

July 14, 2016

Victor McCree, Executive Director for Operations
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: 10 CFR 2.206 Petition on Apparent Violation of 10 CFR 50.9

Dear Mr. McCree:

On behalf of the Union of Concerned Scientists (UCS), I submit this petition pursuant to §2.206 in Title 10 of the Code of Federal Regulations (hereafter 10 CFR). We petition the Nuclear Regulatory Commission (NRC) to take enforcement action regarding an apparent violation of §50.9 in 10 CFR by Pacific Gas & Electric (PG&E, the owner of the Diablo Canyon nuclear plant.

Regulatory Requirement

Paragraph (a) of 10 CFR 50.9, “Completeness and accuracy of information,” states:

Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.¹

Apparent Violation

By letter² dated June 17, 2015, PG&E submitted license amendment request 15-03 to the NRC seeking to apply the alternative source terms in safety analyses of postulated accidents and transients for Diablo Canyon Units 1 and 2.

By communication³ dated October 1, 2015, the NRC sent a request for additional information to PG&E regarding the license amendment request. In the communication, the NRC asked 17 questions and stated the responses were needed for the NRC to complete its review. Via the questions, the NRC staff requested meteorological data for the years 2007 through 2011, the bases by PG&E for determining the hourly stability classifications, and the input and output files for all computer model runs using the ARCON96 code.

¹ Online at <http://www.nrc.gov/reading-rm/doc-collections/cfr/part050/part050-0009.html>

² Online at <http://www.nrc.gov/docs/ML1517/ML15176A539.html>

³ Online at <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML15278A049>

UCS assumes that the information being sought by the NRC via this RAI is material to its decision-making process for approving, or disapproving, the subject license amendment request; otherwise, the NRC would not have asked for this information.

Therefore, the NRC's RAI constitutes *prima facie* evidence that PG&E violated 10 CFR 50.9 by failing to provide complete information with its license amendment request dated June 17, 2015. The NRC attempted to rectify this violation by requesting that PG&E provide the missing information.

PG&E responded to the NRC's RAI by letter⁴ dated November 2, 2015. The NRC staff found⁵ the second attempt at compliance with 10 CFR 50.9 to also be deficient: "...the NRC staff was unable to determine whether the appropriate Met data was input to the modeling runs or if the data was representative of long-term conditions at the DCNPP site." So, the NRC staff made another attempt to pry the complete and accurate information from PG&E by RAIs dated February 17, 2016.⁶

According to the NRC staff, PG&E "confirmed the NRC staff-identified discrepancy between the Met data formatted per RG [Regulatory Guide] 1.23 and as input to the dispersion models, and after correction determined its effects on the downstream dose calculations."⁷

PG&E responded to RAI round two with a letter dated April 21, 2016.⁸ PG&E response totaled 283 pages—a very long supplement of additions and corrections to a submittal required under federal regulations to be complete and accurate in all material aspects.

Therefore, the NRC's RAI and PG&E's response constitute *prima facie* evidence that PG&E violated 10 CFR 50.9 by failing to provide accurate information with its license amendment dated June 17, 2015.

But PG&E was still not in compliance with 10 CFR 50.9 after its initial attempt and two NRC-coached re-tries. The NRC draft a third round of RAIs, but after a telephone call with PG&E on June 20, 2016, opted to conduct an audit in an attempt to fetch the missing and correct the inaccurate information.⁹

Enforcement Action Requested

UCS petitions the NRC to issue a Demand for Information¹⁰ pursuant to 10 CFR 2.204 to PG&E requiring the company to provide the NRC with a written explanation as to why its June 17, 2015, license amendment request failed to include all the accurate information needed by the NRC staff to complete its review and the measures it will implement so as to comply with 10 CFR 50.9 in future submittals to the NRC.

⁴ Online at <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML15321A235>

⁵ Online at <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML16193A332>

⁶ Online at <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML16048A232>

⁷ Online at <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML16193A332>

⁸ Online at <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML16120A026>

⁹ Online at <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML16193A332>

¹⁰ Online at <http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0204.html>

By letter¹¹ dated May 16, 2016, the NRC issued a Confirmatory Order to Entergy for apparent violations of 10 CFR 50.9 at their Palisades Nuclear Plant. The Palisades case differs from the Diablo Canyon case in that the NRC's investigation at Palisades revealed elements of deliberate and/or willful failures to provide complete and accurate information. But 10 CFR 50.9 requires licensees to provide complete and accurate information to the NRC. The administrative controls should be robust enough to prevent both intentional and accident submittals of incomplete or inaccurate information. PG&E failed to conform with 10 CFR 50.9 as clearly as Entergy failed to do so at Palisades, albeit perhaps for different reasons.

