



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION IV  
1600 E LAMAR BLVD  
ARLINGTON, TX 76011-4511

February 11, 2015

EA-14-010

Mr. Edward D. Halpin, Senior Vice President  
and Chief Nuclear Officer  
Pacific Gas and Electric Company  
Diablo Canyon Power Plant  
P.O. Box 56, Mail Code 104/6  
Avila Beach, CA 93424

SUBJECT: FINAL SIGNIFICANCE DETERMINATION OF WHITE FINDING AND NOTICE OF VIOLATION; DIABLO CANYON POWER PLANT - NRC EMERGENCY PREPAREDNESS INSPECTION REPORT 05000275/2015502 AND 05000323/2015502

Dear Mr. Halpin:

This letter provides you with the final significance determination for the preliminary White finding discussed in U.S. Nuclear Regulatory Commission (NRC) Emergency Preparedness Inspection Report 05000275/2014502 and 05000323/2014502 (Agencywide Documents Access and Management System (ADAMS) ML14335A774). The finding involved the failure to obtain prior NRC approval for an emergency plan change that reduced the effectiveness of the emergency plan. Specifically, on November 4, 2005, without approval from the NRC, Diablo Canyon Power Plant staff removed instructions in emergency plan implementing procedures for making protective action recommendations for members of the public on the ocean within the 10-mile Emergency Planning Zone, reducing the plan's effectiveness.

At your request, a Regulatory Conference was held on January 14, 2015, to discuss your staff's views on this issue. A copy of the handout your staff provided is available at ADAMS ML15014A223. During the meeting, your staff described their assessment of the significance of the finding and associated corrective actions, including the root-cause evaluation of the finding. Specifically, your staff determined that they did not effectively compare changes to emergency plan implementing procedures to the NRC regulations and emergency plan requirements, and that they did not perform adequate evaluations for determining whether the changes constituted reductions in effectiveness. Corrective actions included adding an emergency preparedness supervisor position for additional oversight; adding metrics to monitor program health; strengthening procedure instructions, training, and qualifications for performing change evaluations; and adding a protective action recommendation bases document to the site emergency plan. In addition, your staff initiated an Emergency Preparedness Licensing Basis Verification Project to reassess all changes to the emergency plan since its original approval by the NRC.

During the Regulatory Conference, your staff accepted the proposed finding and its preliminary significance as well as the apparent Severity Level III violation, but requested that we consider exercising discretion for the violation and finding. With respect to the finding, your staff requested that the NRC consider discretion under the provisions of Manual Chapter 0305, "Operating Reactor Assessment Program," which provides for consideration of enforcement discretion to "encourage licensee initiatives to identify and resolve problems, especially those subtle issues that are not likely to be identified by routine efforts." We note that the violation occurred in 2005 and that there have been regular opportunities over the intervening years to identify and correct the violation through routine efforts. In particular, frequent drills and exercises presented numerous opportunities to identify this issue. During the conference, your staff acknowledged that had Diablo Canyon Power Plant staff been testing the emergency plan through drills and exercises that cumulatively covered the entire emergency planning zone, including areas over the water, plant staff might have identified and corrected this violation years earlier. In addition, licensee staff missed regular opportunities to identify this issue during your required annual program audit. As a result, the NRC has concluded that discretion for the finding under the provisions of Manual Chapter 0305 is not warranted.

In addition, your staff presented several factors for NRC consideration in regard to exercising enforcement discretion for the violation of Title 10 of the Code of Federal Regulations (CFR) 50.54(q) under the NRC Enforcement Policy's Section 3.5, "Special Circumstances." These factors included age of the violation, significance of the violation, clarity of the requirement and associated guidance, overall sustained performance of the licensee, identification, and current performance.

With regard to the age of the violation, we acknowledge that the violation occurred in 2005, which makes the age of the violation a factor worth considering; however, we also noted that there were a number of missed opportunities to identify this violation over the intervening years, as described above. With regard to clarity of the requirement, your staff indicated that it was not clear that the licensee was required to include areas over water in its protective action recommendation instructions until new guidance was issued in September 2014; however, the referenced change to the guidance pertained to the Significance Determination Process, not to the regulations or guidance on how to comply with the regulations. The September 2014 guidance clarified that the significance of the violation is the same regardless of the size of the population impacted.

The requirement to provide protective action recommendations for the 10-mile radius emergency planning zone, regardless of whether that zone includes areas of water, has never been unclear. This is evidenced by the fact that the original Diablo Canyon site emergency plan provided instructions for making protective action recommendations over the ocean, and the fact that the removal of those instructions was not the result of unclear guidance, but the result of your staff's failure to recognize the impact of the change to the emergency plan implementing procedures when it was made. With regard to identification and current performance, we acknowledge that your staff identified the violation in 2013 and has demonstrated consistently strong performance in the area of emergency preparedness; however, we have already taken these factors into consideration in determining that a civil penalty is not warranted and in refraining from assigning a cross-cutting aspect to the performance deficiency since it is not reflective of current licensee performance.

