

~~SAFEGUARDS INFORMATION~~

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
PACIFIC GAS AND ELECTRIC COMPANY) Docket No. 72-27
HUMBOLDT BAY POWER PLANT) EA-06-277
INDEPENDENT SPENT FUEL STORAGE)
INSTALLATION)
P. O. BOX 770000, MAIL CODE B32)
SAN FRANCISCO, CA 94177-0001)

**ORDER MODIFYING LICENSE
(EFFECTIVE IMMEDIATELY)**

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued a specific license to Pacific Gas and Electric (PG&E), authorizing the operation of an Independent Spent Fuel Storage Installation (ISFSI), in accordance with the Atomic Energy Act of 1954 and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72. The Commission's regulations in 10 CFR 72.184 require PG&E to have a safeguards contingency plan to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage, in accordance with 10 CFR Part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

WARNING: Violation of Section 147 of the Atomic Energy Act, "Safeguards Information," is subject to Civil and Criminal Penalties.

Document transmitted herewith contains sensitive unclassified information. When separated from Attachment 1, this document is DECONTROLLED.

Enclosure 3

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

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment, to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1¹ of this Order, on all

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licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

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

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be supplemented further because the current threat environment continues to persist.

Therefore, it is appropriate to require certain additional security measures, and these measures must be embodied in an Order, consistent with the established regulatory framework.

To provide assurance that PG&E is implementing prudent measures to achieve a consistent level of protection to address the current threat environment, PG&E's specific license issued pursuant to 10 CFR 72.40 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that, in the circumstances described above, the public health, safety, and interest require that this Order be immediately effective.

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III

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

A. PG&E shall comply with the requirements described in Attachment 1 to this Order, except to the extent that a more stringent requirement is set forth in PG&E's security plan. PG&E shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation **no later than May 30, 2007**, with the exception of the additional security measure B.4, which shall be implemented **no later than November 30, 2007**. In any event, PG&E shall complete implementation of all additional security measures before the first day that spent fuel is initially placed in the ISFSI.

B. 1. PG&E shall, within **twenty (20) days** of the date of this Order, notify the Commission: (1) if it is unable to comply with any of the requirements described in Attachment 1; (2) if compliance with any of the requirements is unnecessary, in its specific circumstances; or (3) if implementation of any of the requirements would cause PG&E to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide PG&E's justification for seeking relief from, or variation of, any specific requirement.

2. If PG&E considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, PG&E must notify the Commission, within **twenty (20) days** of this Order, of the adverse safety impact, the basis for its determination that the requirement has an

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adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirements in question, or a schedule for modifying the facility, to address the adverse safety condition. If neither approach is appropriate, PG&E must supplement its response, to Condition B.1 of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

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

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

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

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

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions, for good cause.

IV

In accordance with 10 CFR 2.202, PG&E must, and any other entity adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which

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o submit an answer must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing, and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other entity adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement, at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region IV at 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011; and to the licensee, if the answer or hearing request is by an entity other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for a hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission, to 301-415-1101, or by e-mail, to hearingdocket@nrc.gov, and also to the Office of the General Counsel (OGC), either by means of facsimile transmission, to 301-415-3725, or by e-mail, to OGCMailCenter@nrc.gov. If an entity other than the PG&E requests a hearing, that entity shall set forth, with particularity, the manner in which its interest is adversely affected by this Order, and shall address the criteria set forth in 10 CFR 2.309.

If PG&E or an entity whose interest is adversely affected requests a hearing, the Commission will issue an Order designating the hearing's time and place. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

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

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

FOR THE NUCLEAR REGULATORY COMMISSION



Jack R. Strosnider, Director
Office of Nuclear Material Safety
and Safeguards

Dated this 22 day of November 2006.

