



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 18, 2020

Mr. James M. Welsch
Senior Vice President, Generation
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: DIABLO CANYON NUCLEAR POWER PLANT – TEMPORARY
EXEMPTION FROM BIENNIAL EMERGENCY PREPAREDNESS EXERCISE
FREQUENCY REQUIREMENTS OF 10 CFR PART 50, APPENDIX E,
“EMERGENCY PLANNING AND PREPAREDNESS FOR PRODUCTION
AND UTILIZATION FACILITIES,” SECTIONS IV.F.2.b AND IV.F.2.c
(EPID L-2020-LLE-0111 [COVID-19])

Dear Mr. Welsch:

The U.S. Nuclear Regulatory Commission (NRC) has approved the requested exemption from specific requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix E, “Emergency Planning and Preparedness for Production and Utilization Facilities,” Section IV.F., “Training,” for the Diablo Canyon Nuclear Power Plant, Units 1 and 2 (Diablo Canyon). This action is in response to your application dated July 9, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20191A204), related to an NRC letter dated May 14, 2020 (ADAMS Accession No. ML20120A003), describing a process by which the NRC is prepared to grant temporary exemptions from the biennial emergency preparedness (EP) exercise requirement.

Specifically, your application requests a temporary exemption from the requirements of 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c, regarding the conduct of the full participation biennial EP exercise originally scheduled for August 19 of calendar year (CY) 2020. This exemption request is a one-time CY 2020 schedular postponement to allow Diablo Canyon to conduct the full participation biennial EP exercise in CY 2021.

On January 31, 2020, the U.S. Department of Health and Human Services declared a public health emergency for the United States to aid the nation’s healthcare community in responding to the Coronavirus Disease 2019 (COVID-19). Subsequently, the Centers for Disease Control and Prevention (CDC) issued recommendations (e.g., social distancing) in an attempt to limit the spread of COVID-19.¹ The exemption request states that the State of California issued directed health measures.² Per the exemption request, in response to these and other orders, Pacific Gas and Electric Company (PG&E) implemented its site pandemic plan, which includes social distancing, group size limitations, and self-quarantine. Your application further states that San

¹ CDC, “How to Protect Yourself and Others,” April 18, 2020 (ADAMS Accession No. ML20125A069).

² State of California, “Order of the State Public Health Officer,” March 19, 2020 (ADAMS Accession No. ML20262G968).

Luis Obispo County (the county in which Diablo Canyon is located), the California Department of Public Health, and the California Governor's Office of Emergency Services have communicated to PG&E and to the Federal Emergency Management Agency (FEMA) that the current COVID-19 pandemic response has impacted their ability to prepare for the CY 2020 biennial full participation EP exercise and that they are unable to participate in the exercise as scheduled.

Under 10 CFR 50.12, the NRC may grant exemptions from the requirements of 10 CFR Part 50, which 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 when special circumstances are present. Special circumstances are present whenever, among other things, 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 or the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Granting an exemption from NRC regulations does not impact NRC findings of reasonable assurance. In the statement of considerations for the final rule that established 10 CFR 50.12 ("Specific Exemptions; Clarification of Standards, Final Rule," 50 FR 50764, dated December 12, 1985), the Commission explained that:

While compliance with all NRC regulations provides reasonable assurance of adequate protection of the public health and safety, the converse is not correct, that failure to comply with one regulation or another is an indication of the absence of adequate protection, at least in a situation where the Commission has reviewed the noncompliance and found that it does not pose an "undue risk" to the public health and safety. Furthermore, the Commission has never defined the concept of "defense-in-depth" to preclude the granting of an exemption from a regulation as long as the applicable exemption criteria are met. In fact, the Commission has recognized that its regulations may provide for the possibility of exemptions when an appropriately high level of safety is in fact achieved and the public interest is served.

Further, the statement of considerations states that "the Commission believes that the effect of an exemption on total facility safety is appropriate for consideration as a special circumstance."

The requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.b, state, in part:

Each licensee at each site shall conduct a subsequent exercise of its onsite emergency plan every 2 years. ... The exercise may be included in the full participation biennial exercise required by paragraph 2.c. of this section.

The requirements in 10 CFR Part 50, Appendix E, Section IV.F.2.c, state, in part:

Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the radiological response plan.

