

February 9, 2015

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))

PACIFIC GAS AND ELECTRIC COMPANY'S ANSWER TO
NRC STAFF MOTION REGARDING DR. PECK'S E-MAIL

INTRODUCTION

By motion dated January 30, 2015, the Nuclear Regulatory Commission (“NRC”) Staff requested that the Licensing Board disregard an email communication from Dr. Michael Peck to Judge Ryerson following the oral argument in this proceeding on January 21, 2015.¹ As noted in the NRC Staff’s motion, Pacific Gas and Electric Company (“PG&E”) supports the motion. Without engaging the merits of the assertions in the email, PG&E provides a brief additional response to the motion below.

DISCUSSION

The NRC Staff requests that the Licensing Board not consider the email from Dr. Peck for three reasons: (1) the email addresses current licensing and oversight issues that are not within the scope of a license renewal review; (2) the email is not relevant to the proposed contentions in this proceeding; and (3) the communication does not represent the position of the NRC Staff. All of these bases for the motion are undeniably valid.

¹ Dr. Peck is an NRC employee, and was formerly assigned as Senior Resident Inspector at Diablo Canyon Power Plant.

Most importantly, Dr. Peck’s email, by its terms, addresses his personal views on the Current Licensing Basis (“CLB”) for Diablo Canyon. In the email, Dr. Peck characterizes his previous Differing Professional Opinion (“DPO”) on Diablo Canyon seismic issues as seeking “to ensure that the CLB context . . . was applied to operability.” And in the email he obliquely references the 10 C.F.R. § 50.71(e) process for ongoing updates to the Final Safety Analysis Report. Regardless of the merits of Dr. Peck’s opinions, or of the merits of Friends of the Earth’s characterizations of those opinions, each of the points in the email addresses a licensing or oversight matter that is subject to the NRC’s regulatory processes for the *current* Diablo Canyon operating license. In accordance with the fundamental philosophy of the NRC’s license renewal regulations,² the license renewal review does not revisit the CLB or address current regulatory matters. A license renewal review focuses only on structures, systems, and components that either require an aging management review for the period of extended operation or are the subject of a time-limited aging analysis based on the current license term.³ The email does not address any license renewal matters.⁴

Dr. Peck’s DPO on how the NRC’s regulatory process should have been applied to Diablo Canyon seismic issues has been addressed by NRC Staff management in accordance with the NRC’s internal DPO procedures.⁵ This Licensing Board does not supervise NRC Staff functions.⁶

² See Final Rule, “Nuclear Power Plant License Renewal; Revisions,” 60 Fed. Reg. 22461, 22464 (1995).

³ See, e.g., 10 C.F.R. § 54.21.

⁴ Even if it did address matters within scope, Dr. Peck is not a party in this proceeding and his communication is outside the process established in NRC’s rules of practice. And, as noted by NRC Staff, his personal views are not those of the Staff.

⁵ Memorandum, M.A. Satorius to M.S. Peck, “Differing Professional Opinion Appeal Decision Involving Seismic Issues at Diablo Canyon (DPO-2013-002)” (September 9, 2014) (ADAMS Accession No. ML14252A743).

Nor is this a forum to litigate an NRC DPO.⁷ Accordingly, the Licensing Board should disregard the email and should not allow it to be considered as part of the pending request for hearing.

CONCLUSION

The Licensing Board should grant the NRC Staff motion.

Respectfully submitted,

/s/ signed electronically by

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Executed in accord with 10 C.F.R. 2.304(d)

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Dated at Washington, District of Columbia
this 9th day of February 2015

⁶ See, e.g., *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 74 (2004) (“[L]icensing boards do not sit to ... supervise or direct NRC Staff regulatory reviews.”), citing *Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2), CLI-98-25, 48 NRC 325, 349 (1998); *Curators of the Univ. of Mo.* (TRUMP-S Project), CLI-95-1, 41 NRC 71, 121 (1995) (“As a general matter, the Commission’s licensing boards and presiding officers have no authority to direct the Staff in the performance of its safety reviews.”); *Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-80-12, 11 NRC 514 (1980).

⁷ Members of the public, including Friends of the Earth, have a specific NRC process in which to raise current oversight issues, whether based on Dr. Peck’s views or any other support: 10 C.F.R. § 2.206.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "PACIFIC GAS AND ELECTRIC COMPANY'S ANSWER TO NRC STAFF MOTION REGARDING DR. PECK'S E-MAIL" in the captioned proceeding have been served via the Electronic Information Exchange ("EIE") this 9th day of February 2015, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

Respectfully submitted,

/s/ signed electronically by
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