

May 2, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:)
)
PACIFIC GAS AND ELECTRIC) Docket No. 50-275-LR
COMPANY) Docket No. 50-323-LR
)
(Diablo Canyon Power Plant, Units 1 and 2))

OPPOSITION TO EMERGENCY PETITION
TO SUSPEND LICENSING DECISIONS AND PROCEEDINGS

INTRODUCTION

On April 14, 2011, San Luis Obispo Mothers for Peace (“SLOMFP”), which is an intervenor in this license renewal proceeding, and other petitioners and stakeholders in various licensing and rulemaking matters (collectively “Petitioners”), filed an “Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident” (“Emergency Petition”). The Emergency Petition is directed to the Commission (rather than to the presiding Licensing Board in this case). The Emergency Petition requests, as relevant to this proceeding, that the Commission:

- “Suspend all decisions” regarding the issuance of license renewals, pending completion by the NRC’s Task Force of its investigation of the near-term and long-term lessons of the Fukushima accident and any regulatory actions and/or environmental analyses of those issues. Emergency Petition at 1-2.
- “Suspend all proceedings with respect to hearings or opportunities for public comment” on any reactor-related or spent fuel pool-related issues that have been identified for investigation in the Task Force’s Charter, including external events (*i.e.*, seismic, flooding); station blackout; severe

accident measures; implementation of 10 C.F.R. § 50.54(hh)(2) regarding responses to explosions or fire; and emergency preparedness. *Id.* at 2.

- Establish procedures for raising new issues relevant to the Fukushima accident in pending licensing proceedings, while suspending requirements to justify the late-filing of new issues if their relevance to the Fukushima accident can be demonstrated.¹ *Id.* at 3.

Because the Emergency Petition is not characterized as a petition for rulemaking, a request for enforcement, or other request for other action under NRC regulations, Pacific Gas and Electric Company (“PG&E”) is treating the Emergency Petition as a general motion under 10 C.F.R. § 2.323.² By Order, dated April 19, 2011, the Commission established a May 2, 2011, deadline for responding to the Emergency Petition.

PG&E is supporting industry initiatives to respond to the events in Japan and recognizes and supports the NRC’s action to appoint a Task Force to identify near-term and long-term lessons from the Fukushima accident and to apply those lessons, as appropriate, to operating plants.³ PG&E is also continuing its ongoing geosciences work germane to seismic safety at Diablo Canyon Power Plant (“Diablo Canyon”), and has requested that the NRC not

¹ The Emergency Petition also requests that the Commission (1) conduct a safety analysis of the regulatory implications of the Tohoku-Chihou-Taiheiyo-Oki earthquake and publish the results for public comment and (2) request that the President establish an *independent* investigation of the Fukushima incident and its implications for nuclear safety in the United States. These requests are beyond the scope of this site-specific adjudication. PG&E notes, however, that some of what SLOMFP seeks already has taken place. For example, the NRC has established a Task Force to identify near-term and long-term lessons and to make recommendations for regulatory action.

² When a proceeding is pending, all motions should initially be addressed to the presiding officer. *See* 10 C.F.R. § 2.323(a); *Pacific Gas & Electric Co.* (Diablo Canyon Independent Spent Fuel Storage Installation), CLI-02-23, 56 NRC 230, 237 (2002). Nevertheless, given that the Emergency Petition has been filed on numerous dockets and is generic in nature, we agree that the Commission should address the Emergency Petition in the first instance.

³ *See* SRM-COMGBJ11-0002 (March 21, 2011) (ADAMS Accession No. ML110800456).

complete the license renewal review and issue the renewed licenses for Diablo Canyon until after certain seismic studies are complete. Insights from all of these efforts can and will be addressed as necessary in connection with the current NRC operating licenses for Diablo Canyon to support safe and reliable plant operations, before any period of extended operation.

However, as discussed below, PG&E opposes the Emergency Petition to the extent that it requests that the Commission suspend ongoing licensing reviews and proceedings. Commission precedent and public policy dictate that the NRC continue its ongoing reviews of the Diablo Canyon license renewal application. Moreover, the Atomic Energy Act and NRC regulations already provide for appropriate public participation in connection with agency actions such as any future rulemakings. And, to the extent any petitioners believe new information emerges from the lessons-learned reviews that is relevant to the NRC findings required for license renewal, existing regulations also provide adequate processes for seeking relief.

