

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 1-71

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
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 our law clerk
23 Noel Johnson. And we also are receiving support
24 remotely from law clerk Allison Wood. The argument is
25 being held in the hearing room at the NRC Headquarters

NEAL R. GROSS

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

1 in Rockville, Maryland. And we welcome counsel and
2 the audience.

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

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

21 Before licensing board will grant a
22 hearing request, the petitioner must demonstrate
23 standing and must offer two admissible contentions.
24 The litigants agreed to those issues, and the
25 licensing board has read those briefs. Petitioner

NEAL R. GROSS

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

1 argues the hearing request should be granted because
2 it has standing and it offers two admissible
3 contentions.

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

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

16 JUDGE HAWKENS: Thank you, Ms. Curran.
17 PG&E?

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

25 JUDGE HAWKENS: Thank you. NRC staff?

NEAL R. GROSS

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

1 MR. GENDELMAN: Good afternoon. My name
2 is Adam Gendelman. I'm an attorney in Material Cycle
3 and Waste Division in the NRC Office of General
4 Counsel. With me is Catherine Kanatas and some NRC
5 technical staff are in the gallery, Mr. James Park,
6 Mr. Trent Wertz, and Dr. Christopher Markley.

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

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

20 (No audible response.)

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

24 JUDGE TRIKOUROS: No, thank you.

25 JUDGE ARNOLD: No.

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

2 MS. CURRAN: I'm ready.

3 JUDGE HAWKENS: -- desire to reserve any
4 time for rebuttal?

5 MS. CURRAN: Yes, I would like to reserve
6 ten minutes, please.

7 JUDGE HAWKENS: Very well. You may
8 proceed. Thank you.

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

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

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

NEAL R. GROSS

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

1 license renewal application which if PG&E submits it
2 by December of 2023 will allow it to get the
3 protection of the timely renewal rule.

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

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

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

24 Our concerns arise from the fact that PG&E
25 hasn't amended its application even though it's known

NEAL R. GROSS

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

1 since September that it was planning to do something
2 different or it might do something different. And
3 it's known since October when it requested the NRC to
4 issue the exemption that it wanted to submit a new
5 license renewal application. We have two contentions.

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

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

24 It affects where PG&E is going to get the
25 money for decommissioning. And in our view, the

NEAL R. GROSS

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

1 application should be accurate. It's required by the
2 NRC regulations which are there to protect the public,
3 there to protect the safety of the ISFSI operation.

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

8 JUDGE HAWKENS: May I interrupt? One --

9 MS. CURRAN: Of course.

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

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

NEAL R. GROSS

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

1 JUDGE HAWKENS: Seventeen miles, I
2 believe.

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

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

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

24 MS. CURRAN: Judge Arnold, I have a little
25 different interpretation of that precedent. I don't

NEAL R. GROSS

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

1 think that -- I don't think it's saying that previous
2 decisions have to be revisited. I think what it's
3 saying is you can't come in and say a few years ago
4 you found we had standing, and we're not going to put
5 in standing affidavits again.

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

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

24 MS. CURRAN: Yes.

25 JUDGE ARNOLD: And as the staff mentioned

NEAL R. GROSS

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

1 in their answer, petitioner must demonstrate that the
2 proposed action involves a significant source of
3 radioactivity producing an obvious potential for
4 offsite consequences. Now I personally don't see an
5 obvious potential. But you, I believe, do. Could you
6 tell me what that potential is and how it may occur?

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

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

22 MS. CURRAN: We presented scenarios of an
23 attack on a spent fuel storage facility. And we did
24 not get into exhaustive detail because it's a
25 sensitive security issue. But we demonstrated that it

NEAL R. GROSS

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

1 was credible and that it could result in a significant
2 off-site release.

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

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

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

23 JUDGE HAWKENS: I will note that the
24 Commission recently -- as you mentioned, the storage
25 case, the Holtec case found proximity plus standing as

NEAL R. GROSS

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

1 well. And although those weren't mentioned, do you
2 have any views on the applicability of your rationale
3 on those Commission decisions?

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

7 (Simultaneous speaking.)

8 JUDGE HAWKENS: Twenty-one hundred metric
9 tons though is a lot of radioactive waste.

10 MS. CURRAN: Yes.

11 JUDGE HAWKENS: Do you have any more on
12 standing?

13 JUDGE ARNOLD: No.

14 JUDGE HAWKENS: Do you have any more on
15 standing?

16 JUDGE TRIKOUROS: No.

17 JUDGE HAWKENS: You may proceed to the
18 contention of admissibility today.

19 MS. CURRAN: Okay. I'm just trying to
20 remember where I was.

21 JUDGE HAWKENS: You were on Contention A.

22 MS. CURRAN: Yeah.

23 JUDGE HAWKENS: Operation and
24 decommissioning.

25 MS. CURRAN: Oh, yeah. So there's two

NEAL R. GROSS

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

1 reasons why this is not just an academic exercise.
2 First of all, this is an ANSI -- these are ANSI
3 regulations. They were promulgated for a reason, to
4 provide reasonable assurance that in fact highly
5 radioactive spent fuel can be cared for adequately for
6 a long period of time in which we're going to have it
7 at reactive sites.

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

15 The state, the ratepayers of the state,
16 the taxpayers of the state deserve to know where is
17 the money coming from. Are we paying for it? Who's
18 paying for it?

19 So those are the, I think, important
20 reasons why this information is important to provide.
21 And as the staff said in responding to our contention,
22 the operation of the plant is related to the ISFSI.
23 The ISFSI doesn't -- you might have been able to say
24 that in March of 2022, there's only one purpose for
25 this ISFSI going forward, to store spent fuel. But as

NEAL R. GROSS

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

1 long as operation is going on, there's a relationship
2 there that needs to be addressed.

3 JUDGE HAWKENS: PG&E argues that don't
4 worry about that because the assumption we're using
5 provides a more conservative financial scenario. And
6 so you and the public should be satisfied with that.
7 How would you respond?

