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NUCLEAR REGULATORY COMMISSION

Title: Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant

DOCKETED

February 23, 2011 (2:00 p.m.)

OFFICE OF SECRETARY
RULEMAKINGS AND
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Docket Number: 50-275-LR and 50-323-LR

ASLBP Number: 10-890-01-LR-BD01

Location: (telephone conference)

Date: Wednesday, February 23, 2011

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1 UNITED STATES OF AMERICA
 2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY AND LICENSING BOARD PANEL

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6 PRE-HEARING CONFERENCE

7 -----x

8 IN THE MATTER OF: :
 9 PACIFIC GAS AND : Docket Nos. 50-275-LR
 10 ELECTRIC COMPANY : and 50-323-LR
 11 (Diablo Canyon Nuclear : ASLBP No.
 12 Power Plant, Units 1 : 10-890-01-LR-BD01
 13 and 2) :

14 -----x

15 Wednesday, February 23, 2011

16 Via teleconference

17
 18 The above-entitled matter came on for
 19 prehearing conference, pursuant to notice, at 2:00
 20 p.m.

21 BEFORE:

22 ALEX S. KARLIN Administrative Judge

23 NICHOLAS G. TRIKOUROS Administrative Judge

24 PAUL B. ABRAMSON Administrative Judge

25
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P-R-O-C-E-E-D-I-N-G-S

2:04 p.m.

ADMIN. JUDGE KARLIN: All right. Let's start. Again, this Alex Karlin. We're going to go on the record.

I'm one of the Judges with the Atomic Safety and Licensing Board. And we are on the record with regard to the Pacific Gas and Electric Company's application for a license renewal for its Diablo Canyon Nuclear Power Plants, and the challenge filed by the San Luis Obispo Mothers for Peace.

The docket number for the record of this proceeding is 50-275-LR and 50-323-LR, and the ASLBP number is 10-890-01-LR-BD01.

This conference call is being held pursuant to the order we sent out on January 19th, of this year, and today's date is February 23rd.

We're conducting this conference telephonically. And there should be, I believe there are two types of telephone lines, one for the lawyers and representatives so that they can speak, and a second type of line for members of the public or media who might want to listen in on this proceeding.

At this point, perhaps we can do the introductions for the board. Again, I'm sitting here

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1 in Rockville, Maryland, Alex Karlin, along with John
2 Eser, our lawyer and law clerk.

3 And could the other judges please identify
4 themselves for the record?

5 ADMIN. JUDGE ABRAMSON: Judge Abramson in
6 snowy, sunny New York.

7 ADMIN. JUDGE KARLIN: Okay, Thank you.

8 ADMIN. JUDGE TRIKOUROS: Yes, this is Nick
9 Trikouros, in New Jersey.

10 ADMIN. JUDGE KARLIN: Okay, thank you.

11 Now for the parties, why don't we start
12 with the petitioners on the record.

13 Ms. Curran, could you identify yourself
14 and anyone else who's on the line with you here?

15 MS. CURRAN: This is Diane Curran
16 representing the San Luis Obispo Mothers for Peace.
17 And I believe that Jane Swanson may be listening in,
18 but not in a speaking role.

19 ADMIN. JUDGE KARLIN: Okay, great.

20 Applicant, Mr. Repka, could you introduce
21 your team, please?

22 MR. REPKA: Yes, this is David Repka, on
23 behalf of Pacific Gas and Electric. And also on the
24 call is Mr. Tyson Smith, who is on a separate line.

25 ADMIN. JUDGE KARLIN: Okay, great. And

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1 for the NRC staff, our Office of General Counsel, Ms.
2 Uttal, your team?

3 MS. UTTAL: Yes, this is Susan Uttal
4 representing the NRC staff. I have with me Max Smith
5 and Lloyd Subin, also from the Office of General
6 Counsel, and Drew Stuyvenberg, who is the Environment
7 PM, and Nathan Ferrer, who is the Safety PM for Diablo
8 Canyon License Renewal.

9 ADMIN. JUDGE KARLIN: Great. Is there
10 anyone else on the line? Speak now or forever --
11 okay, that makes sense. That sounds like a full
12 complement.

13 All right. The purpose of this call is to
14 have a six month status report or status conference.
15 And first, what I want to do is go through a little
16 bit of the background, recent background, and then we
17 will go into identifying what we should put on the
18 agenda, and then we'll go through the agenda. And
19 it's not very long, but I think it's worth covering
20 and reviewing some of the background.

21 In August, we admitted four contentions,
22 and issued a decision admitting four contentions,
23 three environmental and one safety or technical in
24 nature.