BACKGROUND

On November 23, 2009, in accordance with the time frame established by NRC regulations, PG&E submitted an application to renew the operating licenses for the two Diablo Canyon units. SLOMFP timely filed a petition to intervene on March 22, 2010. *See* “Request for Hearing and Petition to Intervene.” The Board issued its decision (LBP-10-15) with respect to the hearing request on August 4, 2010. The Board found three proposed contentions (TC-1, EC-1, and EC-4) to be admissible. The Board also found that the Petitioner had made a *prima facie* showing that a waiver of NRC regulations should be granted with respect to Contention EC-2 and that, if a waiver were granted, that contention would be admissible. The Board also referred questions related to one contention (EC-4) to the Commission.

PG&E appealed LBP-10-15 with respect to the three admitted contentions (TC-1, EC-1, and EC-4). *See* “Applicant’s Notice of Appeal of LBP-10-15,” dated August 15, 2010. The NRC Staff also sought Commission review of the Licensing Board decision to admit Contention TC-1 and Contention EC-1. *See* “NRC Staff’s Petition for Interlocutory Review of Atomic Safety and Licensing Board Decision (LBP-10-15) Admitting an Out of Scope Safety Contention and Improperly Recasting an Environmental Contention,” dated August 19, 2010. Both PG&E and the NRC Staff opposed the waiver of NRC regulations for Contention EC-2. *See* “Applicant’s Brief in Opposition to a Waiver for Contention EC-2,” dated September 24, 2010; “NRC Staff’s Brief in Opposition to Waiver of 10 C.F.R. §§ 51.53(c)(2) and 10 C.F.R. Part 51, Subpart A, Appendix B as to Contention EC-2,” dated September 24, 2010. The appeals of the admitted contentions and the waiver issue are pending before the Commission.

Separately, the Licensing Board has issued an initial scheduling order establishing certain milestones for hearings on the admitted contentions in this matter. *See* Initial Scheduling Order, dated September 15, 2010 (unpublished). The hearings on the admitted contentions are linked to the issuance of the NRC Staff review documents — in particular, the Final Supplemental Environmental Impact Statement (“FSEIS”), which is currently scheduled for completion in January 2012.

DISCUSSION

The Commission has previously addressed the criteria that it applies in circumstances such as those raised in the Emergency Petition — that is, in deciding whether to postpone licensing decisions and proceedings while awaiting the results of ongoing reviews of Commission regulations and policies. The Commission considers whether moving forward with the licensing review and adjudication will (1) jeopardize the public health and safety; (2) prove

an obstacle to fair and efficient decisionmaking; or (3) prevent appropriate implementation of any pertinent rule or policy changes that might emerge from its ongoing evaluation of the events. See *Private Fuel Storage* (Independent Spent Fuel Storage Installation), CLI-01-26, 54 NRC 376, 380 (2001); *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-01-28, 54 NRC 393, 399 (2001); *PG&E*, CLI-02-23, 56 NRC at 238. The Emergency Petition does not demonstrate circumstances that meet any of these criteria with respect to the issues currently before the Licensing Board and Commission in this proceeding. Continuation of ongoing safety and environmental reviews, and hearings on admitted issues, would neither present a threat to public health and safety nor interfere with implementation of any changes that could result from ongoing regulatory reviews of the Fukushima accident. Conversely, halting the licensing process would be inefficient. Therefore and as discussed further below, the Emergency Petition should be denied as it relates to this proceeding.⁴

First, the Emergency Petition seeks generic relief (*e.g.*, suspend all decisions on license renewal applications). The Commission has already implicitly addressed the generic issue. By not suspending operating licenses in the period of time that has elapsed since the Fukushima accident, the Commission has concluded that the continued operation of power plants does not pose an imminent risk to the public health and safety. Likewise, the Commission to date has not seen fit to suspend licensing reviews, recognizing that lessons learned from the

⁴ The Emergency Petition is similar to a request made in the past by SLOMFP for the Diablo Canyon Independent Spent Fuel Storage Installation (“ISFSI”). CLI-02-23, 56 NRC at 236. In that case, SLOMFP requested that the Commission: (1) complete a comprehensive review of the adequacy of NRC safety requirements to protect against the terrorist threat; (2) suspend the pending ISFSI license proceeding while the NRC conducts its review; (3) expand the scope of the pending proceeding to allow consideration of interim measures (if the Commission declines to suspend the proceeding); and (4) provide for public participation in considering new requirements. *Id.* The Commission denied the request.

Fukushima events can be addressed in the future, as those lessons and the appropriate regulatory response are identified. The Commission has stated in various forums that it is confident in the safety of U.S. nuclear plants based on current regulations, that it will evaluate the lessons learned from Japan deliberately and in a comprehensive fashion, and will apply those lessons, as needed, to U.S. reactors.⁵ The Commission intends to follow the same lessons-learned approach that it took after the accident at Three Mile Island, Unit 2, and after the terrorist attacks of September 11, 2001.

