

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PACIFIC GAS AND ELECTRIC COMPANY	)	Docket Nos. 50-275-LR/ 50-323-LR
	)	
(Diablo Canyon Nuclear Power Plant,	)	
Units 1 and 2)	)	

---

NRC STAFF ANSWER TO SAN LUIS OBISPO MOTHERS FOR PEACE'S MOTION TO  
FILE NEW CONTENTIONS REGARDING THE ADEQUACY OF THE UPDATED  
ENVIRONMENTAL REPORT FOR DIABLO CANYON

---

Joseph A. Lindell  
Daniel D. Straus  
Counsel for NRC Staff

May 1, 2015

## TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION .....	1
BACKGROUND .....	2
DISCUSSION.....	5
I. SLOMFP's Proposed Contentions Do Not Meet the Admissibility Requirements of 10 C.F.R. § 2.309(f)(1).....	5
A. Contention 1.....	6
1. Legal Standards Governing Contentions Challenging Alternatives Analyses in an ER.....	7
2. SLOMFP's Argument that an Alternative Need Not Replace Baseload Power Is Contrary to Commission Precedent and Therefore Immaterial .....	9
3. SLOMFP's Assertion That PG&E Failed to Consider a Particular "Combination Alternative" Lacks an Adequate Factual Basis and Fails to Raise a Genuine Dispute with the Environmental Report .....	10
a. Distributed Generation.....	12
b. Geothermal Power.....	12
4. SLOMFP's Challenge to PG&E's "Combination Alternative" Lacks an Adequate Factual Basis and Fails to Raise a Genuine Dispute with the Environmental Report .....	13
5. SLOMFP's Arguments Concerning the Costs of Nuclear Power and Renewables Are Outside the Scope of this Proceeding and Lack an Adequate Factual Basis .....	15
B. Contention 2.....	16
1. NRC Regulations Do Not Require an Applicant for License Renewal to Discuss the Economic Costs and Benefits of License Renewal or the Environmental Impacts of Category 1 Issues in its Environmental Report.....	17
2. SLOMFP'S Second Contention Is Not Admissible Because it Impermissibly Challenges NRC Regulations and Therefore Raises Matters Outside the Scope of This Proceeding .....	20
CONCLUSION .....	23

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
PACIFIC GAS AND ELECTRIC COMPANY ) Docket Nos. 50-275-LR/ 50-323-LR  
 )  
(Diablo Canyon Nuclear Power Plant, )  
Units 1 and 2) )

NRC STAFF ANSWER TO SAN LUIS OBISPO MOTHERS FOR PEACE'S MOTION TO FILE  
NEW CONTENTIONS REGARDING THE ADEQUACY OF THE UPDATED ENVIRONMENTAL  
REPORT FOR DIABLO CANYON

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(i)(1) and the Atomic Safety and Licensing Board's ("Board") revised scheduling order,<sup>1</sup> the staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby files its answer to San Luis Obispo Mothers for Peace's ("SLOMFP" or "Intervenor") "Motion to File New Contentions Regarding Adequacy of Environmental Report for Diablo Canyon License Renewal Application" ("Motion").<sup>2</sup> In its Motion, SLOMFP proffers two contentions concerning the adequacy of the discussion of alternatives in Pacific Gas and Electric Company's ("PG&E") updated Environmental Report ("ER update" or "updated ER")<sup>3</sup>

---

<sup>1</sup> Revised Scheduling Order, 8-10 (Nov. 19, 2012) (Agencywide Documents Access and Management System ("ADAMS") Accession No. ML12324A214).

<sup>2</sup> San Luis Obispo Mothers for Peace's Motion to File New Contentions Regarding Adequacy of Environmental Report for Diablo Canyon License Renewal Application (Apr. 6, 2015) (ADAMS Accession No. ML15096A613) ("Motion"). The Motion is supported by the Declaration of Mark Cooper (Apr. 6, 2015) (ADAMS Accession No. ML15096A614) ("Cooper Decl."), which has 3 attachments: Attachment 1 (Mark Cooper's Curriculum Vitae) (ADAMS Accession No. ML15096A615), Attachment 2 (Comments of Dr. Mark Cooper before the Environmental Protection Agency) (ADAMS Accession No. ML15096A617), and Attachment 3 (Declaration of Mark Cooper Regarding the Draft Waste Confidence Generic Environmental Impact Statement) (ADAMS Accession No. ML15096A618).

<sup>3</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 (Feb. 25, 2015) (ADAMS Package Accession No.

supporting the license renewal application (“LRA”) for Diablo Canyon Nuclear Power Plant, Units 1 and 2 (“DCPP” or “Diablo Canyon”).<sup>4</sup>

As more fully set forth below, the Staff opposes the admission of SLOMFP’s two proposed contentions. Although SLOMFP has already demonstrated standing in this proceeding,<sup>5</sup> and the Staff does not contest the timeliness of SLOMFP’s filing, SLOMFP’s contentions should be denied because they do not meet the general contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). Specifically, SLOMFP’s proposed contentions: (1) raise issues outside the scope of this proceeding, (2) are immaterial to the findings the NRC must make, (3) do not raise a genuine material dispute with the license renewal application, and/or (4) lack an adequate basis.<sup>6</sup> Therefore, SLOMFP’s Motion should be denied.

#### BACKGROUND

This proceeding concerns PG&E’s November 23, 2009 application to renew its operating licenses for Diablo Canyon for an additional twenty years from the current expiration dates of November 2, 2024, and August 26, 2025.<sup>7</sup> PG&E submitted its application pursuant to NRC’s license renewal regulations at 10 C.F.R. Part 54.<sup>8</sup> The NRC published Notice of receipt of the LRA, which included PG&E’s initial environmental report, in the *Federal Register* on December

---

ML15057A102), Enclosure 2, Attachment 1 (relevant ADAMS Accession Nos. ML15056A741 & ML15056A755) (“ER update” or “updated ER”).

<sup>4</sup> Letter from James R. Becker, Site Vice President, to NRC, Information to Support NRC Review of DCPP License Renewal Application (LRA) (Nov. 23, 2009) (ADAMS Accession No. ML093350335) (transmitting application for license renewal for Diablo Canyon Nuclear Power Plant, Units 1 and 2.). The Diablo Canyon LRA (2009) is *available at* <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/diablo-canyon.html>.

