[7590-01-P]

NUCLEAR REGULATORY COMMISSION

PACIFIC GAS AND ELECTRIC COMPANY

DIABLO CANYON INDEPENDENT SPENT FUEL STORAGE INSTALLATION

DOCKET NO. 72-26

[NRC-2009-0569]

NOTICE OF ISSUANCE OF

AMENDMENT TO MATERIALS LICENSE NO. SNM-2511

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance of Amendment to Materials License No. SNM-2511.

DATES: A request for a hearing must be filed by **[INSERT DATE: 60 DAYS FROM DATE OF PUBLICATION]**.

FOR FURTHER INFORMATION CONTACT: John Goshen, Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, Mail Stop EBB-3D-02M, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001. Telephone: (301) 492-3325; e-mail: john.goshen@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 22, 2004, the U.S. Nuclear Regulatory Commission (NRC) issued NRC Materials License No. SNM-2511 to the Pacific Gas and Electric Company (PG&E) for the Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI), located at the Diablo

Canyon Nuclear Power Plant, Unit Nos. 1 and 2 site in San Luis Obispo County, California. The license authorizes PG&E to receive, possess, store, and transfer spent nuclear fuel and associated radioactive materials resulting from the operation of the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 in an ISFSI at the power plant site for a term of 20 years. The NRC staff published a Notice of Issuance of Environmental Assessment and Finding of No Significant Impact (EA/FONSI) for the approval of the Diablo Canyon ISFSI license in the Federal Register on October 30, 2003 (68 FR 61838), in accordance with the National Environmental Policy Act, and in conformance with the applicable requirements of 10 CFR Part 51. Additionally, the NRC published a supplement to this EA/FONSI on September 10, 2007 (72 FR 51687), in response to the decision of the United States Court of Appeals for the Ninth Circuit in *San Luis Obispo Mothers for Peace v. NRC*, 493 F.3d 1016 (9th Cir. 2006), and a related addendum to this supplement on November 15, 2007 (72 FR 64252).

By application dated April 7, 2008, as supplemented September 1, November 23, December 31, 2009, and January 22, 2010, PG&E submitted an application to NRC, in accordance with 10 CFR Part 72, requesting an amendment to NRC Materials License No. SNM-2511. PG&E's application requested that the ISFSI Technical Specifications (TS) be revised as follows:

1. Revise TS 3.1.1, "Multi-Purpose Canister (MPC)," to clarify the required Helium leak rate condition and the leak rate testing requirements;
2. Delete TS 3.1.4, "Spent Fuel Storage Cask (SFSC) Time Limitation in Cask Transfer Facility (CTF)," based on analysis of the thermal performance of the Holtec HI-STORM 100 system which shows there is no need for a required time limitation in the CTF;
3. Revise TS 3.2.1, "Dissolved Boron Concentration," to modify the dissolved boron concentrations required for MPC-32 canisters and, to allow linear interpolation for some

enrichments consistent with the Holtec International (Holtec) Certificate of Compliance (CoC) No.1014, Amendment 3, for the HI-STORM 100 system;

4. Add a note to both surveillance requirements of TS 3.2.1 to limit the monitoring requirement consistent with the Holtec CoC No.1014, Amendment 1, for the HI-STORM 100 system;
5. Revise TS 4.1.1.a, b, and c, "Design Features Significant to Safety," to allow use of Metamic Boron-10 as a neutron absorber for each of the specified MPC consistent with Holtec CoC No.1014, Amendment 2, for the HI-STORM 100 system, and add TS 4.1.2, “Design Features Important to Criticality Control,” to define the material and testing requirements for the use of Metamic;
6. Change the title of TS 4.3.4.a, "Permanent Load Handling Equipment," to "Weldment and Reinforced Concrete," which more correctly reflect the subject of the TS subparagraphs;
7. Revise TS 4.3.4.b, "Mobile Load Handling Equipment," to replace the term "permanent load handling equipment" with the term "the cask transporter," as the transporter is not considered a mobile load handling equipment within the context of TS 4.3.4.b; and
8. Revise item b of TS 5.1.3, "MPC and SFSC Loading, Unloading, and Preparation Program," to clarify the maintenance of the required conditions in the annular gap between the MPC and the transfer cask depending on which drying process is used and fuel heat load during MPC loading or unloading operations.

