

March 13, 2023

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Independent
Spent Fuel Installation

Docket No. 72-26

**SAN LUIS OBISPO MOTHERS FOR PEACE’S HEARING REQUEST
AND PETITION TO INTERVENE IN LICENSE RENEWAL PROCEEDING FOR
DIABLO CANYON SPENT FUEL STORAGE INSTALLATION**

I. INTRODUCTION

Pursuant to the notice of an opportunity to request a hearing and petition for leave to intervene published at 88 Fed. Reg. 1,431 (Jan. 10, 2023), San Luis Obispo Mothers for Peace (“SLOMFP”) submits this Hearing Request and Petition to Intervene regarding Pacific Gas & Electric Co.’s (“PG&E’s”) application to renew its license for the independent spent fuel storage installation (“ISFSI”) located on the site of the Diablo Canyon nuclear power plant (“Diablo Canyon” or “DCPP”).¹ As set forth in SLOMFP’s contentions, PG&E’s license renewal for the ISFSI is grossly inadequate to satisfy either NRC’s Atomic Energy Act-based safety regulations or the National Environmental Policy Act (“NEPA”), because the application does not address how the proposed ISFSI will accommodate a huge quantity of spent reactor fuel that PG&E has suddenly proposed to generate as a result of a Fall 2022 decision to pursue license renewal for the twin reactors at Diablo Canyon instead of retiring them.²

¹ Diablo Canyon Independent Spent Fuel Storage Installation, Site-Specific License Renewal Application, Rev. 0 (March 2022) (“2022 ISFSI License Renewal Application”).

² PG&E announced the decision to the NRC in a letter from Paula Gerfen, Senior Vice President and Chief Nuclear Officer, PG&E, to NRC, re: Request to Resume Review of the Diablo Canyon Power Plant License Renewal Application or, Alternatively, for an Exemption from 10 CFR 2.109(b), Concerning a Timely Renewal Application (Oct. 31, 2022) (“Gerfen Letter”).

As discussed in the Gerfen Letter, PG&E made the decision to seek renewal of the operating licenses for its two reactors after the California Assembly, at the behest of California Governor Gavin Newsom, passed SB 846. SB 846 revoked the California Public Utilities Commission’s (“CPUC’s”) previous approval of PG&E’s 2016 decision to close the reactors on their operating license termination dates in 2024 (Unit 1) and 2025 (Unit 2).

PG&E submitted the 2022 ISFSI License Renewal Application in March of 2022, before passage of SB 846, with the intention of using the ISFSI to store the entire inventory of Diablo Canyon’s spent fuel after the reactors’ operating licenses expired, until a permanent federal repository became available. Remarkably, despite the fact that five months have passed since SB 846 became law, PG&E has not changed one word of the ISFSI License Application to address how it will use the ISFSI to store the large quantity of spent fuel it plans to generate during the reactors’ license renewal terms. Nor has PG&E changed one word of the Updated Final Safety Analysis Report it submitted to the NRC in 2021, which states that the ISFSI “provide[s] sufficient storage space for DCPD spent fuel through plant decommissioning.”³

If the UFSAR is to be believed, PG&E intends to store *all* of the spent fuel generated at Diablo Canyon – which now will be one-and-a-half times the quantity of spent fuel PG&E originally planned on – in the ISFSI. Yet, PG&E’s 2022 ISFSI License Renewal Application utterly fails to address the question of how the ISFSI will be re-designed to accommodate the additional spent fuel. Nor does the ISFSI License Renewal Application address the question of how PG&E will remain financially qualified to manage this large quantity of spent fuel in a re-designed ISFSI, or the adequacy of its decommissioning fund to decommission the ISFSI after a

³ Diablo Canyon Independent Spent Fuel Storage Installation Updated Final Safety Analysis Report - Revision 9 at 1-4 (December 9, 2021) (ML22032A074).

repository becomes available and the ISFSI has ceased to operate.⁴ PG&E's abject failure to address these radically-changed circumstances regarding its plans for storage of many additional tons of spent fuel violates both NRC safety regulations and the National Environmental Policy Act ("NEPA").

