

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Units 1 and 2

Docket Nos. 50-275, 50-373

PETITION BY SAN LUIS OBISPO MOTHERS FOR PEACE, FRIENDS OF
THE EARTH AND ENVIRONMENTAL WORKING GROUP
TO DENY PACIFIC GAS & ELECTRIC COMPANY'S REQUEST
TO REVIEW UNDOCKETED LICENSE RENEWAL APPLICATION
FOR THE DIABLO CANYON UNIT 1 AND UNIT 2 REACTORS
AND
PETITION TO DENY PACIFIC GAS & ELECTRIC COMPANY'S REQUEST
TO EXTEND THE DIABLO CANYON REACTORS' LICENSE TERMS
WITHOUT RENEWING THE LICENSES

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CPUC Decision 19-11-016 (November 7, 2019),
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CPUC Decision 18-11-024 (November 29, 2018),
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LaCount, Robert, *Joint Proposal for the Orderly Replacement of Diablo Canyon
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INTRODUCTION AND SUMMARY

Petitioners, San Luis Obispo Mothers for Peace, Friends of the Earth, and the Environmental Working Group, hereby request the Commissioners of the U.S. Nuclear Regulatory Commission (“NRC” or “Commission”) to exercise their supervisory authority to deny two extraordinary requests by Pacific Gas & Electric (“PG&E”):

- (a) to review a 2009 license renewal application for Diablo Canyon nuclear power plant Units 1 and 2 (“Diablo Canyon”) that PG&E formally withdrew in 2018, with the NRC’s approval;¹
- (b) to grant PG&E a regulatory exemption that would allow an immediate extension of the Diablo Canyon licenses beyond their 40-year terms, without any safety or environmental review.²

PG&E seeks actions by the NRC that are unlawful under the Atomic Energy Act, the National Environmental Policy Act (“NEPA”), and NRC regulations. In addition, if taken by the NRC, those actions would severely undermine public confidence in the integrity of the NRC’s

¹ Notice, Pacific Gas & Electric Company; Diablo Canyon Power Plant, Unit Nos. 1 and 2; Withdrawal of License Renewal Application, 83 Fed. Reg. 17,688 (Apr. 23, 2018) (announcing that the NRC had “granted” PG&E’s request “to withdraw its application, and all associated correspondence and commitments.”). *See also* discussion below at pages 16-18.

² Letter from Paula Gerfen, Senior Vice President and Chief Nuclear Officer, PG&E, to NRC, re: Request to Resume Review of the Diablo Canyon Power Plant License Renewal Application or, Alternatively, for an Exemption from 10 CFR 2.109(b), Concerning a Timely Renewal Application (Oct. 31, 2022) (“Gerfen Letter”).

Petitioners previously submitted objections to the Gerfen Letter’s requests in Letter from Jane Swanson, *et al.* to NRC Commissioners re: Objection to PG&E’s Requests Related to Withdrawn License Renewal Application for Diablo Canyon Nuclear Power Plant (Nov. 17, 2022) and Letter from Jane Swanson, *et al.* to NRC Commissioners re: PG&E Must be Required to Submit a New License Renewal Application for Diablo Canyon Units 1 and 2 and NRC Must Comply With All Safety and Environmental Requirements in Conducting its Review (Dec. 6, 2022) (collectively “Petitioners’ Letters”). Petitioners have received no response to their letters from the NRC. The letters are adopted and incorporated by reference into this Petition.

regulatory processes and its commitment to the protection of public health and safety and the environment.

First, PG&E would have the NRC determine that the withdrawal of PG&E's license renewal application from the NRC's docket had no legal or practical effect, and therefore the NRC can simply pick up the license renewal review process where it left off years ago, as if the past six years were a dream.³ But PG&E's abandonment of its license renewal application — with the NRC's approval — was legally binding and momentous in its practical consequences: PG&E stopped investing in the future operation of Diablo Canyon, including updating its license renewal application. And the NRC stopped its environmental review. The NRC also approved the relaxation of monitoring and inspections related to operation after 2024/25, given there was no purpose in investing in long-term safety and environmental protection. Finally, by closing the license renewal docket, the NRC gave Petitioners and other members of the public firm assurance that they could end their own watchdog role over the license renewal process. The NRC has no lawful means to reverse the binding termination of the Diablo Canyon license renewal review, or to magically erase the fundamental practical and prejudicial changes it wrought. In conformance with longstanding NRC regulations, PG&E must be required to submit a new license renewal application.

Second, apparently recognizing the impossibility of obtaining NRC review of its withdrawn 2009 license renewal application, PG&E asks the NRC to exempt it from the NRC's timely renewal rule and allow it to submit a new and updated license renewal application in late 2023.⁴

³ Gerfen Letter at 1 and Enclosure 1.

⁴ Gerfen Letter at 2 and Enclosure 2. In fact, PG&E's correspondence and oral statements demonstrate that it will not be able to submit at least one part of its license renewal application until 2024, the same year the Unit 1 license is due to expire. *See* discussion below at pages 20-21.

PG&E reasons that if it submits its new license renewal application so close to the expiration dates for Units 1 and 2, an exemption may be “needed” to allow the NRC sufficient time to review the new license renewal application before the Diablo Canyon reactors reach their license termination dates in 2024 and 2025.⁵

In effect, PG&E is asking the NRC to exempt it from the 40-year limit on license terms imposed by Section 103 of the Atomic Energy Act, 42 U.S.C. § 2133. As the Commission has recognized, however, the only means by which the NRC may extend the Diablo Canyon license terms is to renew them.⁶ PG&E’s request to the NRC to extend its operating license terms through a regulatory exemption violates the Atomic Energy Act and therefore fails to satisfy the requirement of 10 C.F.R. § 50.12(a)(1) that an exemption must be “authorized by law.”⁷

PG&E would also have the NRC short-circuit NEPA’s procedural requirements and extend the licenses for Diablo Canyon without an environmental review.⁸ NEPA prohibits the NRC from extending the Diablo Canyon license terms by any means, unless it first addresses the significant environmental impacts of operation during the extended term, including earthquake risks, impacts to marine life of Diablo Canyon’s outdated once-through cooling system, and impacts of delaying or deferring license renewal-related maintenance and inspection measures in anticipation of shutdown.⁹ As discussed below at page 14, the NRC has no up-to-date environmental impact statement (“EIS”) to address the impacts of extended operation of Diablo

⁵ Gerfen Letter, Enclosure 2 at 1.

⁶ Final Rule, Nuclear Power Plant License Renewal, 56 Fed. Reg. 64,943, 64,961-62 (Dec. 13, 1991) *See also* discussion below at page 29.

⁷ 10 C.F.R. § 50.12(a)(1).

⁸ Gerfen Letter, Enclosure 2 at 7 (asserting that “no environmental impact statement or environmental assessment needs to be prepared in connection with the proposed exemption.”).

⁹ *See* discussion at pages 32-34 below.

Canyon.

PG&E's claimed impetus for its extraordinary requests is S.B. 846, a 2022 State law that reversed a 2018 California Public Utilities Commission ("CPUC") decision approving PG&E's proposal to retire the Diablo Canyon reactors on their termination dates.¹⁰ As S.B. 846 makes clear, however, the California Legislature *is depending on the NRC* to ensure that any decision to renew the Diablo Canyon licenses fulfills all statutory and regulatory requirements for protection of public health and safety and the environment.¹¹ In any event, the Legislature has no authority to dictate the terms by which NRC licenses and regulates the safety of Diablo Canyon's operation.¹²

Petitioners respectfully submit that the only lawful and fair action the NRC can take is to require PG&E to file a new and up-to-date license renewal application and then docket and review that application in accordance with its well-established regulations. If the NRC is unable to complete its review by the reactors' license termination dates, then it must comply with the Atomic Energy Act by requiring the closure of the reactors until the NRC's license renewal review is complete. The NRC should reject PG&E's proposals and commit to the full enforcement of the Atomic Energy Act, NEPA, and its own regulations for protection of public safety and the environment.

¹⁰ Gerfen Letter at 1-2 (citing Senate Bill No. 846 (Dodd), passed on September 2, 2022). PG&E's proposal arose from an historic 2016 settlement between PG&E, environmental organizations (including FoE), and labor unions. *See* discussion below at pages 15-16.

¹¹ *See* discussion below at pages 18-19.

¹² *Pacific Gas & Electric Co. v. State Energy Comm'n*, 461 U.S. 190, 207 (1983).

**REQUEST FOR EXERCISE OF THE COMMISSION'S
SUPERVISORY AUTHORITY**

Petitioners respectfully request the Commission to exercise its supervisory authority to deny PG&E's requests, because they raise the type of "novel or important issue[s]" that the Commission has reserved to itself in past decisions.¹³ Here, PG&E is asking the NRC to pretend that the NRC's approval of PG&E's request to withdraw its license renewal application never happened and that the NRC may now proceed with the review of a license renewal application that no longer exists on the NRC's license renewal docket.¹⁴ To indulge in this requested

¹³ *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-19-07, 90 N.R.C. 1, 10 (2019) ("*NextEra*"). Additional prior cases in which the NRC has exercised its supervisory authority include *Oklo Power, L.L.C.* (Aurora Reactor), CLI-20-17, 92 N.R.C. 521, 524 (2020); *Union Electric Co. d/b/a Ameren Missouri* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141 (2011); *Yankee Atomic Electric Co.* (Yankee Atomic Electric Co.), CLI-91-10, 34 N.R.C. 3 (1991); *Petition for Emergency and Remedial Action*, CLI-80-21, 11 N.R.C. 700 (1980); *Petition for Emergency and Remedial Action*, CLI-78-6, 7 N.R.C. 400, 405 (1978). *Public Service Co. of New Hampshire* (Seabrook Nuclear Power Station, Units 1 and 2), CLI-77-8, 5 N.R.C. 503, 515-517 (1977); *U.S. Energy Research and Devel. Admin.* (Clinch River Breeder Reactor Project), CLI-76-13, 4 N.R.C. 67, 75-76 (1976); *Consol. Edison Co. of N.Y., Inc.* (Indian Point, Units 1, 2 and 3), CLI-75-8, 2 N.R.C. 173 (1975); and *Consumers Power Co.* (Midland Units 1 and 2), CLI-73-38, 6 A.E.C. 1084 (1973).

