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SAN LUIS OBISPO MOTHERS FOR PEACE
before the
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
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In the matter of
Pacific Gas and Electric Co.
Diablo Canyon Nuclear Power Plant
Unit Nos. 1 and 2

Docket No. 50-275-OLA-2
50-323-OLA
ASLBP No. 92-669-03-OLA-2

San Luis Obispo Mothers for Peace
Motion for Extension of Discovery Deadline

Introduction

On February 3, 1993, the San Luis Obispo Mothers for Peace ("SLOMFP") filed a request for entry to the Diablo Canyon Nuclear Power Plant ("DCNPP") for purposes of inspection, measuring, and photographing, for observation of interim fire-protection measures and maintenance and surveillance activities and for other activities as authorized in the provisions of 10 CFR 2.741 (a)(2).¹ Because SLOMFP must obtain the response to its other discovery requests in order for the site visit to be useful, this requested site visit cannot take place before March 15, 1993, at the earliest. As a result, SLOMFP will be unable to conduct needed follow-up discovery after the site visit within the tight discovery time constraints set in this case. Therefore, SLOMFP requests an extension of the time for taking discovery until 7 days after completion of the site visit.

Background

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SLOMFP has gained admission of two contentions to this case.

1 "Intervenor San Luis Obispo Mothers for Peace Request to Pacific Gas and Electric Company for Entry upon the Diablo Canyon Nuclear Power Plant, Units 1 and 2, Pursuant to 10 CFR 2.741 (a)(2) for the Purposes of Inspection, Measuring, and Photographing, for Observation of Interim Fire-Protection Measures and Maintenance and Surveillance Activities, and for Other Activities as Authorized in the Provisions of 10 CFR 2.741(a)(2) [hereinafter "Request for Entry"].

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Contention I challenges the adequacy of PG&E's maintenance and surveillance program, and Contention U challenges PC&E's interim measures intended to compensate for inadequate fire barriers at DCNPP. On February 3, 1993, in a telephone conference, the Licensing Board established the discovery schedule for litigation of these contentions, which was later memorialized in a written order. Memorandum and Order (Discovery and Hearing Schedules) (February 9, 1993). Under the Board's order, all discovery requests must be filed by March 8, 1993. Memorandum and Order at 4. The Board's order also provided that all discovery responses must be filed within 30 days of receipt, or by April 12, 1993, at the latest. *Id.* The Board declined to set a second round of discovery "inasmuch as parties could later request a second round for good cause." *Id.*

SLOMFP has proceeded expeditiously to conduct as much discovery as possible on the contentions within the discovery time frames set by the Board. On February 3, shortly after SLOMFP's contentions were admitted, SLOMFP filed a Request for Entry seeking permission to visit the plant. Among other things, the Request for Entry sought:

1. inspection of areas where Thermo-Log fire barriers are installed or located nearby, or where fire-watch related activities take place;
2. inspection of the maintenance and surveillance program and its implementation at DCNPP, including both physical activities and written records;
3. close inspection of activities and written records with respect to maintenance of three representative safety items to be selected by SLOMFP and identified shortly before the site visit.

SLOMFP also quickly prepared and submitted a first set of interrogatories and request for production of documents to PG&E, which was on February 16, 1993. ² Pursuant to the Board's order, PG&E's response to these interrogatories and document requests is not due until March 19, 1993.

To a large extent, the matters to be inspected on the site visit will be determined based on PG&E's answers to SLOMFP's interrogatories. For instance, SLOMFP's interrogatories ask for detailed information regarding the location, scheduling, and personnel assignments for fire watches. SLOMFP Interrogatories at B-1 - B-3. This information is needed in order to determine which fire watch locations to visit and evaluate, and which fire watches to observe. SLOMFP also needs to review maintenance procedures and schedules, information about which is requested in SLOMFP's Interrogatories at C-3 - C-4, in order to determine which maintenance and surveillance activities to observe. Similarly, in order to identify the three representative safety items for which SLOMFP seeks to examine maintenance and surveillance practices and documentation, SLOMFP needs to review PG&E's list of safety items, their functions, locations, and the accident environments to which they would be exposed, as requested in SLOMFP's interrogatories at C-1 - C-2.

