UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of	Docket Nos. 50-275-LR and 50-323-LR
PACIFIC GAS & ELECTRIC COMPANY	ASLBP No. 10-890-01-LR-BD01
(Diablo Canyon Nuclear Power Plant, Units 1 and 2)	November 19, 2012

REVISED SCHEDULING ORDER

This proceeding concerns an application by Pacific Gas & Electric Co. (PG&E) for renewal of licenses to operate its two nuclear power reactors at the Diablo Canyon Nuclear Power Plant near San Luis Obispo, California. Under NRC regulations, this Board has the "duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay and to maintain order." 10 C.F.R. § 2.319. This revised scheduling order is designed to ensure proper case management of this proceeding. See 10 C.F.R. § 2.332(c).

I. Recent Background

On September 15, 2010, we issued the initial scheduling order herein. Initial Scheduling Order (ISO) (unpublished) (Sept, 15, 2010). On August 3, 2012, the NRC amended its regulations governing adjudicatory hearings. "Amendments to Adjudicatory Process Rules and Related Requirements, Final Rule," 77 Fed. Reg. 46,562 (Aug. 3, 2012). On August 9, 2012, the Board notified the parties of these regulatory changes and solicited their suggestions as to

whether the ISO might need to be modified in light thereof.[1] On August 27, 2012, the parties filed their joint response. Joint Written Statement Responding to Board's Notice and Order (Aug. 27, 2012).[2] In addition, the impact of the Part 2 amendments was discussed during our September 19, 2012, prehearing conference call with the parties. Tr. at 626.

Based on the foregoing, we are now issuing this revised scheduling order (RSO). It incorporates the conceptual changes (if not the exact wording) suggested by the parties as well as several other adjustments that the Board deems warranted under the revised regulations or due to changes since the ISO was issued (e.g., the deletion of several contentions).

All citations herein are to the regulations as amended on August 3, 2012.

II. Schedule

In addition to the general deadlines and time frames applicable to Subpart L proceedings pursuant to 10 C.F.R. Part 2, the following case management procedures and schedule shall govern this adjudicatory proceeding:

A. Mandatory Disclosures and Production of Hearing File.[3]

1. Updating of Disclosures. The regulations specify that the parties, including the NRC Staff, must update their mandatory disclosures every month, 10 C.F.R. § 2.336(d), and that the NRC Staff must likewise update the hearing file. 10 C.F.R. § 2.1203(c). The parties and the NRC Staff shall make such updates on the fifteenth day (15th) of each month and such disclosures shall cover all documents or other material or information required to be disclosed that are in the possession, custody, or control of each party or the NRC Staff (or their agents). For any given month, the update need not include documents that are developed, obtained, or

[1] Notice and Order (Scheduling Prehearing Conference Call and Notifying Parties of Amendments to Regulations) (Aug. 9, 2012) (unpublished).

[2] The parties consist of the applicant, Pacific Gas & Electric Company (PG&E), the intervenor, the San Luis Obispo Mothers for Peace (SLOMFP), and the NRC Staff.

[3] Except where otherwise specified herein, the term "mandatory disclosures" includes the witness lists and privilege logs required under 10 C.F.R. § 2.336(a) and (b).

discovered by a party during the two weeks immediately prior to the monthly update. Disclosure updates shall include any document or information subject to disclosure that was not included in any previous disclosure. See 10 C.F.R. § 2.336(d).

2. Privilege Logs. The regulations require that the parties provide a "list of documents otherwise required to be disclosed for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents." 10 C.F.R. § 2.336(a)(3); see also 10 C.F.R. § 2.336(b)(5). Such lists are referred to as "privilege logs."[4] Pursuant to their agreement, the parties shall not be required to produce privilege logs for documents claimed to qualify for the attorney-client, attorney work product, or deliberative process privileges. Letter from David A. Repka, Counsel for PG&E (Aug. 31, 2010) at 2 (Repka Letter-2). Also pursuant to the agreement of the parties, each party shall produce, as part of its mandatory disclosures, privilege logs covering any documents claimed to qualify for protected status as security related information and/or as proprietary information under 10 C.F.R. § 2.390(a)(1), (3), and (4) and (d)(1). Id. Each privilege log shall identify the statute or regulation that provides the legal basis for the claimed privilege, and shall provide, for each document listed, sufficient information for the other parties, and the Board, to assess the validity of the claim of privilege or protected status.

3. Scope of Disclosures and Hearing File[5]

i. If a party (or its agents) generates the document in question, then it may limit mandatory disclosures to its final document and need not include its internal drafts, including comments on drafts, resolution of comments, draft transmittals, or other similar documents. However, if a party has legal possession, custody, or control of a "draft" document drafted by

[4] 10 C.F.R. § 2.336(a)(3) and (b)(5) cover documents claimed to be privileged and documents claimed to be protected.

