

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judge:

E. Roy Hawkens, Presiding Officer

In the Matter of

PACIFIC GAS and ELECTRIC CO.

(Diablo Canyon Power Plant Independent
Spent Fuel Storage Installation)

Docket No. 72-26-ISFSI

ASLBP No. 08-860-01-ISFSI-BD01

April 4, 2008

**SCHEDULING AND CASE MANAGEMENT ORDER
FOR ADJUDICATION OF CONTENTION 1(b)**

By Order dated March 27, 2008, the Commission directed the Presiding Officer to resolve Contention 1(b) on an expedited basis and, absent unanticipated circumstances, to issue a decision no later than May 30 (CLI-08-05, slip op. at 4).¹ Pursuant to that Order, I convened a telephone conference call with the parties on April 2 to develop a road map for adjudicating Contention 1(b) on an expedited basis.² This Scheduling and Case Management Order contains: (1) the schedule for this expedited proceeding; and (2) the administrative directives governing this proceeding.

I. SCHEDULE

During the conference call on April 2 (which was transcribed), I expressed the view that – in conformance with the Commission’s directive to issue a decision by May 30 (CL-08-05, slip

¹ The Commission admitted Contention 1(b) “to the extent that it alleges that the [NRC] Staff failed to provide source documents or information underlying its analysis, and failed to identify appropriate [Freedom of Information Act] exemptions for [the Staff’s] withholding decisions” (Pacific Gas and Elec. Co. (Diablo Canyon Independent Spent Fuel Storage Installation), CLI-08-01, 67 NRC __ (Jan. 15, 2008) (slip op. at 19)). Contention 1(b), as admitted, is in the nature of a contention of omission.

² See Notice of Conference Call at 1-2 (Apr. 1, 2008) (unpublished).

op. at 4) – an accelerated schedule must be established that will ensure the filing of all written pleadings by the first week in May so that, if warranted, oral argument could be heard during the week of May 5. In furtherance of that view, the parties agreed to adhere to the following schedule:

a. **April 10, 2008**

1. The Intervenor, San Luis Obispo Mothers for Peace (SLOMFP), will file a brief whose scope is *confined* to discussing and clarifying the issues it raised in the pleading it submitted to the Commission on February 20, 2008. See SLOMFP Response to NRC Staff's Vaughn Index, Request for Leave to Conduct Discovery Against the NRC Staff, Request for Access to Unredacted Reference Documents, and Request for Procedures to Protect Submission of Sensitive Information (Feb. 20, 2008). SLOMFP shall ensure the discussion in its brief does *not* go beyond the details in its pleading to the Commission, which challenged the “completeness of the Staff’s Reference Document List and the adequacy of the Staff’s Vaughn Index” (CLI-08-05, slip op. at 3). SLOMFP’s brief shall be a “stand-alone” document – that is, it shall include as indexed attachments any material that the brief cites or relies upon that is significant to SLOMFP’s argument.³
2. SLOMFP may file a motion for discovery. But cf. CLI-08-05, slip op. at 5 (discovery “is sparingly granted” in this type of litigation).⁴

³ To promote efficiency in my review of the pleadings, as well as for any eventual appellate review, all briefs/motions/pleadings filed in this proceeding shall be “stand-alone” documents as described above in text.

⁴ All motions filed in this proceeding shall comply with 10 C.F.R. § 2.323 (2007). In this regard, the parties are reminded that a motion “must be rejected if it does not include a certification by the attorney . . . of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion” (10 C.F.R.

b. **April 18, 2008**

1. The NRC Staff and the Applicant, Pacific Gas & Electric Co. (PG&E), will file answers to SLOMFP's brief.
2. The NRC Staff will file a Motion for Summary Disposition, which complies with the requirements in 10 C.F.R. § 2.710.
3. The NRC Staff and PG&E will file answers to any discovery motion filed by SLOMFP.

