September 13, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of
Pacific Gas and Electric Company — Docket Nos. 50-275-LR
Diablo Canyon Nuclear Power Plant — 50-323-LR
Units 1 and 2

SAN LUIS OBISPO MOTHERS FOR PEACE'S REPLY TO OPPOSITIONS TO ADMISSION OF NEW CONTENTION

Pursuant to 10 C.F.R. § 2.309(h)(2), San Luis Obispo Mothers for Peace ("SLOMFP") hereby replies to the oppositions submitted by Pacific Gas and Electric Co. ("PG&E") and the U.S. Nuclear Regulatory Commission ("NRC") Staff to SLOMFP's new contention seeking consideration of the environmental implications of the Fukushima Task Force Report. SLOMFP respectfully submits that the arguments by PG&E and the Staff regarding the timeliness and admissibility of the contention are without merit and therefore the contention should be admitted.

The arguments raised by PG&E and the NRC Staff in response to SLOMFP's contention are similar or identical to arguments made by the applicant and staff in response to Fukushima Task Force Report-related contentions that were filed in other reactor licensing proceedings on the same day. SLOMFP attaches and incorporates by reference the attached Reply Memorandum, which addresses the most common arguments that are made in the responses and was prepared by counsel for intervenors in several of the cases.[1] The Reply Memorandum also discusses the effect of the NRC

[1] The Reply Memorandum was prepared by undersigned counsel for SLOMFP in this proceeding (who is also counsel to the intervenor in the Watts Bar Unit 2 operating license proceeding), Mindy Goldstein (counsel for some of the intervenors in the Vogtle

Commissioners' recent decision regarding the Emergency Petition that was submitted by SLOMFP and many other intervenors and petitioners in April 2011. *Union Electric Co., d/b/a/ Ameren Missouri* (Callaway Plant, Unit 2), et al., CLI-11-05, __ NRC __ (Sept. 9, 2011) ("CLI-11-05").[2]

In addition, SLOMFP hereby replies to arguments by PG&E and NRC Staff that are specific to this case. First, PG&E and the Staff that the contention is not specific and therefore fails to meet the NRC's standard for admissibility of contentions. PG&E Response at 12, NRC Staff Response at 14. This argument is incorrect. SLOMFP specifically challenges the failure of the Environmental Report for Diablo Canyon to address the significant environmental implications of the findings and recommendations raised by the NRC's Fukushima Task Force Report. Contention at 4. The contention also specifically identifies the finding in Appendix B to 10 C.F.R. Part 51 on which PG&E relies for the conclusion that the environmental impacts of severe accidents at Diablo Canyon are "small" and which is called into question by the Task Force Report. *Id.* at 12.[3] In addition, the contention specifically challenges the adequacy of the ER's SAMA analysis because it fails to address the conclusions of the Task Force Report. *Id.* at 13.

SLOMFP's demand for consideration of the environmental implications of the Fukushima accident and the Task Force Report has yet to be satisfied in any respect.

---

and Turkey Point COL proceedings), and Jason Totoui (counsel for some of the intervenors in the Turkey Point COL proceeding).

[2] Because PG&E and the NRC Staff have not had an opportunity to address the effect of CLI-11-05 on the timeliness and admissibility of SLOMFP's contention, SLOMFP would not object to a response by the applicant and the Staff to their arguments regarding the relevance of CLI-11-05 to their contention.

[3] SLOMFP's petition to the NRC to revoke this aspect of Appendix B is pending before the NRC Staff. *See* CLI-11-05, slip op. at 40.

Neither the NRC nor PG&E has prepared a single document under the National Environmental Policy Act ("NEPA") that addresses the new and significant information revealed by the Task Force Report regarding accident risks at U.S. nuclear power plants. Unless and until the NRC or PG&E makes some attempt to satisfy NEPA in this regards, SLOMFP's contention of omission is admissible.

Finally, in response to PG&E's argument that this admissibility of this contention should be decided by the Commission, SLOMFP wishes to point out that the Commission decided that issue in CLI-11-5 in favor of having Atomic Safety and Licensing Boards judge the admissibility of the contentions. *Id.,* slip op. at 35.

