

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Pacific Gas and Electric Company,
Diablo Canyon Independent Spent
Fuel Storage Installation

Docket Number: 72-26-ISFSI-MLR

ASLBP Number: 23-979-01-ISFSI-MLR-BD01

Location: teleconference

Date: Wednesday, June 13, 2023

Work Order No.: NRC-2422

Pages 1-69

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1716 14th Street, N.W.
Washington, D.C. 20009
(202) 234-4433

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD PANEL

+ + + + +

HEARING

-----x

In the Matter of: :

PACIFIC GAS AND ELECTRIC : Docket No.

COMPANY, INC. : 72-26-ISFSI-MLR

: ASLBP No.

: 23-979-01-ISFSI-MLR-BD01

(Diablo Canyon : :

Independent : :

Spent Fuel Storage : :

Installation) : :

-----x

Wednesday, June 13, 2023

BEFORE:

E. ROY HAWKENS, Chair

NICHOLAS G. TRIKOUROS, Administrative Judge

JUDGE GARY S. ARNOLD, Administrative Judge

1 APPEARANCES:

2 On Behalf of PG&E, Inc.:

3 RYAN K. LIGHTY, ESQ.

4 PAUL BESSETTE, ESQ.

5 of: Morgan, Lewis & Bockius LLP

6 1111 Pennsylvania Avenue, N.W.

7 Washington, DC 20004

8 ryan.lighty@morganlewis.com

9 paul.bessette@morganlweis.com

10 On Behalf of San Luis Obispo Mothers for Peace:

11 DIANE CURRAN, ESQ.

12 of: Hamon, Curran, Spielberg & Eisenberg, LLP

13 1725 DeSales Street, N.W.

14 Suite 500

15 Washington, DC 20036

16 dcurran@harmoncurran.com

17 On Behalf of the Nuclear Regulatory Commission:

18 ADAM S. GENDELMAN, ESQ.

19 CATHERINE E. KANATAS, ESQ.

20 of: Office of the General Counsel

21 Mail Stop - O-14A44

22 U.S. Nuclear Regulatory Commission

23 Washington, D.C. 20555-0001

24 adam.gendelman@nrc.gov

25 catherine.kanatas@nrc.gov

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

C-O-N-T-E-N-T-S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PAGE

Presentation by Diane Curran, Counsel for	
San Luis Obispo Mothers for Peace	6
Presentation by Ryan Lighty, Counsel for PG&E	26
Presentation by Adam Gendelman, Counsel for	
Nuclear Regulatory Commission	48
Rebuttal by Diane Curran, Counsel for	
San Luis Obispo Mothers for Peace	64

P-R-O-C-E-E-D-I-N-G-S

1:01 p.m.

1
2
3 JUDGE HAWKENS: And with that, we'll go on
4 the record, please. Good afternoon. Today, we'll
5 hear oral argument in a license renewal proceeding
6 entitled Pacific Gas and Electric Company, Diablo
7 Canyon Independent Spent Fuel Storage Installation,
8 Docket No. 72-26-ISFSI-MLr.

9 Petitioner, San Luis Obispo Mothers for
10 Peace challenges the application submitted by PG&E to
11 renew its license for the independent spent fuel
12 storage installation at the Diablo Canyon Nuclear
13 Plant. And as an aside going forward, you may hear
14 judges and counsel use the acronym ISFSI when
15 referring to the independent spent fuel storage unit
16 installation.

17 My name is Roy Hawkens. I'm a legal
18 judge. I chair this licensing board, and I'm joined
19 by Technical Judge Nic Trikouros and Technical Judge
20 Dr. Gary Arnold, both who have an expertise in nuclear
21 engineering.

22 Our Board is assisted by law clerk Noel
23 Johnson. And we also are receiving support from law
24 clerk Allison Wood. The argument is being held in the
25 hearing room at the NRC Headquarters in Rockville,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Maryland. And we welcome counsel and the audience.

2 A listen-only telephone line has been made
3 available for those who could not be here today. And
4 a court reporter is preparing a transcript that will
5 be placed in the NRC's electronic hearing docket
6 within a week. As I mentioned, this proceeding
7 involves a challenge to PG&E's application to renew
8 its license for the ISFSI located at Diablo Canyon
9 Power Plant.

10 Petitioner has proffered two contentions
11 challenging that application. First, it argues the
12 information in the renewal application regarding
13 PG&E's financial qualification to operate and
14 decommission the facility is deficient because it's
15 based on the incorrect assumption that the reactors at
16 the Diablo Canyon Power Plant will be retired in 2024
17 and 2025. Second, it argues a portion of the
18 environmental report supplement is deficient for the
19 same reason.

20 Before licensing board will grant a
21 hearing request, the petitioner must demonstrate
22 standing and must offer two admissible contentions.
23 The litigants agree to those issues, and the licensing
24 board had read those briefs. Petitioner argues the
25 hearing request should be granted because it has

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 standing and it offers two admissible contentions.

2 PG&E does not dispute petitioner's
3 standing, but it argues that neither contention is
4 admissible. And therefore, the hearing request should
5 be denied. The NRC staff on the other hand argues the
6 hearing request should be granted because petitioner
7 has established standing and it proffers one
8 admissible contention. For the record, would counsel
9 please introduce themselves and any colleagues who are
10 accompanying them starting with petitioner, please?

11 MS. CURRAN: Good afternoon. My name is
12 Diane Curran. I'm appearing for San Luis Obispo
13 Mothers for Peace.

14 JUDGE HAWKENS: Thank you, Ms. Curran.
15 PG&E?

16 MR. BESSETTE: Good afternoon, Your Honor.
17 I'm Paul Bessette, counsel for Pacific Gas and
18 Electric. With me is Ryan Lighty who'll be conducting
19 the oral argument with you. And behind me is my
20 colleague Tim Matthews, Partner at Morgan, Lewis. We
21 also have a summer intern with us, Jake Negbessky,
22 who's observing the proceedings.

23 JUDGE HAWKENS: Thank you. NRC staff?

24 MR. GENDELMAN: Good afternoon. My name
25 is Adam Gendelman. I'm an attorney in Material Cycle

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 and Waste Division in the NRC Office of General
2 Counsel. With me is Catherine Kanatas and some NRC
3 technical staff are in the gallery, Mr. James Park,
4 Mr. Trent Wertz, and Dr. Christopher Markley.

5 JUDGE HAWKENS: All right. Thank you.
6 Each litigant has been allotted 40 minutes to present
7 argument. Petitioner will go first followed by PG&E
8 and followed by the NRC staff. Petitioner may reserve
9 up to ten minutes for rebuttal. The Board's law
10 clerk, Ms. Johnson, will be keeping track of time.

11 During the course of your argument, the
12 green light will be illuminated. When five minutes
13 are left, you'll see the yellow light. And when time
14 has elapsed, you'll see the red light at which time
15 we'd ask counsel to wrap up their arguments promptly
16 unless the Board has an issue on questions. At this
17 stage, does counsel have any questions?

18 (No audible response.)

19 JUDGE HAWKENS: Seeing that nobody does,
20 let me ask Judge Trikouros, anything to add before we
21 proceed?

22 JUDGE TRIKOUROS: No, thank you.

23 JUDGE ARNOLD: No.

24 JUDGE HAWKENS: Ms. Curran, do you --

25 MS. CURRAN: I'm ready.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 JUDGE HAWKENS: -- desire to reserve any
2 time for rebuttal?

3 MS. CURRAN: Yes, I would like to reserve
4 ten minutes, please.

5 JUDGE HAWKENS: Very well. You may
6 proceed. Thank you.

7 MS. CURRAN: Thank you. Good afternoon.
8 And I first want to thank you all for accommodating me
9 when I needed to postpone the oral argument for health
10 reasons. I'm doing fine, but I needed that day. And
11 I really appreciate it. Thank you.

12 JUDGE HAWKENS: You're welcome. We're
13 grateful to counsel for accommodating you with your
14 request as well.

15 MS. CURRAN: Yes, and to the counsel.
16 Just before we start in on the contentions, I want to
17 set a little background on this because our concerns
18 arise from the fact that PG&E submitted its license
19 renewal application in March of 2022 when its plans
20 for the Diablo Canyon reactor were completely
21 different than they are today. As you know, today the
22 NRC has granted -- recently, the NRC granted PG&E an
23 exemption from the timely renewal rule to put in a new
24 license renewal application which if PG&E submits it
25 by December of 2023 will allow it to get the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 protection of the timely renewal rule.

2 And as far as we know, PG&E is planning to
3 submit a license renewal application for the reactors
4 even in the State of California. And a bill had
5 passed in September, said that they would limit the
6 operation to five years. They left it a little open
7 ended.

8 And as far as we know, PG&E is planning to
9 apply for a 20-year renewal of the reactor licenses.
10 And as the NRC says in its response to our
11 contentions, the operation of the reactors is related
12 to the ISFSI. It was the motivation for the licensing
13 of the ISFSI in the first place.

14 So here we are because PG&E submitted the
15 ISFSI license renewal application back when they
16 thought they were going to close the reactors in 2024-
17 2025. And the only purpose of the ISFSI if that were
18 true would be to have a safe place to store spent fuel
19 until the repository opens. There's no need to talk
20 about the operation of the facility. It was
21 essentially ending.

