UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

PACIFIC GAS AND ELECTRIC COMPANY'S ANSWER OPPOSING THE FRIENDS OF THE EARTH HEARING REQUEST AND PETITION FOR WAIVER

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November 4, 2014

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INTRODUCTION

In accordance with 10 C.F.R. § 2.309(i), Pacific Gas and Electric Company ("PG&E") herein answers the hearing request filed by Friends of the Earth ("FOE") on October 10, 2014, in this Diablo Canyon Power Plant ("Diablo Canyon") license renewal matter.[1] FOE seeks a hearing on the adequacy of the seismic design and licensing bases for Diablo Canyon. These issues are in fact unrelated to any aging management issue within the scope of a license renewal review and therefore are not properly raised in this proceeding. FOE offers three proposed contentions that fail to demonstrate, with the requisite basis, a link between its concerns regarding the seismic design of Diablo Canyon and equipment aging issues addressed in PG&E's license renewal application ("LRA"). In recognition of this fact, FOE also filed on the same date a petition for a waiver of the license renewal regulations in 10 C.F.R. Part 54 that specifically

[1] "Friends of the Earth's Request for Hearing and Petition to Intervene," dated October 10, 2014 ("Hearing Request").

preclude litigation of their issues in this forum.[2] PG&E also responds to that petition below. No special circumstances meeting the criteria for a waiver exist. In fact, FOE has previously filed with the Commission a request for hearing on Diablo Canyon seismic issues on the operating license docket.[3] PG&E separately responded to that request, which remains pending before the Commission.[4] The Licensing Board should appropriately allow the Commission to address FOE's request for hearing on seismic licensing basis issues in that context, rather than consider the issues in this license renewal proceeding, contrary to the express terms and stated intent of the Commission's license renewal regulations.

BACKGROUND

FOE's Hearing Request and Waiver Petition are based entirely on FOE's misunderstanding of the Diablo Canyon seismic design and licensing bases and on its mischaracterizations of PG&E's recent report on the Central Coastal California Seismic Imaging Project.[5] While these seismic issues are clearly beyond the scope of a license renewal review, PG&E believes clarification of the matters raised by FOE is important for the Licensing Board and the public record.

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2 "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" ("Waiver Petition").

3 "Petition to Intervene and Request for Hearing by Friends of the Earth," dated August 26, 2014.

4 "Pacific Gas and Electric Company's Answer to Friends of the Earth Hearing Request," dated October 6, 2014.

5 PG&E Letter DCL-14-081, "Central Coastal California Seismic Imaging Project, Shoreline Fault Commitment," dated September 10, 2014 (ADAMS Accession No. ML14260A106) ("Seismic Imaging Project Report").

A. The Licensing Basis Hosgri Earthquake Evaluation

The potential for earthquakes from faults in the region of Diablo Canyon was specifically considered in connection with the plant's initial operating license in the 1970s. At that time the NRC and PG&E developed a limiting ground motion response spectrum for the design of Diablo Canyon, based on a postulated maximum magnitude 7.5 earthquake on the Hosgri Fault. The characterization of the maximum earthquake on the Hosgri Fault was based on the recommendations of the NRC's technical consultants, as reflected in the NRC Staff's Supplemental Safety Evaluation Report ("SSER") 4, issued May 11, 1976.[6] The design response spectrum for the limiting earthquake, reflecting an effective ground motion at the Diablo Canyon site up to 0.75g, was based on expert evaluations and was considered to represent the maximum vibratory ground motions at the site.[7] The design response spectrum and related engineering evaluations — referred to as the Hosgri Earthquake ("HE") evaluation — were reviewed by the NRC Staff and its consultants and approved in SSER 7, issued on May 26, 1978.[8] The NRC Staff

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6 NUREG-0675, "Safety Evaluation Report Related to the Operation of Diablo Canyon Power Plant, Units 1 and 2" ("NUREG-0675"), Supplement No. 4, dated May 11, 1976.

7 *See, e.g.*, NUREG-0675, Supplement No. 5, dated September 10, 1976.

8 NUREG-0675, Supplement No. 7, dated May 26, 1978. The ground motion response spectrum was developed from the work of two expert consultants – Nathan Newmark for the U.S. Geological Survey and the NRC and John Blume for PG&E. These geoscientists each used varying methods, including empirical data and technical judgment, in developing a design response spectrum for the postulated Hosgri earthquake. The resulting 1977 HE spectrum was an envelope of the Newmark and Blume spectra. There was no one ground motion prediction equation used at the time, and no such methodology was incorporated into the licensing basis — only the limiting ground motion response spectrum itself, to be used in the qualification of safety-related equipment.

stated in SSER 7 that it considered the HE to be "the safe shutdown earthquake for this site, or at least its equivalent."[9]

Issues related to the seismic source characterization and the design response spectrum were litigated in the NRC licensing hearing process, and the HE evaluation was ultimately confirmed by a licensing board and by the Commission's Appeal Board.[10] The 1977 HE evaluation was, and remains, an essential component of the Diablo Canyon seismic design basis as defined in 10 C.F.R. § 50.2. The HE evaluation is part of the Diablo Canyon Current Licensing Basis ("CLB") as defined in 10 C.F.R. § 54.3, as discussed below. Safety-related equipment must be designed and must be maintained to withstand HE earthquake loads.[11]

In its attack on the Diablo Canyon seismic design and licensing bases, FOE recycles arguments that it made in its August 26, 2014, hearing request that is now pending before the

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[9] SSER 7, Section 2.5 at 2-4. Diablo Canyon licensing pre-dated the NRC's adoption of 10 C.F.R. Part 100, Appendix A, where terms such as "operating basis earthquake" and "safe shutdown earthquake" were defined. The Diablo Canyon seismic licensing basis is plant-specific and unique.

[10] *Pacific Gas and Electric Co*. (Diablo Canyon Power Plant, Units 1 and 2), LBP-79-26, 10 NRC 453 (1979); *aff'd, Pacific Gas and Electric Co*. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903 (1981).

[11] License Condition 2.C(7) in the Diablo Canyon operating license required PG&E to subsequently develop and implement a program to reevaluate and confirm the seismic design and licensing bases. To meet that condition, PG&E developed and implemented the Long Term Seismic Program ("LTSP"). An LTSP Final Report was submitted to the NRC in July 1988 and included detailed evaluations of existing and new geologic and seismologic data of significance to the site. The LTSP used seismic margins, fragilities, and probabilistic risk assessment methodologies. The LTSP was not a deterministic licensing basis analysis like that used in the initial licensing reviews for Diablo Canyon, but was a technically advanced basis to confirm the adequacy of the Diablo Canyon licensing basis. The LTSP methodology showed that a maximum earthquake of magnitude 7.2 on the Hosgri fault would provide a very conservative basis for analyzing the adequacy of the plant and equipment. Equipment previously qualified for design basis seismic loads remained qualified. The NRC's extensive review of the LTSP (including by the Advisory Committee on Reactor Safeguards) is described in NUREG-0675, Supplement No. 34 (SSER 34), dated June 1991.