PG&E's suggests that its request to the NRC to reverse the removal of its 2009 license renewal application from the NRC's review docket is not "novel" because it is supported by "abundant precedent." Gerfen Letter, Enclosure 1 at 3. As discussed below at pages 22-23, however, no such precedents exist.

¹⁴ See discussion above at page 1 and note 1.

PG&E misleadingly argues that the Staff may grant its request as a "discretionary" decision to docket and review a licensing application." Gerfen Letter, Enclosure 1 at 2. In fact, however, what PG&E is asking the NRC to do is to pretend that its license renewal application was never removed from the docket. Such an unlawful action would never be committed to the discretion of the NRC Staff. Moreover, as discussed below at pages 30-36, PG&E's requests seek action by the NRC that would violate non-discretionary provisions in the Atomic Energy Act and NEPA.

Further, even assuming for purposes of argument that the NRC Staff has the authority to put the 2009 application back on the agency's review docket, it could not do that in lawful compliance with NRC regulations, which require that the applicant must "file" the application and furthermore that the Staff must find it is "complete." 10 C.F.R. §§ 2.101(a)(1), (3). Neither of those prerequisites for docketing has been satisfied here. See discussion below at pages 23-26.

pretense would violate the NRC's own regulations for the docketing and review of license applications and would undermine the NRC's already-fragile public credibility as a regulator.

The Commission should also exercise its supervisory jurisdiction to address the novel and important environmental issues raised by PG&E's request to exempt it from the timely renewal rule. To Petitioners' knowledge, the Commission has never before issued an exemption to the timely renewal rule where it was so clear that the NRC's safety and environmental review could not possibly be completed before the expiration dates of the operating licenses.¹⁵ By extending the Diablo Canyon licenses without renewing them, the issuance of such an exemption would violate the Atomic Energy Act's requirement that operating license terms must be limited to 40 years unless they are renewed.¹⁶ And it would violate NEPA by allowing extended operation without evaluating potentially significant environmental impacts such as earthquake risks, cooling system impacts to marine life, and impacts of delaying, deferring or relaxing license renewal-related maintenance and inspection measures in anticipation of shutdown.

Finally, Petitioners request the Commission to exercise its supervisory authority immediately, in order to preclude Staff actions on these novel and important issues that will violate NRC regulations or undermine the NRC's credibility as a regulatory agency. In this regard, it is noteworthy that despite the serious legal and policy concerns raised by Petitioners' Letters (which were copied to the NRC Staff), the only response the Staff has made to the Gerfen

¹⁵ See Viewgraphs, DCCP License Renewal Pre-Submittal Presentation, Presented by Phillippe Soenen, PG&E Director of Strategic Initiatives (Dec. 8, 2022) (ML22339A10) ("PG&E Viewgraphs"). PG&E presented these viewgraphs to the NRC Staff in a meeting on December 8, 2022. The viewgraph on page 15, entitled "Sample Implementation Schedule for DCCP" shows a period of extended operation ("PEO") for Unit 1 beginning in November 2024, and a PEO for Unit 2 beginning in August 2025. But PG&E does not predict that NRC will "Issue Renewed License" until some unspecified date after "Fall 2025."

¹⁶ See discussion at pages 29-32 below.

Letter has been to hold a meeting with PG&E to discuss “particular technical topics for the preparation of information to support license renewal of Diablo Canyon Power Plant, Units 1 and 2.”¹⁷ During that meeting, PG&E presented a set of viewgraphs asserting that “resumption [of the NRC’s review of PG&E’s 2009 license renewal application] is within NRC authority and is consistent with precedent.”¹⁸ The Staff raised no questions or concerns about these clearly incorrect claims.¹⁹

Petitioners respectfully submit that the Staff has no lawful option other than to reject PG&E’s requests. Instead, the Staff must require PG&E to submit a new and up-to-date license renewal application to be reviewed for completeness by the NRC Staff and then docketed and reviewed in accordance with the agency’s regulations. The very fact that the Staff appears to be giving serious consideration to PG&E’s unlawful and institutionally damaging requests raises “novel or important” questions²⁰ that should be addressed by the Commission in the first instance.²¹

¹⁷ Agenda, Public Meeting for License Renewal Application – Diablo Canyon Power Plant, Units 1 and 2 (Nov. 22, 2022) (ML22339A238) (“Meeting Agenda”). The meeting took place on December 8, 2022.

¹⁸ PG&E Viewgraphs at 7.

¹⁹ Declaration of Diane Curran Regarding December 8, 2022 Meeting Between U.S. Nuclear Regulatory Commission Staff and Pacific Gas & Electric Company, par. 3 (Jan. 9, 2023) (“Curran Declaration”) (Attachment 1 to this Petition).

²⁰ *NextEra*, 90 N.R.C. at 10.

²¹ In this context, it should be noted that the Staff appears to consider it unnecessary to consult the Commission before making a decision on PG&E’s novel requests. Curran Declaration, par. 5.

DESCRIPTION OF PETITIONERS

The public's valuable role in NRC licensing and oversight is well-recognized. As members of the NRC's former Appeal Board have observed:

Public participation in licensing proceedings not only can provide valuable assistance to the adjudicatory process, but on frequent occasions demonstrably has done so. It does no disservice to the diligence of either applicants generally or the regulatory staff to note that many of the substantial safety and environmental issues which have received the scrutiny of licensing boards and appeal boards were raised in the first instance by an intervenor.²²

Petitioners are non-profit organizations that share an interest in participating in the NRC's licensing and oversight process in order to ensure that the Diablo Canyon reactors will not be allowed to operate past their license termination dates without adequate safety and environmental oversight. They also share an interest in ensuring that the inherently dangerous Diablo Canyon reactors are replaced as soon as possible with safe and renewable alternative energy sources such as solar and wind power as well as energy efficiency and load management.

A. San Luis Obispo Mothers for Peace

Located in San Luis Obispo, California, San Luis Obispo Mothers for Peace ("SLOMFP") is a non-profit membership organization concerned with the dangers posed by Diablo Canyon and other nuclear reactors, nuclear weapons, and radioactive waste. SLOMFP also works to promote peace, environmental and social justice, and renewable energy. SLOMFP has participated in NRC licensing cases involving the Diablo Canyon reactors since 1973.

Many of SLOMFP's members live, work, and own property within 50 miles of the Diablo Canyon reactors. Their health and safety, and the health of their environment, could be catastrophically damaged by an accident at the Diablo Canyon reactors. And those risks would be almost completely avoided if Diablo Canyon were to close on the expiration dates of its

²² *Gulf States Utility Corp.* (River Bend Units 1 and 2), ALAB-183, 7 A.E.C. 222, 227-28 (1974) (citation omitted).

operating licenses. SLOMFP’s representational standing to bring this Petition is demonstrated in the four attached declarations of SLOMFP members.²³

B. Friends of the Earth

Friends of the Earth (“FoE”) is a tax exempt, nonprofit environmental advocacy organization dedicated to improving the environment and creating a more healthy and just world.²⁴ The organization was founded in 1969 by David Brower in part to protest safety- and environment-related issues at Diablo Canyon. FoE has more than 225,702 members in all 50 states and the District of Columbia, 39,000 of whom are in California. In addition to dues-paying members, FoE has more than 5 million online activist supporters across the country. FoE also has office space in Berkeley, California. FoE’s representational standing to bring this Petition is demonstrated in the four attached declarations of FoE members who live and work within a 50-mile radius of the reactors.²⁵

C. Environmental Working Group

The Environmental Working Group (“EWG”) is a 501(c)(3) non-profit, non-partisan organization that works to empower people to live healthier lives in a healthier environment. EWG does this, in part, by creating and sharing research reports and consumer guides that help people educate themselves about the food they consume, the products they buy, and the

²³ See Attachment 2A, Declaration of Carole Hisasue (Dec. 17, 2022) (“Hisasue Declaration”); Attachment 2B, Declaration of Sherrill Ames Lewis (Dec. 16, 2022) (“Lewis Declaration”); Attachment 2C, Declaration of Lucy Jane Swanson (Dec. 16, 2022) (“Swanson Declaration”); and Attachment 2D, Declaration of Jill ZamEk (Dec. 16, 2022) (“ZamEk Declaration”).

²⁴ Friends of the Earth is a part of Friends of the Earth International, a federation of grassroots groups working in 74 countries on today's most urgent environmental and social issues. Friends of the Earth International is the world’s largest grassroots environmental federation.

²⁵ See Hisasue Declaration, Lewis Declaration, Swanson Declaration, and ZamEk Declaration, Attachments 2A through 2D, respectively.

companies they support, so that everyone can make safer and more informed choices. In furtherance of its mission, EWG engages in research and policy advocacy on a broad range of issues related to state and federal energy policy, climate change, renewable energy, toxic chemicals, food and agriculture, water and air pollution, and public health. EWG's work on energy policy has included rate design and public policy issues related to consumer use of and access to solar.

EWG has a strong presence in California. Its websites, which hosts consumer-focused databases and guides, are visited 24 million times per year by 16 million users, including 1.7 million from California. To learn more about its supporters' concerns and opinions, they email a survey to supporters at least once a month. More than 3 million supporters have signed up to receive these emails of which 330,000 are currently active, including 50,000 supporters from California.

