

September 6, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
PACIFIC GAS AND ELECTRIC) Docket No. 50-275-LR
COMPANY) Docket No. 50-323-LR
)
(Diablo Canyon Power Plant, Units 1 and 2))

APPLICANT’S RESPONSE TO PROPOSED CONTENTION

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h), Pacific Gas and Electric Company (“PG&E”) hereby responds to the San Luis Obispo Mothers for Peace (“SLOMFP”) motion to admit a new contention addressing the implications of the events at the Fukushima Daichi plant in Japan.¹ The lessons learned from the accident at Fukushima are matters currently under review by the Nuclear Regulatory Commission (“NRC” or “Commission”). PG&E supports the Commission’s efforts and expects that important insights will be gained from the NRC review. Any new requirements or enhancements for operating nuclear power plants resulting from lessons learned through the Fukushima accident should (and will) be imposed in the context of the NRC’s ongoing review, independent from this license renewal review.

¹ “Motion to Admit Contention Regarding the Safety and Environmental Implications of the Nuclear Regulatory Commission Task Force Report on the Fukushima Dia-Ichi Accident,” dated August 11, 2011 (“Motion”). The Motion was accompanied by the “Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report,” dated August 11, 2011 (“Proposed Contention”), and a “Declaration of Dr. Arjun Makhijani Regarding Safety and Environmental Significance of NRC Task Force Report Regarding Lessons Learned from Fukushima Daiichi Nuclear Power Station Accident,” dated August 8, 2011 (“Declaration”).

The Motion and Proposed Contention are based entirely on the recommendations in the report of the NRC's Near-Term Task Force, issued on July 12, 2011.² The Task Force Report recommends that the Commission initiate rulemakings to address all of the various topics raised in the Proposed Contention, including:

- A risk-informed, defense-in-depth regulatory framework (Recommendation 1.2);
- A requirement to periodically confirm seismic hazards and flooding hazards (Recommendation 2.2);
- Revisions to 10 C.F.R. § 50.63 addressing loss of power events associated with significant natural disasters (Recommendation 4.1);
- Upgrades to spent fuel pool instrumentation (Recommendations 7.1 - 7.5);
- Hands-on training and exercises on severe accident mitigation procedures (Recommendation 8.4);
- Enhanced emergency preparedness for multi-unit events (Recommendation 9.1); and
- Enhanced emergency preparedness for station blackout events (Recommendation 9.2).

Task Force Report at 73-74. Given the nature of the relief being requested, PG&E requests that the Atomic Safety and Licensing Board ("Board") seek Commission guidance on the admissibility of the Proposed Contention in this proceeding. And, absent action by the Commission, the Board should not accept in this individual license renewal case a contention addressing regulatory changes and plant-specific backfits. Changes to the NRC's regulations and to the current licensing basis for Diablo Canyon Power Plant ("DCPP") are matters that will be more timely addressed as ongoing regulatory issues rather than as license renewal issues.

² "Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident," dated July 12, 2011 ("Task Force Report") (ADAMS Acc. No. ML111861807).

The Proposed Contention is labeled as an environmental contention under the National Environmental Policy Act (“NEPA”), seeking additional environmental analysis (*e.g.*, consideration of severe accident mitigation alternatives). But environmental impact issues raised in the Proposed Contention will be addressed by the NRC’s consideration of the Task Force recommendations. And, as it relates to DCPD, the Proposed Contention is broad and speculative and does not demonstrate a genuine dispute with the DCPD license renewal application. At most, the Proposed Contention raises a limited set of issues that can be addressed in the context of previously-admitted environmental contentions (if those contentions are upheld by the Commission).

BACKGROUND

The Board issued a decision (LBP-10-15) on SLOMFP’s hearing request and initial proposed contentions in this matter on August 4, 2010. The Board found three proposed contentions (TC-1, EC-1, and EC-4) admissible. The Board also found that SLOMFP had made a *prima facie* showing that a waiver of NRC regulations should be granted with respect to Contention EC-2 and that, if a waiver were granted, that contention also would be admissible. The Board also referred questions related to one contention (EC-4) to the Commission. PG&E appealed LBP-10-15 with respect to the three admitted contentions (TC-1, EC-1, and EC-4).³ The NRC Staff also sought Commission review of the Board decision to admit two contentions (TC-1 and EC-1).⁴ Both PG&E and the NRC Staff opposed the recommended waiver of NRC

³ See “Applicant’s Notice of Appeal of LBP-10-15,” dated August 15, 2010.

