

July 31, 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

PACIFIC GAS AND ELECTRIC COMPANY'S  
MOTION FOR SUMMARY DISPOSITION ON CONTENTION EC-1

INTRODUCTION

Pursuant to 10 C.F.R. § 2.1205 and Section II.I.2 of the Second Revised Scheduling Order, dated May 26, 2014,<sup>1</sup> Pacific Gas and Electric Company ("PG&E") files this motion for summary disposition of Contention EC-1.<sup>2</sup> Contention EC-1 is a contention of omission alleging that PG&E failed to address the Shoreline Fault in the Severe Accident Mitigation Alternatives ("SAMA") analysis submitted as part of the Diablo Canyon License Renewal Application ("LRA"). Summary disposition is warranted because the omission averred in the contention has been cured, and there exists no genuine issue as to any material fact relevant to the contention.

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<sup>1</sup> The Second Revised Scheduling Order authorizes dispositive motions within 30 days of the occurrence or circumstance from which the motion arises. The motion for summary disposition is being filed within 30 days of July 1, 2015, which was the submittal date for the most recent update to PG&E's SAMA analysis. The ultimate deadlines in Section II.I.5 of the Scheduling Order are "in addition to, not in lieu of," the 30-day deadline in Section II.I.2. Regardless, there is no practical reason to delay filing of the motion now that the contention is moot.

<sup>2</sup> Counsel for PG&E certifies that it has contacted counsel for the NRC Staff and SLOMFP in a sincere effort to resolve the issues raised in the motion. Counsel for the NRC Staff indicated that they do not object to the filing of the motion, while counsel for SLOMFP indicated that it does not take a position at this time and will respond in due course.

PG&E has revised the Probabilistic Risk Assessment (“PRA”) model used in the SAMA analysis to incorporate probabilistic seismic hazard curves that include the Shoreline Fault and has submitted updated SAMA analyses to the NRC. PG&E therefore is entitled to a decision as a matter of law. This motion is supported by a Statement of Material Facts as to which there is no genuine dispute and the affidavit of Jearl Strickland for PG&E.

#### APPLICABLE LEGAL STANDARDS

Under 10 C.F.R. § 2.1205, a party is entitled to summary disposition as to all or any part of the matters involved in the proceeding if the record shows that “there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.”<sup>3</sup> According to the Commission, “[w]here a contention alleges the omission of particular information or an issue from an application, and the information is later supplied by the applicant or considered by the Staff in a draft EIS, the contention is moot.”<sup>4</sup> Summary disposition is appropriate for a contention that is moot.<sup>5</sup> Once an applicant has provided the omitted information, an intervenor must submit a new or amended contention if it intends to challenge the adequacy of any information provided by the applicant.<sup>6</sup>

#### THE BOARD SHOULD GRANT PG&E’S MOTION FOR SUMMARY DISPOSITION ON CONTENTION EC-1

The basis for the motion is straightforward. For Contention EC-1, there no longer exists a genuine dispute concerning any facts material to the admitted contention because PG&E

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<sup>3</sup> See also 10 C.F.R. § 2.710(d)(2).

<sup>4</sup> *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 1), CLI-02-28, 56 NRC 373, 383 (2002).

<sup>5</sup> *Exelon Generation Company* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 182 (2005).

<sup>6</sup> *Diablo Canyon*, CLI-11-11, 74 NRC 427, 443 n.92.

has revised the SAMA Report to address the specific alleged omission. Since the contention was admitted, PG&E has included the Shoreline fault in the Diablo Canyon PRA model and updated the SAMA analysis in the ER. As a result, the omission in the SAMA evaluation has been cured.

