

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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 OPPOSITION
TO FRIENDS OF THE EARTH APPEAL FROM LBP-15-6

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INTRODUCTION

In accordance with 10 C.F.R. § 2.311(b), Pacific Gas and Electric Company (“PG&E”) herein responds to the Friends of the Earth (“FOE”) appeal¹ of the Atomic Safety and Licensing Board decision, LBP-15-6,² denying their petition to intervene in this license renewal matter. FOE argues that the Licensing Board erred in determining that FOE failed to meet the requirements for a waiver of Commission regulations. Without addressing admissibility of the contentions, FOE argues that a waiver should be granted and that the Commission should direct the Board to “consider anew” the admissibility of Contentions 1 and 3.³ PG&E opposes the appeal. The requirements for a waiver have not been met. Proposed Contentions 1 and 3 should not be admitted for hearing.

¹ “Friends of the Earth’s Notice of Appeal of LBP-15-6” and “Brief of Friends of the Earth in Support of Appeal of LBP-15-16,” dated March 9, 2015 (“Appeal Brief”).

² “Memorandum and Order (Denying Petition to Intervene and Petition for Waiver),” LBP-15-6, dated February 11, 2015.

³ Appeal Brief at 2. FOE does not seek relief with respect to proposed Contention 2.

BACKGROUND

On October 14, 2014, FOE filed a hearing request and petition to intervene in this ongoing license renewal matter.⁴ FOE's filing was triggered by PG&E's release, on September 10, 2014, of a report on the company's comprehensive Central Coastal California Seismic Imaging Project that was completed at the request of the State of California.⁵ FOE offered three proposed contentions for hearing — all related to the adequacy of the current seismic design and licensing bases for Diablo Canyon and the ability of Diablo Canyon to safely shut down in the event of a maximum possible earthquake generated by faults in the region (in particular, the Shoreline Fault). In many respects, the Hearing Request and proposed contentions mirror FOE's assertions, arguments, and errors previously presented in a hearing request filed on August 26, 2014, on the Diablo Canyon operating license docket, and still pending before the Commission.⁶

⁴ "Friends of The Earth's Request for Hearing and Petition to Intervene," dated October 10, 2014 ("Hearing Request"). FOE was not previously a petitioner or party to this proceeding.

⁵ PG&E Letter DCL-14-081, "Central Coastal California Seismic Imaging Project, Shoreline Fault Commitment," dated September 10, 2014 (ADAMS Accession No. ML14260A106) ("Seismic Imaging Project Report").

⁶ In that hearing request, FOE argued that allowing continued operation of Diablo Canyon in light of new seismic information constitutes a *de facto* license amendment that entitles it to a hearing. However, FOE's hearing request in that matter should be rejected as a matter of law. There is no license amendment pending, *de facto* or otherwise, that creates a hearing opportunity under the Atomic Energy Act. And, even if PG&E or the NRC Staff had identified a non-conformance with the licensing basis (which they did not), there still would not be a *de facto* license amendment. There is no right to a hearing on NRC enforcement actions or on exercises of discretion to allow continued operation notwithstanding a non-conformance. *See, e.g., Fla. Power and Light Co.* (St. Lucie Plant, Unit 2), CLI-14-11, __ NRC __ (slip op. Dec. 19, 2014, at 9-10); *Omaha Public Power District* (Fort Calhoun Station, Unit 1), CLI-15-5, __ NRC __ (slip op. March 9, 2015, at 8-13).

Implicitly recognizing that the NRC’s license renewal review under 10 C.F.R. Part 54 is specifically limited to aging management issues for long-lived, passive components as defined by the regulations, including 10 C.F.R. §§ 54.4, 54.21, and 54.29(a), FOE also filed a petition for a waiver from the regulations under 10 C.F.R. § 2.335(b).⁷ FOE characterized the intent of the Part 54 license renewal rules broadly — in effect, “to ensure the continued safe operation of the plant during the extended term” of the license — and argued that the “special circumstances” of new seismic information related to Diablo Canyon justify a waiver to serve the purpose of the license renewal review. Both PG&E and the NRC Staff opposed the Hearing Request and the Waiver Petition.⁸