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

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

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

24 So it's not -- there's many things that
25 are uncertain here. And frankly if it were up to me,

NEAL R. GROSS

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

1 I wouldn't be standing here today arguing about this.
2 I wish that PG&E had simply amended its application or
3 asked the Board hold off until we know what we're
4 doing because it doesn't make any sense to rely on an
5 application that's so clearly out of date. And maybe
6 PG&E doesn't know what it's doing quite yet. But we
7 could all wait until that happens instead of kind of
8 arguing in a hypothetical sense what might happen in
9 the future.

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

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

22 So the status quo is kind of blurry in
23 terms of if you apply the -- if you go through the
24 process of throwing us out now, then when PG&E files
25 a new reactor license application, I honestly don't

NEAL R. GROSS

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

1 see where we have an opportunity to litigate how that
2 affects the ISFSI because you will have approved the
3 license. So we're here. We're here because this was
4 the opportunity that came up. And we know that we get
5 60 days to ask for a hearing or else it's gone.

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

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

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

NEAL R. GROSS

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

1 They could address it in the alternative.
2 They could say, well, if we -- maybe they'll have to
3 shut down the plant. Maybe they won't. Maybe the PUC
4 will say we're not giving you this five years that the
5 legislature wants us to give you.

6 They could address that in the
7 alternative. They could say if we shut down, this is
8 what we'll do. If we keep operating, this is what
9 we'll do.

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

18 MS. JOHNSON: Ten minutes.

19 MS. CURRAN: Ten minutes? Okay. The
20 environmental contention states that PG&E's
21 environmental report is inadequate to satisfy the
22 National Environmental Policy Act because the
23 statement of purpose and need relate only to the
24 storage of spent fuel that will be generated before
25 the expiration dates of 2024 and 2025 in the current

NEAL R. GROSS

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

1 license until the repository becomes available. And
2 I can't remember, one of you just pointed out that
3 this environmental report is called a supplemental
4 environmental report. This is a supplement to the
5 original environmental report that was prepared in
6 2001.

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

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

23 So PG&E looked at the whole picture of
24 operation and spent fuel storage and chose the ISFSI.
25 They chose to build an ISFSI and seek a license. They

NEAL R. GROSS

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

1 chose to build it big enough to hold all of the spent
2 fuel that they would have.

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

11 JUDGE HAWKENS: Can you explain why
12 California statutes and policy are within the scope of
13 this proceeding?

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

19 JUDGE HAWKENS: I apologize for
20 interrupting. But what regulation are you basing that
21 on that requires them to address state statutes and
22 policy?

23 MS. CURRAN: It's simply because in effect
24 PG&E is saying that they're standing in the shoes of
25 the state and making these environmental decisions.

NEAL R. GROSS

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

1 I don't have a regulation for that. This is a very
2 unusual situation. I've never seen anything like it
3 before.

4 And NEPA is a statute that requires
5 reasonable decisionmaking. You look at the
6 circumstances and decide what are reasonable array of
7 alternatives to be looked at. What's a reasonable
8 impact analysis?

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

23 JUDGE HAWKENS: They argue that they have
24 60 years of storage combined with dry storage and wet
25 storage. That's sufficient for the 20 years of

NEAL R. GROSS

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

1 additional operating time for the reactors. And in
2 light of that, their purpose and needs statement is
3 adequate and what they consider is adequate. What's
4 wrong with that argument?

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

24 So if you're a member of the public and
25 you're reading this document, you don't have a clear

NEAL R. GROSS

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

1 understanding of what exactly is going on. You don't
2 have a clear understanding of the fact that if PG&E
3 operates even five more years, it may not have enough
4 room in the ISFSI for all the spent fuel that will be
5 generated. And thus for however many years until we
6 have a repository, fuel could be remaining in the
7 pool. Some amount of fuel could be remaining in the
8 pool. The public is entitled to disclosure of all
9 this so that state lawmakers, policymakers, members of
10 the public can debate, is this what we want?

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

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

23 MS. CURRAN: Thank you.

24 JUDGE HAWKENS: Mr. Lighty, you may
25 proceed, sir. I'd ask as well sometime if you could

NEAL R. GROSS

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

1 incorporate into your argument, although you did not
2 oppose standing, just inform us why you did not oppose
3 standing.

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

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

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

NEAL R. GROSS

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

1 So we didn't conduct an analysis of
2 standing. But to go to Judge Arnold's point about the
3 Bell Bend proceeding, we certainly agree that a fresh
4 standing demonstration must be made in every
5 proceeding. You cannot rely on the factual predicate
6 from a prior ruling. And that must be demonstrated
7 fresh in each proceeding.

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

17 JUDGE HAWKENS: To be clear, you do not
18 oppose standing?

19 MR. LIGHTY: Correct, Your Honor.

20 JUDGE ARNOLD: And one other thing, in not
21 opposing standing, are you agreeing that your ISFSI
22 poses an obvious potential for off-site consequences?

23 MR. LIGHTY: We do not necessarily agree
24 with that assertion.

25 JUDGE HAWKENS: Although you haven't

NEAL R. GROSS

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

1 opposed it because you haven't opposed standing?

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

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

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

25 And that speculative application certainly

NEAL R. GROSS

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

1 has not been approved yet and is noted in our brief at
2 Footnote 46. The California Public Utilities
3 Commission or CPUC also has not yet authorized that
4 continued operation. So there are several gates that
5 must be passed through before continued operation
6 could become the legal reality.

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

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

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

NEAL R. GROSS

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

1 regulation in Part 72 that requires that update to be
2 made under these circumstances.

3 JUDGE HAWKENS: And can you answer the
4 question then when are you required to amend it, the
5 license renewal application?

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

11 JUDGE HAWKENS: But not when the licensed
12 reactor renewal application is filed?

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

19 So at the end of the day, the application
20 was complete and accurate when filed, reflects the
21 current legal reality and nothing more is required.
22 The second overarching matter, we want to reiterate
23 the speculative nature of petitioner's ISFSI expansion
24 claims. The petitioner suggests that if the reactor
25 operating licenses are renewed and if the units

NEAL R. GROSS

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

1 continue to operate, than PG&E will be required to
2 expand this specific licensed ISFSI to accommodate 60
3 years' worth of spent fuel.

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

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

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

20 MR. LIGHTY: I believe so, Your Honor. I
21 believe it does contemplate the entire inventory of 40
22 years of operation including final core.