⁴ See “NRC Staff’s Petition for Interlocutory Review of Atomic Safety and Licensing Board Decision (LBP-10-15) Admitting an Out of Scope Safety Contention and Improperly Recasting an Environmental Contention,” dated August 19, 2010.

regulations for Contention EC-2.⁵ The appeals of the admitted contentions, the waiver recommendation, and the referred questions remain pending before the Commission.

Separately, the Board issued an initial scheduling order establishing certain milestones for hearings on the admitted contentions in this matter. *See* Initial Scheduling Order, dated September 15, 2010 (unpublished). The hearings on the admitted contentions are linked to the issuance of the NRC Staff review documents — in particular, the Final Supplemental Environmental Impact Statement (“FSEIS”). On April 10, 2011, in response to public concerns about the events at the Fukushima power plant, PG&E requested that the NRC defer issuing renewed licenses for DCPD pending completion by PG&E of planned seismic studies at and around the plant. As a result, the NRC Staff delayed issuance of the FSEIS. The FSEIS is currently scheduled for completion between February 2014 and May 2014. Accordingly, hearings on the pending contentions are not imminent.⁶

APPLICABLE LEGAL STANDARDS

The standards governing the admissibility of contentions are found in 10 C.F.R. Part 2. Initial contentions must be based on the application or other documents available at the time the petition is filed. 10 C.F.R. § 2.309(f)(2). Intervenors may file a new contention only if

⁵ *See* “Applicant’s Brief in Opposition to a Waiver for Contention EC-2,” dated September 24, 2010; “NRC Staff’s Brief in Opposition to Waiver of 10 C.F.R. §§ 51.53(c)(2) and 10 C.F.R. Part 51, Subpart A, Appendix B as to Contention EC-2,” dated September 24, 2010.

⁶ On April 14, 2011, SLOMFP filed an “Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident” (“Emergency Petition”). PG&E and the NRC Staff filed responses to the Emergency Petition on May 2, 2011. The Commission has not responded to the Emergency Petition. Accordingly, no specific procedures are in place for addressing issues related to the Fukushima event in individual licensing cases, and the NRC’s Rules of Practice and related precedent continue to apply.

timely filed based on significant new information as described in 10 C.F.R. § 2.309(f)(2). The petitioner must also address the criteria in 10 C.F.R. § 2.309(c)(1). SLOMFP has addressed both sets of criteria for new contentions and PG&E does not oppose the admissibility of the Proposed Contention on grounds of untimeliness under either Sections 2.309(f)(2) or 2.309(c)(1).

However, the Proposed Contention must meet the admissibility standards set forth in 10 C.F.R. § 2.309(f)(1). A proposed contention must contain: (1) a specific statement of the issue of law or fact raised; (2) a brief explanation of the basis for the contention; (3) a demonstration that the issue is within the scope of the proceeding; (4) a demonstration that the issue is material to the findings that the NRC must make regarding the action which is the subject of the proceeding; (5) a concise statement of the alleged facts or expert opinions supporting the contention; and (6) sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

SUMMARY OF PROPOSED CONTENTION

In its most concise statement, the Proposed Contention states:

The [PG&E Environmental Report] for Diablo Canyon license renewal fails to satisfy the requirements of NEPA because it does not address new and significant environmental implications of the findings and recommendations raised by the NRC's Fukushima Task Force Report. As required by [the National Environmental Policy Act] and the NRC regulations, these implications must be addressed in the ER.

