

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of \_\_\_\_\_) Docket Nos. 50-275-LR  
PACIFIC GAS & ELECTRIC COMPANY \_\_\_\_\_) 50-323-LR  
(Diablo Canyon Power Plant) \_\_\_\_\_) February 5, 2015  
(License Renewal Application)

**FRIENDS OF THE EARTH'S RESPONSE TO NRC STAFF'S MOTION REGARDING  
DR. MICHAEL PECK'S EMAIL TO THE BOARD**

**Introduction**

After completion of the oral argument before the Atomic Safety and Licensing Board (ASLB or “Board”) in the above-captioned matter, the Board received an e-mail from Dr. Michael Peck. Dr. Peck, the former Chief Inspector at the Diablo Canyon Power Plant (“Diablo”), apparently had listened to the broadcast of the oral argument, and wished to correct an error in the presentation by PG&E to the Board. Dr. Peck’s remarks were directed to matters within the scope of the license renewal proceeding, and entirely relevant to the contentions proposed by Friends of the Earth (“Friends”). The Nuclear Regulatory Commission (NRC) Staff now requests that Board “not consider” Dr. Peck’s e-mail, on grounds that the e-mail (1) raises issues outside the scope of license renewal, (2) is not relevant to the contentions in this proceeding, and (3) “does not represent the position of the Staff.” *See* NRC Staff Motion Regarding Dr. Michael Peck’s E-mail to the Board (Jan. 30, 2015). Petitioner urges the Board to reject the Staff’s Motion.

Dr. Peck’s remarks were directed to comments made by David Repka, counsel for

PG&E, in response to questions posed by Judge Trikouros. Judge Trikouros asked Mr. Repka whether “it’s the ground motion spectra that are really the licensing basis of the plant, not the, not necessarily the magnitude of the earthquake?” Mr. Repka responded: “That’s correct.”<sup>1</sup> Later in the transcript, Mr. Repka expanded on his argument that the licensing basis for the plant was the maximum vibratory ground motion at the plant, rather than the magnitude of the maximum earthquake and assumptions about the transmission of the energy created by the earthquake:

(Mr. Repka) “[T]he licensing basis is the maximum anticipated vibratory ground motion, and that’s the .75G HE ground motion. So what the research information letter does is it confirms, and it is referenced in [the Final Safety Analysis Report (as Updated)], the revised FSAR, but it confirms that the most recent information from the shoreline and other faults remains bounded by that, by the .75G licensing basis.”<sup>2</sup>

As the former NRC Chief Inspector for Diablo, and a member of the staff of the NRC, Dr. Peck has unparalleled knowledge of the licensing basis for the Diablo plant. His message to the ASLB was that Mr. Repka’s characterization of the licensing basis for the plant was oversimplified and incorrect. Dr. Peck states in his email:

[The] CLB [current licensing basis] explicitly stated that the “DDE corresponds to the safe shutdown earthquake as described in App B to 10 CFR 100” and includes all earthquake faults within 75 miles of the site (except the Hosgri). ***Nowhere does the CLB state that ground motion alone establishes the license limit.***<sup>3</sup> (emphasis supplied).

While it is certainly unusual for the ASLB to hear directly from an NRC employee on a point raised in an oral argument, the Staff’s arguments in its motion to exclude Dr. Peck’s e-mail are entirely unpersuasive.

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<sup>1</sup> The exchange can be found at page 759 of the unrevised version of the transcript, at lines 19-22.

<sup>2</sup> *Id.* at page 790, lines 12-19.

<sup>3</sup> E-mail to Chairman Ryerson, ASLB (January 21, 2015, 1:35 PM) from Michael Peck, Ph.D., Senior Reactor Technology Instructor (TTC 423-855-6515).

