

May 20, 2008

E. Roy Hawkens  
Chief Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Mail Stop: T 3-F23  
Washington, D.C. 20555

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

Dear Judge Hawkens:

Enclosed, in the proper order, is a corrected copy of the index to the attachments and the two attachments to the "NRC Staff's Response to San Luis Obispo Mothers for Peace's Motion for Leave to Conduct Supplemental Discovery," filed April 18, 2008. The hard copies mailed by the Staff did not match the pleading served by email and placed in the NRC's ADAMS document management system because the attachments in the hard copies were in the incorrect order. Please replace the Index to the Attachments and Attachments 1 and 2 with the enclosed copy in order to correct the discrepancy.

Sincerely,

**/RA/**

Molly L. Barkman  
Counsel for NRC Staff

Enclosures: As stated

cc w/encls: Service list

## **INDEX TO THE ATTACHMENTS**

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AFFIDAVIT OF JAMES RANDALL HALL, SHANA HELTON, AND PAUL KELLEY, JR

## **ATTACHMENT 1**

April 18, 2008

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	Docket No. 72-26-ISFSI
	)	
(Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)	)	ASLBP No. 08-860-01-ISFSI-BD01

AFFIDAVIT OF BERNARD STAPLETON

I, Bernard Stapleton, do hereby state as follows:

1. I am employed as the Senior Program Manager for the Safeguards Information program at the Nuclear Regulatory Commission (NRC). I have worked in this capacity for five years. I am also an authorized NRC classifier and have authored several guidance documents involving Safeguards Information and classified topics. Prior to joining the NRC, I worked as a National Security Advisor in the Department of Energy's classification office. I have also represented the NRC staff before several Atomic Safety Licensing Board hearings on information security and have spoken before the Federal Appeals Board on information protection on behalf of the Department of Justice.
2. This affidavit is written to respond to the issues regarding the propriety of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, redactions raised in "San Luis Obispo Mothers for Peace's (SLOMFP's) 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."
3. As part of their responsibilities in preparing the document disclosures for the "NRC Staff's Response to Commission Order to Provide Reference List and *Vaughn* Index," dated February 13, 2008, (Ref. 1), the NRC staff reviewed the unclassified portions of SECY-04-0222, "Decision-Making Framework for Materials and Research and Test Reactor Vulnerability

Assessments" ("SECY-04-0222") (Ref. 2), line-by-line and identified information which should be withheld from public disclosure pursuant to FOIA exemptions.

4. I personally reviewed SECY-04-0222 and certified that all of the information reasonably segregable from information exempt from disclosure was released, and that the FOIA exemptions invoked by the Staff were proper.

5. The *Vaughn* Index states that phrases on page 5 of SECY-04-0222 were withheld because they contain "internal NRC analysis of a specific security feature which would aid an adversary if disclosed." (Ref. 1 at 130). At the time they were redacted, the Staff believed that this information could aid an adversary if disclosed. Upon further review of those two redactions, I have determined that they are not of such a sensitive nature that they cannot be released.

6. Table 1, "Activity-Specific Attractiveness Category Ranking Matrix," appears on page 3 of Attachment 2 to SECY-04-0222. The title, which should not have been redacted, was inadvertently redacted when the table, which was properly withheld, was cut out of the document. However, as the title of the table is identified on page 2 of Attachment 2, no releasable information was withheld. The Staff withheld the information under FOIA exemption 2 because it is "NRC Staff guidance for using the framework methodology to estimate potential consequences." (Ref. 1 at 131). Specifically, the matrix is used by the Staff as part of its assessment of the attractiveness of certain scenarios to adversaries. The table contains specific parameters placed into the matrix including iconic value, complexity of planning, resources needed, execution risk, and public protection measures. Upon reviewing these redactions, I still believe that if the information in the table were disclosed, it would provide adversaries with additional information to form sabotage scenarios based on how the United States protects potential targets.

7. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

References

1. NRC Staff's Response to Commission Order to Provide Reference List and *Vaughn* Index," dated February 13, 2008. (ADAMS Accession No. ML080450260).
2. SECY-04-0222, "Decision-Making Framework for Materials and Research and Test Reactor Vulnerability Assessments," (ADAMS Accession No. ML080440119). (Document 8 in the Staff's Reference List).



Bernard Stapleton

Dated at Rockville, Maryland  
this 18<sup>th</sup> day of April, 2008.

