

BACKGROUND

On March 9, 2022, PG&E filed the LRA seeking a 40-year renewal of the specific license for the DC ISFSI.³ At that time, PG&E planned to shut down and decommission the two DCPD units at the end of their license terms (2024 for Unit 1 and 2025 for Unit 2),⁴ pursuant to a 2018 resource planning decision by the California Public Utilities Commission (“CPUC”).⁵ For that reason, the LRA stated that “[t]he source of funds to operate the [Diablo Canyon] ISFSI until the DCPD Unit 1 permanent shutdown in November 2024 is the General Rate Case process” and the source of funds to operate the ISFSI after permanent shutdown would “include the PG&E Decommissioning Trust Fund.”⁶ However, nearly six months after PG&E submitted the LRA, the State of California enacted a statute invalidating the prior CPUC decision and directing PG&E to seek renewal of the DCPD operating licenses.⁷ In March 2023, SLOMFP requested an adjudicatory hearing and petitioned to intervene therein, proposing two contentions based primarily on SLOMFP’s assertion that PG&E was required to, but did not, update the LRA to reflect the possible continued operation of DCPD (“Petition”).⁸ The Board ultimately granted that Petition after concluding that a portion of Contention A was admissible, and that SLOMFP

³ Letter from M. Zawalick, PG&E, to NRC Document Control Desk, “License Renewal Application for the Diablo Canyon Independent Spent Fuel Storage Installation,” Encl. (Mar. 9, 2022) (ML22068A189) (“LRA”).

⁴ [PG&E, DCPD] Unit 1, Docket No. 50-275, Facility Operating License, License No. DPR-80 at 12 (ML053140349) (expires Nov. 2, 2024); [PG&E, DCPD] Unit 2, Docket No. 50-323, Facility Operating License, License No. DPR-82 at 10 (ML053140353) (expires Aug. 26, 2025).

⁵ Public Utilities Commission of the State of California, Decision Approving Retirement of Diablo Canyon Nuclear Power Plant, Decision 18-01-022 (Jan. 11, 2018), *available at* <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M205/K423/205423920.PDF>.

⁶ LRA at 1-3 to 1-4.

⁷ California Senate Bill No. 846, “Diablo Canyon powerplant: extension of operations,” (approved by Governor Sept. 2, 2022) (“SB 846”), *available at* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB846.

⁸ Re-Filed [SLOMFP]’s Hearing Request and Petition to Intervene in License Renewal Proceeding for Diablo Canyon Spent Fuel Storage Installation (dated Mar. 13, 2023, properly filed and served Mar. 14, 2023) (ML23073A382) (“Petition”).

had established standing.⁹ As reformulated and admitted by the Board, Contention A alleges that:

PG&E's ISFSI LRA fails to provide accurate and complete information regarding its satisfaction of NRC safety regulation 10 C.F.R. § 72.22(e) because its [FQ] analysis is based on the incorrect assumption that PG&E will not seek renewal of the DCPD reactors.¹⁰

On August 1, 2023, the Board ordered a conditional postponement of general discovery and mandatory disclosure requirements based on the “possibility that Contention A may be overcome by superseding events” related to PG&E “submit[ting] an amendment to the [DC] ISFSI [LRA]” and filing “a corresponding dispositive motion.”¹¹ As the Board previewed, PG&E has now updated its LRA and brought this dispositive motion.¹²

DISMISSAL OR SUMMARY DISPOSITION IS APPROPRIATE

The basis for the motion is straightforward. There no longer exists a genuine dispute concerning any facts material to the admitted contention because PG&E has revised the LRA FQ discussion to address the specific alleged omission.¹³

A contention of omission is “one that claims, in the words of 10 C.F.R. § 2.309(f)(1)(vi), ‘the application fails to contain information on a relevant matter as required by law.’”¹⁴ As

⁹ *DC ISFSI*, LBP-23-07, 98 NRC at __ (slip op at 20).

¹⁰ *Id.*

¹¹ Licensing Board Memorandum and Order (Granting the Joint Unopposed Motion to Modify Timing) (Aug. 1, 2023) (unpublished) (ML23213A089).

¹² Accordingly, because “PG&E submit[ted] an amendment to the Diablo Canyon ISFSI license renewal application within sixty (60) days of the issuance of LBP-23-07 and file[d] a corresponding dispositive motion before the Board regarding Contention A within thirty (30) days after the submission of such amendment,” discovery and hearing file obligations in this proceeding will either cease upon the issuance of an order granting this Motion or commence thirty (30) days after the issuance of an order denying this Motion. *Id.* at 2 & n.2.

¹³ *See* Statement of Undisputed Material Facts (Attachment A to this Motion).

