

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) )

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PACIFIC GAS AND ELECTRIC COMPANY'S OPPOSITION TO  
SAN LUIS OBISPO MOTHERS FOR PEACE'S PETITION FOR REVIEW OF LBP-15-29

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December 11, 2015

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I. INTRODUCTION

Pacific Gas and Electric Company (“PG&E”) opposes the petition for review filed by San Luis Obispo Mothers for Peace (“SLOMFP”) on November 16, 2015.<sup>1</sup> SLOMFP seeks review and reversal of the Atomic Safety and Licensing Board (“Licensing Board”) decision, LBP-15-29.<sup>2</sup> In that decision the Licensing Board granted summary disposition of the sole remaining contention in this proceeding, Contention EC-1. That contention challenged the original 2009 Severe Accident Mitigation Alternatives (“SAMA”) evaluation submitted by PG&E with the license renewal application for Diablo Canyon. The Licensing Board found that the contention has been mooted by PG&E’s revised SAMA evaluations. The Licensing Board also rejected proposed amended Contention C, offered by SLOMFP as a new contention in this proceeding, purportedly challenging the revised SAMA evaluation. The Licensing Board found

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<sup>1</sup> “San Luis Obispo Mother for Peace’s Petition for Review of LBP-15-29,” dated November 16, 2015 (“Petition for Review”).

<sup>2</sup> Memorandum and Order (Denying Motion to File Amended Contention, Granting Summary Disposition, and Terminating Proceeding), LBP-15-29, dated October 21, 2015.

that proposed amended Contention C does not meet the NRC's threshold requirements for an admissible contention. SLOMFP has not demonstrated a basis for Commission review of either of these decisions. The Licensing Board's decision should be affirmed.

## II. BACKGROUND

### A. PG&E's SAMA Evaluations for Seismic Issues

PG&E filed the Diablo Canyon license renewal application on November 23, 2009. The Environmental Report submitted with the application included a SAMA evaluation in accordance with 10 C.F.R. § 51.53(c)(3)(ii)(L). The matter was noticed for hearing on January 21, 2010, and SLOMFP timely filed proposed contentions based on the application. The Licensing Board admitted Contention EC-1, which asserted that PG&E's original SAMA evaluation failed to consider information regarding the Shoreline Fault (first reported to the NRC in November 2008). The contention remained pending until the Licensing Board's decision to grant summary disposition.<sup>3</sup>

On February 25, 2015, PG&E submitted an update to the Environmental Report, including an updated SAMA evaluation.<sup>4</sup> The updated SAMA evaluation was based on PG&E's 2014 Diablo Canyon Probabilistic Risk Assessment ("PRA").<sup>5</sup> The revised PRA model

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<sup>3</sup> PG&E submitted responses to NRC Requests for Additional Information addressing seismic SAMA issues in August 2010. Those responses specifically incorporated information available at the time related to the Shoreline Fault. SLOMFP did not file amended contentions and, given the deferred status of the proceeding, PG&E did not file a motion for summary disposition at that time.

<sup>4</sup> PG&E Letter DCL-15-027, "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," dated February 25, 2015 (ADAMS Accession Nos. ML15056A741 and ML15056A755). The updated SAMA analysis is Attachment F to the revised environmental report.

<sup>5</sup> See Attachment F at F-33 - F-35. The updated SAMA evaluation also incorporated more recent population, economic, and evacuation information.

specifically incorporated probabilistic seismic hazard curves that included the Shoreline Fault, as well as updated hazard curves for other regional faults, based on the most recent probabilistic hazards analyses available at that time.<sup>6</sup> While PG&E maintained that these SAMA results were reasonable to satisfy NEPA, it committed to a further evaluation of seismic SAMA issues to address the implications of PG&E's ongoing (at the time) probabilistic reevaluation of seismic hazards in response to the NRC's March 2012 Section 50.54(f) request for information.

PG&E submitted its seismic hazard reevaluation and prioritization screening report on March 11, 2015.<sup>7</sup> That report incorporated information developed through PG&E's Central Coastal California Seismic Imaging Project<sup>8</sup> and was based upon the probabilistic methodology outlined in the NRC's information request. On July 1, 2015, PG&E submitted its evaluation of the impact of the March 2015 seismic hazard update on the license renewal SAMA evaluation.<sup>9</sup> For that update PG&E incorporated the March 2015 updated seismic hazards into the Diablo Canyon PRA and re-performed the evaluation. The PRA model changes had a small

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<sup>6</sup> This information was developed as part of PG&E's 2011 report on the Shoreline Fault. *See* "Report on the Analysis of the Shoreline Fault Zone, Central Coastal California: Report to the U.S. Nuclear Regulatory Commission" (January 2011) (ADAMS Accession No. ML110140431) ("Shoreline Fault Report").