23 JUDGE TRIKOUROS: Okay.

24 MR. LIGHTY: But even assuming for the
25 sake of argument that additional dry storage is

NEAL R. GROSS

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

1 required at some point in the future, for example,
2 after a permanent shutdown of the reactors to support
3 their decommissioning, PG&E could elect to develop
4 that capacity.

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

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

23 As we understand petitioner's reply at
24 pages 3 and 4, it has dropped its GDC claim. So our
25 discussion will focus only on the first two arguments,

NEAL R. GROSS

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

1 both of which are financial in nature. And here, we
2 ask the Board to take particular note, and this is
3 important.

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

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

NEAL R. GROSS

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

1 But the petitioner doesn't identify any
2 reason that circumstance in and of itself constitutes
3 a material defect in the application. Materiality
4 matters, Your Honors. In fact, it's probably the most
5 important consideration in adjudicating Contention A.
6 It is the fundamental premise of Section 2.309F1 XIII
7 6 which places an affirmative burden on the
8 petitioners to, quote, show that a genuine dispute
9 exists with the applicant slash licensee on a material
10 issue of law or fact.

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

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

23 JUDGE HAWKENS: Okay.

24 MR. LIGHTY: -- PG&E does intend to seek
25 renewal. Again, there are several hurdles, several

NEAL R. GROSS

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

1 gates, several rules.

2 JUDGE HAWKENS: Including whether it will
3 be approved or not. But in your license renewal
4 application which was entirely correct at the time,
5 you indicated you were going to shut down in 2024,
6 2025 and made representations regarding operational --
7 financial operational ability and decommissioning
8 financial ability based on that assumption. And that
9 assumption hyper-technically is still correct.

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

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

25 MR. LIGHTY: Certainly. I have a couple

NEAL R. GROSS

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

1 of thoughts on that. The first is we're here to
2 discuss the compliance status of the LRA. It was
3 complete and accurate at the time it was filed.
4 There's no dispute about that. The question is
5 whether there is a duty of the applicant to then
6 update the application based on --

7 JUDGE HAWKENS: Materially changed
8 circumstances.

9 MR. LIGHTY: Yeah, what Petitioners are
10 arguing are materially changed circumstances. And I
11 think that when you compare this, for example, to a
12 Part 54 license renewal proceeding for a reactor,
13 there is a regulation that requires an annual update
14 to the application to contain certain information.
15 That does not exist in Part 72.

16 The standard that is in Part 72 is simply
17 the completeness and accuracy requirement. That
18 requires documents submitted to the NRC -- and I
19 believe the regulation is 10 CFR 72.11 -- to be
20 complete and accurate in all material respects.

21 But Subpart B of that regulation discusses
22 the duty to update information based on the discovery
23 of a significant safety issue. What we haven't seen
24 is Petitioners acknowledge or address that standard,
25 or explain or offer any theory as to why it's

NEAL R. GROSS

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

1 satisfied here based on its claims in the petition.
2 As we've discussed, these ISFSI expansion claims are
3 factually and legally incorrect.

4 And all you're left with is a statement
5 that, on the face of the application, doesn't
6 acknowledge the possibility of reactor license
7 renewal. But there's no further discussion why that
8 matters outside of these expansion-related claims that
9 Petitioners were raising.

10 The Commission has long used the word
11 'flyspecking' to describe minor and insignificant nits
12 regarding environmental review that do not warrant
13 hearing because they have no material impact on the
14 proceeding. And, in general, flyspecking is just
15 another way of describing the absence of materiality.
16 Materiality applies to both environmental and safety
17 contentions.

18 JUDGE HAWKENS: On the safety contention,
19 though, in your application, you say, starting
20 November 24, the source of funds to operate and
21 decommission the ISFSI will include the
22 decommissioning trust fund. Accurate once submitted,
23 accurate now. But when the license renewal
24 application for the reactors is submitted and
25 approved, it will no longer be accurate, correct?

NEAL R. GROSS

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

1 MR. LIGHTY: Correct. Whether it's
2 material is a separate question. And at what point it
3 becomes material I think is another unresolved
4 question. In our view, it is not material at this
5 time. The compliance status of the application is
6 that it was complete and accurate when filed. And the
7 duty to update in 72.11(b) has not been triggered.

8 Because, at the end of the day, stripping
9 away the Petitioners' ISFSI expansion claims, there's
10 nothing in the petition, or that we've heard in
11 arguments today, that would, quote, change the outcome
12 of the proceeding.

13 That's the fundamental requirement for
14 materiality. In fact, all of the participants seem to
15 agree that there are no material concerns about PG&E's
16 financial qualifications to operate the existing
17 ISFSI. Staff's answer at Footnote 61 disavows any,
18 quote, substantive concerns, end quote.

19 And Petitioner doesn't allege any material
20 concerns that are unrelated to ISFSI expansion, which
21 isn't proposed here and isn't part of this licensing
22 action.

23 Now, we note that Staff takes the position
24 that proposed Contention A is admissible because, as
25 noted in its brief at page 11, quote, operations at

NEAL R. GROSS

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

1 the DCMPP are connected to operations at the Diablo
2 Canyon ISFSI by the application. And the application
3 does not appear to address a potential change in the
4 planned retirement date of the DCNPP, end quote.

5 But that's not the end of the inquiry. As
6 the Staff notes a few pages later, in the last
7 sentence of the partial paragraph at the top of page
8 14, Staff says, quote, SLOMFP has not demonstrated how
9 such potential operations render the application
10 insufficient, end quote. We agree. We completely
11 agree. That is absolutely correct. Petitioner has
12 not alleged, much less demonstrated, any material
13 deficiency in the application that is unrelated to
14 ISFSI expansion. And that's what renders proposed
15 Contention A inadmissible, because materiality
16 matters.

17 Taking a step back for a moment. One
18 overarching purpose of the contention of admissibility
19 of criteria is to limit evidentiary hearings to
20 matters where inquiry in depth is appropriate. But
21 that's not the case here.

