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NUCLEAR REGULATORY COMMISSION

Title: Pacific Gas and Electric Company
Diablo Canyon Nuclear Plant

Docket Number: 50-275-LR and 50-323-LR

ASLBP Number: 10-900-01-LR-BD01

Location: (teleconference)

Date: Wednesday, September 19, 2012

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PREHEARING CONFERENCE CALL

| | |
|----------------------------------|-------------------|
| -----x | Docket Nos. |
| In the Matter of: | : 50-275-LR and |
| PACIFIC GAS & ELECTRIC COMPANY : | 50-323-LR |
| (Diablo Canyon Nuclear Power : | |
| Plant, Units 1 and 2) : | ASLBP No. |
| -----x | 10-900-01-LR-BD01 |

Wednesday, September 19, 2012

BEFORE:

| | |
|-----------------------|----------------------|
| ALEX S. KARLIN | Chairman |
| NICHOLAS G. TRIKOUROS | Administrative Judge |
| DR. PAUL B. ABRAMSON | Administrative Judge |

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APPEARANCES:

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On Behalf of the Nuclear Regulatory

Commission:

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P-R-O-C-E-E-D-I-N-G-S

(2:00 p.m.)

1
2
3 CHAIRMAN KARLIN: Good afternoon,
4 everyone. This is Alex Karlin. So, with a court
5 reporter, we now go on the record please.

6 PARTICIPANT: We are on the record, Your
7 Honor.

8 CHAIRMAN KARLIN: Thank you. I know that
9 we have representatives of all of the parties present,
10 and in a moment we will have them introduce
11 themselves.

12 But just for the record, we want to
13 reflect that this is a prehearing conference call in
14 the matter of Pacific Gas & Electric Company, and a
15 challenge to PG&E's application to renew its license
16 for the Diablo Canyon Nuclear Power Plant located in
17 California.

18 The Docket Number is 50-275-LR and 50-323-
19 LR, and the ASLBP Number, for the record, is 10-890-
20 01-LR-BD01.

21 This conference call is being held
22 pursuant to a notice that this Board, the ASLBP Board,
23 sent out on August 9th of 2012. And today's date is
24 September 19, 2012.

25 We are conducting this call

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1 telephonically. The parties are participating
2 telephonically. Two of our Judges are on other lines,
3 and some of us are here in person in Rockville. Also,
4 there is a public listening -- listen-only line which
5 we have made available, and it may be that some
6 members of the media or public are listening in on
7 that line as well, but they will not be able to speak.
8 Like a court proceeding, only the lawyers and the
9 litigants are entitled to address the Board at this
10 time.

11 So let me go from that to the
12 introductions. For the Board, I would say here in
13 Rockville, in our ASLBP offices, we have Jon Eser and
14 Onika Williams, who are lawyers and law clerks helping
15 this Board out; Sara Culler has been our
16 administrative assistant; and Tywana Ellis -- Twana
17 Ellis will be here also, and she is going to be an
18 administrative assistant helping with this matter.

19 Over the phone we have Dr. Abramson.
20 You're there, Dr. Abramson?

21 ADMIN. JUDGE ABRAMSON: Unfortunately.

22 CHAIRMAN KARLIN: Unfortunately, yes. And
23 Nick Trikouros. Judge Trikouros?

24 ADMIN. JUDGE TRIKOUROS: I am here.

25 CHAIRMAN KARLIN: Okay. So we are all

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1 here. Could we have the parties introduce themselves?
2 I will start with Ms. Curran, representing the Mothers
3 for Peace.

4 MS. CURRAN: Hello. Good afternoon. This
5 is Diane Curran, representing the San Luis Obispo
6 Mothers for Peace. I'm on the telephone in
7 Washington, D.C.

8 CHAIRMAN KARLIN: Okay. And do you have
9 anyone with you on the line?

10 MS. CURRAN: No, I don't.

11 CHAIRMAN KARLIN: Okay. Fine. For the
12 Applicant, I believe Mr. Tyson Smith -- are you on the
13 line? Could you introduce your team, please?

14 MR. SMITH: Yes. That's correct, Judge
15 Karlin. This is Tyson Smith, on behalf of Pacific
16 Gas & Electric Company. And with me I have Jennifer
17 Post, who is an attorney at PG&E.

18 CHAIRMAN KARLIN: Okay. Great. And for
19 the Staff, Mr. Subin, I heard you on the line. Is
20 there anyone else with you?