Respectfully submitted,

Electronically signed by
Diane Curran
Harmon, Curran, Spielberg, & Eisenberg, L.L.P.
1726 M Street N.W., Suite 600
Washington, D.C. 20036
202/328-3500
FAX 202/328-6918
dcurran@harmoncurran.com

September 13, 2011

REPLY MEMORANDUM REGARDING TIMELINESS AND ADMISSIBILITY OF NEW CONTENTIONS SEEKING CONSIDERATION OF ENVIRONMENTAL IMPLICATIONS OF FUKUSHIMA TASK FORCE REPORT IN INDIVIDUAL REACTOR LICENSING PROCEEDINGS

INTRODUCTION

The purpose of this Reply Memorandum is to address the most common arguments made in the U.S. Nuclear Regulatory Commission ("NRC") Staffs' and applicants' responses (collectively, the "Responses") opposing the admissibility of contentions that were submitted in over twenty NRC licensing and relicensing proceedings (collectively, the "Proceedings") on September 6, 2011. This Reply Memorandum also addresses the relevance of a decision issued by the NRC Commissioners shortly after the Responses were filed: *Union Electric Co., d/b/a/ Ameren Missouri* (Callaway Plant, Unit 2) et al., CLI-11-05, __ NRC __ (Sept. 9, 2011) ("CLI-11-05").

BACKGROUND

On August 11, 2011, intervenors and petitioners (collectively, "Intervenors") in over twenty proceedings submitted motions and contentions seeking consideration under the National Environmental Policy Act ("NEPA") of new and significant information presented by the NRC's Fukushima Task Force in its report, "Recommendations for Enhancing Reactor Safety in the 21st Century: the Near-term Task Force Review of Insights from the Fukushima Dai-ichi Accident" (July 12, 2011) (the "Task Force Report").[1] While the contentions addressed the particulars of each individual proceeding,

[1] Contentions were submitted in the following proceedings: Callaway Plant, Unit 2 (Docket No. 52-037-COL); Calvert Cliffs Nuclear Power Plant, Unit 3 (Docket No. 52-016-COL); Fermi Nuclear Power Plant, Unit 3 (Docket No. 52-033-COL); William

they all relied on the far-reaching conclusions and recommendations of the Task Force Report.

In all but one the proceedings, the applicants and the NRC Staff submitted Responses on September 6, 2011. The Responses make very similar, if not identical, arguments with respect to the timeliness and the admissibility of the contentions. Three days after the Responses were filed, the NRC Commissioners also issued CLI-11-05, which contains language that bears on the timeliness and admissibility of the contentions.

I. INTERVENORS' CONTENTIONS ARE TIMELY

All Responses argue that the contentions are not timely because they are late; some argue the contentions were both late and premature. None of these arguments has merit.

Notably, some applicants and the NRC Staff (all of whom now argue that the contentions are too late) previously contested the Emergency Petition to Suspend all

---

States Lee III Nuclear Station, Units 1 and 2 (Docket No. 52-018-COL and 52-019-COL); Columbia Generating Station (Docket No. 50-397-LR); Pilgrim Nuclear Power Station (Docket No. 50-293-LR); Indian Point Nuclear Generating Station, Units 2 and 3 (Docket Nos. 50-247-LR and 50-286-LR); Davis-Besse Nuclear Power Station, Units 1 (Docket No. 50-346-LR); Turkey Point, Units 6 and 7 (Docket Nos. 52-040-COL and 52-041-COL); Comanche Peak Nuclear Power Plant, Units 3 and 4 (Docket Nos. 52-034-COL and 52-035-COL); Seabrook Station, Unit 1 (Docket No. 50-443-LR); Diablo Canyon, Units 1 and 2 (Docket Nos. 50-275-LR and 50-323-LR); Bell Bend Nuclear Power Plant (Docket No. 52-039-COL); Shearon Harris Nuclear Power Plant, Units 2 and 3 (Docket Nos. 52-022-COL and 42-023-COL); Levy County Nuclear Power Plant, Units 1 and 2 (Docket Nos. 52-029-COL and 52-030-COL); Virgil C. Summer Nuclear Station, Units 1 and 2 (Docket Nos. 52-027-COL and 52-028-COL); South Texas Project, Units 3 and 4 (52-012-COL and 52-013-COL); Vogtle Electric Generating Plant, Units 3 and 4 (52-025-COL and 52-026-COL); Bellefonte Nuclear Power Plant, Units 3 and 4 (Docket Nos. 52-014-COL and 52-015-COL); Watts Bar, Unit 2 (Docket No. 50-391-OL); and North Anna, Unit 3 (52-017-COL). In addition, comments for filed in the following rulemaking proceedings: AP1000 Design Certification Amendment (NRC-2010-0131, RIN 3150-AI81); and ESBWR Design Certification Amendment (NRC-2010-0135, RIN-3150-AI85).