22 Our concerns arise from the fact that PG&E
23 has amended its application even though it's known
24 since September that it was planning to do something
25 different or it might do something different. And

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 it's known since October when it requested the NRC to
2 issue the exemption that it wanted to submit a new
3 license renewal application. We got two contentions.

4 The first contention relates to financial
5 assurance for operation -- safe operation of the ISFSI
6 and also decommissioning of the ISFSI. Again, in both
7 instances, the representations made by PG&E and the
8 license renewal application are that PG&E is going to
9 operate the ISFSI for only a few more years and then
10 -- or will operate it for a long time but under the
11 current regime of getting funding from the rate payers
12 only a few more years. And then it will tap into the
13 decommissioning trust fund to operate the ISFSI.

14 And the same thing for decommissioning,
15 that as far as they knew back then, they were going to
16 start decommissioning right away. And as PG&E says in
17 appendix page G-4 of its appendix, for purposes of
18 providing an estimate for a funding plan, financial
19 assurance is expected to be provided based on a prompt
20 ISFSI decommissioning scenario. So that timing of
21 decommission affects the cost of decommissioning.

22 It affects where PG&E is going to get the
23 money for decommissioning. And in our view, the
24 application should be accurate. It's required by the
25 NRC regulations which are there to protect the public,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 there to protect the safety of the ISFSI operation.

2 We know that we have historic examples
3 where not enough money was set aside for maintaining
4 nuclear waste. And these regulations evolved out of
5 that. We also have a situation where --

6 JUDGE HAWKENS: May I interrupt? One --

7 MS. CURRAN: Of course.

8 JUDGE HAWKENS: -- quick question. And I
9 want to hear more about your contention of
10 admissibility after this. But at the outset, although
11 nobody has challenged standing, and in fact, the NRC
12 staff agrees standing, as you know, the Board has an
13 independent obligation to verify that standing exists.
14 And I was wondering if you could just summarize your
15 views of standing and which of the members of the
16 petitioner has standing under established case law.

17 MS. CURRAN: Yes. Well, we rely on the --
18 principally on the licensing board's decision with
19 respect to spent fuel storage. In the original ISFSI
20 licensing proceeding in which members of San Luis
21 Obispo Mothers for Peace who live within a few miles
22 of a reactor or within 18 miles actually where found
23 to have standing.

24 JUDGE HAWKENS: Seventeen miles, I
25 believe.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MS. CURRAN: Seventeen? Okay. We have
2 members living within six miles. This is a very large
3 quantity of radioactive material. And if there were
4 any kind of airborne release of this material, the
5 licensing board has found it's reasonable to conclude
6 that this could affect people living near the
7 facility.

8 If the Board is thinking of reconsidering
9 that decision, we would really appreciate an
10 opportunity to brief it more fully. The issue has
11 been briefed in detail in a case in the D.C. Circuit
12 involving a centralized storage facility in Texas.
13 And we'd be glad to provide you with all that legal
14 briefing if you wish.

15 JUDGE ARNOLD: Could I just mention, in
16 the Bell Bend case, CLI-10-07, the commission said,
17 our case law is clear that a petitioner must make a
18 fresh standing demonstration in each proceeding in
19 which any prevention is sought. So that sounds to me
20 as though they're ruling out basing your standing on
21 a previous case where you establish standing.

22 MS. CURRAN: Judge Arnold, I have a little
23 different interpretation of that precedent. I don't
24 think that -- I don't think it's saying that previous
25 decisions have to be revisited. I think what it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 saying is you can't come in and say a few years ago
2 you found we had a standing. And we're not going to
3 put in standing affidavits again.

4 We did that. I don't think -- and I could
5 be wrong. But I don't think that decision is saying
6 all previous decisions are up for reconsideration.
7 It's saying petitioners can't rely on previous
8 standing declarations or any kind of representations
9 regarding your standing. And we have done all that
10 beforehand. We had new standing declarations from a
11 number of Mothers for Peace members.

12 JUDGE ARNOLD: If you take a look at the
13 case you sited where they decided 17 miles, they did
14 not do that based upon an examination of what kind of
15 threats are in an ISFSI. They just said, well, Sharon
16 Harris used 17 miles so we'll use it too. That sounds
17 to me to be a very poor basis to decide that somebody
18 has standing. Now as I understand it, although you
19 never used the expression, proximity plus, in your
20 petition, that's basically what you're basing your
21 standing on.

22 MS. CURRAN: Yes.

23 JUDGE ARNOLD: And as staff mentioned in
24 their answer, petitioner must demonstrate that the
25 proposed action involves a significant source of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 radioactivity producing an obvious potential for
2 offsite consequences. Now I personally don't see an
3 obvious potential. But you, I believe, do. Could you
4 tell me what that potential is and how it may occur?

5 MS. CURRAN: It would -- certainly in the
6 case that we brought, it was in -- I guess it would've
7 been the first ISFSI licensing proceeding, we
8 presented scenarios where a cask could be breached and
9 a radioactive release could occur, airborne
10 radioactive release with significant off-site
11 consequences. So we have -- that hasn't changed.
12 That's a potential attack on an ISFSI. We also know
13 that spent fuel is the most highly radioactive
14 substance on the planet. And this is a significant
15 quantity being stored in one place.

16 JUDGE ARNOLD: So I do not have those
17 scenarios in front of me. And they're not in your
18 petition. Can you recall what type of circumstances
19 would lead to a release of that nature?

20 MS. CURRAN: We presented scenarios of an
21 attack on a spent fuel storage facility. And we did
22 not get into exhaustive detail because it's a
23 sensitive security issue. But we demonstrated that it
24 was credible and that it could result in a significant
25 off-site release.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 And our expert witness talked about what
2 the consequences could be, that they were far reaching
3 and significant. And I would be happy to brief the
4 standing issue again. We rely on the precedent. And
5 the very same ISFSI licensing that was decided some
6 years ago. But if it's a concern of the licensing
7 board, we'd be happy to present all that evidence
8 again.

9 JUDGE ARNOLD: Would you contend that the
10 scenarios you presented then are still possible now,
11 that there's not any changes in technology or anything
12 that would make them less credible? Are the scenarios
13 of 20 years ago, are they still valid today?

14 MS. CURRAN: In my opinion as a lawyer,
15 these things are credible. You're talking about
16 standing where very little bit of harm is enough to
17 get you standing. I don't know -- I mean, these are
18 security issues, right? Has the ISFSI been redesigned
19 so that this is no longer a credible event? I'm never
20 going to be able to tell you that.

21 JUDGE ARNOLD: I will note that the
22 Commission recently -- as you mentioned, the storage
23 case, the Holtec case found proximity plus standing as
24 well. And although those weren't mentioned, do you
25 have any views on the applicability of your rationale

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 on those Commission decisions?

2 MS. CURRAN: They would be equally
3 applicable here, although the quantity is not as
4 great. But still, it's --

5 (Simultaneous speaking.)

6 JUDGE ARNOLD: Twenty-one hundred metric
7 tons, and it was a lot of radioactive waste.

8 MS. CURRAN: Yes.

9 JUDGE HAWKENS: Anymore on standing?

10 JUDGE ARNOLD: No.

11 JUDGE HAWKENS: Anymore on standing?

12 JUDGE TRIKOUROS: No.

13 JUDGE HAWKENS: You may proceed on the
14 contention of admissibility today.

15 MS. CURRAN: Okay. I'm just trying to
16 remember where I was.

17 JUDGE HAWKENS: You were on Contention A.

18 MS. CURRAN: Yeah.

19 JUDGE HAWKENS: Operation and
20 decommissioning.

21 MS. CURRAN: Oh, yeah. So there's two
22 reasons why this is not just an academic exercise.
23 First of all, this is an ANSI -- these are ANSI
24 regulations. They were promulgated for a reason, to
25 provide reasonable assurance that in fact highly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 radioactive spent fuel can be cared for adequately for
2 a long period of time in which we're going to have it
3 at reactive sites.

4 Second, PG&E has repeatedly referred to
5 itself as a contractor of the state. PG&E is now
6 holding itself out in a different light, in a
7 different relationship to the State of California.
8 The State of California is responsible for providing
9 funding for financial assurance for safe operation of
10 the ISFSI until the time of decommissioning starts.

11 The state, the ratepayers of the state,
12 the taxpayers of the state deserve to know where is
13 the money coming from. Are we paying for it? Who's
14 paying for it?

15 So those are the, I think, important
16 reasons why this information is important to provide.
17 And as the staff said in responding to our contention,
18 the operation of the plant is related to the ISFSI.
19 The ISFSI doesn't -- you might be able to say that in
20 March of 2022.

21 There's only one purpose for this ISFSI
22 going forward to store spent fuel. But as long as
23 operation is going on, there's a relationship there
24 that needs to be addressed.

25 JUDGE HAWKENS: PG&E argues that don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 worry about that because the assumption we're using
2 provides a more conservative financial scenario. And
3 so you and the public should be satisfied with that.
4 How would you respond?

5 MS. CURRAN: I don't think necessarily is
6 more concerned. They have or this period which may be
7 between 5 and 20 years. They don't have access to the
8 decommissioning trust fund.

