

May 22, 2012

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 CONTENTIONS

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 Contentions Regarding Failure of Environmental Report to Address Post-Fukushima Investigations and Modifications,” dated April 27, 2012 (“Motion to Admit Contentions”). As discussed below, the proposed new contentions are inadmissible. Both contentions raise issues that are outside the scope of a license renewal proceeding. Changes to the current licensing basis (“CLB”) for Diablo Canyon Power Plant (“DCPP”) — whether resulting from the Fukushima event or any other new regulatory issue — are to be addressed as ongoing regulatory issues rather than as license renewal issues. Both proposed contentions also lack a regulatory basis and fail to demonstrate a genuine dispute with the application on a material environmental issue. SLOMFP has not provided any information — factual, expert, or otherwise — to demonstrate the environmental analysis in the DCPP license renewal Environmental Report (“ER”) is deficient. The Board therefore must find both proposed contentions inadmissible.

BACKGROUND

A. Request for Hearing

The Board granted SLOMFP's hearing request on August 4, 2010, admitting three proposed contentions (TC-1, EC-1, and EC-4).¹ On appeal, the Commission found two of the three previously-admitted contentions inadmissible but upheld the admission of one contention (EC-1).² The hearing on EC-1 is linked to the issuance of the NRC Staff review documents — in particular, to issuance of the Final Supplemental Environmental Impact Statement (“FSEIS”), which is currently scheduled for completion in August 2014.

B. Prior Fukushima Petition and Contention

On March 11, 2011, an earthquake and tsunami caused the Fukushima nuclear facility to suffer substantial damage.³ On April 14, 2011, SLOMFP, along with several petitioners in other proceedings, 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”). On September 9, 2011, the Commission denied the Emergency Petition in its entirety.⁴ The

¹ *Pacific Gas and Electric Co.* (Diablo Canyon License Renewal), LBP-10-15, 72 NRC __ (slip op. August 4, 2010).

² *Pacific Gas and Electric Co.* (Diablo Canyon License Renewal), CLI-11-11, 74 NRC __ (slip op. October 12, 2011).

³ In response, the NRC established a special task force, and on July 11, 2011, the task force issued its report which included twelve recommendations for improving reactor safety in the United States. “Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident” (“Task Force Report”).

⁴ *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-05, 74 NRC __ (slip op. Sept. 9, 2011).

Commission specifically held that a request for an analysis under the National Environmental Policy Act (“NEPA”) based on the Fukushima events was “premature.”⁵

In addition to the Emergency Petition, SLOMFP filed a motion to admit proposed Contention EC-5, which asserted that the DCPD ER “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.”⁶ The Board denied proposed Contention EC-5 on November 18, 2011.⁷ According to the Board, PG&E is not required to supplement its ER to reflect new and significant environmental information that arises after its initial application.⁸ Instead, the obligation to address new and significant information lies with the NRC Staff.⁹ As a result, the Board found that there was no omission on which to base an admissible contention.¹⁰ Alternatively, the Board explained that, even if PG&E had a duty to supplement the ER, EC-5 would still be inadmissible because SLOMFP offered nothing to link the outcome of the Fukushima events to DCPD or the renewal application.¹¹

⁵ *Id.* at 30. The Commission acknowledged that the Task Force had completed its review and provided its recommendations, but explained that the implications and full picture of what happened at Fukushima remain far from clear.

⁶ “Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report,” dated August 11, 2011.

⁷ *Pacific Gas and Electric Co.* (Diablo Canyon License Renewal), LBP-11-32, 74 NRC ___ (slip op. November 18, 2011).

⁸ *Id.* at 16. The Board referred this portion of its ruling to the Commission. *Id.* at 19-21. Commission review is pending.

⁹ *Id.* at 12-13.

¹⁰ *Id.* at 14. The Board noted that its interpretation of 10 C.F.R. § 51.53(c)(3)(iv) does not bar the applicant from voluntarily supplementing its ER. *Id.* at 15 n.30.

¹¹ *Id.* at 19.

