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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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

-----X

Teleconference
Wednesday,
April 2, 2008
2:30 p.m.

BEFORE:
E. ROY HAWKENS, Administrative Judge

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P-R-O-C-E-E-D-I-N-G-S

2:36 p.m.

1
2
3 JUDGE HAWKENS: Let's go on the record,
4 then. We're conducting a conference call in the
5 matter of Pacific Gas and Electric Company, Diablo
6 Canyon Power Plant Independent Spent Fuel Storage
7 Installation, Docket Number 72-26-ISFSI. My name is
8 Roy Hawken. I'm the presiding officer in this case.
9 I'm joined today in chambers by my law clerk Ms. Erica
10 Laplante and my administrative assistant, Mr. Karen
11 Valloch.

12 Will counsel for the parties who will be
13 speaking on behalf of the parties, please introduce
14 themselves?

15 MS. CURRAN: This is Diane Curran
16 representing San Luis Obispo Mothers for Peace.

17 JUDGE HAWKENS: Thank you.

18 MS. CLARK: This is Lisa Clark
19 representing the NRC staff.

20 JUDGE HAWKENS: Thank you.

21 MR. REPKA: And this is David Repka on
22 behalf of Pacific Gas and Electric Company and I have
23 with me Tyson R. Smith.

24 JUDGE HAWKENS: All right, thank you and
25 as the Court Reporter earlier requested, please

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1 identify yourself prior to speaking to assist him in
2 accurately identifying you for the transcript.

3 The Commission in its order of March 27th,
4 directed me to adjudicate Contention 1B on an
5 expedited basis and to endeavor to issue a decision
6 not later than May 30th. The purpose of this call is
7 to endeavor to establish a road map for complying with
8 the Court's order. And to do that, as I indicated in
9 my order of yesterday, I would like to try to have the
10 parties submit all of their written pleadings by May
11 1st.

12 To that end, I've drafted up a schedule
13 that I would like to share with the parties and get
14 their responses to see -- as you know, the Commission
15 has put us on a rocket docket. It's going to require
16 short time lines but we're going to have to do that to
17 comply with the goal of resolving it by the end of
18 May. So let me share with you the schedule that I've
19 come up with.

20 If a party is unable to comply with that
21 schedule, we'll discuss it and see what kind of
22 accommodation can be made. First, the Commission
23 acknowledged the possibility of additional briefing.
24 Now, Ms. Curran, I know that you, earlier, had
25 submitted to the Commission a pleading that included

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1 arguments on Contention 1B and I'd like to offer you
2 the opportunity to submit an additional brief if you
3 think you could clarify -- if you'd like the
4 opportunity to further clarify or flesh out any of the
5 arguments that you already presented to the
6 Commission. I'd like to emphasize that we would not
7 entertain additional arguments but to the extent you
8 believe that your client would be well-served by the
9 submission of an additional brief, I'd like to give
10 you that opportunity.

11 MS. CURRAN: Okay. Maybe I'd like to hear
12 your whole schedule. Can I do that and then --

13 JUDGE HAWKENS: Okay, I will do that. If
14 you wanted to submit an additional brief, I would like
15 to have it by the 9th of April, that's Wednesday. I
16 heard that gasp. You'll find that everybody else may
17 be gasping as well, but --

18 MS. CURRAN: I'm the first gasp but I hope
19 not to be the last gasp.

20 JUDGE HAWKENS: And Ms. Curran as well as
21 all the other parties in the submissions in your brief
22 and the responses and all the pleadings, I would like
23 them to be stand-alone documents so that to the extent
24 you do cite to any materials in your brief that are
25 significant to your argument, I would like to have the

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1 relevant portions included as an attachment to your
2 brief along with an index to those attachments.

3 MS. CURRAN: Just so I understand, Judge,
4 you mean if we filed another brief earlier in the
5 case, and we refer back to that, you want that -- the
6 portion of the brief attached?

