

June 11, 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	Docket No. 50-275
PACIFIC GAS AND ELECTRIC	)	Docket No. 50-323
COMPANY	)	
	)	
(Diablo Canyon Power Plant, Units 1 and 2)	)	

PACIFIC GAS AND ELECTRIC COMPANY’S OPPOSITION  
TO MOTION FOR EXPANDED BRIEFING

INTRODUCTION

In accordance with the Licensing Board Order of June 8, 2015,<sup>1</sup> Pacific Gas and Electric Company (“PG&E”) herein responds to the Friends of the Earth (“FOE”) Motion to allow supplemental briefing on an expanded scope of issues in this proceeding.<sup>2</sup> PG&E opposes the Motion.

Consistent with the Commission’s direction in CLI-15-14,<sup>3</sup> the Licensing Board in its Notice and Order of June 2, 2015, invited PG&E and the NRC Staff to respond to FOE’s specific assertion “that the Staff has ‘approved’ PG&E’s Final Safety Analysis Report Update, Revision 21, and this action, standing alone, grants PG&E greater operating authority and alters

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<sup>1</sup> Order (Scheduling Responses), dated June 8, 2015.

<sup>2</sup> “Petitioner Friends of the Earth’s Motion to Allow Supplemental Briefing,” dated June 5, 2015 (“Motion”).

<sup>3</sup> *Pacific Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-15-14, 81 NRC \_\_\_, slip op. at 7 (May 21, 2015).

the terms of the operating licenses.”<sup>4</sup> In its Motion, FOE seeks to expand the scope of this matter beyond the discrete delegation from the Commission and to untimely introduce evidentiary material and other information extraneous to the limited issue before the Licensing Board. FOE does not raise any credible and material issue that merits additional briefing.

### DISCUSSION

#### A. FOE’s Motion Raises New Issues Beyond the Narrow Scope of the Commission Referral

On August 26, 2014, FOE filed a petition seeking a hearing on seismic issues related to current operations at Diablo Canyon.<sup>5</sup> The Hearing Request was derived from seismic information developed by PG&E beginning in 2008 related to the so-called Shoreline Fault in the vicinity of the plant and from subsequent PG&E reports and NRC Staff reviews of the seismic issues. FOE argued that (1) the NRC is conducting a *de facto* license amendment proceeding<sup>6</sup> and (2) the NRC Staff’s determination that the Shoreline Fault is a lesser-included case under the prior Hosgri Earthquake evaluation for Diablo Canyon is insufficient to ensure that the plant is operating safely.<sup>7</sup>

As characterized by the Commission in CLI-15-14, FOE’s Hearing Request (specifically, the *de facto* license amendment argument) relied on NRC regulatory activities associated with the following correspondence on seismic information:

- (1) The NRC Staff’s March 2012 request for information to all power plant licensees pursuant to 10 C.F.R. § 50.54(f);
- (2) Research Information

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<sup>4</sup> Notice and Order (Scheduling Oral Argument), Nos. 50-275/50-323 (June 2, 2015) at 2 (unpublished), quoting CLI-15-14, slip op. at 8.

<sup>5</sup> “Petition to Intervene and Request for Hearing by Friends of the Earth,” dated August 26, 2014 (“Hearing Request”).

<sup>6</sup> Hearing Request at 29.

<sup>7</sup> *Id.* at 47.

Letter 12-01 (Sept. 2012); and (3) the NRC Staff's October 2012 letter to PG&E that summarized the results of the 2012 assessment and placed Staff's further review of new information in the context of the NRC's section 50.54(f) letter requesting seismic reevaluations by all power reactor licensees.<sup>8</sup>

These matters were all previously addressed in answers to the Hearing Request filed by PG&E and the NRC Staff.<sup>9</sup>