¹⁴ *Pa'ina Hawaii, LLC*, LBP-06-12, 63 NRC 403, 413 (2006); *Va. Elec. & Power Co.* (N. Anna Power Station, Unit 3), LBP-08-15, 68 NRC 294, 313-314 (2008); *Progress Energy Fla., Inc.* (Levy Co. Nuclear Power Plant, Units 1 & 2), LBP-09-10, 70 NRC 51, 123 (2009).

explained by the Commission, “where a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant . . . the contention is moot.”¹⁵ Contentions rendered moot through this process are subject to dismissal.¹⁶

That is precisely the case here. Contention A alleges that the LRA “fails to provide . . . information” (specifically, an acknowledgement in the LRA FQ analysis of PG&E’s plan to “seek renewal of the [operating licenses for the] DCPD reactors”) as allegedly “required by law” (namely, 10 C.F.R. § 72.22(e)).¹⁷ However, PG&E has now supplied that information to the NRC. The LRA Update revises the LRA “to reflect the potential for DCPD continued operations beyond the current license expiration dates.”¹⁸ Specifically, as relevant here, LRA sections 1.3.6 and 1.6 were revised to address the source of funds for operating the DC ISFSI beyond November 2024 (Unit 1) and August 2025 (Unit 2) if PG&E submits a license renewal application for these units.¹⁹ Accordingly, because the application no longer fails to include this allegedly required information, Contention A is moot.

¹⁵ *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 383 (2002).

¹⁶ *See, e.g., Interim Storage Partners LLC* (WCS Consol. Interim Storage Facility), LBP-19-9, 90 NRC 181, 185 (2019), *aff’d*, CLI-20-15, 92 NRC 491, 510 (2020). Alternatively, a moot contention may be resolved through summary disposition. *See, e.g., Exelon Generation Co., LLC (Early Site Permit for Clinton ESP Site)*, LBP-05-19, 62 NRC 134, 182 (2005). So long as the applicant has “supplied the allegedly omitted analysis” or “addressed the allegedly outdated and erroneous information,” summary disposition is appropriate regardless of whether the contention is strictly viewed as one of “omission.” *Id.*

¹⁷ *Compare Pa’ina*, LBP-06-12, 63 NRC at 413 (defining contentions of omission) *with DC ISFSI*, LBP-23-07, 98 NRC at ___ (slip op at 20) (statement of Contention A as reframed by the Board).

¹⁸ LRA Update at 1.

¹⁹ *Id.*, Encl. at 2. If SLOMFP intends to challenge the adequacy of the information in the LRA Update, it must submit a new or amended contention. *See Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-11-11, 74 NRC 427, 443 n.92 (2011).

CONCLUSION

Because it is now moot, the Board should grant this Motion to dismiss (or, alternatively, grant summary disposition of) Contention A.²⁰ Furthermore, because no other contentions were admitted, and assuming no other contested matters remain pending before the Board at the time of its ruling on this Motion, the Board should terminate the proceeding.²¹

Respectfully submitted,

Signed (electronically) by Ryan K. Lighty

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Executed in Accord with 10 C.F.R. § 2.304(d)

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Dated in Washington, D.C.

This 24th day of August 2023

²⁰ Pursuant to 10 C.F.R. § 2.323(b), counsel for PG&E certifies that PG&E has made a sincere effort to contact SLOMFP and the NRC Staff and resolve the issue(s) raised in the motion. The NRC Staff does not oppose the filing of this Motion. SLOMFP does not oppose the filing of this Motion, but indicated that, if it seeks admission of a new or amended contention, it also may ask the Board to defer ruling on this Motion until it rules on SLOMFP's request.

²¹ *DTE Elec. Co.* (Fermi Nuclear Power Plant, Unit 3), CLI-15-10, 81 NRC 535, 564 n.46 (2015) (licensing board "jurisdiction terminates when there are no longer any contested matters pending before it."); *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-15-29, 82 NRC 246, 253-54 (2015) (the mere possibility that a party may seek to raise a new contested matter in the future does not confer continuing jurisdiction).

ATTACHMENT A

Statement of Undisputed Material Facts

Pursuant to 10 C.F.R. § 2.1205(a), PG&E hereby provides a short and concise statement of material facts for which there is no genuine issue to be heard:

- On July 19, 2023, the Board issued LBP-23-7, granting the Petition.
- In LBP-23-7, the Board admitted only one contention for hearing.
- The sole contention admitted for hearing in LBP-23-7 alleged as follows:

PG&E's ISFSI LRA fails to provide accurate and complete information regarding its satisfaction of NRC safety regulation 10 C.F.R. § 72.22(e) because its [FQ] analysis is based on the incorrect assumption that PG&E will not seek renewal of the DCPD reactors.

- On August 10, 2023, PG&E submitted the LRA Update.
- The LRA Update revised the LRA FQ analysis “to reflect the potential for DCPD continued operations beyond the current license expiration dates.”
- Following the LRA Update, the LRA FQ analysis is no longer “based on the incorrect assumption that PG&E will not seek renewal of the DCPD reactors.”

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
PACIFIC GAS AND ELECTRIC COMPANY)	Docket No. 72-26-ISFSI-MLR
(Diablo Canyon Independent Spent Fuel Storage Installation))	August 24, 2023
)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305, I certify that, on this date, a copy of the foregoing “Pacific Gas and Electric Company’s Motion to Dismiss or for Summary Disposition of Contention A as Moot” and Attachment A thereto were served upon the Electronic Information Exchange (the NRC’s E-Filing System), in the above-captioned docket.

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