25 Those -- that decision has been appealed.

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1 And in addition, we certified on one of the issues to
2 the Commission and we referred another issue to the
3 Commission, so the Commission has in its hand some
4 review of our ruling at that point.

5 Meanwhile, we plow ahead and do what we
6 need to do to get ready for the hearing. We had a
7 scheduling conference in August, and then we issued a
8 scheduling order, initial scheduling order, on
9 September 15th.

10 Some of the mandatory disclosures that are
11 required under the reg, specified in the regs, began
12 on October 15th, and others have been deferred.

13 Later in November, pursuant to our
14 instruction and request, the parties submitted a
15 proposed protective order and non-disclosure
16 agreement.

17 We looked at it and studied it and came up
18 with a revised protective order and non-disclosure
19 agreement that we sent around, just the beginning of
20 this month, February 3rd. And the parties have
21 submitted comments on the revised protective order as
22 we had developed it. So that's in our -- on our
23 court, as it were, to finalize and issue that
24 protective order and non-disclosure agreement.

25 In the meantime, other things have been

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1 going on, other background activities. The staff has
2 been busy working on the application, and have
3 reported to us monthly, and we appreciate those
4 reports.

5 And as I understand it, and we'll get to
6 this a little bit later, the staff issued the final
7 safety evaluation report with open items in early
8 January of this year, and that the ACRS subcommittee
9 met and talked about, I guess, this FSER on February
10 9th.

11 Just recently, on February 17th, the staff
12 submitted its monthly status report indicating
13 essentially a three-month delay, it appears, with
14 regard to the draft EIS and the final EIS, so that the
15 draft which we were expecting it might come this
16 month, February of 2011, is now, the staff estimates
17 will be May.

18 And then the final EIS, rather than being
19 October of this year would be maybe January ~~is~~ their
20 best current estimate, of next year, for the final
21 EIS.

22 This results in a, based on our initial
23 scheduling order, the final EIS is the trigger event
24 for the filings that must immediately precede the
25 evidentiary hearing. And so the three-month delay in

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1 the FEIS represents or causes a three-month delay in
2 us being able to hold the evidence you are hearing and
3 issue ultimately a decision.

4 So we've got a little bit of a delay here.

5 Meanwhile, the Ninth Circuit, we are
6 aware, issued a decision, what, on February 15th, in
7 different litigation, a different case, involving the
8 storage of -- interim spent fuel storage facility at
9 Diablo Canyon.

10 And finally, the Commission has yet to
11 rule on any of the referrals or the appeals or the
12 certifications.

13 So we're in a bit of a -- it's been six
14 months or more, and we're still waiting and hoping to
15 have some resolution from them. But, as I said
16 before, we have to proceed, manage this case as fairly
17 and efficiently as we can.

18 So that's really the purpose of this call
19 is to manage this proceeding efficiently and fairly,
20 and do so in a prompt way, and get the hearing as
21 promptly as we can, given that the regs do require us
22 to wait until after the FEIS is issued before we can
23 have the hearing, at least on environmental issues.

24 So, the question really right now is
25 partially, what can we do now when we're not on the

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1 critical path that can expedite and manage this case
2 so that when the staff does finish its activities, we
3 can move promptly and crisply and fairly to a hearing?

4 So the overview agenda as far as I -- some
5 items we might talk about, I think, and there's no
6 major agenda items here, one is just to double-check
7 with the staff what their schedule is. That's item
8 one.

9 Two, we'll talk about site visit and
10 limited appearance statement sessions that we've been
11 discussing briefly with the parties.

12 We are not here to discuss or have oral
13 argument on anything on -- specifically not on the
14 proposed protective order or non-disclosure agreement.

15 We received your comments on those, and
16 they were helpful. We're going to take them into
17 consideration, and we're going to be issuing something
18 in a week or so, probably.

19 But the third agenda item might be to have
20 some preliminary at least recognition and discussion
21 about, it looks like we are likely to have SGI,
22 safeguards information and possibly classified
23 information involved in the litigation of contention
24 EC-4. That is the contention that we admitted that
25 deals with the potential issues, NEPA issues

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1 associated with terrorist attack on the reactor.

2 So, we felt we would elicit some
3 discussion, or at least create some awareness that we
4 may have to feel how we're going to manage those
5 issues, the EC-4 SGI issues. So that's the third
6 agenda item.

7 Fourth is, we recognized in our initial
8 scheduling order, we established three hard dates,
9 dates that are, you know, coming up for certain
10 activities or deadlines. And we're interested in
11 whether the parties have any thoughts about whether we
12 need to adjust those dates.

13 And that's all I've got. Is there
14 anything else that the parties, or the other judges,
15 for that matter, on the call, I'm sorry I didn't ask
16 you earlier, would like to add?

