

August 26, 2010

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION**

In the matter of  
Pacific Gas and Electric Company  
Diablo Canyon Nuclear Power Plant  
Units 1 and 2

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

**SAN LUIS OBISPO MOTHERS FOR PEACE'S RESPONSE  
TO NRC STAFF'S PETITION FOR INTERLOCUTORY REVIEW  
OF LBP-10-15 REGARDING CONTENTIONS TC-1 AND EC-1**

**I. INTRODUCTION**

Pursuant to 10 C.F.R. § 2.341(b)(3), San Luis Obispo Mothers for Peace (SLOMFP) hereby responds to NRC Staff's Petition for Interlocutory Review of Atomic Safety and Licensing Board Decision (LBP-10-15) Admitting an Out of Scope Safety Contention and Improperly Recasting an Environmental Contention (August 19, 2010) ("NRC Staff Petition"). The Staff seeks Commission review of LBP-10-15 with respect to Contentions TC-1 and EC-1.

Independent of the NRC Staff's Petition, Pacific Gas and Electric Company ("PG&E") has exercised its right under 10 C.F.R. § 2.311(a) to obtain Commission review of LBP-10-15 by appealing the decision. *See* Applicant's Notice of Appeal of LBP-10-15 and Brief in Support of Appeal from LBP-10-15 (August 16, 2010) ("PG&E Appeal Brief"). Therefore SLOMFP believes the issue of whether the Staff has justified interlocutory review is moot. Accordingly, this brief does not respond to the Staff's arguments regarding the appropriateness of interlocutory review. In addition, this brief does not address substantive arguments that were made by PG&E and addressed by SLOMFP in its response to PG&E's Appeal Brief. However, this brief responds to new substantive arguments not made by PG&E in its Appeal Brief.

## II. ARGUMENT

### A. Contention TC-1 is Admissible.

NRC license renewal regulation 10 C.F.R. § 54.29(a) requires a demonstration of reasonable assurance with respect to “managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require review under §§ 54.21(a)(1).” Under well-established precedents, all terms of this regulation must be given effect. *Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, New Mexico 87313), CLI-06-14, 63 NRC 510, 516 (2006). Like PG&E, the Staff makes a number of attempts to read the phrase “managing the effects of aging” out of 10 C.F.R. § 54.29(a)(1). These arguments are addressed in SLOMFP’s response to PG&E’s Brief and will not be repeated here. *See* San Luis Obispo Mothers for Peace’s Response to Pacific Gas and Electric Company’s Appeal From LBP-10-15, Section III.A (August 26, 2010).

In its Petition, the NRC Staff also attempts to write another term out of the regulations: the word “will.” The Staff argues that the word should be interpreted to mean “to express intention” rather than a prediction of what will be done. NRC Staff Petition at 17. The Staff’s interpretation effectively would render the word “will,” as it is ordinarily understood and applied by the NRC a nullity. *See, .e.g., Public Service Company of New Hampshire* (Seabrook Station, Unit 1), CLI-88-7, 28 NRC 271 (1988).

The Staff’s argument appears to be an act of last-minute desperation. The Staff does not cite to any pleading below in which it made the claim, nor could SLOMFP find one. As required by 10 C.F.R. § 2.341(b)(5), therefore, the argument should be rejected out of hand. In any event, the Staff cites no support for its unorthodox interpretation of “will,” other than a secondary definition in Webster’s Dictionary. NRC Staff Petition at 17 n.65. But “will” is a regulatory

term that is common in NRC regulations and decisions. In at least one Commission decision, “will” was given the same concrete interpretation that the Atomic Safety and Licensing Board gave it in LBP-10-15. *Seabrook Station*, CLI-88-7, 28 NRC at 273. Therefore the Staff’s argument has no merit.