SLOMFP recognizes that the Task Force found that no imminent risk is posed by operation or licensing of plants as currently designed. Nonetheless, it characterizes the Task Force Report as concluding that certain actions are necessary to increase the level of safety associated with adequate protection of public health and safety. Proposed Contention at 5-6. In particular, SLOMFP highlights the fact that the Task Force recommended changes to the NRC's regulatory program with respect to severe accidents. *Id.* at 6-7. However, the Proposed

Contention is by its own terms an environmental contention — meaning that it addresses the adequacy of environmental analyses under the NEPA rather than any particular safety issue under the Atomic Energy Act. By definition, this limits the relief available in this proceeding to additional environmental analysis.⁷

SLOMFP supports the Proposed Contention with four arguments as follows:

- (1) The NRC’s generic conclusion in 10 C.F.R. Part 51, Appendix B, that the environmental impacts of both design basis accidents and severe accidents are “small” must be reconsidered. SLOMFP asserts that the “findings of the Task Force Report call into question whether this [the regulatory finding] represents a full, accurate description and examination of all design basis accidents having the potential for releases to the environment.” Proposed Contention at 12.
- (2) The ER must be supplemented in light of the Task Force recommendation that certain severe accidents be incorporated into the design basis. In particular, SLOMFP argues that the DCPD evaluation of severe accident mitigation alternatives (“SAMAs”) in Section 4.20 of the ER must be re-evaluated to determine (a) whether additional SAMAs may now be cost beneficial and (b) whether additional required SAMAs may affect the overall cost-benefit analysis for license renewal. *Id.* at 13-14.
- (3) The ER must be supplemented to address seismic and flooding hazards in light of the Task Force recommendations (and considering seismic information related to the Shoreline Fault). *Id.* at 15-16.
- (4) The ER must be supplemented to address specific severe accident mitigation measures recommended by the Task Force. This includes hardened vents, enhanced spent fuel pool makeup capability and instrumentation, strengthening onsite and offsite emergency response

⁷ Because NEPA is a procedural statute, “[i]f the adverse environmental impacts of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). NEPA does not require that PG&E or the NRC eliminate environmental impacts. Instead, NEPA requires sufficient public disclosure of environmental consequences and a rigorous exploration of reasonable alternatives to the proposed action.

procedure (EOPs, SAMGs, and EDMGs),⁸ and requirements for prolonged Station Blackout (“SBO”) capability. *Id.* at 16-17.

Each of these bases is discussed below (referred to as “Bases (1) – (4)”) in the context of the Commission’s contention admissibility criteria. At the threshold, however, the generic nature of the Proposed Contention raises significant procedural and policy issues that merit Commission guidance.

DISCUSSION

A. The Admissibility of the Proposed Contention Should Be Addressed by the Commission

The Proposed Contention fundamentally raises generic issues currently under review by the Commission and NRC Staff. SLOMFP itself acknowledges that the issues raised are generic and therefore appropriate for resolution by rulemaking.⁹ NRC precedent establishes that generic issues that are — or are about to become — subject to a rulemaking will be addressed in the notice and comment rulemaking process rather than site-specific licensing proceedings.¹⁰ NRC generic reviews and rulemakings addressing the Task Force recommendations will allow broad public and industry participation, leading to a more robust

⁸ The acronyms are as follows: Emergency Operating Procedures (“EOPs”); Severe Accident Management Guidelines (“SAMGs”); and Extensive Damage Mitigation Guidelines (“EDMGs”).

⁹ *See* Proposed Contention at 3 (“SLOMFP has joined with other individuals and organizations in a rulemaking petition seeking to suspend any regulations that would preclude full consideration of the environmental implications of the Task Force Report.”); *id.* at 4 (recognizing that “given the sweeping scope of the Task Force conclusions and recommendations, it may be more appropriate for the NRC to consider them in generic rather than site-specific environmental proceedings”).

¹⁰ *See, e.g., Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI-99-11, 49 NRC 328, 345 (1999); *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), ALAB-655, 14 NRC 799, 816 (1981); *Statement of Policy on Conduct of New Reactor Licensing Proceedings*, CLI-08-07, 73 Fed. Reg. 29063, 29069 (April 18, 2007).

technical and policy review of the issues than would be achieved in a license renewal review for one plant. Any necessary plant or procedure changes can be imposed and implemented promptly, rather than being linked to a period of extended operation under a renewed license. And, for DCPD in particular, given the currently deferred schedule for completion of the license renewal review, a generic process will lead to more timely resolution.

