 You're already including it as an  
5 operating expense. You're comparing it to operating  
6 revenues based on the proposal. And you're showing  
7 that the revenues cover the cost.

8 JUDGE BOLLWERK: I may come back to this  
9 point.

10 Does anybody have any other, other  
11 questions at this point?

12 JUDGE LAM: I have a follow-up to Judge  
13 Bollwerk's question on the proposed license transfer.

14 Now in the bankruptcy proceeding there are  
15 two alternative plans.

16 MR. REPKA: That's correct.

17 JUDGE LAM: In the pending license  
18 transfer before the Commission, do you cover both  
19 alternative plans?

20 MR. REPKA: The license transfer doesn't  
21 cover both because it does not need to consider the  
22 CPUC plan. The CPUC plan would not result in a  
23 restructuring of the company that would require a  
24 licensed transfer. So if the Bankruptcy Court were to  
25 confirm the CPUC plan and not the PG&E plan, then the

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1 current utility would continue to be the license --  
2 the licensee for the ISFSI. So in that scenario there  
3 is no license transfer at all.

4 JUDGE LAM: I see.

5 MR. REPKA: And in that scenario  
6 presumptively PG&E would continue to be a rate-  
7 regulated electric utility with access to the rate  
8 process.

9 JUDGE BOLLWERK: I take it from what  
10 you've already told us, if the San Luis Obispo Mothers  
11 for Peace or the County had come into the license  
12 transfer proceeding and wanted to litigate the issue  
13 of financial qualifications relative to this ISFSI  
14 application, at least in terms of putting aside the  
15 substance of the contentions, they would not have been  
16 outside the scope of the proceeding?

17 MR. REPKA: No, I don't think so. If they  
18 had raised the issue that said generate -- Gen, the  
19 Gen Company or Gen is not financially qualified  
20 because it can't cover its costs, including the costs  
21 of the ISFSI, that would have been within the scope.

22 Now the projections don't support that and  
23 would refute that. But it would be another operating  
24 expense of the -- of the Power Plant.

25 JUDGE BOLLWERK: All right. Any other

1 questions from either of the Board Members?

2 Mr. Lewis, I'll offer you a choice. We  
3 can take a break now, or would you prefer to do your  
4 presentation first?

5 MR. LEWIS: I'm ready. It's up to you,  
6 Your Honors, at this point.

7 JUDGE BOLLWERK: Then I'll turn to Ms.  
8 Curran.

9 I think you would probably like a break  
10 before you start yours; is that correct?

11 MS. CURRAN: Yes, indeed.

12 JUDGE BOLLWERK: All right. Why don't we  
13 go ahead then and do the staff's, and then we'll take  
14 a break before we start your presentation.

15 All right.

16 MR. LEWIS: That's fine. I believe I have  
17 30 minutes under the --

18 JUDGE BOLLWERK: That's correct.

19 MR. LEWIS: So I'll reserve 10 minutes of  
20 that for any further comments based upon the other  
21 parties' responses.

22 What I'd like to focus on is that what  
23 we're talking about here is the requirement in 72.22  
24 of the Commission's regulations that -- that the  
25 Commission needs to be able to make a finding that the

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1 applicant for the ISFSI license has the financial  
2 qualifications to construct, operate, and decommission  
3 the ISFSI.

4 Since there is such a requirement in Part  
5 72, the staff did not oppose two of the Mothers for  
6 Peace Contentions, TC2 and TC5.

7 Among the various contentions that have  
8 been proffered here, either by the Mothers for Peace  
9 or the County, those were the only two that, along  
10 with their bases, we felt presented an issue that was  
11 admissible and material to this proceeding. That is  
12 to say, that these two contentions did challenge the  
13 sufficiency of the application to demonstrate the  
14 financial qualifications as required by 72.22.

15 The other contentions in our mind are  
16 contentions that assert that there is some failure in  
17 this application to address what really is happening  
18 here, which we don't think there is. We think there's  
19 a disclosure of what is happening, which is largely  
20 driven by the bankruptcy proceeding.

21 Judge Bollwerk asked me to think about the  
22 question he had just asked Mr. Repka. And I had  
23 already previously jotted down that I should address  
24 it anyway.

25 If, if and when the bankruptcy proceeding

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1 is completed and there is a discharge of PG&E and the  
2 reorganization confirmation is -- and the PG&E  
3 proposed plan of reorganization is confirmed, I think  
4 at that point the -- what -- let me start over again.

5 There is the license transfer proceeding  
6 under subpart (m) pending before a Board. That  
7 proceeding is moving along on its own basis.

8 The staff, while recognizing that that was  
9 the place to litigate detailed questions about the  
10 financial qualifications of this company, was not  
11 sufficiently certain that the ISFSI financing  
12 specifically would be addressed there to say that it  
13 was foreclosed from being considered here. That was  
14 another -- another factor that went into our -- our  
15 thinking on TC2 and TC5.

16 But -- but once there is a license  
17 transfer, that would then have to be reviewed, and it  
18 would have to be determined what the timing is. And  
19 Mr. Repka referred to timing. I mean there is going  
20 to be -- in that situation there would be a new  
21 licensee coming into effect and taking over the  
22 responsibility.

23 If -- if that happened while this  
24 proceeding were still pending, then the application in  
25 this case would have to be amended, and we would

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1 proceed accordingly.

2 If it happened after this proceeding were  
3 closed, then the Part 72 license would have to be  
4 amended and that would be a separate matter. So it's  
5 just -- it's all a matter of timing.

6 JUDGE BOLLWERK: I think -- except if I  
7 understood what Mr. Repka said, and if I'm  
8 misrepresenting him, obviously he should correct me,  
9 that given what's pending with the Commission if this  
10 proceeding were finished and the license had already  
11 been issued for the ISFSI, that under their license  
12 transfer application that would simply transfer over;  
13 it would not need to be amended as such. It would be  
14 -- in other words, it would not be a separate  
15 amendment, it would simply be part of the license  
16 transfer.

17 MR. REPKA: Yeah. I don't think I --  
18 that's necessarily true.

19 JUDGE BOLLWERK: All right.

20 MR. REPKA: I think in that scenario that  
21 --

22 JUDGE BOLLWERK: Maybe I misunderstood.

23 MR. REPKA: -- it's the ISFSI is mentioned  
24 in there, but I don't think that there's a specific  
25 request to transfer the license. I think it's a



1 recognition that -- that, given the timeframes  
2 expected, would be that the -- there was an awareness  
3 that Gen might become the initial ISFSI licensee.

4 JUDGE BOLLWERK: So then, if I have the  
5 sequence correct here, assuming that the -- this  
6 proceeding were to be completed before the license  
7 transfer took place, then the license transfer were --  
8 assuming that the Commission again ruled in favor of  
9 PG&E on their request to transfer the license, Gen  
10 would then be the licensee or one of the entities  
11 would be the licensee of the new -- the operating  
12 license. Then the ISFSI license would have to be  
13 amended again to reflect whatever the structure was  
14 for the new operating company.

15 MR. REPKA: I think that's correct.

16 JUDGE BOLLWERK: And that again would be  
17 subject to a hearing; is that correct?

18 MR. REPKA: Right, that would be correct.

19 But, on the other hand, if the -- if the  
20 ISFSI license has not yet issued, we would amend the  
21 application.

22 Now the amended application wouldn't say  
23 anything more than what's already said there, which is  
24 in -- we we've explained that there is this  
25 possibility.

1 JUDGE BOLLWERK: All right.

2 MR. LEWIS: Judge Bollwerk, it's been  
3 brought to my attention that, as a matter of  
4 practicality, probably the transfers of the operating  
5 license for the Diablo Canyon Power Plant and the  
6 ISFSI would probably happen at the same time in that  
7 they have very much intertwined programs.

8 It would certainly be -- this is probably  
9 an understatement -- it would certainly be highly  
10 desirable for that to happen and it may be necessary  
11 for it to happen, too. But I -- I'm not asserting  
12 that as a fact. I just think that's the way in which  
13 it would probably be handled because of the  
14 interrelatedness of the two co-located --

15 JUDGE BOLLWERK: Well, except that I heard  
16 Mr. Repka say that there is a little procedural matter  
17 that has to be taken care of, which is the name has to  
18 be changed on the ISFSI license.

19 MR. LEWIS: Right.

20 MR. REPKA: Well, the proced- -- the  
21 changing the name would go as the administrative  
22 amendment that goes with the license transfer, if  
23 indeed there's a license -- a Part 72 license at that  
24 point to be transferred.

25 JUDGE BOLLWERK: All right. So I guess

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1 we're back to the original question. Is there a -- is  
2 there an amendment that goes forward, or isn't there?  
3 And is that subject to a hearing?

4 MR. REPKA: Well, it depends on timing.  
5 But if the Part 72 has already been issued at the time  
6 the transfer is going to be implemented, there would  
7 have to be an amendment to the Part 72 and it would be  
8 subject to a hearing and through -- through the  
9 transfer process, the license transfer process.

10 In license transfer space, the amendment  
11 is dealt with as a separate administrative item.

12 JUDGE BOLLWERK: So it would be a subpart  
13 (m) proceeding is what you're telling me.

14 MR. REPKA: It would be subpart (m).

15 JUDGE LAM: Do we know what the proposed  
16 schedule is for the license transfer before the  
17 Commission?

18 MR. REPKA: We had originally asked for  
19 the approval with the expectation of trying to  
20 implement the plan by the end of this year. It's all  
21 contingent upon the status of the bankruptcy  
22 proceeding.

23 Currently the Bankruptcy Court has set  
24 hearings for November, beginning in November on the --  
25 beginning with the CPUC's plan and then followed up

1 with the hearings on the PG&E plan. So I don't think  
2 there is any expectation that that process will be  
3 done this year.

4 Obviously we would like it to be complete  
5 as soon as possible, but I think that this year is  
6 probably optimistic.

7 MR. LEWIS: Judge Bollwerk, I need to --

8 JUDGE BOLLWERK: I interrupted you. Go  
9 ahead.

10 MR. LEWIS: I'm sorry.

11 JUDGE BOLLWERK: Go ahead.

12 MR. LEWIS: I need to correct something I  
13 said. I referred to the -- to the transfer proceeding  
14 as being before a board. That's not accurate. Under  
15 subpart (m) there was a presiding officer who was  
16 designated to gather the record. And that has been  
17 done and it is now before the Commission.

18 JUDGE BOLLWERK: Right. Actually that was  
19 never -- the Commission has never referred it to a  
20 board.

21 MR. REPKA: Actually that's not correct.  
22 I was going to correct it. It never has --

23 JUDGE BOLLWERK: I think I would have  
24 heard about that if it had happened, so.

25 No, that has not happened. Okay.

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1 Go ahead.

2 MR. LEWIS: Give me a moment here.

3 MR. REPKA: While Mr. Lewis is thinking,  
4 I just -- in response to Judge Lam, I answered your  
5 question with respect to the bankruptcy status.

6 With respect to the NRC status, you know,  
7 I'm not sure where the NRC and the Commission are with  
8 respect to their decisions. But I would say that we  
9 do expect that those consents in 50.80 license  
10 transfer space can be issued whenever the Commission  
11 and the staff are ready to do that with it contingent  
12 upon subsequent approval by the Bankruptcy Court of  
13 the plan of reorganization and all the other  
14 regulatory approvals that have to be received,  
15 including from the Federal Energy Regulatory  
16 Commission. So that could very much well be this  
17 year.

18 JUDGE LAM: Thank you.

19 JUDGE BOLLWERK: Let me just ask one other  
20 question. Is all we're talking about here affected in  
21 any way by the District Court ruling about a week ago  
22 dealing with the authority of the California, I guess,  
23 regulatory agencies to be involved with the  
24 bankruptcy?

25 MR. REPKA: Are you speaking of the

1 preemption decision?

2 JUDGE BOLLWERK: Yes.

3 MR. REPKA: Yeah. That clearly is a  
4 pertinent decision in the -- in the bankruptcy process  
5 and a very positive one for PG&E. I think it -- it's  
6 a boost for the PG&E plan. But it does not in and of  
7 itself change the -- the current course of the  
8 bankruptcy process.

9 JUDGE BOLLWERK: All right. Mr. Lewis.

10 MR. LEWIS: So the -- the point that I was  
11 -- was making was that what we have focused on is what  
12 we think is a relatively narrow question, that we  
13 considered to be appropriate in this proceeding, which  
14 is whether or not the application is sufficient to  
15 demonstrate the financial qualifications of the  
16 existing licensee and applicant.

17 There is nothing improper. In fact, it  
18 would be improper if the application were in the name  
19 of anyone other than the current PG&E. It has to be  
20 in the name of the current PG&E.

21 PG&E is operating as a debtor-in-  
22 possession under a Chapter 11 reorganization plan.  
23 Therefore it continues to exist as a corporation and  
24 as the licensee and the applicant.

25 A number of the contentions are -- are

1 based upon concerns over what might be the  
2 implications of future developments as to the company  
3 that arises from the bankruptcy and license transfer  
4 proceedings. But we don't have to face that at this  
5 time.

6 This is -- there are a number of  
7 proceedings going on, and it seems to me that each one  
8 of them is doing what they are supposed to do. The  
9 bankruptcy proceeding is addressing the meat and bones  
10 of the financial questions.

11 The NRC is closely following what is going  
12 on in that proceeding and is independently reviewing  
13 whether or not the licensee -- the proposed new  
14 licensee under the reorganization plan would meet the  
15 NRC's financial assurance requirements.

16 That proceeding clearly will go in much  
17 greater depth than this proceeding needs to with  
18 regard to the overall financial qualifications of  
19 Pacific Gas -- of Pacific Gas and Electric.

20 What we simply -- strike that. I don't  
21 mean the word "simply."

22 What needs to be determined here is  
23 whether or not the application adequately sets forth  
24 the financial qualifications of PG&E to construct,  
25 operate, and decommission eventually the ISFSI.

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1 Other than that, we rest on our responses  
2 of August 19th to the Mothers for Peace Contentions  
3 and September 5th, 2002, to the County's issues.

4 JUDGE BOLLWERK: Let me raise a couple  
5 questions here. The first one is, maybe I don't want  
6 to step in Ms. Curran's shoes here, but from the  
7 perspective of her client I think one of her concerns  
8 is that everybody here seems to be going like this  
9 (indicating), which is where do I go if I have a  
10 problem with the financial qualifications of whether  
11 it's existing PG&E or what as it's going to be  
12 reorganized.

13 And I'm now hearing to some degree,  
14 depending on what happens with this, that, well, it's  
15 not -- it's actually too earlier to litigate those  
16 issues. That's the subpart (m) proceeding potentially  
17 that might come up, depending on what happens with the  
18 timing of this license application, or she should have  
19 been in the license transfer application proceeding  
20 that's now going on before the Commission.

21 Can you help me with that? Can we help  
22 her with that?

23 MR. LEWIS: I can try and help you and  
24 hopefully help her.

25 JUDGE BOLLWERK: All right.



1 MR. LEWIS: I mean presumably this is what  
2 parties hire attorneys for. Yes, it's not  
3 unprecedented in life to have overlapping proceedings.  
4 And one has to determine where you have to put your  
5 efforts in order to have your points be heard.

6 It takes some careful thinking to parse  
7 out exactly what belongs where, but I don't think that  
8 thinking is impossible to do. And that's what I was  
9 talking about when I said the timing.

10 I mean clearly Mr. Repka is right that if  
11 -- if there is a license issued for the ISFSI and then  
12 subsequent to that there is a transfer approved under  
13 50.80, there would then be the need for a conforming  
14 action with respect to the ISFSI license and there  
15 would be an amendment.

16 The amendment would be -- the substantive  
17 review would be the review of the transfer, the -- the  
18 merits of the transfer. The amendment would be  
19 essentially ministerial to change the name, but it  
20 would be an amendment. It's the type of amendment  
21 which the Commission has generically determined  
22 doesn't raise any significant hazards considerations  
23 and is basically administrative in nature, but there  
24 would be -- there would be -- there would have to be  
25 an application for approval of the transfer separately

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1 of the ISFSI in that situation.

2 And this is -- this is my understanding of  
3 the situation and --

4 JUDGE BOLLWERK: Which would be subpart --

5 MR. LEWIS: The NR- --

6 JUDGE BOLLWERK: -- subpart (m)  
7 proceeding.

8 MR. LEWIS: Subpart (m) proceeding.

9 JUDGE BOLLWERK: All right.

10 MR. LEWIS: It would be a subpart (m)  
11 proceeding if it happened after this, this is over.  
12 If it -- if it occurs and can be subsumed within this  
13 proceeding, then it would simply be part of finding --  
14 determining the financial qualifications of the new  
15 licensee/applicant in this proceeding.

