

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY OF THE COMMISSION**

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Units Nos. 1 and 2
Renewal of Operating Licenses

Docket Nos. 50-275
and 50-323

NRC-2009-0552

**SAN LUIS OBISPO MOTHERS FOR PEACE'S PETITION FOR WAIVER
OF 10 C.F.R. PART 51 SUBPART A APPENDIX B
AND 10 C.F.R. § 51.53(C)(2).**

Pursuant to 10 C.F.R. § 2.335(b), San Luis Obispo Mothers for Peace (“SLOMFP”) hereby petitions for a waiver of 10 C.F.R. Part 51 Subpart A Appendix B and 10 C.F.R. § 51.53(c)(2) so that SLOMFP’s Contentions EC-2 and EC-3 may be considered in this operating license renewal proceeding. As demonstrated in the attached Declaration of Diane Curran in Support of Petition for Waiver of 10 C.F.R. Part 51 Subpart A Appendix B and 10 C.F.R. § 51.53(c)(2) (March 22, 2010), in three important respects, the purpose of the regulations – to make a generic determination of environmental risk that can be applied in all license renewal proceedings -- would not be served by their application in this case with respects to the consideration of the environmental impacts of an earthquake-caused pool fire or the environmental impacts of an attack on the spent fuel pool.

First, the Draft Revised License Renewal GEIS contains significant new information demonstrating that DCNPP has unique seismic characteristics that resulted in its exclusion from the principal study on which the NRC relies for its conclusion that spent fuel storage impacts are small.

Second, the Draft Revised License Renewal GEIS strongly indicates that in concluding that the environmental impacts of spent fuel storage are small, the NRC relied on analyses and mitigation measures that are site-specific.

Finally, the NRC has not adequately supported its generic analysis of spent fuel storage impacts, because it fails to provide references to support its conclusion or to show that it has fully complied with its obligations to disclose all publicly releasable information on which it relies.

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
e-mail: dcurran@harmoncurran.com

March 22, 2010

March 22, 2010

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY OF THE COMMISSION**

In the matter of

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

Docket Nos. 50-275-LR
50-323-LR

**DECLARATION BY DIANE CURRAN
IN SUPPORT OF PETITION FOR WAIVER OF
10 C.F.R. PART 51 SUBPART A APPENDIX B AND 10 C.F.R. § 51.53(c)(2).**

Under penalty of perjury, I, Diane Curran, hereby state that:

1. I represent San Luis Obispo Mothers for Peace (“SLOMFP”) in this proceeding.
2. I make this declaration as an attorney who has read documents and/or portions of documents in which Pacific Gas & Electric Company (“PG&E”) and the U.S. Nuclear Regulatory Commission (“NRC”) discuss the environmental impacts of spent fuel storage at the Diablo Canyon Nuclear Power Plant (“DCNPP”) and other nuclear plants. These documents include PG&E’s Environmental Report, the NRC’s 1996 License Renewal Generic Environmental Impact Statement (“1996 License Renewal GEIS”), and the NRC’s Draft Report for Comment of Revision 1 of the 1996 GEIS issued in June 2009 (“Draft Revised License Renewal GEIS”).
3. The purpose of my declaration is to identify the specific aspects of the subject matter of this case for which statements made by the NRC in the Draft Revised License Renewal GEIS demonstrate that the application of the NRC’s prohibition against consideration of spent fuel storage impacts, as codified in 10 C.F.R. Part 51 Subpart A Appendix B and 10 C.F.R. § 51.53(c)(2), would not serve the purposes for which the regulations were adopted. My opinion is based on my reading of the documents identified above in par. 2.
4. As I understand it, the purpose of the regulations cited above is to codify and apply a generic determination, made in the 1996 License Renewal GEIS, that spent fuel may be stored at reactor sites around the United States without imposing any significant environmental risk. Therefore the regulations excuse operating license renewal applicants from addressing the risks of spent fuel storage in the individual Environmental Reports.
5. I do not believe the regulations’ purpose would be served by applying them in this proceeding, in light of significant new information that is presented in the Draft Revised License Renewal GEIS. This information differs substantially from the information presented in the 1996 GEIS. In particular, the Draft Revised License Renewal GEIS concedes, for the first time, that the NRC does not have an adequate technical basis for

reaching any conclusions about the environmental impacts of an earthquake at DCNPP. In addition, the Draft Revised License Renewal GEIS admits that to some extent, mitigation measures at all nuclear reactor spent fuel pools (including DCNPP) are site-specific. I believe the NRC is legally obligated to apply this significant new information in evaluating the environmental impacts of renewing the DCNPP operating license, and may not rely on the now-outdated 1996 License Renewal GEIS. *Marsh v. Oregon Natural Resources Council*, 489 U.S. 360 (1989).

6. The Draft Revised License Renewal GEIS demonstrates that in determining that the environmental impacts of onsite spent fuel storage are small, the NRC now relies on an entirely new set of risk analyses and mitigative measures than it did in the 1996 License Renewal GEIS. The Draft Revised License Renewal GEIS also demonstrates that to a crucial degree, the new risk analyses and mitigative measures relied on for the NRC's generic conclusion regarding spent fuel storage risks cannot be applied to DCNPP.