21 MR. SUBIN: Yes, yes. Lloyd Subin. We
22 have Maxwell Smith --

23 CHAIRMAN KARLIN: Okay.

24 MR. SUBIN: -- for the Staff.

25 CHAIRMAN KARLIN: Great. Welcome. Okay.

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1 This is essentially the 12-month status conference for
2 this case. Our last conference call was September 20,
3 2011, almost a year ago. And a goodly amount has
4 happened since then, but most of that does not need to
5 be something we need to talk about in this call.

6 But we do want to cover a couple of things
7 in the background is -- first, on August 3, 2012, the
8 NRC amended its Part 2 regs that deal with
9 adjudicatory hearings, and on August 27th the parties
10 submitted a joint proposal or response to our request
11 for their suggestions as to what changes to the
12 scheduling order might be appropriate in light of
13 those amendments to the Part 2 regs. So that is one
14 item on the agenda.

15 And the other things perhaps to note for
16 the purposes of this call is on August 16th of 2012
17 the staff filed its most recent status report, and
18 that is relevant here. I understand that your next
19 status report is due tomorrow, so we will be asking
20 you about that. And on September 11, 2012, PG&E filed
21 its status report regarding the seismic study.

22 So the purpose of this call is to, you
23 know, check in with the parties to see if there is
24 anything on the horizon that they are aware of that
25 would be relevant to the management, the efficient

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1 management of this case, that would help us in that
2 regard, and just to assess the status of the case.

3 I talked about this with my colleagues,
4 and I think our agenda is pretty short. One, we'd
5 like to ask PG&E to advise us about its schedule,
6 particularly for the 3D seismic study. Two, we'd ask
7 the Staff to assess its schedule and just confirm
8 where it stands. And, three, we would talk about the
9 -- briefly about the Part 2 amendments and how that
10 might affect our scheduling order.

11 There are no motions pending and nothing
12 else pending before us that I'm aware of at this
13 point, so that is all we have got -- one, two, and
14 three. Do the parties -- do any of the parties have
15 any other item that they think should be added to the
16 agenda?

17 (No response.)

18 Okay. Hearing none, this is going to be
19 a short call I think, but could we ask Mr. Smith for
20 -- on behalf of PG&E, or perhaps Ms. Post, to give us
21 -- I see that your 9/11/2012 status report indicates
22 a 10-month delay in the final seismic study report
23 going from -- previously you had it at November 2013,
24 and now it's September 2014. Could you talk a little
25 bit about that, explain what is going on with that

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1 report?

2 MR. SMITH: Certainly. And as you
3 mentioned, the latest schedule we've got is that
4 September 11, 2012 schedule. And as you noted, the
5 takeaway is the issue of the final seismic report has
6 slipped somewhat.

7 And what that is really due to is if you
8 look a little bit further up on the section on 3D,
9 high energy marine studies, is that we are getting a
10 little more clarity on what our permits are going to
11 look like, and it's looking now like there is going to
12 have to be two phases to those studies.

13 One is going to be performed this winter,
14 in November and December, and then the second phase
15 will likely need to be performed the following year.
16 And that is due to some of the permit restrictions
17 associated with environmental impacts and also the
18 availability of the research vessel that does the
19 studies.

20 And so as a result of, you know, that
21 split into multiple phases, that is going to push back
22 the final report.

23 CHAIRMAN KARLIN: Okay. So does the -- do
24 the Mothers for Peace or the Staff have any questions
25 about that change in schedule?

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1 MS. CURRAN: I was just -- this is Diane
2 Curran. I was just curious, was this because -- my
3 understanding was there was concern about the impacts
4 on whales of the study. Is that it?

5 MS. POST: Yes. It was due to needing to
6 get permits -- it was due to -- they turned it into
7 two phases to mitigate impacts actually on harbor
8 porpoises and sea otters.

9 CHAIRMAN KARLIN: That was Jennifer Post
10 speaking.

11 MS. POST: Yes, it was. I'm sorry.

12 CHAIRMAN KARLIN: No problem. Okay. All
13 right. That's fine.

14 Now, turning to the Staff's schedule, the
15 last report you submitted was August 16th, and now you
16 have one due tomorrow, Mr. Subin. Does the 10-month
17 delay in the final seismic study report translate into
18 some delay associated with the --

19 MR. SUBIN: Yes.

20 CHAIRMAN KARLIN: -- final EIS?

21 MR. SUBIN: Yes, that's correct. We will
22 probably have to extend our dates another 10 months
23 from what you saw last month. That's probably what
24 you will see in tomorrow's filing.