In CLI-15-14 the Commission referred to the Licensing Board the limited issue of “whether the NRC granted PG&E greater authority than that provided by its existing licenses or otherwise altered the terms of PG&E’s existing licenses, thereby entitling FOE to an opportunity to request a hearing pursuant to AEA section 189a.”<sup>10</sup> But, as observed by the Commission in CLI-15-14, FOE asserted in its reply to the PG&E and NRC Staff answers to the Hearing Request an additional basis for its claim that there should be a hearing opportunity — “that the Staff has ‘approved’ PG&E’s Final Safety Analysis Report Update, Revision 21, and this action standing alone, grants PG&E greater operating authority and alters the terms of the operating licenses.”<sup>11</sup> The Commission directed that PG&E and the NRC Staff be given the opportunity to address only FOE’s assertions related to UFSAR Revision 21.<sup>12</sup> PG&E plans to brief that issue on the schedule previously set by the Licensing Board. The Commission did not provide for new filings to update or supplement the Hearing Request.

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<sup>8</sup> CLI-15-14, slip op. at 6-7 (citations to the Hearing Request omitted).

<sup>9</sup> “Pacific Gas and Electric Company’s Answer to Friends of the Earth Hearing Request,” dated October 6, 2014, (“PG&E Answer”); “NRC Staff’s Answer To Petition to Intervene and Request for Hearing by Friends of the Earth,” dated October 6, 2014.

<sup>10</sup> CLI-15-14, slip op. at 7.

<sup>11</sup> *Id.*, slip op. at 8 (citations to FOE reply omitted).

<sup>12</sup> The Commission provided PG&E and the NRC Staff with this limited briefing opportunity because FOE raised the UFSAR Revision 21 issue for the first time in its reply brief.

In its Motion, FOE seeks to expand briefing to include the implications of additional matters not raised previously and not identified by the Commission in CLI-15-14:

- (1) an NRC Staff inspection report dated December 15, 2014, documenting NRC Staff's review of PG&E's operability determination associated with the company's Central Coastal California Seismic Imaging Project ("CCCSIP") report issued in September 2014;
- (2) the action of the Court of Appeals for the D.C. Circuit to hold in abeyance FOE's case in that forum challenging UFSAR Revision 21;
- (3) PG&E's probabilistic seismic hazards report issued on March 15, 2015, to respond to the NRC's Section 50.54(f) letter to all licensees (dated March 12, 2012) requesting seismic risk reevaluations; and
- (4) testimony by two individuals at a hearing in December 2014 held by the U.S. Senate Environment and Public Works Committee.

In seeking to expand the scope of matters under consideration, FOE's Motion plainly exceeds the narrow scope of the Commission delegation to the Licensing Board. Rather than addressing a discrete legal issue, based on and limited by the terms of the pending Hearing Request and the FOE reply, FOE invites a broad inquiry into the ongoing NRC Staff review of seismic issues at Diablo Canyon, including the differing views of two individuals who have offered their opinions on the matter to a Senate Committee. Such a wide-ranging inquiry under the narrow scope delegation would be contrary to CLI-15-14.<sup>13</sup>

B. No Briefing Is Required to Find that the "New" Matters Do Not Involve an NRC Approval

Contrary to FOE's characterizations and assertions, *none* of the proposed additional matters involves an NRC *approval* of any kind. None of these matters could conceivably be

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<sup>13</sup> FOE also makes no effort to show that its new issues are timely. FOE does not even attempt to explain why it did not raise its new issues and new documents in a timely manner while its Hearing Request was pending before the Commission.

construed as a *de facto* license amendment requiring a hearing opportunity under the Atomic Energy Act. As stated by the Commission in CLI-15-14, the sole delegated issue is “whether the NRC granted PG&E greater authority than that provided by its existing licensees or otherwise altered the terms of PG&E’s existing licenses.” On their face, the matters now raised by FOE do not grant anything, do not alter the Diablo Canyon operating licenses (including Technical Specifications), and do not increase operating authority under the licenses. No further briefing is necessary.

