

June 26, 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	Docket No. 50-275
PACIFIC GAS AND ELECTRIC)	Docket No. 50-323
COMPANY)	
)	
(Diablo Canyon Power Plant, Units 1 and 2))	

PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE
TO FOE'S SUPPLEMENTAL BRIEF

INTRODUCTION

In accordance with the Licensing Board Order of June 12, 2015, Pacific Gas and Electric Company ("PG&E") herein responds to the Friends of the Earth ("FOE") supplemental brief.¹ FOE broadly asserts that allowing continued operation in light of new seismic information — whether the Shoreline Fault Report, the Seismic Imaging Project Report, or the most recent seismic hazards re-evaluations — expands the operating authority granted in the licenses by augmenting or altering the plants' licensing basis. FOE is wrong. There is no *de facto* amendment on seismic issues at Diablo Canyon. None of the assessments relied upon by FOE has amended the operating licenses or expanded operating authority. The licenses and licensing basis have not changed. FOE is challenging compliance with the plants' current licensing basis, compliance with the procedures for controlling the licensing basis, and the adequacy of the current licensing basis for safe operation. These matters implicate NRC oversight functions and do not involve hearing rights — a critical distinction that FOE ignores. Accordingly, FOE's hearing request should be denied.

¹ "Petitioner Friends of the Earth's Supplemental Brief," dated June 19, 2015 ("FOE Brief").

BACKGROUND

On August 26, 2014, FOE filed a petition seeking a hearing on seismic issues related to Diablo Canyon.² The hearing request was based on information developed by PG&E beginning in 2008 related to the so-called Shoreline Fault and from subsequent PG&E reports on, and NRC Staff reviews of, that information. FOE argued that the NRC is conducting a *de facto* license amendment proceeding without offering a hearing. In CLI-15-14, the Commission referred to the Licensing Board the limited issue of “whether the NRC granted PG&E greater authority than that provided by its existing licenses or otherwise altered the terms of PG&E’s existing licenses, thereby entitling FOE to an opportunity to request a hearing pursuant to AEA section 189a.”³

PG&E filed an answer opposing FOE’s hearing request.⁴ In addition, PG&E filed a supplemental brief addressing the question of whether the NRC Staff “approved” Diablo Canyon Updated Final Safety Analysis Report (“UFSAR”) Revision 21 and whether it thereby granted PG&E greater operating authority or altered the terms of the operating licenses.⁵ As discussed there, the Staff did neither. This brief addresses only “new” matters raised in the FOE Brief.

DISCUSSION

A. FOE Misrepresents the Seismic Safety Evaluations for Diablo Canyon

PG&E has verified the seismic safety of Diablo Canyon through comprehensive seismic imaging studies that are unprecedented in the industry and using analytical methodologies that are state-of-the art. PG&E’s January 2011 Shoreline Fault Report and September 2014

² “Petition to Intervene and Request for Hearing by Friends of the Earth,” dated August 26, 2014.

³ *Pacific Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-15-14, 81 NRC ___, slip op. at 7 (May 21, 2015).

⁴ “Pacific Gas and Electric Company’s Answer to Friends of the Earth Hearing Request,” dated October 6, 2014 (“PG&E Answer”).

⁵ “Pacific Gas and Electric Company’s Supplemental Brief Regarding UFSAR Revision 21,” dated June 15, 2015 (“PG&E UFSAR Brief”).

Seismic Imaging Project Report show that deterministic response spectra (ground motions) for the Shoreline Fault and other regional faults remain bounded by the limiting licensing basis (1977) Hosgri earthquake spectra. Safety related equipment qualified to the Hosgri ground motions therefore remains qualified. The NRC Staff exercised its oversight responsibilities and independently confirmed the conclusions in the Shoreline Fault Report. The Staff's evaluation was summarized in the letter to PG&E dated October 12, 2012.⁶ FOE claims (at 2) that the Seismic Imaging Project Report indicates that reevaluated seismic hazards exceed the Hosgri evaluation. This assertion is contrary to the actual conclusions of the report.

