

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)	
)	
PACIFIC GAS & ELECTRIC COMPANY)	Docket Nos. 50-275-LR
)	50-323-LR
(Diablo Canyon Nuclear Power Plant,)	
Units 1 and 2))	

NRC STAFF ANSWER OPPOSING SAN LUIS OBISPO MOTHERS FOR PEACE'S PETITION
FOR REVIEW OF LBP-15-29 AND REVIEW OF THE BOARD'S AUGUST 6, 2015
MEMORANDUM AND ORDER

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INTRODUCTION

Pursuant to 10 C.F.R. § 2.341(b), the Staff of the U.S. Nuclear Regulatory Commission (Staff) hereby files its answer opposing San Luis Obispo Mothers for Peace's (SLOMFP) petition for Commission review¹ of the Atomic Safety and Licensing Board's (Board) October 21, 2015 Memorandum and Order (LBP-15-29).² In LBP-15-29, the Board denied SLOMFP's motion to file an amended Contention C, granted Pacific Gas and Electric Company's (PG&E) motion for summary disposition of Contention EC-1, and terminated the Diablo Canyon license renewal proceeding.³ SLOMFP's Petition for Review also renews SLOMFP's request that the Commission review the Board's August 6, 2015 Memorandum and Order,⁴ which denied SLOMFP's Contentions A and C.⁵

¹ [SLOMFP's] Petition for Review of LBP-15-29 (Nov. 16, 2015) (ADAMS Accession No. ML15320A565) (Petition for Review).

² *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-15-29, 82 NRC __ (2015) (slip op.) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15294A301) (LBP-15-29).

³ *Id.* at 1-2.

⁴ Memorandum and Order (Denying Motions to File New Contentions) (Aug. 6, 2015) (unpublished) (ADAMS Accession No. ML15218A517) (August 6, 2015 Order).

⁵ Petition for Review at 1-2 & n.2 (stating that the issues addressed in that Order are now ripe for review).

As set forth below, the Staff opposes Commission review because SLOMFP has not shown that review of either Board order is warranted. First, as the Staff previously explained in its Answer to SLOMFP's Appeal of Contentions A and C, SLOMFP has not shown that the Board's denial of those contentions was contrary to established law or raises important questions of law and policy.⁶ Likewise, SLOMFP has not shown that the Board's denial of SLOMFP's amended Contention C was contrary to established law or raises important questions of law and policy. Finally, SLOMFP has not demonstrated that the Board erred in granting summary disposition of Contention EC-1 and terminating the proceeding. For these reasons, SLOMFP's Petition for Review should be denied.

BACKGROUND

I. Procedural History

This proceeding concerns PG&E's application to renew the operating licenses for the Diablo Canyon Nuclear Power Plant Units 1 and 2 (Diablo Canyon).⁷ On August 4, 2010, the Board found that SLOMFP raised an admissible contention of omission (EC-1) and admitted SLOMFP to the proceeding.⁸ Contention EC-1, as restated by the Commission in 2011, asserted that PG&E's Severe Accident Mitigation Alternatives (SAMA) analysis failed to consider the Shoreline Fault.⁹ The Board subsequently issued several scheduling orders to

⁶ NRC Staff's Answer Opposing Commission Review of Atomic Safety and Licensing Board Memorandum and Order Denying Motion to File New Contentions A and C, at 10-17 (Oct. 9, 2015) (ADAMS Accession No. ML15282A049) (Staff Answer to SLOMFP's Appeal of Contentions A & C).

⁷ PG&E Letter DCL-09-080, from James R. Becker, Site Vice President, to NRC, Information to Support NRC Review of DCPD License Renewal Application (LRA) (Nov. 23, 2009) (ADAMS Accession No. ML093350335) (transmitting application for license renewal for Diablo Canyon Nuclear Power Plant, Units 1 and 2). The Diablo Canyon LRA (2009) is *available at* <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/diablo-canyon.html>.

⁸ *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-10-15, 72 NRC 257, 345-46 (2010).

