

RAS D-6

March 3, 2008

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

In the matter of  
Pacific Gas and Electric Company  
Diablo Canyon Nuclear Power Plant  
Unit Nos. 1 and 2  
Independent Spent Fuel Storage Installation

Docket # 72-26

March 5, 2008 (3:29pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**SAN LUIS OBISPO MOTHERS FOR PEACE'S  
MOTION TO COMPEL DISCOVERY RESPONSES BY NRC STAFF**

Pursuant to 10 C.F.R. § 2.740(f), San Luis Obispo Mothers for Peace ("SOMFP") hereby moves the Atomic Safety and Licensing Board ("ASLB") to compel the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") Staff to answer the following interrogatories, admission requests, and document production requests that the Staff either failed to answer or refused to answer in NRC Staff's Response and Objections to San Luis Obispo Mothers for Peace's First Set of Discovery Requests (February 22, 2008) ("NRC Staff Response").

**1. General Document Production Request No. 1.** In this document production request, SLOMFP requested:

All documents in your possession, custody or control that are identified, referred to or used in any way in responding to all of the above general interrogatories and the following interrogatories and requests for admissions relating to specific contentions. If you withhold any document or any portion thereof, please describe in detail the basis for your decision to withhold the information.

In response to Interrogatory No. 7, the NRC Staff identified various calculations and spreadsheets related to the consequences of an attack on the Diablo Canyon ISFSI. These documents are responsive to Document Production Request No. 1, and have not been identified as privileged or otherwise confidential. Therefore they should have been produced.

2. **Specific Interrogatory No. 1.** In this interrogatory, SLOMFP requested the following information:

In the Supplement to the Environmental Assessment and Final Finding of No Significant Impact Related to the Construction and Operation of the Diablo Canyon Independent Spent Fuel Storage Installation (August 2007), the Staff stated that:

As explained in the EA supplement, the staff has determined the probability of a successful terrorist attack (i.e., one which results in a significant radiological event), to be very low.

*Id.* at A-6. Please answer the following questions with respect to that statement:

- a. Identify the criteria by which the Staff identified a hypothetical terrorist attack as “successful.”
- b. In preparing the EA, if an attack would not cause early fatalities, did you consider it to be successful?
- c. Please provide all quantitative and qualitative criteria by which you determined that the probability of an attack is “very low.”
- d. Please provide all quantitative and qualitative criteria by which you determine that a radiological event is “significant,” including identification of all reference documents you rely on.
- e. Please provide all quantitative and qualitative criteria by which you determine that a release of radioactivity to the environment is significant, including identification of all reference documents you rely on.

The Staff refused to answer the questions posed in subparagraph c, on the ground that it is “unlikely to lead to the discovery of relevant evidence or necessary to a proper decision as required by 10 C.F.R. § 2.720(h)(2)(ii), as Contention 2 is limited to the consideration of land contamination and non-fatal health effects from a hypothetical terrorist attack in the Diablo Canyon ISFSI EA Supplement.” NRC Staff Response at 12. The Staff is incorrect in arguing that the interrogatory is unlikely to lead to the discovery of relevant evidence or unnecessary to a proper decision. As demonstrated in the introduction to the interrogatory, the Supplement to the Environmental Assessment and Final Finding of No Significant Impact Related to the Construction and Operation of the Diablo Canyon Independent Spent Fuel Storage Installation (August 2007) (“Final EA Supplement”) appears to set two related criteria for determining

whether the environmental impacts of an attack on the Diablo Canyon ISFSI are significant: their likelihood and whether they are “successful,” *i.e.*, whether they cause harm. The purpose of the interrogatory is to better understand the use of those criteria by the NRC Staff in its environmental analysis. Thus, the answer to the question may yield information that helps SLOMFP to evaluate the question of whether the NRC Staff did – as it appears from the Final EA Supplement, but is denied by the Staff in discovery – judge that nonfatal attacks are too improbable to warrant consideration in an environmental impact statement.

**3. Specific Interrogatory No. 2.** In this interrogatory, SLOMFP requested the following information:

In using a “security assessment framework as a screening and assessment tool” (EA Draft Supplement at 6), did you screen out “[r]emote or speculative scenarios and scenarios with insignificant consequences?” *See* Draft Environmental Assessment for Pa’ina Irradiator at B-5 (2007).

The Staff objects to this interrogatory on the ground that it is “not likely to lead to the discovery of relevant evidence, and unnecessary to a proper decision as required by 10 C.F.R. § 2.720(h)(2)(ii),” because “Contention 2 is limited to the consideration of land contamination and non-fatal health effects from a hypothetical terrorist attack in the Diablo Canyon ISFSI EA Supplement and the security assessment tool was not used to assess those environmental impacts.” NRC Staff Response at 12. The interrogatory should be answered because it is “reasonably calculated to lead to the discovery of admissible evidence” and necessary to a proper decision regarding the question of whether the Staff used the presumed low likelihood of nonfatal radiological consequences to determine that the environmental impacts of an attack on the Diablo Canyon ISFSI would be insignificant. In its discovery responses, the Staff admits that nonfatal radiological consequences are potentially significant. NRC Staff Response at 19. Therefore, the requested information is necessary in order to fully understand how the Staff

could reach a conclusion that the impacts of an attack causing nonfatal impacts are, in this instance, insignificant.

The ASLB should also reject the Staff's asserted ground that the security assessment tool was not used to assess the environmental impacts of an attack on the Diablo Canyon ISFSI. The Staff specifically discussed its use of the security assessment tool in the EA Supplement. *See* EA Supplement at 6. Clearly, the Staff's use of the security assessment tool is relevant.