[5] A number of the provisions of this sub-section are based on the agreements between the parties that were reported to the Board in an August 10, 2010 letter from David A. Repka, Counsel for PG&E. (Repka Letter-1).

another person or party, and which is otherwise subject to mandatory disclosure (e.g., relevant to a contention), then the party possessing the "draft" must produce it unless that party knows that the drafter of that document has already disclosed that document herein.[6]

ii. Notes or comments (handwritten or electronic) on a final document constitute a separate document and must be produced as well as the original document.

iii. A party need not identify or produce a document that has been served on the other parties to this proceeding.

iv. If a document exists in both hard copy and electronic formats, then the party need only produce the electronic copy.

v. The parties need not identify or produce press clippings, including web clippings.

vi. If the same relevant e-mail exists in multiple locations, each party may produce only one copy of that e-mail.

vii. The parties need not produce publicly available documents. Each party, however, will produce, as part of its disclosures, a log identifying publicly available documents upon which that party may rely and indicating the general location of such documents.

viii. In connection with the NRC Staff's submittal of the hearing file, the Staff will identify the documents available via the NRC's website or the NRC's Agencywide Documents Access and Management System (ADAMS) as required by 10 C.F.R. §§ 2.336(b) and 2.1203.[7]

4. Electronically Stored Information.

i. Reasonable Search. Mandatory disclosures and the production of the hearing file shall include electronically stored information and documents (ESI). In implementing their

[6] The reason for this rule is simple. If the person who developed a document considered it sufficiently final to share it with an external third party (e.g., a party or the NRC Staff) who is a litigant herein, then we do not deem that document, even if it is still labeled "draft," exempt from the mandatory disclosure requirements.

[7] At the evidentiary hearing stage, however, the Board may require the NRC Staff or the parties to produce separate electronic or paper copies of certain important documents such as the FEIS, FSER, and COLA.

responsibilities, the parties and the NRC Staff shall conduct a reasonable good faith search for all documents or information, including ESI, subject to the mandatory disclosure and hearing file requirements. Each production or disclosure shall include a signed affidavit attesting that the party or the NRC Staff, as appropriate, has conducted such a search, and that the disclosure or production excludes only (a) documents or information exempted from disclosure pursuant to the law, including NRC regulations or this order, and (b) information that is not reasonably accessible because of undue burden or cost.[8]

ii. Format of Production. The parties shall produce each document electronically in PDF format to the extent practical. If a document is produced in PDF format, the party will use best efforts to produce the document in word searchable format.

5. Termination. The duty to update mandatory disclosures and the hearing file shall terminate at the close of the evidentiary hearing.

B. Protective Order and Non-Disclosure Agreement.[9] On February 25, 2011, the Board issued a protective order and non-disclosure agreement governing the mandatory disclosure, use and dissemination of documents that any party herein claims to be "Protected Information" as that term is defined in the protective order. LBP-11-5, 73 NRC 131. That order continues to govern and apply.

C. Disclosure Disputes and Motions to Compel. The Board intends to identify, manage, and resolve any discovery or disclosure disputes promptly, fairly, and as early in the adjudicatory proceeding as practicable. The regulations require that, unless otherwise specified

[8] Cf. Fed. R. Civ. P. 16(b)(5) (scheduling order to include "provisions for disclosure of electronically stored information"); 26(b)(2)(B) ("A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost.").

[9] Documents covered by a protective order are nevertheless required to be included in a privilege log. Indeed, the only way that an opposing party can learn of the existence of such a document, and thus to request access to that document, is for it to be included in the privilege log.

by the Board, a motion, such as a motion to compel, shall be filed within ten (10) days after the occurrence or circumstance from which the motion arises. 10 C.F.R. § 2.323(a)(2). Likewise a motion must be accompanied by a certification that the movant made a sincere effort to contact the other parties and to resolve the issues raised in the motion.[10] 10 C.F.R. § 2.323(b). However, experience indicates that some of the mandatory disclosures, particularly the initial mandatory disclosures (and initial production of the hearing file) with regard to a particular contention, can be quite large. This can make compliance with both the ten (10) day deadline and the consultation requirement difficult. The parties discussed this issue with regard to initial disclosures. Tr. at 414-15 (Curran), 415-16 (Repka), 416-17 (Uttal). The Board hereby establishes the following rules to be applicable to disputes regarding the timing, nature, scope, and completeness of mandatory disclosures, production of hearing files, and privilege logs, including but not limited to, disputes regarding whether a document qualifies for a claimed privilege or protection, disputes whether a document should be produced notwithstanding that it qualifies for a privilege, disputes regarding redaction, disputes regarding the adequacy of a privilege log, and disputes regarding the scope and application of any protective order or non-disclosure agreement (hereinafter "Disclosure Disputes"):

1. Burden of Proof: Regardless of whether the Disclosure Dispute arises in the context of a motion to compel or a motion for a protective order, the party asserting the privilege or protection bears the burden of proof. See 10 C.F.R. § 2.325.