Pending Reactor Licensing Decisions pending Investigation of Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident (the "Emergency Petition"), which was filed within thirty days of the Fukushima accident, on the ground that it was too early to determine the environmental significance of the event. *See, e.g.,* PG&E Opposition to Emergency Petition to Suspend Licensing Decisions and Proceedings at 8 (May 2, 2011). To the extent that the NRC Staff and applicants have made inconsistent arguments within the proceedings regarding timeliness, and submit Responses that argue both sides of the timeliness question, an Atomic Safety and Licensing Board has previously dismissed such "Catch-22" tactics as a "shell game, with the usual street-corner outcome: whatever guess the [Intervenors] make will prove wrong." *Shaw Area MOX Services* (Mixed Oxide Fuel Fabrication Facility), LBP-08-11, 67 NRC 460 at 502, n 15, 503 (2008).[2]

Regardless of the impermissible and inconsistent timeliness arguments made in the proceedings and Responses, the contentions are timely. The Responses argue that the contentions are late because they are based on the events of the Fukushima accident that occurred more than thirty days before the contentions were filed. While the Fukushima accident is relevant to the Task Force Report, it is the issuance of the Task Force's sweeping conclusions regarding the relevance of the Fukushima accident to NRC's regulatory program that serves as the basis for the contentions.

As the Commission found in CLI-11-05, while the Task Force Report does not justify a generic NEPA review, it is possible that new and significant information about

[2] In *MOX Services,* the applicant controlled the creation of and access to the information that petitioners used as a basis for ongoing contentions. While the applicants and the NRC Staff did not control the creation of or access to the Task Force Report, the significant similarity is that interested members of the public were unable to predict or control the timing of the development and release of new, significant information contained in the Report.

the environmental implications of the Fukushima accident may "come to light" and require consideration "as part of the ongoing preparation of application-specific NEPA documents" with respect to individual reactor license applications. CLI-11-05, slip op. at 30. At this point in time, neither the Commission nor the NRC Staff has yet undertaken its independent NEPA obligations to consider the question of whether the Task Force Report constitutes such new and significant information that must be considered in individual reactor licensing decisions. By submitting the Task Force Report-based contentions within thirty days of the issuance of the Task Force Report, the Intervenors have timely raised their concern regarding this failure to satisfy NEPA.

Some Responses also argue that the Task Force Report is not "new" for purposes of assessing timeliness, because the Task Force Report is simply a collection and summary of existing facts. *See, e.g.,* FPL Response (Turkey Point) at 11-12 (citing *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-10-27, 72 NRC_, slip op. at 7 (Sep. 30, 2010)); NRC Staff Response (Watts Bar 2) at 38-38. But the Task Force Report does not merely compile and organize certain pre-existing information, without further analysis. To the contrary, in the words of one applicant, the Task Force Report is a "short term and long term *analysis of the lessons that can be learned* from the Fukushima accident." FPL Response to Emergency Petition at 4 (May 2, 2011) (emphasis added).

Some Responses argue that the contentions are "premature" because the Commission may "moot" or "negate" the relief they seek. *See, e.g.,* FPL Response (Turkey Point) at 2-3, NRC Staff Response (Diablo Canyon) at 11. But future action by the Commission is only a possibility, and the Commission has not guaranteed that it will

take action before licensing decisions are made, as required by NEPA. Whether the Commission might address the concerns of the Task Force Report at some point in the future is immaterial. The release or development of new and significant information, not future possible agency action, triggers the Commission's non-discretionary duty under NEPA.