UCS requests enforcement action for this apparent violation of 10 CFR 50.9 at Diablo Canyon for the very reasons that led to the NRC promulgating this regulation in 1987.

Completeness and Accuracy Rule

On December 31, 1987, the NRC's final rule on Completeness and Accuracy of Information was published in the Federal Register (Vol. 52, No. 251, pp. 49362-49374). Quoting from this final rule:

The NRC is amending its regulations to codify the obligations of licensees and applicants for licensees to provide the Commission with complete and accurate information, to maintain accurate records and to provide for disclosure of information identified by the licensees as significant for licensed activities. This action re-emphasizes the NRC's need to receive complete, accurate, and timely communications from its licensees and license applicants if the NRC is to fulfill its statutory responsibilities. (Page 49362, third column)

This is a standard that the Commission should reasonably expect licensees to understand and apply. (Page 49363, third column)

The Commission does not wish to limit violations for omissions to situations involving an element of intent. (Page 49364, first column)

Under this rule, not only material incorrect information, written or oral, but omitted information which causes an affirmation statement to be materially incomplete or inaccurate, will be subject to sanctions. (Page 49366, third column)

Generally, if the matter was promptly identified and corrected by the licensee prior to reliance by the NRC, or before the NRC raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after the NRC relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected. (Page 49370, second column)

¹¹ Online at <https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML16137A012>

The NRC issued the proposed rule on completeness and accuracy of information on March 6, 1987, for public comment. By letter¹² dated August 7, 1987, the Office of Management and Budget (OMB) informed the NRC that their review of the proposed rule did not conclude the new requirements were justified and disapproved issuance of the final rule.

By letter¹³ dated September 8, 1987, the NRC replied to OMB defending the proposed completeness and accuracy rulemaking. The NRC described a history dating back to 1964 under its predecessor, the Atomic Energy Commission, of the sustained focus on licensees submitting complete and accurate information to the agency. For example, the NRC told OMB:

The Commission further emphasized in that decision [1976 case regarding North Anna Units 1 and 2] the absolute necessity that licensees “scrutinize their internal procedures to be as sure as they possibly can that all submissions to this Commission are accurate.

The final rule was published December 31, 1987, and became effective as of February 1, 1988.

Justification for Enforcement Action Requested

10 CFR 50.9 requires that information submitted to the NRC be complete and accurate in all material respects. PG&E submitted a license amendment request dated June 17, 2015, that was not complete and accurate in all material respects as evidenced by the NRC’s repeated RAIs asking for the material information that was missing and that inaccurate information be corrected.

The NRC’s statements accompanying the issuance of the final rule conveyed its expectations that licensees would understand and conform to the rule, that intent did not have to be involved for the rule to be violated, and that enforcement action will normally be taken if the NRC questions the misinformation (even when it is corrected.)

The enforcement action requested by UCS is within the range of possible actions. It is entirely consistent with the position taken by the NRC in the 1976 North Anna decision and restated in the 1987 reply to OMB about the “absolute necessity” for licensee having internal procedures that make it “as sure as possible” that information submitted to the NRC satisfy this federal regulation.

The enforcement action requested by UCS is not punitive. We do not seek to have a civil penalty imposed because of the apparent violation. Instead, we request an enforcement action intended to result in changes to PG&E’s internal procedures that lessen the likelihood that future submittals will be incomplete or inaccurate.

Although not a factor in our decision, the enforcement action requested by UCS will assist the NRC with its ongoing Project AIM efforts. The apparent violation of 10 CFR 50.9 required the NRC staff to expend additional resources to issue numerous requests for additional information and later to re-review the license amendment request along with the

¹² Not online, but available through the NRC’s Public Legacy Library in ADAMS via Accession No. 8806200250.

¹³ Not online, but available through the NRC’s Public Legacy Library in ADAMS via Accession No. 8710190361.

supplemental information. Had this licensee satisfied 10 CFR 50.9 with a complete and accurate license amendment request, these NRC staff resources would not have been squandered in such a non-productive way.

Petition Logistics

UCS requests the opportunity to meet with the members of the Petition Review Board (PRB) before they convene to determine whether our request can be processed as a petition. We do not anticipate this meeting to require more than 30 minutes. We only envision highlighting the enforcement action requested by our petition and its justification and then answering any clarifying questions the PRB members may have about the petition. UCS requests that our participation in this meeting be via a phone bridge.

Sincerely,

A handwritten signature in blue ink that reads "David A. Lochbaum". The signature is written in a cursive, flowing style.

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