<sup>5</sup> 10 C.F.R. § 2.309(c)(4) (“If the party or participant has already satisfied the requirements of standing under paragraph (d) of this section in the same proceeding in which the new or amended contentions are filed, it does not need to do so again.”).

<sup>6</sup> 10 C.F.R. § 2.309(f)(1).

<sup>7</sup> LRA at Section 1.0, 1.1-1.

<sup>8</sup> See 10 C.F.R. §§ 54.19-54.23 (providing general requirements regarding the contents of license renewal applications); See 10 C.F.R. § 51.53(c) (providing environmental requirements regarding the contents of license renewal applications).

11, 2009.<sup>9</sup> The NRC accepted the LRA for review, and on January 21, 2010, published a *Federal Register* Notice providing a Notice of Opportunity for Hearing.<sup>10</sup>

The period for filing a petition for intervention or request for hearing closed on March 22, 2010. SLOMFP timely filed a petition to intervene and a waiver petition on March 22, 2010.<sup>11</sup> The Board granted SLOMFP's hearing request and admitted SLOMFP's contention claiming that the severe accident mitigation alternatives ("SAMA") analysis required by 10 C.F.R. 51.53(c)(3)(ii)(L) was inadequate because it did not account for the Shoreline Fault.<sup>12</sup>

On February 25, 2015, PG&E submitted an update to its Environmental Report. One portion of the update concerned the SAMA analysis for Diablo Canyon, which PG&E stated that it revised "using an updated Probabilistic Risk Assessment (PRA) model, more recent population, economic, and evacuation information, and updated seismic hazard curves."<sup>13</sup> The other major update to the ER concerned PG&E's analysis of alternatives to license renewal. PG&E stated that it updated its alternatives analysis "to address more recent data on energy

---

<sup>9</sup> Pacific Gas & Electric Company; Notice of Receipt and Availability of Application for Renewal of Diablo Canyon Nuclear Power Plant, Units 1 and 2; Facility Operating Licenses Nos. DPR-80 and DPR-82 for an Additional 20-Year Period, 74 Fed. Reg. 65,811 (Dec. 11, 2009).

<sup>10</sup> Notice of Acceptance for Docketing of the Application, Notice of Opportunity for Hearing for Facility Operating License Nos. DPR-80 and DPR-82 for an Additional 20-Year Period; Pacific Gas & Electric Company, Diablo Canyon Nuclear Power Plant, Units 1 and 2; and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation, 75 Fed. Reg. 3493, 3493 (Jan. 21, 2010).

<sup>11</sup> Request for Hearing and Petition to Intervene by San Luis Obispo Mothers for Peace (Mar. 22, 2010) (ADAMS Accession No. ML100810441). San Luis Obispo Mothers for Peace's Petition for Waiver of 10 C.F.R. Part 51 Subpart A Appendix B and 10 C.F.R. § 51.53(c)(2) (Mar. 22, 2010) (ADAMS Accession No. ML100810442). SLOMFP supported its petition with a declaration from its counsel. See Declaration by Diane Curran in Support of Petition for Waiver of 10 C.F.R. Part 51 Subpart A Appendix B and 10 C.F.R. § 51.53(c)(2) (Mar. 22, 2010) (ADAMS Accession No. ML100810442).

<sup>12</sup> *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-10-15, 72 NRC 257, 345-46 (2010). On appeal, the Commission affirmed the Board's ruling on admissibility but restated the contention. *Pac. Gas & Elec. Co.* (Diablo Canyon, CLI-11-11, 74 NRC 427,429, 438 (2011). The hearing is still pending.

<sup>13</sup> ER Update, Enclosure 2, at cover page.

alternatives in California and a combination alternative.”<sup>14</sup> PG&E revised ER Chapter 7, “Alternatives to the Proposed Action,” as well as Tables 8-1 and 8-2, which provide a comparison of the environmental impact of license renewal with the alternatives to license renewal. In the updated ER, PG&E considered two additional alternatives that it maintained will meet system generating needs: (1) a combination alternative consisting of renewables and natural gas; and (2) an alternative relying on demand side management programs and energy efficiency.<sup>15</sup> PG&E also made changes throughout its alternatives analysis to address more recent data from the State of California and other sources.<sup>16</sup>

In its Motion, SLOMFP claims that PG&E’s updated alternatives analysis fails to satisfy the requirements of the National Environmental Policy Act (“NEPA”) and NRC regulations. SLOMFP proposes two contentions challenging the updated ER. In its first contention, SLOMFP maintains that the updated ER fails to evaluate a reasonable array of energy alternatives.<sup>17</sup> In its second contention, SLOMFP asserts that the ER did not consider the environmental impacts of storage and disposal of spent fuel after the conclusion of the license renewal term and failed to discuss the consequences of accidents.<sup>18</sup> SLOMFP also states that its proposed contentions are timely because they are based on information that was not available until PG&E submitted its updated ER.<sup>19</sup> SLOMFP states that it filed this Motion thirty days after the ER update became available in ADAMS.<sup>20</sup>

---

<sup>14</sup> *Id.*

<sup>15</sup> See ER Update at 7.2-6.

<sup>16</sup> See, e.g. ER Update at 7.2-9 – 7.2-11 (containing a greatly revised discussion of photovoltaic technologies and distributed generation).

<sup>17</sup> Motion at 2-7.

<sup>18</sup> *Id.* at 8-13.

<sup>19</sup> *Id.* at 13-15.

<sup>20</sup> *Id.* at 15.

The Staff does not contest the timeliness of SLOMFP's filing. 10 C.F.R. § 2.309(c)(1)(i)-(iii) provides that contentions filed after the initial deadline for submitting contentions will be entertained if the petitioner demonstrates "good cause." To demonstrate "good cause," the petitioner must show that the information upon which its filing is based was not previously available, that such information is materially different from information previously available, and that it submitted its filing in a timely fashion based on the availability of the information. In this case, SLOMFP's contentions concern portions of the alternatives analysis in the ER, which are either new or significantly updated. SLOMFP filed its Motion in a timely fashion. Therefore, the Staff does not challenge the timeliness of SLOMFP's Motion.

Nevertheless, for the reasons discussed more fully below, SLOMFP's proposed contentions are inadmissible because they fail to satisfy the NRC's contention admissibility requirements in 10 C.F.R. § 2.309(f)(1).