In order to satisfy NRC safety regulations and NEPA, PG&E must revise its license renewal application to demonstrate how the ISFSI will be re-designed to accommodate another twenty years' worth of spent fuel to be generated at the reactors, how PG&E will finance the operation of the ISFSI for another twenty years, and how PG&E will finance the decommissioning of the ISFSI with a significantly increased inventory of spent fuel.

II. STANDING OF SAN LUIS OBISPO MOTHERS FOR PEACE

Pursuant to 10 C.F.R. § 2.309(d), a request for a hearing must address: (1) the nature of the petitioner's right under the Atomic Energy Act to be made a party to the proceeding, (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The Atomic Safety and Licensing Board ("ASLB") has summarized these standing requirements as follows:

In determining whether a petitioner has sufficient interest to intervene in a proceeding, the Commission has traditionally applied judicial concepts of standing. Contemporaneous judicial standards for standing require a petitioner to demonstrate that (1) it has suffered or will suffer a distinct and palpable harm that constitutes injury-in-fact within the zone of interest arguably protected by the governing statutes (*e.g.*, the Atomic Energy Act of 1954 and the National Environmental Policy Act of 1969); (2) the injury can fairly be traced to the challenged actions; and (3) the injury is likely to be redressed by a favorable decision. An organization that wishes to intervene in a proceeding may do so either in its own right by demonstrating harm to its organizational interests, or in a representational capacity by demonstrating harm to its members. To intervene in a representational

⁴ While SB 846 limited the term of extended operation to five years, it did not rule out further extensions. And NRC regulations permit PG&E to seek a license renewal term of twenty years.

capacity, an organization must show not only that at least one of its members would fulfill the standing requirements, but also that he or she has authorized the organization to represent his or her interests.⁵

As demonstrated below, SLOMFP's organizational interests fall within the zone of interests protected by the Atomic Energy Act and NEPA.

SLOMFP is a non-profit membership organization concerned with the dangers posed by Diablo Canyon and other nuclear reactors, nuclear weapons, and radioactive waste. SLOMFP also works to promote peace, environmental and social justice, and renewable energy. SLOMFP has participated in NRC licensing cases involving the Diablo Canyon reactors since 1973. As demonstrated by the attached declarations of SLOMFP members Karou Hisasue, Linda Seeley, Lucy Jane Swanson, and Jill ZamEk, SLOMFP has representational standing through members who live within six to eighteen miles of the Diablo Canyon site, who are concerned about the safety and environmental impacts of continued operation of the Diablo Canyon ISFSI, and who authorize SLOMFP to represent their interests in this proceeding.⁶

⁵ *Pacific Gas & Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 N.R.C. 413, 426 (2002), *petition for review denied*, CLI-03-12, 58 N.R.C. 185 (2003).

⁶ See Attachment 1, Declaration of Kaoru Hisasue (March 10, 2023); Attachment 2, Declaration of Linda Seeley (March 13, 2023); Attachment 3, Declaration of Lucy Jane Swanson (March 10, 2023); and Attachment 4, Declaration of Jill ZamEk (March 10, 2023). See also *Pacific Gas and Electric Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 N.R.C. 413, (2002) (concluding that SLOMFP had standing to participate in the initial licensing proceeding for the Diablo Canyon ISFSI based on the proximity of SLOMFP members who lived within seventeen miles of the proposed facility).

III. CONTENTIONS

Contention A: Information Provided in License Renewal Application is Incorrect and Insufficient to Satisfy NRC Safety Regulations.