7 JUDGE HAWKENS: No, no, no. Let's talk in
8 particular about if you were to submit a brief on the
9 9th, that brief would simply include your arguments
10 which you've already at least set out before the
11 Commission. If you wanted again to clarify them,
12 you'd be welcome to do that. To the extent you refer
13 to anything in the record, such as document page in
14 document number 8 --

15 MS. CURRAN: Oh, okay, I understand.

16 JUDGE HAWKENS: -- include that as an
17 attachment, so it's a stand-alone document.

18 MS. CURRAN: Yeah, that makes sense.

19 JUDGE HAWKENS: All right, and that would
20 be due on April 9th, if you're going to submit it. If
21 Ms. Curran were to submit a brief on the 9th, then on
22 the 17th of April, that's a Thursday, I would like an
23 answer from the staff and by PG&E to the extent that
24 it wishes to submit an answer. And in addition, to
25 the extent the staff wish to submit a motion for

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1 summary disposition, I would want that submitted on
2 the say day, Thursday, April 17th.

3 And again, any submission that were filed,
4 they should be stand-alone documents and also any
5 motion for summary disposition, I know in a prior
6 decision the Commission had indicated that this case
7 would be governed by the pre-2004 regulations. Is
8 that -- is my memory correct, Ms. Clark and Ms. Curran
9 on that.

10 MS. CURRAN: Yes; this is Diane Curran,
11 yes.

12 JUDGE HAWKENS: All right. I believe that
13 the regulations covering -- governing summary
14 disposition, the current one, 10 CFR 2.710, is
15 identical or substantial identical to the pre-2004
16 regulation which is 10 CFR 2.749. So I would ask that
17 you all, if you don't have any objection, let's --
18 since they are substantially, if not completely
19 identical, we will just refer to the current
20 regulation governing summary disposition, 10 CFR
21 2.710.

22 Moving on, assuming that the staff did
23 submit a motion for summary disposition on the 17th of
24 April, I would want the Mothers for Peace to submit a
25 response to that motion as well as PG&E if it so

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1 desired, on Friday, April 25th. On that same day, I
2 would like Mothers for Peace, if they wish to, to
3 submit their own motion for summary disposition. It's
4 conceivable that based on the staff's answer of April
5 17th the case could be resolved, but again, if it's
6 not, the response for Mothers for Peace and PG&E would
7 be due April 25th and any motion for summary
8 disposition from Mothers for Peace would be due
9 Friday, April 25th. Did I just say that?

10 MS. CURRAN: I think -- well, I've got
11 down that you want our responses to the staff's
12 summary judgment motion by April 25th. Again, this is
13 Diane Curran. And that you want the Mothers for Peace
14 to file their own summary disposition motion if they
15 plan to do that by the 25th.

16 JUDGE HAWKENS: Right, on the same day,
17 that's correct.

18 MS. CURRAN: Yeah, okay.

19 JUDGE HAWKENS: And again, I would want
20 the parties in preparing their responses as well as
21 your motion, Ms. Curran, to the extent you file one,
22 to comply with the standards in 10 CFR 2.710, the
23 current regulation. And in one of those filings, Ms.
24 Curran, if you believe the issue still exists and has
25 not then been resolved by the staff's answer and

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1 motion, if that day in one of the pleadings that you
2 would submit, if you would indicate whether you
3 believe oral argument would be beneficial and why you
4 think it would be beneficial.

5 MS. CURRAN: Okay.

6 JUDGE HAWKENS: Finally, assuming Mothers
7 for Peace does -- one second, please. I'm going to go
8 off the line for one minute.

9 (Pause)

10 JUDGE HAWKENS: This is Judge Hawken. I'm
11 back on the line. Finally, assuming Mothers for Peace
12 does file a motion for summary disposition, staff and
13 PG&E if it wishes, would respond to that motion for
14 summary disposition no later than Thursday, May 1st.
15 And in that filing, if the filing has to be made,
16 staff and PG&E, I'd like you to indicate whether you
17 believe oral argument would be beneficial and a brief
18 statement of why in your judgment, it would be
19 beneficial.

20 That would have the pleadings, the written
21 pleadings, in my hands by May 1st and I would then be
22 able to determine whether, guided by the parties'
23 input, whether oral argument may be beneficial and if
24 I determine oral argument would be well, I would go
25 ahead and schedule it the following week and probably

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1 on the 7th of May, that would be a Wednesday.

2 That's what I propose, and let me start
3 with Ms. Curran and ask her if that's a schedule that
4 you can meet and if it's not, what would you suggest
5 that would still allow us to have everything filed by
6 the 1st?