9 And the whole issue of financing of the
10 operation of Diablo Canyon is kind of up in the air
11 right now. The last thing we had from Public
12 Utilities Commission was approval of shutdown. That
13 was in 2018.

14 Now the PUC is going through a proceeding
15 where they're evaluating the prudence of allowing
16 Diablo Canyon to continue operating. I honestly don't
17 know how spent fuel storage factors into that. But
18 there's going to be a whole series of PUC proceedings
19 that have to do with covering the costs of Diablo
20 Canyon.

21 So it's not -- there's many things that
22 are uncertain here. And frankly if it were up to me,
23 I wouldn't be standing here today arguing about this.
24 I wish that PG&E had simply amended its application or
25 asked the Board hold off until we know what we're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 doing because it doesn't make any sense to rely on an
2 application that's so clearly out of date. And maybe
3 PG&E doesn't know what it's doing quite yet. But we
4 could all wait until that happens instead of arguing
5 in a hypothetical sense what might happen in the
6 future.

7 JUDGE HAWKENS: What about their argument
8 that the application permissibly reflects the status
9 quo? And there's no regulation that you've cited that
10 requires them to include in the application something
11 that's purely speculative, uncertain. How would you
12 respond to that?

13 MS. CURRAN: Well, I think calling it the
14 status quo is a little extreme. This is a company
15 that has applied to the NRC for permission to seek
16 reactor license renewal. We know that the NRC has
17 told them they can get timing renewal protection and
18 if they file by the end of 2023.

19 So the status quo is kind of blurry in
20 terms of if you apply the -- if you go through the
21 process of throwing us out now, then when PG&E files
22 a new reactor license application, I honestly don't
23 see where we have an opportunity to litigate how that
24 affects the ISFSI because you will have approved the
25 license. So we're here. We're here because this was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 the opportunity that came up. And we know that we get
2 60 days to ask for a hearing or else it's gone.

3 JUDGE ARNOLD: Six years ago, the
4 intentions of PG&E was to renew Diablo Canyon's
5 license and continue operating. A couple years ago,
6 the intention of PG&E was to shut down Diablo Canyon.
7 And now the intention of PG&E is to relicense Diablo
8 Canyon.

9 It looks like their intentions are a very
10 moving target, a very blurred issue I'm saying. I
11 wonder what legal requirement is there to make an
12 application that is being considered now reflect a
13 blurred future. I mean, yes, we would like it. But
14 is there a legal requirement?

15 MS. CURRAN: I think there is in the sense
16 that it's because what they say in the application
17 depends so much on whether there's an operation of the
18 reactor that's going on. And if you know that's in
19 the plans, then to pretend that doesn't exist, it's
20 not an accurate reflection of PG&E's intentions. And
21 therefore, we think that they need to at least address
22 it.

23 They could address it in the alternative.
24 They could say, well, if we -- maybe they'll have to
25 shut down the plant. Maybe they won't. Maybe the PVC

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 will say we're not giving you this five years that the
2 legislature wants us to give you.

3 They could address that in the
4 alternative. They could say if we shut down, this is
5 what we'll do. If we keep cooperating, this is what
6 we'll do.

7 And then we would have the satisfaction,
8 we would have the assurance that PG&E knows where it's
9 going to get the money and what it's going to cost
10 depending on the timing of decommissioning. Okay.
11 I'd like to -- unless you have more questions about
12 the safety contention, I'd like to move on to the
13 environmental contention. Can you tell me how much
14 time I have left, please?

15 (No audible response.)

16 MS. CURRAN: Ten minutes? Okay. The
17 environmental contention states that PG&E's
18 environmental report isn't adequate to satisfy the
19 National Environmental Policy Act because the
20 statement of purpose and need only to the storage of
21 spent fuel that will be generated before the
22 expiration dates of 2024 and 2025 in the current
23 license until the repository becomes available. And
24 I can't remember one of you just pointed out that this
25 environmental report is called a supplemental

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 environmental report. This is a supplement to the
2 original environmental report that was prepared in
3 2001.

4 And if you go back to that environmental
5 report, it talks about the relationship between the
6 operation of the plant and the ISFSI. At the time
7 PG&E thought or they knew that they could only operate
8 until 2006 and they were going to have to close down
9 if they didn't have additional spent fuel storage
10 capacity. So they evaluated a range of alternatives.

11 They came up with dry storage. They said
12 the dry storage facility is going to hold all the fuel
13 that we generate until 2024 and 2025. And they said
14 they picked dry storage over pool storage based on an
15 overall assessment of operational and safety
16 considerations, the amount of spent fuel to be
17 generated, the transportation requirements associated
18 with the alternatives, resources needed, and
19 scheduling restraints.

20 So PG&E looked at the whole picture of
21 operation and spent fuel storage and chose the ISFSI.
22 They chose to build an ISFSI on a single license.
23 They chose to build it big enough to hold all the
24 spent fuel that they would have.

25 And they said that in the environmental

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 report. And then they said that in the updated final
2 safety analysis report. We also know and this on page
3 -- I think it's page 11, note 15 of our hearing
4 request that the State of California has a policy
5 favoring moving fuel from the pools to the dry storage
6 facility. This is saying whenever the NRC -- the
7 NRC's continue storage rule says --

8 JUDGE HAWKENS: Can you explain why
9 California statutes and policy are within the scope of
10 this proceeding?

11 MS. CURRAN: Two reasons. One is that
12 PG&E calls itself a contractor to the state and should
13 be talking about the policy issues associated with
14 spent fuel storage that are important to the state.
15 And second, NEPA generally --

16 (Simultaneous speaking.)

17 JUDGE HAWKENS: I apologize for
18 interrupting. But what regulation are you basing
19 that, it requires them to address state statutes and
20 policy?

21 MS. CURRAN: It's simply because in effect
22 PG&E is saying that they're standing in the shoes of
23 the state and making these environmental decisions.
24 I don't have a regulation for that. This is a very
25 unusual situation. I've never seen anything like it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 before.

2 And NEPA is a statute that requires
3 reasonable decision making. If you look at the
4 circumstances and decide what are reasonable array of
5 alternatives we looked at. What's a reasonable impact
6 analysis?

7 And I would submit that if the State of
8 California thinks that moving spent fuel into the
9 ISFSI is an important policy consideration and if PG&E
10 is a contractor to the state, that ought to be
11 discussed. And also -- yeah, I think that's -- I
12 think that's all I'll say. So in our view, the
13 statement of purpose and need now that we know PG&E is
14 planning to continue to operate the reactors for 5 to
15 20 years, circle back to the initial environmental
16 report and talk about the purpose and need document,
17 how has it been satisfied, how has it changed, and
18 what are the current considerations that are important
19 to our contractor, the State of California?

20 JUDGE HAWKENS: They argue that they have
21 60 years of storage combined with dry storage and wet
22 storage. That's sufficient for the 20 years of
23 conditional operating time for the reactors. And in
24 light of that, their purpose and needs statement is
25 adequate and what they consider is adequate. What's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 wrong with that argument?

2 MS. CURRAN: Judge Hawkens, I think that
3 one of the really important things about an
4 environmental assessment is that it informs the
5 affected members of the public. Right now, if you
6 were somebody who picked up the environmental
7 assessment and you're just reading it and you know
8 that PG&E is planning to operate these reactors for
9 some extended period of time, reading it because it's
10 been approved for a hearing process knowing what
11 PG&E's current plans are, you could easily think that
12 PG&E is representing that they are going to safety
13 store all of the quantity of spent fuel to be
14 generated by the Diablo Canyon reactors in this ISFSI
15 which, of course, is I think it's pretty universally
16 agreed that dry storage is safer than pool storage
17 because you don't have the potential for draining the
18 pools which is a matter of concern to the State of
19 California and others because of the potential for
20 earthquakes in that area.

21 So if you're a member of the public and
22 you're reading this document, you don't have a clear
23 understanding of what exactly is going on. You don't
24 have a clear understanding of the fact that if PG&E
25 operates even five more years, it may not have enough

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 room in the ISFSI for all the spent fuel that will be
2 generated. And that's for however many years until we
3 have a repository.

4 Fuel could be remaining in the pool. Some
5 amount of fuel could be remaining in the pool. The
6 public is entitled to disclosure of all this. So the
7 state lawmakers, policymakers, members of the public
8 can debate, is this what we want?

9 And these are -- the purpose of an
10 environmental assessment is to educate people who
11 might be applying this under state law. They take the
12 facts that are presented in a federally approved
13 document and say, well, these are the facts that we
14 have to work with. It's really important that these
15 documents should be up to date and clear because
16 they're used for many purposes. And I think I will
17 close right there.

18 JUDGE HAWKENS: All right. You have two
19 minutes remaining. That'll be added to your rebuttal
20 time.

21 JUDGE HAWKENS: Thank you.

22 JUDGE HAWKENS: Mr. Lighty, you may
23 proceed, sir. I'd ask as well sometime if you could
24 incorporate into your argument, although you did not
25 oppose standing, just inform us why you did not oppose

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 standing.

2 MR. LIGHTY: Yes, thank you, Your Honor.
3 And may it please the Board, Ryan Lighty on behalf of
4 PG&E. We know Your Honors have studied the briefs.
5 And we don't intend to use our presentation to simply
6 repeat those briefings.