C. Fukushima Orders

On March 12, 2012, the Commission issued an “Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond Design-Basis External Events (Effective Immediately)” (“EA-12-049”).¹² PG&E consented to EA-12-049 on March 28, 2012.¹³ EA-12-049 requires a three-phase approach for mitigating beyond-design-basis external events: (1) the initial phase requires the use of installed equipment and resources to maintain or restore the key safety functions of core cooling, containment, and spent fuel pool cooling; (2) the transition phase requires providing portable, onsite equipment and consumables to maintain or restore these functions until they can be accomplished with resources brought from offsite; (3) the final phase requires obtaining sufficient offsite resources to sustain the functions indefinitely. The NRC expects to issue Interim Staff Guidance for complying with EA-12-049 in August 2012.

Also on March 12, 2012, the NRC issued a request for information mandating that each reactor licensee (a) reevaluate the seismic and flooding hazards at each site using present-day methods and information, (b) conduct walk-downs of each facility to ensure protection against the hazards in the current design basis, and (c) reevaluate emergency communications systems and staffing levels.¹⁴ The NRC estimates that collection of information will take 5-7

¹² The Order is available as ADAMS Accession No. ML12056A045.

¹³ See Letter from John T. Conway, PG&E, to NRC (ADAMS Accession No. ML12089A082).

¹⁴ “Requirements of Request for Information Pursuant to Title 10 of the Code of Federal Regulations, 50.54(f) Regarding Recommendations 2.1, 2.3, and 9.3 of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident,” dated March 12, 2012 (ADAMS Accession No. ML12053A340) (“Request for Information”).

years.¹⁵ The precise scope of activities necessary to fully respond to the Request for Information remains uncertain and subject to evolution.¹⁶ The Order and the Request for Information do not provide any new environmental information on the Fukushima accident.

APPLICABLE LEGAL STANDARDS

The standards governing the admissibility of new contentions are found in 10 C.F.R. §§ 2.309(f) and 2.309(c). These standards have been discussed previously and are not repeated herein.¹⁷

DISCUSSION

A. Proposed Contention 1 is Inadmissible

In proposed Contention 1, SLOMFP asserts that the “Environmental Report Lacks Information Regarding Proposed Modifications to Diablo Canyon Facility.”¹⁸ According to SLOMFP, the ER fails to comply with 10 C.F.R. § 51.53(c)(2), which SLOMFP argues requires licensees to address in the ER certain modifications directly affecting the environment or affecting plant effluents that affect the environment. The contention asserts that the ER does not include information about PG&E’s plans to modify DCPD in response to EA-12-049. As discussed below, proposed Contention 1 is inadmissible because it raises issues outside the scope of a license renewal proceeding, lacks a regulatory basis, and fails to demonstrate a genuine dispute with the ER on a material issue.

¹⁵ *Id.* at 5.

¹⁶ *See id.* (“[B]ased upon the results of Phase 1, the NRC Staff will determine whether additional regulatory actions are necessary”).

¹⁷ *See, e.g.*, “Applicant’s Response to Proposed Contention,” dated September 6, 2011, at 4-5; LBP-11-32 at 6-7.

¹⁸ Motion to Admit Contentions at 2.

1. *Proposed Contention 1 Raises Issues Outside the Scope of License Renewal*

License renewal, by its very nature, contemplates a specific inquiry: the safety and environmental consequences of an additional 20-year operating period.¹⁹ License renewal focuses on aging issues, not on current operating or licensing basis issues.²⁰ This scope of the license renewal review is based on the principle, established by the Commission in the Part 54 rulemaking, that the NRC's ongoing regulatory processes are adequate to ensure compliance with the CLB.²¹ While styled as an environmental issue under NEPA, the purpose and requested relief in proposed Contention 1 is an analysis of PG&E's response to an enforcement action, EA-12-049. As discussed below, the issues raised in the proposed Contention 1 are not within the scope of license renewal.

EA-12-049 "instructs that 'strategies should be developed to add multiple ways to maintain or restore cooling, containment and [spent fuel pool ("SFP")] cooling capabilities in order to improve the defense in depth of licensed power reactors.'"²² Any modifications made to DCPD pursuant to EA-12-049 become part of the CLB and will be addressed by the NRC's ongoing regulatory oversight processes, which continuously assess the adequacy of, and compliance with, the CLB.²³ The Commission has specifically explained that the NRC's

¹⁹ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 6-13 (2001).

²⁰ *Id.*

²¹ 60 Fed. Reg. 22461, 22463-64 (May 8, 1995); *see also* "Nuclear Power Plant License Renewal; Final Rule," 56 Fed. Reg. 64943, 64952 (Dec. 13, 1991) ("[I]ssues that are relevant to current plant operation will be addressed by the existing regulatory process within the present license term rather than deferred until the time of license renewal.").

