

ORAL ARGUMENT NOT YET SCHEDULED

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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FRIENDS OF THE EARTH,

Petitioner,

v.

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

Respondents,

PACIFIC GAS AND ELECTRIC COMPANY,

Intervenor.

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No. 16-1004

**JOINT MOTION TO DISMISS BY FEDERAL RESPONDENTS AND  
PACIFIC GAS AND ELECTRIC COMPANY**

As discussed in the Fifth Status Report of June 29, 2018, the U.S. Nuclear Regulatory Commission (NRC) and the United States of America (collectively, the Federal Respondents), along with Intervenor for Respondents Pacific Gas and Electric Company, hereby ask the Court to dismiss the petition for review in the above-captioned case.

On June 20, 2016, Friends of the Earth and Pacific Gas and Electric Company, along with other parties, submitted a joint settlement proposal (Exhibit

A) to the California Public Utilities Commission, under the terms of which Pacific Gas and Electric Company agreed to, *inter alia*, “retire Diablo Canyon at the expiration of its current NRC operating licenses.”<sup>1</sup> Under the terms of the Joint Proposal Application, if approved by the California Public Utilities Commission, Pacific Gas and Electric Company would withdraw the NRC License Renewal Application for the Diablo Canyon nuclear power plant that is the subject of this petition for review.

On June 29, 2016, Pacific Gas and Electric Company and Friends of the Earth jointly requested, in a “Joint Motion to Suspend Briefing” (Exhibit B), that this Court suspend briefing in this matter pending action by the California Public Utilities Commission on the Joint Proposal Application. That Motion asked the Court to issue an order that would, among other things, “[d]irect[] [Friends of the Earth] to submit a motion to dismiss this matter within 30 days of NRC acceptance of the withdrawal of the License Renewal Application” for Diablo Canyon. Joint Motion to Suspend Briefing at 5.

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<sup>1</sup> Joint Proposal of Pacific Gas and Electric Company, Friends of the Earth, Natural Resources Defense Council, Environment California, International Brotherhood of Electrical Workers Local 1245, Coalition of California Utility Employees and Alliance for Nuclear Responsibility to Retire Diablo Canyon Nuclear Power Plant at Expiration of the Current Operating Licenses and Replace it with a Portfolio of GHG Free Resources (June 20, 2016), at 3 (“Joint Proposal Application”), available online at <http://www.pge.com/includes/docs/pdfs/safety/dcpp/JointProposal.pdf>.

On July 21, 2016, this Court entered an order holding this case in abeyance pending further order of the Court. The Court directed the parties to file status reports at 120-day intervals beginning January 23, 2017. The Court also directed the parties “to file motions to govern future proceedings in this case within 30 days of the completion of the proceedings of the California Public Utilities Commission and any subsequent proceedings of the Nuclear Regulatory Commission related thereto.”

The parties filed the first status report on January 23, 2017, the second report on May 23, 2017, the third report on September 20, 2017, and the fourth report on January 18, 2018.

On April 23, 2018, the NRC published a *Federal Register* notice (Exhibit C) stating that Pacific Gas and Electric Company’s request (filed on March 7, 2018) to withdraw the Diablo Canyon license renewal application had been accepted, effective on the date of the notice. Notice: PG&E; Diablo Canyon Power Plant Unit Nos. 1 and 2; Withdrawal of License Renewal Application, 83 Fed. Reg. 17,688 (April 23, 2018). Accordingly, the NRC nuclear reactor license renewal proceeding that was the subject of Friends of the Earth’s petition for review in the instant case—which challenged the NRC order (Exhibit D) denying Friends of the

Earth's petition to intervene in the NRC proceeding<sup>2</sup>—has now been terminated.

Apart from approving the license renewal application's withdrawal, NRC took no action on the application, and there are no remaining NRC proceedings pending regarding this matter.

Because the application for a renewed NRC license for Diablo Canyon was withdrawn from the NRC before NRC acted on it, the challenges to that application's adequacy that Friends of the Earth sought to litigate at the NRC are moot. Consequently, the instant petition for review of NRC's action denying Friends of the Earth's request to intervene in the NRC proceeding to litigate those challenges is also moot. The Court should therefore dismiss the petition for review as moot. *See Buck's Stove & Range Co. v. Am. Fed'n of Lab.*, 219 U.S. 581 (1911) (dismissing case as moot after parties' settlement agreement mooted the underlying controversy); *NRDC v. U.S. Nuclear Regulatory Comm'n*, 680 F.2d 810, 814–15 (D.C. Cir. 1982) ("The Supreme Court has made it clear that 'no justiciable controversy is presented . . . when the question sought to be adjudicated has been mooted by subsequent developments.'"); *see also Lopez v. Nat'l Lab. Rel. Board*, 655 Fed. Appx. 859, 861 (D.C. Cir. 2016) (unpublished) (holding that settlement

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<sup>2</sup> As reflected in Exhibit D, Friends of the Earth sought to intervene in the NRC proceeding to challenge certain aspects of Pacific Gas and Electric Company's application to renew the Diablo Canyon license. *See also* Exhibit A to Friends of the Earth's Pet. for Rev. (Jan. 8, 2016) (same NRC order in slip opinion form).

of dispute before the agency mooted petition for review of agency's action denying request to intervene in the associated agency proceeding).

As stated in the June 29, 2016, Joint Motion to Suspend Briefing, and consistent with the Court's July 21, 2016, order suspending briefing in the instant case, NRC's approval of Pacific Gas and Electric Company's request to withdraw the Diablo Canyon license renewal application on April 23, 2018, should have resulted in Friends of the Earth filing a motion to dismiss its petition for review in the instant case by May 23, 2018—more than two months ago. FOE has not filed such a motion.

Counsel for the Federal Respondents and Pacific Gas and Electric Company were unsuccessful in their efforts to contact Friends of the Earth's counsel by both email and phone regarding the expected motion to dismiss. Pacific Gas and Electric Company informed its counsel that it understood Friends of the Earth was attempting to reach its own counsel to ensure this issue would be addressed. Based on these circumstances, the Federal Respondents and Pacific Gas and Electric Company filed the Fifth Status Report on June 29, 2018, which included as an attachment the NRC's April 23, 2018, *Federal Register* notice referenced above. The Fifth Status Report also stated the Federal Respondents' and Pacific Gas and Electric Company's plan, absent contrary direction from the Court, to file a motion

to dismiss with the Court should Friends of the Earth not file such a motion itself within thirty days.

It has now been over thirty days since the Fifth Status Report was filed, and Friends of the Earth has not filed a motion to dismiss or otherwise responded to the Fifth Status Report.

As discussed in the Fifth Status Report, and as is still the case today, the Federal Respondents and Pacific Gas and Electric Company are not aware of any change in Friends of the Earth's position, expressed in the Joint Motion to Suspend Briefing, that Friends of the Earth would ask the Court to dismiss its petition for review upon successful withdrawal of the Diablo Canyon license renewal application. Further attempts by Federal Respondents' and Pacific Gas and Electric's counsel, subsequent to the Fifth Status Report's filing, to contact Friends of the Earth's counsel by email and phone regarding this case have been unsuccessful.

Accordingly, in light of Friends of the Earth's previously stated position that this case should be dismissed after successful withdrawal of the Diablo Canyon license renewal application from the NRC, which occurred on April 23, 2018, and the fact that such withdrawal renders the petition for review moot, the Federal Respondents and Pacific Gas and Electric Company hereby ask the Court to dismiss the petition for review in the above-captioned case.

Respectfully submitted,

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August 2, 2018

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Joint Motion to Dismiss complies with the formatting and type-volume restrictions of the rules of the U.S. Court of Appeals for the District of Columbia Circuit. The motion was prepared in 14-point, double spaced, Times New Roman font, using Microsoft Word 2013, in accordance with Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6). The motion contains 1254 words and therefore complies with Fed. R. App. P. 27(d)(2)(A).

/s/ James E. Adler

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**CERTIFICATE AS TO PARTIES AND AMICI**

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), I hereby submit the following list of parties and amici to the agency proceeding below and to the proceeding in this Court (D.C. Cir. No. 16-1004 – Friends of the Earth v. NRC):

**Parties in this Court and in the agency proceeding below:**

1. Friends of the Earth (Petitioner)
2. Nuclear Regulatory Commission (Respondent)
3. Pacific Gas and Electric Company (Intervenor for Respondents)

**Parties in this Court but not in the agency proceeding below:**

1. United States of America (Respondent, by statute (28 U.S.C. § 2348))

/s/ James E. Adler

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**CERTIFICATE OF SERVICE**

I certify that on August 2, 2018, I filed the foregoing Joint Motion to Dismiss with the U.S. Court of Appeals for the District of Columbia Circuit by filing it with the Court's CM/ECF system. That method is calculated to serve all counsel of record in case number 16-1004.

/s/ James E. Adler  
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# **EXHIBIT A**

**JOINT PROPOSAL OF  
PACIFIC GAS AND ELECTRIC COMPANY, FRIENDS OF THE EARTH,  
NATURAL RESOURCES DEFENSE COUNCIL, ENVIRONMENT CALIFORNIA,  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 1245,  
COALITION OF CALIFORNIA UTILITY EMPLOYEES AND ALLIANCE FOR  
NUCLEAR RESPONSIBILITY TO RETIRE DIABLO CANYON NUCLEAR POWER  
PLANT AT EXPIRATION OF THE CURRENT OPERATING LICENSES AND  
REPLACE IT WITH A PORTFOLIO OF GHG FREE RESOURCES**

Pacific Gas and Electric Company (“PG&E”) Friends of the Earth (“FOE”), Natural Resources Defense Council (“NRDC”), Environment California, International Brotherhood of Electrical Workers Local 1245 (“IBEW Local 1245”), Coalition of California Utility Employees (“CUE”) and Alliance for Nuclear Responsibility (“A4NR”) (collectively, the “Parties”) enter into this Joint Proposal governing the closure of Diablo Canyon Nuclear Power Plant (“Diablo Canyon”) at the expiration of its existing Nuclear Regulatory Commission (“NRC”) operating licenses and orderly replacement of Diablo Canyon with a greenhouse gas (“GHG”) free portfolio of energy efficiency, renewables and energy storage that includes a 55 percent Renewable Portfolio Standard commitment by 2031.

**PREAMBLE**

A. Diablo Canyon Units 1 and 2 began commercial operation in May 1985 and March 1986, respectively, and are licensed by the NRC for operation until November 2, 2024 and August 26, 2025. Each year Diablo Canyon generates about 20 percent of the annual electricity production in PG&E’s service territory and nine percent of California’s annual production. Diablo Canyon has been operated by a committed and dedicated group of employees throughout its 31 years of operations. In 2009, PG&E filed at the NRC to continue Diablo Canyon’s operations for an additional twenty years.

B. In 2015, Senate Bill (SB) 350 (2015) enacted California Public Utilities Code § 454.51 which requires the California Public Utilities Commission (“CPUC”) to “identify a diverse and balanced portfolio of resources needed to ensure a reliable electricity supply that provides optimal integration of renewable power in a cost-effective manner. SB 350 also enacted Public Utilities Code § 454.52 which requires the CPUC to establish an integrated resource planning (“IRP”) process for regulated load-serving entities that helps to achieve the State’s green house gas emission reduction target of 40 percent below 1990 levels by 2030 while continuing to deliver safe, reliable, least-cost service to customers.