The Commission recently issued directions to the NRC Staff to begin defining the process (and timeline) by which the NRC Staff (and ultimately the Commission itself) will respond to the Fukushima Task Force recommendations.¹¹ PG&E supports the NRC's ongoing efforts to examine and resolve the issues raised in the Task Force Report. PG&E believes that the path forward for the Task Force recommendations should be set by the Commission, in conjunction with deciding the process for the agency's consideration of the Task Force Report — rather than by several licensing boards in several individual proceedings. Accordingly, PG&E respectfully requests that the Board certify the issues raised by the Motion, or refer any decision accepting the Proposed Contention, to the Commission for further direction in accordance with 10 C.F.R. § 2.323(f).¹²

B. The Proposed Contention Seeks Remedies That Are Not Available In This Proceeding

Absent Commission guidance, the Board should not accept aspects of the Proposed Contention that seek remedies that are not available in this license renewal proceeding.

¹¹ Staff Requirements Memorandum, SECY-11-0093, “Near-Term Report and Recommendations for Agency Actions Following the Events in Japan,” dated August 19, 2011 (ADAMS Acc. No. ML112310021).

¹² *See, e.g., Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-01-20, 54 NRC 211, 213 (2001) (“If the rulings on the admission of contentions or the admitted contentions themselves raise novel legal or policy admissions, the Licensing Board should refer or certify such rulings or questions to the Commission on an interlocutory basis.”).

Although labeled as an environmental contention under NEPA, large portions of the Proposed Contention and supporting Declaration specifically address the Task Force Report and its recommendations for changes to the NRC’s regulatory program for operating plants. For example, SLOMFP argues that “the NRC’s current regulatory scheme requires significant re-evaluation and revision in order to expand or upgrade the design basis for reactor safety as recommended by the Task Force Report.” Proposed Contention at 8. The Proposed Contention also argues that “the regulatory system on which the NRC relies to make the safety findings that the [Atomic Energy Act] requires for licensing of reactors must be strengthened.” *Id.* at 6.¹³ But contentions seeking changes to the regulations are not normally permitted in individual adjudications of any type, much less a license renewal adjudication.¹⁴ *See* 10 C.F.R. § 2.335(a).¹⁵ These matters are to be addressed by other means, including 10 C.F.R. §§ 2.206 and 2.802 — with public participation as appropriate for those processes.

¹³ SLOMFP also states that “the great majority of the NRC’s current regulations do not impose mandatory safety requirements on severe accidents, and severe accident measures are adopted only on a ‘voluntary’ basis or through a ‘patchwork’ of requirements” and therefore argues that the design basis should be upgraded to include severe accidents. *Id.* at 7-8.

¹⁴ *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1035 (1982), *citing Philadelphia Electric Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974) (explaining that a contention must be rejected where it challenges the basic structure of the Commission’s regulatory process and is nothing more than a generalization regarding the intervenor’s views of what applicable policies ought to be); *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 159, *aff’d*, CLI-01-17, 54 NRC 3 (2001) (explaining that contentions advocating stricter requirements than agency rules impose or otherwise seeking to litigate a generic determination established by a Commission rulemaking are inadmissible).

¹⁵ The SLOMFP Motion does not specifically seek a waiver in accordance with 10 C.F.R. § 2.335(b).

Also, consistent with 10 C.F.R. Part 54, any current licensing basis changes required for DCPD following the NRC's review of the Task Force recommendations will be addressed through the NRC's regulatory process and implemented on an appropriate schedule, presumably well before any period of extended plant operation under a renewed license. The environmental impacts associated with any rulemaking changes (and alternatives) can also be addressed during the regulatory process resulting from the Task Force Report.¹⁶

Basis (1) for the Proposed Contention also directly challenges the generic environmental assessment incorporated into 10 C.F.R. §§ 51.71(d) and 51.95(c) for license renewal.¹⁷ Basis (3) seeks unspecified analyses of flooding and seismic hazards. These bases therefore also seek remedies not available in this proceeding. The NRC's Part 51 environmental review regulations are based on the Generic Environmental Impact Statement ("GEIS") for license renewal.¹⁸ The likelihood and environmental consequences of design basis and severe accidents are issues that have been addressed generically for all plants and are not matters

¹⁶ Generic analysis "is clearly an appropriate method of conducting the hard look required by NEPA." *Baltimore Gas and Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 101 (1983) (internal quotation marks omitted); *see also Public Citizen, et al. v. Nuclear Regulatory Commission*, 573 F.3d 916, 928-29 (9th Cir. 2009) (concluding that the NRC met its NEPA obligations in connection with the risk of air-based terrorist threats in promulgating the design basis threat rule).

