

November 7, 2011

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANT’S REPLY TO MOTION FOR LEAVE TO SUPPLEMENT BASIS

On October 28, 2011, San Luis Obispo Mothers for Peace (“SLOMFP”) filed a Motion<sup>1</sup> seeking to provide “further support” for their proposed contention filed on August 11, 2011, related to environmental implications of the Fukushima accident. The proffered supplement is the Commission’s Staff Requirements Memorandum (“SRM”), SRM/SECY-11-0124,<sup>2</sup> addressing the recommendations of the NRC’s Near-Term Task Force Report on the Fukushima accident. Pacific Gas and Electric Company (“PG&E”) does not object to the Motion to supplement the basis for the proposed contention. However, PG&E continues to oppose admissibility of the proposed contention. The SRM does not establish an admissible contention under the National Environmental Policy Act (“NEPA”).

As discussed in PG&E’s Response to the proposed contention,<sup>3</sup> SLOMFP has not established a genuine dispute with the license renewal Environmental Report. Neither the

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<sup>1</sup> “San Luis Obispo Mothers for Peace’s Motion for Leave to Supplement Basis of Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of Fukushima Task Force Report,” dated October 28, 2011 (“Motion”).

<sup>2</sup> SRM/SECY-11-0124, “Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report,” dated October 18, 2011.

<sup>3</sup> “Applicant’s Response to Proposed Contention,” dated September 6, 2011 (“Response”).

proposed contention nor the Declaration of Dr. Makhijani included with the contention drew any connection between the NRC's Near-Term Task Force Report and the issue of environmental consequences of severe accidents at Diablo Canyon Power Plant ("DCPP"). Response, at 13-14. In particular, the proposed contention drew no specific connection between the Task Force recommendations and the DCPP evaluation of Severe Accident Mitigation Alternatives ("SAMAs").

As discussed in Applicant's Sur-Reply,<sup>4</sup> the Commission itself has determined that any argument that there is an obligation to supplement the environmental record under the NEPA is presently premature. Sur-Reply, at 2-4, citing CLI-11-05, slip op. 30-31. That decision was issued by the Commission with full awareness of the Near-Term Task Force Report and recommendations. The fact that the Commission has now issued an SRM to the NRC Staff on the recommendations of the Near-Term Task Force Report does not alter the conclusion that a NEPA contention is premature. The SRM does not provide any new information about environmental consequences of the events in Japan, and does not provide any new or significant environmental information germane to DCPP.<sup>5</sup>

SLOMFP suggests that the SRM "undermines the basis for a recent licensing board decision finding that contentions similar to SLOMFP's contention were premature . . . ." Motion, at 2, citing, *PPL Bell Bend, L.L.C.* (Bell Bend Nuclear Power Plant); *Luminant Generation Co., L.L.C.* (Comanche Peak Nuclear Power Plant, Units 3 and 4); *Energy Northwest* (Columbia Generating Station); *Southern Nuclear Operating Co.* (Vogtle Electric Generating

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<sup>4</sup> "Applicant's Sur-Reply Regarding Admission of Proposed New Contention," dated September 27, 2011 ("Sur-Reply").

<sup>5</sup> See Tr. 574-75 (Oral Argument October 13, 2011) (discussing the Task Force recommendations and the concept of new and significant environmental information under NEPA).

Plants, Units 3 and 4); *Duke Energy Carolinas, L.L.C.* (William States Lee Nuclear Station, Units 1 and 2), LBP-11-27, \_\_\_ NRC \_\_\_, slip op. at 16 (Oct. 18, 2011). However, this conclusion is not explained in the Motion. In fact, the SRM directs the Staff to move forward with respect to the Task Force recommendations. But the SRM does not address environmental issues and takes no position on any NEPA issue. The rationale of the licensing board in LBP-11-27 remains sound and would apply equally to the proposed contention in this matter.

Respectfully submitted,

/s/ signed electronically by  
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Dated at Washington, District of Columbia  
this 7th day of November 2011

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CERTIFICATE OF SERVICE

I hereby certify that copies of “APPLICANT’S REPLY TO MOTION FOR LEAVE TO SUPPLEMENT BASIS” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 7th day of November 2011, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

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