

RAS 7628

April 13, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
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April 20, 2004 (4:06PM)

BEFORE THE COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)
)
Pacific Gas and Electric Co.)
)
(Diablo Canyon Power Plant,)
Units 1 and 2))

Docket Nos. 50-275-LT
50-323-LT

PACIFIC GAS AND ELECTRIC COMPANY'S MOTION TO TERMINATE PROCEEDING

On November 30, 2001, Pacific Gas and Electric Company ("PG&E") filed an application with the Nuclear Regulatory Commission ("NRC" or "Commission") requesting approval of the transfer of the operating licenses for Diablo Canyon Power Plant ("DCPP"). The application was associated with PG&E's then-pending Plan of Reorganization ("PG&E Plan") to emerge from bankruptcy. Following completion of a contested proceeding before the Commission on the application,¹ the NRC Staff approved the proposed transfers by Order dated May 27, 2003.²

On June 24, 2003, the California Public Utilities Commission ("CPUC") and San Luis Obispo County (the "County") requested that the Commission stay the effect of the Commission Order approving the license transfers. PG&E opposed the stay request, and,

¹ See *Pac. Gas & Elec. Co. (Diablo Canyon Power Plant, Units 1 & 2)*, CLI-02-16, 55 NRC 317 (2002), *appeal docketed*, No. 02-72735 (9th Cir. Aug. 23, 2002); See *Pac. Gas & Elec. Co. (Diablo Canyon Power Plant, Units 1 & 2)*, CLI-03-2, 57 NRC 19 (2003), *appeal docketed*, No. 03-1038 (D.C. Cir. Feb. 25, 2003).

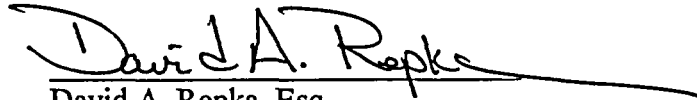
² See *Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2)*; Order Approving Transfer of Licenses and Conforming Amendments, 68 Fed. Reg. 33,208 (June 3, 2003) ("Order").

subsequently, filed a motion to hold the remaining aspects of this proceeding (*i.e.*, a ruling on the stay request) in abeyance in light of the tentative settlement of PG&E's bankruptcy proceeding based on a settlement plan of reorganization for PG&E. The settlement plan does not involve or require the restructuring of the company and license transfers addressed in the NRC's May 27, 2003 Order. In CLI-03-10, the Commission granted PG&E's motion to hold the remaining aspects of the proceeding in abeyance. *See Pac. Gas & Elec. Co. (Diablo Canyon Power Plant, Units 1 & 2), CLI-03-10, 58 NRC 127 (2003)*. At that time, the Commission directed PG&E to notify it immediately upon final approval or rejection of the tentative settlement agreement.

On December 24, 2003, PG&E notified the Commission that the Bankruptcy Court had approved the settlement plan on December 22, 2003. As discussed in a letter to the NRC dated April 12, 2004 (appended hereto as an attachment), all conditions precedent necessary for implementation of the settlement agreement have now been met. As of April 12, 2004, the approved settlement plan has been implemented and PG&E has emerged from bankruptcy as a vertically integrated utility, subject to the traditional ratemaking jurisdiction of the CPUC. Implementation of the settlement plan has eliminated the need for the NRC license transfers at issue in this matter. Accordingly, PG&E does not intend to implement the transfers approved by the NRC in the May 27, 2003 Order and will allow that Order to expire.

Given the implementation of the settlement plan, this proceeding has become moot. Counsel for the CPUC and the County have indicated that they do not object to termination of this proceeding.

Respectfully submitted,



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ATTORNEYS FOR
PACIFIC GAS AND ELECTRIC COMPANY

Dated in Washington, District of Columbia
This 13th day of April 2004



**Pacific Gas and
Electric Company**

April 12, 2004

PG&E Letter DCL-04-043

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

Docket No. 50-275, OL-DPR-80
Docket No. 50-323, OL-DPR-82
Diablo Canyon Units 1 and 2
Notification of Bankruptcy Settlement

Dear Commissioners and Staff:

In an Order dated May 27, 2003, the Nuclear Regulatory Commission (NRC) approved the transfer of the Diablo Canyon Power Plant operating licenses to Electric Generation, LLC and Diablo Canyon, LLC.¹ The transfers approved by the NRC were proposed in connection with a Plan of Reorganization for Pacific Gas and Electric Company (PG&E) filed by PG&E and its parent, PG&E Corporation, then pending in the Bankruptcy Court for the Northern District of California ("Bankruptcy Court"). Pursuant to settlement procedures implemented by the Bankruptcy Court in that proceeding, PG&E, PG&E Corporation, and the staff of the California Public Utilities Commission (CPUC) in June 2003 announced a proposed settlement of the bankruptcy case (the "Settlement Agreement"). Pursuant to the Settlement Agreement, a new plan of reorganization for PG&E (the "Settlement Plan") was filed with the Bankruptcy Court and confirmed in December 2003. The confirmed Settlement Plan does not involve the restructuring or license transfers addressed in the May 27, 2003 NRC Order.

As of April 12, 2004, the Settlement Plan has been implemented and PG&E has emerged from bankruptcy. PG&E remains a vertically integrated electric utility subject to the traditional ratemaking jurisdiction of the CPUC. The NRC's transfer Order by its terms will become null and void if the transfers are not completed by May 31, 2004. PG&E hereby notifies the Commission that it does not intend to complete the transfers in conformance with the Order and will allow the Order to expire.

If you have any questions regarding the Settlement Agreement, please contact me.

¹

See Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments, 68 Fed. Reg. 33,208 (June 3, 2003).

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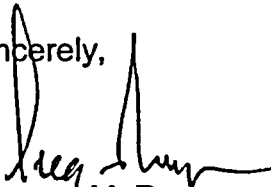
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Sincerely,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:)
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Pacific Gas and Electric Co.) Docket Nos. 50-275-LT
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CERTIFICATE OF SERVICE

I hereby certify that copies of "PACIFIC GAS AND ELECTRIC COMPANY'S MOTION TO TERMINATE PROCEEDING" in the above captioned proceedings has been served as shown below by electronic mail, this 13th day of April 2004. Additional service by deposit in the United States mail, first class, has also been made this same day as shown below.

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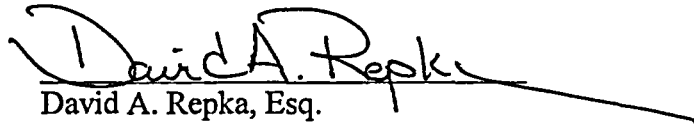
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