

June 16, 2008

Mr. John T. Conway
Site Vice President and
Chief Nuclear Officer
Pacific Gas and Electric Company
P. O. Box 3
Mail Code 104/6/601
Avila Beach, CA 93424

SUBJECT: HUMBOLDT BAY POWER PLANT UNIT 3 - ISSUANCE OF AMENDMENT AND
EXEMPTION FROM REQUIREMENTS OF 10 CFR PART 50 AND 10 CFR
PART 73 SECURITY REQUIREMENTS (TAC NO. J00337)

Dear Mr. Conway:

The Commission has issued the enclosed Amendment No. 43 to Facility Operating License No. DPR-7 for the Humboldt Bay Power Plant Unit 3. The amendment consists of changes to the License in response to your application dated November 5, 2007. The amendment eliminates the security plan requirements from the 10 CFR Part 50 licensed site after the spent nuclear fuel has been transferred to the 10 CFR Part 72 licensed Independent Spent Fuel Storage Installation and is based, in part, on the issuance of exemptions from the specific requirements set forth in 10 CFR 50.54(p) and 10 CFR Part 73.

The Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest based on the continued maintenance of appropriate security requirements for the special nuclear material. Additionally, special circumstances are present based on the relocation of the spent nuclear fuel from the 10 CFR Part 50 licensed site to the 10 CFR Part 72 site. Therefore, the Commission hereby grants Pacific Gas and Electric Company an exemption from the requirements of 10 CFR 50.54(p) at Humboldt Bay Power Plant, Unit 3.

The Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest based on the maintenance of appropriate security requirements for the special nuclear material under the 10 CFR Part 72 license. Therefore, the Commission hereby grants Pacific Gas and Electric Company an exemption from the physical protection requirements of 10 CFR Part 73 at Humboldt Bay Power Plant, Unit 3.

J. Conway

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A copy of our related Safety Evaluation is also enclosed. The Notice of Issuance will be included in the Commission's next biweekly Federal Register notice.

Sincerely,

/RA/

John B. Hickman, Project Manager
Reactor Decommissioning Branch
Decommissioning and Uranium Recovery
Licensing Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials and
Environmental Management Programs

Docket No. 50-133

Enclosures:

1. Amendment No. 43 to DPR-7
2. Safety Evaluation

cc w/encls: Humboldt Bay Service List

A copy of our related Safety Evaluation is also enclosed. The Notice of Issuance will be included in the Commission's next biweekly Federal Register notice.

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cc w/encls: Humboldt Bay Service List

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OFFICIAL RECORD COPY

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PACIFIC GAS AND ELECTRIC COMPANY

DOCKET NO. 50-133

HUMBOLDT BAY POWER PLANT, UNIT 3

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No. 43

License No. DPR-7

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by Pacific Gas and Electric Company (the licensee), dated November 5, 2007, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I;
 - B. The facility will be maintained in conformity with the application, as amended, the provisions of the Act, and the applicable rules and regulations of the Commission;
 - C. There is reasonable assurance: 1) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public; and 2) that such activities will be conducted in compliance with applicable portions of the Commission's regulations;
 - D. 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
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.
2. Accordingly, the license is amended by changes to the Operating License. Paragraph 2.C.1., of Facility Operating License No. DPR-7 is hereby deleted.

3. This license amendment is effective as of the date that the transfer of the last of the spent nuclear fuel from the spent fuel pool to the independent spent fuel storage installation is complete and shall be implemented within 60 days after the transfer.

FOR THE NUCLEAR REGULATORY COMMISSION.

/RA/

Keith I. McConnell, Deputy Director
Decommissioning and Uranium Recovery
Licensing Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials and
Environmental Management Programs

Date of Issuance: June 16, 2008

ATTACHMENT TO LICENSE AMENDMENT NO. 43

FACILITY OPERATING LICENSE (POSSESSION ONLY) NO. DPR-7

DOCKET NO. 50-133

Replace the following license page with the attached revised page. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

REMOVE

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INSERT

3

5. Pursuant to the Act and Title 10, CFR, Chapter I, Parts 30 and 70, to possess, but not to separate, such by product and special nuclear materials which were produced by operation of the reactor.] Amdt. #39 4/17/07
- C. This license shall be deemed to contain and is subject to the conditions specified in Part 20, Section 30.34 of Part 30, Section 40.41 of Part 40, Section 50.54 and 50.59 of Part 50, and Section 70.32 of Part 70 of the Commission's regulations, and is subject to all applicable regulations and orders of the Commission now or hereafter in effect, and is subject to the additional conditions specified or incorporated below.
1. Intentionally Deleted] Amdt. #43 6-16-08
2. Technical Specifications
The Technical Specifications contained in Appendix A, as revised through Amendment No. 38, are hereby incorporated in the license. Pacific Gas and Electric Company shall maintain the facility in accordance with the Technical Specifications.
3. With respect to changes to the facility or procedures described in the Decommissioning Plan, or changes to the Decommissioning Plan, and the conduct of tests and experiments not described in the Decommissioning Plan, the provisions of 10 CFR 50.59 shall apply.] Amdt. #29 7-7-95
4. To demonstrate compliance with the NRC License Termination Rule, the Final Status Survey for Humboldt Bay Power Plant, Unit No. 3 license termination may utilize the results of the licensee's surveys of the area underlying the new fossil generation facility, referred to as the Humboldt Bay Repowering Project, provided a cross contamination prevention and monitoring plan is maintained.] Amdt. #40 9-11-07

