

August 13, 2015

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

INTRODUCTION

Pursuant to 10 C.F.R. § 2.1205 and the Atomic Safety and Licensing Board's (Board) revised scheduling order,¹ the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby files its answer supporting Pacific Gas and Electric Company's (PG&E) Motion for Summary Disposition on Contention EC-1 (Motion).² For the reasons set forth below, the Staff submits that the issues raised by this contention have been resolved. Therefore, the Staff supports PG&E's Motion and recommends that Contention EC-1 be dismissed as moot.

BACKGROUND

I. SLOMPF's Initial Petition and Admission of EC-1

This proceeding concerns PG&E's November 23, 2009 application to renew its operating licenses for two nuclear power reactors at the Diablo Canyon Nuclear Power Plant (Diablo Canyon) for an additional twenty years from the current expiration dates of November 2, 2024,

¹ Revised Scheduling Order, at 8-10 (Nov. 19, 2012) (unpublished) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12324A214).

² Pacific Gas and Electric Company's Motion for Summary Disposition on Contention EC-1 (July 31, 2015) (ADAMS Accession No. ML15212A732) (Motion).

and August 26, 2025.³ PG&E's application included a severe accident mitigation alternatives (SAMA) analysis, as required by 10 C.F.R. § 51.53(c)(3)(ii)(L).⁴

The San Luis Obispo Mothers for Peace (SLOMFP) filed a timely petition to intervene and a waiver petition on March 22, 2010 (Initial Petition).⁵ SLOMPF's Initial Petition included Contention EC-1, which claimed that PG&E's 2009 SAMA analysis was inadequate because it did not account for the Shoreline Fault.⁶ The Staff agreed that EC-1 was an admissible contention to the extent that PG&E's SAMA omitted a discussion of the Shoreline Fault.⁷ The Board granted SLOMPF's hearing request and admitted SLOMFP's Contention EC-1 as a contention of omission.⁸

As admitted, EC-1 states:

³ License Renewal Application (LRA) at 1.1-1. The LRA is *available at* <http://www.nrc.gov/reactors/operating/licensing/renewal/applications/diablo-canyon/dcpp-lra.pdf>.

⁴ See Environmental Report at Appendix E. See 10 C.F.R. § 51.53(c) (providing environmental requirements regarding the contents of license renewal applications). See 10 C.F.R. §§ 54.19-54.23 (providing general requirements regarding the contents of license renewal applications).

⁵ Request for Hearing and Petition to Intervene by San Luis Obispo Mothers for Peace (Mar. 22, 2010) (ADAMS Accession No. ML100810441) (Initial Petition). 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). See 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 (Jan. 21, 2010).

⁶ *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-10-15, 72 NRC 257, 280-81, 360 (2010), *aff'd in part and rev'd in part*, 74 NRC 427 (2011). EC-1 also claimed that PG&E had not justified excluding information on the Shoreline Fault. See Initial Petition at 14-15.

⁷ See NRC Staff's Answer to [SLOMPF's] Request for Hearing and Petition to Intervene at 26-34 (Apr. 16, 2010) (ADAMS Accession No. ML101060667) (Staff Answer to Initial Petition).

⁸ *Diablo Canyon*, LBP-10-15, 72 NRC at 290. See *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), LBP-06-16, 63 NRC 737, 742 (2006) (noting that a contention of omission is one that alleges an application suffers from an improper omission, whereas a contention of adequacy raises a specific substantive challenge to how particular information or issues have been discussed in the application). On appeal, the Commission noted that the Board admitted EC-1 as a contention of omission. See *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 439 (2011). The Commission upheld the Board's admission of EC-1 but reformulated the contention such that 40 C.F.R. § 1502.22 was not binding on the Staff. *Id.* at 443-44.