7 MS. CURRAN: Okay, Judge, I'd like to talk
8 about two things. One is the schedule and one is I
9 had hoped to be able to get some discovery on some of
10 the questions that I raised in the response, Mothers
11 for Peace's responses to the Vaughan Index. And I see
12 you haven't included that here but I'm in a position
13 that I guess my case is going -- if I can't get some
14 discovery, my case is going to be that there's an
15 array of unanswered questions here. And I -- it seems
16 to me it might be beneficial to be able to ask some of
17 them.

18 JUDGE HAWKENS: I understand your position
19 and you also understand that, as the Commission said,
20 that discovery is the exception in these cases.
21 There's an awfully high standard to be met there.
22 Now, let me ask you this; I know that in your
23 submission to the Commission there were several
24 questions which seemed to me to be pretty
25 straightforward, that the Commission may be willing to

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1 answer in an off-line discussion with you which
2 obviously will not occur right now, but let me suggest
3 this, that why don't you, in the very near future,
4 talk to Ms. Clark and see if any of these questions
5 the NRC staff is willing to answer such that it would
6 obviate the need for discovery.

7 It's also conceivable that in this April
8 17th submission when the staff answers you and moves
9 for summary disposition, it may well -- if it hadn't
10 yet, it may at that time provide answers which would
11 obviate the need for discovery.

12 MS. CURRAN: Just to address something
13 that you just said, that discovery is very limited in
14 these cases and I think you may be referring to, in
15 the Commission's order, the Commission cited some FOIA
16 cases saying that discovery in FOIA cases is limited.
17 And I want to get back for a minute to what Contention
18 B says.

19 I think that there are some FOIA related
20 elements but there's another element that is -- it's
21 not -- it doesn't sound in FOIA. It's more a straight
22 NEPA issue which, if I look at page 19 of the SLIP
23 opinion (phonetic) CLI-0801, dated January 15th, 2008,
24 at the top of the page the Commission says, "We thus
25 admit Contention 1B to the extent that it alleges that

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1 the staff failed to provide source documents or
2 information underlying its analysis and failed to
3 identify appropriate FOIA exemptions for its
4 withholding decisions." This phrase "or information
5 underlying its analysis", we are -- we're still -- we
6 still don't know what information underlies the
7 staff's analysis in the Environmental Assessment,
8 because, you know, we've gotten this list of reference
9 documents but this isn't the kind of -- usually what
10 you see in an Environment Impact Statement or what
11 I've seen in the past is that at the end of a sentence
12 say in the EIS, there's a reference document number
13 and then, you know, you flip to the back of the
14 chapter to see what document is being relied on for a
15 particular statement. I don't think that step's ever
16 been fulfilled here.

17 Some of these documents are very lengthy
18 and I'm not sure exactly what they're being relied on
19 for. One of the documents of central concern to us is
20 SECY 04-0222, I think it is.

21 JUDGE HAWKENS: Is that Document Number 8?

22 MS. CURRAN: Yes, and I think there's some
23 contradictory statements in the record as to -- well,
24 it's included in the reference documents but the staff
25 has said it isn't relying at least one of the theories

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1 in the Document Number 8. So we're still -- we still
2 haven't gotten to the point where we've gotten
3 information about what did the staff rely on for its
4 analysis and I was hoping to be able to -- it seems to
5 me it's necessary for us to be able to ask that in
6 order to make our case.

7 MR. REPKA: Judge Hawkens, may I respond
8 to that? This is Dave Repka.

9 JUDGE HAWKENS: Please go ahead, Mr.
10 Repka.

11 MR. REPKA: I think I take a little
12 different view of what Contention 1B is. Contention
13 1B that was admitted by the Commission was a
14 contention of omission. Quite simply, the staff had
15 not identified the reference documents, the source
16 documents behind their conclusions. The Commission
17 decided in its earlier decision that that was
18 essentially a FOIA question and felt that the
19 contention of omission would be addressed by a FOIA
20 procedure, the so-called Vaughan Index Procedure and
21 I think that's reflected in the decision CLI-0805 as
22 well when it says, "We expect the presiding officer to
23 resolve all outstanding FOIA issues, in other words,
24 to resolve Contention 1B on an expedited basis." It's
25 a contention of omission where the contention and the

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1 FOIA process laid out by the Commission are exactly
2 coterminous. So what the Commission expects here is
3 what's happened which is the NRC filed their Vaughan
4 Index, provided their justifications for the documents
5 they did not disclose and allowed the Mothers for
6 Peace to have an opportunity to file objections with
7 respect to specific justifications and the Mothers for
8 Peace have done that.

