

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

DEC 15 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

SAN LUIS OBISPO MOTHERS FOR PEACE,

Petitioner,

v.

UNITED STATES NUCLEAR REGULATORY  
COMMISSION and the UNITED STATES  
OF AMERICA,

Respondents

No.

**08 - 75058**

**PETITION FOR REVIEW**

Pursuant to F.R.A.P. 15 and 28 U.S.C. § 2342-2344, Petitioner, San Luis Obispo Mothers for Peace ("SLOMFP"), hereby petitions the Court for review of four orders by the U.S. Nuclear Regulatory Commission ("NRC" or "Commission"). The orders were issued in a licensing proceeding concerning Pacific Gas & Electric Company's proposal to build and operate an Independent Spent Fuel Storage Installation ("ISFSI") on the site of the Diablo Canyon Nuclear Power Plant.

The orders of which Petitioners seek review are:

- *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-26, \_\_\_ NRC \_\_\_ (October 23, 2008) (*see* Attachment 1);

- *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-08, 67 NRC 193 (2008) (see Attachment 2); and
- *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-05, 67 NRC 174 (2008) (see Attachment 3).
- *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-01, 67 NRC 1 (2008) (see Attachment 4).

SLOMFP contends that, by refusing to hold a closed hearing on whether the environmental impacts of terrorist attacks and other acts of malice or insanity against the proposed ISFSI should be addressed in an Environmental Impact Statement (“EIS”), and by refusing to address the environmental impacts of attacks on the Diablo Canyon spent fuel storage facility before approving a license, the NRC violated the Atomic Energy Act, the National Environmental Policy Act, and the Administrative Procedure Act; and abused its discretion. Therefore, SLOMFP seeks review and reversal of CLI-08-26, CLI-08-02, CLI-08-05, and CLI-08-01.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Diane Curran". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Diane Curran

Harmon, Curran, Spielberg & Eisenberg, L.L.P.

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Attorney for SLOMFP

December 11, 2008

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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SAN LUIS OBISPO MOTHERS FOR PEACE,

Petitioner,

v.

No.

UNITED STATES NUCLEAR REGULATORY  
COMMISSION and the UNITED STATES  
OF AMERICA,

Respondents

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 11, 2008, copies of the foregoing  
PETITION FOR REVIEW were served on the following by first-class mail:

Lisa B. Clark, Esq.  
Molly L. Barkman, Esq.  
Office of the General Counsel  
Mail Stop – O-15 D21  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C 20555-0001  
E-mail: [lbc@nrc.gov](mailto:lbc@nrc.gov);  
[mlb9@nrc.gov](mailto:mlb9@nrc.gov)

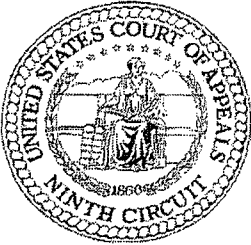
David A. Repka, Esq.  
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Pacific Gas & Electric Company  
77 Beale St., B30A  
San Francisco, CA 94105  
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Dated this 11<sup>th</sup> day of December, 2008

A handwritten signature in dark ink, appearing to read "Diane", written over a horizontal line.

Diane Curran

**FILED**

USCA DOCKET # (IF KNOWN)

DEC 15 2008

**08-75058**MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
CIVIL APPEALS DOCKETING STATEMENT**

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

**TITLE IN FULL:**San Luis Obispo Mothers for  
Peace v. U.S. Nuclear  
Regulatory Commission and  
United States of America

DISTRICT:

NA

JUDGE:

NA

DISTRICT COURT NUMBER:

NA

DATE NOTICE OF APPEAL FILED:

December 12, 2008

IS THIS A CROSS APPEAL?

☐ YES☒ NOIF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY,  
PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY):**BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:**Petition for review of an NRC decision to license a spent  
fuel storage facility at the Diablo Canyon power plant.**PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL:**Whether the NRC violated the National Environmental Policy  
Act and the Atomic Energy Act.**PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE  
PENDING DISTRICT COURT POST-JUDGMENT MOTIONS):**This case appeals an NRC decision on remand from San Luis  
Obispo Mothers for Peace v. NRC 449 F. 3d 1016 (9th Cir.2006),  
cert denied, 127 S Ct. 1124 (2007).**DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:**

- ☒ Possibility of Settlement  
☐ Likelihood that intervening precedent will control outcome of appeal  
☒ Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (Specify)

Petitioners may seek a stay of fuel loading at the facility.