The contentions are not only timely, but also meet the requirements for consideration of non-timely contentions in 10 C.F.R. § 2.309(c)(1). Most importantly, Intervenors have good cause for filing the contentions after the release of the Task Force Report. Given the lack of complete public information issued from Japan in the aftermath of the accident, and given the fact that the Task Force was chartered by the NRC Commissioners with the specific purpose of assembling information about the accident and subjecting it to analysis by some of the most highly qualified members of the NRC Staff, it was eminently reasonable for Intervenors to await and depend upon the Task Force Report for the contentions.

In sum, the contentions are timely because they are neither late nor premature. Additionally, as the contentions provide, they also meet the eight requirements for the consideration of non-timely contentions in 10 C.F.R. § 2.309(c)(1).

II. NEPA REQUIRES THE SUPPLEMENTATION OF THE ENVIRONMENTAL REPORT, DRAFT ENVIRONMENTAL IMPACT STATEMENT, OR FINAL ENVIRONMENTAL IMPACT STATEMENT

The applicants and the NRC Staff devote surprisingly little attention to responding to the underlying basis for the contentions: that NEPA requires the environmental report, draft environmental impact statement, or final environmental impact statement (collectively, the "NEPA Documents") in each proceeding to be

supplemented in light of the significant new information contained in the Task Force Report. Most of the NRC Staffs' Responses make the barest mention of NEPA, while many applicants provide only a cursory and flawed treatment of the law. Their strategies for evading NEPA fall into three basic categories: (1) attempts to avoid all treatment of safety issues within the context of NEPA by employing an overly narrow definition of environmental effects to exclude those impacts to public safety, (2) mischaracterizations of the contentions as contentions of inadequacy rather than omission, and (3) attempts to shift the agency's NEPA responsibilities onto the shoulders of Intervenors. Where the Responses do address NEPA, they incorrectly claim that the contentions are based upon no significant or new information. None of these arguments has merit.

A. The Responses Mischaracterize the Public Safety Issues Raised in the Contentions to Avoid Addressing NRC's Responsibility to Consider These Issues in the NEPA Documents.

A number of Responses claim that the contentions are inadmissible because they "attack" or seek an "overhaul" of NRC regulations. *See e.g.* FPL Response (Turkey Point) at 17-23, Entergy Response (Indian Point) at 18-21, Unistar Response (Calvert Cliffs) at 6-10, NRC Staff Response (Diablo Canyon) at 9-12, NRC Staff (Watts Bar 2) at 16, 20-22, TVA Response (Watts Bar 2) at 17. As the contentions make clear, Intervenors do not challenge the adequacy of NRC regulations to protect public health and safety under the Atomic Energy Act. Instead, the contentions question the sufficiency of the NEPA Documents because those documents make factual determinations that compliance with NRC safety regulations will ensure that environmental impacts of reactor accidents will be "SMALL," and the NRC's Task Force has called such determinations into question in its Report.

NEPA requires consideration of the safety risks posed by nuclear reactors before final agency action. Indeed, an environmental impact statement must be prepared whenever a major federal action may have a significant effect on the human environment. 42 U.S.C. § 4321 *et seq*. The term "human environment" must "be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment." 40 C.F.R. § 1508.15. Moreover, the term "effect" is synonymous with "impact," and includes the ecological (such as effects on natural resources and on the components, structures, and functioning of affected ecosystems) as well as the aesthetic, historic, cultural, economic, social, and health impacts of a proposed action. 40 C.F.R. § 1508.8. The degree to which a project may affect public health or safety is thus a major consideration under the statute. *See* 40 C.F.R. § 1508.27.

Therefore, the Responses' attempts to dismiss the numerous public health and safety issues raised by the Task Force Report as being the subject of an impermissible rule challenge are unavailing, as they obscure the necessary role public health and safety issues play in the examination of a project's environmental impacts under NEPA.

