May 27, 2003

Mr. Gregory M. Rueger
Senior Vice President, Generation
and Chief Nuclear Officer
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
P. O. Box 3
Avila Beach, CA 93424

SUBJECT: DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2 - ISSUANCE OF ORDER APPROVING TRANSFER OF LICENSES FROM PACIFIC GAS AND ELECTRIC COMPANY TO ELECTRIC GENERATION LLC AND DIABLO CANYON LLC, AND APPROVING CONFORMING AMENDMENTS (TAC NOS. MB3523 AND MB3524)

Dear Mr. Rueger:

The enclosed Order is in response to your application dated November 30, 2001, as supplemented by letters dated January 18 and May 1, 2002, requesting approval of the transfer of the licenses for the Diablo Canyon Nuclear Power Plant, Units 1 and 2, held by Pacific Gas and Electric Company, to Electric Generation LLC and Diablo Canyon LLC, and approval of conforming amendments, pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations*. The enclosed Order provides consent to the proposed license transfers. It also approves conforming license amendments to be issued at the time the transfers are completed, with the changes as indicated in Enclosure 2.

Enclosures 3 and 4 are the nonproprietary and proprietary versions, respectively, of the staff's safety evaluation (SE) related to the preceding action. Proprietary information is contained on pages 3 and 4 of Enclosure 4. The nonproprietary version of the SE will be placed in the NRC Public Document Room and added to the Agencywide Documents Access and Management

System's Publicly Available Records System library. The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

***/RA/***

David N. Jaffe, Acting Project Manager, Section 2
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-275 and 50-323

Enclosures
1. Order
2. Conforming Amendments (DPR-80 and DPR-82)
3. Safety Evaluation (nonproprietary)
4. Safety Evaluation (proprietary)

cc w/encls: See next page

System's Publicly Available Records System library. The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,
***/RA/***
David N. Jaffe, Acting Project Manager, Section 2
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-275 and 50-323

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4. Safety Evaluation (proprietary)

cc w/encls: See next page

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**Package No.: ML031350209**
**Enclosure 4 No.: (Proprietary Version) ML031350200** NRR-043
**ADAMS Accession No.: ML031350218** *See previous concurrence ADM-012

| OFFICE | PDIV-2/PM | PDIV-2/LA | TECH ED* | EPHP* | OLHP/SC* | PDIV-2/SC* |
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| NAME | JDonohew for BPham | EPeyton | PKleene | KGibson | DTrimble | SDembek |
| DATE | 5/15/03 | 5/15/03 | 7/16/02 | 3/28/02 | 4/2/02 | 5/14/03 |

| OFFICE | OGC | OGC - NLO | PDIV-2/D | DLPM/D | ADPT | NRR/D |
|---|---|---|---|---|---|---|
| NAME | RBaum | SHom | HBerkow | WHRuland for JZwolinski | BSheron | WBorchardt for SCollins |
| DATE | 5/22/03 | 5-21-03 | 5/15/03 | 5/19/03 | 5/23/03 | 5/27/03 |

DOCUMENT NAME: G:\PDIV-2\License Transfer\Diablo Canyon License Transfer.wpd
DOCUMENT NAME: (Proprietary Version) G:\PDIV-2\License Transfer\Diablo Canyon SE.wpd
OFFICIAL RECORD COPY

Diablo Canyon Power Plant, Units 1 and 2

cc w/o Enclosure 4:

NRC Resident Inspector
Diablo Canyon Power Plant
c/o U. S. Nuclear Regulatory Commission
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Ms. Nancy Culver
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Chairman
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Supervisors
Room 370
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San Luis Obispo, CA 93408

Mr. Truman Burns
Mr. Robert Kinosian
California Public Utilities Commission
505 Van Ness, Room 4102
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Diablo Canyon Independent Safety
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ATTN: Robert R. Wellington, Esq.
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Mr. Ed Bailey, Radiation Program Director
Radiologic Health Branch
State Department of Health Services
P.O. Box 942732 (MS 178)
Sacramento, CA 94234-7320

Mr. James D. Boyd, Commissioner
California Energy Commission
1516 Ninth Street (MS 31)
Sacramento, CA 95814

# Enclosure 1.
# Order

7590-01-P

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| PACIFIC GAS AND ELECTRIC COMPANY | ) | Docket Nos. 50-275 |
| | ) | and 50-323 |
| (Diablo Canyon Nuclear Power Plant, | ) | |
| Units 1 and 2) | ) | |

ORDER APPROVING TRANSFER OF LICENSES AND CONFORMING AMENDMENTS

I.

Pacific Gas and Electric Company (PG&E or the licensee) is the holder of Facility Operating Licenses Nos. DPR-80 and DPR-82, which authorize the operation of the Diablo Canyon Nuclear Power Plant, Units 1 and 2 (DCNPP or the facility) at steady-state power levels not in excess of 3411 megawatts thermal. The facility is located at the licensee's site in San Luis Obispo County, California. The licenses authorize PG&E to possess, use, and operate the facility.

II.

Under cover of a letter dated November 30, 2001, PG&E submitted an application requesting approval of the transfer of Facility Operating Licenses Nos. DPR-80 and DPR-82 for DCNPP from PG&E to Electric Generation LLC and Diablo Canyon LLC. The licensee also requested approval of conforming license amendments to reflect the transfer. The application was supplemented by submittals dated January 18 and May 1, 2002, collectively referred to as the "application" herein unless otherwise indicated.

Diablo Canyon LLC, a California limited liability company, is a wholly-owned subsidiary of Electric Generation LLC, also a California limited liability company. Electric Generation LLC is an indirect wholly-owned subsidiary of PG&E Corporation, the current parent of the licensee.

According to the application, Diablo Canyon LLC will become the owner of the facility, while Electric Generation LLC will operate and maintain DCNPP under the terms of a lease that will make Electric Generation LLC responsible for all costs of operation. Diablo Canyon LLC will be responsible for providing decommissioning funding assurance for DCNPP. With respect to authority to possess, use, and operate the facility, the conforming license amendments would remove references to PG&E from the licenses and add references to Electric Generation LLC and Diablo Canyon LLC, as appropriate, and make other administrative changes to reflect the proposed transfer. The application also proposed certain changes to the antitrust conditions attached to the licenses, which are discussed in more detail below.

PG&E requested approval of the transfer of the licenses and conforming license amendments pursuant to 10 CFR 50.80 and 50.90. Notice of the request for approval and an opportunity to request a hearing or submit written comments was published in the *Federal Register* on January 17, 2002 (67 FR 2455). The Commission received petitions to intervene and requests for hearing from the following: the Northern California Power Agency (NCPA); the Official Committee of Unsecured Creditors of Pacific Gas and Electric Company (Committee); the California Public Utilities Commission (CPUC); the Transmission Agency of Northern California, M-S-R Public Power Agency, Modesto Irrigation District, the California Cities of Santa Clara, Redding, and Palo Alto, and the Trinity Public Utility District, in a joint filing (collectively, TANC); and the County of San Luis Obispo (County). In a Memorandum and Order, dated June 25, 2002 (CLI-02-16), the Commission denied several of the petitioners' requests for intervention and referred the petitions of the County and CPUC to the NRC staff as comments for appropriate consideration. On February 14, 2003, the Commission denied the remaining petitioners' requests for hearing and terminated the proceeding. *Pacific Gas and Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-02, 57 NRC 19 (2003).

In CLI-03-02, the Commission addressed, among other things, the changes proposed in the application to the antitrust conditions appended to the licenses, which PG&E assumed would be carried forward if the licenses were transferred. These proposed changes would have retained PG&E as a licensee in the antitrust conditions, would have added a new transmission company (ETrans LLC) to the antitrust conditions, and would have added Electric Generation LLC (but not Diablo Canyon LLC) to the conditions, for the purpose of implementing the conditions. The Commission ruled that if the proposed license transfers are approved, the antitrust license conditions should not be included in (i.e., not remain part of) the transferred licenses. 57 NRC at 36. Accordingly, the conforming license amendments approved by this Order reflect the Commission's ruling in this regard.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. After reviewing the information submitted in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Electric Generation LLC and Diablo Canyon LLC are qualified to be the holders of the licenses to the extent proposed in the application, and that the transfer of the licenses to Electric Generation LLC and Diablo Canyon LLC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments that reflect the transfer of authority to possess, use, and operate the facility and the transfer of authority concerning the receipt, possession, or use of nuclear material from PG&E to Electric Generation LLC and Diablo Canyon LLC complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in

conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by the NRC staff's safety evaluation dated May 27, 2003.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the transfer of the licenses as described herein to Electric Generation LLC and Diablo Canyon LLC is approved, subject to the following conditions:

(1) Before the completion of the transfer of DCNPP, Electric Generation LLC and Diablo Canyon LLC shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Electric Generation LLC and Diablo Canyon LLC have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) Prior to the closing of the license transfers, all necessary regulatory and/or judicial approvals of the bilateral power sales agreement (PSA) referenced in Enclosure 7 to the November 30, 2001, submittal must be obtained without any material changes to the PSA that would adversely impact the five-year financial projections proffered in the application such that indicated sources of funds would not be sufficient to cover projected costs of operation of the facility.

(3) On the closing date of the transfer of DCNPP, Diablo Canyon LLC shall obtain from PG&E all of the accumulated decommissioning trust funds associated with the facility, and ensure the deposit of the funds into a decommissioning trust(s) for DCNPP established by Diablo Canyon LLC. The amount of the funds must meet or exceed the minimum amount required for the facility pursuant to 10 CFR 50.75. In the event that the transfer of DCNPP occurs prior to December 24, 2003, the decommissioning trust agreement(s) shall be consistent with the provisions contained in 10 CFR 50.75(h)(1) (67 FR 78350, published December 24, 2002), as if such provisions are in effect at the time of transfer. Notwithstanding the date of the transfer, the decommissioning trust agreement(s) must be acceptable to the NRC.

(4) Diablo Canyon LLC shall take all necessary steps to ensure that the decommissioning trust(s) is maintained in accordance with the application and the requirements of this Order, and consistent with the safety evaluation supporting this Order.

(5) Notwithstanding the transfer of ownership of DCNPP to Diablo Canyon LLC, Electric Generation LLC shall at all times following the transfer of the DCNPP licenses to Diablo Canyon LLC and Electric Generation LLC be fully responsible for all costs associated with the possession, use, operation, maintenance, and decommissioning of DCNPP (including costs associated with the receipt, possession, and use of byproduct, source,

and special nuclear material), except for decommissioning costs covered by the decommissioning trust funds transferred to Diablo Canyon LLC at the time of the license transfers. Diablo Canyon LLC shall be responsible for the payment of decommissioning costs for DCNPP at least to the extent of the accumulated decommissioning trust funds transferred to Diablo Canyon LLC and earnings associated with such funds.

(6) Electric Generation LLC shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Electric Generation LLC to its direct or indirect parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of Electric Generation LLC's consolidated net utility plant, as recorded on Electric Generation LLC's books of account.

(7) After receipt of all required regulatory and judicial approvals of the transfer of DCNPP, PG&E shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the closing date of the transfer of DCNPP no later than 7 business days prior to the date of closing. If the transfer of the licenses is not completed by May 31, 2004, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may be extended in writing.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated November 30, 2001, and supplements thereto dated January 18 and May 1, 2002, and the safety evaluation dated May 27, 2003, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 27th day of May 2003.