FOE focuses on PG&E's March 2015 Seismic Hazard Report⁷ submitted in response to the NRC's post-Fukushima request under 10 C.F.R. § 50.54(f) for a probabilistic hazards screening evaluation. The evaluation was, by definition, a non-licensing basis evaluation of new seismic information. As requested, PG&E developed a new probabilistic Ground Motion Response Spectrum ("GMRS") for Diablo Canyon based on new information and using new methodologies (the very point of the evaluation). As also requested, PG&E compared the newly-developed GMRS to the original deterministic licensing basis Double Design Earthquake ("DDE") ground motions for the purposes of Screening and Risk Evaluation Prioritization. Because the GMRS exceeds the DDE response spectrum, Diablo Canyon (like other plants) "screens in" for further risk evaluation.⁸ Contrary to FOE's characterizations (at 3-4), the reevaluation is not an

⁶ NRC Letter to E.D. Halpin, "Diablo Canyon Power Plant, Unit Nos. 1 and 2 – NRC Review of Shoreline Fault (TAC Nos. ME5306 and ME5307)" (October 12, 2012). The NRC Staff concluded that "the existing design basis for the plant already is sufficient to withstand those ground motions."

⁷ PG&E Letter DCL-15-035, "Response to NRC Request for Information Pursuant to 10 CFR 50.54(f) Regarding the Seismic Aspects of Recommendation 2.1 of the Near-Term Task Force Review of Insights From the Fukushima Dai-Ichi Accident: Seismic Hazard and Screening Report," dated March 11, 2015 (ADAMS Accession No. ML15071A046).

⁸ The new GMRS is probabilistic while the licensing basis response spectra are deterministic. So, direct comparisons are not technically appropriate. But the comparison is being used for "screening" purposes only. As also previously addressed, the DDE is not the limiting licensing basis response spectra for Diablo Canyon.

“admission,” “retreat,” or an “about-face,” nor has it been “folded” into the licensing basis. The Seismic Hazards Report does not establish, as FOE suggests (at 5), that Diablo Canyon structures, systems, and components (“SSCs”) are in non-compliance with the licensing basis or the licenses. It is an evaluation of new information using a new, non-licensing basis method. Further evaluations will be completed under the 10 C.F.R. § 50.54(f) process to determine whether changes (*i.e.*, backfits) to the plant or the licensing basis will be required. Diablo Canyon SSCs remain qualified for the current licensing basis seismic events.⁹

FOE argues (at 3-4) that PG&E’s March 2015 Seismic Hazards Report “adopts” a new GMRS that the NRC Staff “endorsed” and that the NRC Staff thereby “expanded the outer bounds of Diablo Canyon’s seismic design basis effectively altering the terms of the plant’s licenses.” But this is false. The Staff has not altered the current licenses. There have been no license amendments or approvals that expand PG&E’s operating authority. As with other plants that have “screened in” for further evaluation under Section 50.54(f), the NRC oversight process is continuing. A decision not to impose changes to the Diablo Canyon license at this time is not itself a change to the license, either affirmatively or by default. Allowing continued operation under the current license also is not a licensing decision that confers new authority. The need for changes to the license and licensing bases will be determined in the future when the evaluations are completed. Any assertion by FOE that there will be a license change is pure speculation. If FOE seeks additional actions in the interim, the matter must be pursued under 10 C.F.R. § 2.206.

The March 2015 report includes an assessment of the safety of plant operations, based on the functionality of safety related equipment given the current seismic design. PG&E

⁹ NRC regulations do not require routine updates of the seismic design, although PG&E has continuously evaluated new geosciences information and methodologies under its Long Term Seismic Program. The seismic design and licensing bases are fixed at initial licensing.

compared the new probabilistic (and non-licensing basis) GMRS to the design and licensing basis 1977 Hosgri earthquake spectrum and to the results of the Long Term Seismic Program (“LTSP”) seismic margins assessment. These comparisons demonstrate that, based on conservatism in the deterministic licensing basis seismic design and qualification, there is reasonable assurance that the SSCs required for safe shutdown will continue to perform their intended safety function if subjected to the ground motions at the newly-developed probabilistic GMRS levels.¹⁰ As discussed below, continued operation under the current seismic licensing basis does not involve a *de facto* license amendment.

B. FOE Seriously Misconstrues the Regulatory Processes and *De Facto* Amendments

Section 189.a of the Atomic Energy Act (“AEA”) requires a hearing opportunity only for certain actions — specifically, “the granting, suspending, revoking or amending of any license.” The Commission has recognized that some agency actions not formally labeled as license amendments can constitute *de facto* license amendments and accordingly trigger hearing rights.¹¹ However, for there to be a *de facto* amendment, there must be an agency licensing approval. And the approval must grant greater authority or modify the terms of the license. None of that has happened with respect to Diablo Canyon seismic issues.

