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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:)
)
Pacific Gas and Electric Co.)
)
(Diablo Canyon Power Plant Independent)
Spent Fuel Storage Installation))

Docket No. 72-26-ISFSI

PACIFIC GAS AND ELECTRIC COMPANY'S ANSWER TO SAN LUIS OBISPO
MOTHERS FOR PEACE REQUEST TO SUPPLEMENT SUBPART K PRESENTATION

I. INTRODUCTION

On April 26, 2008, San Luis Obispo Mothers for Peace ("SLOMFP") filed a request to supplement its Subpart K presentation on Contention 2.¹ Pacific Gas and Electric Company ("PG&E") herein responds. SLOMFP cites no regulatory basis for its "request." Moreover, it is unclear whether the Request to Supplement itself constitutes the supplement or whether SLOMFP seeks further opportunity to supplement. In either case, SLOMFP's request should be denied. SLOMFP is making an illogical argument that distorts the facts and exceeds the scope of Contention 2.

¹ "San Luis Obispo Mothers for Peace's Request to Supplement Subpart K Presentation With NRC Staff Affidavit," dated April 26, 2008 ("Request to Supplement"). The filing was made on a Saturday, so it is unclear how the rules of practice apply. Nonetheless, this answer is filed within 10 days of that date.

II. DISCUSSION

SLOMFP's Request to Supplement focuses on statements made by an NRC Staff witness in an affidavit filed in support of the Staff's motion for summary disposition of Contention 1(b).² Specifically, in the Affidavit of James Randall Hall, Shana Helton, and Paul Kelley, Jr. (Staff Motion, Att. 1), in Paragraph 7, Ms. Helton addresses the relevance of SECY-04-0222³ to the Environmental Assessment ("EA") Supplement at issue in this proceeding. Paraphrasing slightly, Ms. Helton explains that:

- Many aspects of the SECY-04-0222 methodology were not employed by the Staff in developing the Supplemental EA;
- As an example, the Staff did not assess asset attractiveness for the Diablo Canyon ISFSI — effectively meaning that the Staff assumed an attack (*i.e.*, one involving plausible attack scenarios), regardless of attractiveness or lack thereof of the target;
- The Staff did consider in an unspecified way the consequence evaluation criteria in SECY-04-0222 (and its enclosures) when developing the set of assumptions used in a calculation of estimated dose consequences.

Staff Motion, Att. 1, Para. 7.

In its request, SLOMFP takes these statements and leaps to the conclusion that they "confirm that the Staff violated the National Environmental Policy Act ('NEPA'), by arbitrarily applying an irrational — and secret — screening criterion to exclude consideration of reasonably foreseeable attack scenarios that would cause significant offsite contamination, human illness, and adverse socioeconomic effects." Request to Supplement, at 2. No

² The motion was made to the presiding officer designated for Contention 1(b). See "NRC Staff's Motion for Summary Disposition of San Luis Obispo Mothers for Peace's Contention 1(b)," dated April 18, 2008 ("Staff Motion").

³ SECY-04-0222, "Decision-Making Framework for Materials and Research and Test Reactor Vulnerability Assessments" (November 24, 2004).

explanation is given by SLOMFP to provide any logical connection between the statements in the Staff affidavit and the sweeping SLOMFP conclusion. In fact, it simply does not follow from the Staff's use of consequence evaluation criteria from SECY-04-0222 to develop assumptions for a dose estimate, that the Staff excluded attack scenarios, much less "reasonably foreseeable" attack scenarios that would "cause significant offsite human contamination, human illness, and adverse socioeconomic effects."

The NRC Staff has never concealed that its dose estimate in the EA Supplement is based on the set of scenarios that it considered to be credible or plausible, based on the threat information available to it. *See, e.g.*, EA Supplement at 7 ("Initially, NRC screened threat scenarios to determine plausibility. This screening was performed by information gathered through NRC's regular interactions with the law enforcement and intelligence communities Separately, NRC made conservative assessments of consequences, to assess the potential for early fatalities from radiological impacts from those plausible scenarios.")⁴ The Commission has also made it clear on several occasions that it accepts the Staff's assessment of plausible scenarios and will not in this proceeding allow litigation of the scope of the scenarios. *See, e.g.*, Memorandum and Order, CLI-08-08 (April 30, 2008), slip op. at 11-12. SLOMFP's argument that the Staff has excluded "reasonably foreseeable" scenarios simply reflects SLOMFP's previously rejected view that the Staff has improperly ignored SLOMFP's proposed Contention 3 scenario. The Commission, however, has found the Staff's approach to scenarios, based on the NRC Staff's access to classified threat information, to be "reasonable on its face." *Id.* at 12. No further supplementation of Subpart K presentations is warranted on this point.

⁴ "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).

With respect to consequences of postulated attacks, the Staff has also been clear since the EA Supplement that it prepared an estimate of dose to the nearest resident to address potential consequences in terms of early fatalities. *See* EA Supplement 7 (as quoted above). The decision-making framework in SECY-04-0222, Attachment 2, also utilizes estimates of potential consequences “in terms of prompt fatalities.” This choice of metric does not mean that the Staff used a secret criterion to screen out plausible attack scenarios that would lead to significant contamination, illness, or other effects beyond prompt fatalities. In fact, as explained in the Staff’s Subpart K presentation, the Staff “chose the type of plausible attack that results in the largest release of radioactive material” to obtain a “conservative estimate of environmental impacts.” *See* “NRC Brief and Summary of Relevant Facts, Data and Arguments Upon Which the Staff Proposes to Rely at Oral Argument on San Luis Obispo Mothers for Peace’s Contention 2,” dated April 14, 2008. *Aff. of Elizabeth A. Thompson*, at Para. 14.

The issue in Contention 2 is whether the NRC Staff in the EA Supplement should — for this case (*i.e.*, not as a generic question) — consider impacts beyond early dose/prompt fatalities. That issue, entirely consistent with the requirements of NEPA, remains bounded by the set of scenarios that are considered by the Staff to be credible or plausible (or “reasonably foreseeable” rather than “remote and speculative”). For plausible scenarios, the Staff’s consequence analysis shows early doses well below 5 rem. As explained by the NRC Staff and PG&E in the Subpart K filings to date on Contention 2, this determination is an acceptable basis on which to conclude that there would not be significant environmental impacts from a terrorist attack at the Diablo Canyon Independent Spent Fuel Storage Installation. For reasons both generic and specific to the Diablo Canyon site, plausible scenarios will not lead to significant offsite contamination, human illness, or adverse socioeconomic impacts. Nothing in the publicly

available information in SECY-04-0222 suggests otherwise. No further supplementation of Subpart K presentations is warranted on this point.

III. CONCLUSION

The SLOMFP Request to Supplement should be denied.

Respectfully submitted,



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Dated in Washington, District of Columbia
this 6th day of May 2008

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CERTIFICATE OF SERVICE

I hereby certify that copies of "PACIFIC GAS AND ELECTRIC COMPANY'S ANSWER TO SAN LUIS OBISPO MOTHERS FOR PEACE REQUEST TO SUPPLEMENT SUBPART K PRESENTATION" have been served as shown below by electronic mail, this 6th day of May 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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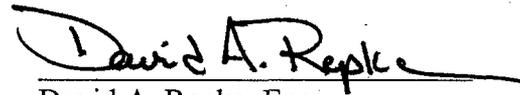
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