

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

PACIFIC GAS AND ELECTRIC COMPANY

(Diablo Canyon Nuclear Power Plant, Unit 1)

Docket No. 50-275

**NRC STAFF ANSWER TO SAN LUIS OBISPO MOTHERS FOR PEACE AND FRIENDS OF THE EARTH REQUEST FOR EMERGENCY ORDER REQUIRING IMMEDIATE SHUTDOWN**

**INTRODUCTION**

On September 14, 2023, in a single pleading, San Luis Obispo Mothers for Peace and Friends of the Earth (Petitioners) filed both a “Request to the NRC Commissioners by San Luis Obispo Mothers for Peace and Friends of the Earth for a Hearing on NRC Staff Decision Effectively Amending Diablo Canyon Unit 1 Operating License to Extend the Schedule for Surveillance of the Unit 1 Pressure Vessel” (Hearing Request) and a “Request for Emergency Order Requiring Immediate Shutdown of Unit 1 Pending Completion of Tests and Inspections of Pressure Vessel, Public Disclosure of Results, Public Hearing, and Determination by the Commission that Unit 1 can Safely Resume Operation” (Request to Suspend Operations).<sup>1</sup> Petitioners’ Request to Suspend Operations asks the Commission to issue an order requiring

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<sup>1</sup> Request to the NRC Commissioners by San Luis Obispo Mothers for Peace and Friends of the Earth for a Hearing on NRC Staff Decision Effectively Amending Diablo Canyon Unit 1 Operating License to Extend the Schedule for Surveillance of the Unit 1 Pressure Vessel and Request for Emergency order Requiring Immediate Shutdown of Unit 1 Pending Completion of Tests and Inspections of Pressure Vessel, Public Disclosure of Results, Public Hearing, and Determination by the Commission that Unit 1 can Safely Resume Operation (Sep. 14, 2023) (ML23257A302) (Petition).

Attached to the Petition is the Declaration of Digby Macdonald, Ph.D in Support of Hearing Request and Request for Emergency Order by San Luis Obispo Mothers for Peace and Friends of the Earth (Sep. 14, 2023) (Declaration).

By unopposed motion dated September 25, 2023, the Staff requested an opportunity for the Staff and Pacific Gas and Electric Company to answer the Hearing Request by October 9, 2023, or for direction from the Commission regarding how and when to respond to the Hearing Request.

the immediate shutdown of and remedial actions for Diablo Canyon Nuclear Power Plant (Diablo Canyon), Unit 1.<sup>2</sup> The U.S. Nuclear Regulatory Commission staff (the Staff) files this answer that the appropriate response to Petitioners' Request to Suspend Operations is for the Commission to instead refer it to the Executive Director for Operations (EDO) for consideration as a petition under 10 C.F.R. § 2.206.<sup>3</sup> This is appropriate because Petitioners' Request to Suspend Operations raises serious issues, is effectively a 10 C.F.R. § 2.206 request for agency action, and would be best resolved by first being considered by the Staff's technical experts and then being subject to review by the Commission, which is the process laid out in 10 C.F.R. § 2.206.

### DISCUSSION

Petitioners' Request to Suspend Operations is effectively a 10 C.F.R. § 2.206 request for agency action. 10 C.F.R. § 2.206(a) states, in part, that "[a]ny person may file a request to institute a proceeding pursuant to [10 C.F.R. §] 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper." In turn, 10 C.F.R. § 2.202(a) provides that "[t]he Commission may institute a proceeding to modify, suspend, or revoke a license or to take such other action as may be proper by serving on the licensee ... an order that will ... [a]llege the violations with which the licensee ... is charged, or the potentially hazardous conditions or other facts deemed to be sufficient ground for the proposed action, and specify the action proposed...." 10 C.F.R. § 2.206(a) also requires that requests under that regulation "specify the action requested and set forth the facts that constitute the basis for the request." Petitioners' Request to Suspend Operations does all of these things—it requests that the Commission issue an order, presumably under 10 C.F.R. § 2.202, to suspend the Diablo Canyon, Unit 1 license (i.e., shut down the plant) and to modify the license and take other actions (i.e., require specific,

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<sup>2</sup> Petition at 27-28.

<sup>3</sup> See, e.g., *Southern California Edison Company* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-12-20, 76 NRC 437, 440 n.13 (2012) (stating that such a referral is consistent with agency practice).

enumerated remedial actions),<sup>4</sup> it alleges that the licensee has committed violations (i.e., by not properly monitoring the condition of the reactor pressure vessel),<sup>5</sup> and it asserts that there exist potentially hazardous conditions (i.e., that there is a serious risk of embrittlement of the reactor pressure vessel).<sup>6</sup> Petitioners' Request to Suspend Operations also sets forth alleged facts as the basis for the request, including the declaration of Dr. Digby Macdonald.<sup>7</sup> Therefore, although Petitioners indicate that their request should not be treated as a request for enforcement action addressed to the Staff,<sup>8</sup> Petitioners' Request to Suspend Operations is, effectively, a 10 C.F.R. § 2.206 request for agency action.