22 It is not necessary to convene a formal
23 hearing at significant taxpayer expense, at
24 significant ratepayer expense, to determine whether
25 PG&E is financially qualified to continue operating

NEAL R. GROSS

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

1 the ISFSI. We already know the answer to that
2 question. As a matter of law, PG&E is presumed
3 qualified.

4 In fact, that's exactly what the
5 Commission said, in 2003, during the initial licensing
6 of the ISFSI, at CLI-03-12, which is cited in our
7 brief. The Petitioners here do not even allege the
8 existence of any information that would rebut that
9 presumption of law. So, to put it in plain terms, a
10 hearing under these circumstances would be a textbook
11 example of the type of wasteful and unnecessary
12 hearing that the admissibility rules were purposefully
13 designed to avoid.

14 Think of it this way. Even if the
15 application contained a token acknowledgment of a
16 possibility of reactor license renewal, it wouldn't
17 make one bit of difference in the outcome of this
18 proceeding because PG&E is financially qualified to
19 continue operating the ISFSI regardless of whether the
20 reactor licenses are renewed. And no participant in
21 this proceeding has claimed otherwise.

22 So, onto the separate issue of
23 decommissioning funding. Petitioner also fails to
24 identify a material defect in the LRA. As I noted
25 earlier, the Petitioners' principle criticism here is

NEAL R. GROSS

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

1 that the application doesn't evaluate the cost of
2 decommissioning an ISFSI with 60 years of spent fuel.
3 But this license doesn't authorize 60 years of spent
4 fuel to be stored there, so that's not a defect in the
5 application at all, much less a material one.

6 As to decommissioning the as-licensed
7 facility, with 40 years of spent fuel, the
8 decommissioning funding projections in the application
9 are conservative. And Petitioner makes no
10 demonstration that anything further is required.

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

16 In contrast, under a scenario where the
17 reactors continue to operate, that fund, instead of
18 decreasing in value, would continue to grow. NRC
19 regulations at 10 CFR Section 50.75 Echo romanette (i)
20 permit a licensee to assume a two percent annual real
21 rate of return on decommissioning funds. So, in
22 simple terms, deferred withdrawals equal additional
23 growth. That's just a common-sense observation. It
24 certainly doesn't require an evidentiary hearing, and
25 particularly where Petitioner has not identified a

NEAL R. GROSS

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

1 material reason why anything beyond that conservative
2 analysis in the application is required, or even
3 meaningful in this proceeding.

4 At the end of the day, Petitioner's ISFSI
5 expansion-related claims are factually and legally
6 baseless. And Petitioner otherwise hasn't identified
7 any reason that the financial projections in the
8 application, as currently written to accurately
9 reflect the legal status quo, are materially deficient
10 in any way. Again, materiality matters here, Your
11 Honors.

12 Shifting gears to proposed Contention B,
13 Petitioner attacks the purpose and needs statement in
14 the ER supplement because it does not mention possible
15 renewal of the reactor operating licenses. But that
16 line of argument also misses the mark. The purpose
17 and needs statement in the ER supplement does not
18 mention a need to store 60 years' worth of spent fuel
19 because that is not, in fact, the purpose of this
20 action.

21 Petitioner identifies no unmet legal
22 requirement for the purpose and needs statement to
23 contemplate anything more. Quite simply, Petitioner
24 has not identified any deficiency in the purpose and
25 needs statement in the LRA, and the contention should

NEAL R. GROSS

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

1 be rejected for that reason alone.

2 Now, you know, we understand that there
3 are a couple of other corollary arguments in
4 Contention B that I'd like to briefly mention
5 regarding alternatives and cumulative impacts. As
6 noted in our brief, Contention B alleges a defect in
7 the purpose and needs statement, and then claims that
8 some aspect of the alternatives or cumulative impacts
9 discussion supplies a supporting basis for that
10 contention.

11 But, as both PG&E and the NRC Staff have
12 explained in our respective briefs, there is no defect
13 in the purpose and needs statement. And so, without
14 that defect in the first instance, those assertions
15 about alternatives and cumulative impacts provide no
16 support for the overarching claim.

17 But, going one step further, just for the
18 sake of argument, even if we considered those
19 assertions as separate standalone claims or
20 contentions, they would still be inadmissible for
21 multiple reasons.

22 For example, Petitioner offers conclusory
23 assertions that the alternatives and cumulative
24 impacts discussions are deficient, but it doesn't
25 identify a single reasonable alternative that hasn't

NEAL R. GROSS

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

1 been considered, or a single cumulative impact that
2 hasn't been considered.

3 As another example, given that this is a
4 Part 72 license renewal proceeding, the ER supplement
5 is only required to address, quote, significant
6 environmental changes, end quote, pursuant to 10 CFR
7 Part 72. So, Petitioner doesn't acknowledge that
8 standard, and it certainly doesn't offer any
9 explanation as to how it's met or satisfied it here.

10

11 So, in sum, these arguments do not support
12 a challenge to the purpose and needs statement. And
13 even if viewed as standalone contentions, these
14 corollary claims would be inadmissible in their own
15 light. And, for these and many other reasons stated
16 in our brief, we believe that neither Contention A nor
17 Contention B are admissible and that the Board should
18 dismiss the petition accordingly.

19 I did want to address just a couple of
20 comments that we heard from Petitioner's counsel a few
21 minutes ago. In the discussion that we heard, there
22 was a suggestion that the application, at Appendix G-
23 4, discussed the decommissioning timeline being based
24 on a prompt ISFSI decommissioning scenario.

25 And that is correct. But what the Board

NEAL R. GROSS

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

1 should understand here is that the decommissioning
2 timeline for the ISFSI is not affected by plant
3 operation. The ISFSI will store the fuel from the
4 initial 40 years of operation and no more, absent some
5 other future licensing action, but the timing for the
6 removal of that fuel doesn't depend on whether the
7 reactor continues to operate. That depends on DOE's
8 performance, or the availability of a consolidated
9 interim storage facility, or some other outside action
10 that is not affected by plant license renewal. So the
11 decommissioning timeline for the ISFSI isn't affected
12 by the plant license renewal.

13 I also wanted to respond to counsel's
14 claim that Petitioners didn't know how the ISFSI
15 operating costs would be funded if the plant licenses
16 are renewed. As noted in our brief, at Page 14,
17 Footnote 53, the SB 846 statute passed by the
18 California legislature and signed by the California
19 governor says that those operating costs will be
20 recovered through the normal rate-making process.