<sup>7</sup> PG&E Letter DCL-15-035, "Response to NRC Request for Information Pursuant to 10 CFR 50.5(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," dated March 11, 2015 (ADAMS Accession No. ML15071A046) ("Seismic Hazard Report").

<sup>8</sup> PG&E Letter DCL-14-081, "Central Coastal California Seismic Imaging Project, Shoreline Fault Commitment," dated September 10, 2014 (ADAMS Accession No. ML14260A106) ("CCCSIP Report").

<sup>9</sup> PG&E Letter DCL-15-080, "Diablo Canyon Power Plant License Renewal Severe Accident Mitigation Alternatives Evaluation of the 2015 Seismic Hazards Results," dated July 1, 2015 (ADAMS Accession No. ML15182A452) ("SAMA Update").



impact (and changed the cost-benefit conclusion for one fire event SAMA), but did not change the cost-benefit conclusions for the SAMAs considered for seismic event mitigation.

On July 31, 2015, PG&E filed a motion for summary disposition of Contention EC-1.<sup>10</sup> PG&E's Summary Disposition Motion was predicated on the fact that the original "omission" averred in Contention EC-1 — the alleged failure to consider the Shoreline Fault in the SAMA evaluation — had been cured by the updated SAMA evaluations specifically incorporating updated probabilistic hazard curves for the Shoreline Fault and other regional faults. The NRC Staff supported the Summary Disposition Motion on grounds that Contention EC-1 is moot.<sup>11</sup>

B. The Licensing Board's Decisions

On July 31, 2015, SLOMFP filed amended proposed Contention C, ostensibly challenging PG&E's July SAMA Update.<sup>12</sup> PG&E opposed admission of the contention on August 25, 2015.<sup>13</sup> The Licensing Board granted SLOMFP's unopposed motion for additional

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<sup>10</sup> "Pacific Gas and Electric Company's Motion for Summary Disposition on Contention EC-1," dated July 31, 2015 ("Summary Disposition Motion").

<sup>11</sup> "NRC Staff Answer to Pacific Gas and Electric Company's Motion for Summary Disposition on Contention EC-1," dated August 13, 2015 ("Staff Summary Disposition Answer").

<sup>12</sup> "San Luis Obispo Mothers for Peace's Motion to File Amended Contention C (Inadequate Consideration of Seismic Risk in SAMA Analysis as Supplemented by SHU-SAMA Evaluation)," dated July 31, 2015 ("Amended Contention C"). SLOMFP's original proposed Contention C ostensibly challenged the February 2015 updated SAMA evaluation. The Licensing Board rejected that proposed contention. *See* Memorandum and Order (Denying Motion to File New Contentions), dated August 6, 2015 ("Contention C Decision"). SLOMFP's petition for review remains before the Commission. To no clear effect, SLOMFP in the current Petition for Review "renews and incorporates by reference" the pending petition for review. PG&E has previously responded to the pending petition and does not address the matter further here.

<sup>13</sup> "Pacific Gas and Electric Company's Answer Opposing Proposed Amended Contention C," dated August 25, 2015 ("PG&E Answer").

time to respond to the PG&E Summary Disposition Motion and to file a reply on proposed amended Contention C. SLOMFP filed those pleadings on September 14, 2015.

In LBP-15-29 the Licensing Board denied SLOMFP's proposed amended Contention C. The Licensing Board's decision leans heavily upon its earlier decision rejecting the original Contention C. The Licensing Board held that amended Contention C fails to satisfy the criteria of 10 C.F.R. § 2.309(f)(1) for three reasons:

- To the extent the contention repeats Contention C, it “suffers identical deficiencies” as addressed in the Board’s Contention C Decision.<sup>14</sup>
- Amended Contention C still does not meet the standards under the National Environmental Policy Act (“NEPA”) and Commission precedent for an admissible SAMA contention because it does not “come forward with a plausible demonstration that PG&E’s existing analysis is unreasonable. SLOMFP fails to allege that considering ground displacement, ground velocity or shaking duration would materially change any conclusions regarding cost-effectiveness of particular SAMAs.”<sup>15</sup>
- “Likewise, SLOMFP does not explain how introduction of surface fault rupture into a SAMA analysis would make a material difference or how the analysis is unreasonable because PG&E did not consider it.”<sup>16</sup> Citing the Diablo Canyon Updated Final Safety Analysis Report (“UFSAR”), the Licensing Board noted that “the ground at and near the [Diablo Canyon] site has not been displaced by faulting for at least 80,000 to 120,000 years.”<sup>17</sup>

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<sup>14</sup> LBP-15-29, slip op. at 8.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* In responding to the proposed contention PG&E pointed out that SLOMFP's assertions of the possibility of earthquakes causing surface rupture at the site involve an issue addressed as part of the initial licensing review. The Diablo Canyon site was extensively studied in connection with the licensing of the plant. The characterization, excavation, and mapping of the site (as required by NRC regulations) were specifically directed to identifying any faults at the site. These studies, by direct observation, determined the absence of faulting beneath Diablo Canyon. PG&E Answer at 8-9.