c. **April 28, 2008**

1. SLOMFP and PG&E will file answers to the NRC Staff's Motion for Summary Disposition (10 C.F.R. § 2.710). In its answer, SLOMFP will state whether it believes oral argument is warranted, and it will provide a brief explanation in support of its view.
2. SLOMFP may file a Motion for Summary Disposition (10 C.F.R. § 2.710).

d. **May 5, 2008**

1. The NRC Staff and PG&E will file answers to any Motion for Summary Disposition filed by SLOMFP (10 C.F.R. § 2.710). In their respective answers, the NRC Staff and PG&E will state whether they believe oral argument is warranted, and they will provide a brief explanation in support of their views.

e. **May 7, 2008**

1. The parties shall reserve the afternoon of May 7 for oral argument, in the event the Presiding Officer determines that argument would be beneficial.

I am grateful to the parties for their cooperative efforts in the crafting of this expedited schedule. Strict adherence to this schedule is critical in order to comply with the Commission's

directive to resolve Contention 1(b) no later than May 30, 2008. Accordingly, requests for extensions of time will be viewed with extreme disfavor.

II. ADMINISTRATIVE DIRECTIVES

A. Service on the Presiding Officer and on Other Participants

1. Presiding Officer Transmittal Information

For each pleading or other submission filed before the Presiding Officer or the Commission in this proceeding, subject to the requirement of subsection 4 below, in addition to submitting an original and two conforming copies to the Office of the Secretary as required by 10 C.F.R. § 2.304(f) and serving a copy on every other participant in this proceeding in accordance with section 2.305(b), a participant should serve conforming copies on the Presiding Officer as follows:

a. Regular Mail To complete service on the Presiding Officer via first-class mail, a participant should send conforming copies to the Presiding Officer and the Presiding Officer's law clerk at the following address:

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

For mail service, the NRC staff may use the NRC internal mail system (Mail Stop T-3F23) in lieu of first-class mail.

b. Overnight or Hand Delivery To complete service on the Presiding Officer via overnight (e.g., express mail) or hand delivery, a participant should send conforming copies to the Presiding Officer and the Presiding Officer's law clerk at the following address:

Atomic Safety and Licensing Board Panel
Mail Stop T-3F23, Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

It should be noted that use of the Presiding Officer's regular mail address (see subsection a, above) on an overnight/hand delivery (such as Federal Express) may delay receipt of the filing.

c. Facsimile Transmission To complete service on the Presiding Officer by facsimile transmission, a participant should (i) send one copy by rapifax to the attention of the Licensing Board Chairman at (301) 415-5599 (verification (301) 415-7399); and (ii) that same date, send conforming copies to the Presiding Officer's law clerk by regular mail at the address given in subsection a, above.

d. E-Mail To complete service on the Presiding Officer by e-mail transmission, a participant should (i) send the filing (which should include the certificate of service) as a file attached to an e-mail message directed to the Presiding Officer and the Presiding Officer's law clerk (Roy.Hawkens@nrc.gov and Erica.LaPlante@nrc.gov); and (ii) send paper conforming copies that same date to the Presiding Officer and the Presiding Officer's law clerk by regular mail at the address given in subsection a, above.

If a participant has a pleading it wishes to send by e-mail that includes attachments it is unable to convert to electronic form, it should do one of the following:

- i. If the attachments the participant is unable to convert to electronic form are fifteen (15) pages or less, contemporaneous with the transmission of the pleading by e-mail the attachments should be sent by a separate facsimile transmission. The e-mail and facsimile transmissions should note that separate transmission modes are being used. The paper conforming copies of the pleading and attachments should be sent to the Presiding Officer and the Presiding Officer's law clerk by regular mail at the address given in subsection a, above.
- ii. If the attachments the participant is unable to convert to electronic form are more than fifteen (15) pages, the pleading should be sent by e-mail and the paper conforming copy of the pleading with the attachments should be sent to the Presiding Officer and the Presiding Officer's law clerk by express mail or other means that will ensure delivery on the next business day. The e-mail should note that there will be next-day service of the pleading with the attachments.