Incredibly, some applicants not only read the analysis of "safety" issues out of NEPA, but attempt to avoid addressing Intervenors' claims by further arguing that because there is "no mention of any environmental reviews, either by applicants or by the Staff" the Task Force Report cannot provide support for the contention, "which seeks to raise environmental claims against the [NEPA Document]." FPL Response at 23; s*ee also* Entergy Response at 23 (asserting "the Task Force Report does not discuss NEPA issues at all"), NRC Staff Response (Watts Bar 2) at 30. NEPA requires supplementation of a NEPA Document whenever there is significant new information relevant to

environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9(c)(1)(*ii*). The applicants' position that NEPA requires the consideration of new information for supplementation purposes only where such documents reference specific "environmental reviews" is unfounded and has no support in the law.

B. The Responses Mischaracterize Intervenors' NEPA Contentions as Contentions of Inadequacy Rather Than of Omission.

Throughout the Responses, applicants make numerous references to Intervenors' alleged failure to point to specific flaws in the NEPA documents. *See, e.g.*, FPL Response at 24-25; Entergy Response at 25-26; Unistar Response at 19-20, n. 12. For example, Florida Power & Light ("FPL") argues that the contention's reference to tsunami risks and seismic seiches does not dispute the findings of Turkey Point's Final Safety Analysis Report ("FSAR") and that the FSAR demonstrates that the units are not vulnerable to tsunamis. Therefore, according to FPL, Intervenors' flooding and seismic protection concerns do not raise any dispute on a significant issue with the application. *See* FPL Response at 24. FPL further argues that Intervenors' concerns with respect to spent fuel pool cooling do not demonstrate any genuine material dispute with the application because these issues are sufficiently addressed in the AP1000 DCD. *See* FPL Response at 25.

FPL's arguments completely miss the mark and are nothing more than an attempt to re-characterize the contention as one of inadequacy rather than of omission. Even a cursory reading of Intervenors' contention makes it abundantly clear that it is a contention of omission. The central thrust of the contention is that the Task Force Report constitutes "significant new information" under NEPA and the NEPA Documents need to be supplemented accordingly. The dispute is not that specific portions of the NEPA

Documents contain a flawed analysis or reach false conclusions, but rather that the NEPA Documents fail entirely to consider the findings, recommendations, and conclusions of the Task Force Report. Therefore, the Responses' efforts to dismiss the contentions based on the content of specific sections of the NEPA Documents and arguments that those sections do not demonstrate a genuine material dispute are without merit.

C. Applicants Erroneously Conflate Intervenors' Responsibilities under NEPA With Those of the Agency.

Applicants attempt to conflate Intervenors' responsibilities under NEPA with those of the agency by arguing that the contentions must explain in detail how the NEPA Documents should use the information contained in the Task Force Report. For instance, FPL argues that the contention "do[es] not identify any error in any of [the NEPA Document's] analyses" and that it "provide[s] no information indicating that the probability or consequences of any accident scenario is greater than as assessed in the [NEPA Documents]," where it concerns the consequences of design basis accidents, consequences of severe accidents, and analyzing the cost and benefits of severe accident mitigation alternatives ("SAMA"). FPL Response (Turkey Point) at 29-30, 33; NRC Staff Response (Watts Bar 2) at 37. This argument highlights a fundamental misunderstanding of Intervenors' duties under NEPA by positing that before the NEPA Documents must be supplemented, Intervenors must demonstrate (1) that the new information will, in fact, result in different or greater environmental effects than those described in the NEPA Documents and, (2) precisely how the conclusions in the NEPA Documents should read. *See* Entergy Response at 23 ("Intervenors do not identify with the requisite specificity any substantial changes in the environmental analysis of the

proposed Indian Point license renewal action resulting from the Task Force recommendations").

