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United States of America
Nuclear Regulatory Commission

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ATOMIC SAFETY AND LICENSING BOARD PANEL
HEARING

IN THE MATTER OF
PACIFIC GAS & ELECTRIC COMPANY
(Diablo Canyon Nuclear Power Plant,
Units 1 and 2)

DOCKET NO: 50-275-LR and
50-323-LR
ASLBP No. 10-890-01-LR-BD01

Thursday,
October 13, 2011

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Rockville, Maryland

The trial commenced in Room T-3B45 of Two White Flint
North, Rockville Pike, Rockville, Maryland, at 10:00 a.m.

BEFORE:

- Alex S. Karlin, Chairman
- Nicholas G. Trikouros
- Dr. Paul B. Abramson

1 Diablo Canyon Power Plant -- Docket Nos. 50-275-LR and 50-323-LR
2 ORDER (Scheduling Oral Argument)

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

2 1:30 p.m.

3 CHAIRMAN KARLIN: Good afternoon. My name is Alex
4 Karlin. We are going on the record, court reporter. This an oral argument in
5 the matter of Pacific Gas & Electric Company application for a renewal of its
6 license for the San Luis Obispo Diablo Canyon nuclear power plant's two nuclear
7 reactors. For the record, the docket number of this matter is 50-275-LR and
8 50-323-LR. And the ASLBP number is 10-890-01-LR-BD01. This oral argument is
9 being held pursuant to an order that this court issued on September 30th of this
10 year. Today's date is October 13th. This proceeding is hopefully being
11 webcast.

12 Normally, we try to hold as many of our proceedings in the vicinity
13 of the proposed -- or the existing power plant as possible. Because of the
14 relatively short notice for this particular argument, we decided to hold it
15 here in Washington in our Rockville hearing room. And thus, we have been able
16 to webcast this, hopefully, to the people out West who might be interested in
17 this matter.

18 At this point I'd like to introduce -- call for introductions,
19 first of the board. To begin, I'm Alex Karlin. I'm one of the legal members
20 of judges, and to my right is Dr. Paul Abramson, and to my left is Nick
21 Trikouros. These are other judges. We also have Jonathan Ezer, who is the
22 lawyer and law clerk who is assisting us and other people in the room,
23 including Karen Valloch as an administrative assistant who is helping.

24 The petitioners, San Luis Obispo Mothers for Peace, Ms. Curran,
25 you're sitting there alone, but do you care to introduce your team or yourself.

1 DIANE CURRAN: Good afternoon. I'm Diane Curran with the law firm
2 of Harmon, Curran, Spielberg and Eisenberg. And I'm her representing the San
3 Luis Obispo Mothers for Peace.

4 CHAIRMAN KARLIN: Thank you. Now, the applicant is Pacific Gas &
5 Electric. Mr. Repka, would you like to introduce your team?

6 DAVID REPKA: Yes. My name is David Repka, and I'm counsel for
7 Pacific Gas & Electric Company, and with me today is my associate at the law
8 firm of Winston & Strawn. Rachel Miras-Wilson.

9 CHAIRMAN KARLIN: Okay, thank you. Welcome. And the staff, Ms.
10 Utall?

11 SUSAN UTALL: Good afternoon. My name is Susan Utall. I am with
12 the Office of General Counsel at the Nuclear Regulatory Commission. I
13 represent the Nuclear Regulatory Commission staff. With me is Richard Harper,
14 also of the Office of General Counsel. Mr. Harper will be presenting the
15 staff's position today.

16 CHAIRMAN KARLIN: All right, thank you. Before we begin, I think
17 it's worth reviewing a little bit of the background of this case. This is a
18 license renewal proceeding, as I mentioned. And the applicant, Pacific Gas &
19 Electric, submitted its application to renew its license in 2009. In January
20 of 2010, the NRC staff issued a notice in the Federal Register informing the
21 public that anyone who had any issues with regard to this proposed license
22 renewal should speak now or forever hold your peace, raise your concerns and
23 request a hearing. And indeed, the San Luis Obispo Mothers for Peace did file
24 a petition for a hearing and five proposed contentions in, I guess it was March
25 2010.

1 Pursuant to that request, the parties briefed the contention
2 admissibility and standing issues, and we had an oral argument in San Luis
3 Obispo on this matter in May of 2010, and then in August, issued a decision
4 admitting four of the proposed contentions and finding that one of the -- the
5 fifth contention was not admissible and did not meet the admissibility
6 criteria. I'm not going to go into the details of that decision. But it does
7 turn out that the staff and the applicant appealed all or parts of that
8 decision quite promptly in September of 2010. And yesterday, the Commission,
9 14 months later, issued its ruling on the appeals of the admission of those
10 contentions. Essentially the Commission threw out all of the contentions
11 except for one. And so there is still one contention in the proceeding.

12 But that's not why we're here today. Today we're looking at a new
13 contention that the Mothers for Peace -- and I'm going to refer to them as
14 Mothers for Peace, if that's okay. It's a little shorter than San Luis Obispo
15 Mothers for Peace. They recently filed a new contention in August -- August
16 11th of 2011, and it's related to the tragic events that occurred in Japan,
17 associated with the Fukushima Daiichi Nuclear Power Plants and the earthquake
18 and the tsunami and then the nuclear power plant problems that occurred out
19 there. And so, that's how we come here today.

20 Now, a little bit of review on that. The Fukushima Daiichi
21 accident and the earthquake and the tsunami occurred on March 11th of 2011. On
22 April 14th of 2011, the Mothers for Peace and others filed a petition with the
23 Commission to suspend all the licensing proceedings in light of the Fukushima
24 Daiichi situation. The Commission did not act upon that for several months.
25 And so, in the meantime, on August 11th, the Mothers for Peace filed this

1 contention in this proceeding. And it's the similar contention was filed in
2 many other adjudicatory proceedings by boards of reactor cases.

3 But meanwhile, on September 9th, the Commission did rule on the
4 earlier petition to suspend all the proceedings in a decision that we're going
5 to call -- or I'm going to refer to as COI 11-5. That's the Commission's
6 decision. And they, among other things, the Commission denied the petition to
7 suspend all the adjudications. And so we are continuing obviously with this
8 adjudication. And that's what we're here to do today, is proceed with this
9 adjudication and this contention, this -- what I'm sometimes refer to as the
10 Fukushima contention.

11 The purpose of this oral argument is to hear from the lawyers
12 regarding the admissibility of the Fukushima contention. We've read their
13 briefs. We've studied the issues. And I think we understand much of what
14 they've covered, but we have some questions that would help us in trying to
15 decide the admissibility of this contention. And that's important for everyone
16 to know. This proceeding is only dealing with the admissibility of the
17 contention, whether it's timely, whether it's admissible under the criteria of
18 the NRC regs, 10CFR 2.309 is the particular reg. And it lays out criteria such
19 as the contention must be within the scope of the licensing renewal proceeding.
20 And it must be supported by alleged facts or expert opinion. And there are
21 other relatively technical criteria that a contention must meet in order to be
22 deemed admissible. The point is we are not here to decide the merits of the
23 contention, whether it's meritorious, whether it is, in fact -- should be
24 ultimately supported, but only whether it's admissible and timely.

25 And we are not here to discuss something else, the decision that

1 the Commission issued yesterday regarding the four contentions and the appeal
2 of the four contentions. So I don't see us really confronting or addressing
3 that at all. We have not asked the parties to address that, and I don't think
4 we're fully prepared to do that either.

5 So if we find this contention, this Fukushima contention admissible
6 and timely, we would admit it and hold an evidentiary hearing later. This is
7 just the oral argument. So, how are we going to proceed at the moment is that
8 we would ask for the parties to deliver opening statements of not greater than
9 five minutes. Please come to the podium when you do that. We'll start with
10 the petitioners, the Mothers for Peace, and then the applicant, Pacific Gas &
11 Electric, and then the staff. After that, we will commence with questions
12 essentially in the same order as the intervener, the applicant and the staff.
13 And we may then ask some rebuttal questions as well.

14 Do either of my colleagues have any additional remarks or -- that
15 they would like to make?

16 NICHOLAS TRIKOUROS: I don't.

17 DR. PAUL ABRAMSON: I do.

18 CHAIRMAN KARLIN: Okay, great.

19 DR. PAUL ABRAMSON: For the record, Judge Abramson. Let me just
20 ask the lawyers who are here who are going to comment in their pleadings to
21 confine their statements to descriptions of what's in the pleading. It's
22 important because this is oral argument on what's in the pleading. It's not an
23 opportunity to make a new case.

24 CHAIRMAN KARLIN: Very good. Ms. Curran, please take the podium
25 and --

1 DIANE CURRAN: Thank you. I'm very grateful that you've allowed us
2 to make an opening statement because I believe there are many members of the
3 Mothers for Peace in California and other neighbors of the Diablo Canyon plant
4 that are very interested in the outcome of this proceeding, how the contention
5 is handled, whether we're going to be able to litigate Fukushima-related issues
6 with respect to this coastal nuclear plant. And so thank you very much.

7 As the world knows, seven months ago, a serious radiological
8 accident began at the Fukushima Daiichi Nuclear Power Plant complex in Japan.
9 The accident itself involved a serious earthquake and a tsunami. The response
10 to the accident revealed a pronounced inability of safety systems to prevent or
11 to stop the release of significant quantities of radioactive materials to the
12 environment. The NRC Commissioners recognized immediately that the Fukushima
13 accident could have significant implications for the safety of U.S. reactors.
14 Therefore, it assembled a high-level task force, composed of its most talented
15 and experienced regulators and asked them to provide a systematic and
16 methodical review of NRC processes and regulations in order to determine
17 whether the agency should make additional improvements to its regulatory
18 system.

19 In July of this year, the task force came back to the NRC
20 Commissioners with a report that included a very significant conclusion, that
21 the NRC's "safety approach" -- that was in quotes, "safety approach" -- is
22 incomplete without a strong program for dealing with the unexpected, including
23 severe accidents. And as we know, the NRC's safety program currently has very
24 little in the way of mandatory programs to address severe accidents, and thus
25 the task force was commenting that more is needed.

1 The report also found -- made findings on a number of significant
2 issues that are extremely important for Diablo Canyon. One is that there may
3 be significant differences between plants and the way they protect against
4 earthquakes and against floods and the adequacy of the safety margin involved.
5 The task force also found that measures for mitigating station blackout events
6 needed to be improved, and therefore the task force recommended the NRC address
7 the concerns raised in the report by adopting a series of new regulatory
8 measures.

9 While the Commission is studying these recommendations, to a large
10 extent, they have not yet been adopted. It appears that rulemakings to adopt
11 these recommendations under the NRC's Atomic Energy Act safety program may take
12 years. In the meantime, the license renewal proceeding for Diablo Canyon
13 proceeds.

14 We are here to seek enforcement of the National Environmental
15 Policy Act, which requires that environmental issues that pertain to major
16 federal decisions with significant potential impacts on the environment --
17 those environmental issues have to be addressed before the licensing decision
18 is made. It's not okay under the National Environmental Policy Act to postpone
19 consideration of these issues until after licensing. We're not here to argue
20 about what the Atomic Energy Act requires, but it's very clear the NRC has a
21 non-discretionary duty to consider the environmental impacts of this licensing
22 actions before making the decision, the purpose, of course, being to prevent
23 harmful decisions from being made and then rationalized in hindsight without
24 really dealing with the environmental risks.

25 The Mothers for Peace believe that the Task Force Report has

1 enormous implications with respect to the adequacy of the environmental
2 analysis for the Diablo Canyon Nuclear Plant. What do I got? One minute?

3 CHAIRMAN KARLIN: Yeah, one minute.

4 DIANE CURRAN: Okay. And really, there's a number of
5 recommendation that the task force makes, but there is an overarching
6 recommendation that has huge significance which is that the current safety
7 systems, the current regulatory system under the Atomic Energy Act is not broad
8 enough to embrace all of the types of accidents that need to be addressed in a
9 safety regulatory scheme. If this issue -- if this issue is not addressed
10 under the Atomic Energy Act, then NEPA requires that it must be addressed under
11 -- in the environmental analysis for this plant. And therefore, we urge the
12 licensing board to admit our contention. Thank you.

13 CHAIRMAN KARLIN: Thank you. Mr. Repka?

14 DAVID REPKA: Thank you and good afternoon. And I'll try to be
15 brief and stick to some -- what I think are the key points that are in our
16 written filings. First, I want to say that the issue before us is not whether
17 the tragic events in Japan at Fukushima need to be addressed by the NRC or by
18 the nuclear industry in the United States. The issue before us is whether or
19 not they need to be addressed under NEPA in this license renewal site-specific
20 case and in the -- the answer to that question is no, they do not. Certainly
21 the issues at Fukushima will be addressed by the industry and by PG&E and the
22 NRC, but this license renewal proceeding is not the appropriate forum.

23 The contention before us from the Mothers for Peace is based
24 entirely on the NRC's own task force, the Near-Term Task Force Report. And that
25 particular report does not say anything about seismic hazards at Diablo Canyon.

1 It doesn't address anything about equipment at the Diablo Canyon. It doesn't
2 address anything about particular severe accident mitigation alternatives at
3 Diablo Canyon, nor does it address even environmental impacts of the accident
4 in Japan.

5 The issue of severe accidents, which must be addressed under the
6 National Environmental Policy Act, is addressed in the generic environmental
7 impact statement for license renewal, the so-called GEIS. There is a
8 substantial analysis of severe accident impacts, including severe accident
9 mitigation alternatives. The Task Force Report does not address that in any
10 way and does not portend to be an environmental analysis. Severe accident
11 mitigation alternatives are addressed in the site-specific Diablo Canyon
12 environmental report to support license renewal. That analysis includes
13 measures related to seismic risks. It includes measures related to off-site
14 power. And the Task Force Report doesn't in any way address those issues.

15 So the issue is, for us, does further analysis need to be conducted
16 in this context related to environmental impacts of license renewal? And the
17 answer is no. Those issues have been addressed. And the sole basis for the
18 contention, the Task Force Report, provides no new information on those points.
19 As we talked about in our pleadings, and I won't belabor this, the NRC has a
20 very -- a carefully crafted regulatory structure related to license renewal,
21 including generic evaluations of environmental impacts of severe accidents,
22 including severe accidents related to spent fuel pools. And those issues have
23 been addressed. And certainly to the extent that as evaluations of the
24 Fukushima accident go forward, if new and significant environmental information
25 were to arise from those ongoing studies, that would be evaluated, and

1 supplements would be considered if necessary. But as the Commission recognized
2 in TLI 11-05, the Commission's ruling on the petitions for suspension of all
3 proceedings, the Task Force Report has revealed -- provided no information on
4 environmental impacts at this point and any obligation with respect to -- or
5 any assertion that there's an obligation to address new and significant
6 information is simply premature. And on that basis, there can be no contention
7 of omission in this case at this time, and the contention should not be
8 admitted.

9 CHAIRMAN KARLIN: Thank you, Mr. Repka. Yes, staff? It's Mr.
10 Harper, right? Okay, thank you.

11 RICHARD HARPER: Good afternoon. Thank you for this opportunity to
12 come in and rehash a few of the points in our pleading. Specifically, your
13 honors, the NRC staff opposes the admission of this contention, primarily on
14 the basis that it does not meet the requirements under 10CFR 2.3091.