7. The "key document" on which the NRC now relies for its conclusion that spent fuel pool storage risks are small is NUREG-1738, *Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants* (October 2000). *Id.* at E-33 – E-34. NUREG-1738 contains a disclaimer, however, that its general conclusions about the risk of a pool fire do not apply to Diablo Canyon. *Id.* at E-33 and note 1. According to NUREG-1738, western nuclear reactor sites like Diablo Canyon "would need to be considered on a site-specific basis because of important differences in seismically induced failure potential of the SFPs [spent fuel pools]." *Id.* at ix. This conclusion is consistent with PG&E's SAMA analysis for Diablo Canyon, which states that while it is generally reasonable to conclude that the risk of external and internal events are "approximately equal," seismic accident risk contributors (along with fire) are "disproportionately dominant" when compared to all external events. *Id.* at F-65.

8. NUREG-1738 also acknowledges that if a pool fire were to occur, it "could result in high consequences in terms of property damage and land contamination." *Id.* at A6-26. The effects of a pool fire also include the societal and economic impacts of relocating large numbers of people: indeed, NUREG-1738's conclusion that latent fatalities would be relatively low is based on the presumption that the people in the area of a nuclear plant will be evacuated and relocated after a pool fire. *Id.* at A4C-4. The economic consequences of a pool fire could be particularly high for California as the highest-earning agricultural state in the union.¹ While it may be possible to relocate people, schools and businesses, it is not possible to relocate fertile farmland. These potential

¹ See 2007 Census of Agriculture – State Data (http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_2_US_State_Level/st99_2_002_002.pdf), which shows that 2007 total farm sales in California were over \$33 billion, more than 10% of the total farm sales in the entire United States of \$297 billion. In the same year, average farm income in California was \$418,164, more than three times the national average of \$134,807. A copy of the California census data is attached as Exhibit 3 to SLOMFP's Hearing Request and Petition to Intervene.

consequences are not discussed in the Environmental Report or any other existing EIS for license renewal.

9. In the Draft Revised License Renewal GEIS, the NRC amends NUREG-1738 by stating that recent and “more rigorous accident progression analyses,” “mitigation enhancements,” and “NRC site evaluations of every SFP in the United States” have led it to conclude that “the risk of an SFP zirconium fire initiation is expected to be less than reported in NUREG-1738 . . . and previous studies.” *Id.* at E-36. Given that the risk evaluation in NUREG-1738 does not apply to Diablo Canyon, however, this assertion has no meaningful application to Diablo Canyon. And nothing else in the Draft Revised License Renewal GEIS indicates that the NRC has re-evaluated the conclusions of NUREG-1738 in light of the seismic risks at Diablo Canyon.

10. While the NRC claims in the Draft Revised License Renewal GEIS that it relies for its conclusions on “NRC site evaluations of every SFP in the United States” *Id.* at E-35 – E-36. NRC does not claim that these site evaluations included any seismic analysis. In any event, the NRC’s assertion that it relied on individual site assessments for its evaluation of environmental impacts of spent fuel pool storage is not consistent with a generic risk determination. And the fact that the assertion is not supported by any citation to a reference document renders it essentially useless to support a generic risk determination.

11. Just as the NRC’s assertions about site evaluations and mitigation measures undermine its claim that seismic risks to the DCNPP fuel pools can be assessed generically, they also undermine the NRC’s claim that it can make a generic assessment of the environmental impacts of intentional attacks on the DCNPP spent fuel pools. The site-specific nature of site evaluations and mitigation measures for attacks on spent fuel warrants the granting of a waiver so that the impacts of attacks on the Diablo Canyon spent fuel pool may be considered in the Diablo Canyon operating license proceeding. *See San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006), cert. denied, 127 S.Ct. 1124 (2007).

12. Another factor which undermines the credibility of the NRC’s claim to be able to make a generic assessment of spent fuel storage risks at DCNPP is its failure to provide any identifying information about the mitigation enhancements and NRC site evaluations to which it refers. The NRC’s failure to provide citations to the reference documents that purportedly support its generic determination, or to disclose releasable portions of those documents, makes it impossible to rely on the generic determination in the Draft Revised License Renewal GEIS. In this proceeding, the NRC should provide identifying information for all reference documents on which it relies, including references to both site-specific and generic analyses and mitigation measures; and it should disclose those portions that are releasable. *Pacific Gas and Electric Company* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-08-1, 67 NRC 1, 14-16 (2008).

13. In order to comply with NEPA, the Environmental Report should contain a complete analysis of the potential for a pool fire at Diablo Canyon. The analysis should consider a

full spectrum of potential causes, including seismic contributors, other unintentional contributors, and intentional attack contributors.

14. The Environmental Report should also provide a complete analysis of the consequences, including not only health effects but economic and societal effects of widespread land contamination and the need to relocate the population. The Environmental Report should address those impacts, including the health, societal and economic impacts of long-term radiological contamination. In addition, the Environmental Report should address alternatives for avoiding or mitigating those impacts, including the no-action alternative.

I declare that the foregoing statements of fact are based on my reading of the NRC's Revised License Renewal GEIS and the expressions of opinion are based on my best professional judgment.

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

dcurran@harmoncurran.com

March 22, 2010