In Appendix E to 10 CFR Part 50, the NRC defines the term "full participation," when used in conjunction with EP exercises for a particular site, to mean appropriate offsite local and State authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. Full participation includes testing major observable portions of the onsite and offsite

emergency plans and mobilization of State, local, and licensee personnel, and other resources in sufficient numbers to verify the capability to respond to the accident scenario.

The underlying purpose of 10 CFR Part 50, Appendix E, Sections IV.F.2.b and IV.F.2.c, is to ensure that emergency response organization personnel are familiar with their duties, to test the adequacy of emergency plans, and to identify and correct weaknesses. Further, the underlying purpose of Section IV.F.2.c is also to test and maintain interfaces among affected State and local authorities and the licensee.

The requested temporary exemption from the biennial EP exercise requirement would ensure that the licensee engages in activities that do not conflict with practices recommended by the CDC and the State of California to limit the spread of COVID-19. Biennial exercises, particularly those that integrate onsite and offsite performance, typically require the physical presence of numerous individuals in close quarters with one another, which is inconsistent with the CDC and the State of California recommendation of social distancing. Additionally, the COVID-19 pandemic has impacted the State of California's ability to prepare for the scheduled exercise and it was unable to participate.

The exemption request states that the decision to defer the EP exercise into CY 2021 allows Diablo Canyon and the offsite response organizations to continue implementing isolation activities to protect required emergency response organization (ERO) personnel so they are capable of executing their functions. It further states that the threat of COVID-19 spread has resulted in the inability to safely conduct the full participation biennial EP exercise originally scheduled for August 19, 2020. Additionally, your application provided a copy of a request made by the State of California, Nuclear Power Preparedness Program, to the FEMA Region IX Office as an attachment to the application, to extend the CY 2020 Diablo Canyon biennial exercise to September 15, 2021. That request documented the determination made by the County of San Luis Obispo, the California Department of Public Health, and the California Governor's Office of Emergency Services that the COVID-19 pandemic response impacted their ability to prepare for the scheduled exercise and that they were unable to participate in the CY 2020 exercise.

In your application, you provided the following information:

- Per Regulatory Issue Summary 2006-03, "Guidance on Requesting an Exemption from Biennial Emergency Preparedness Exercise Requirements," and consistent with similar exemptions granted for issues like hurricanes that have impacted exercise scheduling, a statement that the licensee will reschedule the conduct of the biennial exercise within 35 months from the month in which the previously evaluated exercise was conducted in CY 2018.
- A statement that if an exemption is granted to allow the licensee to conduct the CY 2020 biennial exercise in CY 2021, future biennial exercises will continue to be held in even years.
- A statement that the licensee conducted drills, exercises, and other training activities that exercised its emergency response strategies, in coordination with offsite authorities, since the previous biennial exercise.

- A statement that the rescheduled biennial exercise has been coordinated with the applicable offsite response organizations (if offsite response organization is required), the applicable NRC Region, and the applicable FEMA Region.

You also provided that the last biennial EP exercise was conducted on October 24, 2018. Thus, the 35-month window for scheduling the next exercise ends on September 24, 2021. Accordingly, the requested exemption would expire on September 24, 2021. In your application, you stated that the biennial EP exercise has been tentatively scheduled for September 15, 2021, which falls before this expiration date.

In your application, you listed several EP measures that are ongoing or will be performed and conducted by PG&E and Diablo Canyon that will maintain an acceptable level of EP during the requested exemption period to ensure that emergency response organization personnel are familiar with their duties and to test the adequacy of emergency plans. The listed measures and activities are as follows:

- PG&E has conducted training drills exercising the principal functional areas of emergency response since the last conducted evaluated biennial EP exercise (October 24, 2018);
- During the PG&E training drills with State, county, and local participation, onsite emergency response facilities were activated; and
- Diablo Canyon plans to conduct a drill with State, county, and local participation later in CY 2020.