16 MR. REPKA: May I comment --

17 JUDGE BOLLWERK: In other words, if the  
18 Commission acts before we act, then in theory you  
19 would have then to come in and amend this application  
20 and then that -- then it would then be part,  
21 potentially, to -- subject to late-filed contentions,  
22 or whatever was involved.

23 MR. REPKA: And that's -- that's the  
24 mechanical issue. Let me address the more substantive  
25 issue.

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1           The contentions are an amalgam of attacks  
2           on the qualifications of the current utility, PG&E,  
3           and the future qualifications of the proposed  
4           generation company. So that's what makes it a little  
5           bit confusing to address.

6           But the fact of the matter is if the  
7           attack is on PG&E the Utility, this is the place. And  
8           our argument is there has been no valid contention  
9           raised about the Utility because of the Utility's  
10          access to the rate process, et cetera, and the size of  
11          the -- the size of the expenses we're talking about.

12          If the issue is related to Gen and the  
13          proposed generation company, by far the most  
14          substantive forum to address that would have been in  
15          the subpart (m) process, Part 50 process that's  
16          already been noticed and has already been proceeding  
17          for some months and some time. There's -- there's  
18          really no issue related to the ISFSI or the Power  
19          Plant that could not have been raised in that forum.

20          The fact of the matter is the County did  
21          try to raise issues in that forum, very similar issues  
22          to what they're talking about today. And they failed  
23          utterly to raise a litigable issue. And the  
24          Commission determined that in their June 25th  
25          decision. The Mothers for Peace didn't attempt to

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1 intervene in that forum.

2 All of these issues are bounded by that  
3 application from a substantive standpoint. You know  
4 putting aside all the mechanics of the license, you  
5 know the fact of the matter is the qualifications of  
6 the Gen Company include all of the revenues and all of  
7 the expenses of the Power Plant and supporting  
8 facilities. So that would have been the place.

9 JUDGE BOLLWERK: All right. And, by the  
10 way, I will provide you an opportunity if you want to  
11 say something about that. We won't do it right now,  
12 but bear -- keep that in mind.

13 Thank you, Mr. Repka.

14 MR. LEWIS: I hope we're not imposing  
15 unduly on the Board by ping-ponging this back and  
16 forth.

17 JUDGE BOLLWERK: That's all right. We're  
18 dealing -- I want to make sure everybody gets an  
19 opportunity to speak to this because I think it's an  
20 important issue, so.

21 MR. LEWIS: Yes. Yes.

22 It occurs to me that I may have introduced  
23 some slight confusion, which we certainly don't want  
24 to introduce any more confusion here than some people  
25 think already exists.

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1           The -- I did not mean to indicate when I  
2           said that the staff was uncertain as to whether or not  
3           the Contentions TC2 and TC5 could have been raised in  
4           the -- in the license renewal and license transfer --  
5           excuse me -- in the license transfer proceeding  
6           anything more than I just simply wasn't sure.

7           I don't -- I don't have any reason to  
8           disagree with what Mr. Repka says, that it appears  
9           from the fact that the contentions of the County, the  
10          proposed contentions of the County and I think of the  
11          Public Utility Commission were considered and rejected  
12          in that proceeding, but the point is the County's was  
13          focused on the -- on the ISFSI.

14          That suggests to me that had an admissible  
15          -- had that contention been admissible, the premise  
16          and the understanding of the Commission was that it  
17          could have been encompassed within that proceeding.  
18          I have no reason to disagree with that.

19          JUDGE BOLLWERK:     Your pleading with  
20          respect to TC2, I guess, indicated that while you had  
21          apparently some concerns about some of the bases that  
22          overall the contention was admissible.

23          MR. LEWIS:     Correct.

24          JUDGE BOLLWERK:     Would you like to be any  
25          more specific about the bases that you thought were

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1 suspect?

2 MR. LEWIS: Okay.

3 JUDGE BOLLWERK: And then if there are no  
4 other Board questions, we're going to take a break  
5 right after this, so.

6 MR. LEWIS: There were five -- there were  
7 five bases set forth for the contention.

8 The number 3, "Because PG&E's plan is to  
9 have the ISFSI owned and operated by other nonutility  
10 entities, its claim that since it is a regulated  
11 utility, the NRC should assume financial qualifies is  
12 disingenuous," well, we just saw absolutely no basis  
13 -- no basis in that basis.

14 JUDGE BOLLWERK: All right.

15 MR. LEWIS: All right. We -- we felt  
16 that, basis number 4, "PG&E's current financial  
17 condition is dubious, with access to credit markets  
18 unreliable and very costly," without getting to the  
19 merits of that we felt that, you know, that could be  
20 relevant and material. So we felt it was something  
21 that supported the admissibility.

22 JUDGE BOLLWERK: Maybe we should go  
23 through them the way that they're listed in the  
24 original contention, because I think we're getting --

25 MR. LEWIS: Yeah. Okay.

1 Well, PG&E -- number 1, "PG&E is currently  
2 in a contested bankruptcy and may or may not emerge  
3 from that bankruptcy intact." We didn't consider that  
4 to be relevant or material.

5 JUDGE BOLLWERK: And this is number --  
6 this is number -- this is on page 13 of the  
7 contention. It's listed as Number 2. It says, "PG&E"  
8 --

9 MR. LEWIS: I'm -- well, I'm going from --

10 JUDGE BOLLWERK: Aren't we going --

11 MR. LEWIS: -- page 9. I'm going from  
12 page 9 of our answer, which is going through the five  
13 specific reasons, which are demonstrative of PG&E's  
14 failure to meet --

15 JUDGE BOLLWERK: Okay.

16 MR. LEWIS: -- 72 --

17 JUDGE BOLLWERK: Using your pleading,  
18 okay. I see. I'm sorry. I'm reading -- I'm reading  
19 their document now. I apologize.

20 MR. LEWIS: And -- and the first one that  
21 we listed is, "PG&E is currently in a contested  
22 bankruptcy and may or may not emerge from that  
23 bankruptcy intact."

24 Well, that's true. It may or may not, but  
25 there have been other NRC cases and licensees who went

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1 through bankruptcies. And the fact of a bankruptcy  
2 proceeding in and of itself is not -- in and of itself  
3 it's not material to even a financial assurance  
4 question.

5 JUDGE BOLLWERK: So you didn't feel that  
6 one presented an adequate basis?

7 MR. LEWIS: No.

8 JUDGE BOLLWERK: All right.

9 MR. LEWIS: Number 2, "PG&E is incorrect  
10 in claiming that since it is a regulated utility its  
11 financial qualifications is assured."

12 We -- we were not in a position to know  
13 the merits of whether or not that was a real -- a real  
14 and significant issue. So we considered to support  
15 the admissibility.

16 "Because PG&E's plan is to have the ISFSI  
17 owned and operated by other nonutility entities, its  
18 claim that since it is a regulated utility, the NRC  
19 should assume financial qualifications, is  
20 disingenuous."

21 We considered that to be basically  
22 hyperbole. And, you know, we didn't think it was  
23 raising anything about the adequacy of the application  
24 before the NRC.

25 Number 4, "PG&E's current financial



1 condition is dubious, with access to credit markets  
2 unreliable and very costly."

3 We felt that was reasonably related to the  
4 admissibility of the contention and something that  
5 could be relevant to the finding needed to be made  
6 here, so we thought that was a good basis in that  
7 sense.

8 JUDGE BOLLWERK: All right.

9 MR. LEWIS: "PG&E is currently the target  
10 of multi-million-dollar litigation for fraud by the  
11 California Attorney General."

12 We discounted that one from the point of  
13 view of albeit providing anything that could be  
14 relevant to what this Board could reasonably consider  
15 in this proceeding. There are lawsuits out there  
16 about lots of things. This happens to be a lawsuit  
17 about something --

18 JUDGE BOLLWERK: All right.

19 MR. LEWIS: -- that, you know, has a big  
20 figure associated with it. And whatever happens in  
21 the case will happen in the case. And if it has  
22 implications for the NRC -- excuse me.

23 There are an awful -- an awful lot of  
24 noises in the background --

25 JUDGE BOLLWERK: I don't know what -- I'm

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1 hearing the same thing and having some trouble  
2 following.

3 I take it then it was 2 and 4 were the  
4 ones that you felt were the -- provided a basis for  
5 the contention?

6 MR. LEWIS: 2 and --

7 JUDGE BOLLWERK: As they're listed on page  
8 9 of your response.

9 MR. LEWIS: Yes, 2 and 4.

10 JUDGE BOLLWERK: All right.

11 MR. LEWIS: That's --

12 JUDGE BOLLWERK: All right.

13 MR. LEWIS: Does that sufficiently answer  
14 --

15 JUDGE BOLLWERK: That answers my question.  
16 Thank you.

17 MR. LEWIS: Thank you.

18 JUDGE BOLLWERK: Any other Board questions  
19 at this point?

20 (No audible response.)

21 JUDGE BOLLWERK: All right. It's now  
22 about 11:15, a little bit past. Why don't we take a  
23 break till 11:30. Then we'll come back. And I think  
24 we have some responses both from San Luis Obispo  
25 County that we'll hear and also from Ms. Curran.

1 Thank you.

2 (Recess taken from 11:16 a.m. to 11:34  
3 a.m.)

4 JUDGE BOLLWERK: Before we begin with the  
5 rebuttal of the responses, let me just direct one  
6 other question to the staff.

7 And if you don't have the answer right off  
8 the top of your head, you can come back to us while  
9 we're listening to the other, the other arguments.

10 Yesterday Ms. Curran provided us, the San  
11 Luis Obispo Mothers for Peace provided us with a  
12 document. I believe it was the August 29th Request  
13 for Additional Information that the staff had put out  
14 to PG&E with respect to the ISFSI application.

15 MR. LEWIS: Yes.

16 JUDGE BOLLWERK: Do any of the questions  
17 that the staff has asked relate to Contention TC5,  
18 which deals with questions about inadequate costs --

19 MR. LEWIS: No.

20 JUDGE BOLLWERK: -- and construction  
21 costs, et cetera, that any questions that staff has  
22 asked that would have anything to do with that  
23 contention?

24 MR. LEWIS: They do not. We had asked in  
25 earlier, in earlier and separate correspondence for

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1 some elaboration on the financial qualifications  
2 submittal. I don't have the date readily at hand, but  
3 maybe --

4 (Counsel and NRC staff confer off the  
5 record.)

6 MR. LEWIS: -- the reply was on June 7th.

7 JUDGE BOLLWERK: All right.

8 MR. LEWIS: And --

9 (Counsel and NRC staff confer off the  
10 record.)

11 MR. LEWIS: It happened as a result of a  
12 phone conference, I'm informed. So there was -- there  
13 was some interchange that we had with PG&E and which  
14 resulted in the submittal of some additional  
15 information. And with that information we did not  
16 have any further questions --

17 JUDGE BOLLWERK: All right.

18 MR. LEWIS: -- related to financial  
19 qualifications.

20 JUDGE BOLLWERK: All right. But then  
21 just, again, in terms of TC5 that was not one of the  
22 ones you objected to? That --

23 MR. LEWIS: TC5 was not one of the ones we  
24 objected to.

25 JUDGE BOLLWERK: All right.

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1 MS. CURRAN: I also want to ask if the --  
2 if I could be added to your service list for those  
3 RAIs?

4 MR. LEWIS: Yeah, sure.

5 MS. CURRAN: Okay.

6 MR. LEWIS: Of course you can. Let me --  
7 let me explain something just so the people  
8 understand.

9 We had -- there is a procedure that the  
10 Office of Nuclear Material Safety and Safeguards has.  
11 And Mr. Hall and Mr. Baggett and Mr. Cuadrado all work  
12 in that office. And it deals with Board  
13 notifications.

14 And what it says is that once the issues  
15 in a proceeding are -- are determined, the staff has  
16 an obligation to make Board notifications of anything  
17 that is considered to be material to the issues.

18 And I happen to have a discussion with  
19 staff to make sure I understood why that had not been  
20 a Board notification, because I was not aware of the  
21 fact that the Board notification obligation arose once  
22 the issues had been identified.

23 But once it was pointed out to me, I  
24 understood that that's how the materiality  
25 determination is made. And that's probably more than

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1 I need to say in response to Ms. Curran's question,  
2 but we'll also be happy to ask -- to add your name to  
3 our list.

4 There is a list that has been developed  
5 over the years by the Spent Fuel Project Office based  
6 upon people who have written in and said they would  
7 like to receive correspondence regarding Diablo  
8 Canyon.

9 JUDGE BOLLWERK: All right. Okay. Let me  
10 first turn to the County and see what, if anything,  
11 they want to say, and then I'll let Ms. Curran address  
12 her response rebuttal.

13 MR. TEMPLE: The County has identified two  
14 issues that should be set for hearing in this  
15 proceeding.

16 With respect to the identity of the  
17 applicant, independent of which plan that the  
18 Bankruptcy Court eventually approves, PG&E doggedly  
19 persists in claiming that the Bankruptcy Court will  
20 approve its plan so PG&E will not be the licensee for  
21 the ISFSI.

22 PG&E treats as ministerial the fact that  
23 the actual ISFSI applicant cannot now be identified.  
24 It says that this belongs in some other proceeding.

25 By refusing to consider the corporate

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1 identity, that the corporate identity is not known,  
2 the NRC would support PG&E's inconsistent arguments  
3 regarding the impacts of the outcome of the bankruptcy  
4 proceeding.

5 If the NRC declines to address this issue  
6 at hearing, then the ISFSI licensing proceeding would  
7 be meaningless. The CPUC and the County have appealed  
8 to the Ninth Circuit Court of Appeals the Commission's  
9 decision regarding their participation and the  
10 adequacy of their contentions in the license transfer  
11 proceeding. We will deal with those issues as we see  
12 fit in that proceeding.

13 With respect to financial qualifications  
14 of the ISFSI applicant, the financial qualifications  
15 of the ultimate ISFSI licensee cannot be determined  
16 until the licensee is known, and at that time will be  
17 subject to another hearing.

18 The current ISFSI license applicant is in  
19 bankruptcy and has not demonstrated that it meets the  
20 NRC's requirements for financial qualifications. As  
21 a result, the NRC must consider and take evidence  
22 about the financial qualifications of the real  
23 applicant in this proceeding before approving that  
24 application.

25 In its June 7th supplement PG&E asks that

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1 we trust it, that it, and I quote, "will have the  
2 financial qualifications to construct and operate  
3 Diablo Canyon ISFSI."

4 It is subject to rates set by the  
5 California Public Utility Commission. However PG&E is  
6 currently in bankruptcy. Until PG&E emerges from  
7 bankruptcy, is it a financially-qualified electric  
8 utility?

9 Riverbend 40, NRC 43, 1994 tells us that  
10 an admissible contention exists with respect to the  
11 financial qualification of an electric utility in  
12 bankruptcy.

13 The absence of an automatic NRC okay for  
14 the financial qualifications for such electric  
15 utilities was reiterated in *Northern States Power*, 52  
16 NRC, 37 2000, discussing in part the financial  
17 qualifications for an ISFSI licensed applicant during  
18 a licensed transfer proceeding.

19 Riverbend also reminds us of the threshold  
20 analysis required at the contention filing stage,  
21 which is where we are, as opposed to the determination  
22 that takes place through the testimony of attorneys at  
23 a prehearing conference.

24 PG&E asked the NRC to approve this license  
25 application and to allow the license transfer

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1 proceeding to address corporate identity and  
2 financial-qualification-related issues. Such a  
3 request runs in violation of the clear requirements  
4 for the determinations that must be made in this  
5 proceeding.

6 Moreover, the ISFSI financial  
7 qualifications were not noticed as part of the license  
8 transfer proceedings. Failure to address financial  
9 qualifications for the ISFSI applicant would not be a  
10 mere ministerial oversight.

11 In this proceeding -- if this proceeding  
12 fails to address the financial qualifications of the  
13 ISFSI applicant, and the NRC issues the ISFSI license  
14 relying on the license transfer proceeding to address  
15 those financial qualifications, and the Bankruptcy  
16 Court selects the CPUC plan, then the NRC will never  
17 review the financial qualifications of the ISFSI  
18 applicant.

19 PG&E makes the point that the size of the  
20 ISFSI construction costs is dwarfed by its income.  
21 Enron and Arthur Andersen were both once powerful  
22 companies.

23 The amount of PG&E's liabilities and  
24 claims are uncertain. When liabilities exceed income,  
25 a small liability may go unpaid no matter how small it

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1 is and no matter how much it is dwarfed by the  
2 projected income. Thus PG&E's current financial  
3 question is dubious and its access to credit markets  
4 is uncertain.

