

November 4, 2014

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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

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

**SAN LUIS OBISPO MOTHERS FOR PEACE'S  
RESPONSE TO FRIENDS OF THE EARTH'S REQUEST FOR A HEARING  
AND PETITION TO INTERVENE AND PETITION FOR WAIVER OF  
10 C.F.R. §§ 54.4, 54.21, AND 54.29(a) AS APPLIED TO THE  
DIABLO CANYON LICENSE RENEWAL PROCEEDING**

**I. INTRODUCTION**

Pursuant to 10 CFR §§ 2.309(i), San Luis Obispo Mothers for Peace (“SLOMFP”) hereby responds to Friends of the Earth’s Request for a Hearing and Petition to Intervene (Oct. 10, 2014) (“FoE Hearing Request”) and Petition for Waiver of 10 C.F.R. §§ 54.4, 54.21, and 54.29(a) as Applied to the Diablo Canyon License Renewal Proceeding (Oct. 10, 2014) (“FoE Waiver Petition”). FoE’s three contentions assert, as a general matter, that the safe operation of the Diablo Canyon during the license renewal term would be unduly compromised by a newly discovered earthquake risk that exceeds the reactor’s design basis.

As discussed below, SLOMFP agrees with FoE’s assertion, in its Hearing Request, that the scope of the license renewal rule encompasses its three contentions. In the alternative, assuming for purposes of argument that a regulatory waiver is required for the contentions to be admissible, SLOMFP respectfully submits that a limited waiver of 10 C.F.R. §§ 54.4, 54.21, and 54.29(a) is warranted in order to achieve the purposes of the license renewal regulations. Therefore the Atomic Safety and Licensing Board (“ASLB”) should rule that FoE has made a *prima facie* showing under 10 C.F.R § 2.335(b) that a waiver is justified, and refer the waiver

petition to the Commission. The purpose of this brief is to discuss the basis for SLOMFP's view that issuance of a waiver in the unique circumstances of this case is necessary to achieve the purposes of the license renewal regulations.

## **II. STANDARD FOR EXEMPTIONS**

Under NRC regulations, the "sole ground" for granting a regulatory exemption is that:

special circumstances with respect to the subject matter of the particular proceeding are such that the application or the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted.

10 C.F.R. § 2.335(b). NRC decisions have amplified this standard by requiring petitioners to address the following additional criteria:

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

*Dominion Nuclear Connecticut Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 559-60 and nn. 29-34 (2005).

## **III. DISCUSSION**

### **A. No Waiver is Necessary for the Admission of FoE's Contentions.**

SLOMFP respectfully submits that no waiver is required in this instance because the newly discovered increased earthquake risk to the Diablo Canyon reactors is likely to exacerbate the effects of aging on the passive components that are subject to an Aging Management Plan ("AMP") under NRC's license renewal regulations in 10 C.F.R. Part 54. In promulgating the license renewal regulations, the Commission made it clear that the scope of a license renewal inquiry was intended to broadly cover all issues related to aging management:

The objective of a license renewal review is to determine whether the detrimental effects of aging, which could adversely affect the functionality of systems, structures, and components that the Commission determines require review for the period of extended operation, are adequately managed. *The license renewal review is intended to identify any additional actions that will be needed to maintain the functionality of the systems, structures, and components in the period of extended operation.*

60 Fed. Reg. at 22,464 (emphasis added). Where newly discovered seismic risks may further compromise safety systems already made vulnerable by the aging process, it is relevant to inquire whether “any additional actions” are needed to “maintain their functionality.”

Accordingly, no waiver is necessary for the admission of the contentions.

**B. In the Alternative, Assuming for Purposes of Argument that FoE’s Contentions are Inadmissible Absent a Waiver, the ASLB Should Find That FoE Has Made a *Prima Facie* Case That Issuance of a Waiver is Warranted and Necessary to Achieve the Purposes of the License Renewal Rule.**

In the alternative, assuming for purposes of argument that issuance of a waiver is required before the ASLB can consider FoE’s contentions, SLOMFP respectfully submits that issuance of a waiver in this case is warranted and necessary to ensure fulfillment of the purposes of the license renewal rule. As discussed in the Declaration of Richard Ayres (Oct. 10, 2014) (attached to FOE’s Waiver Petition), these purposes include ensuring that “important systems, structures, and components will continue to perform their intended function in the period of extended operation;” and to avoid waste of administrative resources in license renewal proceedings. *Id.* at 1.

In addition, SLOMFP respectfully submits that the ASLB should consider two other purposes of the regulations that would be defeated by the strict application of the regulations. First, an important purpose of the license renewal rule is to ensure the timely consideration of safety issues affecting both the current license term and the license renewal term. In 1995, in

amending the original 1991 license renewal regulations,<sup>1</sup> the Commission expressed concern that consideration of safety issues in license renewal proceedings could result in undue delay of their resolution:

The Commission continues to believe that aging management of certain important systems, structures, and components during this period of extended operation should be the focus of a renewal proceeding and that issues concerning operation during the currently authorized term of operation should be addressed as part of the current license *rather than deferred until a renewal review* (which would not occur if the licensee chooses not to renew its operating license). However, in this final rule, the Commission has narrowed the scope of structures and components that will require an aging management review for the period of extended operation and identification and evaluation of time-limited aging analyses by the applicant.