15 Specifically, the contention attempts to introduce issues that are
16 outside the scope of license renewal. It states that the license renewal
17 application must deal with the recommendations in the Task Force Reports when
18 those recommendations are planned to be dealt with generically by the
19 Commission and implemented on all the plants regardless of licensing status.
20 Additionally, it challenges regulations in generic determinations as a whole.
21 It attempts to raise emergency planning issues, which are clearly outside the
22 scope of license renewal. And it constitutes -- as a whole, it generalizes
23 attack on the NRC safety regulations. Additionally, the contention does not
24 present a material issue with the license renewal application. The Task Force
25 Report makes safety recommendations that don't relate directly to the

1 contention, potentially based primarily on environmental considerations under
2 NEPA. The contention also does not identify specific portions of the
3 applications which are flawed or which require correction. The contention
4 additionally challenges issues that are dealt with generically in the GEIS as
5 well as in 10 CFR Part 51, Subpart A, Appendix B. And it's -- the SAMA
6 challenges within the contention are not material because NEPA does not require
7 implementation of any mitigation measures. And the contention does not
8 identify any faults with any specific SAMA. Additionally the contention relies
9 on insufficient [spelled phonetically] factual basis. The contention deals
10 directly with SAMAs. The SAMAs are not dealt with or referenced in the Task
11 Force Report. Additionally, the Mahajani declaration whereupon the contention
12 relies does not provide adequate support for the contention. Additionally, the
13 contention misrepresents the Task Force Report by claiming it questions whether
14 the NRC, under the current regulatory structure and team, can continue on with
15 licensing activities. Finally, the contention for reliance on the MARSH
16 standard for the examination of new and significant information is misplaced.
17 Also, the staff challenges the admissibility of the contention under the timing
18 requirements for new contentions of 10CFR 23092, and those requirements for
19 non-timely filings in 10CFR 2.3092. In light of the recent Commission
20 decisions, the staff wishes to reemphasize that the Task Force Report presents
21 no new and significant information which triggers the nuclear review under
22 these circumstances. And additionally, that the Commission plans
23 [unintelligible] and will address and implement the recommendations in the Task
24 Force Report generically and generally to all plants regardless of license and
25 status. For these reasons, the staff opposes admission of the contention.

1 Thank you.

2 CHAIRMAN KARLIN: Thank you, Mr. Harper. Okay, Ms. Curran, we have
3 a few questions for you. If you would please go to the podium.

4 DIANE CURRAN: Oh, sure.

5 CHAIRMAN KARLIN: I have a question to start with, and I think I
6 would refer you to the Commission's decision denying your petition to suspend
7 the adjudicatory proceedings, CLI-11-5. Mr. Repka alluded to this in his
8 opening statement. And I think it is something that is -- something I'd like
9 to ask a question about. On Page 30, it seems to me, of that decision is some
10 of the key language. And I'm going to read that, and I'm going to ask you to
11 help us understand how this contention can survive after the Commission makes
12 this ruling. And I quote, on Page 30 of the CLI-11-5, the Commission was asked
13 to deal with -- I'm not quoting at this point -- whether or not you asking the
14 Commission to update its generic environmental impact statement to take into
15 account Fukushima-related events. And the Commission said, quote, "Petitioners
16 request that the NRC conduct a separate generic NEPA analysis regarding whether
17 the Fukushima events constitute, quote, 'new and significant information,'
18 close quote, under NEPA that must be analyzed as a part of the environmental
19 review for new reactor and license renewal decisions," close quote. And it
20 jumps down to later on that same page, quote, "This request is premature.
21 Although the task force completed its review and provided its recommendations
22 to us, the agency continues to evaluate the accident and its implications for
23 U.S. facilities. And the full picture of what happened at Fukushima is still
24 far from clear. In short, we do not know today the full implications of the
25 Japan events for U.S. facilities. Therefore, any generic NEPA duty, if one

1 were appropriate at all, does not accrue now," period, close quote. How does -
2 - how do you confront that? You're now asking us to deal with an individual
3 environmental impact statement or ER and have that be updated, and you claim
4 that there is new and significant information requiring that it be updated.
5 Could you please help with that?

6 DIANE CURRAN: Well, I think the key is that the word "generic" is
7 used uniformly to modify what the Commission isn't prepared to do. The
8 Commission does not want to do a generic -- you know, it describes what the
9 request is for a generic analysis and says "we are not prepared to do a generic
10 analysis." That is something that's completely in the discretion of the
11 Commission, whether to do a site-specific analysis or a generic analysis. The
12 courts have been very clear that no one really has anything to say about that.
13 That's the Commission's call. So they've made their call. And then, you know,
14 with respect to, okay, what about this particular case, if you turn to Page 35,
15 then there's language there saying we think that if individual parties want to
16 raise issues in individual licensing cases, the hearing process is sufficient
17 to deal with those concerned. So if the decision is consistent with what we
18 did.

19 Another thing is that one would expect where there has been -- if
20 the Commission was going to make a determination that there's no new and
21 significant information, period, there would be some technical discussion. And
22 it isn't there on Pages 30 and 31. And it seems to be more linked with two
23 issues. One is we're not prepared to do anything generic. And then the second
24 issue is many of these license renewal decisions won't be made very
25 immediately, so we have time.

1 CHAIRMAN KARLIN: So are you suggesting that if the Commission
2 wanted to rule that none of the individual contentions could be admitted then
3 because there's no new and significant information, they could have done so,
4 but rather than doing that, they said on Page 35 to go ahead with the
5 individual adjudications.

6 DIANE CURRAN: Right. And, you know, you have to remember, too,
7 that this contention wasn't before them when they made that decision. The
8 timing's been a little odd, right, because we filed the emergency petition in
9 April, and then after months passed in which the Commission made no decision --
10 you know, a number of groups got together and said let's ask the Commission for
11 guidance here, because it's not really clear. Nothing's been said about NEPA.
12 How are we supposed to raise NEPA issues? Because we all know NEPA applies
13 before licensing decisions are made. And the Commission didn't rule. So after
14 the Task Force Report came out and had some very significant conclusions in it,
15 the same groups submitted contentions raising the issue. Then, some months
16 later -- that was in August. Then the next month, September, the Commission
17 issued a decision on the April petition, basically saying, yeah, you were right
18 to go ahead with these individual cases. That's how it should be determined.

19 CHAIRMAN KARLIN: Well, let me ask -- you say, well, that was a
20 generic determination. And on Page 15 of your motion, your contention, I'm
21 going to ask, is there something site-specific about this contention for Diablo
22 Canyon? Here you say, quote, "Yet the task force found that significant
23 differences may exist between plants and the way they protect against design
24 basis natural phenomenon, including seismic and flooding hazards and the safety
25 margin provided." I'll delete the sites. "For instance, while tsunami hazards

1 have been considered in the design basis for operating plants sited on the
2 Pacific Ocean, the same cannot be said for those on the Atlantic Coast.
3 Accordingly, the task force recommended that licensees reevaluate the seismic
4 and flooding hazards at their sites." Now, are you -- is there something site-
5 specific about this contention for this proceeding?

6 DIANE CURRAN: It is site-specific in the sense that always under
7 NEPA the decision is site-specific. There is no generic NEPA decisions to
8 relicense our reactors. There is one decision to relicense Diablo Canyon, and
9 what our contention is saying with great specificity is in this decision for
10 Diablo Canyon, there is no reference to a major report that has significant
11 implications with respect to this licensing decision, and certainly the report
12 was written in generic terms. Mr. Repka said, the report doesn't talk about
13 Diablo Canyon. But the report talks about issues that are applicable to Diablo
14 Canyon, and therefore it's site-specific.

15 NICHOLAS TRIKOUROS: Well, I'd like to explore that a little more.
16 You use terminology -- you say that an analysis of the environmental
17 implications of the Task Force Report should be performed. Now we're talking
18 site-specific -- plant-specific here. What analysis are you referring to? Are
19 you referring to -- if I looked at the Mahajani declaration and I look at your
20 motion, I could see two things. I could see an alternatives analysis and a
21 SAMA analysis. Are those the two -- is that the analysis that you're referring
22 to? Are there others that I didn't mention?

23 DIANE CURRAN: Well, there is -- it's an implicit statement in the
24 Task Force Report. The task force does not explicitly state we consider the
25 current regulatory regime to be inadequate, but it's a necessary inference of

1 what they're saying. When they say we think that what now constitutes a scope
2 of safety regulations to protect against design basis accidents needs to be
3 extended, the flip side -- the necessary conclusion is we think there's a
4 problem here. This is not, you know, the safety regulations are what is
5 considered necessary by the NRC. The task force basically said, hey, 30 years
6 ago after Three Mile Island, you were told, NRC commissioners, you really need
7 to strengthen you regulatory program. It does not encompass enough of a
8 spectrum of accidents. And now, they're saying it again. This second accident
9 has confirmed that.

10 NICHOLAS TRIKOUROS: I'm going to interrupt you because I know
11 where you're going with this. I understand that. I think everybody
12 understands that there are significant issues. They're being dealt with in
13 other forums. I'm more interested in this question specifically how one would
14 fit the Task Force Report recommendations to the Diablo Canyon license renewal.
15 That's our job now.

16 DIANE CURRAN: Okay. I mean, here's another example. The ones
17 that you gave, those are --

18 PAUL B. ABRAMSON: Ms. Curran, as you address these questions,
19 would you try to point us to where in your pleadings these things are answered?
20 We are not permitted to take new information. So show us where in your
21 pleadings this sort of stuff is addressed.

22 DIANE CURRAN: Sure. I just have to find my contention. I'm
23 sorry. Oh, here it is. Okay, first example is on Page 12 of the contention,
24 where we discuss the fact that in the generic EIS for license renewal, most of
25 the accidents that are considered are design-basis accidents. And they are

1 considered to be adequately dealt with by compliance with NRC safety
2 regulations. So there's a conclusion there that the environmental impacts of
3 accidents, design-basis accidents are small. Well, what if the design basis is
4 too small? What if the -- if you think of the Atomic Energy Act regulations
5 and NEPA as circles, okay, and the Atomic Energy Act is the inner circle --

6 DR. PAUL ABRAMSON: Show us in the pleadings, please.

7 CHAIRMAN KARLIN: I think that's permissible for her to argue.

8 DIANE CURRAN: I mean, I'm trying to -- it's in the pleading, and
9 I'm just trying to give you an illustration of how this works in my mind. The
10 Atomic Energy Act safety regulations are a smaller circle inside a bigger
11 circle that includes -- that NEPA's bigger because NEPA covers not just design-
12 basis accidents, but severe accidents. So they're all included inside NEPA,
13 but the Atomic Energy Act design basis is within NEPA. So in that margin
14 around the Atomic Energy Act safety program, you have severe accidents. The
15 way severe accidents are handled is that mitigation measures are considered to
16 be optional in the sense that if they're too expensive, they don't have to be
17 carried out. So they might not happen because they're too expensive. And what
18 the task force is saying is the circle's too small for the Atomic Energy Act
19 safety regulations. They need more, more accidents covered by mandatory
20 regulations. That's huge. That is enormously significant from both the Atomic
21 Energy Act standpoint and NEPA. They're very -- they're overlapping statutes.

22 NICHOLAS TRIKOUROS: But, again, let me rephrase my question in
23 this way. If we were to ask the applicant to modify their license renewal
24 application to accommodate the Task Force Report recommendations, what would
25 you think that they would provide us?

1 DR. PAUL ABRAMSON: Sorry, before we go there, can you point us to
2 legal authority where the applicant is required to do that, to modify its ER?
3 Isn't NEPA a duty of the agency, not of the applicant?

4 DIANE CURRAN: Well, Judge Abramson, you're raising a good
5 question. You know, the -- it's kind of like the rough draft of the EIS that's
6 prepared by the applicant. And that becomes the basis for the environmental
7 impact statement. Now, I'm not quite sure exactly how this would work. I
8 think there is a requirement in -- it's in 51.53, yes, that environmental
9 reports must consider new and significant information. As a practical matter,
10 it might be that the staff ended up doing it. I don't know how it will work
11 out as a practical matter. That's more kind of inside the agency. How does
12 the agency want to do this? Our concern is that it needs to be considered.

13 And I'd also like just to start by saying, Judge Trikouros, I can
14 suggest some ideas of how this would happen. One of our main points here is it
15 is not the public's job to do this analysis for the NRC. It's what the -- what
16 the interested members of the public are doing here is putting the issue of
17 NEPA compliance before the agency and saying, "You need to do this. You need
18 to show us that you are addressing this. You need to say something about this
19 that we could respond to. We are not the experts but we do know the law."

20 NICHOLAS TRIKOUROS: Well, the -- again, the agency has a
21 responsibility with respect to the current licensing basis of Diablo Canyon.
22 And you know this argument well, that they are doing that, they will do that,
23 but again, I'm looking at the license renewal issue because we are narrowly
24 focused in that area here. And they could modify the current licensing basis
25 of this plant significantly, but none of that has an impact on this proceeding.

1 So I just don't want to mix the apples and the oranges here. I
2 understand there are big issues, significant changes are likely coming, all of
3 that. But we're dealing with a contention on license renewal, and I'm trying
4 to understand how it fits.

5 DIANE CURRAN: I need -- I'd like to ask you a question. Are you -
6 - in your question, I hear you suggesting that maybe the scope of this
7 proceeding is limited to safety issues related to aging and degradation and not
8 the current licensing basis. Because I wasn't -- I mean, to me, whatever it is
9 in the current licensing basis is maybe relevant here, but the central question
10 is the environmental analysis.

11 NICHOLAS TRIKOUROS: Right. The -- in the environmental analysis,
12 I identified what I saw as two potential areas, alternatives and SAMA. A party
13 might even argue that alternatives is not an appropriate analysis area for this
14 application. Do you agree with that, that it would be limited to SAMA and
15 alternatives?

16 DIANE CURRAN: No, I think it would include SAMA and alternatives,
17 but also would include a discussion of how the task force's evaluation of the
18 Fukushima accident should affect the discussion of environmental impact.
19 Because if the scope of design-basis accidents is really too small, then the
20 findings in the generic EIS of that -- if a licensee complies with safety
21 requirements, it has adequately protected against accidents is now subject to
22 question and needs to be addressed. And I'm not saying what the outcome of
23 that analysis should be. But we are saying it needs to be addressed.

24 DR. PAUL ABRAMSON: So, am I correct in reading into what you're
25 saying? And maybe you can point to me how you get this out of your pleading,

1 that the contention asks this board to consider, as a preliminary matter,
2 whether the scope of the design-basis accidents, currently considered, is
3 inadequate and therefore needs to be expanded?

4 DIANE CURRAN: What we're asking the board to do is to consider
5 whether we have raised a genuine and material dispute about that, such that the
6 question should be admitted whether the implications of the accident and the
7 Task Force Report rise to the level of something that needs to be addressed.

8 DR. PAUL ABRAMSON: So you're saying that because the Task Force
9 Report makes a statement to the effect that they're concerned about the scope
10 of design-basis accidents, that that is a foundation for admission of a
11 contention that challenges it? Is that right? And that that is -- that's the
12 linkage between the Task Force Report and this license renewal?

13 DIANE CURRAN: Yes, that our contention is based on two technical
14 documents -- the Task Force Report and its conclusions and Dr. Mahajani's
15 declaration, which essentially affirms his belief that this report raises
16 significant environmental issues. And he explains how he thinks some of the
17 environmental analyses for any nuclear plant would change if the task force
18 recommendations were taken into account. But again, I don't think it is our
19 burden here to show how it would change. What we need to show is that it could
20 change, that there's a significant potential that it could change because the
21 basic assumptions, the inputs to the environmental analysis are changing.

22 DR. PAUL ABRAMSON: Let me, if I may focus us back on -- your
23 motion to file the new contention or the contention itself is described as a
24 NEPA contention. And that's what it is, right? It's not a safety contention,
25 correct?

1 DIANE CURRAN: Right.

2 DR. PAUL ABRAMSON: It's a NEPA contention. And the contention is
3 stated at Page 4, and I'm going to read it because I have some questions about
4 that. On Page 4 of your motion, it is, quote, "Statement of contention. The
5 ER for Diablo Canyon license renewal fails to satisfy the requirements of NEPA
6 because it does not address the new and significant environmental implications
7 of the findings and recommendations raised by the NRC's Fukushima Task Force
8 Report," period. "As required by NEPA and the NRC regulations, these
9 implications must be addressed in the ER," close quote, and that's the end of
10 your statement of the contention. As I -- let me just ask this. What, when
11 you talk about the findings and recommendations raised by the Task Force
12 Report, are they -- is that the new and significant information, the findings
13 and recommendations? Or is it the Fukushima event itself?