EWG has participated in utility commission proceedings in California and other states. In California, EWG was found to have party status to intervene in a net energy metering tariff proceeding due to its interest in developing a tariff that supports sustainable growth of rooftop solar.²⁶ Since 2002, EWG has examined and assisted the public in understanding the transportation implications of nuclear waste routes that could be utilized to transport deadly radioactive material from around the United States to California nuclear sites. EWG's President Ken Cook testified on the crucial issues surrounding the licensing process for the proposed facility for long-term storage of lethal, long-lived nuclear waste at Yucca Mountain in Nevada. Additionally, as ionizing radiation is known to cause cancer in humans, EWG provides educational and policy advocacy on radiation in drinking water. EWG's Tap Water Database

²⁶ CA NEM Proceeding: R20-08-020.

reports that more than a dozen different radioactive elements are detected in American tap water. The most common are beryllium, radon, radium, strontium, tritium and uranium. EWG data show that radioactive contaminants are detected in water serving 165 million people across the U.S. Continuing Diablo Canyon's operation increases the risk that even more people will be exposed to cancer-causing radioactive elements in their drinking water.

EWG is highly concerned about -- and its supporters would be directly impacted by -- continued operation of the aging Diablo Canyon nuclear plant because of its high cost to taxpayers and extreme safety and environmental hazards. EWG and its supporters are concerned that continuing its operation hurts the state's shift to safe, renewable energy and prolongs the risk of a disaster at the plant. Californians are saddled with the cost of continuing to prop up the unnecessary and unsafe nuclear power plant. Allowing Diablo Canyon to keep operating will enable and compel PG&E and other companies with aging and uneconomic reactors to slow-walk the transition to those renewable and far less expensive energy sources. EWG brings this petition to ensure that its organizational interests and those of its supporters are represented in the NRC's decision-making process. While EWG is not a membership organization, EWG seeks discretionary recognition of its standing to advocate for the interests of its supporters.²⁷

²⁷ See 10 C.F.R. § 2.309(e); *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 N.R.C. 610, 616 (1976).

FACTUAL BACKGROUND

A. Licensing and Environmental Reviews for Diablo Canyon Operations

1. Initial licensing and environmental impact statement

The NRC originally licensed the Diablo Canyon reactors to operate for forty years beyond the issuance dates of their construction permits.²⁸ Unit 1, which received a construction permit in 1968, was licensed to operate until April 23, 2008; and Unit 2, which received a construction permit in 1970, was licensed to operate until December 9, 2010.²⁹ In support of the construction permits and operating licenses, the NRC issued an environmental impact statement (“EIS”).³⁰

2. 1992-93 license amendment proceeding to extend license terms

In 1992, after the NRC amended its regulations to allow 40-year operating license terms to commence upon issuance of the operating licenses themselves, PG&E applied to the NRC for a license amendment to “recover” or “recapture” the periods of construction for each reactor, by extending the term of their operating licenses from the date the reactors had received their low-power operating licenses.³¹ PG&E proposed to extend the termination date for Unit 1 to September 22, 2021 and the termination date for Unit 2 to April 26, 2025.³²

In the course of reviewing PG&E’s license amendment application, the NRC issued an

²⁸ See Letter from Gregory M. Rueger, PG&E to NRC re: License Amendment Request 92-04 40-Year Operating License Application (July 9, 1992) (ML17083C429) (“Rueger Letter”).

²⁹ *Id.* See also *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-92-27, 36 N.R.C. 196, 197 (1992).

³⁰ Environmental Statement Related to the Nuclear Generating Station, Diablo Canyon Units 1 and 2 (May 1973) (ML15043A481) (“1973 Diablo Canyon EIS”).

³¹ Rueger Letter at 1.

³² *Id.* Later, the termination date for Unit 1 was changed to November 2, 2024. Petitioners have found no documentation for the change.

Environmental Assessment.³³ The Environmental Assessment confirmed that the 1973 Diablo Canyon EIS had evaluated 40-year operating license terms and concluded that extending the operating license terms did not “create any new or unreviewed environmental impacts,” involve “any physical modifications,” or cause “new or unreviewed environmental impacts that were not considered” in the 1973 Diablo Canyon EIS.³⁴

3. 2009 License Renewal Application

In 2009, PG&E applied for renewal of its operating licenses.³⁵ The NRC docketed the application and offered an opportunity for a hearing.³⁶ Both SLOMFP and FoE requested hearings on the application, but their claims were denied.³⁷

The NRC Staff issued a Safety Evaluation Report for license renewal in 2011.³⁸ But the NRC did not issue a Diablo Canyon-specific supplement to the License Renewal Generic

³³ Environmental Assessment and Finding of No Significant Impact, Diablo Canyon Units 1 and 2 (Feb. 3, 1993) (ML022340575).

³⁴ *Id.* at 2. The NRC’s Atomic Safety and Licensing Board approved the license amendment in 1994, with a set of conditions imposed after an adjudicatory hearing. *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-94-35, 40 N.R.C. 180 (1994).

³⁵ Letter from PG&E to NRC re License Renewal Application (Nov. 23, 2009) (ML093340086, ML093340116, ML093340123).

³⁶ 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, Etc., 75 Fed. Reg. 3,493 (Jan. 21, 2010).

³⁷ *See Pacific Gas and Electric Co.* (Diablo Canyon, Units 1 and 2), CLI-16-11, 83 N.R.C. 524 (2016) (affirming summary disposition SLOMFP’s admitted environmental contention relating to seismic risks and denying admission of a contention regarding consideration of energy alternatives); *Pacific Gas and Electric Co.* (Diablo Canyon, Units 1 and 2), CLI-15-21, 82 N.R.C. 295 (2015) (denying FoE’s hearing request and waiver petition on seismic issues).

³⁸ Safety Evaluation Report Related to the License Renewal of Diablo Canyon Nuclear Power Plant, Units 1 and 2 (June 2, 2011) (ML11138A274).

Environmental Impact Statement (“GEIS”) – not even in draft form, let alone final form.³⁹

4. Lack of NRC Environmental Review for Any Operating Period Past 2024-25

As demonstrated above, despite the passage of more than thirteen years since PG&E submitted its 2009 license renewal application, no complete NRC environmental analysis exists for renewal of the Diablo Canyon licenses. Even the 2013 revision of the License Renewal GEIS, on whose generic findings PG&E relied in its Environmental Report under 10 C.F.R. § 51.53(c)(3), is a decade out of date. And while a new “Revision 2” of the License Renewal GEIS is before the Commission, *see* <https://www.nrc.gov/docs/ML2216/ML22165A003.html>, it has yet to be approved by the Commissioners for circulation in draft form. In the meantime, the cursory 1993 Environmental Assessment constitutes the most recent environmental analysis prepared by the NRC for the operation of Diablo Canyon.⁴⁰ Taken together with the 1973 Diablo Canyon EIS, these two documents evaluate *only* the first 40 years of operating Diablo Canyon Units 1 and 2. Aside from the generic impact analysis in the now-outdated 2013 revision to the License Renewal GEIS, the NRC has prepared no Diablo Canyon-specific environmental impact analysis for any operating period beyond the first 40 years; and the complete NRC’s Diablo Canyon-specific environmental documents that do exist are now between 30 and 50 years out of date.

³⁹ NRC regulation 10 C.F.R. § 51.71(d) allows the NRC to rely on the License Renewal GEIS (NUREG-1437, issued in 1996 and revised in 2013) for its environmental analysis of impacts that it has determined to be generic, *i.e.*, common to all operating reactors. In addition, before approving license renewal, the NRC must prepare a supplement to the License Renewal GEIS for reactor-specific environmental impacts. 10 C.F.R. § 51.95(c).

⁴⁰ While PG&E submitted an Environmental Report in support of its 2009 license renewal application, the NRC never completed its own review or issued a supplemental EIS for renewal of the Diablo Canyon licenses.

B. Settlement Agreement to Close Diablo Canyon on License Termination Dates

In 2016, PG&E published a report concluding that the continued operation of Diablo Canyon's 2,200 MW of inflexible baseload generation would cause severe congestion on the high-voltage transmission system as solar generation in California grows under the state's renewable energy standard and community choice aggregation programs.⁴¹ This would force PG&E to export or curtail solar generation because Diablo Canyon's reactors cannot adjust their output quickly enough to relieve overloaded transmission lines. PG&E determined that retiring Diablo Canyon 1 and 2 when their licenses expire in 2024 and 2025 would mitigate the transmission bottleneck, lower consumer costs, and enable the utility to achieve 55% renewable energy by 2031, exceeding the then-existing state renewable energy sources ("RES") target.⁴²

Spurred by this conclusion, PG&E entered into a settlement agreement with labor unions and several environmental organizations (including FoE and other organizations).⁴³ PG&E agreed to close the Diablo Canyon reactors on their retirement dates and drop the license renewal application, and the environmental organizations agreed to drop their oppositions to renewal of the Diablo Canyon license (including a federal court appeal by FoE).⁴⁴ The environmental organizations also agreed not to oppose PG&E's continued reliance on its once-through cooling system, despite a state agency determining that its impacts on marine life were unacceptable and

⁴¹ LaCount, Robert, *Joint Proposal for the Orderly Replacement of Diablo Canyon Power Plant with Energy Efficiency and Renewables* (M. J. Bradley & Associates, June 21, 2016).

https://www.pge.com/includes/docs/pdfs/safety/dcpp/MJBA_Report.pdf

⁴² *Id.*

⁴³ See Joint Proposal by Pacific Gas and Electric Company, Friends of the Earth, Natural Resources Defense Council, *et al.* to Retire Diablo Canyon Nuclear Power Plant at Expiration of the current Operating Licenses and Replace it With a Portfolio of GHG Free Resources (filed before the CPUC June 20, 2016) ("Joint Proposal for Retirement of Diablo Canyon").