Commission. Echoing arguments made in a Differing Professional Opinion ("DPO") of Dr. Michael Peck that was recently denied and closed by NRC Staff management,[12] FOE attempts to equate (and limit) the Diablo Canyon seismic design and licensing bases to the earlier Diablo Canyon Design Earthquake ("DE") and Double Design Earthquake ("DDE") evaluations. The design response spectra for those hypothetical earthquakes (not tied to a specific fault or seismic source in the vicinity of Diablo Canyon) pre-date the HE evaluation. The DE and DDE assumed maximum ground motions at the site of 0.2g and 0.4g — clearly less than the HE. The original DE and DDE structural evaluations included certain assumptions (*e.g.,* damping values and material strengths) that were conservative relative to those later used in the HE evaluations. However, these issues were addressed during the licensing reviews of the HE evaluation. The HE is not a "relaxation," "exception," or an "exemption" from the DE and DDE. The HE represents the bounding licensing basis ground motions for Diablo Canyon. But, where seismic loads predicted from the historic DE and DDE ground motions are greater than those from the HE evaluation because of historic analysis assumptions in the DE and DDE structural evaluations, safety related equipment remains qualified for the greater loads in accordance with acceptance criteria associated with the applicable earthquake evaluation (*i.e.,* DE or DDE). Equipment is therefore qualified for the seismic loads of the hypothetical DE and DDE, and the HE, regardless of an earthquake source that creates the ground motions and causes the loads.

In connection with the initial licensing review, the structural evaluations for the HE ground motions were discussed in the "Hosgri Report" that was submitted to the NRC in phases as amendments to the operating license application. (The Hosgri amendments to the application were

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[12] Memorandum, M.A. Satorius to M.S. Peck, "Differing Professional Opinion Appeal Decision Involving Seismic Issues at Diablo Canyon (DPO-2013-002)" (September 9, 2014) (ADAMS Accession No. ML14252A743).

submitted between June 3, 1977, and June 6, 1980.) The seismic structural evaluations in the complete Hosgri Report encompassed the full scope of safety-related equipment under Safety Guide 29, which was the predecessor to Reg. Guide 1.29.[13] After the operating license was issued, the 1977 HE evaluation has been consistently documented in the Diablo Canyon Updated Final Safety Analysis Report ("UFSAR"), reflecting the plant's licensing basis.[14] For example, the Hosgri earthquake and HE evaluation were addressed in detail in Section 2.5 on Geology and Seismology (UFSAR Section 2.5.2.10 described the ground accelerations and response spectra, including the development of the Hosgri ground motion response spectrum, and referenced SSER 5).[15] The HE evaluation was addressed in other sections as well, including Section 3.2 on Classification of Structures, Systems, and Components (UFSAR Section 3.2.1); Section 3.7 on Seismic Design (UFSAR Sections 3.7.1, 3.7.2, 3.7.6); Section 3.8 on Design of Design Class 1 Structures; Section 3.9 on Mechanical Systems and Components; and Section 3.10 on Seismic

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13 The first phase of the Hosgri structural evaluation was submitted on the docket (operating license application Amendment 50 in June 1977) and encompassed the seismic evaluation of equipment required to shut down and maintain the plant in a safe condition. This is the scope of equipment that has been previously described as the "Hosgri Earthquake Dedicated Shutdown Path." The second phase of the Hosgri evaluation was completed and submitted to the NRC in November 1977 (operating license application Amendment 56). This phase encompassed all safety-related Design Class 1 equipment.

14 In accordance with 10 C.F.R. § 50.71(e)(3)(i), the first UFSAR was not required to be prepared and filed until after the operating license was issued.

15 The citations here are to UFSAR Revision 19 because that revision predated PG&E's voluntary, proposed License Amendment Request 11-05, originally submitted to the NRC on October 20, 2011. That License Amendment Request was submitted to further clarify the licensing basis given issues being raised at the time by Dr. Peck and to clarify the process for addressing new seismic information related to the Shoreline Fault. The proposed license amendment was later determined to be unnecessary and was withdrawn by PG&E after the NRC invoked the post-Fukushima Section 50.54(f) discussed below for reevaluations of seismic licensing bases. The License Amendment Request never meant that the 1977 HE evaluation was not part of the Diablo Canyon licensing basis. Such a conclusion would be contrary to the extensive licensing history of Diablo Canyon only briefly summarized above.

Design of Design Class 1 Instrumentation, HVAC, and Electrical Equipment. UFSAR Section 3.7 also included a specific reference to the Hosgri Report (*see* Reference 15).

The 1977 HE evaluation falls within the Part 54 CLB definition because: (1) it is part of the design basis of the plant as defined in 10 C.F.R. § 50.2 and documented in the UFSAR; (2) it involves licensee commitments and analyses documented in SSER 4, 5, and 7; and (3) it is reflected in docketed licensing correspondence submitted during the NRC review and the hearing process. Any one of these three would be sufficient to meet the CLB definition.

B. The PG&E Central Coast Seismic Imaging Project Report

The PG&E Seismic Imaging Project Report completed in 2014 establishes that earthquakes from regional faults — based on the most up-to-date data and hazards assessments — will not produce ground motions that exceed the ground motions calculated in the 1977 HE evaluation. Therefore, equipment qualified for the HE ground motions remains qualified for updated ground motions expected from the regional seismic hazards. Contrary to FOE's claims, the report does not conclude, or provide evidence to support a conclusion, that regional faults will produce ground motions that exceed the longstanding Diablo Canyon design and licensing bases.

FOE bases its hearing request entirely upon Chapter 13 of the Seismic Imaging Project Report. But, as expressly addressed there, the ground motions for all cases considered are bounded by (*i.e.*, less than) the 1977 HE ground motions. On pages 11-12, that chapter explains that deterministic 84th percentile ground motions were computed for the Hosgri (linked to the San Simeon), Los Osos, San Luis Bay, and Shoreline fault scenarios. "For all the scenarios and for both sets [power block and turbine building] the deterministic ground motions are bounded by the 1977 Hosgri spectrum."[16] This conclusion is also shown in Figures 2-1 and 2-2.[17] Furthermore,

16 *Id.* at 12.

