

September 14, 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of  
Pacific Gas and Electric Company  
Diablo Canyon Nuclear Power Plant  
Units 1 and 2

Docket Nos. 50-275-LR  
50-323-LR

**SAN LUIS OBISPO MOTHERS FOR PEACE'S  
RESPONSE TO PACIFIC GAS & ELECTRIC COMPANY'S  
MOTION FOR SUMMARY DISPOSITION OF CONTENTION EC-1**

**I. INTRODUCTION**

Pursuant to U.S. Nuclear Regulatory Commission (“NRC”) regulation 10 C.F.R. § 2.1205 and the Atomic Safety and Licensing Board’s (“ASLB’s”) Order (Granting Unopposed Motion for Extension of Time) (Aug. 3, 2015), San Luis Obispo Mothers for Peace (“SLOMFP”) hereby responds Pacific Gas and Electric Co.’s Motion for Summary Disposition on Contention EC-1 (July 31, 2015) (“PG&E’s Motion”). PG&E’s Motion is precluded by the ASLB’s Second Revised Scheduling Order (March 26, 2014) and should therefore be denied.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

As admitted by the ASLB, Contention EC-1 asserts that:

PG&E’s Severe Accident Mitigation Alternatives (“SAMA”) analysis fails to satisfy 40 C.F.R. § 1502.22 because it fails to consider information regarding the Shoreline fault that is necessary for an understanding of seismic risks to the Diablo Canyon nuclear power plant. Further, that omission is not justified by PG&E because it has failed to demonstrate that the information is too costly to obtain. As a result of the foregoing failures, PG&E’s SAMA analysis does not satisfy the requirements of the National Environmental Policy Act (“NEPA”) for consideration of alternatives or NRC implementing regulation 10 C.F.R. § 51.53(c)(3)(ii)(L).

*Pacific Gas and Electric Co.* Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-10-15, 72 NRC 257, 292, 360 (2010) (affirmed in relevant part, CLI-11-11, 74 NRC 427, 438 (2011)). In the basis statement, SLOMFP asserted that “information sufficient to conduct a probabilistic

analysis of the risks posed by the Shoreline Fault is ‘essential’ to the SAMA, and must be included unless the cost is exorbitant.” LBP-10-15, 72 NRC at 287 (quoting contention at 7-8). While PG&E was in the process of preparing the “Shoreline Fault Report,” the ASLB refused to limit the scope of the contention to any particular information that must be submitted to satisfy Contention EC-1, ruling that such a limitation would come too close to a merits determination. 72 NRC at 290. Instead, the ASLB held that the sufficiency of the SAMA Analysis would be addressed in the hearing on the merits. 72 NRC at 291.

The ASLB has issued several Scheduling Orders during the almost-four years that Contention EC-1 has been pending. The first Scheduling Order was issued on September 15, 2010, and was revised on November 19, 2012. On March 19, 2014, contemplating additional revisions, the ASLB held a pre-hearing conference “to try to manage this case as efficiently, and proactively, and fairly as we can.” Transcript at 636 (Judge Karlin). Expressing concern that the ASLB’s and parties’ time and resources would be wasted by the filing of motions for summary disposition of Contention EC-1 that could be mooted or repeated after the Staff’s issuance of the Draft Supplemental Environmental Impact Statement (“DSEIS”), then-ASLB Chair Judge Karlin proposed to set “one deadline” for summary disposition motions, “and it’s 30 days after the DEIS.” Tr. at 644. None of the parties objected to his proposal.

Consistent with Judge Karlin’s proposal, on March 26, 2014, the ASLB issued a Second Revised Scheduling Order stipulating that: “Dispositive motions, if any, with regard to Contention EC-1 shall be filed thirty (30) days after the date when NRC issues the DSEIS.” *Id.*, § II.I.5 (footnote omitted).<sup>1</sup> The Order also required that “dispositive motions based on Pacific Gas and Electric’s final seismic report [*i.e.*, the Shoreline Fault Report] should not be filed

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<sup>1</sup> In its latest schedule update, the Staff predicted that the DEIS will be issued in August 2016. Letter from Catherine E. Kanatas to ASLB (Aug. 20, 2015).

before, and shall be deemed timely if they are filed within, thirty (30) days after the date when NRC issues the DSEIS.” *Id.*, § II.I.2. In addition, the Order provided that any new or amended NEPA contentions based on the Shoreline Fault Report (*i.e.*, the “final seismic report”) should be submitted within 30 days after issuance of the DSEIS. *Id.*, § II.F.2.

Since the issuance of the Second Revised Scheduling Order, PG&E has revised its SAMA Analysis twice. As stated in PG&E’s Motion, on February 25, 2015, PG&E submitted an update to parts of its Environmental Report, including “an updated SAMA analysis based on PG&E’s 2014 Diablo Canyon PRA.” PG&E Motion at 3-4 (footnote omitted). According to PG&E, the 2014 PRA model “incorporated probabilistic seismic hazard curves that included the Shoreline Fault, as well as updated hazard curves for other regional faults.” *Id.* at 4. The revised seismic hazard curves “were based on the most recent probabilistic hazard analyses available at the time – developed as part of PG&E’s 2011 Shoreline Fault Report.” *Id.* In July 2015, PG&E revised its SAMA Analysis again, to incorporate the results of its 2015 seismic hazards analysis.<sup>2</sup> PG&E’s Motion for Summary Disposition is based on both of these revisions to the Environmental Report.

### **III. DISCUSSION**

SLOMFP respectfully submits that pursuant to the Second Revised Scheduling Order, PG&E’s Motion for Summary Disposition of Contention EC-1 must be dismissed as premature. With the agreement of all of the parties, the Board established a single deadline for motions for summary disposition of Contention EC-1, as well as dispositive motions based on the Shoreline

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<sup>2</sup> On April 15, 2015, SLOMFP filed Contention C, which challenged the adequacy of the 2015 seismic hazards analysis for purposes of consideration in the SAMA Analysis. Because Contention C was focused on the 2015 seismic hazards analysis and not the 2014 Shoreline Fault Report, Section II.F.2 of the Second Revised Scheduling Order regarding the post-DSEIS timing of contentions on the Shoreline Fault Report did not apply to Contention C.

Fault Report: 30 days after issuance of the DSEIS. While the composition of the ASLB has changed since the issuance of the Second Revised Scheduling Order, the Order has not been changed and therefore remains in effect.

The Second Revised Scheduling Order was designed to ensure the conduct of a fair and meaningful proceeding and protect the resources of the parties. In allocating its limited resources for the litigation of this case, SLOMFP has relied on the terms of the Order and the ASLB's assurances regarding the purposes of the Order. In order to continue to ensure the fair and meaningful conduct of this proceeding, the ASLB should enforce the Order and rule that any motions for summary disposition of Contention EC-1 must await the issuance of the DSEIS.

#### **IV. CONCLUSION**

For the foregoing reasons, the ASLB should deny PG&E's Motion for Summary Disposition of Contention EC-1.

Respectfully submitted,

*[Electronically signed by]*

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**SAN LUIS OBISPO MOTHERS FOR PEACE  
CERTIFICATE OF SERVICE**

I certify that on September 14, 2015, I posted on the NRC's Electronic Information Exchange SAN LUIS OBISPO MOTHERS FOR PEACE'S RESPONSE TO PACIFIC GAS & ELECTRIC COMPANY'S MOTION FOR SUMMARY DISPOSITION OF CONTENTION EC-1. It is my understanding that as a result, the NRC Commissioners, Atomic Safety and Licensing Board, and parties to this proceeding were served.

Respectfully submitted,

*Electronically signed by*

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