FOR THE NUCLEAR REGULATORY COMMISSION

***/RA/***

R. William Borchardt, Acting Director
Office of Nuclear Reactor Regulation

# Enclosure 2.
# Conforming Amendments (DPR-80 and DPR-82)

PACIFIC GAS AND ELECTRIC COMPANY

DOCKET NO. 50-275

DIABLO CANYON NUCLEAR POWER PLANT, UNIT NO. 1

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. DPR-80

1. The Nuclear Regulatory Commission (the Commission) has found that:

   A. The application for amendment by Pacific Gas and Electric Company (the licensee) dated November 30, 2001, as supplemented by letters dated January 18 and May 1, 2002, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I;

   B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;

   C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;

   D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and

   E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, Facility Operating License No. DPR-80 is hereby amended as indicated in the attachment to this license amendment.

3. This license amendment is effective as of its date of issuance and shall be implemented within 60 days from the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Attachment: Changes to the Operating License

Date of Issuance:

ATTACHMENT TO

LICENSE AMENDMENT NO. TO FACILITY OPERATING LICENSE NO. DPR-80

DOCKET NO. 50-275

Replace the following pages of the operating license and appendices with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

| REMOVE | INSERT |
|---|---|
| Facility Operating License No. DPR-80 (pages 1 through 9) | Facility Operating License No. DPR-80 (pages 1 through 11) |
| Appendix B (Cover page) | Appendix B (Cover page) |
| Appendix C - Antitrust Conditions Facility Operating License No. DPR-80 (pages 1 through 10) | Appendix C - Antitrust Conditions Facility Operating License No. DPR-80 (page 1) |
| Appendix D - Additional Conditions Facility Operating License No. DPR-80 (page 1) | Appendix D - Additional Conditions Facility Operating License No. DPR-80 (page 1) |

PACIFIC GAS AND ELECTRIC COMPANY

DOCKET NO. 50-323

DIABLO CANYON NUCLEAR POWER PLANT, UNIT NO. 2

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. DPR-82

1. The Nuclear Regulatory Commission (the Commission) has found that:

   A. The application for amendment by Pacific Gas and Electric Company (the licensee) dated November 30, 2001, as supplemented by letters dated January 18 and May 1, 2002, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I;

   B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;

   C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;

   D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and

   E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

2. Accordingly, Facility Operating License No. DPR-82 is hereby amended as indicated in the attachment to this license amendment.

3. This license amendment is effective as of its date of issuance and shall be implemented within 60 days from the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Attachment: Changes to the Operating License

Date of Issuance:

ATTACHMENT TO

LICENSE AMENDMENT NO. TO FACILITY OPERATING LICENSE NO. DPR-82

DOCKET NO. 50-323

Replace the following pages of the operating license and appendices with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

| REMOVE | INSERT |
| --- | --- |
| Facility Operating License No. DPR-82 (pages 1 through 7) | Facility Operating License No. DPR-82 (pages 1 through 8) |
| Appendix C - Antitrust Conditions Facility Operating License No. DPR-82 (pages 1 through 10) | Appendix C - Antitrust Conditions Facility Operating License No. DPR-82 (page 1) |
| Appendix D - Additional Conditions Facility Operating License No. DPR-82 (page 1) | Appendix D - Additional Conditions Facility Operating License No. DPR-82 (page 1) |

ELECTRIC GENERATION LLC AND DIABLO CANYON LLC

DIABLO CANYON NUCLEAR POWER PLANT, UNIT 1

DOCKET N0. 50-275

FACILITY OPERATING LICENSE

License No. DPR-80

1. The Nuclear Regulatory Commission (the Commission) has found that:

   A. The application for licenses by Pacific Gas and Electric Company (PG&E) on behalf of Electric Generation LLC and Diablo Canyon LLC (Electric Generation LLC and Diablo Canyon LLC collectively, the licensees)*; complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;

   B. Construction of the Diablo Canyon Nuclear Power Plant, Unit 1 (the facility), has been substantially completed in conformity with Provisional Construction Permit No. CPPR-39 and the application, as amended, the provisions of the Act, and the regulations of the Commission;

   C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission, except as exempted from compliance in Section 2.D below;

   D. There is reasonable assurance (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations of the Commission set forth in 10 CFR Chapter I, except as exempted from compliance in Section 2.D below;

   E. Electric Generation LLC is technically qualified to engage in the activities authorized by this operating license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;

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*Electric Generation LLC succeeds PG&E as the operator of Diablo Canyon Nuclear Power Plant, Unit 1, and is authorized to act as agent on behalf of the facility owner, Diablo Canyon LLC, and has exclusive authority, responsibility and control over physical construction, operation and maintenance of the facility.

F. Electric Generation LLC and Diablo Canyon LLC have satisfied the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;

G. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public;

H. After weighing the environmental, economic, technical, and other benefits of the facility against environmental and other costs and considering available alternatives, the issuance of Facility Operating License No. DPR-80, subject to the conditions for protection of the environment set forth herein, is in accordance with applicable Commission regulations governing environmental reviews (10 CFR Part 50, Appendix D and 10 CFR Part 51) and all applicable requirements have been satisfied; and

I. The receipt, possession, and use of source, byproduct, and special nuclear material as authorized by this license will be in accordance with the Commission's regulations in 10 CFR Parts 30, 40 and 70.

2. Pursuant to Commission's Memorandum and Order CLI-84-13, dated August 10, 1984, Facility Operating License No. DPR-76 issued September 22, 1981, as subsequently amended, is superseded by Facility Operating License No. DPR-80, hereby issued to the licensees to read as follows:

A. This License applies to the Diablo Canyon Nuclear Power Plant, Unit 1, a pressurized water nuclear reactor and associated equipment (the facility), owned by Diablo Canyon LLC and operated by Electric Generation LLC. The facility is located in San Luis Obispo County, California, and is described in the Final Safety Analysis Report as supplemented and amended, and the Environmental Report as supplemented and amended.

B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:

(1) Electric Generation LLC, pursuant to Section 104(b) of the Act and 10 CFR Part 50, "Licensing of Production and Utilization Facilities," to possess, use, and operate the facility at the designated location in San Luis Obispo County, California, in accordance with the procedures and limitations set forth in this license;

(2) Diablo Canyon LLC, pursuant to the Act and to 10 CFR Part 50, to possess the facility at the designated location in San Luis Obispo County, California, in accordance with the procedures and limitations set forth in this license;

(3) Electric Generation LLC, pursuant to the Act and 10 CFR Part 70, to receive, possess, and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Final Safety Analysis Report, as supplemented and amended;

(4) Electric Generation LLC, pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use at any time any byproduct, source and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;

(5) Electric Generation LLC, pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use in amounts as required any byproduct, source or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and

(6) Electric Generation LLC, pursuant to the Act and 10 CFR Parts 30, 40, and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

C. This License shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

(1) Maximum Power Level

Electric Generation LLC is authorized to operate the facility at reactor core power levels not in excess of 3411 megawatts thermal (100% rated power) in accordance with the conditions specified herein.

(2) Technical Specifications

The Technical Specifications contained in Appendix A and the Environmental Protection Plan contained in Appendix B, as revised through Amendment No. , are hereby incorporated in the license. Electric Generation LLC shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan, except where otherwise stated in specific license conditions.

(3) Initial Test Program

The Pacific Gas and Electric Company* shall conduct the post-fuel-loading initial test program (set forth in Section 14 of Pacific Gas and Electric Company's Final Safety Analysis Report, as amended), without making any major modifications of this program unless modifications have been identified and have received prior NRC approval. Major modifications are defined as:

a. Elimination of any test identified in Section 14 of PG&E's Final Safety Analysis Report as amended as being essential;

b. Modification of test objectives, methods, or acceptance criteria for any test identified in Section 14 of PG&E's Final Safety Analysis Report, as amended, as being essential;

c. Performance of any test at a power level different from that described in the program; and

d. Failure to complete any test included in the described program (planned or scheduled for power levels up to the authorized power level).

(4) Special Tests

Electric Generation LLC is authorized to perform steam generator moisture carryover studies and turbine performance tests at the Diablo Canyon Nuclear Power Plant, Unit 1. These studies involve the use of an aqueous tracer solution of three (3) curies of sodium-24. Electric Generation LLC's personnel shall be in charge of conducting these studies and be knowledgeable in the procedures. Electric Generation LLC shall impose personnel exposure limits, posting, and survey requirements in conformance with those in 10 CFR Part 20 to minimize personnel exposure and contamination during the studies. Radiological controls shall be established in the areas of the chemical feed, feedwater, steam, condensate and sampling systems where the presence of the radioactive tracer is expected to warrant such controls. Electric Generation LLC shall take special precautions to minimize radiation exposure and contamination during both the handling of the radioactive tracer prior to injection and the taking of system samples following injection of the tracer. Electric Generation LLC shall ensure that all regulatory requirements for liquid discharge are met during disposal of all sampling effluents and when re-establishing continuous blowdown from the steam generators after completion of the studies.

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*References to Pacific Gas and Electric Company (PG&E), the initial licensed operator, are retained on certain historical license conditions.

(5) Fire Protection

a. Electric Generation LLC shall implement and maintain in effect all provisions of the approved fire protection plan as discussed in the Final Safety Analysis Report Update, in PG&E's December 6, 1984, Appendix R Report, and in the NRC staff's Fire Protection Evaluation in Supplements 8, 9, 13, 23, and 27 to the Diablo Canyon Safety Evaluation Report, subject to provision b below.

b. Electric Generation LLC may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

c. Deleted.

(6) NUREG-0737 Conditions

Each of the following conditions shall be completed to the satisfaction of the NRC as indicated below. Each of the following conditions references the appropriate Section in SER Supplements No. 10 and/or No. 12.

a. Shift Technical Advisor (Section I.A.1.1)

Electric Generation LLC shall provide a fully-trained, on-shift technical advisor to the Shift Foreman.

b. Shift Staffing (Section I.A.1.3)

Until the plant has completed its startup test program, licensed personnel who are not regularly assigned members of the shift staff, including but not limited to the Operations Supervisor, shall not be assigned shift duties to satisfy the minimum staffing requirements for operation in Modes 1, 2, 3 and 4 except for cases of emergencies such as unexpected illness. Exceptions to this requirement may be made only after prior consultation with and approval by the NRC.

c. Management of Operations (Section I.B.1)

Electric Generation LLC shall augment the plant staff to provide on each shift an individual experienced in comparable sized pressurized water reactor operation. These individuals shall have at least one year of experience in operation of large pressurized water reactors or shall have participated in the startup of at least three pressurized water reactors. At least one such experienced individual shall be on duty on each shift through the startup test program whenever the reactor is not in a cold shutdown condition

for at least the first year of operation or until the plant has attained a nominal 100% power level, whichever occurs first.

d. Procedures for Verifying Correct Performance of Operating Activities (Section I.C.6)

Procedures shall be available to verify the adequacy of the operating activities.

e. Deleted

f. Relief and Safety Valve Test Requirements (Section II.D.1)

PG&E shall implement the results of the EPRI test program.

g. Containment Isolation Dependability (Section II.E.4.2)

Electric Generation LLC shall limit the 12-inch vacuum/overpressure relief valve opening to less than or equal to 50 degrees.

h. Calculations for Small-Break LOCAs (Sections II.K.3.30 and II.K.3.31)

PG&E is participating in the Westinghouse Owners Group effort for this item and shall conform to the results of this effort. Within one year of staff approval of the Westinghouse generic methodology for calculating small break LOCAs (II.K.3.30), PG&E shall submit a plant specific calculation (II.K.3.31) for staff review and approval.

i. Long-Term Emergency Preparedness (Section III.A.2)

(1) PG&E shall submit a detailed control room design review summary report by December 31, 1984.

