

Nuclear Development, LLC

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September 11, 2020

10 CFR 50.80
10 CFR 50.90

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555-0001

Subject: Supplement to Application for Order Approving Construction Permit Transfers and Conforming Administrative Amendments

Bellefonte Nuclear Plant, Unit 1 and 2
Construction Permits Nos. CPPR -122 and CPPR-123
NRC Docket Nos. 50-438 and 50-439

- References:
1. Application for Order Approving Construction Permit Transfers and Conforming Administrative Construction Permit Amendments, November 13, 2018 (ML18318A428)
 2. Letter and Supporting Document Package from W. Gleaves, NRC, to W.R. McCollum, Nuclear Development, Inc., Supplemental Information Needed for Acceptance of Requested Application for Order Approving Construction Permit Transfers and Conforming Administrative Construction Permit Amendments (EPID No. L-2018-LLM-0004), April 5, 2019 (ML18348B138 (pkg.))
 3. Letter from W.R. McCollum, Nuclear Development, LLC to NRC, Response to Request for Supplemental Information, August 28, 2019 (ML19240A382)
 4. Letter from O. Tabatabai, NRC, to W.R. McCollum, Nuclear Development, LLC, Bellefonte Nuclear Plant, Units 1 and 2 – Acceptance of Application for Order Approving Construction Permit Transfers and Conforming Administrative Construction Permit Amendments (EPID No. L-2018-LLM-0004), November 5, 2019 (ML19298A194)
 5. Letter from O. Tabatabai, NRC, to W.R. McCollum, Nuclear Development, LLC, Status of the Nuclear Regulatory Commission Staff's Review of Nuclear Development, LLC Application for Order Approving Construction Permit Transfers and Conforming Administrative Construction Permit Amendments and Construction Permit Extension Requests (EPID No. L-2018-LLM-0155), August 31, 2020 (ML20230A369)

Nuclear Development, LLC (“ND”) submitted its request for an order approving the transfer of the Construction Permits (“CPs”) for the Bellefonte Nuclear Plant, Units 1 and 2 (“Bellefonte”) on November 13, 2018 (Reference 1) (the “Application”). The Application included a copy of the executed

Purchase and Sale Agreement between ND and the Tennessee Valley Authority (“TVA”) agreeing to the sale of Bellefonte.

As part of its pre-docketing review, the U.S. Nuclear Regulatory Commission (“NRC”) Staff issued a Request for Supplemental Information (“RSI”) to ND on April 5, 2019 (Reference 2). The NRC Staff’s RSI Part 4 requested ND “provide information regarding ND’s right to possess the Bellefonte site.” In its August 28, 2019 response to the RSI (Reference 3), ND explained that TVA had failed to close on the transaction as required under the Purchase and Sale Agreement, and noted that ND had filed suit in the U.S. District Court for the Northern District of Alabama seeking the Court to order TVA to close the sales transaction. Accordingly, ND requested that NRC proceed with its review of the Application.

On November 5, 2019, the NRC Staff notified ND that it had accepted ND’s Application for review (Reference 4). By letter dated August 31, 2020, the NRC updated ND on the status of its review (Reference 5). In its August 31, 2020 letter, the NRC referenced 10 CFR 50.80(b)(2), and reminded ND that it had not yet submitted a written consent from TVA or a court order that demonstrated ND’s right to possession of the Bellefonte site. As a result, the NRC informed ND that “the NRC staff is unable to complete its review of the requested licensing actions in the application until ND provides the staff with the required information to demonstrate compliance with the requirements in 10 CFR 50.80(b)(2).”