Contrary to the applicants' arguments, Intervenors carry only the obligation of showing that the new information at issue is "significant," "relevant to environmental concerns," and has "bearing on the proposed action." 40 C.F.R. § 1502.9. Because Intervenors meet this burden, NRC has the responsibility to conduct supplemental environmental analyses and report the results in the NEPA Document. In this instance, however, applicants seek to require Intervenors to supply these analyses. As courts have made abundantly clear, "[it] is the agency, not an environmental plaintiff, that has a 'continuing duty to gather and evaluate new information relevant to the environmental impacts of its actions,' even after release of an [EA or EIS]." *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 559 (9th Cir. 2000) (quoting *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1023 (9th Cir. 1980)); *See also Te-Moak Tribe v. Interior*, 608 F.3d 592, 605-606 (9th Cir. 2010); *Davis v. Coleman*, 521 F.2d 661, 671 (9th Cir. 1975) ("[C]ompliance with NEPA is a primary duty of every federal agency; fulfillment of this vital responsibility should not depend on the vigilance and limited resources of environmental plaintiffs."). As the First Circuit remarked in *Dubois v. U.S. Dept. of Agric.*, 102 F.3d 1273, 1291 (1st Cir. 1996), discussing the public's role under NEPA:

> Such specifics are not required…. [T]he purpose of public participation regulations is simply to 'provide notice' to the agency, not to 'present technical or precise scientific or legal challenges to specific provisions' of the document in question…. Moreover, NEPA requires the agency to try on its own to develop alternatives that will 'mitigate the adverse environmental consequences' of a proposed project. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351 (1989).

Here, Intervenors have met their burden in demonstrating that the Task Force Report contains new and significant information that is relevant to environmental

concerns and has a bearing on the proposed agency regulatory action. Thus NRC has the duty to evaluate this new information and, in conjunction with applicants, prepare supplemental NEPA Documents that rationally connect the facts found to the choices made. *Burlington Truck Lines v. United States*, 371 U.S. 156, 158 (1972) (holding that the agency must consider "relevant factors" and articulate "a rational connection between the facts found and the choices made").

This same fundamental misunderstanding of NEPA undermines applicants' arguments relating to SAMAs. Applicants assert that the NEPA Documents need not be supplemented with regard to the SAMA analyses because only through a rule change -- which Intervenors are precluded from requesting in this forum -- can the Task Force recommendations on this issue be considered. *See, e.g.*, FPL Response (Turkey Point) at 35. As discussed above, this attempt to shift the focus to the NRC regulations ignores the clear requirements of NEPA. Applicants' further argument that the contentions fail to demonstrate that the cost-benefit analysis set out in the NEPA Documents for the proposed action will be affected by implementation of the Task Force Report fails for the same reason. *See, e.g.*, FPL Response at 37. It is not Intervenors' responsibility to explain how the cost-benefit analysis contained in the NEPA Documents would change. That responsibility lies with the NRC.

Finally, to the extent the applicants argue that NEPA's supplementation requirements do not apply to environmental reports ("ERs"), *see, e.g.*, FPL Response at 31, this argument also fails. Such a strained interpretation of the NEPA process as it applies to NRC decision-making is untenable for three reasons. First, to apply this interpretation would result in no conceivable trigger for the NRC to supplement its NEPA

Documents when significant new information, excluded from consideration and analysis in the ER, becomes available in advance of EIS publication. Nor could Intervenors compel such action, as they would be time-barred from filing new contentions alleging the need to supplement a draft or final EIS because such information was available well before those documents were prepared. As mentioned above, this type of "Catch-22" must be precluded in order to ensure that NRC processes comply with NEPA. *Shaw Area MOX Services,* 67 NRC at 502. Second, to preclude evaluation of significant new information in the ER would limit the NRC's ability to adequately and timely consider and respond to new information relatively early in the decision-making process, before a significant amount of time and resources are expended in finalizing the project and developing the draft and final EIS for the action. Third, given that the NRC relies heavily on the contents of the ER to prepare its EIS, not including such information or analysis in the ER would create the potential for significant deficiencies in the resulting EIS. This would increase the likelihood for future litigation by parties seeking to cure these deficiencies. For all these legal and practical reasons, applicants' argument that supplementation does not apply to all NEPA Documents, including ERs, cannot stand.