The Licensing Board in LBP-15-6 denied the Hearing Request and the Waiver Petition. With respect to the Hearing Request, the Board determined that each of FOE’s proposed contentions “either raises issues that Care outside the scope of a license renewal proceeding, or fails to satisfy one or more requirements of 10 C.F.R. § 2.309(f)(1).”⁹ As pointed out by PG&E and the NRC Staff, proposed Contention 1 was a challenge to the adequacy of the Current Licensing Basis (“CLB”) and the safety of current operations at Diablo Canyon based on information in the Seismic Imaging Project Report.¹⁰ In LBP-15-6, the Board cited the fundamental principle underlying the license renewal regulations — that the Commission’s

⁷ “Friends of the Earth’s Petition for Waiver of 10 C.F.R. §§ 54.4, 54.21, and 54.29(a) as Applied to the Diablo Canyon License Renewal Proceeding,” October 10, 2014 (“Waiver Petition”).

⁸ “Pacific Gas and Electric Company’s Answer Opposing the Friends of the Earth Hearing Request and Petition for Waiver,” dated November 4, 2014 (“PG&E Answer”); “NRC Staff’s Answer to the Friends of the Earth’s Request for Hearing and Petition to Intervene and Waiver Petition,” dated November 4, 2014 (“NRC Staff Answer”).

⁹ LBP-15-6, slip op. at 7.

¹⁰ *See, e.g.*, PG&E Answer at 13-18.

regulatory process ensures that the licensing bases of all currently operating plants are adequate to maintain an acceptable level of safety.¹¹ CLB issues are addressed by ongoing Part 50 regulatory processes that apply in the current operating license term and that will continue to apply in a renewed license term. And, pointing to the Commission's previous decision on another proposed contention in this case, the Board recognized that license renewal should not involve a broad-scope inquiry into compliance matters.¹²

In proposed Contention 3,¹³ FOE broadly challenged the adequacy of the Diablo Canyon "aging management plan." But FOE did not identify any specific plant equipment, or challenge any specific portion of the license renewal application or any specific aging management plan. Accordingly, the Licensing Board determined that FOE's "broad assertions" failed to establish a link between its seismic concerns and the effects of aging within the scope of license renewal.¹⁴ The Board found that the contention did not establish a genuine dispute with the applicant or identify a material issue, and was therefore inadmissible.¹⁵

¹¹ *Id.* at 9, *citing* 60 Fed. Reg. 22461, 22464, "Final Rule: Nuclear Power Plant License Renewal; Revisions" (May 8, 1995).

¹² *Id.*, *citing Pacific Gas and Electric Co.* (Diablo Canyon Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 435-37 (2011).

¹³ Proposed Contention 2 asserted "aging" issues and purportedly inadequate seismic capabilities for two specific components (snubbers and relays). However, both are active components subject to ongoing surveillance and maintenance programs; they are not subject to an aging management review or the subject of a time-limited aging analysis under 10 C.F.R. § 54.21. The Board found Contention 2 to be inadmissible. CLI-15-6, slip op. at 10-12.

¹⁴ LBP-15-6, slip op. at 13.

¹⁵ The Board did not directly address the admissibility of proposed Contention 3 separate from the issue of whether the contention addressed an issue within the scope of license renewal. However, given the contention's lack of specificity and support, PG&E maintained that the contention was insufficient to establish a genuine dispute with the license renewal application. PG&E Answer at 22. The Board's broad statement that the

Addressing the Waiver Petition, the Licensing Board reiterated the standard in 10 C.F.R. § 2.335, as explained by the Commission in *Millstone*.¹⁶ A waiver from the regulations may be granted only upon showing that each of four factors has been satisfied:

- i. strict application of the rule would not serve the purpose for which the rule was adopted;
- ii. the petitioner has alleged special circumstances that were not considered, either explicitly or by necessary implication, in the rulemaking leading to the rule sought to be waived;
- iii. there are circumstances are unique to the facility rather than common to a large class of facilities; and
- iv. a waiver of the regulations is necessary to reach a significant safety problem.¹⁷

FOE did not, and does not, dispute the applicability of this standard.