In addition to denying admission of proposed amended Contention C, the Licensing Board granted PG&E's motion for summary disposition of Contention EC-1.<sup>18</sup> In ruling on PG&E's motion, the Licensing Board found that "it is undisputed that PG&E's [updated SAMA] analysis no longer omits the Shoreline Fault."<sup>19</sup> The Licensing Board cited the Commission's decision in this case clearly stating that if SLOMFP intends to challenge a revision to the SAMA evaluation addressing the Shoreline Fault, it would need to submit a new or amended contention.<sup>20</sup> The Licensing Board rejected SLOMFP's procedural argument that the summary disposition motion was "premature."

Having rejected proposed amended Contention C (as well as the original Contention C) and dismissed the only remaining admitted contention in the proceeding (Contention EC-1), the Licensing Board terminated the proceeding.<sup>21</sup>

### III. STANDARD FOR REVIEW

Under 10 C.F.R. § 2.341(b)(4), the Commission may, in its discretion, grant a petition for review of a full or partial initial decision, giving due weight to the existence of a "substantial question" with respect to the following considerations:

- a finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;
- a necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;

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<sup>18</sup> Prior to the motion, recognizing that the contention of omission had been overcome by events, the Licensing Board inquired at oral argument whether a motion would be forthcoming. Tr. at 881 (July 9, 2015).

<sup>19</sup> LBP-15-29, slip op. at 9 (emphasis in original).

<sup>20</sup> *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 443 n. 92 (2011).

<sup>21</sup> LBP-15-29, slip op. at 12.

- a substantial and important question of law, policy or discretion has been raised;
- the conduct of the proceeding involved a prejudicial procedural error; or
- any other consideration which the Commission may deem to be in the public interest.

As discussed below, SLOMFP in its Petition for Review has not met the standard for discretionary review.

#### IV. ARGUMENT

##### A. The Licensing Board Correctly Granted Summary Disposition of Contention EC-1

###### 1. *Contention EC-1 Is Moot*

As explained in the Summary Disposition Motion, Contention EC-1 was admitted by the Licensing Board as a contention of “omission.”<sup>22</sup> Since that time PG&E has remedied the alleged “omission” — first in August 2010, again in February 2015, and then most recently in the July 2015 SAMA Update specifically incorporating the March 2015 Seismic Hazard Report. There is undeniably no longer an omission of the Shoreline Fault in the current SAMA evaluation. The original Contention EC-1 has been overcome by events.<sup>23</sup> In its Petition for Review SLOMFP does not even attempt to offer a substantive reason why summary disposition of Contention EC-1 is inappropriate at this time. There is no genuine issue remaining with respect to Contention EC-1. Summary disposition (or dismissal for mootness) is appropriate under the rules of procedure in 10 C.F.R. § 2.1205.

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<sup>22</sup> Summary Disposition Motion at 3, citing LBP-10-15, 72 NRC 257, 290 (2010) (explaining that the contention alleged “an omission of consideration of the effects of the Shoreline fault and cost/benefit analyses changes which that consideration might engender from the SAMA analyses”).

<sup>23</sup> At this point, SLOMFP must turn its attention to the SAMA evaluation of record, and offer an admissible contention challenging that evaluation. Contention C and amended Contention C purport to do that, and stand on their own with respect to admissibility.

2. *The Licensing Board Acted Within Its Authority And Discretion*

SLOMFP's only bases for review of the Licensing Board's decision granting summary disposition are an argument that the Summary Disposition Motion was premature under the Licensing Board's case scheduling order and vague notions of procedural "fairness."<sup>24</sup> SLOMFP reads the Licensing Board's Second Revised Scheduling Order, dated May 26, 2014, to require, unwaveringly, that the Licensing Board defer any summary disposition motions until after issuance of the Draft Supplemental Environmental Impact Statement ("DSEIS"). (In this case, the NRC Staff presently projects the issuance of the DSEIS in August 2016.) According to SLOMFP, this would have provided it with more time to prepare "to defend itself against dispositive motions on Contention EC-1" or file new contentions on the Shoreline Fault Report.<sup>25</sup> At a minimum, to assure that "fairness" is not sacrificed to "expediency," SLOMFP suggests that the Licensing Board should have issued a show cause order to give SLOMFP time to retain "expert help" to evaluate the information submitted by PG&E.<sup>26</sup> But these arguments fail to establish an error in fact, law, or procedure that would justify Commission review under 10 C.F.R. § 2.341(b)(4).

