

NUCLEAR REGULATORY COMMISSION
PACIFIC GAS AND ELECTRIC COMPANY
DOCKET NO. 50-133
HUMBOLDT BAY POWER PLANT, UNIT 3
SCHEDULAR EXEMPTION FROM FINAL RULE FOR
ENHANCEMENTS TO EMERGENCY PREPAREDNESS REGULATIONS

1.0 BACKGROUND

On July 2, 1976, Humboldt Bay Power Plant (HBPP) Unit 3 was shut down for annual refueling and to conduct seismic modifications. The unit was never restarted. In 1983, updated economic analyses indicated that restarting Unit 3 would probably not be cost-effective, and in June 1983, Pacific Gas and Electric Company (PG&E) announced its intention to decommission the unit. On July 16, 1985, the U.S. Nuclear Regulatory Commission (NRC or Commission) issued Amendment No. 19 to the HBPP Unit 3 Operating License to change the status to possess-but-not-operate. (Agencywide Documents Access and Management System Accession No. 8507260045). In December of 2008, the transfer of spent fuel from the fuel storage pool to the dry-cask Independent Spent Fuel Storage Installation (ISFSI) was completed, and the decontamination and dismantlement phase of HBPP Unit 3 decommissioning commenced. Active decommissioning is currently underway.

2.0 REQUEST/ACTION

The NRC issued the Final Rule for Enhancements to Emergency Preparedness Regulations (Final Rule) in the *Federal Register* on November 23, 2011 (76 FR 72560). Certain portions of the Final Rule are required to be implemented by June 20, 2012, while other portions of the Final Rule have later implementation dates.

By letter dated June 19, 2012 (ADAMS Accession No. ML12187A235), Pacific Gas and Electric Company (PG&E, the licensee) requested a schedular exemption which would extend the date for implementing certain sections of the Final Rule from June 20, 2012 to September 20, 2012. The specific sections are:

For Security-Related Emergency Plan Issues:

Emergency Action Levels for Hostile Action (10 CFR Part 50, App. E, IV.B)

Emergency Response Organization Augmentation at Alternate Facility - capability for staging emergency organization personnel at an alternate facility and the capability for communications with the control room and plant security (10 CFR Part 50, App. E, IV.E.8.d)

Protection for Onsite Personnel (10 CFR Part 50, App. E, IV.I)

For Non-Security Related Issues:

Emergency Declaration Timeliness (10 CFR Part 50, App. E, IV.C.2.)

Emergency Operations Facility - Performance Based Approach (10 CFR Part 50, App. E, IV.E.8.a.-c.)

PG&E asserts that the Final Rule does not specifically address defueled, non-operating facilities such as HBPP, the Final Rule is not applicable to Part 72 ISFSI emergency plans, and therefore PG&E needs more time to evaluate the impact of the Final Rule on HBPP.

3.0 DISCUSSION

Through the Final Rule which became effective December 23, 2011, the NRC amended certain emergency preparedness (EP) requirements that apply to certain Part 50 and Part 52 licensees and applicants. The Final Rule codified certain voluntary protective measures contained in NRC Bulletin 2005-02, "Emergency Preparedness and Response Actions for Security-Based Events" (BL-05-02) dated February 25, 2002, and generically applicable requirements similar to those previously imposed by Commission orders, in particular

EA-02-026, "Order for Interim Safeguards and Security Compensatory Measures," dated February 25, 2002. In addition, the Final Rule amended other licensee emergency plan requirements based on a comprehensive review of the NRC's EP regulations and guidance. The requirements enhance the ability of licensees in preparing to take and taking certain EP and protective measures in the event of a radiological emergency; address, in part, security issues identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent emergency plan implementation among licensees; and modify certain EP requirements to be more effective and efficient.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

This exemption would, as noted above, allow the licensee to defer compliance with portions of the new EP rule contained in 10 CFR Part 50, from June 20, 2012, until September 20, 2012. The Atomic Energy Act of 1954, as amended and the Commission's regulations permit the Commission to grant exemptions from the regulations in 10 CFR Part 50. Granting exemptions is consistent with the authority provided to the Commission in the Atomic Energy Act of 1954, as amended. Therefore, the exemption is authorized by law.

The Final Rule incorporated several security-related emergency planning improvements that had previously been issued by Order EA-02-026 or BL-05-02. EA-02-026 was sent only to operating power reactor licensees, and B-05-02 was sent only to holders of operating licenses for nuclear power reactors, except for those licensees who have permanently ceased operation and have certified that fuel has been removed from the reactor vessel. Although both the Order

and Bulletin were not applicable to nuclear power reactor facilities that have permanently shutdown, such as Humboldt Bay, all aspects of the Final Rule are applicable to these licensees.

The staff determined that Humboldt Bay's EP program met the baseline requirements of the previous version of the EP requirements in 10 CFR 50.47, and Part 50, Appendix E as previously approved by the NRC in the Decommissioning Safety Evaluation Report dated April 27, 1987. The EP Final Rule was not necessary for adequate protection. The *Federal Register* notice for the Final Rule stated, "the Commission has determined that the existing regulatory structure ensures adequate protection of public health and safety and common defense and security." Thus, compliance with the EP requirements in effect before the effective date of the EP Final Rule demonstrated reasonable assurance of adequate protection, and granting an extension of time to comply with portions of the EP Final Rule will not present an undue risk to public health or safety and is consistent with the common defense and security.

The Humboldt Bay Site Emergency Plan is a joint emergency plan addressing both the Part 50 licensed facility and the Part 72 licensed ISFSI. The Emergency Plan does not include PG&E-staffed offsite facilities or an onsite Technical Support Center. As stated in Section 2.0 above, the licensee has stated that the Final Rule does not specifically address defueled, non-operating facilities such as HBPP, it is not applicable to Part 72 ISFSI emergency plans, and therefore PG&E is still evaluating the applicability of the Final Rule to HBPP. Because PG&E is still evaluating the applicability of the Final Rule to HBPP, special circumstances are present in that the licensee reasonably needs more time to assess the impact of the rule.

4.0 CONCLUSION

The NRC staff reviewed the licensee's submittals and concludes that the licensee has justified its request for an extension of the compliance date with regard to five specific requirements of 10 CFR 50.47, and Part 50, Appendix E until September 20, 2012.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, "Specific exemptions," an exemption from the June 20, 2012, compliance date is authorized by law and will not endanger life or property or the common defense and security, is otherwise in the public interest, and special circumstances are present. Therefore, the Commission hereby grants the requested exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption to the June 20, 2012, deadline for the five sections specified in the licensee's letter dated June 19, 2012, the licensee is required to be in compliance with 10 CFR 50, App. E, IV.B, 10 CFR 50, App. E, IV.E, 10 CFR 50, App. E, IV.I, 10 CFR 50, App. E, IV.C, and 10 CFR 50, App. E, IV.E.8, or request appropriate exemption by September 20, 2012.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (77 FR 71198; November 29, 2012).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of December, 2012.

For the Nuclear Regulatory Commission.

/RA/

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