17 Let me ask Mr. Repka. Is there anything
18 that the applicant wants to put on the agenda here
19 today or talk about in addition to what I just
20 covered?

21 MR. REPKA: No. We did want to discuss
22 the three hard dates, but nothing other than that.

23 ADMIN. JUDGE KARLIN: Okay. Ms. Curran?

24 MS. CURRAN: Yes, thanks, Judge Karlin.
25 If this isn't one of the hard date items, I wondered

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1 if we could get any information from PG&E as to if it
2 has a plan to revise the PRA to -- or the SAMA
3 analysis to take into account the new information
4 about the Shoreline Fault, and if so, when.

5 ADMIN. JUDGE KARLIN: I don't -- okay, why
6 don't we put that as a question you can ask when we
7 get to what I'll call the other items. I'll add that
8 to the agenda.

9 Ms. Uttal, anything that the staff might
10 have?

11 MS. UTTAL: The staff has nothing to add,
12 Judge.

13 ADMIN. JUDGE KARLIN: Okay. Okay, moving
14 right along. Staff schedule, first item, you all
15 submitted a week or so ago your schedule. You -- let
16 me ask you, on the FSER, the Final Safety Evaluation
17 Report, is it correct that that has been reviewed by
18 the subcommittee of the ACRS earlier this month?

19 MS. UTTAL: That is correct. ---

20 ADMIN. JUDGE KARLIN: Good. Okay. Is
21 there a transcript that's generally available from
22 that sort of thing?

23 MS. UTTAL: I believe there is, probably
24 in ADAMS somewhere.

25 ADMIN. JUDGE KARLIN: Okay. I just want

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1 to --

2 MS. UTTAL: Or it's on the website, the
3 ACRS website.

4 ADMIN. JUDGE KARLIN: Okay. Good.

5 MS. UTTAL: But we don't know if it's
6 there yet.

7 ADMIN. JUDGE KARLIN: Okay. I'm not
8 suggesting or asking you to submit that, I just wanted
9 to know -- assumed that something like that would be
10 available.

11 And is there any other -- your estimate
12 for the final FSER is still the same as what you
13 indicated in your letter?

14 MS. UTTAL: May 23rd.

15 ADMIN. JUDGE KARLIN: Yes, so that's
16 pretty much on track as you originally estimated it?

17 MS. UTTAL: Yes, it is.

18 ADMIN. JUDGE KARLIN: Great, okay. On the
19 draft EIS, I tried to draft supplemental ~~EIS~~, and
20 final supplemental EIS, you've revised your timing.

21 Is there any reason, can you tell us? I
22 mean, I know you don't have to, but if you wanted to,
23 are there issues that have come up that cause this
24 delay, or --

25 MS. UTTAL: Yes, it has to do with the

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1 SAMA analysis.

2 ADMIN. JUDGE KARLIN: Okay.

3 MS. UTTAL: We need additional time, the
4 staff needs additional time to complete the review.

5 ADMIN. JUDGE KARLIN: Right. Now, and so
6 your best dates at this point are still the May and
7 the January dates?

8 MS. UTTAL: Yes. That's correct.

9 ADMIN. JUDGE KARLIN: Okay. Let me ask
10 this. If the Commission affirms our ruling on the
11 TC1, the aging management issues, do you anticipate
12 that you would leave the FSER unchanged?

13 MS. UTTAL: I imagine we would.

14 ADMIN. JUDGE KARLIN: Okay. All right.

15 MS. UTTAL: Because it's final except for
16 the open items, I don't anticipate too many changes.

17 ADMIN. JUDGE KARLIN: Okay. All right.
18 That's helpful, in terms of -- your schedule's pretty
19 much as you laid out in your letter of February of
20 this year?

21 MS. UTTAL: That's correct.

22 ADMIN. JUDGE KARLIN: Let's move to the
23 next item, the site visit and the limited appearance
24 statement session.

25 All of you have been most cooperative in

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1 helping John Eser, and I think he's contacted you with
2 regard to logistics about the timing and scheduling of
3 a possible site visit on April 6th or 7th, and a
4 possible limited appearance statement session.

5 We've studied that issue and looked at it,
6 and although I think the majority of the board at
7 least thinks that both of those would be valuable
8 things to have, we've all agreed that it's probably
9 the timing of this should be put off a bit and
10 postponed.

11 The Commission's not yet acted on our
12 appeals. The EIS has been delayed three months. We
13 operated on the assumption that the EIS would have
14 been out by the time we had the site visit -- the
15 draft EIS, in any event.