Final Rule, Nuclear Power Plant License Renewal; Revisions, 60 Fed. Reg. 22,461, 22,481 (May 8, 1995) (emphasis added). Thus, one purpose of limiting the scope of a license renewal review was to ensure that important safety issues would be addressed as they arose and not postponed until the time of license renewal. That purpose would be defeated by excluding consideration of seismic issues in the unique circumstances surrounding this license renewal proceeding, because the NRC has scheduled a comprehensive post-Fukushima seismic review that may not be completed until sometime between 2018 and 2020, well after the license renewal proceeding has concluded.<sup>2</sup> Based on statements made by PG&E to the ASLB, it appears that consideration of

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<sup>1</sup> The original license renewal regulations were published at 56 Fed. Reg. 64,943 (Dec. 13, 1991). These regulations limited the scope of license renewal proceedings to matters “uniquely relevant to the license renewal term.” *Id.* at 64,946. Under the 1991 rule, a license renewal proceeding would have excluded matters such as the discovery of an earthquake fault at the Diablo Canyon site. *See* 56 Fed. Reg. at 64,959. In the 1995 amendments to the rule, however, the Commission changed the focus of the rule to the management of aging effects on safety equipment during the license renewal term. 60 Fed. Reg. at 22,464. Thus, the rule no longer has the limitation that issues must be unique to the license renewal term. 60 Fed. Reg. at 22,482.

<sup>2</sup> Pursuant to the NRC Staff’s March 12, 2012, Request for Additional Information . . . Regarding Recommendations 2.1, 2.3, and 9.3 of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident (ADAMS Accession No. ML12053A340), PG&E is required to submit updated seismic information and a seismic hazard analysis by March 12, 2015. *Id.*, Enclosure 1 at 9. Once PG&E submits the information, the NRC will make a

the safety implications of the recently discovered seismic information is likely to be postponed until then. *See* Transcript of Prehearing Conference at 639 (March 19, 2014). Yet, if the license renewal regulations are strictly applied, renewal of PG&E's operating license for Diablo Canyon may be approved based on outdated seismic information, long before the safety significance of the new seismic information is ever addressed.<sup>3</sup>

This is precisely the type of situation that concerned the Commission in promulgating the 1995 amendments to the license renewal rule, *i.e.*, a situation in which the application of the license renewal regulations could result in postponement of the resolution of a significant safety issue. Resolution of the serious safety issue raised by newly discovered seismic information would be more timely addressed if it were included in the license renewal proceeding than postponed until a later date. Indeed, it would defeat the Commission's purpose in promulgating the license renewal rule to ensure the timely consideration of safety issues if the rule were applied so as to exclude FoE's contentions.

The license renewal rule has another purpose that would be undermined by strict application of the rule to FoE's contentions. That purpose is to ensure that license renewal proceedings focus on issues for which the scope of the normal regulatory process may be inadequate to ensure the safety of reactor operation during the license renewal term. In 1995, the Commission made a reasoned determination that such issues are limited to aging-related concerns:

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determination regarding how high a priority it should receive. *Id.* PG&E will then be required to prepare a risk evaluation and submit it within three or four years of that determination, depending on how high a priority the NRC assigns to the matter. *Id.*

<sup>3</sup> While it appears that the NRC Staff intends to address the new seismic information in its environmental analysis for its license renewal decision, there is no indication that the Staff intends to evaluate the safety implications of the information for its license renewal decision.

The Commission has concluded that the only issue where the regulatory process may not adequately maintain a plant's current licensing basis concerns the detrimental effects of aging on the functionality of certain systems, structures, and components in the period of extended operation.

60 Fed. Reg. at 22,464. This determination was "based on careful review of the sufficiency of the NRC regulatory process to resolve issues not considered in renewal." 60 Fed. Reg. at 22,482.

In the particular circumstances of this case, the Commission's reasoned determination regarding the sufficiency of its regulatory process to handle most safety issues that could arise during the license renewal term does not hold up. To the contrary, it is clear that the NRC Staff has not conducted a normal regulatory process with respect to newly discovered information regarding earthquake risks at Diablo Canyon. *See* FoE's Petition to Intervene and Request for Hearing, filed before the NRC Commissioners on August 26, 2014. Instead of addressing the new seismic information in a formal operating license amendment proceeding, the NRC Staff has effectively amended PG&E's operating license for the Diablo Canyon nuclear power plant, surreptitiously allowing PG&E to operate outside the bounds of its safe shutdown earthquake ("SSE") design basis.

To hold such a secretive license amendment proceeding, without notifying or soliciting input from parties other than PG&E, completely fails to provide a "sufficien[t]" regulatory process for resolving issues not considered in license renewal proceedings. 60 Fed. Reg. at 22,482. In these circumstances, the Commission's purpose of focusing license renewal proceedings on matters for which the NRC's ordinary regulatory system is inadequate to resolve safety problems would be mocked -- not served -- by strict application of the license renewal regulations to FoE's contentions.

### III. CONCLUSION

For the foregoing reasons, the ASLB should conclude that a waiver of the NRC's license renewal regulations is not necessary for the admission of FoE's contentions. In the alternative, the ASLB should rule that FoE has made a *prima facie* showing that such a waiver is justified and certify the matter directly to the Commission.

Respectfully submitted,

*[Electronically signed by]*

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**SAN LUIS OBISPO MOTHERS FOR PEACE  
CERTIFICATE OF SERVICE**

I certify that on November 4, 2014, I posted on the NRC's Electronic Information Exchange SAN LUIS OBISPO MOTHERS FOR PEACE'S RESPONSE TO FRIENDS OF THE EARTH'S REQUEST FOR A HEARING AND PETITION TO INTERVENE AND PETITION FOR WAIVER OF 10 C.F.R. §§ 54.4, 54.21, AND 54.29(a) AS APPLIED TO THE DIABLO CANYON LICENSE RENEWAL PROCEEDING. It is my understanding that as a result, the Atomic Safety and Licensing Board and the parties to this proceeding were served.

Respectfully submitted,

*[Electronically signed by]*

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