[10] As stated elsewhere herein, the consultation effort required by 10 C.F.R. § 2.323(b) does not extend the ten-day promptness deadline process required by 10 C.F.R. § 2.323(a)(2). For example, the listing of a document on a privilege log is the "occurrence or circumstance" when the claim of privilege first arises, and a motion challenging that claim should, absent good cause, generally be filed within ten days under 10 C.F.R. § 2.323(a). Negotiations between the parties concerning the validity of the privilege claim, while important and valuable, do not automatically extend the ten-day deadline and the commencement of the ten-day countdown does not wait until (perhaps many months later) one of the parties finally declares a negotiating impasse. However, the parties may request a reasonable extension of the deadline if they show that they are actively engaged in good faith negotiations to resolve the disclosure dispute.

2. Promptness: General Deadline: A motion raising Disclosure Disputes shall be filed within twenty (20) days of the occurrence or circumstance from which the motion arises. For example, such a motion should generally be filed within twenty (20) days of the monthly update of the mandatory disclosures. Absent prior approval by the Board, negotiations between the parties concerning a Discovery Dispute do not extend the twenty (20) day deadline. Absent good cause shown, motions raising Discovery Disputes will not be considered after the twenty (20) day deadline.

3. Promptness Exception: Initial Disclosures and Initial Production of Hearing File: A motion raising Disclosure Disputes arising from the initial disclosures and initial production of hearing file (including the associated privilege logs) for a particular contention shall be filed within sixty (60) days of the initial disclosures and initial production.

4. Promptness Exception: Post Trigger Date: After the Trigger Date (as defined in II.K herein) motions raising Disclosure Disputes shall be filed within five (5) working days of the occurrence or circumstance from which the motion arises.

5. Scope and Timing: Disclosure Disputes shall be resolved by this Board pursuant to the procedures set forth in 10 C.F.R. Part 2 and in this RSO. The "Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation" set forth in the original notice issued herein, see 75 Fed. Reg. 3,493, 3,495-97 (Jan. 21, 2010), no longer governs because it applies to "potential parties" who are seeking access to information in order to prepare contentions, whereas, here, SLOMFP is already a party hereto.[11] Thus, the

[11] The "Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation" was issued pursuant to 10 C.F.R. § 2.307(c), which only authorizes SECY to establish procedures for potential parties to obtain access to safeguards or sensitive information when they are seeking that information in order to meet Commission requirements for intervention. That situation does not apply here. See South Texas Project Nuclear Operating Company (South Texas Project, Units 3 and 4) CLI-10-24, 72 NRC 451, 462 ("The Access Order does not apply to the circumstances presented here. . . . Once a petition to intervene has been granted, issues involving access to documents for use in the proceeding are governed by our discovery rules. In a Subpart L proceeding such as this, we look to the mandatory disclosure provisions of 10 C.F.R. § 2.336.").

procedures in the January 21, 2010, order now "give way to the normal process for litigating disputes concerning access to information" under 10 C.F.R. Part 2, see 75 Fed. Reg. at 3,496, and do not extend the Disclosure Dispute deadlines (e.g., for filing motions to compel) set forth herein.

D. Monthly Status Report. On the third Thursday of each month, the NRC Staff shall submit a short report specifying its best estimate of the dates it expects to issue the draft and final version of the Supplemental Environmental Impact Statement (DEIS and FEIS), the Advanced Final Safety Evaluation Report (AFSER) and the Final Safety Evaluation Report (FSER), and the dates when it understands that the Advisory Committee on Reactor Safety (ACRS) and its relevant subcommittees plan to issue any reports concerning PG&E's proposed license renewal.[12]

E. Requests for Subpart G Proceeding Based on Disclosures of Eyewitness. A request that a contention or other contested matter be handled pursuant to Subpart G procedures based on 10 C.F.R. § 2.310(d) (which focuses, inter alia, on issues "where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness") may be based on the mandatory disclosure of the identity of an opposing party's witnesses pursuant to 10 C.F.R. § 2.336(a)(1). Such requests shall be filed within the same promptness deadlines specified in II.C for Disclosure Disputes.