⁹ *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-11-11, 74 NRC 427, 444 (2011).

manage the proceeding, most recently on March 26, 2014.¹⁰ As relevant here, the Board's March 2014 Scheduling Order provided that motions for summary disposition of Contention EC-1 should be filed thirty days after the Staff issued its draft supplemental environmental impact statement (DSEIS) supporting license renewal.¹¹

On February 25, 2015, PG&E submitted an update to its Environmental Report (ER) supporting license renewal.¹² PG&E stated that it revised the SAMA analysis by incorporating "more recent population, economic, and evacuation information, and updated seismic hazard curves that considered the Shoreline fault and other regional faults."¹³

On March 11, 2015, PG&E submitted a Seismic Hazard Screening Report for Diablo Canyon¹⁴ responding to the Staff's letter dated March 12, 2012, which had requested (pursuant to 10 C.F.R. §50.54(f)) that PG&E reevaluate the seismic hazard at the Diablo Canyon site using updated seismic information and "present-day regulatory guidance and methodologies."¹⁵ The March 11, 2015 Report documented that PG&E performed a seismic hazard reevaluation

¹⁰ Second Revised Scheduling Order (Mar. 26, 2014) (ADAMS Accession No. ML14085A335) (March 2014 Scheduling Order). See also Revised Scheduling Order (Nov. 19, 2012) (ADAMS Accession No. ML12324A214) (November 2012 Scheduling Order).

¹¹ March 2014 Scheduling Order at 2.

¹² PG&E Letter DCL-15-027, from Barry S. Allen, PG&E, to NRC, Update to the Diablo Canyon Power Plant License Renewal Application (LRA) Amendment 49 and LRA Appendix E, "Applicant's Environmental Report – Operating License Renewal Stage," Amendment 2 (Feb. 25, 2015) (ADAMS Package Accession No. ML15057A102) (February 2015 ER update). The revised SAMA analysis is in Enclosure 2, Attachment 2 – Environmental Report, Amendment 2, Section 4.20 Appendix E and Attachment F (ADAMS Accession Nos. ML15056A755, ML15056A756, ML15056A758, ML15056A759, ML15056A763, ML15056A765, ML15056A769) (SAMA analysis).

¹³ February 2015 ER Update at 4.20-3 (emphasis omitted).

¹⁴ PG&E Letter DCL-15-035, from Barry S. 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, at 1 (Mar. 11, 2015) (ADAMS Accession No. ML15070A607) (2015 seismic hazards analysis).

¹⁵ 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, Enclosure 2, at 4 (Mar. 12, 2012) (ADAMS Accession No. ML12053A340).

for Diablo Canyon and developed a plant specific ground motion response spectrum for screening purposes.¹⁶

In April 2015, SLOMFP filed four new contentions, including Contentions A and C.¹⁷ Contention A asserted that PG&E's February 2015 ER update failed to evaluate a reasonable array of energy alternatives.¹⁸ Contention C asserted that PG&E's revised SAMA analysis did not satisfy the National Environmental Policy Act (NEPA) or NRC regulations because the seismic probabilistic risk assessment (PRA) used in the SAMA analysis¹⁹ did not include the data from PG&E's March 2015 seismic hazards analysis.²⁰ SLOMFP also argued that even if the results of PG&E's 2015 seismic hazards analysis were incorporated into PG&E's revised SAMA analysis, the SAMA analysis would be deficient because the 2015 seismic hazards analysis failed to adequately characterize the seismic risk to Diablo Canyon.²¹ The Staff and PG&E opposed the admission of Contentions A and C, and in an August 6, 2015 Order, the

¹⁶ The ground motion response spectrum was developed based on the results of PG&E's Probabilistic Seismic Hazard Analysis, the details of which are provided in two additional reports (i) the Seismic Source Characterization for the Diablo Canyon Power Plant, San Luis Obispo County, California and the (ii) Southwestern United States Ground Motion Characterization SSHAC Level 3 Technical Report. See Senior Seismic Hazard Analysis Committee Studies for Diablo Canyon Power Plant Seismic Hazard Update (Mar. 2015), *available at* <http://www.pge.com/en/safety/systemworks/dcpp/sshac/index.page>.

¹⁷ See [SLOMFP's] Motion to File New Contentions Regarding Adequacy of Environmental Report for Diablo Canyon License Renewal Application (Apr. 6, 2015) (ADAMS Accession No. ML15096A613) (Motion to Admit Contentions A & B); [SLOMFP's] Motion to File New Contentions Regarding Adequacy of Severe Accident Mitigation Alternatives Analysis for Diablo Canyon License Renewal Application (Apr. 15, 2015) (ADAMS Accession No. ML15105A633) (Motion to Admit Contentions C & D).