16 And given that these things have happened,
17 we thought it would be more efficient to just simply
18 postpone the limited appearance statement session and
19 the site visit, so it would allow us to conduct a more
20 scoped and more efficient inspection and -- on any
21 public input that we might receive.

22 So, a, thank you, especially to the
23 Applicant and the people at the facility for making it
24 available and agreeing, and for all of you to try to
25 come up with a date.

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1 But essentially, we're just going to
2 postpone it, because we just think we can -- we want
3 to wait a little bit and see if we get the draft EIS.
4 At least we want to have that under our belt before we
5 have these events. So it's kind of off for a bit of
6 time.

7 And I don't think that's going to input
8 our critical path to having a hearing and getting a
9 decision done promptly, but that's where we are on
10 that.

11 The next item is on the agenda was the SGI
12 -- okay, we've admitted a contention, EC-4, that deals
13 with the alleged inadequacies with regard to the
14 assessment ER's analysis of terrorist attack of the
15 reactor.

16 And we have in our proposed protective
17 order and non-disclosure agreement two footnotes,
18 footnote nine and ten. Nine deals with SGI, ten deals
19 with classified information.

20 And we wrote them that way kind of
21 intentionally, because it's our initial take is that
22 it seems probable that that contention EC-4, will at
23 least involve SGI, and therefore, we didn't say if it
24 involves SGI. We pretty much figure it will involve
25 SGI.

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1 And so let me ask some questions. Let's
2 talk about that a little bit. In order to litigate
3 the environmental contention 4, the relevant
4 documents, the relevant information, and I want to ask
5 the question, do the parties agree that that would
6 entail some safeguards information?

7 Maybe I could ask the staff first.

8 Ms. Uttal?

9 MS. UTTAL: Judge, the staff tells me that
10 they don't think that they know yet whether it will or
11 not. It's likely that it will include some safeguards
12 information, but we can't give you an absolute answer
13 right now.

14 ADMIN. JUDGE KARLIN: Okay. Ms. Curran,
15 your thoughts on that?

16 MS. CURRAN: Well, in the case that went
17 to the Ninth Circuit, a lot was accomplished when the
18 staff went through the hearing file and disclosed as
19 much as possible. A lot of that information has been
20 declared SUNSI, and that might be really different
21 from safeguards.

22 But an impressive amount of information
23 that had originally been withheld was disclosed in the
24 course of the Agency basically complying with the
25 Freedom of Information Act aspect of NEPA.

1 So I guess it's not clear to me how much
2 could be accomplished just based on public documents.
3 And you might -- I guess we might need to see what the
4 lay of the land is at that point.

5 ADMIN. JUDGE KARLIN: Right, well, I mean,
6 if you assume that the contention is affirmed as
7 admitted, I mean, what's to see? You have a
8 contention, you've propounded it.

9 It sounds like the people on this phone
10 have litigated or been involved in some of these
11 issues in the Ninth Circuit already. I just, you
12 know, assuming we litigate the contention EC-4, is
13 there any way we can avoid getting into safeguards
14 information?

15 MS. CURRAN: Well, I think, I guess what
16 I would propose is that whenever we do get a ruling
17 from the Commission, if they decide the contention is
18 admissible, it might be good then to have a briefing
19 from the parties as how to go forward. —

20 ADMIN. JUDGE KARLIN: Okay. Do you have
21 any thoughts on this, Mr. Repka?

22 MR. REPKA: A couple thoughts. Number
23 one, I don't know at this point what the contention is
24 that would be admitted, so it's a little bit of a
25 hypothetical abstract question.

1 But second, I'd want to point out that in
2 a recently concluded IS FSI litigation that went to
3 the Ninth Circuit, the Commission specifically
4 declined in the NEPA context to release any SGI or
5 classified information and to make that part of a
6 hearing process on a NEPA contention. So I wouldn't
7 presume that the Commission would require that to
8 happen in this case, something they specifically did
9 not allow in the last case.

10 And so with that backdrop, I think
11 certainly the expectation under NEPA and the recent
12 Ninth Circuit decision would be that the Commission
13 could put controls on its process so that it does not
14 have to release that kind of security information into
15 the hearing process.

16 Beyond that, if the Commission should
17 decide otherwise, I mean, certainly, we can talk about
18 specific controls with respect to safeguards and need-
19 to-know and those kinds of things at some point where
20 we know what the specific information might be.

21 ADMIN. JUDGE KARLIN: Now, okay.

22 MR. REPKA: Classified puts us into a
23 whole different sphere with a different level of
24 clearance as well.

25 ADMIN. JUDGE KARLIN: Right. There have

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1 been -- of course, the Boards have had numerous closed
2 hearings with regard to safeguards information and
3 classified information, so it's a normal approach in
4 many proceedings.