(2) PG&E shall complete operator training on the Safety Parameter Display System and emergency operating procedures by March 28, 1985.

(3) PG&E shall implement emergency operating procedures based upon Westinghouse Owners Group guidelines by March 28, 1985.

(7) Seismic Design Bases Reevaluation Program (SSER 27 Section IV.5)

PG&E shall develop and implement a program to reevaluate the seismic design bases used for the Diablo Canyon Nuclear Power Plant.

The program shall include the following Elements:

(1) PG&E shall identify, examine, and evaluate all relevant geologic and seismic data, information, and interpretations that have become available since the 1979 ASLB hearing in order to update the geology, seismology and tectonics in the region of the Diablo Canyon Nuclear Power Plant. If needed to define the earthquake potential of the region as it affects the Diablo Canyon Plant, PG&E will also reevaluate the earlier information and acquire additional new data.

(2) PG&E shall reevaluate the magnitude of the earthquake used to determine the seismic basis of the Diablo Canyon Nuclear Plant using the information from Element 1.

(3) PG&E shall reevaluate the ground motion at the site based on the results obtained from Element 2 with full consideration of site and other relevant effects.

(4) PG&E shall assess the significance of conclusions drawn from the seismic reevaluation studies in Elements 1, 2 and 3, utilizing a probabilistic risk analysis and deterministic studies, as necessary, to assure adequacy of seismic margins.

PG&E shall submit for NRC staff review and approval a proposed program plan and proposed schedule for implementation by January 30, 1985. The program shall be completed and a final report submitted to the NRC three years following the approval of the program by the NRC staff.

PG&E shall keep the staff informed on the progress of the reevaluation program as necessary, but as a minimum will submit quarterly progress reports and arrange for semiannual meetings with the staff. PG&E will also keep the ACRS informed on the progress of the reevaluation program as necessary, but not less frequently than once a year.

(8) <u>Control of Heavy Loads (SSER 27, Section IV.6)</u>

Prior to startup following the first refueling outage, the licensee shall submit commitments necessary to implement changes and modifications as required to satisfy the guidelines of Section 5.1.2 through 5.1.6 of NUREG-0612 (Phase II: 9-month responses to the NRC Generic Letter dated December 22, 1980).

(9) Emergency Preparedness (SSER 27, Section IV.3)

In the event that the NRC finds that the lack of progress in completion of the procedures in the Federal Emergency Management Agency's final rule, 44 CFR Part 350, is an indication that a major substantive problem exists in achieving or maintaining an adequate state of preparedness, the provisions of 10 CFR Section 50.54(s)(2) will apply.

(10) Masonry Walls (SSER-27, Section IV.4; Safety Evaluation of November 2, 1984)

Prior to start-up following the first refueling outage, PG&E shall (1) evaluate the differences in margins between the staff criteria as set forth in the Standard Review Plan and the criteria used by PG&E, and (2) provide justification acceptable to the staff for those cases where differences exist between the staff's and PG&E's criteria.

(11) Spent Fuel Pool Modification

PG&E is authorized to modify the spent fuel pool as described in the application dated October 30, 1985 (LAR 85-13) as supplemented. Amendment No. 8 issued on May 30, 1986 and stayed by the U.S. Court of Appeals for the Ninth Circuit pending completion of NRC hearings is hereby reinstated.

Prior to final conversion to the modified rack design, fuel may be stored, as needed, in either the modified storage racks described in Technical Specification 5.6.1.1 or in the unmodified storage racks (or both) which are designed and shall be maintained with a nominal 21-inch center-to-center distance between fuel assemblies placed in the storage racks.

(12) Additional Conditions

The Additional Conditions contained in Appendix D, as revised through Amendment No. 135, are hereby incorporated into this license. Electric Generation LLC shall operate the facility in accordance with the Additional Conditions.

(13) License Transfer Conditions

a. On the closing date of the transfer of the licenses for the Diablo Canyon Nuclear Power Plant, Diablo Canyon LLC shall obtain from PG&E all of the accumulated decommissioning trust funds associated with the facility, and ensure the deposit of the funds into a decommissioning trust(s) for Diablo Canyon Nuclear Power Plant established by Diablo Canyon LLC. The amount of the funds must meet or exceed the minimum amount required for the

facility pursuant to 10 CFR 50.75. In the event that the transfer of Diablo Canyon Nuclear Power Plant occurs prior to December 24, 2003, the decommissioning trust agreement(s) shall be consistent with the provisions contained in 10 CFR 50.75(h)(1) (67 FR 78350, published December 24, 2002), as if such provisions are in effect at the time of transfer. Notwithstanding the date of the transfer, the decommissioning trust agreement(s) must be acceptable to the NRC.

b. Diablo Canyon LLC shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application for the license transfer, the requirements of the Order approving the license transfer, and consistent with the safety evaluation supporting that Order.

c. Notwithstanding the transfer of ownership of Diablo Canyon Nuclear Power Plant to Diablo Canyon LLC, Electric Generation LLC shall at all times following the transfer be fully responsible for all costs associated with the possession, use, operation, maintenance, and decommissioning of Diablo Canyon Nuclear Power Plant (including costs associated with the receipt, possession, and use of byproduct, source, and special nuclear material), except for decommissioning costs covered by the decommissioning trust funds transferred to Diablo Canyon LLC at the time of the license transfers. Diablo Canyon LLC shall be responsible for the payment of decommissioning costs for Diablo Canyon Nuclear Power Plant at least to the extent of the accumulated decommissioning trust funds transferred to Diablo Canyon LLC and earnings associated with such funds.

d. Electric Generation LLC shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Electric Generation LLC to its direct or indirect parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of Electric Generation LLC's consolidated net utility plant, as recorded on Electric Generation LLC's books of account.

D. <u>Exemption</u>

Exemption from certain requirements of Appendix J to 10 CFR Part 50 is described in the Officer of Nuclear Reactor Regulation's Safety Evaluation Report, Supplement No. 9. This exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, this exemption, previously granted in Facility Operating License No. DPR-76, is hereby reaffirmed. The facility will operate, to

the extent authorized herein, in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission.

E. Physical Protection

Electric Generation LLC shall fully implement and maintain in effect all provisions of the Commission-approved physical security, guard training and qualification, and safeguards contingency plans including amendments made pursuant to provisions of the Miscellaneous Amendments and Search Requirements revisions to 10 CFR 73.55 (51 FR 27817 and 27822) and to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The plans, which contain Safeguards Information protected under 10 CFR 73.21, are entitled: "Diablo Canyon Power Plant, Units 1 and 2 Physical Security Plan," with revisions submitted through March 4, 1988; "Diablo Canyon Power Plant, Units 1 and 2 Security Force Training and Qualification Plan," with revisions submitted through August 16, 1985; and "Diablo Canyon Power Plant, Units 1 and 2 Safeguards Contingency Plan," with revisions submitted through November 9, 1987. Changes made in accordance with 10 CFR 73.55 shall be implemented in accordance with the schedule set forth therein.

F. Antitrust

Antitrust conditions are no longer included per Memorandum and Order by the Commission, CLI-03-02, 57 NRC 19 (Feb. 14, 2003).

G. Reporting

Electric Generation LLC shall report any violations of the requirements contained in Sections 2.C(3) and 2.C(4), 2.C(6) through 2.C(10), 2.E and 2.F, of this License within 24 hours. Initial notification shall be made in accordance with the provisions of 10 CFR 50.72 with written follow-up in accordance with the procedures described in 10 CFR 50.73(b), (c), (d) and (e).

H. Financial Protection

Electric Generation LLC and Diablo Canyon LLC shall have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with Section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims.

I. Term of License

This License is effective as of the date of issuance and shall expire at midnight on September 22, 2021.

FOR THE NUCLEAR REGULATORY COMMISSION

**Original Signed by**
**Edson G. Case for**

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Attachments:
1. Appendix A – Technical Specifications
2. Appendix B – Environmental Protection Plan
3. Appendix C – Antitrust Conditions
4. Appendix D – Additional Conditions

Date of Issuance: November 2, 1984

# APPENDIX B

## TO FACILITY OPERATING LICENSES NOS. DPR-80 AND DPR-82

## DIABLO CANYON NUCLEAR GENERATING STATION,

## UNITS 1 AND 2

**ELECTRIC GENERATION LLC**
**DOCKET NOS. 50-275 and 50-323**

# ENVIRONMENTAL PROTECTION PLAN
# (NON-RADIOLOGICAL)

**AUGUST 1985**

APPENDIX C

ANTITRUST CONDITIONS

FACILITY OPERATING LICENSE NO. DPR-80

Antitrust conditions are no longer included per Memorandum and Order by the Commission, CLI-03-02, 57 NRC 19 (Feb. 14, 2003).

APPENDIX D

ADDITIONAL CONDITIONS

FACILITY OPERATING LICENSE NO. DPR-80

Pacific Gas & Electric Company shall comply with the following conditions on the schedules given below:

| Amendment Number | Additional Conditions | Implementation Date |
|---|---|---|
| 120 | PG&E is authorized to relocate certain technical specifications requirements to the equipment control guidelines (ECGs) as referenced in the Updated Final Safety Analysis Report. Implementation of these amendments shall include relocation of these technical specification requirements to the ECGs as described in the licensee's application dated October 4, 1995, as supplemented by letters dated July 17, 1996, August 20, 1996, and June 2, 1997, and evaluated in the staff's safety evaluation dated February 3, 1998. | The amendment shall be implemented within 90 days of its issuance. |
| 135 | This amendment authorizes the relocation of certain Technical Specification requirements to licensee-controlled documents. Implementation of this amendment shall include the relocation of these Technical Specification requirements to the appropriate documents, as described in Table LG of Details Relocated from Current Technical Specifications, Table R of Relocated Current Technical Specifications, Table LS of Less Restrictive Changes to Current Technical Specifications, and Table A of Administrative Changes to Current Technical Specifications that are attached to the NRC staff's Safety Evaluation enclosed with this amendment. | The amendment shall be implemented by June 30, 2000. |

ELECTRIC GENERATION LLC AND DIABLO CANYON LLC

DIABLO CANYON NUCLEAR POWER PLANT, UNIT 2

DOCKET N0. 50-323

FACILITY OPERATING LICENSE

License No. DPR-82

1. The Nuclear Regulatory Commission (the Commission) has found that:

   A. The application for licenses by Pacific Gas and Electric Company (PG&E) on behalf of Electric Generation LLC and Diablo Canyon LLC (Electric Generation LLC and Diablo Canyon LLC collectively, the licensees)* complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;

   B. Construction of the Diablo Canyon Nuclear Power Plant, Unit 2 (the facility), has been substantially completed in conformity with Provisional Construction Permit No. CPPR-69 and the application, as amended, the provisions of the Act, and the regulations of the Commission;

   C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission, except as exempted from compliance in Section 2.D below;

   D. There is reasonable assurance (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations of the Commission set forth in 10 CFR Chapter I, except as exempted from compliance in Section 2.D below;

   E. Electric Generation LLC is technically qualified to engage in the activities authorized by this operating license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;

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*Electric Generation LLC succeeds PG&E as the operator of Diablo Canyon Nuclear Power Plant, Unit 2, and is authorized to act as agent on behalf of the facility owner, Diablo Canyon LLC, and has exclusive authority, responsibility and control over physical construction, operation and maintenance of the facility.

