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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

May 8, 2003

Annette L. Vietti-Cook  
Secretary  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16C1  
Washington, DC 20555-0001

**Re:    Petition for Rulemaking of Union of Concerned Scientists and the  
      San Luis Obispo Mothers for Peace and Associated Request to  
      Suspend Diablo Canyon Power Plant ISFSI Licensing Proceeding**

Dear Ms. Vietti-Cook:

Pacific Gas and Electric Company ("PG&E") is in receipt of the petition for rulemaking, dated April 28, 2003, of the Union of Concerned Scientists ("UCS") and the San Luis Obispo Mothers for Peace ("SLOMFP") requesting that the NRC amend 10 C.F.R. §§ 50.59, 50.54, and 10 C.F.R. Part 50 in connection with "protection against radiological sabotage." To the extent a response to the substance of the generic rulemaking petition is determined to be necessary, PG&E will respond either on its own behalf or through an industry representative, at an appropriate future time.

PG&E also notes that UCS and SLOMFP have included, in the cover letter transmitting the rulemaking petition, a request by SLOMFP — pursuant to 10 C.F.R. § 2.802(d) — to suspend the ongoing licensing proceeding on PG&E's application for a Part 72 license for an independent spent fuel storage installation ("ISFSI") at Diablo Canyon Power Plant, pending consideration of the rulemaking petition. However, no motion has been made on the docket of the ISFSI licensing case, to which SLOMFP is a party. Thus, the procedural posture and the viability of the request are unclear. The Commission can nonetheless summarily reject the SLOMFP request on its merits.

In the context of the Diablo Canyon ISFSI Part 72 licensing proceeding, SLOMFP previously sought a similar stay on September 9, 2002, requesting that the Commission suspend the proceeding pending the Commission's comprehensive review of measures to protect against terrorist attack. PG&E comprehensively responded to SLOMFP's

Annette L. Vietti-Cook  
May 8, 2003  
Page 2

arguments in a filing dated September 19, 2002.<sup>1</sup> The Commission subsequently denied SLOMFP's request in CLI-02-23, issued on November 21, 2002.<sup>2</sup> As noted in the Commission's decision, the Commission has expressly denied numerous requests for suspensions and/or dismissals of licensing actions pending ongoing review of the agency's security policies. See CLI-02-23, 56 NRC at 238. A summary dismissal of the latest request is therefore entirely appropriate.

In the April 28 petition, SLOMFP does not raise any new fact or argument as to why the Diablo Canyon ISFSI licensing proceeding cannot go forward. Indeed, the rulemaking petition itself appears to be entirely directed at revisions to 10 C.F.R. Part 50, related to the power plant. The proposed PG&E ISFSI would be subject to regulations at 10 C.F.R. Part 72. Moreover, since its decision denying the earlier stay request, the Commission has completed its review of security requirements, to the point of issuing an Order, dated April 29, 2003, revising the Design Basis Threat ("DBT") for all operating power reactor licensees.<sup>3</sup> This action underscores the conclusion reached by the Commission in CLI-02-23, 56 NRC at 237-38, that by *not* suspending operating licenses since September 11, 2001, the Commission has implicitly concluded that continued operations of power plants and ISFSIs "does not pose an imminent risk to the public health and safety and is not inimical to the common defense and security." Accordingly, there is no conceivable reason to suspend a licensing proceeding for a facility that is not yet even authorized to be built.

In sum, SLOMFP has not provided any basis for a suspension of the PG&E ISFSI licensing proceeding. The request is redundant to SLOMFP's prior request that was denied by the Commission. The latest stay request therefore should also be denied. Should the Commission require any additional response, PG&E would be pleased to provide such a response.

Respectfully submitted,



David A. Repka  
Counsel for Pacific Gas and Electric Co.

cc: Service List

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<sup>1</sup> See Response of Pacific Gas and Electric Company to Petition of San Luis Obispo Mothers for Peace *et al.*, dated September 19, 2002, at 7-9 (no. 72-26-ISFSI).

<sup>2</sup> See *Pac. Gas & Elec. Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)*, CLI-02-23, 56 NRC 230 (2002)

<sup>3</sup> See EA-03-086, *All Operating Power Reactor Licensees*, Order Modifying Licenses (Effective Immediately), Apr. 29, 2003.