Applying the standard, the Licensing Board concluded that FOE had failed to meet at least two of the required criteria. First, FOE had not demonstrated that application of the Part 54 regulations would not serve the purposes for which the regulations were adopted.¹⁸ And, second, FOE had not shown that a waiver is necessary to reach a significant safety problem.¹⁹ The Board emphasized that seismic issues of concern to FOE are current operating issues to be addressed by the applicable regulatory processes, including 10 C.F.R. § 2.206. In fact, as

proposed contentions either raise issues outside the scope of license renewal or fail to satisfy one or more requirements of 10 C.F.R. § 2.309(f)(1) (CLI-15-6, slip op. at 7) suggests that the Board agreed. Only the former defect could be remedied by the requested waiver.

¹⁶ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Under 2 and 3), CLI-05-24, 62 NRC 551, 559-60 (2005).

¹⁷ LBP-15-6, slip op. at 14; *see also* CLI-11-11, 74 NRC at 449.

¹⁸ LBP-15-16, slip op. at 15.

¹⁹ *Id.* at 16.

discussed by PG&E and NRC Staff in the filings below, those issues are being addressed through NRC oversight and post-Fukushima reviews being conducted through the 10 C.F.R. § 50.54(f) process.²⁰

DISCUSSION

On appeal, FOE does not dispute that its proposed contentions require a waiver in order to be admitted in this license renewal proceeding.²¹ Section 2.335(b) provides that “the sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or provision of it) would not serve the purposes for which the rule or regulation was adopted.” As recognized by the Licensing Board, the Commission in *Millstone* emphasized a four part showing (summarized above) to meet Section 2.335. FOE’s Waiver Petition does not meet the test. Because Diablo Canyon seismic issues already are being actively addressed by PG&E and the NRC as a current operating issue, license renewal for Diablo Canyon should be treated the same as any other nuclear plant. In any event, seismic studies for Diablo Canyon have not to date identified an inadequacy in the seismic CLB or any other seismic safety problem. The Waiver Petition was appropriately denied.

²⁰ PG&E Answer at 9-10; NRC Staff Answer at 8-11.

²¹ As observed by the Board in connection with proposed Contention 1, FOE did not dispute that the ability of Diablo Canyon to shut down safely following a potential earthquake is “a current operating issue, and not unique to whether PG&E’s licenses . . . should be renewed.” LBP-15-6, slip op. at 8. Accordingly, FOE’s seismic concerns are not within the scope of the Part 54 license renewal review. Below, FOE made arguments (most pointedly in connection with proposed Contention 2) that at least issues related to snubbers and relays are within the scope of review pursuant to Sections 54.4(a)(2) and 54.21(a)(3). The Board rejected that theory. *Id.* at 10-12. That theory does not re-surface in the appeal and FOE has conceded the need for a waiver.

A. Application of the Rule Would Serve the Exact Purpose of the Rule

FOE seeks a waiver from several regulations in Part 54 that restrict a license renewal review to long-lived, passive equipment and aging management issues unique to the period of extended operation. In its Waiver Petition FOE clearly recognized that “[t]he stated purpose of the [rule] revision was to identify and eliminate from license renewal proceedings certain analysis that would be duplicative of the licensee’s ongoing obligations to comply with Commission regulations and the plant’s current licensing basis.”²² However, FOE argued that the overall purpose, or “paramount objective” of the rule, was to “ensure that important systems, structures, and components will continue to perform their intended function in the period of extended operation.”²³ To FOE, this broad safety objective will not be met for Diablo Canyon absent a waiver. In other words, according to FOE, the seismic CLB must be reviewed afresh and litigated, in connection with license renewal, to achieve safety in the license renewal period.

Consistent with the Commission’s decision in *Millstone* (also a license renewal case), the Licensing Board correctly rejected FOE’s reasoning. Quoting from *Millstone*, the Board wrote that “it makes no sense to spend the parties’ and our own valuable resources litigating allegations of current deficiencies in a proceeding that is directed to future-oriented issues of aging.”²⁴ Under Part 54, present-day issues are to be addressed in the current license term through Part 50 oversight and licensing processes, as applicable — not in license renewal.