5 In fact, we have 10 CFR Part 2 Subpart I
6 which lays out the procedures we're to follow for
7 classified, much less, it's not SGI, which is a lesser
8 level.

9 So it may be a bit of a false choice, as
10 I think Commissioner Jaczko may have said, between
11 having no hearing or having a closed hearing.

12 But, okay, how about classified? I guess
13 it's probably the same answer, you don't know. But we
14 are just aware that that may be an issue as well. And
15 obviously, we want to manage that effectively and
16 efficiently so that it's protected and that, to the
17 maximum extent possible, the adjudicatory process can
18 occur and all of this information can be protected
19 appropriately.

20 MR. REPKA: This is Mr. Repka. On the
21 classified issue, and again, I don't want to presume
22 that we need classified information in this context,
23 but if we were to go in that direction, classified
24 information does require an L clearance.

25 Some of us have had L clearances in the

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1 past, through the NRC for purposes of adjudications,
2 whether it was used or not used. I think that that's
3 -- having those clearances updated sometimes takes
4 time. And to the extent we find we're going to go
5 that route, I think we need to identify that as soon
6 as possible so that we can deal with those logistics
7 without causing delay while we wait for clearances and
8 things of that nature.

9 Again, I don't think that should be
10 necessary, but I just want to highlight that that is
11 a logistical issue.

12 ADMIN. JUDGE KARLIN: You anticipate my
13 next point, and I think your points are well taken.

14 I wanted to ask about clearances. I mean,
15 let's just look at it this way. This contention was
16 admitted. As far as this board is concerned, it will
17 be affirmed and it will stay admitted as is. The
18 issue you need to think about, what does that mean,
19 vis a vis SGI and/or classified, but let's hope that
20 none of that needs to be involved, but it may be. I
21 don't know, and we want to be prepared for that.

22 So let me ask about clearances.

23 Ms. Curran, do you have, or have you
24 recently had a clearance for either SGI or classified?

25 MS. CURRAN: Yes. I have a level L

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1 clearance, and the last time I checked, I don't
2 remember the specifics, but it was good for a while.

3 I'm not -- you know, I can certainly
4 double-check that and make sure that it's still going
5 to be valid for the next while, but as far as I know,
6 it's valid.

7 ADMIN. JUDGE KARLIN: Okay. Yes.

8 Mr. Repka, your team, what do you --

9 MR. REPKA: Certainly, we have been, and
10 I currently am in clear for SGI through PG&E, but with
11 respect to L, I've had an L clearance in the past. I
12 think that was in around 2004, so whether that's still
13 valid, at this point, I couldn't tell you.

14 ADMIN. JUDGE KARLIN: Okay. Yes, and I'm
15 just assuming the staff has got all the clearances it
16 needs, right?

17 MS. UTTAL: That's correct.

18 ADMIN. JUDGE KARLIN: Right. Okay. So I
19 don't -- won't bother you with that question--

20 MS. CURRAN: Judge Karlin, this is Diane
21 Curran. I just wanted to add that our expert on
22 Contention EC-4 would probably be Edwin Lyman of the
23 Union of Concerned Scientists, and he also has a Level
24 L clearance.

25 ADMIN. JUDGE KARLIN: Okay. Well, that's

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1 good to know.

2 And everyone better double check their
3 clearances as Ls, Qs, whatever it is, depending on
4 what kind of information, whether it's restricted data
5 or national security information or just quote SGI to
6 see what we've got.

7 Because maybe I can ask Ms. Uttal or the
8 staff, what's the timing needed in order for someone
9 to get an L clearance, let's say? Do you know?

10 MS. UTTAL: I have no idea, Judge.

11 ADMIN. JUDGE KARLIN: Okay. When I was in
12 the high-level waste pre-license application board, I
13 was on the PAPO, the staff reported to me that if you
14 filed -- in fact, they reported to all of us that it
15 would take at least four to six months to get an L
16 clearance, and that would be really pushing it.

17 And the PAPO sent a memo to the Commission
18 asking for an approach that would be shorter than
19 that, because it might be problematic to try ~~to~~ run an
20 adjudicatory hearing and meet timelines if you take
21 that long to do it.

22 But it's good to hear that it sounds like
23 many, if not most, people have got some security
24 clearances here, as you may need them.

25 The next thing that we sort of want to

1 focus on in this is we have -- we will have a
2 protective order and non-disclosure agreement that
3 deals with a number of categories of information
4 claimed to be privileged, you know, proprietary, that
5 sort of thing.

6 I contemplate that we would -- might need
7 a similar or a parallel, I'm not sure how similar it
8 would be, protective order and non-disclosure
9 agreement for SGI.