As a request for agency action, Petitioners' Request to Suspend Operations would be best resolved under the 10 C.F.R. § 2.206 process. 10 C.F.R. § 2.206 establishes a process by which the public may bring enforcement issues, such as those raised in Petitioners' Request to Suspend Operations, to the attention of the agency and it ensures both transparency by requiring the Staff to respond to such requests in writing and accountability by making these Staff responses reviewable by the Commission. Specifically, 10 C.F.R. § 2.206(a) states that a request for agency action is to be addressed to the EDO who then assigns it to the NRC office with responsibility for the subject matter of the request. Thereafter, the Director of that office is required, within a reasonable time, to either institute the requested proceeding or advise the person who made the request in writing that no proceeding will be instituted in whole or in part.<sup>9</sup> With the completion of this Staff review, then the Commission may, on its own motion, review the Staff decision to determine if the Staff abused its discretion.<sup>10</sup> Because the 10 C.F.R.

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<sup>4</sup> Petition at 27-28.

<sup>5</sup> *Id.* at 26.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 29.

<sup>9</sup> 10 C.F.R. § 2.206(b).

<sup>10</sup> 10 C.F.R. § 2.206(c)(1).

§ 2.206 process was established specifically to address concerns such as those in Petitioners' Request to Suspend Operations, that request should be referred to the EDO for consideration as a petition under 10 C.F.R. § 2.206. The Commission has repeatedly reaffirmed the vitality of the 10 C.F.R. § 2.206 process to address stakeholders' concerns.<sup>11</sup>

In the Request to Suspend Operations, Petitioners indicate that, contrary to 10 C.F.R. § 2.206, their request should not be reviewed by the Staff, but by "the highest officials of the agency."<sup>12</sup> However, Petitioners do not demonstrate that such a drastic action of excluding Staff review is either necessary or advisable. Although they speak of the urgency of the matter,<sup>13</sup> Petitioners do not demonstrate that a fulsome technical evaluation and Staff decision followed by a Commission review prior to issuing any order to shutdown Diablo Canyon, Unit 1 would endanger the public health and safety. Petitioners also assert that the Staff shouldn't be trusted to review the request,<sup>14</sup> but the Staff is the very entity with the technical expertise needed to conduct such a review. In any case, the Commission retains supervisory authority over the Staff both under 10 C.F.R. § 2.206(c) and at all times and can, therefore, ensure that both of these Petitioners' concerns (i.e., timeliness and bias) are protected against within the 10 C.F.R. § 2.206 process.

Finally, Petitioners cite to *Yankee Rowe* as support for their argument that, contrary to 10 C.F.R. § 2.206, a Staff review should be skipped;<sup>15</sup> however, *Yankee Rowe* does not stand for this proposition. *Yankee Rowe* involved different petitioners asking the Commission itself to

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<sup>11</sup> See, e.g., *All Operating Boiling Water Reactor Licensees with Mark I and Mark II Containments: Order Modifying Licenses with Regard to Reliable Hardened Containment Vents (Effective Immediately) and All Power Reactor Licensees and Holders of Construction Permits in Active or Deferred Status: Order Modifying Licenses with Regard to Reliable Spent Fuel Pool Instrumentation (Effective Immediately)*, CLI-13-2, 77 NRC 39, 50 n.57 (2013); *San Onofre*, CLI-12-20, 76 NRC at 439-40.

<sup>12</sup> Petition at 29.

<sup>13</sup> See Declaration at 14 (asserting that "Unit 1 could approach NRC's threshold for remedial action as early as 2024").

<sup>14</sup> Petition at 26-27.

<sup>15</sup> *Id.* at 26 (citing *Yankee Atomic Electric Company* (Yankee Rowe Nuclear Power Station), CLI-91-11, 34 NRC 3 (1991)).

act on their request for agency action.<sup>16</sup> In response, the Commission referred the matter to the Staff for review under 10 C.F.R. § 2.206.<sup>17</sup> The Staff performed its review and decided to deny the request for agency action.<sup>18</sup> It was only after this Staff decision that the Commission then, upon the petitioners renewing their request for Commission review, elected to rule on the petition.<sup>19</sup> As was done in *Yankee Rowe*, and for the other reasons discussed above, the Commission should refer Petitioners' Request to Suspend Operations to the EDO for consideration as a petition under 10 C.F.R. § 2.206.

### CONCLUSION

Petitioners' Request to Suspend Operations raises serious issues that should first be considered by the Staff because the Staff has the necessary technical expertise to evaluate and address them. The Staff's determination would then be reviewed by the Commission, as it deems necessary. Therefore, the Commission should refer Petitioners' Request to Suspend Operations to the EDO for consideration as a petition under 10 C.F.R. § 2.206.

Respectfully submitted,

**/Signed (electronically) by/**

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Dated September 25, 2023

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<sup>16</sup> *Yankee Rowe*, CLI-91-11, 34 NRC at 5.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 6.

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**Certificate of Service**

Pursuant to 10 C.F.R. § 2.305, I hereby certify that copies of the foregoing “NRC STAFF ANSWER TO SAN LUIS OBISPO MOTHERS FOR PEACE AND FRIENDS OF THE EARTH REQUEST FOR EMERGENCY ORDER REQUIRING IMMEDIATE SHUTDOWN,” dated September 25, 2023, have been served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the captioned proceeding, this 25th day of September 2023.

**/Signed (electronically) by/**

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Dated September 25, 2023