As a result, SLOMFP and its experts, MHB Technical Associates, have negotiated with PG&E regarding the site visit and have set tentative dates of March 15 and 16, 1993. Consequently, SLOMFP has informed PG&E that it

² Intervenor San Luis Obispo Mothers for Peace First Set of Written Interrogatories and Requests for the Production of Documents to Pacific Gas and Electric Company (hereinafter "SLOMFP Interrogatories").

is necessary to review PG&E's answers to its first round of interrogatories and document requests in order to plan the site visit, and that therefore SLOMFP does not wish to conduct the site visit until it has received those answers. SLOMFP has also informed PG&E that it may have to postpone the site visit if it does not receive the answers to the interrogatories and document requests beforehand. 3 Thus, PG&E has committed to making an effort to respond to the interrogatories during the week prior to March 15, even though the answers are not due until March 19.

In addition, as requested by PG&E, SLOMFP has withdrawn its request to conduct informal interviews with maintenance and inspection and fire protection personnel during the site visit, and plans instead to question them formally, pursuant to NRC discovery rules. 4 However, this means that formal questioning of DCNPP employees regarding maintenance and fire protection practices observed during the site visit will need to be postponed until after the site visit, i.e., after the deadline for filing discovery requests has expired.

Argument

The Board's order sets an extremely short schedule for discovery, but provides an opportunity to request an extension for good cause shown. Memorandum and Order at 4. SLOMFP submits that in this case, there is good cause to extend the discovery schedule. SLOMFP makes this motion now, rather than waiting until the deadline has expired, because it has become

3 The site visit may also need to be postponed if PG&E's responses are substantially incomplete.

4 SLOMFP is now preparing written interrogatories to these DCNPP personnel which contain those questions that we have been able to formulate without benefit of a site visit. However, SLOMFP anticipates the need to conduct follow-up discovery based on our observations during the site visit.

very clear to us, in preparing for the site visit, that we cannot stay within the Board's discovery schedule and still be able to conduct needed discovery in an adequate and meaningful way.

SLOMFP's Request for Entry is an extremely important discovery tool. It will give SLOMFP the opportunity to inspect the plant, observe relevant operations, and review material documents that are maintained at the plant so that SLOMFP can evaluate the adequacy of both the maintenance and interim fire protection programs. However, the site visit will be fruitless if it is not delayed until after PG&E has responded to SLOMFP's interrogatories and document production requests, because these responses will determine which matters should be inspected during the site visit.

To give PG&E sufficient time to respond to SLOMFP's interrogatories and document production requests, the parties have had to schedule the site visit for March 15, 1993. While the site visit date is well within the Board's deadline of April 12, 1993, for close of discovery, it is after the March 8 cut-off date for filing discovery requests. Yet, SLOMFP already anticipates that it will need to conduct follow-up discovery as a result of what is learned during the site visit. SLOMFP will need to follow up the site visit with formal questioning of DCNPP employees regarding maintenance and fire protection practices observed during the visit. In addition, SLOMFP clearly will observe new things during the onsite visit and will need to file more interrogatories to PG&E regarding practices, systems, and documents observed, such as, for instance, clarifying the relationship between observed practices and written procedures that are provided for those practices. Because the site visit is necessarily being held after

the discovery cut-off date, these follow-up discovery requests cannot be filed within the timeframe established by the Board.

To ensure both that SLOMFP has adequate information in preparation for the site visit and that it has an adequate opportunity to conduct follow-up discovery after the site visit, SLOMFP believes that the discovery schedule needs to be extended. Accordingly, we request that the Licensing Board extend the discovery period until 7 days after the site visit, for the limited purpose of conducting follow-up discovery related to the site visit. 5

Respectfully submitted,



Nancy Culver, President
San Luis Obispo Mothers for Peace

March 4, 1993

5 We note that as a separate matter, SLOMFP may also need to seek an opportunity for follow-up discovery on PG&E's responses to our first round of interrogatories and document requests. We will evaluate the need for further discovery when we receive PG&E's answers to our interrogatories and document requests, and will proceed accordingly. At this time, we are requesting an extension only for the purpose of conducting follow-up discovery regarding the site visit.

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Certificate of Service

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I hereby certify that copies of the foregoing **San Luis Obispo Mothers for Peace Reply Motion for Extension of Discovery Deadline** have been served upon the following persons by U.S. mail, first class, or by FAX, as noted.

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