



**Pacific Gas and
Electric Company®**

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January 19, 2006

PG&E Letter DCL-06-007

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

Docket No. 50-275, OL-DPR-80
Docket No. 50-323, OL-DPR-82
Diablo Canyon Units 1 and 2
License Amendment Request 06-03

Application for License Amendments to Delete Antitrust License Conditions.

Dear Commissions and Staff:

In accordance with 10 CFR 50.90, enclosed is an application for amendment to Facility Operating License Nos. DPR-80 and DPR-82 for Units 1 and 2 of the Diablo Canyon Power Plant (DCPP), respectively. The enclosed License Amendment Request (LAR) proposes to delete Appendix C, "Antitrust Conditions," from the facility operating licenses.

The reasoning of a Commission decision in 2003 suggests that the NRC has no legal authority to continue to impose the DCPP antitrust conditions. Although that decision has been vacated as moot, the policy and analysis therein remain relevant. Furthermore, in light of changes in the regulation of the electric industry since the antitrust conditions were first adopted, the conditions are no longer necessary to serve the original intended purpose.

Enclosure 1 contains a description of the proposed change, the supporting analyses, and the no significant hazards consideration determination. Enclosure 2 contains the marked-up facility operating license pages.

Pacific Gas and Electric Company (PG&E) has determined that this LAR does not involve a significant hazards consideration as determined per 10 CFR 50.92. Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of this amendment. The change proposed in this LAR is not required to address an immediate safety concern. Approval is requested by January 27, 2007. PG&E requests the license amendment be made effective upon NRC issuance, to be implemented within 90 days from the date of issuance.

If you have any questions or require additional information, please contact Stan Ketelsen at (805) 545-4720. Service upon PG&E of comments, hearing requests, or other correspondence or pleadings should be made to the undersigned, and to Richard F. Locke, Esq., Pacific Gas and Electric Company, 77 Beale Street, B30A, San Francisco, California 94105; and to David A. Repka, Esq., Winston & Strawn LLP, 1700 K Street, N.W., Washington, D.C. 20006.

Sincerely,



John S. Keenan
Senior Vice President – Generation and Chief Nuclear Officer

jer1/3664

Enclosures

cc: Edgar Bailey, DHS
Terry W. Jackson
Bruce S. Mallett
Diablo Distribution

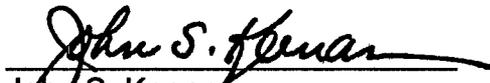
cc/enc: Alan B. Wang

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of PACIFIC GAS AND ELECTRIC COMPANY)	Docket No. 50-275 Facility Operating License No. DPR-80
Diablo Canyon Power Plant Units 1 and 2)	Docket No. 50-323 Facility Operating License No. DPR-82

AFFIDAVIT

John S. Keenan, of lawful age, first being duly sworn upon oath says that he is Senior Vice President - Generation and Chief Nuclear Officer of Pacific Gas and Electric Company; that he has executed License Amendment Request 06-03 on behalf of said company with full power and authority to do so; that he is familiar with the content thereof; and that the facts stated therein are true and correct to the best of his knowledge, information, and belief.

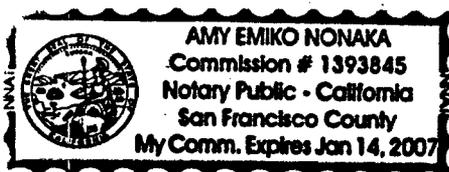


 John S. Keenan
 Senior Vice President - Generation and Chief Nuclear Officer

Subscribed and sworn to before me on this 19th day of January, 2006, by John S. Keenan, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.



 Notary
 State of California
 County of San Francisco



EVALUATION

1.0 DESCRIPTION

This letter is a request to amend Facility Operating Licenses DPR-80 and DPR-82 for Units 1 and 2 of the Diablo Canyon Power Plant (DCPP), respectively.

This License Amendment Request (LAR) proposes to delete Appendix C, "Antitrust Conditions," from the facility operating licenses.

2.0 PROPOSED CHANGE

The proposed change would delete Section 2.F, "Antitrust," and Appendix C, "Antitrust Conditions," from the facility operating licenses.

Enclosure 2 contains the marked-up facility operating license pages.

3.0 ANALYSIS

3.1 Introduction

The Facility Operating Licenses for DCPP, Units 1 and 2, Nos. DPR-80 and DPR-82, presently include certain antitrust license conditions, which are set forth in Appendix C to the licenses. The antitrust license conditions impose what are known as the "Stanislaus Commitments," which, as is discussed further below, derived from the licensing process for the proposed, but never completed, Stanislaus Nuclear Plant. Pacific Gas and Electric Company (PG&E) in this application requests amendments to the DCPP facility operating licenses to delete these antitrust license conditions. As reflected in a 2003 Commission decision (which subsequently became moot), it appears to PG&E that there is no legal authority in the Atomic Energy Act of 1954, as amended (AEA or Act), or in the Nuclear Regulatory Commission's (NRC) regulations, for the NRC to continue to impose these conditions absent PG&E's consent. Moreover, in light of changes in the electric industry, NRC imposition of the conditions and the prospect of NRC enforcement of the conditions are no longer necessary to serve the original intended purpose.

3.2 Background on the DCPP Antitrust Conditions

Both DCPP units were (and remain) licensed to operate under Section 104.b of the AEA. The Section 104 designation (or class of license) resulted from the fact that the DCPP construction permits were issued on April 23, 1968 (Unit 1), and December 9, 1970 (Unit 2), that is, prior to the December 1970 amendments to the AEA. Section 104.b licenses issued prior to enactment of the 1970

amendments were generally exempt from antitrust review under Section 105 of the AEA and, therefore, generally did not include antitrust license conditions.

The 1970 amendments to the AEA resulted from Public Law 91-560, enacted on December 19, 1970. Congress at that time specifically amended the licensing provisions of Section 102 of the Act and recast the antitrust review provisions of Section 105.c. The AEA, as amended, requires that licenses for commercial power reactors issued after the date of the amendment be issued under Section 103. See AEA § 102.a; 42 United States Code (U.S.C.) § 2132(a). Further, the AEA, as amended, requires the NRC to conduct antitrust reviews of applications for construction permits and operating licenses issued under Section 103. See AEA § 105.c(2); 42 U.S.C. § 2135 (c)(2).¹ Plants with Section 104.b construction permits as of December 19, 1970, such as DCP, were "grandfathered" under the 1970 amendments from antitrust review. See AEA § 102.b; 42 U.S.C. § 2132(b).² That is, the operating license applications for Section 104.b construction permit holders were not subject to antitrust review.

Notwithstanding the Section 104.b status of the DCP licenses, the DCP operating licenses presently include the Stanislaus Commitments as antitrust license conditions in Appendix C. The Stanislaus Commitments were added to the DCP construction permits by the NRC, with the consent of PG&E, by an amendment dated December 6, 1978.³ (A copy of the NRC's amendment is provided as Exhibit 1 hereto.) These license conditions were carried forward into the DCP operating licenses when those licenses were issued in November 1984 and August 1985. The Stanislaus Commitments derived from the Section 105 pre-licensing antitrust review of PG&E's proposed (and later canceled) Stanislaus Nuclear Project, not from antitrust review of either the DCP construction permit or operating license applications.

¹ Prior to the 1970 amendments, antitrust reviews were triggered only by a Commission finding of "practical value" for a class of licenses under Section 102 of the Act. Had a practical value finding been made for commercial reactors, the Commission would have begun issuing Section 103 licenses to facilities within the class and then only after a pre-licensing antitrust review. The 1970 amendments deleted the Section 102 language which had provided for the "practical value finding." The amendments substituted the current language which states, in effect, that licenses issued after the date of enactment (December 19, 1970) shall be issued under Section 103.

² Under Section 105.c(3), Section 104.b licenses could have been subject to a Section 105 antitrust review only if they were "reverse-grandfathered." This could have occurred if any person had intervened or petitioned to intervene in the construction permit proceeding to address "antitrust considerations." After the 1970 amendments, upon a timely written request to the Commission, such a person could have obtained a Section 105 antitrust review in connection with the operating license for the "reverse-grandfathered" plant. It does not appear from a review of the records that DCP fell into this category of Section 104.b licensees that were subjected to an operating license antitrust review.

³ See Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Issuance of Amendment to Construction Permits, 43 Federal Register (Fed. Reg.) 59,934 (Dec. 22, 1978).

The Stanislaus Commitments were originally made by PG&E to the United States Department of Justice (DOJ) in connection with DOJ's pre-licensing antitrust review of the Stanislaus project. The commitments were made in a letter from PG&E to DOJ of April 30, 1976. The commitments provided DOJ with the basis to recommend to the Commission that no antitrust hearing would be necessary in connection with a construction permit application for the Stanislaus project. DOJ's recommendation was stated in an advice letter to the NRC dated May 5, 1976. On May 17, 1976, the NRC issued a notice of receipt of the DOJ advice letter.⁴ The NRC notice includes the full text of PG&E's commitment letter to DOJ, the commitments themselves, and DOJ's advice letter to the Commission. (A copy of the notice is provided as Exhibit 2 hereto.)

In connection with the Stanislaus Commitments, and as reflected in the letters included in the Commission's 1976 notice, PG&E also agreed that:

"In the event that PG&E's application for a construction permit for the Stanislaus Nuclear Project Unit 1 is withdrawn, or that a construction permit for such unit is not issued by the Nuclear Regulatory Commission prior to July 1, 1978, PG&E is willing to have its license(s) for Diablo Canyon Nuclear Power Plant, Units 1 and 2, amended to incorporate the commitments."⁵

No construction permit for the Stanislaus project was ever issued.⁶ However, long before that project was terminated, and consistent with the July 1, 1978, deadline set in the commitment above, on September 15, 1978, the NRC, apparently on its own initiative, sent a letter (a copy is provided as Exhibit 3 hereto) to PG&E advising as follows:

"To date a construction permit for the Stanislaus Nuclear Project Unit 1 has not been issued. Accordingly, in keeping with the above quoted

⁴ Pacific Gas and Electric Co.; Receipt of Attorney General's Advice and Time for Filing Petitions to Intervene on Antitrust Matters, 41 Fed. Reg. 20,225 (May 17, 1976).

⁵ 41 Fed. Reg. at 20,226, col. 2.

⁶ With respect to the application for the Stanislaus Nuclear Project, several interested parties, including Northern California Power Agency (NCPA), disagreed with the DOJ recommendation that no NRC antitrust hearing was necessary and, accordingly, requested a hearing. A licensing board was appointed to preside. The licensing board granted the petitions to intervene and requests for hearing of NCPA and others. *Pac. Gas & Elec. Co. (Stanislaus Nuclear Project, Unit 1)*, LBP-77-26, 5 NRC 1017 (1977). Litigation was actively pursued for several years thereafter. The licensing proceeding was eventually terminated in 1983, after PG&E's decision not to pursue the project. See *Pac. Gas & Elec. Co. (Stanislaus Nuclear Project, Unit 1)*, LBP-83-2, 17 NRC 45 (1983) (granting PG&E's motion to withdraw its construction permit application without prejudice). The agreement in 1976 to impose the conditions via the DCP license pending the licensing of Stanislaus appears to have simply been a vehicle at the time to expedite imposing the commitments by license condition (that is, pending completion of Stanislaus licensing).