⁴⁴ *Id.* at 16.

requiring replacement by a new set of cooling towers.⁴⁵ In addition, the agreement included provisions for replacement of Diablo Canyon with greenhouse gas (“GHG”) free renewable energy sources and efficiency, employee retention and severance, a community impacts mitigation program, and provision for a decommissioning study.⁴⁶

PG&E applied to the CPUC for approval of the settlement.⁴⁷ In 2018, the CPUC approved it.⁴⁸ Together with the Legislature, the CPUC also approved a series of additional related measures to expand the production of renewable energy in the State.⁴⁹

C. PG&E Withdrawal of License Renewal Application

In June 2016, consistent with the settlement agreement, PG&E requested the NRC to suspend its review of PG&E’s license renewal application.⁵⁰ The NRC suspended its review of the

⁴⁵ *Id.* at 15. *See also* PG&E’s report on this agreement at https://www.pgecorp.com/corp_responsibility/reports/2021/pl04_water.html.

⁴⁶ Joint Proposal for Retirement of Diablo Canyon at 4-13.

⁴⁷ Application of Pacific Gas & Electric Co. for approval of the Retirement of Diablo Canyon Power Plant, Implementation of the Joint Proposal, and Recovery of Associated Costs Through Proposed Ratemaking Mechanisms (Aug. 11, 2016), <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M166/K001/166001245.PDF>

⁴⁸ California PUC Decision No. 18-01-022 (January 11, 2018), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M205/K423/205423920.PDF>. The CPUC decision was codified in Cal. Senate Bill 1090 (Monning), signed by then-Governor Jerry Brown on September 19, 2018.

⁴⁹ *See, e.g.*, CPUC Decision 18-11-024 (November 29, 2018), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M246/K081/246081285.PDF>; CPUC Decision 19-11-016 (November 7, 2019), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M319/K825/319825388.PDF>; CPUC Decision 21-06-035 (June 24, 2021), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K603/389603637.PDF>.

⁵⁰ Letter from Edward D. Halpin, PG&E to NRC Commissioners and Staff re: Request to Suspend NRC Review of Diablo Canyon Power Plant License Renewal Application (June 21, 2016) (ML16175A561).

application a month later.⁵¹

In 2018, after receiving CPUC approval of the settlement agreement, PG&E wrote again to the NRC, this time requesting the NRC to approve PG&E's withdrawal of its license renewal application "and all associated correspondence and commitments."⁵² The NRC Staff approved PG&E's request.⁵³ On April 18, 2018, in a Federal Register notice, the Staff publicly announced it had "granted" PG&E's request "to withdraw its application, and all associated correspondence and commitments."⁵⁴

The NRC also updated its webpage for Diablo Canyon license renewal to state: "**Diablo Canyon - License Renewal Application: Withdrawn on 03/07/2018.**"⁵⁵ In a table entitled "License Renewal Review Schedule," the title "License Renewal Review Schedule" was now marked with an asterisk, with a caption for the asterisk stating simply that: "*application was withdrawn on March 7, 2018."⁵⁶ Similarly, all entries in the table for "Milestones" in the license renewal process that had not been completed before March 7, 2018 (the date of PG&E's request to withdraw the application) were depicted as "N/A*," referencing the same asterisked phrase

⁵¹ Letter from Jane E. Marshall, NRC to Edward D. Halpin, PG&E re: Response to Request to Suspend NRC Review of Diablo Canyon Power Plant License Renewal Application (July 18, 2016) (ML16193A599).

⁵² Letter from James W. Welsch, PG&E to Commissioners and Staff, NRC re: Request to Withdraw the Diablo Canyon Power Plant License Renewal Application (March 7, 2018) (ML18066A937).

⁵³ Letter from George A. Wilson Jr., NRC to James A. Welsch, PG&E, re: Response to Request to Withdraw the Diablo Canyon Power Plant, Unit Nos. 1 and 2, License Renewal Application (April 16, 2018) (ML18093A115).

⁵⁴ See note 1 above.

⁵⁵ See <https://www.nrc.gov/reactors/operating/licensing/renewal/applications/diablo-canyon.html#appls> (last visited on January 9, 2023).

⁵⁶ *Id.*

“*application was withdrawn on March 7, 2018.”⁵⁷ These website entries – which remain on the NRC’s website to the present date -- provide further public notice and confirmation that the NRC’s license renewal docket for Diablo Canyon is closed.

D. Passage of California Senate Bill 846 and PG&E Request to Review License Renewal Application

In September 2022, at the behest of California Gov. Gavin Newsom, the California Legislature passed S.B. 846, revoking the CPUC’s approval of the settlement agreement to close Diablo Canyon on its license expiration dates, directing PG&E to request approval of continued operation of Diablo Canyon, and granting PG&E a \$1.4 billion loan for that purpose.⁵⁸ The Legislature provisionally limited the extended operating period to five years.⁵⁹

The Legislature passed S.B. 846 in response to the perceived potential for future energy shortages, but neither sought nor provided any expert analysis to support its concerns. And the statute included a number of qualifiers by which the State could change its decision to support extended operation of Diablo Canyon, such as if the CPUC determines that the State’s forecasts for calendar years 2024 and 2025 “do not show reliability deficiencies if the Diablo Canyon power plant is retired by 2025, or that extending the Diablo Canyon power plant to at least 2030 is not necessary for meeting any potential supply deficiency.”⁶⁰

The Legislature also took pains to clarify that it was depending on the NRC to ensure that Diablo Canyon would not be permitted to continue operation if it were unsafe, and that the NRC

⁵⁷ *Id.* The entries for “Milestones” now marked “N/A” included issuance of a Supplemental Safety Evaluation Report, issuance of draft and final versions of the Diablo Canyon-specific Supplemental GEIS, meetings of the Advisory Committee on Reactor Safeguards, and issuance of a license renewal decision.

⁵⁸ Cal. Pub. Resources Code § 25548.3(a).

⁵⁹ Cal. Pub. Resources Code § 25548(b).

⁶⁰ Cal. Pub. Resources Code § 25548.3(c)(5)(D).

would impose any upgrades necessary to protect public health and safety during the license renewal term. And the Legislature assumed that the NRC may order “seismic safety upgrades” that are too expensive to justify the loan.⁶¹

E. PG&E’s Request to NRC to Review Withdrawn License Renewal Application

On October 31, 2022, PG&E wrote to the Commissioners and the NRC Staff, asking them to “resume review” of PG&E’s withdrawn 2009 license renewal application.⁶² PG&E based its request on “the recent change of energy policy by the State of California in support of its critical energy needs,” and asserted that “resuming the NRC’s review of the [license renewal application] is the most prudent and efficient regulatory path to completing the NRC’s license renewal review” for Diablo Canyon.⁶³ Nevertheless, PG&E conceded that the 2009 license application is out of date, and that it may be as much as another year before it can provide the NRC with the significant amount of information that must be provided to support a license renewal decision.⁶⁴

In the alternative, if the NRC required PG&E to submit a new license renewal application, PG&E requested an exemption from the timely renewal regulation in 10 C.F.R. 2.109(b).⁶⁵ PG&E also asserted that the requested exemption met the six-pronged test for a categorical

⁶¹ Cal. Pub. Resources Code § 25548.3(c)(9). *See also* Cal. Pub. Resources Code § 25548(d), allowing the State to cancel the loan if the CPUC determines that NRC-required safety upgrades are too costly.

⁶² Gerfen Letter at 1.

⁶³ *Id.* at 2.

⁶⁴ *Id.*, Enclosure 1 at 6 (stating that PG&E will submit “supplemental information relevant to both the safety and environmental reviews to account for any material new information and guidance since the cessation of the [original license renewal review],” including an update to “licensing commitments.”) PG&E promised to “submit this information no later than the end of calendar year 2023.” *Id.*

⁶⁵ *Id.*

exclusion from the NEPA requirement for an environmental assessment, including that it posed no significant increase in environmental impacts and involved only “scheduling requirements which are administrative.”⁶⁶

On November 17, 2022, Petitioners wrote to the Commissioners, demanding that they refuse PG&E’s unlawful requests.⁶⁷ Because the license renewal docket for Diablo Canyon no longer exists, Petitioners asserted that the NRC must require PG&E to submit a new license renewal application that is current and complete. Further, Petitioners demonstrated that PG&E had failed to justify the grant of an exemption. After receiving no response from either the Commission or the Staff, Petitioners followed up with a second letter, repeating their demands and providing further support for their assertion that issuance of an exemption would violate NEPA.⁶⁸ Again, neither the Commission nor the Staff responded.

On December 8, 2022, the NRC Staff held a meeting with PG&E to discuss “particular technical topics for the preparation of information to support license renewal of Diablo Canyon Power Plant, Units 1 and 2.”⁶⁹ During that meeting, PG&E presented a set of viewgraphs asserting that “resumption [of the NRC’s review of PG&E’s 2009 license renewal application] is within NRC authority and is consistent with precedent.”⁷⁰ Despite having received two letters from Petitioners challenging the lawfulness of these claims as made in the Gerfen Letter, the NRC Staff raised no questions or concerns.⁷¹

⁶⁶ *Id.*, Enclosure 2 at 7.

⁶⁷ *See* note 1 above.

⁶⁸ *Id.*

⁶⁹ *See* Meeting Agenda and discussion above at page 7 and note 17.

⁷⁰ PG&E Viewgraphs at 7.

⁷¹ Curran Declaration, par. 3.

PG&E’s presentation significantly altered one key representation that PG&E had made earlier in the Gerfen Letter. In the Gerfen Letter, PG&E had committed to submitting, by the end of 2023, “supplemental information relevant to both the safety and environmental reviews to account *for any material new information and guidance* since the cessation of the [original license renewal review].”⁷² But in the viewgraphs presented by PG&E during its meeting with the Staff, PG&E vaguely asserted that by December 2023, it would submit “an update” to the license renewal application⁷³ – not a complete update, as previously promised. PG&E also clarified that it could not even *obtain*, let alone evaluate, one key piece of relevant data – a coupon from the Unit 1 reactor vessel – until “Fall 2023.”⁷⁴ During the meeting, a PG&E representative stated that PG&E would not be able to complete and submit an analysis of the coupon until sometime in 2024.⁷⁵

⁷² Gerfen Letter, Enclosure 1 at 6 (emphasis added). *See also* note 64.