²² Motion to Admit Contentions at 3-4.

²³ *See Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 8-9 (2001) (explaining that the CLB includes "any orders,

“ongoing regulatory and oversight processes provide reasonable assurance that each facility complies with its ‘current licensing basis,’ which can be adjusted by future Commission order or by modification to the facility’s operating license outside the renewal proceeding.”²⁴ Litigating proposed Contention 1 would duplicate ongoing oversight processes and involve review of the adequacy of (and alternatives to) PG&E’s efforts to address the matters identified in EA-12-049.²⁵

Moreover, the license renewal review is focused on management of the effects of aging on plant systems and equipment. SLOMFP does not identify or address any particular aspect of the integrated plant assessment, the aging management review, or an aging management program that is alleged to be deficient. And, proposed Contention 1 does not link the modifications required by EA-12-049 to management of the effects of aging nor does the proposed contention demonstrate that any aging management plans are inadequate to address the modifications, once implemented. Accordingly, proposed Contention 1 does not raise an issue within the scope of license renewal.

exemptions, and licensee commitments that are part of the docket for the plant’s license, i.e., responses to NRC bulletins, generic letters, and enforcement actions”) (emphasis added); *Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC __ (June 17, 2010) (slip op. at 4, 18, & n.76) (noting that “[b]oth during the original license term and continuing through the renewal term, the NRC ‘continually assesses the adequacy of and compliance with’ the licensing basis, and does so through the NRC regulatory oversight process, which includes generic and plant-specific reviews, plant inspections, and enforcement actions”) (emphasis added).

²⁴ *Callaway*, CLI-11-05, 74 NRC at __ (slip op. at 26) (emphasis added); *see also Pacific Gas and Electric Co.* (Diablo Canyon License Renewal), CLI-11-11, __ NRC __ (slip op. October 12, 2011 at 44).

²⁵ A license renewal review does not include a “broad-scoped inquiry into compliance that is separate from and parallel to ongoing compliance oversight activity.” *Diablo Canyon*, CLI-11-11, slip op. at 10.

2. *There is No Regulatory Basis for Proposed Contention 1 and Therefore No Basis for Relief*

In LBP-11-32, the Board concluded that proposed Contention EC-5, which asserted a need for PG&E to update its ER to address the findings and recommendations raised by the NRC's Fukushima Task Force Report, "fails on its face because an applicant has no legal duty to supplement or update the ER to incorporate new and significant information that arise from events that occur after the ER was duly filed."²⁶ The Board explained that the requirement to automatically supplement an EIS based on any new or significant environmental information is applicable only to federal agencies.²⁷ Likewise, to the extent that proposed Contention 1 asserts that PG&E has a duty to supplement its ER at present based solely on the Order, proposed Contention 1 lacks a legal basis for an omission. Part 51 does not require an applicant to automatically revise its ER, which was submitted in accordance with 10 C.F.R. § 51.53(c), to discuss an order issued after initial submission of the ER. EA-12-049 was issued after submittal of the ER and the NRC Staff has not issued any Requests for Information ("RAIs") in connection with license renewal as a result of EA-12-049. There is no omission at this time that could form the basis for an admissible contention.

3. *Proposed Contention 1 Fails to Demonstrate a Genuine Dispute with the ER on a Material Issue.*

SLOMFP specifically relies on 10 C.F.R. § 51.53(c)(2). Section 51.53(c)(2) states that the ER "must contain a description of the proposed action, including the applicant's plans to modify the facility or its administrative control procedures as described in accordance with § 54.21" and that the ER "must describe in detail the modifications directly affecting the

²⁶ LBP-11-32 at 12.

²⁷ *Id.* As explained by the Board, this proceeding has not yet reached the DSEIS stage, and proposed Contention 1 challenges only the ER.

environment or affecting plant effluents that affect the environment.” According to SLOMFP, Section 51.53(c)(2) requires PG&E to provide an “analysis of information regarding the environmental impacts of proposed modifications to the Diablo Canyon plant [resulting from EA-12-049]” and to discuss the “effectiveness and relative costs of alternatives for mitigation of beyond-design-basis accidents.”²⁸ Section 51.53(c)(2) requires no such analysis or discussion.