PG&E also included, as a sensitivity, a deterministic assessment of a full Shoreline fault rupture linked to the Hosgri and extending to the San Simeon fault. Again, the "ground motion from this linked rupture case remains bounded by the 1977 Hosgri spectrum."[18] This is shown in Figure 2-3. The overall conclusions of the report are again captured in Chapter 14.[19]

FOE's attack on the Diablo Canyon licensing basis is as uninformed as it is out of context. Throughout its filing, FOE erroneously focuses on a comparison between the Seismic Imaging Project Report and PG&E's 2011 Shoreline Fault Report. Even though certain estimated magnitudes and other parameters for the regional faults have changed from 2011 to 2014 based on additional data collected from the seismic imaging project (*see* Tables 1-1, 2-1, 2-2), the overall conclusion is that the updated ground motions are bounded by the 1977 HE ground motions. In other words, the conclusion has not changed since the Shoreline Fault Report in 2011 — the Diablo Canyon seismic design and licensing bases remain adequate. FOE specifically points to updated estimates of the Hosgri–San Simeon Fault, and asserts that those estimates exceed the updated ground motions for the Hosgri fault.[20] But those updated estimates do <u>not</u> exceed the 1977 HE ground motions that are part of the plant's seismic design and licensing bases.[21]

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17 These figures are similar to Figure ES-1 in PG&E's 2011 report on the Shoreline Fault, only based on the latest data. "Report on the Analysis of the Shoreline Fault Zone, Central Coastal California: Report to the U.S. Nuclear Regulatory Commission," at ES-5 (January 2011) (ADAMS Accession No. ML110140431) ("Shoreline Fault Report").

18 Seismic Imaging Project Report, Chapter 13, at 18.

19 *Id.*, Chapter 14, at 3.

20 *See* Hearing Request at 5 (alleging that an earthquake on the Shoreline Fault "would produce greater ground motion than estimated previously for the Hosgri fault, which is located nearly 5 kilometers from the plant").

21 *See* Seismic Imaging Project Report, Chapter 13, at 8, Figures 2-1, 2-2 (explaining that the Hosgri and San Simeon faults are assumed to rupture together, but that the resulting ground motions at Diablo Canyon remain bounded by the 1977 HE design response spectra).

Similarly, increases in the magnitude of possible earthquakes relative to the 2011 Shoreline Fault Report do not change the conclusion that the 1977 HE seismic design basis remains bounding. The Diablo Canyon safety-related equipment design is tied to the ability to operate and shutdown for ground motions reflected in the licensing basis response spectra. The seismic qualification of safety-related equipment is independent of the seismic source in an earthquake scenario.

C. The Section 50.54(f) Process Addresses The Seismic Licensing Basis for U.S. Plants

As reflected in Chapter 14 of the Seismic Imaging Project Report, the NRC is addressing the adequacy of the seismic licensing basis for all U.S. plants, including Diablo Canyon, through the 10 C.F.R. § 50.54 process. Specifically, a year after the Fukushima event in Japan, the NRC directed specific actions by all licensees, as a current regulatory oversight matter, to reevaluate the seismic hazards at their plants using present day data, methods, and guidance.[22] PG&E must submit an updated seismic hazards analysis within three years of the NRC's Section 50.54(f) request for information (*i.e.*, by March 2015). On April 29, 2013, PG&E submitted to the NRC a plan and schedule for the Diablo Canyon seismic reevaluation.[23] The data developed during the Seismic Imaging Project is being incorporated into PG&E's seismic hazards assessment. Issues implicating the adequacy of the Diablo Canyon seismic licensing basis therefore are being addressed separate from the Part 54 license renewal review. Under the NRC's

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

23 PG&E Letter DCL-13-044, "Response to NRC Request for Information Pursuant to 10 CFR 50.54(f) Regarding the Seismic Aspects of Recommendation 2.1 of the Near-Term Task Force Review of Insights from the Fukushima Dai-Ichi Accident," dated April 29, 2013 (ADAMS Accession No. ML13120A275).

regulatory framework, resolution of those issues is not tied to any future decision to issue a renewed license.

FOE'S CONTENTIONS ARE NOT ADMISSIBLE

A. A Contention Must Demonstrate a Genuine Dispute Within the Scope of a Proceeding

To be granted a hearing, FOE must proffer at least one contention that meets the admissibility standards in 10 C.F.R. § 2.309(f)(1)(i)-(vi). The contention admissibility standard is "strict by design" and failure to meet any one of the six criteria is grounds for rejecting a proposed contention.[24] In particular, FOE must provide the necessary information to demonstrate that there is a genuine dispute with the Diablo Canyon LRA on an issue within the scope of this license renewal proceeding.[25]

1. Establishing a Genuine Dispute

For its contentions to be admissible, FOE must provide sufficient information to establish a genuine dispute with the LRA. Vague references to documents do not suffice — FOE must identify specific portions of documents on which it relies.[26] Conclusory statements are not enough.[27] And, most importantly, the Board must also consider any documents presented to ascertain whether, on their face, they support FOE's assertions. FOE's imprecise reading of a

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24 "Changes to Adjudicatory Process; Final Rule," 69 Fed. Reg. 2182, 2202 (Jan. 14, 2004).

25 *Balt. Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-14, 48 NRC 39, 41 (1998).

26 *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 & 2), CLI-89-03, 29 NRC 234, 240-41 (1989).

27 *Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Unit 3), CLI-01-3, 53 NRC 22, 27 (2001).

reference document cannot serve to generate an issue suitable for litigation.[28] FOE's contentions must be ruled inadmissible if FOE offers only "bare assertions and speculation."[29] The Board may not make factual inferences on FOE's behalf.[30]

2. Scope of License Renewal Proceedings

The scope of a license renewal proceeding is defined by the technical (or safety) review under 10 C.F.R. Part 54 and the environmental review under 10 C.F.R. Part 51. The technical review is limited to plant systems, structures, and components ("SSCs") that fulfill specified safety functions[31] and, more particularly, that either (1) require an aging management review for the period of extended operation or (2) are subject to a time-limited aging analysis ("TLAA") based on the current license term.[32] Only "passive" SSCs — *i.e.,* those that perform their intended functions without moving parts or change in configuration or property — are within the scope of a license renewal aging management review. The operability of "active" equipment and equipment with a defined replacement term (less than the current license term) is assured on a routine basis by ongoing surveillance and maintenance programs under 10 C.F.R. Part 50.