¹⁷ SLOMFP asserts that the "findings of the Task Force Report call into question whether [the regulatory finding that the impacts are "small"] represents a full, accurate description and examination of all design basis accidents having the potential for releases to the environment." Proposed Contention at 12.

¹⁸ NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," December 1995; *see generally* "Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, Final Rule," 61 Fed. Reg. 28467 (1996), *amended by* 61 Fed. Reg. 66537 (1996).

subject to challenge in individual proceedings absent a waiver.¹⁹ Absent action by the Commission, Category 1 environmental issues, including environmental impacts of design basis accidents, severe accidents, and on-site storage of spent fuel, do not need to be addressed in a site-specific environmental review and cannot be adjudicated in a plant-specific license renewal proceeding — even if based on allegedly new and significant information.²⁰ These aspects of the Proposed Contention are matters to be addressed by a petition for rulemaking in accordance with 10 C.F.R. § 2.802.²¹

C. The Proposed Contention Does Not Establish a Genuine Dispute with the DCPD ER

NRC’s Part 51 regulations for license renewal require a plant-specific evaluation of SAMAs. *See* 10 C.F.R. § 51.53(c)(3)(ii)(L). Viewed as a SAMA contention, the Proposed Contention does not articulate or demonstrate a specific and genuine dispute with the DCPD license renewal application. SLOMFP argues generally that the risks of operating DCPD may be

¹⁹ *See* 10 C.F.R. § 51.53(c)(3)(i); 10 C.F.R. Part 51, Appendix B, Table B-1 (“Postulated Accidents”); *see also* GEIS, Section 5.0.

²⁰ 56 Fed. Reg. at 64,946; *see Entergy Nuclear Vermont Yankee LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-07-3, 65 NRC 13, slip op. at 7-8 (2007), *reconsid. denied*, CLI-07-13, 65 NRC 211 (2007), *aff’d*, *Massachusetts v. United States*, 522 F.3d 115 (1st Cir. 2008). (“[Adjudicating Category 1 issues site by site based merely on a claim of “new and significant information,” would defeat the purpose of resolving generic issues in a GEIS”); *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 154-155 (2001), *aff’d* CLI-01-17, 54 NRC 3 (2001) (citing 61 Fed. Reg. 28467, 28470 (1996)) (“[a]lthough the Commission’s license renewal regulations require that the Applicant’s environmental report identify any new and significant information . . . such information cannot be challenged in a license renewal proceeding absent a waiver of the renewal rules by the Commission.”).

²¹ The NRC has defined the requirements for operating reactors in 10 C.F.R. Part 50 and the scope the license renewal review in 10 C.F.R. Part 54, and has taken a “hard look” at environmental impacts and alternatives within a reasonable scope of those regulations in promulgating those rules. NUREG-1398, “Environmental Assessment for the Final Rule on Nuclear Power Plant License Renewal,” December 1991, at 5-1 (concluding “[t]he promulgation of 10 CFR Part 54 will have no significant impact of the environment”).

higher than estimated in the ER and that PG&E's environmental analysis of the relative costs and benefits of SAMAs may be inadequate. Proposed Contention at 3. SLOMFP argues in Basis (2) that Section 4.20 of PG&E's ER (the SAMA discussion) must be revised, and in Basis (4) that the ER must be supplemented to address specific severe accident mitigation measures recommended by the Task Force. However, these bases do not demonstrate a genuine dispute with the DCP application on a SAMA issue.