9 So with respect to those issues, it's
10 really just incumbent upon the presiding officer to
11 rule on the FOIA issue, is there a sufficient basis
12 for non-disclosure or not and that's the only issue
13 before us in Contention 1B.

14 If -- once those issues are resolved, the
15 Commission has already determined that that disclosure
16 will be all the disclosure there is and that will, in
17 effect, moot Contention 1B at that point, the
18 Contention of omission. There doesn't need to be
19 further discovery on that issue. There doesn't really
20 even need to be further argument on that issue. The
21 arguments have been presented, the justifications have
22 been presented and the presiding officer can certainly
23 rule on that.

24 With respect to some of the other issues
25 raised by Mothers for Peace in their filing of

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1 February 20th, particularly related to SECY 04-0222,
2 those are issues that are based upon the Mothers for
3 Peace review of documents released and quite frankly,
4 there is no contention before the presiding officer or
5 the Commission on those issues.. Where a contention of
6 omission has been resolved by providing the documents,
7 whatever the scope of that disclosure will ultimately
8 be, the contention is resolved and it's really
9 incumbent to file a new contention showing that the
10 factors for a late file contention are satisfied as
11 well as the factors for admissibility of any
12 contention.

13 And only then, if there were an issue
14 admitted would there be any limited discovery. So I
15 think this idea of jumping ahead and saying we have
16 questions, that's beyond the scope of the currently
17 admitted contention and beyond the scope of what the
18 presiding officer needs to do to fulfill the
19 Commission's directive in CLI 08-05.

20 JUDGE HAWKENS: Before asking Ms. Curran
21 to respond, I'd like to give Ms. Clark the opportunity
22 to weigh in.

23 MS. CLARK: Thank you, Judge Hawkens.
24 This is Lisa Clark. I agree that it seems to me the
25 only point of pursuing discovery at this point would

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1 be to attempt to find some basis for raising issues
2 with regard to the staff's reference list. The
3 Commission expressly directed the staff that the list
4 of references had to be complete. The staff has filed
5 an addendum to insure that all relevant references
6 were listed and we filed an affidavit attesting to the
7 fact that the reference list is complete.

8 And Ms. Curran's attempt to pursue
9 discovery on the issue of this SECY paper seems to be
10 only for the purpose of trying to find some grounds
11 for alleging that our reference list is somehow
12 incomplete and I think that this would be an
13 inappropriate use of discovery since there is no
14 outstanding contention with any foundation indicating
15 that all reference lists may be incomplete.

16 JUDGE HAWKENS: Well, of course, that's
17 what I'll be -- that's what we're going to be
18 resolving here.

19 MS. CLARK: Correct.

20 JUDGE HAWKENS: Let me -- before I give
21 you -- was that it, Ms. Clark?

22 MS. CLARK: Yes.

23 JUDGE HAWKENS: Thank you. Before coming
24 back to you, Ms. Curran, let me just observe that
25 although I generally agree with Mr. Repka and Ms.

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1 Clark that this is properly characterized as an
2 omission of -- a contention of omission, the
3 Commission in its most recent decision did note that
4 several issues were raised by Mothers for Peace that
5 require addressing.

6 For example, Ms. Curran indicated it's
7 because Document Number 8 is on its face not
8 applicable to ISFSI, whether the staff's reference to
9 that document means that there is another document
10 linking this document to ISFSI that was improperly
11 omitted from the reference document list. Now, Ms.
12 Clark, you say that you have certificates or
13 declarations indicating the reference document list is
14 complete. Certainly a declaration which expressly
15 states why Document 8 was used even though it's
16 spatially not applicable and moreover a declaration
17 saying that our use of Document 8 does not mean
18 another document linking it to a ISFSI was improperly
19 left off the reference document list would address and
20 resolve the issue raised by Ms. Curran.

21 Likewise the Commission in its decision
22 said Ms. Curran appears to raise the issue whether
23 follow-up activity is referred to in Document 8 such
24 as participation in the DHS vulnerability reviews
25 generated documents the staff should have listed in

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1 the reference document list. Again, another
2 declaration by the NRC coming to grips with that and
3 directly addressing it would make our job at this
4 point easier.

