

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-275 and 50-323; NRC-2009-0552]

**Pacific Gas and Electric Company; Diablo Canyon Power Plant, Units 1 and 2;
Annual Updates to License Renewal Application**

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an August 1, 2016, request from Pacific Gas and Electric Company (PG&E), which requested an exemption from the requirement to submit annual updates to its license renewal application (LRA) for Diablo Canyon Power Plant (DCPP), Units 1 and 2. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption while the review of the LRA remains suspended.

DATE: The exemption is effective on **August 24, 2016**.

ADDRESSES: Please refer to Docket ID **NRC-2009-0552** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2009-0552**. Address questions about NRC dockets to Carol Gallagher;

telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Michael J. Wentzel, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-6459; e-mail: Michael.Wentzel@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

By letter dated November 23, 2009 (ADAMS Package No. ML093340125), PG&E submitted an application pursuant to part 54 of title 10 of the *Code of Federal Regulations*

(10 CFR) for the renewal of Facility Operating Licenses DPR-80 and DPR-82 for DCP. A notice of acceptance for docketing of the application and opportunity for hearing regarding renewal of the facility operating licenses was published in the *Federal Register* on January 21, 2010 (75 FR 3493). On June 21, 2016, PG&E notified the NRC that it had reached an agreement in principle with various stakeholders to not proceed with the DCP license renewal and requested that the NRC suspend activity on the LRA, pending approval of the agreement by the California Public Utilities Commission (ADAMS Accession No. ML16173A454). On July 28, 2016, the NRC staff notified PG&E that it had suspended its review of the DCP LRA (ADAMS Accession No. ML16193A599). Although the NRC staff has suspended its review of the DCP LRA, the NRC's regulations at 10 CFR 54.21(b) would still require PG&E to provide an annual update to its LRA identifying changes made to the current licensing basis (CLB) for DCP that materially affect the LRA, absent this exemption request.

II. Request/Action

Pursuant to 10 CFR 54.15, "Specific exemptions," which references 10 CFR 50.12, PG&E's letter dated August 1, 2016 (ADAMS Accession No. ML16214A369), requested an exemption from the requirements of 10 CFR 54.21, "Contents of application—technical information," paragraph (b), related to the schedule for submitting periodic updates to the DCP LRA, while the NRC staff's review of the DCP LRA is suspended. Given PG&E's request for approval from the California Public Utilities Commission to not proceed with license renewal for DCP, PG&E is requesting exemption from the requirements in 10 CFR 54.21(b). Should the California Public Utilities Commission deny PG&E's request and direct PG&E to pursue license renewal, PG&E would provide an amendment to the DCP LRA that identifies changes to the

CLB of the facility that materially affect the contents of the LRA by a date agreed upon between PG&E and the NRC.

III. Discussion

Pursuant to 10 CFR 54.15, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of 10 CFR part 54, in accordance with 10 CFR 50.12, when (1) the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) special circumstances are present. As applicable to the requested exemption, special circumstances exist when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)).

The purpose of 10 CFR 54.21(b) is to ensure that the effect of changes to a renewal applicant's existing licensing basis is evaluated during the review of a renewal application (56 FR 64954). As referenced above, the NRC staff has suspended its review of the DCPD LRA in response to PG&E's June 21, 2016, request. As such, the NRC staff would not review an update to the DCPD LRA, should it be provided; therefore, updating the LRA while the review is suspended is unnecessary to achieve the underlying purpose of the rule. Should PG&E resume the license renewal process for DCPD, the NRC will require it to provide an amendment to the DCPD LRA that identifies applicable changes to the CLB of the facility since the period of time covered in PG&E's December 21, 2015, update (ADAMS Accession No. ML16004A149) by a date agreed upon between PG&E and the NRC.