First, the Proposed Contention and Declaration do not address any of the specific information regarding SAMAs that is included in Section 4.20 and Attachment F of the DCP license renewal application ER. The main text of the Proposed Contention does not contain any substantive citation to or discussion of the application.²² A contention that does not directly controvert a position taken by the applicant in the application is inadmissible.²³

The DCP ER, Section 4.20 and Attachment F,²⁴ in fact contain an in-depth discussion of SAMAs, including SAMAs dealing with station blackout and the station's response to seismic events.²⁵ A petitioner bears the burden to present adequate factual information or

²² There is only the single reference to Section 4.20 of the Diablo Canyon ER. New Contention at 13. SLOMFP simply notes that the PG&E ER discusses SAMAs in Section 4.20. SLOMFP does not even cite the detailed SAMA discussion in ER, Attachment F.

²³ *See Tex. Utils. Elec. Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992).

²⁴ The DCP SAMA evaluation was also revised in response to an NRC Staff Request for Additional Information to address updated seismic hazards information, including the Shoreline fault zone. *See* PG&E Letter DCL-10-106, "Response to NRC Letter dated July 6, 2010, Request for Additional Information for the Applicant's Environmental Report - Operating License Renewal Stage," dated August 27, 2010 (ADAMS Acc. No. ML102440444).

²⁵ To illustrate, some of the pertinent information from the application is compiled and summarized in Attachment 1 to this filing.

expert opinions necessary to support a contention challenging the SAMA analysis in the ER and must also explain the significance of any factual information upon which it relies. 10 C.F.R. § 2.309(f)(1)(v). Here, the Proposed Contention and Declaration simply presume that Fukushima-type releases could occur at DCP, that the accident consequences would be worse than previously analyzed in the GEIS for severe accidents, and that additional SAMAs will somehow be identified or that SAMAs evaluated in the ER will be more beneficial. The Proposed Contention and Declaration do not discuss any specific implications of the Fukushima event for accident probabilities or environmental consequences at the DCP site. Nor do they identify any specific SAMAs that were not considered in the ER or any specific increases in SAMA benefits. While the Declaration makes general assertions about the possibility of plant changes related to issues such as a station blackout, it does not correlate those changes to a specific SAMA evaluation model or any specific SAMA evaluation results.²⁶

Apart from speculation regarding licensing basis changes and the SAMA evaluation, the Proposed Contention broadly asserts that the ER and GEIS must be supplemented to comply with NEPA, based on “new and significant information” arising from the Fukushima event and the Task Force Report. *See* Bases (2), (3), and (4). But, as discussed above, the NRC has previously issued the GEIS for license renewal. Under 10 C.F.R. § 51.92(a), NRC must supplement an EIS if there are (1) substantial changes in the proposed action that are relevant to environmental concerns, or (2) significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. The Task Force

²⁶ The Declaration does mention DCP, but only in the context of acknowledging the reviews of seismic hazards *already underway*. Declaration at ¶22. There is no reference to any portion of the DCP ER that is allegedly inadequate or any SAMAs that were not, but that should have been, considered. Similarly, the Proposed Contention notes that plants sited on the Pacific Ocean, such as Diablo Canyon, already considered tsunami hazards. Proposed Contention at 15.

Report, however, does not state that seismic events are more likely at DCP, that the environmental consequences of a seismic event or severe accident would be greater than those already considered in the GEIS, or that any particular enhancement would be beneficial under a SAMA evaluation model.²⁷ In fact, the Task Force Report itself does not discuss environmental impacts at all.²⁸

In addressing the scope of SAMAs that must be considered in an environmental report, the Commission has observed that, “[u]nder the rule of reason governing NEPA, [t]o make an impact statement something more than an exercise in frivolous boilerplate the concept

²⁷ To be significant, “new information must present ‘a seriously different picture of the environmental impact of the proposed project from what was previously envisioned.’” *Hydro Res., Inc.* (2929 Coors Rd., Suite 101, Albuquerque, N.M. 87120), CLI-99-22, 50 NRC 3, 14 (1999). Similar issues regarding the need for supplementation of environmental analyses were raised following Three Mile Island. The D.C. Circuit explained that “the fact that the accident occurred does not establish that accidents with significant environmental impacts will have significant probabilities of occurrence.” *San Luis Obispo Mothers for Peace v. NRC*, 751 F.2d 1287, 1301 (D.C. Cir. 1984), *aff’d en banc*, 789 F.2d 252 (D.C. Cir. 1986).