Throughout its brief, FOE ignores the fact that Diablo Canyon SSCs comply with the current licensing basis. Even more glaringly, FOE misleadingly equates the “licensing basis” to the Diablo Canyon “license.” By conflating the two, FOE suggests that any perceived change to or non-compliance with the “licensing basis” becomes a change to the “license” that triggers

¹⁰ PG&E does not claim, nor need it claim, that the LTSP margins analysis is, as FOE suggests (at 4), a GMRS or a deterministic licensing basis evaluation. PG&E shows that because of margin in the original licensing basis, safety equipment will perform its safety function for new earthquake scenarios. FOE’s arguments (at 4) about reduction in margins are irrelevant to a functionality assessment.

¹¹ See, e.g., *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 326 (1996).

hearing rights. However, the licensing basis is not the license. The license is a specific set of authorities and conditions, including Technical Specifications, controlled by the license amendment process and subject to hearing rights. As the Commission has emphasized, “[a] licensee cannot amend the terms of its license unilaterally; it must request and obtain agency approval.”¹² The licensing basis is a broader, less rigid set that includes the UFSAR, regulatory acceptance criteria, and regulatory correspondence.¹³ The licensing basis is subject to regulatory control and reporting processes such as 10 C.F.R. § 50.59, 10 C.F.R. § 50.71(e), and 10 C.F.R. §§ 50.72 and 50.73. Some licensing basis changes require amendments under the regulations; others do not.

Throughout its brief, FOE also misleadingly suggests (indeed, simply presumes) that any alleged non-compliance (whether with the licensing basis or the license itself), any alleged failure to follow a regulatory control process such as 10 C.F.R. § 50.59, or any alleged inadequacy in the licensing basis would be an “expansion” of operating authority. Even if these circumstances were present (they are not), the FOE premise is simply wrong. The license authority is as specified in the license. The regulatory functions of assuring compliance, assuring corrective actions in cases of degraded or non-conforming conditions to restore compliance, or assessing the adequacy of the licensing basis itself (and safety in the interim) are all oversight functions and not licensing actions. The Commission has recently emphasized the “distinction between [the] agency’s hearing and its oversight processes.”¹⁴ The latter does not involve hearing rights — even if the Staff

¹² *Omaha Public Power Dist.* (Fort Calhoun Station, Unit 1), CLI-15-5, 81 NRC ___, slip op. at 7 (Mar. 9, 2015), citing *Fla. Power & Light Co.* (St. Lucie Plant, Unit 2), CLI-14-11, 80 NRC ___, slip op. at 8 (Dec. 19, 2014).

¹³ *See, e.g.*, 10 C.F.R. § 54.3(a).

¹⁴ *Fort Calhoun*, CLI-15-5, 81 NRC at ___, slip op. at 7-9. The hearing process relates to agency *licensing* actions that confer hearing rights under Section 189.a. Oversight activities relate to compliance with the existing license and regulations, and do not involve hearing rights (at least absent an enforcement order).

agrees or accepts a licensee's compliance or safety position. It is the type of agency decision that matters, not the mere act of agreement. Where a stakeholder disagrees and seeks enforcement — whether in the form of sanctions, an order compelling actions, or actions to apply Section 50.59 to a change — the exclusive remedy is through 10 C.F.R. § 2.206.¹⁵

FOE's overly-expansive concept of *de facto* license amendments would drastically change the NRC's processes. Under FOE's approach, any NRC Staff oversight decision (whether by action or by inaction) would become subject to a hearing opportunity as a putative "expansion" of operating authority. Similarly, by FOE's lights any licensing basis change implemented by a licensee under Section 50.59 would be subject to a hearing opportunity on whether an amendment was necessary. Enforcement functions clearly delegated to the Staff would become subject to the hearing process and licensing board review. The intent of Section 50.59 to allow certain changes without license amendments would be negated, and Section 2.206 would be unnecessary. But, this is not the NRC regulatory framework. FOE's reading is neither consistent with nor compelled by the AEA, the Commission's decision in *Perry*, or any other Commission or judicial decision.