Contention EC-1 alleges that PG&E's SAMA analysis fails to consider information regarding the Shoreline Fault. SLOMFP acknowledged in its hearing request that the Shoreline Fault was mentioned in PG&E's Environmental Report ("ER") but maintained that "information sufficient to conduct a probabilistic analysis of the risks posed by the Shoreline Fault is 'essential' to the SAMA, and must be included unless the cost is exorbitant."<sup>7</sup> SLOMFP argued that PG&E's SAMA analysis was incomplete because it did not include the Shoreline Fault or justify omitting such information. In LBP-10-15, the Board admitted Contention EC-1 "on the basis that there is an asserted omission."<sup>8</sup> The Board concluded that there was "an omission of consideration of the effects of the Shoreline fault and the cost/benefit analyses changes which that consideration might engender from the SAMA analyses."<sup>9</sup>

On February 25, 2015, PG&E submitted an update to certain sections of the license renewal ER.<sup>10</sup> The updated ER included an updated SAMA analysis based on PG&E's 2014

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<sup>7</sup> "Request for Hearing and Petition to Intervene by San Luis Obispo Mothers for Peace," dated March 22, 2010, at 14 ("Petition").

<sup>8</sup> LBP-10-15, 72 NRC 257, 290 (2010).

<sup>9</sup> *Id.*

<sup>10</sup> See PG&E Letter DCL-15-027, Enclosure 2, "Update to the Diablo Canyon Power Plant License Renewal Application," dated February 25, 2015 (ADAMS Accession Nos. ML15056A741 and ML15056A755). The ER is Appendix E to the license renewal application. The updated SAMA analysis is Attachment F to the ER. Attachment F will be referred to herein as the "February 2015 SAMA Report."

Diablo Canyon PRA.<sup>11</sup> The 2014 PRA model incorporated probabilistic seismic hazard curves that include the Shoreline Fault, as well as updated hazard curves for other regional faults. The revised seismic hazard curves were based on the most recent probabilistic hazard analyses available at the time — developed as part of PG&E’s 2011 Shoreline Fault Report.<sup>12</sup>

In parallel to revising the SAMA Report, PG&E was preparing updated seismic information in order to respond to the NRC’s letter, issued under 10 C.F.R. § 50.54(f), requesting information in accordance with Fukushima Near-Term Task Force Recommendation 2.1.<sup>13</sup> PG&E submitted its probabilistic seismic hazard evaluation and prioritization screening report on March 11, 2015.<sup>14</sup> As noted in the February 2015 SAMA Report, the Seismic Hazard Report was not yet complete in February 2015 when the SAMA update was submitted, nor had this information been incorporated into the Diablo Canyon PRA model. PG&E committed to a further evaluation of the effect of the 2015 seismic hazard results on the SAMA analysis by June 2015.

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<sup>11</sup> See February 2015 SAMA Report at F-33 - F-35. The updated SAMA also incorporated more recent population, economic, and evacuation information.

<sup>12</sup> *Id.*; see also “Report on the Analysis of the Shoreline Fault Zone, Central Coastal California: Report to the U.S. Nuclear Regulatory Commission” (January 2011) (ADAMS Accession No. ML110140431).

<sup>13</sup> NRC Letter to All Power Reactor Licensees and Holders of Construction Permits in Active or Deferred Status, “Request for Information Pursuant to Title 10 of the Code of Federal Regulations 50.54(f) Regarding Recommendations 2.1, 2.3, and 9.3, of the Near-Term Task Force Review of Insights for the Fukushima Dai-Ichi Accident,” dated March 12, 2012 (ADAMS Accession No. ML12053A340).

<sup>14</sup> PG&E Letter DCL-15-035, “Response to NRC Request for Information Pursuant to 10 CFR 50.5(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) (“Seismic Hazard Report”).

On July 1, 2015, PG&E submitted an evaluation of the March 2015 Diablo Canyon seismic hazard update on the February 2015 SAMA Report.<sup>15</sup> The letter notes that information from the March 11, 2015 Seismic Hazard Report has been incorporated into the Diablo Canyon PRA model in order to evaluate the impact of the updated seismic hazard information on the Diablo Canyon SAMA analysis. The evaluation concludes that, while the use of the updated seismic hazard probabilistic risk assessment model does have a small impact on the maximum averted cost-risk and the averted cost-risk results, it does not change the conclusions of the SAMA analysis.

