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**COPY**

October 12, 2007

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 Nos. 1 and 2  
Independent Spent Fuel Storage Installation

Docket # 72-26-ISFSI

**SAN LUIS OBISPO MOTHERS FOR PEACE'S  
REPLY TO PG&E AND NRC STAFF'S RESPONSES TO  
SLOMPF RESPONSE TO COMMISSION ORDER**

Pursuant to the U.S. Nuclear Regulatory Commission's ("NRC's" or "Commission's") Order of September 11, 2007, San Luis Obispo Mothers for Peace ("SLOMFP") hereby replies to Pacific Gas and Electric Company's ("PG&E's") Response to Commission Order and San Luis Obispo Mothers for Peace Filing on the Final Environmental Assessment Supplement (October 11, 2007) ("PG&E Response") and NRC Staff's Response to San Luis Obispo Mothers for Peace's Response to Commission Order and Supplement to Final Environmental Assessment (October 11, 2007) ("NRC Staff Response"). Neither of their responses shows that the NRC Staff's Final Environmental Assessment ("EA") Supplement<sup>1</sup> moots or otherwise resolves the concerns raised by SLOMFP's contentions in this proceeding.<sup>2</sup>

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<sup>1</sup> Supplement to the Environmental Assessment and Final Finding of No Significant Impact Related to the Construction and Operation of the Diablo Canyon Independent Spent Fuel Storage Installation (August 2007).

<sup>2</sup> San Luis Obispo Mothers for Peace's Contentions and Request for a Hearing Regarding Diablo Canyon Environmental Assessment Supplement (June 28, 2007; corrected June 29, 2007) ("SLOMFP Contentions").

TEMPLATE= SECY-037

SECY-02

### **Contention 1(b)**

The NRC Staff claims to have mooted Contention 1(b) by providing a list of additional references to the EA Supplement. NRC Staff Response at 4. While this constitutes the second time the Staff has supplemented its list of references, the list concededly remains incomplete: at the very least it excludes information about the Staff's methods for assessing the dose consequences of an attack on the Diablo Canyon spent fuel storage facility. NRC Staff Response at 3-4. While the Staff's attorney asserts that this information is "widely known," that is neither readily apparent nor an excuse for failing to identify the information. Given that the Staff's finding of no significant impact is based on a determination that radiation doses from an intentional attack on the Diablo Canyon spent fuel storage facility would be small, the methods used by the Staff to reach that result are key to understanding the Staff's "scientific conclusions" and therefore should be identified. *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1988).

The Staff Response also vaguely refers to its failure to identify other "[p]ublic available reference documents that provide background and technical information." *Id.* at 3. The Staff does not assert that these documents are unnecessary to understanding its conclusions, however; only that they are publicly available and provide widely known information. *Id.* This is not an acceptable excuse for failing to identify the documents that form the Staff's technical basis for its finding of no significant impact. *Idaho Sporting Cong.*, 137 F.2d at 1150.

Finally, the Commission should not credit any of the assertions in the Staff Response regarding the completeness of the list of references for the EA Supplement, because they are not backed up by the NRC Project Manager's technical affidavit. The Staff's affiant, James Randall Hall, merely states that the list of references attached to the Staff Response "includes sources used by the Staff to form the basis for the statements" in the EA Supplement. Affidavit of James Randall Hall Regarding Addendum to References Listed in the NRC Staff's Supplement to the Environmental Assessment and Finding of No Significant Impact for the Diablo Canyon Independent Spent Fuel Storage Installation at 1 (October 11, 2007). Mr. Hall does not, as the Staff Response asserts, attest that "the reference list [attached to the Staff Response] contains the references necessary to address those items identified in SLOMFP's proposed Contention 1(b)."<sup>3</sup> The Commission should disregard the Staff attorney's mischaracterization of Mr. Hall's affidavit and admit Contention 1(b).

#### **SLOMFP's Other Contentions**

With the exception of the addition of a partial list of references to the Final EA Supplement, the Final EA Supplement for the Diablo Canyon ISFSI is virtually identical to the Draft EA Supplement. Moreover, as detailed in the October 1, 2007, Declaration of Dr. Gordon Thompson, the NRC Staff's response to comments on the Final EA Supplement does not resolve any of the concerns raised in SLOMFP's contentions.<sup>4</sup>

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<sup>3</sup> NRC Staff Response at 4. It is also unclear what the Staff Response means by "those items identified in Contention 1(b)."

<sup>4</sup> Even assuming for purposes of argument that the Staff's response to public comments were adequate to resolve the concerns, the Commission should bear in mind the Staff's admonition that its responses to public comments "are not incorporated into the EA

Therefore, as PG&E correctly observes, SLOMFP has made no changes to its contentions and seeks a ruling on the admissibility of its contentions. PG&E Response at 2.