#### DISCUSSION

##### I. SLOMFP's Proposed Contentions Do Not Meet the Admissibility Requirements of 10 C.F.R. § 2.309(f)(1)

SLOMFP's proposed contentions should be denied because they do not meet the Commission's general contention admissibility standards in 10 C.F.R. § 2.309(f)(1). Under § 2.309(f)(1), an admissible contention must:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted. . .

(ii) Provide a brief explanation of the basis for the contention;

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on

which the requestor/petitioner intends to rely to support its position on the issue; [and]

(vi) . . . [P]rovide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief[.]<sup>21</sup>

The Commission has strictly applied these contention admissibility requirements in NRC adjudications.<sup>22</sup> As the Commission and Atomic Safety and Licensing Boards have repeatedly held, "[a] failure to meet any of these criteria renders the contention inadmissible."<sup>23</sup>

As discussed below, SLOMFP's proposed contentions should not be admitted because they raise issues that are beyond the scope of this proceeding, do not raise a genuine dispute with the application, do not raise a material issue, and/or lack an adequate basis.<sup>24</sup>

A. Contention 1

SLOMFP's Contention 1 states:

Chapter 7 of PG&E's Amended Environmental Report is inadequate to satisfy NEPA and 10 CFR § 51.53(c)(2) because it does not evaluate a reasonable array of energy alternatives that either currently are commercially viable or will become so in the near term (i.e., within the next ten years). PG&E's energy alternatives analysis is based on arbitrary and unreasonable assumptions about the necessary characteristics of replacement

---

<sup>21</sup> 10 C.F.R. § 2.309(f)(1). A further provision, § 2.309(f)(1)(vii), applies only to COL applications submitted under 10 C.F.R. Part 52.

<sup>22</sup> *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-06-24, 64 NRC 111, 118-19 (2006).

<sup>23</sup> *N. States Power Co.* (Prairie Island Nuclear Generating Plant Independent Spent Fuel Installation), LBP-12-24, 76 NRC 503, 509 (2012). See also *South Carolina Elec. & Gas Co.* (Virgil C. Summer Nuclear Station, Units 2 and 3), CLI-10-1, 71 NRC 1, 7 (2010) ("Our contention admissibility requirements are deliberately strict, and we will reject any contention that does not satisfy the requirements.") (quoting *USEC Inc.* (American Centrifuge Plant), CLI-06-9, 63 NRC 433, 437 (2006)).

<sup>24</sup> 10 C.F.R. § 2.309(f)(1)(iii)-(vi).



energy, the viability and availability of alternative energy sources, and what constitute reasonable combinations of energy sources.<sup>25</sup>

Specifically, SLOMFP argues that the ER (1) should have considered alternatives that would not replace baseload power;<sup>26</sup> (2) should have considered a combination of alternatives consisting of distributed generation, efficiency, storage technology, and geothermal power;<sup>27</sup> (3) should not have considered a combination of alternatives that included natural gas;<sup>28</sup> and (4) should have considered the low costs of renewables and the high costs of nuclear power.<sup>29</sup>

However, for the reasons discussed below, Contention 1 is inadmissible because it raises issues that are outside the scope of this proceeding or immaterial to the findings the NRC must make, it lacks an adequate basis, and it does not raise a genuine dispute with the ER.<sup>30</sup>

1. Legal Standards Governing Contentions Challenging Alternatives Analyses in an ER

NRC regulations require license renewal applicants to include in their environmental reports “an analysis that considers and balances . . . the environmental impacts of alternatives to the proposed action, and alternatives available for reducing or avoiding adverse environmental effects.”<sup>31</sup> An applicant’s alternatives analysis need not discuss every conceivable alternative to the proposed action. Rather, NEPA requires only consideration of

---

<sup>25</sup> Motion at 2.

<sup>26</sup> *Id.* at 3, 5.

<sup>27</sup> *Id.* at 4, 6.

<sup>28</sup> *Id.* at 4-5.

<sup>29</sup> *Id.* at 6.

<sup>30</sup> 10 C.F.R. § 2.309(f)(1)(iii)-(vi).

<sup>31</sup> 10 C.F.R. § 51.45(c).

“feasible, nonspeculative, and reasonable alternatives.”<sup>32</sup> In defining the scope of alternatives that must be considered by an applicant, the Commission in *Seabrook* and *Davis-Besse* held that only economically and technically viable alternatives that produce baseload power constitute reasonable alternatives to license renewal.<sup>33</sup> Baseload power is “energy intended to continuously produce electricity at or near full capacity, with high availability.”<sup>34</sup>

In *Seabrook*, the Commission explained that the criteria for an admissible contention on energy alternatives include the ability of the proffered alternative to produce baseload power.<sup>35</sup> The Commission stated that the ER need only discuss alternatives that “will bring about the ends of the proposed action.”<sup>36</sup> In determining “the ends of the proposed action,” the Commission gives substantial weight to the preference of the applicant.<sup>37</sup> The Commission explained that to raise an admissible contention on energy alternatives:

[A] petitioner ordinarily must provide “alleged facts or expert opinion” sufficient to raise a genuine dispute as to whether the best information today suggests that commercially viable alternate technology (or combination of technologies) is available now, or will become so in the near future, to supply *baseload power*.<sup>38</sup>

In the *Davis-Besse* license renewal proceeding, the Commission dismissed a contention

---

<sup>32</sup> *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 & 3), LBP-08-14, 68 NRC 43, 95 (2008). See also *City of Carmel-by-the-Sea v. Dep’t of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997); *Nuclear Mgmt. Co., LLC* (Monticello Nuclear Generating Plant), LBP-05-31, 62 NRC 735, 753 (2005).

<sup>33</sup> *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-12-05, 75 NRC 301, 342 (2012); *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), CLI-12-08, 75 NRC 393, 397 (2012).

<sup>34</sup> *Seabrook*, CLI-12-05, 75 NRC at 339 n.223 (quoting *Environmental Law and Policy Center v. NRC*, 470 F.3d 676, 679 (7th Cir. 2006)).

<sup>35</sup> *Seabrook*, CLI-12-05, 75 NRC at 342.