*Company commitment, this is to advise you that it is our present intention to amend Construction Permits CPPR-39 and CPPR-69 issued to the Company on April 23, 1968, and December 9, 1970, respectively, for Diablo Canyon Nuclear Plant, Units 1 and 2 to incorporate as conditions the Statement of Commitments appended to the Company's letter of April 30, 1976. We expect these amendments to be issued pursuant to the Commission's regulations sometime in October.*⁷

PG&E replied on September 19, 1978, stating that it "has no objection to the amendment of the Construction Permits as proposed in your letter."⁸ (A copy of PG&E's letter is provided as Exhibit 4 hereto.) The construction permit amendment discussed above (Exhibit 1) ensued shortly thereafter. (Exhibit 5 hereto is a copy of the notice of the amendment.) Subsequently, when the NRC issued the Section 104.b operating licenses for DCPD Units 1 and 2, the agency simply incorporated the antitrust license conditions as they currently appear.

3.3 Authority to Impose the DCPD Antitrust Conditions

The Commission discussed the history and legal status of the DCPD antitrust license conditions in *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-2, 57 NRC 19, 30-36 (2003), *vacated as moot*, *Northern California Power Agency v. NRC*, 393 F.3d 223 (D.C. Cir. 2004). The context in that case was different than the present context; at the time, PG&E was considering a plan of reorganization for the company to emerge from bankruptcy that involved disaggregation of PG&E's various businesses and that required transfers of the NRC operating licenses for DCPD. The specific issue before the Commission was the treatment of the antitrust license conditions in the transferred licenses. The Commission in CLI-03-2 concluded that there would be "no legal underpinning for transferring the Stanislaus-triggered DCPD antitrust condition to new entities to be created under the proposed PG&E reorganization plan" (*id.* at 34) and declined to "reenact the DCPD antitrust conditions as part of the [proposed] DCPD license transfer" (*id.* at 35). The issue in that decision subsequently became moot, because PG&E reached a settlement agreement in its bankruptcy case, accepting and ultimately implementing an alternative plan of reorganization that did not involve disaggregation or NRC license transfers and, therefore, the decision was vacated by the Court of Appeals.⁹ Nonetheless, the legal analysis and policy

⁷ Letter, Jerome Saltzman, Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation, to John C. Morrissey, Vice President and General Counsel, PG&E, dated September 15, 1978.

⁸ Letter, John C. Morrissey, Vice President and General Counsel, PG&E, to Jerome Saltzman, Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation, dated September 19, 1978.

⁹ The NRC approved the DCPD license transfers on May 27, 2003. However, following settlement of the bankruptcy case and implementation of the alternative reorganization plan,

considerations in that Commission decision are useful and support the current LAR.

Presently, PG&E remains the licensee for the DCPD units. The licenses remain Section 104.b licenses, as discussed above. As the Commission observed in CLI-03-2:

"The AEA gives the NRC no separate authority, independent of the Stanislaus proceeding, to impose antitrust license conditions on PG&E with respect to DCPD. This is because DCPD was licensed pursuant to section 104 of the AEA — a section excluding license applicants for "research and development" plants, such as DCPD, from antitrust review (except under circumstances not present here). The Commission's initial authority to impose antitrust conditions on PG&E came from the now-defunct Stanislaus proceeding (a license review based on an application submitted under section 103). Now that it is clear that the section 103 Stanislaus proceeding will not be reopened, we lack an antitrust "hold" on PG&E."

Id. at 34 (footnote omitted).¹⁰ This assessment confirms that DCPD was exempt from antitrust review during its licensing and strongly suggests that the Commission now lacks the authority to continue to impose these conditions on PG&E, at least absent PG&E's consent to maintain those conditions in the licenses. Quite simply, the Commission lacks an antitrust hold on PG&E. This conclusion applies regardless of the fact that the DCPD licenses are not now being transferred.

The Commission's sole antitrust authority derives from Section 105 of the AEA. In CLI-03-2, the Commission noted its "obligation to respect our congressional grant of authority," citing precedent for the proposition that an agency's jurisdiction may not extend beyond the boundaries defined by Congress. *Id.* at 34. The Commission also, previously, thoroughly analyzed its Section 105

on April 12, 2004, PG&E notified the NRC that it would not implement the license transfers and that the transfer consent would, by its terms, become null and void on May 31, 2004. PG&E, on April 13, 2004, moved to terminate the NRC adjudicatory proceeding that gave rise to CLI-03-02. The Commission granted that motion in CLI-04-18, dated July 7, 2004. The Commission decision in CLI-03-02 was the subject of a petition for review in the United States Court of Appeals for the District of Columbia Circuit, Docket No. 03-1038. That petition for review was dismissed as moot by an unpublished order of April 16, 2003. The Court of Appeals subsequently vacated CLI-03-02 in accordance with *A.L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324 (1961)), because the Commission decision became moot pending judicial review.

¹⁰ See also *Florida Power & Light Co.* (St. Lucie Plant, Unit 1; Turkey Point Plant, Units 3 and 4), ALAB-428, 6 NRC 221, 224 (1977); *Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Unit 1), ALAB-323, 3 NRC 331 (1976) (reactors licensed as research and development facilities prior to the 1970 antitrust amendments are excluded from antitrust review).

EXHIBIT 1



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20535

DEC 06 1978

Docket Nos. 50-275
and 50-323

Mr. John C. Morrissey
Vice President & General Counsel
Pacific Gas & Electric Company
77 Beale Street
San Francisco, California 94106

Dear Mr. Morrissey:

SUBJECT: AMENDMENT NOS. 1 AND 4 TO CPPR-39 AND CPPR-69
(Diablo Canyon Nuclear Power Plant)

In your letter to the U. S. Department of Justice (DOJ) dated April 30, 1976, you stated that, in the event a construction permit for the Stanislaus Nuclear Project was not issued by the NRC prior to July 1, 1978, PG&E was willing to have its license(s) for the Diablo Canyon Nuclear Power Plants, Units 1 and 2, amended to incorporate certain antitrust commitments. This willingness was contingent upon the DOJ advising the NRC that no antitrust hearing was necessary in connection with licensing the Stanislaus Project. The DOJ provided such advice in a letter dated May 5, 1976.

Since no construction permit for the Stanislaus Project had yet been issued, the NRC staff advised PG&E, in a letter dated September 15, 1978, of its intention to include the antitrust commitments as conditions in the Diablo Canyon Construction Permits. PG&E responded, in a letter dated September 19, 1978, stating that it had no objection to such an amendment.

Accordingly, the Nuclear Regulatory Commission has issued Amendment Nos. 1 and 4, respectively, to the Provisional Construction Permit Nos. CPPR-39 and CPPR-69 to provide for the addition of certain antitrust conditions to the Construction Permits. We have determined that the amendments are administrative actions which do not alter environmental impacts described in the Final Environmental Statement or create new impacts not previously addressed in the statement. Therefore, no environmental impact appraisal or negative declaration need be prepared.

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Mr. John C. Morrissey

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DEC 06 1973

Copies of Amendment No. 1 to CPPR-39 and Amendment No. 4 to CPPR-69 are enclosed. Also enclosed is a copy of a related notice which has been forwarded to the Office of the FEDERAL REGISTER for publication.

Sincerely,



Roger S. Boyd, Director
Division of Project Management
Office of Nuclear Reactor Regulation

Enclosures:

1. Amendment Nos. 1 and 4 to
CPPR-39 and CPPR-69
2. FEDERAL REGISTER Notice
3. Evaluation Supporting Amendments

ccs w/enclosures: See next page

Mr. John C. Morrissey

DEC 05 1978

cc: California Dept. of Health
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

PACIFIC GAS AND ELECTRIC COMPANY

(DIABLO CANYON NUCLEAR POWER PLANT, UNIT 1)

DOCKET NO. 50-275

AMENDMENT TO PROVISIONAL CONSTRUCTION PERMIT

Amendment No. 1
Construction Permit No. CPPR-39

- A. The Nuclear Regulatory Commission (NRC) having found that:
1. The amendment to Construction Permit No. CPPR-39, for the purpose of including in the Construction Permit the antitrust commitments stated in PG&E's letter of April 30, 1976 to the Department of Justice, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations set forth in 10 CFR Chapter 1;
 2. The issuance of this amendment is in accordance with 10 CFR Part 51;
 3. 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
 4. Prior public notice of this amendment is not required since the amendment does not involve a significant hazards consideration.
- B. Accordingly, Construction Permit No. CPPR-39 is hereby amended by adding a new paragraph 2.D. which reads as follows:
- 2.D. This Construction Permit is subject to the following antitrust conditions:
- (1) Definitions
 - (1)(a) "Applicant" means Pacific Gas and Electric Company, any successor corporation, or any assignee of this license.
 - (1)(b) "Service Area" means that area within the exterior geographic boundaries of the several areas electrically served at retail, now or in the future, by Applicant, and those areas in Northern and Central California adjacent thereto.
 - (1)(c) "Neighboring Entity" means a financially responsible private or public entity or lawful association thereof owning, contractually controlling or operating, or in good faith proposing to own, to contractually control or to operate facilities for the generation, or transmission at 60 kilovolts or above, of electric power.

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which meets each of the following criteria: (1) its existing or proposed facilities are or will be technically feasible of direct interconnection with those of Applicant; (2) all or part of its existing or proposed facilities are or will be located within the Service Area; (3) its primary purpose for owning, contractually controlling, or operating generation facilities is to sell in the Service Area the power generated; and (4) it is, or upon commencement of operations will be, a public utility regulated under applicable state law or the Federal Power Act, or exempted from regulation by virtue of the fact that it is a federal, state, municipal or other public entity.

- (1)(d) "Neighboring Distribution System" means a financially responsible private or public entity which engages, or in good faith proposes to engage, in the distribution of electric power at retail and which meets each of the criteria numbered (1), (2), and (4) in subparagraph (c) above.
- (1)(e) "Costs" means all capital expenditures, administrative, general, operation and maintenance expenses, taxes, depreciation and costs of capital including a fair and reasonable return on Applicant's investment, which are properly allocable to the particular service or transaction as determined by the regulatory authority having jurisdiction over the particular service or transaction.
- (1)(f) "Good Utility Practice" means those practices, methods and equipment, including levels of reserves and provisions for contingencies, as modified from time to time, that are commonly used in the Service Area to operate, reliably and safely, electric power facilities to serve a utility's own customers dependably and economically, with due regard for the conservation of natural resources and the protection of the environment of the Service Area, provided such practices, methods and equipment are not unreasonably restrictive.
- (1)(g) "Firm Power" means that power which is intended to be available to the customer at all times and for which, in order to achieve that degree of availability, adequate installed and spinning reserves and sufficient transmission to move such power and reserves to the load center are provided.

