

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

_____)	
Friends of the Earth,)	
)	
<i>Petitioner,</i>)	
)	No. 16-1004
v.)	
)	
United States Nuclear Regulatory)	
Commission, United States of America,)	
)	
<i>Respondents.</i>)	
_____)	

PETITIONER’S MOTION TO HOLD THE CASE IN ABEYANCE

Petitioner in the above-captioned matter requests an order holding this case in abeyance because Pacific Gas and Electric Co. has not decided whether to move forward with its request for a renewal of its operating license of Diablo Canyon Power Plant in Avila Beach, California.¹ In support of this motion, Petitioner states the following:

1. This matter concerns an application filed before the Nuclear Regulatory Commission (NRC) by Pacific Gas & Electric Co. (PG&E), the owner

¹ Petitioner has consulted with counsel for Respondents and for Movant-Intervenor Pacific Gas & Electric Co. regarding this motion. Counsel for each party has advised the undersigned that it does not consent to this motion.

and operator of Diablo Canyon Power Plant (Diablo Canyon), to extend Diablo Canyon's Facility Operating Licenses for an additional 20 years beyond their current expiration dates. *See* 10 C.F.R. § 54.17. The current licenses expire on November 2, 2024 and August 26, 2025, respectively.

2. On October 10, 2014, Petitioner filed a timely Request for Hearing and Petition to Intervene, along with a Petition for Waiver of 10 C.F.R. §§ 54.4, 54.21, and 54.29(a) As Applied to the Diablo Canyon License Renewal Proceeding, seeking to intervene in the license renewal proceeding for Diablo Canyon pursuant to 42 U.S.C. § 2239(a)(1)(A) and 10 C.F.R. § 2.309. Following oral argument on the petitions, the Atomic Safety and Licensing Board (Board) denied both petitions. Memorandum and Order (Denying Petition to Intervene and Petition for Waiver) (Feb. 11, 2015). Petitioner timely appealed this decision to the Commissioners, which affirmed the Board's order. CLI-15-21, Memorandum and Order (Nov. 9, 2015).

3. On January 8, 2016, Petitioner filed with this Court a Petition for Review of the NRC's final action denying Petitioner's request for hearing and waiver petition. *See* 28 U.S.C. § 2344 (a party may seek review of a final order of the NRC within 60 days).

4. PG&E filed the license renewal application at issue on November 23, 2009. On April 10, 2011, PG&E requested the NRC to delay processing of its

license renewal application to allow time for completion of certain seismic studies to address concerns raised during the State of California's Coastal Zone Management Act review. By letter dated May 31, 2011, the NRC delayed indefinitely its review of PG&E's license renewal application.

5. On April 28, 2015, the NRC notified PG&E that, although PG&E had not yet established a schedule to complete the Coastal Zone Management Act review—a prerequisite to obtaining license renewal—the NRC had “determined that it is appropriate to move forward with its review” of the license renewal application. Letter from Christopher G. Miller, Director, Division of License Renewal, to Edward D. Halpin, Senior Vice President, Pacific Gas & Electric Company, “Schedule Revision for the Review of the Diablo Canyon Power Plant, Units 1 and 2, License Renewal Application” (Apr. 28, 2015). The NRC restarted its review of the application on its own initiative, rather than at the request of PG&E.

6. Despite NRC's recommencement of its review, according to numerous public statements PG&E has not yet determined whether to pursue license renewal. See David R. Baker, *Nuclear power's last stand in California: Will Diablo Canyon die?*, S.F. Chron., Nov. 14, 2015, <http://www.sfchronicle.com/business/article/Nuclear-power-s-last-stand-in-California-Will-6630933.php> (reporting that Tony Earley, PG&E's Chief

Executive Officer, “said the utility has not decided whether to proceed” with its request for license renewal and that “the utility has more pressing issues to deal with first”); David Sneed, *NRC to hold hearings on Diablo Canyon relicensing*, San Luis Obispo (CA) Trib., Aug. 1, 2015, <http://www.sanluisobispo.com/news/local/article39058179.html> (quoting PG&E spokesman Blair Jones: “Overall, PG&E has not made a decision to move forward with license renewal as we continue to evaluate feedback on the seismic studies and the steps needed to obtain state approvals.”); Michael Hiltzik, *PG&E plays coy on the future of Diablo Canyon nuclear plant*, L.A. Times, Jan. 1, 2016, <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-20160103-column.html> (“PG&E placed its 2010 renewal application on hold after the Fukushima nuclear accident in 2011 ‘and has not set a timeline for a decision,’ PG&E spokesman Blair Jones said.”); Michael R. Blood, *Nuclear crossroad: California reactors face uncertain future*, Associated Press, Nov. 28, 2015, <http://bigstory.ap.org/article/5a672114b6524db588a9898885604880/nuclear-crossroad-california-reactors-face-uncertain-future> (“‘We continue to evaluate feedback on the seismic research and steps needed to obtain state approvals,’ PG&E spokesman Blair Jones said.”).

7. To avoid unnecessary waste of resources by the Court and both parties, Petitioner requests the Court place this matter in abeyance pending a

decision by PG&E to move forward with its license renewal application. Unless and until it is clear that PG&E intends to pursue renewal of its operating licenses, it is substantially likely that continuing with judicial review of the instant Petition for Review could be wasteful and unnecessary.

8. Petitioner proposes that the Court issue an order directing PG&E to file periodic reports informing the Court of the status of the license renewal proceeding.

9. Such a proposal will prevent unnecessary waste of resources by the Court and both parties.

Respectfully submitted,

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Dated: Feb. 11, 2016

Counsel for Petitioner

CERTIFICATE OF SERVICE

I certify that on February 11, 2016, I served “Petitioner’s Motion to Hold the Case in Abeyance” in the above-captioned case upon all counsel registered with the Court’s CM/ECF system.

Respectfully submitted,

/s/ John Bernetich

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