Upon closer review of NRC precedents related to transfer consents under 10 CFR 50.80, ND concludes that issuance of the NRC’s order granting consent to transfer of the CPs and the supporting Safety Evaluation Report -- conditioned upon production to the NRC evidence of ND’s right to possess the facility upon closing -- would be most consistent with longstanding agency practice related to transfers under 10 CFR 50.80. Most reactor-related consents occur under the circumstance of not-yet closed acquisition agreements while multiple other ancillary but necessary conditions to closing also are pending and uncertain (*e.g.*, Internal Revenue Service private letter rulings; Committee on Foreign Investment in the United States review; state public utility commission approvals; bankruptcy court approvals and financings, etc.). The permissive (“may”) language of Section 50.80(b)(2) recognizes the NRC Staff’s discretion to proceed with approving by appropriately conditioned transfer consent while the transferee’s access to title to the site remains pending.

At the time of its pre-docketing correspondence, ND anticipated timely resolution of the ongoing litigation. That lawsuit is ongoing and ND continues to expect to prevail on the merits. The Court’s rejection of TVA’s motion to dismiss¹ conclusively demonstrates in this case that ND advances a credible, non-trivial and non-speculative claim to ownership of the Bellefonte site.

The Commission’s policy determinations support moving forward with issuance of the consent. Commission precedent explains that the NRC will not “stay its hand” on a requested licensing action because other agencies or private parties have not taken (or may not take) actions necessary for the planned activity.² The Commission has long-held that it “will not be drawn into such [commercial

¹ *Nuclear Dev., LLC v. TVA*, No. 5:18-cv-1983-LCB, 2019 WL 2124539, at *7 (N.D. Ala. May 15, 2019).

² *See, e.g., Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-02-16, 55 NRC 317, 334 (2002):

[I]t would be productive of little more than untoward delay were each regulatory agency to stay its hand simply because of the contingency that one of the others might eventually choose to withhold a necessary permit or approval . . . PG&E’s bankruptcy case is moving forward in due course; it could yield a final decision late this year. We thus see no reason here to deviate from our usual practice of completing our license transfer

contractual] disputes, absent a concern for the public health and safety or the common defense and security, except to carry out its responsibilities to act to enforce its licenses, orders, and regulations.”³ Indeed, the NRC has explicitly refused to suspend a construction permit where a private party alleged that a private contract required approval from a third party, in this instance a state regulator, prior to construction.⁴

NRC orders approving requests for consent of power reactor license transfers routinely include a condition that “after receipt of all required regulatory approvals of the proposed transfer actions, [transferee] shall inform the Director of the NRC Office of Nuclear Reactor Regulation in writing of such receipt no later than 5 business days prior to the date of the closing of the transfer.”⁵ Such has been the case even in the face of ongoing adjudicatory proceedings before state public utility commissions⁶ and in the face of opposition by state officials.⁷

In some cases, the NRC Staff has included specific additional conditions in orders approving transfers of reactor licenses. The NRC’s approvals of certain requested transfers included applications where

reviews promptly despite the pendency of related matters elsewhere. (Internal quotations and citations omitted).

³ *CBS Corp.* (Waltz Mill Facility), CLI-07-15, 65 NRC 221, 234 (2007).

⁴ *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 748 (1977).

⁵ See, e.g., Order Approving Direct and Indirect Transfers of Control of Licenses and Draft Conforming License Amendments, *FirstEnergy Nuclear Operating Co.* (Beaver Valley Power Station, Unit Nos. 1 and 2, Davis-Besse Nuclear Power Station, Unit No. 1, and Perry Nuclear Power Plant, Unit No. 1) at 5 (Dec. 2, 2019) (ML19303C953); see also Order Approving Transfer of Licensed Authority and Draft Conforming Administrative License Amendment (EA-20-045), *Duke Energy Florida, LLC* (Crystal River Nuclear Generating Plant) at 4 (Apr. 2, 2020) (ML20069A024) (similar conditions for decommissioning reactor).