PG&E's Severe Accident Mitigation Alternatives [(SAMA)] analysis fails to consider information regarding the Shoreline fault that is necessary for an understanding of seismic risks to the Diablo Canyon nuclear power plant. As a result, PG&E's SAMA analysis does not satisfy the requirements of the National Environmental Policy Act [(NEPA)] for consideration of alternatives or NRC implementing regulation 10 C.F.R. § 51.53(c)(3)(ii)(L).⁹

The parties have filed monthly hearing file and schedule updates related to EC-1 since its admission.¹⁰

II. Revised SAMA Submitted That Addresses Shoreline Fault

On February 25, 2015, PG&E submitted an update to its Environmental Report (ER),¹¹ including an update to its SAMA analysis.¹² PG&E stated that it revised the SAMA "using an updated Probabilistic Risk Assessment (PRA) model" incorporating "plant design changes, an upgrade to the internal flooding analysis, and an updated fire model." Notably, the "updated SAMA analysis incorporated more recent population, economic, and evacuation information and updated seismic hazard curves that considered the Shoreline fault and other regional faults."¹³

⁹ *Diablo Canyon*, CLI-11-11, 74 NRC at 444. See also *id.* at 443 n. 92 ("If SLOMFP intends to challenge the adequacy of any information that PG&E provides in a revision or supplement to its license renewal application regarding the Shoreline Fault, it must submit a new or amended contention.").

¹⁰ See Revised Scheduling Order at 2-8. See, e.g., Staff's April 2015 Hearing File Update (Apr. 15, 2015) (ADAMS Accession No. ML15105A224); Staff's Projected Schedule for Completion of the Safety and Environmental Evaluations (Jan. 15, 2015) (ADAMS Accession No. ML15015A658).

¹¹ Letter from Barry S. Allen, Vice President, Nuclear Services, PG&E to NRC, 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. ML15057A102) (Updated ER).

¹² The revised SAMA is in Enclosure 2, Attachment 2 – Environmental Report, Amendment 2, Section 4.20 Appendix E and Attachment F – Severe Accident Mitigation Alternatives (ADAMS Accession Nos. ML15056A755, ML15056A756, ML15056A758, ML15056A759, ML15056A763, ML15056A765, ML15056A769) (revised SAMA analysis or SAMA analysis).

¹³ Updated ER at 4.20-3 (emphasis omitted).

On July 1, 2015, PG&E submitted an evaluation of the effect of its March 11, 2015 seismic hazard results¹⁴ on the February 2015 SAMA analysis.¹⁵

On July 31, 2015, PG&E filed the instant Motion seeking to dismiss Contention EC-1 as moot¹⁶ on the grounds that “the alleged omission in the application has been cured by the updates to the SAMA evaluation and ER.”¹⁷

DISCUSSION

I. The Issues Raised in Contention EC-1 Have Been Resolved and EC-1 Should Be Dismissed as Moot

The Staff agrees with PG&E that Contention EC-1 should be dismissed as moot.¹⁸

Where a contention has been rendered moot by superseding events, *i.e.*, events that occur following the admission of the contention, the contention should be amended or dismissed.¹⁹

Contention EC-1 asserted that PG&E’s 2009 SAMA analysis was deficient because it failed to discuss the Shoreline Fault.²⁰ PG&E has now revised its SAMA and the revised SAMA

¹⁴ See PG&E’s March 11, 2015 probabilistic seismic hazard evaluation and prioritization screening report. ADAMS Package Accession No. ML15071A046.

¹⁵ Letter from Barry S. Allen, Vice President, Nuclear Services, PG&E to NRC, PG&E Letter DCL-15-080, Diablo Canyon Power Plant License Renewal [SAMA] Analysis Evaluation of the 2015 Seismic Hazard Results (July 1, 2015) (ADAMS Accession No. ML15182A452) (July 1, 2015 Submittal).

¹⁶ The Motion is styled as a Motion for Summary Disposition, but the basis for requesting summary disposition is because EC-1 is moot. See Motion at 2, 5 (claiming EC-1 is moot). See *id.* at 2 (citing *Exelon Generation Co.* (Early Site Permit for Clinton ESP Site), LBP-05-19, 62 NRC 134, 182 (2005) for proposition that summary disposition is appropriate for a contention that is moot).

¹⁷ Motion at 5. *Id.* at 3. See *also* Revised Scheduling Order at 13 (contemplating motions to dismiss a matter as moot).

¹⁸ Motion at 5. The Staff also agrees that the Motion demonstrates that there is no genuine dispute of material facts with respect to Contention EC-1. However, the Staff believes it is more appropriate to simply dismiss Contention EC-1 as moot given that EC-1 was admitted as a contention of omission and the omission is now “cured.” Motion at 3, 5.