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28 *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Ga.), LBP-95-6, 41 NRC 281, 300 (1995).

29 *Fansteel*, CLI-03-13, 58 NRC at 203 (quoting *GPU Nuclear* (Oyster Creek Nuclear Generating Station), CLI-00-06, 51 NRC 193, 208 (2000)).

30 *G.I.T.*, 41 NRC at 305.

31 10 C.F.R. § 54.4

32 10 C.F.R. § 54.21(a),

A fundamental principle of the license renewal regulations is that an operating plant's CLB provides an acceptable level of safety and that the NRC's ongoing regulatory process is adequate to ensure compliance with the CLB.[33] As the Commission explained in *Turkey Point*:

> [CLB is] a term of art comprehending the various Commission requirements applicable to a specific plant that are in effect at the time of the license renewal application … The [CLB] represents an "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." 60 Fed. Reg. at 22,473. It is effectively addressed and maintained by ongoing agency oversight, review, and enforcement.[34]

The Commission concluded that requiring a full reassessment of safety issues that were "thoroughly reviewed when the facility was first licensed" and continue to be "routinely monitored and assessed by ongoing agency oversight and agency-mandated licensee programs" would be "both unnecessary and wasteful."[35]

A second and equally important principle of license renewal holds that the plant-specific licensing basis must be maintained during the renewal term in the same manner and to the same extent as during the original licensing term.[36] The NRC's license renewal regulations expressly distinguish between operational issues addressed by the ongoing regulatory process (*e.g.*, inspection and oversight) and aging management issues to be addressed in license renewal. A license renewal review "is confined to the small number of issues uniquely determined by the

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33 56 Fed. Reg. at 64946. As noted above, the term "current licensing basis" is defined in 10 C.F.R. § 54.3.

34 *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 9 (2001).

35 *Id*. at 7. Issues related to current operations (and implementation of existing programs) must be addressed through ongoing regulatory processes and are not deferred until the license renewal decision or the period of extended period.

36 "Nuclear Power Plant License Renewal; Revisions, Final Rule" 60 Fed. Reg. 22461, 22464 (May 8, 1995).

Commission to be relevant for protecting the public health and safety during the renewal term, leaving all other issues to be addressed by the agency's existing regulatory processes."[37]

B. FOE Raises Current Licensing Basis Issues Outside the Scope of License Renewal

FOE's hearing request and proposed contentions are nakedly a challenge to the current licensing basis for Diablo Canyon and therefore beyond the scope of the license renewal review. FOE specifically raises issues addressed in the Seismic Imaging Project Report that already are being addressed under the Part 50 regulatory process, including through the post-Fukushima Section 50.54(f) seismic reevaluations at all plants. FOE's focus on the CLB can be seen in the Hearing Request itself, in the supporting declarations, and — most specifically —in the relief requested:

- "PG&E has not demonstrated that the plant can be safely operated under its existing operating license." Hearing Request at 3.
- "[T]he PG&E Seismic Report establishes that the earthquake caused by the Hosgri fault, as identified and analyzed in the Hosgri part of the original licensing proceeding, is no longer the largest or most powerful threat to the Diablo plant." *Id*. at 5.
- "PG&E's operating licenses for Diablo Canyon should thus not be renewed until PG&E can demonstrate that the plant can be safely shut down in light of the significant new information about the seismic energy to which Diablo Canyon could be exposed." *Id*. at 8.
- "PG&E has not demonstrated that the plant can be safely shut down following an earthquake on one or more of these faults. The Board should not grant PG&E's license renewal request unless and until PG&E can do so." *Id*. at 10.
- "PG&E is required to evaluate these data under the requirements of NRC regulations and the Diablo Canyon license, not their own invented, non-peer reviewed, non-NRC approved methods." *Id*. at 16.

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37 *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 152 (2001) (emphasis added).

- "[T]he Board should order PG&E to perform its additional analysis of the possible ground motion using NRC-approved, peer-reviewed ground motion prediction equations for PG&E's final March 2015 report." *Id*.

- The Jentzsch declaration concludes (at 11) that the "earthquake hazards estimations for Diablo Canyon site are not at all conservative."

- The Gundersen declaration challenges licensing basis assumptions such as damping coefficients (at 10-11) used in the HE evaluation — issues that were addressed and resolved during the initial licensing review.

These citations amply demonstrate that FOE is challenging the CLB and current operations — matters that are not within the scope of a license renewal proceeding.[38]

FOE's attempts to link CLB issues to "aging" and "aging management" are strained and perfunctory. Throughout its Hearing Request, and specifically in the proposed contentions, FOE's recurring theme is that the seismic licensing basis (the "Safe Shutdown Earthquake" or "SSE") in the plant's licensing basis is insufficiently conservative because "aged" equipment will somehow be more vulnerable to new or different seismic hazards.[39] FOE's assertion is simply unfounded. In fact there is no link between aging and the maximum predicted ground motions. Safety-related SSCs are qualified and maintained to the licensing basis seismic loads regardless of their "age" — a fundamental aspect of the regulatory framework that FOE does not even acknowledge. This qualification is assured through Part 50 maintenance programs and procedures or, for in-scope equipment, by Part 54 aging management programs. FOE may not challenge Part 50 programs in the proceeding, and does not challenge any specific Part 54 aging management program. These deficiencies are addressed further in connection with each proposed contention.

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38 *Turkey Point,* CLI-01-17, 54 NRC at 9.

39 *See, e.g.*, Gundersen Declaration at 35. In its focus on an "SSE", FOE consistently ignores that Diablo Canyon was not licensed to 10 C.F.R. Part 100, Appendix A.

FOE attempts to find support for its proposed contention in the DPO of former senior resident inspector, Dr. Peck.[40] However, that DPO involved a current oversight issue — matters related to the seismic CLB and the NRC's regulatory response to identification of new seismic information related to the Shoreline Fault in 2008. The NRC's assessments of ongoing plant operations and regulatory compliance, including the need for license amendments or other approvals, are quite clearly not within the scope of a license renewal review.[41]

C. Contention 1 Is Not Admissible

Contention 1 argues that a renewed license should not be issued until FOE's concerns regarding the seismic CLB are addressed. This challenge to the CLB is not permitted in a license renewal proceeding. Contention 1 should be denied for that reason alone. Regardless, the contention is replete with the errors. FOE inaccurately portrays the Diablo Canyon licensing basis and mischaracterizes the Seismic Imaging Project Report. On its face, the report that FOE cites does not support claims that there is a current safety issue or that a license renewal hearing is appropriate. Each of the "bases" for this proposed contention (Hearing Request at 11-13) is briefly discussed below.