F. New or Amended Contentions.

1. Consolidated Filing. If a party seeks to file a motion for leave to file a new or amended contention,[13] then such motion shall be accompanied by the proposed contention. This consolidated filing shall specify how the motion satisfies the "good cause" criteria of 10 C.F.R. §

[12] The duty of PG&E to submit a monthly status report pursuant to our Notice of 52-Month Delay and Order Requiring Status Reports (June 7, 2011) (unpublished) remains unchanged.

[13] March 22, 2010, was the deadline specified by NRC for the filing of initial contentions. See 75 Fed. Reg. at 3,493-94.

2.309(c)(1)(i)-(iii) and how the proposed contention satisfies the admissibility criteria of 10 C.F.R. §2.309(f)(1)(i)-(vi). Within twenty-five (25) days thereafter, any other party may file an answer responding to the motion. See 10 C.F.R.§ 2.309(i)(1). The answer shall also address the admissibility of the proffered contention. Within seven (7) days thereafter, the movant may file a reply. See 10 C.F.R. § 2.309(i)(2).

2. Timeliness Deadline. The consolidated filing referred to in the preceding paragraph shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first became available.

3. Extensions of Time. A party may move for an extension to the foregoing timeliness deadline for good cause or by stipulation approved by the Board. See 10 C.F.R. § 2.307(a). A motion for extension may be filed before or after the deadline. The "good cause" concept and criterion specified in 10 C.F.R. § 2.307(a) may include such causes as serious health issues, severe weather issues, or NRC electronic hearing docket issues. The "good cause" test under 10 C.F.R. § 2.307(a) is broader than the "good cause" test under 10 C.F.R. § 2.309(c)(1)(i)-(iii). See 77 Fed. Reg. at 46,571-72, 46,582, 46,591 (Aug, 3, 2012).

4. Selection of Hearing Procedures. A motion and proposed new contention specified in paragraph II.F.1 above may address the selection of the appropriate hearing procedure for the proposed new contention. See 10 C.F.R. §§ 2.309(g) and 2.310(d).

G. New Hearing Requests and Petitions to Intervene. New hearing requests and petitions to intervene challenging this license renewal, may be filed in this proceeding by persons not currently a party hereto provided that they satisfy the "good cause" criteria of 10 C.F.R. § 2.309(c)(1)(i)-(iii), the contention admissibility criteria of 10 C.F.R. §2.309(f)(1)(i)-(vi), and the standing criteria of 10 C.F.R. § 2.309(d). See 10 C.F.R. § 2.309(c)(3). Because such filings are subject to additional requirements, the determination as to whether such requests or petitions are filed in a "timely manner" as required by 10 C.F.R. § 2.309(c)(1)(iii) shall be subject to a

reasonableness standard and is not subject to the thirty (30) day deadline specified in II.F.2 above.

H. Pleadings and Motions – Generally.

1. Ten Days. Except for motions under 10 C.F.R. § 2.309(c) or as otherwise specified herein, all motions must be filed within ten (10) days after the occurrence or circumstance from which the motion arises. See 77 Fed. Reg. at 46,567, 46,593 (Aug. 3, 2012).

2. Pleadings – Page Limitation. Motions and answers to motions shall not exceed fifteen (15) pages in length (excluding attachments) absent preapproval of the Board. A motion for preapproval to exceed this page limitation shall be submitted in writing no less than three (3) business days prior to the time the motion or answer is due to be filed. A motion to exceed this page limitation must (i) indicate whether the request is opposed or supported by the other participants to the proceeding; (ii) provide a good faith estimate of the number of additional pages that will be filed; and (iii) demonstrate good cause for exceeding the page limitation.

3. Response to New Facts or Arguments in Answer Supporting a Motion. Except for a motion to file a new or amended contention as set forth in paragraph II.F above or where there are compelling circumstances, the moving party has no right to reply to an answer or response to a motion. See 10 C.F.R. § 2.323(c). However, if any party files an answer that supports a motion, then a party opposing the motion may, within ten (10) days after service of that answer, file a response to any new facts or arguments presented in that answer. Except as otherwise specified herein, no further supporting statements or responses thereto will be entertained.[14]

4. Motion for Leave to File Reply. A party seeking to file a reply must first obtain leave of the Board. A motion for leave to file a reply shall be submitted no less than three (3) business days prior to the time the reply would need to be filed and shall attach the motion requested to

[14] This provision avoids unnecessary confusion and litigation that has arisen on this point and is modeled on 10 C.F.R. § 2.710(a).

be accepted.[15] In addition to all other requirements, a motion to file a reply must (i) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (ii) demonstrate good cause for permitting the reply to be filed.