¹⁹ *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 383 (2002). See *also* *Diablo Canyon*, CLI-11-11, 74 NRC at 443 n. 92 (noting that 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).

²⁰ SLOMPF’s Initial Petition at 12-14 (citing Environmental Report, Attachment F, at F-65). See *Diablo Canyon*, LBP-10-15, 72 NRC at 292 (admitting EC-1 as a contention of omission because the

considers the Shoreline Fault.²¹ Thus, the omission identified in EC-1 has now been resolved and Contention EC-1 is moot under Commission case law.²²

Further, EC-1 challenged the 2009 SAMA, which is no longer the docketed SAMA analysis associated with PG&E's license renewal application. Instead, PG&E's revised SAMA is subject to challenge.²³ SLOMPF appears to recognize this, as it submitted two new proposed SAMA contentions (Contention C and D) challenging the adequacy of the revised SAMA.²⁴ SLOMPF moved to amend Contention C based on PG&E's July 1, 2015 Submittal.²⁵ The Board ruled that Contention C and D are inadmissible and is currently assessing whether amended Contention C meets the Commission's contention admissibility standards.²⁶ Regardless of the Board's holding on amended Contention C, under Commission case law, Contention EC-1 is moot and should be dismissed.²⁷

SAMA "fail[ed] to consider information regarding the Shoreline fault that is necessary for an understanding of seismic risks to the Diablo Canyon nuclear power plant.").

²¹ See Updated ER at 4.20-3.

²² See *McGuire/Catawba*, CLI-02-28, 56 NRC at 383.

²³ See *Diablo Canyon*, CLI-11-11, 74 NRC at 443 n. 92.

²⁴ San Luis Obispo Mothers for Peace's Motion to File New Contentions Regarding Adequacy of Severe Accident Mitigation Alternatives Analysis for Diablo Canyon License Renewal Application (Apr. 15, 2015) (ADAMS Accession No. ML15105A633) (Motion on Proposed Contentions C and D). SLOMPF did not move to amend EC-1.

²⁵ See San Luis Obispo Mothers for Peace's Motion to File Amended Contention C (Inadequate Consideration of Seismic Risk in SAMA Analysis as Supplemented by SHU-SAMA Evaluation (July 31, 2015) (ADAMS Accession No. ML15212A959) (Motion to Amend Contention C).

²⁶ Memorandum and Order (Denying Motions to File New Contentions) at 1 (Aug. 6, 2015) (ADAMS Accession No. ML15218A517). See *McGuire/Catawba*, CLI-02-28, 56 NRC at 382-84 (stating that any new or amended contention that is filed should be assessed for admissibility, separately, under the Commission's standards governing the admission of contentions).

²⁷ As the Board noted, at this time, EC-1 is the only admitted contention. Memorandum and Order (Denying Motions to File New Contentions) at 2 n.4. However, dismissal of EC-1 will not terminate this proceeding, as the Board is still considering the admissibility of SLOMPF's Motion to Amend Contention C. Dismissal of EC-1 would terminate the parties' duty to file schedule and hearing file updates.

CONCLUSION

For the reasons set forth above, the Staff supports PG&E's Motion and respectfully submits that Contention EC-1 should now be dismissed as moot.

Respectfully submitted,

/Signed (electronically) by/

Catherine E. Kanatas
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O15-D21
Washington, DC 20555
Telephone: (301) 415-2321
Email: Catherine.Kanatas@nrc.gov
Date of Signature: August 13, 2015

Executed in Accord with 10 CFR 2.304(d)

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

Executed in Accord with 10 CFR 2.304(d)

Susan L. Uttal
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O15-D21
Washington, DC 20555
Telephone: (301) 415-1582
Email: Susan.Uttal@nrc.gov

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R. § 2.305 (revised), I hereby certify that copies of the "NRC STAFF ANSWER TO PACIFIC GAS AND ELECTRIC COMPANY'S MOTION FOR SUMMARY DISPOSITION ON CONTENTION EC-1" have been served upon the Electronic Information Exchange, the NRC's E-Filing System, in the above captioned proceeding, this 13th day of August, 2015.

/Signed (electronically) by/

Catherine E. Kanatas
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O15-D21
Washington, DC 20555
Telephone: (301) 415-2321
Email: Catherine.Kanatas@nrc.gov
Date of Signature: August 13, 2015