C. The NRC Staff May 13, 2015 Letter Did Not Modify the License

FOE argues (at 6) that the NRC Staff's letter of May 13, 2015,¹⁶ "enlarged the terms of Diablo Canyon's license by augmenting the design basis to include new seismic data — a ground motion response spectra that otherwise exceeded the design basis." This is a mischaracterization of the NRC Staff letter. The letter does not "enlarge" or otherwise change the

¹⁵ *Id.* at 11. This specifically includes a challenge to a Section 50.59 evaluation. *See also First Energy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), LBP-13-11, 78 NRC __ (Aug. 12, 2013).

¹⁶ "Screening and Prioritization Results for the Western United States Sites Regarding Information Pursuant to Title 10 of the *Code of Federal Regulations* 50.54(f) Regarding Seismic Hazards Re-Evaluations for Recommendation 2.1 of the Near-Term Task Force Review of Insights from the Fukushima Dai-Ichi Accident," dated May 13, 2015 (ADAMS Accession No. ML15113B344) ("May 13 NRC Letter"). The letter concludes that, based on interim evaluations and actions, Diablo Canyon is "safe for continued operations."

licenses. The letter is an assessment made as part of the ongoing Section 50.54(f) oversight process to determine whether additional regulatory action should be required. The letter certainly does not, as FOE contends (at 7), augment the “plain terms of the licenses’ seismic design basis to include the extra design basis response spectrum.” The Staff letter does not approve any licensing or design basis changes. The Diablo Canyon operating licenses, and the licensing basis seismic evaluations, remain unchanged. And even if the licensing basis did change, that is not a license amendment.¹⁷ FOE’s attempts (at 6) to distinguish *Fort Calhoun* and *St. Lucie* are unavailing. FOE claims that the present case, unlike those cases, involves a present Staff action that grants new authority. But in pointing to the Staff’s May 13, 2015 letter, FOE misses the key distinction made by the Commission in those cases — the distinction between NRC licensing actions (with hearings) and oversight activities (no hearings).

FOE contends that the distinction between oversight and licensing has been rejected in *Citizens Awareness Network*.¹⁸ In that case, the Commission issued specific decisions responding to the licensee’s request for permission to proceed with an “early component removal project.” The Court found that, by explicit policy change (not inaction), the Commission affirmatively approved the licensee’s request to conduct major decommissioning activities ahead of approval of a decommissioning plan required by regulation at the time. The Court remanded the matter for NRC to complete the required approval process. This decision does not mean that the NRC must provide a hearing opportunity every time a party alleges that there has been, or should be, an NRC approval in the form of a license amendment. Nor does the case stand for the proposition that petitioners who believe a license amendment is necessary can sidestep the

¹⁷ For example, licensees are permitted to make certain licensing basis changes through the Section 50.59 process without prior NRC approval. But if, as FOE appears to be suggesting, all licensing basis changes require NRC approval (and a hearing opportunity), the Section 50.59 process would have no purpose.

¹⁸ FOE Brief at 8, citing *Citizens Awareness Network, Inc. v. NRC*, 59 F.3d 284, 288 (1st Cir. 1995).

appropriate process (10 C.F.R. §2.206) for asserting that position at the agency level.¹⁹ Unlike *Citizens Awareness Network*, there has been no request by PG&E to conduct an activity not previously authorized; nor has there been an NRC approval for a new activity for which approval is required. FOE's unhappiness with the oversight process does not create a hearing right.

D. The Staff's October 2012 Letter and Related UFSAR Revision Were Not NRC Approvals

FOE next contends that the NRC Staff's letter of October 12, 2012, was a "directive to modify" the UFSAR to include the Shoreline Fault in the UFSAR as a "lesser included case;" that the letter "enlarged PG&E's operating authority by directing the licensee to make the changes and then approving them;" and that the subsequent UFSAR Revision 21 changes "*de facto* amend the licenses."²⁰ This argument clearly exceeds the Board's allowance of a supplemental brief to address only events after August 26, 2014. And PG&E has already demonstrated that UFSAR revisions, including Revision 21, are not "approved" by the NRC under the regulations.²¹ The NRC Staff's October 2012 letter and PG&E's UFSAR Revision 21 did not change the design basis of the plant, nor did they amend the licenses.²²

As evidence of a purported "approval," FOE points to an internal PG&E document prepared in connection with PG&E procedures controlling UFSAR revisions — the UFSAR "Change Request" form for Revision 21.²³ The PG&E procedure and the particular form for Revision 21 were addressed in a Declaration of Thomas R. Baldwin filed in the Court of Appeals for the D.C. Circuit (attached hereto as Exhibit 1) in connection with FOE's petition for review of

¹⁹ The petitioner in that case filed a petition under 10 C.F.R. § 2.206. *Id.* at 289.

