

RAS 15041

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February 4, 2008

Annette L. Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

DOCKETED
USNRC

February 5, 2008 (7:39am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SUBJECT: *Remanded Licensing Proceeding for Diablo Canyon ISFSI,
Docket No. 72-26*

Dear Ms. Vietti-Cook:

On behalf of San Luis Obispo Mothers for Peace ("SLOMFP"), I am writing to clarify SLOMFP's position with respect to the NRC Staff's Unopposed Request for Extension of Time (January 24, 2008), which you granted on January 25, 2008. While SLOMFP did not oppose the motion, and while SLOMFP does not currently seek any modification to your January 25 Order, SLOMFP wishes to alert you of its concern that the extensions may adversely impact SLOMFP's ability to complete discovery and prepare its case, therefore requiring SLOMFP to request additional time for discovery.

As you know, the Staff's motion requested two-week extensions of two deadlines established by CLI-08-01 (January 15, 2008) for the remanded licensing proceeding regarding the Diablo Canyon Independent Spent Fuel Storage Installation ("ISFSI"). First, the Staff requested an extension of the deadline for filing of the Staff's Vaughn Index in response to Contention 1(b), on the grounds that the limited number of individuals with the expertise to perform the reviews and the need to perform management and inter-office reviews would require more time than allotted in CLI-08-01. Second, the Staff requested an extension of the deadline for the parties' written Subpart K presentations on the merits of SLOMFP's Contention 2, on the ground that the Staff's primary witness for Contention 2 will be on medical leave for up to four weeks starting at the end of February.¹

SLOMFP considers the Staff's grounds for requesting the extensions to be reasonable, indeed unavoidable. Nevertheless, SLOMFP's accession to the Staff's motion should not be interpreted as agreement that the new April 14 deadline for Subpart K presentations will allow SLOMFP sufficient time to prepare its case on Contention 2. In fact, SLOMFP is concerned that the current discovery period on Contention 2 -- which ends February 29, 2008, without the possibility of even a brief extension into the month of March due to the Staff's primary expert's planned absence -- may be inadequate to allow SLOMFP to question the NRC Staff regarding its position on the contention.

¹ The Staff requested an extension, from January 29 to February 13, 2008, of the deadline for filing of the Staff's Vaughn Index in response to Contention 1(b); and an extension from March 31 to April 14, 2008, for the parties' written Subpart K presentations on the merits of SLOMFP's Contention 2.

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Pursuant to an agreement between the parties that was approved by Judge Hawkens in his January 24, 2008 Order, SLOMFP will submit its first set of discovery requests to the Staff regarding Contention 2 on February 6, 2008. The Staff's responses are due on February 20, 2008, a full week after the Staff's deadline for filing its Vaughn Index. In establishing this schedule, the parties took into account the Staff's concerns that (a) the Staff would need until February 13 to prepare a Vaughn Index and (b) the Staff did not believe it was feasible to prepare the Vaughn index *and* respond to discovery questions on Contention 2 simultaneously.

As a result of the agreed-upon discovery schedule, SLOMFP will not be able to complete two rounds of discovery requests before the Commission's deadline of February 29, 2008. Given that the Staff's expert on Contention 2 will be unavailable for the entire month of March, it will also be infeasible to obtain a short extension of the discovery period in order to complete a second round. If the discovery period is to be extended, it must be suspended during March and resumed in April after the Staff's primary witness returns to work.

If the Staff's answers to SLOMFP's February 6 discovery requests are fully responsive to SLOMFP's questions and do not require follow-up questioning, it is possible that a single round of discovery on Contention 2 will be sufficient. SLOMFP anticipates, however, that it may be necessary to request additional discovery on Contention 2. In light of the fact that the Staff's expert on Contention 2 may be unavailable for the entire month of March, it is possible that SLOMFP will need to request an extension of the discovery deadline into early April. In that event, it may not be feasible for SLOMFP to prepare its written Subpart K submissions by April 14, 2008.

It is too early to tell whether SLOMFP will require additional time for discovery, and thus it would be inappropriate to file a motion at this juncture. However, we wish to inform you that such a motion may become necessary. In that event, SLOMFP's cooperation with the Staff in establishing a discovery schedule, taking into consideration the apparently intractable limitations on the Staff's time and resources, should not be held against SLOMFP.

Sincerely,



Diane Curran

Cc: Service list