

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alex S. Karlin, Chairman  
Nicholas G. Trikouros  
Dr. Paul B. Abramson

In the Matter of

PACIFIC GAS & ELECTRIC COMPANY

(Diablo Canyon Nuclear Power Plant, Units 1  
and 2)

Docket Nos. 50-275-LR and 50-323-LR

ASLBP No. 10-900-01-LR-BD01

April 9, 2010

NOTICE OF DISCLOSURE

The administrative judges of the Atomic Safety and Licensing Board Panel (ASLBP) of the U.S. Nuclear Regulatory Commission are subject to legal and ethical standards more stringent than those applicable to other NRC employees. "The standard applicable in the federal courts, and applied by the NRC as well, is that a judge shall disqualify himself in any proceeding in which 'his impartiality may reasonably be questioned.' 28 U.S.C. § 455(a)."<sup>1</sup> This is an objective standard. The fact that a judge is actually impartial is not sufficient. The law requires that there is no reasonable basis upon which a judge's "impartiality might reasonably be questioned." Even if a judge believes that there is no such basis for disqualification, he or she should disclose any information that "might reasonably be considered relevant" to this issue.<sup>2</sup>

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<sup>1</sup> Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-84-20\*, 20 NRC 1061,1078 n. 46 (1984). See also Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-9, 47 NRC 326, 331 (1998); Houston Lighting and Power Company (South Texas Project, Units 1 and 2), CLI-82-9, 15 NRC 1363, 1366 (1982); MODEL CODE OF JUDICIAL CONDUCT R. 2.11 (2007); 28 U.S.C. § 455(a).

<sup>2</sup> "A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the

In accordance with these principles, I place the following information into the record of this proceeding:

My wife and I reside in Potomac, Maryland. In 2003 we purchased a small undeveloped parcel of land (75 x 125 feet) on Fourth Street in Los Osos, California as a possible location for a retirement home. I do not plan to retire for at least 6 years. Meanwhile, this empty parcel is currently undevelopable due to a construction moratorium imposed on Los Osos by the California Regional Water Quality Control Board.

I have considered this situation and, in accordance with normal ASLBP procedures, I discussed these facts with the Chief Administrative Judge of the ASLBP before he assigned me to this matter. I am confident that, as an actual matter, I can be impartial in this proceeding. Further, I do not believe that the foregoing facts constitute a basis upon which my “impartiality might reasonably be questioned.” Nevertheless, I will listen with an open mind to any party, potential party,<sup>3</sup> or interested State or local governmental body or affected Federally-recognized Indian Tribe that may believe otherwise.<sup>4</sup>

If any party or potential party to this proceeding, or any interested State or local governmental body or affected Federally-recognized Indian Tribe, believes that the foregoing facts may warrant my recusal, then they should file a motion herein to that effect within ten days of the date of this notice. See 10 C.F.R. §§ 2.323 and 2.313(b).

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judge believes there is no basis for disqualification.” MODEL CODE OF JUDICIAL CONDUCT R. 2.11 cmt. 5 (2007).

<sup>3</sup> “‘Potential Party’ means any person who has requested, or who may intend to request, a hearing or petition to intervene in a hearing.” 10 C.F.R. § 2.4.

<sup>4</sup> NRC regulations provide that the Board “will afford an interested State, local governmental body (county, municipality or other subdivision), and affected, Federally-recognized Indian Tribe, which has not been admitted as a party under § 2.309, a reasonable opportunity to participate in a hearing.” 10 C.F.R. § 2.315(c).



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(Diablo Canyon Nuclear Power Plant, )  
Units 1 and 2) )  
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing NOTICE OF DISCLOSURE have been served upon the following persons by the Electronic Information Exchange.

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Docket Nos. 50-275-LR and 50-323-LR  
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[Original signed by Nancy Greathead]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 9<sup>th</sup> day of April 2010.