<sup>36</sup> *Id.* at 339 (internal quotations omitted).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 342 (quoting *Roosevelt Campobello International Park Commission v. EPA*, 654 F.2d 1041, 1047 (1st Cir. 1982)).

challenging in part the ER's analysis of wind power on the same grounds as in *Seabrook*.<sup>39</sup> The Commission found that the *Davis-Besse* petitioners had not established that the proposed alternatives could provide the necessary baseload power in a timely fashion, *i.e.*, by the start of the license renewal period, and ruled the contention inadmissible.<sup>40</sup> The Commission wrote that "the Petitioners have failed to lay a foundation for their claim that wind, solar, and energy storage – in any combination – could satisfy the baseload demand in the region of interest by 2017."<sup>41</sup>

In its ER update, PG&E stated that the two nuclear power reactors at the Diablo Canyon site currently produce 2,285 MWe (megawatts electric) of baseload generation.<sup>42</sup> PG&E evaluated alternatives that would be sufficient to replace the net baseload capacity of these two plants.<sup>43</sup> A contention challenging PG&E's decision to exclude a particular alternative or combination of alternatives would be admissible only if it demonstrated that the proposed alternative(s) could supply baseload power sufficient to replace Diablo Canyon's generating capacity at the time the licenses expired in 2024 and 2025.<sup>44</sup> Each one of the Intervenor's arguments in Contention 1 are inadmissible because they do not meet this standard.

2. SLOMFP's Argument that an Alternative Need Not Replace Baseload Power Is Contrary to Commission Precedent and Therefore Immaterial

SLOMFP disagrees with PG&E's statement in the ER that an alternative that cannot

---

<sup>39</sup> *Davis-Besse*, CLI-12-08, 75 NRC at 401.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* See also *Union Elec. Co.* (Callaway Plant, Unit 1), LBP-12-15, 76 NRC 14, 38-39 (2012) (rejecting a contention regarding wind power alternatives on the grounds that the petitioners failed to meet the standard in *Seabrook* and *Davis-Besse*).

<sup>42</sup> Updated ER at 7.2-2.

<sup>43</sup> *Id.*

<sup>44</sup> *Seabrook*, CLI-12-05, 75 NRC at 342; *Davis-Besse*, CLI-12-08, 75 NRC at 401.

replace baseload generation is unreasonable.<sup>45</sup> SLOMFP argues that the need for an alternative to replace baseload capacity is outdated because of declining costs of non-baseload resources and dramatic improvements in technology.<sup>46</sup> SLOMFP asserts that reliance on baseload power is “inflexible because neither supply nor demand can be managed.”<sup>47</sup>

However, the Intervenor’s claims directly challenge Commission precedent. As discussed above, the Commission has stated several times that an alternative is reasonable and must be considered only if it will be available in the near-term to supply baseload power.<sup>48</sup> Therefore, SLOMFP’s arguments that an alternative is reasonable even if it cannot replace baseload capacity are not material to this proceeding and do not support an admissible contention.<sup>49</sup>

3. SLOMFP’s Assertion That PG&E Failed to Consider a Particular “Combination Alternative” Lacks an Adequate Factual Basis and Fails to Raise a Genuine Dispute with the Environmental Report

In its updated ER, PG&E considered a combination of natural gas, wind, solar, geothermal, and demand-side management as an alternative to license renewal.<sup>50</sup> PG&E analyzed the impacts of the “combination alternative” and compared them to the impacts of license renewal.<sup>51</sup> PG&E did not consider any other “combination alternatives” in its updated ER.

SLOMFP asserts that PG&E should not have rejected the possibility that renewables

---

<sup>45</sup> Motion at 3.

<sup>46</sup> *Id.* See also Cooper Decl. at ¶ 7.

<sup>47</sup> Motion at 5.

<sup>48</sup> *Seabrook*, CLI-12-05, 75 NRC at 342; *Davis-Besse*, CLI-12-08, 75 NRC at 401.

<sup>49</sup> See 10 C.F.R. § 2.309(f)(1)(iv).

<sup>50</sup> Updated ER at 7.2-4.

<sup>51</sup> *Id.* at 7.2-18 – 7.2-22.

alone could replace Diablo Canyon's baseload generating capacity.<sup>52</sup> SLOMFP argues that PG&E should have considered a "combination alternative" consisting of distributed generation, efficiency, storage technology, and geothermal power in its ER.<sup>53</sup> SLOMFP claims that the evidence relied on by Dr. Cooper in his declaration, "some of it cited by PG&E itself," demonstrates that SLOMFP's proposed combination of resources could provide four times the generating capacity of Diablo Canyon.<sup>54</sup> Indeed, Dr. Cooper's declaration includes a bar graph—based on the updated ER—showing that energy efficiency measures, combined with distributed generation and geothermal power, could potentially replace the output of Diablo Canyon more than three times over.<sup>55</sup>

However, SLOMFP does not raise an admissible contention. First, the updated ER already considered energy efficiency and demand-side management programs as an alternative to license renewal.<sup>56</sup> Thus, Dr. Cooper's graph showing that energy efficiency measures could "replace" baseload power does not raise a genuine dispute with the updated ER.<sup>57</sup>

Second, Dr. Cooper's conclusions about the energy output of geothermal power and distributed generation take portions of PG&E's updated ER out of context. The updated ER discussed the *potential* generating capabilities of geothermal power and distributed generation.<sup>58</sup> The updated ER did not provide evidence that either of these technologies,

---

<sup>52</sup> Motion at 4.

<sup>53</sup> Motion at 4, 6. Cooper Decl. at ¶ 10.

<sup>54</sup> *Id.*

<sup>55</sup> Cooper Decl. at 13 (Figure 1).

<sup>56</sup> Updated ER at 7.2-6.

<sup>57</sup> Energy efficiency measures do not generate baseload power, but instead obviate the need for baseload power. See Updated ER at 7.2-3 (stating that demand-side management and energy efficiency programs are not a "source of generation," but were considered anyway).

<sup>58</sup> See Updated ER at 7.2-10 – 7.2-12.

individually or in combination, could generate sufficient baseload energy by 2024 or 2025 to constitute a reasonable alternative to license renewal. Aside from his citations to the updated ER, Dr. Cooper provides no other evidence to support SLOMFP's claims concerning distributed generation and geothermal power. Thus, as described below, Dr. Cooper's declaration lacks an adequate factual basis and does not raise a genuine dispute with the ER.

a. Distributed Generation

Dr. Cooper relies on the updated ER for his statements regarding distributed generation.<sup>59</sup> According to the ER update, "distributed generation is the widespread generation of electricity from facilities that are smaller than 50 MW [megawatts] in net generating capacity."<sup>60</sup> The updated ER also stated that "PG&E Planning Area Self-Generation Peak Impacts could reach 2079.3 MW by 2024."<sup>61</sup> However, the ER update noted that "[a]ccording to the California Energy Commission, more than 1,000 MW of the distributed generation in the PG&E service territory is expected to be photovoltaic (PV) systems."<sup>62</sup> The updated ER concluded that photovoltaic power's intermittency makes distributed generation unsuitable for baseload applications without sufficient energy storage systems, which are not yet available.<sup>63</sup> Dr. Cooper fails to provide evidence to the contrary. As such, SLOMFP does not demonstrate that distributed generation, alone or in combination with other alternatives, can supply sufficient baseload power by 2024 or 2025.

b. Geothermal Power

Dr. Cooper relies solely on the updated ER for his assertions regarding the availability of

---

<sup>59</sup> Cooper Decl. at 13 (Figure 1).