C. After considering factors including, but not limited to, (i) the increase of the Renewable Portfolio Standard (“RPS”) to 50% by 2030; (ii) doubling of energy efficiency goals under SB 350; (iii) the challenge of managing overgeneration and intermittency conditions under a resource portfolio increasingly influenced by solar and wind production; (iv) the growth rate of distributed energy resources; and (v) the potential increases in the departure of PG&E’s retail load customers to Community Choice Aggregation (“CCA”), PG&E in consultation with the Parties has concluded that the most effective and efficient path forward for achieving California’s SB 350 policy goal for deep reductions of GHG emissions is to retire Diablo Canyon at the close of its current operating license period and replace it with a portfolio of GHG free resources. The Parties agree that the orderly replacement of Diablo Canyon with GHG free resources will be the reliable, flexible, and cost-effective solution for PG&E’s customers.

D. The Parties recognize that the three tranches of resource procurement proposed in this Joint Proposal are not intended to specify everything that will be needed to ensure the orderly replacement of Diablo Canyon with GHG free resources, which is the Parties’ shared commitment. The full solution will emerge over the 2024-2045 period, in consultation with

many parties and with the oversight of the CPUC, the California Independent System Operator (“CAISO”), the California Energy Commission (“CEC”), the California Air Resources Board, the Governor, and the Legislature. Additional procurement beyond that specified in the three tranches will be needed on a system wide basis to replace the output of Diablo Canyon and the Parties envision that this issue will primarily be addressed through the CPUC’s IRP process. Some of the factors influencing resource replacement in PG&E’s Northern and Central California service territory will occur outside the CPUC’s resource planning proceedings, including but not limited to Statewide adoption of enhanced energy efficiency goals, customers’ additions of distributed energy resources, potential expansion of customer loads by current and future CCAs, Energy Service Providers (“ESPs”) and other load-serving entities (“LSEs”), and reduced need for periodic curtailment of California’s increasingly abundant solar and wind resources. Given these and other uncertainties, the Parties cannot, and it would be a mistake to try to, specify all the necessary replacement procurement now; what the Parties have proposed in the Joint Proposal are significant and appropriate steps in the journey. The Parties are fully committed to supporting policies that result in replacing the output of Diablo Canyon with GHG-free resources.

## **AGREEMENT**

The Parties agree to the following terms and conditions:

### **1. Diablo Canyon License Renewal**

1.1. Under the terms of this Joint Proposal, PG&E will retire Diablo Canyon at the expiration of its current NRC operating licenses. The Parties will jointly propose and support the orderly replacement of Diablo Canyon with GHG free resources.

1.2. Recognizing that the procurement, construction and implementation of a GHG-

free portfolio of energy efficiency, renewables and energy storage replacement resources will take years, the Parties recognize that PG&E intends to operate Diablo Canyon to the end of its current NRC operating licenses which expire on November 2, 2024 (Unit 1) and August 26, 2025 (Unit 2), subject to the Unit 2 timing issue discussed in Section 6.2. This eight to nine year transition period will provide the time to begin the process to plan and replace Diablo Canyon's energy with new GHG-free replacement resources.

1.3. PG&E will immediately cease any efforts on its part to renew the Diablo Canyon operating licenses and will ask the NRC to suspend consideration of the pending Diablo Canyon license renewal application pending withdrawal with prejudice of the NRC application upon CPUC approval of the Joint Proposal Application.

1.4. Nothing in this Joint Proposal constrains or limits in any way the right of Parties to raise safety or compliance issues related to Diablo Canyon with the NRC or any other government agency, going forward.

## **2. Greenhouse Gas Free Replacement Resources**

2.1. The Parties jointly propose that Diablo Canyon be replaced with a GHG-free portfolio of energy efficiency, renewables and energy storage, as specified below. The portfolio will include a mix of investments that facilitates the achievement of broader statewide goals for deep reductions in GHG emissions, reliability, resource integration, and other long-term, cost-effective system wide benefits. The Parties propose that PG&E be authorized to procure GHG-free replacement resources in three competitive procurement tranches. The procurement provisions in section 2 of the Joint Proposal are beyond A4NR's charter and interests. A4NR takes no position on these provisions (as well as the related provisions in the second and third

sentences of Section 7.3) but agrees not to oppose Section 2 of the Joint Proposal or the implementation actions undertaken by PG&E consistent with these provisions.

In the first tranche (Section 2.2), PG&E will be authorized to obtain 2,000 gross gigawatt-hours (“GWH”) of energy efficiency savings to be implemented over the 2018 to 2024 time period. In the second tranche (Section 2.3), PG&E will be authorized to procure 2,000 GWH of GHG-free energy resources through an all-source solicitation that will commence energy deliveries or add energy efficiency programs or projects to the system in the 2025 to 2030 time period. In the third tranche (Section 2.4), with energy delivery starting in 2031, PG&E will purchase incremental RPS eligible resources through competitive solicitations to voluntarily achieve a 55% RPS and PG&E will maintain this voluntary commitment through 2045 or until superseded by action of the legislature or the CPUC.

## **2.2. Tranche 1: Energy Efficiency**

2.2.1. PG&E will obtain 2,000 gross GWH from Energy Efficiency (“EE”) installed by January 1, 2025 (measured as the sum of the first year gross GWH from EE installed in 2018 – 2024). The objective of this Tranche 1 component of the Joint Proposal is to achieve “early action” GHG savings prior to the retirement of Diablo Canyon in order to support flexibility in the timing of resource commitments in Tranche 2 and 3. PG&E may seek CPUC approval of cost-effective EE programs in excess of the 2,000 gross GWH target.

2.2.2. PG&E will issue a Request for Offers (“RFO”) for EE projects and programs on or before June 1, 2018. The RFO will request bids for new EE projects and programs to be installed in the 2018-2024 timeframe. The Tranche 1 RFO will procure EE only. The goal of the RFO is to encourage new EE offerings, not duplicate existing

programs. In order to assure cost-effectiveness, eligible bids must be below a “RPS equivalent” cost cap that will be specified in the RFO. The RFO will compare offers using the Program Administrator Cost Test. The RFO will encourage proposals that estimate savings using an existing conditions baseline and normalized meter-based savings estimates where feasible and appropriate.

2.2.3. In addition, PG&E may propose new utility EE programs for the purpose of meeting the 2,000 gross GWH savings target. New utility EE will be evaluated for cost-effectiveness using the Program Administrator Cost Test. Where feasible and appropriate, PG&E will estimate savings using an existing conditions baseline and normalized meter-based savings estimates.

2.2.4. In its CPUC Application seeking approval of the Joint Proposal (“Joint Proposal Application”), PG&E will request approval of the funding needed to meet the Tranche 1 2,000 gross GWH EE target for the years 2018-2024. The incremental revenue requirement will be recovered in PG&E’s electric public purpose program (“PPP”) rates as non-bypassable charges. PG&E will also seek authorization to issue the RFO, including a description of the RFO process, PG&E will report its progress towards meeting the 2,000 gross GWH target in its annual energy efficiency report, separate from its reports on its other programs. PG&E will hold successive RFOs and/or propose new utility programs until the 2,000 gross GWH target has been achieved.

### **2.3. Tranche 2: All Source GHG Free Energy Request For Offers**

2.3.1. No later than June 1, 2020, PG&E will issue an all-source RFO for 2,000 GWH per year of GHG-free energy resources or EE. The RFO eligibility requirements will include: i) the resource must be a source of GHG-free energy or result in energy

savings (for example, renewables, EE; energy storage, by itself, is not a source of energy and therefore is not eligible); ii) EE proposals must be for projects installed in PG&E's service territory; iii) energy deliveries must be for a minimum term of 5 years; iv) energy deliveries must commence during the period 2025-2030 and achieve the 2,000 GWH per year target during this period; v) at PG&E's discretion, EE proposals may commence prior to 2025; and vi) utility-owned generation will be eligible to compete in the RFO. In the Joint Proposal Application, PG&E will specify the RFO framework, including the least-cost, best fit evaluation criteria, RFO process and the CPUC approval process.

2.3.2. If PG&E does not obtain CPUC approval of GHG-free energy resource contracts or EE for 2,000 GWH per year as a result of the first RFO, it will hold successive RFOs until the 2,000 GWH per year target has been achieved.

2.3.3. PG&E will submit the winning bids from the RFO to the CPUC for its review and approval. At that time, PG&E may seek CPUC approval of cost-effective contracts from GHG-free resources in excess of the 2,000 GWH target.

2.3.4. The effectiveness of all GHG-free energy resource procurement contracts resulting from the RFOs will be conditioned upon CPUC approval, assurance of cost recovery and, as specified in Section 2.6, pre-approval of a cost allocation method. The incremental revenue requirement for EE programs selected in the all source RFO will be recovered in PG&E's electric PPP rates as non-bypassable charges.

#### **2.4. Tranche 3: Voluntary 55 Percent RPS Commitment**

2.4.1. In each of the years beginning in 2031 and ending in 2045, PG&E commits to providing 55 percent of its total retail sales from eligible renewable energy resources, as defined in the CEC Renewables Portfolio Standard Guidebook. In

determining whether PG&E has met this commitment, all RPS requirements and limits set forth in the RPS Statute (California Public Utilities Code Section 399.11 et. seq.) will apply, as interpreted by the CEC and the CPUC (including, but not limited to, the portfolio balance requirements adopted in D.11-12-052, the banking and other compliance rules adopted in D.12-06-038, and the RPS enforcement rules adopted in D.14-12-023), except that the voluntary procurement quantity requirement in each year will be based upon the 55 percent RPS commitment. To facilitate determining whether it met this commitment, PG&E will use the RPS Compliance Report spreadsheet most recently adopted by the CPUC and the volumes reported in final, verified compliance reports for each applicable year.

2.4.2. PG&E's voluntary 55 percent RPS commitment will terminate on the earlier of 2045 or when superseded through implementation of an RPS requirement (or equivalent GHG reduction regulation) that exceeds 55 percent.

2.5. Resource Integration and Storage: The Parties recognize that the retirement of Diablo Canyon in 2025, a large baseload source of energy, will impact the efficient and reliable balancing of load and resources in PG&E's service territory. On the one hand, removing a large baseload resource during periods of peak solar production will reduce the need for periodic curtailment of RPS resources and enhance RPS resource integration during these periods. On the other hand, the retirement of Diablo Canyon may have impacts on system ramping and the need for additional energy storage. The challenges associated with resource integration, and system and local reliability, must be reviewed and resolved by the CPUC through its IRP process, in collaboration with the CAISO. The Parties will strongly support at the CPUC and before the CAISO the use of cost-effective GHG-free resource solutions, some of which may include

additional large pumped storage and utility-owned storage projects. Given the reliability and resource integration challenges described above, the Parties support a change in existing policies to allow allocation of resource costs for integration and storage through the CAISO's Transmission Access Charge ("TAC") or alternatively, through a Cost Allocation Mechanism ("CAM"), such as the CAM specified in Public Utilities Code Section 365.1(c), Section 454.51(c), or other similar CAM mechanisms approved by the CPUC.

2.6. Cost Recovery: Under the Joint Proposal, PG&E makes a commitment to procure GHG-free energy resources through 2030 and beyond for the benefit of all customers in its service territory. PG&E's commitment to replace Diablo Canyon energy with GHG-free energy resources under tranche 2 (Section 2.3) and tranche 3 (Section 2.4) is therefore conditioned upon CPUC pre-approval that any procurement PG&E makes associated with the Joint Proposal will be subject to a non-bypassable cost allocation mechanism that : 1) equitably allocates costs and benefits, such as RPS or Resource Adequacy credits, associated with the procurement among responsible load serving entities; and 2) determines the net capacity costs of such procurement consistent with the methodology for the allocation of net capacity costs described in California Public Utilities Code section 365.1(c)(2)(C). In the Joint Proposal Application, PG&E will ask the CPUC to pre-approve the non-bypassable cost allocation mechanism and the Parties will support approval of this proposal. Costs associated with EE in Tranche 1 or Tranche 2 will be recovered through the PPP on a non-bypassable basis, consistent with existing recovery mechanisms for EE costs.

