

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. 10-890-01-LR-BD01

August 5, 2010

ORDER

(Scheduling Initial Scheduling Conference)

This is to notify Pacific Gas & Electric Co., the San Luis Obispo Mothers for Peace (SLOMFP), and the Nuclear Regulatory Commission Staff that, in accordance with 10 C.F.R. §§ 2.329 and 2.332, the Board will hold an initial scheduling conference call on August 24, 2010, at 3:00 PM EDT for the purpose of developing a scheduling order to govern the conduct of this proceeding.

Prior to the conference call, the parties and the Staff should familiarize themselves with the relevant procedural rules of 10 C.F.R. Part 2, including but not limited to 10 C.F.R. §§ 2.309(c) and (f), 2.310, 2.323, 2.329, 2.332, 2.333, 2.334, 2.338, all of Subpart L, and the model milestones set forth in Appendix B to Part 2.

Pursuant to 10 C.F.R. § 2.332(d), the Board will consider the NRC Staff's projected schedule for completion of its safety and environmental evaluations in developing the hearing schedule. Accordingly, on August 18, 2010, the NRC Staff shall submit to the Board, with copies to all parties, a written estimate of its projected schedule for completion of such safety and environmental evaluations, including but not limited to its current best good faith estimate of the

dates when it expects to issue the final safety evaluation report (SER), the draft and final environmental impact statements (EIS), and the date when it expects to submit the SER to the Advisory Committee on Reactor Safety.

The parties and the Staff should be prepared to address the following matters at the initial scheduling conference call:

1. Whether hearings on the safety contention (Contention TC-1) should be commenced before publication of the NRC Staff's safety evaluation as permitted under 10 C.F.R. § 2.332(d);
2. Suggestions for modifying the time limits set in 10 C.F.R. § 2.1205(a) to prevent motions for summary disposition from conflicting with the preparation by the parties, the Staff, and the Board for the evidentiary hearing;
3. Suggested time limits for filing "timely" motions for leave to file new or amended contentions under 10 C.F.R. § 2.309(f)(2)(iii) and for defining "nontimely" filings under 10 C.F.R. § 2.309(c).
4. Specification of pleading rules for motions for leave to file new or amended contentions that reconcile 10 C.F.R. §§ 2.309(c), 2.309(f)(2), and 2.323 (motions and answers to motions) with 10 C.F.R. § 2.309(h) (answers and replies to contentions);
5. Suggested regularized time frames for the updating of mandatory disclosures under 10 C.F.R. § 2.336(d) and for the updating of the hearing file under 10 C.F.R. § 2.1203(c);
6. Establishment of an agreement concerning which electronically stored information will be considered reasonably accessible and thus subject to mandatory disclosure under 10 C.F.R. § 2.336 or production under 10 C.F.R. § 2.1203(c) (e.g., an agreement between the parties and Staff as to the nature and extent of their respective duties to conduct a reasonable search for their electronically stored information);¹

¹ See Fed. R. Civ. P. 16(b)(3)(B)(iii) (Scheduling order may "provide for disclosure or discovery of electronically stored information"); 26(b)(2)(B) ("A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective

7. Establishment of an agreement as to the form of the mandatory disclosure or production of electronically stored information (if no agreement can be reached, and the Board does not otherwise instruct, then electronically stored information shall be disclosed and produced in an electronic form that is readily searchable by commonly available computer programs);²

8. Suggested time limit for filing of the final list of potential witnesses for each contention pursuant to 10 C.F.R. § 2.336(a)(1);

9. Suggested time limit for any motion for the use of Subpart G hearing procedures for a particular contention based upon challenges to the credibility of a newly disclosed eyewitness pursuant to 10 C.F.R. § 2.310(d);³

10. Whether, pursuant to 10 C.F.R. § 2.310(h), the parties and the Staff are currently willing to consent to handling of any specific contention under Part 2 Subpart N and, if not at this time, whether to establish a later time for reconsideration of this issue;

11. Opportunities for the clarification, simplification, or specification of the issues in accordance with 10 C.F.R. § 2.329(c)(1);

12. The necessity or desirability of amending the pleadings in accordance with 10 C.F.R. § 2.329(c)(2);

13. Opportunities to develop stipulations or admissions of fact in accordance with 10 C.F.R. § 2.329(c)(3);

order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for discovery.”) (emphasis added).

² See Fed. R. Civ. P. 34 (regarding the formats for the production of electronically stored information).

³ See Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station), LBP-04-31, 60 NRC 686, 703 (2004).

14. Opportunities for the settlement of issues or contentions, including the utility of appointing a settlement judge pursuant to 10 C.F.R. § 2.338;

15. Whether any party or the Staff intend to assert a privilege or protected status for any information or documents otherwise required to be disclosed herein and, if so, proposals for the submission of privilege logs under 10 C.F.R. § 2.336(a)(3) and (b)(5), procedures and time limits for challenges to such assertions, and the development of a protective order and non-disclosure agreement;⁴

16. Whether a site visit would be appropriate and helpful to the Board in the resolution of the contentions;

17. Whether the parties and the Staff should be required to file their respective initial written statements of position and written testimony with supporting affidavits pursuant to 10 C.F.R. § 2.1207(a)(1) simultaneously or sequentially, and if sequentially, which party should file first;

18. Suggested time limits for the filing of motions for cross-examination under 10 C.F.R. § 2.1204;⁵ and

19. Any other procedural or scheduling matters that the Board may deem appropriate.

Most of the foregoing matters are addressed (in the context of a different proceeding) in the Initial Scheduling Order in Progress Energy Florida, Inc. (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, 70 NRC ____ (slip op.) (August 27, 2009). During the initial scheduling conference call herein, the parties and the Staff should be prepared to explain, on a point-by-point basis, why a similar order should not be issued here.

⁴ See Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station), LBP-05-33, 62 NRC 828 (2005).

⁵ See Citizens Awareness Network v. United States, 391 F.3d 338, 353-54 (1st Cir. 2004); Vermont Yankee, LBP-04-31, 60 NRC at 710-11.

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Units 1 and 2))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (SCHEDULING INITIAL SCHEDULING CONFERENCE) have been served upon the following persons by the Electronic Information Exchange.

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[Original signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 5th day of August 2010.