SAFETY EVALUATION BY OFFICE OF FEDERAL AND STATE MATERIALS
AND ENVIRONMENTAL MANAGEMENT PROGRAMS
RELATED TO AMENDMENT NO. 43 TO FACILITY OPERATING LICENSE NO. DPR-7
PACIFIC GAS AND ELECTRIC COMPANY
HUMBOLDT BAY POWER PLANT, UNIT 3
DOCKET NO. 50-133

1.0 INTRODUCTION

By letter dated November 5, 2007, Pacific Gas and Electric Company (PG&E, the licensee) submitted to the NRC, a request for an amendment to eliminate the Humboldt Bay Power Plant (HBPP) security plan requirements pursuant to 10 CFR Part 73 and 10 CFR 50.54(p) upon successful transfer of the spent nuclear fuel assemblies and fuel fragment containers (spent fuel) from the Spent Fuel Pool (SFP) to the Humboldt Bay Independent Spent Fuel Storage Installation (ISFSI). The removal of all spent fuel from the permanently shutdown and defueled HBPP would reduce the threat of radiological sabotage or diversion of strategic nuclear materials relevant to the Part 50 license.

2.0 BACKGROUND

On July 2, 1976, HBPP Unit 3 was shut down for annual refueling and to conduct seismic modifications. In 1983, updated economic analyses indicated that restarting Unit 3 would probably not be cost-effective, and in June 1983, PG&E announced its intention to decommission the unit. On July 16, 1985, the U.S. Nuclear Regulatory Commission (NRC) issued Amendment No. 19 to the HBPP Unit 3 Operating License to change the status to possess-but-not-operate, and the plant was placed into a SAFSTOR status. SAFSTOR is the decommissioning method in which a nuclear facility is placed and maintained in a condition that allows the safe storage of radioactive components of the nuclear plant and subsequent decontamination to levels that permit license termination.

The NRC approved the HBPP Unit 3 SAFSTOR Decommissioning Plan (DP) in July 1988. Pursuant to the 1996 NRC decommissioning rule, 10 CFR 50.82, and subsequent discussions with the NRC, the HBPP DP was converted into a Defueled Safety Analysis Report (DSAR) and a Post Shutdown Decommissioning Activities Report (PSDAR). The DSAR is updated every two years in accordance with 10 CFR 50.71. The plant is currently in SAFSTOR with incremental decommissioning activities ongoing.

In December 2003, PG&E formally submitted a license application to the NRC for approval of a dry-cask Independent Spent Fuel Storage Installation (ISFSI) at the Humboldt Bay site. License and safety evaluation reports for the Humboldt Bay ISFSI were issued on November 17, 2005. PG&E is preparing to transfer spent fuel currently in the SFP to the ISFSI in 2008, which will facilitate increased decommissioning activities in Unit 3.

On September 2, 2005, the NRC approved the HB ISFSI Physical Security Plan (PSP) that PG&E submitted on July 11, 2005. On November 17, 2005, the NRC issued Materials License SNM-2514 for the HB ISFSI that included approval of the HB ISFSI PSP. In approving the Humboldt Bay ISFSI PSP, the NRC found that the plan meets the security requirements in 10 CFR 72 Subpart H, "Physical Protection," meets the requirements in 10 CFR 73.51, "Requirements for the Physical Protection of Stored Spent Nuclear Fuel and High-Level Radioactive Waste," and provides reasonable assurance that the storage of spent nuclear fuel at the ISFSI will not constitute an unreasonable risk to public health and safety with respect to physical protection. Currently, the licensee is maintaining the security plan requirements pursuant to 10 CFR Part 73 and 10 CFR 50.54(p). Contingent upon approval of the subject exemption and amendment, the ISFSI PSP will become effective upon the complete transfer of spent nuclear fuel from the spent fuel pool to the ISFSI.

