

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

E. Roy Hawkens, Chair  
Nicholas G. Trikouros  
Dr. Gary S. Arnold

In the Matter of

PACIFIC GAS AND ELECTRIC COMPANY

(Diablo Canyon Independent Spent Fuel  
Storage Installation)

Docket No. 72-26-ISFSI-MLR

ASLBP No. 23-979-01-ISFSI-MLR-BD01

September 15, 2023

MEMORANDUM AND ORDER

(Dismissing Contention and Terminating Proceeding)

Pending before this Licensing Board in this license renewal proceeding for the Diablo Canyon Power Plant (DCPP) Independent Spent Fuel Storage Installation (ISFSI) is (1) Pacific Gas and Electric Company's (PG&E's) motion to dismiss or for summary disposition of Contention A,<sup>1</sup> and (2) San Luis Obispo Mothers for Peace's (SLOMFP's) notice of withdrawal of Contention A.<sup>2</sup> Contention A, which is the sole contention admitted in this proceeding, challenges PG&E's financial qualifications analysis in its license renewal application (LRA) for the Diablo Canyon ISFSI.<sup>3</sup> As discussed below, we dismiss Contention A pursuant to

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<sup>1</sup> See [PG&E's] Motion to Dismiss or for Summary Disposition of Contention A as Moot (Aug. 24, 2023) [hereinafter PG&E Motion].

<sup>2</sup> See [SLOMFP's] Notice of Withdrawal of Contention A (Sept. 11, 2023) [hereinafter SLOMFP Withdrawal Notice].

<sup>3</sup> See Pacific Gas and Electric Co. (Diablo Canyon Independent Spent Fuel Storage Installation), LBP-23-07, 98 NRC \_\_, \_\_ (July 19, 2023) (slip op. at 15).

SLOMFP's withdrawal notice (which renders PG&E's motion moot), and we terminate this proceeding.

I. BACKGROUND

On March 13, 2023, SLOMFP filed a hearing request challenging PG&E's LRA that seeks to extend operation of the Diablo Canyon ISFSI for an additional 40 years beyond the current license expiration date of March 22, 2024.<sup>4</sup> On July 19, 2023, this Licensing Board granted SLOMFP's hearing request and admitted one of its contentions, Contention A, as follows: "PG&E's ISFSI LRA fails to provide accurate and complete information regarding its satisfaction of [Nuclear Regulatory Commission (NRC)] safety regulation 10 C.F.R. § 72.22(e) because its financial qualifications analysis is based on the incorrect assumption that PG&E will not seek renewal of the DCPD reactors." LBP-23-07, 98 NRC at \_\_ (slip op. at 15).

On August 10, 2023, PG&E submitted a revision to the LRA that amends the financial qualifications discussion "to reflect the potential for DCPD continued operations beyond the current operating license expiration dates."<sup>5</sup>

On August 24, 2023, PG&E filed a motion asking this Board to dismiss or, alternatively, grant summary disposition of Contention A as moot. See PG&E Motion at 1. PG&E explains that Contention A is a contention of omission alleging that the financial qualifications discussion in the LRA improperly fails to acknowledge PG&E's plan to seek renewal of the DCPD reactors. See id. at 4. PG&E states that the revised LRA cures that alleged deficiency, see id. at 1, and pursuant to 10 C.F.R. § 2.1205(a), PG&E provides the following statement of material facts for which there is no genuine issue to be heard:

- On July 19, 2023, the Board issued LBP-23-07, granting [SLOMFP's hearing request].

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<sup>4</sup> See [SLOMFP] Hearing Request and Petition to Intervene in License Renewal Proceeding for Diablo Canyon [Independent] Spent Fuel Storage Installation (Mar. 13, 2023).

<sup>5</sup> See Letter from M. Zawalick, PG&E, to NRC Document Control Desk, Diablo Canyon [ISFSI LRA], rev. 1, at 1 (Aug. 10, 2023) (ADAMS Accession No. ML23222A287).

- In LBP-23-07, the Board admitted only one contention for hearing.
- The sole contention admitted for hearing in LBP-23-07 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 financial qualifications 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 [revised LRA].
- The [revised LRA amends] the LRA [financial qualifications] analysis "to reflect the potential for DCPD continued operations beyond the current [operating] license expiration dates."
- Following the [revised LRA], the LRA [financial qualifications] analysis is no longer "based on the incorrect assumption that PG&E will not seek renewal of the DCPD reactors."

Id., attach. A. PG&E therefore moves this Board to summarily dismiss the contention as moot.

See id. at 5.

On September 5, 2023, the NRC Staff filed an answer supporting PG&E's motion.<sup>6</sup> In the NRC Staff's view, because of PG&E's revision to the ISFSI LRA, "Contention A as admitted has become moot, and there is no remaining genuine material dispute of fact or law with respect to Contention A." NRC Staff Answer at 2.

On September 11, 2023, SLOMFP notified this Board and the Commission that it was withdrawing Contention A. See SLOMFP Withdrawal Notice at 1.<sup>7</sup> SLOMFP explains that it is "withdrawing the contention because PG&E's August 10, 2023 amendment to its license renewal application now appears to resolve the concerns raised by Contention A." Id. SLOMFP recognizes that "withdrawal of Contention A will result in the termination of this adjudicatory proceeding," but it "reserves the right [pursuant to 10 C.F.R. § 2.309(c)] to submit a new hearing

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<sup>6</sup> See NRC Staff Answer to [PG&E's] Motion to Dismiss or for Summary Disposition of Contention A as Moot (Sept. 5, 2023) [hereinafter NRC Staff Answer].

<sup>7</sup> SLOMFP included the Commission in its filing to ensure it would be aware that "as a result of withdrawing the contention, SLOMFP will not respond to PG&E's brief on appeal of LBP-23-07 (filed with the Commission on August 14, 2023)." SLOMFP Withdrawal Notice at 1.

request . . . if subsequent events or changes to PG&E's ISFSI license renewal application give rise to new safety or environmental concerns." Id.

II. ORDER

In recognition of SLOMFP's notice of withdrawal of Contention A, we dismiss Contention A. Our dismissal of Contention A renders PG&E's motion for summary disposition moot.<sup>8</sup> Because Contention A was the only admitted contention in this proceeding, we terminate this proceeding at the Board level.

Pursuant to 10 C.F.R. § 2.341(b), any petition for review to the Commission must be filed within 25 days of this issuance.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

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E. Roy Hawkens, Chair  
ADMINISTRATIVE JUDGE

*/RA/*

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Nicholas G. Trikouros  
ADMINISTRATIVE JUDGE

*/RA/*

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Dr. Gary S. Arnold  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
September 15, 2023

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<sup>8</sup> Although our dismissal of Contention A pursuant to SLOMFP's withdrawal notice moots PG&E's motion, it is to be acknowledged that the reasoning underlying both filings is identical — namely, PG&E's revised LRA cured the deficiency alleged in Contention A.

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Storage Installation) )  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Dismissing Contention and Terminating Proceeding) (LBP-23-08)** have been served upon the following persons by Electronic Information Exchange.

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**Pacific Gas and Electric Company (Diablo Canyon Independent Spent Fuel Storage Installation) - Docket No. 72-26-ISFSI-MLR  
MEMORANDUM AND ORDER (Dismissing Contention and Terminating Proceeding)  
(LBP-23-08)**

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 15<sup>th</sup> day of September 2023