Contrary to arguments by the NRC Staff, SLOMFP has not sought to add new issues or new information to its contentions in its October 1, 2007, Response. *See* NRC Staff Response at 2, 7. Instead, the purpose of SLOMFP's October 1 Response and Dr. Thompson's Declaration was to demonstrate that the NRC Staff had failed to resolve any of the concerns raised in SLOMFP's contentions in the Final EA Supplement or the response to public comments. The Staff and PG&E criticisms of Dr. Thompson's October 1 Declaration only serve to illustrate the existence of material factual disputes between the parties, warranting admission of the contentions. *See* 10 C.F.R. § 2.714(b)(2).<sup>5</sup>

SLOMFP stands by the assertions in its contentions. The deficiencies in the Draft EA Supplement that are raised by the contentions remain uncorrected in the Final EA Supplement and have not been justified by the NRC Staff's response to public comments on the Draft EA Supplement.

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Supplement itself, do not represent the Staff's findings or environmental analysis and therefore cannot be used as the basis for contentions concerning the adequacy of the EA Supplement." NRC Staff Response at 7. SLOMFP believes the Staff's characterization of its response to comments is correct, and also precludes a determination that any of the Staff's responses to comments is sufficient to cure defects in the EA Supplement where the Staff has failed to make a corresponding change to the EA Supplement.

<sup>5</sup> The Staff, for instance, accuses SLOMFP of making an unacceptably late attempt to raise issues of "what information should be made public." NRC Staff Response at 4. To the contrary, the issue of what information should be made public is raised throughout SLOMFP's contentions, which demand the disclosure of sufficient information for the public to understand the basis for the NRC Staff's finding of no significant impact. SLOMFP's disagreement with the Staff's excessive secrecy runs throughout SLOMFP's contentions.

Respectfully submitted,



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October 12, 2007

### CERTIFICATE OF SERVICE

I certify that on October 12, 2007, copies of the foregoing San Luis Obispo Mothers for Peace's Reply to PG&E and NRC Staff's Responses to SLOMFP Response to Commission Order were served on the following by first-class mail and/or e-mail as indicated below:

Office of the Secretary (original and two copies) Rules and Adjudications Branch U.S. Nuclear Regulatory Commission 11555 Rockville Pike Rockville, MD 20852 Also by e-mail to: <a href="mailto:hearingdocket@nrc.gov">hearingdocket@nrc.gov</a>	William V. Manheim, Esq. Jennifer Post Pacific Gas & Electric Co. 77 Beale Street B30A San Francisco, CA 94105 Also by e-mail to: <a href="mailto:AxFn@pge.com">AxFn@pge.com</a> , <a href="mailto:JLKm@pge.com">JLKm@pge.com</a>
David A. Repka, Esq. Tyson R. Smith, Esq. Winston & Strawn, LLP 1700 K Street N.W. Washington, D.C. 20006-3817 Also by e-mail to: <a href="mailto:drepka@winston.com">drepka@winston.com</a> , <a href="mailto:trsmith@winston.com">trsmith@winston.com</a>	Lisa B. Clark, Esq. Tison A. Campbell, Esq. Office of General Counsel Mail Stop O-15D21 U.S. Nuclear Regulatory Commission Washington, D.C. 20555 Also by e-mail to: <a href="mailto:tac2@nrc.gov">tac2@nrc.gov</a> , <a href="mailto:lbc@nrc.gov">lbc@nrc.gov</a>
Timothy McNulty, Esq. Office of County Counsel County Government Center Room 386 San Luis Obispo, CA 93408 Also by e-mail to: <a href="mailto:tmcnulty@co.slo.ca.us">tmcnulty@co.slo.ca.us</a>	Kenneth Alex, Esq. Claudia Polsky, Esq. California Department of Justice 1515 Clay Street, 20 <sup>th</sup> Floor Oakland, CA 94612-0550 Also by e-mail to: <a href="mailto:Claudia.polsky@doj.ca.us">Claudia.polsky@doj.ca.us</a>
Barbara Byron, Staff Counsel California Energy Commission Chief Counsel's Office 1516 Ninth Street, MS 14 Sacramento, CA 95814 Also by e-mail to: <a href="mailto:Bbyron@energy.state.ca.us">Bbyron@energy.state.ca.us</a>	San Luis Obispo Mothers for Peace P.O. Box 164 Pismo Beach, CA 93448

  
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October 11, 2007

Emile Julian, Director  
Rulemakings and Adjudications Staff  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

SUBJECT: *Diablo Canyon ISFSI Licensing Proceeding, Docket No. 72-26*

Dear Mr. Julian,

On behalf of San Luis Obispo Mothers for Peace ("SLOMFP"), I am enclosing the original of the Declaration by Dr. Gordon R. Thompson Regarding the NRC Staff's August 2007 Supplement to the Environmental Assessment and Final Finding of No Significant Impact Related to the Construction and Operation of the Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI), dated October 1, 2007. A faxed copy of Dr. Thompson's declaration was filed on October 1, 2007, in support of SLOMFP's Response to NRC Staff's Supplement To The Environmental Assessment And Finding Of No Significant Impact For The Diablo Canyon Independent Spent Fuel Storage Installation.

Sincerely,

  
Diane Curran