21 And, finally, I'd like to respond to
22 counsel's assertion that PG&E is a contractor to the
23 state. PG&E has not held itself out as acting on
24 behalf of the State of California in this ISFSI
25 license renewal proceeding, period. So I just wanted

NEAL R. GROSS

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

1 to clarify that for the Board.

2 And I'm happy to take any other questions
3 Your Honors may have.

4 JUDGE TRIKOUROS: I just want to
5 understand the picture at the end of 60 years. We're
6 looking at an ISFSI that has 40 years of fuel in it,
7 full. We're looking at a spent fuel pool that has 20
8 years of fuel in it, apparently with enough empty
9 space to also include a full core offload. Otherwise,
10 I suppose you would not be able to make it to that
11 point prior. You'd have to stop in prior years or do
12 something at the end of that, when you ran out of that
13 ability to offload.

14 The decommissioning activities, as I see
15 them, would not be able to begin at that point because
16 the -- well, I'll phrase it as a question. Could you
17 begin decommissioning activities with the fuel in that
18 state that I just mentioned, 20 years in the spent
19 fuel pool and 40 years in the ISFSI?

20 MR. LIGHTY: Are you talking about, could
21 decommissioning begin on the plant or --

22 JUDGE TRIKOUROS: On the plant. I'm
23 talking about on the plant.

24 (Simultaneous speaking.)

25 MR. LIGHTY: I think that partial

NEAL R. GROSS

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

1 decommissioning activities could begin. Obviously,
2 the plant itself could not be fully decommissioned
3 with spent fuel still in the pool.

4 JUDGE TRIKOUROS: Okay. So there would be
5 a requirement to expand the storage requirements for
6 spent fuel at that point, but it would not necessarily
7 involve this particular ISFSI. Is that correct?

8 MR. LIGHTY: Correct. If a policy
9 decision or a mandate of a state said you must fully
10 decommission the reactor, take the fuel out of the
11 spent fuel pool, and assuming that there was no
12 consolidated interim storage facility available, that
13 DOE has not completed a permanent repository at the
14 end of the 40-year license renewal period of the
15 ISFSI, then potentially there would be a need to have
16 other dry storage onsite.

17 But as you mentioned, Judge Trikouros, it
18 could either be through a general license, a separate
19 specific license, an amendment to this specific
20 license. But none of that is being proposed as part
21 of this license renewal.

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

25 MR. LIGHTY: True. We have seen other

NEAL R. GROSS

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

1 precedent where fuel goes from one site to another
2 site, even though that site is not necessarily a
3 consolidated interim storage facility but potentially
4 an aggregator site.

5 JUDGE TRIKOUROS: All right. Thank you.

6 JUDGE HAWKENS: Thank you.

7 MR. LIGHTY: Thank you, Your Honors.

8 (Pause.)

9 JUDGE HAWKENS: You may proceed, sir.
10 Thank you.

11 MR. GENDELMAN: Thank you. Good
12 afternoon. May it please the Board. My name is Adam
13 Gendelman from the NRC Staff. Thank you for the
14 opportunity to discuss the Staff's position on San
15 Luis Obispo Mothers for Peace's petition. I plan to
16 discuss Staff's views on the principle issues in
17 dispute -- especially Contention A, as each party has
18 a different view -- address the important points for
19 you today, and I'd be happy to answer the Board's
20 questions.

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

23 MR. GENDELMAN: Happily, Your Honor. I
24 think you and Judge Arnold captured the Staff's
25 position exactly with regard to the discussion of the

NEAL R. GROSS

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

1 proximity-plus standard.

2 In the Staff's view, as you noted, Judge
3 Hawkens, this is an application for the renewal of a
4 facility to store 2,100 metric tons of spent fuel. And
5 in the Staff's view, that action meets that standard.
6 To be clear, that's not a reflection on the actual
7 probability of any event that could cause such
8 consequences. But, especially given that this is a
9 license renewal proceeding versus, for example, an
10 amendment on some more auxiliary matter, we think
11 standing has been demonstrated in that regard.

12 JUDGE HAWKENS: And based on the legal
13 rationale and the Licensing Board's 2002 standing
14 decision in the Diablo Canyon case, you still find
15 that to be a reasonable analysis?

16 MR. GENDELMAN: It's informative. With
17 regard to the previous discussion about a fresh
18 assertion of standing, I think we agree with
19 Petitioner that they have made that fresh assertion
20 here. I think it's appropriate to note past similar
21 circumstances and how they were disposed of. But the
22 petition doesn't say, oh, well, we were granted
23 standing in the past, so we have standing now. It
24 makes that fresh assertion, as pointed out both in the
25 petition and in the updates.

NEAL R. GROSS

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

1 JUDGE ARNOLD: Where in the petition does
2 it even assert that there's a potential for offsite
3 consequences?

4 MR. GENDELMAN: So, in our reading of the
5 affidavits, the affiants note they're concerns about
6 continued operation of the ISFSI jeopardizing their
7 health and safety and the quality of the environment.
8 And so that's the language that we think it
9 demonstrates those concerns.

10 JUDGE ARNOLD: That demonstrates that they
11 have a concern, but does it demonstrate that there's
12 an obvious potential for damage?

13 MR. GENDELMAN: No, I think, as I said,
14 the Staff's view is we're not contesting standing, in
15 the light of the fact that this is a major license
16 proceeding, a proceeding whose disposition affects
17 whether or not this facility will continue to operate,
18 coupled with the amount of radioactive material to be
19 stored, and the potential, however small, of what
20 dispersion of that material could bring about.

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

25 MR. GENDELMAN: I'm not sure I would

NEAL R. GROSS

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

1 characterize it that way, but Staff's view is that
2 standing has been adequately pled. I understand the
3 Board's questions with regard to some of those square
4 corners. But I think that, consistent with both
5 previous practice, it's inferential, not binding
6 authority, that standing has been demonstrated.

