

February 9, 2016

**By Electronic Information Exchange**

U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20851

**Re: Diablo Canyon Power Plant, Docket Nos. 50-275, 50-323**  
**Response to Friends of the Earth letter dated January 14, 2016**

Dear Commissioners:

On January 14, 2016, Friends of the Earth (“FOE”) filed a letter on this docket asserting that an NRC Staff inspection report from November 2015 is “an important and directly relevant action” with respect to FOE’s pending claim that there is a *de facto* license amendment proceeding for the Diablo Canyon Power Plant (“Diablo Canyon”) and that FOE is entitled to a hearing.<sup>1</sup> FOE’s description of the inspection report in its letter to the Commission is inaccurate and its claims regarding the relevance of the report to FOE’s hearing request are mistaken. Pacific Gas and Electric Company (“PG&E”) is therefore providing information to correct FOE’s inaccurate and misleading description of the inspection report and to demonstrate the lack of relevance of the report to FOE’s hearing request.

**The Inspection Finding**

Several years ago, PG&E self-initiated a Licensing Basis Verification Project (“LBVP”) in order to ensure a clear understanding of the Diablo Canyon licensing basis and strong regulatory compliance. The program is designed to review and evaluate the design, procedures, documentation, licensing history, and requirements for Diablo Canyon across a range of plant systems. Through the LBVP, PG&E reviewed the seismic evaluation for replacement steam generators and reactor vessel heads previously installed at Diablo Canyon. This seismic evaluation included an assessment of the design and licensing basis Hosgri Earthquake (“HE”) fault. There was a separate evaluation for the loading due to a loss of coolant accident (“LOCA”).

The LBVP identified that the evaluation for the replacement vessel heads and steam generators also should have included a very low probability event of an earthquake on the Hosgri fault and a LOCA at the same time. Given the lack of a simultaneous HE and LOCA evaluation

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<sup>1</sup> FOE filed an appeal of the Licensing Board decision, LBP-15-27, denying FOE’s request for hearing on October 23, 2015. PG&E and the NRC Staff filed briefs opposing the appeal on November 17, 2015. The appeal remains pending before the Commission.

for that equipment, PG&E completed an operability assessment that was accepted by the NRC. The operability assessment shows the equipment can withstand the combined stress loads in such an extremely unlikely event.

PG&E is in the process of updating the stress analysis for the equipment. The method PG&E is using to combine the seismic and LOCA loading is referred to as the “Square Root of the Sum of the Squares” or “SRSS.” The SRSS method is a load combination methodology that is widely used in the industry.

Prior to 2013 the SRSS method was not clearly described in the Diablo Canyon licensing basis for this specific application. PG&E applied the NRC’s Section 50.59 process in 2013 and concluded that it could use the SRSS method at Diablo Canyon for the limited issue described above. The Section 50.59 process allows a licensee to make updates to its licensing basis, without seeking prior NRC approval, if the Section 50.59 evaluation demonstrates that prior approval for the change is not needed.

In the November 2015 inspection report, the NRC Staff determined that PG&E did not adequately document its 2013 Section 50.59 evaluation in which PG&E found that prior NRC approval was not required to update the licensing basis to use the SRSS methodology. The NRC Staff classified the violation of 10 C.F.R. § 50.59 as a Green non-cited violation (“NCV”) — a Severity Level IV violation of very low-safety significance. As a corrective action for the violation, PG&E subsequently revised the Section 50.59 documentation on the use of the SRSS methodology.

### **FOE’s Claims**

FOE’s claim that the inspection finding demonstrates that PG&E, in connection with FOE’s hearing request on seismic issues, has somehow mischaracterized the seismic design and licensing bases for Diablo Canyon is simply incorrect. And FOE’s claim that the inspection finding demonstrates that there is a *de facto* license amendment on which they are entitled to a hearing is also incorrect. The inspection finding in fact demonstrates that the HE is part of the seismic design and licensing bases for Diablo Canyon. If it were not, a calculation of HE plus LOCA loads would not be necessary. The inspection report further demonstrates that the NRC Staff’s oversight function is operating as intended. As the Commission has previously stated, NRC oversight matters are not licensing matters and do not involve hearing rights.<sup>2</sup>

FOE asserts in its letter that the inspection finding demonstrates that the Hosgri earthquake, at least not “entirely,” has not been reviewed and accepted by the NRC. But the inspection finding demonstrates no such thing. As the inspection report shows, the design and licensing bases included the simultaneous HE and LOCA as identified by the LBVP. Therefore, the inspection report confirms the accuracy of PG&E’s conclusion that the HE is part of the licensing basis for the plant. The only issue in the inspection finding was a failure to clearly document the conclusion that the SRSS methodology could be used for the replacement vessel

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<sup>2</sup> Fla. Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2), CLI-14-11, 80 NRC 167, 175 (2014); Omaha Public Power Dist. (Fort Calhoun Station, Unit 1), CLI-15-5, 81 NRC 329, 336-37 (2015).

heads and steam generators without prior NRC approval. FOE reads far too much into the violation, which in any event has been corrected by revising the Section 50.59 documentation.

With respect to PG&E's adoption of the SRSS methodology, there are no present hearing rights. Inspections identifying violations that must be corrected are not license amendments — real or *de facto*. As the Commission and the Licensing Board below have recognized, plant, procedure, and licensing basis changes adopted under Section 50.59 are not license amendments and do not create hearing rights. If the NRC were ultimately to determine that a change does not meet Section 50.59 criteria for a change without prior approval, the licensee would either need to file a license amendment application or restore compliance without the change. That, however, is not the case for PG&E's adoption of the SRSS methodology for the limited and narrowly-defined evaluation. PG&E's conclusion is that the change met the Section 50.59 criteria for a change without prior approval.

Finally, this low-level inspection finding does not support FOE's broad claim that the Hosgri Earthquake analysis and a reference in the Updated Final Safety Analysis Report to the Shoreline fault as a "lesser included case" under the HE is a *de facto* license amendment. On its face, the NRC Staff document is an "inspection report" that evaluates compliance. It is not a license amendment or a specific approval. In any event, this is the first time that FOE has raised the simultaneous HE and LOCA issue, which was first identified by PG&E in 2011.<sup>3</sup> It is simply too late for FOE to now claim that the issue underlying the inspection finding is new information that supports their discredited *de facto* amendment theory.

## **Conclusion**

The issues identified in the inspection report involve a straightforward question of compliance with 10 C.F.R. § 50.59. Even though the NRC Staff determined that a violation should be issued for PG&E not adequately documenting its Section 50.59 evaluation in 2013, the violation is of very low safety-significance and does not challenge the seismic safety of the facility. And, PG&E maintains that prior NRC approval was not in fact required. Likewise, the inspection report does not support FOE's claim that there is a *de facto* license amendment; the inspection report merely documents the NRC Staff's oversight function. There is no NRC action that would afford FOE hearing rights.

Respectfully submitted,

/s/ signed electronically by  
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<sup>3</sup> See, e.g., NRC Integrated Inspection Reports 05000275/2014005 and 05000323/2014005, dated January 29, 2015 (ADAMS Accession No. ML15030A083).