First, the Second Scheduling Order was never as constraining as SLOMFP reads it to be. The Second Revised Scheduling Order included two provisions for dispositive motions. Section II.I.2, "Promptness Deadlines," authorizes dispositive motions within 30 days of the occurrence or circumstance from which the motion arises, rather than the 10 days ordinarily

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<sup>24</sup> Petition for Review at 10-11.

<sup>25</sup> *Id.* at 11. SLOMFP never explains why it should now be allowed to proffer additional new contentions based on the 2011 Shoreline Fault Report. As noted above, SLOMFP has already filed two new contentions, Contention C and amended Contention C, based on more recent assessments of seismic hazards that were completed in 2014 and 2015.

<sup>26</sup> *Id.* at 11-12.

provided by regulation. PG&E filed its Summary Disposition Motion within 30 days of July 1, 2015, which was the date of the SAMA Update that unequivocally mooted the contention.<sup>27</sup> Section II.I.5 of the Second Revised Scheduling Order, “Ultimate Deadlines,” relied upon by SLOMFP, set a deadline for dispositive motions 30 days after the DSEIS. This deadline was specifically “in addition to, not in lieu of,” the 30-day “promptness” deadline in Section II.I.2.<sup>28</sup> PG&E therefore was not prohibited from timely filing a summary disposition motion once it was clear that the contention of omission was moot, and arguably was required to do so.

Second, even if the Second Scheduling Order was as limiting as SLOMFP suggests, the timing outlined by that order was not based on any statutory or regulatory mandate. The timing for summary disposition motions and the Licensing Board’s willingness to consider motions fall entirely within the Licensing Board’s discretionary authority to manage the case — set forth, for example, in 10 C.F.R. § 2.332(c)(1) (“[e]xpediting the disposition of the proceeding”). The Licensing Board was free to modify or waive the provisions of a scheduling order “as it deems appropriate in the interest of sound case management.”<sup>29</sup> In the absence of any substantive reason to deny the Summary Disposition Motion, the Licensing Board made an appropriate decision to grant the motion.

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<sup>27</sup> Under this provision, the Summary Disposition Motion might also have been styled as a motion to dismiss for mootness, as observed by the NRC Staff. Staff Summary Disposition Answer at 4, n.16.

<sup>28</sup> Second Revised Scheduling Order, dated March 26, 2014, at 2.

<sup>29</sup> LBP-15-29, slip op. at 10, citing *S. Cal. Edison Co.* (San Onofre Nuclear Generating Station, Units 2 & 3), ALAB-212, 7 AEC 986, 991 (1974) (“Of necessity, licensing boards must be vested with considerable latitude in determining the course of the proceedings which they are called upon to conduct. . . . We will enter that arena only to the extent necessary to insure that no party has been denied a fair opportunity to advance its cause.”).

Third, SLOMFP's "fairness" argument is specious. Contention EC-1 was pending for over 5 years. PG&E made mandatory disclosures on the contention for that entire period. SLOMFP certainly had ample time to find an expert, prepare to defend against dispositive motions, and, most importantly, to address PG&E's supplemental information and revised SAMA evaluations that began as early as mid-2010 and continued through the July 2015 SAMA Update. And, SLOMFP in fact did retain an expert to support its proposed Contention C and proposed amended Contention C. Therefore, SLOMFP has not been prejudiced in any way. And, the essential fact remains that no expert was ever going to conjure up a dispute remaining with respect to Contention EC-1.

Finally, deferring the motion or issuing a show cause order as SLOMFP proposes may have been alternatives within the discretion of the Licensing Board. But that is not the same as prejudicial error in granting summary disposition. Maintaining Contention EC-1 as some kind of placeholder, as SLOMFP suggests, would in fact be unfair to PG&E and the NRC Staff.<sup>30</sup> All parties are entitled to a fair and efficient hearing process. Subjecting PG&E and the NRC Staff to ongoing disclosure obligations (and associated expenses) simply to assure a perception of "fairness" would itself be unfair. The Licensing Board was presented with a clearly mooted contention and acted well within its authority in choosing to move on from that contention. The Licensing Board, in granting summary disposition, reasonably (and correctly) chose to focus on the admissibility of SLOMFP's proposed challenges to the SAMA Update rather than a moot one.