7 JUDGE TRIKOUROS: Just one question along
8 those lines. Does the fact that this plant is in the
9 Ninth Circuit and that terrorist activities are soon
10 to occur in that circuit, would you say that the
11 licensing basis of this plant, Diablo Canyon, includes
12 the potential for terrorist activity associated with
13 the spent fuel pool, the ISFSI?

14 MR. GENDELMAN: So, I believe I understand
15 your question. And I would certainly say that ISFSIs
16 in the Ninth Circuit, and all others, are
17 appropriately required to mitigate against both safety
18 and security risk, consistent with NRC requirements.
19 With regard to standing, I don't think it is
20 aggravated or mitigated in any particular circuit.
21 But, as I said, the Staff's read of the proximity-plus
22 standard is about a potential for consequences,
23 distinct from an actual probability.

24 So, I'll unpack that for a second. For
25 example, if this was a proposal to add a single cask

NEAL R. GROSS

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

1 -- for example, to go from 2,100 tons to 2,150 metric
2 tons -- I think the analysis might be different
3 because at issue is the condition of a single cask
4 versus the renewal of the entire facility.

5 JUDGE TRIKOUROS: Thank you.

6 MR. GENDELMAN: So, to begin, this
7 proceeding, of course, concerns PG&E's application to
8 renew its ISFSI license under Part 72. It's not a
9 proceeding for the renewal of -- a reactor license
10 renewal, nor is it a proceeding, as the Applicant
11 noted several times, to otherwise amend PG&E's Part 72
12 license to resign the facility or change the amount of
13 material that can be stored there.

14 In one case identified in the petition,
15 the ISFSI renewal application creates a linkage
16 between the retirement of the Diablo Canyon reactors
17 and satisfaction of financial qualification
18 requirements in 10 CFR 72.22(e).

19 In that one case, the developments
20 associated with potential reactor renewal are
21 relevant, and, indeed, in the staff's view, the basis
22 for an admissible contention, but relevant only
23 because they bear factually on the satisfaction of
24 regulatory criteria in this proceeding. This
25 framework unknots the central question, we think,

NEAL R. GROSS

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

1 presented by both contentions, which is: with respect
2 to this Part 72 proceeding, what is the significance,
3 if any, of the recently developments associated with
4 the potential for continued operations at the Diablo
5 Canyon reactors?

6 We think the answer indicated is that
7 they're relevant only insofar as they bear upon the
8 ISFSI license renewal application and the Applicant's
9 satisfaction of requirements, again, in this
10 proceeding.

11 This framework also shows why the
12 petition's other arguments in Contention A and
13 Contention B do not succeed, because the other cited
14 portions of the ISFSI renewal application do not rely
15 on the timing of the retirement of the Diablo Canyon
16 reactors as the basis for meeting regulatory
17 requirements in Part 72. And, therefore, these recent
18 events concerning that potential for continued
19 operations are not similarly relevant to this
20 application.

21 And so, with respect to Contention A, as
22 noted in its answer, the Staff views the portion of
23 Contention A concerning financial qualification in
24 72.22(e) to be admissible.

25 JUDGE HAWKENS: And that's all that's

NEAL R. GROSS

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

1 before us now, since Petitioner's filed a reply.
2 Isn't that correct? And let me ask it another way.
3 I understand, based on Petitioner's reply, I think I
4 would understand that you agree now that their
5 contention should be admissible in full? And if not,
6 could you tell me why not?

7 MR. GENDELMAN: I'm not sure that I
8 understood the reply to drop the 72.30 financial
9 assurance argument, as distinct from 72.22 financial
10 qualifications argument. But otherwise, yes.

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

13 MR. GENDELMAN: So, in sum, 72.22(e)
14 requires an applicant to demonstrate its financial
15 qualifications, and that they either have the
16 necessary funds or have reasonable assurance of
17 obtaining them to cover operating costs for the
18 planned life of the facility -- in this case, a 40-
19 year renewal for the ISFSI, not to be confused with
20 the other renewal -- as well as the cost of
21 decommissioning the ISFSI facility.

22 The application provides that this funding
23 will derive from the rate-making process until
24 November 2024, at which time funding will include the
25 reactor decommissioning trust fund. The petition

NEAL R. GROSS

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

1 contrasts these representations with the recent
2 developments concerning the potential for continued
3 operations of the Diablo Canyon reactors: the passage
4 of California law S.B. 846, the exemption request from
5 the applicant, the Gerfen letter where the Applicant
6 states its intent, as we heard today, to take the
7 necessary regulatory steps to operate Diablo Canyon
8 reactors beyond the dates in their current license.
9 The petition concludes that, therefore, the Applicant
10 has not demonstrated financial qualifications, in
11 light of these circumstances.

12 First, the Staff does not have a position
13 on the sufficiency of this or any provision in the
14 application, as the Staff has not completed its
15 technical or environmental reviews, but does find this
16 portion of Contention A to be admissible, as it meets
17 the individual requirements of 2.309(f)(i). And, as
18 discussed, the Staff believes that the Petitioner has
19 demonstrated standing.

20 The Applicant, in its answer and today,
21 counters on what I would call two principal grounds.
22 First, the application is accurate. The licenses
23 right now do say that the reactor is -- that they are
24 to retire in 2024 and 2025, and that it would be
25 rather speculative on the part of PG&E to assume

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 future regulatory actions: that they submit a renewal
2 license application, that the NRC would approve it,
3 and then to now, in the present, rely upon all that in
4 its application.

5 Further, as the Applicant notes, PG&E has
6 not actually submitted even a renewal application, and
7 has not even been timely renewed, notwithstanding the
8 timely renewal exemption that the Applicant requested
9 and the Staff issued this past March.

10 In response, I would say that the
11 Applicant is correct as to the current -- I think, as
12 you fashioned it; I liked it -- the legal regulatory
13 posture, sort of the legal reality, and,
14 understandably, stresses the potential, not certainty,
15 for the extension of reactor operating life. But I
16 think the Staff and Applicant differ on the
17 significance of these recent factual developments, in
18 light of the language in the application;
19 specifically, the linkage in the application between
20 the retirement of Unit 1 and the Applicant's
21 satisfaction of 72.22(b).