## **ATTACHMENT 2**

April 18, 2008

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	Docket No. 72-26-ISFSI
	)	
(Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)	)	ASLBP No. 08-860-01-ISFSI-BD01

AFFIDAVIT OF JAMES RANDALL HALL, SHANA HELTON, AND PAUL KELLEY, JR.

James Randall Hall, Shana Helton, and Paul Kelley, Jr., do hereby state as follows:

1. I, James Randall Hall (JRH), have been employed by the U.S. Nuclear Regulatory Commission ("NRC") since 1981. My current position is Senior Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards. I am the project manager for the Diablo Canyon ISFSI, and oversaw the preparation of the "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 (ISFSI)" ("Supplemental EA").
2. I, Shana R. Helton (SRH), have been employed by the NRC since 2002. My current position is Nuclear Engineer/Dose Assessment Specialist Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards. I participated in the preparation of the Supplemental EA.
3. I, Paul Kelley, Jr. (PK), have been employed by the NRC since 2003. My current position is Security Specialist with the Materials, Waste, and International Security Branch, Waste Security Team, in the Office of Nuclear Security and Incident Response. I participated in the preparation of the Supplemental EA.

4. (JRH, SRH, PK) The purpose of this affidavit is to respond to “San Luis Obispo Mothers for Peace’s (“SLOMFP’s”) 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.” More specifically, the Staff herein responds to SLOMFP’s challenges to the completeness of the NRC Staff’s Reference List for the Diablo Canyon ISFSI Supplemental EA. (Ref. 1).
5. (JRH, SRH, PK) The Reference List includes all documents, including those which reference the NRC’s framework assessment methodology, which the Staff relied upon directly or used as guidance during the development of the Supplemental EA. In compiling its documents for the Reference List, the Staff included in the scope of what was “relied upon” and “guidance” those documents specifically considered by the Staff in developing the statements, characterizations, and determinations in the Supplemental EA.
6. (SRH) SLOMFP has questioned the reason for the Staff’s inclusion of SECY-04-0222, “Decision-Making Framework for Materials and Research and Test Reactor Vulnerability Assessments,” (“SECY-04-0222”) (Ref. 3), in the reference list for the Supplemental EA. At the outset, the Staff would like to note that in compiling the reference list, the Staff attempted to err on the side of being overly inclusive to ensure that the list was complete. Therefore, some of the reference documents are not specific only to ISFSIs but apply broadly to large categories of NRC licensees which include ISFSI licensees.
7. (SRH) The framework assessment methodology outlined in SECY-04-0222 was applied to various categories of NRC licensees and certificate holders, including ISFSIs. There are many aspects of this methodology that were not employed by the staff when developing the Supplemental EA. For instance, the Staff did not assess asset attractiveness for the Diablo Canyon ISFSI. However, the staff did refer to the

consequence evaluation criteria in SECY-04-0222 (and its enclosures) when developing the set of assumptions used to calculate the estimated dose to the nearest resident to the Diablo Canyon ISFSI. A detailed explanation of how the dose was calculated was provided in the Affidavit of Elizabeth Thompson, attached to "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."

8. (SRH) The Staff also relied in part on the Staff Requirements Memorandum, SRM-SECY-04-0222, (Ref. 3), which contains Commission guidance regarding application of the framework assessment methodology recommended by the Staff in SECY-04-0222.
9. (JRH, SRH, PK) ISFSIs having a site specific license under 10 C.F.R. Part 72, including the Diablo Canyon ISFSI, are subject to the physical protection requirements of Part 72, Subpart H, and are not required to protect the spent fuel against the Design Basis Threat ("DBT") for radiological sabotage, which is applied to nuclear power reactors. Even so, as directed by the Commission in CLI-07-011, the Staff also considered the DBT when developing the Supplemental EA, and therefore included the DBT rulemaking in the Reference List.
10. (SRH) Document 6 of the Reference List, "Memorandum from J. Strosnider to R. Zimmerman, "Framework Assessments of Spent Fuel Storage Casks and Radioactive Material Transportation Packages," December 9, 2005 ("Strosnider Memo") was a separate action from the development of the Supplemental EA. The Strosnider Memo documented the Staff's security assessments for spent fuel storage casks (which used the methodology in SECY-04-0222) and concluded that the ISFSI security measures, including those enacted since September 11, 2001, are adequate. The Staff reported these findings to the Commission in two memoranda from Luis Reyes. (Ref. 5, 6).
11. (JRH, SRH) All of the documents, including those which provided guidance, used by the Staff in developing the Supplemental EA were disclosed in the Reference List. The

reason for including SECY-04-0222, SRM-SECY-04-0222, and the Strosnider memo in the reference list is that the Staff relied on methods similar to those described in those documents in determining the dose to the nearest resident to the Diablo Canyon ISFSI. While other documents generated by the NRC and other agencies may be used by the NRC in various security activities, the Staff who developed the Supplemental EA relied only on the methods and guidance in the documents listed in the Reference List.