14 DIANE CURRAN: Well, it's a combination because the task force was
15 -- they were assigned to evaluate --

16 DR. PAUL ABRAMSON: Yeah, but be careful there -- be careful there
17 because CLI-11-5, the Commission just said -- and at that point, the Commission
18 was just dealing with the Fukushima events as I understand it, and the quote is
19 from CLI-11-5, Page 30, "Petitioners request that the NRC conduct a separate
20 generic analysis regarding whether the Fukushima events constitute new and
21 significant information." So there you were saying the Fukushima events
22 constitute new and significant information. Here you have -- the contention
23 says the findings and recommendations are the new and significant information.
24 I think that works. But is that what you're saying? I mean, that's what
25 you've been saying in your pleading?

1 DIANE CURRAN: Yes. We based the contention on the conclusion of
2 the NRC's own experts about the significance of the Fukushima accident. So the
3 contention is based on those conclusions.

4 DR. PAUL ABRAMSON: Right, right. So if I understand the logic of
5 this contention, it is sort of as follows. First, the task force recommends
6 what you describe as a complete overhaul of the safety regulations. Second,
7 that the complete over -- and this is found at motion Page 13 and thereabouts,
8 14 -- first, that the task force has recommendations, two -- second, that the
9 recommendations are going to be costly, three, that the cost-benefit analysis
10 of NEPA and the alternatives analysis of NEPA and the SAMA analysis of NEPA
11 needs to be updated to reflect those additional costs. And therefore, this is
12 new and significant information, and the ER, the EIS needs to incorporate that.
13 Is that -- that's how I understand your logic. Is that right basically?

14 DIANE CURRAN: Yes, I'm not sure it completely covers everything in
15 the contention because we would like to see a discretion of how the conclusions
16 of the task force affects the conclusions about the significance of
17 environmental impacts. And I think the issue of cost is -- I think that it
18 would be handled in several potentially different ways. The concepts raised by
19 the task force are all about safety and safety requirements. And the task
20 force distinguishes between mandatory safety requirements and discretionary
21 requirements, things like SAMAs that are subject to cost-benefit analysis.
22 Well, NEPA is all about cost-benefit analysis. There's no requirements under
23 NEPA.

24 So then the question is how do you do a NEPA analysis when you just
25 -- and apply it to a question -- or a conclusion like you've got from the task

1 force? Well, one way you might do it is you weight the benefit side of the
2 SAMA so much that it's going to come out to be almost inevitable that it's
3 cost-effective. I don't know how it would be done, but it would involve that
4 sort of reasoning.

5 NICHOLAS TRIKOUROS: When I read the task force recommendations, I
6 don't see them the way that you describe in your pleading. The -- if a severe
7 accident is moved into the design basis space, it's no longer a SAMA issue
8 because there's no cost-benefit anymore. You have to do it. It's -- at least
9 right now, it's deterministic and not even risk-informed to any large extent,
10 so you have to do it. If all severe accidents were moved into design basis
11 space as you, you know, seem to be implying is the recommendation, then there
12 would be no need for a SAMA.

13 DIANE CURRAN: That's right. And then we would have no contention.

14 DR. PAUL ABRAMSON: Do you see -- do you see --

15 NICHOLAS TRIKOUROS: This is circular reasoning.

16 DR. PAUL ABRAMSON: Do you see any conflict between your position
17 that the task force is saying the regulatory scheme needs to be completely
18 overhauled and we need to -- this is your interpretation, I think -- that we
19 need to bring severe accidents into design basis-basis space? Do you see any
20 conflict between that and the quite plain statement that the task force made
21 that there's no problem with existing plants?

22 DIANE CURRAN: No, I don't because the task force was talking in
23 terms of imminent risk. And that is a term of art that is used in enforcement
24 cases to decide whether immediate shutdown is warranted. And I think what they
25 were saying there was, "We don't see any reason to shut down any of these

1 plants," but that's really different from the question of, over time, is our
2 regulatory scheme good enough to protect against nuclear power plant accidents,
3 and I think they were saying no, it's not.

4 And if I could go back to what Judge Trikouros was talking about,
5 the problem, the reason that we're here under NEPA is because we don't have
6 confidence that all these recommendations that the task force has proposed are
7 going to be incorporated or adopted before Diablo Canyon is relicensed and also
8 because we're obligated to raise our concerns as quickly as they come up. And
9 so, if, as we believe, NEPA requires that environmental issues have to be dealt
10 with at the time of licensing, we want to be sure that we get before you our
11 claim that these issues have to be dealt with before Diablo Canyon is
12 relicensed. If the NRC wants to take these severe accidents and make them
13 design-basis accidents, well, then do it before Diablo Canyon is licensed. Or
14 if they're not ready to do that yet, then do an environmental analysis that
15 shows this has been taken into consideration.

16 NICHOLAS TRIKOUROS: Which gets us back to my initial questions --
17 you're talking about redoing the SAMA analysis with some additional assumptions
18 or with a new set of assumptions. That's where you --

19 DIANE CURRAN: That's one thing, yes.

20 CHAIRMAN KARLIN: But aren't you saying that if the recommendations
21 of the task force are implemented, then the costs of meeting the minimal design
22 basis requirements will increase substantially? You say that. And that
23 increased cost needs to be factored into the NEPA analysis of whether nuclear
24 power is better or worse than some other alternative and whether any particular
25 severe accident mitigation alternative is worth it or not.

1 DIANE CURRAN: That's true, yes.

2 CHAIRMAN KARLIN: So the NEPA contention, it's not a safety
3 contention.

4 DIANE CURRAN: It's not a safety contention.

5 NICHOLAS TRIKOUROS: Well, as a break, I'll ask another slightly
6 varied question here. In your pleading -- in your motion, again, I think it's
7 Page 5, 6, you make this argument about the task force finding no imminent risk
8 was posed. You also indicate that they found that operation is not inimical to
9 the common defense and security but that they failed to indicate that the
10 operation of the plants would not be inimical to public health and safety.
11 Could you help me to understand the implications of that that you're trying to
12 make in your pleading?

13 DIANE CURRAN: I think that the task force avoided saying that the
14 current regulations are adequate to protect public health and safety in
15 licensing decisions. They couched their language in enforcement terms.
16 "There's no imminent risk that would cause us to recommend a shutdown of these
17 plants." But underlying this report, there is a very strong inference that
18 this task force does not believe that the current body of regulations, safety
19 regulations, is adequate. And this is borne out for them by the Three Mile
20 Island accident and the Fukushima accident. I think that is a fair reading of
21 the Task Force Report.

22 NICHOLAS TRIKOUROS: All right, but how does that relate to
23 contention admissibility here?

24 DIANE CURRAN: Because what this contention is discussing is the
25 entire scope of accidents that are covered by NEPA. That includes severe

1 accidents and it includes design-basis accidents. It includes the process for
2 considering SAMAs and it includes the process for determining that plants are
3 safe, because NEPA's all about public health, the human environment. So NEPA
4 covers the question of whether or not nuclear plant licensing poses undue risk.
5 So it's -- if they had said, well, we think that a nuclear plant today could be
6 relicensed or licensed and that the regulations are perfectly adequate to
7 support that finding, we might be in a different place. But they didn't say
8 that.

9 NICHOLAS TRIKOUROS: And so, if -- go ahead.

10 DR. PAUL ABRAMSON: Ms. Curran, is there not a carve-out from NEPA
11 for remote and speculative events, that there's not required to consider under
12 NEPA the environmental impacts of remote and speculative events?

13 DIANE CURRAN: Yes, that's right.

14 DR. PAUL ABRAMSON: And is it not possible that many -- some severe
15 accidents are so unlikely as to be remote and speculative? In other words, not
16 every severe accident would avoid the exclusion.

17 DIANE CURRAN: That's always been true. But I think that what
18 we've seen at the NRC over the years since the severe accident report was
19 prepared in Reg 1150, since the Three Mile Island accident, since Chernobyl, is
20 this increasing acknowledgement that what was initially -- initially no severe
21 accidents were considered credible. They were considered impossible. And then
22 that -- the understanding of what's possible keeps growing and growing, and the
23 understanding of what's likely is changing too. And I think that's the sea
24 change that we see in the Task Force Report. That's why it's so significant.
25 Now, the Commission -- the Commission may end up saying the task force, "We

1 totally disagree with the task force. We think this is really wrong." But
2 under NEPA, the NRC can't ignore what the conclusions of their hand-picked
3 technical experts that they've got a problem.

4 CHAIRMAN KARLIN: As I see it in the Task Force Report
5 recommendation number one, the central thrust of that is to say that we need --
6 that they recommend that the agency redraw the line of what they denominate as
7 adequate protection and that many things that are now not comprehended within
8 the design basis, which is required without regard to probability -- it's just
9 deterministically required that you must meet the design basis -- the task
10 force recommendation number one talks about defense-in-depth, mentions the word
11 dozens of time and says essentially we should move the adequate protection
12 standards further over and capture more things, and they call that, quote,
13 "extended design basis," that basically what you're doing is capturing severe
14 accidents, which were formally severe accidents, and now calling them design
15 basis, right?

16 DIANE CURRAN: I think that's correct, yes.

17 CHAIRMAN KARLIN: And so your thrust is that when you do that,
18 when you push the, quote, "adequate protection standard" further down the line
19 and include more severe accident events, deterministically, no probabilistic
20 about it, just include it, that's going to increase costs. And increased costs
21 is going to change SAMAs, it's going to change alternatives.

22 DIANE CURRAN: Yes.

23 CHAIRMAN KARLIN: That's what you say in -- and that is indeed what
24 you say at Page 13 to 14 of your motion. And I think I understand that.

25 DIANE CURRAN: And it might also change discretion of the

1 environmental impacts as well.

2 CHAIRMAN KARLIN: Let me ask this, if I may. As I truly see it,
3 your contention says that the findings and recommendations of the task force
4 are the new and significant information. You repeat that many times. You said
5 that in your reply. How can recommendations be, quote, "new and significant
6 information"? Aren't they just words piece -- you know, ideas? They may never
7 come to pass.

8 DIANE CURRAN: Well, we rely on the conclusions of the task force,
9 which are interpretations of --

10 CHAIRMAN KARLIN: All right. Where are the conclusions? I mean, I
11 can read in the Task Force Report, there's a section, "Recommendations," 1
12 through 12 and I can read -- I don't know what section is the conclusions or
13 the findings. You used both of those words, and I'm not sure -- I didn't find
14 a conclusions or findings section.

15 DIANE CURRAN: Well, they're in each -- in relation to each
16 recommendation, there's a discussion. And the task force explains how it
17 arrived at the recommendation. And we rely on both. I mean, the
18 recommendations got to come from somewhere.

19 CHAIRMAN KARLIN: Okay, but these are recommendations -- they are
20 conclusions, they're findings, they're recommendations, they're words.

21 DIANE CURRAN: They're interpretations --

22 CHAIRMAN KARLIN: How does that constitute new and significant
23 information, environmental information that needs to be -- requires the
24 supplementation of an ER or EIS?

25 DIANE CURRAN: Well, I don't think you can divorce the

1 recommendations from the actual occurrence of the accident. This is -- when we
2 -- just to give you a little background, right after the accident, of course,
3 members of the public were very concerned, wanted to raise their concerns
4 before the NRC, get these addressed. And the answer was, well, this accident
5 is progressing. We just don't know what's happening. We haven't analyzed it
6 yet. Well, then somebody analyzed it, and that was the task force. And not
7 only did they analyze it, but they were the best people the NRC had. They
8 analyzed it, and they came up with some pretty earth-shattering conclusions and
9 recommendations.

10 CHAIRMAN KARLIN: But I'm not sure whether you can have it both
11 ways. The Commission ruled on September 9th that the events at Fukushima are so
12 evolving and unclear that revising the generic EISs would be inappropriate at
13 this time because it's premature. We don't know enough about -- the
14 information is not clear. So if it's the events of Fukushima, then it's
15 premature. If it's the recommendations of the task force, then at least that's
16 something that happened on July 12th and it's in black and white, and we know
17 what those recommendations are. So it's not premature, but the question is, is
18 a recommendation new and significant information if it's just a recommendation?

19 DIANE CURRAN: Well, I think a couple things. First of all,
20 getting back to what we were talking about before, that conclusion in CLI-11-05
21 is that it is not appropriate to do a generic analysis at this point. And the
22 Commission does talk about the Task Force Report, but in point of fact, the
23 Task Force Report was not presented to the Commission in April because it
24 didn't -- it hadn't been written yet. So the Commission has made a decision
25 about whether to proceed generically or not, and it's made a characterization

1 of the Task Force Report for generic purposes. I don't see anywhere in the --
2 in CLI-11-05 where the Commission says we have made a determination that in no
3 case does the Task Force Report present new and significant information. And
4 as a matter of fact, the Commission says we know that there has been
5 contentions filed in individual cases, and we're asking the licensing board to
6 go ahead with their regular processes.

7 CHAIRMAN KARLIN: Ma'am, I grant you that on Page 35, they direct
8 us to -- all the adjudicatory -- all the boards to continue with their
9 adjudications. So, if the Commission wanted to tell us that it was premature,
10 they had a great opportunity to, and they didn't. So, they told us to go
11 ahead. But I mean, this is another issue -- recommendations. I'm still
12 focusing on whether words on a piece of paper can constitute new and
13 significant information requiring a NEPA supplement or update, and there's lots
14 of recommendations that fly around. On July 12th, the task force issued its
15 report and its recommendations. You know, then the Commission had a meeting
16 and directed the staff to prioritize those recommendations. And what was it?
17 The ACRS met, and they studied the recommendations and they discussed it and
18 said some things. And on October 3rd of 2011, a few days ago, the staff issued
19 a memo prioritizing the task force's recommendations on making some of its own
20 recommendations.

21 Now, is there every time the staff or anybody makes some
22 recommendations, does that automatically trigger the requirement to do -- that
23 it's new and significant information that triggers a need to supplement the EIS
24 every time? Certainly, you can't say that. How do we draw a line between
25 recommendations that trigger -- that constitute new and significant

1 information, triggering the duty to supplement and some second lieutenant in
2 the bowels of NRC making some, you know, stray recommendation, and does that
3 trigger the duty to supplement?

4 DIANE CURRAN: Well, I think it's possible that it does. I guess
5 it would depend on -- for instance, with the SECY paper that the staff issued
6 on October 3rd, I'm not sure that does because it's really --

7 CHAIRMAN KARLIN: That does what?

8 DIANE CURRAN: Would trigger a new obligation because it really is
9 just kind of developing a further analysis and a plan, a plan for how the
10 staff, under a safety regime, is going to address the recommendations.

11 But it seems to me that all -- that there is kind of a point of
12 departure for us anyway, that the first opportunity where we had a high-level
13 body in the Commission sanctioned by the NRC Commissioners evaluating the
14 significance of the Fukushima accident. We are obligated, there's no question
15 of our obligation to put that before you and to ask you to admit a contention.
16 Now, if, you know, if you want to tell us we think it's premature, we would
17 appreciate knowing when it's right because we're not getting any guidance from
18 anybody. And it's got to be right sometime before this license renewal
19 decision is made.

20 CHAIRMAN KARLIN: We will address that here before the end of the
21 day.

22 DR. PAUL ABRAMSON: Didn't the Commission in either CLI-11-5 or 11-
23 11 say something to the effect that they're confident that the plants can keep
24 operating as they are and that if we're going to make changes, we'll do it with
25 our regs and our normal course just like we did with DMI [spelled phonetically]

1 and we will -- and there's nothing that will -- in fact, there's nothing to
2 prohibit us and we expect to make changes in regulation for plants whether
3 they're relicensed or not? Isn't that essentially is what they said?

4 DIANE CURRAN: Judge Abramson, I think I remember language like
5 that in the discussion of the safety regulations and how the safety regime
6 works, the NRC's process for regulating plants under the Atomic Energy Act. If
7 you notice -- and that's CLI-11-05. Most of that decision is devoted to safety
8 issues. There's two pages for NEPA, and so, you know, that's -- we are not --
9 another time maybe we'll make an argument about the Atomic Energy Act. That's
10 not what we're bringing to you. We're asking you to enforce NEPA here.

11 CHAIRMAN KARLIN: On the safety issue, both the applicant and the
12 staff make a point that -- well, the Task Force Report upon which you rely
13 deals with safety issues. That doesn't say anything they say about
14 environmental or environmental issues. So, ipso facto, in NEPA -- you can't
15 base a NEPA contention on recommendations that only deal with safety. How do
16 you respond to that?