7 But we will like to use a portion of our
8 time to discuss a few key issues that are particularly
9 important here and to respond to some assertions that
10 were in the staff's answer and the petitioner's reply.
11 And we'd like to start with two overarching topics
12 that inform the discussion today and then move into
13 the discussion of the individual contentions in turn
14 and then respond to some of petitioner's arguments
15 that have been presented today. And I expect our
16 prepared remarks will take less than half of our time,
17 so plenty of time for Board questions.

18 And I'll start off addressing the standing
19 issue as you requested, Your Honor. We did not
20 analyze that issue in depth because in our view, the
21 standing analysis is immaterial given that neither of
22 the contentions is admissible. That petition must be
23 denied for that reason alone.

24 So we didn't conduct an analysis of
25 standing. But to go to Judge Arnold's point about the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Bell Bend proceeding, we certainly agree that a fresh
2 standing demonstration must be made in every
3 proceeding. You cannot rely on the factual predicate
4 from a prior ruling. And that must be demonstrated
5 fresh in each proceeding.

6 To the extent that petitioners rely only
7 on their finding of standing in the initial ISFSI
8 licensing proceeding, I would note that that's a
9 different type of proceeding. And an initial
10 licensing proceeding is different than a license
11 renewal proceeding. And so to the extent that the
12 standards are different, that case law may or may not
13 apply squarely here. So turning back to the two
14 overarching topics.

15 JUDGE HAWKENS: To be clear, you do not
16 opposed standing?

17 MR. LIGHTY: Correct, Your Honor.

18 JUDGE ARNOLD: And one other thing, not
19 proposing standing, are you agreeing that your ISFSI
20 poses an obvious potential for off site consequences?

21 MR. LIGHTY: We do not necessarily agree
22 with that assertion.

23 JUDGE HAWKENS: Although you haven't
24 opposed it because you haven't opposed standing?

25 MR. LIGHTY: Correct, correct. To the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 extent that off site consequences must be
2 demonstrated, they have to be demonstrated at a
3 particular radius, specific to the type of licensing
4 action that is presented. And so to the extent that
5 the representations and the standing declarations
6 don't mean that radius, then obviously it would be
7 petitioner's burden to make the demonstration that it
8 does apply here.

9 So turning back to the overarching topics,
10 the overarching themes presented here today, first, we
11 want it to be crystal clear that the LRA was complete
12 and accurate when it was submitted. And still to
13 date, it accurately reflects the legal status quo.
14 Based on the current legal posture, the reactor
15 operating licenses are set to expire at the end of
16 their initial four year terms.

17 And absent intervening circumstances that
18 would materially change the facts of the ground,
19 that's what will happen. No one disputes that PG& is
20 planning to seek renewal of its licenses, but it
21 hasn't done so yet. No application has been filed.
22 No application has been docketed.

23 And that speculative application certainly
24 has not been approved yet and is noted in our brief at
25 Footnote 46. The California Public Utilities

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Commission or CPUC also has not yet authorized that
2 continued operation. So there are several gates that
3 must be passed through before continuing operation
4 could become the legal reality.

5 In fact, the petitioners currently
6 participating in at least three different proceedings,
7 in state court, in federal court for CPUC seeking to
8 prevent continued operations. So for the petitioner
9 to argue here that the ISFSI license renewal
10 application was required to assume continued operation
11 is a big disingenuous. At bottom, the LRA currently
12 reflects the most up-to-date legal information
13 regarding the status of the DCPD reactor license.

14 JUDGE HAWKENS: At what point would PG&E
15 be required to amend the application?

16 MR. LIGHTY: Well, I think that's a good
17 question and an issue that petitioner should've
18 addressed in their petition. They haven't identified
19 any regulation in Part 72 that requires the LRA which
20 was complete and accurate at the time it was filed to
21 be updated to reflect an inchoate scenario involving
22 potential future licensing applications in a different
23 in a different proceeding. And our view is that there
24 is no such regulation in Part 72 that requires that
25 update to be made under these circumstances.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 JUDGE HAWKENS: And can you answer the
2 question? Then when were you required to amend it,
3 the license renewal application?

4 MR. LIGHTY: I think in our view when the
5 reactor -- if the reactor licenses are, in fact,
6 renewed, that would be a substantially changed
7 circumstance that should be reflected in the
8 application.

9 JUDGE HAWKENS: But not when the licensed
10 reactor renewal application is filed?

11 MR. LIGHTY: Well, I think that there
12 could be an colorful argument made for petition for
13 rulemaking to establish a rule that requires that.
14 But the current regulations do not contain that
15 requirement. And petitioner certainly hadn't
16 demonstrated that much.

17 So at the end of the day, the application
18 was complete and accurate when it reflects the current
19 legal reality and nothing more is required. The
20 second overarching matter, we want to reiterate the
21 speculative nature of petitioner's ISFSI expansion
22 clubs. The petitioner suggests that if the reactor
23 operating license are renewed and if the units
24 continue to operate, then PG&E will be required to
25 expand this specific licensed ISFSI to accommodate 60

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 years' worth of spent fuel.

2 That's factually and legally incorrect.
3 To be clear, PG&e is not seeking to expand this ISFSI
4 at this time. That's a fact that petitioner does not
5 dispute.

6 The existing storage as the ISFSI are
7 sufficient to store all spent fuel generated during
8 the initial 40-year term. The spent fuel pools are
9 capable of holding another 20 years of spent fuel. So
10 PG&E currently has the ability to store 60 years'
11 worth of spent fuel at the site without expanding any
12 facilities. That's another fact petitioner does not
13 dispute.

14 JUDGE TRIKOUROS: Mr. Lighty, let me
15 interrupt you. Does that 60-plus -- the 40 plus 20
16 components, do they include the ability to offload a
17 full core at the end of that 60-year period?

18 MR. LIGHTY: I believe so, Your Honor. I
19 believe it does contemplate the entire inventory of 40
20 years of operation including final core. But even
21 assuming for the sake of argument that additional dry
22 storage is required at some point in the future, for
23 example, after a permanent shutdown of the reactors
24 just for their decommissioning, PG&E could elect to
25 develop that capacity.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 But regardless of whether that would occur
2 via a general license for a new ISFSI, a new specific
3 licensed ISFSI, or an amendment to this specific
4 licensed ISFSI. Any expansion would be subject to a
5 separate regulatory process. So the bottom line is
6 that the current license capacity of this ISFSI does
7 not hinge on whether the reactors operate beyond 40
8 years.

9 And to the extent that petitioners allege
10 otherwise, its claims are factually incorrect based on
11 the plan test of the terms of the ISFSI license that
12 is proposed to be renewed here. So turning now to the
13 two contentions. In Contention A, petitioner presents
14 three challenges to the safety portion of the
15 application. The first relates to financial
16 qualifications, the second to decommissioning funding
17 insurance, and the third relates to the General Design
18 Criteria or GDC.

19 As we understand petitioner's reply at
20 pages 3 and 4, it has dropped its GDC claim. So our
21 discussion will focus only on the first two arguments,
22 both of which are financial in nature. And here, we
23 ask the Board to take particular note, and this is
24 important.

25 Both of these financial arguments rest on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 the same assertion that the material deficiency in the
2 application is that it does not consider the financial
3 and decommissioning implications of storing 60 years'
4 worth of spent fuel on the ISFSI. For example, page
5 6 of the petition criticizes the decommission finding
6 discussion because it does not address, quote, the
7 cost of decommissioning the ISFSI, end quote, if it
8 stores 60 years' worth of spent fuel. Likewise, page
9 7 of the petition alleges the application does not,
10 quote, account for increased operating costs, end
11 quote, of storing 60 years' of spent fuel.

12 But as I mentioned earlier, this license,
13 the only one at issue in this proceeding, does not in
14 any way authorize storage of 60 years of spent fuel.
15 Simply put, there's no legal or regulatory obligation
16 to analyze that unlicensed scenario in the safety
17 application. So setting side those ISFSI expansion-
18 related claims, the only arguments left in the
19 petition are petitioner's bare complaint application
20 on its face just doesn't mention the possibility of
21 license renewal.

22 But the petitioner doesn't identify any
23 reason that circumstance in and of itself constitutes
24 a material defect of the application. Materiality
25 matters, Your Honors. In fact, it's probably the most

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 important consideration in adjudicating Contention A.
2 It is the fundamental premise of Section 2.309F1 XIII
3 6 that places an affirmative burden on the petitioners
4 to, quote, show that a genuine dispute exists with the
5 applicant, slash, licensee on a material issue of law
6 or fact.

7 JUDGE HAWKENS: Mr. Lighty, a question for
8 you. You have a very strong hyper technical argument.
9 But I think the regulations when they require you to
10 provide the NRC with complete and accurate information
11 in the license renewal application, for you to ignore
12 the change in circumstances since when you first
13 submitted this application. Now you're directed to
14 seek renewal. And it's not -- I don't think in your
15 pleading you ever said that PG&E intends to seek
16 renewal of the reactors, does it?

17 MR. LIGHTY: Yes, at this time --

18 JUDGE HAWKENS: Okay.

19 MR. LIGHTY: -- PG&E does intend to seek
20 renewal. Again, there are several hurdles, several
21 gates, several rules.