F. Electric Generation LLC and Diablo Canyon LLC have satisfied the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;

G. The issuance of this license will not be inimical to the common defense and security or to the health and safety of the public;

H. After weighing the environmental, economic, technical, and other benefits of the facility against environmental and other costs and considering available alternatives, the issuance of Facility Operating License No. DPR-82, subject to the conditions for protection of the environment set forth herein, is in accordance with applicable Commission regulations governing environmental reviews (10 CFR Part 50, Appendix D and 10 CFR Part 51) and all applicable requirements have been satisfied; and

I. The receipt, possession, and use of source, byproduct, and special nuclear material as authorized by this license will be in accordance with the Commission's regulations in 10 CFR Parts 30, 40 and 70.

2. Pursuant to approval by the Nuclear Regulatory Commission in its Memorandum and Order (CLI-85-14) dated August 1, 1985, the license for fuel loading and low power testing, Facility Operating License No. DPR-81, issued on April 26, 1985, is superseded by Facility Operating License No. DPR-82, hereby issued to the licensees to read as follows:

A. This License applies to the Diablo Canyon Nuclear Power Plant, Unit 2, a pressurized water nuclear reactor and associated equipment (the facility), owned by Diablo Canyon LLC and operated by Electric Generation LLC. The facility is located in San Luis Obispo County, California, and is described in the Final Safety Analysis Report as supplemented and amended, and the Environmental Report as supplemented and amended.

B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:

(1) Electric Generation LLC, pursuant to Section 104(b) of the Act and 10 CFR Part 50, "Licensing of Production and Utilization Facilities," to possess, use, and operate the facility at the designated location in San Luis Obispo County, California, in accordance with the procedures and limitations set forth in this license;

(2) Diablo Canyon LLC, pursuant to the Act and 10 CFR Part 50, to possess the facility at the designated location in San Luis Obispo County, California, in accordance with the procedures and limitations set forth in this license;

(3) Electric Generation LLC, pursuant to the Act and 10 CFR Part 70, to receive, possess, and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Final Safety Analysis Report, as supplemented and amended;

(4) Electric Generation LLC, pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use at any time any byproduct, source and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;

(5) Electric Generation LLC, pursuant to the Act and 10 CFR Parts 30, 40, and 70, to receive, possess, and use in amounts as required any byproduct, source or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and

(6) Electric Generation LLC, pursuant to the Act and 10 CFR Parts 30, 40, and 70, to possess, but not separate, such byproducts and special nuclear materials as may be produced by the operation of the facility.

C. This License shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

(1) Maximum Power Level

Electric Generation LLC is authorized to operate the facility at reactor core power levels not in excess of 3411 megawatts thermal (100% rated power) in accordance with the conditions specified herein.

(2) Technical Specifications (SSER 32, Section 8)* and Environmental Protection Plan

The Technical Specifications contained in Appendix A and the Environmental Protection Plan contained in Appendix B, as revised through Amendment No. , are hereby incorporated in the license. Electric Generation LLC shall operate the facility in accordance with the

*The parenthetical notation following the title of many license conditions denotes the section of the Safety Evaluation Report and/or its supplements wherein the license condition is discussed.

Technical Specifications and the Environmental Protection Plan, except where otherwise stated in specific license conditions.

(3) Initial Test Program (SSER 31, Section 4.4.1)

Any changes to the Initial Test Program described in Section 14 of the FSAR made in accordance with the provisions of 10 CFR 50.59 shall be reported in accordance with 50.59(b) within one month of such change.

(4) Fire Protection (SSER 31, Section 9.6.1 and SSER 32, Section 10)

a. Electric Generation LLC shall implement and maintain in effect all provisions of the approved fire protection program as discussed in the Final Safety Analysis Report Update, in PG&E's* December 6, 1984, Appendix R Report, and in the NRC staff's Fire Protection Evaluation in Supplements 8, 9, 13, 23, 27 and 31 to the Diablo Canyon Safety Evaluation Report, subject to provision b. below.

b. Electric Generation LLC may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

c. Deleted.

(5) NUREG-0737 Items

Each of the following conditions shall be completed to the satisfaction of the NRC as indicated below. Each condition references the appropriate Section in SER Supplements.

a. I.D.1 Detailed Control Room Design Review (SSER 31, Section 4.13)

PG&E shall comply with the requirements of Supplement 1 to NUREG-0737 for the conduct of a Detailed Control Room Design Review (DCRDR) in accordance with a schedule acceptable to the NRC staff.

*References to Pacific Gas and Electric Company (PG&E), the initial licensed operator, are retained on certain historical license conditions.

b. II.E.4.2 Containment Isolation Dependability (SSER 31, Section 4.21)

Electric Generation LLC shall limit the 12-inch vacuum/overpressure relief valve opening to less than or equal to 50 degrees.

(6) Emergency Preparedness (SSER 31, Section 4.23.2 and SSER 32, Section 7)

In the event that the NRC finds that the lack of progress in completion of the procedures in the Federal Emergency Management Agency's final rule, 44 CFR Part 350, is an indication that a major substantive problem exists in achieving or maintaining an adequate state of preparedness, the provisions of 10 CFR Section 50.54(s)(2) will apply.

(7) Masonry Walls (SSER 31, Section 4.7)

Prior to start-up following the first refueling outage, PG&E shall (1) evaluate the differences in margins between the staff criteria as set forth in the Standard Review Plan and the criteria used by PG&E, and (2) provide justification acceptable to the staff for those cases where differences exist between the staff's and PG&E's criteria.

(8) Reactor Trip System Reliability – Generic Letter 83-28 (SSER 31, Section 4.8)

PG&E shall submit responses to and implement the requirements of Generic Letter 83-28 on a schedule which is consistent with that given in the PG&E letters dated January 24, and March 13, 1985.

(9) Steam Generator Tube Rupture Analysis (SSER 31, Section 4.25)

By April 1988, PG&E shall submit for NRC review and approval an analysis which demonstrates that the steam generator tube rupture (SGTR) analysis presented in the FSAR is the most severe case with respect to the release of fission products and calculated doses. Consistent with the analytical assumptions, PG&E shall propose all necessary changes to the Technical Specifications (Appendix A) to this license.

(10) Pipeway Structure DE and DDE Analysis (SSER 32, Section 4)

Prior to start-up following the first refueling outage PG&E shall complete a confirmatory analysis for the pipeway structure to further demonstrate the adequacy of the pipeway structure for load combinations that include the design earthquake (DE) and double design earthquake (DDE).

(11) Spent Fuel Pool Modification

PG&E is authorized to modify the spent fuel pool as described in PG&E's application dated October 30, 1985 (LAR 85-13) as supplemented. Amendment No. 6 issued on May 30, 1986 and stayed by the U.S. Court of Appeals for the Ninth Circuit pending completion of NRC hearings is reinstated.

Prior to final conversion to the modified rack design, fuel may be stored, as needed, in either the modified storage racks described in Technical Specification 5.6.1.1 or in the unmodified storage racks (or both) which are designed and shall be maintained with a nominal 21-inch center-to-center distance between fuel assemblies placed in the storage racks.

(12) Additional Conditions

The Additional Conditions contained in Appendix D, as revised through Amendment No. 118, are hereby incorporated into this license. Electric Generation LLC shall operate the facility in accordance with the Additional Conditions.

(13) License Transfer Conditions

a. On the closing date of the transfer of the licenses for the Diablo Canyon Nuclear Power Plant, Diablo Canyon LLC shall obtain from PG&E all of the accumulated decommissioning trust funds associated with the facility, and ensure the deposit of the funds into a decommissioning trust(s) for Diablo Canyon Nuclear Power Plant established by Diablo Canyon LLC. The amount of the funds must meet or exceed the minimum amount required for the facility pursuant to 10 CFR 50.75. In the event that the transfer of Diablo Canyon Nuclear Power Plant occurs prior to December 24, 2003, the decommissioning trust agreement(s) shall be consistent with the provisions contained in 10 CFR 50.75(h)(1) (67 FR 78350, published December 24, 2002), as if such provisions are in effect at the time of transfer. Notwithstanding the date of the transfer, the decommissioning trust agreement(s) must be acceptable to the NRC.

b. Diablo Canyon LLC shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application for the license transfer, the requirements of the Order approving the license transfer, and consistent with the safety evaluation supporting that Order.

c. Notwithstanding the transfer of ownership of Diablo Canyon Nuclear Power Plant to Diablo Canyon LLC, Electric Generation LLC shall at all times following the transfer be fully responsible for all costs associated with the possession, use, operation, maintenance, and decommissioning of Diablo Canyon Nuclear Power Plant (including costs associated with the receipt, possession, and use of byproduct, source, and special nuclear material), except for decommissioning costs covered by the decommissioning trust funds transferred to Diablo Canyon LLC at the time of the license transfer. Diablo Canyon LLC shall be responsible for the payment of decommissioning costs for Diablo Canyon Nuclear Power Plant at least to the extent of the accumulated decommissioning trust funds transferred to Diablo Canyon LLC and earnings associated with such funds.

d. Electric Generation LLC shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Electric Generation LLC to its direct or indirect parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of Electric Generation LLC's consolidated net utility plant, as recorded on Electric Generation LLC's books of account.

D. Exemption (SSER 31, Section 6.2.6)

An exemption from certain requirements of Appendix J to 10 CFR Part 50 is described in the Office of Nuclear Reactor Regulation's Safety Evaluation Report, Supplement No. 9. This exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, this exemption previously granted in Facility Operating License No. DPR-81 pursuant to 10 CFR 50.12 is hereby reaffirmed. The facility will operate, with the exemption authorized, in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission.

E. Physical Protection

Electric Generation LLC shall fully implement and maintain in effect all provisions of the Commission-approved physical security, guard training and qualification, and safeguards contingency plans including amendments made pursuant to provisions of the Miscellaneous Amendments and Search Requirements revisions to 10 CFR 73.55 (51 FR 27817 and 27822) and to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The plans, which contain Safeguards Information protected under 10 CFR 73.21, are entitled: "Diablo Canyon Power Plant, Units 1 and 2 Physical Security Plan," with revisions submitted through March 4, 1988; "Diablo Canyon Power Plant, Units 1 and 2 Security Force Training and Qualification Plan," with revisions submitted through

August 16, 1985; and "Diablo Canyon Power Plant, Units 1 and 2 Safeguards Contingency Plan," with revisions submitted through November 9, 1987. Changes made in accordance with 10 CFR 73.55 shall be implemented in accordance with the schedule set forth therein.

F. Antitrust

Antitrust conditions are no longer included per Memorandum and Order by the Commission, CLI-03-02, 57 NRC 19 (Feb. 14, 2003).