17 DIANE CURRAN: Well, as we were discussing before, NEPA embraces
18 safety issues. If safety issues aren't addressed in the context of the safety
19 regulatory scheme, then they have to be addressed under NEPA. And this
20 contention is really directed towards circumstances where the agency doesn't --
21 does not address the issues in a timely way under the Atomic Energy Act. For
22 instance, if the NRC were to just say today, "We're adopting all of the task
23 force recommendations under our safety programs," I don't think we'd have a
24 contention. Our contention raises the concern that the NRC's -- the NRC has no
25 timetable for addressing these safety issues, but NEPA does have a timetable,

1 and that is it has to be done before the license renewal decision.

2 CHAIRMAN KARLIN: Well, isn't the simpler answer something to the
3 effect that, well, if the NRC, for safety reasons, said that the Diablo Canyon
4 Nuclear Power Plant needed to be moved 500 feet up the bluff, and if some
5 endangered snail guarder [spelled phonetically] lived 500 feet up the bluff,
6 then there might be some environmental implications associated with that even
7 though the direction was safety-related, it never mentioned the endangered
8 snail guarder.

9 DIANE CURRAN: Well, that's true.

10 CHAIRMAN KARLIN: So a report need not necessarily mention
11 environmental to have environmental to have environmental implications.

12 DIANE CURRAN: That's true.

13 CHAIRMAN KARLIN: Okay.

14 NICHOLAS TRIKOUROS: I'm going to take you back to Page 14 again.

15 It seems to be a favorite area that -- of your motion --

16 MALE SPEAKER: -- of what?

17 NICHOLAS TRIKOUROS: Page 14 of your motion.

18 MALE SPEAKER: Okay.

19 NICHOLAS TRIKOUROS: You say where SAMA is imposed as mandatory
20 measures, the outcome of the ER and subsequently the EIS for Diablo Canyon
21 could be affected significantly and then you go on to describe having to make
22 modifications and the cost implications of that, et cetera. Those words --
23 first of all, was this then sort of a thinking out loud stream of consciousness
24 writing or was there something associated with this contention that I need --
25 I'd like to understand about this, because when you say where SAMA has imposed

1 these mandatory measures, I assume you're saying that if the SAMA is found to
2 be cost beneficial, it would be required to be implemented in some reasonable
3 timeframe. Is that what you're saying there?

4 DIANE CURRAN: Well, if -- this is going to the question under the
5 case law and the regulation that new information doesn't have to be considered
6 unless it's significant, in other words unless it could affect the outcome of
7 the environmental analysis or the -- it could affect the licensing decision.
8 So, I'm sorry if it was hard to understand, but what we were trying to get at
9 was that if SAMAs were imposed as mandatory measures, it could make the plant
10 safer, which would be a good outcome. It would change the licensing division.

11 NICHOLAS TRIKOUROS: Are you talking about all SAMAs or cost
12 beneficial SAMAs?

13 DIANE CURRAN: Well, we were saying if -- supposing they were
14 effectively made mandatory. In other words, you did a cost benefit analysis
15 and you waived the benefits by so much that it ended up being mandatory,
16 because that's kind of the implication of the task force report.

17 NICHOLAS TRIKOUROS: But, this has really no direct implication to
18 the --

19 DIANE CURRAN: Well, what we're trying to say is that it would make
20 a big difference in the outcome of the environmental analysis for Diablo Canyon
21 if these issues were taken into account --

22 NICHOLAS TRIKOUROS: Okay, but --

23 DIANE CURRAN: -- it could.

24 NICHOLAS TRIKOUROS: That's not the situation, so it's just sort of
25 wishful thinking?

1 CHAIRMAN KARLIN: Well, may I? On Page 19 of your motion you make
2 a statement that we referenced and that the applicant and staff references
3 that, quote, "Of course the Commission could moot the contention by adopting
4 all of the task force's recommendations," close quote. Now, I just don't
5 understand that comment at all and let me explain why. It seems to me that the
6 contention is that the recommendations, task force made recommendations, if
7 those recommendations are implemented, costs will increase and therefore the ER
8 and the EIS cost benefit analysis need to reflect that. So, it seems like the
9 contention assumes that the recommendations will be, or hopes that the
10 recommendations will be implemented and in implementing them, the cost goes up
11 and the environmental impact statement needs to be revised. So, rather than
12 mooting the contention, the NEPA contention, the -- if the Commission adopted
13 all of the recommendations, it would support the contention and say, "Wow,
14 Voila! Yes, the costs have increased and therefore the alternatives need to be
15 reanalyzed."

16 DIANE CURRAN: I see now that I think you're right.

17 CHAIRMAN KARLIN: I don't know -- yeah. I just don't understand
18 it, the mooting. I think you may -- what you probably meant is if the
19 Commission adopted all the recommendations, you'd be very happy --

20 DIANE CURRAN: Yeah, but --

21 CHAIRMAN KARLIN: -- but not necessarily --

22 DIANE CURRAN: No, no, the Mothers for Peace, their main concern is
23 safety and protecting the environment. They're not here to have an academic
24 debate. They want to make Diablo Canyon safer and so that was what -- that
25 argument was driving that was if the Commission adopted all those task force

1 recommendations, then I agree with you, Judge Karlin. You pointed out
2 something I didn't see. Yes, it would change the ultimate cost benefit
3 analysis, but it would remove the issue of SAMAs. That's what it would do,
4 because they'd be required --

5 CHAIRMAN KARLIN: Well, it wouldn't remove the issue of SAMAs.
6 They would still be -- it move the issue of SAMAs down further along the pike,
7 because once they drew the line, there would still be severe accidents out
8 there and there would still need to be a SAMA analysis as to whether any
9 particular mitigation measure was worth it or not.

10 DIANE CURRAN: That's true, yeah.

11 NICHOLAS TRIKOUROS: On Page 15 of your motion, you say the NRC
12 cannot meet the fundamental purposes of NEPA if it does not include all of the
13 costs associated with required mitigative measures. You say there can be no
14 hard look at the cost and benefits unless costs are disclosed.

15 DIANE CURRAN: I'm sorry, what page are you on?

16 NICHOLAS TRIKOUROS: Page 15 of your motion and the question I have
17 for you regarding that was that let's assume it's correct, we agree, et cetera,
18 I'm not saying it, but assuming we did, then are we at the point where we can
19 say that we know what all the costs are going to be?

20 DIANE CURRAN: Well, probably, no. We don't know at this point,
21 because the analysis hasn't been done.

22 NICHOLAS TRIKOUROS: Right, so what you are saying that's required
23 to do the hard look won't be known for some period of time into the future?

24 DIANE CURRAN: Well, okay there's -- I was answering a question as
25 to whether we know right now in the context of all the analysis hasn't been

1 done, so we don't know and I think what you might have been asking was because
2 we don't know everything about the accident, Fukushima accident, that we won't,
3 or we don't -- I'm not sure.

4 NICHOLAS TRIKOUROS: It goes to the issue of ripeness. This --
5 there will come a time when all of this information is known, but now is not
6 that time.

7 DIANE CURRAN: Well, NEPA does require that an agency use the best
8 information that's available to it at the time. So, I don't think that it's
9 allowed under NEPA to say we are not going to talk about the Fukushima accident
10 at all because we still don't know everything about it. I think under NEPA
11 it's clear, the case law is clear that the agency should use the best
12 information available to it and inform it's decision as well as possible, using
13 what it knows.

14 DR. PAUL ABRAMSON: And what new information about environmental
15 impacts of the accidents at Fukushima is revealed by a report, not the
16 recommendations, by the report, what new information is revealed and what
17 information is revealed therein about the environmental impacts one might
18 expect at Diablo Canyon?

19 DIANE CURRAN: Well --

20 DR. PAUL ABRAMSON: And where did you mention it in your pleadings?

21 DIANE CURRAN: I'd like to point you to paragraph seven of Dr.
22 Mahajani's declaration, where --

23 DR. PAUL ABRAMSON: I read Dr. Mahajani's --

24 DIANE CURRAN: Because that -- at the end of that paragraph, he
25 said, "Adequate protection of the public is incompatible with the NRC's

1 continued reliance on voluntary evaluation of severe external and internal
2 events, voluntary adoption of the indicated measures or the use of cost benefit
3 analysis to evaluate their desirability." What I think the Fukushima task
4 force observed was that the system --

5 DR. PAUL ABRAMSON: That's not my question --

6 DIANE CURRAN: All right.

7 DR. PAUL ABRAMSON: -- and I understand what Dr. Mahajani's
8 speculates, but what I'm asking you is where in your pleadings do you talk
9 about new information about environmental impacts, actual new information on
10 environmental impacts from the Fukushima Daiichi accidents and how, if you
11 didn't mention it, where do you discuss its relevance and the projected
12 environmental impacts for Diablo Canyon; and if the answer is we didn't, that's
13 okay. I just want to know where you did, if you did.

14 MALE SPEAKER: [inaudible] but we will in a minute.

15 DR. PAUL ABRAMSON: Counselor, my colleague advises that we are
16 going to take a break in some short period of time and when we do, perhaps it
17 might be appropriate for you during the break, to plow through your pleadings
18 and answer that question later.

19 CHAIRMAN KARLIN: Okay, great. Yeah, I think we were gone a little
20 while, but let's go until 3:00, an hour and a half. You've been in the hot
21 seat for a while, Ms. Curran. You might share the wealth with others in a
22 moment or two, but right now I have a question for you. PG&E in its answer on
23 Page 11 raises something that I think is quite important and it's a question of
24 whether or not you have an impermissible challenge to the regulations, whether
25 this contention represents an impermissible challenge to the regulation, and

1 I'm going to set aside the argument of impermissible challenge of the safety
2 regulations because I don't really see that at the moment, but I do see a
3 problem with regard to the environmental regulations, Part 51 and they point
4 out in Page 11 of the PG&E answer, quote, "Absent action by the Commission,
5 Category 1 environmental issues, including the environmental impacts of design
6 basis accidents, severe accidents, and onsite storage of spent fuel do not need
7 to be addressed in a site specific environmental review and cannot be
8 adjudicated in a plant specific license renewal proceeding, even if based on
9 allegedly new and significant information," and a quote, a case I am familiar
10 with, which is Vermont Yankee and the Commission's decision in COI 07-3. So,
11 isn't it true that --

12 MALE SPEAKER: [inaudible]

13 CHAIRMAN KARLIN: -- Yes, isn't it true that that entire -- you
14 can't challenge anything that's a Category 1 issue and under Part 1, and once
15 you ask for a waiver and you haven't done that here.

16 DIANE CURRAN: We absolutely did ask for a waiver.

17 CHAIRMAN KARLIN: Asked for a waiver and the prior one --

18 DIANE CURRAN: No.

19 CHAIRMAN KARLIN: -- where's the waiver here?

20 DIANE CURRAN: It's attached to the contention.

21 CHAIRMAN KARLIN: You had a -- I didn't see anything that looked
22 like a waiver.

23 DIANE CURRAN: Oh, I'm sorry, I'm sorry --

24 [talking simultaneously]

25 CHAIRMAN KARLIN: It was a rulemaking --

1 DIANE CURRAN: It was a rulemaking --

2 [talking simultaneously]

3 CHAIRMAN KARLIN: Yeah, yeah, yeah.

4 DIANE CURRAN: -- issue that was attached to this contention. We
5 just couldn't see how it was --

6 CHAIRMAN KARLIN: You couldn't come up with something site specific
7 or unique to this site?

8 [talking simultaneously]

9 DIANE CURRAN: Not site specific about the task force --

10 CHAIRMAN KARLIN: Right.

11 DIANE CURRAN: -- overall recommendation, until we did a rulemaking
12 petition and that is now before the staff.

13 CHAIRMAN KARLIN: Right, so, but my question therefore, still
14 remains. Absent -- this does appear to me to be at least with regard to
15 Category 1 issues for license renewal, a challenge to the regulations Part 1,
16 you know regulations and therefore would have to be stripped entirely from this
17 contention, if it survives at all.

18 DIANE CURRAN: We'd ask you to make a ruling that except for the
19 Category 1 issue, that you otherwise would find the issue admissible, and await
20 the --

21 CHAIRMAN KARLIN: It would be with regard to Category 2 issues?

22 DIANE CURRAN: Yeah --

23 CHAIRMAN KARLIN: I don't know.

24 DIANE CURRAN: -- but I agree with you that you couldn't consider
25 the issue.

1 CHAIRMAN KARLIN: Well, let me ask this, is an alternative -- NEPA
2 requires -- our regs require, and you talk about the need to revise the
3 alternatives analysis, whether nuclear is cost effective after you add all
4 these additional supposed costs that are going to be imposed. Is the
5 alternatives analysis a Category 1 or a Category 2 issue? I'm going to ask Mr.
6 Repka and others, I don't know where -- it doesn't look like it's either one,
7 but I don't know.

8 DIANE CURRAN: Honestly, I'm not sure.

9 CHAIRMAN KARLIN: Okay, well that may be something that you can put
10 in -- and if you can find anything on that, great, after the break.

11 DIANE CURRAN: Judge Karlin, I just wanted to add that we consider
12 ourselves obligated to raise our concerns when they arise and that you know,
13 this is part and parcel of our contention, and so we know we were -- we
14 explained how the -- even if in making an analysis of whether it matters to the
15 environmental impact statement, that's part of what you have to evaluate in
16 admitting -- deciding whether to admit this contention. It seems to me that it
17 is appropriate to consider whether it could change some part of the analysis
18 that is maybe subject to Category 1 because you know, Category 1 is -- it isn't
19 set in stone. It can be changed and NEPA requires that Category 1, it can't
20 hold if there is new and significant information that disturbs it. That's --
21 it can't be used as a block to that --

22 CHAIRMAN KARLIN: Well --

23 DIANE CURRAN: -- and perhaps you don't have the authority to
24 change it, but I don't think that this precludes you from considering how that
25 analysis might change.

1 CHAIRMAN KARLIN: Okay, well I think the law is pretty clear and
2 the Commission has spoken emphatically several times on the category one issue
3 in Vermont, Yankee, and elsewhere, but one further question that I have before
4 we take a break and it's something that was alluded to earlier. In your reply,
5 at Page 9, and I -- when I say reply, I'm generally going to be referring to
6 your reply memorandum. You have two documents you filed at that moment. You
7 filed a reply and then you filed an attached reply memorandum, which is
8 something I think that was filed in many of the cases, right?

9 DIANE CURRAN: Yes.

10 CHAIRMAN KARLIN: So, I'm referring to the reply memorandum, I
11 guess, and in that section, you attack as it were the applicants and you say,
12 quote, "Applicants erroneously conflate intervenor's responsibility under NEPA
13 with those of the agency," close quote. And there you're arguing that you
14 shouldn't have the burden of doing the EIS and you don't have to prove that
15 this juncture you know, that it's going to make a necessarily big difference if
16 the agency that's responsible -- and you quote on Page 10, the case law, quote,
17 "As courts have made abundantly clear," quote, "it is the agency not an
18 environmental plaintiff that has the continuing duty to gather and evaluate new
19 information relevant to the environmental impacts of its actions," close quote.
20 And then you go on to say quote, "Compliance with NEPA is a primary duty of
21 every federal agency," close quote. Okay, if that's true, I have a problem
22 with your contention, which says the applicant has to update the ER in order to
23 reflect the new and significant information. Now, I can compositely that the
24 NRC may have to update or include in its EIS -- because that's what NEPA
25 imposes the duties on the agency in Marsh versus Oregon, it imposes the duty on

1 the agency, but where is there any duty on the applicant to update its ER?