²⁰ FOE Brief at 9.

²¹ *See* PG&E UFSAR Brief at 5-10.

²² FOE contends (at 11) that UFSAR Revision 21 added the Hosgri earthquake evaluation and the LTSP evaluation. This is simply not true. Those evaluations were discussed in prior UFSAR revisions.

²³ FOE Brief at 7, n.29, and 17-18.

UFSAR 21. FOE chooses to ignore it. As explained to the Court by Mr. Baldwin, the Change Request form was not submitted to the NRC in connection with Revision 21; PG&E did not request NRC approval of Revision 21; and there was no change to the plant or procedures requiring a license amendment. Regardless of any characterization of the regulatory correspondence made on the form by a PG&E internal reviewer, there was no licensing process in connection with the UFSAR revision. If FOE disagrees with PG&E's conclusion regarding the need for a license amendment or other approval for the revision — or with the Staff's acceptance of that conclusion — its remedy is through 10 C.F.R. § 2.206.²⁴

FOE next asserts (at 12) that the NRC Staff (presumably through the October 2012 letter, but this is not stated) has “excused” PG&E from meeting the terms of General Design Criterion 2. FOE asserts that the “Shoreline evaluation must . . . be compared against the seismic qualification of critical SSCs calculated for the DDE scenario, not against the Hosgri.” FOE invokes differences in the methods, assumptions, inputs, load combinations, and acceptance criteria between the DDE and Hosgri evaluations. PG&E has addressed this issue previously.²⁵ FOE is reprising issues addressed by NRC Staff management in connection with a Differing Professional Opinion (“DPO”) lodged by Michael Peck. Without engaging the technical merits, this issue does not involve an expansion of operating authority or a change to the licenses. The October 2012 letter and the Staff's evaluation of the Shoreline Fault are oversight activities. They did not grant any approval to conduct any new activity and they did not amend the licenses.²⁶

²⁴ FOE also cites (at 7, n.30) the NRC's internal document, the “Bamford Memo.” This document is discussed in the PG&E UFSAR Brief (at 8-9).

²⁵ PG&E Answer at 5-6.

²⁶ Even assuming the NRC Staff “excused” PG&E from something, that would be an example of oversight or enforcement discretion rather than a licensing approval. And the NRC's process for resolving DPOs does not involve hearing rights (much less, third-party hearing rights).

FOE asserts (at 14-15) that the NRC Staff has allowed (presumably in UFSAR Revision 21; the October 2012 letter again is not cited here) different methods for calculating ground motions — and that this constitutes a license amendment. Relying on Dr. Blakeslee’s statements made in another forum (at 16-17), FOE complains that PG&E used new methodologies to show reduced ground motions. But the very point of PG&E’s non-licensing basis evaluations was to use new methodologies. (There is no requirement to use old methods and data.) Because of advances in the data and models, these evaluations have confirmed the conservatism of the licensing basis.²⁷ These methodologies are not being incorporated into the licensing basis or being used to change the licensing basis (*e.g.*, to decrease the ground motions). FOE’s arguments also presume that ground motion prediction equations (“GMPEs”) are part of the licensing basis. They are not. The seismic design and licensing bases are defined by a set of response spectra that are used to qualify safety related equipment. And, even if the GMPEs were part of the licensing basis, there is a difference between the licensing basis and the license. Licensing basis methodologies can be changed under 10 C.F.R. § 50.59, with or without NRC approval as appropriate. FOE’s argument is with Section 50.59 *compliance*. That is a matter for 10 C.F.R. § 2.206.