⁷³ PG&E Viewgraphs at 7.

⁷⁴ *Id.* at 20.

⁷⁵ Curran Declaration, par. 4.

LEGAL AND POLICY GROUNDS FOR DENIAL OF PG&E'S REQUESTS

I. THE NRC MAY NOT “RESUME REVIEW” OF PG&E’S 2009 LICENSE RENEWAL APPLICATION BECAUSE IT NO LONGER EXISTS ON THE NRC’S DOCKET.

A. As a Matter of Law, the NRC-Approved Withdrawal of PG&E’s License Renewal Application Eliminates the Possibility of a Resumed Review.

Both PG&E and the NRC have taken actions to establish, as a matter of law, that PG&E’s 2009 license renewal application no longer exists on the NRC’s license renewal docket. PG&E requested and received NRC permission to formally withdraw its license renewal application, the NRC approved the withdrawal in a letter to PG&E, and NRC gave public notice in the Federal Register and on its website.⁷⁶ As a result of PG&E’s withdrawal of its license renewal application and all associated correspondence and commitments, no license renewal application currently exists on the NRC’s license renewal docket. Therefore, there is no docketed application for which the NRC could lawfully “resume” review, as requested in the Gerfen Letter.⁷⁷

PG&E asserts there is “ample precedent” for ignoring these regulatory docketing requirements and “resuming review of previously docketed applications after they have been suspended, withdrawn, voided, and even denied.”⁷⁸ But PG&E cites only one NRC Staff decision in support of that claim, a letter from the NRC Staff to the licensee of the Aerotest Radiography and Research Reactor that culminated a four-year hearing process.⁷⁹ In that case, the license application in question was never withdrawn from the NRC’s review docket. The only

⁷⁶ See pages 16-18 above.

⁷⁷ See Gerfen Letter at 1, Enclosure 1 at 1.

⁷⁸ *Id.*, Enclosure 1 at 3.

⁷⁹ *Id.* (citing letter from Brian E. Holian, Acting Director, NRC Office of Nuclear Reactor Regulation, to David M. Slaughter, President, Aerotest Operations, Inc. re: Aerotest Radiography and Research Reactor – Withdrawal of Denial of License Renewal Application (CAC No. MF7221 at 2-4 (Aug. 8, 2017) (ML17138A309) (“Holihan Letter”))).

reversal that was made was the Staff's withdrawal of a previous decision denying the license application. While PG&E asserts that *Aerotest* provides a "relevant template" for Diablo Canyon,⁸⁰ *Aerotest* involved no deviation by the Staff from its regulatory requirements for the docketing and review of license applications. To the contrary, the letter itself states that the NRC followed its "normal" process for reaching a final decision on a license application.⁸¹ In contrast, there is nothing "normal" about PG&E's proposal to continue reviewing a license renewal application that was formally and completely abandoned years earlier and for which the NRC has closed the review docket.

B. It is Not Lawfully Possible to Restore PG&E's 2009 License Renewal Application to the NRC's Docket for Review.

Even assuming for purposes of argument that the NRC Staff somehow could consider restoring PG&E's 2009 license application to the review docket, PG&E cannot satisfy the NRC's docketing requirements, and thus the 2009 application is not capable of review.

1. Filing requirement not satisfied

First, NRC regulations require that:

An application for a permit, a license, a license transfer, a license amendment, a license renewal, or a standard design approval, *shall be filed* with the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards...⁸²

Having withdrawn the 2009 license renewal application, PG&E would be required to file it again by 10 C.F.R. § 2.101(a)(1) – but PG&E has not done so. By itself, PG&E's failure to re-file the 2009 license renewal application precludes its review.

⁸⁰ *Id.*

⁸¹ *See* Holihan Letter at 2-4.

⁸² 10 C.F.R. § 2.101(a)(1) (emphasis added).

2. Requirement for completeness and acceptability not satisfied

Second, PG&E must file an application that is “complete and acceptable for docketing” under 10 C.F.R. § 2.101(a)(3):

If the Director, Office of Nuclear Reactor Regulation, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, determines that a tendered application for a construction permit or operating license for a production or utilization facility, and/or any environmental report required pursuant to subpart A of part 51 of this chapter, or part thereof as provided in paragraphs (a)(5) or (a–1) of this section *are complete and acceptable for docketing*, a docket number will be assigned to the application or part thereof, and the applicant will be notified of the determination.⁸³

Unless and until the NRC Staff determines that the application is “complete and acceptable for docketing,” it will be treated only as a “tendered” application and will not be docketed.⁸⁴

PG&E itself has admitted that its 2009 license renewal application is incomplete, and that sufficient information to complete it cannot be submitted until late 2023 at the earliest.⁸⁵

Therefore, PG&E cannot satisfy the NRC’s additional docketing requirement that its license renewal application must be “complete.”

PG&E provides no details on the nature of the information that it has yet to submit in order to update its application, but it appears that the amount of missing information is significant. PG&E must account for exemptions granted by the NRC over the past six years in the expectation that the reactors would close in 2024 and 2025. For instance, in 2016, the NRC exempted PG&E from the requirement of 10 C.F.R. § 54.21(b) for annual updates regarding changes to the current licensing basis that materially affect the contents of the license renewal

⁸³ *Id.* (emphasis added).

⁸⁴ 10 C.F.R. § 2.101(a)(2).

⁸⁵ *See* discussion above at pages 20-21.

application.⁸⁶ The NRC also exempted PG&E from limits on its withdrawals from the decommissioning fund.⁸⁷ There may be other relevant exemptions or comparable regulatory actions, but PG&E has provided no accounting of them.

PG&E also has failed to provide any information on maintenance activities that it may have stopped or relaxed based on the imminent closure of the Diablo Canyon reactors. At meetings of the Diablo Canyon Independent Safety Committee (“DCISC”), for instance, significant concern has been raised about the number and nature of inspections and the amount of maintenance that PG&E has suspended due to the expectation that the two reactors would close in the near future.⁸⁸ In addition, PG&E must report on operating experience over the past years that may adversely implicate the adequacy of its program for monitoring of aging equipment during the license renewal term.⁸⁹ Overall, there appears to be an enormous amount of information that PG&E must provide in order to satisfy the NRC’s requirement for a complete license renewal application under Part 54.

In addition, PG&E must update its Environmental Report to address any changes in its evaluation of environmental impacts of continued operation. With respect to earthquake impacts,

⁸⁶ Notice of Exemption Issuance, Pacific Gas and Electric Company; Diablo Canyon Power Plant, Units 1 and 2; Annual Updates to License Renewal Application, 81 Fed. Reg. 57,942 (Aug. 24, 2016).

⁸⁷ Notice of Exemption Issuance, Pacific Gas and Electric Company; Diablo Canyon Nuclear Power Plant Units 1 and 2, 84 Fed. Reg. 48,955 (Sept. 17, 2019).

⁸⁸ See You-tube video of June 22, 2022 DCISC meeting to discuss May 18-19, 2022 Fact-Finding Report, <https://www.youtube.com/watch?v=g93Un6DnRuI&t=77s>.

⁸⁹ Recently, for example, PG&E filed a Licensee Event Report (“LER”) with the NRC regarding “vibration-induced fatigue propagation of a flaw initiated at a weld defect” in the Unit 1 reactor cooling system. Letter from Dennis B. Peterson, PG&E, to NRC Commissioners and Staff, re: Unit 2 Licensee Event Report 2022-001-00, Unit 1 Reactor Coolant System Pressure Boundary Degradation (Dec. 21, 2022) (ML22355A081).

for instance, PG&E did not complete its post-Fukushima seismic analysis until 2018.⁹⁰ The update also should include a discussion of the environmental impacts of PG&E’s once-through cooling system on the marine environment in the absence of cooling towers that were previously required by the State Water Board to be installed by 2024, but from which the Water Board excused PG&E from complying after PG&E announced that the Diablo Canyon reactors would close on their license expiration dates.⁹¹

PG&E must also evaluate renewable energy alternatives, as required by 10 C.F.R. § 51.53(c)(2). As discussed above at pages 8-11 and 18-19, the availability of adequate renewable energy alternatives is not only a legally required topic of analysis, but is of great importance to the State the Petitioners, and the general public.⁹²

⁹⁰ See Letter from Robert J. Bernardo, NRC, to James M. Welsch, PG&E, re: Diablo Canyon Power Plant, Unit Nos. 1 and 2 – Documentation of the Completion of Required Actions Taken in Response to the Lessons Learned From the Fukushima Dai-Ichi Accident (May 8, 2020 (ML20093B934)). The relevance of PG&E’s post-Fukushima seismic analysis to the NRC’s environmental impact analysis for license renewal is demonstrated in the Draft Revision 2 of the License Renewal GEIS. See GEIS for License Renewal of Nuclear Plants, Draft Report for Comment at E-29 – E32 (NUREG-1437, Vol. 1, Rev. 2 December 2022) (ML22167A060).

⁹¹ See Joint Proposal for Retirement of Diablo Canyon at 15; S.B. 846, Cal. Pub. Resources Code § 25548(e). While S.B. 846 expresses the Legislature’s “intent” that PG&E should be required to pay a mitigation fee in lieu of building cooling towers, the State Water Board must determine whether such a mitigation fee would be adequate to comply with the Clean Water Act. In the meantime, both PG&E and the NRC must address the environmental impacts of continuing to operate Diablo Canyon in noncompliance with the Clean Water Act. See *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), LBP-08-13, 68 N.R.C. 43, 150-53 (2008).