Indeed, when the most recent version of Part 54 was adopted, the Commission expressed the “first principle of license renewal” as follows:

²² Waiver Petition at 6, *citing* 60 Fed. Reg. at 22462-22463.

²³ *Id.*

²⁴ LBP-15-6, slip op. at 15, *quoting* CLI-05-24, 62 NRC at 561 (emphasis in original).

. . . with the possible exception of the detrimental effects of aging on the functionality of certain plant systems, structures, and components in the period of extended operation and possibly a few other issues related to safety only during extended operation, the regulatory process is adequate to ensure that the licensing bases of all currently operating plants provides and maintains an acceptable level of safety so that operation will not be inimical to public health and safety or common defense and security.²⁵

The license renewal rule therefore focused on issues involving the detrimental effects of aging resulting from operation during the initial license term and any other discrete issues unique to extended operation not addressed in the current license term.

Here, FOE's proposed contentions challenged the seismic CLB; they did not identify any aging mechanism or challenge any specific aging management plan. As observed by the Licensing Board, the regulations from which FOE seeks relief in the present case "serve exactly the purpose the Commission intended" — that is, to bar litigation of current regulatory matters in a license renewal proceeding that is appropriately focused on equipment aging.²⁶ This conclusion alone was fatal to the Waiver Petition.

On appeal, FOE offers nothing new on this factor. FOE again advocates a broad reading of the purpose of the license renewal rule, focusing again on the language in the rulemaking regarding the need to ensure that equipment important to safety will perform its intended function in the period of extended operation. FOE accuses the Licensing Board of prioritizing "maximum efficiency" over "seismic risk." But FOE misreads and misapplies the rulemaking language that it quotes. The Commission in adopting the rule intended to ensure the capability of equipment to fulfill its safety function in the period of extended operation. The Commission chose to do this through the combination of the license renewal review and other

²⁵ 60 Fed. Reg. at 22464.

²⁶ LBP-15-6, slip op. at 16.

ongoing regulatory processes. For example, issues involving the adequacy of and compliance with the CLB are not limited to the renewed license term, and therefore are addressed as current operating issues rather than in the license renewal process. The functionality of active equipment and short-lived components is addressed through ongoing maintenance and surveillance programs and regulatory oversight, and therefore also does not need to be reviewed in license renewal. The objective of the rule was to establish this dichotomy, and that objective is served exactly as intended in the present case. This is not a matter of prioritizing efficiency over safety. Rather, it is a matter of ensuring that all issues are reviewed in the appropriate regulatory process at the appropriate time, without undue duplication.

FOE's argument is also very similar to an argument that the Commission rejected in *Millstone*. In that case the petitioner sought to litigate (in connection with license renewal) emergency planning issues under 10 C.F.R. § 50.47. Emergency planning issues are, of course, licensing basis issues subject to review and hearing prior to issuance of the operating license, and subject to ongoing oversight throughout the license term. In seeking a waiver of the regulations, the petitioners suggested that the Commission read the purpose of Section 50.47 broadly, as "to ensure the protection of public health and safety."²⁷ The Commission rejected that invitation:

Of course, *all* our Part 50 regulations are aimed, directly or indirectly, at protecting public health and safety. But that does not mean that all are suitable subjects for litigation in a license renewal proceeding. They are not. In fact, the primary reason we excluded emergency-planning from license renewal proceedings was to limit the scope of those proceedings to "age-related degradation unique to license renewal." Emergency planning is, by its very nature, neither germane to age-related degradation nor unique to the period covered by the Millstone license renewal application."²⁸

²⁷ CLI-05-24, 62 NRC at 560.

²⁸ *Id.* at 560-61 (footnotes omitted) (emphasis in original).

The same point applies to seismic issues for Diablo Canyon. FOE’s seismic concerns — directed to the adequacy of, or compliance with, the CLB — are unrelated to equipment aging, and are not properly the subject of a license renewal proceeding. The purpose of the license renewal rule is served by denying the waiver and allowing seismic issues to be addressed exclusively through the ongoing Part 50 regulatory process.²⁹ The waiver analysis therefore begins and ends with the first factor.