5 Number 3, the Commission said an issue Ms.
6 Curran raised was whether the risk analysis and
7 management for critical assets protection methodology
8 should have been listed in the reference document
9 list. If not, it's easy enough for the NRC staff to
10 advise us why it should not be. And finally, the
11 Commission said an issue raised by Ms. Curran was
12 whether redactions in Document 8 where the staff
13 failed to provide a corresponding FOIA exemption
14 provided a contextual basis for concluding the
15 withholding of secret law. Again, I'm not as familiar
16 with that document as the parties are, but it may be
17 as easy as -- the answer may be as easy as saying that
18 the corresponding FOIA exemption was inadvertently
19 omitted from the Vaughan Index and it could be
20 provided by the staff or some other plausible
21 explanation, but these are issues which I think have
22 to be grappled with and it may be part of the reason
23 Ms. Curran is seeking discovery.

24 Now, having said that, let me go back to
25 Ms. Curran and see what her response was to Mr. Repka

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1 and Ms. Clark.

2 MS. CURRAN: Okay, this is Diane Curran.
3 Going back to the language of the contention, the
4 contention itself says in the basis statement under
5 NEPA the NRC is required to disclose the technical
6 basis for its determination that the environmental
7 impacts of licensing the Diablo Canyon in ISFSI are
8 insignificant. The public is also entitled to review
9 that technical basis.

10 So I guess I'm not -- and I think the
11 Commission picked up on that in its order, that it
12 isn't -- that the contention wasn't saying it's
13 sufficient to give us hundreds of pages of documents
14 that portions of it may be containing analysis that
15 we're looking for and portions may not, and especially
16 where there's controversy about some portions of these
17 documents and whether or not they were relied on.

18 So, I do think that that is a part of
19 Contention 1B. And I understand that if the Judge
20 disagrees, well, that I have to live with that, but I
21 would like to be able to inquire about the extent to
22 which the staff relied on these documents.

23 And then the next thing that I would say
24 is just in terms of timing, I am comfortable with
25 talking informally with the staff and seeing if I can

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1 get a better understanding of some of these issues and
2 then maybe that can be formalized in some of these
3 summary disposition documents. I just don't -- what
4 I'm concerned about is I don't want to be dealing with
5 a lot of new information sort of towards the tail end
6 of this summary judgment proceeding. I'd like to have
7 the information up front.

8 So I guess it would help to build in some
9 kind of maybe a process for informal disclosure were
10 I could maybe confirm my understanding with the staff
11 and then base my -- if that information could go into
12 the staff's summary disposition motion, I guess that
13 would be the most helpful thing, if the staff's
14 summary disposition motion could include at least the
15 answers to these questions that the Commission picked
16 up on in its decision.

17 JUDGE HAWKENS: I'd be very interested in
18 seeing the answers to those questions from the staff
19 as well and I'm sure the Commission is, otherwise,
20 they would not have included those questions in its
21 decision. As far as working out anything with the
22 staff, Ms. Curran, that's -- I'm going to step back.
23 I think that's a very good idea and I would suggest
24 that after we're done with this conference call, you
25 get together with Ms. Clark and Mr. Repka and see if

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1 you know, there's any agreements, understandings, that
2 can be reached regarding answers to any of these
3 questions or what you might anticipate including in
4 any of these pleadings. But I'm going to leave that
5 to you all to resolve.

6 And having said that, if after talking to
7 them, Ms. Curran, if you feel like you do think
8 discovery is appropriate, may I suggest that you on
9 the same day that you file your brief, which will be
10 the 9th of April, you file a motion for discovery.

11 MS. CURRAN: Okay. Okay.

12 JUDGE HAWKENS: And Ms. Clark, if she does
13 file a motion for discovery on the 9th, then on the
14 17th, the same day that you would be filing your
15 answer and any motion for summary disposition, the
16 same day you could file a response to that motion.

17 MS. CLARK: Very well.

18 JUDGE HAWKENS: And Mr. Repka, of course,
19 to the extent that you want to weigh in with the
20 response, it would likewise be due on the 17th.

21 MR. REPKA: Okay.

22 JUDGE HAWKENS: Are there any other
23 matters the parties want to address? Ms. Curran?

24 MS. CURRAN: Yes, Judge Hawkins. The
25 second issue I wanted to talk to you about was the

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1 schedule. I have to go out of town for a funeral on
2 Friday and I also have a work trip that's going to
3 take me out of town from the 21st through the 23rd. So
4 I'd like to ask you for -- oh, and the other thing I
5 have is in the Mox Plutonium Facility Licensing Case,
6 I have a significant oral argument on the 9th that's
7 going to require quite a bit of preparation.