⁹² For instance, S.B. 846 provided that the State may rescind its authorization for extended operation of Diablo Canyon if the CPUC determines that the State’s forecasts for calendar years 2024 and 2025 “do not show reliability deficiencies if the Diablo Canyon power plant is retired by 2025, or that extending the Diablo Canyon power plant to at least 2030 is not necessary for meeting any potential supply deficiency.” Cal. Pub. Resources Code § 25548.3(c)(5)(D).

C. Granting PG&E's Request Would Prejudice Petitioners' Ability to Participate Meaningfully in the License Renewal Decision-making Process.

Petitioners have a strong interest in participating in the NRC's decision-making process regarding the proposed renewal of the Diablo Canyon licenses, because renewed operation would pose significant safety and environmental risks. And the NRC has recognized the value of public participation in licensing proceedings by groups such as the Petitioners.⁹³ Yet, by proposing that the NRC disregard its docketing regulations, PG&E's proposal would hamstring Petitioners' ability to raise issues in the hearing process in any meaningful way.

The NRC's docketing requirements in 10 C.F.R. § 2.101 are designed, in part, to protect the integrity of the hearing process. As the Commission has previously explained:

An application is neither accepted for full review by the NRC Staff nor automatically noticed for a possible hearing when it is submitted; instead, the Staff reviews it to ensure it contains the information and analyses required in a proper application to allow the Staff's full review of the proposed licensing action. If the application does not provide the necessary content, it is returned to the applicant for appropriate changes and possible resubmission. *Until an application has been accepted by the NRC Staff, there is not certainty that there will be a proceeding in which a hearing may be requested.*⁹⁴

In its 2008 Policy Statement for New Reactor Licensing Proceedings, the Commission confirmed that in ordinary circumstances, "the Commission will issue a Notice of Hearing only when a complete application has been docketed in order to avoid piecemeal litigation."⁹⁵

PG&E proposes that the NRC should keep the date of docketing the license renewal application at the year 2010, when the NRC published its original hearing notice.⁹⁶ If the NRC

⁹³ See page 8 above.

⁹⁴ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-04-12, 59 N.R.C. 237, 241-42 (2004) (emphasis added).

⁹⁵ Statement of Policy on Conduct of New Reactor Licensing Proceedings, 75 Fed. Reg. 20,969-20,971 (Apr. 17, 2008) (emphasis added).

⁹⁶ *Id.*, Enclosure 1 at 2-3. See also Notice of Acceptance for Docketing of the Application,

were to accept that proposal, all members of the public with an interest in the outcome of the license renewal proceeding would be placed in the position of seeking to participate after passage of the initial 2010 deadline for submitting hearing requests – thereby requiring them to meet a “good cause” standard for late intervention in 10 C.F.R. § 2.309(c).⁹⁷ In addition, Petitioners would be put in the position of requesting a hearing on an application that is outdated – a tremendous waste of their resources. Petitioners would have no idea whether PG&E intended to make changes to the application or not, and thus would not know whether they should defer their analysis of the application until those revisions appeared. Nor would the Petitioners have a way to prioritize their concerns for purposes of retaining experts or focusing their resources.

D. Granting PG&E’s Request Would Betray Reliance by Petitioners and Other Members of the Public on the NRC Representations Regarding the Removal of PG&E’s 2009 License Renewal Application from the License Renewal Docket.

Granting PG&E’s request would betray the reliance by Petitioners and other members of the public on the NRC’s representations regarding the removal of PG&E’s 2009 license renewal application from the license renewal docket. San Luis Obispo Mothers for Peace, as well as other organizations and individuals, relaxed their previous longstanding vigilance over license renewal-related issues in reliance on the NRC’s Federal Register notice that PG&E had withdrawn its license renewal application and committed to closing the reactors in 2024 and 2025. Equally important, Friends of the Earth dropped a federal court lawsuit challenging the NRC’s refusal to grant a hearing on its concerns about seismic risks, in explicit reliance on

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, Etc., 75 Fed. Reg. 3,493 (Jan. 21, 2010).

⁹⁷ PG&E audaciously omits any hearing process from its proposed license renewal schedule. The hearing process is characterized as a “Completed item.” PG&E also labels the process “No intervention or Resolved.” PG&E Viewgraphs at 5.

PG&E's formal agreement to close the reactors when their operating licenses expired.⁹⁸

Therefore, to legally characterize any concerns arising after 2010 as late and therefore not subject to any statutory hearing right would be unfair in the extreme. PG&E's proposal seeks the polar opposite of "Principles of Good Regulation" and "Openness" that it disingenuously claims its proposal will fulfill.⁹⁹

II. THE ATOMIC ENERGY ACT AND NEPA PROHIBIT THE NRC FROM EXTENDING THE LICENSE TERMS FOR THE DIABLO CANYON REACTORS BY ANY MEANS OTHER THAN A LICENSE RENEWAL DECISION THAT COMPLIES WITH NEPA.

In addition to requesting the NRC to take the legally impossible action of resuming review of its withdrawn 2009 license renewal application, PG&E also asks the NRC to take the legally impossible action of exempting it from the timely renewal regulation, 10 C.F.R. § 2.109(b).¹⁰⁰ As discussed below, the granting of this request is precluded by two statutes: the Atomic Energy Act and NEPA.

A. The NRC Must Reject PG&E's Exemption Request Because It is Not Authorized by the Atomic Energy Act.

Pursuant to 10 C.F.R. § 50.12(a)(1), the NRC may not issue an exemption that would be "unlawful." Here, the exemption requested by PG&E would violate Section 103 of the Atomic Energy Act, 42 U.S.C. § 2133, which restricts the NRC's authority to extend the term of an initial 40-year license to the action of renewing the license. Unless and until a reactor license is renewed, its term must be limited to 40 years.

⁹⁸ See Joint Proposal by Pacific Gas and Electric Company, Friends of the Earth, Natural Resources Defense Council, *et al.* to Retire Diablo Canyon Nuclear Power Plant at Expiration of the Current Operating Licenses and Replace it With a Portfolio of GHG Free Resources at 16 (filed before the CPUC June 20, 2016). See also discussion above at page 16.

⁹⁹ Gerfen Letter, Enclosure 1 at 4-6.

¹⁰⁰ Gerfen Letter at 2 and Enclosure 2.

The Commission recognized this limitation in the rulemaking for the 10 C.F.R. Part 54 license renewal rule. In proposing the rule, the Commission opined that extended operation “should be accomplished” by license renewal and not by license amendment.¹⁰¹ By the time it finalized the rule, the Commission had concluded that it had no alternative means of extending 40-year reactor licenses, other than by renewing them:

After reviewing the AEA, the relevant legislative history, and the licensing regimes for other Federal agencies, including the Federal Communications Commission, the Commission concludes that extended operation of nuclear power plants licensed under section 103 of the AEA *must be accomplished by issuance of renewed operating licenses*.

Section 103 of the AEA states:

Each (Section 103) license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years, and may be renewed upon expiration of that period.

Based upon the explicit statutory prohibition of license terms in excess of 40 years, together with the statutory provisions for renewal, the Commission concludes that the

¹⁰¹ Proposed Rule, Nuclear Power Plant License Renewal, 55 Fed. Reg. 29,044, 29050 (July 17, 1991). As the Commission explained:

An issue that the Commission identified early in the rulemaking is the legal nature of the license authorizing operations beyond that approved in the original operating license. Industry commenters suggested that extended operation could be accomplished through amendment of the expiration date in the existing operating license. After reviewing the Atomic Energy Act (AEA), as amended, and the relevant legislative history, the Commission concludes that extended operation of nuclear power plants licensed under section 103 of the AEA should be accomplished by issuance of renewed operating licenses. . . . Section 103 of the AEA limits the term of licenses for commercial nuclear power plants issued under section 103 to 40 years, but provides they may be renewed upon expiration. Based on the AEA’s explicit prohibition of license terms in excess of 40 years, together with the statutory provision for renewal, the Commission concludes that the term of a section 103 operating license may not be extended beyond 40 years by amending the expiration date in the existing operating license. While the record does not show any safety basis for the Congress’ decision to set the 40-year limitation, the Commission is not free to ignore the statutory mandate.

Id.

term of a section 103 license *may not be extended beyond 40 years by amendment.*¹⁰²

The Commission also stated that license renewal applicants would be “entitled to favorable treatment under the Timely Renewal Doctrine of the Administrative Procedure Act and 10 CFR 2.109.”¹⁰³ But the NRC did not anticipate a conflict between the Atomic Energy Act and the Timely Renewal Doctrine, because it had (a) established a requirement that license renewal applications must be “essentially complete and sufficient when filed” and (b) established a five-year cutoff for license renewal applications, plenty of time for completion of a license renewal review that was expected to take “approximately 2 years,” with any “necessary hearing” adding “an additional year or more.”¹⁰⁴

In this unprecedented case, PG&E has knowingly asked the NRC to issue a regulatory exemption that would extend the Diablo Canyon reactors’ licenses beyond their 40-year limit for an undefined period while the NRC reviews a not-yet-filed or completed license application.¹⁰⁵

¹⁰² Final Rule, Nuclear Power Plant License Renewal, 56 Fed. Reg. at 64,961-62 (emphasis added).

¹⁰³ *Id.*, 56 Fed. Reg. at 64,962.

¹⁰⁴ *Id.*, 56 Fed. Reg. at 64,962.

Notably, the Commission initially considered a threshold period of three years before expiration of an operating license, but extended that time to five years in order to be consistent with the requirement that decommissioning plans must be submitted at least five years before expiration of a license. *Id.* While the Commission may have intended to exercise some flexibility in deciding whether to accept an application filed less than five years but more than three years before a license expiration date, the rulemaking history shows an intention to hold the line at three years. While one of the industry commenters on the proposed rule requested a “good cause” exception to the proposed three-year threshold, the Commission did not adopt any such exception in the Final Rule. *See* NUREG-1428, Analysis of Public Comments on the Proposed Rule on Nuclear Power Plant License Renewal at 3-11 (December 1991) (ML16354A013) (comment by Nuclear Management and Resources Council).

