

ORIGINAL

March 5, 2008 (3:29pm)

March 5, 2008

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

Pacific Gas and Electric Co.

Docket No. 72-26-ISFSI

(Diablo Canyon Power Plant Independent
Spent Fuel Storage Installation)PACIFIC GAS AND ELECTRIC COMPANY'S
OPPOSITION TO SAN LUIS OBISPO MOTHERS FOR PEACE
MOTION TO COMPEL DISCOVERY RESPONSES BY NRC STAFFI. INTRODUCTION

In its filing of March 3, 2008,¹ San Luis Obispo Mothers for Peace ("SLOMFP") seeks to compel the NRC Staff to answer certain interrogatories, admission requests, and document production requests following the "NRC Staff's Responses and Objections to San Luis Obispo Mothers for Peace's First Set of Discovery Requests," dated February 22, 2008, as supplemented on February 29, 2008. For the reasons discussed below, Pacific Gas and Electric Company ("PG&E") hereby opposes SLOMFP's motion to compel as out of time. While PG&E would not normally interject itself into a discovery dispute between other parties, this motion raises a schedule matter in which PG&E has a clear interest.

In its Memorandum and Order of January 15, 2008 (CLI-08-01), the Commission directed that discovery on Contention 2 — the subject of SLOMFP's Motion to Compel — "will conclude no later than 45 days after the date of [its] decision." CLI-08-01, slip op. at 30. This

¹ "San Luis Obispo Mothers for Peace's Motion to Compel Discovery Responses by NRC Staff," dated March 3, 2008 ("Motion to Compel").

directive was reiterated by the Presiding Officer in the Scheduling and Management Order for Discovery (“Scheduling Order”), dated January 24, 2008. In the Scheduling Order, the Presiding Officer set a date of February 29, 2008, for completing discovery. Scheduling Order, at 4. The Presiding Officer specifically highlighted 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.” *Id.* Subsequently, the Presiding Officer granted the NRC Staff and SLOMFP a two-day extension of time for filing responses to discovery requests.² In that Order, the Presiding Officer again reminded the parties that discovery was to be completed by February 29, 2008.³

II. DISCUSSION

On March 3, 2008, SLOMFP filed a motion to compel discovery responses by the NRC Staff. Here, SLOMFP’s motion would adversely impact the overall schedule for this proceeding. PG&E has a strong interest in the orderly conduct of this proceeding in order to reduce uncertainty surrounding the Diablo Canyon Independent Spent Fuel Storage Installation (“ISFSI”). Permitting SLOMFP to ignore the clear and unambiguous deadlines imposed by both the Commission and the Presiding Officer would set a bad precedent and could lead to additional delays in this proceeding.

In its motion to compel, SLOMFP did not even mention that its filing was late or otherwise provide any explanation for failing to comply with the Commission and Presiding

² See Order, “Granting NRC Staff’s Unopposed Request for Extension,” dated February 15, 2008.

³ Separately, the NRC Staff had requested an extension of time with respect to due date for filing a Reference Document List, the *Vaughn* index, and non-exempt documents and the due date for submitting the parties’ written submissions. In an Order dated January 25, 2008, the Commission granted the requests for an extension of time, but did not change the February 29, 2008 deadline for completing discovery on Contention 2.

Officer directives. A party seeking to extend discovery beyond a deadline may obtain an extension on the discovery period only by showing that there is good cause shown for why the deadline was not met. *Georgia Power Company, et al.* (Vogle Electric Generating Plant, Units 1 and 2), LBP-94-16, 39 NRC 257, 260-61 (1994); *see also Kerr-McGee Chemical Corp.* (West Chicago Rare Earths Facility), LBP-85-46, 22 NRC 830, 832 (1985) (refusing to excuse compliance with discovery schedule based on a need to prepare for a related state court trial). In the absence of a good cause for its failure to comply with the Scheduling Order, SLOMFP's motion to compel should be denied.

Finally, while we are not addressing the specifics of the motion or the Staff's objection, we reiterate that the contention, as admitted by the Commission, is a narrow contention of omission related to whether the EA Supplement needs to consider further the issues of latent health effects and land contamination. SLOMFP's motion to compel implicitly suggests an overly-broad scope to the contention. For example, SLOMFP states that the NRC Staff's answers to the question could help SLOMFP evaluate "the question of whether the NRC Staff did . . . judge that non-fatal health effects are too *improbable* to warrant consideration" and "the question of whether the [NRC] 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." Motion to Compel, at 3 (emphasis added). The Commission has already decided that this limited proceeding does not extend to adjudicating the credibility or likelihood of hypothetical terrorist scenarios. CLI-08-01, slip op. at 24.

III. CONCLUSION

SLOMFP's motion to compel does not comply with the Scheduling Order set by the Presiding Officer. Nor does SLOMFP provide any explanation for its failure to seek an extension of time in which to complete discovery. For these reasons, SLOMFP's motion to compel should be denied.

Respectfully submitted,



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Dated in Washington, District of Columbia
this 5th day of March 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
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Pacific Gas and Electric Co.)	Docket No. 72-26-ISFSI
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(Diablo Canyon Power Plant Independent)	
Spent Fuel Storage Installation))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "PACIFIC GAS AND ELECTRIC COMPANY'S OPPOSITION TO SAN LUIS OBISPO MOTHERS FOR PEACE MOTION TO COMPEL DISCOVERY RESPONSES BY NRC STAFF" have been served as shown below by electronic mail, this 5th day of March 2008. Additional service has also been made this same day by deposit in the United States mail, first class, as shown below.

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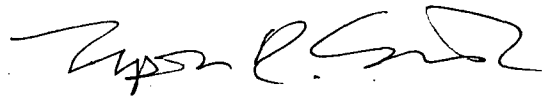
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