

September 14, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
PACIFIC GAS AND ELECTRIC) Docket No. 50-275-LR
COMPANY) Docket No. 50-323-LR
)
(Diablo Canyon Power Plant, Units 1 and 2))

JOINT MOTION TO AMEND DEADLINE FOR
INITIAL DISCLOSURES ON CONTENTIONS TC-1 AND EC-4

Pursuant to 10 C.F.R. § 2.323, Pacific Gas and Electric Company (“PG&E”) hereby requests that the Licensing Board modify the deadlines for initial disclosures and the hearing file for Contentions TC-1 and EC-4.¹ Under the current schedule, the disclosures required under 10 C.F.R. § 2.336 and the hearing file required under 10 C.F.R. § 2.1203 for Contentions TC-1 and EC-4 are due on September 30, 2011. However, for the reasons discussed below, the parties respectfully request that the Licensing Board extend the deadline by six months. Under the proposed revised schedule, initial disclosures and the hearing file on Contentions TC-1 and EC-4 would be due on March 31, 2012, or thirty days after a Commission decision, whichever is first to occur.

The Board issued a decision (LBP-10-15) on SLOMFP’s hearing request and initial proposed contentions on August 4, 2010. The Board found three proposed contentions (TC-1, EC-1, and EC-4) admissible. The Board also referred questions related to one contention

¹ Counsel for PG&E contacted the other parties in this proceeding, explained to them the factual and legal issues raised in this motion, and sought to resolve those issues. Based on those discussions, the NRC Staff and the San Luis Obispo Mothers for Peace (“SLOMFP”) both stated that they support the motion.

(EC-4) to the Commission. PG&E appealed LBP-10-15 with respect to the three admitted contentions (TC-1, EC-1, and EC-4) while the NRC Staff also sought Commission review of the Board decision to admit two contentions (TC-1 and EC-1). The appeals of the admitted contentions and the referred questions remain pending before the Commission.

The Board issued an initial scheduling order establishing certain milestones for hearings on the admitted contentions in this matter. *See* Initial Scheduling Order, dated September 15, 2010 (unpublished). The Board established a deadline of March 15, 2011 or thirty days after a Commission decision, which is earlier, for initial disclosures and the hearing file for Contentions TC-1 and EC-4.² On January 19, 2011, the Board revised the deadlines for making initial mandatory disclosures and providing the hearing file for Contentions EC-4 and TC-1. *See* Order (Extending Deadline for Certain Mandatory Disclosures) at 1-2 (unpublished). The Board set the deadlines for the disclosures and hearing file for May 16, 2011, or thirty days after the Commission ruling on the contentions, whichever was first to occur. In an April 14, 2011 Order (Revising Deadlines for Certain Mandatory Disclosures, Hearing File Production, and Dispositive Motions), the Board explained that it “considers it prudent” to revise the disclosure and hearing file deadlines. As a result, the Board established a new deadline for initial disclosures and production of the hearing file for Contentions for EC-4 and TC-1 of September 30, 2011, or thirty days after the Commission ruling on the contention, whichever is first to occur.

The Board had tentatively scheduled a telephone conference with the parties for sometime in August 2011. PG&E intended to raise the issue of the deadlines for the initial

² The deadline for initial disclosures and the hearing file for Contention EC-1 was October 15, 2010. Since then, the parties have continued to supplement the disclosures and hearing file on a monthly basis.

disclosures and hearing file for Contentions TC-1 and EC-4 at that time. The call was later scheduled for September 20, 2011. *See* Notice (Scheduling Pre-Hearing Conference Call), dated August 31, 2011. In the Notice, the Board indicates that potential topics of discussion during the telephone conference include the September 30, 2011 deadline for initial mandatory disclosures and production of the hearing file related to Contentions TC-1 and EC-4.

In light of the time and resources needed to prepare the initial disclosures and hearing file for Contentions TC-1 and EC-4, the parties cannot wait until the September 20th telephone conference to discuss a possible change in the deadlines for initial disclosures and the hearing file. Accordingly, the parties request that the Board extend the deadline for initial disclosures and the hearing file for Contentions TC-1 and EC-4 by six months (to March 31, 2012) or until 30 days after a Commission decision on the contentions, whichever comes first. In light of the current schedule for the NRC Staff review of the Diablo Canyon license renewal application and the ongoing seismic studies,³ there is no prejudice to any parties from a change in the initial deadlines and the extension will not result in any delay in the hearing process. Moreover, the Commission still has not issued a decision on the appeals filed by PG&E and the NRC Staff regarding the admissibility of Contentions TC-1 and EC-4. In the event that the Commission rules in favor of the NRC Staff or PG&E on the admissibility of one or both of the contentions, the parties would have extended considerable resources unnecessarily. Given the

³ On April 10, 2011, in response to public concerns about the events at the Fukushima power plant, PG&E requested that the NRC defer issuing renewed licenses for DCPD pending completion by PG&E of planned seismic studies at and around the plant. As a result, the NRC Staff delayed issuance of the Final Supplemental Environmental Impact Statement (“FSEIS”). The FSEIS is currently scheduled for completion between February 2014 and May 2014. Accordingly, hearings on the pending contentions are not imminent.

current review schedule and the still-pending appeals, a limited extension of the deadlines for initial disclosures on Contentions TC-1 and EC-4 is reasonable and prudent at this time.

For the reasons discussed above, the Board should grant this motion to extend the deadlines for initial disclosures and the hearing file for Contentions TC-1 and EC-4 to the earlier of (a) March 31, 2012, or (b) thirty days after a Commission decision on the pending appeals.

Respectfully submitted,

/s/ signed electronically by _____
David A. Repka
Tyson R. Smith
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006

Executed in accord with 10 C.F.R. 2.304(d)
Jennifer Post
Pacific Gas and Electric Company
77 Beale St., B30A
San Francisco, CA 94105

COUNSEL FOR THE PACIFIC GAS
AND ELECTRIC COMPANY

Dated at Washington, District of Columbia
this 14th day of September 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
PACIFIC GAS AND ELECTRIC) Docket No. 50-275-LR
COMPANY) Docket No. 50-323-LR
)
(Diablo Canyon Power Plant, Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of “MOTION TO AMEND DEADLINE FOR INITIAL DISCLOSURES ON CONTENTIONS TC-1 AND EC-4” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 14th day of September 2011, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001

Alex S. Karlin, Chair
Nicholas G. Trikouros
Paul B. Abramson

Susan Uttal, Esq.
Lloyd Subin, Esq.
Maxwell Smith, Esq.
Catherine Kanatas, Esq.

E-mail: Alex.Karlin@nrc.gov
E-mail: Nicholas.Trikouros@nrc.gov
E-mail: Paul.Abramson@nrc.gov

E-mail: Susan.Uttal@nrc.gov
E-mail: Lloyd.Subin@nrc.gov
E-mail: Maxwell.Smith@nrc.gov
E-mail: catherine.kanatas@nrc.gov
OGC Mail Center : OGCMailCenter@nrc.gov