D. The Responses Incorrectly Claim the Contentions Are Based Upon No Significant New Information

The applicants also claim the contentions are inadmissible because Intervenors have failed to present "significant new information," as required by 10 C.F.R. § 52.39(c)(v). *See, e.g.*, Entergy Response (Indian Point) at 21-25; FPL Response (Turkey Point) at 30-34; Unistar at 14-18; PEF Response (Levy) at 13-14. The contentions, however, are based upon the new and significant information contained in the Task Force Report. The Applicants' efforts to use the Task Force Report to support a claim that the

Task Force itself did not identify significant regulatory changes that represent significant new information in the context of NEPA requirements are simply incorrect.

Many of the Responses argue that the Task Force Report does not present new and significant information because it did not conclude that the recommended design basis changes are necessary at this time. *See, e.g.,* NRC Staff Response (Watts Bar 2) at 28, TVA Response (Watts Bar 2) at 23, NRC Staff Response (Diablo Canyon) at 13. This argument ignores the fact that such a conclusion is provisional, that is to say that the Task Force assumed the NRC would make the recommended regulatory reforms. Thus, the Task Force found that current regulatory requirements can support a reasonable assurance finding "until the actions set forth below have been implemented" and that continued operation of existing nuclear plants does not pose an immediate threat to public health and safety. That the Report contains provisional statements does not detract from or contradict the essential message of the Task Force Report that the NRC's program of *mandatory* safety regulations requires significant strengthening in order to provide, over the long term, adequate protection of public health and safety.[3] It is this longer term, *i.e.,* the next 40 years or more, that is addressed by the NRC's licensing process and by the associated NEPA Documents.

CONCLUSION

For the foregoing reasons, the applicants' and NR Staff's oppositions to the Fukushima Task Force related contentions submitted by Intervenors.

---

[3] *See* Task Force Report at 18 ("As new information and new analytical techniques are developed, safety standards need to be reviewed, evaluated, and changed, as necessary, to insure that they continue to address the NRC's requirements to provide reasonable assurance of adequate protection of public health and safety. The Task Force believes, based on its review of the information currently available from Japan and the current regulations, that the time has come for such change.")

Respectfully submitted,

Electronically signed by
Diane Curran, Esq.
Harmon, Curran, Spielberg & Eisenberg, L.L.P
1726 M Street NW, Suite 600
Washington, D.C. 20036
Telephone: (202)328-3500
Facsimile: (202)328-6918
E-mail: dcurran@harmoncurran.com

Electronically signed by
Mindy Goldstein
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Road
Atlanta, GA 30322
Phone: (404) 727-3432
Fax: (404) 727-7851
Email: magolds@emory.edu

Electronically signed by
Jason Totoiu
Everglades Law Center
PO Box 2693
Winter Haven, FL 33883
(561)568-6740
Jason@evergladeslaw.org

September 13, 2011

CERTIFICATE OF SERVICE

I certify that on September 13, 2011, I re-posted on the NRC's Electronic Information Exchange the foregoing San Luis Obispo Mothers for Peace's Reply to Oppositions to Admission of New Contention and attached Reply Memorandum. It is my understanding that as a result, the following persons were served:

Office of the Secretary Rules and Adjudications Branch U.S. Nuclear Regulatory Commission 11555 Rockville Pike Rockville, MD 20852 hearingdocket@nrc.gov	David A. Repka, Esq. Tyson R. Smith, Esq. Winston & Strawn, LLP 1700 K Street N.W. Washington, D.C. 20006-3817 drepka@winston.com, trsmith@winston.com
Susan Uttal, Esq. Lloyd Subin, Esq. Maxwell Smith, Esq. Office of General Counsel Mail Stop O-15D21 U.S. Nuclear Regulatory Commission Washington, D.C. 20555 Susan.Uttal@nrc.gov Lloyd.Subin@nrc.gov Maxwell.smith@nrc.gov	Alex Karlin, Chair Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555 Alex.Karlin@nrc.gov
Nicholas G. Trikouros Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555 Nicholas.trikouros@nrc.gov	Paul B. Abramson Atomic Safety and Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555 Paul.abramson@nrc.gov
	Office of Appellate Adjudication U.S. Nuclear Regulatory Commission Washington, D.C. 20555-0001

Electronically signed by
Diane Curran