E. The NRC Inspection Report Did Not Amend the Diablo Canyon Licenses

In its search for an NRC action granting expanded operating authority, FOE turns (at 18-20) to the NRC Staff’s December 2014 inspection report assessing PG&E’s seismic operability determination after the issuance of the September 2014 Seismic Imaging Project Report. On its face, the Staff document is a “baseline inspection report.” It is not a license amendment or a specific approval. The report addresses PG&E’s basis for continued safe

²⁷ FOE argues (at 17) that revised ground motion prediction equations produce “a drastic revision of the projected risks” and that this “in effect grants PG&E greater authority.” Neither increased nor decreased risk is the same as increased operating authority.

operation given new seismic information.²⁸ It summarizes the NRC Staff's evaluation of potential ground motions utilizing a "more conservative" ergodic approach. The Staff concludes that "past evaluations of the Hosgri spectrum indicate considerable design margin for functionality of SSCs, and satisfies the provisions for operability as described in NRC Inspection Manual Chapter 0326."²⁹

As recognized by FOE (at 19), the inspection report accepted PG&E's determination. An operability determination is neither a licensing basis change nor a license amendment. And, an inspection report does not excuse non-compliance with the license, endorse a change in licensing bases methodology, or grant greater operating authority.³⁰ The inspection report in this case does not even identify any findings or violations. At bottom, an inspection report documents an oversight function.³¹ Inspection reports, whether finding violations or not, do not trigger hearing rights under the AEA. FOE's disagreements with inspection findings must be pursued through the 10 C.F.R. § 2.206 process.

CONCLUSION

For the foregoing reasons, FOE's Hearing Request should be denied.

²⁸ PG&E does not concede that evaluations of new seismic information need to be addressed in the operability process. They are being addressed in the Section 50.54(f) process. In any event, FOE (at 19) alleges problems with the spectrum utilized by PG&E. Suffice it to say, PG&E adopted its approach based on the technical merits. The selection was not "arbitrary."

²⁹ Inspection Report 050000275/2014008 and 05000323/2014008, December 15, 2014, Enclosure at 5 (ADAMS Accession No. ML14349A485).

³⁰ See Inspection Manual Chapter 0326 at 0326-07 ("Corrective Action"). A change to the facility, procedures, or licensing basis may be necessary to restore compliance. Appropriate regulatory processes would apply.

³¹ See *Fort Calhoun*, CLI-15-5, 81 NRC at ___, slip op. at 7-9 (recognizing the "distinction between [the] agency's hearing and oversight processes"). Contrary to FOE's incantation of *Citizens Awareness Network* (FOE Brief at 20, n.85), it is precisely the effect of the inspection report, not its label, that is relevant.

Respectfully submitted,

/s/ signed electronically by

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

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COUNSEL FOR THE PACIFIC GAS
AND ELECTRIC COMPANY

Dated at Washington, District of Columbia
this 26th day of June 2015

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	Docket No. 50-275
PACIFIC GAS AND ELECTRIC)	Docket No. 50-323
COMPANY)	
)	
(Diablo Canyon Power Plant, Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that "PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO FOE's SUPPLEMENTAL BRIEF" in the captioned proceeding has been filed and served via the Electronic Information Exchange ("EIE") this 26th day of June 2015.

Respectfully submitted,

/s/ signed electronically by
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COUNSEL FOR THE PACIFIC GAS
AND ELECTRIC COMPANY

Dated at Washington, District of Columbia
this 26th day of June 2015

EXHIBIT 1

DECLARATION OF THOMAS R. BALDWIN

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT

No. 14-1213

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FRIENDS OF THE EARTH

Petitioner,

v.

UNITED STATES NUCLEAR
REGULATORY COMMISSION
and the UNITED STATES OF AMERICA,

Respondents,

No. 14-1213

PACIFIC GAS AND ELECTRIC COMPANY,

Intervenor

DECLARATION OF THOMAS R. BALDWIN

Thomas R. Baldwin states as follows under penalty of perjury:

1. I am currently the Director, Site Services, employed by Pacific Gas and Electric Company ("PG&E") at the Diablo Canyon Power Plant ("Diablo Canyon") located near San Luis Obispo, California.