(2) Interconnection

Interconnection agreements negotiated pursuant to this license conditions shall be subject to the following paragraphs (a) through (g):

- (2)(a) Applicant shall not unreasonably refuse to interconnect and operate normally in parallel with any Neighboring Entity, or to interconnect with any Neighboring Distribution System. Such interconnections shall be consistent with Good Utility Practice.
- (2)(b) Interconnection shall be at one point unless otherwise agreed by the parties to an interconnection agreement. Interconnection shall not be limited to lower voltages when higher voltages are preferable from the standpoint of Good Utility Practice and are available from Applicant. Applicant may include in any interconnection agreement provisions that a Neighboring Entity or Neighboring Distribution System maintain the power factor associated with its load at a comparable level to that maintained by Applicant in the same geographic area and use comparable control methods to achieve this objective.
- (2)(c) Interconnection agreements shall not provide for more extensive facilities or control equipment at the point of interconnection than are required by Good Utility Practice unless the parties mutually agree that particular circumstances warrant special facilities or equipment.
- (2)(d) The Costs of additional facilities required to provide service at the point of interconnection shall be allocated on the basis of the projected economic benefits for each party from the interconnection after consideration of the various transactions for which the interconnection facilities are to be used, unless otherwise agreed by the parties.
- (2)(e) An interconnection agreement shall not impose limitations upon the use or resale of capacity and energy sold or exchanged under the agreement except as may be required by Good Utility Practice.

(2)(f) An interconnection agreement shall not prohibit any party from entering into other interconnection agreements, but may provide that (1) Applicant receive adequate notice of any additional interconnection arrangement with others, (2) the parties jointly consider and agree upon additional contractual provisions, measures, or equipment, which may be required by Good Utility Practice as a result of the new arrangement, and (3) Applicant may terminate the interconnection agreement if the reliability of its system or service to its customers would be adversely affected by such additional interconnection arrangement.

(2)(g) Applicant may include provisions in an interconnection agreement requiring a Neighboring Entity or Neighboring Distribution System to develop with Applicant a coordinated program for underfrequency load shedding and tie separation. Under such programs the parties shall equitably share the interruption or curtailment of customer load.

(3) Reserve Coordination

Interconnection agreements negotiated pursuant to these license conditions shall be subject to the following paragraphs (a) through (e) regarding reserve coordination:

(3)(a) Applicant and any Neighboring Entity with which it interconnects shall jointly establish and separately maintain the minimum reserves to be installed or otherwise provided under an interconnection agreement. Unless otherwise mutually agreed upon, reserves shall be expressed as a percentage of estimated firm peak load and the minimum reserve percentage shall be at least equal to Applicant's planned reserve percentage without the interconnection. A Neighboring Entity shall not be required to provide reserves for that portion of its load which it meets through purchases of Firm Power. While different reserve percentages may be specified in various interconnection agreements, no party to an interconnection agreement shall be required to provide a greater reserve percentage than Applicant's planned reserve percentage, except that if the total reserves Applicant must provide to maintain system reliability equal to that existing without a given interconnection arrangement are increased by reason of the new arrangement, then the other party or parties may be required to install or provide additional reserves in the full amount of such increase.

- (3)(b) Applicant and Neighboring Entities with which it interconnects shall jointly establish and separately maintain the minimum spinning reserves to be provided under an interconnection agreement. Unless otherwise mutually agreed upon, spinning reserves shall be expressed as a percentage of peak load and the minimum spinning reserve percentage shall be at least equal to Applicant's spinning reserve percentage without the interconnection. A Neighboring Entity shall not be required to provide spinning reserves for that portion of its load which it meets through purchases of Firm Power. While different spinning reserve percentages may be specified in various interconnection agreements, no party to an interconnection agreement shall be required to provide a greater spinning reserve percentage than that which Applicant provides, except that if the total spinning reserves Applicant must provide to maintain system reliability equal to that existing without a given interconnection arrangement are increased by reason of the new arrangement, then the other party or parties may be required to provide additional spinning reserves in the full amount of such increase.
- (3)(c) Applicant shall offer to sell, on reasonable terms and conditions, including a specified period, capacity to a Neighboring Entity for use as reserves if such capacity is neither needed for Applicant's own system nor contractually committed to others and if the Neighboring Entity will offer to sell, on reasonable terms and conditions, its own such capacity to Applicant.
- (3)(d) Applicant may include in any interconnection agreement provisions requiring a Neighboring Entity to compensate Applicant for any reserves Applicant makes available as the result of the failure of such Neighboring Entity to maintain all or any part of the reserves it has agreed to provide in said interconnection agreement.
- (3)(e) Applicant shall offer to coordinate maintenance scheduling with Neighboring Entities interconnected with Applicant and to exchange or sell maintenance capacity and energy when such capacity and energy are available and it is reasonable to do so in accordance with Good Utility Practice.

(4) Emergency Power

Applicant shall sell emergency power to any interconnected Neighboring Entity which maintains the level of minimum reserve agreed upon with Applicant, agrees to use due diligence to correct the emergency, and agrees to sell emergency power to Applicant. Applicant shall engage in such transactions if and when capacity and energy for such transactions are available from other sources, but only to the extent that it can do so without impairing service to Applicant's retail or wholesale power customers or impairing its ability to discharge prior commitments.

(5) Other Power Exchanges

Should Applicant have on file, or hereafter file, with the Federal Power Commission, agreements or rate schedules providing for the sale and purchase of short-term capacity and energy, limited-term capacity and energy, long-term capacity and energy or economy energy, Applicant shall, on a fair and equitable basis, enter into like or similar agreements with any Neighboring Entity, when such forms of capacity and energy are available, recognizing that past experience, different economic conditions and Good Utility Practice may justify different rates, terms and conditions. Applicant shall respond promptly to inquiries of Neighboring Entities concerning the availability of such forms of capacity and energy from its system.

(6) Wholesale Power Sales

Upon request, Applicant shall offer to sell firm, full or partial requirements power for a specified period to an interconnected Neighboring Entity or Neighboring Distribution System under a contract with reasonable terms and conditions including provisions which permit Applicant to recover its costs. Such wholesale power sales must be consistent with Good Utility Practice. Applicant shall not be required to sell Firm Power at wholesale if it does not have available sufficient generation or transmission to supply the requested service or if the sale would impair service to its retail customers or its ability to discharge prior commitments.

(7) Transmission Services

(7)(a) Applicant shall transmit power pursuant to interconnection agreements, with provisions which are appropriate to the requested transaction and which are consistent with these license conditions. Except as listed below, such service shall be provided (1) between two or among more than two Neighboring Entities or sections of a Neighboring Entity's system which are geographically separated, with which, now or in the future, Applicant is interconnected, (2) between a Neighboring Entity with which, now or in the future, it is interconnected and one or more Neighboring Distribution Systems with which, now or in the future, it is connected and (3) between any Neighboring Entity or Neighboring Distribution System(s) and the Applicant's point of direct interconnection with any other electric system engaging in bulk power supply outside the area then electrically served at retail by Applicant. Applicant shall not be required by this Section to transmit power (1) from a hydroelectric facility the ownership of which has been involuntarily transferred from Applicant or (2) from a Neighboring Entity for sale to any electric system located outside the exterior geographic boundaries of the several areas then electrically served at retail by Applicant if any other Neighboring Entity, Neighboring Distribution System, or Applicant wishes to purchase such power at an equivalent price for use within said areas. Any Neighboring Entity or Neighboring Distribution System(s) requesting transmission service shall give reasonable advance notice to Applicant of its schedule and requirements. Applicant shall not be required by this Section to provide transmission service if the proposed transaction would be inconsistent with Good Utility Practice or if the necessary transmission facilities are committed at the time of the request to be fully-loaded during the period for which service is requested or have been previously reserved by Applicant for emergency purposes, loop flow, or other uses consistent with Good Utility Practice; provided, that with respect to the Pacific Northwest-Southwest Intertie, Applicant shall not be required by this Section to provide the requested transmission service if it would impair Applicant's own use of this facility consistent with the Bonneville Project Act, (50 Stat. 731, August 20, 1937), Pacific Northwest Power Marketing Act (78 Stat. 756, August 31, 1964) and the Public Works Appropriations Act, 1965 (78 Stat. 682, August 20, 1964).

- (7)(b) Applicant shall include in its planning and construction programs such increases in its transmission capacity or such additional transmission facilities as may be required for the transactions referred to in paragraph (a) of this Section, provided any Neighboring Entity or Neighboring Distribution System gives Applicant sufficient advance notice as may be necessary to accommodate its requirements from a regulatory and technical standpoint and provided further that the entity requesting transmission services compensates Applicant for the Costs incurred as a result of the request. Where transmission capacity will be increased or additional transmission facilities will be installed to provide or maintain the requested service to a Neighboring Entity or Neighboring Distribution System, Applicant may require, in addition to a rate for use of other facilities, that payment of Costs associated with the increased capacity or additional facilities shall be made by the parties in accordance with and in advance of their respective use of the new capacity or facilities.
- (7)(c) Nothing herein shall require Applicant (1) to construct additional transmission facilities if the construction of such facilities is inconsistent with Good Utility Practice or if such facilities could be constructed without duplicating any portion of Applicant's transmission system, (2) to provide transmission service to a retail customer or (3) to construct retail by Applicant.
- (7)(d) Rate schedules and agreements for transmission services provided under this Section shall be filed by Applicant with the regulatory agency having jurisdiction over such rates and agreements.
- (8) Access to Nuclear Generation
- (8)(a) If a Neighboring Entity or Neighboring Distribution System makes a timely request to Applicant for an ownership participation in the Stanislaus Nuclear Project, Unit No. 1 or any future nuclear generating unit for which Applicant applies for a construction permit during the 20-year period immediately following the date of the construction permit for Stanislaus Unit No. 1, Applicant shall offer the requesting party an opportunity to participate in such units, up to an amount reasonable in light

of the relative loads of the participants. With respect to Stanislaus Unit No. 1 or any future nuclear generation unit, a request for participation shall be deemed timely if received within 90 days after the mailing by Applicant to Neighboring Entities and Neighboring Distribution Systems of an announcement of its intent to construct the unit and a request for an expression of interest in participation. Participation shall be on a basis which compensates Applicant for a reasonable share of all its Costs, incurred and to be incurred, in planning, selecting a site for, constructing and operating the facility.

- (8)(b) Any Neighboring Entity or any Neighboring Distribution System making a timely request for participation in a nuclear unit must enter into a legally binding and enforceable agreement to assume financial responsibility for its share of the Costs associated with participation in the unit and associated transmission facilities. Unless otherwise agreed by Applicant, a Neighboring Entity or Neighboring Distribution System desiring participation must have signed such an agreement within one year after Applicant has provided to that Neighboring Entity or Neighboring Distribution System pertinent financial and technical data bearing on the feasibility of the project which are then available to Applicant. Applicant shall provide additional pertinent data as they become available during the year. The requesting party shall pay to Applicant forthwith the additional expenses incurred by Applicant in making such financial and technical data available. In any participation agreement subject to this Section, Applicant may require provisions requiring payment by each participant of its share of all costs incurred up to the date of the agreement, requiring each participant thereafter to pay its pro rata share of funds as they are expended for the planning and construction of units and related facilities, and requiring each participant to make such financial arrangements as may be necessary to ensure the ability of the participant to continue to make such payments.