5 The NRC must make a determine in this  
6 proceeding whether the requirements of 10 CFR  
7 72.22(d)(3) and 72.22(e) have been satisfied. That  
8 cannot take place if the corporate structure and  
9 financial qualifications of the licensee are being  
10 determined in another proceeding not run by the NRC  
11 but by a Bankruptcy Court in the Northern District of  
12 California.

13 It is for these reasons that a hearing  
14 must be held on the issues of the licensee's identity  
15 and financial qualifications and an NRC determination  
16 of whether PG&E currently has met these requirements  
17 must be made in the ISFSI proceeding.

18 JUDGE BOLLWERK: All right. Any questions  
19 from the Board Members?

20 All right. No.

21 All right. Ms. Curran then.

22 MS. CURRAN: Okay. I think we heard  
23 arguments earlier today that these petitioners are not  
24 in the right place, that we should have intervened in  
25 a different case that was begun before this ISFSI

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1 proceeding started in order to challenge the license  
2 transfer, the proposed license transfer from PG&E  
3 Utility to its new entities.

4 And I would like to emphasize that  
5 petitioners believe very strongly we are in the right  
6 place. We are exercising our rights under the NRC's  
7 regulations in 10 CFR Part 72 to demand a showing that  
8 this applicant is financially qualified to build and  
9 operate an ISFSI.

10 Now there's a great deal of confusion here  
11 about who the applicant is. And I'd like to talk  
12 about that next. But there is simply no doubt that  
13 there needs to be an applicant, an identifiable  
14 applicant, and that applicant needs to come in and  
15 demonstrate its financial qualifications.

16 And it will not do for the attorney for  
17 the company to come in and say, 'You should have  
18 intervened in another case and requested the  
19 proprietary documents in that case if you really  
20 wanted to know whether this applicant is financially  
21 qualified to build the ISFSI.'

22 And we will expect that when our  
23 contention is admitted that we will have access to all  
24 of the information that relates to the license  
25 transfer, because it's relevant to this case.

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1           It seems to us that there's been what --  
2           what feels to us like something of a shell game here  
3           as to who is the applicant for this ISFSI. And I  
4           think it's important to get back to what is in this  
5           application.

6           And that is there is a single plan. The  
7           single plan starts out with PG&E Utility as the  
8           licensee. And then it goes to transfer of the license  
9           to a new entity called Gen. And this plan very much  
10          depends on that reorganization, because PG&E has said  
11          that as an entity it cannot continue to operate  
12          because it is -- its debts are too high and it must  
13          reorganize and get out from under its financial  
14          problem.

15          So there is one plan here which we have  
16          addressed in our contention. And to maintain this  
17          fiction that the only entity that we should be  
18          addressing here is PG&E Utility is -- it becomes quite  
19          absurd, since in its own documents PG&E Utility is  
20          saying, 'We don't think we're financially viable and  
21          we don't think we can continue in this way.'

22          If the Licensing Board or the parties  
23          don't -- don't think that it's appropriate at this  
24          point to litigate the adequacy of what PG&E is  
25          proposing as a plan here, then this proceeding should

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1 be stayed until the outcome of the reorganization.  
2 And that to me seems actually like a very sensible way  
3 to proceed here. And we have previously asked the  
4 Licensing Board to stay this proceeding.

5 But in the absence of a stay it seems to  
6 me that we are entitled to litigate the plan that is  
7 presented in this application and to challenge the  
8 financial qualifications of the entities that are  
9 presented there.

10 I'd also like to remind the Licensing  
11 Board that all this is in the relatively short term.  
12 I think you heard Mr. Repka say a little earlier that  
13 yesterday, I believe it was yesterday, the major  
14 creditors voted overwhelmingly to approve PG&E's plan.

15 That means that the reorganization should  
16 be approved in the fairly near future. So we're not  
17 talking about a very long-term, drawn-out situation.  
18 We need to take a practical approach here which allows  
19 us to address the situation as it really is.

20 I think I also heard Mr. Repka say that  
21 the costs of the ISFSI are being treated as an  
22 expense, an operating expense of PG&E Utility, and  
23 that these are not significant costs when compared to  
24 other costs of operating the reactor.

25 But it's important to bear in mind that

1 they are costs that must be met, that the point here  
2 is that we have a utility that is in bankruptcy that  
3 has serious credit problems.

4 And I'm talking about the Utility that  
5 operates the Nuclear Plant, which has to go out and  
6 borrow money for other purposes. I think it's  
7 probably a much more complicated situation than --  
8 that the Utility takes out a loan for a certain  
9 project and that it only spends the loan proceeds on  
10 that project.

11 My guess is that a company as big as PG&E  
12 Utility borrows some money, gets some money out of the  
13 ratemaking system, and that it's a -- you have to look  
14 at as a whole. And whether PG&E is a viable entity is  
15 -- is the question here in this case.

16 I'd also like to point out that one of the  
17 issues that we've raised in this case is whether PG&E  
18 should be making substantial design changes, whether  
19 they should at least consider such design changes as  
20 appropriate mitigative measures in an environmental  
21 report to protect against acts of terrorism or other  
22 acts of malice or insanity.

23 And we would think that the costs of  
24 redesigning a dry cask facility such as this one could  
25 be significant. And that's another thing that could

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1 raise the cost of the ISFSI.

2 I'd also like to point out that this  
3 particular Nuclear Plant when it was built had massive  
4 cost overruns, as many of them do. So the initial  
5 projection of what the costs of a nuclear facility is  
6 going to be is not always the -- does not always turn  
7 out to be the actual cost.

8 I think another point that Mr. Repka made  
9 was that if you look at PG&E's 10-Q form, that PG&E  
10 has had substantial income over the last year. I  
11 think he mentioned a \$2 billion revenue stream. But  
12 it's important to note that, first of all, he didn't  
13 mention the costs against which that income must be  
14 offset.

15 He didn't mention that at this point PG&E  
16 Utility is under the protection of the Bankruptcy  
17 Court, so that some of the costs which would  
18 ordinarily be offset against that revenue will not  
19 because the Bankruptcy Court is forestalling the  
20 payment of those debts.

21 He also didn't mention that the amount of  
22 the claims which are now outstanding against PG&E is  
23 over \$28 billion and that PG&E anticipates repaying  
24 only about half of that money, 13 or \$14 billion. And  
25 it remains uncertain whether those other claims will

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1 be allowed.

2 This would have a significant effect, we  
3 would think, on PG&E's creditworthiness when it goes  
4 to try to reorganize or to try to function as a simple  
5 functioning utility.

6 (Counsel briefly confers with Mr.  
7 Sheehan.)

8 MS. CURRAN: And that, that information,  
9 I just want to remind you, is in the 10-K -- the 10-Q.  
10 Pardon me.

11 And, as you look -- as you consider the  
12 information that has been provided to you today, you  
13 know the information about the \$2 billion in income,  
14 I think it's important to look at that entire 10-Q  
15 form, because overall there's a great deal of bad news  
16 in that report as to the serious problems that PG&E  
17 Utility has with its creditworthiness and its ability  
18 to satisfy those conditions that it has for going  
19 forward with a reorganization and becoming viable  
20 which, as it has said in its license application, is  
21 its intent.

22 (Counsel briefly confers with Mr.  
23 Sheehan.)

24 MS. CURRAN: And, in particular, the  
25 reference to the \$28.7 billion in outstanding claims

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1 can be found at page -- well, page 18 of the printout  
2 that we provided you a little earlier today. And it  
3 may be a different page in your -- in the printout  
4 that you, I think, are going to be getting from the  
5 complete report from PG&E. But it's a section  
6 entitled, "Chapter 11 Filing."

7 (Counsel confers briefly with Ms. Becker.)

8 MS. CURRAN: Ms. Becker has asked me to  
9 point out that the Mothers for Peace tried to  
10 intervene in the bankruptcy proceeding to advocate for  
11 the interests of the ratepayers and the residents of  
12 the area of the Diablo Canyon Plant. And they were  
13 refused participation in the bankruptcy case because  
14 they're not creditors.

15 So in terms of where the Mothers for Peace  
16 ought to be participating, they have done what they  
17 could to participate in the bankruptcy case. They  
18 have been active before the CPUC. And in terms of  
19 what the NRC is doing, they are actively participating  
20 in this case because they are very interested in the  
21 financial qualifications of this new entity or  
22 whatever entity comes out of this reorganization to  
23 build and operate this brand new facility at the  
24 Diablo Canyon Nuclear Plant.

25 Thank you.

1 JUDGE BOLLWERK: All right. Let me take  
2 care of one administrative matter before we move any  
3 further.

4 There were two documents that Ms. Curran  
5 has proffered to the Board. Either the -- I'm not  
6 going to consider the CPUC -- the California Public  
7 Utilities Commission decision as one that we would  
8 necessarily put in the record. It's got a citation.  
9 We can look it up in theory on Lexis and WestLaw.

10 These two documents, one being the, I  
11 guess, a page out of the license transfer application,  
12 the second one being the 10-Q, does the staff, or  
13 PG&E, or anyone else have any objection to either of  
14 these?

15 MR. REPKA: No objection to the license  
16 transfer page.

17 On the 10-Q, I'm going to pass out the  
18 complete 10-Q, and perhaps that would be the better  
19 way to go.

20 JUDGE BOLLWERK: Do you have any thoughts  
21 about that, Ms. Curran, substituting that for yours?

22 MS. CURRAN: I very much appreciate you  
23 doing that, Mr. Repka. Thank you.

24 MR. REPKA: And I will point out it is a  
25 public document available on the webpage.

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1 JUDGE BOLLWERK: All right.

2 MS. CURRAN: Yeah. But also, just to  
3 point out, that trying to get those SEC filings off  
4 the web is an exercise in itself that anyone should  
5 try, just...

6 JUDGE BOLLWERK: I won't go -- I won't  
7 even ask if it's better or worse than Adams. I'm not  
8 going to go there.

9 (Laughter.)

10 MS. CURRAN: That's probably wise.

11 JUDGE BOLLWERK: Mr. Repka, did you want  
12 to say anything further at this point?

13 MR. REPKA: I can't remember how many  
14 minutes I reserved.

15 JUDGE BOLLWERK: About three, but we're --

16 MR. REPKA: I'll be brief.

17 First, the Mothers for Peace characterize  
18 our argument as that they're not in the right place.  
19 That, frankly, -- that's just not at all what we said,  
20 and I think the record is clear on that.

21 To the extent their contentions challenge  
22 the utility, you know, this is the place; this is the  
23 forum. Our argument there is that their contentions  
24 are simply based upon the mere fact of bankruptcy.  
25 They ignore public information. They ignore reality

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1 with respect to claims that we don't have  
2 creditworthiness, the fact of the matter is there's  
3 not credit, there's not capital expenses involved in  
4 this project.

5 With respect to the Utility, I do want to  
6 pass out the 10-Q. We'll pass that out as soon as I'm  
7 done. I want to reference the fact that we refer to  
8 -- what we referred to the numbers earlier are on page  
9 8 of 68 and page 9 of 68. These are the Consolidated  
10 Statement of Operations for Pacific Gas and Electric  
11 Company, the Utility, a Debtor-in-Possession. That's  
12 show the numbers for six months ending June 30th,  
13 2002. The operating revenues -- operating income of  
14 \$2.3 billion.

15 I also did mention, contrary to what the  
16 Mothers for Peace just said, I did mention that the  
17 income available to common stock, which is after  
18 expenses, is \$1.053 billion.

19 The numbers there, in deference to Ms.  
20 Curran's comment about the difficulty of getting these  
21 off the web, the 2001 numbers in this 10-Q are cut  
22 off. But the 2002 numbers are the ones I referred to,  
23 and they are here. So we'll pass that out.

24 With respect to the financial  
25 qualifications of the proposed generation company,

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1 those -- those issues could have been addressed in the  
2 license transfer case. That's correct. That is our  
3 argument.

4 However, even if they were to be addressed  
5 here, our argument is there's not a material, or  
6 substantial, or litigable issue that's been  
7 identified.

8 We referred to the disclosure statement  
9 income numbers. And those income numbers show that  
10 the costs associated with the entire Power Plant are  
11 covered by the revenues based upon the proposed plan .  
12 of reorganization. Those include the ISFSI costs.

13 So a lot of statements being made here  
14 today are based upon a lack of knowledge of fact.  
15 They're based upon doubt as opposed to being based on  
16 actual fact.

17 Ms. Curran made a comment to my reference  
18 to the creditors' vote. The creditors' vote accepted  
19 overwhelmingly the PG&E plan. However, she made it  
20 sound like that meant the plan would be approved next  
21 week or two weeks from now, and that's really not the  
22 case.

23 The creditors' vote is a significant  
24 development, but it does not confirm the plan. That's  
25 up -- that's up to the Bankruptcy Court after the

1 hearings on the plans.

2 And the last thing I'll mention is the  
3 County made an argument that I can't even begin to  
4 understand, something about the scenario that the NRC  
5 will never review the financial qualifications of the  
6 ISFSI licensee. I don't get that at all.

7 Obviously PG&E, the Utility's financial  
8 qualifications are under review here. The financial  
9 qualifications of the generating company are under  
10 review in the license transfer case.

11 And that's all the remarks I'll make.

12 (Copies of 10-Q distributed to  
13 participants.)

14 JUDGE BOLLWERK: All right. Anything else  
15 the staff wants to say?

16 MR. LEWIS: Yes. Just on the same point  
17 that Mr. Repka just picked up on, let me see if I can  
18 add a little bit more that will hopefully assure --  
19 reassure the County that the financial qualifications  
20 issue under any scenario will be considered for the  
21 applicant.

22 The 72.50, Section 72.50 of the  
23 Commission's regulations provides that the transfer of  
24 an ISFSI license has to receive the Commission's  
25 consent in writing.

1           The -- it goes on to say that -- bear with  
2 me one moment. It makes reference to the action of  
3 the Commission's consent with regard to the Commission  
4 giving its consent, that will be done after  
5 appropriate notice to interested persons.

6           Now the -- and the finding would have to  
7 be made that the proposed transferee is qualified to  
8 be the holder of the license.

9           There's also a specific reference to -- or  
10 that a finding would have to be made under 72.22,  
11 which is the provision regarding financial  
12 qualifications.

13           Now to try and close the circle on this,  
14 subpart (m) of Part 2 of the Commission's regulations,  
15 which are the procedures for hearings on licensed  
16 transfer applications, starts out in 2.1300 by making  
17 reference to the subpart governing hearings on any  
18 application for transfer of control of any NRC  
19 license, which requires prior approval of the NRC.  
20 Well, -- and we just previously pointed to you where  
21 a Part 72 license does require prior consent of the  
22 Commission.

23           These points in subpart (m) would become  
24 controlling if the timing were such that this  
25 proceeding were completed and the finding that had

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1       been made here was as to PG&E, and then there was a  
2       license transfer.

3               Subpart (m) provides that there would be  
4       notice in the *Federal Register* of the receipt of an  
5       application for approval of such a license transfer  
6       and specifically references Part 72 as among the  
7       licenses covered by that.

8               If that happened, then subpart (m)  
9       provides that the mechanisms set forth there provide  
10      the only mechanism for requesting hearing on that  
11      license transfer unless contrary case-specific orders  
12      are issued by the Commission.

13              Well, putting these two things together,  
14      I think that regardless of what the timing turns out  
15      to be, I think we can assure the County that the  
16      financial qualifications of the applicant for the  
17      license or a -- or a requester of a -- the transferee,  
18      the proposed transferee on a licensed transfer would  
19      be reviewed by the NRC staff. As to whether or not  
20      contentions are admitted into this proceeding, that  
21      will be up to this Board after having heard the  
22      various arguments at this Prehearing Conference.

23              JUDGE BOLLWERK: All right. Anything  
24      further?

25              MR. LEWIS: No.

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1 JUDGE BOLLWERK: All right. Let me turn  
2 first to the County.

3 Do you want to say anything further?

4 MR. TEMPLE: Just briefly.

5 The County's concern was that if PG&E's  
6 request to throw financial qualifications for the  
7 ISFSI applicant over the wall to the license transfer  
8 proceeding was followed. And if financial  
9 qualifications of PG&E Company were not considered in  
10 this proceeding and a license transfer does not take  
11 place, there's no second bite at the apple.

12 JUDGE BOLLWERK: All right.

13 Ms. Curran, anything further you want to  
14 say?

15 MS. CURRAN: Just one more comment, which  
16 is that the standard that the petitioners have to meet  
17 here is to show a genuine dispute as to a material  
18 fact.

19 And it seems to me that if you look at  
20 just the 10-Q statement, that you've gotten a complete  
21 of copy from Mr. Repka, within that document there is  
22 information creating grave doubt as to whether in what  
23 -- or in what form PG&E Utility -- PG&E Utility or its  
24 hoped-for new progeny are going to survive this  
25 bankruptcy process. And that is an elemental question

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1 in this case.