In accordance with 10 CFR 72.16, a Notice of Docketing was published in the Federal Register on December 28, 2009 (74 FR 68638). Pursuant to 10 CFR 72.46(b)(2), on February 10, 2010, the NRC approved and issued Amendment No. 1 to Materials License No. SNM-2511, held by PG&E for the receipt, possession, transfer, and storage of spent fuel at the Diablo Canyon ISFSI. Amendment No. 1 was effective as of the date of issuance.

Amendment No. 1 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. As required by the Act and the NRC's rules and regulations in 10 CFR Chapter I, the NRC has made appropriate findings, which are set forth in Amendment No. 1 Safety Evaluation Report (SER). The issuance of Amendment No. 1 satisfied the criteria specified in 10 CFR 51.22(c)(11) for a categorical exclusion. Thus, the preparation of an environmental assessment or an environmental impact statement is not required.

II. Opportunity to Request a Hearing

In accordance with 10 CFR 72.46(b)(2), the staff determined that this license amendment did not present a genuine issue as to whether public health and safety would be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing was not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign

documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at http://www.nrc.gov/site-help/e-submittals/apply-certificates.html. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at http://www.nrc.gov/site-help/e-submittals.html. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at http://www.nrc.gov/site-help/e-submittals.html.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at http://www.nrc.gov/site-help/e-submittals.html. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system

time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at http://www.nrc.gov/site-help/e-submittals.html, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using

E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

III. Further information

The NRC has prepared a SER that documents the staff's review and evaluation of the amendment. In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," final NRC records and documents related to this action, including the application for amendment and supporting documentation and the SER, are available electronically at the NRC's Electronic Reading Room, at: http://www.nrc.gov/reading-rm/adams.html From this site, you can access NRC's Agencywide Document Access and Management System (ADAMS), which provides text and

image files of NRC's public documents. The ADAMS Accession Numbers for the applicable documents are:

Document	**Date**	**ADAMS Accession No.**
License Amendment Request	April 7, 2008	ML081070073
Response to First Request for Additional Information	September 1, 2009	ML092530178
Response to Second Request for Additional Information	November 23, 2009	ML093270488
Response to Request for Supplemental Information	December 31, 2009	ML100120650
Response to Request for Supplemental Information	January 22, 2010	ML100280414
License Amendment No. 1 Issuance Package	February 10, 2010	ML100360010
Safety Evaluation Report	February 10, 2010	ML100360046

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact NRC's Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

These documents may also be viewed electronically on the public computers located at NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents, for a fee.

Dated at Rockville, Maryland, this 8th day of March, 2010.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

John Goshen, P. E., Project Manager
Licensing Branch
Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety
and Safeguards

image files of NRC's public documents. The ADAMS Accession Numbers for the applicable documents are:

Document	**Date**	**ADAMS Accession No.**
License Amendment Request	April 7, 2008	ML081070073
Response to First Request for Additional Information	September 1, 2009	ML092530178
Response to Second Request for Additional Information	November 23, 2009	ML093270488
Response to Request for Supplemental Information	December 31, 2009	ML100120650
Response to Request for Supplemental Information	January 22, 2010	ML100280414
License Amendment No. 1 Issuance Package	February 10, 2010	ML100360010
Safety Evaluation Report	February 10, 2010	ML100360046

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact NRC's Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

These documents may also be viewed electronically on the public computers located at NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents, for a fee.

Dated at Rockville, Maryland, this 8th day of March, 2010.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

John Goshen, P. E., Project Manager
Licensing Branch
Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety
and Safeguards

DISTRIBUTION: SFST r/f
File Location: G:\SFST\Diablo Canyon\Amend 1\FinalDC A1 FRN Issuance of Amendment.doc
ADAMS : ML100360212

OFC:	SFST		SFST		OGC		SFST		SFST		SFST	
NAME:	JGoshen		WWheatley		APessin		EBenner					
DATE:	2/22/2010		2/25/2010		2/ 22 /2010		03/02/2010					

OFFICIAL RECORD COPY