Authorized by Law

Pursuant to 10 CFR 54.15, and in accordance with 10 CFR 50.12, the NRC may grant an exemption from the requirements of 10 CFR part 54, if the exemption is authorized by law. The exemption is authorized by law in that no other prohibition of law exists to preclude the activities which would be authorized by the exemption. Granting this exemption will provide PG&E with relief from the requirements of 10 CFR 54.21(b) while review of the DCPD LRA is suspended and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, this exemption request is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 54.21(b) is to ensure that changes made to the CLB of a facility that materially affect an LRA are reflected in a timely manner over the course of the NRC staff's review. The requested exemption is administrative in nature, in that it pertains to the schedule for submitting periodic updates of an application for renewal under 10 CFR part 54. Based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption. As a result, neither the probability, nor the consequences, of postulated accidents are increased. Therefore, the requested exemption does not result in any undue risk to public health and safety.

Consistent with Common Defense and Security

The requested exemption would exempt PG&E from providing updates to the DCPD LRA while review of the LRA is suspended. This proposed change has no relation to security issues. Therefore, the common defense and security is not impacted by the exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)).

As discussed above, the requested exemption will exempt PG&E from submitting LRA updates while the NRC's review of the application is suspended. Because the NRC staff would not review an update to the DCPD LRA, should it be provided, application of 10 CFR 54.21(b) is not necessary to achieve the underlying purpose of the rule. Therefore, special circumstances exist under 10 CFR 50.12(a)(2)(ii).

Eligibility for Categorical Exclusion from Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of 10 CFR chapter 1 (which includes 10 CFR 54.21(b)) is an action that is a categorical exclusion, provided that it meets the requirements of 10 CFR 51.22(c)(25)(i) through (vi). The NRC staff's determination that each of the applicable criteria for this categorical exclusion is met as follows:

- I. 10 CFR 51.22(c)(25)(i): There is no significant hazards consideration.

Staff Analysis: The criteria for determining if an exemption involves a significant hazards consideration are found in 10 CFR 50.92. The action involves only changes regarding the submission of updates to an application for which the licensing review is currently suspended. Therefore, there are no significant hazard considerations because granting the exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

II. 10 CFR 51.22(c)(25)(ii): There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

Staff Analysis: The proposed action involves only a change regarding the submission of updates, which is administrative in nature, and does not involve any changes in the types or significant increase in the amounts of effluents that may be released offsite.

III. 10 CFR 51.22(c)(25)(iii): There is no significant increase in individual or cumulative public or occupational radiation exposure.

Staff Analysis: Since the proposed action involves only a change regarding the submission of updates, which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

IV. 10 CFR 51.22(c)(25)(iv): There is no significant construction impact.

Staff Analysis: Since the proposed action involves only a change regarding the submission of updates, which is administrative in nature; it does not involve any construction impact.

V. 10 CFR 51.22(c)(25)(v): There is no significant increase in the potential for or consequences from radiological accidents.

Staff Analysis: The proposed action involves only a change regarding the submission of updates, which is administrative in nature and does not impact the probability or consequences of accidents.

VI. 10 CFR 51.22(c)(25)(vi): The requirements from which this exemption is sought involve 10 CFR 51.22(c)(25)(vi)(B) (reporting requirements) and 10 CFR 51.22(c)(25)(vi)(G) (scheduling requirements).

Staff Analysis: The exemption request involves requirements in both of these categories because it involves suspending the requirement contained in 10 CFR 54.21(b) to provide an update to the DCPD LRA each year following submittal of the LRA.

IV. Conclusions

The NRC has determined that, pursuant to 10 CFR 54.15, and in accordance with 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances exist under 10 CFR 50.12(a)(2)(ii). Therefore, the NRC hereby grants PG&E this exemption from the requirements of 10 CFR 54.21(b) to allow PG&E to dispense with the submission of updates to the DCPD LRA while the NRC's review of the LRA is suspended. Should PG&E resume the license renewal process for DCPD, the NRC will require it to provide an amendment to the DCPD LRA that identifies applicable changes to the CLB of the facility

since the period of time covered in PG&E's December 21, 2015, update by a date agreed upon between PG&E and the NRC.

Additionally, pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

Dated at Rockville, Maryland, this 17th Day of August 2016.

For the Nuclear Regulatory Commission.

/RA/

Jane E. Marshall, Acting Director,
Division of License Renewal,
Office of Nuclear Reactor Regulation.