Your staff also requested that the NRC consider discretion in light of the agency's overall objective to "encourage licensee initiatives to identify and resolve problems." We have noted that as a result of identifying this violation, your staff has undertaken a substantial initiative, the Emergency Preparedness Licensing Basis Verification Project. This is an appropriate and commendable effort to assess the extent of cause of this issue. We would also highlight that to encourage initiatives like this, the NRC Enforcement Policy provides for enforcement discretion consideration for a violation "identified after the NRC has taken enforcement action, if the violation is identified by the licensee as part of the corrective action for the previous enforcement action and the violation has the same or similar root cause."

After considering the information developed during the NRC inspection and the additional information your staff provided at the regulatory conference, we have concluded that the violation is appropriately characterized as Severity Level III, and that the associated finding is appropriately characterized as White, meaning a finding of low to moderate safety significance. In addition, we have considered each of the factors associated with enforcement discretion and concluded that enforcement discretion is not warranted in this case.

You have 30 calendar days from the date of this letter to appeal our determination of significance for the identified finding. Such appeals will be considered to have merit only if they meet the criteria stated in the Prerequisites and Limitations sections of Attachment 2, "Process for Appealing NRC Characterization of Inspection Findings (SDP Appeal Process)," of NRC Inspection Manual Chapter 0609, "Significance Determination Process." An appeal must be sent in writing to the Regional Administrator, Region IV, 1600 E. Lamar Blvd., Arlington, Texas 76011-4511.

We have also determined that the failure to obtain prior approval for an emergency plan change which reduced the effectiveness of the emergency plan is a violation of 10 CFR 50.54(q), as cited in the attached Notice of Violation (Notice). The circumstances surrounding the violation were described in detail in NRC Inspection Report 05000275/2014502 and 05000323/2014502. In accordance with the NRC Enforcement Policy, the Notice is considered escalated enforcement action.

We have concluded that the information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in NRC Inspection Report 05000275/2014502 and 05000323/2014502 and this letter. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position.

Because licensee performance for this issue has been determined to be beyond the licensee response band, we will use the NRC's Action Matrix to determine the most appropriate NRC response for this finding. We will notify you, by separate correspondence, of that determination.

E. Halpin

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In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

***/RA/***

Marc L. Dapas  
Regional Administrator

Dockets: 50-275; 50-323  
Licenses: DPR-80; DPR-82

Enclosure:  
Notice of Violation

cc w/encl: Electronic Distribution for  
Diablo Canyon Power Plant

E. Halpin

- 4 -

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Sincerely,

**/RA/**

Marc L. Dapas  
Regional Administrator

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Enclosure:  
Notice of Violation

cc w/encl: Electronic Distribution for  
Diablo Canyon Power Plant

**Distribution w/ encl:**  
See next page

DOCUMENT NAME: S:\RAS\ACES\ENFORCEMENT\EA CASES - OPEN\Diablo Canyon\_EA-14-010\_PARS over ocean\Final Action\DC EA-14-010 FINAL SDP LETTER and NOV\_2-2-15.docx  
ADAMS ACCESSION NUMBER: ML15042A544

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By: MSHaire		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Non-Publicly Available		<input type="checkbox"/> Sensitive		NRC-002	
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OFFICIAL RECORD COPY

Letter to Edward D. Halpin from Marc L. Dapas, dated February 11, 2015

SUBJECT: FINAL SIGNIFICANCE DETERMINATION OF WHITE FINDING AND NOTICE OF VIOLATION; DIABLO CANYON POWER PLANT - NRC EMERGENCY PREPAREDNESS INSPECTION REPORT 05000275/2015502 AND 05000323/2015502

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## NOTICE OF VIOLATION

Pacific Gas and Electric Company  
Diablo Canyon Power Plant

Docket Nos. 50-275; 50-323  
License Nos. DPR-80; DPR-82  
EA-14-010

During an NRC inspection conducted from November 21, 2013, through October 17, 2014, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 50.54(q) [2005 version] requires, in part, that a nuclear power reactor licensee shall follow and maintain in effect emergency plans which meet the standards in 10 CFR 50.47(b) and that proposed changes that decrease the effectiveness of the approved emergency plans may not be implemented without application to and approval by the Commission. 10 CFR 50.47(b)(10) requires that a range of protective actions be developed for the plume exposure pathway emergency planning zone for emergency workers and the public.

Contrary to the above, on November 4, 2005, the licensee implemented a change that decreased the effectiveness of the approved emergency plan without application to and approval by the Commission, which resulted in the licensee failing to follow and maintain in effect an emergency plan meeting the standards in 10 CFR 50.47(b). Specifically, without approval from the NRC, the licensee decreased its emergency plan's effectiveness by removing instructions from its emergency plan implementing procedures for making protective action recommendations for affected areas over the ocean within the 10-mile emergency planning zone.

This is a Severity Level III violation. (Section 6.6)  
This violation is associated with a White significance determination process finding.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in NRC Inspection Report 05000275/2014502 and 05000323/2014502 and the letter transmitting this notice. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation; EA-14-010" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy to the Regional Administrator, Region IV, and a copy to the NRC Resident Inspector at Diablo Canyon Power Plant, within 30 days of the date of the letter transmitting this Notice.

If you choose to respond, your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. Therefore, to the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction.

Dated this 11th day of February 2015

Enclosure