2 Thank you.

3 JUDGE BOLLWERK: All right. Any other  
4 questions from either of the Board Members on this  
5 subject?

6 (No audible response.)

7 JUDGE BOLLWERK: All right. At this point  
8 we're going to adjourn until later this afternoon.

9 Let me ask one more question. The  
10 memorial service you're holding, we're going to have  
11 about a two-and-a-half-hour lunch break. When do you  
12 plan on starting so that --

13 MS. BECKER: In the next 10, 15 minutes.

14 JUDGE BOLLWERK: In the next 10, 15  
15 minutes, anyone that's interested in attending the  
16 memorial service. It's outside on the grass area on  
17 the cliffs above the ocean. All right.

18 At 2:30 we will reconvene to hear  
19 arguments on the Seismic Contention. And then if  
20 nothing else until that point, we stand adjourned.

21 Thank you.

22 (Luncheon recess taken from 1:07 p.m. to  
23 2:28 p.m.)

24 JUDGE BOLLWERK: We're here for the  
25 afternoon session on Wednesday afternoon for the

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1 Prehearing Conference for the Diablo Canyon ISFSI  
2 proceeding.

3 This afternoon we are scheduled to hear  
4 arguments on San Luis Obispo Mothers for Peace  
5 Contention TC1 which deals with seismic matters.

6 I think we have an administrative matter  
7 we need to take care of first. Go ahead.

8 MR. TEMPLE: I just noted as we -- after  
9 we broke for lunch that there appeared to still be  
10 some confusion about the County's point that an ISFSI  
11 license could be issued without a hearing on PG&E's  
12 financial qualifications.

13 Absent a hearing on financial  
14 qualifications for PG&E at this proceeding, it's  
15 possible that no hearing on this subject could take  
16 place, and it could happen like this. That first the  
17 ISFSI license is issued to PG&E Company without a  
18 further hearing on financial qualifications on the  
19 theory that financial qualifications are being  
20 addressed in another proceeding, the license transfer  
21 proceeding.

22 Then the Bankruptcy Court adopts the CPUC  
23 plan, which does not involve the creation of new  
24 corporations, moots the license transfer proceeding.

25 At that point the result would be an ISFSI

1 license being issued to PG&E Company without any  
2 contested hearing on the financial qualifications of  
3 PG&E. And just so long as that point is clear.

4 JUDGE BOLLWERK: All right.

5 MR. REPKA: May I respond to that?

6 JUDGE BOLLWERK: Yes.

7 MR. REPKA: PG&E's financial  
8 qualifications are an issue in this proceeding. PG&E  
9 is the applicant. So if the CPUC plan of  
10 reorganization is ultimately selected, PG&E will  
11 continue to be the licensee. So the point is not well  
12 founded.

13 I have one other follow-up item, if I may,  
14 from that -- from the discussion this morning?

15 JUDGE BOLLWERK: All right.

16 MR. REPKA: There was a question regarding  
17 what was in the Part 50 licensed transfer application  
18 related to ISFSI and what it asked for. We have  
19 obtained copies of the transfer application and felt  
20 that perhaps the Board would be interested in  
21 receiving copies for the record.

22 It does -- it does discuss the fact that  
23 if the plan of reorganization is approved and becomes  
24 -- and the generating company becomes the Part 50  
25 licensee, it would also become ultimately the ISFSI

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1 licensee.

2 It does not apply for that change, because  
3 at the time -- the license transfer application was in  
4 November of 2001. The ISFSI application came a month  
5 later. And the expectation at that time was that the  
6 license transfer would be approved in 2002, long  
7 before the ISFSI license would be issued.

8 But there's specific references to that on  
9 page 5 of the license transfer application, page 17 of  
10 the license transfer application in Section H, and  
11 then with respect to the qualifications of Gen, in the  
12 Enclosure Number 8, page 4, at footnote 19.

13 So with -- I just wanted to provide those  
14 references for the record and also if the Board would  
15 like it, we can pass out copies of the application.

16 JUDGE BOLLWERK: Just for completeness, if  
17 no one has an objection, why don't we go ahead and do  
18 that. If you haven't enough copies, that's the  
19 question. It looks like there's a pile right there,  
20 so I suspect you do.

21 MR. REPKA: And this is the nonproprietary  
22 version.

23 (Copies of application distributed to the  
24 Board.)

25 JUDGE BOLLWERK: All right. Thank you.

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1 And, again, this is the license  
2 application that's pending with the Commission --  
3 license transfer application pending with the  
4 Commission?

5 MR. REPKA: That's correct.

6 JUDGE BOLLWERK: All right.

7 Anything further the County wants to say  
8 on this? I see you're holding the microphone. Is  
9 there something you want to --

10 MR. TEMPLE: We sort of go on to the  
11 financial qualifications of Gen. We know in this  
12 proceeding we're dealing with the financial  
13 qualifications of the Pacific Gas and Electric  
14 Company, which the scenario I provided was one in  
15 which those financial qualifications would not receive  
16 a hearing. And I know that's what you're considering  
17 at this point, and so it need not be belabored  
18 further.

19 JUDGE BOLLWERK: All right. Anything  
20 further from anyone on that subject?

21 Mr. Repka.

22 MR. REPKA: Not on that subject. I did  
23 have a new player at the table --

24 JUDGE BOLLWERK: Okay.

25 MR. REPKA: -- I was going to introduce

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1 before we begin. To my right is Mr. Lloyd Cluff,  
2 who's the Director of Geosciences at PG&E. And to  
3 give him his full due, he's a leading expert, a  
4 nationally-recognized expert in his field, a past  
5 chairman of the California Seismic Safety Commission  
6 and a member of the National Academy of Engineering.

7 He was recently appointed by Interior  
8 Secretary Gale Norton as chairman of a congressional-  
9 mandated committee to evaluate the national Earthquake  
10 Hazard Reduction Program. So I wanted to just  
11 introduce him for the record.

12 JUDGE BOLLWERK: All right. Anything else  
13 in that regard?

14 Ms. Curran, do you have some -- I know  
15 you're busy -- is that Mr. Legg?

16 MS. CURRAN: Yes, it is.

17 JUDGE BOLLWERK: Do you want to introduce  
18 him for us -- to us?

19 Welcome, sir, by the way. Thank you for  
20 coming today.

21 MS. CURRAN: I'd like to introduce Dr.  
22 Mark Legg who is the petitioners' expert on the  
23 Seismic Contention.

24 JUDGE BOLLWERK: All right. Have you  
25 caught your breath? I saw you come running in and hop

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1 over the stanchion. You're on time so that's not a  
2 problem.

3 All right. We have -- you have 45 minutes  
4 for this one. How long do you want for rebuttal?

5 MS. CURRAN: I'd like to save 20 minutes  
6 for rebuttal.

7 JUDGE BOLLWERK: All right. And we will  
8 trying to get it done by 4:30, because I understand  
9 there are some flights that are leaving. That's still  
10 correct, isn't it?

11 MR. REPKA: Yes. I did manage to get a  
12 slightly later flight than my originally planned 5:45  
13 flight, but I am still trying to leave tonight.

14 JUDGE BOLLWERK: Okay. We'll try to end  
15 in the vicinity of 4:30, if we can do that. Great.

16 Thank you.

17 All right. Ms. Curran.

18 MS. CURRAN: Okay. The first major issue  
19 regarding this contention is what is the appropriate  
20 legal standard here, since this is an ISFSI that's  
21 proposed for a site that already has a nuclear power  
22 plant on it.

23 In its response to our contention, PG&E  
24 argues that these issues that are raised by the  
25 petitioners have already been resolved in the original

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1 operating license proceeding for the Diablo Canyon  
2 Nuclear Power Plant and therefore we can't bring them  
3 up again.

4 And I'd like to look at that because I  
5 don't believe that's the case. The first regulation  
6 that PG&E cites is 10 CFR 72.40(c), which provides  
7 that, "For facilities that have been covered under  
8 previous" -- "previous licensing actions, including  
9 the issuance of a construction permit under Part 50 of  
10 this chapter, a re-evaluation of the site is not  
11 required except where new information is discovered  
12 which could alter the original site evaluation  
13 findings."

14 In this case -- in this case the site  
15 evaluation factors involved will be re-evaluated. I  
16 think PG&E interprets this section to mean that  
17 seismic issues or site evaluation issues, if they were  
18 evaluated before, they can't be raised again unless  
19 new information is provided.

20 First of all, I think if that were the  
21 correct interpretation, we still meet that standard.  
22 But I think that PG&E's interpretation is overbroad.  
23 This particular regulation does not refer to seismic  
24 analysis. There is a separate regulation that  
25 addresses that subject and that is 10 CFR 72.102(f),

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1 which provides, in subsection (f)(1), "The design  
2 earthquake for use in the design of structures must be  
3 determined as follows."

4 Subsection 1 says, "For sites that have  
5 been evaluated under the criteria of Appendix A of 10  
6 CFR Part 100, the design earthquake must be equivalent  
7 to the safe shut down earthquake SSE for a nuclear  
8 power plant."

9 It doesn't say, "the nuclear power plant."  
10 It says "a nuclear power plant," which I think the  
11 choice of words means something, that this is -- that  
12 the Commission intended to apply general standards  
13 applicable to the siting of nuclear plants to the  
14 siting of ISFSIs.

15 And I find further support for this  
16 interpretation in a newly-proposed rule that was  
17 issued by the Commission in a *Federal Register* date --  
18 notice dated July 22nd, 2002, entitled, "Geological  
19 and Seismological Characteristics for Siting and  
20 Design of Dry Cask Independent Spent Fuel Storage  
21 Installations and Monitored Retrievable Storage  
22 Installations."

23 And if you look in this proposed rule at  
24 a new Section 72.103(a)(2), it's similar to what's in  
25 72.102 now, but it adds a sentence that says, "If the

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1 existing design criteria" -- wait a minute -- "for the  
2 nuclear power plant is used and the site has multiple  
3 nuclear power plants, then the criteria for the most  
4 recent nuclear power plant must be used" -- wait. I  
5 may have the wrong section here.

6 No, I'm sorry. I should be in Section  
7 72.103(b), which applies west of the Rocky Mountains.

8 Oh, here it is. In Subsection 72.103(b)  
9 it says, "If an ISFSI or MRS is located on a nuclear  
10 power plant site, the existing geological and  
11 seismological criteria for the nuclear power plant is  
12 used and the site has multiple nuclear power plants,  
13 then the criteria for the most recent nuclear power  
14 plant must be used."

15 So that it seems to me the Commission  
16 wanted -- has proposed a way to incorporate the  
17 earlier design into the ISFSI design in this proposed  
18 rule, which leads to the inference that in a previous  
19 rule that wasn't intended, that it was intended -- it  
20 was intended that a new review would be done.

21 In any event, whether or not this is a  
22 case where we are entitled to revisit the question of  
23 the seismic design again, or whether it is -- it  
24 requires that we demonstrate there's new information,  
25 we believe that we have provided an admissible

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1 contention that also relies on relatively new  
2 information.

3 The new information that we -- the  
4 information that we present in this contention has  
5 essentially been developed over the last 10 years  
6 since the Supplemental Safety Evaluation Report was  
7 prepared for the Long-Term Seismic Program that was  
8 carried out by PG&E after -- in response to a license  
9 condition that was imposed in 1985, when the license  
10 was issued.

11 I'd also like to point out that we tried  
12 to find out whether there was any kind of a public  
13 hearing or a public notice that went out about the  
14 Long-Term Seismic Program or the 1991 SSER that the  
15 staff prepared. And we couldn't find that.

16 You know, we can't confirm that it did or  
17 did not happen, but we were unable to find any record  
18 of a hearing or hearing notice that went out. This  
19 did happen five or six years after the license was  
20 issued, and it's possible that it was not noticed for  
21 public hearing.

22 PG&E cites a number of public meetings  
23 that were held. And if you look at the Supplemental  
24 SER that was published in 1991, there's a history of  
25 how this Long-Term Seismic Program was carried out

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1 that mentioned some public meetings, but there's no  
2 mention of a public hearing. So as far as we can  
3 tell, this Long-Term Seismic Program was never  
4 subjected to a public hearing.

5 In any event, the information that we  
6 present here reflects a development of understanding  
7 that is constantly going on. And this is an area of  
8 our continent that is extremely active seismologically  
9 and is very well studied.

10 And, as time goes on, instruments become  
11 more sophisticated, more data is gathered, more  
12 earthquakes occur, and a better understanding is  
13 achieved about the seismological characteristics of  
14 this area.

15 And that is essentially what our  
16 contention tries to show, that this program that was  
17 carried out in the mid- to late 1980s has been  
18 overtaken by additional information that shows that  
19 the earthquake risks are more significant.

20 And the first issue we raise is that the  
21 Long-Term Seismic Program improperly assumes that a  
22 strike-slip fault is the fault -- the nature of the  
23 faulting that occurs in this area.

24 And Dr. Legg has provided information  
25 indicating that reverse faulting is much more

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1 prominent than previously thought, which is  
2 significant because reverse faulting can involve a  
3 higher degree of ground motion.

4 And this has a great deal to do with the  
5 assumptions that PG&E has made about the  
6 characteristics of the Hosgri Fault and of a  
7 particular earthquake that occurred in 1927, the  
8 Lompoc Earthquake, which is -- some experts now  
9 believed was an earthquake that was on the Hosgri  
10 Fault while it was earlier thought not to be related  
11 to the Hosgri Fault. And this provides support for  
12 the theory that the Hosgri Fault is a reverse fault.

13 And I think the petitioners set out with  
14 basis and specificity the reasons for their belief,  
15 that PG&E has improperly underestimated the degree to  
16 which reverse faulting exists in this area.

17 PG&E argues that the petitioners focus  
18 improperly on PG&E's assumption of a strike slip fault  
19 at page 2.6-33 of the SAR. PG&E states that this --  
20 this figure relates only to a response factor greater  
21 than two seconds, which in turn relates only to issues  
22 of slope stability and cask transport or sliding. But  
23 of course slope stability is a very serious concern,  
24 from the petitioners' point of view, because if the  
25 casks are covered in some kind of an earthquake, if

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1 there's a landslide, then that would affect the  
2 ability to cool these casks and could lead to an  
3 accident.

4 I'd like to pass out a couple of figures  
5 that are in -- you have these in the license  
6 application, but I thought it might help to look at  
7 them. There's three of them. And, again, you already  
8 have this in your copy of the SAR, but I thought it  
9 would help all of us if you could see what these  
10 figures look like.

11 (Copies of document distributed to the  
12 participants.)

13 MS. CURRAN: All right. We'll just let  
14 those be for a minute.

15 (Counsel and Dr. Legg confer off the  
16 record.)

17 MS. CURRAN: I'd like to go next to the  
18 second basis for this contention which has to do with  
19 whether PG&E's assumption that the -- that the  
20 faulting is vertical. And this is in the Hosgri Fault  
21 zone.

22 And PG&E argues that if you look at Figure  
23 2.6-41 you can see that this is a vertical fault. But  
24 I would like to direct your attention to that figure,  
25 because I think it supports our position.

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1 If you look at the cross-section that  
2 shows from B to B-1 --

3 (Counsel and Dr. Legg confer off the  
4 record.)

5 MS. CURRAN: -- B prime, the --

6 (Counsel and Dr. Legg confer off the  
7 record.)

8 MS. CURRAN: The hypo centers are at an  
9 angle. There are more in the upper left, left-hand  
10 corner. And then they go down at an angle to the  
11 lower right-hand corner. That, according to Dr. Legg,  
12 is an indication that this is a dipping fault, that it  
13 dips to the east.

14 (Counsel and Dr. Legg confer off the  
15 record.)

16 MS. CURRAN: So that means that the  
17 significance of whether a fault is vertical or dipping  
18 is that if the dip goes under the site, which Dr. Legg  
19 believes it may, then that means that the epicenter of  
20 the earthquake is directly under the site.

21 (Counsel and Dr. Legg confer off the  
22 record.)

23 MS. CURRAN: It also means that you get  
24 intense shaking in the hanging wall of the fault  
25 because of that angle.

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1 (Counsel and Dr. Legg confer off the  
2 record.)

3 MS. CURRAN: This occurred in the 1994  
4 Northridge Earthquake --

5 (Counsel and Dr. Legg confer off the  
6 record.)

7 MS. CURRAN: -- and the 1999 Chi-Chi  
8 Taiwan Earthquake.

9 Dr. Legg -- in our contention we also  
10 present studies that have been provided by -- or  
11 identified by Dr. Legg from 1999 through 2000  
12 regarding the prevalence of dipping faults in the  
13 area. And we also give an example of the 1989 Loma  
14 Prieta Earthquake, which involved a dipping fault.