The Staff also argues that under its interpretation of 10 C.F.R. § 54.29(a), the NRC would “only” be required to determine “that the applicant had sufficient plans to manage the effects of aging during the [period of extended operation.]” NRC Staff Petition at 17-18. But this argument simply begs the question of what the applicant’s plan for managing the effects of aging should include. In SLOMFP’s view, the plan should include measures to ensure that PG&E’s current problems with management of safety equipment do not adversely affect its management of aging equipment during the license renewal term.

**B. Contention EC-1 is Admissible as Drafted.**

The Staff argues that to apply 40 C.F.R. § 1502.22 would undermine the rigor of NRC’s own regulations because NRC regulations would require PG&E to provide information “necessary” to its Severe Accident Mitigation Alternatives (“SAMA”) analysis regardless of cost and would not allow PG&E to justify the exclusion of necessary information if it could show that obtaining the information is too “costly.” NRC Staff Brief at 22-23. In opposing the contention, however, the NRC Staff did not interpret the term “necessary” in such an unqualified way. Although the Staff had previously stated that probabilistic risk analysis is accepted and standard practice in SAMA analyses” (*see Entergy Nuclear Generation Co. and Entergy Nuclear Operation, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 340 (2006)), the Staff opposed admission of the contention to the extent that it sought the results of a probabilistic study now in progress on the ground that it was a “state-of-the-art” study. NRC Staff’s Answer

to the San Luis Obispo Mothers for Peace Request for Hearing and Petition to Intervene at 30 (April 16, 2010). Asserting that the NRC “must have some discretion to draw the line and move forward with decisionmaking,” the Staff contended that a “sensitivity analysis using a best estimate or conservative multiplier on the [core damage frequency] would be sufficient for the purpose of completing the SAMA analysis.” *Id.* (citing *Entergy Nuclear Generation Co. and Entergy Nuclear Operation., Inc.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC \_\_\_ (March 26, 2010) (slip op. at 37 (quoting *Hells Canyon Alliance v. United States Forest Serv.*, 227 F.3d 1170, 1185 (9th Cir. 2000)). Given that the act of “drawing the line” generally involves consideration of costs and/or other practical factors, the Staff does not appear to have a real dispute with the applicability of 40 C.F.R. § 1502.22.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should admit Contentions TC-1 and EC-1 as re-drafted by the Atomic Safety and Licensing Board.

Respectfully submitted,

*Electronically signed by*

Diane Curran

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

1726 M Street N.W., Suite 600

Washington, D.C. 20036

202/328-3500

e-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

August 30, 2010

## CERTIFICATE OF SERVICE

I certify that on August 30, 2010, I posted San Luis Obispo Mothers for Peace's Response to NRC Staff's Petition for Interlocutory Review of LBP-10-15 Regarding Contentions TC-1 and EC-1 on the NRC's Electronic Information Exchange. It is my understanding that as a result, the following persons were served:

<p>Office of the Secretary And NRC Commissioners Rules and Adjudications Branch U.S. Nuclear Regulatory Commission 11555 Rockville Pike Rockville, MD 20852 <a href="mailto:hearingdocket@nrc.gov">hearingdocket@nrc.gov</a></p>	<p>David A. Repka, Esq. Tyson R. Smith, Esq. Winston &amp; Strawn, LLP 1700 K Street N.W. Washington, D.C. 20006-3817 <a href="mailto:drepka@winston.com">drepka@winston.com</a>, <a href="mailto:trsmith@winston.com">trsmith@winston.com</a></p>
<p>Susan Uttal, Esq. Lloyd Subin, Esq. Office of General Counsel Mail Stop O-15D21 U.S. Nuclear Regulatory Commission Washington, D.C. 20555 <a href="mailto:Susan.Uttal@nrc.gov">Susan.Uttal@nrc.gov</a> <a href="mailto:Lloyd.Subin@nrc.gov">Lloyd.Subin@nrc.gov</a></p>	<p>E. Roy Hawkens Chief Administrative Judge Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555 <a href="mailto:Roy.Hawkens@nrc.gov">Roy.Hawkens@nrc.gov</a></p>

*Electronically signed by*  
Diane Curran