### **3. Employee Retention and Severance Program**

3.1. PG&E and all of California has benefited from a well-trained, highly skilled and dedicated workforce at Diablo Canyon for its 31 years of operations. It is critical to retain these

highly qualified personnel at Diablo Canyon during the remaining years of operations. Pursuant to California Public Utilities Code Section 8330, these costs of these retention and severance programs will be recovered through the rates for Diablo Canyon decommissioning. PG&E will propose a fair and equitable employee package as part of its Joint Proposal Application.

3.2. PG&E's Employee Program contains the following elements: (i) an employee severance program; (ii) a retention program to ensure adequate staffing levels (iii) a retraining and development program to facilitate redeployment of a portion of plant personnel to the decommissioning project and elsewhere with PG&E. The severance program was previously approved by the CPUC in prior nuclear decommissioning ratemaking proceedings. PG&E estimates that the additional cost of the Employee Retention, Retraining and Development Programs is approximately \$350 million. PG&E will provide a detailed description and cost estimate of the Employee Program for CPUC approval in the Joint Proposal CPUC Application and PG&E's commitment to implement the program is conditioned upon CPUC approval. The Retention, Retraining and Development Programs are subject to bargaining with PG&E's labor unions.

#### **4. Community Impacts Mitigation Program**

4.1. Diablo Canyon is one of the largest employers, taxpayers, and charitable contributors in the San Luis Obispo County area. Diablo Canyon currently contributes approximately \$22 million in property taxes to the local community. With the retirement of Diablo Canyon, this could decline to zero by 2025. The Parties will support funding of continuing revenue streams to address community needs and concerns. PG&E will propose to compensate San Luis Obispo County for the loss of property taxes associated with the declining rate base in Diablo Canyon through a transition period ending in 2025. The payment in lieu of

taxes will be recovered through nuclear decommissioning funding. PG&E estimates that the total cost of the Community Impacts Mitigation Program is approximately \$49.5 million. As specified in Section 5.4.1, as a condition of the program, PG&E will recover the costs of the Community Impacts Mitigation Program through CPUC-approved rates for nuclear decommissioning.

## **5. Other Diablo Canyon CPUC Proceedings**

5.1. Amortization of Diablo Canyon Book Value: Under the Joint Proposal, PG&E intends to operate Diablo Canyon to the end of its currently authorized NRC license life, subject to the Unit 2 timing issue discussed in Section 6.2. Consistent with the CPUC cost recovery principles for long-life capital assets, the Parties support full cost recovery of PG&E's investment in and return on Diablo Canyon, fully amortized/depreciated to a zero book value by the end of 2024 for Unit 1 and the end of 2025 for Unit 2, subject to the Unit 2 timing issue discussed in Section 6.2. PG&E will request CPUC approval of this ratemaking approach in the Joint Proposal Application. Parties will not oppose amortization and cost recovery of Diablo Canyon costs in PG&E's 2017 General Rate Case A. 15-09-001. If there is an early shut-down of Diablo Canyon, the Parties reserve all rights to contest cost recovery of or related to any then-remaining unamortized Diablo Canyon net book costs, provided, however, if Unit 2 closes at the end of 2024 due to the timing issue described in Section 6.2, the Parties support full amortization/depreciation to a zero book value for Unit 2 by December 31, 2024.

5.2. License Renewal Costs: PG&E has incurred approximately \$50 million related to the federal and state license renewal processes, including technical and environmental assessments and permitting and licensing costs. With the exception of A4NR, the Parties agree that it was reasonable and prudent for PG&E to conduct the evaluations and incur the costs of

state and federal regulatory review in order to preserve all options, including license renewal, during a period of resource planning uncertainty that resulted in the decision reflected in the Joint Proposal. In the Joint Proposal Application, PG&E will request cost recovery of the license renewal costs. The Parties, with the exception of A4NR, support PG&E's request for full recovery of license renewal costs. A4NR reserves the right to contest recovery of the License Renewal Costs in the Joint Proposal Application.

5.3. Seismic Study Process and Costs: PG&E has been continually engaged in the evaluation of seismic conditions at Diablo Canyon since the start of operations. The decision not to proceed with license renewal does not affect this on-going commitment. Nothing in this agreement shall constrain the Parties from advocacy on issues related to seismic studies. PG&E acknowledges the substantial influence and contribution of A4NR's work in reaching the positions reflected in the Joint Proposal. Because of PG&E's decision not to proceed with license renewal, A4NR agrees to withdraw its pending objections and recommendations regarding PG&E's recovery of costs in the Diablo Canyon Seismic Studies Balancing Account in PG&E's 2013 and 2014 ERRA proceedings.

5.4. Nuclear Decommissioning: PG&E submitted a revised Diablo Canyon decommissioning study on March 1, 2016 in the CPUC Nuclear Decommissioning Triennial Proceeding ("NDCTP"). (CPUC Application 16-03-006) In the 2015 NDCTP, PG&E estimated the cost to decommission Diablo Canyon at \$3.779 billion (2014 \$). The 2015 NDCTP estimate is based on a financial model prepared by TLG Services, Inc. and does not reflect the results of an actual site-specific decommissioning study.

5.4.1. PG&E will prepare a Diablo Canyon site-specific decommissioning study and submit it to the CPUC in an application for approval no later than the date when the

2018 NDCTP will be filed. PG&E will seek authorization from the CPUC in the Joint Proposal Application to disburse funds from the Diablo Canyon decommissioning trust to fund the site specific decommissioning study. The site-specific decommissioning study will update the 2015 NDCTP forecast and incorporate the costs of (i) the Employee Program described in Section 5.3, (ii) the Community Impacts Mitigation Program in Section 4.1, (iii) a plan for expedited post-shut-down transfer of spent fuel to Dry Cask Storage as promptly as is technically feasible using the transfer schedules implemented at the San Onofre Nuclear Generating Station as a benchmark for comparison, and provided PG&E will also provide the plan to the CEC, collaborate with the CEC, and evaluate the CEC's comments and input; and (iv) a plan to continue existing emergency planning activities, including maintenance of the public warning sirens and funding of community and state wide emergency planning functions until the termination of Diablo Canyon's 10 CFR Part 50 license, subject to CPUC approval and funding in decommissioning rates. The Parties will support CPUC approval and funding of these elements of PG&E's revised Diablo Canyon decommissioning study.

5.4.2. The Parties support CPUC approval of PG&E's 2015 NDCTP decommissioning forecast and establishment of the proposed revenue requirement until such time as the CPUC reviews, approves and authorizes cost recovery for the Diablo Canyon site specific decommissioning study. A4NR reserves the right to contest PG&E's forecast and assumptions regarding spent fuel transfer to dry cask storage in the 2015 NDCTP proceeding.

## **6. Actions at Other Governmental Agencies**

6.1. State Lands Commission ("SLC"): PG&E requested that SLC issue new

submerged lands leases for the intake and discharge structures at Diablo Canyon effective from the date of issuance until Diablo Canyon ceases operations under Diablo Canyon's existing NRC operating licenses in August, 2025. Given PG&E's decision to retire Diablo Canyon in 2025, the Parties agree to jointly support the granting of the new lease to run coterminous with the existing NRC operating licenses and will submit a joint letter to the SLC to that effect. Given the particular circumstances of this matter, and subject to PG&E's commitment under the Joint Proposal that PG&E will not seek license renewal and agrees to cease operations at Unit 1 by November 2, 2024 and Unit 2 by August 26, 2025, FOE, NRDC, Environment California, IBEW Local 1245, CUE and A4NR waive any argument that the continuing operations of the plant through August 26, 2025, without any material increase or change in those operations, requires review under the California Environmental Quality Act ("CEQA"). However, A4NR reserves the right to ask the SLC to conduct a discretionary Environmental Impact Report ("EIR") under CEQA prior to making a decision on the lease extension request. In the event the SLC decides not to perform a discretionary EIR, A4NR waives all rights to appeal the SLC's decisions in connection with its approval of the short term lease extension.

6.1.1. After PG&E has completed its Diablo Canyon site-specific decommissioning study as specified in Section 5.4.1, PG&E will submit a new and separate lease application to the SLC to allow use of the intake and discharge for the period of time necessary to accommodate decommissioning activities. It is PG&E's expectation that the SLC's review of the decommissioning project, in collaboration with the Coastal Commission's review of any development under the project, will be subject to environmental review under CEQA. Nothing in the Joint Proposal affects the Parties positions regarding CEQA and/or the National Environmental Policy Act ("NEPA")

compliance regarding the decommissioning process for Diablo Canyon or any other SLC lease extension after August 26, 2025.

6.1.2. If the CPUC rejects the Joint Proposal Application and it or any other entity with the requisite legal authority directs PG&E to pursue Diablo Canyon license renewal at the NRC, PG&E will within 120 days of such final and non-appealable action submit a new lease request to the SLC premised on the change in circumstances which will be fully subject to CEQA and the Parties reserve all rights to contest such application.

6.2. State Water Resources Control Board (“State Water Board”): Given PG&E’s decision to retire Diablo Canyon, the Parties agree that compliance issues under Track 1 and Track 2 of the State Water Board’s Once Through Cooling (“OTC”) policy will have been resolved once the plants cease power generation, on the condition that the resulting water flows associated with decommissioning meet the applicable requirements of the OTC policy. PG&E will continue to pay “interim mitigation” fees through the end of PG&E’s existing NRC operating licenses in 2024 and 2025 as specified under State Water Board Resolution No. 2015-0057. These fees shall be in addition to any other fees PG&E is currently paying or will be required to pay in the future. PG&E will disclose actual intake volume data and any other data requested by the State Water Board to support the agency’s calculation of the appropriate interim mitigation fees. In order to clarify the authority of Diablo Canyon Unit 2 to operate beyond December 31, 2024 under the OTC policy, PG&E will ask the State Water Board for an amendment to the OTC policy to conform the compliance timeline table to the date of actual expiration of the Unit 1 and Unit 2 NRC operating licenses. The amendment, if approved, would confirm that Unit 2 is authorized to operate through August 26, 2025, subject to continued

payment of the interim mitigation during Diablo Canyon Unit 2's 2025 operations. PG&E will implement the Joint Proposal regardless of the State Water Board's decision on the amendment request. The Parties will review the amendment request and reserve the right to oppose it or seek additional conditions. The Parties shall be unconstrained in their ability to comment on the adequacy of the interim mitigation fee amount.

6.3. **NRC License Renewal:** Following final and non-appealable CPUC approval of the Joint Proposal Application, 1) PG&E will withdraw the Diablo Canyon NRC license renewal application and request that the proceeding be terminated with prejudice; 2) the Parties will support the withdrawal and termination of the Diablo Canyon NRC license renewal application; and 3) FOE will withdraw with prejudice the petition at the DC Circuit Court of Appeals and related pending hearing requests and motions in the Diablo Canyon license renewal case (*Friends of the Earth v. U.S. Nuclear Regulatory Commission*, Case No. 16-1004 (D.C. Cir. filed Jan. 8, 2016)).