B. Seismic Issues at Diablo Canyon Are Not “Special Circumstances” Justifying a Waiver

Under the waiver provision in 10 C.F.R. § 2.335(b), the sole basis for a waiver is “special circumstances” such that application of the rule would not serve the purpose of the rule. “Special circumstances” alone do not provide grounds for a waiver. Therefore, having found FOE’s petition lacking on the first factor above, the Licensing Board did not address this second factor. But, applying the test articulated by the Commission in *Millstone*, FOE’s Waiver Petition fails on this factor as well.

In *Millstone* the Commission defined the second waiver test as whether the petitioner has alleged special circumstances that were not considered, either explicitly or by necessary implication, in the rulemaking leading to the rule sought to be waived. FOE argues on appeal, as it did below, that “Diablo Canyon’s unique seismic history constitutes special circumstances that warrant an analysis at the license renewal stage of whether the plant’s

²⁹ PG&E recognizes that FOE has a hearing request related to seismic issues pending on the Diablo Canyon operating license docket. PG&E does not concede that a hearing is appropriate in connection with that request. *See infra* n.6 (citing two recent Commission decisions as support for the proposition that FOE’s hearing request on the operating license docket should be rejected as a matter of law because there is no right to a hearing on NRC oversight matters or on exercises of discretion to allow continued operation notwithstanding a non-conformance). Other regulatory processes apply to assure safety. Hearing rights under the Atomic Energy Act and 10 C.F.R. Parts 2 and 50 apply only as specified in the statute and regulations.

[structures, systems, and components], in their aged condition, can continue to function properly under the potential seismic circumstances during the extended period of operation.”³⁰ FOE characterizes (inaccurately) the 1977 Hosgri Evaluation as (1) “materially less conservative” than prior seismic evaluations for Diablo Canyon, (2) an evaluation that “had been shown to be inaccurate” (FOE does not say by whom), and (3) a “special case” somehow limited to its own facts and inapplicable as a benchmark for more current evaluations of the Shoreline Fault and other regional faults. FOE argues that the Diablo Canyon history was not considered in the license renewal rulemaking and, much more broadly, that the “rule assumes not only that the plant’s current licensing basis will be maintained in compliance with Commission regulations, but also that no other exceptions for outside-design-basis events will be added to the plant’s current licensing basis.”³¹

Without conceding that any of FOE’s characterizations are factually accurate, FOE is missing the point that applies to waivers. The Commission in issuing the license renewal rule made no assumptions about the adequacy of a plant’s CLB, a plant’s compliance with the CLB and Commission regulations, or the seismic issues that might exist at Diablo Canyon or anywhere else in the future. Instead, in the license renewal rule, the Commission expected that any issues related to the CLB or compliance that might arise at any time can and would be addressed as a current operating and oversight issue (*i.e.*, when they arise). This is certainly the case for Diablo Canyon.³²

³⁰ Appeal Brief at 10-11.

³¹ *Id.* at 14.

³² FOE suggests that PG&E, in answering the Waiver Petition somehow conceded that “the possibility of discovery of new seismic information” was not considered in the license renewal rulemaking. Appeal Brief at 11, n. 46. FOE is mischaracterizing PG&E’s answer, which does not include the words FOE attributes to PG&E. *See* PG&E Answer

In *Millstone* the Commission underscored the point. In rejecting the waiver request related to emergency planning, the Commission highlighted the fact that its rulemaking addressing license renewal had emphasized that any litigated issues must be “unique to the license renewal period.”³³ The issues raised by the petitioner in that case (demography and transportation) were not unique to the period of extended operation and are addressed by normal Commission activities such as setting standards and conducting exercises. For Diablo Canyon, the license renewal rulemaking clearly contemplated that all CLB and ongoing compliance issues, including seismic hazards and seismic qualification issues, would be addressed by ongoing regulatory oversight.

