

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SAN LUIS OBISPO MOTHERS)	
FOR PEACE, FRIENDS OF THE)	
EARTH, and ENVIRONMENTAL)	
WORKING GROUP)	
)	
Petitioner,)	Case No. 23-852
)	
v.)	
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION and the)	
UNITED STATES OF AMERICA,)	
)	
Respondents.)	
)	

**PETITIONERS’ UNOPPOSED MOTION TO
EXPEDITE ORAL ARGUMENT**

INTRODUCTION

Pursuant to Circuit Rule 27-12, Petitioners San Luis Obispo Mothers for Peace, Inc., Friends of the Earth, Inc., and Environmental Working Group, hereby request the Court to expedite oral argument of this petition for review of an order by the Respondent United States Nuclear Regulatory Commission (the “NRC” or “Commission”), which granted an exemption to Intervenor Pacific Gas and Electric Co. (“PG&E”) from the NRC regulation governing “timely renewal” of license renewal applications. This exemption provides that if PG&E submits an application to the NRC by December 31, 2023, to renew the licenses for the Diablo

Canyon Unit 1 and Unit 2 nuclear reactors (which currently expire in November 2024 and August 2025, respectively), the existing licenses will not be deemed to have expired until the NRC has made a final determination on whether to approve the renewal application.

Respondents NRC and the United States, and Intervenor PG&E, do not oppose the Petitioners' proposed briefing schedule or the Petitioners' request for expedited oral argument. Respondents and Intervenor disagree with Petitioners' assertions of irreparable injury and, although not opposing the motion, are not conceding any of Petitioners' arguments raised within.

REQUEST TO EXPEDITE ORAL ARGUMENT

Petitioners request the Court to expedite the oral argument and thereby facilitate the Court's ability to decide this case before the operating license for Diablo Canyon Unit 1 expires on November 2, 2024. Good cause exists for expediting oral argument because Petitioners assert that irreparable harm may occur if the Court does not rule before the operating license expires. The crux of the issue raised by Petitioners is whether the NRC has violated the Atomic Energy Act and the National Environmental Policy Act by granting an exemption that may permit PG&E to operate the Diablo Canyon reactors past their operating license expiration dates without allowing sufficient advance time to complete safety and environmental reviews and an adjudicatory hearing. If the Court agrees with

Petitioners' appeal, Petitioners assert that irreparable harm will occur if the Court does not issue a decision before November 2, 2024, as Unit 1 will be illegally operating without a license and continue to present serious environmental and health risks. While it seems likely that the Court will reach a decision before expiration of the Unit 2 operating license on August 26, 2025, it is not clear whether the Court will have enough time to decide the case before expiration of the Unit 1 operating license on November 2, 2024.

The Petitioners also seek to expedite the oral argument to accelerate the Court's resolution of the jurisdictional challenge the NRC and the United States intend to raise in their merits brief. While exemptions are not specifically listed among the actions covered by the Hobbs Act in 42 U.S.C. § 2239(a)(1), Petitioners contend that the Hobbs Act applies here and jurisdiction in this Court is proper because the NRC effectively amended the Diablo Canyon operating licenses to extend their terms. *Deukmejian v. NRC*, 751 F.2d 1287, 1312 (D.C. Cir 1984) (holding that the NRC effectively amended the Diablo Canyon operating licenses by extending them). *See also General Atomics v. NRC*, 75 F.3d 536, 539 (9th Cir. 1996) (explaining the Hobbs Act "is to be read broadly to encompass all final [NRC] decisions that are preliminary or incidental to licensing."). The NRC and United States intend to contest jurisdiction consistent with *Brodsky v. NRC*, 578 F.3d 175 (2d Cir. 2009). In the event they prevail on the jurisdictional issue, the

Petitioners seek to maximize the time available to seek redress from the district court.

PROPOSED BRIEFING SCHEDULE

In order to assist the Court in expediting the oral argument, the Petitioners propose to accelerate the filing of their opening brief from July 24, 2023 to June 30, 2023. The following briefing schedule, which has been agreed to by all parties, would also modify the schedule established by the Court's May 19, 2023 order by giving the NRC and United States a total of 60 days for their responsive brief. The proposed briefing schedule is as follows:

June 30 – Petitioners' Opening Brief

August 29 – Respondents' Brief

September 28 – Intervenor's Brief

October 19 – Petitioners' Reply Brief

CONCLUSION

For the foregoing reasons, the Petitioners request the Court to expedite the oral argument and adopt the proposed briefing schedule.

Respectfully Submitted,

___/signed electronically by/___

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May 31, 2023

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Circuit Rules 27-1(1)(d) and 32-3(2) because it contains 717 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 27-1(1)(d).

Pursuant to Federal Rule of Appellate Procedure 27(d)(1)(E), this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Times New Roman 14-point font.

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May 31, 2023