Under 10 C.F.R. § 51.53(c)(2), a license renewal applicant must discuss in its application those plant modifications “directly affecting the environment or affecting plant effluents that affect the environment” that are necessary to support renewal of the operating license and continued operation during the renewal term.²⁹ The regulation expressly cross-references modifications to be made in accordance with the license renewal evaluations required by 10 C.F.R. § 54.21 (*i.e.*, integrated plant assessments and time-limited aging analyses). Section 51.53(c)(2) therefore refers only to plant modifications made specifically in connection with license renewal.³⁰ It is those modifications, if any, that must be described in the license renewal application and ER — not CLB modifications made as an operational matter or through normal oversight processes outside license renewal. SLOMFP’s basis for proposed Contention 1 therefore begins from the faulty premise that Section 51.53(c)(2) requires the applicant to

²⁸ Motion to Admit Contentions at 6.

²⁹ See “Environmental Review for Renewal of Operating Licenses; Proposed Rule,” 56 Fed. Reg. 47016, 47017 (Sept. 17, 1991) (explaining that, in preparing its application, the license renewal applicant should determine those modifications “that are necessary, at the time of license renewal and throughout the license renewal term,” to support operation during an additional 20-year period).

³⁰ In addition to continuing operation and maintenance activities, license renewal activities might include refurbishment to allow for extended plant operation or changes to surveillance, inspections, testing, and recordkeeping. Supplement 1 to Regulatory Guide 4.2, “Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses,” at 4.2-S-9 (September 2000).

address all plant modifications, including those identified subsequent to the application through the normal regulatory process. Neither NEPA nor the NRC’s regulations require a discussion of the status of compliance with the CLB.

There may be circumstances — not present here — where modifications to the CLB might warrant changes to a license renewal application. For example, a modification that materially affects the license renewal application must be addressed in a revision to the application.³¹ This ensures that changes to the CLB that materially affect license renewal are considered during the NRC Staff’s review of the license renewal application (to determine, for example, whether the changes affect the scope of aging management programs or time-limited aging analyses). Here, however, SLOMFP has not demonstrated that EA-12-049 will result in any change to the CLB that will materially affect the license renewal application. SLOMFP does not cite any specific aspect of the license renewal application (*e.g.*, an aging management program) that will change as a result of EA-12-049. And, SLOMFP provides no support — no specific facts, references, or expert opinion — to demonstrate that any modifications resulting from EA-12-049 will materially affect the license renewal application.³² SLOMFP therefore fails to demonstrate a genuine dispute with the license renewal application on a material issue.

Even if SLOMFP had identified specific CLB modifications resulting from EA-12-049, SLOMFP wholly fails to link modifications to any specific changes in environmental

³¹ See 10 C.F.R. § 54.21(b) (“[E]ach year following [the application’s] submittal . . . and at least 3 months before scheduled completion of the NRC review, an amendment to the renewal application must be submitted that identifies any change to the CLB of the facility that materially affects the contents of the . . . application.”) (emphasis added).

³² Any argument that EA-12-049 mandates a specific change to the license renewal application would also be premature. Future plant modifications arising of EA-12-049 are not reasonably predictable at this time. It remains to be seen what changes, if any, will be necessitated by EA-12-049.

impacts germane to license renewal.³³ SLOMFP provides no support — no specific facts, references, or expert opinion — for its assertion that the modifications will result in a new or different environmental impact during the renewal period.³⁴ Moreover, SLOMFP has not explained why a NEPA supplement would be necessary given that actions to address EA-12-049 would necessarily reduce the environmental impacts of an event.³⁵ A supplemental NEPA document is not necessary where a change will result in less environmental impact.³⁶ SLOMFP therefore fails to demonstrate a genuine dispute on a material issue or the availability of any specific relief.

³³ As the Board explained in LBP-11-32, PG&E has no obligation to automatically update its ER to address new and significant environmental information. But, the Board also recognized that PG&E may need to change its ER if there are changes made to the license renewal application to address, for example, RAIs. LBP-11-32 at 19, n.30. An ER update may also be necessary if PG&E makes a change to the CLB that materially affects the license renewal application and that leads to new or different environmental impacts. PG&E has not made any such changes in the context of EA-12-049.