1. Statement of Contention.

PG&E’s license renewal application is incorrect and insufficient to satisfy NRC design criteria and safety regulations for ISFSIs because it fails to provide accurate and complete information regarding its satisfaction of NRC safety regulations 10 C.F.R. § 72.22(e), 10 C.F.R. §§ 72.30(a) and (b), and the General Design Criteria in 10 C.F.R. Part 72, Subpart F. The 2022 ISFSI License Renewal Application is inaccurate and incomplete because its representations are based on the incorrect assumption that PG&E will retire the Diablo Canyon reactors in 2024 and 2025. In fact, however, PG&E intends to seek renewal of the reactor licenses for as much as twenty years, and has obtained a regulatory exemption from NRC for that purpose.⁷ If the NRC grants PG&E’s reactor license renewal application, it may generate as much as half the quantity of spent fuel that will be generated by the end of the first license term – a quantity too substantial to be ignored.

For instance, PG&E asserts that it satisfies 10 C.F.R. § 72.22(e)’s financial qualifications requirements for operation because the General Rate Case process regulated by the CPUC provides it with sufficient funds to operate the ISFSI “until the DCP Unit 1 permanent shutdown in 2024.”⁸ After that, PG&E proposes to take funding from the Decommissioning Trust Fund.⁹ In fact, however, PG&E may operate the reactors an additional twenty years, thereby extending the period in which the operation of the ISFSI must be funded by means other

⁷ NRC Notice of Exemption Issuance, 88 Fed. Reg. 14,395 (March 8, 2023).

⁸ 2022 ISFSI License Renewal Application at 1-4.

⁹ *Id.*

than the Decommissioning Trust Fund. PG&E must demonstrate its financial qualifications for the entire twenty-year renewal period of the reactor licenses.

Similarly, PG&E claims to have sufficient funds to decommission the ISFSI. *Id.* But PG&E's claim is based on the assumption that the ISFSI will hold only the amount of spent fuel that will be generated during the first 40 years of the reactors' operating lives. PG&E has not addressed the cost of decommissioning the ISFSI if it is used to store a quantity of spent fuel that is half again as large as the quantity that has been generated and will be generated during the reactors' initial license terms. Therefore, PG&E has failed to satisfy 10 C.F.R. §§ 72.30(a) and (b).

Finally, PG&E's license renewal application does not discuss how the ISFSI will be re-designed to "provide sufficient storage space for DCPD spent fuel through plant decommissioning," as PG&E has asserted in the 2021 UFSAR that is referenced in the license renewal application.¹⁰ At the time the Diablo Canyon ISFSI was licensed, it was designed to be just big enough to hold the entire inventory of the two reactors at the end of their 40-year license terms. If PG&E retired the reactors at the end of their license terms, the ISFSI clearly would be large enough to "provide sufficient storage space for DCPD spent fuel through plant

¹⁰ UFSAR at 4.2-1 (emphasis added). According to the UFSAR:

The Diablo Canyon ISFSI storage site is designed to include seven cask storage pads in a row. Each pad will accommodate up to 20 HI-STORM 100SA storage casks. Figure 4.1-1 shows the layout of the pads with the surrounding security fence, nuisance fence, and approximate dimensions. *Seven storage pads provide sufficient storage space for DCPD spent fuel through plant decommissioning.* The seismic design criteria for the cask storage pads are described in Sections 3.2.3 and 3.3.2. Pad embedment design criteria are integrated with the storage cask pad design criteria, which is the primary focus of discussion in Section 3.3.2. A further discussion of the design criteria, analyses, and resulting design of the cask storage pads is provided here.

decommissioning,” as stated in the UFSAR at page 4.1-2. But if PG&E obtains renewal of its reactor licenses, it will have to make design changes to the ISFSI in order for the UFSAR’s assertion to continue to be correct. PG&E must address these design changes in order to satisfy the General Design Criteria of 10 C.F.R. Part 72, Subpart F. If the UFSAR is incorrect, PG&E must correct it and explain how it will resolve the inconsistency between the UFSAR and the ISFSI License Renewal Application.