6.4. **NRC Dry Cask Fuel Storage:** PG&E's current NRC license for its Independent Spent Fuel Storage Installation ("ISFSI") expires in 2024. PG&E expects to file a license renewal application with the NRC for the ISFSI no later than five years prior to expiration of the current license. Parties will not oppose PG&E's NRC application to renew the license for the ISFSI at Diablo Canyon, including any associated state approvals. While A4NR will not oppose continuing use of the ISFSI, A4NR reserves the right to petition and present recommendations to those state agencies whose approval is necessary to the ISFSI license renewal. This section does not restrict in any way the rights of the Parties to take a position on interim storage of spent nuclear fuel as part of the broader national discourse.

## GENERAL PROVISIONS

### 7. Scope and Approval

7.1. The Parties agree that the Joint Proposal is subject to approval by the CPUC and shall be submitted for approval pursuant to Article 12 (Settlements) of the CPUC's Rules of Practice and Procedure. Within thirty days after PG&E's public announcement of the Joint Proposal, PG&E will convene a conference with notice and an opportunity to be heard to all parties as specified under CPUC Rule 12.1(b) for the purpose of discussing the Joint Proposal and inviting parties to comment on and join in a settlement agreement. No later than 30 days after the SLC has approved the new leases for Diablo Canyon as specified in Section 6.1, or as mutually agreed, PG&E shall file the Joint Proposal Application with the CPUC for approval, adoption and implementation of the Joint Proposal and thereafter will complete the process for execution and submission of an associated settlement agreement as specified in CPUC Rule 12. The Parties agree to: (i) support the Joint Proposal Application and the associated settlement agreement and use their best efforts to secure CPUC approval of the Joint Proposal and the associated settlement agreement in its entirety without modification; (ii) recommend that the CPUC approve and adopt this Joint Proposal and the associated settlement agreement in its entirety without change; and (iii) actively and mutually defend the Joint Proposal and the associated settlement agreement and the Joint Proposal Application if opposed by any other party. Unless the CPUC expressly provides otherwise, and except as otherwise expressly provided herein, such adoption does not constitute approval or precedent for any principle or issue in this or any future proceeding, consistent with CPUC Rule 12.5.

7.2. The Parties intend that CPUC adoption of this Joint Proposal will be binding on the Parties. The Parties agree that, if the CPUC fails to adopt this Joint Proposal and the

associated settlement agreement in its entirety and without modification, the Parties shall meet and confer as specified in CPUC Rule 12.4 within fifteen (15) days thereof to discuss whether the Joint Proposal and associated settlement agreement should be renegotiated with alternative terms and resubmitted to the Commission for approval. The Parties agree under such circumstances to bargain in good faith to restore the balance of benefits and burdens under the Joint Proposal. If the Parties cannot mutually agree to resolve the issues raised by the CPUC's actions, the Joint Proposal and the associated settlement agreement may be rescinded by any Party and the Parties shall be released from their obligations under the Joint Proposal.

Thereafter, the Parties may pursue any action they deem appropriate.

7.3. In the Joint Proposal Application, PG&E will request that the CPUC issue a final decision approving the Joint Proposal Application no later than December 31, 2017. If the CPUC decision is not issued by December 31, 2017, PG&E, in consultation with the Parties, may delay implementation of the actions related to the procurement of GHG-free energy resources as specified in Section 2, until such CPUC approval becomes final and non-appealable. For any procurement voluntarily undertaken by PG&E prior to the time that the CPUC's approval of the Joint Proposal Application has become final and non-appealable, PG&E may condition the procurement contracts on the approval becoming final and non-appealable. PG&E's obligation to withdraw its license renewal application under Section 1.3 shall not become effective or binding until the CPUC's approval of the Joint Proposal Application has become final and non-appealable.

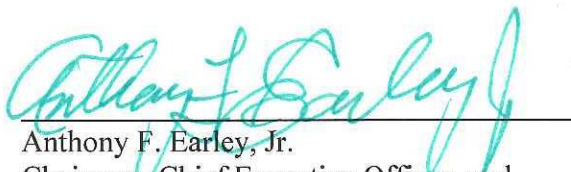
7.4. This Joint Proposal shall be governed by the laws of the State of California as to all matters, including but not limited to, matters of validity, construction, effect, performance, and remedies.

7.5. This Joint Proposal may be executed in separate counterparts by the different Parties hereto with the same effect as if all Parties had signed one and the same document.

The Parties mutually believe that, based on the terms and conditions and reservations of rights stated above, this Joint Proposal is reasonable, consistent with the law, and in the public interest.

The Parties' authorized representatives have duly executed this Joint Proposal on behalf of the Parties they represent.

## PG&amp;E CORPORATION



Anthony F. Earley, Jr.  
Chairman, Chief Executive Officer, and  
President

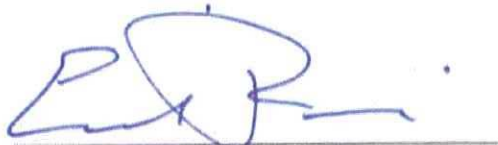
Date: June 20, 2016

NATURAL RESOURCES DEFENSE  
COUNCIL

Rhea Suh  
President

Date: June 20, 2016

## FRIENDS OF THE EARTH



Erich Pica  
President

Date: June 20, 2016

## ENVIRONMENT CALIFORNIA



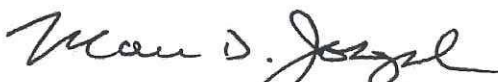
Dan Jacobson  
Legislative Director

Date: June 20, 2016

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL 1245

Tom Dalzell  
Business Manager

Date: June 20, 2016

COALITION OF CALIFORNIA UTILITY  
EMPLOYEES

Marc D. Joseph  
Attorney on behalf of Coalition Of California  
Utility Employees

Date: June 20, 2016

ALLIANCE FOR NUCLEAR  
RESPONSIBILITY

*Rochelle Becker*  
Rochelle Becker (Jun 20, 2016)

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Rochelle Becker  
Executive Director

Date: June 20, 2016

## **EXHIBIT B**

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**


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Friends of the Earth,

*Petitioner,*
*v.*

U.S. Nuclear Regulatory Commission,  
United States of America,

*Respondents,*

Pacific Gas &amp; Electric Co.,

*Intervenor.*


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No. 16-1004

**JOINT MOTION TO SUSPEND BRIEFING**

Pursuant to Federal Rule of Appellate Procedure 27, the undersigned parties jointly move to suspend briefing in this matter pending approval of a proposed settlement filed with the California Public Utilities Commission (CPUC) and, pursuant to that agreement, withdrawal of the license renewal application at issue in this matter. Petitioner Friends of the Earth (FOE) seeks review in this Court of Respondent Nuclear Regulatory Commission's (NRC) order denying FOE's request to intervene in an administrative proceeding regarding an application by

Intervenor Pacific Gas & Electric Co. (PG&E) to renew the operating licenses for Diablo Canyon Nuclear Power Plant (Diablo Canyon) (“License Renewal Application”). Under the terms of the proposed settlement and as described more fully below, upon approval of the settlement by the CPUC, PG&E has agreed to withdraw the License Renewal Application and FOE has agreed to dismiss this matter. The undersigned parties therefore request briefing in this matter be suspended pending approval by the CPUC of the proposed settlement and subsequent withdrawal of the License Renewal Application pursuant to that agreement. Federal Respondents do not oppose the relief requested in this motion.

### **Background**

1. On January 8, 2016, FOE sought review by this Court of the NRC’s final action affirming an order by the Atomic Safety and Licensing Board denying FOE’s petition to intervene in a proceeding regarding PG&E’s application to renew its operating licenses for Diablo Canyon. *See* Petition for Review (Jan. 8, 2016); Memorandum and Order, CLI-15-21, Docket Nos. 50-275-LR, 50-323-LR (Nov. 9, 2015).

2. On June 20, 2016, FOE and PG&E, along with other parties, submitted a “Joint Proposal” to the CPUC, under the terms of which PG&E agreed to, *inter alia*, “retire Diablo Canyon at the expiration of its current NRC operating licenses.” Joint Proposal of Pacific Gas & Electric Company, Friends of the Earth,

Natural Resources Defense Council, Environment California, International Brotherhood of Electrical Workers Local 1245, Coalition of California Utility Employees and Alliance for Nuclear Responsibility to Retire Diablo Canyon Nuclear Power Plant at Expiration of the Current Operating Licenses and Replace it with a Portfolio of GHG Free Resources (June 20, 2016), <http://www.pge.com/includes/docs/pdfs/safety/dcphp/JointProposal.pdf> at 3 (“Joint Proposal Application”). The parties agreed to “jointly propose and support the orderly replacement of Diablo Canyon with GHG free resources.” Joint Proposal Application at 3.

3. Under the Joint Proposal Application, the parties agreed as follows:

Following final and non-appealable CPUC approval of the Joint Proposal Application, 1) PG&E will withdraw the Diablo Canyon NRC license renewal application and request that the proceeding be terminated with prejudice; 2) the Parties will support the withdrawal and termination of the Diablo Canyon NRC license renewal application; and 3) FOE will withdraw with prejudice the petition at the DC Circuit Court of Appeals and related pending hearing requests and motions in the Diablo Canyon license renewal case (*Friends of the Earth v. U.S. Nuclear Regulatory Commission*, Case No. 16-1004 (D.C. Cir. filed Jan. 8, 2016)).

Joint Proposal Application at 16.

4. PG&E agreed to “request that the CPUC issue a final decision approving the Joint Proposal Application no later than December 31, 2017.” Joint Proposal Application at 18.

5. The parties further agreed that “PG&E’s obligation to withdraw its license renewal application . . . shall not become effective or binding until the CPUC’s approval of the Joint Proposal Application has become final and non-appealable.” Joint Proposal Application at 18.

6. Diablo Canyon’s current operating licenses expire on November 2, 2024 (Unit 1) and August 26, 2025 (Unit 2).

7. Petitioner’s brief in this matter is due July 25, 2016. Oral argument has not been scheduled.

### **Relief Sought**

8. In light of the foregoing, the undersigned parties request that the briefing in this matter be suspended pending approval by the CPUC of the Joint Proposal Application and subsequent withdrawal by PG&E of the License Renewal Application.

9. The undersigned parties request an order:

- a. Suspending briefing in this matter pending approval by the CPUC of the Joint Proposal Application and withdrawal of the License Renewal Application;
- b. Directing PG&E to submit status reports every 120 days, beginning January 20, 2017, regarding the status of the CPUC’s

consideration of the Joint Proposal Application and the status of PG&E's License Renewal Application;

- c. Directing FOE to submit a motion to dismiss this matter within 30 days of NRC acceptance of the withdrawal of the License Renewal Application; and
- d. Directing the parties to submit motions to govern future proceedings within 30 days of the CPUC taking any final action regarding the Joint Proposal Application that does not approve the Joint Proposal Application as submitted or otherwise has the effect that PG&E will not withdraw the License Renewal Application in accordance with the terms of the Joint Proposal Application.

Respectfully submitted,

David A. Repka  
Tyson R. Smith  
WINSTON & STRAWN LLP  
1700 K Street, NW  
Washington, DC 20006  
1-202-282-5726

*Counsel for Pacific Gas &  
Electric Co.*

/s/ Richard E. Ayres

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*Counsel for Friends of the Earth*

Dated: June 29, 2016

**CERTIFICATE OF SERVICE**

I certify that on June 29, 2016, I served the foregoing “Joint Motion to Suspend Briefing” in the above-captioned case upon all counsel registered with the Court’s CM/ECF system.

Respectfully submitted,

/s/ John H. Bernetich

John H. Bernetich

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## **EXHIBIT C**

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

**ADDRESSES:** Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395-7316.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sandra Webb, Director of Grant Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024-2135. Dr. Webb can be reached by Telephone: 202-653-4718 Fax: 202-653-4608, or by email at [swebb@imls.gov](mailto:swebb@imls.gov), or by teletype (TTY/TDD) for persons with hearing difficulty at 202-653-4614.