Moreover, the Commission in the present case has already rejected a request (from San Luis Obispo Mothers for Peace) to waive generic environmental findings for license renewal related to spent fuel storage, based on Diablo Canyon seismic hazards, including the Shoreline Fault. The Commission did not find new information about the Shoreline Fault, without more, to be special circumstances meeting the waiver test.³⁴ These CLB issues are circumstances that were contemplated “by necessary implication” in the rulemaking. The Waiver Petition can be rejected on this basis as well.

at 27. PG&E merely recognized that the specific circumstances of the Diablo Canyon seismic licensing history and the Seismic Imaging Project Report (which was many years in the future at the time) were not explicitly considered in the rulemaking. But the prospect of CLB issues and the possibility of future CLB modifications were considered. PG&E pointed out, as discussed above, that application of the license renewal rule would serve the purpose of the regulation — assuring that the issue is addressed in connection with the current license. By necessary implication, this logic applies to Diablo Canyon as well as to other plants completing post-Fukushima seismic reevaluations.

³³ CLI-05-24, 62 NRC at 561.

³⁴ CLI-11-11, 74 NRC at 451, n. 133.

C. Seismic Hazards Re-evaluations Are Not Unique to Diablo Canyon

The third factor in *Millstone* is a further elaboration of the “special circumstances” required by 10 C.F.R. § 2.335(b): whether the alleged “special circumstances” are unique to the facility in question. The Licensing Board did not apply this factor, but the factor also precludes a waiver in the present case. In *Millstone* the Commission found that the waiver request related to emergency planning did not meet the third factor because the circumstances of road limitations and demography trends in Suffolk County, New York, are “hardly unique” and exist in other jurisdictions.³⁵ The same can be said in the present case for post-Fukushima seismic issues and seismic re-evaluations.

Under the NRC’s regulations, plants are not required to re-analyze seismic hazards after initial licensing. Recognizing this fact, and based on the NRC Staff recommendations following the Fukushima accident, the NRC has requested under 10 C.F.R. § 50.54(f) that all U.S. plants complete seismic re-evaluations.³⁶ These evaluations address new information and apply methodologies that have been developed in the years since most plants were licensed. PG&E, because of its longstanding commitment to implement and maintain the Long Term Seismic Program for Diablo Canyon, had already developed information regarding the Shoreline Fault and issued a report to the NRC.³⁷ But its ongoing review of the Shoreline

³⁵ CLI-05-24, 62 NRC at 562.

³⁶ “Letter from NRC to All Power Reactor Licensees and Holders of Construction Permits in Active or Deferred Status, 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. ML12056A046).

³⁷ PG&E was required by condition in the original operating license for Diablo Canyon to develop and implement a program to reevaluate and confirm the seismic design basis. PG&E completed the Long Term Seismic Program (“LTSP”) and submitted a report to the NRC in 1988. The program confirmed the adequacy of the design and licensing basis

Fault and other regional faults has now been subsumed into the post-Fukushima Section 50.54(f) process utilizing the methodologies outlined by the NRC.³⁸ Similarly, prior to the Fukushima event, under Generic Issue (“GI”) 199, the NRC was reviewing potentially increased seismic hazards based on new information and new methodologies for plants in the Central and Eastern United States (“CEUS”).³⁹ The CEUS seismic review process too has since been incorporated into the post-Fukushima Section 50.54(f) seismic reviews.

Seismic issues at Diablo Canyon are important and complex. As at any plant, they are also site-specific and therefore, by necessity, “unique.” PG&E has aggressively developed and analyzed new seismic information related to the Shoreline Fault and other regional faults. PG&E does not minimize these issues. But, more germane to the waiver test, the fact that PG&E is conducting new seismic evaluations is not unique to Diablo Canyon. Nor is the possibility of different or increased seismic hazards compared to initial licensing.⁴⁰ And,

at the time. The NRC reviewed the results and closed the license condition in 1991. PG&E has maintained a strong geosciences capability since that time, and has continued to identify and evaluate new seismic information as it arises — including the Shoreline Fault in 2008. PG&E submitted a report on its Shoreline Fault assessment in January 2011. That report showed that, utilizing a deterministic methodology, updated ground motion response spectra for the four regional faults near Diablo Canyon are bounded by the 1977 licensing basis ground motion response spectra for the maximum postulated Hosgri Earthquake.