¹⁸ Motion to Admit Contentions A & B at 2-7.

¹⁹ The seismic PRA serves as an input to the SAMA analysis' evaluation of the comparative costs and benefits of mitigation measures.

²⁰ Motion to Admit Contentions C & D at 2.

²¹ *Id.* at 2-3.

Board held that Contentions A and C were inadmissible.²² SLOMFP's appeal of the Board's August 6, 2015 Order is currently pending before the Commission.²³

On July 1, 2015, PG&E submitted another update to its license renewal application that evaluated the impacts of its 2015 seismic hazards analysis on its February 2015 SAMA analysis.²⁴ SLOMFP then filed an amended Contention C on July 31, 2015, which argued that: (1) PG&E's July 1, 2015 submittal did not resolve the concerns raised in the original Contention C, (2) the SAMA analysis failed to consider measures of earthquake intensity aside from ground acceleration, and (3) the SAMA analysis should have considered the possibility of surface fault rupture.²⁵ The Staff and PG&E opposed the admission of amended Contention C because it did not raise a material dispute with PG&E's SAMA analysis and portions of it were untimely.²⁶

On July 31, 2015, PG&E filed a motion for summary disposition of Contention EC-1, which the Staff supported and SLOMFP opposed.²⁷ As explained in the Staff's brief supporting PG&E's motion, Contention EC-1, a contention of omission, was mooted by PG&E's revisions to

²² August 6, 2015 Order at 12, 17.

²³ [SLOMFP's] Petition for Review of Memorandum and Order (Denying Motions to File New Contentions) (Sept. 14, 2015) (ADAMS Accession No. ML15257A570) (SLOMFP's Sept. 14, 2015 Appeal). SLOMFP appealed the Board's denial of Contentions A and C, but did not appeal the Board's denial of Contentions B and D. *Id.* at 1 n.1. In its instant appeal, SLOMFP reasserts its arguments in support of reversing the Board's decision with regard to Contentions A and C. Petition for Review at 2.

²⁴ PG&E Letter DCL-15-080, from Barry S. Allen, Vice President, Nuclear Services, PG&E, to NRC, Diablo Canyon Power Plant License Renewal [SAMA] Analysis Evaluation of the 2015 Seismic Hazard Results (July 1, 2015) (ADAMS Accession No. ML15182A452).

²⁵ [SLOMFP's] Motion to File Amended Contention C (Inadequate Consideration of Seismic Risk in SAMA Analysis as Supplemented by SHU-SAMA Evaluation), at 2-3 (July 31, 2015) (ADAMS Accession No. ML15212A959) (Motion to Admit Amended Contention C).

²⁶ NRC Staff Answer to [SLOMFP's] Motion to File Amended Contention C, at 2 (Aug. 25, 2015) (ADAMS Accession No. ML15237A049) (Staff Answer to Amended Contention C); [PG&E's] Answer Opposing Proposed Amended Contention C, at 1 (Aug. 25, 2015) (ADAMS Accession No. ML15237A092).

²⁷ [PG&E's] Motion for Summary Disposition on Contention EC-1 (July 31, 2015) (ADAMS Accession No. ML15212A732); NRC Staff Answer to [PG&E's] Motion for Summary Disposition on Contention EC-1 (Aug. 13, 2015) (ADAMS Accession No. ML15225A531) (Staff Answer Supporting Summary Disposition); [SLOMFP's] Response to [PG&E's] Motion for Summary Disposition of Contention EC-1 (Sept. 14, 2015) (ADAMS Accession No. ML15257A572).

the SAMA analysis that considered the potential ground motions from the Shoreline Fault.²⁸

On October 21, 2015, the Board issued LBP-15-29, which denied the admission of amended Contention C, granted PG&E's motion for summary disposition of Contention EC-1, and terminated the proceeding.²⁹ The Board held that amended Contention C was inadmissible because SLOMFP did not show that the SAMA analysis was unreasonable or how incorporating its preferred methods would make a material difference to the analysis.³⁰ The Board granted summary disposition of EC-1 because the SAMA analysis now considers the Shoreline Fault, and EC-1 is therefore moot.³¹ The Board recognized that its March 2014 Scheduling Order provided for motions for summary disposition to be filed after the Staff issued the DSEIS, but waived that provision to avoid holding the case open for another year when there were no matters remaining in dispute.³² The Board then terminated the proceeding.³³

On November 16, 2015, SLOMFP filed the instant Petition for Review, asking the Commission to take review of LBP-15-29 as well as the Board's August 6, 2015 Order.³⁴ As described in detail below, SLOMFP's Petition for Review should be denied because SLOMFP has not shown that LBP-15-29 or the Board's August 6, 2015 Order were contrary to law or raise policy issues warranting review.