2. Basis Statement.

In order to obtain renewal of its operating license for the Diablo Canyon ISFSI, PG&E must submit information that is both correct and sufficient to demonstrate satisfaction of the NRC’s safety regulations.¹¹ Here, PG&E submitted its license renewal application in March of 2022, when it still planned to retire the Diablo Canyon reactors in 2024 (Unit 1) and 2025 (Unit 2). Then in September of 2022, the California Assembly passed SB 846, reversing the CPUC’s decision approving the retirement of Diablo Canyon. And in the Fall of 2022, PG&E informed the NRC that it wished to see renewal of its reactor licenses.¹²

PG&E knew at that time that if its reactor licenses were renewed, it would generate a significant amount of additional spent fuel and that it would also delay the decommissioning of the reactors. Yet, PG&E made no attempt to update its March 2022 ISFSI license renewal application to account for increased operating costs, delayed decommissioning, or design changes that would be needed for PG&E to continue to fulfill its stated plan of using the ISFSI to accommodate the reactors’ entire spent fuel inventory at the time of decommissioning. PG&E’s license renewal application must be rejected because it fails to provide accurate or complete

¹¹ 10 C.F.R. § 72.11(a).

¹² Gerfen Letter.

information in satisfaction of 10 C.F.R. §§ 72.22(e), 72.30(a) and (b), and the General Design Criteria in 10 C.F.R. Part 72, Subpart F.

3. Demonstration that the contention is within the scope of the proceeding.

This contention is within the scope of the license renewal proceeding for the Diablo Canyon ISFSI because it seeks compliance by PG&E with NRC safety regulations.

4. Demonstration that the contention is material to the findings NRC must make to renew the Diablo Canyon ISFSI license.

This Contention is material to the findings NRC must make regarding the safety of the ISFSI's continued operation because it demonstrates noncompliance with mandatory safety requirements for ISFSIs.

5. Concise statement of the facts or expert opinion supporting the contention, along with appropriate citations to supporting scientific or factual materials.

The facts supporting SLOMFP's contention are set forth in official PG&E and government documents as cited in the Statement of the Contention and Basis Statement.

Contention B: Inadequate Statement of Purpose and Need in Environmental Assessment.

1. Statement of Contention.

The Environmental Report's discussion at pages F-1 – F-2 of the "Purpose and Need for the Proposed Action" is inadequate to satisfy NEPA or NRC implementing regulations because it is based on the assumption that the reactors will close when their operating licenses expire in 2024 and 2025. Therefore, it discusses only the purposes and needs of the ISFSI that are related to continued storage of spent fuel after the reactor license termination dates, and not purposes and needs related to continued operation of the reactors and generation of more spent fuel.¹³ This is because PG&E submitted the application in March of 2022, six years after deciding to close the reactors and not seek license renewal. PG&E did not make any changes to the ISFSI license renewal application after passage of SB 846 and its decision to submit a new application for renewal of the reactor licenses.

The Environmental Report's statement of need and purpose is not reasonably accurate or up-to-date because it does not address the spent fuel storage needs created by PG&E's recent reversal of its previous decision to close Diablo Canyon at the end of the reactors' operating license terms and instead apply for renewal of the licenses. Nor does the statement of need and

¹³ 2022 ISFSI License Renewal Application at F-1 - F-2. The first four paragraphs describe the history of the repository program established by Congress under the Nuclear Waste Policy Act ("NWPA"), including government's failure to site or open a repository to date. They also describe the NRC's generic findings regarding the environmental impacts of continued storage of spent fuel pending the opening of a repository, and the NRC's assessment that a repository is both technically feasible and reasonably likely to be built in 25 to 35 years.