15 The third basis involves the location of  
16 the fault. And as we state in the contention, we  
17 believe that PG&E did not locate the fault close  
18 enough to the plant [sic]. It's to the east of the  
19 fault.

20 (Counsel and Dr. Legg confer off the  
21 record.)

22 MS. CURRAN: Their location was to the  
23 west side of the fault. And Dr. Legg believes there's  
24 evidence that it was on the east side of the fault.

25 (Counsel and Dr. Legg confer off the

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1 record.)

2 MS. CURRAN: Or, to be conservative, it  
3 should be on the east side of the fault closer to the  
4 fault and closer to the plant.

5 And this is -- when you put all these  
6 things together: The reverse nature of the fault, the  
7 dipping nature of the fault, and the location of the  
8 fault, you get a more serious earthquake than what  
9 PG&E has designed for.

10 (Counsel and Dr. Legg confer off the  
11 record.)

12 MS. CURRAN: I believe the NRC makes a  
13 legal argument that this is -- it's not sufficient for  
14 the petitioners to show that assumptions that were  
15 made in PG&E's earlier studies of the seismicity of  
16 the area are incorrect, that the petitioners need to  
17 show some additional safety significance.

18 But I think it's important to go back to  
19 the standard that is applicable here, which is the  
20 siting standard for nuclear power plants in Appendix  
21 A to Part 100, and which clearly requires that the  
22 applicant for a license for a nuclear power plant  
23 provide quite a detailed study of the seismicity of  
24 the area because of course this is an extremely  
25 important issue. So that by itself having a

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1 reasonably-accurate picture of what the seismic risks  
2 are in the area of the facility is of immense value to  
3 the NRC in evaluating the design of a proposed  
4 facility.

5 So we would submit that in itself having  
6 an adequate seismic analysis for this facility is  
7 necessary to ensure that whatever design is provided  
8 here takes account of the conditions of the site.

9 And that's all I have at the moment.

10 JUDGE BOLLWERK: All right. Any questions  
11 from the Board Members at this point?

12 JUDGE KLINE: No, nothing.

13 JUDGE LAM: Ms. Curran, are you asserting,  
14 based on the new information you have discovered, the  
15 design basis earthquake for this facility would be  
16 higher than what the existing design basis is?

17 MS. CURRAN: Yes.

18 JUDGE LAM: Thank you.

19 JUDGE BOLLWERK: All right. Let's go to  
20 the interested-governmental entities. And I'll kind  
21 of go down the line here, and see if anyone has  
22 anything they wish to say about this.

23 The Independent Safety Committee.

24 MR. WELLINGTON: We finally have been able  
25 to obtain all the information and the arguments on

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1 both sides. And so the Committee itself has not  
2 considered this, but having reviewed this, I believe  
3 that this contention should be admitted, however with  
4 the condition outlined in the NRC staff alternate  
5 recommendation, that the contention be limited to  
6 correctly correspond to the limited scope to the ISFSI  
7 proceeding.

8 JUDGE BOLLWERK: All right.

9 The Energy Commission.

10 MS. HOUCK: We have no objections or  
11 comments.

12 MR. WAYLETT: We would support admission  
13 of the contention.

14 JUDGE BOLLWERK: That's the Harbor  
15 District?

16 MR. WAYLETT: Yes.

17 JUDGE BOLLWERK: All right.

18 And the San Luis Obispo County?

19 MR. TEMPLE: The County asks that the NRC  
20 fully explore the concerns raised by other  
21 participants with respect to the adequacy of the  
22 seismic analysis for the proposed ISFSI site and  
23 ensure, in light of the information made available by  
24 qualified experts, that the proposed site is safe and  
25 appropriate for an ISFSI before approving PG&E's

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1 application.

2 The County wants to be sure that the NRC  
3 has reviewed the application in light of the  
4 significant advances in understanding seismology, the  
5 causes of earthquakes in California since Diablo  
6 Canyon was licensed. Therefore, San Luis Obispo  
7 County supports consideration of the seismic issues in  
8 this proceeding.

9 JUDGE BOLLWERK: All right. Thank you.

10 Anything further that's -- all right.

11 Let me turn then to Pacific Gas and  
12 Electric Company.

13 MR. REPKA: Thank you. And I'd like to  
14 reserve five minutes for surrebuttal.

15 JUDGE BOLLWERK: All right.

16 MR. REPKA: In this contention the Mothers  
17 for Peace off the record three bases for addressing  
18 the seismic source characterization for Diablo Canyon  
19 ground motions.

20 Those are -- that issue is one that we  
21 fully addressed in our written papers, and I think  
22 that response is sufficient. But what I want to do  
23 today is highlight some of the high points and respond  
24 to some of the things that Ms. Curran said this  
25 morning -- or this afternoon.

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1 First let me address the legal standard.  
2 First, Ms. Curran argues that 72.40(c) does not apply  
3 because seismic is not a site evaluation factor. But,  
4 in fact, 72.40(c) does apply because it specifically  
5 references an evaluation of the site under Part 50 for  
6 a Part 50 reactor.

7 The site evaluation factors for a nuclear  
8 power plant are in Part 100. They specifically  
9 include the seismic criteria of Appendix A to Part  
10 100. And so clearly the site evaluation factors  
11 referenced in 72.40 encompass the seismic criteria as  
12 well.

13 With respect to 10 CFR 72.102(f), that  
14 also does apply in this proceeding. The logic of that  
15 regulation is that if you have a co-located facility,  
16 the seismic design, the safe-shutdown earthquake, and  
17 the seismic-design ground motions for the site, the  
18 ISFSI should be those of a nuclear power plant. I  
19 can't imagine what other nuclear power plant it might  
20 be referring to other than the co-located nuclear  
21 power plant.

22 The fact that there is a pending rule  
23 change in Part 73 that adopts this same philosophy,  
24 that for a co-located plant, it specifically states  
25 you would not reopen the seismic design for the power

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1 plant or you would apply the seismic design from the  
2 power plant simply confirms the logic of the  
3 Commission.

4 In fact, in that regulation and  
5 rulemaking, we cited to in our filings, but the  
6 Statement of Consideration points out that the  
7 Commission takes the approach for a co-located ISFSI  
8 of using the power plant design criteria because, and  
9 I quote now, "Those criteria have been determined to  
10 be safe for nuclear power plant licensing. And the  
11 seismically-induced risk of an ISFSI or MRS is  
12 significantly lower than that of a nuclear power  
13 plant."

14 So, in other words, to use the seismic  
15 design criteria for the co-located power plant is a  
16 conservatism.

17 Now the County's fundamental argument is  
18 that they offer some new information. And I think  
19 Judge Lam asked the question earlier where the County  
20 has some new information that shows there would be  
21 higher design basis ground motions -- I'm sorry -- the  
22 Mothers for Peace, not the County -- raised the  
23 argument -- or asked the question whether there's some  
24 new information that shows higher design basis ground  
25 motions.

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1           And the answer is that they -- although  
2           the answer to that question was yes, there really is  
3           nothing presented by the Mothers for Peace that  
4           suggests that that's true.

5           The contention itself is focused on  
6           characterizing the seismic source. The seismic source  
7           characterization includes the focal mechanism of the  
8           fault, the geometry of the fault, and the fault  
9           location.

10           All of those issues were addressed in  
11           licensing of the plant and in the Long-Term Seismic  
12           Program. There's nothing new that has been  
13           affirmatively presented that suggests that the  
14           conclusions in those studies were not conservative.

15           In fact, the data, particularly the data  
16           of Dr. Crouch and others relied upon in that  
17           contention was data specifically addressed in the  
18           Long-Term Seismic Program.

19           There was a discussion this morning -- or  
20           I'm sorry -- this afternoon of PG&E's own figure from  
21           the ISFSI license application, Figure 2.6-41, cross-  
22           section BB. And that's intended to support the  
23           argument that this is new information that shows  
24           somehow that there was higher design basis ground  
25           motions. That figure simply does not support that

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1 argument.

2 Even if you presume that you could draw a  
3 slanting fault through those data points, that data  
4 shows nearly vertical faulting everywhere from depths  
5 of two to three kilometers down.

6 In the Long-Term Seismic Program SSER,  
7 which we reference in our papers, it's explained that  
8 the conclusion there was that faulting was in the 60-  
9 degree to 90-degree range. And that was used as the  
10 basis for the Long-Term Seismic Program response  
11 spectra.

12 There is nothing in this data that could  
13 generate a fault at an angle less than 60 degrees. At  
14 the angle that you could draw a fault through here, it  
15 would result in a fault below the power plant  
16 somewhere in 8 to 10 to 12 kilometers.

17 In other words, even if there's an angle,  
18 it would be going downward. The Power Plant is here,  
19 and there's -- the fault would be under the Power  
20 Plant at a depth of 8, 10, 12 kilometers. The design  
21 basis for the Plant is for a fault on the Hosgri at  
22 4.2 kilometers.

23 So there's nothing in this data that would  
24 suggest, even if there is some slant to the fault,  
25 that the -- that the design basis earthquake would be

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1 located any closer to the power plant or would  
2 generate greater ground motions.

3 In fact, as I think I stated at the top,  
4 even if the fault is in a 60-degree to 90-degree band,  
5 that's precisely the conclusion the LTSP reached. And  
6 that's referenced in the SSER as referenced in our  
7 paper. So that's not new or different information.  
8 It's nothing suggesting a conclusion any different  
9 than has already been addressed.

10 (Counsel and Mr. Cluff confer off the  
11 record.)

12 MR. REPKA: Okay. I'm corrected that the  
13 4.5 is the correct distance referred to in the LTSP.

14 Let me go back to the Long-Term Seismic  
15 Program, having addressed a few of these points  
16 already. I want to try to capture some of the degree  
17 of effort that went into that program.

18 During the NRC's operating licensing  
19 hearing process the NRC addressed a wide range of  
20 seismic issues, including issues related to the  
21 characterization of the Hosgri Fault. This included  
22 the participation of the Mothers for Peace and others.  
23 It included active review by the Advisory Committee on  
24 Reactor Safety Safeguards and involvement of the  
25 United States Geological Survey.

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1           The Hosgri re-evaluation. As a result of  
2           the Hosgri re-evaluation the NRC required ground  
3           motions based upon a 7.5-magnitude earthquake on the  
4           Hosgri at five kilometers from Diablo Canyon producing  
5           .75 GP ground motions. When the OLs were issued in  
6           November of '84 and August of '85, the NRC required  
7           the confirmatory, Long-Term Seismic Program.

8           The scope of that effort, and that effort  
9           was over seven years and five months, from April 1984  
10          to September 1991, it was not subjected to the hearing  
11          process, but there were over 60 noticed public  
12          meetings, including the NRC, NRC consultants, the  
13          USGS, university professors and graduate students,  
14          several expert review panels, independent expert  
15          studies, all of this reviewed by the ACRS.

16          The seismic source for Diablo Canyon,  
17          including the controlling fault characterization, the  
18          geometry, and the location were all thoroughly  
19          addressed. The Mothers for Peace participated in  
20          those meetings.

21          When the NRC issued its Safety Evaluation  
22          SSER 34 in June of 1991, they included a chronology.  
23          The chronology of that effort alone is 12 pages long.

24          I'm holding in my hand right now SSER 34.  
25          This is the document that results -- that documents

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1 the results of the LTSP. This is approximately three  
2 or four inches thick. This was a substantial  
3 undertaking not only by PG&E but others. And it  
4 thoroughly addressed all of the issues of the  
5 characterization of the fault, be it strike slip or  
6 reverse thrust, the magnitude of the fault, the  
7 location of the fault including the location of the  
8 Lompoc Earthquake. These are not new issues.

9 One of the most important conclusions for  
10 our purposes here today of the LTSP was that for  
11 conservative reasons the NRC opted specifically to  
12 consider ground motions and response spectra that were  
13 based upon a composite characterization of the Hosgri:  
14 A two-thirds strike slip and one-third reverse slip  
15 character. Therefore the argument that -- that we are  
16 considering only a strike-slip fault is simply not  
17 true.

18 The ISFSI response spectra are based upon  
19 a composite, a conservative bounding composite that  
20 includes the response spectra of the LTSP. And  
21 therefore where it's conservative specifically  
22 includes that conservative characterization of the  
23 fault.

24 And, as I mentioned earlier, that  
25 characterization includes analysis of the data of the

1 Hosgri specifically of the type referenced on pages 2  
2 -- on Figure 2.6-41 and concluded -- and I should  
3 actually read the words.

4 The staff, the NRC staff concludes that  
5 the Hosgri Fault at depth dips between 60 and 90  
6 degrees over most of its length through the  
7 seismogenic zone. That's the angle that I referred to  
8 earlier.

9 This data referenced in this Figure 2.6-41  
10 simply confirms that conclusion. It's entirely  
11 consistent with that conclusion.

12 I want to address quickly each of the  
13 specific bases individually. However, the overriding  
14 argument here is the reopening of the seismic design  
15 is not required by the regulations and is not required  
16 or dictated by anything in the proposed contention.

17 But having said that, I just want to  
18 address these bases to assure the Board that these  
19 were issues that were specifically addressed.

20 First, Basis A focuses on the focal  
21 mechanism of the fault. Again, strike slip versus a  
22 thrust or reverse fault. As I mentioned already, this  
23 is something that was thoroughly addressed in  
24 licensing and in the LTSP.

25 We did point out in our filings that there

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1 is a statement in Section 2.6 of the SAR related to  
2 the long-period spectra. Ms. Curran makes an argument  
3 that somehow we're ignoring the long-period spectra,  
4 that slope stability and transporter sliding are very  
5 important. We don't disagree that they're very  
6 important. They're, in fact, addressed in the SAR.

7 This is an area in which the Hosgri  
8 Composite Fault would not necessarily be bounding.  
9 What PG&E opted to do was use a purely strike-slip  
10 fault assumption for the long-period spectra  
11 applicable to slope stability and transporter sliding.  
12 That's at -- at periods greater than two seconds.

13 The reason that the strike-slip assumption  
14 is more conservative in this range is because of the  
15 near fault effects, such as directivity and fling,  
16 which are modern, more contemporary seismic concepts.

17 The point being, however, that there is no  
18 new information that suggests that PG&E is being  
19 nonconservative. In fact, PG&E is using the most  
20 conservative, the most contemporary analysis  
21 techniques and making the most conservative  
22 assumptions in this band of the spectrum by assuming  
23 a strike-slip fault.

24 Much of the contention references the work  
25 of Dr. Crouch and others that grew out of oil

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1 exploration at the southern end of the Hosgri and  
2 beyond the Hosgri in the Santa Barbara Channel and the  
3 Santa Maria Basin.

4 This again is data that was specifically  
5 considered in the LTSP. It's data that was  
6 specifically the basis for a motion to reopen in 1984  
7 that was denied by the Commission at that time.

8 The LTSP response spectra and the seismic  
9 design for Diablo Canyon are based upon data that's --  
10 that considers not only that data but, more  
11 importantly, data on the Hosgri Fault that's further  
12 to the north and more applicable to the Hosgri region  
13 in the area of Diablo Canyon.

14 This was based upon a substantial amount  
15 of work that was performed by PG&E to generate data  
16 and acquire data through detailed offshore surveys.  
17 This was all fully ventilated through the LTSP  
18 process. There's no new indications or information in  
19 the contention that would warrant reopening all of  
20 that.

21 The second basis is related to the  
22 geometry of the controlling fault. This is the issue  
23 that we've already addressed, and it's addressed, we  
24 hear today, based upon Figure 2.6-41, if this  
25 postulates an east-dipping fault. However, that issue

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1 has been addressed precisely in SSER 34 at page 2-19  
2 that I've already referred to.

3 The third basis relates to the fault  
4 location, another aspect of the seismic source  
5 characterization that would not be reopened under the  
6 regulations.

7 The Hosgri ground motions for Diablo  
8 Canyon, which were determined based -- during the OL  
9 licensing review, were based upon a 7.5-magnitude  
10 earthquake on the Hosgri Fault at five kilometers from  
11 the site.

12 As I mentioned earlier, the LTSP studies  
13 resulted in ground motions of 7.- -- based upon a 7.2-  
14 magnitude earthquake on the Hosgri at 4.5 kilometers.

15 In those considerations, in those  
16 analyses, all the data on the location of the faults  
17 on this Hosgri was analyzed. The one data point  
18 that's referred to in the contention and is referred  
19 to again here today is the location of the 1927 Lompoc  
20 Earthquake. This is not a new issue.