⁶ For example, in 2018 the NRC approved the license transfer for the Vermont Yankee Nuclear Power Station (“Vermont Yankee”) even though the Vermont Public Utility Commission Proceeding was ongoing. The NRC granted its approval for the transaction in October 11, 2018. See Order Approving the Transfer of License and Conforming Amendment, *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station) at 7 (Oct. 11, 2018) (ML18248A096). However, the Vermont Public Utility Commission did not grant its approval to the transfer of Vermont Yankee until December 6, 2018. See Vermont Public Utility Commission, Order Approving Acquisition of Entergy Nuclear Vermont Yankee, Inc. by NorthStar Decommissioning Holdings, LLC and Granting Other Requests Subject to Memorandum of Understanding, Case No. 8880 (Dec. 6, 2018). Similarly, the NRC approved the transfer of the Indian Point Nuclear Generating Unit Nos. 1 and 2 to Entergy in August 2001 even though the state utility commission had not yet approved the transfer of the plant. See Order Approving Transfer of Licenses and Approving Conforming Amendments, *Consolidated Edison Co. of New York, Inc.* (Indian Point Nuclear Generating Unit Nos. 1 and 2) (Aug. 27, 2001) (ML012250459). The New York Public Service Commission did not approve the transfer until August 30, 2001. See Order Authorizing Asset Transfer, Case 01-E-0040, *Joint Petition of Consolidated Edison Company of New York, Inc. and Entergy Nuclear Indian Point 2, LLC, for Authority to Transfer Certain Generating and Related Assets and for Related Relief*, slip op at 8 (issued August 31, 2001).

⁷ See, e.g., *Entergy Nuclear Operations, Inc.* (Pilgrim Nuclear Power Station), CLI-19-11, 90 NRC 258, 261 (2019) (The Commission rejected the Commonwealth of Massachusetts’ request to stay the effectiveness of a license transfer order pending adjudication of Massachusetts’ opposition in NRC license transfer proceeding.); *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), State of Vermont’s Petition for Leave to Intervene and Hearing Request (June 13, 2017) (ML17164A419) (opposing transfer of Vermont Yankee license to NorthStar Nuclear Decommissioning Company, LLC).

regulatory and commercial arrangements had not been finalized at the time the NRC granted its consent. For example, in approving the transfer of the license for the Beaver Valley Power Station, Unit No. 1, the NRC Staff conditioned its consent by requiring that:

On or by the closing date of the license transfer transaction, the Applicants shall take all necessary steps to ensure that the provisional trust agreement . . . to address the shortfall identified for [Beaver Valley Power Station, Unit No. 1] is implemented and maintained consistent with the safety evaluation supporting this Order.⁸

Similarly, in approving the transfer of the Diablo Canyon Nuclear Power Plant, Units 1 and 2 as part of Pacific Gas and Electric Company's emergence from bankruptcy in 2003, the NRC Staff's order included the following condition:

Prior to the closing of the license transfers, all necessary regulatory and/or judicial approvals of the bilateral power sales agreement (PSA) referenced in Enclosure 7 to the November 30, 2001, submittal must be obtained without any material changes to the PSA that would adversely impact the five-year financial projections proffered in the application⁹

These and other instances where the NRC has conditioned its order granting consent on certain - yet to be completed - actions confirms that Staff can, and routine agency practice would be to, complete its review of ND's Application and issue the consent subject to ordinary conditions. As Staff counsel noted in PG&E, "NRC approval does not effectuate the license transfers."¹⁰ Because NRC separately controls issuance of the conforming CP amendments, there is no risk that the CPs will transfer prior to ND's lawful ownership of the Bellefonte site. Accordingly, ND is aware of no basis that requires right to title of real property to be treated differently from other closing requirements.

Nonetheless, should the Staff conclude that an additional condition beyond those routinely included in consent orders is necessary, ND proposes the following language:

At least 5 business days prior to the closing of the transfers of the Construction Permits, Nuclear Development, LLC shall submit to the NRC proof of: (1) written consent to the transfer of the Bellefonte Nuclear Plant, Units 1 and 2 Construction Permits from the Tennessee Valley Authority; (2) a certified copy of an order or judgment from the U.S. District Court for the Northern District of Alabama attesting to Nuclear Development, LLC's right to possess the Bellefonte Nuclear Plant, Units 1 and 2; or (3) other evidence acceptable to the Staff.