12. (JRH, SRH, PK) All input from other agencies which was relied upon or used as guidance in the development of the Supplemental EA is contained in the documents in the Reference list. Other documents, such as the RAMCAP methodology, referenced by SLOMFP, which informed the NRC's development of the framework assessment methodology in 2004, were not relied on by the Staff when developing the Supplemental EA for the Diablo Canyon ISFSI. As stated in SECY-04-0222, the Staff's framework assessment methodology (subsequently approved by the Commission in SRM-SECY-04-0222) was informed by the RAMCAP methodology; however, the Staff did not expressly adopt the RAMCAP or any other methodology. (Ref. 2 at 3). As such, these other methodologies cited in SLOMFP's April 10, 2008, filing were not listed as references to the Supplemental EA.
13. (JRH, SRH, PK) Upon reviewing the Reference List for this Response, the Staff realized that one document, listed in the November 7, 2007, Addendum to the Supplemental EA (Reference 3; Memorandum from Daniel H. Dorman to Wayne Hodges, "Results of NSIR Screening of Nuclear Facility Security Scenarios for Remote and Speculative Nature Prior To Use In Decision-Making Framework," March 9, 2005), was inadvertently omitted from the Reference List provided with the *Vaughn* Index and was not publicly released to the extent permissible under FOIA. (Ref. 1). We note that in citing this document as a reference, the Staff was overly inclusive, as the Staff did not directly use information from this memo in preparing the Supplemental EA. As discussed in Enclosure 2 to the

Strosnider Memo, the Staff considered this memorandum as an input to the generic spent fuel storage security assessments. A more thorough discussion of scenario selection is contained in the Strosnider Memo, a redacted version of which was included in the Staff's *Vaughn* index (Ref. 1). Nevertheless, the Staff is releasing a public version of this document in an addendum to the *Vaughn* Index.

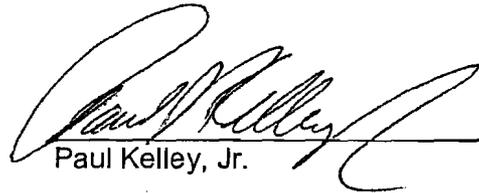
14. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

### References

1. "NRC Staff's Response to Commission Order to Provide Reference List and *Vaughn* Index," February 13, 2008. (ADAMS Accession No. ML080450260).
2. SECY-04-0222, "Decision-Making Framework for Materials and Research and Test Reactor Vulnerability Assessments," (ADAMS Accession No. ML080440119). (Document 8 in the Staff's Reference List).
3. Staff Requirements-SECY-04-0222, "Decisionmaking Framework for Materials and Research Test Reactor Vulnerability Assessments," (ADAMS Accession No. ML080440118). (Document 7 in the Staff's Reference List).
4. "Memorandum from J. Strosnider to R. Zimmerman, "Framework Assessments of Spent Fuel Storage Casks and Radioactive Material Transportation Packages," December 9, 2005. (ADAMS Accession Nos. ML053290260, ML080440117). (Document 6 in the Staff's Reference List).
5. Memorandum from L. Reyes to the Commission, "Completion of Security Assessment of Spent Fuel Storage Casks for Land-Based Terrorist Threats," September 15, 2005. (ADAMS Accession Nos. ML052490378, ML080440115). (Document 4 in the Staff's Reference List).
6. Memorandum from L. Reyes to the Commission, "Completion of Security Assessment of the Crash of a Large Plane into Spent Fuel Storage Casks," September 15, 2005. (ADAMS Accession Nos. ML052490377, ML080440116). (Document 5 in the Staff's Reference List).
7. Design Basis Threat, Final Rule, 10 C.F.R. Part 73, U.S. Nuclear Regulatory Commission. (ADAMS Accession No. ML070520692). (Document 14 in the Staff's Reference List).

  
James Randall Hall

  
Shana R. Helton

  
Paul Kelley, Jr.

Dated at Rockville, Maryland  
this 18<sup>th</sup> day of April, 2008