³⁸ See, e.g., NRC Letter to E.D. Halpin, “Diablo Canyon Power Plant, Unit Nos. 1 and 2 – NRC Review of Shoreline Fault (TAC Nos. ME5306 and ME5307),” dated October 12, 2012 (ADAMS Accession No. ML120730106) (“October 2012 NRC Letter”), at 3-4.

³⁹ “GI-199: Implications of Updated Probabilistic Seismic Hazards Estimates on Central and Eastern United States,” dated June 9, 2005 (ADAMS Accession No. ML051600272).

⁴⁰ See NRC Letter, “Screening and Prioritization Results Regarding Information Pursuant to Title 10 of the Code of Federal Regulations 50.54(f) Regarding Seismic Hazards Re-for evaluations Recommendation 2.1 of the Near-Term Task Force Review of Insights from the Fukushima Dai-Ichi Accident,” (*i.e.*, Results for CEUS licensees), dated May 9, 2014 (ADAMS Accession No. ML14111A147).

at this point there is not any information that suggests that Diablo Canyon presents a unique or excessive seismic risk, given its robust seismic design. PG&E’s 2014 Seismic Imaging Project Report, the genesis of FOE’s Hearing Request, in fact confirmed prior conclusions that the updated ground motion response spectra for the four regional faults are bounded by the licensing basis 1977 Hosgri Earthquake ground motions. And more recent information developed in accordance with the Section 50.54(f) request also confirms the seismic safety of the plant.⁴¹

In another decision involving license renewal and a waiver request, the Commission held that to justify a waiver under the uniqueness factor, a petition must show “issues that are legitimately unique to the proceeding and do not imply broader concerns about the rule’s general viability or appropriateness.”⁴² If a waiver of license renewal regulations were justified for seismic issues at Diablo Canyon, the same result could apply at many other plants that are conducting revised seismic hazards analyses. The Commission, as in *Limerick*, should

⁴¹ On March 13, 2015, PG&E submitted its first seismic hazards and screening report in response to the NRC’s Section 50.54(f) request. This report, using current information and methodologies specified by the NRC, shows that Diablo Canyon “screens-in” for further seismic evaluation in accordance with the Section 50.54(f) process. But the report also includes an interim comparison of the newly developed ground motion response spectra (“GMRS”) to the design and licensing basis 1977 Hosgri Earthquake spectrum and the LTSP seismic margins assessment. These comparisons demonstrate that there is reasonable assurance that Diablo Canyon structures, systems, and components required for safe shutdown will perform their intended safety functions if subjected to ground motions at the newly-developed GMRS levels. See Letter from B. Allen, PG&E, to NRC, “Response to NRC Request for Information Pursuant to 10 CFR 50.54(f) Regarding the Seismic Aspects of Recommendation 2.1 of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident: Seismic Hazard and Screening Report,” DCL-15-035, dated March 11, 2015 (ADAMS Accession No. ML15071A046).

⁴² *Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-7, 78 NRC 199, 208 (2013).

“not set aside a duly-promulgated regulation lightly.”⁴³ A reevaluation of the scope of license renewal reviews would be a matter for a rulemaking rather than a site-specific waiver.

FOE argues on appeal that the licensing history of Diablo Canyon and the fact that the plant is “the only currently operating plant on the West Coast” meet this waiver factor.⁴⁴ But this argument equates location to uniqueness and seismic hazards to seismic risk. It ignores the robust seismic design of Diablo Canyon and the ongoing reevaluations directed for all plants in accordance with the Section 50.54(f). PG&E and the NRC are reviewing seismic issues for Diablo Canyon through an established Part 50 process to assure that local seismicity does not pose unique or undue risks. Other plants are doing the same given their unique locations and site-specific designs and licensing bases. The existence of seismic issues involving Diablo Canyon is not a unique circumstance justifying a waiver of license renewal regulations.