First, the inspection report cited by FOE is exactly that — an inspection report. It documents an NRC Staff *oversight* function. The Commission has already (and repeatedly) emphasized the “distinction between [the] agency’s hearing and its oversight processes.”<sup>14</sup> Suffice it to say, construing inspection reports (whether documenting violations or not) to be license amendments conferring hearing rights would be a fundamental change in the NRC regulatory process. The Licensing Board can readily conclude that it need not consider the inspection report cited by FOE.

Second, FOE raises its pending petition for review in the D.C. Circuit.<sup>15</sup> However, the action by the Court of Appeals — deferring its consideration of the merits of FOE’s claims regarding UFSAR Revision 21 pending the outcome of the administrative process at the NRC on FOE’s Hearing Request — by definition says nothing about the merits of FOE’s claims of a *de*

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<sup>14</sup> *Omaha Public Power District* (Fort Calhoun Station, Unit 1), CLI-15-5, 81 NRC \_\_\_\_, slip op. at 7-9, (March 9, 2015). The hearing process relates to agency *licensing* actions that confer hearing rights under Section 189.a of the Atomic Energy Act. Oversight activities relate to compliance with the existing license and regulations, and do not involve hearing rights (at least absent an enforcement order). *See also Florida Power & Light Co.* (St. Lucie Plant, Unit 2), CLI-14-11, 80 NRC \_\_\_\_, slip op. at 8-9 (December 19, 2014).

<sup>15</sup> U.S. Court of Appeals, D.C. Circuit, No 14-1213.

*facto* amendment. The case was deferred following a motion seeking deferral filed by the NRC.<sup>16</sup> There is no relevance to the schedule in that case to the issue in this forum, and further briefing is not necessary or warranted.

PG&E's report responding to the NRC's Section 50.54(f) letter on seismic hazards is also irrelevant to FOE's claim in the present proceeding. The post-Fukushima Section 50.54(f) process is an ongoing *oversight* matter for all operating plants initiated in March 2012. That process was already discussed in PG&E's Answer to the Hearing Request.<sup>17</sup> FOE, in its reply to the answers, therefore had the opportunity to address PG&E's position on the Section 50.54(f) process. The fact that PG&E has since responded to the request, on the schedule previously established, is not surprising. And that response is certainly not determinative of the current issue before the Licensing Board. Ongoing generic regulatory activities and NRC Staff oversight are not license amendments.<sup>18</sup> Any licensing basis changes that result from the Section 50.54(f) process will be determined in the future, and will be implemented in accordance with NRC procedures (which may or may not include a hearing opportunity).<sup>19</sup>

Finally, the testimony from the Senate Committee hearing offered by FOE is certainly not relevant to the current legal issue before the Licensing Board. The testimony does not grant PG&E any authority. The testimony presents the views of two individuals on the merits

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<sup>16</sup> "Respondent's Motion to Defer Briefing Schedule," No. 14-1213, dated February 26, 2015. The Court of Appeals also still has before it the NRC's motion to dismiss the case (dated December 10, 2014).

<sup>17</sup> PG&E Answer at 12-16.

<sup>18</sup> Moreover, in accordance with the Section 50.54(f) letter, PG&E's March 2015 seismic hazards report is a probabilistic hazards analysis rather than a deterministic licensing basis evaluation.

<sup>19</sup> *See, e.g., Fort Calhoun, CLI-15-5, 81 NRC at \_\_\_, slip op. at 10* ("the prospect of a possible future license amendment does not trigger hearing rights now").

of seismic issues for Diablo Canyon. Further briefing on these views would simply invite more confusion from FOE and require PG&E to respond with a technical assessment on the merits. This might be relevant if FOE's Hearing Request were granted. But it is certainly not relevant to the threshold legal issue now before the Licensing Board. No further briefing is required to reach this conclusion.

CONCLUSION

For the foregoing reasons, the Motion to expand the scope of briefing should be denied.

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 11<sup>th</sup> day of June 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of “PACIFIC GAS AND ELECTRIC COMPANY’S OPPOSITION TO MOTION FOR EXPANDED BRIEFING” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 11<sup>th</sup> day of June 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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Dated at Washington, District of Columbia  
this 11<sup>th</sup> day of June 2015