2 DIANE CURRAN: I believe it is in 51.53 and I think it's cited in
3 the contention. I'll find that for you.

4 CHAIRMAN KARLIN: Yes, it is cited in the contention and it's -- I
5 will read it here if I can find it and I think it's not as helpful as it might
6 be. I will note that 10 CFR 51.72 A deals with the supplement to the draft
7 EIS, and I will quote it to say that the staff will prepare a supplement if
8 quote "there are significant new circumstances or information relevant to the
9 environmental concerns and varying on the proposed action or its impacts,"
10 close quote. Staff will update the EIS. We turn to the closest analog in the
11 ER context. It is 10 CFR 51.53 C 3 iv, or little four, quote. "The
12 environmental report must contain any new and significant information regarding
13 these environmental impacts of license renewal of which the applicant is
14 aware." So, it doesn't really say you have to supplement the ER. It just says
15 the ER should contain that from the get go it seems. Is that the section
16 you're relying on?

17 DIANE CURRAN: Yes, and we are confined to Section 10 CFR 2.309 to
18 facing environmental contentions on the environmental document that's available
19 to us and there are only two right now that I did, one is the environmental
20 report and one is the License Renew GI Act.

21 CHAIRMAN KARLIN: But, does that -- think about it this way, the
22 applicant has done an ER, you -- let us posit subsequent to that ER, new and
23 significant information has arisen; let's posit that. The staff will be
24 issuing a draft environmental impact statement some day, a draft supplemental
25 environmental impact statement, I guess. Isn't your juncture for filing this

1 contention when the staff issues its draft environmental impact statement?

2 DIANE CURRAN: The way that members of the public interpret 10 CFR
3 2.309 is that you'd better file an contingent --

4 CHAIRMAN KARLIN: Right.

5 DIANE CURRAN: As soon as you have the information --
6 [talking simultaneously]

7 CHAIRMAN KARLIN: You're dealing with --
8 [talking simultaneously]

9 DIANE CURRAN: If you [inaudible] it is at your peril.

10 CHAIRMAN KARLIN: So, you're dealing with the Mike Farrar [spelled
11 phonetically] Mach's [spelled phonetically] Case catch 22. You're concerned
12 about the catch 22, so you filed now?

13 DIANE CURRAN: It is not a good bargain to guess about those things
14 that are --

15 [talking simultaneously]

16 CHAIRMAN KARLIN: Understood.

17 DIANE CURRAN: -- filed early and have the board say, "You're too
18 early, come back," and all we're asking is if you're going to tell us that,
19 give us some guidance on when to come back.

20 DR. PAUL ABRAMSON: If the applicant were to take the position that
21 the ER is prepared, does consider all of the significant information of which
22 it is aware, is that the end of it, because it's the applicant who has to
23 decide of which it is aware, significant information of which it is aware. So,
24 it can say we -- it seems to me and that's what I want to ask, is that
25 something that from your perspective, if the applicant says, "We've looked at

1 what's available from Fukushima. We've considered everything that's available
2 to us about Fukushima. We've looked at the task force report. We've
3 considered what we think is relevant from that and our ER encompasses that," is
4 that the end of the applicant's obligation under that -- under the clause we
5 were reading before?

6 DIANE CURRAN: Well, then the question is how do you interpret of
7 which the applicant is aware, the information about the task force report is
8 publically available. You can presume the applicant's aware of it. I think --

9 DR. PAUL ABRAMSON: But, the question is what does it do to its ER,
10 and that's why I was asking you earlier can you show me what environmental
11 impacts information you have from either the task force report -- from the task
12 force report and where you have referred to it in your pleadings, because that
13 to me is crucial to this.

14 DIANE CURRAN: [affirmative].

15 CHAIRMAN KARLIN: At this juncture it'd probably be a good idea to
16 take a break. It's 3:05 or so, 3:03. Why don't we take a 10 minute break and
17 it's going to be relatively Chris [phonetic], so we'll be back in 10 minutes.
18 I'm not sure, I'll consult with my fellow board members, but we may at that
19 point, although we may not be finished entirely with you, Ms. Curran, we may --
20 you are going to be coming up for rebuttal, so we may ask Mr. Repka at that
21 point to start, but I'll have to consult with them first. So, everybody stand
22 by and we'll adjourn for 10 minutes. Thank you.

23 (Whereupon, a short recess was taken)

24 CHAIRMAN KARLIN: Okay, please be seated. Thank you. We're
25 [unintelligible] licensing board in the Pacific Gas and Electric case is now

1 reconvening and we'll go back on the record. I've consulted with my colleagues
2 and though we still may have a couple of questions for Ms. Curran, we're going
3 to turn to Mr. Repka and ask him to take the podium and maybe we can ask some
4 questions of you, sir.

5 I'd like to start with the same question I think we started with
6 Ms. Curran, was just to focus on the meaning of CLI 11-5, Page 30 and where the
7 Commission talks about prematurity I guess, and I'm not going to re-quote it,
8 but I do want to refer to your sur-reply. We ask you, each party, to address
9 the meaning of CLI 11-5. You all submitted a sur-reply and on Page 2, you talk
10 about this Page 30, and you say, the contention is premature, quote, "The
11 Commission specifically held however, that requests for a NEPA supplement based
12 on the Fukushima event are premature. The conclusion applies equally to the
13 current proposed contention," close quote, and so this is part of -- my
14 question is you say the Commission ruled that requests for a NEPA supplement
15 based on the Fukushima event are premature. The contention, as I read it, says
16 that the -- is based upon the recommendations of the task force report. Do you
17 see that difference? Is it about a difference that makes any difference?

18 DAVID REPKA: It's a difference that makes no difference. The
19 Commission's statement in CLI 1105 was made in September. The Commission says
20 in full, "The request is premature," although the task force completed its
21 review and provided its recommendations to us. So, they had the task force
22 report in hand and they concluded that they had, they, the Commission, the NRC,
23 had no new and significant environmental information based on either the
24 Fukushima accident itself or the task force report and recommendations, and
25 that makes sense, because the obligation to complete a supplement to the

1 generic environmental impact statement is one that belongs to the Commission.
2 The request that was being addressed in CLI 1105 was one about setting off to
3 do exactly that, updating the generic environmental impact statement to address
4 Fukushima, and so the Commission had to address that based on everything it
5 knew as of September of whatever the date of CLI 1105 is, and they did that,
6 and they specifically referenced the fact that they had the recommendations in
7 hand.

8 CHAIRMAN KARLIN: Yes, you are correct that they referenced the
9 fact that there's a task force and that it issued a report, but in context it
10 says further on there, "In short, we do not know today the full implications of
11 the Japan events for U.S. facilities." So, they're really talking about, in
12 the petition to suspend was based upon the events at Fukushima. Do you pause
13 at that? I mean the task force report didn't even exist at the time --

14 [talking simultaneously]

15 DAVID REPKA: When the petition was filed, that's correct.

16 CHAIRMAN KARLIN: -- and then subsequently the task force report
17 came out, but the petitioners there were not relying upon the task force
18 report. They were relying upon the events of Fukushima and it is those events
19 which it seems the Commission is saying, well, it's premature. A picture of
20 what happened at Fukushima is far from clear, but the picture of what the task
21 force recommended is absolutely clear, isn't it?

22 DAVID REPKA: And based on that, the Commission said, today,
23 September 20th, or whatever the date was, they said, "Today, the full
24 implications are not clear." They didn't have enough information as of that
25 point, based on both the event and the task force report, and recommendations

1 if there was any significant, new environmental impact information, and to step
2 back for a minute and look at what we in fact have in front of us, based upon
3 the event and the task force report. We have nothing in the event itself
4 that's any -- the event itself stands for the fact that there was a severe
5 accident, a beyond design basis accident in Japan. That's precisely the issue
6 that's addressed in the generic environmental impact statement, among other
7 things, and Ms. Curran gave some misleading information about the fact that the
8 analysis was done was about design basis accident that's simply not true. It's
9 a very comprehensive evaluation beyond design basis events. So, based on the
10 event, was there anything there to say that there's something new that hasn't
11 been addressed? No. Based upon the task force report coming out and the
12 recommendations, which the Commission had in front of them, they said, no, we
13 still have no new environmental information bearing on the project and its
14 environmental impact. Yes, there's recommendation related to our regulatory
15 structure, but nothing there specific to the environmental impacts of --

16 CHAIRMAN KARLIN: I understand there is recommendations to deal
17 with safety issues versus environmental issues, and that's another issue we may
18 get into, but okay, COI 11-5, on Page 30 says this is all premature. On Page
19 35, and Ms. Curran has pointed this too, the Commission says, reactor
20 adjudication to go forward related to Fukushima. Quote, "Reactor adjudication
21 should go forward, including those that may involve proposed contentions based
22 on the issues implicated at the Fukushima events," close quote. If -- that
23 doesn't make any sense, if the Commission just said Fukushima contentions are
24 all premature.

25 DAVID REPKA: No, the Commission didn't say Fukushima contentions

1 are all premature, and what it said was that the adjudication's could go
2 forward. There could be many different types of issues arising out of the
3 Fukushima event and they said, "Go forward, consider those various issues."

4 CHAIRMAN KARLIN: Why didn't they just say that's all premature, I
5 mean they could have put us all out of our misery basically, by saying this
6 whole entire thing is premature and none of these -- because they knew when
7 they issued this decision that in 21 different adjudicatory proceedings or
8 boards had a Fukushima contention and all they had to do was say, "It's all
9 premature," and they didn't do that.

10 DAVID REPKA: I think what they did was they said, with respect to
11 the NEPA claim, that there's new and significant information, they did put you
12 out of your misery. They did tell you, you don't have to deal with that. It's
13 premature.

14 CHAIRMAN KARLIN: Why did they tell us to go --

15 DAVID REPKA: We have a petition that's affecting countless dockets
16 with --

17 CHAIRMAN KARLIN: Right.

18 DAVID REPKA: -- with all manner of different regulatory approvals
19 involved, and so the Commission wasn't trying to address every single issue
20 that could be raised and every single regulatory content. It simply said,
21 board's go do that, but certainly take into account what we've just said here
22 today in COI 1105, and one of the things they specifically addressed was the
23 environmental new information issue.

24 CHAIRMAN KARLIN: Let me ask you another potential difference with
25 regard to this case and COI 11-5, okay.

1 DR. PAUL ABRAMSON: Judge Karlin, before you go to that, can I just
2 follow up for a second on --

3 CHAIRMAN KARLIN: Oh, sure, sure.

4 DR. PAUL ABRAMSON: -- on the underlying questions. Mr. Repka, I
5 think Judge Karlin's been talking at length about the distinction between a
6 challenged based on Fukushima and a challenge based on the task force report,
7 and you said there's -- it's a distinction without any meaning. What would be
8 required in -- of the task force report? What's missing from the task force
9 report that would make such a distinction meaningful? In other words, what
10 would the task force report have to have had in it for there to be a foundation
11 for a NEPA contention?

12 DAVID REPKA: Okay, broadly speaking, it would have to address the
13 environmental impacts of a project, so that's the parameters. Now, what would
14 specifically get to that? One thing that would address that is if the task
15 force report was analyzed and the consequences of the Fukushima accident, which
16 is something I don't think that anybody has a clear handle on yet, today, and I
17 think the Commission acknowledges that. So, if a report were to come out and
18 say the consequences of this accident were this, that, and the other thing in
19 terms of land contamination goes to the public, whatever it might be, the
20 source term material released, then that would have to be compared against what
21 was already analyzed in the generic environmental impact statement for severe
22 accidents, and so then there might be new information.

23 DR. PAUL ABRAMSON: So, there would need to be the technical
24 information, either leading to or providing an environmental impact, the basics
25 of an environmental impact from that event, right?

1 DAVID REPKA: Correct.

2 DR. PAUL ABRAMSON: Would you also need to know the sequence in the
3 events that led to that, so that you could factor into some sort of severe
4 accident analysis or could you start simply from the environmental impacts? In
5 other words, they got radiation measurements; we've seen it in a number of
6 petitions. Could those -- could, would that enable an environmental impact
7 number from which one could somehow back out some NEPA claim?

8 DAVID REPKA: Perhaps, it's very difficult to speculate in a
9 vacuum, but you have a severe accident model that's used by the NRC in a
10 generic environmental impact statement based on standard codes, based on
11 certain assumptions, and so you would need to know enough about the accident
12 and perhaps its sequence of events and source term -- and again, make a
13 comparison, some amount of technical information to say does that challenge the
14 model, did that challenge the analysis that was conducted for a severe
15 accident.

16 DR. PAUL ABRAMSON: And was there anything in the task force report
17 that addressed any of that?

18 DAVID REPKA: No, nothing at all.

19 CHAIRMAN KARLIN: Now, today we're here as I think I said in the
20 intro, to deal with the issue of contention, admissibility, and timeliness,
21 right? We're not here to address the merits of the contention, just whether it
22 meets 2.309 F1 and F2, and C, and whatever other provisions that apply to
23 contention admissibility. So, I'd like you to think about the focus on Page 30
24 of CLI 11-5. Wasn't that a ruling on the merits? The Commission was asked to
25 undertake a new generic environmental impact statement immediately and the

1 Commission on the merits, said it, wasn't going to do that. So, the question
2 whether or not something is new and significant information is a merits
3 determination, isn't it?

4 DAVID REPKA: It could be, but it could also be a basis for a
5 contention argument. It could -- because of the contention admissibility
6 requirements require a genuine dispute on a material issue. So, the issue
7 raised in the petition is one that we -- there's new and significant
8 information that triggers the NEPA obligation. The Commission says there
9 isn't. It is a factual statement that goes to the adequacy, not only of the
10 basis for the petition, but goes to the same -- the adequacy of the basis for
11 the present contention, and so the board is allowed to look behind the
12 contention to determine whether or not that basis is real. The Commission has
13 given an indication and it relies on the task force report, and the Fukushima
14 event, the Commission has already looked at the documents relied upon and said
15 that this doesn't say anything about that and made the conclusion that the
16 contention is premature. So, they have made that finding and I think the
17 licensing board is certainly allowed to credit that finding, and should credit
18 that finding.

19 Secondarily, even if the Commission had not said that in CLI 1105
20 the licensing board in making an admissibility determination is always free to
21 look at the documents that are being offered as the basis for the contention
22 and determine whether there really is a basis there for the contention, and I
23 think this is exactly the point that the task force report doesn't provide a
24 basis on environmental impact. It's simply not an environmental --

25 CHAIRMAN KARLIN: Okay, well I asked this of Ms. Curran, which is

1 the fact that the task force report focuses on safety doesn't mean, or does it
2 mean, that it necessarily cannot have environmental implications?

3 DAVID REPKA: An event may have environmental implications, but we
4 don't know what those are, based upon that report and that report doesn't
5 advance the ball or provide any evidence on that.

6 CHAIRMAN KARLIN: Well, that's why I was talking and asking Ms.
7 Curran, I mean I've read the contention and it doesn't say the Fukushima
8 events, it says, "the task force recommendations and findings," and as I
9 understand the logic that they articulate, she articulates in that motion, the
10 recommendations, if implemented, will be very costly. Those costs will drive
11 up the cost of the reactor and our continuing to operate the facility, which
12 will then affect the SAMA analysis and the alternatives analysis, and that is
13 something that must be done in the NEPA space. So, the fact that the
14 recommendations are safety related does not in itself mean that it doesn't have
15 environmental implications. Talk me through your response to that. It seems
16 to be your logic and I'd like to understand how you would respond.

17 DAVID REPKA: Well, let's review the bidding and start at the
18 beginning: severe accidents is a Category 1 issue. It's addressed in the TEIS.

19 CHAIRMAN KARLIN: But I thought it was a Category 2 on the part
20 Table B1, severe accident is a Category 2 issue.

21 DAVID REPKA: Only to the extent that it relates to active
22 mitigation alternatives.

23 CHAIRMAN KARLIN: Wasn't that what their contention's about?

24 DAVID REPKA: Their contention is about new and significant
25 information related to environmental consequences and it does raise among many,

1 many other things, it does raise alternative issues, but --

2 CHAIRMAN KARLIN: Yeah, I mean part Table B1 says, "severe
3 accidents, category two, the probability of weighted consequences of the
4 atmospheric release," et cetera, "however alternatives to mitigate severe
5 accidents must be considered for all plants that have not considered such
6 alternatives," and that's what's happening here. Is it not? I mean there was
7 a SAMA analysis in the ER --

8 DAVID REPKA: Right.

9 CHAIRMAN KARLIN: -- but the -- so that's a Category 2 issue.

10 DAVID REPKA: The SAMA issue is severe accident mitigation
11 alternatives issue, not the consequence issues because the consequence issues
12 is addressed in dozens of pages in the GIS.