22 JUDGE HAWKENS: Whether it will be
23 approved or not. But in your license renewal
24 application which is entirely correct at the time, you
25 indicated you were going to shut down in 2024, 2025

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 and made representations regarding operational --
2 financial operational ability and decommissioning
3 financial ability based on that assumption. And that
4 assumption hyper technically is still correct.

5 But as a practical matter, it's not. And
6 that raises a genuine dispute about financial ability
7 for an operation and decommissioning. Not as a
8 practical matter because as the NRC staff observes, it
9 appears based on California statute which provides you
10 with the necessary rate income you need for operation
11 and decommissioning.

12 That shouldn't be a problem. But the NRC
13 staff and the public is entitled to accurate and
14 complete representations, I think it is my sense in
15 your license renewal application. And there seems to
16 be a genuine question as to whether those
17 representations are complete and accurate. And there
18 wasn't a discrete question in there, but could you
19 respond to that?

20 MR. LIGHTY: Certainly. I have a couple
21 of thoughts on that. The first is we're here to
22 discuss the compliant status of the LRA. It was
23 complete and accurate at the time it was filed.
24 There's no dispute about that. The question is
25 whether there is a duty of the applicant to then

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 update the application based on --

2 (Simultaneous speaking.)

3 MR. LIGHTY: -- what petitioners are
4 arguing are materially changed circumstances. And I
5 think that when you compare this, for example, to a
6 Part 54 license renewal proceeding for a reactor,
7 there is a regulation that requires an annual update
8 to the application to contain certain information.
9 That does not exist in Part 72.

10 The standard that is in Part 72 is simply
11 the completeness and accuracy requirement. That
12 requires documents submitted to the NRC. And I
13 believe the regulation is 10 CFR 72.11 to be complete
14 and accurate in all material respects.

15 But Subpart B of that regulation discusses
16 the duty to update information based on the discovery
17 of a significant safety issue. What we haven't seen
18 is petitioners acknowledge or address that standard or
19 explain or offer any theory as to why it's satisfied
20 here based on its claims in the petition. As we've
21 discussed, these ISFSI expansion claims are factually
22 and legally incorrect.

23 And all you're left with is a statement
24 that on the face of the application, it does
25 acknowledge the possibility of reactor license

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 renewal. But there's no further discussion why that
2 matters outside of these expansion-related claims that
3 petitioners were raising. The Commission has long
4 used the word flyspecking to describe minor and
5 insignificant miss regarding environmental review that
6 do not work here because they have no material impact
7 on the proceeding. And in general, flyspecking is
8 just another way of describing the absence of
9 materiality. Materiality applies to both
10 environmental and safety contentions.

11 JUDGE HAWKENS: On the safety contention,
12 though, in your application, you say, starting
13 November 24, the source of funds to operate and
14 decommission the ISFSI will include the
15 decommissioning trust fund, accurate once submitted,
16 accurate now. But the license renewal application for
17 the reactors is submitted and approved, it will no
18 longer be accurate, correct?

19 MR. LIGHTY: Correct. Whether it's
20 material is a separate question. And at what point it
21 becomes material I think is another unresolved
22 question. In our view, it is not material at this
23 time.

24 The compliance status of the application
25 is that it was complete and accurate when you filed.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 And the duty to update in 72.11B has not been
2 triggered. Because at the end of the day, stripping
3 away the petitioner's ISFSI expansion claims, there's
4 nothing in the petition or that we've heard in
5 arguments today that would, quote, change the outcome
6 of the proceeding.

7 That's the fundamental requirement for
8 material knowledge. In fact, all of the participants
9 seem to agree that there are no material concerns
10 about PG&E's financial qualifications to operate the
11 existing ISFSI. Staff's answer at Footnote 61
12 disavows any, quote, substantive concerns, end quote.

13 And petitioner doesn't allege any material
14 concerns that are unrelated to ISFSI expansion which
15 isn't proposed here and isn't part of this licensing
16 action. Now we know that staff takes the position
17 that proposed Contention A is admissible because as
18 noted in it brief at page 11, quote, operations at the
19 DCMPP are connected to operations at the Diablo Canyon
20 ISFSI by the application. And the application does
21 not appear to address a potential change in the
22 planned retirement date of the DCMPP, end quote.

23 But that's not the end of the inquiry. As
24 the staff notes a few pages later in the last sentence
25 of the partial paragraph at the top of page 14, staff

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 says, quote, SLOMPF has not demonstrated how such
2 potential operations render the application
3 insufficient, end quote. We agree.

4 We completely agree. That is absolutely
5 correct. Petitioner has not alleged much less
6 demonstrated any material deficiency in the
7 application that is unrelated to ISFSI expansion. And
8 that's what renders proposed Contention A inadmissible
9 because materiality matters.

10 Taking a step back for a moment. One
11 overarching purpose of the contention admissibility of
12 criteria is to limit evidentiary hearings to matters
13 where inquiry and depth is appropriate. But that's
14 not the case here.

15 It is not necessary to convene a formal
16 hearing at significant taxpayer expense, at
17 significant rate payer expense to determine whether
18 PG&E is financially qualified to continue operating
19 the ISFSI. We already know the answer to that
20 question. As a matter of law, PG&E is presumed
21 qualified.

22 In fact, that's exactly what the
23 Commission said in 2003 during the initial licensing
24 of the ISFSI, CLI-03-12 which is cited in our brief.
25 The petitioners here do not even alleged the existence

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 of any information that would rebut that presumption
2 of law. So to put it in plain terms, a hearing under
3 these circumstances would be a textbook example of the
4 type of wasteful and unnecessary hearing that the
5 admissibility rules were purposefully designed to
6 avoid.

7 Think of it this way. Even if the
8 application contained a token acknowledgment of a
9 possibility of reactor license renewal, it wouldn't
10 make one bit of difference in the outcome of this
11 proceeding because PG&E is financially qualified to
12 continue operating the ISFSI regardless of whether the
13 reactor licenses are renewed. And no participant in
14 this proceeding has claimed otherwise.

15 So onto the separate issue of
16 decommissioning find. Petitioner also fails to
17 identify a material defect in the LRA. As I noted
18 earlier, the petitioner's principle criticism here is
19 that the application doesn't evaluate the cost of
20 decommissioning an ISFSI with 60 years of spent fuel.
21 But this license doesn't authorize 60 years of spent
22 fuel to be stored there.

23 So that's not a defect in the application
24 at all, much less the material. As to decommissioning
25 the AS licencing facility for 40 years of spent fuel,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 the decommissioning projections in the application are
2 conservative. And petitioner makes no demonstration
3 that anything further is required.

4 Now what I mean by conservative is that
5 the LRA assumes that PG&E will begin drawing down on
6 the decommissioning trust fund in 2024 to cover ISFSI
7 operating costs. Then as a result, the fund balance
8 would begin decreasing. The money starts going down.

9 In contrast, under a scenario where the
10 reactors continue to operate, that fund instead of
11 decreasing in value would continue to grow. NRC
12 regulations in 10 CFR Section 50.75 E1 VIII 1 permit
13 a licensee to assume a two percent annual real rate of
14 return on decommissioning funds. So instead of the
15 terms, deferred withdrawals equal additional growth.

16 That's just a common sense observation.
17 It certainly doesn't require an evidentiary hearing.
18 And particularly where petitioner has not identified
19 a material reason why anything beyond that
20 conservative analysis and the application is required
21 or even meaningful in this proceeding.

22 At the end of the day, petitioner's ISFSI
23 expansion related claims are factually and legally
24 baseless. And petitioner otherwise hasn't identified
25 any reason that the financial projections in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 application as currently written to accurately reflect
2 the legal status quo are materially deficient in any
3 way. Again, materiality matters here, Your Honors.

4 Shifting gears to proposed Contention B,
5 petitioner attacks the purpose and needs statement in
6 the ER supplement because it does not mention possible
7 renewal of the reactor on the licenses. But that line
8 of argument also misses the mark. The purpose and
9 needs statement in the ER supplement does not mention
10 a need to store 60 years' worth of spent fuel because
11 that is not, in fact, the purpose of this action.

12 Petitioner identifies no unmet legal
13 requirement for the purpose and needs statement to
14 contemplate anything more. Quite simply, petitioner
15 has not identified any deficiency in the purpose and
16 needs statement in the LRA. And the contention should
17 be rejected for that reason alone.

18 Now we understand that there are a couple
19 of other core arguments in Contention B that I'd like
20 to briefly mention regarding alternatives and
21 cumulative impacts. As noted in our brief, Contention
22 B alleges a defect in the purpose and needs statement
23 and then claims that some aspect of the alternatives
24 were cumulative impact discussions, supplies, and
25 supporting basis for that contention. But as PG&E and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 the NRC staff have explained in our respective briefs,
2 there is no defect in the purpose and needs statement.

3 And so without that defect in the first
4 instance, those assertions are not alternatives and
5 cumulative impact provide no support for the
6 overarching claim. But going one step further just
7 for the sake of argument. Even if we considered those
8 assertions as separate standalone claims or
9 contentions, they would still be inadmissible for
10 multiple reasons.