22 The potential extension of the Diablo
23 Canyon reactor licenses is relevant here because it
24 bears upon the availability of funding sources
25 identified in the application, in the ISFSI renewal

NEAL R. GROSS

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

1 application.

2 Specifically, if the Applicant's recent
3 statements about its intent to continue Diablo Canyon
4 reactor operations is accurate, it is not clear that
5 decommissioning trust funds would be available to
6 support ISFSI operations in 2024.

7 Thus, in the Staff's view, this
8 disagreement between the Petitioner and the Applicant
9 over the significance of these events for the
10 Applicant's demonstration of compliance with 72.22(b)
11 is indeed a material dispute, and illustrates the
12 satisfaction of 2.309(f)(i)(6) regarding that
13 requirement. And so --

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

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

NEAL R. GROSS

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

1 SB 846 itself has some funding provisions. And that,
2 sort of in any scenario, given the cited Commission
3 case law about rate-making authority being sort of a
4 presumptive demonstration of reasonable assurance,
5 that, in any scenario, adequate funding would be
6 available, so the contention should not be omitted.

7 I think, with regard to all of these
8 arguments, the Staff has a short, if not pithy,
9 answer, in that I think we agree with the Petitioner
10 in their reply, that all these arguments may very well
11 be right, but they all get to the merits. Does the
12 Applicant satisfy 72.22(e), where the question here
13 is, has the petition satisfied the contention and
14 admissibility requirements?

15 It may very well be that the resolution of
16 this contention is -- and the Staff, once it completes
17 its safety review, may even agree -- that the
18 application, as it exists, now meets NRC requirements.
19 But that's a merits question. And at this point, I
20 don't think that begrudges the submission of an
21 admissible contention.

22 And I would sort of point again to the --
23 I think it's the Private Fuel Storage case we note in
24 our brief, that while the showing that a petitioner
25 needs to make at this phase is not insubstantial, a

NEAL R. GROSS

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

1 petitioner doesn't have to prove their contention at
2 the contention and admissibility phase.

3 As to the other claims of Contention A
4 concerning a potential redesign of the ISFSI or the
5 need for increased capacity based on extended
6 operations, as well as financial assurance in 72.30,
7 the Staff views that these claims each fail for the
8 reason that 72.22(e) claim succeeds, because in this
9 cases the claims in the petition are not similarly
10 grounded in language in the application, which, in
11 turn, does not rely on a specific nuclear power plant
12 retirement date to demonstrate compliance with the
13 ISFSI license renewal requirements. Indeed, as the
14 Applicant notes, in many cases, the petition's
15 arguments are speculative, contrary to the specific
16 representations in the application. For example,
17 there is no request for an increase in the amount of
18 fuel to be stored at the ISFSI.

19 Similarly, with regard to Contention B,
20 arguing that the Applicant's environmental report is
21 similarly problematic because of its dependence on
22 2024 and 2025 Diablo Canyon reactor requirements, the
23 Staff views those claims as simply, again, not borne
24 out but language 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.

5 With respect to the alternatives analysis,
6 the petition does not seem to countenance the specific
7 discussion in the application, and, from the Staff's
8 view, argues that the environmental report lacks an
9 analysis that it appears to contain. With regard to
10 cumulative impacts, the petition does not identify any
11 impacts that are not considered cumulatively, and
12 while there's not a distinct section in the
13 environmental report titled "Cumulative Impacts,"
14 because the only direct impacts identified are public
15 and occupational dose, impacts that are evaluated
16 cumulatively, again, I think we have a contention that
17 alleges an omission that we believe is present.

18 And so, in summary, while the Staff has
19 not completed its technical or environmental reviews,
20 the petition proposes an admissible contention with
21 respect to financial qualifications under 72.22(e),
22 but the remainder of Contention A and Contention B are
23 inadmissible. They contain speculation about the
24 future, and not this application and its satisfaction
25 of the applicable NRC requirements in this Part 72

NEAL R. GROSS

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

1 proceeding.

2 And, with that, I'd be happy to answer any
3 additional questions.

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

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

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

24 MR. GENDELMAN: I understand, Your Honor.
25 And I don't believe a decision will be made this year.

NEAL R. GROSS

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

1 That said, I don't think, in the Staff's view, that
2 that's necessarily sort of the break point, in that,
3 we think, given the reality now, given the petition
4 before the Board, that with regard at least to the
5 financial qualification contention, that based on not
6 future, speculative "could submit/could not submit"
7 actions, but that, based on the world as it exists
8 today, that an admissible contention has been
9 proffered. So I'm not sure it's our view that that
10 would -- but I understand your concern.

11 JUDGE HAWKENS: I want to follow up on
12 your -- you disagree with Petitioner's argument at
13 Contention A, to the extent it deals with Section
14 72.30?

15 MR. GENDELMAN: That's right.

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

23 And it's your position that it can be
24 based on that because the ISFSI can accommodate 40
25 years of waste. And, therefore, it will only take in

NEAL R. GROSS

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

1 waste until '24 and '25, and so that statement is
2 accurate. It doesn't matter whether they, in fact,
3 are retired in 2024 and 2025 or not?

4 MR. GENDELMAN: I would say it a little
5 more simply, actually. I think that, because of the
6 way the -- as the language cited by the Petitioner --
7 the 72.22 discussion specifically points to the 2024
8 retirement, and specifically identifies it as a
9 funding source the decommissioning trust fund at that
10 time, that the retirement sort of correlates to
11 demonstration of regulatory requirements in this
12 proceeding in a way that I think is at least more
13 iterated.

14 So, from a Staff perspective, it's not
15 clear to me whether or not that assessment being based
16 upon 2024 or 2025 retirement ultimately impacts the
17 sufficiency that that demonstration -- and, like I
18 said, Staff has not completed its safety review. But
19 in specifically the 72.22 case, where regulatory
20 compliance is specifically tied by the application to
21 the 2024 retirement of the facility, we believe that
22 the petition is articulated in genuine dispute.

23 JUDGE HAWKENS: I understand. Let me try
24 to simplify it even further. Would it be your view
25 that their reference to the retirement of the reactors

NEAL R. GROSS

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

1 in the 2024 and 2025 for purposes of 72.30 are simply
2 not material?