10 So the parties will all have to start
11 thinking about developing that.

12 Does the staff have any thought about
13 protective orders you have used or seen in SGI cases
14 that you would propose or suggest?

15 MS. UTTAL: I would have to review some
16 before I had any suggestions.

17 ADMIN. JUDGE KARLIN: Okay. All right.

18 MS. CURRAN: Judge Karlin, I was involved
19 in a construction authorization request proceeding for
20 the MOX facility. This was a while back, but we had
21 a protective order for safeguards information, and
22 that was Judge Moore's case.

23 ADMIN. JUDGE KARLIN: Right. Okay. Well,
24 I know Catawba, Duke Catawba had some SGI and
25 classified, if I understand it --

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1 MS. CURRAN: Well, that's right. That's
2 right.

3 ADMIN. JUDGE KARLIN: Private Fuel Storage
4 also had SGI and maybe classified information. We're
5 talking about terrorists and an airplane that hits on
6 the facility in Private Fuel Storage. So there are
7 some examples out there.

8 MS. CURRAN: Yes.

9 ADMIN. JUDGE KARLIN: But I'm just
10 thinking, time-wise and management-wise, that
11 essentially, as soon as we get a ruling from the
12 Commission on this contention, and we will assume that
13 they, of course, affirm the Board's admission of this
14 contention, but assuming that, then we will all have
15 some work to do, and you will have some work to do,
16 because we're all going to have to figure out how we
17 manage this process.

18 We could begin that now. We could ask the
19 parties to turn to drafting or proposing or suggesting
20 something now.

21 But, you know, it might not -- given that
22 it might be a reverse, who knows, we're just going to
23 -- we'll put that out there and tell everyone to start
24 doing their homework.

25 Because hopefully, the Commission will

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1 rule one of these days, and when they do, we want to
2 move out crisply to get this hearing conducted
3 efficiently and fairly and promptly.

4 So keep that in mind, because I'd look at
5 the Ninth Circuit decision. It simply says, NEPA nor
6 the Atomic Energy Act require there to be an open
7 hearing, and we, the Ninth Circuit, defer to the case-
8 specific decision made by the Commission in that case.

9 And we have another case, and we have some
10 other issues to make, and it will have to be decided
11 how we manage this, and whether or not a closed
12 hearing will be necessary.

13 Turning to the next point, which is hard
14 dates, other hard dates that are in the ISO. By my
15 count, there are three of them.

16 First, there is a hard date of May 1st,
17 this year, for motions for summary disposition on
18 safety issues, ISO Section 2, page 5.

19 Second is, hard date for motion for
20 summary disposition on NEPA issues, that's June 1st,
21 this year, same section, ISO 2, page 5.

22 And the third is the hard date for the
23 mandatory disclosures in EC-4 and TC-1, which is May
24 16th of this year, which we just extended, actually,
25 a couple -- well, last month.

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1 Any thoughts? Mr. Repka, you seem to have
2 thought about this initially on whether or not any or
3 all of those need to be adjusted.

4 MR. REPKA: It would be my position that
5 all of those should be adjusted to -- essentially to
6 reflect the delay in the trigger date, day for day.

7 ADMIN. JUDGE KARLIN: Yes. Okay.

8 Ms. Curran?

9 MS. CURRAN: That sounds reasonable.

10 ADMIN. JUDGE KARLIN: Okay. Staff?

11 MS. UTTAL: We agree.

12 ADMIN. JUDGE KARLIN: Okay. Well, we're
13 going to take that under consideration and figure out
14 what we need to do. We're aware of it.

15 If anyone feels really hot under the
16 collar about it, they can file a motion. But in the
17 meantime, we will be thinking about it over the next
18 month and take it under consideration.

19 MS. CURRAN: Judge, Judge Karlin, this is
20 Diane Curran. I just have a question.

21 I think it was presumed when the May 1st
22 deadline was set for summary judgement on safety
23 issues that there would have been a ruling from the
24 Commission by now on TC1.

25 So, I guess, you know, the trigger date is

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1 typically tied to the SCI or the EIS, or one of those
2 things. But if we're still waiting for a Commission
3 ruling, I guess that trumps. I'd just like to clarify
4 that that's the correct understanding.

5 ADMIN. JUDGE KARLIN: Yes, I don't know
6 whether that's correct or not. We all want to think
7 about that, because, you're right, the motion for
8 summary disposition on safety hard date was founded
9 upon the FSER would be -- the open items would be
10 issued, and the ACRS subcommittee would look at it.
11 And they did all those things. It's all been done.

12 So, the fact that the FEIS has been
13 delayed does not seem to make much difference to the
14 assumptions we made with regard to that hard date, and
15 whether the Commission can either reverse us, or they
16 can affirm us, or I guess they can reverse in part and
17 affirm in part.