<sup>60</sup> *Id.* at 7.2-10.

<sup>61</sup> *Id.* at 7.2-11.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

geothermal power.<sup>64</sup> The updated ER cited a United States Geological Survey (“USGS”) report, which “estimates that California has the potential for additional geothermal power development on private and public lands of 9,282 MWe.”<sup>65</sup> However, as the updated ER explained, the USGS report speaks only about *potential* geothermal development in California.<sup>66</sup> Mere potential for development is different from commercial viability as a source of baseload power.<sup>67</sup> Dr. Cooper provides no evidence that geothermal power, even in combination with other alternatives, would be available to replace the baseload power supplied by Diablo Canyon by 2024 or 2025.<sup>68</sup>

In sum, SLOMFP’s claim that the ER should have considered a combination of distributed generation, efficiency, storage, and geothermal power is inadmissible because it lacks an adequate basis and fails to raise a genuine dispute with the ER.<sup>69</sup>

4. SLOMFP’s Challenge to PG&E’s “Combination Alternative” Lacks an Adequate Factual Basis and Fails to Raise a Genuine Dispute with the Environmental Report

SLOMFP also challenges the reasonableness of PG&E’s proposed “combination alternative.” As noted above, PG&E considered a “combination alternative” consisting of natural

---

<sup>64</sup> Cooper Decl. at 13 (Figure 1).

<sup>65</sup> *Id.* at 7.2-12.

<sup>66</sup> United States Geological Survey, Assessment of Moderate- and High-Temperature Geothermal Resources of the United States, Fact Sheet 2008-3082, *available at* <http://pubs.usgs.gov/fs/2008/3082/> (stating that the USGS “recently assessed the electric power generation *potential* of conventional geothermal resources in the United States,” and that “the electric power generation *potential* from identified geothermal systems is 9,057 Megawatts electric (MWe), distributed over 13 states.”) (emphasis added).

<sup>67</sup> *Davis-Besse*, CLI-12-08, 75 NRC at 402. See also *Seabrook*, CLI-12-05, 75 NRC at 345 (“Our review of Beyond Nuclear’s referenced exhibit confirms that it refers to a plan only—not a statement of expectation that the project will be commercially viable as of 2014.”).

<sup>68</sup> In its “combination alternative” PG&E included only 100 MW of geothermal power because “[g]eothermal generation in 2025 is expected to be approximately one-third of wind or solar PV.” Updated ER at 7.2-4 – 7.2-5. Dr. Cooper fails to provide evidence challenging PG&E’s assumptions regarding the availability of geothermal power in 2025.

<sup>69</sup> 10 C.F.R. § 2.309(f)(1)(vi).

gas, wind, solar, geothermal, and demand-side management.<sup>70</sup> SLOMFP argues that PG&E's "combination alternative" is "arbitrary and unreasonable" because it ignores developments in the individual renewable technologies that are part of the alternative (such as, wind and solar) and relies too heavily on natural gas.<sup>71</sup>

However, SLOMFP's claim is inadmissible. Although SLOMFP provides evidence of the increased use and reduced cost of renewables, SLOMFP fails to show that renewables can replace Diablo Canyon's baseload power without any contribution from natural gas. In his declaration, Dr. Cooper focuses on demonstrating that nuclear power generation is decreasing while the use of renewables is increasing.<sup>72</sup> For example, Figures 3 and 4 show an increase in wind and solar generation,<sup>73</sup> while Figures 6 and 7 involve the declining costs and increased use of battery technology.<sup>74</sup> However, Dr. Cooper's declaration and supporting exhibits do not provide evidence that the alternative technologies will be available to replace the baseload power provided by Diablo Canyon by 2024 or 2025. Evidence that technologies are rapidly advancing is distinct from evidence that they are or will be commercially available in the near term.<sup>75</sup> For this reason, SLOMFP's assertion that PG&E should have considered a mix of renewables that does not include natural gas lacks an adequate basis and fails to raise a

---

<sup>70</sup> Updated ER at 7.2-4.

<sup>71</sup> Motion at 4-5. *See also* Cooper Decl. at ¶ 9. SLOMFP makes a nearly identical claim in Contention 2. There, SLOMFP argues that the "combination alternative" evaluated by PG&E is arbitrary, and that it has greater environmental impacts than other reasonable alternatives because it relies on natural gas. Motion at 9.

<sup>72</sup> *See, e.g.*, Cooper Decl. at ¶¶ 13, 15-17.

<sup>73</sup> *Id.* at pp. 15-16 (Figures 3 & 4).

<sup>74</sup> *Id.* at pp. 18-19 (Figures 6 & 7).

<sup>75</sup> *See Davis-Besse*, CLI-12-08, 75 NRC at 400-01 (finding evidence of developments in wind, solar, and energy storage technologies insufficient to demonstrate that they could satisfy baseload demand in any combination in the near-term); *id.* at 402 (finding mere potential for the construction of facilities insufficient to demonstrate commercial viability as a baseload power source); *id.* at 405 (finding evidence supporting the *eventual* development of baseload solar generation insufficient to support an admissible alternatives contention).



genuine dispute with ER.<sup>76</sup>

5. SLOMFP's Arguments Concerning the Costs of Nuclear Power and Renewables Are Outside the Scope of this Proceeding and Lack an Adequate Factual Basis

SLOMFP's final point in Contention 1 concerns cost reductions in renewable technologies compared with the "deteriorating economics" of nuclear power.<sup>77</sup> SLOMFP argues that economic changes should be a factor in determining which alternatives are considered reasonable.<sup>78</sup> Yet, as discussed below in the Staff's response to Contention 2,<sup>79</sup> to the extent that SLOMFP is arguing that PG&E should have weighed the costs and benefits of license renewal against the alternatives,<sup>80</sup> the Commission has explained that such an analysis is outside the scope of license renewal.