Because the alleged omission in the application has been cured by the updates to the SAMA evaluation and ER, Contention EC-1, as admitted by the Licensing Board, is now moot. There remains no genuine issue as to any material fact relevant to the admitted contention. Accordingly, PG&E is entitled to a decision as a matter of law.

#### CONCLUSION

For the above reasons, the Licensing Board should grant summary disposition of Contention EC-1.

Respectfully submitted,

/s/ signed electronically by  
David A. Repka  
Tyson R. Smith  
Winston & Strawn LLP  
1700 K Street, NW  
Washington, DC 20006

Executed in accord with 10 C.F.R. 2.304(d)  
Jennifer Post  
Pacific Gas and Electric Company

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<sup>15</sup> PG&E Letter DCL-15-080, Enclosure, "Evaluation of the March 2010 Seismic Hazard Update on the February 2015 Severe Accident Mitigation Alternatives Analysis," dated July 1, 2015 (ADAMS ML15182A452).

77 Beale St., B30A  
San Francisco, CA 94105

COUNSEL FOR THE PACIFIC GAS  
AND ELECTRIC COMPANY

Dated at Washington, District of Columbia  
this 31st day of July 2015

July 31, 2015

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

STATEMENT OF MATERIAL FACTS  
ON WHICH NO GENUINE DISPUTE EXISTS

Pacific Gas and Electric Company ("PG&E") submits, in support of its motion for summary disposition of Contention EC-1, this statement of material facts as to which PG&E contends there is no genuine issue to be heard.

1. On November 23, 2009, PG&E filed the license renewal application for Diablo Canyon. The application included an Environmental Report ("ER"). A Severe Accident Mitigation Alternatives ("SAMA") analysis was included as Attachment F to the ER.
2. On March 22, 2010, San Luis Obispo Mothers for Peace ("SLOMFP") filed its petition challenging the license renewal application. The Petition contained five proposed contentions: one safety contention (TC-1) and four environmental contentions (EC-1 through EC-4).
3. In its Memorandum and Order, dated August 4, 2010, the Licensing Board admitted Contention EC-1 as an environmental "contention of omission." In admitting Contention EC-1, the Board concluded that there was "an omission of consideration of the effects of the Shoreline fault and the cost/benefit analyses changes which that consideration might engender from the SAMA analyses."<sup>1</sup>
4. On February 25, 2015, PG&E submitted an update to certain sections of the ER.<sup>2</sup> The updated ER included an updated SAMA analysis in Attachment F based on PG&E's 2014 Diablo Canyon Probabilistic Risk Assessment ("PRA") model.

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<sup>1</sup> LBP-10-15, 72 NRC 257, 290 (2010).

<sup>2</sup> See PG&E Letter DCL-15-027, Enclosure 2, "Update to the Diablo Canyon Power Plant License Renewal Application," dated February 25, 2015 (ADAMS Accession Nos. ML15056A741 and ML15056A755).

5. The 2014 PRA model incorporated probabilistic seismic hazard curves that include the Shoreline Fault, as well as updated hazard curves for other regional faults. The revised seismic hazard curves were based on the most recent probabilistic hazard analyses available at the time — developed as part of PG&E’s 2011 Shoreline Fault Report.<sup>3</sup>
6. In response to the NRC’s letter, issued under 10 C.F.R. § 50.54(f), requesting information regarding Fukushima Near-Term Task Force Recommendation 2.1, PG&E submitted its probabilistic seismic hazard evaluation and prioritization screening report on March 11, 2015.<sup>4</sup> PG&E committed to a further evaluation of the effect of the 2015 seismic hazard results on the SAMA analysis by June 2015.
7. On July 1, 2015, PG&E submitted an evaluation of the March 2015 Diablo Canyon seismic hazard update on the February 2015 SAMA Report.<sup>5</sup> The letter notes that seismic hazard curves from the March 11, 2015 seismic hazard report have been incorporated into the Diablo Canyon PRA model and assessed as part of the July 1, 2015 SAMA update.