STANDARD OF REVIEW

The procedural regulations at 10 C.F.R. § 2.341 govern a petition for review of a licensing board's decision. 10 C.F.R. § 2.341(b)(4) provides that the Commission may grant a

²⁸ Staff Answer Supporting Summary Disposition at 4-5.

²⁹ *Diablo Canyon*, LBP-15-29, 82 NRC __ (slip op. at 2).

³⁰ *Id.* at 8.

³¹ *Id.* at 10-11.

³² *Id.*

³³ *Id.* at 2.

³⁴ Petition for Review at 1-2 & n.2.

petition for review “giving due weight to the existence of a substantial question” with respect to one or more of the following considerations:

- (i) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;
- (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
- (iii) A substantial and important question of law, policy, or discretion has been raised;
- (iv) The conduct of the proceeding involved a prejudicial procedural error; or
- (v) Any other consideration which the Commission may deem to be in the public interest.³⁵

With respect to a board’s conclusions of law, a petitioner must show an “error of law or abuse of discretion” by the board.³⁶

A board’s decision on contention admissibility is governed by the requirements in 10 C.F.R. § 2.309. In order for a petitioner to raise an admissible contention, the issue raised must meet the Commission’s contentions admissibility criteria in 10 C.F.R. § 2.309(f)(1)(i)-(vi), which are “strict by design.”³⁷ The Commission and licensing boards have repeatedly held that they will “reject any contention that does not satisfy the requirements.”³⁸

DISCUSSION

The Commission should deny review of LBP-15-29 and the Board’s August 6, 2015 Order because these decisions were not contrary to law or an abuse of discretion. Rather, the Board soundly applied Commission law and precedent. First, as the Staff explained in its

³⁵ 10 C.F.R. § 2.341(b)(4).

³⁶ *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-10, 75 NRC 479, 483-84 (2012).

³⁷ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 & 3), CLI-01-24, 54 NRC 349, 358 (2001).

³⁸ See *South Carolina Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 (2010).

Answer to SLOMFP's Appeal of Contentions A and C, the Board properly held in its August 6, 2015 Order that the claims raised in Contentions A and C did not meet the Commission's contention admissibility criteria. Second, the Board properly held in LBP-15-29 that SLOMFP's amended Contention C was inadmissible for similar reasons to the initial Contention C. Third, the Board properly granted summary disposition of Contention EC-1 because it was moot and its dismissal at this stage in the proceeding did not prejudice SLOMFP.

I. The Board's August 6, 2015 Order Correctly Found Contentions A and C Inadmissible
SLOMFP's Petition for Review "renews and incorporates by reference" the arguments SLOMFP made in its September 14, 2015 Appeal of the Board's August 6, 2015 Order denying Contentions A and C.³⁹ SLOMFP notes that since the issuance of LBP-15-29, the claims raised in its earlier appeal "are now ripe for review."⁴⁰

The Staff agrees that the question of the admissibility of Contentions A and C is now ripe for review. In its prior Answer to SLOMFP's Appeal of Contentions A and C to the Commission, the Staff argued that SLOMFP's appeal was interlocutory because Contention EC-1 was still pending before the Board, and that SLOMFP had not pled or met the criteria for interlocutory appeal.⁴¹ Now, however, because LBP-15-29 dismissed EC-1 and terminated the proceeding, the appeal of Contentions A and C is no longer interlocutory, and is properly pending before the Commission.

However, the Staff maintains its position that the Board's August 6, 2015 Order denying the admission of Contentions A and C was not contrary to law.⁴² The Board properly held that

³⁹ Petition for Review at 2. SLOMFP states that its September 14, 2015 Appeal sought review of the Board's decision denying Contentions B and C. *Id.* However, SLOMFP's September 14 Appeal sought review of Contentions A and C, but not Contention B. See SLOMFP's Sept. 14, 2015 Appeal at 1 n.1.