13 Now, with respect to alternatives, there's two things here that are
14 being muddled together. One is the projects alternatives and the overall cost
15 benefit of the project, and this is an issue I think the staff addressed very
16 well in their response. NRC regulations on license renewal don't require an
17 environmental report or an environmental analysis to address the overall cost
18 and benefits of the project, and that's 5145 C and 5153 C in 10 CRF. So, that
19 issue of the idea that -- and this is certainly in the Mark Ajani Affidavit --
20 that the task force is going to require all these things that are going to
21 drive up the cost of the project and somehow that's going to change the overall
22 cost benefit. That's simply not a license renewal issue.

23 So, the second alternative issue is the SAMA issue of let's accept
24 that there are severe accidents. What can we do to address beyond design basis
25 events and what might be cost effective, and you know, certainly the task force

1 report says nothing about that. The environmental report for Diablo Canyon
2 says a lot about that and the contention says nothing about that, and doesn't
3 suggest anything that's wrong with that evaluation. So --

4 CHAIRMAN KARLIN: But doesn't the -- let me ask this if I may.
5 Doesn't the task force report say that there needs to be this new category of
6 extended design basis? The design basis is not sufficient at this point and
7 they recommend that some things that are now beyond design basis, i.e. severe
8 accidents be moved into the mandatory, Defense-in-Depth, deterministic, must be
9 done regardless of probability or not, so many things like the task force
10 report recommendations were implemented, things that are now considered severe
11 accidents and only need to be dealt with if they're cost effective mitigation
12 measures. Now would be mandatory and have to be imposed. So, it moves a
13 number of things which were severe accidents into the design basis mandatory
14 category.

15 DAVID REPKA: Yes, I see that, but that doesn't --
16 [talking simultaneously]

17 CHAIRMAN KARLIN: So, it increases the cost.
18 [talking simultaneously]

19 DAVID REPKA: It would raise the cost of -- there would be a cost
20 associated with implementing those measures and number one, those measures that
21 would be a current operating regulatory issue. It would be a challenge; it
22 would relate to the existing regulations and therefore is outside the scope of
23 license renewal. To the extent it's related to the overall cost of the
24 project, it's not even linked to license renewal. So, to say that that's a
25 cost of license renewal is inaccurate. That would be a cost of a project.

1 That would be a cost of ongoing compliance with the project and the regulations
2 on license renewal, the ones I just cited in Part 51 don't require that overall
3 cost related --

4 CHAIRMAN KARLIN: Let me point you to another reg that concerns me
5 and help me with this, 5153 do you have it in front of you? Do you have the
6 regs? 5153 C, that's the Operating License Renewal Stage Environmental Report,
7 5153 C 2 and about half way through it, it's a long provision and this is what
8 the staff I believe refers to in its brief. Quote, "The report is not --" this
9 is talking about the environmental report right? Quote, "The report is not
10 required to include discussion of the need for power or the economic costs and
11 economic benefits of the proposed action or of alternatives to the proposed
12 action, except in so far as such cost and benefits are either essential for
13 determination regarding the inclusion of an alternative in the range of
14 alternatives considered or relevant to mitigation." So, doesn't that exception
15 undermine what you just said? It's like well, okay it's relevant to
16 alternatives --

17 [talking simultaneously]

18 DAVID REPKA: Not at all.

19 CHAIRMAN KARLIN: -- and it's relevant to mitigation.

20 DAVID REPKA: Not at all. That section is a referral to the
21 consideration of alternatives in the SAMA context, not overall project costs.
22 So, not let's look at SAMAs, because that's the second part of this piece that
23 --

24 [talking simultaneously]

25 CHAIRMAN KARLIN: Does it say that?

1 DAVID REPKA: Well, it references or it's relevant to including an
2 alternative in the range of alternatives considered. That's for SAMA or
3 relevant to mitigation. That's itself, you have to decide what alternatives
4 are going to be potentially relevant and will be considered in your SAMA
5 evaluation, and then you address those, the benefits and costs of those,
6 because their beyond design basis. So, I believe that's what that's a
7 reference to. In the SAMA evaluation process, if the recommendation of the
8 task force were adopted and more events are considered design basis and plant
9 [inaudible] are required to bring those within the design basis, again that's a
10 current operating issue, not linked in any way to license renewal, but for
11 environmental purposes or safety purposes, but that would have the effect of
12 taking them -- and I think Judge Trikouros alluded to this earlier, they would
13 no longer be SAMA. They would be things that would be part of the design basis
14 and they would be excluded from the SAMA pool. So, we would continue to still
15 look at things that go beyond that new design basis for cost design basis prime
16 [spelled phonetically] and do the same SAMA evaluation on whatever's left
17 there, but --

18 CHAIRMAN KARLIN: But it would increase the total cost of the
19 facility of operating it --

20 [talking simultaneously]

21 DAVID REPKA: But that's not a relevant number.

22 CHAIRMAN KARLIN: Well, it is relevant to alternatives analysis.

23 DAVID REPKA: No, it's not.

24 CHAIRMAN KARLIN: Why not?

25 DAVID REPKA: It's relevant to a project's alternative --

1 CHAIRMAN KARLIN: Yes.

2 DAVID REPKA: -- perhaps, but that's not a license renewal relevant
3 issue.

4 CHAIRMAN KARLIN: Well, but it's -- the license renewal as I
5 understand that Turkey Point and others have taught us that you know, when you
6 get into license renewal space safety issues exclude current licensing basis
7 issues --

8 DAVID REPKA: Right.

9 CHAIRMAN KARLIN: -- NEPA does not so circumscribe any additional
10 costs or you know, can be you know or environmental impacts can be covered
11 within the NEPA analysis for a license renewal, right?

12 DAVID REPKA: I'm sorry, I [inaudible] --

13 [talking simultaneously]

14 CHAIRMAN KARLIN: Turkey Point the Commission taught that there is
15 a distinction in license renewal. Safety issues are limited to aging
16 management issues and they are not to include current licensing basis issues.
17 NEPA issues in license renewal are not so constrained and can cover any
18 environmental impact that might be associated in some way with the license
19 renewal, whether it's aging management related or not.

20 DAVID REPKA: That's correct. It relates to the impact of
21 continued operations, not necessarily the impact of plant retrofits that are
22 being made or being considered under the current operating [inaudible] of the
23 plant.

24 [talking simultaneously]

25 DR. PAUL ABRAMSON: Help me, Mr. Repka, with this one. What we're

1 talking about it sounds to me is expanding the events that fall into design
2 basis by adding in some severe accidents of probabilities -- probably higher
3 probabilities than one in a million per year.

4 DAVID REPKA: That's correct, or you need --

5 DR. PAUL ABRAMSON: -- so they claim

6 [talking simultaneously]

7 DAVID REPKA: -- and that are currently dealt with as a you know,
8 that may be for some plants not dealt with --

9 DR. PAUL ABRAMSON: Right.

10 DAVID REPKA: -- like design basis and station blackout.

11 [talking simultaneously]

12 DR. PAUL ABRAMSON: So we would expand those in the design basis by
13 having the design deal with those by putting the plant mods in place or
14 retrofits in place to deal with those, would the effect not be to reduce the
15 environmental impact, because of what's left out there for SAMA is a smaller
16 set?

17 DAVID REPKA: That's correct, for sure. That would have that
18 affect of reducing certainly the likelihood and consequences of an offsite --
19 of a severe, beyond design basis accident. That is accurate, but I think that
20 going to Judge Karlin's point again that the concept of the project
21 alternatives and what could be done to improve the project or instead of the --
22 what other things could be done other than license renewal and relative cost
23 and benefits of those, that's just something that's not considered here in this
24 context under the regulations and --

25 DR. PAUL ABRAMSON: So, your view is that that regulation takes

1 such events, such considerations off the table for license renewal, whether or
2 not there's safety, takes them off the table for NEPA also?

3 DAVID REPKA: And that's correct, because again, it's -- there's a
4 linkage here between those are issues that are really being dealt with in the
5 regulatory process as current operating issues.

6 NICHOLAS TRIKOUROS: Can I? This new and significant information
7 under NEPA, your pleading, your sur-reply I believe indicates that Mothers for
8 Peace would have an opportunity to challenge the lack or quality of a NEPA
9 supplement if new and significant information, environmental information
10 applicable to Diablo Canyon is ever identified and it's pretty clear that both
11 the staff and PG&E feel that the task force recommendations do not introduce
12 any new and significant environmental information, and really never will. I
13 mean --

14 [talking simultaneously]

15 DAVID REPKA: Well, the recommendations in and of themselves don't
16 do that and never will, but certainly the analysis of the event if it goes
17 forward if it -- as I talked about in responding to Judge Abramsom, if there
18 was some new consequence data that came out of ongoing studies where there was
19 new seismic information out of Japan that said that you know, that's relevant
20 to Diablo Canyon or new tsunami data that says a 46 foot tsunami was going to -
21 -

22 NICHOLAS TRIKOUROS: Well, let me address that specifically then
23 with respect to the recommendations that we have now from the task force. In
24 all of the meetings that are taking place discussing these recommendations and
25 prioritizing them, it's becoming very clear that the 50.50 4(hh) equipment

1 requirements, the station blackout efforts that are now proceeding, that would
2 -- that might have say diesel fuel requirements for portable pumps, that -- all
3 of that is indicating that if we're a multi-unit site, which is one of the task
4 force recommendations, I think it's in four somewhere, that the consequences to
5 be considered would be for multi-unit sites would be higher than for single
6 unit sites. So, for example at Diablo Canyon all of the SAMA analysis that are
7 done in the environmental report deal with one core-melt all of the costs
8 associated with the cost benefit analysis is one core-melt, but the
9 recommendations are clearly indicating that consideration should be given to,
10 in the case of Diablo Canyon, two core-melts. So, do you consider that a -- do
11 you not see that as new and significant information with respect to this
12 situation?

13 DAVID REPKA: Not at the present time and certainly don't see it as
14 an issue that was raised in either of the contention or the Mark Ajani
15 declaration and I think that was the point that we -- why we included some
16 excerpts from the SAMA evaluation, showing the range of some of the
17 alternatives that were considered because they go to, you know albeit with a
18 one core-melt event, but go to some of those precise issues, like offsite power
19 station blackout, hydrogen control, and so those are things that are
20 specifically considered in the SAMA evaluation already, and you know nothing
21 in the declaration at all or the contention engages that and says you know,
22 this is what's wrong. This is what needs to be considered in addition.

23 CHAIRMAN KARLIN: Somewhat -- well, this may be a slightly
24 different area, but as I understand it, your position as stated in the sur-
25 reply is that along with CLI 11-5, you agree with the Commission that Fukushima

1 related contentions are premature at this point.

2 DAVID REPKA: Fukushima related contentions that assert there's a
3 need for a supplemented environmental impact statement based on new and
4 significant information are premature at this point.

5 CHAIRMAN KARLIN: Okay, okay. Fair clarification, I appreciate
6 that, and Ms. Curran sites to the Mach's case about the catch 22 problem, which
7 is -- commonly we see interveners trying to grapple with timeliness in terms of
8 filing their contentions, new contentions and they are faced with double whammy
9 of the -- well, it's late and it's premature, and so we grapple with -- we all
10 try to deal with when -- what is the moment in time when it's right or
11 appropriate?

12 Now, the Commission in CLI 11-5, on Page 33 states, and they're
13 dealing with this issue about whether or not -- when the contention should be
14 filed, and at that point to the interveners, I'm sorry, the petitioners had
15 asked the Commission to set up, as I understand it, issue some schedule or
16 guidance as to when it would be mature, when Fukushima related contentions
17 ought to be filed. And I'd like your help here, because the Commission
18 declines to do that and says, "Respondents disagree, arguing," quote
19 "Respondents disagree, arguing that," quote "NRC regulations and case law
20 already provide clear and uniform standards to determine the timeliness of
21 motions to add new contentions or to reopen the record, and this situation
22 should not be treated differently. As a general matter we agree with the
23 respondent's assessment." Being a respondent, can you help us understand what
24 these clear and uniform standards are as to when these Fukushima contentions
25 ought to be filed?

1 DAVID REPKA: Well, I think it's referenced at 2.309 and the
2 requirements in the -- for new or amended contentions and it talked about
3 basically timely relative to when new information is available and without
4 reading those requirements, I believe that's what it's a reference to. I think
5 that it has to be read in concert, too, though with the requirements for
6 updating -- the staff's update and when an update to the environmental impact
7 statement or draft environmental impact statement would be required and the
8 Commission sites those regulations 51 71 2A, which talks about their
9 substantial changes in the proposed action that are relevant to environmental
10 concerns. Well, that's not happening here and --

11 CHAIRMAN KARLIN: Well, that wouldn't apply here yet, although I
12 value that comment, because they haven't even done their EIS or draft EIS, yet.

13 DAVID REPKA: Or there are significant new circumstances or
14 information relevant to environmental concerns, and bearing on the proposed
15 action are impacts. So, I think if you look at -- that would be the basis for
16 a contention if there needs to be an update, assuming there hasn't been an
17 update, and --

18 CHAIRMAN KARLIN: Let me stop you there. I mean so you're -- the
19 clear and uniform standards are 2.309 F2.

20 DAVID REPKA: Right.

21 CHAIRMAN KARLIN: Well, I know that only came into effect in 2004,
22 but there must be literally hundreds of cases where the boards grappled with
23 applying that regulation and its predecessors, and they're all over the boards
24 in terms of whether there's something's timely or not, and in fact the parties,
25 the applicant and the staff, commonly, almost uniformly argue that it's not

1 timely and or it's premature, the catch 22 Judge Ferrara was referring to. So,
2 you're suggesting that that standard is clear and what is the word clear in
3 uniform standards? Have we achieved clarity and uniformity with the hundreds
4 of LBPs that have been issued on that reg.?

5 DAVID REPKA: I won't get between the licensing board and the
6 Commission on that one. I think the Commission views it as clear and uniform,
7 but I understand the licensing board views may differ, but I think those are
8 the requirements and I think it certainly accepted that if some new report were
9 to come out with environmental impact information, that was germane to a plant
10 in the United States based on Fukushima, you know certainly the standard,
11 acceptable standard is if you file within 30 days of a new report, it will be
12 considered timely and that's what happened here, and I'll just point out the
13 PG&E did not object on the basis of timeliness.

14 CHAIRMAN KARLIN: Right. You ultimately -- well, let me just
15 continue that then. The staff has an answer, page -- staff answer at Page 33
16 and 34, the staff sites to the Commission decision in Oyster Creek, quote, "Our
17 contention admissibility and timeliness rules require a high degree of
18 discipline and preparation by petitioners who must examine the public available
19 material and set forth their claims at the outset. Now, on Page 34 they refer
20 to this old canard that the interveners have a quote, "Iron clad obligation to
21 examine the publicly available documentary material." Given that the -- are
22 the interviews supposed to be omniscient or something? The Commission itself
23 doesn't even know what's happening at Fukushima or what happened and they are
24 saying it's premature. How in the world can an impecunious intervener have an
25 iron clad obligation to know everything that happened at Fukushima?

1 DAVID REPKA: Well, certainly the citation to the case and the
2 obligation is an accurate one. It's an argument I'm not making and PG&E is not
3 making, so I'm not going to defend it.

4 CHAIRMAN KARLIN: Well, perhaps you could help us then. What --
5 let's say we wanted to issue -- back up for a second. There are many regs that
6 deal with safety issues and though they aren't black and white, CFR Part 50,
7 Part 52, Part 54, and the Commission issues many, many guidance documents,
8 NUREGS and other guidance documents as to how to apply and comply with those
9 regs. Now, here we have 10 CFR, Part 2.309F2 and the Commission doesn't want
10 to issue any guidance document, but if we were to issue some scheduling order
11 trying to lay out some objectively determinable events by which we could assess
12 the timeliness of any Fukushima related contentions. What -- help us -- what
13 do you think we should come up with for objectively determinable events rather
14 than some subjective fight about it? Is there anything you can help us with?

