

NUCLEAR REGULATORY COMMISSION

**Docket No. 72-26
License No. SNM-2511**

EA-05-089

**In the Matter of PACIFIC GAS AND ELECTRIC
DIABLO CANYON NUCLEAR POWER PLANT
INDEPENDENT SPENT FUEL STORAGE INSTALLATION
ORDER MODIFYING LICENSE (EFFECTIVE IMMEDIATELY)**

AGENCY: Nuclear Regulatory Commission

ACTION: Issuance of Order for Implementation of Additional Security Measures Associated with Access Authorization.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415-4015; fax number: (301) 415-8555; e-mail CSB2@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice in the matter of Diablo Canyon Nuclear Power Plant Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately).

II. Further Information

I

Pacific Gas and Electric (PG&E) holds a license issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing the operation of an Independent Spent Fuel Storage Installation (ISFSI) in accordance with the Atomic Energy Act of 1954 and Title 10 of the Code of Federal Regulations (10 CFR) Part 50 and 10 CFR Part 72. Commission regulations at 10 CFR 72.184 require PG&E to have a safeguards contingency plan to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage.

Inasmuch as an insider has an opportunity equal to or greater than any other person to commit radiological sabotage, the Commission has determined these measures to be prudent. This Order has been issued to all licensees who currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements which emerged from the NRC's ongoing comprehensive review. The

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Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1¹ of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 1 to this Order in response to previously issued advisories, the October 2002 Order, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions

¹ Attachment 1 contains SAFEGUARDS INFORMATION and will not be released to the public.

must be supplemented further because the current threat environment continues to persist. Therefore, it is appropriate to require certain additional security measures and these measures must be embodied in an Order, consistent with the established regulatory framework.

In order to provide assurance that PG&E is implementing prudent measures to achieve a consistent level of protection to address the current threat environment, PG&E's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in light of the common defense and security matters described above, the public health, safety, and interest require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 72, and 73, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT YOUR GENERAL LICENSE IS MODIFIED AS FOLLOWS:

- A. PG&E shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in the PG&E's security plan. PG&E shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation **no later than October 31, 2005**, with the exception of the additional security measures B.4, which shall be implemented **no later than May 2, 2006**, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.
- B. 1. PG&E shall, within **twenty (20) days** of the date of this Order, notify the Commission: (1) if it is unable to comply with any of the requirements described in

Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause PG&E to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide PG&E's justification for seeking relief from or variation of any specific requirement.

2. If PG&E considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, PG&E must notify the Commission, within **twenty (20) days** of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirements in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, PG&E must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required under Condition B.1.

C. 1. PG&E shall, within **twenty (20) days** of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 1.

2. PG&E shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.186, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

PG&E's response to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by PG&E of good cause.

IV

In accordance with 10 CFR 2.202, PG&E must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region IV at 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011-4005; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for a hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to

301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the PG&E requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by PG&E or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), PG&E may, in addition to demanding a hearing at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations or error.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Margaret V. Federline, Acting Director
Office of Nuclear Material Safety
and Safeguards

Dated this 5th day of May 2005.