5. Motion for Extension of Time. A motion for extension of time under 10 C.F.R. § 2.307 may be filed before or after the deadline in question. In general, however, parties should endeavor to file such motions at least three (3) business days before the due date for the pleading or other submission for which an extension is sought. In addition, such a motion must (i) indicate whether the request is opposed or supported by the other participants to the particular proceeding; and (ii) demonstrate good cause that supports the request. If the motion requests an extension of time greater than ten (10) days (e.g., due to an unexpected medical difficulty), it shall be accompanied by documentation that demonstrates why such a large amount of time is needed.[16]

6. Answer to Motion to Exceed the Page Limitation, to File a Reply, or to Extend Time. If a motion to exceed the page limit, to file a reply, or to extend the time for filing a pleading is filed less than five days before the relevant deadline, then the answers thereto shall be filed within two (2) business days of the motion. Otherwise, answers are due within (7) seven days.

7. Motion Certification. In accordance with 10 C.F.R. § 2.323(b), a motion will be rejected if it does not include the following certification by the attorney or representative of the moving party:

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[15] Although the agency's rules of practice regarding motions do not provide for reply pleadings, the Board will presume that for a reply to be timely it would have to be filed within seven (7) days of the date of service of the response it is intended to address. See 10 C.F.R. § 2.309(h)(2).

[16] If the motion for extension of time is based on medical, disability, or other personal information that is entitled to be protected under the Privacy Act, see 5 U.S.C § 552a, then, unless the moving party expressly waives any such protections in the motion, the moving party may submit any necessary information and documentation pursuant to a protective order.

> I certify that I have made a sincere effort to contact the other parties in this proceeding, to explain to them the factual and legal issues raised in this motion, and to resolve those issues, and I certify that my efforts have been unsuccessful.[17]

8. Answer Certification. If the attorney or representative of a party is contacted pursuant to the consultation requirement of 10 C.F.R. § 2.323(b), then that person (or his or her alternate) must make a sincere effort to make himself or herself available to listen and to respond to the moving party's explanation, and to resolve the factual and legal issues raised in the motion. If the answering party is unaware of any attempt by the moving party to contact it, then the answer shall so certify. Otherwise, an answer will be rejected if it does not include the following certification by the contacted attorney or representative (or his or her alternate) of the answering party:

> I certify that I have made a sincere effort to make myself available to consider and respond to the moving party, and to resolve the factual and legal issues raised in the motion, and that my efforts to resolve the issues have been unsuccessful.

The Board finds that it is inconsistent with the dispute avoidance/resolution purposes of 10 C.F.R. § 2.323(b), and thus insufficient, for the contacted attorney or representative to fail or refuse to consider the substance of the consultation attempt, or for the party to respond that "it takes no position on the motion (or issues) and that it reserves the right to file a response to the motion when it is filed."

[17] Although in general the movant has only ten (10) days within which to file its motion under 10 C.F.R. § 2.323(a)(2), the sincere effort at consultation should be timely, i.e., not initiated at the last minute. It should be initiated sufficiently in advance of the ten-day deadline to provide enough time for the possible resolution of the matter or issues in question. See Entergy Nuclear Vermont Yankee, LLC (Vermont Yankee Nuclear Power Station), LBP-06-5, 63 NRC 116, 128 (2006). If the parties believe that all or part of the matter may be resolved amicably if additional time for filing the motion were provided, the parties are encouraged to file a joint motion requesting that the Board grant such an extension of time to allow for further consultation and discussion.

9. Supplemental Information. The certifications specified in the foregoing two subsections may be supplemented with any additional information that the representative or attorney deems necessary to ensure the accuracy of the certification or to explain the situation.

I. Dispositive Motions. Dispositive motions, such as motions for summary disposition under 10 C.F.R. § 2.1205 and motions to dismiss a matter as moot, ask for a resolution of a contention on the basis of written pleadings, testimony, and exhibits and are, in this respect, quite similar to Subpart L proceedings, which are primarily written proceedings (with the opportunity for the Board to ask questions). In light of this situation, the Board finds that dispositive motions, especially if filed late in the proceeding when the parties are heavily engaged in other important tasks (e.g., preparing and submitting their pleadings, testimony, and exhibits immediately prior to the commencement of the evidentiary hearing), may impede and burden the litigants and the Board, rather than serving to narrow or expedite the resolution of the adjudicatory proceeding. Therefore, motions for summary disposition and other dispositive motions, while permissible, will be managed in this proceeding as follows:[18]

[18] The Commission has stated that:

> [t]here may be times in the proceeding these where motions [for summary disposition] should not be entertained because consideration of the motions would unduly delay or complicate proceedings by distracting responding parties from addressing other pending issues or distracting other parties and the presiding officer from their preparation for a scheduled hearing. Moreover, there may be situations in which the time required to consider summary disposition motions and responses and to issue a ruling on these motions will substantially exceed the time needed to complete the hearing and record on the issues. The presiding officer . . . is in a good position to determine when the use of summary disposition would be appropriate and would not delay the ultimate resolution of issues and the Commission will provide presiding officers the flexibility to make that determination in most proceedings.

Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,186 (Jan. 14, 2004).

1. Certification. A dispositive motion (e.g., motion for summary disposition or a motion to dismiss) will be rejected unless, in addition to the signature requirements of 10 C.F.R. § 2.304(d) and the certifications required by 10 C.F.R. § 2.323(b) and this order, the motion includes the following certification by the attorney or representative of the moving party:

> I certify that this motion is not interposed for delay, prohibited discovery, or any other improper purpose, that I believe in good faith that there is no genuine issue as to any material fact relating to this motion, and that the moving party is entitled to a decision as a matter of law, as required by 10 C.F.R. §§ 2.1205 and 2.710(d).[19]

2. Promptness Deadline: Additional Time for Dispositive Motions. In light of the gravity and importance of dispositive motions, and in order to accommodate careful consultation as specified above, dispositive motions may be filed twenty (20) days after the occurrence or circumstance from which the motion arises (rather than the ten (10) day time frame established by 10 C.F.R. § 2.323(a)).

3. Answers. In accordance with 10 C.F.R. § 2.1205(b), an answer supporting or opposing a motion for summary disposition or other dispositive motion shall be filed within twenty (20) days after service of the motion.

4. Continuance. If it appears to the Board from the affidavits of a party opposing a motion for summary disposition or other dispositive motion that the opposing party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the Board may refuse the application for summary disposition, order a continuance to permit affidavits to be obtained, or make an order as is appropriate. See 10 C.F.R. § 2.710(c); cf. Fed. R. Civ. P. 56(f).

5. Ultimate Deadlines. With regard to any contention based on 10 C.F.R. Part 51 or the National Environmental Policy Act (NEPA Contentions), no motion for summary disposition or other dispositive motion may be filed later than thirty (30) days after the NRC Staff issues the

[19] See 10 C.F.R. § 2.304(d) (Representations of a Signatory to a Pleading); cf. Fed. R. Civ. P. 11(b).

Draft Supplemental Environmental Impact Statement (DSEIS).[20] This is an extension of the June 1, 2011 ultimate deadline for such motions that was established in ISO § II.H.5 and that has already expired. See Tr. at 627. In order to accommodate this extension, the Board establishes the following transition rule: If a motion for summary disposition or other dispositive motion concerning a NEPA Contention arises from an occurrence or circumstance that arose after June 1, 2011, but before the date of this RSO, then that motion must be filed no later than forty (40) days after the issuance of this RSO. With regard to any non-NEPA Contention or issue, no motion for summary disposition or other dispositive motion may be filed later than thirty (30) days after the NRC Staff issues the Draft Supplemental Environmental Impact Statement (DSEIS). These ultimate deadlines are in addition to, not in lieu of, the promptness deadlines specified above.

J. Clarification, Simplification, and Amendment of the Pleadings. During the initial scheduling conference, the parties and the NRC Staff stated that it was their consensus that it is premature to address the following issues:

1. The clarification, simplification, or specification of the issues;
2. The necessity or desirability of amending the pleadings;
3. Opportunities to develop stipulations or admissions of fact; and
4. Opportunities for the settlement of issues or contentions.

Tr. at 407-08.

Nevertheless, the Board encourages the parties and NRC Staff to continue to consider and pursue such measures, as specified in 10 C.F.R. §§ 2.329(c)(1)-(3) and 2.338. We will revisit these issues throughout this proceeding.

K. Evidentiary Hearing Filings. The Board presently contemplates a single evidentiary hearing covering the single environmental contention currently admitted herein. Pursuant to 10

[20] Currently the Staff estimates that it will issue the DSEIS in January 2015. See Staff Projected Schedule (October 18, 2012).

C.F.R. § 2.1207, a number of documents must be filed immediately prior to the evidentiary hearing. The Board has determined that the appropriate trigger date for the initiation of such filings is the date when the NRC Staff issues the Final Supplemental EIS (FSEIS) to the public.[21] This shall be deemed the "Trigger Date." If new or amended contentions are hereinafter admitted, the Board may modify or adjust the Trigger Date.

1. Initial Statements of Position, Testimony, Affidavits, and Exhibits. Forty-five (45) days after the Trigger Date, all parties and the NRC Staff shall file their initial written statement of position, written testimony with supporting affidavits, and exhibits, on a contention-by-contention basis, pursuant to 10 C.F.R. § 2.1207(a)(1). The initial written statement should be in the nature of a trial brief that provides a precise road map of the party's case, setting out affirmative arguments and applicable legal standards, identifying witnesses and evidence, and specifying the purpose of witnesses and evidence (i.e., stating with particularity how the witness, exhibit, or evidence supports a factual or legal position). The written testimony shall be under oath or by an affidavit so that it is suitable for being received into evidence directly, in exhibit form, in accordance with 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses refer to, use, or are relying upon for their statements or position.