²⁸ The DCP license renewal ER (and the GEIS) do not specifically address the implications of the Fukushima accident for severe accident probability and environmental consequences at DCP, because they pre-date the event. Due to PG&E’s request to defer issuance of a renewed license until after completion of the planned seismic studies, the FSEIS is currently not anticipated until 2014. There is ample time therefore for the Fukushima implications to be addressed — if further reviews suggest that an ER revision or GEIS supplement in the FSEIS is warranted. However, if the Task Force Report recommendations become regulatory requirements (*i.e.*, if PG&E is required to implement those measures), the environmental impacts of an accident would be less than those described currently in the GEIS. A supplemental NEPA document is not necessary where a change will result in less environmental impact. *See, e.g., Concerned Citizens on I-190 v. Sec’y of Transp.*, 641 F.2d 1, 6 (1st Cir. 1981) (adopting a new environmental protection “statute or regulation clearly does not constitute a change in the proposed action or any ‘information’ in the relevant sense”); *New Eng. Coalition on Nuclear Pollution v. NRC*, 582 F.2d 87, 94 (1st Cir. 1978) (concluding that a supplemental EIS is not needed, even though the EIS did not discuss the new cooling intake location, because the change “would have a smaller impact on the aquatic environment than would the original location”); *So. Trenton Residents Against 29 v. Fed. Highway Admin.*, 176 F.3d 658, 663-668 (3d Cir. 1999) (holding that design changes that cause less environmental harm do not require a supplemental EIS).

of alternatives must be bounded by some notion of feasibility.”²⁹ A speculative statement that additional SAMAs “should be considered” is insufficient to demonstrate a genuine issue or support an admissible SAMA contention.

D. Fukushima Implications May Be Considered in Connection with Other Contentions

As discussed above, SLOMFP has not demonstrated that, as applied to DCP, the Task Force Report provides new environmental information. Nevertheless, PG&E recognizes that the implications of the Fukushima accident and some aspects of the Task Force Report could be considered as additional evidence in conjunction with the previously-admitted contentions. For example, Contention EC-1 involves new seismic information regarding the Shoreline fault zone and its implications for the license renewal SAMA analysis. Any changes to the SAMA analysis based on new seismic or severe accident mitigation information resulting from the Fukushima reviews could conceivably fall within the scope of the admitted contention, if the admissibility of the contention is upheld by the Commission. A limited set of seismic issues is also already addressed in Contention EC-2 (spent fuel storage impacts). The Board has recommended a waiver of the regulations prohibiting a review of spent fuel pool impacts in a license renewal review. That issue is on appeal to the Commission. Any seismic-related developments related to spent fuel storage based on the Fukushima accident (including cooling capability and instrumentation) could be considered in the context of Contention EC-2, if admission of the contention is ultimately upheld by the Commission.

²⁹ *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 11-12 (2002), citing *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 551 (1978).

CONCLUSION

The issues raised in the Proposed Contention are generic in nature and should be addressed by a regulatory process outside this license renewal proceeding. Any regulatory enhancements or additional environmental analyses necessitated by the NRC's ongoing review of the Fukushima event can be completed in a more timely fashion for DCPD as an ongoing regulatory matter, independent of the renewal of the licenses for DCPD. For the reasons discussed above, the Proposed Contention should not be accepted for hearing.

Respectfully submitted,

/s/ signed electronically by
David A. Repka
Tyson R. Smith
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006

Executed in accord with 10 C.F.R. 2.304(d)
Jennifer Post
Pacific Gas and Electric Company
77 Beale St., B30A
San Francisco, CA 94105

COUNSEL FOR THE PACIFIC GAS
AND ELECTRIC COMPANY

Dated at Washington, District of Columbia
this 6th day of September 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
PACIFIC GAS AND ELECTRIC) Docket No. 50-275-LR
COMPANY) Docket No. 50-323-LR
)
(Diablo Canyon Power Plant, Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of “APPLICANT’S RESPONSE TO PROPOSED CONTENTION” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 6th day of September 2011, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
E-mail: hearingdocket@nrc.gov

Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001

Alex S. Karlin, Chair
Nicholas G. Trikouros
Paul B. Abramson

Susan Uttal, Esq.
Lloyd Subin, Esq.
Maxwell Smith, Esq.
Catherine Kanatas, Esq.