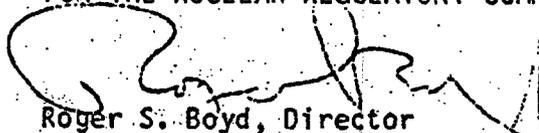
(9) Implementation

- (9)(a) All rates, charges, terms and practices are and shall be subject to the acceptance and approval of any regulatory agencies or courts having jurisdiction over them.

- (9)(b) Nothing contained herein shall enlarge any rights of a Neighboring Entity or Neighboring Distribution System to provide services to retail customers of Applicant beyond the rights they have under state or federal law.
- (9)(c) Nothing in these license conditions shall be construed as a waiver by Applicant of its rights to contest the application of any commitment herein to a particular factual situation.
- (9)(d) These license conditions do not preclude Applicant from applying to any appropriate forum to seek such changes in these conditions as may at the time be appropriate in accordance with the then-existing law and Good Utility Practice.
- (9)(e) These license conditions do not require Applicant to become a common carrier.

C. This amendment is effective as of the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION



Roger S. Boyd, Director
Division of Project Management
Office of Nuclear Reactor Regulation

Date of Issuance: DEC 06 1978



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

PACIFIC GAS AND ELECTRIC COMPANY

(DIABLO CANYON NUCLEAR POWER PLANT, UNIT 2)

DOCKET NO. 50-323

AMENDMENT TO PROVISIONAL CONSTRUCTION PERMIT

Amendment No. 4
Construction Permit No. CPPR-69

A. The Nuclear Regulatory Commission (NRC) having found that:

1. The amendment to Construction Permit No. CPPR-69, for the purpose of including in the Construction Permit the antitrust commitments stated in PG&E's letter of April 30, 1976 to the Department of Justice, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations set forth in 10 CFR Chapter 1;
2. The issuance of this amendment is in accordance with 10 CFR Part 51;
3. 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
4. Prior public notice of this amendment is not required since the amendment does not involve a significant hazards consideration.

B. Accordingly, Construction Permit No. CPPR-69 is hereby amended by adding a new paragraph 2.D. which reads as follows:

2.D. This Construction Permit is subject to the following antitrust conditions:

(1) Definitions

(1)(a) "Applicant" means Pacific Gas and Electric Company, any successor corporation, or any assignee of this license.

(1)(b) "Service Area" means that area within the exterior geographic boundaries of the several areas electrically served at retail, now or in the future, by Applicant, and those areas in Northern and Central California adjacent thereto.

(1)(c) "Neighboring Entity" means a financially responsible private or public entity or lawful association thereof owning, contractually controlling or operating, or in good faith proposing to own, to contractually control or to operate facilities for the generation, or transmission at 60 kilovolts or above, of electric power.

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which meets each of the following criteria: (1) its existing or proposed facilities are or will be technically feasible of direct interconnection with those of Applicant; (2) all or part of its existing or proposed facilities are or will be located within the Service Area; (3) its primary purpose for owning, contractually controlling, or operating generation facilities is to sell in the Service Area the power generated; and (4) it is, or upon commencement of operations will be, a public utility regulated under applicable state law or the Federal Power Act, or exempted from regulation by virtue of the fact that it is a federal, state, municipal or other public entity.

- (1)(d) "Neighboring Distribution System" means a financially responsible private or public entity which engages, or in good faith proposes to engage, in the distribution of electric power at retail and which meets each of the criteria numbered (1), (2), and (4) in subparagraph (c) above.
- (1)(e) "Costs" means all capital expenditures, administrative, general, operation and maintenance expenses, taxes, depreciation and costs of capital including a fair and reasonable return on Applicant's investment, which are properly allocable to the particular service or transaction as determined by the regulatory authority having jurisdiction over the particular service or transaction.
- (1)(f) "Good Utility Practice" means those practices, methods and equipment, including levels of reserves and provisions for contingencies, as modified from time to time, that are commonly used in the Service Area to operate, reliably and safely, electric power facilities to serve a utility's own customers dependably and economically, with due regard for the conservation of natural resources and the protection of the environment of the Service Area, provided such practices, methods and equipment are not unreasonably restrictive.
- (1)(g) "Firm Power" means that power which is intended to be available to the customer at all times and for which, in order to achieve that degree of availability, adequate installed and spinning reserves and sufficient transmission to move such power and reserves to the load center are provided.

(2) Interconnection

Interconnection agreements negotiated pursuant to these license conditions shall be subject to the following paragraphs (a) through (g):

- (2)(a) Applicant shall not unreasonably refuse to interconnect and operate normally in parallel with any Neighboring Entity, or to interconnect with any Neighboring Distribution System. Such interconnections shall be consistent with Good Utility Practice.
- (2)(b) Interconnection shall be at one point unless otherwise agreed by the parties to an interconnection agreement. Interconnection shall not be limited to lower voltages when higher voltages are preferable from the standpoint of Good Utility Practice and are available from Applicant. Applicant may include in any interconnection agreement provisions that a Neighboring Entity or Neighboring Distribution System maintain the power factor associated with its load at a comparable level to that maintained by Applicant in the same geographic area and use comparable control methods to achieve this objective.
- (2)(c) Interconnection agreements shall not provide for more extensive facilities or control equipment at the point of interconnection than are required by Good Utility Practice unless the parties mutually agree that particular circumstances warrant special facilities or equipment.
- (2)(d) The Costs of additional facilities required to provide service at the point of interconnection shall be allocated on the basis of the projected economic benefits for each party from the interconnection after consideration of the various transactions for which the interconnection facilities are to be used, unless otherwise agreed by the parties.
- (2)(e) An interconnection agreement shall not impose limitations upon the use or resale of capacity and energy sold or exchanged under the agreement except as may be required by Good Utility Practice.

(2)(f) An interconnection agreement shall not prohibit any party from entering into other interconnection agreements, but may provide that (1) Applicant receive adequate notice of any additional interconnection arrangement with others, (2) the parties jointly consider and agree upon additional contractual provisions, measures, or equipment, which may be required by Good Utility Practice as a result of the new arrangement, and (3) Applicant may terminate the interconnection agreement if the reliability of its system or service to its customers would be adversely affected by such additional interconnection arrangement.

(2)(g) Applicant may include provisions in an interconnection agreement requiring a Neighboring Entity or Neighboring Distribution System to develop with Applicant a coordinated program for underfrequency load shedding and tie separation. Under such programs the parties shall equitably share the interruption or curtailment of customer load.

(3) Reserve Coordination

Interconnection agreements negotiated pursuant to these license conditions shall be subject to the following paragraphs (a) through (e) regarding reserve coordination:

(3)(a) Applicant and any Neighboring Entity with which it interconnects shall jointly establish and separately maintain the minimum reserves to be installed or otherwise provided under an interconnection agreement. Unless otherwise mutually agreed upon, reserves shall be expressed as a percentage of estimated firm peak load and the minimum reserve percentage shall be at least equal to Applicant's planned reserve percentage without the interconnection. A Neighboring Entity shall not be required to provide reserves for that portion of its load which it meets through purchases of Firm Power. While different reserve percentages may be specified in various interconnection agreements, no party to an interconnection agreement shall be required to provide a greater reserve percentage than Applicant's planned reserve percentage, except that if the total reserves Applicant must provide to maintain system reliability equal to that existing without a given interconnection arrangement are increased by reason of the new arrangement, then the other party or parties may be required to install or provide additional reserves in the full amount of such increase.

- (3)(b) Applicant and Neighboring Entities with which it interconnects shall jointly establish and separately maintain the minimum spinning reserves to be provided under an interconnection agreement. Unless otherwise mutually agreed upon, spinning reserves shall be expressed as a percentage of peak load and the minimum spinning reserve percentage shall be at least equal to Applicant's spinning reserve percentage without the interconnection. A Neighboring Entity shall not be required to provide spinning reserves for that portion of its load which it meets through purchases of Firm Power. While different spinning reserve percentages may be specified in various interconnection agreements, no party to an interconnection agreement shall be required to provide a greater spinning reserve percentage than that which Applicant provides, except that if the total spinning reserves Applicant must provide to maintain system reliability equal to that existing without a given interconnection arrangement are increased by reason of the new arrangement, then the other party or parties may be required to provide additional spinning reserves in the full amount of such increase.
- (3)(c) Applicant shall offer to sell, on reasonable terms and conditions, including a specified period, capacity to a Neighboring Entity for use as reserves if such capacity is neither needed for Applicant's own system nor contractually committed to others and if the Neighboring Entity will offer to sell, on reasonable terms and conditions, its own such capacity to Applicant.
- (3)(d) Applicant may include in any interconnection agreement provisions requiring a Neighboring Entity to compensate Applicant for any reserves Applicant makes available as the result of the failure of such Neighboring Entity to maintain all or any part of the reserves it has agreed to provide in said interconnection agreement.
- (3)(e) Applicant shall offer to coordinate maintenance schedules with Neighboring Entities interconnected with Applicant and to exchange or sell maintenance capacity and energy when such capacity and energy are available and it is reasonable to do so in accordance with Good Utility Practice.

(4) Emergency Power

Applicant shall sell emergency power to any interconnected Neighboring Entity which maintains the level of minimum reserve agreed upon with Applicant, agrees to use due diligence to correct the emergency, and agrees to sell emergency power to Applicant. Applicant shall engage in such transactions if and when capacity and energy for such transactions are available from other sources, but only to the extent that it can do so without impairing service to Applicant's retail or wholesale power customers or impairing its ability to discharge prior commitments.

(5) Other Power Exchanges

Should Applicant have on file, or hereafter file, with the Federal Power Commission, agreements or rate schedules providing for the sale and purchase of short-term capacity and energy, limited-term capacity and energy, long-term capacity and energy or economy energy, Applicant shall, on a fair and equitable basis, enter into like or similar agreements with any Neighboring Entity, when such forms of capacity and energy are available, recognizing that past experience, different economic conditions and Good Utility Practice may justify different rates, terms and conditions. Applicant shall respond promptly to inquiries of Neighboring Entities concerning the availability of such forms of capacity and energy from its system.

(6) Wholesale Power Sales

Upon request, Applicant shall offer to sell firm, full or partial requirements power for a specified period to an interconnected Neighboring Entity or Neighboring Distribution System under a contract with reasonable terms and conditions including provisions which permit Applicant to recover its costs. Such wholesale power sales must be consistent with Good Utility Practice. Applicant shall not be required to sell Firm Power at wholesale if it does not have available sufficient generation or transmission to supply the requested service or if the sale would impair service to its retail customers or its ability to discharge prior commitments.