Nevertheless, SLOMFP appears to argue, at least in part, that the low cost of renewable energy technologies such as battery storage, information and control technologies, and efficiency improvements demonstrate that these technologies will be available in the near term to supply baseload power.<sup>81</sup> Yet SLOMFP's claim is speculative and lacks expert support. Although Dr. Cooper discusses cost reductions in technologies such as battery storage,<sup>82</sup> he does not connect the reduced costs of any particular technology to its availability to supply baseload power by 2024 or 2025. As such, SLOMFP's claim that alternative technologies will

---

<sup>76</sup> 10 C.F.R. § 2.309(f)(1)(vi).

<sup>77</sup> Motion at 6.

<sup>78</sup> *Id.*

<sup>79</sup> *See infra* at Section I.B.1.

<sup>80</sup> *See, e.g.,* Cooper Decl. at ¶ 19.

<sup>81</sup> Motion at 6.

<sup>82</sup> Cooper Decl. at ¶ 16; *id.* at pp. 18-19 (Figures 6 & 7).

be available in the near term lacks an adequate factual basis and is inadmissible.<sup>83</sup>

For all of these reasons, SLOMFP's Contention 1 is inadmissible.<sup>84</sup>

B. Contention 2

SLOMFP's Contention 2 states:

The Environmental Report is inadequate to satisfy NEPA and 10 C.F.R. § 51.53(c)(2) because it presents a distorted and inaccurate comparison between the environmental impacts of continued operation of Diablo Canyon nuclear power plant and the environmental impacts of energy alternatives. PG&E arbitrarily excludes from its comparisons of environmental impacts (Tables 8-1 and Table 8-2) energy alternatives with small impacts, and misrepresents some of the impacts of renewing Diablo Canyon's license as small. As a result, PG&E fails to consider evidence that the adverse environmental impacts of renewing the Diablo Canyon operating license are "so great, compared with the set of alternatives, that preserving the option of license renewal for future decisionmakers would be unreasonable." Final Rule, Environmental Review for Renewal of Nuclear Power Plant Licenses, 61 Fed. Reg. 28,467, 28,468 (June 5, 1996) ("1996 License Renewal Rule").<sup>85</sup>

Specifically, SLOMFP argues that PG&E's environmental report fails to satisfy the requirements of 10 C.F.R. § 51.53(c) for three reasons: (1) the report did not consider the environmental impacts of storage and disposal of spent fuel after the conclusion of the license renewal term;<sup>86</sup> (2) the report did not conduct a comparison of the costs and benefits of license renewal

---

<sup>83</sup> 10 C.F.R. § 2.309(f)(1)(vi). *See also supra* at Section I.A.4.

<sup>84</sup> In addition to providing a declaration, Dr. Mark Cooper submitted a nearly 200 page comment associated with an Environmental Protection Agency proposed rule concerning carbon pollution emission guidelines for stationary sources. Attachment 2. Dr. Cooper also attached a lengthy comment that he submitted to the NRC as part of the Continued Storage rulemaking. Attachment 3. However, Dr. Cooper's lengthy comments do not raise an admissible contention. SLOMFP's Motion does not cite any specific portion of the EPA or NRC comments. Neither the Commission nor the Board is required "to look through lengthy documents for information on which a litigant relies." *Davis-Besse*, CLI-12-08, 75 NRC at 404 n.67 (*citing Entergy Nuclear Generation Co.* (Pilgrim Nuclear Power Station), CLI-09-11, 69 NRC 529, 534 (2009)). Moreover, the NRC responded to Dr. Cooper's comments as part of the Continued Storage rulemaking. *See See* NUREG-2157, Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel: Final Report, Vol. 2 at Appendix D (addressing public comments), D-564 (mentioning Dr. Cooper's correspondence) (Sept. 2014) (ADAMS Accession No. ML14196A105).

<sup>85</sup> Motion at 8.

<sup>86</sup> *Id.* at 9-10.

compared to the alternatives;<sup>87</sup> and (3) the report did not discuss the consequences of accidents.<sup>88</sup>

However, the Intervenor's arguments in Contention 2 challenge the Commission's generic determinations and suggest that a cost-benefit analysis is needed when in fact none is required. Therefore, Contention 2 is inadmissible because it raises matters outside the scope of this proceeding.<sup>89</sup>

1. NRC Regulations Do Not Require an Applicant for License Renewal to Discuss the Economic Costs and Benefits of License Renewal or the Environmental Impacts of Category 1 Issues in its Environmental Report

NRC regulations require applicants for operating license renewals to submit environmental reports. The NRC set out its requirements for these reports in 10 C.F.R. § 51.53(c). An environmental report, among other things, "must contain a description of the proposed action," must "describe in detail the affected environment around the plant," and must "discuss . . . the environmental impacts of alternatives."<sup>90</sup>

NRC regulations do not require applicants to compare the costs and benefits of the proposed action and energy alternatives in their environmental reports.<sup>91</sup> Except in limited circumstances, "The [environmental] report is not required to include discussion of . . . the economic costs and benefits of the proposed action or of alternatives to the proposed action."<sup>92</sup>

---

<sup>87</sup> *Id.* at 8-9, 12.

<sup>88</sup> *Id.* at 12. SLOMFP also argues in Contention 2 that the ER did not consider a reasonable "combination alternative." *Id.* at 9. As discussed above, SLOMFP's claim does not raise a genuine dispute with the ER. See *supra* at Section I.A.4.

<sup>89</sup> 10 C.F.R. §2.309(f)(1)(iii).

<sup>90</sup> Continued Storage of Spent Nuclear Fuel, 79 Fed. Reg. 56,238, 56,262 (Sept. 19, 2014) (to be codified at 10 C.F.R. § 51.53(c)(2)) (hereinafter "10 C.F.R. § 51.53(c)(2)").

<sup>91</sup> 10 C.F.R. § 51.53(c)(2).

