UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
GENERAL COUNSEL

October 11, 2005

Cathy A. Catterson, Clerk
United States Court of Appeals for
the Ninth Circuit
95 Seventh Street
San Francisco, California 94103-1526

RE: *San Luis Obispo Mothers for Peace, et al. v. U.S. Nuclear Regulatory Commission*, No. 03-74628

Dear Ms. Catterson:

Pursuant to FRAP 28(j), the Respondents file the following information:

In their brief, the Petitioners note that, as of the time of its filing, the NRC had not issued a security order to Pacific Gas & Electric (PG&E) with regard to the Independent Spent Fuel Storage Installation (ISFSI) that is at issue in this case. *See* Petitioners' Brief at 27-28, n. 13. The NRC issued a security order modifying the recently-issued license held by PG&E for the ISFSI on May 5, 2005. *See* 70 Fed. Reg. 25121 (May 12, 2005). A copy of the Federal Register Notice is enclosed.

Sincerely,

Charles E. Mullins
Senior Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission

Enclosure: As stated

cc: Service List

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.

Dated this 5th day of May 2005.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–2342 Filed 5–11–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–26; License No. SNM–2511; EA–05–088]

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 interim safeguards and security compensatory measures.

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 or the Licensee) holds a site-specific license issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954 and 10 CFR Part 72. This Order is being issued to PG&E who has identified near term plans to store spent fuel in an ISFSI under the site specific license provisions of 10 CFR Part 72. The Commission regulations at 10 CFR 72.184(b) require the licensee to maintain safeguards contingency plan procedures in accordance with 10 CFR Part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR Part 73.

II. On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., 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. The 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 plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory measures are required to be implemented by the Licensee as prudent, interim measures 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 1[1] of this Order, on PG&E who has indicated near term plans to store spent fuel in an ISFSI under their site-specific license issued under the provisions of 10 CFR Part 72. These interim 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 some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at PG&E's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

In order to provide assurance that the licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. PG&E's License No. SNM–2511 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, I find 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 72 and 73, *it is hereby ordered,* effective immediately, that the license identified in this order 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 their security plan. PG&E shall immediately start implementation of the requirements in Attachment 1 to the Order and shall

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

complete implementation before October 31, 2005, 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 its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide licensee'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 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 requirement in question or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the 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 in Condition B.1.

C.1. PG&E shall, within twenty (20) days of the date 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, 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 the Licensee 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 or request a hearing 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 potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for 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 the 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 PG&E requests a hearing, that person shall set forth with particularity the manner in which his 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 the Licensee 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 ground 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.

Dated this 5th day of May 2005.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5-2344 Filed 5-11-05; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-387 and 50-388]

Susquehanna Steam Electric Station, Units 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-14 and NPF-22, issued to PPL Susquehanna, LLC (PPL, the licensee), for operation of the Susquehanna Steam Electric Station, Units 1 and 2, located in Berwick, Pennsylvania.

The proposed amendment would revise the Technical Specification (TS) 3.8.4, "DC Sources—Operating," to address new required actions for the condition in which a 125 volt direct current (VDC) charger is taken out of service for the purposes of a special inspection and related activities. The proposed changes would be in effect