⁴⁰ Petition for Review at 2 n.2.

⁴¹ Staff Answer to SLOMFP's Appeal of Contentions A and C at 8-9.

⁴² *Id.* at 9-17.

Contention A was inadmissible because SLOMFP did not show that the alternatives it wished PG&E to consider would be commercially viable to supply baseload power by the beginning of the period of extended operations, as required by the Commission in *Seabrook* and *Davis-Besse*.⁴³ Additionally, the Board properly held that Contention C was not admissible because it did not raise a material dispute with PG&E's SAMA analysis.⁴⁴ Thus, the Commission should deny review of the Board's August 6, 2015 Order.

II. LBP-15-29 Correctly Found That SLOMFP's Amended Contention C was Inadmissible

SLOMFP argues that review of LBP-15-29 is warranted because the Board "committed clear factual and legal errors" in dismissing amended Contention C.⁴⁵ However, as described more fully below, the Board's decision was consistent with Commission precedent and does not warrant Commission review.

A. To the Extent that Amended Contention C Reasserts Claims in the Original Contention C, the Board Properly Found Those Matters Inadmissible

In support of its amended Contention C, SLOMFP reasserted its initial Contention C claims, arguing that they were not resolved by PG&E's July 1, 2015 update to the SAMA analysis.⁴⁶ In its current Petition for Review, SLOMFP notes that its September 14, 2015 Appeal already addressed those portions of amended Contention C that had been previously asserted in the initial Contention C.⁴⁷ Likewise, the Staff has previously explained why the Board properly found those matters inadmissible in its Answer to SLOMFP's Appeal of Contentions A and C, and will not repeat its arguments in detail here. In short, the Staff argued

⁴³ *Id.* at 10-12. See *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 342 (2012); *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-8, 75 NRC 393, 397 (2012).

⁴⁴ Staff Answer to SLOMFP's Appeal of Contentions A and C at 13-17.

⁴⁵ Petition for Review at 4.

⁴⁶ Motion to Admit Amended Contention C at 2-13.

⁴⁷ Petition for Review at 4.

that the Board correctly concluded that SLOMFP did not sufficiently link its claims—which concerned deficiencies in PG&E’s 2015 seismic hazards analysis—to material deficiencies in the SAMA analysis that would affect its cost-benefit determinations.⁴⁸

B. The Board Correctly Held that SLOMFP’s Arguments Concerning Alternative Earthquake Measurement Methods Do Not Raise a Genuine Material Dispute

SLOMFP’s Petition for Review focuses on the new arguments raised in amended Contention C.⁴⁹ Specifically, SLOMFP argued that the SAMA analysis is deficient because it did not consider potential earthquakes by measuring ground displacement, ground velocity, and duration of shaking in addition to ground acceleration.⁵⁰ SLOMFP claims that the Board erred in holding that SLOMFP needed to show these alternative measures would materially change the conclusions of the SAMA analysis.⁵¹

However, the Board did not err. Essentially, SLOMFP is arguing that the SAMA analysis is deficient simply because it did not account for alternative ways to measure earthquakes. But as the Commission explained in *Seabrook*, it is not sufficient for a challenge to a SAMA analysis “to conceive of alternative and more conservative inputs, whose use in the analysis could result in greater estimated accident consequences.”⁵² Thus, it is not enough that SLOMFP explained the effects of ground displacement, ground velocity, and duration of shaking on buildings and engineered structures.⁵³ Instead, SLOMFP needed to show with greater specificity how its

⁴⁸ See Staff Answer to SLOMFP’s Appeal of Contentions A and C at 13-17; *Seabrook*, CLI-12-5, 75 NRC at 323 (“SAMA adjudications would prove endless if hearings were triggered merely by suggested alternative inputs and methodologies that conceivably could alter the cost-benefit conclusions.”).

⁴⁹ Petition for Review at 4.

⁵⁰ See *id.* See also Motion to Admit Amended Contention C at 13-17.

⁵¹ Petition for Review at 4-5. See also *Diablo Canyon*, LBP-15-29, 82 NRC __ (slip op. at 8).