8 So, I frankly, I can't see how I'm going
9 to be able to make this April 9th deadline for the
10 brief and I wonder if I could get say till the 11th
11 for that.

12 JUDGE HAWKENS: Well, we'll have to get --
13 I would like to accommodate you but my goal is still
14 to have everything submitted by the 1st and what
15 effect is that going to be having on the other
16 parties.

17 MS. CURRAN: Well, if I were to move it
18 two days till the 11th, would that necessitate -- I
19 guess then the other parties get to reply to me,
20 right? And you had given them till when?

21 JUDGE HAWKENS: I had given them till the
22 17th.

23 MS. CURRAN: So could they take till the
24 18th or the 21st?

25 JUDGE HAWKENS: And then are you still

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1 going to be able to then submit -- if they submitted
2 on the 21st, will you be able to submit your response,
3 your motion for summary disposition on the 25th?

4 MS. CURRAN: Well, no, because I'm going
5 to be out of town the 21st to the 23rd. Would it be
6 possible if I got my motion in by the 30th?

7 JUDGE HAWKENS: Well, under my schedule,
8 that gives the staff and PG&E on day to answer. I
9 don't think they would like that.

10 MS. CURRAN: Well, no, I guess I'm asking
11 to -- I don't mean to pinch you, Judge Hawkens, but I
12 just --

13 JUDGE HAWKENS: I'm feeling pinched.

14 MR. REPKA: I am as well.

15 MS. CURRAN: I want to share the pain.

16 MR. REPKA: Judge Hawkens, this is Dave
17 Repka. I think that the 9th is an optional pleading
18 to begin with, you know, since Mothers for Peace have
19 already made a filing that sets out what their
20 arguments are. So I think that we shouldn't make too
21 much of what's required on the 9th to begin with, but
22 beyond that, certainly the result of a problem Mothers
23 for Peace has shouldn't tightened the time frames for
24 the staff or anybody else.

25 JUDGE HAWKENS: I'm sympathetic to you,

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1 Mr. Repka. I hadn't -- I was being facetious when I
2 was giving you one day for an answer.

3 MR. REPKA: Thank you.

4 JUDGE HAWKENS: Ms. Curran, I'm looking at
5 the 9th for your brief. To me that does -- I mean, we
6 could move it back under my schedule by one day and I
7 think move everybody else back by one day and still
8 achieve substantially the same result. On the other
9 hand, I agree with Mr. Repka, that because the
10 contents of that brief can't go beyond the arguments
11 you already submitted, rather it would simply be
12 clarifying them and I did read your submission to the
13 Commission. They were set out pretty cleanly there.
14 It doesn't seem to me like that brief is going to be
15 very burdensome to create.

16 Having said that, if it would help you to
17 push it back by one day, I can do that but I -- I'm
18 not sure if that's going to help you very much.

19 MS. CURRAN: Well, it would just because
20 I'm pretty much going to be out of pocket most of the
21 day April 9th.

22 JUDGE HAWKENS: Okay, well, let's try this
23 on for size. Ladies and gentleman, if we moved the
24 submission of Mothers for Peace brief and motion for
25 discovery to the extent they're going to file one, to

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1 the 10th, then we move the answer by the staff and
2 PG&E along with the staff's motion for summary
3 disposition and any response by the staff and PG&E to
4 a discovery motion, move that back one day to the
5 18th. Now, that takes care of your argument in Mox,
6 Ms. Curran. At least it provides you with a small
7 amount of buffer.

8 MS. CURRAN: Yes.

9 JUDGE HAWKENS: And it gives you then two
10 weeks and one day, although you said you're going to
11 be gone for the first couple of days during the week
12 of the 21st, it still provides you with two weeks and
13 a day to provide your response of any motion for
14 summary disposition which would be due on the 25th.

15 MS. CURRAN: Judge Hawken, I think that's
16 one week, right? If it's filed on the 18th --

17 JUDGE HAWKENS: Oh, I'm sorry.

18 MS. CURRAN: -- I get one week and three
19 of those days I'm going to be --

20 JUDGE HAWKENS: All right, what I can do
21 for you, Ms. Curran, is move it to the 28th. I can't
22 go beyond that.

23 MS. CURRAN: That would help.

24 JUDGE HAWKENS: That does give you the
25 weekend.

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1 MS. CURRAN: That would help.