(7) Transmission Services

- (7)(a) Applicant shall transmit power pursuant to interconnection agreements, with provisions which are appropriate to the requested transaction and which are consistent with these license conditions. Except as listed below, such service shall be provided (1) between two or among more than two Neighboring Entities or sections of a Neighboring Entity's system which are geographically separated, with which, now or in the future, Applicant is interconnected, (2) between a Neighboring Entity with which, now or in the future, it is interconnected and one or more Neighboring Distribution Systems with which, now or in the future, it is connected and (3) between any Neighboring Entity or Neighboring Distribution System(s) and the Applicant's point of direct interconnection with any other electric system engaging in bulk power supply outside the area then electrically served at retail by Applicant. Applicant shall not be required by this Section to transmit power (1) from a hydroelectric facility the ownership of which has been involuntarily transferred from Applicant or (2) from a Neighboring Entity for sale to any electric system located outside the exterior geographic boundaries of the several areas then electrically served at retail by Applicant if any other Neighboring Entity, Neighboring Distribution System, or Applicant wishes to purchase such power at an equivalent price for use within said areas. Any Neighboring Entity or Neighboring Distribution System(s) requesting transmission service shall give reasonable advance notice to Applicant of its schedule and requirements. Applicant shall not be required by this Section to provide transmission service if the proposed transaction would be inconsistent with Good Utility Practice or if the necessary transmission facilities are committed at the time of the request to be fully-loaded during the period for which service is requested, or have been previously reserved by Applicant for emergency purposes, loop flow, or other uses consistent with Good Utility Practice; provided, that with respect to the Pacific Northwest-Southwest Intertie, Applicant shall not be required by this Section to provide the requested transmission service if it would impair Applicant's own use of this facility consistent with the Borneville Project Act, (50 Stat. 731, August 20, 1937), Pacific Northwest Power Marketing Act (78 Stat. 756, August 31, 1964) and the Public Works Appropriations Act, 1965 (78 Stat. 682, August 30, 1964).

- (7)(b) Applicant shall include in its planning and construction programs such increases in its transmission capacity or such additional transmission facilities as may be required for the transactions referred to in paragraph (a) of this Section, provided any Neighboring Entity or Neighboring Distribution System gives Applicant sufficient advance notice as may be necessary to accommodate its requirements from a regulatory and technical standpoint and provided further that the entity requesting transmission services compensates Applicant for the Costs incurred as a result of the request. Where transmission capacity will be increased or additional transmission facilities will be installed to provide or maintain the requested service to a Neighboring Entity or Neighboring Distribution System, Applicant may require, in addition to a rate for use of other facilities, that payment of Costs associated with the increased capacity or additional facilities shall be made by the parties in accordance with and in advance of their respective use of the new capacity or facilities.
- (7)(c) Nothing herein shall require Applicant (1) to construct additional transmission facilities if the construction of such facilities is inconsistent with Good Utility Practice or if such facilities could be constructed without duplicating any portion of Applicant's transmission system, (2) to provide transmission service to a retail customer or (3) to construct transmission outside the area then electrically served at retail by Applicant.
- (7)(d) Rate schedules and agreements for transmission services provided under this Section shall be filed by Applicant with the regulatory agency having jurisdiction over such rates and agreements.
- (8) Access to Nuclear Generation
- (8)(a) If a Neighboring Entity or Neighboring Distribution System makes a timely request to Applicant for an ownership participation in the Stanislaus Nuclear Project, Unit No. 1 or any future nuclear generating unit for which Applicant applies for a construction permit during the 20-year period immediately following the date of the construction permit for Stanislaus Unit No. 1, Applicant shall offer the requesting party an opportunity to participate in such units, up to an amount reasonable in light

- (9)(b) Nothing contained herein shall enlarge any rights of a Neighboring Entity or Neighboring Distribution System to provide services to retail customers of Applicant beyond the rights they have under state or federal law.
- (9)(c) Nothing in these license conditions shall be construed as a waiver by Applicant of its rights to contest the application of any commitment herein to a particular factual situation.
- (9)(d) These license conditions do not preclude Applicant from applying to any appropriate forum to seek such changes in these conditions as may at the time be appropriate in accordance with the then-existing law and Good Utility Practice.
- (9)(e) These license conditions do not require Applicant to become a common carrier.

C. This amendment is effective as of the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION


Roger S. Boyd, Director
Division of Project Management
Office of Nuclear Reactor Regulation

Date of Issuance: DEC 06 1978

UNITED STATES NUCLEAR REGULATORY COMMISSION

DOCKET NOS. 50-275 AND 50-323

PACIFIC GAS AND ELECTRIC COMPANY

(Diablo Canyon Nuclear Power Plant, Units 1 and 2)

NOTICE OF ISSUANCE OF AMENDMENT TO CONSTRUCTION PERMITS

The U. S. Nuclear Regulatory Commission (NRC) has issued Amendments 1 and 4, respectively, to Construction Permit Nos. CPPR-39 and CPPR-69 issued to the Pacific Gas and Electric Company for Diablo Canyon Nuclear Power Plant, Units 1 and 2, located in San Luis Obispo County, California.

The amendments provide for the addition of certain antitrust conditions. The Diablo Canyon Nuclear Power Plant is not subject to an antitrust review under Section 105C of the Atomic Energy Act, as amended. More recent nuclear power plants are subject to such review. However, in connection with the NRC's proceedings on the Stanislaus Nuclear Project, Pacific Gas and Electric Company agreed to include antitrust commitments as conditions in the Diablo Canyon licenses in certain circumstances which have occurred.

In a letter to the U. S. Department of Justice (DOJ), dated April 30, 1976, PG&E stated that, in the event a construction permit for the Stanislaus Nuclear Project was not issued by the NRC prior to July 1, 1978, PG&E was willing to have its license(s) for the Diablo Canyon Nuclear Power Plants, Units 1 and 2, amended to incorporate certain antitrust commitments. This willingness was contingent upon the DOJ advising the NRC that no antitrust hearing was necessary in connection with licensing the Stanislaus Project. The DOJ provided such advice in a letter dated May 5, 1976.

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Since no construction permit for the Stanislaus Project had yet been issued, the NRC staff advised PG&E, in a letter dated September 15, 1978, of its intention to include the antitrust commitments as conditions in the Diablo Canyon Construction Permits. PG&E responded, in a letter dated September 19, 1978, stating that it had no objection to such an amendment.

The amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The staff has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the amendment.

In accordance with 10 CFR 50.91, prior public notice of these amendments was not required since the amendments do not involve significant hazards considerations.

The staff has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

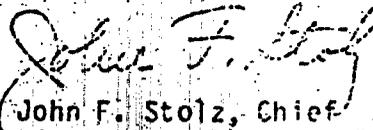
For further details with respect to this action, see (1) letters related to the amendments dated April 20, 1976, May 5, 1976, September 15, 1978, and September 19, 1978, (2) Amendment Nos. 1 and 4 to CPPR-39 and CPPR-69, respectively, and (3) the staff's related Evaluation of an Amendment to Include Antitrust Conditions in the Diablo Canyon Construction Permits.

All of these items and other related material are available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C. and at the Local Public Document Room located in San Luis Obispo County Free Library, P. O. Box X, San Luis Obispo, California 93406.

A copy of items (1), (2), and (3) may be obtained upon written request to the U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, ATTN: Director, Division of Project Management, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this ^{10th} day of ~~December~~ 1978.

FOR THE NUCLEAR REGULATORY COMMISSION



John F. Stolz, Chief
Light Water Reactors Branch No. 1
Division of Project Management

EVALUATION OF AN AMENDMENT TO INCLUDE
ANTITRUST CONDITIONS IN CONSTRUCTION PERMITS FOR
THE DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2

The Pacific Gas and Electric Company holds construction permits CPPR-39 and CPPR-69 for Units 1 and 2, respectively, of the Diablo Canyon Nuclear Power Plant.

The construction permit for Unit 1, CPPR-39, was issued on April 23, 1968. No amendments to CPPR-39 have previously been issued. It was last modified by an Order on October 13, 1978 extending the latest date for completion of construction.

The construction permit for Unit 2 was issued on December 9, 1970. The last amendment to CPPR-69 was Amendment Number 3 dated August 14, 1974. It was last modified by an Order on October 13, 1978 extending the latest date for completion of construction.

The Diablo Canyon Nuclear Power Plant is not subject to an antitrust review under Section 105C of the Atomic Energy Act, as amended. More recent nuclear power plants are subject to such review. However, in connection with the NRC's proceedings on the Stanislaus Nuclear Project, Pacific Gas and Electric Company agreed to include antitrust commitments as conditions in the Diablo Canyon licenses in certain circumstances which have occurred.

In a letter to the U. S. Department of Justice (DOJ) dated April 30, 1976, PG&E stated that, in the event a construction permit for the Stanislaus Nuclear Project was not issued by the NRC prior to July 1, 1978, PG&E was willing to have its license(s) for the Diablo Canyon Nuclear Power Plants, Units 1 and 2, amended to incorporate certain antitrust commitments. This willingness was contingent upon the DOJ advising the NRC that no antitrust hearing was necessary in connection with licensing the Stanislaus Project. The DOJ provided such advice in a letter dated May 5, 1976.

Since no construction permit for the Stanislaus Project had yet been issued, the NRC staff advised PG&E, in a letter dated September 15, 1978, of its intention to include the antitrust commitments as conditions in the Diablo Canyon Construction Permits. PG&E responded, in a letter dated September 19, 1978, stating that it had no objection to such an amendment.

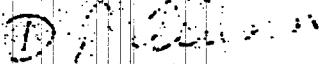
Based on these factors, the NRC staff is treating this matter as a request from PG&E to amend the construction permits for the Diablo Canyon Nuclear Power Plant to include the antitrust commitments stated in PG&E's letter of April 30, 1976 as conditions. The NRC staff has reviewed this matter and concludes that the amendments are appropriate.

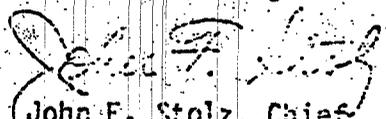
From an antitrust standpoint, DOJ has reviewed the PG&E commitments and provided its advice in a letter dated May 5, 1976. This amendment of the construction permits simply effectuates the agreement that has been reached between PG&E and DOJ. For these reasons we have concluded that these amendments should be issued.

An antitrust proceeding is currently in progress involving the Stanislaus Project. The Board in that proceeding will determine whether there is a need to add antitrust conditions to the Stanislaus license.

As a result of the NRC staff's review of the Final Safety Analysis Report to date, and considering the nature of the amendments, we have identified no area of significant safety considerations in connection with this amendment. The assessment of potential environmental impact associated with site preparation and the construction of Units 1 and 2 of the Diablo Canyon Nuclear Power Plant were addressed in the Final Environmental Statement (FES) issued in May 1973. The staff has determined that considering the nature of the amendment, this is an administrative action since it does not alter impacts described in the FES or create new impacts not previously addressed in the statement. Having made this determination, the staff has concluded, pursuant to 10 CFR Part 51.6(d)(1), that an environmental statement, negative declaration or environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

Accordingly, issuance of amendments incorporating the antitrust commitments that PG&E has agreed to as conditions is reasonable and should be authorized.


D. P. Allison, Project Manager
Light Water Reactors Branch No. 1
Division of Project Management


John F. Stolz, Chief
Light Water Reactors Branch No. 1
Division of Project Management

Dated: DEC 06 1976

EXHIBIT 2

**NUCLEAR REGULATORY
COMMISSION**

[DOCKET NO. 80-338]

NEBRASKA PUBLIC POWER DISTRICT

Issuance of Amendment to Facility License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 23 to Facility Operating License No. DPR-46, issued to the Nebraska Public Power District (the licensee), which revised Technical Specifications for operation of the Cooper Nuclear Station (the facility) located in Nemaha County, Nebraska. The amendment is effective as of its date of issuance.

