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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

Pacific Gas and Electric Company
(Diablo Canyon Nuclear Power
Plant, Units 1 and 2)

)
) Docket Nos. 50-275-OLA - 2
) 50-323-OLA
) (Construction Period
) Recovery)
)
)

PACIFIC GAS & ELECTRIC COMPANY'S RESPONSE
TO INTERVENOR'S MOTION FOR EXTENSION OF DISCOVERY PERIOD

I. INTRODUCTION

By Motion dated March 4, 1993,^{1/} the intervenor San Luis Obispo Mothers for Peace ("MFP") requested an extension of the discovery period in this proceeding. Under the schedule previously adopted by the Licensing Board, all discovery requests were to be filed by March 8, 1993.^{2/} MFP now requests that this period be extended for a period of seven days after an upcoming visit by MFP to the Diablo Canyon Nuclear Power Plant ("DCPP"), "for the limited purpose of conducting follow-up discovery related to the site visit." Motion at 6.

As explained more fully below, Pacific Gas and Electric Company ("PG&E") objects to the blanket 7-day extension requested

^{1/} "San Luis Obispo Mothers for Peace Motion for Extension of Discovery Deadline," March 4, 1993.

^{2/} See Memorandum and Order (Discovery and Hearing Schedules), at 3 (February 9, 1993).

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by MFP. However, in the spirit of cooperation, PG&E would not oppose a single 7-day extension until March 23, 1993, solely for the purpose of follow-up discovery limited to Contention I (Maintenance) and limited to information on the maintenance practices associated with a sample of three specific components. Such focused maintenance discovery would be consistent with the approach originally suggested by MFP's initial discovery request in this proceeding. As MFP knows, PG&E has offered for over a month to make such information available to MFP, but MFP so far has declined to provide a list of sample components.

With regard to Contention V (Thermo-Lag), as admitted, MFP has demonstrated no reason why follow-up discovery is necessary given the contention's narrow scope. Since October 1992, MFP has had a copy of PG&E's response to NRC Bulletin 92-1, Supplement 1, which fully describes PG&E's interim compensatory measures in Thermo-Lag fire areas. In addition, PG&E's responses to MFP's interrogatories and document requests on Thermo-Lag (also being filed today) will provide MFP with all existing data on PG&E's implementation of interim compensatory measures.

Further, PG&E believes that a limited extension of the discovery schedule should be the last extension of discovery in this proceeding. PG&E is opposed to a) further extension(s) of the discovery period, which would serve only to unnecessarily delay resolution of this proceeding, and to b) further "rounds" of discovery, which would represent an unwarranted resource burden on PG&E. The discovery opportunities allowed in this proceeding to

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date, along with those presented by the upcoming site visit and the requested supplemental discovery period, are more than sufficient to allow MFP a fair hearing, given the limited nature and narrow scope of issues admitted in this proceeding.

II. DISCUSSION

PG&E has indicated repeatedly its desire to cooperate in this proceeding in meeting MFP's discovery needs, at least to the extent requested discovery is permissible and within the scope of the admitted contentions. Toward this end, PG&E has been working informally with MFP's representatives to arrange the site visit previously requested by MFP.^{3/} PG&E has provided MFP's consultants with information and documents, outside the context of the various pending formal discovery requests, in order to assist them in planning and preparing for the site visit. This has included copies of maintenance procedures, a copy of the plant "Q-list," as well as a list of maintenance activities scheduled for the week of March 15, 1993. The express purpose of these efforts has been to assist MFP's consultants focus the visit on pertinent sources of information and thereby increase its efficiency and productivity.

MFP also acknowledges, in its Motion, that "PG&E has committed to making an effort to respond to the [first set of MFP]

^{3/} MFP, in its Motion, indicates March 15 and 16 as possible days for the site visit. However, even when pressed, MFP has never confirmed these dates to PG&E. Due to a recent change in plans creating conflicting schedules at the plant, PG&E can no longer accommodate the March 15 date. PG&E has proposed March 16 and 17.

interrogatories during the week prior to March 15, even though the answers are not due until March 19." Motion at 4. This effort is being made by PG&E, at MFP's request, so that MFP may have the discovery information in advance of the site visit.^{4/} In essence, in the spirit of cooperation and in order to facilitate MFP's site visit, PG&E has already shortened the time it has been allotted to respond to MFP's first set of interrogatories and requests for documents.

Viewed in context, it becomes clear that the site visit -- requested by MFP as a discovery device -- is being used by MFP to drive the discovery schedule in two directions; both adverse to PG&E. As is clear from the recent developments discussed above, the site visit has necessitated hastening of PG&E's response to its interrogatories and document requests. Now, in the current Motion, MFP argues that the site visit will necessitate further "follow-up" discovery after the visit. It is indeed ironic that if MFP had not opted for a site visit as a means of discovery, none of these "problems" would have arisen. In choosing discovery, parties should generally be required to adhere to the schedule adopted by the Licensing Board in its February 9, 1993 Memorandum and Order. As now proposed, MFP's "first round" discovery would entail three bites at the proverbial discovery apple: (1) initial requests