G. Reporting

Except as otherwise provided in the Technical Specifications or Environmental Protection Plan, the licensee shall report any violations of the requirements contained in Sections 2.C(3), 2.C(5) through 2.C(10), 2.E, and 2.F of this license in the following manner: initial notification shall be made within 24 hours to the NRC Operations Center via the Emergency Notification System with written followup within thirty days in accordance with the procedures described in 10 CFR 50.73(b), (c), and (e).

H. Financial Protection

Electric Generation LLC and Diablo Canyon LLC shall have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with Section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims.

I. Term of License

This License is effective as of the date of issuance and shall expire at midnight on April 26, 2025.

FOR THE NUCLEAR REGULATORY COMMISSION

Original Signed by
Harold R. Denton

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Attachments:
1. Appendix A – Technical Specifications (NUREG-1151)
2. Appendix B – Environmental Protection Plan
3. Appendix C – Antitrust Conditions
4. Appendix D – Additional Conditions

Date of Issuance: August 26, 1985

APPENDIX C

ANTITRUST CONDITIONS

FACILITY OPERATING LICENSE NO. DPR-82

Antitrust conditions are no longer included per Memorandum and Order by the Commission, CLI-03-02, 57 NRC 19 (Feb. 14, 2003).

APPENDIX D

ADDITIONAL CONDITIONS

FACILITY OPERATING LICENSE NO. DPR-82

Pacific Gas & Electric Company shall comply with the following conditions on the schedules given below:

| Amendment Number | Additional Conditions | Implementation Date |
|---|---|---|
| 118 | PG&E is authorized to relocate certain technical specifications requirements to the equipment control guidelines (ECGs) as referenced in the Updated Final Safety Analysis Report. Implementation of these amendments shall include relocation of these technical specification requirements to the ECGs as described in the licensee's application dated October 4, 1995, as supplemented by letters dated July 17, 1996, August 20, 1996, and June 2, 1997, and evaluated in the staff's safety evaluation dated February 3, 1998. | The amendment shall be implemented within 90 days of its issuance. |
| 135 | This amendment authorizes the relocation of certain Technical Specification requirements to licensee-controlled documents. Implementation of this amendment shall include the relocation of these Technical Specification requirements to the appropriate documents, as described in Table LG of Details Relocated from Current Technical Specifications, Table R of Relocated Current Technical Specifications, Table LS of Less Restrictive Changes to Current Technical Specifications, and Table A of Administrative Changes to Current Technical Specifications that are attached to the NRC staff's Safety Evaluation enclosed with this amendment. | The amendment shall be implemented by June 30, 2000. |

# Enclosure 3.
# Safety Evaluation (nonproprietary)

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

RELATED TO TRANSFER OF FACILITY OPERATING LICENSES

NOS. DPR-80 AND DPR-82

FROM PACIFIC GAS AND ELECTRIC COMPANY TO

ELECTRIC GENERATION LLC AND DIABLO CANYON LLC FOR

DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2

DOCKET NOS. 50-275 AND 50-323

## 1.0 INTRODUCTION

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (the Act), and Section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR), Pacific Gas and Electric Company (PG&E), by application dated November 30, 2001, as supplemented by letters dated January 18 and May 1, 2002, requests that the Nuclear Regulatory Commission (NRC) consent to a direct transfer of Facility Operating Licenses Nos. DPR-80 and DPR-82 for the Diablo Canyon Nuclear Power Plant (DCNPP), Units 1 and 2, respectively. The application also requests approval of conforming license amendments to reflect the proposed direct transfers as detailed later in this safety evaluation. This application has been filed in connection with a comprehensive reorganization and restructuring of the businesses and operations of PG&E, including its nuclear and non-nuclear generation, transmission, and electricity distribution businesses. PG&E proposes to spin off certain assets to new entities which will be subsidiaries of PG&E's current corporate parent. With respect to DCNPP, the licenses will be held by a non-electric utility operator and a subsidiary of the operator.

The January 18 and May 1, 2002, supplements to the initial submittal of November 30, 2001, did not expand the application beyond the scope of the *Federal Register* notice of the application (67 FR 2455, January 17, 2002).

## 2.0 BACKGROUND

On April 6, 2001, PG&E filed a petition for relief under Chapter 11 of the United States Bankruptcy Code. As stated by PG&E, the goal of the bankruptcy was to halt the deterioration of PG&E's financial position, restore the company to financial health, and continue supplying electricity and gas in the normal course of business. On September 20, 2001, PG&E and its parent corporation, PG&E Corporation, filed with the Bankruptcy Court a comprehensive Plan of

Reorganization (Plan) for PG&E. Under the Plan, operating authority for DCNPP will be transferred to a new limited liability company named Electric Generation LLC (Gen) and ownership of the two-unit generating asset will be assigned to a wholly-owned subsidiary of Gen named Diablo Canyon LLC (Nuclear). (These names may be changed prior to implementation of the Plan, in which case PG&E will provide the NRC with the new names.)

According to the November 30, 2001, application, the current businesses of PG&E will be disaggregated and restructured. PG&E will divide its operations and the assets of its business lines among four separate operating companies. The majority of the assets and liabilities associated with the current electric transmission business of PG&E will be transferred to ETrans LLC (ETrans); the majority of PG&E's gas transmission assets and liabilities will be transferred to GTrans LLC (GTrans); and the majority of the assets and liabilities associated with the current generation business, including DCNPP, will be transferred to Gen or its subsidiaries. In addition, PG&E has created a separate corporation called Newco Energy Corporation (Newco) to hold the membership interests of each of ETrans, GTrans and Gen. PG&E is currently the sole shareholder of Newco. After the assets are transferred to the newly-formed entities, PG&E will declare and pay a dividend of the outstanding common stock of Newco to PG&E Corporation, and each of ETrans, GTrans and Gen will thereafter be an indirectly wholly-owned subsidiary of PG&E Corporation absent the PG&E corporate layer. PG&E Corporation will also change its name in the near future.

PG&E has also created subsidiaries of Gen to hold specific assets and project-specific liabilities related to Gen's line of business. Nuclear is a subsidiary of Gen created to hold the ownership of DCNPP. Gen will also have multiple subsidiaries formed to hold its hydroelectric assets.

Nuclear will hold the ownership interest in DCNPP under the new corporate structure described in the current bankruptcy plan. Nuclear will lease DCNPP to Gen under lease terms that assign to Gen the entitlement to the output and capacity of DCNPP and that make Gen responsible for all costs of plant operation. (A copy of the facility lease for DCNPP between Nuclear and Gen was provided as Enclosure 3 to the November 30, 2001, application.) Gen will operate DCNPP and will become the operating licensee, with Nuclear as a possession-only licensee.

## 3.0 FINANCIAL QUALIFICATIONS ANALYSIS

Pursuant to 10 CFR 50.33(f), an electric utility as defined in 10 CFR 50.2 is not required to demonstrate its financial qualifications. Section 50.2 of 10 CFR defines an electric utility as "any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority." The application states that neither Gen nor Nuclear will be an "electric utility" as defined by the NRC.

As both newly formed entities and non-electric-utilities, Gen and Nuclear are subject to a more detailed financial qualification review by the NRC than established electric utilities. Specifically, Nuclear and Gen must meet the requirements of 10 CFR 50.33(f) by providing information which shows the following:

a. As a non-electric utility applicant for operating licenses, it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the licenses. It must submit estimates for total annual operating costs for the first five years of facility operations and indicate the source of funds to cover these costs.

b. As a newly formed entity organized primarily for the purpose of operating nuclear power plants, it must show: (a) the legal and financial relationships it has or proposes to have with its stockholders or owners; (b) its financial ability to meet any contractual obligation to the entity which they have incurred or propose to incur; and (c) any information considered necessary by the NRC to enable it to determine the applicant's financial qualification.

In addition, 10 CFR 50.33(k)(1) requires that Gen and Nuclear must provide information described in 10 CFR 50.75 indicating how reasonable assurance will be provided that funds will be available to decommission the facilities. Nuclear's and Gen's proposals for decommissioning funding assurances are discussed in Section 4.0 of this evaluation.

As discussed above, Nuclear will lease DCNPP to Gen under a lease agreement that will require Gen to cover all of the operating and capital costs of DCNPP. Gen will operate as an electric generation company that controls various generation assets, including DCNPP and hydroelectric generating stations. Pursuant to the Plan, Gen and the reorganized PG&E (i.e., PG&E following the transfer of the assets described previously) will enter into a Long-Term bilateral power sales agreement (PSA). According to the application, the PSA and rates will be subject to approval by the Federal Energy Regulatory Commission (FERC).

Under the bilateral PSA or contract (Enclosure 7 of the November 30, 2001, application), the reorganized PG&E will be entitled to purchase substantially all of the output of Gen's facilities, but electricity from DCNPP will be purchased on a must-take basis. As currently contemplated, the contract will have a term of 12 years.

The application delineates the two major assumptions about revenue: price per megawatt hour and nuclear capacity factor. According to the application those factors are as follows:

GEN
Major Revenue Assumptions

| Fiscal Year* | Year 1<br>2003 | Year 2<br>2004 | Year 3<br>2005 | Year 4<br>2006 | Year 5<br>2007 |
|---|---|---|---|---|---|
| $/Mwh | **[** | | | | |
| Capacity Factor | | | | | **]** |

*These years correspond to the first five years of operation of DCNPP following the proposed license transfers.

Following the proposed restructuring and license transfers, the financing and financial reporting relevant to the generation businesses will occur at the Gen level of the organization. As indicated in the projected income statements below, Gen should be a financially sound entity due to its diversified generation portfolio and power sales contract with the reorganized PG&E. The projected revenues from sales of electricity and capacity, Gen's capitalization, and the extent and diversity of Gen's assets together indicate that Gen, as the operator, will meet its financial obligations under the lease with Nuclear, as the owner.

The application provided the following projected income statement for Gen:

GEN
Projected Income Statement
(in millions $)

| Fiscal Year | Year 1 2003 | Year 2 2004 | Year 3 2005 | Year 4 2006 | Year 5 2007 |
|---|---|---|---|---|---|
| Revenue: | | | | | |
| Nuclear | [ | | | | |
| Other Generation | | | | | |
| Total Revenue | | | | | |
| Total Operating Expenses | | | | | |
| Operating Income | | | | | |
| Other Non-Operating Deductions | | | | | |
| Income Taxes | | | | | |
| Net Income (Loss) | | | | | ] |

The application also provided the following projected income statement for DCNPP operations only, separate from other Gen non-nuclear generation operations:

DIABLO CANYON NUCLEAR OPERATIONS
Projected Income Statement
(in millions $)

| Fiscal Year | Year 1 2003 | Year 2 2004 | Year 3 2005 | Year 4 2006 | Year 5 2007 |
|---|---|---|---|---|---|
| Revenue | [ | | | | |
| Total Operating Expenses | | | | | |
| Operating Income | | | | | |
| Income Taxes | | | | | |
| Net Income (Loss) | | | | | ] |

The NRC staff notes that the projected capacity factor of about 89% is the same as the historical capacity factor for the last 6 years (1995 to 2000) at DCNPP. The NRC staff also concludes that projected total operating expenses appear to be reasonable, based on the NRC staff's experience in reviewing such information for similar facilities.