21 This issue was fully addressed during the  
22 LTSP. The location and the current thinking based  
23 upon the latest information on the location of the  
24 Lompoc Earthquake is reflected in the California  
25 Seismic records that are referenced in our written

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1 pleading.

2 I have a copy of that map here. It's not  
3 a map I could make multiple copies of, but it shows  
4 that the Lompoc Earthquake is located -- it locates  
5 the Lompoc Earthquake, based upon current data and  
6 current thinking, off the Hosgri Fault, consistent  
7 with PG&E's and the NRC's conclusions during the --  
8 during the Long-Term Seismic Program.

9 In sum, all of these issues have been  
10 fully addressed previously. However, I want to  
11 emphasize that we're not turning -- we, PG&E, never  
12 turn a blind eye to any new information. PG&E  
13 maintains an active Geosciences Department that  
14 continues to gather and evaluate data.

15 Dr. Legg and Mothers for Peace have not  
16 identified any new significant data that call into  
17 question the seismic source characterizations for  
18 Diablo Canyon and therefore the ISFSI.

19 When and if any new information comes  
20 available, we, PG&E, have an ongoing obligation to  
21 address that information and notify the NRC as  
22 appropriate. That simply is not the case here.

23 In fact, all of the most recent  
24 information that PG&E has identified and is in the  
25 process right now of publishing reinforces the

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1 conservativisms of the previous conclusions in the  
2 licensing process in the LTSP.

3 At this point I have nothing further  
4 unless there's questions.

5 JUDGE BOLLWERK: Questions from Board  
6 Members at this point?

7 JUDGE LAM: No questions.

8 JUDGE KLINE: (Shakes head.)

9 JUDGE BOLLWERK: All right. Why don't we  
10 turn to the staff then.

11 MR. LEWIS: Mr. Chairman, could we take a  
12 short break at this time? Staff wants to do some  
13 conferring with our technical support.

14 JUDGE BOLLWERK: All right. Would 10  
15 minutes be sufficient?

16 MR. LEWIS: Yes.

17 JUDGE BOLLWERK: All right. Why don't we  
18 say -- we'll round it off and say we'll be back at  
19 3:30. How's that?

20 MR. LEWIS: Thank you. Thank you.

21 (Recess taken from 3:16 p.m. to 3:32 p.m.)

22 JUDGE BOLLWERK: All right. Let's go back  
23 on the record. I think we were going to hear from the  
24 staff now on this issue.

25 MR. LEWIS: Members of the Board, thank

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1 you for allowing us that break to evaluate what we've  
2 heard today.

3 The staff's concern regarding -- "concern"  
4 is a bad word.

5 The reason the staff did not support  
6 admissibility of this contention was that we did not  
7 find in the papers put forward by Mothers for Peace an  
8 indication of the relationship between what was  
9 asserted should be new material information regarding  
10 the attributes of the design-basis earthquake -- and  
11 I assume if it's the design-basis earthquake, it's  
12 also the safe-shutdown earthquake, but I guess a  
13 safe-shutdown earthquake wouldn't apply to an ISFSI,  
14 so it's probably just the design-basis earthquake that  
15 we're talking about -- we saw no nexus established  
16 there.

17 What we saw was a compilation of  
18 information supported with -- by a list, a lengthy  
19 list of reports, that challenged a number of the  
20 assumptions on which the design-basis earthquake for  
21 the power block at Diablo Canyon is based.

22 Now thinking about what we heard today,  
23 the only additional thing we heard today from Ms.  
24 Curran was essentially a statement that it's in --  
25 this is my own word, I don't think she used this word,

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1 but I'll characterize her presentation as being that  
2 -- isn't it intuitively obvious that if there is  
3 information that they assert is new and -- is new  
4 regarding the nature of the Hosgri Fault, and they  
5 point to three respects in which it might be important  
6 information, isn't it intuitively obvious that that is  
7 going to affect the design and operation of the  
8 proposed ISFSI.

9 Now we did not bring with us today our  
10 seismic consultants from the Center for Nuclear Waste  
11 Analysis in San Antonio, because we didn't think we  
12 were going to get into this degree of the merits.

13 But the staff that is here today, on the  
14 basis of our discussions with them and looking at the  
15 requests for additional information the staff recently  
16 submitted to PG&E, in that RAI the staff is proceeding  
17 from an acceptance of PG&E's analysis that the  
18 earthquake assumptions which are applied currently to  
19 the power block at the Diablo Canyon Plant have also  
20 been shown by their analysis to be applicable to the  
21 location of the ISFSI and to the transport route for  
22 the casks from the station to the ISFSI location.

23 There are questions in our request for  
24 additional information in this general area, but they  
25 are all proceeding from a conclusion that the

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1 consultants had reached that the presentation in the  
2 application of the reason why, the reasons why the  
3 same seismic assumptions could be applied to both of  
4 these locations on this basically co-located site,  
5 they were accepted by that staff.

6 I really can't say anything much more on  
7 that in a technical sense without their presence.

8 The nature -- the nature of our argument  
9 was, as Ms. Curran said, you know basically a legal  
10 argument. It seems to us that 72.40(c) and 72.105- --  
11 give me a moment here to look back at my notes --  
12 72.102(f) are precisely applicable to the situation  
13 presented here before you now.

14 To begin with, subpart (c) of 10 CFR Part  
15 72 regarding issuance of licenses in 72.40(a)(2) where  
16 it is -- where it says that the Commission will issue  
17 a license for an ISFSI upon finding that -- and then  
18 number (2) is that the proposed site complies with the  
19 criteria in subpart (e).

20 So we know that -- that the subpart (e)  
21 provisions are linked to the issuance of the license  
22 being sought here today.

23 Now in subpart (e), which is siting  
24 evaluation factors, we think had discussion today  
25 about 72.102, geological and seismological

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1 characteristics. We heard one interesting argument,  
2 which was that 72.102(f)(1), because it used the word  
3 "a nuclear power plant" rather than "the nuclear power  
4 plant," was not talking about the plant at which the  
5 ISFSI was proposed to be located.

6 Well, Mr. Repka didn't -- didn't think  
7 that was a logical reading, and I can only second  
8 that. I don't think it's a logical reading either.  
9 I don't see how -- I don't see how some hypothetical  
10 nuclear power plant and the safe-shutdown earthquake  
11 for that hypothetical nuclear power plant or anything  
12 other than the power plant at this site could have  
13 any, any meaningful place in this sentence. So I  
14 think it's obviously talking about the safe-shutdown  
15 earthquake in this case for the Diablo Plant.

16 The other thing I wanted to mention is  
17 that the staff included in its response to this  
18 contention what I will characterize as essentially a  
19 statement of the obvious, at least what I think is the  
20 obvious but, nevertheless, we did articulate it very  
21 specifically, which was that if the matter were to be  
22 considered in this proceeding it should be limited to  
23 the scope of this proceeding, which is regarding the  
24 licensing of the ISFSI.

25 Today I -- I don't think that the staff

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1 has considered carefully what we've heard so far. We  
2 don't think we've heard anything that made a nexus to  
3 the licensing of the ISFSI so as to enable us to now  
4 say that we support the admission of this proposed  
5 contention. So we continue to oppose its admission.

6 And I'd like to reserve five minutes of my  
7 time for further addressing comments as they may be  
8 made.

9 JUDGE KLINE: Let me just ask the staff:  
10 On the issue you just last addressed, that is to say  
11 trying to confine the scope of any possibly-admitted  
12 contention to the ISFSI alone, it appears to us, and  
13 we've been discussing this among ourselves, that there  
14 doesn't seem to be any practical way to do that if, in  
15 fact, the contention were admitted.

16 That is to say that the pleadings appear  
17 to raise the licensing basis of the plant itself with  
18 respect to seismicity. And that's a matter of concern  
19 to the Board. And the question is, is there any way  
20 within the regulations that we could just artificially  
21 exclude the plant, given the linkage in the  
22 regulations between the plant and the ISFSI seismic  
23 qualifications?

24 MR. LEWIS: Dr. Kline, I very much  
25 appreciate your question because that -- that is the

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1 precise reason why I wanted to make clear in my view  
2 as to what we intended when we talked about in the  
3 alternative if the contention were to be admitted  
4 because it was linked sufficiently to the ISFSI, then  
5 the analysis should be limited to the ISFSI, the  
6 effect of the seismic assumptions on the ISFSI.

7 And as we now rethink that question, we  
8 ourselves do not believe that it is that easy to parse  
9 out the matter the way -- the way we articulated it  
10 there. We could have stated it better than we did.  
11 The two things are clearly linked together, which is  
12 the reason why we're having essentially a merits -- a  
13 mini-merits-type discussion today. The 72. -- Section  
14 72.40(c) basically leads you to it, --

15 JUDGE KLINE: Yeah.

16 MR. LEWIS: -- because it asks you to make  
17 a -- it asks that a determination be made as to  
18 whether or not there is any reason why the site  
19 assumptions for a previously-evaluated facility would  
20 not continue to apply to a co-located ISFSI.

21 And that's -- that's what the regulations  
22 provide. And so here we are today, you know, going  
23 into these types of discussions.

24 JUDGE KLINE: Okay. And, Ms. Curran, in  
25 your rebuttal would you address that question?



1 MS. CURRAN: Yes.

2 JUDGE KLINE: Thanks.

3 JUDGE LAM: And I'd like to hear more from  
4 the staff regarding how Parts 72.40(c) together with  
5 Part 72.102(f) can be applied in this situation here.  
6 Would you elaborate a little bit more?

7 MR. LEWIS: I'll try. Give me a moment.

8 (Mr. Lewis confers off record with NRC  
9 staff.)

10 MR. LEWIS: Well, having had some very  
11 useful help from my staff, the way in which the staff  
12 went through its thinking on this was whether or not  
13 the seismic and geologic data provided by PG&E in its  
14 ISFSI license application demonstrated to our  
15 satisfaction that the same assumptions as to the  
16 controlling earthquake and controlling seismic  
17 conditions are applicable to the ISFSI location and to  
18 the locations where the cask would have to transit to  
19 get to the ISFSI location.

20 And the conclusion of our consultants was  
21 that they found those data and analyses to demonstrate  
22 to them that the same assumptions did apply to the  
23 ISFSI location and related routes.

24 Have I answered your question? I tried.

25 JUDGE LAM: Well, what I am interested in

1 is, by reading what the applicant has asserted, seeing  
2 there is a prohibition in Part 72.102(f) against  
3 reopening the record for litigating the seismic issue.  
4 I mean how do you look at that assertion?

5 MR. LEWIS: I think that -- I don't think  
6 that we have looked upon the combination of 72.102(f)  
7 and 72.40(c) to constitute a prohibition. We have  
8 looked upon them as constituting a threshold that  
9 would have to be met in order to show that a re-  
10 evaluation is needed.

11 JUDGE LAM: I see. Thank you for your  
12 help.

13 JUDGE BOLLWERK: All right. Before I  
14 begin with any rebuttal, is there anything else you  
15 want to say with respect to what the staff said, Mr.  
16 Repka? I'll make it a little more efficient.

17 MR. REPKA: Not at this time.

18 JUDGE BOLLWERK: Not at this time, all  
19 right.

20 All right. Then, Ms. Curran.

21 MS. CURRAN: Would it be all right to take  
22 a five-minute break?

23 JUDGE BOLLWERK: Yes. We'll come back at  
24 five till 4:00. How's that?

25 MS. CURRAN: Thank you.

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1 (Recess taken from 3:50 p.m. to 3:55 p.m.)

2 JUDGE BOLLWERK: All right. Ms. Curran.

3 MS. CURRAN: Okay. I'd like to start by  
4 talking about the legal question that, Judge Kline,  
5 that you all are concerned about.

6 And, first, I just want to go back to this  
7 proposed rule. I read you a sentence from it that I  
8 don't think was the correct sentence. Sometimes I  
9 think I'm going to go blind reading these computer  
10 printouts. They're much harder to read than the old-  
11 fashioned ones.

12 This is from Proposed Section 10 CFR  
13 72.103(b).

14 JUDGE BOLLWERK: B as in boy as opposed to  
15 --

16 MS. CURRAN: B as in boy.

17 JUDGE BOLLWERK: Okay.

18 MS. CURRAN: -- which contains criteria  
19 for sites west of the Rocky Mountain front.

20 And there's a sentence here that says, "If  
21 an ISFSI or MRS is located on a nuclear power plant  
22 site, the existing geological and seismological design  
23 criteria for the nuclear power plant may be used."

24 And seeing that made me wonder why did  
25 they put that in if they already had that in the

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1 existing rule, which is I think what PG&E's position  
2 is here.

3 We can go back and use the old analysis  
4 that we used for the nuclear power plant. So it just  
5 raises a question. You know it's the principles of  
6 how you interpret regulations. Why does an agency add  
7 new language in a proposed rule if it already had the  
8 ability to do what it's proposing in the only rule.

9 JUDGE KLINE: But, wait. I'm not sure  
10 we're seeing the full context here. Isn't that  
11 rulemaking the one that adopts or would permit  
12 probabilistic seismic analysis in the alternative --

13 MS. CURRAN: Right.

14 JUDGE KLINE: -- to an Appendix A  
15 deterministic seismic analysis?

16 MS. CURRAN: Yes, it is.

17 JUDGE KLINE: And so that if, in fact,  
18 there -- they may be saying, and I haven't seen -- I  
19 haven't read it enough with this in mind, -- but in  
20 order to look at the fuller context, they may be  
21 making a permissive statement in the alternative to  
22 recasting a new probabilistic analysis. That is to  
23 say that I think it's permissive, not compulsory to --  
24 on the probabilistic analysis. But, anyway, I would  
25 leave it to the --

1 MS. CURRAN: Right.

2 JUDGE KLINE: -- parties to resolve that.

3 MS. CURRAN: And you may be right. I  
4 think it deserves some attention --

5 JUDGE KLINE: Yeah.

6 MS. CURRAN: -- as to whether -- you know,  
7 the sentence read by itself is quite broad. And I  
8 don't know whether the whole context restricts it.  
9 But it's definitely worth looking at.

10 JUDGE BOLLWERK: In other words, since the  
11 deterministic standard is the only one that applies  
12 now, now that you can use -- or under that proposed  
13 rule --

14 JUDGE KLINE: Well, --

15 JUDGE BOLLWERK: -- you could use a  
16 probablistic standard, --

17 JUDGE KLINE: -- I'm --

18 JUDGE BOLLWERK: -- you now have to list  
19 some --

20 JUDGE KLINE: I'm presuming that Diablo  
21 Canyon was licensed under an Appendix A  
22 deterministic-type standard, wasn't it?

23 MR. REPKA: That's correct.

24 JUDGE KLINE: Yeah. And that it would be  
25 permissive now, if that rule is adopted, to use a

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1 different approach if desired, but apparently since  
2 there's already an existing analysis that wouldn't --  
3 you know, it would be permissive just to use the  
4 existing data, is what I would get out of what you've  
5 read. But if you have a different interpretation, we  
6 need to hear it now.

7 MS. CURRAN: Well, I have not studied this  
8 in depth enough to give you a definitive --

9 JUDGE KLINE: Okay.

10 MS. CURRAN: -- opinion. I just was  
11 looking through this as I was preparing, --

12 JUDGE KLINE: Yeah.

13 MS. CURRAN: -- and I noticed this  
14 language, which certainly raised a signal for me that  
15 the Commission -- and the reason I looked at this was  
16 because I wonder what is the purpose of 72.40 -- or  
17 what's the relationship between 72.40 and 72.102.  
18 They seem redundant.

19 If 72.40 also applies to seismic issues,  
20 then 72.102 seems redundant. And 72.102, to me, seems  
21 -- through its general language, it doesn't refer to  
22 the nuclear power plant. It refers to a nuclear power  
23 plant, as though it were referring you to the standard  
24 that should be applied, not telling you that we'll  
25 accept what you did before. That's how I read 72.102.

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1 But I certainly agree that the language in  
2 72.104 is -- is very broad. It just makes a person  
3 wonder how to read these two regulations together in  
4 a way that makes sense. And certainly the seismic  
5 design would be a very important element of any  
6 nuclear facility -- nuclear facility design. So I  
7 would think that 72.102 might trump 72.40(c).

8 At any rate, as I said before, I think  
9 what this -- I mean everyone agrees, I hear, that PG&E  
10 did a very -- a long-term study that took a lot of  
11 information into account between 1985 and 1988, and  
12 the staff reviewed it. There's certainly no doubt  
13 about that.

14 What we've come here with this contention  
15 to say is that that information is not the best  
16 information and it's not adequate information because  
17 there's more current information, even information  
18 that we see in the SAR itself, which indicates that  
19 the situation is more complicated than depicted in the  
20 Long-Term Seismic Program.

