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Subject: Comments of Beyond Nuclear on DOCKET NO. 72-26

To whom it may concern:

Attached please find the comments of Beyond Nuclear/Nuclear Policy Research Institute on DOCKET NO. 72-26 regarding NRC supplemental Environmental Assessment and Draft FONSI.

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**COMMENTS OF BEYOND NUCLEAR /
NUCLEAR POLICY RESEARCH INSTITUTE
REGARDING THE
U.S. NUCLEAR REGULATORY COMMISSION
SUPPLEMENT TO THE ENVIRONMENTAL ASSESSMENT
AND DRAFT FINDING OF NO SIGNIFICANT IMPACT
RELATED TO THE CONSTRUCTION AND OPERATION OF THE
DIABLO CANYON INDEPENDENT SPENT FUEL STORAGE INSTALLATION
DOCKET NO. 72-26
PACIFIC GAS AND ELECTRIC COMPANY**

July 2, 2007

Chief, Rulemaking, Directives, and Editing Branch,
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Submitted by email: NRCREP@nrc.gov

To Whom It May Concern:

On behalf of Beyond Nuclear / Nuclear Policy Research Institute (NPRI), I am submitting comments in response to Federal Register Notice dated May 31, 2007 at pages 30398-30399 regarding the United States Nuclear Regulatory Commission's (NRC) Supplemental on the Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI) for the construction and operation of the Diablo Canyon Independent Spent Fuel Storage Installation under Pacific Gas and Electric Company Docket No. 72-26.

The NRC draft supplemental assessment concludes that *"the probability of a successful terrorist attack on any such facility is very low. This conclusion is based on the NRC's continual evaluation of the threat environment and coordination with other federal, state and local agencies; protective measures currently in place that reduce the chances of any terrorist attack being successful; the robust design of dry cask storage systems, which provide substantial resistance to penetration; and NRC's security assessments of potential consequences of terrorist attacks at these facilities."*

The NRC Supplemental Environment Assessment is illogical, unreasonable and unacceptably deficient. It does not provide reasonable assurance that the NRC has made a "fully informed and well-considered" determination as required under the National Environmental Policy Act (NEPA).

To the contrary, NRC demonstrates that it has ignored important environmental consequences as the result of a credible and successful attack by an adversary on the proposed dry cask storage units at Diablo Canyon.

The agency further withholds documents from public review upon which the government bases critical and dubious assumptions in its analysis. As such, NRC imposes upon the affected public an unacceptable standard of "blind faith" and denies the public its due process for a thorough independent review as required by NEPA for the major federal action.

NRC further fails to address the National Infrastructure Protection Plan (NIPP) 2006 which seeks to protect critical infrastructure and key installations.

[http://www.dhs.gov/xlibrary/assets/NIPP_Plan_ExecSumm.pdf]

As the regulator of nuclear power plants which includes the oversight and enforcement for Independent Spent Fuel Storage Installations, the NRC bears heavy responsibility for homeland security. Nuclear power plants and their irradiated fuel storage installations are identified targets by adversaries of the United States. Nuclear power plants and their irradiated fuel storage systems are large fixed targets that are at present lightly defended. At present, the ISFSIs receive a lesser degree of protection than do the nuclear power plants themselves. This is unacceptable.

The National Commission On Terrorist Attacks Upon the United States [<http://www.9-11commission.gov/report/911Report.pdf>] identifies at page 154 in its public report that the original al-Qaeda plan was to hijack ten domestic commercial jet airliners and direct two of them into US nuclear power station sites. Such attacks could very well have deliberately targeted closely congregated dry casks sitting on open tarmacs at of the US nuclear power plant sites.

However, Supplemental Environmental Assessment identifies that the staff did not consider the impacts of terrorism on the ISFSI in the initial assessment. The Supplemental Environmental Assessment at Section 3.0 NRC Security Requirements for ISFSIS provides a vague set of criteria and assumptions with regard to acts of adversary aggression directed on the facility. NRC makes the incredible statement that simply because there is no history of aggression on a dry cask storage system should be regarded in whether or not such an attack on the future should or should not be viewed as credible. NRC further asserts that it

In our view, it is more pertinent to regard the potential vulnerability of these facilities than a dismissive review of the absence of history.

The NRC in its EA review has neglected to incorporate more critical factors including what constitutes an adequate and appropriate Design Basis Threat [DBT] for evaluating the proposed ISFSI. According to the Government Accountability Office (GAO) testimony given on April 4, 2006 before the Subcommittee on National Security, Emerging Threats and International Relations, House Committee on Government Reform, the GAO found "the process used to obtain stakeholder feedback created the appearance that changes were made based on what industry considered reasonable and feasible to defend against rather than on what as assessment of the terrorist threat called

for.”¹ Specifically, GAO found that NRC staff recommendations submitted to the Commission as informed by United States intelligence services were vetted by the Nuclear Energy Institute (NEI). According to GAO, NEI then determined that the recommended actions in a revised DBT to defend against the identified sets of weapons would be cost prohibitive. Further Congressional testimony revealed that these sets of weapons are being used by adversaries of the United States today in Iraq and Afghanistan against US defended facilities. These weapon sets includes rocket propelled grenades (RPGs) and 50-caliber rifles using armor piercing and incendiary rounds. The described rifles can be obtained at domestic gun shows. RPGs can be potentially be smuggled across US borders for use on domestic targets such as identified by the 9/11 Commission. Either of these weapons could potentially be used to breach and ventilate a dry cask or casks in the proposed ISFSI and ignite a zircaloy fuel fire involving tons of high-level radioactive waste in each of the closely congregated dry casks on an ISFSI often in an open line of site to such weapons.