- *Shoreline fault is longer than known when the plant was licensed:* This basis statement raises a CLB issue. It challenges the adequacy of the seismic design and licensing basis. A challenge to the seismic CLB is a current Part 50 issue, outside the scope of Part 54 license renewal.

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40 Hearing Request at 4, referencing DPO-2013-002 (July 18, 2013). That matter was resolved by the NRC Staff management, as noted above (*see* n.12).

41 *See, e.g.*, *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-11-11, 74 NRC 427, 436-437 (2011) (explaining that "ongoing compliance oversight activities" are appropriately excluded from license renewal proceedings and noting that compliance issues instead should be addressed through a 10 C.F.R. § 2.206 petition); *Turkey Point*, 54 NRC at 10 (noting the limited scope of license renewal reviews and hearings and explaining that "any change to a plant's licensing basis that requires a license amendment – i.e., a change in the technical specifications – will itself offer an opportunity for hearing in accordance with section 189 of the Atomic Energy Act.").

Moreover, while the specific assertion is true, it is not relevant to safety given that the ground motions from the Shoreline Fault are enveloped by the 1977 HE ground motions.[42] Plant equipment is qualified to ground motions, regardless of the characteristics of a seismic source.

- *Hosgri and Shoreline faults may rupture together:* Again, this basis statement raises a CLB issue. A challenge to the seismic CLB is a current Part 50 issue, outside the scope of Part 54 license renewal. But, in any event, FOE misreads the implications of the Seismic Imaging Project Report. It is true that as a sensitivity, the Seismic Imaging Project Report includes a deterministic hazard analysis assuming that the full Shoreline fault rupture is linked to a rupture on the Hosgri fault, extending north to the end of the San Simeon fault. This is a different assumption that the original assumption of a 7.5 magnitude earthquake on the Hosgri fault. But the resulting ground motions at Diablo Canyon from the assumed scenario are still bounded by the 1977 HE design response spectra, demonstrating that the CLB is adequate even given the most up-to-date assessments of seismic hazards.[43]

- *Hosgri and San Simeon faults are connected:* This basis also raises a CLB issue. There is nothing in this basis statement germane to Part 54 license renewal. But, in any event, FOE again misreads the implications of the Seismic Imaging Project Report. In the report, the Hosgri and San Simeon are assumed to rupture together.[44] Again, while this may be a different initiating scenario than assumed at licensing, the resulting ground motions at Diablo Canyon are still bounded by the 1977 HE design response spectra.[45] Plant equipment is qualified to ground motions, regardless of a seismic source.

FOE asserts that PG&E's current analysis is not peer-reviewed or approved by the NRC.[46] This basis raises both a challenge to the CLB and a challenge to the adequacy of NRC oversight of current Diablo Canyon operations. These are issues that must be raised through the 10

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42 Seismic Imaging Project Report, Chapter 13, Figures 2-1, 2-2.

43 *Id.* at 18, Figure 2-3.

44 *Id*. at 8.

45 *Id.* at Figures 2-1, 2-2.

46 Hearing Request at 14 ("The ground motion prediction equations used to arrive at the DDE of 0.4 g are, and were at the time they were used, peer-reviewed, scientifically accepted, NRC-approved assumptions.").

C.F.R. § 2.206 process. Challenges to the methodologies or "peer review" process used for the Seismic Imaging Project Report, assertions regarding the current licensing implications of the report, and contentions related to other regulatory approvals alleged to be required are all beyond the scope of the license renewal process. But, so that the record is clear, the Diablo Canyon licensing basis and UFSAR have never included ground motion prediction equations or methodologies — only ground motion response spectra.[47] The 1977 HE ground motion response spectra were based on accepted methods at the time (including the assessment by the NRC's consultant, Dr. Newmark), litigated in the hearing process, and approved. The original DE was not based on ground motion prediction equations at all, but rather on empirical data available at the time from earthquakes not within the region. And, the DDE was simply an arbitrary doubling of the DE, not the result of ground motion prediction equations. In any event, license renewal is not a forum to re-litigate the prior HE analysis or to litigate the Seismic Imaging Project Report or related regulatory process issues. Current seismic issues already are being reevaluated as part of the NRC's ongoing oversight function.[48]

FOE's only attempt to link these CLB issues and regulatory oversight matters to license renewal lacks specificity and basis, and is clearly unfounded. The general reference to equipment in an "aged state" (Hearing Request at 20) does not point to any specific in-scope

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47 The facts are directly contrary to FOE's unsupported claim that the UFSAR "provides ground motion prediction equations used to bound DDE (0.4 g) and Hosgri (0.75 g) events" and that "the NRC reviewed and approved a revised set of ground motion potential [sic] equations." *Id*.

48 As noted, the NRC is utilizing the 10 C.F.R. § 50.54(f) request for information process. If changes to the CLB are determined to be necessary, the NRC and PG&E will follow appropriate processes to implement those changes, possibly including the license amendment process. Again, in the meantime, this license renewal proceeding is not a forum to review NRC Staff management disposition of Dr. Peck's DPO on NRC's past regulatory oversight of seismic issues at Diablo Canyon.

equipment, any specific TLAA, or any specific Part 54 aging management plan ("AMP") that FOE alleges to be deficient. FOE also ignores the fact that the NRC's rules require each safety-related SSC to be seismically designed and qualified for its entire operating life, with margin. And, FOE ignores the role of Part 50 maintenance programs, including surveillance and testing, in assuring that qualified equipment remains operable. While Part 54 aging management programs address environmental aging mechanisms for equipment within the scope of 10 C.F.R. § 54.21(a), seismic events are not an aging mechanism except for a limited set of SSC's subject to fatigue assessments.[49] FOE does not address any AMP, TLAA, or fatigue assessment. FOE therefore fails to demonstrate any genuine dispute regarding a matter within the scope of license renewal.

D. Contention 2 Is Not Admissible

In Contention 2, FOE alleges that PG&E failed to demonstrate "that the effects of aging on Diablo Canyon's relay switches and snubbers will be adequately managed for the period of extended operation, in violation of 10 C.F.R. § 54.21(c)."[50] With respect to relays, the proposed contention alleges that, as relays age, they are more likely to experience relay chatter in the event of an earthquake.[51] The proposed contention also asserts that failure of snubbers "could cause safety-related piping to break."[52] Proposed Contention 2 is inadmissible. FOE has identified no AMP for relays or snubbers that it alleges to be deficient and has provided no basis to assert that there is a missing TLAA associated with this equipment.