3.0 EVALUATION

Paragraph (a) of 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage," states that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety." Pursuant to 10 CFR 73.5, "Specific Exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemption from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Paragraph (1) of 10 CFR 50.54(p), states in part, "the licensee shall prepare and maintain safeguards contingency plan procedures in accordance with appendix C of part 73 of this chapter for effecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan." Pursuant to 10 CFR 50.12, "Specific Exemptions," the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirement of the regulations of this part, which are authorized by law and will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

3.1 Exemptions from 10 CFR Part 73 and 10 CFR 50.54(p)

The licensee requested specific exemptions in accordance with 10 CFR 73.5 and 10 CFR 50.12 for the HBPP from the requirements in 10 CFR Part 73 and 10 CFR 50.54(p), which provide the basis for the commitments in the security, contingency, and guard qualification and training plans. The requested exemptions from the security requirements for HBPP would be effective after the spent fuel has been removed from the reactor site by the licensee and relocated to the new ISFSI. The new ISFSI has been licensed under 10 CFR Part 72 for storage facilities not associated with a reactor site and possesses an approved physical security plan as required by 10 CFR 72.180 and 10 CFR 73.51. Subpart H of 10 CFR Part 72 establishes requirements for physical protection for the independent storage of spent nuclear fuel and high-level radioactive

waste and refers to 10 CFR 73.51 to define the requirements for physical protection of spent nuclear fuel stored under a specific license issued pursuant to 10 CFR Part 72. The HBPP ISFSI has an NRC-approved security plan to protect the spent nuclear fuel from radiological sabotage and diversion as required by 10 CFR Part 72, Subpart H.

The existing 10 CFR Part 73 requirements need to be maintained at HBPP until the spent fuel located in the spent fuel pool is physically relocated from the defueled site to the new security area at the ISFSI. The proposed exemptions and amendment would not be effective until all the spent fuel at HBPP has been transferred to the ISFSI. With the completion of this activity, there would be no spent nuclear fuel located within the 10 CFR Part 50 licensed site. At that time, the potential for radiological sabotage or diversion of special nuclear material at the 10 CFR Part 50 licensed site is eliminated. The security requirements of 10 CFR Part 73, as applicable to a 10 CFR Part 50 licensed site, presume that the purpose of the facility is to possess and utilize special nuclear material. Therefore, the continued application of the 10 CFR Part 73 requirements to the HBPP facility would no longer be necessary to achieve the underlying purpose of the rule. Additionally, with the transfer of the spent nuclear fuel to the ISFSI, the 10 CFR Part 50 licensed site would be comparable to a source and byproduct licensee in terms of the level of security needed to protect the public health and safety. Based on the above, the NRC has determined that the removal of all spent nuclear fuel from the 10 CFR Part 50 licensed site constitutes special circumstances. The security of the special nuclear material will be maintained following relocation of the spent nuclear fuel to the 10 CFR Part 72 licensed ISFSI since specific assurance objectives and general performance requirements are in place to protect the spent fuel by the security requirements in 10 CFR Part 72. Therefore, protection of the special nuclear material will continue following relocation of the spent nuclear fuel from the 10 CFR Part 50 licensed site.

Based on the above, the Commission has determined that, pursuant to 10 CFR 73.5 and 10 CFR 50.12(a), the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest based on the continued maintenance of appropriate security requirements for the special nuclear material. Additionally, special circumstances are present based on the relocation of the spent nuclear fuel from the 10 CFR Part 50 site to the 10 CFR Part 72 site.

3.2 License Change

In addition to the proposed exemptions, the licensee has proposed to delete Section C.1. from Facility Operating License No. DPR-7. As discussed above, the exemptions from the Commission's security requirements, following the transfer of the spent nuclear fuel from the 10 CFR Part 50 site to the 10 CFR Part 72 site, is acceptable. The proposed changes to the license are consistent with the exemptions and necessary for the relief to be effective. Therefore, based on the discussion provided in Section 3.1, the proposed deletion of paragraph C.1. from Facility Operating License No. DPR-7 is acceptable.

3.3 Summary

The staff concludes that the exemption requests and license change are acceptable when the spent nuclear fuel has been removed from the 10 CFR Part 50 site. The NRC finds the exemptions from 10 CFR Part 73 and 10 CFR 50.54(p) and the deletion of paragraph C.1. from the facility operating license to be acceptable since specific assurance objectives and general performance requirements will be in place to protect the spent fuel by the security requirements in 10 CFR Part 72 after the spent nuclear fuel has been relocated to the ISFSI.

4.0 STATE CONSULTATION

In accordance with the Commission's regulations, the appropriate California State official was notified of the proposed issuance of the amendment. The State official had no comments.

5.0 ENVIRONMENTAL CONSIDERATION

This amendment relates solely to safeguards matters and does not involve any significant construction impacts. Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(12). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact related to the exemption was published in the *Federal Register* on May 6, 2008 (73 FR 25050). Accordingly, based upon the environmental assessment, the Commission has determined that issuance of this exemption will not have a significant effect on the quality of the human environment.

6.0 CONCLUSION

The staff has concluded, based on the considerations discussed above, that: 1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner; and 2) such activities will be conducted in compliance with the Commission's regulations, and the issuance of the amendment will not be inimical to the common defense and security nor to the health and safety of the public.

Principal Contributor: John Hickman

Date: June 16, 2008