In the last paragraph, the Environmental Assessment sums up the purpose of and need for the ISFSI as follows:

Due to the current timeframe projections for development of a federal geologic repository, the purpose and the need for the proposed action is to provide for continued temporary dry storage of spent nuclear fuel generated from operation of DCPD at the DC ISFSI until facilities are available for interim or permanent disposal.

purpose explain how or whether the original purposes and needs for the ISFSI have been addressed, whether they remain current, or how they have changed. PG&E initially applied for an ISFSI license in 2001 because it was running out of storage space in the spent fuel storage pools. Having decided to apply for renewal of its operating licenses for the two Diablo Canyon reactors, PG&E has now put itself in a similar position as in 2001, *i.e.*, that it may not be able to run the Diablo Canyon reactors for a full twenty years without running out of storage space in the spent fuel pools. And even if PG&E does have space in the pools to allow the reactors to operate for a full twenty years, it appears virtually certain that PG&E will not be able to decommission the pools at the end of a twenty-year period of operating the reactors, because the capacity of the ISFSI is only sufficient for the current inventory of spent fuel at the Diablo Canyon plant. PG&E's Environmental Report is deficient because it does not address these issues, or how they affect the alternatives analysis or the cumulative impact analysis for the Environmental Assessment.

Finally, the Environmental Assessment does not address how the re-licensing of the ISFSI will be consistent with two significant State policies regarding the creation and storage of spent fuel. First, the Environmental Assessment does not address the inconsistency of creating more spent fuel storage demands at Diablo Canyon with State law imposing a moratorium on construction of new nuclear reactors for the very purpose of stopping the creation of additional spent fuel inside the State's borders unless and until a repository is operational.¹⁴ Second, the

¹⁴ As described by the Supreme Court in *Pacific Gas & Electric Co. v. State Energy Comm'n*, 461 U.S. 190 (1983):

Section 25524.1(b) of the California Public Resources Code provides that before a nuclear powerplant may be built, the State Energy Resources Conservation and Development Commission must determine on a case-by-case basis that there will be "adequate capacity" for interim storage of the plant's spent fuel at the time the plant

Environmental Assessment does not address how continued operation of the ISFSI, in conjunction with continued operation of the reactors, will affect PG&E's compliance with the State's wish to expedite the transfer of spent fuel from the spent fuel pools to the ISFSI.¹⁵

Therefore, the Environmental Assessment fails to satisfy 10 C.F.R. §§ 52.30(a)(1)(i) or 51.45(b) because its discussion of the purpose and need for continued operation of the ISFSI is inadequate to support the identification of a reasonable array of alternatives as required by 10 C.F.R. §§ 52.30(a)(1)(ii) and 51.45(b)(3). The Environmental Assessment also fails to satisfy 10 C.F.R. §§ 52.30(a)(1)(iii) or 51.23(c) because it does not provide a reasonably accurate and complete environmental impact analysis, including an analysis of cumulative impacts.

requires such storage. Section 25524.2 imposes a moratorium on the certification of new nuclear plants until the State Commission finds that there has been developed, and that the United States through its authorized agency has approved, a demonstrated technology or means for the permanent and terminal disposal of high-level nuclear wastes.

¹⁵ See CPUC Decision 21-09-003, Adopting Settlement, Section 5 at 27-28 (Sept. 9, 2021), approving the following stipulation between PG&E and other parties:

5.1 PG&E agrees that its pending solicitation of vendors for spent fuel storage systems shall include performance specifications that: (1) enable the final offload of spent fuel from the Unit 1 and Unit 2 spent fuel pools within 4 years of the shutdown of Unit 1 and Unit 2, respectively, subject to NRC licensing and other required regulatory approvals and (2) require that the proposed spent nuclear fuel storage systems must fit within the existing DC ISFSI licensed by the NRC and permitted by the County of San Luis Obispo and the California Coastal Commission.

5.2 In the event no vendor can develop a spent fuel storage system that: can meet a 4-year spent nuclear fuel cooling period, be accommodated on the existing DC ISFSI, and is licensable by the NRC, PG&E will, in consultation with the CEC, select a vendor who will achieve transfer of spent fuel to the DC ISFSI as promptly as reasonably practicable, but in no event longer than 7 years.