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<sup>30</sup> It also would be contrary to recent Commission precedent denying proposed "placeholder" contentions. *See, e.g., DTE Electric Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-12, 81 NRC \_\_ (Apr. 23, 2015) (slip op. at 4) (reiterating that contentions must establish a genuine dispute with the applicant on a material issue in order to be admissible).

B. The Licensing Board Correctly Rejected Proposed Amended Contention C

Amended Contention C purports to challenge PG&E's July 2015 SAMA Update. SLOMFP filed the contention after that update. But amended Contention C is based entirely on, and directed to, PG&E's March 2015 Seismic Hazard Report responding to NRC's Section 50.54(f) letter, without addressing any new information from the July SAMA Update. The proposed contention and bases do not establish a genuine dispute with respect to the SAMA evaluation. The contention was therefore neither timely nor admissible. The Licensing Board correctly denied the motion.

1. *Amended Contention C Does Not Meet The Standard For An Admissible SAMA Contention*

To meet the NRC's admissibility criteria in 10 C.F.R. Part 2, a contention must demonstrate a genuine dispute with the application on an issue material to the underlying licensing decision. In a license renewal proceeding, materiality is limited to matters within the scope of technical issues in 10 C.F.R. Part 54 and the environmental review required under 10 C.F.R. Part 51. The environmental regulations require a SAMA evaluation under Section 51.53(c)(3)(ii)(L). However, the regulations clearly do not encompass review of the Current Licensing Basis ("CLB") of the plant.<sup>31</sup> And, as discussed in the Board Order in connection with the original Contention C, a SAMA analysis is part of the NRC's environmental review under NEPA and therefore is governed by the NEPA "rule of reason."<sup>32</sup>

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<sup>31</sup> See Final Rule, "Nuclear Power Plant License Renewal; Revisions," 60 Fed. Reg. 22461, 22463-64 (May 8, 1995). The CLB is "effectively addressed and maintained by ongoing agency oversight, review, and enforcement" — in the current operating license term. *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 9 (2001); see also *Diablo Canyon*, LBP-15-6, slip op. at 8-9.

<sup>32</sup> Contention C Decision, slip op. at 15-16. SAMA analyses are conducted for the purposes of the NRC's environmental review under NEPA; they are not safety analyses. *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-5, 75 NRC 301, 322 (2012).



As stated by the Commission:

The purpose of the SAMA review is to ensure that any plant changes — in hardware, procedures, or training — that have a potential for significantly improving severe accident safety performance are identified and assessed. If the cost of implementing a particular SAMA is greater than its associated benefit, the SAMA would not be considered cost-beneficial. SAMAs, in short, are rooted in a cost-benefit assessment.<sup>33</sup>

A SAMA contention therefore ultimately must demonstrate a “dispute that could lead to a different conclusion on potential cost-beneficial SAMAs.”<sup>34</sup> In guidance to another licensing board on SAMA contentions, the Commission emphasized that “[u]nless it looks genuinely plausible that inclusion of an additional factor or use of other assumptions or models may change the cost-benefit conclusions for SAMA candidates evaluated, no purpose would be served to further refine the SAMA analysis, whose goal is only to determine what safety enhancements are cost-effective to implement.”<sup>35</sup> If a proposed contention does not address that issue, it does not raise an issue that could lead to any meaningful relief in the proceeding. Moreover, as the Commission has stated (and the Licensing Board quoted in the Contention C Decision), “[i]t will always be possible to envision and propose some alternate approach, some additional detail to include, some refinement.” That, without more, is insufficient for an admissible contention.<sup>36</sup>

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<sup>33</sup> *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-17, 56 NRC 1, 5 (2002).

<sup>34</sup> *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-09-11, 69 NRC 529, 533 (2009).

<sup>35</sup> *Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-10-11, 71 NRC 287, 315 (2010) (emphasis added); *see also First Energy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-11-13, 73 NRC 534, 566 (2011).

<sup>36</sup> Contention C Decision, slip op. at 16, *citing Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-12-15, 75 NRC 704, 714 (2012).

The Licensing Board determined that SLOMFP had not demonstrated a genuine dispute with respect to the SAMA Update. SLOMFP challenges that decision for two reasons — both grounded on its position that it has met its burden at the admissibility stage and that the Licensing Board improperly addressed merits issues.