Given the foregoing information, the NRC staff finds that the application has satisfied the requirements of 10 CFR 50.33(f)(2) and 10 CFR 50.33(f)(3) for Gen. However, in view of the NRC's concern that certain multi-level corporate structures can lead to a diminution of assets necessary for the safe operation and decommissioning of a licensee's nuclear power plant, the NRC's practice has been to condition corresponding license transfer approvals upon a requirement that the licensee not transfer significant assets from the licensee to an affiliate without first notifying the NRC. This requirement assists the NRC in assuring that a licensee will continue to maintain adequate resources to contribute to the safe operation and decommissioning of its facility. Thus, the following should be made a condition of the Order approving the proposed license transfers, as well as a conforming license condition:

> Gen shall provide the Director of the Office of Nuclear Reactor Regulation (NRR) a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Gen to its direct or indirect parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of Gen's consolidated net utility plant, as recorded on Gen's books of account.

With respect to the financial qualifications of Nuclear, the NRC staff analyzed the following information under 10 CFR 50.33(f)(2) and 10 CFR 50.33(f)(3). As stated earlier, Nuclear is a wholly-owned subsidiary of Gen. Under the lease agreement between Gen and Nuclear, Gen will be solely responsible for all costs associated with the facility (except for costs to be paid out of the decommissioning trusts which will be transferred to Nuclear, as discussed in the NRC staff's decommissioning funding analysis, below). In other words, Nuclear will have no "estimated operation costs" for the facility. See 10 CFR 50.33(f)(2). The lease agreement also provides that Nuclear will receive rent from Gen for the facility in the amount of $1.00 per year. Accordingly, under the terms and conditions proposed in the application, including but not limited to the terms in the lease agreement, the NRC staff finds that Nuclear will be financially qualified to possess, (i.e., own) the facility and lease it to Gen, provided the following is made a condition of approval of the transfer and a license condition in the conforming amendments:

> Notwithstanding DCNPP being owned by Nuclear, Gen shall at all times following the transfer of the DCNPP licenses to Gen and Nuclear be fully responsible for all costs associated with the possession, use, operation, maintenance, and decommissioning of DCNPP (including costs associated with the receipt, possession, and use of byproduct, source, and special nuclear material), except for decommissioning costs covered by the decommissioning trust funds transferred to Nuclear at the time of the license transfers. Nuclear shall be responsible for the payment of decommissioning costs for DCNPP at least to the extent of the accumulated decommissioning trust funds transferred to Nuclear and earnings associated with such funds.

In summary, based on the information provided in the application, satisfying the requirements of 10 CFR 50.33(f)(2) and 10 CFR 50.33(f)(3), the NRC staff finds that Gen and Nuclear will be financially qualified to possess, use, and operate DCNPP as proposed.

## 4.0 DECOMMISSIONING FUNDING

The NRC has determined that the requirements to provide assurance of adequate decommissioning funding are necessary to ensure the adequate protection of public health and safety. Section 50.33(k) of 10 CFR requires that an application for an operating license for a utilization facility contain information indicating how reasonable assurance will be provided that funds will be available to decommission the facility. Decommissioning funding assurance for DCNPP is presently provided by an external Nuclear Decommissioning Trust as authorized by 10 CFR 50.75(e)(1)(ii). According to the application, PG&E will transfer to Nuclear the interest in the Nuclear Decommissioning Trust associated with DCNPP (other funds in the Trust are allocated for the Humboldt Bay facility, which will continue to be maintained by PG&E). The funds will be segregated from the new licensee's assets and outside its administrative control. A trustee will continue to manage investment of the funds in accordance with a master trust agreement and applicable NRC requirements and license conditions. The funds will be used only in a manner consistent with the terms of the trust agreement.

As stated in the "Diablo Canyon Facility Lease By and Between Diablo Canyon LLC, as Lessor, and Electric Generation LLC, as Lessee" (Enclosure 3 to the November 30, 2001, application), the following condition is included:

> Lessee shall be solely responsible for the decommissioning of the Diablo Canyon Power Plant in accordance with NRC Requirements and any other Legal Requirements. Lessee's responsibilities shall include all necessary planning, engineering, permitting, reporting and carrying out or overseeing of such decommissioning [ ]. Notwithstanding Section 3.02(j) [of the lease], Lessor shall reimburse Lessee for the cost of all Decommissioning Activities to the extent that such costs are payable out of the Diablo Canyon Decommissioning Master Trust Agreements. Lessee shall be solely responsible for all costs of Decommissioning Activities not paid out of the Diablo Canyon Nuclear Decommissioning Trust.

The Nuclear Decommissioning Trust includes a California Public Utilities Commission (CPUC) jurisdictional qualified and a FERC jurisdictional qualified trust. The liquidation value of the DCNPP Nuclear Decommissioning Trust as of September 30, 2001, was approximately $473.5 million for DCNPP, Unit 1, and $627.5 million for DCNPP, Unit 2. Pursuant to 10 CFR 50.75(c), DCNPP, Units 1 and 2, must *each* have decommissioning assurance in the amount of $309.9 million. Based on the application, the NRC staff has determined that the current fund balances exceed the minimum Decommissioning Trust amounts specified in 10 CFR 50.75, even without taking a 2% credit for future interest growth as is permitted by NRC regulations. The transfer to Nuclear of PG&E's interest in the Decommissioning Trust is subject to the approval of the Bankruptcy Court as part of the confirmation of the Plan. The transfer of the trust funds is also subject to the approval of FERC, according to the application. Thus, PG&E will seek the necessary approvals.

PG&E also expects to seek a private letter ruling from the Internal Revenue Service to assure that the beneficial interest in the qualified decommissioning funds can be transferred to Nuclear on a tax-free basis.

Since 1999, when the NRC staff began to approve license transfers to non-electric utilities, certain conditions have been imposed by order and conforming license amendments to address such transferees' decommissioning trust funds and governing trust agreements, given the transferees' unregulated status. On December 24, 2002, the NRC issued a final rule on decommissioning trust provisions (67 FR 78332), which codified these conditions, with some modifications. The effective date of the rule is December 24, 2003, to allow current licensees transition time to be able to amend relevant trust agreements and other arrangements to be consistent with the requirements of the new rule. Since the action here is approval of license transfers to new non-electric utility licensees, one of whom will be the owner of the facility who will establish a decommissioning trust(s) for DCNPP, the NRC staff has concluded that it is appropriate to condition approval of the license transfers as follows:

> On the closing date of the transfer of DCNPP, Diablo Canyon LLC shall obtain from PG&E all of the accumulated decommissioning trust funds associated with the facility, and ensure the deposit of the funds into a decommissioning trust(s) for DCNPP established by Diablo Canyon LLC. The amount of the funds must meet or exceed the minimum amount required for the facility pursuant to 10 CFR 50.75. In the event that the transfer of DCNPP occurs prior to December 24, 2003, the decommissioning trust agreement(s) shall be consistent with the provisions contained in 10 CFR 50.75(h)(1) (67 FR 78350, published December 24, 2002), as if such provisions are in effect at the time of transfer. Notwithstanding the date of the transfer, the decommissioning trust agreement(s) must be acceptable to the NRC.

The NRC staff has also concluded that in order to ensure that the decommissioning trust(s) is maintained consistent with the NRC staff's action on the application, essentially the following must be included as a condition of the transfer approval and as a condition in the licenses:

> Diablo Canyon LLC shall take all necessary steps to ensure that the decommissioning trust(s) is maintained in accordance with the application and the requirements of the Order approving the subject license transfers, and consistent with the safety evaluation supporting the Order.

Based on the above, the NRC staff finds that there will be reasonable assurance of adequate decommissioning funding for DCNPP.

## 5.0 ANTITRUST REVIEW

The Atomic Energy Act does not require or authorize antitrust reviews of post-operating license transfer applications. *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441, 468 (1999). Therefore, since the transfer application postdates the issuance of the DCNPP, Units 1 and 2 operating licenses, no antitrust review is required or authorized.

Certain antitrust conditions were incorporated in 1978 into the licenses for DCNPP as a result of a proceeding involving a different proposed nuclear power plant, i.e., the Stanislaus facility. In connection with proposed amendments to the DCNPP licenses to reflect their transfer, the license transfer application proposed that the antitrust conditions be transferred, but amended in such a way as to have them apply to Gen, PG&E and ETrans, even though PG&E and ETrans would not own or operate DCNPP after the transfer or otherwise engage in NRC-licensed activities for DCNPP. The *Federal Register* notice of the application, however, specifically noted that consideration is being given to approving only those changes to the antitrust conditions that would reflect Gen and Nuclear as licensees. Pursuant to the *Federal Register* notice, hearing requests were filed that, *inter alia*, related to the appropriate treatment of the antitrust conditions in the conforming license amendments to be issued to reflect the license transfers.

The Commission, in CLI-03-02, addressed issues regarding the treatment of the antitrust conditions and determined that "legal and policy considerations preclude transfer of antitrust conditions originally imposed in 1978 on the licenses for [DCNPP]." *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-02, 57 NRC 19, 23 (2003). The Commission terminated the proceeding and directed the NRC staff not to include the DCNPP antitrust conditions as part of the DCNPP license transfers if the NRC staff otherwise approves the PG&E transfer application. *Id*. at 36. Accordingly, the DCNPP antitrust conditions will not be included in the transferred licenses, thus removing any issue as to whom the conditions would otherwise apply.

## 6.0 FOREIGN OWNERSHIP, DOMINATION OR CONTROL

Gen and Nuclear will be indirectly owned and controlled by PG&E Corporation, currently the parent of PG&E. PG&E Corporation is incorporated in California, and its shares are publicly traded and widely held. According to the application, Gen and Nuclear are California limited liability companies with offices in San Francisco. Newco is a California corporation which also has a San Francisco address, according to documents maintained by the California Secretary of State. As mentioned earlier PG&E Corporation will own Newco, which will own Gen, which in turn will own Nuclear. The application states that all officers and directors of Gen and the officers of Nuclear (Nuclear will not have directors) are expected to be United States citizens. The application further states that neither Gen nor Nuclear will be owned, controlled, or dominated by foreign interests. The NRC staff does not know or have any reason to believe otherwise.

## 7.0 NUCLEAR INSURANCE

The provisions of the Price-Anderson Act (Section 170 of the Atomic Energy Act) and the Commission's regulations at 10 CFR Part 140 require that Gen and Nuclear be added to the current indemnity agreement for DCNPP. In accordance with the Price-Anderson Act, Gen and Nuclear will also be required to provide primary insurance and participate in the secondary retrospective insurance pool. These requirements can be met by purchasing insurance policies from American Nuclear Insurers. Gen and Nuclear will also be required to maintain property insurance as specified in 10 CFR 50.54(w). The information provided in the application concerning financial qualifications demonstrates that Gen and Nuclear will be able to satisfy

applicable insurance obligations and requirements concerning annual retrospective premiums under 10 CFR 140.21.

