

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Friends of the Earth,*Petitioner,*

v.

U.S. Nuclear Regulatory Commission,
United States of America,*Respondents,*

Pacific Gas & Electric Co.,

Intervenor.

No. 16-1004

JOINT MOTION TO SUSPEND BRIEFING

Pursuant to Federal Rule of Appellate Procedure 27, the undersigned parties jointly move to suspend briefing in this matter pending approval of a proposed settlement filed with the California Public Utilities Commission (CPUC) and, pursuant to that agreement, withdrawal of the license renewal application at issue in this matter. Petitioner Friends of the Earth (FOE) seeks review in this Court of Respondent Nuclear Regulatory Commission's (NRC) order denying FOE's request to intervene in an administrative proceeding regarding an application by

Intervenor Pacific Gas & Electric Co. (PG&E) to renew the operating licenses for Diablo Canyon Nuclear Power Plant (Diablo Canyon) (“License Renewal Application”). Under the terms of the proposed settlement and as described more fully below, upon approval of the settlement by the CPUC, PG&E has agreed to withdraw the License Renewal Application and FOE has agreed to dismiss this matter. The undersigned parties therefore request briefing in this matter be suspended pending approval by the CPUC of the proposed settlement and subsequent withdrawal of the License Renewal Application pursuant to that agreement. Federal Respondents do not oppose the relief requested in this motion.

Background

1. On January 8, 2016, FOE sought review by this Court of the NRC’s final action affirming an order by the Atomic Safety and Licensing Board denying FOE’s petition to intervene in a proceeding regarding PG&E’s application to renew its operating licenses for Diablo Canyon. *See* Petition for Review (Jan. 8, 2016); Memorandum and Order, CLI-15-21, Docket Nos. 50-275-LR, 50-323-LR (Nov. 9, 2015).

2. On June 20, 2016, FOE and PG&E, along with other parties, submitted a “Joint Proposal” to the CPUC, under the terms of which PG&E agreed to, *inter alia*, “retire Diablo Canyon at the expiration of its current NRC operating licenses.” Joint Proposal of Pacific Gas & Electric Company, Friends of the Earth,

Natural Resources Defense Council, Environment California, International Brotherhood of Electrical Workers Local 1245, Coalition of California Utility Employees and Alliance for Nuclear Responsibility to Retire Diablo Canyon Nuclear Power Plant at Expiration of the Current Operating Licenses and Replace it with a Portfolio of GHG Free Resources (June 20, 2016), <http://www.pge.com/includes/docs/pdfs/safety/dcphp/JointProposal.pdf> at 3 (“Joint Proposal Application”). The parties agreed to “jointly propose and support the orderly replacement of Diablo Canyon with GHG free resources.” Joint Proposal Application at 3.

3. Under the Joint Proposal Application, the parties agreed as follows:

Following final and non-appealable CPUC approval of the Joint Proposal Application, 1) PG&E will withdraw the Diablo Canyon NRC license renewal application and request that the proceeding be terminated with prejudice; 2) the Parties will support the withdrawal and termination of the Diablo Canyon NRC license renewal application; and 3) FOE will withdraw with prejudice the petition at the DC Circuit Court of Appeals and related pending hearing requests and motions in the Diablo Canyon license renewal case (*Friends of the Earth v. U.S. Nuclear Regulatory Commission*, Case No. 16-1004 (D.C. Cir. filed Jan. 8, 2016)).

Joint Proposal Application at 16.

4. PG&E agreed to “request that the CPUC issue a final decision approving the Joint Proposal Application no later than December 31, 2017.” Joint Proposal Application at 18.

5. The parties further agreed that “PG&E’s obligation to withdraw its license renewal application . . . shall not become effective or binding until the CPUC’s approval of the Joint Proposal Application has become final and non-appealable.” Joint Proposal Application at 18.

6. Diablo Canyon’s current operating licenses expire on November 2, 2024 (Unit 1) and August 26, 2025 (Unit 2).

7. Petitioner’s brief in this matter is due July 25, 2016. Oral argument has not been scheduled.

Relief Sought

8. In light of the foregoing, the undersigned parties request that the briefing in this matter be suspended pending approval by the CPUC of the Joint Proposal Application and subsequent withdrawal by PG&E of the License Renewal Application.

9. The undersigned parties request an order:

- a. Suspending briefing in this matter pending approval by the CPUC of the Joint Proposal Application and withdrawal of the License Renewal Application;
- b. Directing PG&E to submit status reports every 120 days, beginning January 20, 2017, regarding the status of the CPUC’s

consideration of the Joint Proposal Application and the status of PG&E's License Renewal Application;

- c. Directing FOE to submit a motion to dismiss this matter within 30 days of NRC acceptance of the withdrawal of the License Renewal Application; and
- d. Directing the parties to submit motions to govern future proceedings within 30 days of the CPUC taking any final action regarding the Joint Proposal Application that does not approve the Joint Proposal Application as submitted or otherwise has the effect that PG&E will not withdraw the License Renewal Application in accordance with the terms of the Joint Proposal Application.

Respectfully submitted,

David A. Repka
Tyson R. Smith
WINSTON & STRAWN LLP
1700 K Street, NW
Washington, DC 20006
1-202-282-5726

*Counsel for Pacific Gas &
Electric Co.*

/s/ Richard E. Ayres

Richard E. Ayres
Jessica L. Olson
AYRES LAW GROUP LLP
1707 L St. NW, Suite 850
Washington, DC 20036
(202) 452-9200
ayresr@ayreslawgroup.com
olsonj@ayreslawgroup.com

John H. Bernetich
AYRES LAW GROUP LLP
1536 Wynkoop St., Suite 528
Denver, CO 80202
(720) 504-3002
bernetichj@ayreslawgroup.com

Counsel for Friends of the Earth

Dated: June 29, 2016

CERTIFICATE OF SERVICE

I certify that on June 29, 2016, I served the foregoing “Joint Motion to Suspend Briefing” in the above-captioned case upon all counsel registered with the Court’s CM/ECF system.

Respectfully submitted,

/s/ John H. Bernetich

John H. Bernetich

AYRES LAW GROUP LLP

1536 Wynkoop St., Suite 528

Denver, CO 80202

(720) 504-3002

bernetichj@ayreslawgroup.com