21 I want to go back and look at some of  
22 these figures that I passed out. In particular,  
23 Figure 2.6-42 from SAR.

24 JUDGE BOLLWERK: If I can just stop you  
25 right there.

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1 I take it there's no objection of anyone  
2 putting these, again, as part of the --

3 MR. REPKA: No.

4 MR. LEWIS: No objection.

5 JUDGE BOLLWERK: All right.

6 MS. CURRAN: Okay. This is a depiction of  
7 -- the title is, "Lower Hemisphere P Wave First Motion  
8 Focal Mechanism Plugs of Earthquakes from October 1987  
9 through January 1997." So this would be in the period  
10 pretty much following the issuance of the Long-Term  
11 Seismic Program.

12 And Dr. Legg tells me these circles that  
13 appear on here are, in fact, called "beach balls."

14 If you look at these beach balls, there  
15 are some that -- the orientation of the stripe on the  
16 beach ball tells you whether it's a reverse earthquake  
17 or a strike-slip earthquake. And if you see more of  
18 one -- how can I describe -- you don't see -- when you  
19 see the cross of the -- you see all the four -- four  
20 quadrants, you're looking at a strike-slip earthquake.  
21 When you just see big slices of -- you know, they look  
22 like slices of the beach ball, say for instance the  
23 Ragged Point Earthquake, those are reverse  
24 earthquakes.

25 So of course these are all earthquakes in

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1 the last 10 years. These are -- not last 10 years,  
2 but 10 years following this Long-Term Seismic Program.  
3 You see a complex pattern that includes reverse  
4 earthquakes and strike-slip earthquakes.

5 And where there's reverse earthquakes  
6 there is a tendency for the fault to be dipping. And  
7 where the fault is dipping you have what's called in  
8 an earthquake a situation called a hanging wall, which  
9 is the situation of concern to us here.

10 In other words, the area that's underneath  
11 the fault is called the foot, of -- foot wall. And  
12 the area above it is called the hanging wall because  
13 it's basically hanging over the underlying area.

14 Now because of that phenomenon reverse  
15 earthquakes have greater ground motion than strike-  
16 slip earthquakes. And that is discussed in the  
17 contention.

18 So if, as we are presenting in this  
19 contention, the reverse earthquakes and the dipping  
20 fault are more predominant than previously thought,  
21 that raises a concern that the design basis for this  
22 facility was not adequate because it didn't take into  
23 account the degree of the ground motion that could  
24 occur.

25 Just to clarify, the reason that the

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1 ground motion is greater is that the energy is trapped  
2 in the lower part of this -- in the upper part of the  
3 fault. And so that leads to greater ground shaking.

4 So if you have a greater predominance of  
5 dipping faults, and it's my understanding, just to go  
6 back to what is in -- what was assumed in the  
7 Long-Term Seismic Program, according to PG&E, PG&E  
8 stated in the LTSP that the dip of the fault in the  
9 area is between 60 and 90 degrees.

10 But in point of fact, the fault that was  
11 assumed, the dip of the fault that was assumed for  
12 purposes of establishing the design of the facility  
13 was a 90-degree fault. So that's the key, whether or  
14 not PG&E acknowledges that this type of faulting  
15 exists in the area it was a 90-degree fault that was  
16 used in the design.

17 But if you have dipping faults, if the  
18 dipping faults tend to be dipping towards the east --  
19 and if you look at Figure 2.6-40, you have a number of  
20 earthquakes that are on the east side of the fault.  
21 That indicates that you may have a phenomenon here  
22 where the hanging wall may be directly underneath the  
23 Diablo Canyon site.

24 And that is -- that is new information.  
25 That is --

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1 (Counsel and Dr. Legg confer off the  
2 record.)

3 MS. CURRAN: All right. I'm -- Dr. Legg  
4 corrected me and said that the new information is that  
5 the more recent earthquakes: The Northridge  
6 Earthquake, the Chi-Chi Taiwan Earthquake, --

7 (Counsel and Dr. Legg confer off the  
8 record.)

9 MS. CURRAN: -- Loma Prieta Earthquake  
10 showed how severe the shaking could be in the hanging  
11 wall. That was not previously understood or taken  
12 fully into consideration.

13 And with respect to the location of the  
14 fault, if you look at Figure 2.6-40, you will see that  
15 there's quite a bit of earthquake activity to the east  
16 of the Hosgri Fault. But the place where PG&E located  
17 an earthquake for purposes of its analysis was to the  
18 west of the fault.

19 And our contention here is that in light  
20 of this information it would have been more  
21 conservative to place it to the east of the Hosgri  
22 Fault.

23 JUDGE KLINE: Go over that again. I  
24 didn't quite follow that, the east-west dichotomy.

25 MS. CURRAN: Would it be possible to have

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1 Dr. Legg answer that question, because I'm afraid I'm  
2 going to mangle it.

3 JUDGE BOLLWERK: Let me put -- I mean is  
4 this in your pleading somewhere, or -- I want to make  
5 sure we stay within the --

6 MS. CURRAN: Well, we certainly talk in  
7 our pleading about the hanging wall, about the dipping  
8 faults. And we also have a basis that discusses the  
9 location -- the assumption of an earthquake on the  
10 west side of the fault. That's the third basis.

11 JUDGE KLINE: Yeah. I only want to know  
12 what you're asserting. What is it that was analyzed  
13 on the west and should have been on the east? That's  
14 -- my question is simple, in other words.

15 In other words, I don't want a big seismic  
16 analysis. I just want to know what you're telling us.

17 MS. CURRAN: All right.

18 (Counsel and Dr. Legg confer off the  
19 record.)

20 MS. CURRAN: In answer to your question,  
21 for the 7.5 earthquake on the Hosgri Fault, PG&E used  
22 a distance of five kilometers to the west of the  
23 fault. By having the --

24 (Counsel and Dr. Legg confer off the  
25 record.)

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1 MS. CURRAN: I'm sorry.

2 -- five kilometers to the west of the  
3 plant.

4 (Counsel and Dr. Legg confer off the  
5 record.)

6 MS. CURRAN: That puts it on the west side  
7 of the fault.

8 By having the earthquake farther from the  
9 site, that lowered the design shaking. It further  
10 lowered the design shaking by assuming that the fault  
11 was vertical, because that would make the earthquake  
12 also farther from the site than one would  
13 conservatively assume if one were using an east-  
14 dipping fault.

15 JUDGE KLINE: Okay. I think I understand  
16 now.

17 MS. CURRAN: Okay.

18 (Counsel and Dr. Legg confer off the  
19 record.)

20 MS. CURRAN: I'd like to address the issue  
21 that PG&E raised about the location of the Lompoc  
22 Fault -- of the Lompoc Earthquake, which took place in  
23 1927.

24 By essentially removing this earthquake  
25 from close proximity to the Hosgri Fault, the analysis

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1 reduced the implication of the earthquake. And this  
2 type of earthquake, it's a reverse earthquake that had  
3 it been evaluated to occur along the Hosgri Fault,  
4 which is a reasonable supposition, would have led to  
5 much higher ground motion than PG&E estimates in its  
6 analysis.

7 And the issue here is that no one really  
8 knows where the Lompoc Earthquake was, but there is --  
9 there are Lompoc-type earthquakes that occur along the  
10 Hosgri Fault and that -- and it's our position that  
11 that type of earthquake should have been included in  
12 PG&E's analysis.

13 This contention is very much the work of  
14 Dr. Legg. And basically we packaged it and presented  
15 it to the Licensing Board. And I feel that perhaps  
16 his words speak best for -- he speaks best for himself  
17 in the words that he wrote here.

18 But he has done a thorough evaluation of  
19 the Long-Term Seismic Program of the staff's Safety  
20 Evaluation Report. And I think he has set forth here,  
21 with basis and specificity, material disputes with the  
22 adequacy of the Long-Term Seismic Program to support  
23 the conclusions that PG&E has come to about the risk  
24 of an earthquake for this ISFSI.

25 The question has come up here as to how

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1 one could address these issues without basically  
2 opening Pandora's Box in terms of the original Part 50  
3 license.

4 And, you know, I think as a procedural  
5 matter, you can do that in the sense that you're  
6 looking at one license, but you're not technically  
7 reopening another. But, as a practical matter, I do  
8 think that if it is concluded that some significant  
9 information was overlooked in the original design of  
10 this facility, the Commission is under a very grave  
11 obligation to address that.

12 But of course that would -- that kind of  
13 an analysis would also take into account the design of  
14 the Diablo Canyon Nuclear Power Plant and how  
15 conservative that was. And I -- you know, we haven't  
16 studied that and we can't comment on it.

17 But it seems to me that it would be remiss  
18 of the agency to avoid taking -- undertaking the kind  
19 of review it needs to take to satisfy itself that this  
20 ISFSI is safe merely to avoid having to reopen a  
21 review of the original licensing decision. That, you  
22 know, there's a legal obligation here to make sure  
23 this ISFSI is safe, and take the consequences,  
24 whatever they may be.

25 I don't have anything else to add.

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1 JUDGE KLINE: Would you address the  
2 questions raised by the opposing parties relative to  
3 the issue of specificity with regard to your view of  
4 the new design-basis earthquake?

5 That is to say, if you're not satisfied  
6 with 7.5, what it should be? And that's one of the  
7 things that didn't appear in your pleading. And it  
8 would appear to be essential with respect to  
9 specificity.

10 MS. CURRAN: Well, I would disagree that  
11 it's essential to come up with a numerical figure,  
12 because I think there's another way to go about it,  
13 which is to look at the building blocks of the  
14 analysis and make a qualitative critique of the  
15 assumptions that went into that. And I would assume  
16 that the calculation of what the design basis accident  
17 is, is a somewhat complicated affair.

18 JUDGE KLINE: Yes.

19 MS. CURRAN: And so that is really the  
20 responsibility of the licensee. But if the petitioner  
21 comes forward and shows that there are significant,  
22 significant problems in a qualitative sense -- and I  
23 believe the language of the contention does address  
24 the significance of the inadequacy in the study that's  
25 been done to date -- then that, I believe, should be

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1 sufficient.

2 I think the Commission has long recognized  
3 that quantitative analysis is important, but also  
4 qualitative analysis is, too. And that while we may  
5 not have the resources to do, in preparing a  
6 contention to do a quantitative calculation, that if  
7 we raise important qualitative issues, that that  
8 should at least lead to the admission of an issue and  
9 to litigation so that it can be explored further.

10 JUDGE KLINE: You appear to be asserting  
11 that there is -- and with a good deal of detail --  
12 that there is new physical information on the nature  
13 of the faults, and the orientation of the faults, and  
14 this sort of thing. In other words, in your view a  
15 new physical picture.

16 Does it inevitably follow that the design-  
17 basis earthquake goes up instead of down? How does it  
18 -- how does it -- what is the indicator that says,  
19 well, now that you know of a new kind of fault, that  
20 the design basis is higher than it is -- it really  
21 ought to be higher? And that is not intuitively  
22 obvious, so we need some kind of proffer from you on  
23 that.

24 MS. CURRAN: Two, two factors go into  
25 this.

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1                   One is that the deeper one goes into the  
2 ground the greater the force of an earthquake. If you  
3 assume that earthquake faults are dipping rather than  
4 vertical, and they're dipping eastward, which is the  
5 pattern here, then a fault that is dipping -- if a  
6 fault is dipping towards the plant, then at the  
7 deepest point it may be under the plant. And of  
8 course the closer the fault is to the plant -- or the  
9 closer the earthquake is to the plant, the greater the  
10 force is going to be.

11                   The other factor is this hanging-wall  
12 factor where the energy is trapped because of the --  
13 the physical nature of a hanging fault.

14                   JUDGE KLINE: What is it that indicates to  
15 us that even if the design-basis earthquake was --  
16 ought to be higher than now specified, that it's so  
17 high as to exceed the design envelope that exists  
18 while both for the plant and that could exist for the  
19 ISFSI? That is to say that there's -- is there  
20 anything that prohibits a bit of overdesign in these  
21 facilities?

22                   MS. CURRAN: Well, I think the thing that  
23 needs to be done is to have an accurate or reasonably  
24 accurate picture of what the earthquake risk is and  
25 then to take a look at whether your design is

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1 adequately conservative. And one would hope that  
2 these designs are -- have a margin of conservatism.  
3 But that -- the first thing you need to know is what  
4 are you designing to. And that's what we're talking  
5 about here.

6 Excuse me for a minute.

7 (Counsel and Dr. Legg confer off the  
8 record.)

9 MS. CURRAN: Just to illustrate their  
10 relationship, the Long-Term Seismic Program found that  
11 the safe-shutdown earthquake was one-half of the  
12 expected force. And PG&E found that it had designed  
13 the plant with sufficient conservatism to accommodate  
14 that.

15 But as more information is gathered, if  
16 the force of the expected earthquake goes up, then one  
17 again has to make that comparison between the  
18 conservatism of the design and what is the expected  
19 force of the earthquake. And that needs to be done in  
20 the case of the ISFSI as an initial matter.

21 That -- you know, the petitioners may not  
22 have the resources to make the comparison between the  
23 design of this ISFSI and the -- and the design -- what  
24 should be the design earthquake. But we think PG&E  
25 ought to do it, and we think that PG&E ought to have

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1 reasonably-accurate information with which to make  
2 that a valuation. And we all deserve the assurance of  
3 knowing that the design is adequately conservative.

4 JUDGE LAM: I don't know if I'm hearing an  
5 answer to Judge Kline's question, which was: Could  
6 new information lead to a lower-design basis.

7 MS. CURRAN: In this case we believe the  
8 new information clearly shows a higher-design  
9 earthquake, for the reasons that I've expressed to  
10 Judge Kline.

11 JUDGE BOLLWERK: All right. Mr. Repka, if  
12 you have anything to say.

13 MR. REPKA: A few points. First with  
14 respect to the issue of the significance of the  
15 proposed Rule 72.103, I did want to respond to Judge  
16 Kline's question and say that we do agree with that  
17 characterization.

18 This proposed rule in context creates an  
19 option where none previously existed, to use  
20 probablistic analysis, and therefore creates an option  
21 with respect to the design earthquake and the -- the  
22 design criteria for the Nuclear Power Plant that's  
23 consistent with the current philosophy, if you opt not  
24 to use the probablistic approach for the ISFSI.

25 Second, with respect to 72.102(f), I think

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1 Ms. Curran made the comment that she believes that  
2 72.102(f) trumps 72.40(c). That's actually a comment  
3 I tend to agree with. 72.102(f) is actually a  
4 specific requirement related to seismic design and  
5 therefore is more specific than 72.40(c).

6 What's significant about that is there is  
7 no threshold showing, no new information aspect to  
8 72.102(f). It is -- therefore, acts as a legal bar to  
9 reopening the design basis of the Nuclear Plant.

10 Then the third thing is with respect to  
11 72.40(c), if you're assuming -- if you assume that  
12 72.102(f) is not a legal bar, then 72.40(c) does apply  
13 and does create an opportunity for perhaps some kind  
14 of threshold showing. However, that's precisely the  
15 showing that we're saying has not been met here.

16 The contention challenges the seismic  
17 source characterization, but that's only one piece in  
18 the puzzle. The seismic source, which is the  
19 magnitude and the mechanism and the location of the  
20 controlling fault then needs to be translated to  
21 ground motions.

22 The -- under Part 100, Appendix A, the  
23 design basis of a power plant from a seismic  
24 perspective, the safe-shutdown earthquake is a ground  
25 motion. It's not a seismic source. It's a ground

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1 motion. There's nothing in the contention that goes  
2 to the calculation of ground motions. And, therefore,  
3 it shows one way or the other whether there would be  
4 any change.

5 In addition, for a structural analysis,  
6 the next piece of the puzzle is the response spectra  
7 based upon the ground motions across the range of  
8 relevant frequencies or periods. There's nothing in  
9 the contention that relates to that or shows in any  
10 way that the response spectra used for the ISFSI  
11 design are inadequate.

12 The showing, the so-called showing of new  
13 information is based upon entirely on PG&E data. It's  
14 based upon the figures in the Safety Analysis Report.

15 Figure 2.6-41 is the one we've already  
16 discussed. It seems like the new information, in  
17 contrast to the SSER 34 and the Long-Term Seismic  
18 Program, which is this, four inches thick worth of  
19 documents analyzing this, the so-called new  
20 information is the one cross-section B, B prime.

21 And we've previously discussed that on its  
22 face. It doesn't show any new information that would  
23 support a more extreme angle than what was previously  
24 considered, the 60-degree to 90-degree angles  
25 considered in the LTSP.