15 DAVID REPKA: I can't anticipate what all the new -- what form the
16 new information might take and I'd rather not, but certainly an example would
17 be some specific report that a petitioner or an intervener is going to rely
18 upon as a basis for a contention. I think that creates the obligation to then
19 timely file and that's routinely interpreted as 30 days, but I think that
20 ultimately it has to be filed within 30 days of the information being available
21 and that's the regulatory standard and I really don't see the difficulty in
22 that being the standard.

23 CHAIRMAN KARLIN: Well, in Fukushima perhaps the information is
24 coming out over time and its clarity is getting better perhaps, and then our
25 knowledge or the information is becoming better, but isn't it kind of a very

1 slippery slope as to what the moment in time is when the contention should be
2 filed?

3 DAVID REPKA: And perhaps that's because it's a very much a fact-
4 based determination and then and that's why the regulations read the way they
5 are and I'm, I don't know --

6 CHAIRMAN KARLIN: Would this be --

7 DAVID REPKA: -- how we could be otherwise.

8 CHAIRMAN KARLIN: Would this be a situation where even if it might
9 arguably not be timely there might be good cause for not filing it precisely
10 when somebody thought they should of if you know it was coming out through the
11 smoke and the haze gradually?

12 DAVID REPKA: That's always part of the showing and so that's
13 certainly they exist.

14 CHAIRMAN KARLIN: Okay. Yeah, go ahead.

15 NICHOLAS TRIKOUROS: Let's see, in your -- Mr. Repka, your answer,
16 Pages 13, 14, it's -- you were talking about having considered in the SAMA
17 analysis for Diablo Canyon station blackout and seismic related SAMAs you, in
18 fact, included an attachment to your pleading that identified all of those
19 SAMAs that were specifically related to station blackout and seismic, but all
20 of those were rejected as being not required or not cost beneficial.

21 DAVID REPKA: That's correct.

22 NICHOLAS TRIKOUROS: And would that -- is that still true today in
23 light of the task force recommendations that we're dealing with here?

24 DAVID REPKA: I don't know how the task force recommendations would
25 change that particular calculus. You know, the SAMA evaluation is done based

1 upon the models as they exist, based upon the PRA and the offsite consequences,
2 and the recommendations go to whether or not additional design-basis measures
3 should be required. But putting that aside, if you're looking at it still on a
4 purely cost-benefit, beyond-design basis, you know everything that goes in that
5 calculation would be the same today as it was you know a year ago.

6 You know, again, based on what we know today. If there were
7 something that changed the seismic hazard or changed the, changed the, you
8 know, something that would lead to a conclusion that at Diablo Canyon there was
9 a greater than assumed potential for core melt, containment failure, offsite
10 consequences, those would be the things that would change the SAMA results and
11 we just don't have anything that says that that would be true.

12 CHAIRMAN KARLIN: One or two more questions perhaps. The
13 interveners assert that the environmental report needs to be supplemented or
14 updated in light of this new and significant information. I'm not sure I see
15 where -- I understand that NEPA requires EISs to be supplemented and updated if
16 new and significant information arises. Let us posit for a moment that there
17 is new and significant information. Did you argue in any of your answers that,
18 well it doesn't apply to the ER anyway because we're not subject to any of
19 those requirements?

20 DAVID REPKA: I don't believe we made that argument.

21 CHAIRMAN KARLIN: So are we disallowed from rejecting the
22 contention on that basis, because you didn't make the argument according to
23 Judge Abramson?

24 DAVID REPKA: I'm --

25 [laughter]

1 DR. PAUL ABRAMSON: According to -- according to the footnote 133
2 in CLI-11-11 you are.

3 DAVID REPKA: Right and that's a different -- I mean that's the
4 point the Commission is making if there is no new and significant information.
5 You know if there were new, then again --

6 CHAIRMAN KARLIN: [inaudible]

7 DAVID REPKA: -- as to what would happen if there was something
8 else that happened next week or next month or next year that said there is new
9 or significant information. It -- that's again that contention could be filed
10 at that time. Number two is, is there an obligation that runs the PG&E
11 independent of the NRC staff to say something at that time? I actually think,
12 and I couldn't find this over the break, but I believe that we are subject to
13 an annual update of the license renewal application environmental report at
14 least until the draft environmental impact statement comes out. I couldn't
15 find the citation for that. So if at some point PG&E thought there was new and
16 significant information, you know we would put that in such an update, and even
17 if there were not such an update requirement if we found -- made that
18 determination having a complete and accurate application in all material
19 respects may lead us to make that kind of notification to the NRC. So I think
20 there are obligations on PG&E's part, it's just we haven't -- there -- that
21 doesn't exist right now.

22 DR. PAUL ABRAMSON: Counselor, just one point of clarification if I
23 may. Let's suppose that Diablo Canyon -- that no new and significant
24 information on environmental impacts arises before the license is actually
25 renewed, and there are some plants as you know that are in the queue that are

1 going to be done soon. Yours is some years away perhaps. What would then be
2 the recourse? This proceeding would be closed because the license renewal
3 would be issued. So at that point contention admissibility they don't file a
4 contention because a proceeding's done. What would happen at that point? What
5 would be the remedy available to the interveners if they thought there was new
6 information at that point?

7 DAVID REPKA: I guess there would -- and it's a question I have not
8 thought a lot about.

9 DR. PAUL ABRAMSON: But it seems to me that's part of what's
10 concerning.

11 DAVID REPKA: That is -- there would be no licensing action, no
12 major federal action before the NRC that would trigger an environmental impact
13 statement or environmental assessment obligation, but I don't think that
14 there's anything that would prevent a petitioner from filing a petition for
15 rulemaking to update the generic environmental impact statement or to ask the
16 Commission to conduct a generic environmental impact statement related to
17 continued operations you know [inaudible].

18 DR. PAUL ABRAMSON: How about for Diablo Canyon per se? Could they
19 -- would they -- could they would the process be for them to petition the
20 Commission for a back fit or for some modification to the license to, to adapt
21 to deal with new and significant information? How would that work?

22 DAVID REPKA: I do not believe there would be a NEPA obligation
23 that would exist at that point, but could there be some petition some, some
24 request that would trigger some Commission obligation to look at that? It's
25 possible, I just don't know what that would be.

1 DR. PAUL ABRAMSON: Thanks.

2 CHAIRMAN KARLIN: Any more questions for Mr. Repka? Okay, thank
3 you Mr. Repka. I think we're done with you. [laughter] Mr. Harper?

4 Mr. Repka -- I'm sorry, Mr. Harper. We've talked about whether
5 it's premature and whether it's timely and we've gotten through that a little
6 bit. I'm going to skip past some of that discussion. In the staff -- but in
7 the staff's SER reply on Page 4 you say based on CLI-11-5 that the contention
8 is premature. Meanwhile, on Page 35 of your answer, I think I've got this cite
9 right, you say that it's not timely. "The issues presented here in the
10 proffered contention were readily available and discussed by the intervener's
11 expert more than four months ago. At that time the intervener chose to forgo
12 filing the contentions. As such the late filed contention is not timely and
13 should be denied." So which is it? Isn't this exactly the catch 22? It's not
14 timely, it's late and oh, by the way, it's premature. You've said both, which
15 one is it?

16 RICHARD HARPER: Yes, I think it would cover both, your honor. Let
17 me explain how that would be. The argument on timeliness that it is not a
18 timely submission based on the opinions of the underlying presumption in the
19 task force. As the, Dr. Mahajani's declaration states the task force supports
20 his opinions that were submitted four -- or four months ago at that time, so in
21 April, and our argument is based there on that if those opinions were available
22 and were expressed at that time, and the report is basically a confirmation of
23 those opinions and, therefore, it is not timely.

24 CHAIRMAN KARLIN: Well let's go back to the contention. The
25 contention is that not based on the task force report. The contention is based

1 upon "new and significant environmental implications of the findings and
2 recommendations of the Task Force Report." So the contention is not based on
3 Fukushima, it's based on the time -- findings and recommendations of task force
4 report.

5 RICHARD HARPER: Correct, your honor, and as I believe in the
6 petitioner's reply they clarify that and state that the contention is based on
7 the conclusions and recommendations within the task force [inaudible].

8 CHAIRMAN KARLIN: Same thing aren't they?

9 RICHARD HARPER: That's more of ancillary point. Kind of going
10 towards that what I'm, what we're arguing at the staff is that the underlying
11 opinions for those conclusions and for the recommendation are similar if not,
12 you know, are similar in essence to those opinions that were expressed four
13 months earlier. I'd like to also add at this time that even if the board were
14 to decide that the contention is timely it does not defeat all of our other
15 arguments that the contention is inadmissible.

16 CHAIRMAN KARLIN: I understand, I understand it's a different
17 issue. Okay, let's ask the question I think we need to ask of everyone, which
18 is -- and I want to refer to your answer at Page 33 and 34 again. And here you
19 say there's an ironclad obligation on the part of the intervener and it's a
20 high standard of discipline they must undertake. In this context, in the
21 situation where the Fukushima events are coming out and the information is
22 coming out, what objectively determinable events could we use in the scheduling
23 order to specify when, if ever, these kinds of contentions become mature or
24 ripe?

25 RICHARD HARPER: I think it would be difficult to compile a

1 conclusive list but I think, you know, based on Mr. Repka's comments I think
2 that's a good starting point. Some type of official report that outlines the
3 findings. You know, as the Commission said findings as they are right now, the
4 picture is not clear which implies that you know that the clarification process
5 is ongoing, and there will be certain steps along the way where information
6 will be released. At that time, I would say would be an appropriate time for
7 the clock to start ticking if you will.

8 CHAIRMAN KARLIN: Well here's, I think you make this argument in
9 your pleadings which is well, this report is just a compilation of information
10 that was previously available. So the issuance of the report is meaningless.
11 The information was already floating around out there and so the contention
12 should've been filed earlier. Is that what you're arguing with regard to the
13 Task Force Report?

14 RICHARD HARPER: I would go back to my earlier comment that the
15 recommendations in the underlying opinions of the task force, yes, I would say
16 that was the case is that those were available, the information -- the task
17 force report is a compilation of the information and opinions, recommendations
18 based on that information. As far as the contention is based on that then I
19 would say yes.

20 CHAIRMAN KARLIN: And so that the issuance of reports does not
21 necessarily provide us a crisp, objectionably determinable event from which
22 contentions could be filed?

23 RICHARD HARPER: I think it's, it's difficult to wrap this all up
24 in a nice package. I think it depends on the situation. Here we have, you
25 know -- the Fukushima disaster was very well chronicled and the information the

1 NRC gained at the time as it was presented was made public. The Task Force
2 Report made its recommendations based on that public information. It compiled
3 that information and expressed opinions that according to Dr. Mahajani coincide
4 with what you -- he established four months earlier.

5 CHAIRMAN KARLIN: Let me ask this. I believe you do make the
6 argument that under the regs there is no duty imposed upon the applicant to
7 update its environmental report, even if there is new and significant
8 information, right?

9 RICHARD HARPER: I believe that's correct.

10 CHAIRMAN KARLIN: And so the applicant has no duty to update its
11 environmental report even if there is new and significant information. So --

12 DR. PAUL ABRAMSON: No, it's a question up to the applicant to
13 decide whether it's new and significant. Isn't that what the reg says?

14 CHAIRMAN KARLIN: No, not necessarily. I'm just trying -- the reg
15 does not say that it says the environmental report must include new and
16 significant information. It does not say that the environmental report
17 thereafter must be supplemented or updated. So we've got an environmental
18 report, let's posit that it doesn't have to be updated because Part 51 doesn't
19 require that and NEPA doesn't apply to applicants anyway. So the environmental
20 report doesn't need to be updated, but the draft EIS is coming out someday,
21 right?

22 RICHARD HARPER: That, that is correct, your honor.

23 CHAIRMAN KARLIN: And when that report comes out if Ms. Curran and
24 her client are unhappy with the contents of that draft environmental report,
25 i.e. it doesn't discuss the recommendations of the task force or whatever else,

1 presumably they can challenge it at that point. Right?

2 RICHARD HARPER: They can challenge the findings in the
3 supplemental environmental impact statement.

4 CHAIRMAN KARLIN: Right, and would that be timely then?

5 RICHARD HARPER: It certainly depends on the information and the
6 challenges they are bringing up. I am hesitant to say absolutely yes.

7 DR. PAUL ABRAMSON: That's fine. Mr. Harper, can I just pick this
8 up for a second? I can't help clarifying this question. If the EIS, or
9 whatever it is, supplement draft, whatever form it comes out, only uses
10 information that was used in preparation of the ER and does not use -- and
11 there's no new say specific technical report that comes out between then and --
12 between today and the issuance of this staff document that regards the
13 consequences or the environmental impacts of Fukushima vis-à-vis Diablo Canyon.
14 If -- would it be timely for the filing of a contention claiming that the EIS,
15 this staff document, does not consider the recommendations of the Task Force
16 Report since it has already filed that contention now and we're looking at
17 that? In other words there's nothing new other than a claim that they didn't -
18 - that now the ER needs to include it and it doesn't and that sometime in the
19 future when the staff document comes out can they make the same claim? They
20 raised it timely in accordance with the regs now. If we reject it now would it
21 be timely in the future?

22 RICHARD HARPER: Just, just to make sure I understand your
23 question. I apologize.

24 DR. PAUL ABRAMSON: Same, same challenge. It's just the only new -
25 -

1 RICHARD HARPER: Yeah, same challenge only I [inaudible] --

2 DR. PAUL ABRAMSON: Not yet, no new, nothing new under the sun
3 between then and the time they raise the challenge to the staff EIS or DEIS or
4 supplement. If all that they're -- if they want to challenge just the
5 exclusion of consideration or failure to consider this task force report and
6 it's already been dealt with by us and they challenged it now is that timely to
7 raise then?

8 RICHARD HARPER: I would say yes, simply because the draft
9 supplemental environmental, impact statement would be the document that starts
10 the clock, that allows for the time to proceed from then. So the appropriate
11 time to challenge the NRC's failure to include or lack of inclusion of that --
12 those -- that information would be at that time.

13 DR. PAUL ABRAMSON: Even though they've challenged it now, which
14 seems to be the ER. They've made the same challenge to the ER. Today's
15 challenge is the ER doesn't consider the recommendations of the Task Force
16 Report. We for some reason -- if we find it's premature for whatever reason
17 then you're saying it's okay to raise the challenge later when the -- when the
18 ER -- when the staff's document comes out.

19 RICHARD HARPER: Well clearly it would have to be a different
20 challenge. The challenge currently is the challenge that the environmental
21 report is not including consideration. At that time the challenge would need
22 to be structured that the staff has not included consideration of those
23 elements within the environmental impact statement.

24 CHAIRMAN KARLIN: Yeah, all right, and I think in addition setting
25 aside whether it's premature, I mean it's to dispense with that entirely if we

1 rule there is no duty to up -- as we see it in Part 51, to up -- to supplement
2 the ER. It was filed. It was what it was. There's no duty to supplement it.
3 No contention could be raised about supplementing the ER, but when the draft
4 EIS comes out if that doesn't have the right stuff in it then that's the time
5 for this contention to be filed or some -- any contention to be filed about
6 that.

7 Now, when is the draft supplemental environmental impact statement
8 going -- I know you all get to file this monthly report and it's very helpful,
9 but I think you kind of finessed that one. You talk about the final being,
10 what is it February to May of 2014? [laughter]

11 RICHARD HARPER: Your honor, I'll admit I was not -- I did not
12 [inaudible].

13 CHAIRMAN KARLIN: [inaudible] Okay. All right, well it will be
14 whatever it is but --

15 RICHARD HARPER: It will be released, that is simply the
16 information [inaudible].

17 CHAIRMAN KARLIN: You will have to issue a draft supplemental
18 environmental impact statement first and there'll be a final. Okay. I'm not
19 sure I have any more questions.

20 NICHOLAS TRIKOUROS: With respect to this question of the duty of
21 the applicant, with respect to the environmental report. So if there's a
22 significant issue, a significant environmental piece of information, they have
23 no obligation to incorporate that into their environmental report as a
24 supplement. The DEIS comes out and doesn't include it because frankly the
25 staff had -- didn't know about it. Does that make sense? It doesn't to me.