⁸ Order Approving Direct and Indirect Transfers of Control of Licenses and Draft Conforming License Amendments, *FirstEnergy Nuclear Operating Co.* (Beaver Valley Power Station, Unit Nos. 1 and 2, Davis-Besse Nuclear Power Station, Unit No. 1, and Perry Nuclear Power Plant, Unit No. 1) at 5 (Dec. 2, 2019) (ML19303C953).

⁹ Order Approving Transfer of Licenses and Conforming Amendments, *Pac. Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2) at 5 (May 27, 2003) (ML031350218).

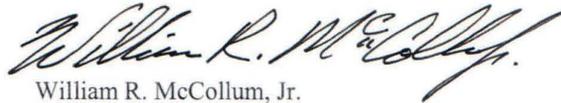
¹⁰ Letter from S. Lewis, NRC, to Atomic Safety and Licensing Board, Order Approving Transfer of Licenses from Pacific Gas and Electric Company to Electric Generation LLC and Diablo Canyon LLC, and Approving Conforming Amendments (May 29, 2003) (ML031530257) (transmitting copy of Order approving license transfer to ASLB in license transfer adjudicatory proceeding) (Attached).

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By following this approach, the NRC most closely adheres to its long-established agency policy of not becoming unnecessarily embroiled in ancillary approvals and most closely adheres to its long-standing and effective process of ensuring the Staff confirms the conditions necessary for license transfer.

ND would like to resolve this matter expeditiously and allow the NRC to meet the current committed schedule. If further discussions between ND and the Staff are needed, please contact me at your earliest convenience.

Sincerely,



William R. McCollum, Jr.
Chief Executive Officer & Chief Nuclear Officer
Nuclear Development, LLC

cc: Omid Tabatabai, Senior Project Manager
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May 29, 2003

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In the Matter of
PACIFIC GAS & ELECTRIC COMPANY
(Diablo Canyon Power Plant Independent Spent Fuel Storage Installation)
Docket No. 72-26-ISFSI; ASLBP No. 02-801-01-ISFSI

Dear Administrative Judges:

Enclosed, for inclusion in the record of this proceeding, is the "Order Approving Transfer of Licenses and Conforming Amendments," issued May 27, 2003 with respect to proposed transfer of the 10 C.F.R. Part 50 licenses for Diablo Canyon Nuclear Power Plant, Units 1 and 2. Please note that this NRC approval does not effectuate the license transfers. Although the Order of approval has been issued, the conforming license amendments will not be issued until the transfers are completed. The transfer cannot be completed until certain actions are taken by the U.S. Bankruptcy Court for the Northern District of California and the Federal Energy Regulation Commission.

Nevertheless, the issuance of this NRC approval represents a significant milestone with respect to the proposed transfers, a subject that has been extensively addressed in pleadings in this proceeding. It is submitted because of the frequent references in this proceeding to the pending Part 50 license transfer application. Its issuance has no effect on this proceeding, in that it does not affect the legitimacy of Pacific Gas and Electric Company as the Applicant in this proceeding.

Sincerely,

Stephen H. Lewis
Stephen H. Lewis
Counsel for NRC Staff

Enclosure: As stated

cc: Service List

May 27, 2003

Mr. Gregory M. Rueger
Senior Vice President, Generation
and Chief Nuclear Officer
Pacific Gas and Electric Company
Diablo Canyon Nuclear Power Plant
P. O. Box 3
Avila Beach, CA 93424

SUBJECT: DIABLO CANYON NUCLEAR POWER PLANT, UNITS 1 AND 2 - ISSUANCE OF ORDER APPROVING TRANSFER OF LICENSES FROM PACIFIC GAS AND ELECTRIC COMPANY TO ELECTRIC GENERATION LLC AND DIABLO CANYON LLC, AND APPROVING CONFORMING AMENDMENTS (TAC NOS. MB3523 AND MB3524)