**SUPPLEMENTARY INFORMATION:** The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit [www.imls.gov](http://www.imls.gov).

**Current Actions:** This notice proposes the clearance of the IMLS National Medals Nomination forms and instructions. The 60-day Notice for the "Notice of Proposed Information Collection Requests: 2019-2021 IMLS National Medals Nomination Forms was published in the **Federal Register** on November 27, 2017 (82 FR 56058). The agency has taken into consideration the one comment that was received under this notice.

The National Medals are designed to recognize outstanding libraries and museums that have made significant contributions in service to improve the wellbeing of their communities. These institutions exceed expected levels of community outreach beyond a single program or exhibit by building community cohesion and serving as catalysts for positive community change. Nominees should review the IMLS strategic plan (<https://www.imls.gov/publications/transforming-communities-imls-strategic-plan-2018-2022>) and highlight how their work aligns (e.g., promoting lifelong learning, building institutional

capacity, increasing community access). We are particularly interested in enhanced services for veterans/military families, sustained opportunities for diverse youth and young professionals, and assistance to marginalized young families or seniors. Recipient institutions are honored at an awards ceremony that is held in Washington, DC.

**Agency:** Institute of Museum and Library Services.

**Title:** IMLS National Medals Nomination Forms.

**OMB Number:** 3137-0097.

**Frequency:** Once per year.

**Affected Public:** Library and Museum applicants.

**Number of Respondents:** 160.

**Estimated Average Burden per Response:** 9 hours.

**Estimated Total Annual Burden:** 1,440 hours.

**Total Annualized Capital/Startup Costs:** n/a.

**Total Annual Costs:** \$40,219.

Dated: April 18, 2018.

**Kim Miller,**

*Grants Management Specialist, Office of Grants Policy and Management.*

[FR Doc. 2018-08407 Filed 4-20-18; 8:45 am]

**BILLING CODE 7036-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-275 and 50-323; NRC-2009-0552]

### Pacific Gas & Electric Company; Diablo Canyon Power Plant, Unit Nos. 1 and 2; Withdrawal of License Renewal Application

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License renewal application; withdrawal by applicant.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Pacific Gas & Electric Company (PG&E or the licensee) to withdraw its application, and all associated correspondence and commitments, dated November 23, 2009, for license renewal of Diablo Canyon Power Plant (DCPP), Unit Nos. 1 and 2 (Operating License Nos. DPR-80 and DPR-82, respectively). The license renewal application had requested 20 additional years of operation for DCPP, Unit Nos. 1 and 2. By withdrawing the license renewal application, the current operating licenses will expire on November 2, 2024, for DCPP Unit No. 1, and on August 26, 2025, for Unit No. 2.

**DATES:** The effective date of the withdrawal of the license renewal application is April 23, 2018.

**ADDRESSES:** Please refer to Docket ID NRC-2009-0052 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• **Federal Rulemaking Website:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2009-0052. Address questions about NRC dockets to Jennifer Borges; telephone: 301-287-9127; email: [Jennifer.Borges@nrc.gov](mailto:Jennifer.Borges@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Elaine Keegan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-8517; email: [Elaine.Keegan@nrc.gov](mailto:Elaine.Keegan@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The licensee submitted its application for license renewal for DCPP, Unit Nos. 1 and 2, on November 23, 2009 (ADAMS Accession No. ML093340086). DCPP, Unit Nos. 1 and 2, are located in San Luis Obispo County, California, approximately 7 miles northwest of Avila Beach and 12 miles west-southwest of San Luis Obispo. On April 10, 2011, PG&E requested the deferral of a final decision on the license renewal application until seismic studies and a report addressing the results of those studies were completed (ADAMS Accession No. ML111010592).

The NRC staff issued a safety evaluation report on June 2, 2011 (ADAMS Accession No. ML11153A103),

that documented the technical safety review of DCP, Unit Nos. 1 and 2. Appendix A of the safety evaluation report listed PG&E's commitments for renewal of the operating licenses.

The NRC staff resumed the review of the license renewal application after PG&E submitted the annual update for the application on December 22, 2014 (ADAMS Package Accession No. ML14364A259). Subsequently, on June 21, 2016, PG&E requested that the NRC staff suspend the license renewal review (ADAMS Accession No. ML16175A561). At that time, PG&E also requested approval from the California Public Utilities Commission not to proceed with license renewal. The NRC staff suspended the license renewal review in July 2016. On January 11, 2018, the California Public Utilities Commission approved PG&E's proposal to close DCP, Unit Nos. 1 and 2, when its current licenses expire. By letter dated March 7, 2018, PG&E requested withdrawal of its license renewal application, including all associated correspondence and commitments, for DCP, Unit Nos. 1 and 2 (ADAMS Accession No. ML18066A937).

Pursuant to the requirements in part 2 of title 10 of the *Code of Federal Regulations*, the Commission grants PG&E's request to withdraw DCP, Unit Nos. 1 and 2, license renewal application.

Dated at Rockville, Maryland, this 17th day of April 2018.

For the Nuclear Regulatory Commission.

**Eric R. Oesterle,**

*Chief, License Renewal Project Branch,  
Division of Materials and License Renewal,  
Office of Nuclear Reactor Regulation.*

[FR Doc. 2018-08366 Filed 4-20-18; 8:45 am]

**BILLING CODE 7590-01-P**

## POSTAL SERVICE

### Revision to ZIP Code Zone Charts for APO/FPO/DPO Inbound Mail

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service will rezone Inbound Mail from APO/FPO/DPO ZIP Codes to coordinate the Origin/Destination ZIP Codes with the designated International Service Centers (ISC) through which each originating ZIP Code dispatches mail.

**DATES:** *Applicable:* June 1, 2018.

**FOR FURTHER INFORMATION CONTACT:**

Direct questions or comments to Kimberly G. Forehan by email at [kimberly.g.forehan@usps.gov](mailto:kimberly.g.forehan@usps.gov) or phone (859) 447-2652.

**SUPPLEMENTARY INFORMATION:** Effective with the ZIP Code Zone Charts update on June 1, 2018, Inbound Mail from APO/FPO/DPO ZIP Codes will be rezoned to coordinate the Origin/Destination ZIP Codes with the designated International Service Centers (ISC) through which each originating ZIP Code dispatches mail. This means that mail being sent from the various APO/FPO/DPO ZIP codes will be realigned so that both outbound and inbound ZIPs will be paired with the areas they serve. The US Postal Service refers to these relationships as "reciprocal" or "retrograde" pairs. This is a change from the current process where Pacific ZIP Codes are zoned through the San Francisco ISC and the European ZIP Codes are zoned through the JFK ISC. After June 1, 2018, each of the five ISCs will be aligned with reciprocal pairs for inbound mail from APO/FPO/DPO ZIP Codes. This will result in a more accurate pricing model for Military customers mailing items back to the United States.

**Ruth Stevenson,**

*Attorney, Federal Compliance.*

[FR Doc. 2018-08360 Filed 4-20-18; 8:45 am]

**BILLING CODE 7710-12-P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

**Extension:**

Rule 206(3)-2; SEC File No. 270-216, OMB Control No. 3235-0243

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 206(3)-2, (17 CFR 275.206(3)-2), which is entitled "Agency Cross Transactions for Advisory Clients," permits investment advisers to comply with section 206(3) of the Investment Advisers Act of 1940 (the "Act") (15 U.S.C. 80b-6(3)) by obtaining a client's blanket consent to enter into agency cross transactions (*i.e.*, a transaction in which an adviser acts as a broker to both the advisory client and the opposite party to the transaction). Rule 206(3)-2,

applies to all registered investment advisers. In relying on the rule, investment advisers must provide certain disclosures to their clients. Advisory clients can use the disclosures to monitor agency cross transactions that affect their advisory account. The Commission also uses the information required by Rule 206(3)-2, in connection with its investment adviser inspection program to ensure that advisers are in compliance with the rule. Without the information collected under the rule, advisory clients would not have information necessary for monitoring their adviser's handling of their accounts and the Commission would be less efficient and effective in its inspection program.

The information requirements of the rule consist of the following: (1) Prior to obtaining the client's consent, appropriate disclosure must be made to the client as to the practice of, and the conflicts of interest involved in, agency cross transactions; (2) at or before the completion of any such transaction, the client must be furnished with a written confirmation containing specified information and offering to furnish upon request certain additional information; and (3) at least annually, the client must be furnished with a written statement or summary as to the total number of transactions during the period covered by the consent and the total amount of commissions received by the adviser or its affiliated broker-dealer attributable to such transactions.

The Commission estimates that approximately 426 respondents use the rule annually, necessitating about 50 responses per respondent each year, for a total of 21,300 responses. Each response requires an estimated 0.5 hours, for a total of 10,650 hours. The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the cost of Commission rules and forms.

This collection of information is found at (17 CFR 275.206(3)-2) and is necessary in order for the investment adviser to obtain the benefits of Rule 206(3)-2. The collection of information requirements under the rule is mandatory. Information subject to the disclosure requirements of Rule 206(3)-2 does not require submission to the Commission; and, accordingly, the disclosure pursuant to the rule is not kept confidential.

Commission-registered investment advisers are required to maintain and preserve certain information required under Rule 206(3)-2 for five (5) years. The long-term retention of these records

## **EXHIBIT D**

Cite as 82 NRC 295 (2015)

**CLI-15-21**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**COMMISSIONERS:**

**Stephen G. Burns**, Chairman  
**Kristine L. Svinicki**  
**William C. Ostendorff**  
**Jeff Baran**

**In the Matter of**

**Docket Nos. 50-275-LR  
50-323-LR**

**PACIFIC GAS AND ELECTRIC  
COMPANY  
(Diablo Canyon Nuclear Power  
Plant, Units 1 and 2)**

**November 9, 2015**

**STANDARD OF REVIEW**

The Commission's standard of review is highly deferential; the Commission will not overturn a licensing board's ruling on threshold issues like intervention absent error of law or abuse of discretion.

**CONTENTIONS, ADMISSIBILITY**

For a successful intervention petition or request for hearing, a petitioner must, in addition to demonstrating standing, propose at least one contention that: (1) provides a specific statement of the issue of law or fact to be raised or controverted; (2) provides a brief explanation of its basis; (3) demonstrates that the issue raised is within the scope of the proceeding; (4) demonstrates that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding; (5) provides a concise statement of the alleged facts or expert opinions that support the 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 petitioner intends to rely to support its position on the issue; and (6) provides sufficient information to show

that a genuine dispute exists with the applicant/licensee on a material issue of law or fact, with 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 contention must identify each failure and the supporting reasons for the petitioner's belief.

#### **CONTENTIONS, ADMISSIBILITY**

The Commission's contention admissibility requirements are strict by design; only focused, well-supported issues will be admitted for hearing.

#### **CONTENTIONS, ADMISSIBILITY**

The Commission's rules of practice also place limits on the types of issues a petitioner may raise. As relevant here, 10 C.F.R. § 2.335(a) prohibits challenges to an agency rule or regulation in an adjudicatory proceeding without a waiver of that rule or regulation.

#### **WAIVER OF RULE**

Because the Commission's rules were promulgated with the expectation that they will apply generically, rather than on a case-by-case basis, the Commission sets a high bar for waivers: a waiver request must demonstrate that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which it was adopted.