11 For example, petitioner offers conclusory
12 assertions that the alternatives and cumulative impact
13 discussions are deficient. But it doesn't identify a
14 single reasonable alternative that hasn't been
15 considered or a single cumulative impact that hasn't
16 been considered. As another example, given that this
17 is a Part 72 license renewal proceeding, the ER
18 supplement is only required to address, quote,
19 significant environmental changes, end quote, pursuant
20 to 10 CFR Part 72.

21 So petitioner doesn't acknowledge that
22 standard. And it certainly doesn't offer any
23 explanation as to how it's met or satisfied it here.
24 So in sum, these arguments do not support a challenge
25 to the purpose and needs statement.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 And even if you had standalone
2 contentions, these corollary claims would be
3 inadmissible in their own way. And for these and many
4 other reasons stated in our brief, we believe that
5 neither Contention A nor Contention B are admissible
6 and that the Board should dismiss the petition
7 accordingly. I did want to address just a couple of
8 comments that we heard from petitioner's counsel a few
9 minutes ago.

10 In the discussion that we heard, there was
11 a suggestion that the application at Appendix G-4
12 discussed the decommissioning timberline be based on
13 a prompt ISFSI decommissioning scenario. And that is
14 correct. But what the Board should understand here is
15 that the decommissioning timberline for the ISFSI is
16 not affected by plant operation. The ISFSI will store
17 the fuel from the initial 40 years of operation and no
18 more, absent some other future licensing action.

19 The timing for the removal of that fuel
20 doesn't depend on whether the reactor contained
21 Doppler. That depends on DOE's performance or the
22 availability of a consolidated interim storage
23 facility or some other outside action that is not
24 affected by plant license renewal. So the
25 decommissioning timberline for the ISFSI isn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 affected by the plant license renewal.

2 I also wanted to respond to counsel's
3 claim that petitioners didn't know how the ISFSI
4 operating costs would be funded if the plant license
5 is already renewed. As noted in our brief at page 14,
6 Footnote 53, the SB 846 statute passed by the
7 California legislature and signed by the California
8 governor says that those operating costs will be
9 recovered through the normal rate making process. And
10 finally, I'd like to respond to counsel's assertion
11 that PG&E is a contractor to the state.

12 PG&E has not called itself out as acting
13 on behalf of the State of California in this ISFSI
14 license renewal proceeding, period. So I just wanted
15 to clarify that for the Board. And I'm happy to take
16 any other questions Your Honors may have.

17 JUDGE TRIKOUROS: I just want to
18 understand the picture at the end of 60 years. We're
19 looking at an ISFSI that has 40 years of fuel in it.
20 So we're looking at a spent fuel pool that has 20
21 years of fuel in it apparently with enough empty space
22 to also include a full core.

23 Otherwise, I suppose you would not make it
24 to that point. You'd have to stop in prior years or
25 do something at the end of that, when you ran out of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 that ability to offload. The decommissioning
2 activities as I see them would not be able to begin at
3 that point because the -- well, I'll phrase it as a
4 question. Could you begin decommissioning activities
5 with the fuel and that state that I just mentioned, 20
6 years in the spent fuel pool and 40 years in the
7 ISFSI?

8 MR. LIGHTY: Are you talking about could
9 decommissioning begin with a plan --

10 (Simultaneous speaking.)

11 MR. LIGHTY: I think that partial
12 decommissioning activities could begin. Obviously,
13 the plant itself could not be fully decommissioned
14 with spent fuel still in the pool.

15 JUDGE TRIKOUROS: So there would be a
16 requirement to expand the storage requirements for
17 spent fuel at that point. But it would not
18 necessarily involve this particular ISFSI. Is that
19 correct?

20 MR. LIGHTY: Correct. If a policy
21 decision or a mandate of a state said you must fully
22 decommission the reactor, take the fuel out of the
23 spent fuel pool, and assuming that there was no
24 consolidated interim storage facility available that
25 DOE has not completed a permanent repository at the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 end of the 40-year license renewal period of the
2 ISFSI, then potentially there would be a need to have
3 other dry storage on site. But as you mentioned,
4 Judge Trikouros, it could either be through the
5 general license, a separate specific license, an
6 amendment to this specific license. But none of that
7 is being proposed as part of this license renewal.

8 JUDGE TRIKOUROS: And it doesn't have to
9 be dry storage, actually, I suppose. It could be any
10 number of other options.

11 MR. LIGHTY: True. We have seen other
12 precedent where fuel goes from one site to another
13 site, even though that site is not necessarily
14 consolidated interim storage facility but potentially
15 in an aggregator site.

16 JUDGE TRIKOUROS: All right. Thank you.

17 JUDGE HAWKENS: Thank you.

18 MR. LIGHTY: Thank you, Your Honors.

19 JUDGE HAWKENS: You may proceed, sir.
20 Thank you.

21 MR. GENDELMAN: Thank you. Good
22 afternoon. May it please the Board. My name is Adam
23 Gendelman from the NRC staff. Thank you for the
24 opportunity to discuss the staff's position on San
25 Luis Obispo Mothers for Peace's petition. I plan to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 discuss staff use on the principle issues in dispute,
2 especially Contention A, as each party has a different
3 view, address the important points for you today. And
4 I'd be happy to answer the Board's questions.

5 JUDGE HAWKENS: Could you also start off
6 with a brief discussion on your view of standing?

7 MR. GENDELMAN: Happily, Your Honor. I
8 think you and Judge Arnold captured the staff's
9 position exactly with regard to the discussion of the
10 proximity-plus standard. In the staff's view, as you
11 noted, Judge Hawkens, this is an application for the
12 renewal of a facility to store 2,100 metric tons of
13 spent fuel.

14 And in the staff's view, that action meets
15 that standard. To be clear, that's not a reflection
16 on the actual probability of any event that could
17 cause such consequences. But especially given this is
18 a license renewal proceeding versus, for example, an
19 amendment on some more auxiliary matter that we can
20 say it's been demonstrated.

21 JUDGE HAWKENS: And based on the legal
22 rational and the licensing board's 2002 standing
23 decision in the Diablo Canyon case, you still find
24 that to be a reasonable analysis?

25 MR. GENDELMAN: It's informative. With

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 regard to the previous discussion about a fresh
2 assertion of standing, I think we agree with
3 petitioner that they have made that fresh assertion
4 here. I think it's appropriate to note past similar
5 circumstances and how they were disposed of.

6 But the petition doesn't say, oh, we were
7 granted standing in the past. So we have standing
8 now. It makes that fresh assertion as both in the
9 petition and in the updates.

10 JUDGE ARNOLD: Where in the petition does
11 it even assert that there's a potential for offsite
12 consequences?

13 MR. GENDELMAN: So in our reading of the
14 affidavits, the affiants note their concerned about
15 continued operation of the ISFSI jeopardizing their
16 health and safety and the quality of the environment.
17 And so that's the language that we think it
18 demonstrates those concerns.

19 JUDGE ARNOLD: That demonstrates that they
20 have concern. But does it demonstrate that there's an
21 obvious potential for damage?

22 MR. GENDELMAN: No, I think, as I said,
23 the staff's view is we're not contesting standing in
24 the light of the fact that this is a major license
25 proceeding, the proceeding whose disposition affects

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 whether or not this facility will continue to operate
2 coupled with the amount and radioactivity that the
3 material could be stored, and the potential, however
4 small, of what dispersion of that material could bring
5 about.

6 JUDGE ARNOLD: So essentially, you're
7 filling in the assertion that there's an obvious
8 potential for consequences based upon your knowledge
9 of what this facility is, what's stored there?

10 MR. GENDELMAN: I'm not sure I would
11 characterize it that way. But staff's view is that
12 standing has been adequately pled. I understand the
13 Board's questions with regard to some of those square
14 corners. But I think consistent with both previous
15 practice, it's inferential, not binding authority that
16 standing has been demonstrated.

17 JUDGE TRIKOUROS: Just one question along
18 those lines. Does the fact that this plant is in the
19 Ninth Circuit and that terrorist activities are soon
20 to occur in that circuit, would you say that the
21 licensing basis of this plant, Diablo Canyon, includes
22 the potential for terrorist activity associated with
23 the spent fuel, the ISFSI?

24 MR. GENDELMAN: So I believe I understand
25 your question. And I would certainly say that ISFSIs

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 in the Ninth Circuit and all others are appropriately
2 required to mitigate against both safety and security
3 risk consistent with NRC requirements. With regard to
4 standing, I don't think it is aggravated or mitigated
5 in any particular circuit.

6 But as I said, the staff's read of the
7 proximity-plus standard is about the potential for
8 consequences distinct from an actual probability. So
9 I'll unpack that for a second. For example, if this
10 was a proposal to add a single cask, for example, to
11 go from 2,100 tons to 2,150 metric tons. I think the
12 analysis might be different because at issue is the
13 condition of a single cask versus the renewal of the
14 entire facility.