^{4/} PG&E's stated goal was to respond to MFP's pending interrogatories and document requests, in full or in part, during the week of March 8, 1993. PG&E is in fact filing responses to the Thermo-Lag discovery requests by overnight delivery on March 10. PG&E currently plans to file responses to the maintenance requests one day later.

filed by March 8, 1993 (to date, constituting voluminous document requests and interrogatories); (2) the site visit, which will involve a tour of relevant plant areas, observations of relevant plant activities (e.g., fire watches, maintenance activities), and review of more documents; and (3) "follow-up" discovery, which could presumably involve any of the discovery techniques allowed by NRC's Rules of Practice. Moreover, MFP implies in its Motion that the requested extension may not be the last.^{5/}

PG&E objects to the open-ended, unfocused extension requested by MFP. However, as stated above, PG&E would not object to an extension to March 23, 1993, if the additional discovery opportunity were limited to Contention I (Maintenance) and to information on a sampling of three components. If this additional focused discovery period will forestall future motions for additional discovery, then the interests of all parties would seem to favor the extension.

In addition, since PG&E, this week will be providing MFP with a substantial amount of maintenance information in response to the pending interrogatories and document requests, such an extension should be tied to a firm date rather than the site visit. Although the visit could be completed next week as has been discussed, it remains up to MFP to set a date (which PG&E can

^{5/} MFP specifies in its Motion, at 6, n.5, that "SLOMFP may also need to seek an opportunity for follow-up discovery on PG&E's responses to our first round of interrogatories and document requests At this time, we are requesting an extension only for the purpose of conducting follow-up discovery regarding the site visit."

support) and to attend (PG&E has suggested March 16 and 17). PG&E has no desire for this visit to be delayed, or for "follow-up" discovery to remain open if MFP does not schedule the visit. Any such delay would in turn prolong all else to follow in this proceeding.

In anticipation of the possibility of a series of similar requests from MFP, the extension of discovery should also be conditional on a concomitant ruling that precludes further extension(s) of the discovery period by MFP in this proceeding. MFP has already filed a significant number of interrogatories and document requests. The issues admitted in this proceeding are narrow in scope and neither unduly complex nor subtle. The types of information required by MFP would seem to be readily apparent. Accordingly, the need for a further round of discovery as suggested by MFP (Motion, at 6, n.5) is highly suspect. Despite MFP's continued misinterpretation, Contention V (Thermo-Lag) is confined to the narrow issue of the adequacy of the implementation of interim compensatory measures at DCP. Between the discovery already requested and the upcoming site visit, PG&E cannot fathom what further discovery might be necessary on this issue. With respect to Contention I (Maintenance), MFP already has requested a substantial amount of information pertinent to maintenance and surveillance at DCP. This will be amplified during the upcoming site visit, where documentation will also be available for review. The prospect of further, open-ended discovery in this area is inconsistent with the Commission's guidance on discovery in its

proceedings and with a fundamental notion of economy in the discovery process.

As has been articulated by the Commission, focused discovery as well as Licensing Board management and guidance of discovery processes are necessary to expedite hearings through the disclosure of relevant information. See Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 455 (1981).^{6/} Moreover, each "round" of discovery places a burden on PG&E's resources in order to respond to the requests. Discovery in this proceeding should therefore remain efficient and focused on the issues raised by Contentions I and V. All parties to this proceeding have an interest in moving forward toward resolution and avoiding further unwarranted extension(s) of the discovery period previously established by the Licensing Board.

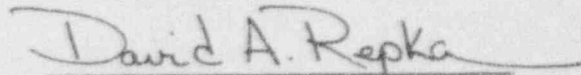
III. CONCLUSION

As discussed above, PG&E objects to MFP's Motion. PG&E would not oppose, however, an alternative limited extension to March 23, 1993. This extended opportunity for discovery would be limited to Contention I, and would be required to be focused on a sampling of maintenance practices on three components. The

^{6/} Similarly, it is impermissible under NRC practice to use the discovery process as a "fishing expedition" to uncover new bases for contentions or new alleged problems. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), LBP-88-25, 28 NRC 394, 396, (1988); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-86-8, 23 NRC 182, 188 (1986); Illinois Power Co. (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1741 (1981).

extension would be tied to a fixed date rather than to the, as yet, unscheduled site visit. In addition, PG&E's agreement to such a limited extension is premised upon the expectation that this additional discovery opportunity will be the final discovery opportunity in this proceeding.

Respectfully submitted,



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Dated in Washington, DC
this 10th day of March, 1993

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)
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CERTIFICATE OF SERVICE

I hereby certify that copies of "PACIFIC GAS & ELECTRIC COMPANY'S RESPONSE TO INTERVENOR'S MOTION FOR EXTENSION OF DISCOVERY PERIOD" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk (*), by Federal Express overnight delivery, or as indicated by two asterisks (**), by hand delivery, this 10th day of March, 1993. In addition, for those parties indicated by the (†) symbol, duplicate service by facsimile has been made.

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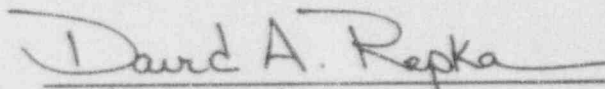
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