#### **WAIVER OF RULE**

To determine whether the waiver standard has been met, the Commission applies a four-factor test. The petitioner must demonstrate that: (i) the rule's strict application would not serve the purposes for which it was adopted; (ii) special circumstances exist that were not considered, either explicitly or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived; (iii) those circumstances are unique to the facility rather than common to a large class of facilities; and (iv) waiver of the regulation is necessary to reach a significant safety or environmental problem.

## **CONTENTIONS, ADMISSIBILITY**

Contentions that challenge an agency rule or regulation without a waiver, in addition to being expressly prohibited by 10 C.F.R. § 2.335(a), are outside the scope of the proceeding.

## **LICENSE RENEWAL PROCEEDINGS**

The Commission's license renewal regulations rely on the regulatory processes applicable to all currently operating reactors to address most safety and security issues, limiting license renewal proceedings to consideration of only certain issues related specifically to plant aging.

## **MEMORANDUM AND ORDER**

Friends of the Earth has appealed the Atomic Safety and Licensing Board's ruling in LBP-15-6, in which the Board denied Friends of the Earth's petition to intervene and its related request to waive certain regulations that govern the scope of this license renewal proceeding.<sup>1</sup> For the reasons set forth below, we affirm the Board's ruling.

### **I. BACKGROUND**

In November 2009, Pacific Gas and Electric Company (PG&E) applied to renew the operating licenses for Diablo Canyon Units 1 and 2 for an additional 20 years.<sup>2</sup> The NRC Staff docketed the application and provided an opportunity for interested persons to request an adjudicatory hearing.<sup>3</sup> At that time, one petitioner, the San Luis Obispo Mothers for Peace, filed a request for hearing and proposed five contentions challenging the application.<sup>4</sup> The Board admitted three

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<sup>1</sup> Friends of the Earth's Notice of Appeal of LBP-15-6 (Mar. 9, 2015); Brief of Friends of the Earth in Support of Appeal of LBP-15-6 (Mar. 9, 2015) (Appeal); LBP-15-6, 81 NRC 314, 327 (2015).

<sup>2</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>3</sup> *Id.*

<sup>4</sup> Request for Hearing and Petition to Intervene by San Luis Obispo Mothers for Peace (Mar. 22, 2010).

of them.<sup>5</sup> We reversed in part and affirmed in part the Board's ruling, leaving one admitted contention pending in the proceeding.<sup>6</sup> In that contention, Mothers for Peace asserted that PG&E's Environmental Report, specifically PG&E's severe accident mitigation alternatives analysis, failed to consider the Shoreline Fault, a recently discovered fault near the Diablo Canyon facility.<sup>7</sup>

Since the discovery of the Shoreline Fault, PG&E has undertaken a series of studies to gain a better understanding of the seismic landscape near Diablo Canyon.<sup>8</sup> Among these efforts, at the request of the State of California, PG&E launched a major seismic imaging project, which culminated in a final report that PG&E provided to the NRC in September 2014.<sup>9</sup> PG&E also incorporated the information it obtained from the seismic imaging project into its March 2015 response to the Staff's request for updated seismic hazard information from all licensees as part of the agency's response to the March 2011 nuclear accident at the Fukushima Dai-ichi Nuclear Power Plant in Japan.<sup>10</sup> Over the course of

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<sup>5</sup> LBP-10-15, 72 NRC 257, 345-46 (2010). The Board also found that Mothers for Peace had demonstrated a *prima facie* case for waiver to support the admission of a fourth contention; the Board conditionally admitted that contention and certified the waiver petition to us for review. *Id.* at 345. We denied the waiver request and thus found the contention inadmissible. CLI-11-11, 74 NRC 427, 452 (2011).

<sup>6</sup> *Id.* at 444.

<sup>7</sup> *Id.* at 438; *see infra* note 10.

<sup>8</sup> *See, e.g.*, Report on the Analysis of the Shoreline Fault Zone, Central Coastal California: Report to the U.S. Nuclear Regulatory Commission (Jan. 2011), at ES-1 (ADAMS Accession No. ML110140425).

<sup>9</sup> *See* Central Coastal California Seismic Imaging Project (Sept. 10, 2014) (ADAMS Accession No. ML14260A106 (package)).

<sup>10</sup> *See* Allen, Barry S., PG&E, Letter to U.S. NRC Document Control Desk (Mar. 11, 2015), at 1-2, Enclosure 1 (ADAMS Accession No. ML15071A046 (package)); *see also* Tr. at 770-71. *See generally* 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 from the Fukushima Dai-ichi Accident (Mar. 12, 2012) (ADAMS Accession No. ML12053A340) (50.54(f) Letter); Final Determination of Licensee Seismic Probabilistic Risk Assessments Under the Request for Information Pursuant to Title 10 of the *Code of Federal Regulations* 50.54(f) Regarding Recommendation 2.1 "Seismic" of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (Oct. 27, 2015) (ADAMS Accession No. ML15194A015). PG&E's updated seismic hazard analysis also will be considered in certain limited respects to inform the Staff's environmental review of PG&E's license renewal application, specifically with regard to the severe accident mitigation alternatives analysis and Mothers for Peace's admitted contention. *See* Lindell, Joseph A., counsel for NRC Staff, Letter to Licensing Board (July 16, 2015), at 1 (ADAMS Accession No. ML15197A195); Tr. at 784. Relatedly, PG&E sought summary disposition of Mothers for Peace's admitted contention, arguing that because PG&E has now considered the Shoreline Fault in its severe accident mitigation alternatives analysis, the contention should be dismissed. *See* Pacific Gas and Electric Company's Motion for Summary Disposition on Contention EC-1 (July 31, 2015) at 1-2. The Board recently granted summary disposition and has terminated the proceeding. LBP-15-29, 82 NRC 246 (2015).

this ongoing process, the Staff will review PG&E's updated seismic hazard information to determine what impacts, if any, it will have on current operations at Diablo Canyon, including whether any changes to Diablo Canyon's current licensing basis are necessary.<sup>11</sup>

One month after PG&E submitted the seismic imaging project report to the NRC, Friends of the Earth filed a petition to intervene with three proposed contentions.<sup>12</sup> In general, Friends of the Earth asserted that the operating licenses for Diablo Canyon Units 1 and 2 may not be renewed until the agency explores, in an evidentiary hearing, the impact of the new seismic information on the safe operation of the plant.<sup>13</sup> Although Friends of the Earth argued that its contentions were within the scope of the Diablo Canyon license renewal proceeding, as a precaution it also requested a waiver of three regulations in 10 C.F.R. Part 54 that pertain to the scope of the agency's license renewal review:<sup>14</sup> 10 C.F.R. § 54.4, which defines the scope of license renewal; 10 C.F.R. § 54.21, which sets forth the contents of a license renewal application; and 10 C.F.R. § 54.29, which sets forth the findings that the agency must make for the issuance of a renewed license.<sup>15</sup>

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<sup>11</sup> See Tr. at 764-65, 791-93; see also 50.54(f) Letter at 1 ("The review will enable the staff to determine whether the nuclear plant licenses . . . should be modified, suspended, or revoked.").

<sup>12</sup> Friends of the Earth's Request for a Hearing and Petition to Intervene (Oct. 10, 2014) at 1 (Petition); Affidavit and Curriculum Vitae of Dr. Gerhard Jentzsch (Oct. 8, 2014); Gundersen Affidavit Supporting Friends of the Earth's Petition to Intervene (Oct. 10, 2014). Friends of the Earth filed a separate hearing request, a portion of which we referred to the Atomic Safety and Licensing Board to determine whether, as Friends of the Earth asserts, there is an ongoing de facto license amendment proceeding involving PG&E's updated seismic hazard evaluation, for which the NRC is required to provide an opportunity to request a hearing under the Atomic Energy Act of 1954, as amended (AEA). See *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-15-14, 81 NRC 729, 730, 734-35 (2015); Petition to Intervene and Request for Hearing by Friends of the Earth (Aug. 26, 2014) (Hearing Request) (ADAMS Accession No. ML14254A223 (package)); see also *infra* note 69 (discussing the referral of a portion of this hearing request to the Staff for resolution under section 2.206). The Board recently denied Friends of the Earth's request for hearing on the ground that "the NRC has neither granted PG&E greater authority than that provided by its license nor otherwise altered the terms of those licenses," and therefore, Friends of the Earth had not demonstrated the existence of a licensing action subject to hearing rights under section 189a of the Atomic Energy Act. *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-15-27, 82 NRC 184, 186 (2015). Friends of the Earth has appealed the Board's decision. Friends of the Earth's Notice of Appeal of LBP-15-27 (Oct. 23, 2015); Brief of Friends of the Earth in Support of Appeal of LBP-15-27 (Oct. 23, 2015) (ADAMS Accession No. ML15296A550).

<sup>13</sup> See Petition at 1-2, 6, 10.

<sup>14</sup> See *id.* at 20-21, 30; Friends of the Earth's Petition for Waiver of 10 C.F.R. §§ 54.4, 54.21, and 54.29(a) as Applied to the Diablo Canyon License Renewal Proceeding (Oct. 10, 2014) (Waiver Request); Declaration of Richard Ayres, Counsel for Friends of the Earth, Regarding Waiver of 10 C.F.R. §§ 54.4, 54.21, and 54.29(a) as Applied to the Diablo Canyon License Renewal Proceeding (Oct. 10, 2014).

<sup>15</sup> 10 C.F.R. §§ 54.4, 54.21, 54.29.

In response to questioning from the Board at oral argument, Friends of the Earth requested waiver of 10 C.F.R. § 54.30 to the extent it also precluded the litigation of Friends of the Earth's proposed contentions.<sup>16</sup> That section states that matters relating to reasonable assurance of safety during the current license term are to be addressed under the current license and are outside the scope of a license renewal review.<sup>17</sup> Mothers for Peace filed an answer in support of Friends of the Earth's petition to intervene and waiver request.<sup>18</sup>

PG&E and the Staff opposed Friends of the Earth's intervention on several grounds. Both PG&E and the Staff asserted that Friends of the Earth's proposed contentions were not timely filed because, in PG&E's view, Friends of the Earth could have filed them in 2011, when PG&E submitted an earlier report on the Shoreline Fault to the agency, or, in the Staff's view, no later than 2012, when the Staff completed a confirmatory analysis of that report.<sup>19</sup> In addition, PG&E and the Staff argued that the proposed contentions were outside the scope of the proceeding because they raised current operating issues rather than the safety issues designated for review in a license renewal proceeding — specifically, those relating to the aging management of certain structures, systems, and components during the period of extended operation.<sup>20</sup> PG&E and the Staff also asserted that Friends of the Earth's waiver request should not be granted because Friends of the Earth had not demonstrated special circumstances that would prevent the challenged license renewal regulations from serving their intended purpose.<sup>21</sup>

The Board “decline[d] to reject [Friends of the Earth's] petition as untimely,” but ultimately found that Friends of the Earth's contentions did not meet our admissibility requirements and that its waiver request did not demonstrate a *prima*

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<sup>16</sup> Appeal at 1-2 n.3; Tr. at 740-41. Because we find that Friends of the Earth has not met the standard for a waiver of our rules, we need not address the timeliness of this additional request.

<sup>17</sup> 10 C.F.R. § 54.30.

<sup>18</sup> San Luis Obispo Mothers for Peace's Response to Friends of the Earth's Request for a Hearing and Petition to Intervene and Petition for Waiver of 10 C.F.R. §§ 54.4, 54.21, and 54.29(a) as Applied to the Diablo Canyon License Renewal Proceeding (Nov. 4, 2014), at 1.