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1                   With respect to Figure 2.6-42, which was  
2 just discussed, the so-called beach balls, if you look  
3 at this chart, which is just a subset of the seismic  
4 data, which is a subset from 1987 through January  
5 1997, the beach balls of interest here on the Hosgri  
6 Fault are strike-slip beach balls, that show the cross  
7 hatch that's referred to.

8                   There are other reverse -- reverse or  
9 thrust-fault beach balls elsewhere in this entire  
10 region that's shown on the figure, but those are not  
11 the beach balls on the Hosgri Fault itself.

12                   In addition, in this context, looking at  
13 again the characterization of the fault, the LTSP  
14 didn't consider a purely strike-slip fault on the  
15 Hosgri. It considered the two-third strike slip, one-  
16 third thrust fault composite. So therefore on its  
17 face this doesn't stand for the proposition that  
18 somehow that characterization is not conservative.

19                   There was some discussion earlier of --  
20 again of the location of the fault. There was a  
21 reference to the five kilometers. Well, keep in mind  
22 that the design source for Diablo Canyon is based upon  
23 a number of different design earthquakes. There was  
24 the design earthquake, the double-design earthquake,  
25 the Hosgri earthquake, and then there was the

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1 confirmatory LTSP.

2 The reference to five kilometers related  
3 to one of those, the Hosgri, a re-evaluation, which  
4 was the assumption, the collection was a 7.5-magnitude  
5 earthquake at five kilometers. The LTSP conclusion  
6 was a 7.2-magnitude earthquake at 4.5 kilometers.

7 There was some discussion of the Loma  
8 Prieta in 1989. That's something that was modeled in  
9 the LTSP program.

10 There's discussion of the hanging-wall,  
11 foot-wall effects from the Loma Prieta. Again, that  
12 was something that was specifically considered. Data  
13 from the more recent Northridge and Chi-Chi  
14 Earthquakes in Taiwan. That is certainly information  
15 that PG&E is aware of, has analyzed and addressed as  
16 part of its ongoing seismic or geosciences reviews.  
17 But it has no clear relevance and certainly no  
18 relevance has been brought out here today to the ISFSI  
19 design.

20 As I think I indicated earlier, the new  
21 information that has been developed over the years,  
22 even subsequent to the LTSP, actually does tend to  
23 show that the ground motions are -- that have been  
24 used in the design are actually overly conservative,  
25 at least in some frequency ranges.

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1                   So I think in this context even if some  
2                   kind of threshold showing of new information might  
3                   require -- be required, that clearly has not been met  
4                   here.

5                   JUDGE BOLLWERK: Anything further?

6                   MR. REPKA: No.

7                   JUDGE BOLLWERK: All right. Let me just  
8                   turn to the staff to see if they have anything further  
9                   they wish to say.

10                  MR. LEWIS: No.

11                  JUDGE BOLLWERK: Anything from any of the  
12                  interested-governmental entities?

13                  MR. TEMPLE: No.

14                  JUDGE BOLLWERK: Nothing, all right.

15                  And, Ms. Curran, anything else you want to  
16                  say on this subject?

17                  MS. CURRAN: Could I have just a minute --

18                  JUDGE BOLLWERK: Sure.

19                  MS. CURRAN: -- to consult Dr. Legg?

20                  (Ms. Curran and Dr. Legg confer off the  
21                  record.)

22                  JUDGE LAM: While we are waiting I would  
23                  like to hear from the staff on two related questions.

24                  Mr. Lewis, what would be the appropriate  
25                  threshold for new information to reopen issues for

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1 litigation here under Part 72 license?

2 And also would you contrast that to what  
3 would be the appropriate threshold to reopen issues  
4 for litigation using new information under a Part 50  
5 license?

6 MR. LEWIS: Give me -- give me a moment.

7 (Mr. Lewis and staff confer off the  
8 record.)

9 JUDGE BOLLWERK: We're going to go ahead  
10 and take a five-minute break while they're discussing,  
11 as well as Ms. Curran.

12 (Recess taken from 4:32 p.m. to 4:38 p.m.)

13 JUDGE BOLLWERK: And I think in the  
14 interests of efficiency, it's probably more efficient  
15 to have the staff answer the question first. Then if  
16 Ms. Curran has anything else to say with respect to  
17 what Mr. Repka said or what Mr. Lewis has to say, she  
18 can address it at that point.

19 MR. REPKA: Do I get to comment on what he  
20 says?

21 JUDGE BOLLWERK: If you want to, sure.

22 MS. CURRAN: Could I --

23 JUDGE BOLLWERK: As long as Ms. Curran  
24 gets the last word.

25 MS. CURRAN: I'm afraid I was talking to

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1 Dr. Legg, because I thought I had to do that while  
2 this -- Dr. Lam's question was going on, so I'm not  
3 sure what the question is on the table.

4 JUDGE BOLLWERK: The question that Dr. Lam  
5 asked was what is -- what's the standard under  
6 72.40(c) in terms of new information being discovered  
7 that would require some additional analysis for the  
8 ISFSI. And also what's the standard for a reopening  
9 for a Part 50 license.

10 Did I say that correctly?

11 JUDGE LAM: That's exactly right.

12 MR. LEWIS: Okay. So I'm -- we'll step up  
13 to the plate and take a crack at trying to answer  
14 this.

15 I suppose what I am going to say now is  
16 going to sound to some members of the public like  
17 being a very severe threshold that -- that public  
18 petitioners have to -- have to meet but, in fact, what  
19 I'm going to say is, in fact, directly drawn from the  
20 regulations.

21 The criteria that we're going to have to  
22 measure -- that we're going to have to use to  
23 determine whether or not the ISFSI is adequately  
24 designed are going to be an earthquake magnitude and  
25 a ground motion acceleration.

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1                   So -- and, by the way, those would be the  
2 same things that have to be used in a Part 50  
3 earthquake analysis, seismic analysis.

4                   Ms. Curran has asserted that it's not the  
5 burden of her clients to tell you a magnitude that  
6 they think results from their analysis or presumably  
7 she would say the same thing for a ground  
8 acceleration. But I think the regulations, in fact,  
9 obligate her to do so in order to get this matter  
10 reheard.

11                  The -- in looking at it again, I -- in  
12 looking at the two regulations again by which I mean  
13 72.40(c) and 72.105 -- 102(f), I would now come around  
14 to something that Dr. Lam said, which is that actually  
15 72.102(f) is very prescriptive, and it really -- it  
16 really is probably not correct on my part to describe  
17 it as a "threshold," because it says specifically that  
18 the design earthquake for the ISFSI must be equivalent  
19 to the safe-shutdown earthquake for a nuclear power  
20 plant.

21                  Well, that's very specific, so I mean as  
22 compared to 72.40(c), talking about new information  
23 discovered which would alter the original site  
24 evaluation findings.

25                  But to get where I'm going with this, Dr.

1 Lam, is that I think that the same criteria would, in  
2 fact, apply and have to apply under Part 50 or under  
3 Part 72 because they are being linked by virtue of the  
4 way Part 72 structures the question of whether or not  
5 seismicity at a co-located ISFSI is -- or other site  
6 characteristics at a co-located ISFSI is a litigable  
7 issue or becomes a litigable issue in a Part 72  
8 license proceeding.

9 JUDGE LAM: Now what does it take if an  
10 intervenor wants to come in and reopen the litigation  
11 under the Part 50 license on seismic issues? What  
12 does it take for an intervenor to do that, aside from  
13 the ISFSI here?

14 MR. LEWIS: Well,...

15 JUDGE BOLLWERK: Well, I think we need to  
16 put that in a context. There has to be some licensing  
17 action that's out there once that becomes an issue, or  
18 they have to file a 2.206 petition. Am I -- I don't  
19 want to --

20 MR. LEWIS: Yeah. Thank you, Mr.  
21 Chairman.

22 I, even without that help, I was just  
23 about to say that it strikes me that this is headed,  
24 the logic of this is headed in the direction of a  
25 2.206 petition, or at least that's the theory I'm

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1 hearing from the Mothers for Peace, which is that they  
2 now question the sufficiency of the design earthquake  
3 for the Diablo Canyon Plant.

4 Now it's very interesting to me. They  
5 sort of hedged on this a little bit. They said, well,  
6 we haven't really looked at the design-basis  
7 earthquake, but we do question the earthquake from the  
8 Long-Term Seismic Program. So I'm not quite sure  
9 exactly. They're challenging some part of it as to its  
10 adequacy, but apparently have not looked at the -- the  
11 original OL -- the original operating license seismic  
12 assumptions.

13 JUDGE LAM: Thank you, Mr. Lewis.

14 JUDGE BOLLWERK: Mr. Repka, anything you  
15 want to say?

16 MR. REPKA: The first thing I would say is  
17 I agree that 72.102 is very prescriptive, and I think  
18 it has no threshold and I think it is therefore  
19 controlling.

20 But with respect to the question of  
21 72.40(c), of the threshold there, I think I agree with  
22 what Mr. Lewis said. I would go a little farther, and  
23 I'd say the relevant question under that regulation is  
24 what it says, is could the information alter the  
25 original site evaluation findings.

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1 Well, now to alter the site evaluation  
2 findings you would need not just changes to the source  
3 characterization, you would need some effect on the  
4 ground motions. And even in licensing space, the  
5 requirements, the site evaluation requirements don't  
6 establish a ground motion that one must meet, good or  
7 bad.

8 You define a ground motion, and then you  
9 design to it. So therefore it suggests that you have  
10 to go further and address the response spectra and  
11 show that in some way the design and response spectra  
12 used in the structural analysis are inadequate.

13 So to get to a relevant licensing-type  
14 decision, you would need much more than to challenge  
15 the source, you would not to connect the dots I think  
16 is the terminology somebody has used already.

17 JUDGE BOLLWERK: Anything further?

18 MR. REPKA: No.

19 JUDGE BOLLWERK: All right. Let me just  
20 turn if anyone from the interested-governmental  
21 entities want to say anything about what you just  
22 heard?

23 MR. TEMPLE: (Shakes head.)

24 MR. WAYLETT: (Shakes head.)

25 JUDGE BOLLWERK: All right. Then Ms.

1 Curran.

2 MS. CURRAN: Well, turning to Section  
3 72.40(c), the question is whether new information is  
4 presented that could alter the original site  
5 evaluation findings. And I think at page 6 the  
6 contention that we presented sums up our view on how  
7 the new information that we have set forth could alter  
8 the findings that supported the original analysis that  
9 was done by PG&E.

10 And we don't -- it's true that we don't  
11 have a number at this point. We prepared a  
12 contention. It's a threshold pleading to put into  
13 contention to show a material dispute with the  
14 applicant on an issue that's relevant to the license  
15 application. And the question is whether we've done  
16 that.

17 I think it's a different question whether  
18 in the merits proceeding if the licensee presents  
19 calculations of ground motions and we don't come  
20 forward with some kind of counter evidence that is  
21 getting to that level of detail, that becomes a merits  
22 question.

23 But I think as summarized here on page 6  
24 of our contention, we provide the information and we  
25 qualitatively state that it's very significant. We

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1 state: "This oversight or selective ignorance could  
2 result in a series [sic] understatement of the seismic  
3 hazard at the subject site and thus may represent a  
4 more serious threat to the public and the environment  
5 then the SAR and ER suggest."

6 In terms of what is required in a Part 50  
7 proceeding, I guess the only regulation that I could  
8 think of that would apply there would be if one was in  
9 a proceeding, the standard for reopening the record,  
10 which is in 2.734, which requires that -- well, first  
11 of all, "The motion has to be timely, except that an  
12 exceptionally grave safety issue may be considered in  
13 the discretion of the presiding officer; the motion  
14 must address a significant safety or environmental  
15 issue; and, third, the motion must demonstrate that a  
16 material different" -- "a materially-different result  
17 would be or would have been likely had the newly-  
18 proffered evidence been considered initially."

19 And I think timeliness is a very important  
20 consideration in any motion to reopen the record.  
21 When -- the situation you're usually in there is that  
22 you're towards the end of some licensing case and some  
23 new information that comes up that the intervenor  
24 believes bears on the decision and comes in and says,  
25 'This information came up just now, couldn't have

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1 presented to you earlier. It's significant.'

2 And even if perhaps it didn't just come  
3 up, then it's so grave that it warrants everyone  
4 delaying this whole thing so that we can look at this.

5 And it seems to me that we're in a  
6 somewhat different situation here where there's a  
7 brand new licensing action. There's a licensing  
8 decision on a site that has relevance here that  
9 happened many years ago, 15 years ago or more.

10 And the question is, is there new  
11 information that indicates that that decision was not  
12 based on adequate information. That -- to support  
13 this particular licensing decision. There is -- the  
14 Commission is bound here by the undue -- no-undue-risk  
15 standard of the Atomic Energy Act and is not entitled  
16 to license a facility that it believes would pose no  
17 undue risk to public health and safety.

18 So I would say that raising a very  
19 significant threshold to the introduction of material  
20 new information would be a violation of the overall  
21 obligation of the Commission under the Act.

22 JUDGE BOLLWERK: Anything further?

23 MS. CURRAN: I would just like to return  
24 to the beach balls, which I think Mr. Repka said if  
25 you look at this diagram, it shows that the great

1 majority of these beach balls are strike-slip faults,  
2 but we don't agree with that characterization.

3 And I think this is really a case that  
4 comes down to what the experts think of this, but --

5 MR. REPKA: Before this goes too far I  
6 want to say that that's not what I said.

7 MS. CURRAN: Um-hum. Well, you can say  
8 what you --

9 JUDGE BOLLWERK: All right. If you want  
10 to --

11 MS. CURRAN: -- intended.

12 JUDGE BOLLWERK: -- make some other  
13 statement, we'll go back again. Let's go ahead and  
14 let --

15 MS. CURRAN: All right.

16 JUDGE BOLLWERK: -- Ms. Curran finish what  
17 she has to say first.

18 MS. CURRAN: In our view, this -- and this  
19 is limited data. This is recent data over a 10-year  
20 period, from 1987 to 1997. But it shows a significant  
21 number of reverse faults along this fault -- along the  
22 Hosgri Fault. And that is significant. And we do not  
23 see how assuming two-third strike-slip faults and one-  
24 third reverse faults can be considered conservative  
25 under the circumstances, especially in light of the

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1 fact that the most severe earthquake in history in  
2 this area, which is the Lompoc Earthquake in 1927, was  
3 a reversed earthquake.

4 That's all I have on that.

5 JUDGE BOLLWERK: Anything further?

6 MS. CURRAN: No.

7 JUDGE BOLLWERK: All right. Is there  
8 something you wanted to say, Mr. Repka?

9 MR. REPKA: There really is no dispute and  
10 there never has been a dispute that the controlling  
11 earthquake for Diablo is the Hosgri.

12 JUDGE BOLLWERK: All right.

13 MR. REPKA: Ms. Curran characterized my  
14 comment as saying that I said that the majority of the  
15 beach balls on this figure were strike slip. What I  
16 said was that the majority of the beach balls on the  
17 Hosgri Fault are strike slip. And I think the figure  
18 speaks for itself on that point.

19 JUDGE BOLLWERK: All right. Ms. Curran,  
20 anything further?

21 MS. CURRAN: Just one moment, please.

22 JUDGE BOLLWERK: Sure.

23 (Ms. Curran confers with Dr. Legg off  
24 record.)

25 MS. CURRAN: We believe the figure shows

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1 that are significant reverse faults on the Hosgri  
2 Fault.

3 JUDGE BOLLWERK: All right. Anything  
4 further from the Board Members?

5 (No audible response.)

6 JUDGE BOLLWERK: All right. Anything  
7 further from any of the parties?

8 (No audible response.)

9 JUDGE BOLLWERK: All right. At this point  
10 then I think we are -- we've heard all the arguments  
11 on the contentions that have been submitted as well as  
12 the questions of standing that are before the Board.  
13 The Board now has to take all this into account and  
14 write a decision, which we will be issuing in due  
15 course.

16 I should say that both the Board -- other  
17 Board Members have commented to me, and I agree, that  
18 the quality of the presentations we've heard from  
19 counsel in this proceeding have been very high. We  
20 appreciate your efforts and your time. It does  
21 illuminate and help us think these things through and  
22 come to decisions. And so I would thank all of you  
23 for your time and your effort in coming before us the  
24 last two days and providing us with the information  
25 that you have. Thank you very much.

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1 At this point we stand adjourned. Thank  
2 you.

3 (The Prehearing Conference was adjourned  
4 at 4:51 o'clock p.m.)  
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CERTIFICATE

This is to certify that the attached proceedings  
before the United States Nuclear Regulatory Commission  
in the matter of:

Name of Proceeding: Pacific Gas & Electric  
Diablo Canyon ISFSI

Docket Number: 72-26-ISFSI; ASLBP No. 02-  
801-01-ISFSI

Location: Shell Beach, California

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