E-mail: Alex.Karlin@nrc.gov
E-mail: Nicholas.Trikouros@nrc.gov
E-mail: Paul.Abramson@nrc.gov

E-mail: Susan.Uttal@nrc.gov
E-mail: Lloyd.Subin@nrc.gov
E-mail: Maxwell.Smith@nrc.gov
E-mail: catherine.kanatas@nrc.gov
OGC Mail Center : OGCMailCenter@nrc.gov

Diane Curran
Harmon, Curran, Spielberg, & Eisenberg, L.L.P.
1726 M St., NW, Suite 600
Washington, DC 20036

E-mail: dcurran@harmoncurran.com

Respectfully submitted,

 /s/ signed electronically by
David A. Repka
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006

COUNSEL FOR PACIFIC GAS
AND ELECTRIC COMPANY

**ATTACHMENT 1: EXAMPLES OF SEVERE ACCIDENT MITIGATION
ALTERNATIVES INVOLVING ISSUES RAISED IN THE
PROPOSED CONTENTION**

SAMA Description from ER, Table F.5-3		
SAMA 3	Alternate DC Generator	In order to mitigate DC system failures, an alternate DC generator could be used to directly power a bus (bypasses charger faults) or directly power critical loads (bypasses distribution failures). The generator should be stored in a seismically qualified area so that it would potentially be available to respond in seismic scenarios.
SAMA 4	Install a Self-Contained Swing Emergency Diesel Generator (“EDG”)	One of the most effective means of reducing SBO scenarios is to provide a diverse emergency power supply that can support all of the equipment normally supplied by an existing EDG.
SAMA 5	Use an Alternate EDG to Support Long Term AFW Operation and a 480V AC Self-Cooled PDP for Primary Side Makeup	A low cost SBO mitigation strategy is to use a small, alternate EDG to power a station battery charger for level instrumentation and AFW control. In addition, if power can be supplied to a 480V AC self-cooled positive displacement pump, primary makeup could be maintained to mitigate a seal LOCA. This SAMA is geared towards mitigating the higher probability (low leakrate) RCP seal LOCA (21 gpm per pump, 84 gpm total), which accounts for 78 percent of all seal LOCAs
SAMA 10	Install High Temperature RCP Seals	Installation of high temperature RCP seals could help reduce or minimize the risk of RCP seal LOCAs.
SAMA 11	Install Containment Combustible Gas Igniters	Early containment failure is a large contributor to the LERF release category. Although inerting containment in accident conditions could help prevent burns of combustible gases, a better solution is to install battery-backed igniters throughout upper dome of containment.

SAMA Description from ER, Table F.5-3		
SAMA 18	Seismically Qualified Portable 480V AC EDG to Support Long Term AFW Operation and a Seismically Qualified 480V AC Self Cooled PDP for RCP Seal Injection.	For seismic events that fail the site's 4KV AC systems, portable EDG could be used to power a station battery charger for SG level instrumentation and AFW control. In addition, if power can rapidly be supplied to a 480V AC self cooled PDP, a long term primary side makeup source would be available to mitigate RCP seal leakage. The generator and pump would have to be stored in a seismically qualified area.
SAMA 19	Replace Critical Relays with High Seismic Capacity Relays	Relays in the emergency power circuit are assumed to be vulnerable to seismic activity, which can lead to interruptions in the availability of emergency 4KV AC power. Replacing the relays with designs that are more seismically durable could prevent relay faults due to seismic events.
SAMA 23	Reinforce SG and Associated RCS Piping Supports	Failure of the SGs in a seismic event can potentially overpressurize that containment due to the large steam volume that would be expelled into the reactor building from the primary and/or secondary sides. Depending on the mode of failure, mitigation of the SG failure is also challenging and the PRA assumes that SG failures result in core damage. Strengthening the SG and associated RCS piping supports so that they would be expected to remain intact for seismic events with peak accelerations of 2.0g to 2.5g would address some of the larger DCPD seismic contributors.