<sup>19</sup> See Pacific Gas and Electric Company's Answer Opposing the Friends of the Earth Hearing Request and Petition for Waiver (Nov. 4, 2014) at 23-25 (PG&E Answer); NRC Staff's Answer to Friends of the Earth's Request for a Hearing and Petition to Intervene and Waiver Petition (Nov. 4, 2014) at 20 (Staff Answer). See generally Report on the Analysis of the Shoreline Fault Zone, Central Coastal California (Jan. 7, 2011) (ADAMS Accession No. ML110140431 (package)); Research Information Letter 12-01, Confirmatory Analysis of Seismic Hazard at Diablo Canyon Power Plant from the Shoreline Fault Zone (Sept. 2012) (ADAMS Accession No. ML121230035). Friends of the Earth filed a reply to PG&E's and the Staff's answers. Friends of the Earth's Reply to NRC Staff's and Pacific Gas & Electric Company's Answers to Petition to Intervene and Request for Hearing (Nov. 12, 2014).

<sup>20</sup> See PG&E Answer at 13-15; Staff Answer at 25-26, 30, 37.

<sup>21</sup> See PG&E Answer at 25-28; Staff Answer at 41-50.

*facie* case for waiver.<sup>22</sup> The Board therefore denied both the petition to intervene and the waiver request, and Friends of the Earth filed the instant appeal.<sup>23</sup> Friends of the Earth's appeal qualifies as an appeal as of right under 10 C.F.R. § 2.311(c).<sup>24</sup> Our standard of review is highly deferential; we will not overturn a licensing board's ruling on threshold issues like intervention absent error of law or abuse of discretion.<sup>25</sup>

## II. DISCUSSION

For a successful intervention petition or request for hearing, a petitioner must, in addition to demonstrating standing, propose at least one contention that:

- (1) provides a specific statement of the issue of law or fact to be raised or controverted;
- (2) provides a brief explanation of its basis;
- (3) demonstrates that the issue raised is within the scope of the proceeding;
- (4) demonstrates that the issue raised is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (5) provides a concise statement of the alleged facts or expert opinions that support the 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 petitioner intends to rely to support its position on the issue; and
- (6) provides sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact, with 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

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<sup>22</sup> LBP-15-6, 81 NRC at 320, 325.

<sup>23</sup> *Id.* at 327. PG&E and the Staff oppose Friends of the Earth's Appeal. See Pacific Gas and Electric Company's Opposition to Friends of the Earth Appeal from LBP-15-6 (Apr. 3, 2015) at 1; NRC Staff's Answer to Friends of the Earth's Appeal of Memorandum and Order LBP-15-6 (Denying Petition to Intervene and Petition for Waiver) (Apr. 2, 2015) at 2.

<sup>24</sup> See 10 C.F.R. § 2.311(c) (providing an appeal as of right on the question whether a request for hearing or petition to intervene should have been granted).

<sup>25</sup> See, e.g., CLI-11-11, 74 NRC at 431.

by law, the contention must identify each failure and the supporting reasons for the petitioner's belief.<sup>26</sup>

Our contention admissibility requirements are strict by design; only focused, well-supported issues will be admitted for hearing.<sup>27</sup>

Our rules of practice also place limits on the types of issues a petitioner may raise. As relevant here, 10 C.F.R. § 2.335(a) prohibits challenges to an agency rule or regulation in an adjudicatory proceeding without a waiver of that rule or regulation. And because our rules were promulgated with the expectation that they will apply generically, rather than on a case-by-case basis, we set a high bar for waivers: a waiver request must demonstrate that “special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which . . . [it] was adopted.”<sup>28</sup> To determine whether this standard has been met, we apply a four-factor test.<sup>29</sup> The petitioner must demonstrate that:

- (i) the rule's strict application would not serve the purposes for which it was adopted;
- (ii) special circumstances exist that were not considered, either explicitly or by necessary implication, in the rulemaking proceeding leading to the rule sought to be waived;
- (iii) those circumstances are unique to the facility rather than common to a large class of facilities; and
- (iv) waiver of the regulation is necessary to reach a significant safety or environmental problem.<sup>30</sup>

Contentions that challenge an agency rule or regulation without a waiver, in addition to being expressly prohibited by 10 C.F.R. § 2.335(a), are outside the scope of the proceeding.<sup>31</sup>

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<sup>26</sup> 10 C.F.R. § 2.309(a), (f)(1)(i)-(vi). The Board found that Friends of the Earth had demonstrated standing through the authorized representation of members who live within 50 miles of the Diablo Canyon Nuclear Power Plant site. *See* LBP-15-6, 81 NRC at 317-18 & n.22. The Board's ruling on Friends of the Earth's standing is not before us on appeal.

<sup>27</sup> *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001).

<sup>28</sup> 10 C.F.R. § 2.335(b); *see also Exelon Generation Co., LLC* (Limerick Generating Station, Units 1 and 2), CLI-13-7, 78 NRC 199, 206-07 (2013).

<sup>29</sup> *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 (2005).

<sup>30</sup> *Id.*; *Limerick*, CLI-13-7, 78 NRC at 207-09.

<sup>31</sup> *See* 10 C.F.R. § 2.309(f)(1)(iii). We also discussed the relationship between sections 2.335(a) and 2.309(f)(iii) earlier in this proceeding. *See* CLI-11-11, 74 NRC at 452.

On appeal, Friends of the Earth asks us to reverse the Board's ruling in LBP-15-6, grant its waiver request, and admit Contentions 1 and 3 for hearing.<sup>32</sup> In the alternative, Friends of the Earth asks us to grant the waiver request and remand the proceeding to the Board "to consider anew the admissibility of Contentions 1 and 3."<sup>33</sup> We find that the Board appropriately denied Friends of the Earth's petition to intervene and waiver request. Therefore, we decline to remand the contention admissibility issue for the Board to address a second time.

#### **A. Friends of the Earth's Contentions 1 and 3**

In Contention 1, Friends of the Earth argued that the information in the seismic imaging report demonstrates that the potential energy from seismic activity near Diablo Canyon "is far greater than previously known."<sup>34</sup> Friends of the Earth asserted that PG&E's imaging study revealed that the Shoreline Fault is longer than previously known, that it may rupture with the Hosgri Fault (a nearby fault that was used in the calculation of the seismic design and licensing basis for Diablo Canyon during the initial operating license proceeding), and that the Hosgri and San Simeon faults are assumed to be connected.<sup>35</sup> Friends of the Earth asserts that this new information demonstrates "that previous seismic studies by PG&E significantly underestimated the potential seismic energy that could be released near Diablo Canyon."<sup>36</sup>

Based on its interpretation of the new information, Friends of the Earth questioned PG&E's conclusion that the updated ground motion calculations are bounded by Diablo Canyon's existing seismic design and licensing bases.<sup>37</sup> Friends of the Earth also questioned PG&E's calculation methodology, arguing that the equations used in the seismic imaging report were not peer-reviewed and have not been approved by the NRC.<sup>38</sup> Ultimately, Friends of the Earth argued that the Board should not renew the operating licenses for Diablo Canyon until PG&E can demonstrate that "the plant can be safely shut down following an earthquake on one or more of [the nearby] faults."<sup>39</sup>

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<sup>32</sup> Appeal at 2. Friends of the Earth does not challenge the Board's ruling on Contention 2, which pertained to aging management of certain switches and snubbers. *Id.* at 2 n.6; Petition at 21.

<sup>33</sup> Appeal at 2.

<sup>34</sup> Petition at 10.

<sup>35</sup> *Id.* at 11-12.

<sup>36</sup> *Id.* at 12.

<sup>37</sup> *See id.* at 15.

<sup>38</sup> *See id.* at 13-15.

<sup>39</sup> *Id.* at 10; *see also id.* at 8 (Contention 1: "PG&E's operating license for Diablo Canyon should not be renewed unless and until PG&E establishes that the plant can withstand and be safely shut down following an earthquake on the Hosgri-San Simeon, Shoreline, Los Osos, or San Luis Bay Faults.").

The Board rejected Friends of the Earth's Contention 1 because it did not meet three of the requirements for an admissible contention.<sup>40</sup> The Board noted that Friends of the Earth did not dispute that safe shutdown of the plant "is a current operating issue" that is not dependent upon "whether PG&E's licenses . . . should be renewed."<sup>41</sup> The Board found this concern to be outside the narrow scope of the license renewal proceeding, which, for safety-related issues, "is limited to 'plant structures and components that will require an aging management review for the period of extended operation [under the renewed license] and the plant's systems, structures, and components that are subject to an evaluation of time-limited aging analyses.'"<sup>42</sup> Similarly, the Board found that Friends of the Earth did not raise an issue material to the findings the NRC must make to support the licensing action, which, as noted above, is narrowly focused.<sup>43</sup> Finally, the Board found that Friends of the Earth had not raised a genuine dispute with PG&E because its concerns "do not actually challenge any specific part" of PG&E's license renewal application.<sup>44</sup>

We agree with the Board's finding that Contention 1 is outside the scope of this license renewal proceeding. Contention 1 asserts that, to obtain a renewed license, PG&E must adequately demonstrate that Diablo Canyon "can withstand and be safely shut down following an earthquake on the Hosgri-San Simeon, Shoreline, Los Osos, or San Luis Bay faults."<sup>45</sup> As the Board properly recognized, this contention raises "a current operating issue" that "is not unique to whether PG&E's licenses — which do not expire until nearly a decade from now — should be renewed."<sup>46</sup> A central principle of our license renewal regulations is that such issues must be addressed as they arise.<sup>47</sup> Accordingly, our regulations rely on the

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<sup>40</sup> LBP-15-6, 81 NRC at 321-22. All six requirements must be met for a contention to be admitted. 10 C.F.R. § 2.309(f)(1).

<sup>41</sup> LBP-15-6, 81 NRC at 320-21.

<sup>42</sup> *Id.* at 321 (quoting *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-01-20, 54 NRC 211, 212 (2001)).

<sup>43</sup> *Id.* at 321-22.

<sup>44</sup> *Id.* at 322.

<sup>45</sup> Petition at 8.

<sup>46</sup> LBP-15-6, 81 NRC at 320-21.

<sup>47</sup> Final Rule: "Nuclear Power Plant License Renewal; Revisions," 60 Fed. Reg. 22,461, 22,463-64 (May 8, 1995) (License Renewal Rule) (reaffirming the regulatory philosophy that, "[g]iven the Commission's ongoing obligation to oversee the safety and security of operating reactors, issues that are relevant to current plant operation will be addressed by the existing regulatory process within the present license term rather than deferred until the time of license renewal"); *see also* *Millstone*, CLI-05-24, 62 NRC at 560-61 ("[I]t makes no sense to spend the parties' and our own valuable resources litigating allegations of *current* deficiencies in a proceeding that is directed to *future*-oriented issues of aging." (emphasis in original)). This concept is the first principle of license renewal, which

(Continued)

regulatory processes applicable to all currently operating reactors to address most safety and security issues, limiting license renewal proceedings to consideration of only certain issues related specifically to plant aging.<sup>48</sup> Contention 1 does not address the particular aging-related matters within the scope of license renewal proceedings under our 10 C.F.R. Part 54 regulations. Thus, the contention is outside the scope of this license renewal proceeding.