Dear Mr. Rueger:

The enclosed Order is in response to your application dated November 30, 2001, as supplemented by letters dated January 18 and May 1, 2002, requesting approval of the transfer of the licenses for the Diablo Canyon Nuclear Power Plant, Units 1 and 2, held by Pacific Gas and Electric Company, to Electric Generation LLC and Diablo Canyon LLC, and approval of conforming amendments, pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations*. The enclosed Order provides consent to the proposed license transfers. It also approves conforming license amendments to be issued at the time the transfers are completed, with the changes as indicated in Enclosure 2.

Enclosures 3 and 4 are the nonproprietary and proprietary versions, respectively, of the staff's safety evaluation (SE) related to the preceding action. Proprietary information is contained on pages 3 and 4 of Enclosure 4. The nonproprietary version of the SE will be placed in the NRC Public Document Room and added to the Agencywide Documents Access and Management

System's Publicly Available Records System library. The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

David N. Jaffe, Acting Project Manager, Section 2
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-275 and 50-323

Enclosures 1. Order
 2. Conforming Amendments (DPR-80 and DPR-82)
 3. Safety Evaluation (nonproprietary)
 4. Safety Evaluation (proprietary)

cc w/encs: See next page

Diablo Canyon Power Plant, Units 1 and 2

cc w/o Enclosure 4:

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Enclosure 1.
Order

UNITED STATES OF AMERICANUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
PACIFIC GAS AND ELECTRIC COMPANY)	Docket Nos. 50-275
)	and 50-323
(Diablo Canyon Nuclear Power Plant,)	
Units 1 and 2))	

ORDER APPROVING TRANSFER OF LICENSES AND CONFORMING AMENDMENTS

I.

Pacific Gas and Electric Company (PG&E or the licensee) is the holder of Facility Operating Licenses Nos. DPR-80 and DPR-82, which authorize the operation of the Diablo Canyon Nuclear Power Plant, Units 1 and 2 (DCNPP or the facility) at steady-state power levels not in excess of 3411 megawatts thermal. The facility is located at the licensee's site in San Luis Obispo County, California. The licenses authorize PG&E to possess, use, and operate the facility.

II.

Under cover of a letter dated November 30, 2001, PG&E submitted an application requesting approval of the transfer of Facility Operating Licenses Nos. DPR-80 and DPR-82 for DCNPP from PG&E to Electric Generation LLC and Diablo Canyon LLC. The licensee also requested approval of conforming license amendments to reflect the transfer. The application was supplemented by submittals dated January 18 and May 1, 2002, collectively referred to as the "application" herein unless otherwise indicated.

Diablo Canyon LLC, a California limited liability company, is a wholly-owned subsidiary of Electric Generation LLC, also a California limited liability company. Electric Generation LLC is an indirect wholly-owned subsidiary of PG&E Corporation, the current parent of the licensee.

According to the application, Diablo Canyon LLC will become the owner of the facility, while Electric Generation LLC will operate and maintain DCNPP under the terms of a lease that will make Electric Generation LLC responsible for all costs of operation. Diablo Canyon LLC will be responsible for providing decommissioning funding assurance for DCNPP. With respect to authority to possess, use, and operate the facility, the conforming license amendments would remove references to PG&E from the licenses and add references to Electric Generation LLC and Diablo Canyon LLC, as appropriate, and make other administrative changes to reflect the proposed transfer. The application also proposed certain changes to the antitrust conditions attached to the licenses, which are discussed in more detail below.