¹⁰⁵ *See* PG&E Viewgraphs at 15. If the NRC were to exempt PG&E from the timely renewal rule and allow it to submit a new license renewal application within approximately a year of the expiration of the Diablo Canyon reactors’ operating licenses (November 2024 and April 2025), the NRC would not have time to make the safety findings required for license renewal in 10

Such an extension effectively would amend the Diablo Canyon operating licenses to add an undetermined number of months or years beyond their 40-year limit.¹⁰⁶ As discussed above, however, extension of an operating license term by any means other than renewal is forbidden by the Atomic Energy Act. Therefore, the Atomic Energy Act precludes the NRC from granting the exemption sought by PG&E.¹⁰⁷

B. The NRC Must Reject PG&E’s Exemption Request Because Such an Exemption Would Extend the Diablo Canyon Reactors’ Operating License Terms Beyond 40 Years Without the Possibility of NEPA Compliance.

NEPA requires that before taking action that may have significant adverse effects on the human environment, the NRC must evaluate those environmental impacts and “bring those effects to bear” on its decisions.¹⁰⁸ Compliance with NEPA is not discretionary: the NRC must comply with NEPA “unless [compliance is] specifically excluded by statute or when existing law makes compliance with NEPA impossible.”¹⁰⁹

C.F.R. § 54.29.

¹⁰⁶ *Deukmejian v. NRC*, 751 F.2d 1287 (D.C. Cir 1984). In *Deukmejian*, the U.S. Court of Appeals held that an extension to the operating license for Diablo Canyon, granted by the NRC to compensate for lost time due to a period of license suspension, constituted a license amendment. *Id.* at 1312, 1314.

¹⁰⁷ PG&E contends that “no statute requires that [a license renewal application] review must be able to be completed prior to expiration of the license in order to be ‘timely.’” Gerfen Letter, Enclosure 2 at 3. Petitioners contend that this is exactly what the Atomic Energy Act does require, and the NRC may not rely on another statute, the APA, as justification for violating the Atomic Energy Act.

¹⁰⁸ *Natural Resources Defense Council v. NRC*, 685 F.2d 459, 482-83 (D.C. Cir. 1980), rev’d on other grounds, *Baltimore Gas & Electric Co. v. Natural Resources Defense Council*, 462 U.S. 87 (1983). See also *Robertson v. Methow Valley Citizens Association*, 490 U.S. 332, 349 (1989) (environmental impacts must be considered in advance of taking federal action, in order to ensure “that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.”).

¹⁰⁹ *Limerick Ecology Action v. NRC*, 869 F.2d 719, 729 (3rd Cir. 1989) (citing *Public Service Company of New Hampshire v. NRC*, 582 F.2d 77, 81 (1st Cir. 1978)). See also *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016, 1034 (2006).

Nothing in the Atomic Energy Act or the Administrative Procedure Act excuses the NRC from NEPA compliance, or makes NEPA compliance impossible.¹¹⁰ Therefore, the NRC may not exempt itself from NEPA's requirement to analyze the environmental impacts of renewing the Diablo Canyon license terms *before* it allows the Diablo Canyon reactors to operate beyond their 40-year license terms. Yet, PG&E asks the NRC to issue an exemption that would extend the Diablo Canyon reactors' license terms, *without* completing an environmental review.

It would be impossible for the NRC to have sufficient time to undertake a NEPA review before expiration of the Diablo Canyon licenses. Indeed, in the viewgraphs presented by PG&E during the December 8, 2022 meeting with the NRC Staff, there is no schedule for conduct or completion of a NEPA review. PG&E simply describes the elements of an NRC environmental review —“Draft SEIS Public Meeting,” “NRC issues Final SEIS,” and “Final SEIS issued” — as tasks to be completed in the future, with no predicted dates of completion.¹¹¹ And just as it is clearly impossible for the NRC Staff to complete a safety review for license renewal before the expiration of the Diablo Canyon reactors' operating license, it is also clearly impossible for the NRC to complete the environmental review.

The NRC has no other complete or up-to-date EIS on which it could rely for a decision to extend or renew the Diablo Canyon reactor licenses. Both the 1973 EIS and the 1993 environmental assessment limited the timeframe of the NRC's environmental analysis to *only* 40 years. While the NRC's 1996 License Renewal GEIS, as revised in 2013, purports to evaluate

¹¹⁰ See 5 U.S.C. § 558(c) (“When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.”) Unsurprisingly, the Administrative Procedure Act (which was passed in 1946) contains no reference to NEPA. And NEPA contains no reference to the timely renewal doctrine.

¹¹¹ PG&E Viewgraphs at 5.

generic environmental impacts of operating Diablo Canyon and other reactors for a 20-year license renewal term, the revised GEIS is now out of date. The Commission has before it a proposed draft of a new revision of the License Renewal GEIS, which contains an entirely new generic analysis of the environmental impacts of earthquakes – an issue of great concern to Petitioners, as well as the State Legislature.¹¹² Because this new revised draft GEIS evaluates new and significant information that does not appear in previous revisions of the License Renewal GEIS, the NRC must provide it for public comment before imposing the findings of that revised GEIS on the Petitioners.¹¹³

The processes of completing that draft revised License Renewal GEIS, and of preparing a Diablo Canyon-specific SEIS, will inevitably continue beyond the expiration dates for the Diablo Canyon licenses. Therefore, the Commission has no lawful basis to grant a regulatory exemption that would result in such a blatant violation of NEPA.¹¹⁴

¹¹² See pages 8-11 and 18-19 above.

¹¹³ 10 C.F.R. § 51.73.

¹¹⁴ PG&E also claims that it is entitled to a categorical exclusion from the requirements of NEPA. Gerfen Letter, Enclosure 2 at 7-8. But PG&E's argument proposes an impermissible evasion of NEPA's non-discretionary requirements. See discussion above at pages 32-33.

In any event, the regulatory history of 10 C.F.R. § 51.22(c)(25) shows that the NRC intended the categorical exclusion to apply to truly minor actions of an administrative nature, *i.e.*, those with no arguably significant environmental impacts. Examples of appropriate exemptions given by the NRC in promulgating the rule included:

- (1) Revising the schedule for the biennial exercise requirements for nuclear reactors in 10 CFR Part 50, Appendix E, Sections IV.F 2.b and c;
- (2) Revising the schedule for the biennial exercise requirements for nuclear reactors in 10 CFR Part 50, Appendix E, Sections IV.F 2.b and c;
- (3) Applying updated NRC-approved ASME Codes; and
- (4) Training and experience requirements in 10 CFR Part 35, 'Medical Use of Byproduct Material.

Proposed Rule, Categorical Exclusions from Environmental Review, 73 Fed. Reg. 59,540, 59,545 (Oct. 9, 2008). The NRC further demonstrated its intention that the exclusion should not apply to actions with substantive significance by removing the term "procedural" from the

CONCLUSION AND REQUEST FOR RELIEF

PG&E has made unprecedented requests to the NRC to violate the Atomic Energy Act, NEPA, and the NRC's well-established regulations in its bid for review and approval of an abandoned and seriously outdated license renewal application. The Commission should immediately exercise its supervisory authority to reject PG&E's requests and instead require PG&E to file a new and updated application that satisfies the NRC's docketing requirement for completeness. At that point, the NRC should commence its license renewal review in conformance with its regulations, including offering the public a hearing opportunity. In addition, if the NRC's license renewal review is not completed before the expiration dates for Units 1 and 2, the NRC should enforce the limitations of the Atomic Energy Act by compelling PG&E to close the reactors on their license expiration dates, with reopening to depend on the lawful renewal of their licenses.

category of actions subject to the exclusion. Final Rule, Categorical Exclusions From Environmental Review, 74 Fed. Reg. 20,248, 20,252 (April 19, 2010) (noting that "the term 'procedural' could be misconstrued in this context to include the requirement for licensees to implement procedures for substantive requirements.").

Such minor changes to schedules for exercises and training programs and updates to industry codes cannot reasonably be compared to a decision on whether two reactors must shut down on schedule or be permitted to operate for an undetermined number of additional years beyond their 40-year terms.

Respectfully submitted,

/signed electronically by/

Diane Curran

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January 10, 2023

ATTACHMENT 1
TO
PETITION BY SAN LUIS OBISPO
MOTHERS FOR PEACE,
FRIENDS OF THE EARTH AND
ENVIRONMENTAL WORKING GROUP
(JAN. 9, 2023)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Units 1 and 2

Docket Nos. 50-275, 50-373

**DECLARATION OF DIANE CURRAN REGARDING
DECEMBER 8, 2022 MEETING BETWEEN U.S. NUCLEAR REGULATORY
COMMISSION STAFF AND PACIFIC GAS & ELECTRIC COMPANY**

Under penalty of perjury, I, Diane Curran, declare:

1. I am counsel to San Luis Obispo Mothers for Peace (“SLOMFP”) with respect to the PETITION BY SAN LUIS OBISPO MOTHERS FOR PEACE, FRIENDS OF THE EARTH AND ENVIRONMENTAL WORKING GROUP TO DENY PACIFIC GAS & ELECTRIC COMPANY’S REQUEST TO REVIEW UNDOCKETED LICENSE RENEWAL APPLICATION FOR THE DIABLO CANYON UNIT 1 AND UNIT 2 REACTORS AND PETITION TO DENY PACIFIC GAS & ELECTRIC COMPANY’S REQUEST TO EXTEND THE DIABLO CANYON REACTORS’ LICENSE TERMS WITHOUT RENEWING THE LICENSES filed on Jan. 9, 2023.
2. On December 8, 2022, in the course of my representation of SLOMFP, I attended, via “Microsoft Teams,” a December 8, 2022 meeting between the U.S. Nuclear Regulatory Commission (“NRC”) Staff and Pacific Gas & Electric Co. (“PG&E”).¹
3. During that meeting, the NRC Staff raised no questions or concerns about the lawfulness of requests made by PG&E, in an October 31, 2022 letter to NRC, to (a) resume review of a license renewal application that NRC had removed from its docket at PG&E’s request and (b) issue an exemption to the requirement of 10 C.F.R. § 2.109 for timely filing of license renewal applications.²

¹ The NRC gave public notice of the meeting in Agenda, Public Meeting for License Renewal Application – Diablo Canyon Power Plant, Units 1 and 2 (Nov. 22, 2022) (ML22339A238).