⁵² *Seabrook*, CLI-12-5, 75 NRC at 323.

⁵³ See Petition for Review at 5 (arguing that such explanations were sufficient to raise an admissible contention).

alternative inputs would materially affect the cost-benefit conclusions of the SAMA analysis. Otherwise, “there is no genuine material dispute with the SAMA analysis that was done, only a proposal for an alternative NEPA analysis that may be no more accurate or meaningful.”⁵⁴ Since SLOMFP did nothing more than suggest alternative inputs, the Board appropriately held that SLOMFP’s claims about ground displacement, ground velocity, and shaking duration were inadmissible.

C. The Board Correctly Held that SLOMFP’s Arguments Concerning Surface Fault Rupture Do Not Raise a Genuine Material Dispute

SLOMFP similarly asserts that the Board should not have dismissed its arguments concerning surface fault rupture.⁵⁵ SLOMFP maintains that the Board put too much weight on PG&E’s studies demonstrating that surface faulting is not a credible hazard at Diablo Canyon, and thus improperly reached the merits of the contention.⁵⁶

But the Board properly held that SLOMFP did not show how consideration of surface faulting would materially affect the SAMA analysis.⁵⁷ Even though SLOMFP opined that the location of the Shoreline Fault is uncertain and PG&E did not gather enough data to conclude that surface faulting will not occur under or near Diablo Canyon,⁵⁸ that assertion alone does not establish a material dispute with the SAMA analysis. Amended Contention C concerned the adequacy of the SAMA analysis, not whether there is the potential for surface fault rupture at Diablo Canyon. Accordingly, SLOMFP needed to show that the SAMA analysis is unreasonable in order to raise a material dispute.⁵⁹ SLOMFP’s arguments that surface faulting may occur,

⁵⁴ *Seabrook*, CLI-12-5, 75 NRC at 324.

⁵⁵ Petition for Review at 4-6.

⁵⁶ *Id.* at 5-6.

⁵⁷ *Diablo Canyon*, LBP-15-29, 82 NRC __ (slip op. at 8).

⁵⁸ See Petition for Review at 5-6.

⁵⁹ *Seabrook*, CLI-12-5, 75 NRC at 323-24. See also *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-1, 75 NRC 39, 57-58 (2012).

without greater specificity, do not render the SAMA analysis unreasonable. For this reason, the Board correctly concluded that SLOMFP's arguments about surface fault rupture were inadmissible.

D. SLOMFP's New Arguments in Amended Contention C Do Not Satisfy the Good Cause Criteria

In its Petition for Review, SLOMFP notes that the Board did not reach the issue of timeliness because it ruled that amended Contention C did not meet the contention admissibility criteria.⁶⁰ SLOMFP argues, however, that the new information supporting amended Contention C cannot be untimely because the Board ruled that the original Contention C was in part premature, and contentions cannot be premature and late at the same time.⁶¹

The Staff maintains that the *new* claims in amended Contention C, *i.e.*, those concerning alternative earthquake measurement methods and surface fault rupture, do not satisfy the good cause criteria for contentions filed after the deadline for initial intervention petitions. Since these claims were raised for the first time in amended Contention C, the Board did not rule that they were premature.

In order to show "good cause" under 10 C.F.R. § 2.309(c)(1), SLOMFP must demonstrate that the information upon which its amended contention is based was not previously available, that such information is materially different from information previously available, and that it submitted the amended contention in a timely fashion based on the availability of the information.⁶² SLOMFP's new claims in amended Contention C concern alternative earthquake measurement methods and surface fault rupture. But PG&E's July 1,

⁶⁰ Petition for Review at 6. *See also Diablo Canyon*, LBP-15-29, 82 NRC __ (slip op. at 8 n.32).

⁶¹ Petition for Review at 6.

⁶² 10 C.F.R. § 2.309(c)(1)(i)-(iii). Regarding the third factor, timely submittal, the Board's November 2012 Scheduling Order provides that a new or amended contention filed by a party to the proceeding, such as SLOMFP, will be timely "if it is filed within thirty (30) days of the date when the new and material information on which it is based first became available." November 2012 Scheduling Order at 9.