This amendment revises the Technical Specifications for the facility to permit the calibration of intermediate range neutron monitors on any intermediate range monitor indicator range scale in lieu of indicator range scale 10 only.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental statement, negative declaration or environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 10, 1976, (2) Amendment No. 23 to License No. DPR-46, and (3) the Commission's concurrently issued Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Auburn Public Library, 110 15th Street, Auburn, Nebraska 68305. A copy of items (2) and (3) may be obtained upon request addressed to the United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 11th day of May 1976.

For the Nuclear Regulatory Commission.

JEROME L. LINTANA,
Chief, Operating Reactors
Branch No. 2, Division of
Operating Reactors

[FR Doc. 76-1481 Filed 5-14-76; 9:45 am]

[Docket No. 80-333]

**POWER AUTHORITY OF THE STATE OF
NEW YORK AND NIAGARA MOHAWK
POWER CORP.**

**Issuance of Amendment to Facility
Operating License**

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 17 to Facility Operating License No. DPR-59 issued to the Power Authority of the State of New York and the Niagara Mohawk Power Corporation which revised the Technical Specifications for operation of the James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York. The amendment is effective within 30 days of its date of issuance.

The amendment changes the Technical Specifications to specify lower limits for the reactor coolant water conductivity and chloride ion concentration.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) application for amendment submitted by letter dated January 27, 1976, (2) Amendment No. 17 to License No. DPR-59, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Oswego City Library, 120 East Second Street, Oswego, New York.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 50th day of April 1976.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors
Branch No. 2, Division of
Operating Reactors

[FR Doc. 76-1482 Filed 5-14-76; 9:45 am]

[Docket No. P-564-A]

PACIFIC GAS AND ELECTRIC CO.

**Receipt of Attorney General's Advice and
Time for Filing of Petitions To Intervene
on Antitrust Matters**

The Commission has received, pursuant to section 105c of the Atomic Energy Act of 1954, as amended, a letter of advice from the Attorney General of the United States, dated May 3, 1976, a copy of which is attached as Appendix "A".

Any person whose interest may be affected by this proceeding may, pursuant to section 2.714 of the Commission's "Rules of Practice," 10 CFR Part 2, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed by June 16, 1976, either (1) by delivery to the NRC Docketing and Service Section at 1717 H Street, N.W., Washington, D.C., or (2) by mail or telegram addressed to the Secretary, Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Section.

For The Nuclear Regulatory Commission.

JEROME SALTMAN,
Chief, Antitrust and Indemnity
Group, Nuclear Reactor Reg-
ulation.

APPENDIX A

STANISLAU'S NUCLEAR PROJECT, UNIT NO. 1
PACIFIC GAS AND ELECTRIC CO.

[Docket No. P-564-A]

You have requested our advice pursuant to the provisions of Section 105c of the Atomic Energy Act of 1954, as amended, in connection with the application of Pacific Gas and Electric Company to construct the Stanislaus Nuclear Project, Unit No. 1.

The Department has previously rendered advice on license applications for several nuclear facilities with respect to which PG&E has been an applicant. The first of these was PG&E's 1971 application for a license to construct the then proposed Mendocino Power Plant, Units 1 and 2. On August 2, 1972, the Department informed your predecessor Commission that certain described conduct by PG&E to foreclose the development of alternative bulk power supply sources in Northern and Central California had created a situation inconsistent with the antitrust laws and that construction and operation of the Mendocino Plant by PG&E appeared likely to maintain such anticompetitive situation. Accordingly, we recommend that an antitrust hearing be held with respect to the Mendocino application. Subsequent to the rendering of that advice, PG&E withdrew the Mendocino application because of environmental and safety problems. Thereafter, the Department commenced a comprehensive investigation under the antitrust laws with a view to possible antitrust action in the district court.

That investigation was nearing completion when you requested our advice on PG&E's application to participate in the San Joaquin Nuclear Project (SJNP). On November 24, 1975, we advised the Commission in connection with SJNP that, in the period since our

1972 advice letter, it appeared that PG&E may have modified certain of its anticompetitive practices which were the basis for our earlier recommendation that a hearing be held. As we stated in that letter, "Whether these actions by PG&E have been such that a situation inconsistent with the antitrust laws no longer exists and/or whether an antitrust proceeding in United States District Court should be instituted are matters which are currently being considered and which will shortly be resolved." We indicated that because the Department would shortly render definitive antitrust advice on PG&E in connection with the also pending PG&E application for a license to construct the Stanislaus Nuclear Project and in view of PG&E's agreement to certain limited license conditions pertaining to SJNP, no hearing would be necessary in connection with the licensing of SJNP.

Following the issuance of the SJNP advice letter, the Department and PG&E entered into discussions regarding antitrust concerns which we believed were posed by PG&E's activities affecting alternative bulk power supply sources in Northern and Central California. On February 19, 1976, March 22, 1976, and April 30, 1976, PG&E, with our concurrence, requested the Commission to afford additional time for the Attorney General to render advice on the Stanislaus License Application in order that discussions between PG&E and the Department might continue.

We are now able to inform the Commission that PG&E and the Department have reached agreement on a Statement of Commitments which the Department believes will obviate the anti-trust problems posed by PG&E's activities and which will remedy the situation inconsistent with the antitrust laws which we believe has existed in Northern and Central California. The Statement of Commitments is contained in the attached letter to the Department from PG&E President John F. Bonner. For its part, PG&E denies that any of its policies or practices have been or will be inconsistent with the antitrust laws. However, it is willing to have these commitments included as conditions to its license to construct the Stanislaus Nuclear Project. In the event that PG&E chooses not to construct the Stanislaus Nuclear Project, it has consented to have its operating license for Diablo Canyon Nuclear Power Plant, Units 1 and 2, amended to incorporate the commitments as conditions to that license.

In our opinion, the effectuation of the commitments will meet the questions of anticompetitive conduct by PG&E which have come to our attention. The implementation of these policies should provide competitors of Applicant with reasonable opportunities to develop competitive bulk power supply sources. Since PG&E is agreeable to having the commitments included in the Company's Statement of Commitments as conditions to the Stanislaus Nuclear Project license, we conclude that an antitrust hearing will not be necessary with respect to the instant application if the Commission issues a license so conditioned.

RECEIVED

Pacific Gas and Electric Company is herewith submitting to the U.S. Department of Justice the attached statement of commitments. PG&E is willing to have the commitments included as conditions in the construction permit and operating license issued by the Nuclear Regulatory Commission for construction and operation of the proposed Stanislaus Nuclear Project, Unit 1. If the Attorney General will advise the Nuclear Regulatory Commission that no antitrust hearing is necessary in connection with the

licensing of the unit. In the event that PG&E's application for a construction permit for the Stanislaus Nuclear Project Unit 1 is withdrawn, or that a construction permit for such unit is not issued by the Nuclear Regulatory Commission prior to July 1, 1978, PG&E is willing to have its license(s) for Diablo Canyon Nuclear Power Plant, Units 1 and 2, amended to incorporate the commitments.

As a result of its review of PG&E's activities, the Department has indicated that inclusion of commitments in the Stanislaus License is necessary to remedy an anti-competitive situation which it believes to exist. We believe that none of PG&E's activities has been or will be inconsistent with the antitrust laws and for that reason, it is our view that no conditions to the Stanislaus License are necessary. However, in order to avoid protracted litigation we are agreeable to the inclusion of the attached conditions in the license. We understand that the Department will advise the Nuclear Regulatory Commission that these conditions, which have been negotiated between the Department and PG&E, will remedy the situation inconsistent with the antitrust laws which the Department perceives to exist.

We recognize that if the Attorney General advises the Nuclear Regulatory Commission that the commitments are appropriate license conditions for the Stanislaus Nuclear Project, such advice would mean only that broader license conditions are not deemed necessary in the context of this licensing proceeding. Accordingly, the inclusion in the commitments of limited exceptions to PG&E's general commitment to transmit power in no way exempts PG&E from any legal requirement it may have under statutes other than Section 108c to transmit power in circumstances where such transmission would not be required under the commitments.

We understand that should PG&E refuse in the future to transmit power in circumstances where the commitments do not require it to transmit power, the Department reserves the right to bring legal action in an appropriate forum other than the Nuclear Regulatory Commission against PG&E if the Department concludes that such a refusal to transmit power is under the circumstances then existing in violation of the antitrust laws or any other Federal statutes. We also understand that the Department reserves its right to contest PG&E's interpretation of any part of the statement of commitments in the Nuclear Regulatory Commission. In setting forth this understanding, we do not mean to suggest that if PG&E were in fact to refuse to transmit power in circumstances covered by the exceptions, such refusal would violate the antitrust laws or any other Federal statutes.

**PACIFIC GAS AND ELECTRIC COMPANY
STATEMENT OF COMMITMENTS**

1. DEFINITIONS

A. "Applicant" means Pacific Gas and Electric Company, any successor corporation, or any assignee of this license.

B. "Service Area" means that area within the exterior geographic boundaries of the several areas electrically served at retail, now or in the future, by Applicant, and those areas in Northern and Central California adjacent thereto.

C. "Neighboring Entity" means a financially responsible private or public entity or mutual association thereof owning, contractually controlling or operating, or in good faith proposing to own, to contractually control or to operate facilities for the generation or transmission at 60 kilovolts or above of electric power which meets each

of the following criteria: (1) its existing or proposed facilities are or will be technically feasible of direct interconnection with those of Applicant; (2) all or part of its existing or proposed facilities are or will be located within the Service Area; (3) its primary purpose for owning, contractually controlling, or operating generation facilities is to sell in the Service Area the power generated; and (4) it is, or upon commencement of operations will be, a public utility regulated under applicable state law or the Federal Power Act, or exempted from regulation by virtue of the fact that it is a federal, state, municipal or other public entity.

D. "Neighboring Distribution System" means a financially responsible private or public entity which engages, or in good faith proposes to engage, in the distribution of electric power at retail and which meets each of the criteria numbered (1), (2), and (4) in subparagraph C above.

E. "Costs" means all capital expenditures, administrative, general, operation and maintenance expenses, taxes, depreciation, and costs of capital including a fair and reasonable return on Applicant's investment, which are properly allocable to the particular service or transaction as determined by the regulatory authority having jurisdiction over the particular service or transaction.

F. "Good Utility Practice" means those practices, methods and equipment, including levels of reserves and provisions for contingencies, as modified from time to time, that are commonly used in the Service Area to operate reliably and safely, electric power facilities to serve a utility's own customers dependably and economically, with due regard for the conservation of natural resources and the protection of the environment of the Service Area, provided such practices, methods and equipment are not unreasonably restrictive.

G. "Firm Power" means that power which is intended to be available to the customer at all times and for which, in order to achieve that degree of availability, adequate installed and spinning reserves and sufficient transmission to move such power and reserves to load center are provided.

INTERCONNECTION

Interconnection agreements negotiated pursuant to these license conditions shall be subject to the following paragraphs A through G:

A. Applicant shall not unreasonably refuse to interconnect and operate normally in parallel with any Neighboring Entity, or to interconnect with any Neighboring Distribution System. Such interconnections shall be consistent with Good Utility Practice.

