

October 1, 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  
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**

**I. INTRODUCTION**

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 addresses the effects of the NRC Staff's Final Environmental Assessment ("EA") Supplement<sup>1</sup> on SLOMFP's contentions in this proceeding.<sup>2</sup> The Final EA Supplement does not make any significant changes to the Draft EA Supplement, nor does it provide any satisfactory explanation for the gross deficiencies of the EA Supplement. Therefore SLOMFP makes no changes to its contentions.

**II. DISCUSSION**

The Final EA Supplement is virtually identical to the Draft EA Supplement, whose severe inadequacies were described in SLOMFP's contentions. Moreover, as

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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) ("SLOFMP Contentions").

discussed in the attached Declaration by Dr. Gordon Thompson, the response to comments contained in an appendix to the Final EA Supplement fails to address or resolve the concerns raised by the contentions.<sup>3</sup> Like the Draft EA Supplement, the Final EA Supplement does not (1) define its terms, explain its methodology, or identify scientific sources; (2) reveal or justify its assumptions; (3) consider credible threat scenarios with significant environmental impacts; (4) address the National Infrastructure Protection Plan; or (5) consider the vulnerability of the proposed ISFSI in relation to the entire Diablo spent fuel storage complex.

The one respect in which the Final EA Supplement improves upon the Draft EA Supplement is that it provides a list of some of the references relied on by the NRC in preparing the EA Supplement. The list of references is insufficient to comply with NEPA, however, because it is concededly incomplete. In response to comments that the Draft EA Supplement was deficient for its failure to provide source terms, information regarding its sources, and documentary references, the Final EA Supplement states that:

The staff cannot provide specific details of the analyses (such as the source term used), nor the supporting background documents, due to the sensitive nature of the information. However, *some of these reference documents* have been listed in the final EA supplement in response to these comments (and are also listed at the end of this appendix).

Final EA Supplement at A-4 (emphasis added). The NRC Staff provides no explanation as to why it considers the mere identification of reference documents to be too “sensitive” to publish, nor is any justification evident. The Final EA Supplement should provide a complete list of its sources and references, including records of the consultations with law

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<sup>3</sup> 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 (October 1, 2007).

enforcement agencies which are identified as important sources of information in the appendix to the Final EA Supplement.<sup>4</sup>

As set forth in Contention 1(b), SLOMFP continues to seek access to any safeguards or classified documents that the NRC Staff relied on to conclude that the environmental impacts of attacks on the proposed ISFSI are insignificant.<sup>5</sup> Even in the event that the Commission rejects SLOMFP's contentions, to the extent the Commission relies on non-public documents in rejecting any contentions, SLOMFP seeks access to those non-public documents (under appropriate protective measures) in order to evaluate the basis for the Commission's decision.

While SLOMFP seeks access to safeguards and classified documents to the extent such access is necessary to evaluate the basis for the conclusions reached in the Final Supplement to the EA, SLOMFP also believes that the Commission can and must disclose far more information in order to demonstrate to the public that it has considered the environmental impacts of attacks on the Diablo Canyon ISFSI, and that it can do so without compromising the security of the ISFSI. The Commission's own Design Basis Threat ("DBT") rulemaking, for example, reflects a far more open approach than has been taken in the Diablo Canyon licensing proceeding. As the Commission stated in the preamble to the proposed rule, the level of detail provided in the rulemaking notice:

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<sup>4</sup> See, e.g., Final EA Supplement at A-5 ("The threat scenarios considered in the security assessments were selected by NRC, based on intelligence information regarding trends and actual, demonstrated capabilities of potential adversaries, gathered through regular consultations with federal and law enforcement agencies, and the intelligence community;" *id.* at A-6 ("NRC's choice of scenarios was informed by information gathered through NRC's regular interactions with the law enforcement and intelligence communities").

<sup>5</sup> As discussed in note 3 of SLOMFP's Contentions, SLOMFP's attorney, Diane Curran, and one of its experts, Dr. Edwin S. Lyman, have active security clearances.

reflects all major features of the DBTs, yet avoids compromising licensee security by not publishing the specific tactical and operational capabilities of the DBT adversaries. The goal of this approach is to provide sufficient public notice of the upgrades to the DBTs, *including the new modes of attack that facilities must be prepared to defend against*, so that meaningful public input is possible regarding the proposed rule's scope and content.

Proposed Rule, Design Basis Threat, 70 Fed. Reg. 67,380, 67,382 (November 7, 2005)

(emphasis added).

As the Commission emphasized:

[I]t is important for the public to be informed of the types of attacks against which nuclear power plants and Category I fuel cycle facilities are required to defend. The public has a vital stake in the security of these facilities, as well as the right to meaningful comment when NRC proposes to amend its regulations.

The Commission's legal and policy concerns and practical approach to information disclosure in promulgating the DBT rule are as applicable to the Diablo Canyon ISFSI as they are to nuclear power plants and Category I fuel cycle facilities, and as relevant in the context of the National Environmental Policy Act as they are in the context of the Atomic Energy Act. The Final EA Supplement for the Diablo Canyon ISFSI falls dismally short of meeting the Commission's legal or policy standards for public disclosure of security-related information.<sup>6</sup>

### **III. CONCLUSION**

As discussed above, the NRC Staff has made no significant changes to the EA Supplement for the Diablo Canyon ISFSI that would warrant any changes to SLOMFP's

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<sup>6</sup> In addition to seeking access to safeguards and classified information by Dr. Lyman and the opportunity for Dr. Lyman to present testimony in a protected setting, SLOMFP seeks an opportunity for Dr. Thompson to present his criticisms of the EA Supplement in a protected setting. While SLOMFP does not plan to seek access to classified or safeguards information by Dr. Thompson, SLOMFP does seek an opportunity for Dr. Thompson to present, in a protected setting, the details of his expert views on the potential for attacks on the Diablo Canyon ISFSI and the consequences of attacks.

contentions. Therefore, SLOMFP seeks a ruling on the admissibility of the contentions as written.

Respectfully submitted,

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