See also id. Section 9.4 at 31, providing that:

The Settling Parties agree that the Charter of the Diablo Canyon Independent Safety Committee (DCISC) should be amended to extend its oversight role on nuclear safety matters until all spent nuclear fuel has been transferred from the spent fuel pools to the ISFSI.

2. Basis Statement.

An environmental assessment must be a "concise public document' that '[b]riefly provide[s] sufficient evidence and analysis for determining whether to prepare an [EIS]."¹⁶ NRC regulations require that an environmental assessment must discuss the "need for the proposed action."¹⁷ An environmental report must also discuss the proposed action's "purposes."¹⁸ A clearly defined purpose and need is necessary because the project's goals dictate the range of alternatives.¹⁹

PG&E's discussion of the purpose and need for renewal of the ISFSI license is excessively narrow. This can be seen by comparing it to the discussion of purpose and need in PG&E's original 2001 license application for the Diablo Canyon ISFSI. PG&E's stated purposes in seeking that license were two-fold. First, because no U.S. Department of Energy ("DOE") repository was yet available for permanent storage of spent fuel as required by the NWPA, PG&E asserted that "spent fuel generated by [the Diablo Canyon reactors] will need to remain [on the site] until a DOE or other facility is available."²⁰

Second, PG&E reasoned that it needed the ISFSI to keep the Diablo Canyon reactors running past 2006 because the two spent fuel storage pools had already been re-racked and would be filled to capacity by 2006.²¹ Thus, PG&E asserted that:

¹⁶ *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 757 (2004) (quoting 40 C.F.R. § 1508.9(a)).

¹⁷ 10 C.F.R. § 51.30(a)(1)(i).

¹⁸ 10 C.F.R. § 51.45(b).

¹⁹ *City of Carmel-By-the Sea v. Dep't of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997); *Citizens Against Burlingame, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).

²⁰ *Id.* at 1.2-1.

²¹ *Id.* at 1.1-1. As described by PG&E:

*The additional capacity to accommodate discharged spent fuel as proposed herein will allow DCPD to continue to generate electricity. Any interruption in the availability of this capacity would almost certainly cause a negative impact on the domestic sector power supply in California. Considering the power supplies in California and in the western United States, as well as uncertainties about future power supplies, any loss of power from DCPD could have significant adverse impacts on the population, the infrastructure, and the economy. Expansion of the onsite spent fuel storage capacity at DCPD as planned by PG&E is necessary to avoid these potential significant negative impacts.*²²

The fact that the ISFSI was needed to keep the reactors running affected the array of alternatives considered in the Environmental Assessment:

PG&E has considered several alternative means for accommodating *the additional spent fuel that will be generated at DCPD through the licensed operating life of each unit*. The onsite alternatives include a second reracking of the spent fuel pools to replace the existing high density racks with racks of higher-density design, and building an onsite ISFSI using dry cask storage technology. PG&E has also considered the possibility of participating in the Private Fuel Storage venture, which has an application pending before the NRC for a license to independently store spent fuel from nuclear power plants.²³

Unit 1 began commercial operation in May 1985 and Unit 2 in March 1986. The operating licenses expire in September 2021 for Unit 1 and April 2025 for Unit 2. In general, the operating and spent fuel storage histories of DCPD Unit 1 and Unit 2 are similar to those of other PWRs. The spent fuel storage racks were initially of low-density design, capable of accommodating only one and one-third cores of spent fuel assemblies. These low-density racks were replaced in the late 1980s with high-density racks that are currently in use.

The spent fuel pool for each unit presently has sufficient capacity for the storage of 1,324 fuel assemblies. Each reactor core contains 193 fuel assemblies, and both units are currently operating on 18- to 21-month refueling cycles. Typically, 76 to 96 spent fuel assemblies are permanently discharged from each unit after a refueling. Each unit has operated for 10 fuel cycles and each is presently operating in its 11th cycle. Based on the existing inventory and the expected generation of spent fuel, each spent fuel pool can accommodate the concurrent storage of a full core of irradiated fuel and the anticipated quantity of spent fuel generated from prior refueling operations until 2006. After that time, an alternative means of spent fuel storage at DCPD must be provided unless the spent fuel can be shipped offsite.