2015 submittal did not concern these issues or make any change, much less a material change, in the SAMA analysis with respect to these matters. In fact, the SAMA analysis has never discussed surface fault rupture or characterized earthquakes using SLOMFP's preferred ground displacement, ground velocity, or shaking duration metrics. Thus, SLOMFP could presumably have raised these issues long ago. For these reasons, SLOMFP's new arguments do not meet the "good cause" criteria.

For all of the above reasons, SLOMFP's Petition for Review does not show that LBP-15-29's ruling on amended Contention C is contrary to established law or that it raises substantial and important questions of law, policy, or discretion. Therefore, Commission review under 10 C.F.R. § 2.341(b) is not warranted and should be declined.

III. The Board Properly Granted Summary Disposition of Contention EC-1

Finally, SLOMFP argues that the Commission should review the Board's decision to grant summary disposition of Contention EC-1 because it was procedurally unfair.⁶³ SLOMFP maintains that it relied on the Board's March 2014 Scheduling Order that provided that motions for summary disposition of Contention EC-1 could only be filed after the Staff issued the DSEIS.⁶⁴ SLOMFP states that "[t]o ensure procedural fairness, parties should be able to rely on the terms of standing case management orders unless they receive prior notice from the [Board] that the orders will be changed."⁶⁵ SLOMFP argues that because the Board did not provide notice that it intended to waive this provision in its March 2014 Scheduling Order, SLOMFP did not have the opportunity to obtain "expert help to evaluate the question of whether, in fact, the information submitted by PG&E satisfies NEPA's requirements for SAMA analyses" and resolved Contention EC-1.⁶⁶

⁶³ Petition for Review at 10-12.

⁶⁴ *Id.* at 10, 11.

⁶⁵ *Id.* at 11.

⁶⁶ *Id.* at 12.

While the Staff recognizes that review of a licensing board's decision to modify its scheduling order without notice would be warranted if it deprived a party of its right to procedural due process,⁶⁷ that is not the case here. SLOMFP was not prejudiced by the Board's modification of its March 2014 Scheduling Order or by its decision to grant summary judgment. SLOMFP claims that it was prejudiced because it relied on the March 2014 Scheduling Order and did not have a chance to evaluate whether the revised SAMA analysis satisfied NEPA and resolved Contention EC-1.⁶⁸ But EC-1 was admitted by the Board as a contention of omission, not adequacy, and therefore, there was nothing for SLOMFP to evaluate for purposes of summary disposition of EC-1 beyond the fact that a revised analysis had been supplied.⁶⁹

Moreover, SLOMFP in fact had the opportunity to challenge the adequacy of PG&E's revised SAMA analysis—and it did so. SLOMFP's initial and amended Contention C claimed that the revised SAMA analysis failed to adequately address the Shoreline Fault.⁷⁰ By raising issues regarding the adequacy of PG&E's revised SAMA analysis, SLOMFP recognized that the original Contention EC-1—a contention of omission—had been superseded. Thus, SLOMFP could not have been prejudiced by the Board's decision, because it has already aired its concerns regarding the adequacy of the revised SAMA analysis before the Board.

⁶⁷ See *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Units 1 & 2), ALAB-841, 24 NRC 64, 95 (1986) (holding that the Commission will “entertain a claim that a licensing board abused its discretion by setting a hearing schedule that deprives a party of its right to procedural due process.”) (internal quotation marks and modifications omitted).

⁶⁸ Petition for Review at 12.

⁶⁹ See *Diablo Canyon*, LBP-10-15, 72 NRC at 290 (“For now, we conclude only that there is indeed an omission of consideration of the effects of the Shoreline Fault and the cost/benefit analyses changes which that consideration might engender from the SAMA analyses.” . . . “We understand and admit EC-1 on the basis that there is an asserted omission; we do not address the merits of any party's proposition of what cure must be undertaken.”); *Diablo Canyon*, CLI-11-11, 74 NRC at 443 n.92 (stating with regard to Contention EC-1, “If SLOMFP intends to challenge the adequacy of any information that PG&E provides in a revision or supplement to its license renewal application regarding the Shoreline Fault, it must submit a new or amended contention.”).

⁷⁰ See, e.g., Motion to Admit Amended Contention C at 7-9, 15, 18; Motion to Admit Contentions C & D at 6-9.