Consistent with NRC practice, the NRC staff will require Gen and Nuclear to provide satisfactory documentary evidence that Gen and Nuclear have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended licenses reflecting Gen and Nuclear as the licensees. Because the issuance of the amended licenses is directly tied to the proposed transfers, the Order approving the transfer of the licenses for DCNPP will be conditioned as follows:

> Gen and Nuclear shall, prior to the completion of the transfers, provide the Director of NRR satisfactory documentary evidence that Gen and Nuclear have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

## 8.0 TECHNICAL QUALIFICATIONS

### 8.1 Purpose of the Evaluation

The purpose of this evaluation is to ensure that the corporate management of the proposed operator is involved with, informed of, and dedicated to the safe operation of DCNPP and, that sufficient qualified technical resources will be provided to support safe plant operation and maintenance, and to evaluate proposed changes to the operating organization that may occur as a result of the license transfers. Gen is the only proposed operator of DCNPP; therefore, the NRC staff has evaluated Gen's technical qualifications, as described below.

The NRC staff used the following regulations and guidance to complete its evaluation: 10 CFR 50.40(b), "Common Standards;" 10 CFR 50.80, "Transfer of Licenses;" the Standard Review Plan (SRP) NUREG-0800, Chapter 13, "Conduct of Operations;" SRP Section 13.1.1, "Management and Technical Support Organization;" SRP Sections 13.1.2-13.1.3, "Operating Organization;" and American National Standards Institute/American National Standards (ANSI/ANS) N18.1-1971, "Selection and Training of Nuclear Power Plant Personnel," as endorsed by Regulatory Guide 1.8, Revision 2, April 1987, "Qualification and Training of Personnel for Nuclear Power Plants."

### 8.2 Management and Technical Support Organization

Using the regulations and guidance stated above, the NRC staff reviewed the application to determine the acceptability of the corporate management and technical support organization for the proposed transferee, Gen. The NRC staff evaluated the application using the applicable acceptance criteria contained in SRP Section 13.1.1.

The November 30, 2001, submittal states that, after the transfer, Gen "will operate, maintain, and manage DCNPP in accordance with the operating licenses and NRC requirements, and with the same regard for public and personnel safety exemplified to date by PG&E. * * * Key managers now responsible for the safe operation of DCNPP will remain responsible for its operation after the [license transfers]." Gen "will have all the necessary authority and responsibility for operation of the units and for maintaining public health and safety and

regulatory compliance." Further, the application states that, "The technical qualifications of Gen to carry out its operational responsibilities under the DCNPP operating licenses will be equivalent to the present technical qualifications of PG&E. The management team from PG&E's present nuclear organization, from the Senior Vice President-Generation and Chief Nuclear Officer position down, will be transferred to Gen. * * * They will continue to meet the applicable industry qualifications standards. * * * In total, the technical qualifications of the Gen management, site, and support organizations will be equivalent to those of the existing PG&E nuclear organization. Sufficient qualified technical resources will be provided to support safe operation and maintenance of the units. . . ." The application also states that "The management and technical support functions will continue to conform to the pertinent provisions in the plant Technical Specifications and the DCNPP Updated Final Safety Analysis Report."

Based on the November 30, 2001, submittal, the NRC staff concludes that the application has described Gen's organization for managing and its means of providing technical support to the plant staff for operation of the units after the license transfers. The NRC staff concludes that Gen will have an acceptable management organization and adequate resources to provide offsite technical support for the operation of DCNPP under both normal and off-normal conditions in accordance with SRP Section 13.1.1.

8.3 Operating Organization

Using the regulations and guidance stated above, the NRC staff reviewed the application to determine the acceptability of Gen's operating organization, evaluating changes to the current operating organization proposed as a result of the license transfers. The initial operating organization was determined to be acceptable by the initial licensing review. Subsequent safety-related changes to the operating organization were required to have been evaluated with an appropriate methodology, and the NRC staff is not aware of any deficiencies with the current operating organization. Consequently, the NRC staff's review focused on evaluating any changes to the operating organization proposed as a result of the transfers. The NRC staff evaluated the application using the applicable acceptance criteria contained in SRP Sections 13.1.2-13.1.3.

The November 30, 2001, submittal indicates that, "Concurrent with the license transfers, the current on-site organizations at DCNPP will be transferred intact to Gen."

The existing structure of the DCNPP organizations, as shown in the DCNPP Updated FSAR (Revision 14, November 2001), will remain unchanged after the transfer. The application further states that, "substantially all PG&E nuclear personnel in the existing DCNPP nuclear organizations will become employees of Gen and will continue to be assigned to DCNPP. These employees will take direction through the Gen management chain of command and their responsibilities will continue to be clear and unambiguous."

In addition, "The qualifications of the nuclear personnel generally will not change as a result of the restructuring and license transfers. The personnel qualification requirements presently defined in the respective plant Technical Specifications and DCNPP UFSAR will not be changed and will continue to be met." Further, the application states that, "No physical changes will be made to the plant as a result of the license transfers, and there will be no significant changes in the day-to-day management of, and operating procedures for, the plant."

Based on the above, the proposed operating organization that Gen will have for DCNPP and the qualifications of the Gen operating personnel in that organization will be essentially equivalent to the current organization and qualifications of PG&E. Accordingly, the NRC staff concludes that following the proposed license transfers, Gen's organization for operating and maintaining DCNPP, under both normal and off-normal conditions, will be acceptable and in accordance with SRP Sections 13.1.2.-13.1.3.

### 8.4 Conclusions with Respect to Technical Qualifications

The application has described Gen's corporate level management and technical support organization and the onsite operating organization responsible for the operation and maintenance of DCNPP after the license transfers. The NRC staff concludes that Gen will have an acceptable corporate organization, onsite organization, and adequate resources to provide technical support for the safe operation and maintenance of DCNPP under both normal and off-normal conditions after the license transfers. The application adequately addresses the relevant requirements of 10 CFR 50.40(b) and 10 CFR 50.80.

Accordingly, in light of the foregoing evaluation, the NRC staff concludes that Gen will be technically qualified to hold the operating authority under the DCNPP licenses.

## 9.0 COMMENTS RECEIVED

No written comments were filed as such. However, in its Memorandum and Order (CLI-02-16), dated June 25, 2002, the Commission referred to the NRC staff two petitions to intervene concerning the requested transfer of the DCNPP licenses as comments for appropriate consideration. The Commission directed the NRC staff to consider whether the comments call into question the proposed license transferees' ability to operate DCNPP safely. The two petitions were those of the CPUC dated February 5, 2002 (hereinafter, "CPUC Petition"), and the County of San Luis Obispo (County) dated May 10, 2002 (hereinafter, "County Petition"), each raising certain issues regarding the proposed transfer.

The NRC staff reviewed the petitions by the CPUC and the County, and provides its analysis below. As described below, the NRC staff does not consider that the comments stated in the CPUC Petition or the County Petition call into question the proposed license transferees' ability to operate DCNPP safely.

### 9.1 Financial Comments Response

#### 9.1.1 Financial Qualifications

CPUC alleges that PG&E's Plan is illegal and the PSA on which the Plan is founded is unfair. CPUC alleges that Gen will not be financially able to meet its basic health and safety-related obligations without approval by FERC of the rates in the PSA, which CPUC describes as illegal, unjust, and unreasonable and as not being based on cost-of service principles. CPUC asserts that, if rates were to be based instead on cost-of-service principles, they would be about half the PSA rates. (CPUC Petition at 27-28.)

CPUC argues that "FERC cannot legally or properly approve" the PSA rates and urges that FERC permit the collection of only rates based on cost-of-service. (CPUC Petition at 21.) CPUC claims that if FERC does not approve the Plan's proposed rates, Gen would not be a financially viable entity and thus not be qualified to hold the DCNPP licenses.

Upon review of this issue, the NRC staff notes that CPUC is asking the NRC to deny the proposed transfer on the basis of CPUC's challenge to the fairness of the PSA before FERC, a regulatory agency which considers rate-related, not safety-related issues. FERC is the appropriate agency for addressing this rate issue currently pending before it, and not the NRC. NRC's role in evaluating financial qualifications is to decide whether the proposed transferee has reasonable assurance of obtaining the funds necessary to cover estimated operation costs, based on the financial projections and other information presented to the NRC, and not to try to determine the issue of the fairness or unfairness of rates for DCNPP power. CPUC has made no allegation that the Plan or PSA, if approved, will nonetheless preclude Gen from meeting the requirements of the NRC for financial qualifications.

Pursuant to 10 CFR 50.33(f)(2), PG&E's application includes estimated cost and revenue data for Gen for the first five years of operation after the requested transfer, indicating adequate revenue to cover costs. Because the revenue data are directly tied to the implementation of the PSA, and the CPUC has specifically called into question whether the PSA would be approved by relevant regulatory authorities, the NRC staff concludes that essentially the following should be made an express condition of approval of the transfer to clarify that the approval is based, *inter alia*, on the continued viability of the financial projections submitted with the application:

> Prior to the closing of the license transfers, all necessary regulatory and/or judicial approvals of the PSA must be obtained without any material changes to the PSA that would adversely impact the five-year financial projections proffered in the application such that indicated sources of funds would not be sufficient to cover projected costs of operation of the facility.

In essence, should FERC or the Bankruptcy Court not approve the basic financial foundation of the license transfer application, the license transfers for DCNPP will not be able to occur.

The County asserts the following regarding financial qualifications:

1. Gen and Nuclear have no basis for income projections or cost and revenue projections for the five-year period following the transfer because the Bankruptcy Court has not approved a plan and, therefore, there are no rate-setting directions from either FERC or CPUC to make such projections possible.

2. Revenue projections in the application are based on Power Purchase Agreements, which appear to be based on rates that are above market price, such that it is not clear that FERC or the CPUC would approve these rates.

3. There is a failure to demonstrate that Gen has adequate resources to cover an extended outage of at least six months.

4. There is a failure to demonstrate that Gen has funds to build and to operate an independent spent fuel storage installation (ISFSI) that PG&E has committed to construct.

5. Information required to satisfy 10 CFR 50.33(f)(3) requirements describing the relationships of Gen and Nuclear and their relationship to the proposed restructured corporation cannot be provided in the absence of a ruling from the Bankruptcy Court. This could cause problems in terms of adequate funds not necessarily being available to ensure plant safety or to ensure decommissioning in the event of a premature shutdown.

6. No assurance is provided that the parent would be financially responsible to ensure the protection of the public health and safety, and there should be an NRC condition that Gen and Nuclear obtain guarantees from the parent that, in all events, the parent will be financially responsible for providing whatever funds are necessary to provide reasonable assurance of public health and safety.

Regarding items 1 and 2 above, the NRC staff notes that both the PSA and other key items forming the basis for the five-year income, cost, and revenue projections in the application are subject to approval by the Bankruptcy Court and FERC and that such approvals can be verified by the NRC staff such that, if material aspects of the PSA are not approved or other key aspects of the financial foundation of the application do not occur, the proposed transfers will not be approved.

Regarding item 3, NRC does not require licensees to demonstrate adequate cash to cover a six-month outage. Reference to cash for such an outage is cited in NUREG-1577, Revision 1, but <u>only as an alternative</u> if other means of establishing financial qualifications (such as a power purchase agreement) are not available. The NRC staff notes that item 3 does not apply in this case because financial qualifications are being established based on a five-year projection of costs and revenues.

Regarding item 4, there is no need to address any ISFSI issues in this SE because financial qualifications to construct and operate an ISFSI associated with DCNPP is a separate issue from this transfer being covered under a separate application. Also, there is no proposed transfer of an ISFSI license at this time.

