

**BEFORE THE UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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In the Matter of )  
 )  
PACIFIC GAS & ELECTRIC COMPANY )  
 )  
(Diablo Canyon Nuclear Power Plant, Units 1 and 2) \_\_\_\_\_)

Docket No. 50-275-LR  
Docket No. 50-323-LR

October 10, 2014

(License Renewal Application)

**DECLARATION OF RICHARD AYRES, COUNSEL FOR FRIENDS OF THE EARTH,  
REGARDING WAIVER OF 10 C.F.R. §§ 54.4, 54.21, AND 54.29(a) AS APPLIED TO  
THE DIABLO CANYON LICENSE RENEWAL PROCEEDING**

I, Richard Ayres, counsel for Friends of the Earth in this matter, declare that the following statements are true and correct to the best of my knowledge.

1. For Contentions 1, 2, and 3, submitted in the attached Petition to Intervene, the strict application of 10 C.F.R. §§ 54.4, 54.21, and 54.29(a) would not serve the purposes for which the regulations were promulgated. The purpose of the regulations are twofold: first, “to ensure that important systems, structures, and components will continue to perform their intended function in the period of extended operation;”<sup>1</sup> and second, to avoid waste of administrative resources in license renewal proceedings by excusing the applicant—here, Pacific Gas & Electric (“PG&E”)—from reconducting analyses that are conducted during the normal operation of a plant.
2. Where, as here, there is new and material information indicating that the capability of seismic faults near Diablo Canyon Power Plant (“Diablo Canyon”) is far greater than previously estimated, it would be contrary to the purposes of the regulations to deny Contentions 1, 2, and 3 on the basis that Diablo Canyon’s ability to safely shut down

<sup>1</sup> Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,463 (May 8, 1995).

following earthquakes that are shown by recent seismic studies to be capable, are outside the scope of a license renewal proceeding.<sup>2</sup>

3. First, strict application of the regulations to exclude any consideration of seismic issues would not further the license renewal rule's purpose to ensure plant safety during the period of extended operation. To ensure safety requires consideration all relevant risks to the plant, including consideration of the effect of seismic data on the plant.
4. Second, strict application of the regulations would not further the rule's purpose of eliminating waste of administrative resources by excusing the applicant from conducting duplicative analysis. The data in the Final Seismic Report has not been adequately analyzed to ensure that Diablo Canyon remains safe.<sup>3</sup> Analysis of such data, therefore, would not be duplicative.

Executed in Accord with 10 C.F.R. § 2.304 (d),

(electronically signed by) Richard Ayres

Richard Ayres

Signed this 10th day of October, 2014

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<sup>2</sup> See PG&E, Central Coastal California Seismic Imaging Project, <http://www.pge.com/en/safety/systemworks/dcpp/seismicsafety/report.page> (last accessed Oct. 1, 2014) (the "Final Seismic Report") (containing significant and new data indicating that previous assessments of seismicity around Diablo Canyon are inaccurate and underestimate the capability of major faults around the plant); see also Petition to Intervene, at 11-17 (discussing the Final Seismic Report).

<sup>3</sup> See Final Seismic Report, Ch. 13, p. 7. PG&E noted that a full analysis of the new seismic data's effect on Diablo Canyon will not be completed until *March 2015*: "The effect of the new information on the probabilistic seismic hazard for the DCP is being evaluated separately for the U.S. Nuclear Regulatory Commission's (NRC) required Senior Seismic Hazard Analysis Committee (SSHAC) seismic source characterization and ground-motion-characterization studies that are due in March 2015." Moreover, Petitioner notes that the Final Seismic Report was issued without prior submittal to an independent review panel established by the State of California.