A contention outside the scope of a proceeding is not admissible for hearing in that proceeding.<sup>49</sup> To remedy that deficiency, Friends of the Earth must persuade us to grant its waiver petition, in which it asks us to set aside, for purposes of this specific proceeding, the foundational regulations in 10 C.F.R. Part 54 that define the scope of our license renewal proceedings. As discussed in Part II.B, *infra*, Friends of the Earth has not demonstrated that a waiver of our basic rules governing license renewal proceedings is warranted here. Therefore, we uphold the Board's ruling that Contention 1 is inadmissible because it is outside the scope of the proceeding.<sup>50</sup>

In Contention 3, Friends of the Earth asserted that PG&E's integrated plant assessment, under which PG&E must identify the structures, systems, and components subject to an aging management review, is faulty because it "rests on seismic data that has been shown to be obsolete and inaccurate."<sup>51</sup> Friends of the Earth argued that PG&E must demonstrate that the structures, systems, and components identified in the integrated plant assessment can continue to perform their intended functions during the period of extended operation in light of the "newly understood seismic circumstances of the plant."<sup>52</sup>

The Board likewise found this contention inadmissible, observing that Friends of the Earth "d[id] not explain how its claims . . . would affect the Staff's ability to make the findings required for license renewal."<sup>53</sup> The Board noted that Friends of

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is that the "regulatory process is adequate to ensure that the licensing bases of all currently operating plants provide[ ] and maintain[ ] an acceptable level of safety so that operation will not be inimical to public health and safety or common defense and security." License Renewal Rule, 60 Fed. Reg. at 22,464.

<sup>48</sup> See 10 C.F.R. §§ 54.4 (defining the scope of our license renewal regulations), 54.21 (specifying license renewal application requirements), 54.29(a) (indicating the safety findings we must make before issuing renewed licenses).

<sup>49</sup> 10 C.F.R. § 2.309(f)(1)(iii); see also 10 C.F.R. § 2.335(a).

<sup>50</sup> Because Contention 1 is outside the scope of this license renewal proceeding and inadmissible on that basis alone, we need not reach the Board's findings regarding other contention admissibility requirements.

<sup>51</sup> Petition at 30-31 (Contention 3: "PG&E has failed to establish in its aging management plan that the effects of aging on Diablo Canyon will be adequately managed for the period of extended operation, in violation of 10 C.F.R. § 54.21(a)(3).").

<sup>52</sup> *Id.* at 31.

<sup>53</sup> LBP-15-6, 81 NRC at 324.

the Earth did not cite any specific portion of the license renewal application that it found deficient, nor did Friends of the Earth explain how its generalized concerns about aging components relate to the updated seismic information in the seismic imaging report.<sup>54</sup> The Board thus dismissed the contention for failure to raise an issue that is material to the findings the NRC must make to support the proposed licensing action.<sup>55</sup> The Board also found that because Friends of the Earth did not provide any specific references to the license renewal application, Friends of the Earth had failed to demonstrate the existence of a genuine dispute with PG&E on a material issue of fact or law.<sup>56</sup> We agree that Friends of the Earth's intervention petition does not identify any specific portion of the application that it seeks to challenge and therefore lacks the specificity that our contention admissibility rules require. The Board properly found Contention 3 inadmissible.<sup>57</sup>

#### **B. Friends of the Earth's Waiver Request**

On appeal, Friends of the Earth reasserts that it is entitled to a waiver to litigate Contentions 1 and 3.<sup>58</sup> The Board denied Friends of the Earth's waiver request for failure to meet two of the four waiver factors.<sup>59</sup> First, the Board found that Friends of the Earth had not shown that application of the regulations in this proceeding would not serve the purposes for which they were adopted. The Board found that our license renewal regulations would serve exactly their intended purpose by focusing the proceeding on future-oriented aging issues.<sup>60</sup> Second, the Board found that Friends of the Earth had not shown that a waiver is necessary to reach a significant safety issue.<sup>61</sup> Although the Board observed that "potential

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<sup>54</sup> *Id.* at 324-25; *see also* 10 C.F.R. § 2.309(f)(1)(vi).

<sup>55</sup> *Id.* (citing 10 C.F.R. § 2.309(f)(1)(iv)).

<sup>56</sup> *Id.* at 325 (citing 10 C.F.R. § 2.309(f)(1)(vi)).

<sup>57</sup> The Board also found that Friends of the Earth would have needed to obtain a rule waiver in order to obtain a hearing on Contention 3. *Id.* Because we find that Contention 3 is inadmissible due to lack of specificity, we need not reach the question of whether Contention 3 is an out-of-scope contention requiring a rule waiver.

<sup>58</sup> Appeal at 7-8.

<sup>59</sup> LBP-15-6, 81 NRC at 326-27.

<sup>60</sup> *Id.* at 326 (citing *Millstone*, CLI-05-24, 62 NRC at 561). In its waiver request, Friends of the Earth pointed broadly to the safety-related purpose of our license renewal regulations. *See* Waiver Request at 6-7. Although it is true that our license renewal regulations are designed with safety as their goal, they were drawn specifically to ensure that current safety issues are prioritized (and are addressed as part of the NRC's ongoing oversight activities) over those that are unique to the period of extended operation — that is, to ensure that safety issues are addressed at their appropriate time. *See* License Renewal Rule, 60 Fed. Reg. at 22,463-64; *Millstone*, CLI-05-24, 62 NRC at 560-61 (rejecting a similarly broad interpretation of the purpose of the license renewal regulations).

<sup>61</sup> LBP-15-6, 81 NRC at 327.

seismic risks to the Diablo Canyon facility are important issues — most certainly ‘significant’ ones,” the Board concluded that Friends of the Earth could raise its concerns through other, more appropriate avenues.<sup>62</sup>

Having agreed with the Board’s finding that Contention 1 is outside the scope of this license renewal proceeding and, therefore, may not be litigated absent a rule waiver,<sup>63</sup> we turn to the Board’s denial of Friends of the Earth’s waiver petition.<sup>64</sup> We agree with the Board that Friends of the Earth has not met the standards for a waiver of our rules, but we reach this conclusion on different grounds. We find that Friends of the Earth has not shown that special circumstances exist that were not considered, either explicitly or by necessary implication, when we adopted our license renewal regulations — the second factor in our waiver test.<sup>65</sup> At bottom, Friends of the Earth argues that a safety issue relating to the current operation of Diablo Canyon requires attention as part of this license renewal proceeding. But we contemplated precisely this type of circumstance when we devised the licensing structure of Part 54. We were aware, when adopting the rule, that issues “relevant to current plant operation” could arise while a license renewal application was under review, and, based on our confidence in the NRC’s regulatory process, we reaffirmed our view that those issues are best addressed as part of our regular oversight activities, outside of license renewal.<sup>66</sup> We see no reason to revisit that rationale in this case.

As the Board correctly observed, our rules provide other mechanisms for Friends of the Earth to raise its concerns that would not require us to redefine the scope of this proceeding.<sup>67</sup> In particular, Friends of the Earth “may file a request

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

<sup>63</sup> *See supra* Section II.A.

<sup>64</sup> As already discussed, we do not reach the question here of whether a waiver would be necessary to permit litigation of Contention 3. *See supra* note 57. Accordingly, although both Friends of the Earth’s waiver petition and the Board’s decision contemplate that a waiver would be necessary for both Contention 1 and Contention 3, our waiver analysis here assumes, without deciding, that Contention 1 is the only contention requiring a waiver.

<sup>65</sup> *See Millstone*, CLI-05-24, 62 NRC at 560.

<sup>66</sup> License Renewal Rule, 60 Fed. Reg. at 22,463-64. Friends of the Earth does argue, when addressing this second waiver-test factor, that “[t]he license renewal rule was based on the implicit assumption that a plant’s seismic design basis would be static, so that there was no need to revisit the seismic assumptions to determine whether alterations to the plant’s current licensing basis were necessary when considering a license renewal.” Appeal at 10; *see also id.* at 14-15. Yet, when issuing our license renewal regulations, we explained plant licensing bases as follows: “The [current licensing basis] represents the *evolving* set of requirements and commitments for a specific plant *that are modified as necessary over the life of a plant* to ensure continuation of an adequate level of safety.” License Renewal Rule, 60 Fed. Reg. at 22,473 (emphasis added). Modifications to a plant’s licensing basis made outside of license renewal could include, for instance, changes addressing newly discovered seismic risks.

<sup>67</sup> *See LBP-15-6*, 81 NRC at 327.

to institute a proceeding . . . to modify, suspend, or revoke a license, or for any other action that may be proper,” if it believes that PG&E’s seismic design and licensing basis is now invalid and that safe operation of the plant can no longer be assured.<sup>68</sup> Friends of the Earth also may file a petition for rulemaking to expand the scope of our license renewal regulations.<sup>69</sup> We decline to set aside our license renewal regulations to conduct what would be an entirely different proceeding when there are more appropriate avenues available for Friends of the Earth to seek relief.

That said, we consider seriously concerns regarding the safe operation of the current nuclear fleet. Today we conclude only that Friends of the Earth has not demonstrated that its seismic concerns are appropriately addressed as part of this license renewal adjudication, which, under our regulations, is limited in scope. Outside of this proceeding, the agency is conducting a comprehensive review of licensee seismic hazard reevaluations, including the information that PG&E provided in March of this year, which may lead to changes in the current licensing basis for Diablo Canyon, as well as for other operating plants.<sup>70</sup> Therefore, although we decline to permit Friends of the Earth to litigate its concerns in this proceeding, the seismic information that has given rise to these concerns is under close and active consideration by the agency.

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<sup>68</sup> 10 C.F.R. § 2.206(a).

<sup>69</sup> See 10 C.F.R. § 2.802. We are not persuaded by Friends of the Earth’s arguments that neither the section 2.206 process nor the opportunity to file a petition for rulemaking would address its claims. See Appeal at 17-19. First, contrary to Friends of the Earth’s view, *see id.* at 18-19, the 2.206 process is designed for bringing just such a challenge regarding a licensee’s current operation under its existing license. By its plain terms, section 2.206 provides an opportunity for the modification, suspension, or revocation of a license, any of which actions might be appropriate as a remedy for Friends of the Earth’s concern that seismic considerations render operation of Diablo Canyon unsafe, if Friends of the Earth determines that its concerns differ from those already pending before the Staff. See *Diablo Canyon*, CLI-15-14, 81 NRC at 736 n.32 (referring a portion of a similar hearing request filed by Friends of the Earth to the Staff as a request for enforcement action under section 2.206, with instructions to the Staff to consider Friends of the Earth’s concerns regarding the safe operation of Diablo Canyon). Second, although Friends of the Earth asserts that it does not wish to challenge our regulations in Part 54 as a general matter, *see* Appeal at 17, a petition for rulemaking to expand license renewal safety reviews, if successful, could be applied to this proceeding. See 10 C.F.R. § 2.802. Third, Friends of the Earth’s insistence that its seismic concerns must be addressed “only in the course of a license renewal proceeding” because of their relation to safety *during the period of extended operation*,” Appeal at 19, does not account for the fact that the current licensing basis (including any adjustments that may have been made to it to deal with emergent safety issues) carries forward from the initial license term into the period of extended operation. Friends of the Earth’s concerns therefore appropriately could be addressed as part of the agency’s continuing oversight of Diablo Canyon irrespective of when, during the plant’s operating life, they may arise.

<sup>70</sup> Any amendment to an existing license as a result of this process would be subject to a hearing opportunity under the AEA. See AEA § 189a, 42 U.S.C. § 2239(a).

### III. CONCLUSION

Friends of the Earth has not raised an admissible contention that is suitable for litigation in this license renewal proceeding, nor has it established that a waiver of our rules is warranted to address its concerns. We therefore *affirm* the Board's denial, in LBP-15-6, of Friends of the Earth's waiver petition and its petition to intervene.

IT IS SO ORDERED.

For the Commission

ANNETTE L. VIETTI-COOK  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 9th day of November 2015.