<sup>92</sup> *Id.*

As explained in the NRC's Statements of Consideration ("SOC") accompanying its 1996 license renewal rulemaking, this reflects the NRC's decision to:

[E]liminate[] the use of cost-benefit analysis and consideration of utility economics in its NEPA review of a license renewal application . . . [because] the NRC recognizes that the determination of the economic viability of continuing the operation of a nuclear power plant is an issue that should be left to appropriate State regulatory and utility officials.<sup>93</sup>

Instead, the NRC's "NEPA decision standard for license renewal [requires] the NRC to determine whether the environmental impacts of license renewal are so great that preserving the option of license renewal for future decision makers would be unreasonable."<sup>94</sup> However, NRC "regulations for license renewal do not require applicants to apply this decision standard to . . . their environmental report."<sup>95</sup>

Applicants for license renewal need only discuss the economic costs and benefits of alternatives to license renewal in their environmental reports "insofar as such costs and benefits are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation."<sup>96</sup> In its SOC to the 1996 license renewal rulemaking, the NRC explained that discussion of economic costs and benefits would be essential to determining whether to include an alternative when "an alternative's exorbitant cost could render it nonviable and unworthy of future consideration."<sup>97</sup>

---

<sup>93</sup> Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, 61 Fed. Reg. 28,467, 28,471 (Jun. 5, 1996).

<sup>94</sup> 61 Fed. Reg. at 28,471. See also 10 C.F.R. § 51.103(a)(5) ("In making a final decision on a license renewal action pursuant to Part 54 of this chapter, the Commission shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.").

<sup>95</sup> 61 Fed. Reg. at 28,484.

<sup>96</sup> 10 C.F.R. § 51.53(c)(2).

<sup>97</sup> 61 Fed. Reg. at 28,472.

Moreover, 10 C.F.R. § 51.53(c)(2) provides that “no discussion of the environmental impacts of the continued storage of spent fuel is required in” the applicant’s environmental report. The Commission stated in its SOC for the recent continued storage rulemaking that:

[The] NRC has determined in the GEIS [“Generic Environmental Impact Statement”] that the direct and indirect environmental impacts of continued storage at reactors can be analyzed generically. This means that, for each of the resource areas analyzed in the GEIS, the NRC has reached a generic determination (SMALL, MODERATE, LARGE, or a range) that is appropriate for all sites.<sup>98</sup>

The SOC concluded, “These generic determinations will not be revisited and may not be challenged in individual licensing proceedings without the grant of a waiver under 10 C.F.R. 2.335.”<sup>99</sup>

Finally, the Commission has limited contentions raising environmental issues in license renewal proceedings to those issues that are affected by license renewal and have not been addressed by rulemaking or on a generic basis.<sup>100</sup> Table B-1 of 10 C.F.R. Part 51 incorporates the License Renewal GEIS and contains “Category 1” issues for which the NRC has reached generic conclusions.<sup>101</sup> Applicants for license renewal do not need to analyze the impacts of Category 1 issues in their environmental reports, but instead may reference and adopt the generic findings.<sup>102</sup> Applicants, however, must provide a plant-specific review of the non-generic “Category 2” issues.<sup>103</sup> Category 1 issues “are not subject to site-specific review and

---

<sup>98</sup> 79 Fed. Reg. at 56,242.

<sup>99</sup> *Id.* at 56,243.

<sup>100</sup> *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plants, Units 3 & 4), CLI-01-17, 54 NRC 3, 11, 16 (2001).

<sup>101</sup> NUREG-1437, Rev. 1, Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Final Report (Jun. 2013) (ADAMS Accession No. ML13106A241).

<sup>102</sup> *Turkey Point*, CLI-01-17, 54 NRC at 11.

<sup>103</sup> *Id.*

thus fall beyond the scope of individual license renewal proceedings.”<sup>104</sup> Consequently, a party seeking to litigate a Category 1 issue or challenging a determination in Table B-1 in a license renewal proceeding must seek a waiver of the Commission’s regulations, pursuant to 10 C.F.R. § 2.335.<sup>105</sup>

2. SLOMFP’S Second Contention Is Not Admissible Because it Impermissibly Challenges NRC Regulations and Therefore Raises Matters Outside the Scope of This Proceeding

As noted above, SLOMFP argues that PG&E’s environmental report fails to satisfy the requirements of 10 C.F.R. § 51.53(c) for three reasons: (1) the report did not consider the environmental impacts of storage and disposal of spent fuel after the conclusion of the license renewal term;<sup>106</sup> (2) the report did not conduct a comparison of the costs and benefits of license renewal compared to the alternatives;<sup>107</sup> and (3) the report did not discuss the consequences of accidents.<sup>108</sup>

First, SLOMFP argues that PG&E inadequately characterized the impacts of license renewal in Tables 8.1 and 8.2 of the updated ER because it failed to consider the impacts of spent fuel storage and disposal after the license renewal term.<sup>109</sup> SLOMFP notes that in the Continued Storage GEIS, the NRC did not categorize all the impacts of continued spent fuel storage as “small.”<sup>110</sup> SLOMFP also argues that several environmental impacts categorized as “small” in Tables 8.1 and 8.2 should have been categorized differently because they “could be

---

<sup>104</sup> *Id.* at 16; *see* 10 C.F.R. § 51.53(c)(3)(i)-(ii).

<sup>105</sup> *Turkey Point*, CLI-01-17, 54 NRC at 12, 22-23.

<sup>106</sup> Motion at 9-10.

<sup>107</sup> *Id.* at 8-9, 12.

<sup>108</sup> *Id.* at 12.

<sup>109</sup> *Id.* at 9-10.

<sup>110</sup> *Id.* at 10.

affected by spent fuel disposal.”<sup>111</sup> In particular, SLOMFP claims that Dr. Mark Cooper provides evidence that the socioeconomic consequences of disposing of spent fuel generated during the license renewal term are “likely to be extremely high.”<sup>112</sup>

However, SLOMFP’s arguments regarding both continued storage and disposal raise impermissible challenges to NRC regulations. As discussed above, 10 C.F.R. § 51.53(c)(2) states that applicants for license renewal are not required to discuss the impacts of continued storage in their environmental reports.<sup>113</sup> Rather, those impacts have been generically determined in the Continued Storage GEIS.<sup>114</sup> Indeed, SLOMFP itself recognizes that the environmental impacts of continued storage have already been determined in the Continued Storage GEIS.<sup>115</sup> Likewise, the NRC has generically determined the impact of high-level waste disposal. Table B-1 of 10 C.F.R. Part 51 defines high-level waste disposal as a Category 1 issue.<sup>116</sup> Therefore, Tables 8.1 and 8.2 in PG&E’s environmental report were not required to address the environmental impacts of continued storage or high level waste disposal cited by the Intervenor.