² Letter from Paula Gerfen, Senior Vice President and Chief Nuclear Officer, PG&E, to NRC, re: Request to Resume Review of the Diablo Canyon Power Plant License Renewal Application or, Alternatively, for an Exemption from 10 CFR 2.109(b), Concerning a Timely Renewal Application (Oct. 31, 2022).

4. In viewgraphs presented by PG&E during the meeting, PG&E asserted that by December 2023, it would submit “an update” to the license renewal application.³ These viewgraphs also represented that PG&E could not obtain one key piece of relevant data – a coupon from the Unit 2 reactor vessel – until “Fall 2023.” During the meeting, a PG&E representative further stated that PG&E would not be able to complete and submit an analysis of the coupon until sometime in 2024.
5. During the meeting, I posed a question to Lauren Gibson, NRC License Renewal Branch Chief, regarding whether the Staff intended to consult the Commission about how to respond to the requests by PG& that are described above in paragraph 3. Ms. Gibson responded the Staff had not yet made a decision regarding whether to consult the Commission. NRC Public Affairs Officer Scott Burnell then asserted that the NRC Staff has the necessary authority to act on PG&E’s requests, without consulting the Commission.



Diane Curran

January 9, 2023

³ See Viewgraphs, DCCP License Renewal Pre-Submittal Presentation, Presented by Phillippe Soenen, PG&E Director of Strategic Initiatives at 7 (Dec. 8, 2022) (ML22339A10).

ATTACHMENT 2A
TO
PETITION BY SAN LUIS OBISPO
MOTHERS FOR PEACE,
FRIENDS OF THE EARTH AND
ENVIRONMENTAL WORKING GROUP
(JAN. 9, 2023)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Units 1 and 2

Docket Nos. 50-275, 50-373

DECLARATION OF Carole Hisasue

Under penalty of perjury, Carole Hisasue declares as follows:

1. My name is Carole Hisasue. I am a member of San Luis Obispo Mothers for Peace (SLOMFP) and Friends of the Earth (FOE).
2. I live at 2837 Clark Valley Road, Los Osos, CA.
3. My home is located within the 50-mile ingestion pathway zone of Diablo Canyon Unit 1 and Unit 2 nuclear reactors. I am aware that the licensee, Pacific Gas and Electric Company (PG&E), has requested the U.S. Nuclear Regulatory Commission (NRC) to (a) review a license renewal application that PG&E submitted to the NRC in 2009 and withdrew more than four years ago and (b) extend the reactors' operating license terms beyond their termination dates of 2024 and 2025.
4. Based on my knowledge of seismic risks to the Diablo Canyon nuclear reactors and the historical experience of nuclear power stations, I believe that the continued operation of the Diablo Canyon reactors poses an unacceptable risk to my health and safety and the environment.
5. Therefore, I have authorized SLOMFP and FOE to represent my interests by petitioning the NRC to reject PG&E's requests.

Typed name: Carole Hisasue

December 17, 2022

Signature:



ATTACHMENT 2B
TO
PETITION BY SAN LUIS OBISPO
MOTHERS FOR PEACE,
FRIENDS OF THE EARTH AND
ENVIRONMENTAL WORKING GROUP
(JAN. 9, 2023)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Units 1 and 2

Docket Nos. 50-275, 50-373

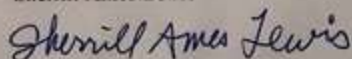
DECLARATION OF SHERRILL AMES LEWIS

Under penalty of perjury, Sherrill Ames Lewis (AKA Sherry Lewis) declares as follows:

1. My name is Sherrill Ames Lewis. I am a member of San Luis Obispo Mothers for Peace (SLOMFP) and Friends of the Earth (FOE).
2. I live at 209 Longview Lane, San Luis Obispo CA 93405
3. My home is located within the 50-mile ingestion pathway zone of Diablo Canyon Unit 1 and Unit 2 nuclear reactors. I am aware that the licensee, Pacific Gas and Electric Company (PG&E), has requested the U.S. Nuclear Regulatory Commission (NRC) to (a) review a license renewal application that PG&E submitted to the NRC in 2009 and withdrew more than four years ago and (b) extend the reactors' operating license terms beyond their termination dates of 2024 and 2025.
4. Based on my knowledge of seismic risks to the Diablo Canyon nuclear reactors and the historical experience of nuclear power stations, I believe that the continued operation of the Diablo Canyon reactors poses an unacceptable risk to my health and safety and the environment.
5. Therefore, I have authorized SLOMFP and FOE to represent my interests by petitioning the NRC to reject PG&E's requests.

Sherrill Ames Lewis

December 16, 2022



ATTACHMENT 2C
TO
PETITION BY SAN LUIS OBISPO
MOTHERS FOR PEACE,
FRIENDS OF THE EARTH AND
ENVIRONMENTAL WORKING GROUP
(JAN. 9, 2023)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Units 1 and 2

Docket Nos. 50-275, 50-373

DECLARATION OF Lucy Jane Swanson

Under penalty of perjury, Lucy Jane Swanson declares as follows:

1. My name is Lucy Jane Swanson. I am a member of San Luis Obispo Mothers for Peace (SLOMFP) and Friends of the Earth (FOE).
2. I live at 313 Presidio Place, San Luis Obispo, CA 93401
3. My home is located within the 50-mile ingestion pathway zone of Diablo Canyon Unit 1 and Unit 2 nuclear reactors. I am aware that the licensee, Pacific Gas and Electric Company (PG&E), has requested the U.S. Nuclear Regulatory Commission (NRC) to (a) review a license renewal application that PG&E submitted to the NRC in 2009 and withdrew more than four years ago and (b) extend the reactors' operating license terms beyond their termination dates of 2024 and 2025.
4. Based on my knowledge of seismic risks to the Diablo Canyon nuclear reactors and the historical experience of nuclear power stations, I believe that the continued operation of the Diablo Canyon reactors poses an unacceptable risk to my health and safety and the environment.
5. Therefore, I have authorized SLOMFP and FOE to represent my interests by petitioning the NRC to reject PG&E's requests.

Lucy Jane Swanson

December 16, 2022



ATTACHMENT 2D
TO
PETITION BY SAN LUIS OBISPO
MOTHERS FOR PEACE,
FRIENDS OF THE EARTH AND
ENVIRONMENTAL WORKING GROUP
(JAN. 9, 2023)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Units 1 and 2

Docket Nos. 50-275, 50-373

DECLARATION OF Jill ZamEk

Under penalty of perjury, Jill ZamEk declares as follows:

1. My name is Jill ZamEk. I am a member of San Luis Obispo Mothers for Peace (SLOMFP) and Friends of the Earth (FOE).
2. I live at 1123 Flora Road, Arroyo Grande, CA 93420
3. My home is located within the 50-mile ingestion pathway zone of Diablo Canyon Unit 1 and Unit 2 nuclear reactors. I am aware that the licensee, Pacific Gas and Electric Company (PG&E), has requested the U.S. Nuclear Regulatory Commission (NRC) to (a) review a license renewal application that PG&E submitted to the NRC in 2009 and withdrew more than four years ago and (b) extend the reactors' operating license terms beyond their termination dates of 2024 and 2025.
4. Based on my knowledge of seismic risks to the Diablo Canyon nuclear reactors and the historical experience of nuclear power stations, I believe that the continued operation of the Diablo Canyon reactors poses an unacceptable risk to my health and safety and the environment.
5. Therefore, I have authorized SLOMFP and FOE to represent my interests by petitioning the NRC to reject PG&E's requests.

Jill ZamEk



Date

12.16.2022

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the matter of
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
Units 1 and 2

Docket Nos. 50-275, 50-373

CERTIFICATE OF SERVICE

I, Diane Curran, certify that on January 10, 2023, I served:

- Petition By San Luis Obispo Mothers for Peace, Friends of the Earth and Environmental Working Group to Deny Pacific Gas & Electric Company's Request to Review Undocketed License Renewal Application for the Diablo Canyon Unit 1 and Unit 2 Reactors and Petition to Deny Pacific Gas & Electric Company's Request to Extend the Diablo Canyon Reactors' License Terms Without Renewing the Licenses, including:
 - Attachment 1, Declaration of Diane Curran Regarding December 8, 2022 Meeting Between U.S. Nuclear Regulatory Commission Staff and Pacific Gas & Electric Company (Jan. 9, 2023);
 - Attachment 2A, Declaration of Carole Hisasue (Dec. 17, 2022)
 - Attachment 2B, Declaration of Sherrill Ames Lewis (Dec. 16, 2022);
 - Attachment 2C, Declaration of Lucy Jane Swanson (Dec. 16, 2022); and
 - Attachment 2D, Declaration of Jill ZamEk (Dec. 16, 2022)
- Notice of Appearance for Diane Curran;
- Notice of Appearance for Hallie Templeton; and
- Notice of Appearance for Caroline Leary

on the following persons by electronic mail:

NRC Commissioners
c/o Brooke Poole Clark, Secretary of the Commission
U.S. Nuclear Regulatory Commission
NRCExecSec@nrc.gov

John Simon, General Counsel and Chief Ethics and Compliance Officer,
Pacific Gas & Electric Company
John.Simon@pge_corp.com



Diane Curran