**4. Specific Interrogatory No. 3.** In this interrogatory, SLOMFP requested the following information:

SPECIFIC INTERROGATORY NO. 3: If you answer to Specific Interrogatory No. 2 is yes, by what criteria did you define "insignificant consequences?"

The Staff responded that the answer to Specific Interrogatory No. 2 is "not yes." Because the Staff did not respond to Specific Interrogatory No. 2 at all, it should be required to respond to Specific Interrogatory No. 3 if it is compelled to respond to Interrogatory No. 2 and the answer to that interrogatory is yes.

**5. Specific Interrogatories Nos. 4, 5, 6, and 9.** In these interrogatories, SLOMFP requested the following information:

SPECIFIC INTERROGATORY NO. 4: If your answer to Specific Interrogatory No. 2 is no, did you screen out "[r]emote or speculative scenarios and scenarios with insignificant consequences" in some other part of your assessment of the need for additional security measures at the Diablo Canyon ISFSI? If so, please describe at what point in the analysis you applied that criterion.

SPECIFIC INTERROGATORY NO. 5: Please explain any differences between your analytical procedures for the Diablo Canyon EA and the Pa'ina irradiator EA with respect to the screening out of scenarios with insignificant consequences.

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SPECIFIC INTERROGATORY NO. 6: Please explain the reason for any differences between your analytical procedures for the Diablo Canyon EA and the Pa'ina irradiator EA with respect to the screening out of scenarios with insignificant consequences, as described above in response to Specific Interrogatory No. 5.

SPECIFIC INTERROGATORY NO. 9: In opposing the admission of Contention 2, the Staff stated that “[t]he Staff also addresses ‘the potential for early fatalities’ as an additional consideration combined with other factors to determine the need for additional security measures at the facility, not to rule out other threat scenarios that cause other types of impacts.” NRC Staff’s Answer to Contentions at 19. Please answer the following questions:

a. Please list the “other factors” that you considered “to determine the need for additional security measures at the facility,” and provide all quantitative and qualitative criteria by which you considered these factors, including identification of reference documents on which you relied.

b. Among the factors identified above in response to Specific Interrogatory 9.a., which of them must be present in order to warrant additional security measures at the Diablo Canyon ISFSI?

c. Please describe the manner in which you applied the factors described above in response to Specific Interrogatory 9.a., including the chronological order in which you applied them.

The NRC Staff argues that it should not be required to respond to these interrogatories because they are not likely to lead to the discovery of relevant evidence, and are unnecessary to a proper decision as required by 10 C.F.R. § 2.720(h)(2)(ii). NRC Staff Response at 13-14. As discussed above with respect to Interrogatories Nos. 1 and 2, because the information sought by SLOMFP may illuminate the Staff’s reasoning process, it is relevant and discoverable.

With respect to Interrogatory No. 4, the NRC Staff also cites the Commission’s ruling in CLI-08-01 that “adjudication of alternative terrorist scenarios will not be permitted in this proceeding.” NRC Staff Response at 13. The standard for discovery is relevance, however, not admissibility of the information sought in discovery. *Safety Light Corp.* (Bloomsburg Site Decontamination), LBP-92-3A, 35 NRC 110, 111-12 (1992). The interrogatory is seeks discoverable information on the use of probability and consequence criteria by the NRC Staff in its environmental analysis.

**6. Request for Admissions No. 6.** In this request for admission, SLOMFP asked the NRC Staff to admit or deny the following statement:

The decision-making matrix proposed in the November 2004 SECY paper was used by the Staff to rule out consideration of attacks on the Diablo Canyon ISFSI that do not cause immediate fatalities.

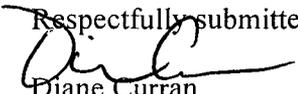
The Staff objects to the request on the ground that it is unlikely to produce relevant information. The Staff's objection is without merit. The request goes to the heart of Contention 2, because it seeks to establish whether the Staff did or did not rely on the November 2004 SECY paper – which was identified as a reference document in the Staff's Vaughn Index – to exclude from the Final EA Supplement consideration of attacks with nonfatal consequences. Therefore it is relevant and should be answered.

**7. Specific Document Production Request No. 1.** In this request, SLOMFP sought the following documents:

Any and all documents containing decision-making frameworks or other criteria for assessing security needs that take into consideration the consequences of an attack on a facility licensed by NRC, including the SECY paper referenced in Request for Admissions No. 1.

The Staff objects to this request on the ground that it requests the Staff to disclose its “assessment of security measures” and does not relate to the Staff's assessment of environmental consequences. NRC Staff Response at 25. The Staff's response is inconsistent with the Final EA Supplement, which clearly shows that the Staff relied on its security assessments in order to reach a conclusion about the significance of the environmental impacts of attacks on the Diablo Canyon ISFSI. The request seeks relevant information and therefore should be answered.

Respectfully submitted,

  
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March 3, 2008

## CERTIFICATE OF SERVICE

I certify that on March 3, 2008, copies of San Luis Obispo Mothers for Peace's Motion to Compel Discovery Responses by NRC Staff were served on the following persons by e-mail and first-class mail:

<p>Office of the Secretary (original and two copies) Rules and Adjudications Branch U.S. Nuclear Regulatory Commission 11555 Rockville Pike Rockville, MD 20852 Also by e-mail to: <a href="mailto:hearingdocket@nrc.gov">hearingdocket@nrc.gov</a></p>	<p>William V. Manheim, Esq. Jennifer Post Pacific Gas &amp; Electric Co. 77 Beale Street B30A San Francisco, CA 94105 Also by e-mail to: <a href="mailto:AxFn@pge.com">AxFn@pge.com</a>, <a href="mailto:JLKm@pge.com">JLKm@pge.com</a></p>
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