Therefore, where the NRC states at page 4 in the Diablo Canyon Supplemental EA and FONSI that “NRC threat assessment staff reviews, analysis, coordinates, and disseminates threat and intelligence information to its licensees, at both strategic and tactical levels” is in fact contradicted by the findings of GAO-06-55T where the financial interests of the supposedly regulated industry are documented to have trumped general security considerations at nuclear power stations including the proposed ISFSI. Beyond Nuclear considers this to be a breach of national security.

As such, it is inappropriate and unacceptable that the environmental assessment fails to take into account the lack of site defenses and the associated lack of analysis of site consequences involving the proposed ISFSI where such weapons have not been incorporated. The Environmental Assessment and the FONSI for Diablo Canyon ISFSI should be rejected and rewritten incorporating these significant environmental impacts.

Furthermore, Section 3.1 of the Supplemental EA regards General Security Considerations. The NRC cites and states that it relies upon the nationwide effort to reduce an adversary’s access to commercial aircraft that might be used to attack the ISFSI.

However, such reliance does not address or evaluate the risk and consequence associated with an adversary gaining access to private aircraft laden with both fuel and high explosives that can be directed into the proposed ISFSI. According to GAO testimony to Congress in September 2003, the malicious use of general aviation aircraft remains a significant national security concern. “Since September 11, 2001, TSA (Transportation Security Administration) has taken limited action to improve general aviation security, leaving it far more open and potentially vulnerable than commercial aviation. General aviation is vulnerable because general aviation pilots are not screened before takeoff and

¹ GAO, Jim Wells, Testimony before the Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, US House of Representatives, GAO-06-55T, April 4, 2006, Nuclear Power Plants Have Upgraded Security, but the Nuclear Regulatory Commission Needs to Improve Its Process for Revising the Design Basis Threat, “What GAO Found,” p. 1.

the contents of planes are not screened at any point. General aviation includes more than 200,000 privately owned airplanes, which are located in every state at more than 19,000 airports. Over 550 of these airports also provide commercial service. In the last 5 years, about 70 aircraft have been stolen from general aviation airports, indicating a potential weakness that could be exploited by terrorists.”² There are more than 550,000 active general aviation pilots and instructors in the United States using jet propelled, propeller driven and helicopter aircraft. The GAO further identifies that non-US citizens can also possess active student pilot certificates in the United States.³ The TSA has concluded that it is impractical to conduct a threat and vulnerability assessments for the 19,000 general aviation airports nationwide despite Federal Bureau of Investigation findings that adversaries of the United States have considered launching attacks on critical infrastructure and key installations.⁴ Twin engine aircraft including private jets, as a single aircraft or in multiple aircraft coordinated attacks, can therefore potentially carry a substantial amount of explosives in conjunction with mounted shaped charges to breach and ventilate a dry storage cask or casks and ignite a zircaloy fuel fire. Such a fire could loft substantial amounts of radioactivity over considerable distances downwind.

Section 2.2 Summary of Alternatives Considered in the EA does not include any evaluation by PG&E nor does the NRC staff address in its EA consideration of Hardened Onsite Storage (HOSS) or Robust Storage of dry casks in bermed structures that remove the cask themselves from direct line of site by various weapons and dispersed on-site to reduce the likelihood of multiple casks being involved.

Section 4.0 Consideration of Environmental (Radiological) Impacts for Terrorist Acts states that the various casks are licensed or certified by NRC to meet stringent requirements for structural, thermal, shielding and critically performance and confinement integrity for normal and accident events. The NRC further states that the high-level nuclear waste is “further protected by the metallic zircaloy cladding.” However, these evaluations do not include the ability of the dry cask systems to perform their critical functions as the result of attack by shaped charges, rocket propelled grenades, military surplus or stolen anti-tank missile delivery systems (capable of penetrating 65 cm or more of rolled homogenous armor) or 50-caliber rifles and multiple firings of armor piercing and incendiary rounds or explosive laden aircraft. The EA further ignores such attacks that would deliberately seek to exploit the extremely high energy chemically stored in the zirconium cladding itself. Were a cask penetrated and ventilated so as to provide combustion of the zircaloy cladding in air, the highly exothermic combustion, if successfully initiated would liberate substantial amounts of radioactivity into the outside environment and downwind to populations, surface water systems and eventually groundwater systems.

² GAO, Gerald Dillingham, Testimony before the Committee on Commerce, Science and Transportation, US Senate, Aviation Security : Progress Since September 11, 2001 and the Challenges Ahead, September 2003, p. 14

³ GAO, General Aviation Security: Increased Federal Oversight is Needed, but Continued Partnership with the Private Sector is Critical to Long Term Success, Report to Subcommittee on Homeland Security, Committee on Appropriations, House of Representatives, November 2004, GA0-05-144, General Aviation Security, p. 10

⁴ Ibid.

The NRC Environmental Assessment therefore does not comply with NEPA because it fails to consider the extensive, cumulative and long term environmental, socio-economical and public health impacts arising from a successful attack on the storage of high-level radioactive waste in the proposed ISFSI. The EA is in further non-compliance because it additionally failed to analyze the risks and consequences associated with high-level nuclear waste in high density storage racks in the Diablo Canyon "spent" fuel pool.

Sincerely,

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