2. Rebuttal Statements of Position, Testimony, Affidavits, and Exhibits. No later than thirty (30) days after service of the materials submitted under paragraph K.1, the parties and the NRC Staff shall file their written responses, rebuttal testimony with supporting affidavits, and rebuttal exhibits, on a contention-by-contention basis, pursuant to 10 C.F.R. § 2.1207(a)(2). The written response should be in the nature of a response brief that identifies the legal and factual weaknesses in an opponent's position, identifies rebuttal witnesses and evidence, and specifies the precise purpose of rebuttal witnesses and evidence. The rebuttal testimony shall be under oath or by an affidavit so that it is suitable for being received into evidence directly, in exhibit

[21] The Staff currently estimates that it will issue the FSEIS in June 2015. Staff Projected Schedule (October 18, 2012). 10 C.F.R. § 2.332(d) prohibits the commencement of evidentiary hearings on environmental issues until after the FEIS is issued.

form, in accordance with 10 C.F.R. § 2.1207(b)(2). The exhibits shall include all documents that the party or its witnesses refer to, use, or are relying upon for their statements or position. Being in the nature of rebuttal, the response, rebuttal testimony and rebuttal exhibits are not to advance any new affirmative claims or arguments that should have been, but were not, included in the party's previously filed initial written statement.

3. Motions In Limine or to Strike. No later than ten (10) days after service of the materials submitted under paragraph K.2, the parties and the NRC Staff shall file their motions in limine or motions to strike regarding the materials submitted under paragraphs K.1 and K.2. Answers shall be filed no later than seven (7) days after service of such motions.

4. Proposed Questions for Board to Ask.[22] No later than thirty (30) days after service of the materials submitted under paragraph K.2, all parties and the NRC Staff shall file proposed questions for the Board to consider propounding to the direct or rebuttal witnesses, pursuant to 10 C.F.R. § 2.1207(a)(3)(i) and (ii). The direct or rebuttal examination plans should contain a brief description of the issue or issues which the party contends need further examination, the objective of the examination, and the proposed line of questioning (including specific questions) that may logically lead to achieving the objective. The proposed direct examination questions and plans should be filed in camera and not served on SECY, the NRC Staff, or any other party.

5. Motions for Cross-Examination.[23] No later than thirty (30) days after service of the materials submitted under paragraph K.2, all parties shall file any motions or requests to permit

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[22] A party should cover all essential points in the direct and rebuttal testimony that it prefiles for each of its own witnesses. The prefiled proposed questions should not focus on a party's own witnesses, but should instead be directed to the witnesses of the other parties.

[23] The standard for allowing the parties to conduct cross-examination is the same under Subparts G and L, to wit – the Administrative Procedure Act (APA) standard for cross-examination in formal administrative proceedings as set forth in 5 U.S.C. § 556(d) ("A party is entitled . . . to conduct such cross examination as may be required for a full and true disclosure of the facts."). See Citizens Awareness Network, Inc. v. NRC, 391 F.3d 338, 351 (1st Cir. 2004); see also 69 Fed. Reg. at 2,195-96.

that party to conduct cross-examination of a specified witness or witnesses, together with the associated cross-examination plan(s), pursuant to 10 C.F.R. § 2.1204(b). The motion for cross-examination shall be filed with all parties, but the cross-examination plan itself should be filed in camera and not be served on SECY, the NRC Staff, or any other party.

6. Evidentiary Hearing. Although the specific time and date for the evidentiary hearing will be determined later, the Board currently contemplates that it will commence between thirty (30) and eighty (80) days after the service of the material specified in paragraphs K.4 and K.5.

7. Witness with Written Testimony Must be Available in Person. Unless the Board expressly provides otherwise, each party (including the NRC Staff) must, at its own expense and effort, assure that each person for whom it submitted written direct or rebuttal testimony attends the evidentiary hearing in person and is available to testify and to respond orally to questions.[24]

L. Attachments to Filings.

1. Documents Must be Attached. If a motion or pleading of any kind refers to a report, website, NUREG, guidance document, or document of any kind (other than to a law, regulation, case, or other legal authority), then a copy of that document shall be submitted with and attached to the pleading. The pleading must cite to the specific pages or sections of the document that are relevant. Citations should be as specific as possible.

