

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
)	
PACIFIC GAS AND ELECTRIC COMPANY)	Docket No. 72-26-ISFSI
)	ASLBP No. 08-860-01-ISFSI-BD01
(Diablo Canyon Power Plant Independent)	
Spent Fuel Storage Installation))	

NRC STAFF'S UNOPPOSED REQUEST FOR EXTENSION OF TIME

On January 15, 2008, the Commission issued an Order admitting limited portions of two contentions proffered by San Luis Obispo Mothers for Peace (SLOMFP) and setting a tentative schedule for further Commission consideration and proceedings.¹ For the admitted portion of Contention 1(b), which relates to the Staff's listing of source documents, the Commission directed the Staff to file with the Commission a complete list of documents on which it relied in preparing the environmental assessment, together with a *Vaughn* index for any documents for which the Staff claims a FOIA exemption, and to make available to the other parties any documents or portions thereof not covered by a FOIA exemption by February 29, 2008. *Id.* at 30. Pursuant to the Order, the other parties are permitted to respond to the Staff's document list and *Vaughn* index within seven days of the Staff's filing.

Regarding Contention 2, as admitted, which concerns the Staff's consideration of non-fatal health effects and land contamination, the Commission established a schedule for discovery and a Subpart K hearing. According to the Commission's tentative schedule, discovery would be completed by February 29, 2008, and the parties would submit detailed written submission pursuant to 10 C.F.R. § 2.1113 by March 28, 2008. The Commission also provided for the designation of a presiding officer to keep discovery on schedule and resolve

¹ *Pacific Gas and Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)*, (continued. . .)

discovery disputes. Thereafter, the administrative judge designated to preside over this case, E. Roy Hawkins, convened a conference call on Wednesday, January 23, 2008, to discuss the discovery schedule and his role in addressing responses to the Staff's reference document list and *Vaughn* index. Pursuant to the presiding officer's direction, the parties conferred on scheduling matters before the conference call and reached agreement on the time extensions requested herein and discussed below. On January 24, 2008, the presiding officer issued *Scheduling and Management Order for Discovery* summarizing the conference call and setting a tentative discovery schedule.

The references relied on by the Staff in developing the environmental assessment include a substantial amount of sensitive security information. To maximize the amount of information made available to the parties the Staff will perform a detailed, line-by-line review of each document in order to ensure that only information which is properly subject to a FOIA exemption is withheld. For security information, this review must be performed by Staff familiar with the underlying documents and with the NRC's processes and guidance on handling security information. Further, due to the extremely sensitive nature of the information, the importance of preventing inadvertent disclosure is enhanced and therefore requires substantial management oversight. Because of the limited number of individuals with the expertise to perform these reviews and the need to perform management and inter-office reviews to ensure consistency and accuracy of the redactions, the Staff respectfully requests an extension until February 13, 2008, to provide the list of reference documents, the *Vaughn* index and provide those portions not covered by a FOIA exemption to the other parties. As noted above, the other parties have been consulted and do not object to the Staff's request.²

(. . .continued)
CLI-08-01, 66 NRC ____.

² Counsel for SLOMFP has represented that she intends to file a responsive motion addressing the impact of the Staff's request on the discovery deadline established by the Commission. While the Staff recognizes the possibility that events may at some point necessitate a change in the discovery schedule, (continued. . .)

As provided by the Commission's Order, the other parties will be afforded the opportunity to respond to the Staff's filing. As noted in the presiding officer's scheduling order, the parties and the presiding officer have interpreted the Commission Order to mean that the Commission will rule on any responses or, if not, explicitly direct the presiding officer to do so. As requested by the presiding officer, the Staff wishes to raise this matter to the Commission's attention in the event that our understanding is incorrect.

Regarding the deadline for written submissions to the Commission, the Staff's primary expert witness for Contention 2 is expected to undergo surgery late in February which will necessitate a recovery period of up to four weeks. Given these circumstances, the Staff respectfully requests an extension of the deadline for the filing of written submissions until April 14, 2008. The other parties have been consulted and do not object to the Staff's request,

Respectfully submitted,

/RA/

Lisa B. Clark
Counsel for the NRC Staff

Dated at Rockville, Maryland
this 24th day of January, 2008

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it would be premature at this juncture to presume that the tentative schedule set by the presiding officer – which contemplates completion by the Commission's deadline – cannot be met.

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Spent Fuel Storage Installation))

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter in accordance with 10 C.F.R. § 2.314(b).

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Name of Party: NRC Staff

Respectfully submitted,

/RA/

Molly L. Barkman
Counsel for the NRC Staff

Dated at Rockville, Maryland
this 24th day of January, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S UNOPPOSED REQUEST FOR EXTENSION OF TIME" and "NOTICE OF APPEARANCE" in the above-captioned proceedings have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), and by electronic mail as indicated by a double asterisk (**) on this 24TH day of January, 2008..

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/RA/

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