2. Timely Service by Hand Delivery, Facsimile Transmission, or E-Mail

For service on the Presiding Officer to be timely, any pleading or other submission served by: (i) hand delivery must be received by 4:30 p.m. Eastern Time on the due date; and (ii) facsimile transmission or e-mail must be received by the Presiding Officer no later than 5:00 p.m. Eastern Time on the due date.

3. Service on Other Participants

Whichever of the methods outlined above is used for service on the Presiding Officer, the participant serving the pleading should employ the same or a comparable method to make service on other participants and the Office of the Secretary (e-mail: hearingdocket@nrc.gov; facsimile number: (301) 415-1101 (facsimile verification number: (301) 415-1966)).

4. Receipt of All Filings

Absent some other directive from the Presiding Officer, all filings directed to the Presiding Officer shall be served on the Presiding Officer and the other participants so as to ensure receipt on the day of filing. Absent some other directive from the Presiding Officer, the participants may use any of the methods outlined above so long as the filing is timely received by the Presiding Officer and the other participants.

B. Limitations on Pleading Length and Reply Pleadings

1. Page Limitations

Aside from the motions and related responsive pleadings discussed supra Section I, any motion filed after the date of this Scheduling and Case Management Order, and any related responsive pleadings to such a motion, shall not exceed ten (10) pages in length (including signature page) absent preapproval of the Presiding Officer. A request for Presiding Officer preapproval to exceed this page limitation shall be sought in writing no less than 3 business days prior to the time the motion or responsive pleading is filed or due to be filed. A request to exceed this page limitation must: (1) indicate whether the request is opposed or supported by

the other participants to the proceeding; (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

2. Reply Pleadings

In accordance with the agency's rules of practice, leave must be sought to file a reply to a response to a motion. See 10 C.F.R. § 2.323(c). A request for Presiding Officer preapproval to file a reply shall be sought in writing no less than 3 business days prior to the time the reply will be filed.⁵ A request to file a reply must: (1) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (2) demonstrate good cause for permitting the reply to be filed.

C. Motions for Extension of Time

The Commission directed that the adjudication of Contention 1(b) is to be conducted on an expedited basis and that, absent unanticipated circumstances, a decision shall be issued no later than May 30, 2008. Mindful of that directive, the parties to this proceeding – taking into account their respective schedules – participated in the crafting of this scheduling order. Under these circumstances, any motion for an extension of time will be viewed with extreme disfavor. Any such motion shall be submitted in writing at least 3 business days before the due date for the pleading or other submission for which an extension is sought.

D. Opposing a Request to Exceed Page Limitations, to File a Reply, or to Extend the Time for Filing a Pleading

Any written opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be served on the Presiding Officer, the Office of the Secretary, and counsel for the other participants in the particular proceeding by facsimile transmission,

⁵ In this proceeding, for a reply to be timely, it would have to be filed within 5 days of the date of service of the response it is intended to address.

e-mail, or other means that will ensure receipt on the next business day after the filing of the request.

E. Exhibits/Attachments to Filings

If a participant files a pleading or other submission with the Presiding Officer that has additional documents appended to it as exhibits or attachments, a separate alpha or numeric designation (e.g., Exhibit 1; Attachment A) should be given to each appended document, either on the first page of the appended document or on a cover/divider sheet in front of the appended document. An Index identifying each attachment shall precede the attachments.

It is so ORDERED.

BY THE PRESIDING OFFICER⁶

/RA/

E. Roy Hawkens
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 4, 2008

⁶ Copies of this Initial Scheduling and Management Order were sent this date by Internet e-mail to counsel for: (1) Pacific Gas and Electric Co.; (2) San Luis Obispo Mothers for Peace; and (3) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
PACIFIC GAS AND ELECTRIC CO.) Docket No. 72-26-ISFSI
)
)
(Diablo Canyon Power Plant)
Independent Spent Fuel Storage)
Installation))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB SCHEDULING AND CASE MANAGEMENT ORDER FOR ADJUDICATION OF CONTENTION 1(B) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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Washington, DC 20555-0001

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 4th day of April 2008