2. Exception. If the following documents are publicly available on the NRC ADAMS system, then they do not need to be attached to a motion or pleading: PG&E's Application and Environmental Report, the DSEIS, the FSEIS, the FSER with open items, and the FSER. With

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LBP-10-15, 72 NRC 257, 343-44 (2010).

[24] If, after reading the prefiled testimony, the Board concludes that it has no questions for a particular witness, it will so advise the parties and that individual will not need to attend the evidentiary hearing. Likewise, if the Board concludes that it has no questions for any witness concerning a particular contention, it will so advise the parties and propose that the contention be resolved pursuant to 10 C.F.R. § 2.1208.

regard to such documents, it is sufficient if the pleading clearly identifies the document (including its date and revision number, if any), provides its ADAMS ML number, and cites to the specific page or section that is relevant. All other documents (or the relevant portions thereof), even if they can be found in ADAMS, should be attached to the pleading.[25]

3. Attached Documents are "Attachments." All documents referred to in the pleadings (pursuant to the two preceding paragraphs) shall be labeled and referred to as "Attachments," not exhibits.[26]

4. Designation and Marking of Attachments. A separate numeric designation shall be assigned to each Attachment (e.g., Attachment 3). With regard to Attachments covered by paragraph K.1, the numeric designation shall be prominently marked either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

5. Page Limits/Method of Electronic Submission. Attachments are not subject to the page limitation set forth in paragraph H.2 above. All Attachments associated with a pleading shall be submitted together via the E-Filing system as a single electronic file that consists of the pleading or other submission, the certificate of service, and all the Attachments. If, however, the

[25] The NRC's E-Filing guidance document has guidance concerning the filing of copyrighted material. See http://www.nrc.gov/site-help/e-submittals.html (under Additional Information, follow link to Reference Materials for Electronic Submissions and then access link for Guidance for Electronic Submissions to the NRC, Revision 6).

[26] The term "exhibit" is reserved for use as a designation for those items that are submitted pursuant to paragraph II.K as proffered evidence for the evidentiary hearing.

submission exceeds fifteen megabytes in size, then the pleading should be separated into two or more submissions, each less than fifteen megabytes.[27]

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

/RA/

Nicholas G. Trikouros
ADMINISTRATIVE JUDGE

/RA/

Dr. Paul B. Abramson
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 19, 2012

[27] This accords with NRC's E-Filing guidance (at page 14-15). See http://www.nrc.gov/site-help/e-submittals.html (under Additional Information, follow link to Reference Materials for Electronic Submissions and then access link for Guidance for Electronic Submissions to the NRC, Revision 6).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
PACIFIC GAS & 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 **REVISED SCHEDULING ORDER** have been served upon the following persons by the Electronic Information Exchange.

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

Alex S. Karlin, Chair
Administrative Judge
E-mail: alex.karlin@nrc.gov

Nicholas G. Trikouros
Administrative Judge
E-mail: nicholas.trikouros@nrc.gov

Paul B. Abramson
Administrative Judge
E-mail: pba@nrc.gov
paul.abramson@nrc.gov

Jonathan Eser, Law Clerk
E-mail: jonathan.eser@nrc.gov

Onika Williams, Law Clerk
E-mail: onika.williams@nrc.gov

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

Edward L. Williamson, Esq.
E-mail: edward.williamson@nrc.gov
Susan Uttal, Esq.
E-mail: susan.uttal@nrc.gov
Maxwell Smith, Esq.
E-mail: maxwell.smith@nrc.gov
Lloyd Subin, Esq.
E-mail: lloyd.subin@nrc.gov

OGC Mail Center
E-mail: OGCMailCenter@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16C1
Washington, DC 20555-0001
OCAA Mail Center
E-mail: ocaamail@nrc.gov

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

Counsel for Pacific Gas and
Electric Company
Winston & Strawn, LLP
101 California Street
San Francisco, CA 94111-5802
David A. Repka, Esq.
E-mail: drepka@winston.com
Tyson Smith, Esq.
E-mail: trsmith@winston.com
Carlos Sisco, Senior Paralegal
E-mail: csisco@winston.com

Winston & Strawn, LLP
1700 K Street, NW
Washington, DC 20006
Rachel Miras-Wilson, Esq.
E-mail: rwilson@winston.com

San Luis Obispo Mothers for Peace
1123 Flora Road
Arroyo Grande, CA 93420
Jill ZamEk, Esq.
jzk@charter.net

Counsel for San Luis Obispo Mothers
For Peace
Harmon, Curran, Spielberg, and Eisenberg
1726 M Street, N.W., Suite 600
Washington, DC 20036
Diane Curran, Esq.
dcurran@harmoncurran.com

[Original signed by Brian Newell]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 19th day of November 2012