18 If they reverse us, end of matter. If
19 they affirm us, is this a contention that's going to
20 have any viable motion for summary disposition anyway,
21 given the substance of that contention? Well, I don't
22 know, whether there's a -- there's no material issue
23 of fact in dispute. But that would have to be part of
24 the issue.

25 Okay. So, we'll think about that.

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1 MR. REPKA: Judge Karlin, may I just add
2 one thing on that?

3 ADMIN. JUDGE KARLIN: Yes.

4 MR. REPKA: Particularly with respect to
5 the environmental contention, we do see the draft SEIS
6 as being a potentially significant source of
7 information and a basis for summary disposition
8 motion, possibly.

9 So with that date flipping to May,
10 possibly May 31st of 2011, with respect to a date for
11 the summary disposition on the environmental
12 contentions, I think that that does radically change,
13 and the draft SEIS schedule does radically change our
14 expectations and our assumptions as to when an
15 appropriate time for summary disposition may occur.

16 ADMIN. JUDGE KARLIN: Well, speaking for
17 myself, I think it is correct that the hard date for
18 the motion for summary disposition on NEPA issues was
19 founded upon at least the DEIS having been out for
20 some time.

21 And that that does not appear like it's
22 going to happen, so you may have a good point as far
23 as I'm concerned on that one.

24 And the mandatory disclosures, well, we'll
25 just have to deal with that. But it may not make a

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1 whole lot of sense to begin mandatory disclosures on
2 EC-4 if we haven't got a ruling from the Commission at
3 all.

4 I'm loathe -- I'm sensitive to the fact --
5 I think all the Board members are sensitive to the
6 fact that license and renewal applications and
7 adjudications should be conducted efficiently and
8 promptly, you know, people are watch -- people are
9 concerned, and we want to do it that way.

10 But I guess we've got to realize that if
11 something's up there at the Commission, it may take a
12 while, and it may be -- it may end up delaying things.

13 If they don't rule, we may -- it may be
14 futile to try to begin the whole disclosure of SGI
15 before they've even ruled.

16 Okay, I just want to sensitize people to
17 that. And we are sensitive to it and thinking about
18 that.

19 I think we're just about at the ~~end~~ except
20 for the other items, which was -- I think, Ms. Curran,
21 you had some question or something you wanted to put
22 on the agenda?

23 What was that?

24 MS. CURRAN: I wanted to see if we could
25 get a sense of when and if PG&E was planning to revise

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1 its SAMA analysis to address the Shoreline fault.

2 ADMIN. JUDGE KARLIN: Okay. Do you -- I'd
3 ask, would you like to try to answer that, Mr. Repka,
4 or decline?

5 MR. REPKA: No, I can answer that
6 question, Judge Karlin.

7 ADMIN. JUDGE KARLIN: Okay.

8 MR. REPKA: In not only a sense, but
9 factually, PG&E has already revised its SAMA
10 evaluation based on the latest seismic information,
11 and has been responding to NRC staff RAIs on that
12 issue.

13 And those RAI responses have been
14 identified in the hearing file, and are available on
15 ADAMS, and will presumably be addressed in the
16 supplemental EIS.

17 ADMIN. JUDGE KARLIN: Okay. Does that
18 answer your question, Ms. Curran?

19 MS. CURRAN: Yes. I also think that when
20 PG&E has sent information to the NRC that is relevant
21 to an admitted contention, it has an obligation to do
22 a Board notification. So, you know, I'd like to
23 confirm that there will be some notice to us that this
24 information bears on an admitted contention.

25 MS. UTTAL: Judge, this is Susan Uttal.

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1 I don't really agree with what Diane just said. I
2 mean, they send it to us and we put it in the hearing
3 file. I don't think there's a requirement that they
4 also do a Board notification.

5 The Board notification is for information
6 that may be related to the case but is not directly
7 involved in the docket that the case involves.

8 MR. REPKA: Additionally, we have been
9 identifying other materials that surround and support
10 that docketed material through our disclosures.

11 ADMIN. JUDGE KARLIN: Yes. Well, there
12 are mandatory disclosures that must be made, and if a
13 document is relevant to an admitted contention, then
14 it must be disclosed or listed on a privilege log, if
15 there's some claim of privilege.

16 Now, that's the normal way as I would see
17 it nowadays, Ms. Curran, that people are informed of
18 what the other parties are doing.

19 And presumably, if Mr. Repka's client has
20 developed a revised SAMA that's relevant to whatever
21 contention, then that would be subject to mandatory
22 disclosure.