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49 As discussed further below, a fatigue assessment would involve the number of cycles (*e.g.*, seismic events), not the nature or magnitude of the SSE.

50 Hearing Request at 21. The contention is ostensibly supported by the declaration of Mr. Gundersen.

51 *Id*. at 23.

52 *Id*. at 29.

In fact, snubbers and relays are not subject to an aging management review. Both are specifically excluded by the regulation and NRC guidance.[53] Section 54.21(a)(1)(i) only includes equipment that performs its intended function without moving parts or without a change in configuration or property. Both snubbers and relay switches (as recognized in the Gundersen declaration) have mechanical moving parts.[54] Contention 2 therefore ignores both the express terms and intent of the license renewal rule.

FOE at most suggests that snubbers and relays may be addressed in a TLAA under 10 C.F.R. § 54.21(c)(1)(i)-(iii). But FOE does not exhibit any expertise (or even awareness or understanding) in that regard. FOE merely questions whether there are TLAAs for snubbers and relays, but does not contend that there should be a TLAA.[55] Nor does FOE provide any basis for an assertion that there should be a TLAA for snubbers or relays. In fact, snubbers and relays do not meet the criteria of 10 C.F.R. § 54.3(a) for a TLAA. For these components there are no time-limited assumptions defined by the current operating term.[56] Instead, the equipment is subject to

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53 10 C.F.R. § 54.21(a)(1)(i); *see also* Regulatory Guide 1.188, which endorses Revision 6 of NEI 95-10. NEI 95-10, Rev. 6, Appendix B, addresses whether SSCs are within the scope of 10 C.F.R. § 54.21(a)(i). Snubbers (item category 25) and relays (item category 98) are not in scope. Snubbers and relays instead are subject to maintenance programs and the Part 50 maintenance rule in 10 C.F.R. § 50.65.

54 *See* Gundersen Aff. at 24-25 (describing relays as "mechanical switching devices" that control the flow of electricity through the use of electromagnets and springs); *id*. at 37 (explaining that snubbers are "specialized springs and devices" that are "similar to the shock absorbers on cars").

55 Hearing Request at 24-25 ("The TLAAs for relays and snubbers, to the extent PG&E has in fact conducted such TLAAs, are no longer valid in light of PG&E's conclusions in the Seismic Report that its previous analyses of the Hosgri, Shoreline, and other faults greatly underestimated the earthquake capability of those faults.); *id*. at 27 ("PG&E's current TLAAs for relays and snubbers, to the extent the licensee has conducted such TLAAs, are thus based on obsolete seismic data.").

56 *See* 10 C.F.R. § 54.3 (Criterion 3 in definition of TLAA).

current Part 50 surveillance and test programs.[57] FOE therefore has not demonstrated a genuine dispute with the Diablo Canyon LRA.

At bottom, FOE's issues regarding the qualification of these components for a future earthquake do not involve an aging issue. The adequacy of the current design basis SSE is not related to aging.[58] While a DE, DDE, or HE may be an operating transient impacting component life, FOE does not raise any issue or provide any reference related to the frequency of earthquakes in the past or in the future.[59] FOE's disputes regarding the identity and nature of an SSE, or the sufficiency of the CLB ground motion response spectra, are not germane to that issue.[60] Most tellingly, neither FOE nor Mr. Gundersen ever identify any specific analysis,

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[57] Safety-related snubbers are maintained by periodic visual inspections and functional testing performed by qualified personnel in accordance with Diablo Canyon procedures, Technical Specifications, and the NRC's maintenance rule. The testing and inspections ensure that all required snubbers are operable so that the structural integrity of the reactor coolant system and all other safety-related systems is maintained during and following a seismic or other event initiating dynamic loads. Relays are "shake table" tested prior to installation and, once installed, are periodically tested in accordance with Technical Specifications. Testing consists of energizing all relays in the channel required for channel operability, verifying the operability of each required relay, and performing a continuity check.

[58] *See, e.g.*, Hearing Request at 26 ("PG&E's current TLAAs for relays and snubbers, to the extent the licensee has conducted such TLAAs, are thus based on obsolete seismic data.); *id*. at 25-26 ("Despite the discovery of new data indicating that previous assessments forming the basis of the seismic qualification of Diablo Canyon's SSCs are inaccurate and underestimate the capability of faults near the plant, PG&E has not conducted any reevaluation of the TLAAs to take into account the updated seismic data.").

[59] In the event of an actual earthquake, there are also Part 50 processes for post-earthquake inspections that differ depending on whether an actual earthquake is within or exceeds the design basis. *See, e.g.*, Regulatory Guide 1.167, "Restart of a Nuclear Power Plant Shutdown by a Seismic Event" (March 1997) (ADAMS Accession No. ML003740093). This is an example of how the regulatory process assures that SSCs remain operable/functional for continued or resumed operations after an earthquake. Unanticipated cycling of equipment would be addressed as part of the post-event regulatory oversight process.

[60] SSCs are designed to withstand the appropriate seismic loadings in accordance with their Design Class. For SSCs that require fatigue analysis, seismic loading/cycles are evaluated

program, or qualification that is allegedly inadequate.[61] There is not a single reference in the Hearing Request to the LRA or the NRC Safety Evaluation Report. Contention 2 does not raise an issue within the scope of license renewal and is not admissible.

E. Contention 3 Is Not Admissible

In proposed Contention 3, FOE broadly alleges that "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)."[62] The proposed contention asserts that PG&E's LRA "rests on seismic data that has been shown to be obsolete and inaccurate."[63] FOE claims that PG&E must "update its aging management review with data from the Seismic Report."[64] Contention 3 is inadmissible. FOE does not identify any deficient AMP and instead again seeks to litigate the adequacy of the seismic design and licensing bases at Diablo Canyon — an issue outside the limited scope of this proceeding.

Contention 3 challenges the adequacy of an unspecified Diablo Canyon "aging management plan," purportedly required by 10 C.F.R. § 54.21(a)(3), without ever identifying any equipment subject to an AMP as defined in 10 C.F.R. § 54.21(a)(1)(i). FOE does not point to any

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in accordance with Codes, standards, or commitments to which the fatigue analysis is being completed. *See, e.g.*, LRA Section 4.3.6 (noting that the fatigue design and analysis of Class IE electrical raceway support angle fittings for seismic events considers five DEs, and one DDE or Hosgri in accordance with IEEE 344-1975 and the DCPP-specific licensing basis); "Safety Evaluation Report Related to the License Renewal of Diablo Canyon Nuclear Power Plant, Units 1 and 2," dated June 2011, at Section 4.3.6 (same).