## **Argument**

### **A. Dr. Peck’s Message Addresses Issues Entirely Within the Scope of the License Renewal Proceeding.**

Friends’ Petition to Intervene asserts that the new seismic information in the 2014 Central California Seismic Imaging Project Report (“PG&E Seismic Report”) about the web of faults in the vicinity of Diablo show that PG&E cannot provide the assurances of safe operation required to obtain permission to operate the plant through its sixth decade. Further, Friends argues that the applicant has not identified or analyzed the effects of aging on two systems that are crucial to the operation of the structures, systems, and components vital to the safety of the plant, and that PG&E has failed to establish in its aging management plan that the effect of aging on Diablo will be adequately managed for the period of extended operation. One purpose of the oral argument was to assist the Board in determining whether Friends has identified issues, and provided a “brief recitation of the factors underlying the contention”<sup>4</sup> sufficient to justify requiring a public hearing on the matter.

In its Reply Brief, and in the oral argument, Friends pointed to the incongruity in PG&E’s argument that the Hosgri Evaluation “bounded” the equally powerful and far closer Shoreline fault. (The Shoreline fault is 600 meters from Diablo, while the Hosgri fault is 5 kilometers from the plant.) As Judge Trikouros said, this anomaly could only be explained by differences in the ground motion equations used by PG&E to calculate the ground movement at Diablo for the two faults. Mr. Repka’s argument, reproduced above, attempted to declare the ground motion equations irrelevant, saying that the 0.75g ground motion estimate is the entire current licensing basis with respect to earthquakes for the plant. Dr. Peck’s comment, that the

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<sup>4</sup> Friends of the Earth’s Request for a Hearing and Petition to Intervene at 7, citing *Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), LBP-06-23, 64 NRC 257, 356 (2006).

CLB does not provide that ground motion alone establishes the license limit, is directly responsive to an issue within the scope of the license renewal proceeding – addressed by Judge Trikouros, the Staff, and PG&E’s counsel. Indeed, Judge Trikouros and Mr. Repka had an extended colloquy on the subject of what is the current licensing basis for Diablo with respect to earthquakes and their effect on the plant.

**B. Dr. Peck’s Communication Is Highly Relevant to the Proposed or Admitted Contentions.**

Dr. Peck’s communication is relevant to at least two of Friends’ Contentions. The primary response of the Staff and the Applicant to Friends’ Contention that PG&E has not provided assurances that the plant can be safely operated for a total of 60 years is that, even though the Seismic Report shows that the Shoreline Fault, as now understood, is capable of releasing greater seismic energy closer to Diablo, the ground motion at the plant will not exceed the Hosgri 0.75g ground motion prediction. Dr. Peck’s e-mail is directly relevant to this defense, since his comment contradicts PG&E’s oversimplified assertion of the current licensing basis.

As the former Chief NRC Staff Inspector at Diablo, Dr. Peck must be considered an authority on the current licensing basis of that plant. In his view, the appropriate yardstick by which to measure the potential impact of the reanalyzed fault system around Diablo is the more stringent of the Hosgri Evaluation and the Double Design Earthquake. The clear implication of Dr. Peck’s comment is that such an analysis would show the risk to Diablo from the Shoreline and perhaps other faults, as now understood, to be greater than what was predicted in the Hosgri Evaluation. Such a conclusion, which would require PG&E to analyze the risks to the plant based on the new seismic findings, is obviously relevant to Petitioner’s Contention 1.

### **C. Dr. Peck's View "Does Not Represent the Position of the Staff."**

Dr. Peck's e-mail is clearly not offered as the view of the Staff, but rather as expert comment from an NRC Staff member with extensive knowledge of the current licensing basis at Diablo, offering to correct erroneous information conveyed to the Board by the Staff and Applicant during the oral argument. As such, it contains information that could be helpful to the Board's examination of the issues presented by Friend's Petition.

### **Conclusion**

For the foregoing reasons, Friends respectfully requests that the Board deny NRC Staff's motion to exclude Dr. Peck's email from consideration.

Respectfully submitted,

/s/ Richard Ayres  
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Date: February 5, 2015

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this date, the “Friends Of The Earth’s Response To NRC Staff’s Motion Regarding Dr. Michael Peck’s Email To The Board” was served via the Electronic Information Exchange system.

*Signed (electronically) by Jessica Olson*

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*Executed in accordance with 10 C.F.R. § 2.304(d)*