B. Interconnection shall be at one point unless otherwise agreed by the parties to an interconnection agreement. Interconnection shall not be limited to lower voltages when higher voltages are preferable from the standpoint of Good Utility Practice and are available from Applicant. Applicant may include in any interconnection agreement provisions that a Neighboring Entity or Neighboring Distribution System maintain the power factor associated with its load at a comparable level to that maintained by Applicant in the same geographic area and use comparable control methods to achieve this objective.

C. Interconnection agreements shall not provide for more extensive facilities or control equipment at the point of interconnection than are required by Good Utility Practice unless the parties mutually agree that particular circumstances warrant special facilities or equipment.

D. The Costs of additional facilities required to provide service at the point of interconnection shall be allocated on the basis of the projected economic benefits for each

party from the interconnection after consideration of the various transactions for which the interconnection facilities are to be used, unless otherwise agreed by the parties.

K. An interconnection agreement shall not impose limitations upon the use or resale of capacity and energy sold or exchanged under the agreement except as may be required by Good Utility Practice.

F. An interconnection agreement shall not prohibit any party from entering into other interconnection agreements, but may provide that (1) Applicant receive adequate notice of any additional interconnection arrangement with others, (2) the parties jointly consider and agree upon additional contractual provisions, measures, or equipment, which may be required by Good Utility Practice as a result of the new arrangement, and (3) Applicant may terminate the interconnection agreement if the reliability of its system or service to its customers would be adversely affected by such additional interconnection arrangement.

G. Applicant may include provisions in an interconnection agreement requiring a Neighboring Entity or Neighboring Distribution System to develop with Applicant a coordinated program for underfrequency load shedding and its separation. Under such programs the parties shall equitably share the interruption or curtailment of customer load.

IX. RESERVE COORDINATION

Interconnection agreements negotiated pursuant to these license conditions shall be subject to the following paragraphs A through E regarding reserve coordination:

A. Applicant and any Neighboring Entity with which it interconnects shall jointly establish and separately maintain the minimum reserves to be installed or otherwise provided under an interconnection agreement. Unless otherwise mutually agreed upon, reserves shall be expressed as a percentage of estimated firm peak load and the minimum reserve percentage shall be at least equal to Applicant's planned reserve percentage without the interconnection. A Neighboring Entity shall not be required to provide reserves for that portion of its load which it meets through purchases of Firm Power. While different reserve percentages may be specified in various interconnection agreements, no party to an interconnection agreement shall be required to provide a greater reserve percentage than Applicant's planned reserve percentage, except that if the total reserves Applicant must provide to maintain system reliability equal to that existing without a given interconnection arrangement are increased by reason of the new arrangement, then the other party or parties may be required to install or provide additional reserves in the full amount of such increase.

B. Applicant and Neighboring Entities with which it interconnects shall jointly establish and separately maintain the minimum spinning reserves to be provided under an interconnection agreement. Unless otherwise mutually agreed upon, spinning reserves shall be expressed as a percentage of peak load and the minimum spinning reserve percentage shall be at least equal to Applicant's spinning reserve percentage without the interconnection. A Neighboring Entity shall not be required to provide spinning reserves for that portion of its load which it meets through purchases of Firm Power. While different spinning reserve percentages may be specified in various interconnection agreements, no party to an interconnection agreement shall be required to provide a greater spinning reserve percentage than that which Applicant provides, except that if the total spinning reserves Applicant must provide to maintain system reliability equal to that

existing without a given interconnection arrangement are increased by reason of the new arrangement, then the other party or parties may be required to provide additional spinning reserves in the full amount of such increase.

C. Applicant shall offer to sell, on reasonable terms and conditions, including a specified period, capacity to a Neighboring Entity for use as reserves if such capacity is neither needed for Applicant's own system nor contractually committed to others and if the Neighboring Entity will offer to sell, on reasonable terms and conditions, its own such capacity to Applicant.

D. Applicant may include in any interconnection agreement provisions requiring a Neighboring Entity to compensate Applicant for any reserves Applicant makes available as the result of the failure of such Neighboring Entity to maintain all or any part of the reserves it has agreed to provide in said interconnection agreement.

E. Applicant shall offer to coordinate maintenance schedules with Neighboring Entities interconnected with Applicant and to exchange or sell maintenance capacity and energy when such capacity and energy are available and it is reasonable to do so in accordance with Good Utility Practice.

X. EMERGENCY POWER

Applicant shall sell emergency power to any interconnected Neighboring Entity which maintains the level of minimum reserve agreed upon with Applicant, agrees to use due diligence to correct the emergency, and agrees to sell emergency power to Applicant. Applicant shall engage in such transactions if and when capacity and energy for such transactions are available from its own generating resources, or may be obtained by Applicant from other sources, but only to the extent that it can do so without impairing service to Applicant's retail or wholesale power customers or impairing its ability to discharge prior commitments.

XI. OTHER POWER EXCHANGES

Should Applicant have on file or hereafter file with the Federal Power Commission, agreements or rate schedules providing for the sale and purchase of short-term capacity and energy, limited-term capacity and energy, long-term capacity and energy or economy energy, Applicant shall, on a fair and equitable basis, enter into like or similar agreements with any Neighboring Entity, when such forms of capacity and energy are available, recognizing that past experience, different economic conditions and Good Utility Practice may justify different rates, terms and conditions. Applicant shall respond promptly to inquiries of Neighboring Entities concerning the availability of such forms of capacity and energy from its system.

XII. WHOLESALE POWER SALES

Upon request, Applicant shall offer to sell firm, full or partial requirements power for a specified period to an interconnected Neighboring Entity or Neighboring Distribution System under a contract with reasonable terms and conditions including provisions which permit Applicant to recover its costs. Such wholesale power sales must be consistent with Good Utility Practice. Applicant shall not be required to sell Firm Power as wholesale if it does not have available sufficient generation or transmission to supply the requested service or if the sale would impair service to its retail customers or its ability to discharge prior commitments.

XIII. TRANSMISSION SERVICES

A. Applicant shall transmit power pursuant to interconnection agreements, with provisions which are appropriate to the requested transaction and which are consistent

with these license conditions. Except as listed below, such service shall be provided

(1) between two or among more than two Neighboring Entities or sections of a Neighboring Entity's system which are geographically separated, with which, now or in the future, Applicant is interconnected, (2) between a Neighboring Entity with which, now or in the future, it is interconnected and one or more Neighboring Distribution Systems with which, now or in the future, it is connected and (3) between any Neighboring Entity or Neighboring Distribution System(s) and the Applicant's point of direct interconnection with any other electric system engaging in bulk power supply outside the area then electrically served at retail by Applicant. Applicant shall not be required by this Section to transmit power (1) from a hydroelectric facility the ownership of which has been involuntarily transferred from Applicant or (2) from a Neighboring Entity for sale to any electric system located outside the exterior geographic boundaries of the several areas then electrically served at retail by Applicant if any other Neighboring Entity, Neighboring Distribution System, or Applicant wishes to purchase such power at an equivalent price for use within said areas. Any Neighboring Entity or Neighboring Distribution System(s) requesting transmission service shall give reasonable advance notice to Applicant of its schedule and requirements. Applicant shall not be required by this Section to provide transmission service if the proposed transaction would be inconsistent with Good Utility Practice or if the necessary transmission facilities are committed at the time of the request to be fully loaded during the period for which service is requested, or have been previously reserved by Applicant for emergency purposes, loop flow, or other uses consistent with Good Utility Practice; provided, that with respect to the Pacific Northwest-Southwest Intertie, Applicant shall not be required by this Section to provide the requested transmission service if it would impair Applicant's own use of this facility consistent with the Bonneville Project Act, (60 Stat. 731, August 20, 1937), Pacific Northwest Power Marketing Act (73 Stat. 754, August 21, 1964) and the Public Works Appropriations Act, 1963 (78 Stat. 622, August 30, 1964).

B. Applicant shall include in its planning and construction programs such increases in its transmission capacity or such additional transmission facilities as may be required for the transactions referred to in paragraph A of this Section, provided any Neighboring Entity or Neighboring Distribution System gives Applicant sufficient advance notice as may be necessary to accommodate its requirements from a regulatory and technical standpoint and provided further that the entity requesting transmission services compensates Applicant for the costs incurred as a result of the request. Where transmission capacity will be increased or additional transmission facilities will be installed to provide or maintain the requested service to a Neighboring Entity or Neighboring Distribution System, Applicant may require, in addition to a rate for use of other facilities, that payment of costs associated with the increased capacity or additional facilities shall be made by the parties in accordance with and in advance of their respective use of the new capacity or facilities.

C. Nothing herein shall require Applicant (1) to construct additional transmission facilities if the construction of such facilities is inconsistent with Good Utility Practice or if such facilities could be constructed without duplicating any portion of Applicant's transmission system, (2) to provide transmission service to a retail customer or (3) to construct transmission outside the area then electrically served at retail by Applicant.

D. Rate schedules and agreements for transmission services provided under this Section shall be filed by Applicant with the regulatory agency having jurisdiction over such rates and agreements.

VIII. ACCESS TO NUCLEAR GENERATION

A. If a Neighboring Entity or Neighboring Distribution System makes a timely request to Applicant for an ownership participation in the Stanislaus Nuclear Project, Unit No. 1 or any future nuclear generating unit for which Applicant applies for a construction permit during the 20-year period immediately following the date of the construction permit for Stanislaus Unit No. 1, Applicant shall offer the requesting party an opportunity to participate in such units, up to an amount reasonable in light of the relative loads of the participants. With respect to Stanislaus Unit No. 1 or any future nuclear generating unit, a request for participation shall be deemed timely if received within 90 days after the mailing by Applicant to Neighboring Entities and Neighboring Distribution Systems of an announcement of its intent to construct the unit and a request for an expression of interest in participation. Participation shall be on a basis which compensates Applicant for a reasonable share of all its costs, incurred and to be incurred, in planning, selecting a site for, constructing and operating the facility.

B. Any Neighboring Entity or any Neighboring Distribution System making a timely request for participation in a nuclear unit must enter into a legally binding and enforceable agreement to assume financial responsibility for its share of the costs associated with participation in the unit and associated transmission facilities. Unless otherwise agreed by Applicant, a Neighboring Entity or Neighboring Distribution System desiring participation must have signed such an agreement within one year after Applicant has provided to that Neighboring Entity or Neighboring Distribution System pertinent financial and technical data bearing on the feasibility of the project which are then available to Applicant. Applicant shall provide additional pertinent data as they become available during the year. The requesting party shall pay to Applicant forthwith the additional expenses incurred by Applicant in making such financial and technical data available. In any participation agreement subject to this Section, Applicant may require provisions requiring payment by each participant of its share of all costs incurred up to the date of the agreement, requiring each participant thereafter to pay its pro rata share of funds as they are expended for the planning and construction of units and related facilities, and requiring each participant to make such financial arrangements as may be necessary to ensure the ability of the participant to continue to make such payments.

A. All rates, charges, terms and practices are and shall be subject to the acceptance and approval of any regulatory agencies or courts having jurisdiction over them.

B. Nothing contained herein shall enlarge any rights of a Neighboring Entity or Neighboring Distribution System to provide services to retail customers of Applicant beyond the rights they have under state or Federal law.

