

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.)	
)	
U.S. Nuclear Regulatory Commission,)	
United States of America,)	
)	
<i>Respondents.</i>)	
_____)	

**PETITIONER’S REPLY IN SUPPORT OF
MOTION TO HOLD THE CASE IN ABEYANCE**

Petitioner in the above-captioned matter files this reply in support of its request for an order holding this case in abeyance. Abeyance is appropriate because Pacific Gas and Electric Co. (PG&E) has not decided whether to move forward with its request for a renewal of its operating licenses for Diablo Canyon Power Plant in Avila Beach, California (Diablo Canyon).

1. The arguments advanced by respondent Nuclear Regulatory Commission (NRC) and intervenor PG&E against abeyance ignore that PG&E has not finally decided whether to seek renewal of Diablo Canyon’s operating licenses.

E.g., 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"). NRC and PG&E assert that abeyance is not warranted because the contested portion of Diablo Canyon's license renewal proceeding has ended and, therefore, this matter is ripe for review. NRC Resp. at 4; PG&E Resp. at 2. But the dispute here—whether the contested portion of the license renewal proceeding has been properly terminated by the NRC—is relevant only to the extent PG&E moves forward with the *non-contested* portion of the proceeding. In light of public statements by PG&E cited in Petitioner's motion, Mtn. at 3-4, it is far from clear whether PG&E intends to move forward with the non-contested portion of the proceeding.

2. Expenditure of this Court's resources will be for naught if, as the comments of the company's leaders suggest, PG&E ultimately determines not to seek a license renewal. NRC asserts that this Court should involve itself in a highly complex and technical dispute regarding the adequacy of the demonstration of seismic safety made by PG&E in its license renewal application, even though it

appears quite possible PG&E will ultimately decide against seeking license renewal. Judicial review is necessary now, NRC contends, because, “much like a person who obtains a driver’s license but then decides not to use it,” PG&E should be permitted to decide later whether to utilize a license renewal, if and when the agency issues a renewal. NRC Resp. at 5. But, even putting aside the potential waste of agency resources expended in the adjudication of the application, this argument ignores the monumental waste of resources by this Court in reviewing this petition for review, only for PG&E to withdraw its application later.

3. Moreover, Diablo Canyon’s operating licenses do not expire until 2024 and 2025, respectively. Abeyance of a limited duration to permit PG&E to decide whether to pursue a license renewal would not prejudice PG&E’s ability to secure a renewal, if indeed it ultimately determines to seek one.

4. Notably, NRC asserts that PG&E “has consistently acted to ‘move forward’ with the administrative hearing process on the application,” NRC Resp. at 1, but this statement is not true. In April 2011, PG&E requested the agency to halt processing of its license renewal application to allow time for completion of certain seismic studies. The license renewal process lay dormant for nearly four years until NRC, acting on its own and without any request from PG&E, restarted its review of the application. *See Mtn.* at 2-3.

5. Accordingly, Petitioner seeks an abeyance of a limited duration to permit PG&E to determine finally whether to seek a license renewal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 7, 2016, I served “Petitioner’s Reply in Support of 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,

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