/s/ signed electronically by

Tyson R. Smith  
Winston & Strawn LLP  
1700 K Street, NW  
Washington, DC 20006

COUNSEL FOR THE PACIFIC  
GAS AND ELECTRIC COMPANY

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<sup>3</sup> “Report on the Analysis of the Shoreline Fault Zone, Central Coastal California: Report to the U.S. Nuclear Regulatory Commission” (January 2011) (ADAMS Accession No. ML110140431).

<sup>4</sup> PG&E Letter DCL-15-035, “Response to NRC Request for Information Pursuant to 10 CFR 50.5(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).

<sup>5</sup> PG&E Letter DCL-15-080, Enclosure, “Evaluation of the March 2010 Seismic Hazard Update on the February 2015 Severe Accident Mitigation Alternatives Analysis,” dated July 1, 2015 (ADAMS Accession No. ML15182A452).



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AFFIDAVIT OF L. JEARL STRICKLAND IN  
SUPPORT OF SUMMARY DISPOSITION OF CONTENTION EC-1

I, L. Jearl Strickland, do hereby state as follows:

1. I am employed by Pacific Gas and Electric Company ("PG&E") as Director, Technical Services. In my current position I have overall responsibility for the license renewal application for Diablo Canyon. I provided input to and have reviewed the motion for summary disposition, and I affirm its accuracy.

2. Subsequent to its initial license renewal application, PG&E submitted, on February 25, 2015, an update to certain sections of the license renewal application's Environmental Report ("ER"). The updated ER included an updated SAMA analysis based on PG&E's 2014 Diablo Canyon Probabilistic Risk Assessment ("PRA") model.

3. The 2014 PRA model incorporated probabilistic seismic hazard curves that include the Shoreline Fault, as well as updated hazard curves for other regional faults. The revised seismic hazard curves were based on the most recent probabilistic hazard analyses available at the time — developed as part of PG&E's 2011 Shoreline Fault Report.

4. In response to the NRC's letter, issued under 10 C.F.R. § 50.54(f), requesting information regarding Fukushima Near-Term Task Force Recommendation 2.1, PG&E submitted its probabilistic seismic hazard evaluation and prioritization screening report on March

11, 2015 (“Seismic Hazard Report”). PG&E committed to a further evaluation of the effect of the 2015 seismic hazard results on the SAMA analysis by June 2015.

5. On July 1, 2015, PG&E submitted an evaluation of the March 2015 Seismic Hazard Report on the February 2015 SAMA Report. Seismic hazard curves based on the March 11, 2015 Seismic Hazard Report have been incorporated into the Diablo Canyon PRA model and assessed as part of the July 2015 SAMA update.

6. I hereby certify under penalty of perjury that the foregoing is true and complete to the best of my knowledge, information, and belief.

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

/s/ L. Jearl Strickland  
L. Jearl Strickland  
Director, Technical Services  
Pacific Gas & Electric Company  
Diablo Canyon Power Plant  
735 Tank Farm Road, Suite 200  
San Luis Obispo, California 93401

Dated at San Luis Obispo, California  
this 31st day of July 2015

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(Diablo Canyon Power Plant, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of “PACIFIC GAS AND ELECTRIC COMPANY’S MOTION FOR SUMMARY DISPOSITION ON CONTENTION EC-1” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 31st day of July 2015, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

Respectfully submitted,

/s/ signed electronically by  
Tyson R. Smith  
Winston & Strawn LLP  
1700 K Street, NW  
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COUNSEL FOR THE PACIFIC GAS  
AND ELECTRIC COMPANY