1 RICHARD HARPER: Based on the conversation and discussion we've
2 just had, your honor, and the regulations that outline the applicant's
3 responsibilities whether or not they should update or they're required to
4 update the environmental report, the logical next step is -- for contention to
5 be raised would be at the issuance of the draft supplemental environmental
6 statement. It doesn't mean that that time necessarily that --

7 CHAIRMAN KARLIN: The part, the ER is a creature of Part 51 and
8 only of Part 51, not of NEPA, and unless there's a duty in Part 51 to
9 supplement I am concerned whether there is any duty to supplement the ER, and
10 we have to study 51.53.C3⁴ and see if that covers it.

11 DR. PAUL ABRAMSON: Would the staff's RAI process -- say the staff
12 thought there was new and significant information for the ER, for the
13 environmental side. Would the staff -- is it the staff's practice to ask the
14 applicant to advise them how that would impact the ER through an RAI or some
15 other method?

16 RICHARD HARPER: Your honor, I don't know that off the top of my
17 head. If I may consult with my lead counsel?

18 DR. PAUL ABRAMSON: Please.

19 CHAIRMAN KARLIN: Can we proceed, Mr. Harper? I'll ask the
20 reporter to read back the question. No, no that's [inaudible]. What was the
21 question?

22 RICHARD HARPER: That may be helpful. First as a point of
23 clarification based on the last question, the applicant has a yearly
24 responsibility to update their application which includes update of the
25 environmental [inaudible].

1 CHAIRMAN KARLIN: Where is that in the regs?

2 RICHARD HARPER: Part 54. I apologize, I don't --

3 DR. PAUL ABRAMSON: Let them find it for us as we move along. Go
4 ahead with your next point, Mr. Harper.

5 RICHARD HARPER: Along with that that would include any type of new
6 and significant information. With response to the question on whether an RAIs
7 -- our responses to RAIs and perhaps -- perhaps if you could ask your question
8 again, your honor. I apologize.

9 DR. PAUL ABRAMSON: My question is if the staff becomes aware of
10 some information it feels is new and significant vis-à-vis its EIS, would the
11 staff customarily ask the applicant -- provide the applicant with a request
12 for, with a request for additional information which is what RAI is, and let
13 the applicant deal with that or is it the sort of thing the staff would just
14 deal with on its own in the EIS?

15 RICHARD HARPER: Yes, well the staff would definitely consult with
16 the applicant and request further information clarifying information from that.

17 DR. PAUL ABRAMSON: Okay, so that if it comes up and the reason it
18 what, it -- for example, if some report that comes out from some experts who
19 looked at all the data coming out of Fukushima and said here's the
20 environmental impact from Fukushima and here's how we think it will impact U.S.
21 plants. That sounds like new and significant information to me. Is that the
22 sort of thing that then the staff would ask the applicant address it in its ER
23 one way or another, right? Thank you.

24 RICHARD HARPER: [inaudible]

25 CHAIRMAN KARLIN: Yeah, there are regs I found that the staff can

1 ask the applicant to update its ER. That's a may, not a shall, and so I think
2 it's the contention hinges upon a shall and so at least that's one way to read
3 it. Is there a reg in 10 CFR Part 54 or 51 that you can cite as to that says
4 the applicant must annually update its ER?

5 DR. PAUL ABRAMSON: They're looking for it.

6 RICHARD HARPER: Can we get back to your [inaudible].

7 CHAIRMAN KARLIN: Okay. Okay. I'd be very much interested in
8 finding that out because that could make a difference. I think we're going to
9 go back. We're probably done with you, Mr. Harper. We have some other
10 questions that we'd have some fun with but we're not going to ask them so --

11 RICHARD HARPER: I appreciate that.

12 CHAIRMAN KARLIN: You can sit down.

13 RICHARD HARPER: Thank you.

14 CHAIRMAN KARLIN: When Ms. Curran comes back [inaudible]. Oh,
15 yeah, well. Ms. Curran could you come back to the podium? We have a couple of
16 further questions for you. One of them was my -- one of my earlier questions,
17 one of my first questions and I'm not sure I got an answer. I don't know that
18 I did. Which is, the Commission dealt with the generic EIS in the context of
19 CLI-11-5 and said no we're not going to update, -- we're not going to initiate
20 a revised generic EIS, it's premature. You filed this contention -- we filed
21 it before that decision came down saying, well this environmental impact
22 statement or ER at this site and needs to be implemented -- updated because
23 there's new and significant information. Now my question at that point was on
24 Page 15 of your motion and also at Page 17 you talk about -- you refer to some
25 things that are sort of site specific. Let me see if I can pull that up.

1 Sorry, it's going to take me a moment.

2 DR. PAUL ABRAMSON: While you're looking for that, Judge Karlin,
3 Ms. Curran did you have any answers for my earlier questions that we deferred?

4 DIANE CURRAN: I did.

5 DR. PAUL ABRAMSON: Okay, let's address this.

6 CHAIRMAN KARLIN: Yeah, go ahead. I'm sorry.

7 DR. PAUL ABRAMSON: While we're waiting.

8 CHAIRMAN KARLIN: Good idea.

9 DIANE CURRAN: I hope this is responsive to your question, Judge
10 Abramson. On Page 12 to 13, we talk about the NRC's determination that the
11 environmental impacts of both design-basis accidents and severe accidents are
12 small. And so the Task Force Report provides new and significant information
13 suggesting that the environmental impacts of severe accidents are not
14 necessarily small because there, because the task force suggests that they
15 should be included within the realm of accidents for which mitigation is
16 required. In other words, it --.

17 DR. PAUL ABRAMSON: Okay, I understand that.

18 DIANE CURRAN: [inaudible] is considered to have small impacts
19 because they're very unlikely to happen. That's the general idea and what the
20 implication of the task force report is --

21 DR. PAUL ABRAMSON: Implication.

22 DIANE CURRAN: -- more likely --

23 DR. PAUL ABRAMSON: Implication.

24 DIANE CURRAN: -- than that.

25 DR. PAUL ABRAMSON: Implication.

1 DIANE CURRAN: The implication. It's a strong implication.

2 DR. PAUL ABRAMSON: I understand that, and that's what you have?

3 DIANE CURRAN: Yes.

4 DR. PAUL ABRAMSON: Thank you.

5 CHAIRMAN KARLIN: Okay, my -- I'm referring to Page 15 of your
6 motion and 17 also, but the question is, is this contention based upon any kind
7 of sort of site-specific environmental impacts or issues? Because the problem
8 is the Commission has dealt with the generic issue and said no, that's
9 premature. So how can you -- is the survival of this contention founded upon
10 it being site-specific to Diablo Canyon in some way?

11 DIANE CURRAN: Well, as I think I said previously, it's not
12 necessary for the task force conclusions to be site specific for those
13 conclusions to have site-specific ramification and that is what is discussed in
14 the contention at Pages 15 and 16. In other words, the Task Force Report
15 expressed concern about seismic risk, about risk of flooding. Well we have
16 here a nuclear plant -- I'm as close to California in an earthquake zone. So
17 we made a connection between that general concern of the task force and the
18 specific circumstances of the Diablo Canyon plant, and then another example is
19 station blackout. Well that's generally expressed concerned in the task force
20 report but it is -- it has a site specific application to Diablo Canyon.

21 CHAIRMAN KARLIN: Oh, okay. So you're saying you don't have any --
22 that the task force report findings and recommendations, although generic, have
23 site specific effects or implications or potentially and that's how you're
24 approaching this?

25 DIANE CURRAN: Right.

1 CHAIRMAN KARLIN: Okay. I think that's [inaudible]

2 DIANE CURRAN: This task force report has environmental
3 implications, major environmental implications. The Commission has a choice.
4 It could deal with them generically. It could deal with them on a case-by-case
5 basis in pending license renewal cases. In CLI-11-05 the Commission decided
6 not to deal with those generically, and we would submit to you then that leaves
7 only one choice, which is deal with them on a case-by-case basis. But the NRC
8 must deal with them somehow.

9 CHAIRMAN KARLIN: Okay, I understand that. I want to ask the
10 question that we've asked the others and, you know, what objectively
11 determinable events can we, could we craft, would you suggest that we put into
12 -- if we were going to do a case management order, a scheduling order -- here
13 is the win, the Fukushima contention should, would be timely, or here are the
14 criteria that would be used in determining whether they're timely. You don't
15 want to be in the catch 22. You've said that. I understand that. I mean, is
16 there anything you would suggest?

17 DIANE CURRAN: Well I guess in the course of the answering that I'd
18 like to address two predicates.

19 CHAIRMAN KARLIN: All right but. Go ahead.

20 DIANE CURRAN: Issue one is, if the Board ends up ruling that
21 there's no obligation, no legal obligation to supplement an environmental
22 report then it seems to me that the logical conclusion is that the next
23 juncture at which it would be appropriate to submit a contention is when the
24 supplemental EIS comes out. Then and at that point we would submit the task
25 force report and anything else that had happened in the meantime that we

1 thought was relevant. That one seems clear to me. The issue of whether or not
2 this is just premature because not enough was known about the Fukushima
3 accident or because there's something in CLI-11-05 that suggests that -- first
4 of all I don't think CLI-11-05 says that and second, I think it's really basic
5 to this case, to NEPA, to this contention that a group of experts within the
6 NRC has issued an expert opinion about the implications of the task --
7 Fukushima accident. About you know what, what does it mean for U.S. reactors?
8 Even if the Commission somewhere say between now and the issuance of the draft
9 EIS, the Commission says we reviewed the Task Force Report.

10 We think they're full of beans and we're not regarding this unless
11 they make a real technical determination of that and say we hereby determine
12 this is not new, this is not significant. They can't just wish it away. It's
13 been said by credible experts within the agency so it must be dealt with on a
14 NEPA.

15 CHAIRMAN KARLIN: Okay, any other questions?

16 DR. PAUL ABRAMSON: No.

17 CHAIRMAN KARLIN: Questions? Thank you, Ms. Curran.

18 DIANE CURRAN: Oh, I have one more thing, Judge Karlin.

19 CHAIRMAN KARLIN: What?

20 DIANE CURRAN: And that's just, just to comment on what you, you
21 had said wouldn't you do an EIS anyway supposing the Commission adopted all
22 these recommendations? And I just happened to notice while I was sitting there
23 a footnote in PG&E's response on Page 14 that -- I haven't read these cases,
24 but it seems to give the answer that if the supplement to an EIS would make the
25 environment better then it doesn't need to be supplemented. I think that's

1 where our -- anyway I hate give that away but I think that's, you know.

2 DR. PAUL ABRAMSON: That's, that's, that's kind of where I was
3 going earlier, right? You put more in the design basis, the environmental
4 impact gets less.

5 DIANE CURRAN: Yeah.

6 CHAIRMAN KARLIN: Okay, thank you Ms. Curran.

7 DIANE CURRAN: Thank you.

8 CHAIRMAN KARLIN: Mr. Harper, do you have that cite for us?

9 RICHARD HARPER: Your honor, in 54.13(b) it says each applicant
10 shall notify the Commission of [inaudible].

11 CHAIRMAN KARLIN: I see it, let me get it, 54.13?

12 RICHARD HARPER: (b).

13 CHAIRMAN KARLIN: (b), yes. Each applicant shall notify --

14 RICHARD HARPER: The Commission of information identified by the
15 applicant as having for the regulated activity a significant implication for
16 public health and safety or common defense and security.

17 DR. PAUL ABRAMSON: Identified by the applicant.

18 RICHARD HARPER: Identified by the applicant.

19 DR. PAUL ABRAMSON: So if they don't think it does, they don't
20 notify you. Right?

21 CHAIRMAN KARLIN: Well, okay, but that -- there could be question
22 whether that's a subjective standard or an objective standard, you know. But,
23 but the point let's -- is that what you're relying on for the annual updates?

24 SUSAN UTALL: No, I couldn't find [inaudible].

25 CHAIRMAN KARLIN: [laughter] Yeah because, yeah okay, because.

1 SUSAN UTALL: Have to send it on.

2 CHAIRMAN KARLIN: Each applicant shall notify the Commission of
3 information identified there as having for the regulated activity significant
4 implication of or common defense and security. That's the completeness and
5 accurate -- so that's your basic completeness and accuracy provision that comes
6 in every Part 30, Part 40, Part 50, Part 70.

7 SUSAN UTALL: It's the same as 50.9.

8 CHAIRMAN KARLIN: Yeah, yeah.

9 DAVID REPKA: Judge Karlin, that's part of what I alluded to.

10 CHAIRMAN KARLIN: Yeah.

11 DAVID REPKA: [inaudible] material information but I did allude to
12 my recollection of an annual update. I haven't been able to find that citation
13 either and I can certainly -- I'm willing to take that as homework to see if I
14 can find more [inaudible].

15 DR. PAUL ABRAMSON: Let them both e-mail it.

16 CHAIRMAN KARLIN: Well let's see here. Let me just try -- let me
17 look at one thing here. [inaudible]

18 [laughter]

19 Well there is 54.21(b), which talks about CLB changes during the
20 NRC review of the application. Each year following the submittal of the
21 license renewal application, blah, blah, blah, the application -- amendment to
22 the renewal application must be submitted that identifies any changes to the
23 CLB the. Is that what we're talking about? There is an annual update relating
24 to CLB, not environmental. Maybe that --

25 DAVID REPKA: That may be what I was recollecting.

1 CHAIRMAN KARLIN: Yeah. I mean it could be in guidance, which
2 isn't going to cut it really in terms of a mandatory Part 51, but Okay. Well
3 why don't -- I don't -- I hate to end this and say, okay, submit this, you
4 know, post-hearing briefs on anything. This is not to be long, this is a one
5 page or less and -- and that you can submit let's say in five days, would you
6 please, and all three of you may submit that. Is there and the only question
7 is, is there a reg? What reg, if any, requires the environmental report to be
8 supplemented or updated annually or whatever other time?

9 SUSAN UTALL: Can I add --

10 DR. PAUL ABRAMSON: Can I make that more specific? Provide the --
11 identify any regulation which requires.

12 CHAIRMAN KARLIN: Yeah, okay, here let's --

13 DR. PAUL ABRAMSON: And you don't need a page, either there is or
14 there isn't.

15 CHAIRMAN KARLIN: And Ms. Curran will be incentivized to find that
16 reg as well, so all three of you would be, you know, submit what there is on
17 that. Ms. Utall, yes?

18 SUSAN UTALL: Yeah, I'd like to make one point regarding what is
19 done in practice because the licensees [inaudible].

20 CHAIRMAN KARLIN: Practice? We don't pay any attention to that
21 [unintelligible] regs.

22 SUSAN UTALL: I don't know where [inaudible] and that's why
23 [inaudible] looking, we're going to look for it. But in practice the, the
24 licensees do update their application and quite frequently frankly and I'll ask
25 the staff, you know --

1 CHAIRMAN KARLIN: Okay.

2 SUSAN UTALL: -- the basis of that.

3 CHAIRMAN KARLIN: One page on the question we just addressed in
4 five days [unintelligible], yeah. With that, anything else, Judge Abramson?

5 DR. PAUL ABRAMSON: One sentence, not one [inaudible].

6 CHAIRMAN KARLIN: One sentence, less. All right, well we thank you
7 all for your patient answers. It's taken a little longer than some of us
8 hoped, but we got through it so we now stand adjourned. Thank you.

9 (Whereupon, at 4:31 p.m. the above-entitled matter was concluded)

10 E-N-D-P-R-O-F-P-R-O-C-D-E-E-D-I-N-G-S

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing OFFICIAL TRANSCRIPT OF THE LICENSING BOARD ORAL ARGUMENT ON OCTOBER 13, 2011, have been served upon the following persons by the Electronic Information Exchange.

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Diablo Canyon Nuclear Power Plant - Docket Nos. 50-275-LR and 50-323-LR
OFFICIAL TRANSCRIPT OF THE LICENSING BOARD ORAL ARGUMENT ON
OCTOBER 13, 2011

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[Original signed by R. Giitter _____]

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Dated at Rockville, Maryland
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