Second, because of its concerns regarding spent fuel storage and disposal, SLOMFP argues that “the comparative environmental impacts of license renewal are great enough to tip

---

<sup>111</sup> *Id.* at 11.

<sup>112</sup> *Id.* at 11-12.

<sup>113</sup> 10 C.F.R. § 51.53(c)(2); *see also* 79 Fed. Reg. at 56,260 (to be codified at 10 C.F.R. § 51.23(b)) (hereinafter “10 C.F.R. § 51.23(b)”) (“The environmental reports described in § . . . 51.53 . . . are not required to discuss the environmental impacts of spent nuclear fuel storage in a reactor facility storage pool or an ISFSI [Independent Spent Fuel Storage Installation] for the period following the term of the reactor operating license . . . The impact determinations in NUREG-2157 regarding continued storage shall be deemed incorporated into the environmental impact statements . . . if the impacts of continued storage of spent fuel are relevant to the proposed action.”).

<sup>114</sup> *See* NUREG-2157 at xlvii (Table ES-3), lx-lxi (Table ES-5).

<sup>115</sup> Motion at 10 (listing the environmental impacts of continued storage on different resource areas discussed in the GEIS).

<sup>116</sup> 79 Fed. Reg. at 56,262 (to be codified at 10 C.F.R. Part 51 App’x B Table B-1) (hereinafter “Table B-1”).

the balance” against renewing the license, and PG&E should have performed a cost-benefit comparison pursuant to 10 C.F.R. § 51.53(c)(2).<sup>117</sup> However, SLOMFP’s reading of 10 C.F.R. § 51.53(c)(2) is incorrect. As discussed above, 10 C.F.R. § 51.53(c)(2) does not require applicants to perform a cost-benefit comparison in their environmental reports. NRC regulations only require applicants to discuss economic costs and benefits insofar as such costs are essential to determining whether to include an energy alternative in the range of alternatives considered in the ER or as relevant to mitigation.<sup>118</sup> Regardless, the NRC has already generically determined the environmental impacts of continued storage.<sup>119</sup> And although the NRC has not assigned a level of significance to the impacts of spent fuel disposal, the Commission has generically concluded “that the impacts [of spent fuel disposal] would not be sufficiently large to require the NEPA conclusion, for any plant, that the option of extended operation under 10 CFR part 54 should be eliminated.”<sup>120</sup> Therefore, further discussion of the economic costs and benefits of continued storage and spent fuel disposal, even if required in environmental reports, would not tip the balance against license renewal. SLOMFP’s arguments to the contrary impermissibly challenge NRC rules and generic determinations.

Third, SLOMFP argues that PG&E’s environmental report is inadequate because it does not discuss the consequences of potential accidents.<sup>121</sup> SLOMFP argues that the socioeconomic impacts of license renewal cannot be “small,” because a severe accident would cause “widespread environmental, social and economic devastation.”<sup>122</sup> This argument,

---

<sup>117</sup> Motion at 9, 12.

<sup>118</sup> 10 C.F.R. § 51.53(c)(2); 61 Fed. Reg. at 28,471-72.

<sup>119</sup> 10 C.F.R. §§ 51.23(b), 51.53(c)(2); 79 Fed. Reg. at 56,242.

<sup>120</sup> Table B-1. *See also*, 79 Fed. Reg. at 56,250-51 (discussing the categorization of spent fuel disposal as a “Category 1” issue).

<sup>121</sup> Motion at 12.

<sup>122</sup> *Id.*



however, is a direct challenge to the Commission's regulations in Table B-1 of 10 C.F.R. Part 51. Table B-1 specifies that the "probability weighted consequences" of "societal and economic impacts from severe accidents are small for all plants." The Commission's generic determination prevents SLOMFP from litigating the societal and economic impacts of a severe accident in this proceeding absent a waiver.<sup>123</sup> SLOMFP has not submitted or been granted a waiver. Therefore, SLOMFP's claim is outside the scope of this proceeding and should be rejected.<sup>124</sup>

### CONCLUSION

The Staff respectfully submits that the Intervenor has not proffered an admissible contention, as required by 10 C.F.R. § 2.309(f)(1)(i)-(vi). Rather, the Motion fails to raise a genuine dispute with PG&E's updated environmental report, lacks an adequate factual basis, and raises issues that are immaterial or beyond the scope of this proceeding. The Motion should therefore be denied.

Respectfully submitted,

***/Signed (electronically) by/***

---

Joseph A. Lindell  
Counsel for the NRC Staff  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop O15-D21  
Washington, DC 20555  
Telephone: (301) 415-1474  
Email: [Joseph.Lindell@nrc.gov](mailto:Joseph.Lindell@nrc.gov)  
Date of Signature: May 1, 2015

---

<sup>123</sup> While the impact finding of "small" for societal and economic impacts from postulated accidents is a generic determination for all plants, "severe accident mitigation alternatives" is a "Category 2" issue. See Table B-1 (citing 10 C.F.R. § 51.53(c)(3)(ii)(L) and noting that alternatives to mitigate severe accidents must be considered for all plants that have not considered such alternatives).

<sup>124</sup> 10 C.F.R. § 2.309(f)(1)(iii).

**Executed in Accord with 10 CFR 2.304(d)**

Daniel D. Straus  
Counsel for the NRC Staff  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop O15-D21  
Washington, DC 20555  
Telephone: (301) 415-2793  
Email: [Daniel.Straus@nrc.gov](mailto:Daniel.Straus@nrc.gov)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
PACIFIC GAS & ELECTRIC COMPANY	)	Docket Nos. 50-275-LR/ 50-323-LR
	)	
(Diablo Canyon Nuclear Power Plant,	)	
Units 1 and 2)	)	

CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (revised), I hereby certify that copies of the "NRC STAFF ANSWER TO SAN LUIS OBISPO MOTHERS FOR PEACE'S MOTION TO FILE NEW CONTENTIONS REGARDING THE ADEQUACY OF THE UPDATED ENVIRONMENTAL REPORT FOR DIABLO CANYON" have been served upon the Electronic Information Exchange, the NRC's E-Filing System, in the above captioned proceeding, this 1st day of May, 2015.

**/Signed (electronically) by/**

Joseph A. Lindell  
Counsel for the NRC Staff  
U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop O15-D21  
Washington, DC 20555  
Telephone: (301) 415-1474  
Email: [Joseph.Lindell@nrc.gov](mailto:Joseph.Lindell@nrc.gov)  
Date of Signature: May 1, 2015