

March 10, 2008 (8:00am)

March 8, 2008

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

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

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

Pursuant to 10 C.F.R. § 2.730(a), San Luis Obispo Mothers for Peace ("SLOMFP") hereby responds to the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") Staff's motion to strike San Luis Obispo Mothers for Peace's Motion to Compel Discovery Responses by NRC Staff (March 3, 2008) ("Motion to Compel"). NRC Staff's Motion to Strike San Luis Obispo Mothers for Peace's Motion to Compel Discovery Responses by the NRC Staff (March 5, 2008) ("Motion to Strike"). The Staff's Motion to Strike is without merit, and moreover the Staff has failed to respond to any of the arguments in SLOMFP's Motion to Compel. Therefore the Presiding Officer should deny the Staff's motion and order the Staff to respond to SLOMFP's discovery requests.

The Staff's Motion to Strike is based on the premise that in CLI-08-01, the Commission intended the February 29, 2008, discovery deadline in this proceeding to apply to motions to compel. SLOMFP respectfully submits that the Staff's interpretation of CLI-08-01 is unfounded. In setting a 45-day discovery period, CLI-08-01 does not include motions to compel within the scope of discovery-related activities that must be completed before February 29, 2008. Instead, the decision states that discovery includes "interrogatories, requests for admissions, and requests for production of documents." CLI-08-01, ___ NRC ___, slip op. at 20 (January 15, 2008). Nor

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has the Presiding Officer added motions to compel to the scope of activities that must be completed before February 29, 2008, either in his January 24, 2008, Scheduling and Management Order for Discovery or the telephone conference on the previous day. Instead, the Order states that “[u]nder the current discovery schedule, it is unlikely that there would be time for a second round of interrogatories, and any motion to compel would have to be submitted and resolved with extreme expedition.” The Order does not state that any motion to compel would have to be submitted before the close of the discovery period, nor does it shorten the ten-day period allowed by NRC regulation 10 C.F.R. § 2.741(f).

Not only does the Staff’s interpretation of CLI-08-01 and the Presiding Officer’s Order go beyond the plain language of those decisions, but it undermines the NRC discovery regulations’ general goal of ensuring compliance with the discovery process by all parties. To require the filing of a motion to compel before the close of discovery would reward recalcitrance on the part of responding parties, by forcing requesters to seek enforcement against incomplete discovery responses within a time period so constrained as to prevent meaningful analysis or action.

SLOMFP also respectfully submits that undersigned counsel submitted SLOMFP’s Motion to Compel with the most extreme degree of expedition possible, given the significant additional obligation imposed by the Commission on SLOMFP during the last two weeks of the discovery period, *i.e.*, to evaluate thousands of pages of reference documents, produced by the NRC Staff in connection with the submission of its Vaughn Index on February 13, 2008; and to submit any late-filed contentions within fourteen days or by February 27, 2008. *See* CLI-08-01, slip op. at 31. SLOMFP did so, submitting Late-filed Contention 6 on February 27.¹ Only after

¹ SLOMFP did not have time to evaluate the NRC Staff’s set of reference documents for purposes of preparing a late-filed contention between February 14 and February 22, because

completing that formidable task did SLOMFP's counsel and expert have time to turn to an evaluation of the NRC Staff's discovery responses and prepare a motion to compel. SLOMFP filed its Motion to Compel as expeditiously as possible, within three business days after filing Contention 6 on February 27, within one business day after the close of discovery on February 29, and within the ten-day period prescribed by 10 C.F.R. § 2.741(f).

Accordingly, because neither the Commission nor the Presiding Officer set February 29 as a deadline for filing motions to compel, and because SLOMFP prepared its Motion to Compel with all possible expedition given its other obligations in this case, the Staff's Motion to Strike should be denied. Because the Staff has failed to submit any substantive response to SLOMFP's Motion to Strike within the time period allowed by 10 C.F.R. § 2.730(a), the Staff should be ordered to provide the information requested in SLOMFP's Motion to Compel.

In the alternative, if the Presiding Officer finds that SLOMFP was required to submit its Motion to Compel by February 29, 2008, SLOMFP hereby requests the Presiding Officer to retroactively extend the time for submitting the motion by one business day, until March 3, 2008, in order to account for the fact that SLOMFP was unable to comply with the deadline due to its other obligations in this proceeding, as described above.

Respectfully submitted,


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March 8, 2008

during that period it was required to respond to discovery requests from both the NRC Staff and PG&E.

CERTIFICATE OF SERVICE

I certify that on March 8, 2008, copies of San Luis Obispo Mothers for Peace's Opposition to NRC Staff's Motion to Strike SLOMFP's Motion to Compel Discovery Responses by NRC Staff were served on the following persons by e-mail and first-class mail:

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