15 JUDGE HAWKENS: Thank you.

16 MR. GENDELMAN: So to begin, this
17 proceeding, of course, concerns PG&E's application to
18 renew its ISFSI license under Part 72. It's not a
19 proceeding for the renewal of a reactor license
20 renewal nor is it a proceeding as the applicant noted
21 several times to otherwise amend PG&E's Part 72
22 license to resign the facility or change the amount of
23 material that can be stored there. In one case
24 identified in the petition, the ISFSI renewal
25 application creates a linkage between the retirement

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 of the Diablo Canyon reactors and satisfaction of
2 financial qualification requirements in 10 CFR 72.22E.

3 In that one case, the developments
4 associated with potential reactor renewal are relevant
5 and indeed in the staff's view the basis for an
6 admissible contention but relevant only because they
7 bear factually on the satisfaction of regulatory
8 criteria in this proceeding. This framework unknots
9 the central question we think presented by both
10 contentions which is with respect to this Part 72
11 proceeding, what is the significance, if any, of the
12 recently developments associated with the potential
13 for continued operations at the Diablo Canyon
14 reactors? We think the answer indicated is that
15 they're relevant only insofar as they bear upon the
16 ISFSI license renewal application and the applicant's
17 satisfaction of requirements again in this proceeding.

18 This framework also shows why the
19 petition's other arguments in Contention A and
20 Contention B do not succeed because the other sited
21 portions of the ISFSI renewal application do not rely
22 on the timing of the retirement of the Diablo Canyon
23 reactors as the basis for meeting regulatory
24 requirements in Part 72. And therefore, these recent
25 events concerning that potential for continued

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 operations are not similarly relevant to this
2 application. And so with respect to Contention A as
3 noted in his answer, the staff views the portion of
4 Contention A concerning financial qualification in
5 72.22E to be admissible.

6 JUDGE HAWKENS: And that's all that's
7 before us now since petitioner's filed a reply. Isn't
8 that correct? And let me ask it another way. I
9 understand based on petitioner's reply, I think I
10 would understand that you agree now that their
11 contention should be admissible in full? And if not,
12 could you tell me when?

13 MR. GENDELMAN: I'm not sure that I
14 understood the reply to drop the 7230 financial
15 assurance argument as distinct from 7222 financial
16 qualifications argument. But otherwise, yes.

17 JUDGE HAWKENS: All right. We'll follow
18 up with that in rebuttal. Please proceed.

19 MR. GENDELMAN: So in sum, 72.22E requires
20 an applicant to demonstrate its financial
21 qualifications and that they either have the necessary
22 funds or have reasonable assurance of obtaining them
23 to cover operating costs in the prime life of the
24 facility, in this case, a 40-year renewal for the
25 ISFSI, not to be confused with the other, as well as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 the cost of decommissioning the ISFSI facility. The
2 application provides that this funding will derive
3 from the rate making process until November 2024 at
4 which time funding will include the reactor
5 decommissioning trust fund. The petition contrasts
6 these representations with the recent developments
7 concerning the potential for continued operations at
8 the Diablo Canyon reactors, the passage of California
9 law, SB 846, the exemption request from the applicant,
10 the letter where the applicant states its intent as we
11 heard today to take the necessary steps to operate
12 Diablo Canyon reactors beyond the dates in their
13 current license.

14 Petition concludes that therefore the
15 applicant has not demonstrated financial
16 qualifications in light of these circumstances.
17 First, the staff does not have a position on the
18 sufficiency of this or any provision in the
19 application as the staff has not completed its
20 technical or environmental reviews, but does find this
21 portion of Contention A to be admissible as it meets
22 the individual requirements of 2.309 F1. And as
23 discussed, the staff believes that the petition has
24 demonstrated standing.

25 The applicant in its answer and today

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 counters on what I would call two principle runs.
2 First, the application is accurate. The licenses
3 right now do say that the reactor is -- that they are
4 to retire in 2024 and 2025 and that it would be rather
5 speculative on the part of PG&E to assume future
6 regulatory actions.

7 They submitted a renewal license
8 application that the NRC would approve it and then to
9 now in the present rely upon all that in its
10 application. Further, as the applicant notes, PG&E
11 has not actually submitted a renewal application and
12 has not even intended renewal notwithstanding the
13 timely renewal exemption that the applicant requested
14 and the staff issued this past March. In response, I
15 would say that the applicant is correct as to the
16 current -- I think as you fashioned it, legal
17 regulatory posture, sort of the legal reality.

18 And understandably stress the potential,
19 not certainty, for the extension of reactor operating
20 life. But I think this can differ on the significance
21 of these recent factual developments in light of the
22 language in the application, specifically, the linkage
23 in the application between the retirement of Unit 1
24 and the applicant's satisfaction of 72.22B. The
25 potential extension of the Diablo Canyon reactor

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 licenses is run in here because it bears upon the
2 availability of funding sources identified in the
3 application, in the ISFSI renewal application.

4 Specifically, the applicant's recent
5 statements about its intent to continue Diablo Canyon
6 reactor operations is accurate, it is not clear in the
7 decommissioning trust funds would be available to
8 support ISFSI operations in 2024. Thus, in the
9 staff's view, this disagreement between the petitioner
10 and the applicant over the significance of these
11 events for the applicant's demonstration of compliance
12 with 72.22B is indeed a material dispute and
13 illustrates the satisfaction of 2.309 F16 regarding
14 that requirement. And so --

15 JUDGE HAWKENS: I think in your brief, you
16 indicated you had no substantive concern in the long
17 run about PG&E and feel like it's financial
18 obligations. So why is it material?

19 MR. GENDELMAN: So that's right, Your
20 Honor. And I think that gets to PG&E's second
21 argument which has a couple of different forms, both
22 they and in their answer that either a continued
23 operation scenario where both rate case funding
24 followed by at some time decommissioning trust fund
25 funding is conservative vis-a-vis what's in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 application. I believe I saw something that even SB
2 846 itself has some funding provisions. And then sort
3 of in any scenario given the Commission case law about
4 rate making authority being sort of a presumptive
5 demonstration of reasonable assurance that in any
6 scenario adequate funding would be available. So the
7 contention should not be omitted.

8 I think with regard to all of these
9 arguments, the staff has a short if not pithy answer
10 in that I think we agree with the petitioner in their
11 reply that all these arguments may very well be right.
12 But they all get to the merits. Does the applicant
13 satisfy 72.22E where the person here is, has the
14 petition satisfied the contention and admissibility
15 requirements?

16 It may very well be that the resolution of
17 this contention is and the staff once it completes a
18 safety review may even agree that the application as
19 it exists now meets NRC requirements. But that's a
20 merits question. And at this point, I don't think
21 that begrudges the submission of an admissible
22 contention. And I'm sort of pointing again to the --
23 I think it's the Private Fuel Storage case in our
24 brief that while the showing that a petitioner needs
25 to make at this space is not insubstantial.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 A petitioner doesn't have to prove their
2 contention, the contention of admissibility phase. As
3 to the other claims of Contention A concerning
4 potential redesign of the ISFSI or the need for
5 increased capacity based on extended operations as
6 well as financial assurance in 72.30, the staff used
7 that these claims each fail for the reason that 72.22E
8 claim succeeds because in this cases the claims in the
9 petition are not similarly grounded in language in the
10 application which in turn does not rely on a specific
11 nuclear power plant retirement date to demonstrate
12 compliance with the ISFSI license renewal
13 requirements. Indeed, as the applicant notes in many
14 cases, the petition's arguments are speculative
15 contrary to the specific representations in the
16 application.

17 For example, there is no request for an
18 increase in the amount of fuel to be stored at the
19 ISFSI. Similarly with regard to Contention B arguing
20 that the applicant's environmental report is similarly
21 problematic because of its dependence on 2024 and 2025
22 Diablo Canyon reactor requirements. The staff views
23 those claims as simply again not worn out but language
24 in the application.

25 Indeed as the applicant notes, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 proposed action, renewal of the independent spent fuel
2 storage installation license is independent of
3 operations from the Diablo Canyon reactors in this
4 regard. With respect to the alternatives analysis,
5 the petition does not seem to count in this specific
6 discussion any application and from the staff's view
7 argues that the environmental report lacks an analysis
8 that it appears to contain. With regard to cumulative
9 impacts, the petition does not identify any impacts
10 that are not considered cumulatively.

11 And while there's not a distinct section
12 in the environmental report titled cumulative impacts,
13 because the only direct impacts identified are public
14 and occupational dose, impacts that are evaluated
15 cumulatively. Again, I think we have a contention
16 that alleges an omission and precludes precedent. And
17 so in summary, while this step is not completed, it's
18 technical environmental reviews.

19 The petition proposes an admissible
20 contention with respect to financial qualifications
21 under 72.22E. But the remainder of Contention A and
22 Contention B are inadmissible. They contain
23 speculation about the future and not this application
24 in its satisfaction of the applicable NRC requirements
25 in this Part 72 proceeding. And with that, I'd be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 happy to answer any additional questions.

2 JUDGE ARNOLD: Just a practical matter.
3 What's the current schedule for the ISFSI license
4 renewal review? When is a decision expected?

5 MR. GENDELMAN: Yes, Your Honor. The
6 original docketing letter from September of last year
7 I think had targeted an RAI submission -- request for
8 additional information, RAIs, in the February time
9 frame with an eye towards a decision in the November
10 time frame. My understanding is that that schedule
11 has slipped and that a new schedule is being
12 formulated but has not been finalized. I don't
13 believe RAIs have been issued yet. But I don't think
14 there's a new schedule.