2. I received a BS in Mechanical Engineering from the University of Colorado, Boulder in 1984. I was granted a Senior Reactor Operator License for Diablo Canyon, Units 1 and 2, in 2000. (I have since retired my Senior Reactor Operator License.) I have over 29 years of experience in the commercial nuclear power industry and have been a registered Professional Engineer in California since 1988.
3. I have been employed by PG&E for Diablo Canyon duties since 1986. From November 1, 2009 to November 30, 2014, I was the Manager, Regulatory Services at Diablo Canyon, responsible for managing regulatory licensing and compliance issues arising under the regulations of the Nuclear Regulatory Commission ("NRC").
4. As the Manager, Regulatory Services, one of my responsibilities was the overall implementation of the program for maintaining and revising the Diablo Canyon Updated Final Safety Analysis Report ("UFSAR"). The UFSAR is a document maintained by the licensee in accordance with NRC regulations, 10 C.F.R. § 50.71(e). The UFSAR is a summary of the current NRC licensing basis of the plant. The licensing basis encompasses a range of documents, including the NRC operating license and licensing correspondence, as defined in 10 C.F.R. § 54.3(a).

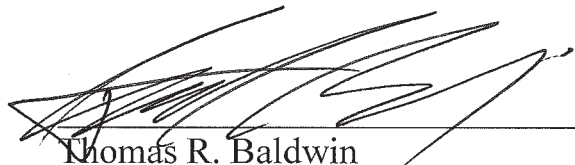
5. Under 10 C.F.R. § 50.71(e), licensees must report revisions to the UFSAR every two years. Revisions must address new information and analyses developed during the reporting period, license amendments approved by the NRC during the reporting period, and changes to the plant and procedures during that time that were within the scope of the UFSAR that were made without the need for NRC approval (in accordance with 10 C.F.R. § 50.59). In accordance with Section 50.71(e), a revision is submitted to the NRC but is not formally “approved” by the NRC.
6. PG&E controls the Diablo Canyon UFSAR under an Interdepartmental Administrative Procedure, XI3.ID2. Revision 15 of that procedure was in effect in September 2013, when Revision 21 of the UFSAR was submitted to the NRC. The procedure defines the internal reviews and approvals required from PG&E personnel for revisions to the UFSAR — including reviews of proposed revisions by a section owner, the Quality Verification director, and appropriate managers. The procedure also establishes the internal documentation required for the revisions and the internal review process.
7. The procedure includes a form (XI3.ID2, Attachment 4) for the “UFSAR Change Request.” The Change Request is used within PG&E to initiate and document the internal review and approval of all changes to the UFSAR, and to track incorporation of changes into the controlled document. A “Change

Request” is not submitted to the NRC with the revised UFSAR. The completed internal Change Request document is maintained with plant records and is available for NRC inspector review.

8. Revision 21 of the Diablo Canyon UFSAR was submitted on the NRC docket for the Diablo Canyon operating licenses on September 16, 2013. As described in the docketed correspondence, Revision 21 was submitted in electronic document format on a CD. The revised UFSAR included appropriate change indications in accordance with 10 C.F.R. § 50.71(e)(1) and (5), but was not a “redline” version of the report. The revision submitted to the NRC did not include PG&E’s internal review documents.
9. The document submitted to the Court by Friends of the Earth as Exhibit 1 to its Motion to Supplement the Certified Index of the Record is the PG&E Change Request for Section 2.5 of Revision 21 of the UFSAR, addressing Geology and Seismology issues. The Change Request is a completed form (XI3.ID2, Attachment 4) from the PG&E procedure, with a “redline” version of the sections being revised. The completed document is from PG&E’s internal records and was not submitted on the NRC licensing docket. It was available for NRC inspector review. PG&E did not “request” NRC approval of Revision 21.

10. Revision 21, Section 2.5, incorporated new information related to the Shoreline Fault that had been developed in the reporting period. In NRC correspondence to PG&E dated October 12, 2012, related to Shoreline Fault evaluations, NRC stated that that the Shoreline Fault should be considered a lesser included case under the previous Hosgri Fault earthquake evaluation, and PG&E should update the UFSAR as appropriate to include the Shoreline Fault scenario in accordance with the requirements of 10 C.F.R. § 50.71(e). In the internal Change Request documentation, PG&E concluded that the addition of that information to the UFSAR did not change the seismic design or licensing basis for Diablo Canyon and did not require NRC approval.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'Tom Baldwin', is written over a horizontal line.

Thomas R. Baldwin
Director, Site Services
Pacific Gas and Electric Company
Diablo Canyon Power Plant
Phone: (805) 545-4720

Date: April 8, 2015