³⁴ As noted above, changes to the CLB, including those in response to orders, enforcement actions, or license amendments, are addressed through the NRC’s normal oversight processes. The environmental impacts of any changes (and alternatives) would be addressed during the NRC Staff’s environmental reviews of those changes, which are separate from license renewal. Environmental impacts of operations consistent with the CLB will be the same under the current operating license and during the renewal period.

³⁵ In EA-12-049 (at 4), the Commission states that continued operation “do[es] not pose an imminent threat to public health and safety” and explains that the Order aims to “increase the capability of nuclear power plants to mitigate beyond-design-basis external events.”

³⁶ *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).

To the extent that proposed Contention 1 relates to spent fuel storage or spent fuel pools, it also impermissibly challenges the conclusions of the GEIS for license renewal.³⁷ Absent action by the Commission, a Category 1 environmental issue — even if based on allegedly new and significant information — does not need to be addressed in a site-specific environmental review and cannot be adjudicated in a plant-specific license renewal proceeding.³⁸ This provides a separate basis for declining to admit the portion of proposed Contention 1 that relates to spent fuel accident risks and spent fuel pool mitigation alternatives.

B. Proposed Contention 2 is Inadmissible

In proposed Contention 2, SLOMFP asserts that the “Environmental Report Lacks Information on Status of Compliance With Federal Requirements and Approvals.”³⁹ SLOMFP argues that the ER violates 10 C.F.R. § 51.45(d) because it “fails to describe the status of PG&E’s compliance with [EA-12-049 and the Request for Information].”⁴⁰ SLOMFP further argues that, to the extent EA-12-049 and the Request for Information result in modifications to DCP, NEPA “requires the consideration of the effectiveness and relative costs of a range of

³⁷ NUREG-1437, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants,” December 1995 (“GEIS”); *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). The GEIS’s finding encompasses spent fuel accident risks and their mitigation alternatives. *See* GEIS, at xlvi, 6-72 to 6-76; 6-80 to 6-81; 6-86, 6-92; *Fla. Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 21 (2001).

³⁸ *See, e.g.*, CLI-11-11 at 23-34 (rejecting SLOMFP’s proposed Contention EC-2, which involved the risk of spent fuel pool accidents).

³⁹ Motion to Admit Contentions at 6.

⁴⁰ *Id.*

alternatives for satisfying the NRC’s concerns.”⁴¹ As discussed below, proposed Contention 2 is inadmissible because it raises issues outside the scope of the license renewal review, lacks a regulatory basis, and fails to demonstrate a genuine dispute with the application on a material environmental issue.

1. Proposed Contention 2 is Outside the Scope of the License Renewal Review

Proposed Contention 2 is based upon EA-12-049 and the Request for Information. According to SLOMFP, proposed Contention 2 is within the scope of this proceeding because it is seeking “required environmental information” in the ER, and because the proposed contention “bears on the environmental impacts” of DCPP during the license renewal term.⁴² But, as discussed in PG&E’s response to proposed Contention 1, license renewal contemplates a limited inquiry into the safety and environmental consequences of an additional 20-year operating period.⁴³ EA-12-049 and the Request for Information are part of the NRC’s ongoing regulatory oversight process and relate to operation independent of an extended period of operation.⁴⁴ As the Commission explained, the NRC’s “ongoing regulatory and oversight processes provide reasonable assurance that each facility complies with its ‘current licensing basis,’ which can be adjusted by future Commission order or by modification to the facility’s operating license

⁴¹ *Id.* at 8, citing 10 C.F.R. § 51.53(c)(2) and *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), LBP-12-08, __ NRC __, slip op. at 9 and n.42 (April 4, 2012).

⁴² *Id.* at 9.

⁴³ *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 & 4), CLI-01-17, 54 NRC 3, 6-13 (2001).

⁴⁴ *See Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-10-14, 71 NRC __ (June 17, 2010) (slip op. at 4, 18, & n.76).

outside the renewal proceeding.⁴⁵ The issue of modifications to be made to DCPD pursuant to EA-12-049 or as a result of the Request for Information is simply not within the scope of the license renewal review.⁴⁶

Moreover, as noted above, the license renewal review is focused on management of the effects of aging on plant systems and equipment. SLOMFP did not identify or address any particular aspect of the integrated plant assessment, the aging management review, or an aging management program that is alleged to be deficient or that will be affected by EA-12-049 or the Request for Information. Proposed Contention 2 does not link the modifications required by EA-12-049 or the Request for Information to management of the effects of aging. Nor does proposed Contention 2 demonstrate that any aging management plans are inadequate to address the modifications, once implemented. For these additional reasons, proposed Contention 2 does not raise an issue within the scope of license renewal.