C. Nothing in these license conditions shall be construed as a waiver by Applicant of its rights to contest the application of any commitment herein to a particular factual situation.

D. These license conditions do not preclude Applicant from applying to any appropriate forum to seek such changes in these

in accordance with the then-existing law conditions as may at the time be appropriate and Good Utility Practices.

E. These license conditions do not require Applicant to become a common carrier.

[FR Doc. 76-14280 Filed 5-14-76; 8:45 am]

[Docket No. 50-271]

VERMONT YANKEE NUCLEAR POWER CORP.

Issuance of Amendment to Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 22 to Facility Operating License No. DPR-28 issued to Vermont Yankee Nuclear Power Corporation which revised Technical Specifications for operation of the Vermont Yankee Nuclear Power Station, located near Vernon, Vermont. This amendment is effective as of its date of issuance.

The amendment modifies Technical Specification Table 3.1.1 to clarify and refine the requirement governing operator response to a failed instrument channel. This amendment also makes minor editorial changes to the Technical Specifications, and corrects the frequency of environmental reporting from monthly to annually consistent with the changes of Amendment No. 17 issued November 5, 1975. These changes to the environmental reporting frequency were inadvertently omitted from Amendment No. 17.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR mission has made appropriate findings as required by the Act and the Commission's rules and regulation in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental statement, negative declaration or environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 8, 1975, (2) Amendment No. 22 to License No. DPR-28, (3) the Commission's related Safety Evaluation and (4) Amendment No. 17 to License No. DPR-28 issued November 5, 1975, and related documents. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. At

tention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 29th day of April, 1976.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Operating Reactors Branch No.
4, Division of Operating Reactors.

[FR Doc. 76-14283 Filed 5-14-76; 8:45 am]

PRIVACY ACT OF 1974

Notices of Systems of Records: Amendments of Routine Uses

On October 1, 1975, the Nuclear Regulatory Commission published in the FEDERAL REGISTER (40 FR 45332) notices of those systems of records maintained by the NRC which contain personal information about individuals and from which such information can be retrieved by an individual identified. The notices were published as a document subject to publication in the annual compilation of Privacy Act documents.

Proposed amendments of the NRC Systems of Records were published in the FEDERAL REGISTER on February 5, 1976 (41 FR 5356) proposing that the following be established as a routine use for all of the NRC systems:

Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

The amendment is intended to assure that implementation of the Privacy Act does not have the unintended effect of denying individuals the benefit of Congressional assistance which they request. This amendment would obviate the written consent of the individual in those cases where the individual requests assistance of a Member of Congress which would entail a disclosure of information pertaining to the individual within a system of records.

Interested persons were invited to submit written comments on the proposed rule by March 10, 1976. No comments have been received on the proposed amendments. Accordingly, the Nuclear Regulatory Commission has adopted the amendments as proposed.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 552a of Title 5 of the United States Code, the following amendments to the Commission's Notices of Systems of Records are published as a document subject to publication in the annual compilation of Privacy Act documents.

1. The NRC Systems of Records are amended by adding the following General Routine Use to the Prefatory Statement of General Routine Uses:

PREFATORY STATEMENT OF GENERAL ROUTINE USES

The following routine uses apply to each system of records notice set forth

EXHIBIT 3



UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION
 WASHINGTON, D. C. 20548

P. 03/03

Docket Nos. 80-275A
 80-323A
 P-564A

SEP 15 1978

Pacific Gas and Electric Company
 ATTN: Mr. John C. Morrissey
 Vice President and General Counsel
 77 Beale Street
 San Francisco, CA 94106

Re: Diablo Canyon Nuclear Plant,
 Units 1 and 2

Gentlemen:

In a letter dated April 30, 1976, addressed to the Assistant Attorney General, Antitrust Division, U. S. Department of Justice, the President of the Pacific Gas and Electric Company stated as follows:

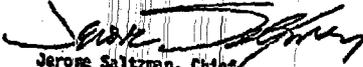
"Pacific Gas and Electric Company is herewith submitting to the U. S. Department of Justice the attached statement of commitments. PG&E is willing to have the commitments included as conditions in the construction permit and operating license issued by the Nuclear Regulatory Commission for construction and operation of the proposed Stanislaus Nuclear Project, Unit 1, if the Attorney General will advise the Nuclear Regulatory Commission that no antitrust hearing is necessary in connection with the licensing of the unit. In the event that PG&E's application for a construction permit for the Stanislaus Nuclear Project Unit 1 is withdrawn, or that a construction permit for such unit is not issued by the Nuclear Regulatory Commission prior to July 1, 1978, PG&E is willing to have its license(s) for Diablo Canyon Nuclear Power Plant, Units 1 and 2, amended to incorporate the commitments."

On May 5, 1976, the Assistant Attorney General advised the Nuclear Regulatory Commission that, if licenses issued by the NRC to the Company for the Stanislaus Project were conditioned to include the Company's Statement of Commitments, an antitrust hearing would not be necessary.

-2-

To date a construction permit for the Stanislaus Nuclear Project Unit 1 has not been issued. Accordingly, in keeping with the above quoted Company commitment, this is to advise you that it is our present intention to amend Construction Permits CPPR-39 and CPPR-69 issued to the Company on April 23, 1968 and December 9, 1970, respectively, for Diablo Canyon Nuclear Plant, Units 1 and 2 to incorporate as conditions the Statement of Commitments appended to the Company's letter of April 30, 1976. We expect these amendments to be issued pursuant to the Commission's regulations sometime in October.

Sincerely,


 Jerome Saltzman, Chief
 Antitrust and Indemnity Group
 Office of Nuclear Reactor Regulation

cc: Donald A. Kaplan, DOJ

EXHIBIT 4

AUG-08-2002 13:34

P.02/02

PACIFIC GAS AND ELECTRIC COMPANY

PG&E + 77 BEALE STREET • SAN FRANCISCO, CALIFORNIA 94108 • (415) 781-4211

JOHN C. MORRISSEY
VICE PRESIDENT AND GENERAL COUNSEL

September 19, 1978

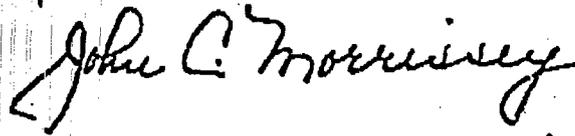
Mr. Jerome Saltzman, Chief
Antitrust and Indemnity Group
Office of Nuclear Reactor Regulation
United States Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Saltzman:

Docket Nos. 50-275A, 50-323A, P-564A
Diablo Canyon Nuclear Plant, Units 1 and 2

In accordance with the spirit of our letter of April 30, 1976 quoted in your letter of September 15, 1978, Pacific Gas and Electric Company has no objection to the amendment of the Construction Permits as proposed in your letter.

Sincerely,



cc: Donald A. Kaplan, DOJ
Enc.

TITAI P.02

EXHIBIT 5

* [7590-01-M]

(Docket No. 50-320)

METROPOLITAN EDISON CO. ET AL.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment 8 to Facility Operating License No. DPR-73, issued to the Metropolitan Edison Company, Jersey Central Power & Light Company, and Pennsylvania Electric Company, for operation of the Three Mile Island Nuclear Station, Unit 2 (the facility), located in Dauphin County, Pennsylvania. The amendment is effective as of its date of issuance.

The license is amended by revising certain Technical Specifications to permit operation at reduced power levels with reduced reactor coolant system flow.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1 which are set forth in the license amendment.

The Commission has determined that the granting of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) Amendment No. 8 to Facility Operating License No. DPR-73, and (2) the Commission's related safety evaluation supporting Amendment No. 8 to Facility Operating License No. DPR-73. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the State Library of Pennsylvania, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Bethesda, Maryland, this 15th day of December 1978.

FOR THE NUCLEAR REGULATORY COMMISSION

STEVEN A. VARGA,
Chief, Light Water Reactors
Branch 4, Division of Project
Management

(FR Doc. 78-35563 Filed 12-21-78; 8:45 am)

[7590-01-M]

(Docket Nos. 50-275 and 50-323)

PACIFIC GAS & ELECTRIC CO. (DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2)

Issuance of Amendment to Construction Permits

The U.S. Nuclear Regulatory Commission (NRC) has issued Amendments 1 and 4, respectively, to Construction Permit Nos. CFP-39 and CFP-69 issued to the Pacific Gas and Electric Company for Diablo Canyon Nuclear Power Plant, Units 1 and 2, located in San Luis Obispo County, California.

The amendments provide for the addition of certain antitrust conditions. The Diablo Canyon Nuclear Power Plant is not subject to an antitrust review under Section 105C of the Atomic Energy Act, as amended. More recent nuclear power plants are subject to such review. However, in connection with the NRC's proceedings on the Stanislaus Nuclear Project, Pacific Gas and Electric Company agreed to include antitrust commitments as conditions in the Diablo Canyon licenses in certain circumstances which have occurred.

In a letter to the U.S. Department of Justice (DOJ), dated April 30, 1978, PG&E stated that, in the event a construction permit for the Stanislaus Nuclear Project was not issued by the NRC prior to July 1, 1978, PG&E was willing to have its license(s) for the Diablo Canyon Nuclear Power Plants, Units 1 and 2, amended to incorporate certain antitrust commitments. This willingness was contingent upon the DOJ advising the NRC that no antitrust hearing was necessary in connection with licensing the Stanislaus Project. The DOJ provided such advice in a letter dated May 5, 1978.

Since no construction permit for the Stanislaus Project had yet been issued, the NRC staff advised PG&E, in a letter dated September 15, 1978, of its intention to include the antitrust commitments as conditions in the Diablo Canyon Construction Permits. PG&E responded, in a letter dated September 19, 1978, stating that it had no objection to such an amendment.

The amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The staff has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the amendment.

In accordance with 10 CFR 50.91, prior public notice of these amendments was not required since the amendments do not involve significant hazards considerations.

The staff has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) letters related to the amendments dated April 20, 1976, May 5, 1976, September 15, 1978, and September 19, 1978, (2) Amendment Nos. 1 and 4 to CFP-39 and CFP-69, respectively, and (3) the staff's related Evaluation of an Amendment to Include Antitrust Conditions in the Diablo Canyon Construction Permits.

All of these items and other related material are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Local Public Document Room located in San Luis Obispo County Free Library, P.O. Box X, San Luis Obispo, California 93406.

A copy of items (1), (2), and (3) may be obtained upon written request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Director, Division of Project Management, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 6th day of December 1978.

FOR THE NUCLEAR REGULATORY COMMISSION

JOHN F. STOLZ,
Chief, Light Water Reactors
Branch No. 1, Division of Project
Management

(FR Doc. 78-35565 Filed 12-21-78; 8:45 am)

[7590-01-M]

(Docket No. 50-312)

SACRAMENTO MUNICIPAL UTILITY DISTRICT
Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 26 to Facility Operating License No. DPR-54, issued to Sacramento Municipal Utility District, which revised Technical Specifications for operation of the Rancho Seco Nuclear Generating Station (the facility), located in Sacramento County, California. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to reflect plant operating limits for the fuel loading to be used during Cycle 3.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act