First, SLOMFP argues that the Licensing Board erred by holding that SLOMFP must show how consideration of factors in amended Contention C — ground displacement, ground velocity, surface fault rupture, and duration of shaking — would make a difference in the SAMA conclusions.<sup>37</sup> SLOMFP cites several cases for the proposition that, at the pleading stage, it is not required to provide “criticisms of the details of a SAMA analysis.”<sup>38</sup> SLOMFP’s argument, however, runs counter to the Commission decisions discussed above, which hold that SAMA contentions must establish a material dispute by demonstrating that consideration of additional factors could lead to a change in a cost-benefit conclusion. This is not a merits determination. It is an assessment of admissibility, based on whether there is a genuine dispute on a material issue — *i.e.*, a dispute that could lead to relief in the proceeding. SLOMFP did not challenge any specific aspect of the July 2015 SAMA evaluation, identify any additional SAMA to be considered, or argue that any particular SAMA would be cost-beneficial as a result of Dr. Jackson’s arguments. SLOMFP and Dr. Jackson simply failed to offer anything on the material SAMA issue.

SLOMFP cites the Commission’s prior decision in this proceeding, CLI-11-11, in which the Commission addressed the admissibility of Contention EC-1 and discussed a prior

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<sup>37</sup> Petition for Review at 4-5.

<sup>38</sup> *Id.*

decision in *McGuire/Catawba* upholding admission of a SAMA contention.<sup>39</sup> But neither of these decisions undercuts the precedent on SAMA contentions requiring some basis that challenges the SAMA evaluation itself. In *McGuire/Catawba*, the Commission allowed the SAMA contention, explaining that the admitted contention in that case alleged a specific deficiency in the SAMA analysis — a failure to consider the results of a specific study.<sup>40</sup> And, Contention EC-1 alleged a failure to consider the then-newly-discovered Shoreline Fault in the original SAMA analysis. So, both cases addressed the omission of information alleged to be material to the SAMA analysis. But here, the amended Contention C bases allege alternative or additional considerations without asserting that specific impacts were omitted from the SAMA analysis or suggesting how the SAMA input data should change and without explaining why the SAMA results are unreasonable as a result.<sup>41</sup> The present proposed contention therefore is more akin to contentions on the adequacy of the SAMA analysis addressed by the Commission in *Pilgrim* than it is to the alleged failure to consider material information in the SAMA analysis as in Contention EC-1 or *McGuire/Catawba*.

Even if amended Contention C is viewed as a challenge to the inputs to the SAMA analysis as SLOMFP asserts, SLOMFP still fails to establish a genuine dispute with respect to the inputs. SLOMFP claims in amended Contention C that PG&E did not “take into

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<sup>39</sup> *McGuire/Catawba*, CLI-02-17, 56 NRC at 11-12.

<sup>40</sup> *Id.*, at 9-10.

<sup>41</sup> SLOMFP also cites *Davis-Besse*, CLI-12-18, 75 NRC 393. In that case the Commission upheld admissibility of some portions of a SAMA contention and rejected others. *Id.* at 406-418. Suffice it to say, the admitted portion of the contention specifically addressed a SAMA methodology (*i.e.*, use of the MAAP code). The Commission rejected other portions of the contention because they lacked sufficient basis to demonstrate a genuine dispute — that is, they failed to identify a plausible impact on the licensee’s SAMA analysis. *Id.* at 416, 418.

account all relevant earthquake characteristics that could affect the SAMA analysis” and that the “SAMA Evaluation is unreasonably restricted to the consideration of the effects of spectral acceleration on the Diablo Canyon Nuclear Power Plant.”<sup>42</sup> But, SLOFMP never explains how, or even whether, information on surface fault rupture, ground displacement, ground velocity, or duration of shaking theoretically could be quantified and incorporated into a PRA. Consistent with NRC regulations and guidance, as well as the Diablo Canyon CLB, the plant’s seismic design and structural evaluations are based on projections of peak ground acceleration. The probability of a seismic event having a certain peak ground acceleration is used as the input to the PRA model. SLOMFP provided no information regarding the probability of surface fault rupture that would facilitate its use as an input to the PRA. Nor did SLOMFP claim that considering ground displacement, ground velocity, or duration of shaking would have any effect on the probabilities of failure of any component considered in the PRA. SLOMFP appears to simply presume that these earthquake characteristics can readily be translated into PRA-ready inputs, and that the SAMA results would change, but puts forth no information to suggest that either is actually the case.<sup>43</sup>

Absent any showing that its concerns can be translated into the type of quantitative data necessary to perform a probabilistic analysis using presently-day techniques,

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<sup>42</sup> Amended Contention C at 3-4.