D. A Waiver is Not Necessary to Reach a Significant Safety Problem

The final factor under *Millstone* is whether a waiver of the license renewal regulations is necessary to reach a significant safety problem. The Licensing Board concluded that this is not the case.⁴⁵ In light of the many considerations already discussed above, the Board’s conclusion is patently correct. Seismic issues for Diablo Canyon are already being addressed in appropriate processes for the current operating license term. Continued operation of Diablo Canyon remains a matter for ongoing, continuous NRC oversight. Seismic issues remain a focus area for post-Fukushima evaluations in the Section 50.54(f) process. PG&E’s and NRC Staff evaluations to date do not support FOE’s sweeping assertions regarding the risks of

⁴³ *Id.*

⁴⁴ Appeal Brief at 16.

⁴⁵ LBP-15-6, slip op. at 16.

earthquakes at the plant. Litigation in connection with license renewal is by no means necessary to address the issue or reach a significant safety problem.

On appeal, FOE's primary argument is that NRC regulations do not provide satisfactory avenues to raise (and litigate) its claims regarding seismic safety.⁴⁶ The Licensing Board rejected this argument, pointing to the 10 C.F.R. § 2.206 enforcement petition process and the 10 C.F.R. § 2.802 petition for rulemaking process.⁴⁷ These indeed are the available and appropriate processes for FOE to raise concerns about the adequacy of NRC oversight, the need for enforcement action (*e.g.*, for an order requiring a shutdown), or the adequacy of the regulations (including the scope of a license renewal review). The Commission has recently affirmed the applicability and viability of these processes for current operating matters.⁴⁸

FOE argues that the NRC's guidance precludes using the Section 2.206 process to raise "the safety-related licensing claims it advances here."⁴⁹ But FOE is misreading the guidance and being coy about the relief it seeks. The guidance clearly allows Section 2.206 petitions to seek enforcement action to modify, suspend, or revoke a license based on safety concerns. Certainly that is the ultimate relief that FOE seeks — based on the issues asserted in the proposed contentions. Section 2.206 provides a process in which those concerns would be considered and resolved. Of course, FOE would prefer and seeks a hearing as the process in

⁴⁶ Appeal Brief at 16-19.

⁴⁷ LBP-15-6, slip op. at 16.

⁴⁸ *See, e.g., Fort Calhoun*, CLI-15-5, slip op. at 14; *Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3)*, CLI-12-20, 76 NRC 437, 439-40 (2012).

⁴⁹ Appeal Brief at 18.

which to address its claims. But a hearing is not the ultimate relief it seeks. And the Atomic Energy Act does not provide for hearings on petitions seeking enforcement actions.

FOE further argues that the relief it seeks relates only to plant safety during the extended term of operation, and “therefore may be brought only in the course of a license renewal proceeding.”⁵⁰ This argument is strange, if not disingenuous. Seismic safety is not artificially constrained, as FOE suggests, to the period of extended operation. Indeed, as presented by FOE and as already discussed, the contentions do not involve aging management issues unique to the period of extended operation or to a renewed license term. FOE can file a Section 2.206 petition at any time, during the initial license term or during a renewed license term, to raise its concerns. That is the appropriate forum in which FOE can seek relief (including changes to the licensing basis, modifications to the facility, or a shutdown order). In suggesting that there is no “alternative avenue” to seek relief, FOE is simply and unnecessarily being self-limiting — and wrong. There is no lack of means for FOE to raise its issues. FOE’s unfounded argument does not justify a waiver of the license renewal rules.

⁵⁰ *Id.* at 19.

CONCLUSION

For the reasons discussed above, the Licensing Board's decision in LBP-15-6, denying FOE's Waiver Petition, should be affirmed.

Respectfully submitted,

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Dated at Washington, DC
this 3rd day of April 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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 “PACIFIC GAS AND ELECTRIC COMPANY’S OPPOSITION TO FRIENDS OF THE EARTH APPEAL FROM LBP-15-6” in the captioned proceeding have been served this 3rd day of April 2015 via the Electronic Information Exchange (“EIE”), which to the best of my knowledge resulted in transmittal of the foregoing to all those on the EIE Service List for the captioned proceeding.

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