You also stated that since the previous biennial exercise conducted on October 24, 2018, the State, county, and local authorities participated in additional emergency response training and drills conducted on the following dates:

- December 2018
- January 16, 2019
- January 24, 2019
- January 30, 2019
- March 27, 2019
- June 5, 2019
- June 14, 2019
- June 18, 2019
- July 24, 2019
- August 7, 2019
- October 30, 2019
- December 19, 2019
- January 6, 2020
- March 3, 2020
- March 5, 2020
- March 12, 2020

PG&E stated that it made a reasonable effort to reschedule the biennial EP exercise during CY 2020 but was unsuccessful. The exemption request states that on April 29, 2020, the FEMA Region IX Regional Assistance Committee Chair instituted biweekly coordination between

representatives from the County of San Luis Obispo, the California Department of Public Health, the California Governor's Office of Emergency Services, the NRC, and PG&E to understand the organizations' resource availability to support the August 19, 2020, exercise and to consider planning options. The decision to defer the exercise into CY 2021 was preferred because it allows PG&E and the offsite response organizations to continue responding to the current global health crisis and to focus on protecting responders as well as the health and safety of the public. Further, the California Governor's Office of Emergency Services and the County of San Luis Obispo submitted letters that are provided in the exemption request as attachments, which endorse this biennial EP exemption request to postpone the CY 2020 exercise to CY 2021.

The NRC staff has reviewed the requested exemption and determined that it is permissible under the Atomic Energy Act of 1954, as amended, and that no other prohibition of law exists to preclude the activities that would be authorized by the exemption. Therefore, the NRC staff finds that the requested exemption is authorized by law.

The NRC staff has reviewed the requested exemption and determined that it would not adversely affect the emergency response capability of the facility because the listed measures, activities, and additional emergency response training and drills will maintain the Diablo Canyon emergency responders' EP knowledge, skills, and abilities without the conduct of the biennial EP exercise during CY 2020. The requested exemption would also allow the affected PG&E staff and offsite response organizations to continue to be available to perform their functions during the COVID-19 public health emergency. Therefore, the NRC staff finds that the requested exemption will not present an undue risk to the public health and safety and is consistent with the common defense and security.

The NRC staff has reviewed the requested exemption and determined that it would provide only temporary relief from the applicable regulation and that the licensee has made good faith efforts to comply with the regulation. Also, based on the licensee continuing to conduct drills, exercises, and other training activities that exercise its emergency response strategies; the fact that the CY 2020 biennial EP exercise is being postponed, not canceled; and the fact that the future biennial exercises will continue to be held in even years, the NRC staff determined that application of the regulation in these circumstances is not necessary to achieve the underlying purpose of the rule. The NRC also notes that, on August 17, 2020, FEMA granted the request of the State of California for relief from the requirement to perform the CY 2020 Diablo Canyon biennial EP exercise as scheduled.³ Therefore, the NRC staff finds that special circumstances are present.

NRC approval of the requested exemption is categorically excluded under 10 CFR 51.22(c)(25), and there are no extraordinary circumstances present that would preclude reliance on this exclusion. The NRC staff determined, per 10 CFR 51.22(c)(25)(vi)(E), that the requirements from which the exemption is sought involve education, training, experience, qualification, requalification, or other employment suitability requirements. The NRC staff also determined that approval of this exemption involves no significant hazards consideration because it does not authorize any physical changes to the facility or any of its safety systems, change any of the assumptions or limits used in the facility licensee's safety analyses, or introduce any new failure modes. There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite because this exemption does not affect any effluent release limits as provided in the facility licensee's technical specifications or by the regulations

³ Memorandum from the FEMA Deputy Administrator, Resilience, to the FEMA Region IX Regional Administrator, dated August 17, 2020 (ADAMS Accession No. ML20260H359).

in 10 CFR Part 20, "Standards for Protection Against Radiation." There is no significant increase in individual or cumulative public or occupational radiation exposure because this exemption does not affect limits on the release of any radioactive material, or the limits provided in 10 CFR Part 20 for radiation exposure to workers or members of the public. There is no significant construction impact because this exemption does not involve any changes to a construction permit. There is no significant increase in the potential for or consequences from radiological accidents because the exemption does not alter any of the assumptions or limits in the licensee's safety analysis. In addition, the NRC staff determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the requested exemption.

Based on the above, the NRC has determined that the requested 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, and that special circumstances are present. Therefore, the NRC hereby grants the exemption.

This exemption expires on September 24, 2021.

If you have any questions, please contact the Diablo Canyon project manager, Samson Lee, at 301-415-3168 or by e-mail to Samson.Lee@nrc.gov.

Sincerely,

Craig G. Erlanger, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-275 and 50-323

cc: Listserv

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*by e-mail

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