☐ Any other information relevant to the inclusion of this case in the Mediation Program☐ Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges

## LOWER COURT INFORMATION

JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT/ORDER APPEALED	RELIEF
<input checked="" type="checkbox"/> <b>FEDERAL QUESTION</b> <input type="checkbox"/> <b>DIVERSITY</b> <input type="checkbox"/> <b>OTHER (SPECIFY):</b> <div style="border: 1px solid black; height: 100px; width: 100%;"></div>	<input type="checkbox"/> <b>FINAL DECISION OF DISTRICT COURT</b>  <input type="checkbox"/> <b>INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT</b>  <input type="checkbox"/> <b>INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY):</b> <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <input checked="" type="checkbox"/> <b>OTHER (SPECIFY):</b> <div style="border: 1px solid black; padding: 5px;">petition for review of agency decision.</div>	<input type="checkbox"/> <b>DEFAULT JUDGMENT</b> <input type="checkbox"/> <b>DISMISSAL/JURISDICTION</b> <input type="checkbox"/> <b>DISMISSAL/MERITS</b> <input type="checkbox"/> <b>SUMMARY JUDGMENT</b> <input type="checkbox"/> <b>JUDGMENT/COURT DECISION</b> <input type="checkbox"/> <b>JUDGMENT/JURY VERDICT</b> <input type="checkbox"/> <b>DECLARATORY JUDGMENT</b> <input type="checkbox"/> <b>JUDGMENT AS A MATTER OF LAW</b> <input type="checkbox"/> <b>OTHER (SPECIFY):</b> <div style="border: 1px solid black; height: 30px; width: 100%;"></div>	<input type="checkbox"/> <b>DAMAGES:</b> <b>SOUGHT \$</b> <div style="border: 1px solid black; width: 80px; height: 20px;"></div> <b>AWARDED \$</b> <div style="border: 1px solid black; width: 80px; height: 20px;"></div> <input type="checkbox"/> <b>INJUNCTIONS:</b> <input type="checkbox"/> <b>PRELIMINARY</b> <input type="checkbox"/> <b>PERMANENT</b> <input type="checkbox"/> <b>GRANTED</b> <input type="checkbox"/> <b>DENIED</b> <input type="checkbox"/> <b>ATTORNEY FEES:</b> <b>SOUGHT \$</b> <div style="border: 1px solid black; width: 80px; height: 20px;"></div> <b>AWARDED \$</b> <div style="border: 1px solid black; width: 80px; height: 20px;"></div> <input type="checkbox"/> <b>PENDING</b> <input type="checkbox"/> <b>COSTS: \$</b> <div style="border: 1px solid black; width: 80px; height: 20px;"></div>

## CERTIFICATION OF COUNSEL

**I CERTIFY THAT:**

1. COPIES OF ORDER/JUDGMENT APPEALED FROM ARE ATTACHED.
2. A CURRENT SERVICE LIST OR REPRESENTATION STATEMENT WITH TELEPHONE AND FAX NUMBERS IS ATTACHED (SEE 9TH CIR. RULE 3-2).
3. A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SERVED IN COMPLIANCE WITH FRAP 25.
4. I UNDERSTAND THAT FAILURE TO COMPLY WITH THESE FILING REQUIREMENTS MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS APPEAL.

Signature

12/11/2008

Date

## COUNSEL WHO COMPLETED THIS FORM

NAME	Diane Curran		
FIRM	Harmon, Curran, Spielberg & Eisenberg LLP		
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\*\*THIS DOCUMENT SHOULD BE FILED IN DISTRICT COURT WITH THE NOTICE OF APPEAL. \*\*  
 \*\*IF FILED LATE, IT SHOULD BE FILED DIRECTLY WITH THE U.S. COURT OF APPEALS. \*\*