With respect to Diablo Canyon specifically, the NRC Staff review of the license renewal application is moving forward in parallel with the Task Force's examination of the Fukushima events. Hearings on the currently admitted license renewal issues are not imminent. Nonetheless, upon achieving the milestones in the NRC Staff's reviews, any necessary hearings on issues currently before the Licensing Board can continue without jeopardizing public health and safety.⁶ Indeed, it would not be sensible to postpone consideration and resolution of safety and environmental issues within the scope of NRC's license renewal rules that are unrelated to the Commission's ongoing review of Fukushima events.

PG&E separately requested that the NRC "delay the final processing" of the license renewal application, "such that the renewed operating licenses, if approved, would not be

⁵ See, e.g., Commission Briefing Transcript, dated March 21, 2011, at 5, 9-10 (ADAMS Accession No. ML110810254).

⁶ As a general matter, the Commission has frequently reiterated its commitment to "the expeditious completion of adjudicatory proceedings." *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 24 (1998). Moreover, it is well settled that the pendency of parallel proceedings before other forums (e.g., the NRC's Fukushima Task Force) is not adequate grounds to stay an NRC adjudication. See e.g., *Consol. Edison Co. of N.Y. (Indian Point, Units 1 & 2)*, CLI-01-08, 53 NRC 225, 228-30 (2001) (denying request to suspend proceeding pending completion of license transfers and a decision on a 10 C.F.R. § 2.206 enforcement petition).

issued until after PG&E has completed the 3-D seismic studies and submitted a report to the NRC addressing the results of those studies.” Ltr. from John Conway, Chief Nuclear Officer, PG&E, to Document Control Desk, “Request for Deferral of Issuance of Diablo Canyon Power Plant Renewed Operating Licenses,” dated April 10, 2011 (ADAMS Accession No. ML111010592). These seismic studies will take time to complete. Given the current status of the safety and technical reviews of the license renewal application and the delay in final action requested by PG&E, there is no reason to believe that any danger to public health and safety would result from mere continuation of the adjudicatory proceeding on the previously-admitted issues.

Further, moving forward with the licensing reviews and this adjudication (consistent with the current schedule) will not prevent appropriate implementation of any rule or policy changes arising from the Commission’s ongoing evaluation of the Fukushima accident. Issues related to current operations, including the topics mentioned in the Emergency Petition — external events, station blackout, severe accidents, 10 C.F.R. § 50.54(hh)(2), and emergency preparedness — can all be addressed through ongoing regulatory processes under 10 C.F.R. Part 50 and do not need to await issuance of the renewed license. And, the Commission can modify license requirements by rule, regulation, or order; and changes can be applicable to both applicants and licensees. The regulations provide for public participation on these matters.⁷ Thus, suspending the NRC Staff license renewal review or the adjudicatory proceeding is not necessary to ensure that the public will realize the full benefit of the ongoing regulatory reviews at the Diablo Canyon facility.

⁷ See 10 C.F.R. § 2.802 (permitting “any interested person” to file a petition for rulemaking); 10 C.F.R. § 2.206 (affording “any person” the opportunity to file a request to modify, suspend, or revoke a license).

The Emergency Petition also requests that the Commission conduct an analysis of whether the Fukushima events pose new and significant information that must be considered under the National Environmental Policy Act (“NEPA”). Emergency Petition at 2. It is axiomatic that the NRC must comply with its NEPA obligations. However, the Emergency Petition does not provide a basis for suspending ongoing license reviews or adjudicatory proceedings while the NRC decides whether there is new and significant information, or whether any supplemental NEPA evaluations are necessary, prior to issuance of the renewed licenses. Any evaluations ultimately identified to comply with NEPA can be completed in due course prior to issuance of the renewed license.⁸

CONCLUSION

PG&E recognizes and supports the NRC Task Force’s efforts to identify the near-term and long-term lessons from the Fukushima accident and to apply those lessons, as appropriate, to operating plants, including Diablo Canyon. However, for the foregoing reasons, the Commission should deny the requests to suspend the ongoing licensing reviews and adjudicatory hearings. The Commission should continue to review matters presently before it, the NRC Staff should continue its reviews of the license renewal application, and the current hearing milestones set by the Board should remain in place. Any regulatory action or environmental analyses necessitated by the Fukushima accident can be addressed in due course prior to issuance of the renewed licenses.

⁸ *See generally* 10 C.F.R. § 51.92.

Respectfully submitted,

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Dated at Washington, District of Columbia
this 2nd day of May 2011

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CERTIFICATE OF SERVICE

I hereby certify that copies of “OPPOSITION TO EMERGENCY PETITION TO SUSPEND LICENSING DECISIONS AND PROCEEDINGS” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 2nd day of May 2011, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

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