61 Mr. Gundersen's allegations are also unsupported. For example, he states (at 31) that relay chatter has never been evaluated at Diablo Canyon. This is false. The 1988 LTSP Report specifically addressed relay chatter. *See, e.g.*, SSER 34 at Chapter 23.

62 Hearing Request at 30.

63 *Id*. at 31.

64 *Id*. at 32.

SSC that is subject to aging management review, much less identify a specific deficiency with that aging management review.[65] The proposed contention therefore lacks specificity and does not establish a genuine dispute with the LRA.

The contention also lacks basis. AMPs address aging mechanisms such as environmental conditions. Earthquakes are not an aging mechanism. Nor is there any direct link between the SSE (the issue FOE wants to address) and aging. The inherent assumption in FOE's contention that "aged" equipment is more vulnerable to an SSE is simply unfounded. The design and seismic qualification of SSCs, as well as Part 50 maintenance programs and Part 54 aging management programs, ensure the availability of equipment to perform the intended function regardless of age or service time.

Finally, the proposed contention raises an issue outside the scope of license renewal. Implicit in the contention is the assumption that PG&E's Seismic Imaging Project Report shows that Diablo Canyon is not in compliance with the CLB.[66] But, compliance with the CLB is a current operating issue. License renewal is not the appropriate forum for evaluating whether changes to the CLB are necessary to address new seismic information.[67] And, the new data in the Seismic Imaging Project Report actually confirms that the design basis response spectra bound the newly calculated hazards.[68] While FOE pays lip service to license renewal's focus on aging

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65 As noted, snubbers and relays are specifically are not subject to a Part 54 AMP.

66 Hearing Request at 32 ("A determination made before the issuance of the Seismic Report that an SSC will remain strong enough throughout the plant's extended period of operation to withstand an earthquake in accordance with the plant's CLB, is no longer valid.").

67 This topic is the subject of the ongoing evaluations under 10 C.F.R. § 50.54(f).

68 The procedure to challenge this conclusion is 10 C.F.R. § 2.206.

management, Contention 3 is ultimately a transparent attempt to litigate the adequacy of the CLB and the NRC's current oversight of the plant. The proposed contention should be rejected.

FOE'S CONTENTIONS ARE NOT TIMELY

FOE argues that its proposed contentions were timely filed because they are based on new information contained in PG&E's Seismic Imaging Project Report. FOE claims that the report "adds significant new and material information to the body of scientific knowledge regarding the seismicity of the area surrounding Diablo Canyon."[69] In particular, FOE argues that the report shows that the Shoreline Fault is longer than previously assumed and that a linked rupture of the Hosgri and San Simeon faults is possible. But, the fact that knowledge of seismic conditions has evolved over time does not mean that issues and arguments that could have been raised earlier are now timely.

Under the Commission's rules of procedure, petitioners must initially file contentions challenging the adequacy of an application. To be timely, a contention filed after the original deadline for requesting a hearing must be based on data or conclusions that differ significantly from what was submitted in the license application. FOE cannot disregard timeliness requirements and add a new contention at their convenience based on information or arguments that could have formed the basis for a contention at the outset.[70] Even assuming its issues are somehow within the scope of a license renewal proceeding, that is precisely what FOE is attempting to do here.

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69 Hearing Request at 33.

70 *AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station), CLI-09-07, 69 NRC 235, 271-72 (2009) (internal citations omitted); *see also Union of Concerned Scientists v. NRC*, 920 F.2d 50, 55 (D.C. Cir. 1990) ("[W]e think it unreasonable to suggest that the NRC must disregard its procedural timetable every time a party realizes based on NRC environmental studies that maybe there was something after all to a challenge it either originally opted not to make or which simply did not occur to it at the outset.").

Contention 1 revolves around FOE's concerns with the adequacy of the CLB and, in particular, PG&E's comparison of new seismic information to the 1977 HE ground motions.[71] FOE's concern with the process used by PG&E to compare new seismic information to the CLB (*e.g.*, use of updated ground motion prediction methodologies, comparison of results to the 1977 HE spectra) is not timely. PG&E used a similar approach in the earlier Shoreline Fault Report. FOE could have, but did not, raise this issue when the Shoreline Fault Report was issued in 2011.

Contention 2 addresses the effect of seismic events on relays and snubbers. Relays and snubbers have been excluded from the scope of equipment subject to an aging management review under 10 C.F.R. § 54.21(a) since before PG&E filed its LRA. While Contention 2 now vaguely asserts that relays and snubbers must be seismically qualified, or may be subject to an AMP or TLAA, there has been no change in PG&E's treatment of relays and snubbers that would justify a new contention at this time. Similarly, FOE does not point to any new or different information to suggest that an aging management review or TLAA for relays and snubbers is now necessary when it was not before. The Seismic Imaging Project Report never mentions snubbers or relays. A mere reference to the report does not establish the timeliness of all issues somehow creatively linked to that report.

Lastly, Contention 3 generally challenges the adequacy of the Diablo Canyon "aging management plan" required by 10 C.F.R. § 54.21(a)(3). But there is no single "aging management plan" for Diablo Canyon; only AMPs for specific in-scope equipment. As with Contention 2, relays and snubbers have never been subject to a Part 54 AMP. FOE's argument

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[71] *See* Hearing Request at 6, n.15 ("Petitioner's view is that the DDE [(not the 1977 HE)] is the relevant point of comparison."); *id*. at 15 ("PG&E compares apples to oranges when it uses the PEER ground-motion prediction equations [in the Seismic Imaging Project Report] to argue that the ground motions possible from ruptures on the studied faults are bounded by the 1977 Hosgri and 1991 LTSP ground motion response spectrum.").

that snubbers and relays now must be subject to an AMP or TLAA is too late. FOE also has not identified any AMP or TLAA for any other SSC that is somehow deficient or missing in light of new seismic conditions.

At bottom, any contentions regarding the scope of equipment subject to an AMP or a TLAA, or regarding how an AMP or TLAA must consider seismic information, should have been filed based on the LRA. Additionally, any legal arguments regarding PG&E's process to assess new seismic information could have, and should have, been raised no later than after issuance of the Shoreline Fault Report in 2011. Because sufficient information on which to base Contentions 1, 2, and 3 was available to FOE prior to the issuance of the Seismic Imaging Project Report, the contentions are untimely.