25 CHAIRMAN KARLIN: Okay. So it's sort of

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1 a day for day, month for month, there is no
2 opportunity to compress that or, you know --

3 MR. SUBIN: Not at this point in time.

4 CHAIRMAN KARLIN: Okay. And the -- as you
5 see it, the final seismic study report is the -- what
6 I might call the trigger date for you, for the Staff
7 to be able to do the draft supplementary EIS.

8 MR. SUBIN: Correct.

9 CHAIRMAN KARLIN: All right. Okay. Okay.
10 Well, that pushes us back, you know, considerably --
11 10 months -- straight forward. It still is, I might
12 note, within the 52-month timeframe that we had
13 originally noted to the Commission, because in PG&E's
14 original letter to the Commission of April 10, 2011,
15 you had -- it seemed to me that you had said the
16 possibility was that report would come out in December
17 2015, and you are still beating that date. Is that
18 correct, Mr. Smith?

19 MR. SMITH: Yes, Your Honor.

20 CHAIRMAN KARLIN: Okay. All right. So it
21 is what it is, and this proceeding cannot go to an
22 evidentiary hearing on the environmental issue until
23 that is done, I suppose. So we will just have to have
24 you do your thing, and when those things are completed
25 we can proceed with our adjudication on those issues.

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1 I will turn to the --

2 MS. CURRAN: Judge Karlin, this is Diane
3 Curran. I have a question.

4 CHAIRMAN KARLIN: Yes?

5 MS. CURRAN: I guess my question is for
6 the Staff. The Commission has issued a Staff
7 Requirements Memorandum establishing a two-year
8 deadline for revised -- for preparing a new waste
9 confidence EIS. And I just wondered if the Staff has
10 -- if they expect that to be resolved before or after
11 the seismic issues, and how that is all going to be
12 integrated into the EIS for Diablo Canyon.

13 CHAIRMAN KARLIN: That is a legitimate
14 question. I was thinking about that myself. I'm glad
15 you reminded me. I assume that 24 months is already
16 covered within the timeframe that we have here, but
17 what is your reaction on that, Mr. Subin?

18 MR. SUBIN: We would hope that to be
19 resolved. We are not waiting to do these sites
20 because of that. The only thing that is holding it up
21 is, as we said, the seismic studies.

22 CHAIRMAN KARLIN: Is there any
23 contemplation that a site-specific supplemental FEIS
24 will be done, or a DEIS will be done here to deal with
25 the waste confidence decision?

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1 MR. SUBIN: No. If one is necessary, it
2 would probably be done before then anyway, or part of
3 this. But we're not contemplating one at this point
4 in time.

5 OPERATOR: Excuse me. This is the
6 operator. I apologize. I have someone who is still
7 sitting in the main conference on music hold. Did you
8 want them to join you?

9 CHAIRMAN KARLIN: Well, Operator, members
10 of the public are on a listen-only line, and
11 presumably they have been -- they should be in enable
12 listen.

13 OPERATOR: No, they -- no, I was not given
14 any direction to join them yet. So --

15 CHAIRMAN KARLIN: Well, okay. Please join
16 them, then.

17 OPERATOR: Okay.

18 PARTICIPANT: But not in a speaking
19 capacity.

20 CHAIRMAN KARLIN: Yes, but not in a
21 speaking capacity.

22 OPERATOR: Right. A listen-only mode.

23 CHAIRMAN KARLIN: Are they -- okay.
24 Please join them.

25 OPERATOR: All right. One moment.

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1 CHAIRMAN KARLIN: Hello? Operator, are
2 you on the line? Operator? Okay.

3 PARTICIPANT: I don't think we have
4 contact with her unless she interrupts us.

5 CHAIRMAN KARLIN: Okay. Well, let me just
6 say, this is Judge Alex Karlin. I'm with the Atomic
7 Safety and Licensing Board. We have been conducting
8 a prehearing conference call with the parties to the
9 adjudication in the Diablo Canyon matter.

10 The operator was -- there is a listen-only
11 line that we arranged to have for members of the
12 public to listen to this proceeding, and to listen to
13 this call, and the operator just informed us that they
14 -- the public, members of the public on that line,
15 were only patched in a moment ago. I apologize for
16 the delay associated with that, but we are going to
17 continue to proceed.

18 For those of you who were -- you know,
19 members who were not able to hear at the beginning of
20 this call, please note that a transcript of the call
21 will be made available on NRC's public website within
22 about a week or so, and you can look at that first I
23 guess 10 minutes of the call and listen to that.