3 MR. GENDELMAN: I think that's right,
4 given the structure of the regulation and the way that
5 portion of the application is structured. Again, with
6 no view on its ultimate sufficiency.

7 JUDGE HAWKENS: All right. Any more
8 questions? No?

9 No more questions for you. Thank you.

10 MR. GENDELMAN: Thank you, Your Honor.

11 JUDGE HAWKENS: Ms. Curran, I'm going to
12 check with my timekeeper, but I believe you have at
13 least 12 minutes left.

14 MS. CURRAN: Great.

15 JUDGE HAWKENS: She's nodding her head in
16 the affirmative, so you may proceed.

17 MS. CURRAN: Thank you. In response to
18 something Mr. Lighty said about how our claims only
19 relate to expansion, I just want to direct your
20 attention to the paragraph on the bottom of Page 5 of
21 our hearing request. This is really following up on
22 what NRC Staff counsel said, that our contention is
23 based on the fact that the license renewal application
24 depends on the assumption of a retirement date of 2024
25 and 2025. And we're expressing concern that there

NEAL R. GROSS

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

1 will be a period of time now, potentially 20 years,
2 when PG&E does not have access to the decommissioning
3 trust fund.

4 So, thank you very much. We appreciate
5 the Staff's logical support for that contention. And
6 I also feel that the argument was persuasive on 72.30.
7 And that, I agree, it was a good argument, and I
8 didn't understand it before, that we haven't made an
9 adequate claim about the decommissioning fund, because
10 we did assume that the capacity of the ISFSI could be
11 increased, and it's just not there in the application.

12
13 Now, that's setting NEPA aside. I don't
14 want to imply at all that we are abandoning our NEPA
15 contention, because NEPA requires some consideration
16 of the big picture. And obviously --

17 JUDGE HAWKENS: Can you put NEPA aside for
18 one second?

19 MS. CURRAN: Yeah.

20 JUDGE HAWKENS: I'm looking at 72.30. So,
21 the NRC Staff says it agrees with you that Contention
22 A is admissible to the extent it raises a challenge
23 regarding PG&E's compliance with Section 72.22, I
24 believe. You also made a claim in Contention A that
25 their compliance with Section 71.30 was deficient.

NEAL R. GROSS

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

1 Are you no longer advancing that argument?

2 MS. CURRAN: That's right.

3 JUDGE HAWKENS: Okay.

4 MS. CURRAN: Yeah.

5 JUDGE HAWKENS: For purposes of Contention
6 A, you're simply saying that their showing financial
7 qualification for operating of the ISFSI under 72.22
8 is deficient.

9 MS. CURRAN: Yeah.

10 JUDGE HAWKENS: Okay. Thank you.

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

23 It's reasonably foreseeable that PG&E will
24 seek to expand the capacity of this ISFSI. If they
25 get 20 more years of operation, it's a real good

NEAL R. GROSS

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

1 question, what are they going to do with the spent
2 fuel they generate? Especially since they answer to
3 the state, and the state wants them to take the fuel
4 out of the pools as expeditiously as possible. We
5 think all that needs to be addressed in the
6 environmental assessment. It's important.

7 This is the whole purpose of NEPA, that
8 you don't take an action until you've looked at all
9 the relevant considerations, so you don't foreclose
10 anything because you had tunnel vision. Clearly,
11 under the safety regulations, there is an element of
12 tunnel vision. But that's not true with respect to
13 NEPA.

14 And I still think -- we still think --
15 that the appropriate remedy here, if you don't admit
16 our contentions, is to hold this proceeding in
17 abeyance until we know what PG&E is going to do for
18 this license renewal application. Because this -- we
19 are not content to say PG&E may amend the ISFSI
20 license -- seek to amend the ISFSI license some point
21 down the road.

22 This is our opportunity right now. This
23 license renewal is being sought for 20 years. And we
24 -- or is it 40? It's a long time. This is our
25 opportunity. As members of the public, we know that

NEAL R. GROSS

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

1 if you don't take the opportunity when it comes up, it
2 goes by and it may not come up again. We don't want
3 to rely on some discretionary decision by PG&E or the
4 NRC to amend this license.

5 The issues are before us now. We know now
6 that PG&E has invested resources into filing a new
7 license renewal application for this reactor, set of
8 reactors. Those considerations, it's really
9 important, for any environmental assessment that
10 addresses the impacts of the ISFSI, to look at all
11 those relevant considerations. And if more time is
12 needed, there's no reason not to give it.

13 That concludes my rebuttal.

14 JUDGE TRIKOUROS: We all agree, however,
15 that if there's an expansion of the ISFSI, or a
16 request to expand the ISFSI, it would be an entirely
17 new licensing proceeding, right?

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

NEAL R. GROSS

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

1 way down the road.

2 JUDGE HAWKENS: Thank you. Any more? No?

3

4 Thank you, Ms. Curran

5 MS. CURRAN: Thank you.

6 JUDGE HAWKENS: I want to thank the
7 parties, everyone's presentation, and their written
8 pleadings today. Very helpful. And it's our intent
9 to issue a decision on Petitioner's hearing request
10 within 35 days.

11 Before adjourning, I'd like to acknowledge
12 the support the Panel's IT expert, Andrew Welkie; the
13 Panel's administrative assistants, Sara Culler, Penny
14 Kenney (phonetic), and SherVerne Cloyd-Allen; the
15 Panel's law clerks, Noel Johnson, Allison Wood, and
16 Emily Newman. And lastly, we appreciate the services
17 of the court reporter, Lanelle Phillips.

18 And, Lanelle, will you need to consult any
19 attorneys after we adjourn to ensure accuracy of your
20 transcript?

21 COURT REPORTER: Yes, Mr. Bessette and Ms.
22 Curran.

23 JUDGE HAWKENS: All right. We'll just ask
24 counsel to remain until Ms. Phillips has had the
25 opportunity to talk to you.

NEAL R. GROSS

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

1 Judge Trikouros, do you have anything to
2 add before we adjourn?

3 JUDGE TRIKOUROS: I do not. Thank you.

4 JUDGE ARNOLD: No.

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

7 (Whereupon, the above-entitled matter went
8 off the record at 2:38 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25