2. There is No Regulatory Basis for Proposed Contention 2

As discussed above, this Board has previously determined that “an applicant has no legal duty to supplement or update the ER to incorporate new and significant information that arise from events that occur after the ER was duly filed.”⁴⁷ PG&E therefore is under no obligation to automatically update its ER in response to EA-12-049 or the Request for

⁴⁵ *Callaway*, CLI-11-05, 74 NRC at ___ (slip op. at 26) (emphasis added); *see also Diablo Canyon*, CLI-11-11, 74 NRC at ___ (slip op. at 44).

⁴⁶ *See Turkey Point*, CLI-01-17, 54 NRC at 8-9; *Entergy Nuclear Generation Co. And Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-24, 64 NRC 257, 276 (2006); *Turkey Point*, LBP-01-6, 53 NRC 138, 165 (2001).

⁴⁷ LBP-11-32 at 12.

Information. As a result, proposed Contention 2, which asserts that PG&E must amend the ER to disclose EA-12-049 and the Request for Information, “fails on its face.”⁴⁸

3. *Proposed Contention 2 Fails to Demonstrate a Genuine Dispute with the ER on a Material Issue*

Proposed Contention 2 is also inadmissible because it fails to demonstrate a genuine dispute with the ER on a material issue. SLOMFP correctly notes that 10 C.F.R. § 51.45(d) requires an ER to “[l]ist all Federal permits, licenses, approvals and other entitlements which must be obtained in connection with the proposed action.” This provision requires applicants to disclose, for example, required State permits or other approvals needed to support operations during the renewal period.⁴⁹ But, this does not include all NRC regulations, orders, or generic requests for information that licensees will need to meet or respond to during the license terms (whether the initial or renewal term). Also, SLOMFP overlooks a critical limitation in 10 C.F.R. § 51.45(d) — that is, the list of Federal permits licensees and approvals is limited to those that must be obtained in connection with the proposed action (*i.e.*, license renewal). Neither EA-12-049 nor the Request for Information is related to license renewal. Instead, as noted above, both EA-12-049 and the Request for Information are being addressed as part of the NRC Staff’s ongoing oversight of DCCP operations and the CLB.⁵⁰ Because there is no omission of required information, proposed Contention 2 does not raise a genuine dispute with the ER on a *material* issue.

⁴⁸ *Id.*

⁴⁹ Appendix H of Volume 2 of NUREG-1437 summarizes the major Federal statutes that may relate to license renewal applications. Appendix H explains that the list includes those authorization or consultation processes with federal or state agencies outside the NRC. For DCCP, the list of permits and approvals is located in the ER at Table 9-1 and 9-2.

⁵⁰ Any modifications made to Diablo Canyon pursuant to EA-12-049 or the Request for Information will become part of the CLB.

In addition, while proposed Contention 2 makes general assertions regarding the need to revise the ER to include information regarding EA-12-049 and the Request for Information, it fails to identify any substantive portion of the ER that is alleged to be deficient. The text of proposed Contention 2 does not contain any citation to or discussion of the environmental analysis in the ER.⁵¹ SLOMFP provides no support — no specific facts, references, or expert opinion — for its proposed contention. And, as with proposed Contention 1, SLOMFP has not explained why a NEPA supplement would be necessary given that actions to address EA-12-049 would necessarily reduce the environmental impacts of an event. Proposed Contention 2 is therefore inadmissible for failing to demonstrate a genuine dispute with the ER on a material issue.

CONCLUSION

For all of the above reasons, SLOMFP's proposed new contentions are inadmissible and should be rejected.

⁵¹ A contention that does not directly controvert a position taken by the applicant in the application is inadmissible. *Comanche Peak*, LBP-92-37, 36 NRC at 384.

Respectfully submitted,

/s/ signed electronically by _____

David A. Repka
Tyson R. Smith
Rachel Miras-Wilson
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 22nd day of May 2012

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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)
PACIFIC GAS AND ELECTRIC) Docket No. 50-275-LR
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(Diablo Canyon Power Plant, Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of “APPLICANT’S RESPONSE TO PROPOSED CONTENTIONS” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 22nd day of May 2012, 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