24 So it's -- but we apologize for the delay,
25 and we are now talking about the schedule. I guess we

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1 were still talking about the Staff's schedule and the
2 -- whether or not the waste confidence rule decision
3 in New York v. NRC -- how that might impact the
4 schedule here. And I believe, Mr. Subin, you are
5 saying you don't think it will impact the schedule
6 here. Mr. Subin, for the Staff, is that correct?

7 MR. SUBIN: That's correct. That's what
8 I said.

9 CHAIRMAN KARLIN: And I had asked whether
10 or not the Staff was contemplating doing a site-
11 specific environmental impact analysis of the waste
12 confidence issue for Diablo Canyon. And, Mr. Subin,
13 your answer is?

14 MR. SUBIN: I said no, we were not
15 contemplating it at this point in time.

16 CHAIRMAN KARLIN: Right. Okay. And that
17 I think brings us up to date to the one -- third item
18 on the agenda, really, which is just to talk about the
19 August 3, 2012, amendments to the NRC's regulations
20 governing adjudicatory proceedings.

21 As we know, those new regs went into
22 effect in early September, and they don't change
23 anything we have done in the past, but going forward
24 the new rules are to be applied to disputes that might
25 arise in the conduct of this proceeding. And so with

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1 that in mind, we, the Board, ask the parties to submit
2 to us suggestions as to whether -- how we should
3 change our scheduling order.

4 We have an initial scheduling order that
5 was issued in September 2010, the governance
6 proceeding, and whether these amendments to the
7 regulations warrant any changes in that scheduling
8 order. You submitted something to the parties,
9 jointly submitted some proposals to us on August 27th
10 of 2011. We have looked at them.

11 We think -- I'm trying to speak for my
12 colleagues on the Board -- that conceptually you are
13 in the right mode. We are going to make some of those
14 changes. We may not adopt your precise wording, but
15 we will adjust the scheduling order to reflect some of
16 the changes in the regs.

17 And we may delete some of the provisions
18 that have become obsolete, but -- you may not see
19 everything exactly the way you proposed it, but I
20 think the gist of it will be there. And we are also
21 going to change -- there was an ultimate deadline set
22 for motions for summary disposition associated with
23 environmental matters, and that needed to be revised,
24 and so we are going to revise that.

25 But we don't really need to discuss that

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1 at this point unless there are any questions that the
2 parties have. You will probably be seeing something
3 from us in the next couple of weeks, I hope, that is
4 a revised scheduling order that reflects that.

5 With that, unless Judge Abramson or Judge
6 Trikouros has anything -- just hold on a second.

7 (Pause.)

8 CHAIRMAN KARLIN: All right, everyone.
9 We're back on the record here. And I think Judge
10 Trikouros had one question that he wanted to ask.

11 ADMIN. JUDGE TRIKOUROS: Yes. This is for
12 Ms. Post. During the course of these studies, do you
13 see any opportunity for -- to make up any lost time in
14 the schedule?

15 MS. POST: Given the approach that we are
16 required to take under the permit that was issued by
17 the California State Lands Commission, I don't see an
18 opportunity to -- we can't change the
19 November/December timeframes where we're collecting
20 the data. And that is due to different requirements
21 with regard to whether and with regard to the
22 different species that -- and other environmental
23 impacts that we are having.

24 So we certainly, in terms of trying to
25 process the data, we might be able to -- we might be

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1 able to compress some time there. But we are, at this
2 point, married to performing the collection of the
3 data in two phases, in November and December of 2012,
4 and then again in November and December of 2013.

5 ADMIN. JUDGE TRIKOUROS: All right. Thank
6 you.

7 CHAIRMAN KARLIN: Okay. Anything else
8 from the parties?

9 (No response.)

10 All right. I appreciate the status
11 conference. It was short, but sometimes it's helpful
12 to pulse the parties and to find out if anything is on
13 the horizon that we should know about that would help
14 us manage the case. It sounds like there is a lot of
15 studying going on, and that's fine and good, and we
16 will await the results of that information, so that we
17 can have our adjudicatory hearing once the study is
18 complete, and the EIS is then complete.

19 We may have another conference call in six
20 to 12 months, depending on the level of activity in
21 the case. But, otherwise, I appreciate your time, and
22 we will just close the record.

23 Thank you.

24 (Whereupon, at 2:00 p.m., the proceedings
25 in the foregoing matter were concluded.)

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