²² *Id.* at 1.2-2 (emphasis added).

²³ *Id.* (emphasis added).

And the need to keep the reactors running affected PG&E's choice of dry storage from among the available alternatives:

Based on an overall assessment of operational and safety considerations, the amount of spent fuel to be generated, the transportation requirements associated with the alternatives, resources needed, and scheduling restraints, PG&E has concluded that dry cask storage of spent fuel at DCPD is the best available method at this time for providing the necessary storage capacity. However, as discussed below, increasing the spent fuel pool storage capacity through a second reracking with higher density racks remains a viable option if it appears that the Diablo Canyon ISFSI cannot be licensed on a schedule that meets PG&E storage requirements.

The expanded storage capacity provided by the use of dry casks at the ISFSI will be used to store aged spent fuel that has been stored for 5 years or longer in the DCPD spent fuel pools. The storage spaces in the respective spent fuel pools that become available following this transfer of the aged spent fuel into dry cask storage then can be used to store future discharged spent fuel from the reactor core. Storage casks will be acquired as needed to accommodate the spent fuel generated until shipment offsite occurs.²⁴

As discussed above, PG&E has now put itself in a similar position as in 2001, *i.e.*, that it may not be able to run the Diablo Canyon reactors for a full twenty years without running out of storage space in the spent fuel pools. And even if PG&E does have space in the pools to allow the reactors to operate for a full twenty years, it appears virtually certain that PG&E will not be able to decommission the pools at the end of a twenty-year period of operating the reactors, because the capacity of the ISFSI is only sufficient for the current inventory of spent fuel at the Diablo Canyon plant. PG&E's Environmental Report is deficient because it does not address these issues or how they affect the alternatives analysis or the cumulative impact analysis for the Environmental Assessment. PG&E's Environmental Report is also deficient because it fails to address the inconsistency between its representations about the limited capacity of the ISFSI and the unqualified representation in the UFSAR that "seven storage pads provide sufficient storage

²⁴ *Id.* (emphasis added).

space for DCPD spent fuel through plant decommissioning.”²⁵ PG&E must be required to explain the discrepancy between the 2022 ISFSI License Renewal Application and the UFSAR.

In addition, the Environmental Report does not address the consistency of re-licensing the ISFSI and possibly accommodating additional spent fuel with two important policies of the State of California. Discussion of these State policies is now particularly important because the passage of SB 846 has effectively transformed PG&E into a “contractor” with the State.²⁶

First, PG&E should address the consistency of creating more spent fuel and spent fuel storage demands at Diablo Canyon with a 1976 State law imposing a moratorium on the creation of more spent fuel by banning new reactor construction.²⁷ While that law does not apply to Diablo Canyon because it was passed after PG&E received its construction permits for Diablo Canyon in 1968 and 1970, the underlying policy of preventing the generation of more spent fuel and its attendant costs and liabilities is applicable.²⁸ Therefore, it must be considered.

²⁵ *Id.* at 4.1-2.

²⁶ *See, e.g.*, reported statement by PG&E Director of Strategic Initiatives Phillipe Soenen to the Diablo Canyon Independent Safety Committee at its September 28-29, 2022 Public Meeting that “with the passage of SB 846 PG&E is becoming a contractor to the State of California and it intends to fulfill that contract and serve not just PG&E’s customers but also all 58 counties in California and to support approximately 40 load-serving entities across the State of California.” Agenda Packet Draft – February 1, 2023 at B-3-38.