23 Now, if everybody's agreed to defer
24 mandatory disclosure indefinitely, then, I guess that
25 vehicle for being informed is undermined.

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1 Is that's what's going on here, Ms.
2 Curran? I mean, is this a contention -- I mean,
3 shouldn't you just be getting this by mandatory
4 disclosure? And if not, is that one that you've
5 agreed to waive?

6 MS. CURRAN: There's a lot of material
7 being sent to us or identified, lots and lots of
8 documents.

9 And I think it's incumbent upon PG&E to
10 say, this is what we're doing, we're revising the SAMA
11 analysis. This is not just relevant, this is the
12 subject of the contention.

13 ADMIN. JUDGE KARLIN: Well, let me put it
14 this way. This Board, I don't think, and I think I
15 expressed this at earlier stages, I'm really not
16 personally, and I'll speak personally, one, for
17 getting a lot of notifications from the parties every
18 time they file something.

19 I don't want to get that. I don't want to
20 clutter this file up with those kind of notifications.

21 Mandatory disclosures occur between the
22 parties, and a lot of information exchanged --
23 everything relevant to contention is supposed to be
24 exchanged if there's not been a waiver of the
25 disclosure or a delay in the disclosure.

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1 So, now, I really do not think -- it
2 should be a rare event when someone feels they need to
3 notify this Board that they answered an RAI or filed
4 a revised version to X or Y. If you want to file a
5 motion with us, fine, but.

6 MR. REPKA: And again, to clarify these,
7 our disclosures on EC1 and the disclosures on that
8 contention have been ongoing.

9 And I'm happy to have a conversation with
10 Ms. Curran off-line to point her specifically to
11 submittals and --

12 ADMIN. JUDGE KARLIN: Okay.

13 MR. REPKA: -- if that would be helpful.

14 MS. CURRAN: Okay, thank you.

15 ADMIN. JUDGE KARLIN: Okay, good. Well,
16 why don't you all handle it that way, because if it's
17 an EC1, which I guess it is, when I think about it,
18 and that's one -- mandatory disclosures began in
19 October.

20 Then I think you all just have to monitor
21 what's being disclosed, Ms. Curran, and if there's
22 something you're interested in, read it, or ask for
23 it, or whatever.

24 MS. CURRAN: Okay.

25 ADMIN. JUDGE KARLIN: Okay. All right.

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1 I think we've covered everything.

2 I guess one other item I might add, we had
3 -- there's been some word around the Agency that we
4 might have a Government shutdown here on March 4th or
5 5th or something like that.

6 And we don't really know, I don't know
7 what would be entailed in that. It might very well be
8 that the Government employees, we're told not to show
9 up for a day or a week or whatever it is.

10 I don't think that's going to have any
11 immediate impact on this proceeding. There's nothing
12 that is immediately coming up in the next first part
13 of March, let's say.

14 But, you know, if there is -- something
15 like this occurs, I think we'll try to issue some note
16 that everyone that -- there might be a notice issued
17 that adjudicatory proceedings are affected in some
18 way.

19 And I don't know what that is--at this
20 point, but I don't think it's going to have any impact
21 on the critical path of this proceeding.

22 But that is an issue that's affecting some
23 of the other proceedings we've got at this moment.

24 And other than that, I don't think there
25 are any specific action items that we have to take out

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1 of this.

2 But I do ask the parties to think about
3 how we're going to manage SGI and/or classified, if we
4 need to, if it needs to be involved in the
5 adjudication of contention EC-4.

6 With that, is there anything else that
7 anyone needs to add, or has an issue or a point at
8 this point?

9 Judge Abramson, anything you wanted to add
10 at this point?

11 Judge Trikouros?

12 ADMIN. JUDGE TRIKOUROS: No, I think I'm
13 comfortable.

14 I don't know if we lost Judge Abramson,
15 however.

16 ADMIN. JUDGE ABRAMSON: No, I'm here.

17 ADMIN. JUDGE KARLIN: Okay. You had your
18 mute on, I suppose.

19 ADMIN. JUDGE ABRAMSON: Yes, I had to shut
20 it down.

21 ADMIN. JUDGE KARLIN: Okay. Everyone
22 okay? Then we will stand adjourned.

23 We will probably hold another conference
24 call, if nothing else is needed, in approximately six
25 months, just as a management tool.

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But anyway, thank you all, and we stand
adjourned.

MS. CURRAN: Thank you.

MR. REPKA: Thank you.

(Whereupon, the above-entitled matter was
concluded at 2:47 p.m.)

CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of: Diablo Canyon Power Plant

Name of Proceeding: Pre-Hearing Conference

Docket Number: 50-275-LR and 50-323-LR

Location: (teleconference)

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