Additionally, the Board's decision to waive the provisions of its March 2014 Scheduling Order concerning Contention EC-1 was not an abuse of discretion. Rather, the circumstances which led to the issuance of the March 2014 Scheduling Order were no longer relevant. On March 19, 2014, the Board held a prehearing conference call with the parties to discuss potential changes to the November 2012 Scheduling Order.⁷¹ At that time, PG&E expected to issue a seismic report for the California Coastal Commission in June 2014,⁷² and the Staff expected to publish the DSEIS in September 2014.⁷³ At the prehearing conference call, the Board explained that it was concerned that the issuance of the new seismic report right before the issuance of the DSEIS would lead to consecutive motions for summary judgment that might be duplicative and contradictory.⁷⁴ Therefore, the Board issued the March 2014 Scheduling Order, which provided that dispositive motions on the seismic report and the DSEIS should both be filed thirty days after the issuance of the DSEIS.⁷⁵ This effectively consolidated the two sets of motions to ensure they would not duplicate or contradict one another.⁷⁶

However, the conflict envisioned by the Board did not materialize. PG&E issued its seismic report in September 2014,⁷⁷ which did not engender any motions for summary judgment, and the Staff now expects that it will not issue the DSEIS until August 2016.⁷⁸

⁷¹ Transcript of Pre-Hearing Conference Call (Mar. 19, 2014) (ADAMS Accession No. ML14080A113) (March 2014 Teleconference Transcript).

⁷² This report is the Central Coastal California Seismic Imaging Project Report, which was prepared by PG&E for the State of California, and also submitted to the NRC.

⁷³ March 2014 Teleconference Transcript at 642.

⁷⁴ *Id.* at 642-45.

⁷⁵ March 2014 Scheduling Order at 2.

⁷⁶ See March 2014 Teleconference Transcript at 644 (stating that by moving both deadlines to thirty days after the issuance of the DSEIS, the Board hoped "to avoid a double filing.").

⁷⁷ See Letter from E. Halpin, Senior Vice President, PG&E, to NRC, Central Coastal California Seismic Imaging Project, Shoreline Fault Commitment (Sept. 10, 2014) (ADAMS Accession No. ML14260A387).

⁷⁸ See Letter from J. Lindell, Counsel for NRC Staff, to Licensing Board, Projected Schedule for Completion of the Safety and Environmental Evaluations, at 1 (Oct. 15, 2015) (ADAMS Accession No.

Additionally, PG&E issued a revised SAMA analysis in February 2015 that mooted Contention EC-1.⁷⁹ Thus, the Board did not err in finding that it made little sense to hold the proceeding open for another year “[d]espite the absence of any viable contention.”⁸⁰ Instead, the Board waived the provisions of its March 2014 Scheduling Order in the interest of sound case management.⁸¹

For these reasons, SLOMFP’s Petition for Review does not show that the Board’s decision in LBP-15-29 to grant summary disposition is contrary to established law or that it raises substantial and important questions of law, policy, or discretion. Therefore, Commission review under 10 C.F.R. § 2.341(b) is not warranted and should be declined.

CONCLUSION

For the reasons set forth above, the Staff respectfully requests that the Commission deny SLOMFP’s Petition for Review. SLOMFP has not shown that the Board committed a legal error or abuse of discretion in either LBP-15-29 or its August 6, 2015 Order.

Executed in Accord with 10 CFR 2.304(d)

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⁷⁹ See February 2015 ER Update at 4.20-3.

⁸⁰ *Diablo Canyon*, LBP-15-29, 82 NRC __ (slip op. at 9).

⁸¹ *Id.* at 10.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
PACIFIC GAS AND ELECTRIC COMPANY) Docket Nos. 50-275-LR/ 50-323-LR
)
(Diablo Canyon Nuclear Power Plant,)
Units 1 and 2))

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (revised), I hereby certify that copies of the “NRC STAFF’S ANSWER OPPOSING SAN LUIS OBISPO MOTHERS FOR PEACE’S PETITION FOR REVIEW OF LBP-15-29 AND REVIEW OF THE BOARD’S AUGUST 6, 2015 MEMORANDUM AND ORDER,” dated December 11, 2015, have been served upon the Electronic Information Exchange, the NRC’s E-Filing System, in the above captioned proceeding, this 11th day of December, 2015.

/Signed (electronically) by/

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