NO WAIVER IS WARRANTED

Recognizing that the issues that it wishes to raise are beyond the limited scope of a license renewal review, FOE seeks a waiver of Part 54 regulations under 10 C.F.R. § 2.335(b). Under the regulations, the sole basis for a waiver is special circumstances with respect to a particular plant — *such that application of the rule would not serve the purpose for which the rule was adopted*. The special circumstances must be unique to Diablo Canyon and the waiver also must be necessary to reach a "significant" safety problem.[72] No such special circumstances exist.[73]

The license renewal rule is based on the fundamental principles of license renewal that the CLB provides an acceptable level of safety and that the NRC's ongoing regulatory process

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[72] *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 560 (2005).

[73] The 10 C.F.R. § 2.206 process remains the appropriate process in which to address the adequacy of the NRC Staff's ongoing oversight of Diablo Canyon. Challenges to the regulations defining the scope of license renewal reviews must be pursued under a petition for rulemaking under 10 C.F.R. § 2.802. The fact that FOE would prefer the adjudicatory process to address these issues is not a basis for a waiver.

ensures the ongoing adequacy of, and compliance with, the CLB. The license renewal rule was adopted expressly to narrow the scope of license renewal to certain issues related to aging management for a specific scope of equipment and to avoid re-litigating issues addressed at the time of initial licensing and through the ongoing regulatory process. Application of the rule to Diablo Canyon would serve exactly its intended purpose — avoiding duplication of ongoing oversight efforts and ensuring that issues related to the CLB (and unrelated to aging management) do not become the focus of the agency's license renewal review.[74]

There is no basis to expand the license renewal review to encompass issues already being actively addressed under Part 50. The fact that FOE is now concerned with these issues for Diablo Canyon is not a special circumstance justifying a waiver. The NRC has a general concern with the seismic CLB at all plants after Fukushima, and is addressing that issue in accordance with the Section 50.54(f) request for information process. The issues presented by FOE are being addressed through the same Part 50 regulatory process for all operating licensees.

FOE's specific arguments for a waiver lack merit. FOE attempts (Waiver Petition at 6-8) to broadly define the objective of the license renewal rule to "ensure the continued safe operation of the plant during the extended term and to cast a broad net with regard to the licensee's required evaluation of all SSCs."[75] This characterization is directly contrary to the rule itself and the Commission's fundamental principles of license renewal. As noted above, the NRC's license

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74 *See, e.g.*, *Diablo Canyon*, CLI-11-11, 74 NRC at 449 (finding that a request for waiver "begins and ends" with the fact that the waiver petition did not demonstrate that strict application of the rule would not serve the purposes for which it was adopted).

75 *See also* Declaration of Richard Ayres at 2 (broadly characterizing the purpose of license renewal rule as "ensur[ing] plant safety during the period of extended operation").

renewal process does not duplicate or replace the Part 50 processes that already apply to ensure continued safe operation during the current license term.[76]

FOE argues (*id.* at 8-12) that there are "special circumstances" due to the "seismic history of Diablo Canyon" and PG&E's Seismic Imaging Project Report. FOE argues that those circumstances "were not considered in the rulemaking proceeding leading to the rule." Of course they were not considered in that rulemaking. The seismic history of Diablo Canyon had nothing to do with license renewal and the Seismic Imaging Project Report did not exist at the time. But FOE's argument does not address the actual test in the regulation for a waiver. The test is whether there are special circumstances that would result in the rule not serving its intended purpose. There are none. The fact that unique seismic issues related to Diablo Canyon were not considered in the license renewal rulemaking is irrelevant. FOE's approach to the waiver standard would justify waiving regulations defining the scope of the license renewal review for any plant whenever there is interest in addressing plant-specific operating issues that exist at the time of the

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[76] *See Diablo Canyon*, CLI-11-11 (finding a contention outside the scope of license renewal because litigation of the contention "necessarily would involve review of the adequacy of PG&E's efforts to address the current operational issues," which is "precisely the type of duplicative review that appropriately is excluded from a license renewal proceeding").

waiver petition.[77] This is precisely what the license renewal rule was intended to preclude. Emerging issues are addressed through Part 50 oversight processes.

FOE also broadly argues (*id.* at 13-14) that special circumstances exist because a nearby fault can produce greater ground motions than the scenario FOE believes claims to be the plant's SSE. This is simply not true. The Seismic Imaging Project Report seismic imaging project confirmed the adequacy of the licensing basis. And, in any event, alleged "special circumstances" alone do not meet the waiver test as discussed above. FOE does not show that, given the cited circumstances, application of the rule would be contrary to the intent of the rule. Likewise, FOE's assertions regarding PG&E's long term seismic program (*id.* at 9-10) and GDC 2 (*id.* at 9) do not meet the test for a waiver.

Finally, FOE argues (*id.* at 14) that a waiver is necessary to reach a significant safety problem. This again is not true. And, again, it does not address the test for a waiver in the regulations. If anything, this argument merely reflects that FOE's real interest is to have a hearing on current seismic licensing basis issues. FOE is already seeking that hearing from the Commission separately. FOE's interest in a hearing does not justify a waiver of the license renewal regulations.

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[77] The Commission stressed in the license renewal rulemaking that litigated issues must be "unique to the license renewal" period:

> [T]he final rule amends § 2.758 [now § 2.335] to make clear that challenges to the ... rule could be made in the formal hearing so that certain other issues claimed to be necessary to ensure adequate protection *only during the renewal term* could be admitted in a formal hearing. . . . *Issues that have relevance during the term of operation under the existing operating license as well as license renewal would not be admissible* under the new provision of § 2.758 [now § 2.335] because there is *no unique relevance of the issue to the renewal term*.

56 Fed. Reg. 64943, 64961-62 (Dec. 13, 1991) (emphases added).

CONCLUSION

For the reasons discussed above, the Hearing Request should be denied. The proposed contentions are not admissible in this license renewal proceeding.

Additionally, because FOE is raising seismic CLB issues, and is separately seeking a hearing on the Part 50 docket before the Commission, any decision to admit a contention in this license renewal proceeding should be referred to the Commission for immediate review under 10 C.F.R. §§ 2.319(l) or 2.323(f).

For the reasons discussed above, the Waiver Petition should also be denied. The petition does not meet the standards for a waiver in the Commission's regulations.

Respectfully submitted,

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

Dated at Washington, District of Columbia
this 4th day of November 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "PACIFIC GAS AND ELECTRIC COMPANY'S ANSWER OPPOSING THE FRIENDS OF THE EARTH HEARING REQUEST AND PETITION FOR WAIVER" in the captioned proceeding have been served via the Electronic Information Exchange ("EIE") this 4th day of November 2014, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

Respectfully submitted,

/s/ signed electronically by
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