<sup>43</sup> SLOMFP’s “contention” is in reality a “suggestion” that other factors or measures should be used, without any indication as to how that could be done or whether the results would actually be different. A NEPA document is not a “research document,” reflecting the frontiers of scientific methodology, studies, and data. *Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, CLI-10-22, 72 NRC 202, 208 (2010) (citing *Town of Winthrop v. FAA*, 533 F.3d 1, 13 (1st Cir. 2008)). Instead, NEPA allows agencies “to select their own methodology as long as that methodology is reasonable.” *Hughes River Watershed Conservancy v. Johnson*, 165 F.3d 283, 289 (4th Cir. 1999); see also *The Lands Council v. McNair*, 537 F.3d 981, 1003 (9th Cir. 2008) (noting that NEPA document need not be based on the “best scientific methodology available”).

SLOMFP's amended Contention C becomes, fundamentally, a challenge to PG&E's use of current probabilistic methodologies in its SAMA evaluation. As another licensing board explained in denying a SAMA contention:

[T]o the extent that any part of the contention or basis may be construed as challenging on a generic basis the use of probabilistic techniques that evaluate risk, we find any such portion(s) to be inadmissible. The use of probabilistic risk assessment and modeling is obviously accepted and standard practice in SAMA analyses.<sup>44</sup>

Moreover, nothing in SLOMFP's contention suggests that use of spectral accelerations to assess the probability of component failure is inherently unreasonable or even non-conservative with respect to consideration of ground displacement, ground velocity, or duration of shaking.<sup>45</sup> Because SLOMFP provided no information to link their concerns to the PRA model, the inputs to the PRA model, or the SAMA results, amended Contention C fails to establish a genuine dispute with the SAMA evaluation.

Second, SLOMFP asserts that the Licensing Board "erroneously faulted SLOMFP for failing to address PG&E studies" that previously established that the ground at and near the site has not been displaced for 80,000 to 120,000 years.<sup>46</sup> But the problem with the contention was not, as SLOMFP suggests, that SLOMFP did not address the "studies" in the proposed contention. The problem was that SLOMFP failed to establish a genuine dispute. The Licensing

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<sup>44</sup> *Pilgrim*, CLI-10-11, 71 NRC at 292-93, quoting *Entergy Nuclear Vermont Yankee LLC and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-23, 64 NRC 257, 339 (2006).

<sup>45</sup> See *First Energy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station), CLI-12-08, 75 NRC 393, 406 (2012) citing *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1) CLI-12-05, 75 NRC 301, 323-24 (2012) (noting that, when litigating SAMA contentions, "the 'proper question is not whether there are plausible alternative choices for use in the analysis, but whether the analysis that was done is reasonable under NEPA'").

<sup>46</sup> *Id.* at 5, citing LBP-15-29, slip op. at 8.

Board was not making a merits decision in referencing the existing UFSAR. Rather, the UFSAR simply reflects that the site was studied for surface rupture as part of the initial licensing review. SLOMFP cannot base an admissible contention on an alleged omission of a discussion of the possibility of surface rupture where that very possibility has been previously addressed for Diablo Canyon.<sup>47</sup>

In the end, SLOMFP failed to provide “factual or expert basis for why the proposed changes in the analysis are warranted (*e.g.*, why the inputs or methodology used is unreasonable, and the proposed changes or methodology would be more appropriate),” and their suggestions of other ways an analysis could have been done, or other details that could have been included, fall short of the support necessary for a SAMA contention under a NEPA standard.<sup>48</sup>

2. *Amended Contention C Was Not Timely*

The Licensing Board did not address timeliness because it found the proposed amended Contention C to be otherwise inadmissible.<sup>49</sup> The proposed contention, however, can

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<sup>47</sup> Similarly, in rejecting the original Contention C, the Board noted that Dr. Jackson’s views were in fact considered in developing the Seismic Hazard Report, which was ultimately used in the July 2015 SAMA evaluation. Contention C Decision at 16-17. As with amended Contention C, the Board was not assessing the merits of the PG&E analysis, but simply pointing out that SLOMFP failed to establish a genuine dispute with the information actually presented.

<sup>48</sup> *Seabrook*, CLI-12-5, 75 NRC at 323 (“We have long held that contentions admitted for litigation must point to a deficiency in the application, and not merely ‘suggestions’ of other ways an analysis could have been done, or other details that could have been included. SAMA adjudications would prove endless if hearings were triggered merely by suggested alternative inputs and methodologies that conceivably could alter the cost-benefit conclusions.”).

<sup>49</sup> LBP-15-29, slip op. at 8-9, n. 32.

be dismissed on timeliness grounds alone.<sup>50</sup> PG&E addressed the timeliness issue in its answer to the proposed amended contention.<sup>51</sup> The seismic issues raised in the proposed amended contention are not based on any new information in PG&E's July 2015 SAMA Update. SLOMFP offered no reason that the bases added to the amended contention could not have been raised in the first proposed Contention C. In fact, proposed amended Contention C was plainly a "second bite at the apple" with respect to Dr. Jackson's complaints regarding the March 2015 Seismic Hazard Report first addressed in the original proposed Contention C. As discussed above, the amended contention is entirely disconnected from the SAMA update submitted in July 2015.