Regarding item 5, much of the information provided in any transfer application is prospective in nature; thus, NRC staff approval is necessarily based on a presumption that events will unfold as represented in the application. Should the proposed scenario materially change (e.g., by reason of another regulatory body disapproving certain aspects), NRC staff approval based on the original representations in the application would not be valid. Here, although the Bankruptcy Court and FERC have yet to approve what is before them, the application has provided adequate information, albeit of a prospective nature, to satisfy 10 CFR 50.33(f)(3), thus allowing the NRC staff to make its findings.

Regarding item 6, there is no specific NRC regulatory requirement that the parent of an applicant for a license guarantees the operating and maintenance costs of a nuclear plant to be owned by the applicant. As the NRC staff concluded regarding financial qualifications in

Section 3.0 of this SE, the application has fulfilled the requirements of 10 CFR 50.33(f), subject to the conditions for approval as noted, without any proposed parent guaranty. Therefore, any additional condition to require a parent company guaranty is unnecessary.

9.1.2 Decommissioning Funding

CPUC alleges that the proposed transferees would lack adequate decommissioning funding assurance, claiming that: (1) Nuclear would have no decommissioning funding assurance because PG&E has no legal authority to transfer its current decommissioning trust funds; (2) the Bankruptcy Court has no authority to compel CPUC to authorize such a transfer as requested by PG&E; (3) the trust funds are not transferable, except on sale of the plant, and only then with prior approval of CPUC, and CPUC will not give that approval; and (4) because the DCNPP trust funds provide for decommissioning of the Humboldt Bay unit and the two DCNPP units, there are practical difficulties and potential inequities in allocating trust funds among the three units such that inadequate funds for proper decommissioning could result, with potential adverse effects on ratepayers and the public health, safety, and welfare. (CPUC Petition, at 12-21.)

Upon review of CPUC's assertions relating to decommissioning funding, the NRC staff notes that the primary focus is on: (1) whether the trust funds associated with DCNPP would or could be transferred to ensure adequate decommissioning funding; and (2) what is the appropriate amount of decommissioning funds that should be transferred.

The NRC does not need to resolve whether PG&E's accumulated decommissioning trust funds associated with DCNPP will in fact be transferred to the new licensee owner because the NRC staff's approval of the license transfers is expressly conditioned on the transfer of all of the funds associated with DCNPP. If the funds are not transferred, due to whatever reason, then the license transfers may not occur. CPUC does not assert that, if the transactions proposed in the application were implemented in accordance with the terms and conditions of NRC approval, the transferees would not meet NRC decommissioning funding requirements.

With respect to the issue concerning the appropriate amount of funds in the decommissioning trusts that should be transferred, PG&E's application shows the amounts that are allocated to DCNPP Units 1 and 2 and Humboldt Bay as of September 30, 2001. The application states that: (1) as part of the reorganization plan, PG&E will segregate all the funds associated with each of the three units so that it can retain its beneficial interests in the funds designated for Humboldt Bay for continuing its decommissioning; and (2) funds segregated for DCNPP are to be transferred to Nuclear. Furthermore, the amount of funds shown in the application as being already collected and designated for DCNPP Units 1 and 2 as of September 30, 2001, exceeds the amount required by 10 CFR 50.75, thereby providing reasonable assurance in the form of prepayment that adequate decommissioning funds will be available if they are allocated as proposed in the application. In summary, the NRC staff concludes that CPUC has not raised any problematic decommissioning funding issues.

9.1.3 CPUC Regulatory Responsibilities

CPUC alleges that transfer of the DCNPP licenses would reduce California's regulatory authority over nuclear power to the detriment of its citizens, but the NRC staff notes that issues

regarding the CPUC and preemption of certain state laws must be resolved by the courts and are not issues for resolution by the NRC. NRC approval of the proposed transfers would not alter the NRC's regulatory role. The NRC will retain its regulatory oversight necessary for the protection of public health and safety with respect to radiological risks.

9.1.4 Public Safety and Welfare Issues

CPUC asserts that the public safety and welfare are threatened from the transition of DCNPP from being owned by a cost-of-service-based regulated utility to ownership by a market-based unregulated subsidiary, citing two types of alleged problems: (1) the new unregulated entity "will certainly attempt to reduce operating expenses" (such as reducing staff and increasing use of overtime), which could very conceivably adversely affect plant safety and reliability; and (2) the relationship between the new subsidiary and its ultimate parent could cause funds to flow from the former to the latter such that, if financial problems occurred, the parent might not provide adequate funding for the subsidiary, which could result in the bankruptcy of the subsidiary. (CPUC Petition, at 54-57.)

The NRC staff notes that the license transfer application states that there will be no operational changes and essentially no staff or management changes after the license transfers, and CPUC has provided no factual support for its speculation that the new unregulated entity will subordinate safety to a focus on cost-cutting measures that could have adverse safety results.

Furthermore, if such alleged potential problems were to occur, the NRC has plant oversight responsibility and investigation and enforcement programs for identifying operational problems at plants and for requiring corrective action if necessary.

CPUC's suggestion that the subsidiary might not have adequate funding from the parent does not appear to be a specific challenge to the financial information in the application upon which the NRC bases its decision on financial qualifications. Also, to the extent that CPUC raises a challenge to a proposed licensee being a limited liability company (LLC), the Commission has consistently ruled that LLCs are not precluded from owning and operating nuclear power plants.

9.2 Technical Comments Response

9.2.1 Reliable Offsite Power

The County asserts that the application does not provide sufficient information to demonstrate that adequate provisions for offsite power will be available to satisfy General Design Criterion (GDC) 17 of 10 CFR Part 50, Appendix A and the NRC's station blackout rule, 10 CFR 50.63. In this regard, the County asserts that the application lacks reliable detail regarding the financial strength of ETrans LLC (ETrans) and the assets which will be available for ETrans to maintain transmission lines and facilities necessary to supply reliable offsite power to DCNPP.

GDC 17 provides that an offsite electrical power system shall be provided to permit functioning of structures, systems, and components important to safety. It specifies that electric power from the transmission network to the onsite electric distribution system shall be supplied by two physically independent circuits designed and located to prevent their simultaneous failure.

Each circuit shall be designed to be available following loss of onsite power, as described in the rule. The NRC's station blackout rule at 10 CFR 50.63 requires that each nuclear power plant be able to withstand for a specified duration and recover from a station blackout.

ETrans is a proposed new business entity under the PG&E Plan that will own PG&E's existing transmission assets if the PG&E Plan is approved by the Bankruptcy Court. The assets include approximately 18,500 circuit miles of electric transmission lines and cables located in California.

The NRC does not ordinarily review transmission asset owners' financial qualifications in a license transfer review since such owners are not proposing to hold an NRC license. In any event, the County has not asserted with particularity any basis beyond mere speculation to call into question ETran's financial qualifications or the reliability of the transmission facilities. The requirements in GDC 17 and 10 CFR 50.63 will continue to apply to Gen following the transfer of the DCNPP licenses in the same manner and to the same extent that they have applied to PG&E. The license transfer application does not propose any physical modification to the facility, nor does it involve any changes to the ability of the plant to cope with station blackout. Therefore, there appear to be no problematic issues raised by the County under the provisions of GDC 17 and 10 CFR 50.63 with respect to this license transfer application. Moreover, as a license transferee, Gen will be required to comply with all requirements that PG&E had been subject to prior to the transfer, and the NRC staff is unaware of any safety issue that would otherwise be implicated by the transfer of transmission assets to ETrans, which are, and will continue to be operated by the California Independent System Operator. Therefore, the transfer of the transmission assets from PG&E to ETrans does not call into question the license transferees' ability to operate DCNPP safely. If offsite power becomes an issue following the transfers, the NRC will continue to be able to take appropriate remedial actions against the new licensees to ensure adequate protection of public health and safety.

9.2.2 <u>The County's Role Under the DCNPP Emergency Plan</u>

The County states that it plays an integral role in carrying out the emergency plans for DCNPP, and that it is "legitimately concerned with its ability to fulfill its role in carrying out" the DCNPP emergency plan should the NRC authorize the license transfers to a company "which may have inadequate resources." (County Petition at 6.) The NRC staff concludes that since it has already determined that the proposed transferees will be financially qualified under the NRC's regulations, there should be no concern by the County with the fulfillment of its responsibilities under the DCNPP emergency plans.

The application states that no major substantive changes to the existing emergency plans presently implemented are anticipated as a result of the license transfers. A review of the annotated changes to the facility operating licenses revealed no changes to the DCNPP radiological emergency plan. The application further states that any needed changes to the emergency plans or implementing procedures will be made in accordance with 10 CFR 50.54(q) and Appendix E to Part 50 as appropriate. Therefore, the requested license transfer and license changes are acceptable with respect to their impact on the level of site radiological emergency preparedness at DCNPP.

## 10.0 CONFORMING AMENDMENTS

### 10.1 Introduction

As previously stated, the application requests approval of conforming amendments to the DCNPP Facility Operating Licenses Nos. DPR-80 and DPR-82. The requested changes principally eliminate references to PG&E in the licenses and, as appropriate, replace them with references to Electric Generation LLC and Diablo Canyon LLC, to reflect the proposed license transfers.

Changes were also requested for the antitrust license conditions such that Gen, PG&E, and ETrans would be responsible for complying with the conditions, even though the latter two companies would, after the transfer, not own or operate the DCNPP or otherwise engage in NRC-licensed activities for DCNPP. As discussed below, the Commission has determined in CLI-03-02 that the proposed antitrust license conditions should not survive at all if the licenses are transferred, and, therefore, the NRC staff will not include them in the transferred licenses No physical changes to the facility have been requested. Supplemental information received after the initial *Federal Register* notice did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

### 10.2 Discussion

The changes to be made to the licenses and technical specifications, as indicated in Enclosure 2 to the cover letter forwarding the Order approving the transfers, do no more than accurately reflect the approved transfer action, which is subject to certain conditions set forth in the Order approving the transfer, and that were identified and discussed earlier in this safety evaluation. The NRC staff made some minor edits to the proposed changes to more accurately reflect historical information and clarify certain references and authority. The amendments involve no safety questions and are administrative in nature. Accordingly, the proposed amendments are acceptable.

The amendments being approved do not include the transfer of any of the current antitrust conditions. The Commission, in CLI-03-02, addressed issues regarding the treatment of the antitrust conditions and determined that "legal and policy considerations preclude transfer of antitrust conditions originally imposed in 1978 on the licenses for [DCNPP]." *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-02, 57 NRC 19 (2003). The Commission directed the NRC staff not to include the DCNPP antitrust conditions as part of the DCNPP license transfers if the NRC staff otherwise approves the PG&E transfer application. *Id.* at 36. Accordingly, the DCNPP antitrust conditions will not be included in the transferred licenses.

### 10.3 State Consultation

In accordance with the Commission's regulations, the California State official was notified of the proposed issuance of the amendments. The State official had no comments.

10.4 Conclusion with Respect to the Conforming Amendments

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

## 11.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the transfer of licenses issued by the NRC and approval of conforming amendments. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

## 12.0 CONCLUSIONS

Based on all of the foregoing, the NRC staff has concluded that with the appropriate conditions discussed above, Electric Generation LLC and Diablo Canyon LLC are qualified to be the license holders for DCNPP to the extent requested, and the transfer of the licenses to Electric Generation LLC and Diablo Canyon LLC is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

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Date: May 27, 2003