²⁷ As described by the Supreme Court in *Pacific Gas & Electric Co. v. State Energy Comm’n*, 461 U.S. 190 (1983):

Section 25524.1(b) of the California Public Resources Code provides that before a nuclear powerplant may be built, the State Energy Resources Conservation and Development Commission must determine on a case-by-case basis that there will be "adequate capacity" for interim storage of the plant's spent fuel at the time the plant requires such storage. Section 25524.2 imposes a moratorium on the certification of new nuclear plants until the State Commission finds that there has been developed, and that the United States through its authorized agency has approved, a demonstrated technology or means for the permanent and terminal disposal of high-level nuclear wastes.

²⁸ *See Pacific Gas & Electric Co.* 861 U.S. at 195.

In addition, the California Public Utilities Commission (“CPUC”) has directed PG&E to undertake an investigation of the feasibility of expediting transfer of spent fuel from the pools to the ISFSI.²⁹ The State’s initiative is significant and serious, as witnessed by the fact that PG&E has contracted with Orano TN Americas for use of the NUHOMS-EOS cask system going forward.³⁰ The principal purpose of switching to Orano is that their casks can accommodate hotter fuel and therefore its use will speed up the transfer process.³¹ PG&E should discuss how the renewal of the ISFSI license would affect the State’s developing policy to encourage expedited transfer of spent fuel from the pools to the ISFSI.

Providing an accurate and complete identification and discussion of the purposes and needs of the Diablo Canyon ISFSI may affect the consideration of alternatives. For instance, while PG&E now proposes to maintain the same storage capacity of the ISFSI, that capacity may not be adequate to meet PG&E’s needs for either continued operation of the reactors or expedited transfer of the spent fuel from the pools to the ISFSI following decommissioning. Alternatives for increasing the capacity of the ISFSI or adding another ISFSI should be considered, including their relative costs and benefits. In addition, the cumulative impacts of adding yet another spent fuel facility should be considered.

²⁹ Letter from Maureen R. Zawalick PG&E to NRC re: Diablo Canyon Units 1 and 2 Irradiated Fuel Management Plan, Revision 1 (Oct. 2, 2022) (“Zawalick Letter”). As shown in Table 2a of the letter’s Enclosure, PG&E anticipated being able to transfer all of the spent fuel in the pools to the ISFSI by 2028.

³⁰ Zawalik Letter.

³¹ *Id.*

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CERTIFICATE OF SERVICE

I certify that on March 13, 2023, I attempted to post SAN LUIS OBISPO MOTHERS FOR PEACE'S HEARING REQUEST AND PETITION TO INTERVENE IN LICENSE RENEWAL PROCEEDING FOR DIABLO CANYON SPENT FUEL STORAGE INSTALLATION HEARING REQUEST, including Attachments 1, 2, 3, and 4, on the NRC's Electronic Information Exchange. However, I did not have access to the EIE portal. Therefore, I served the documents by email on the following:

Brooke Pool Clark, Secretary to the Commission, nrcexecsec@nrc.gov

Ryan Lighty, Counsel to PG&E, ryan.lighty@morganlewis.com

Paul Bessette, Counsel to PG&E, paul.bessette@morganlewis.com

Timothy Matthews, Counsel to PG&E, timothy.matthews@morganlewis.com

NRC Hearing Docket, hearing.docket@nrc.gov

NRC Office of General Counsel, ridsogcmailcenter.resource@nrc.gov

The documents will be posted on the NRC's EIE portal on Tuesday, March 14, 2023, as soon as access is provided.

/signed electronically by/
Diane Curran

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BEFORE THE SECRETARY

In the matter of
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CERTIFICATE OF SERVICE

I certify that on March 14, 2014, I posted SAN LUIS OBISPO MOTHERS FOR PEACE'S HEARING REQUEST AND PETITION TO INTERVENE IN LICENSE RENEWAL PROCEEDING FOR DIABLO CANYON SPENT FUEL STORAGE INSTALLATION HEARING REQUEST, including Attachments 1, 2, 3, and 4, on the NRC's Electronic Information Exchange.

 /signed electronically by/
Diane Curran