The rules of procedure, 10 C.F.R. § 2.309(f)(2), provide that intervenors may file a new or amended environmental contention only if the contention complies with 10 C.F.R. § 2.309(c)(1). Under 10 C.F.R. § 2.309(c)(1), the intervenor must demonstrate that:

- (i) The information upon which a new contention is based was not previously available;
- (ii) The information upon which a new contention is based is materially different from information previously available; and
- (iii) The new contention has been submitted in a timely fashion based on the availability of the subsequent information.

SLOMFP's basis for timeliness in the proposed contention was neither factually accurate nor legally defensible. SLOMFP claimed that the information was "not previously available, because PG&E did not submit it until recently."<sup>52</sup> It is true that the SAMA Update was not

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<sup>50</sup> The Commission is free to affirm a Board decision on any ground finding support in the record, whether previously relied on or not. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-1, 61 NRC 160, 166 (2005).

<sup>51</sup> PG&E Answer at 10-12.

<sup>52</sup> Amended Contention C at 25.

available until July 1, 2015. But the *information upon which the amended contention was based* had been available since at least March 2015. SLOMFP is challenging information in the Seismic Hazard Report, not information in the July 2015 SAMA evaluation. Its claim of timeliness therefore must be based on the availability of the Seismic Hazard Report, which could have been used to support a proposed contention on the then-current SAMA evaluation.

SLOMFP next claimed that the July 2015 SAMA Update “contains information that is materially different from previously submitted information” because it is the first update based on the results of the Seismic Hazard Report and related SSHAC reports.<sup>53</sup> This much is true. But, again, SLOMFP’s proposed contention only addresses, and is only based upon, information in the March 2015 Seismic Hazard Report. The Seismic Hazard Report was available when the original proposed Contention C was filed. New or amended contentions must be based on new facts not previously available.<sup>54</sup>

Similarly, SLOMFP’s claim that the July 2015 SAMA analysis failed to consider seismic impacts other than ground accelerations could have been raised earlier — as long ago as 2009, when the original SAMA evaluation was submitted. Neither the original SAMA analysis nor the February 2015 SAMA update incorporated hazards related to ground displacement, ground velocity, or duration of shaking. A new contention alleging an ongoing omission of information in a SAMA evaluation does not become timely each time the applicant updates the SAMA analysis without addressing the original alleged omission.<sup>55</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> *Entergy Nuclear Generation Co. and Entergy Nuclear (Pilgrim Nuclear Power Station)*, CLI-12-10, 75 NRC 479, 493 n.70 (2012).

<sup>55</sup> *See, e.g., DTE Electric Co. (Fermi Nuclear Power Plant, Unit 3)*, CLI-15-01, 81 NRC \_\_\_ (January 13, 2015) (slip op. at 7-8) (noting that contentions must be raised at the earliest



On appeal SLOMFP argues that amended Contention C must be timely because “the Licensing Board held that the original Contention C was premature” and the amended Contention C was filed within 30 days of the updated SAMA evaluation that incorporates the latest probabilistic hazards information.<sup>56</sup> SLOMFP sees itself as being caught in a paradox (“[c]laims that are premature cannot be late at the same time”). But that is not what is happening here. Instead, SLOMFP disagrees with the methodology and analysis in the March 2015 Seismic Hazard Report. The Licensing Board was correct that original Contention C was premature to the extent SLOMFP was seeking to challenge an updated SAMA evaluation incorporating revised seismic hazard information. That evaluation was not yet available at the time. Now proposed amended Contention C is untimely because in fact it is based on, and directed to, the March report. Had SLOMFP actually addressed something in the July SAMA Update, its claim might have been timely. But SLOMFP’s amendments to the contention simply do not do that. The mere fact that the proposed amended Contention C was filed within 30 days of the July 2015 SAMA Update is insufficient to meet the timeliness standard in the regulations.

## V. CONCLUSION

The Licensing Board correctly dismissed Contention EC-1 and rejected proposed amended Contention C. There is no basis for review of either of the Licensing Board’s decisions. The Petition for Review should be denied.

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possible opportunity and remarking that “Petitioners who choose to wait to raise contentions that could have been raised earlier do so at their peril”).

<sup>56</sup> Petition for Review at 6.

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 11th day of December 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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|--|---|----------------------|
| 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 SAN LUIS OBISPO MOTHERS FOR PEACE’S PETITION FOR REVIEW OF LBP-15-29” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 11th day of December 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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