2 JUDGE HAWKENS: And that moves back -- it
3 does interfere with my goal of having the written
4 submissions on the 1st but let me see, Mr. Repka and
5 Ms. Clark, that would then make any answer to any
6 motion for summary disposition filed by Mothers for
7 Peace due on May 5th.

8 MR. REPKA: Okay.

9 JUDGE HAWKENS: I can live with that if
10 the parties can live with that. I would still expect
11 though to endeavor to schedule oral argument if there
12 were to be any during the week of the 5th and very
13 likely on Wednesday, the 7th, perhaps on Thursday the
14 8th. Would there be any problem?

15 MS. CURRAN: Judge Hawkens, this is Diane
16 Curran. I am going to have to go out of town probably
17 the afternoon of the 8th on a work-related trip. So
18 if you do do it the 8th, I would appreciate it if it
19 could be in the morning. I have to go to Denver to
20 prepare for an oral argument in the 10th Circuit.

21 JUDGE HAWKENS: All right. And so it
22 would be on the morning of the 8th or you would be
23 free on the 7th?

24 MS. CURRAN: Yes.

25 JUDGE HAWKENS: Mr. Repka, would you be

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1 free during the 7th or the morning of the 8th?

2 MR. REPKA: Yes.

3 JUDGE HAWKENS: All right, and Ms. Clark?

4 MS. CLARK: I'm available on those dates.

5 JUDGE HAWKENS: Thank you. I thought you
6 would be. All right, let me just review to make sure
7 that everybody is on board with what we just went
8 over. Any additional briefing or motion for discovery
9 is to be filed by Ms. Curran no later than the 10th.
10 An answer by staff or PG&E would be due on the 18th.
11 A motion for summary disposition by the staff would
12 likewise be due on the 18th.

13 And any response by the staff or by PG&E
14 to a motion for discovery, if any, is submitted would
15 be likewise due on the 18th. Mother for Peace's and
16 PG&E's response to motion for summary disposition
17 submitted by the staff would be due on the 28th. And
18 any motion for summary disposition filed by Mothers
19 for Peace would also be due on the 28th.

20 And finally the staff's and PG&E's answer
21 to any motion for summary disposition would be due on
22 Monday, the 5th. Is everybody in agreement with that?

23 MS. CLARK: I'm in agreement.

24 MS. CURRAN: This is Diane Curran. I have
25 one question in my mind. I have -- my expert witness,

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1 my principal witness is out of town for much of the
2 month of April. I do not think I'm going to need him
3 for this because this just involves -- I don't think
4 I'm going to need an expert declaration for this.

5 JUDGE HAWKENS: I think you're probably
6 right.

7 MS. CURRAN: But if I do, I guess I would
8 just -- when I see the staff's motion, I can -- if I
9 have a problem, I can get -- I hope I can get in touch
10 with the Board and let you know.

11 JUDGE HAWKENS: All right.

12 MR. REPKA: And this is Mr. Repka. I have
13 no problem with the schedule and I would just say as
14 a general matter, the proceeding cannot wait on the
15 availability of two people, Ms. Curran and her expert.
16 And so we all have to do what we have to do to meet
17 the schedule.

18 JUDGE HAWKENS: And Ms. Clark, I just want
19 to make sure you are on board with the schedule as
20 well.

21 MS. CLARK: Yes, I am, your Honor.

22 JUDGE HAWKENS: All right. Any other
23 matters the parties would like to raise? Mr. Repka?

24 MR. REPKA: Nothing further.

25 JUDGE HAWKENS: All right, Ms. Curran?

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1 MS. CURRAN: Nothing from me.

2 JUDGE HAWKENS: Ms. Clark?

3 MS. CLARK: Not for the staff.

4 JUDGE HAWKENS: All right, well, thank you
5 everybody for your cooperation and we will issue a
6 scheduling and case management order later this week.
7 Thank you very much.

8 MR. REPKA: You're welcome.

9 MS. CURRAN: Thank you.

10 MS. CLARK: Bye, bye.

11 (Whereupon, at 3:20 p.m. the above-
12 entitled matter concluded.)

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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Pacific Gas & Electric Co.

Teleconference

Docket Number: 72-26-ISFSI

Location: (By Telephone)

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



James Salandro
Official Reporter
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