Attachment 1: Additional Security Measures
(This attachment contains Safeguards Information)

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NUCLEAR REGULATORY COMMISSION

Docket No. 72-27

EA-06-276

**In the Matter of PACIFIC GAS AND ELECTRIC COMPANY
HUMBOLDT BAY POWER PLANT
INDEPENDENT SPENT FUEL STORAGE INSTALLATION
ORDER MODIFYING LICENSE (EFFECTIVE IMMEDIATELY)**

AGENCY: U. S. Nuclear Regulatory Commission.

ACTION: Issuance of Order for Implementation of Interim Safeguards and Security
Compensatory Measures.

FOR FURTHER INFORMATION, CONTACT: L. Raynard Wharton, Senior Project Manager,
Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office
of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission
(NRC), Rockville, MD 20852. Telephone: (301) 415-1396; fax number: (301) 415-8555; e-mail:
LRW@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, NRC (or the Commission) is providing notice, in the matter of
Humboldt Bay Power Plant Independent Spent Fuel Storage Installation (ISFSI) Order
Modifying License (Effective Immediately).

II. Further Information

NRC has issued a specific license to Pacific Gas and Electric Company (PG&E), authorizing storage of spent fuel in an ISFSI, in accordance with the Atomic Energy Act of 1954, and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72. This Order is being issued to PG&E, which has identified near-term plans to store spent fuel in an ISFSI under the specific license provisions of 10 CFR Part 72. The Commission's regulations at 10 CFR 72.184 require PG&E to maintain safeguards contingency plan procedures in accordance with 10 CFR Part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives, to discuss and evaluate the current threat environment, to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat

environment, in a consistent manner, throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1¹ of this Order, on PG&E, which has indicated near-term plans to store spent fuel in an ISFSI under the specific license provisions of Part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at PG&E's facility, to achieve the intended objectives and to avoid any unforeseen effect on the safe storage of spent fuel.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. PG&E's specific license, issued pursuant to 10 CFR 72.40, is modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety, and interest, require that this Order be effective immediately.

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

III

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

A. PG&E shall comply with the requirements described in Attachment 1 to this Order, except to the extent that a more stringent requirement is set forth in its security plan. It shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation before **May 30, 2007**, or the first day that spent fuel is initially placed in the ISFSI, whichever is earlier.

B. 1. PG&E shall, within **twenty (20) days** of the date of this Order, notify the Commission: (1) if it is unable to comply with any of the requirements described in Attachment 1; (2) if compliance with any of the requirements is unnecessary in its specific circumstances; or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from, or variation of, any specific requirement.

2. If PG&E considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, it must notify the Commission, within **twenty (20) days** of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement(s) in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, PG&E must supplement its response to Condition B.1 of this

Order to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required in Condition B.1.

- C. 1. PG&E shall, within **twenty (20) days** of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.
- 2. PG&E shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.
- D. All measures implemented or actions taken, in response to this Order, shall be maintained until the Commission determines otherwise.

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

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions, for good cause.

IV

In accordance with 10 CFR 2.202, PG&E must, and any other entity adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order,

the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other entity adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address; to the Regional Administrator for NRC Region IV, at 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011; and to the licensee, if the answer or hearing request is by an entity other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission, to 301-415-1101, or by e-mail, to hearingdocket@nrc.gov, and also to the Office of the General Counsel (OGC), either by means of facsimile transmission, to 301-415-3725, or by e-mail, to OGCMailCenter@nrc.gov. If an entity other than PG&E requests a hearing, that entity shall set forth, with particularity, the manner in which its interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

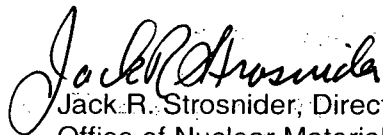
If a hearing is requested by PG&E or an entity whose interest is adversely affected, the Commission will issue an Order designating the hearing's time and place. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), PG&E may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate

effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

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

FOR THE NUCLEAR REGULATORY COMMISSION.


Jack R. Strosnider, Director,
Office of Nuclear Material Safety
and Safeguards.

Dated at Rockville, Maryland, this 22 day of November, 2006.