

DAVID A. REPKA
202-282-5726
dreпка@winston.com

Electronic Letterhead

August 31, 2010

BY ELECTRONIC INFORMATION EXCHANGE

Administrative Judge Alex S. Karlin
Administrative Judge Nicholas G. Trikouros
Administrative Judge Paul B. Abramson
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Two White Flint North
11545 Rockville Pike
Mail Stop: T-3F23
Rockville, MD 20852

In the Matter of
PACIFIC GAS AND ELECTRIC COMPANY
(Diablo Canyon Power Plant, Units 1 and 2)
Docket Nos. 50-275-LR and 50-323-LR

RE: Clarification of Agreement of the Parties Regarding Privilege Logs

Dear Administrative Judges:

In accordance with the direction of the Licensing Board during the conference call on scheduling issues held on August 24, 2010, this letter is to inform you of an agreement of the parties to clarify their agreement on mandatory disclosures previously submitted by the undersigned on August 10, 2010. Specifically, Pacific Gas and Electric Company (PG&E), San Luis Obispo Mothers for Peace, and the NRC Staff have agreed to modify Paragraph 5 of the stipulation as discussed below. All other provisions of the agreement are not modified.

The discussion on the conference call with the Licensing Board involved the intent of the parties regarding sensitive, unclassified security information commonly referred to as "SUNSI." This information does not rise to the level of Safeguards Information (SGI) under NRC regulations and practice.¹ Rather, it is commonly treated as a form of commercial or financial (*i.e.*, "proprietary" information). *See, e.g.*, 10 C.F.R. 2.390 (d)(1). Based on further discussion among the parties, Paragraph 5 of the stipulation is stricken and replaced with the following:

¹ *See generally* SECY-04-0191, "Withholding Sensitive Unclassified Information Concerning Nuclear Power Reactors from Public Disclosure," October 19, 2004.

5. (a) The parties have agreed to waive the requirements in 10 C.F.R. §§ 2.336(a)(3) and 2.336(b)(5) to produce a privilege log identifying documents subject to the attorney-client communication, attorney work product, and deliberative process privileges.
- (b) The parties have agreed that they will still produce, as part of their mandatory disclosures, privilege logs covering any documents claimed to qualify for protected status as security-related information and/or as proprietary information. *See, e.g.*, 10 C.F.R. §§ 2.390(a)(1), (3), and (4); 2.390(d)(1).

This modified stipulation is consistent with the approach taken in Section II.A.2 of the Initial Scheduling Order in the *Levy Combined Operating License Application* matter. *See Progress Energy Florida, Inc.* (Levy County Nuclear Power Plant, Units 1 and 2), LBP-09-22, slip op. at 4-5 (Aug. 27, 2009). The parties agree that further discussion of the scope of the privileges addressed in Paragraph 5 above is premature. That issue can be addressed in the context of any specific claim of privilege that is disputed, should that circumstance arise.

Counsel for San Luis Obispo Mothers for Peace and the NRC Staff have authorized the undersigned counsel for PG&E to submit this agreement on behalf of the parties.

Sincerely,

/s/ signed electronically by

David A. Repka
Counsel for Pacific Gas and Electric Company

cc: EIE Service List