15 JUDGE ARNOLD: My question arises if the
16 licensing decision came down in November, before an
17 application is due for the renewal of the operating
18 license, then its current status would reflect the
19 correct status at time of renewal. But if it's
20 delayed, then certainly you have to look at the
21 implications of plant license renewal.

22 MR. GENDELMAN: I understand, Your Honor.
23 And I don't believe a decision will be made this year.
24 That said, I don't think in the staff's view that's
25 necessarily sort of the break point in that we've been

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 given -- the reality now given the petition before the
2 Board that with regard at least to the financial
3 qualification and contention that based on not future
4 speculative could submit, could not submit actions.

5 But that based on the world as it exists
6 today that an admissible contention has been
7 proffered. I'm not sure if it's argued. But I
8 understand your concern.

9 JUDGE HAWKENS: I want to follow up. You
10 disagree with petitioner's argument in Contention A to
11 the extent it deals with Section 72.30?

12 MR. GENDELMAN: That's right.

13 JUDGE HAWKENS: The decommissioning. And
14 I want to make sure I understand why that is. If I
15 understand petitioner's argument, they point to
16 Appendix G-5 which states decommissioning estimate is
17 based on configuration of the ISFSI which in turn is
18 based on Units 1 and 2 operating until the end of
19 current licenses, 2024, 2025.

20 And it's your position that it can be
21 based on that because the ISFSI can accommodate 40
22 years of waste. And therefore, it will take in waste
23 till '24 and '25. And so that statement is accurate.
24 It doesn't matter whether they, in fact, are retired
25 in 2024 and 2025 or not?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MR. GENDELMAN: I would say it a little
2 more simply actually. I think that because of the way
3 the, as the language cited by the petitioner, the
4 72.22 discussion specifically points to the 2024
5 retirement and specifically identifies it as a funding
6 source, the decommissioning trust fund at that time
7 that the retirement sort of correlates to
8 demonstration of regulatory requirements in this
9 proceeding in a way that I think is more iterated in
10 that. So from a staff perspective, it's not clear to
11 me whether or not that assessment being based upon
12 2024 or 2025 retirement ultimately impacts the
13 sufficiency that administration and staff has not
14 completed a safety review. But specifically the 72.22
15 case where regulatory compliance is specifically tied
16 by the application to the 2024 retirement of the
17 facility, we believe that the petition is articulated.

18 JUDGE HAWKENS: I understand. Let me try
19 to simplify it even further. Would it be your view,
20 their reference to the retirement of the reactors in
21 the 2024, 2025 for purposes of 72.30 are simply not
22 material?

23 MR. GENDELMAN: I think that's right.
24 Given the structure of the regulation in a way that
25 portion of the application is structured. Again, it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 open in sufficiency.

2 JUDGE HAWKENS: No more questions for you.
3 Thank you.

4 MR. GENDELMAN: Thank you, Your Honor.

5 JUDGE HAWKENS: Ms. Curran, I'm going to
6 check with my time keeper. But I believe you have at
7 least 12 minutes left.

8 MS. CURRAN: Great.

9 JUDGE HAWKENS: She's nodding her head in
10 the affirmative. So you may proceed.

11 MS. CURRAN: Thank you. In response to
12 something Mr. Lighty said about how our claims only
13 relate to expansion. I just want to direct your
14 attention to a paragraph on the bottom of page 5 of
15 our hearing request. This is really following up on
16 what NRC staff counsel said that we -- our contention
17 is based on the fact that the license renewal
18 application depends on the assumption of a retirement
19 date of 2024 and 2025.

20 And we're expressing concern that there
21 will be a period of time now, potentially 20 years,
22 when the PG&E does not have access to the
23 decommissioning trust fund. So thank you very much.
24 We appreciate the staff's logical support for that
25 contention.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 And I also feel that the argument was
2 persuasive on 72.30. And that I agree. It was a good
3 argument and I didn't understand it before that we
4 haven't made an adequate claim about the
5 decommissioning fund because we did assume that the
6 capacity of the ISFSI could be increased.

7 And it's just not there in the
8 application. Now that's setting NEPA aside. I don't
9 want to imply at all that we are abandoning our NEPA
10 contention because NEPA requires some consideration of
11 the big picture. And obviously --

12 JUDGE HAWKENS: I'm going to put NEPA
13 aside for one second. I'm looking at 72.30. So the
14 NRC staff says it agrees with you that Contention A is
15 admissible to the extent it raises a challenge
16 regarding PG&E's compliance with Section 72.22, I
17 believe. You also made a claim in Contention A that
18 they're in compliance with Section 71.30 was
19 deficient. Are you no longer advancing that argument?

20 MS. CURRAN: That's right.

21 JUDGE HAWKENS: Okay.

22 MS. CURRAN: Yeah.

23 JUDGE HAWKENS: For purposes of Contention
24 A, you're simply saying that they're showing financial
25 qualification for operating of the ISFSI under 72.22

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 is deficient.

2 MS. CURRAN: Yeah.

3 JUDGE HAWKENS: Okay. Thank you.

4 MS. CURRAN: On the NEPA claim, I just
5 want to make it really clear that our focus is on the
6 statement of purpose and need which is a requirement
7 to have a reasonably accurate statement of purpose and
8 need for the proposed action. This is a supplemental
9 environmental assessment. We continue to think that
10 if this is supplementing the previous environmental
11 assessment, this environmental assessment needs to go
12 back and discuss what was the purpose and need back
13 then and then discuss what are -- NEPA requires a
14 discussion of reasonably foreseeable actions and
15 impacts.

16 It's reasonably foreseeable that PG&E will
17 seek to expand the capacity of this ISFSI. If they
18 get 20 more years of operation, that's a real good
19 question. What are they going to do with the spent
20 fuel they generate, especially since they answer to
21 the state.

22 And the state wants them to take the fuel
23 out of ports as expeditiously as possible. We think
24 all that needs to be addressed in the environmental
25 assessment. It's important.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 This is the whole purpose of NEPA, that
2 you don't take an action until you've looked at all
3 the relevant considerations. So you don't foreclose
4 anything because you had tunnel vision. Clearly under
5 the safety regulations, there is now tunnel vision.

6 But that's not true with respect to NEPA.
7 And I still think -- we still think that the
8 appropriate remedy here if you don't admit our
9 contentions is to hold this proceeding in abeyance
10 until we know what PG&E is going to do for this
11 license renewal application. Because this -- we are
12 not content to say PG&E may amend the ISFSI license --
13 seek to amend the ISFSI license some point down the
14 road.

15 This was our opportunity right now. This
16 license renewal is being sought for 20 years. And
17 it's a long time. This is our opportunity as members
18 of the public. We know that if you don't take the
19 opportunity when it comes up, it goes by and it may
20 not come up again.

21 We don't want to rely on some
22 discretionary decision by PG&E or the NRC to amend
23 this license. The issues before us now, we know now
24 that PG&E has invested resources into filing a new
25 license renewal application for this reactor -- set of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 reactors.

2 Those considerations, it's really
3 important for any environmental assessment that
4 addresses the impacts of the ISFSI to look at all
5 those relevant considerations. And if more time is
6 needed, there's no reason not to give it. That
7 concludes my rebuttal.

8 JUDGE TRIKOUROS: We all agree that if
9 there's an expansion of the ISFSI or request to expand
10 the ISFSI, it would be an entire relicensing
11 proceeding.

12 MS. CURRAN: If there is a request for
13 expansion, yes. But we don't know when that will
14 happen. We don't know what the relationship will be
15 between storage in the pools and ISFSI -- storage in
16 the ISFSI. Those are relevant environmental
17 considerations that PG&E could kick down the road for
18 a long time if it wanted to. And we think it's
19 important to address them now, at least in a
20 reasonably soon future, not way down the road.

21 JUDGE HAWKENS: Thank you.

22 MS. CURRAN: Thank you.

23 JUDGE HAWKENS: I want to thank the
24 parties, everyone's presentation and their written
25 pleadings today. Very helpful. And it's our intent

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 to issue a decision on petitioner's hearing request
2 within 35 days.

3 Before we adjourn, I'd like to acknowledge
4 the support the panel's IT expert Andrew Welkey, the
5 panel's administrative assistants, Sara Culler, Andrew
6 Kenney, and Sherera Deploydawn, panel's law clerks,
7 Noel Johnson, Allison Wood, and Emily Newman. And
8 lastly, we appreciate the services of the court
9 reporter, Lanelle Phillips. And Lanelle, will you
10 need to consult any attorneys after we adjourn to
11 ensure accuracy of your transcript?

12 COURT REPORTER: Yes, Mr. Bessette and Ms.
13 Curran.

14 JUDGE HAWKENS: All right. We'll just ask
15 counsel to remain until Ms. Phillips has had the
16 opportunity to talk to you. Judge Trikouros, do you
17 have anything to add before we adjourn?

18 JUDGE TRIKOUROS: I do not. Thank you.

19 JUDGE ARNOLD: No.

20 JUDGE HAWKENS: The case is submitted and
21 we are adjourned. Thank you very much.

22 (Whereupon, the above-entitled matter went
23 off the record at 2:38 p.m.)
24
25

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309