PG&E requested approval of the transfer of the licenses and conforming license amendments pursuant to 10 CFR 50.80 and 50.90. Notice of the request for approval and an opportunity to request a hearing or submit written comments was published in the *Federal Register* on January 17, 2002 (67 FR 2455). The Commission received petitions to intervene and requests for hearing from the following: the Northern California Power Agency (NCPA); the Official Committee of Unsecured Creditors of Pacific Gas and Electric Company (Committee); the California Public Utilities Commission (CPUC); the Transmission Agency of Northern California, M-S-R Public Power Agency, Modesto Irrigation District, the California Cities of Santa Clara, Redding, and Palo Alto, and the Trinity Public Utility District, in a joint filing (collectively, TANC); and the County of San Luis Obispo (County). In a Memorandum and Order, dated June 25, 2002 (CLI-02-16), the Commission denied several of the petitioners' requests for intervention and referred the petitions of the County and CPUC to the NRC staff as comments for appropriate consideration. On February 14, 2003, the Commission denied the remaining petitioners' requests for hearing and terminated the proceeding. *Pacific Gas and Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-02, 57 NRC 19 (2003).

In CLI-03-02, the Commission addressed, among other things, the changes proposed in the application to the antitrust conditions appended to the licenses, which PG&E assumed would be carried forward if the licenses were transferred. These proposed changes would have retained PG&E as a licensee in the antitrust conditions, would have added a new transmission company (ETrans LLC) to the antitrust conditions, and would have added Electric Generation LLC (but not Diablo Canyon LLC) to the conditions, for the purpose of implementing the conditions. The Commission ruled that if the proposed license transfers are approved, the antitrust license conditions should not be included in (i.e., not remain part of) the transferred licenses. 57 NRC at 36. Accordingly, the conforming license amendments approved by this Order reflect the Commission's ruling in this regard.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. After reviewing the information submitted in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Electric Generation LLC and Diablo Canyon LLC are qualified to be the holders of the licenses to the extent proposed in the application, and that the transfer of the licenses to Electric Generation LLC and Diablo Canyon LLC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments that reflect the transfer of authority to possess, use, and operate the facility and the transfer of authority concerning the receipt, possession, or use of nuclear material from PG&E to Electric Generation LLC and Diablo Canyon LLC complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in

conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by the NRC staff's safety evaluation dated May 27, 2003.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the transfer of the licenses as described herein to Electric Generation LLC and Diablo Canyon LLC is approved, subject to the following conditions:

- (1) Before the completion of the transfer of DCNPP, Electric Generation LLC and Diablo Canyon LLC shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Electric Generation LLC and Diablo Canyon LLC have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

- (2) Prior to the closing of the license transfers, all necessary regulatory and/or judicial approvals of the bilateral power sales agreement (PSA) referenced in Enclosure 7 to the November 30, 2001, submittal must be obtained without any material changes to the PSA that would adversely impact the five-year financial projections proffered in the application such that indicated sources of funds would not be sufficient to cover projected costs of operation of the facility.
- (3) On the closing date of the transfer of DCNPP, Diablo Canyon LLC shall obtain from PG&E all of the accumulated decommissioning trust funds associated with the facility, and ensure the deposit of the funds into a decommissioning trust(s) for DCNPP established by Diablo Canyon LLC. The amount of the funds must meet or exceed the minimum amount required for the facility pursuant to 10 CFR 50.75. In the event that the transfer of DCNPP occurs prior to December 24, 2003, the decommissioning trust agreement(s) shall be consistent with the provisions contained in 10 CFR 50.75(h)(1) (67 FR 78350, published December 24, 2002), as if such provisions are in effect at the time of transfer. Notwithstanding the date of the transfer, the decommissioning trust agreement(s) must be acceptable to the NRC.
- (4) Diablo Canyon LLC shall take all necessary steps to ensure that the decommissioning trust(s) is maintained in accordance with the application and the requirements of this Order, and consistent with the safety evaluation supporting this Order.
- (5) Notwithstanding the transfer of ownership of DCNPP to Diablo Canyon LLC, Electric Generation LLC shall at all times following the transfer of the DCNPP licenses to Diablo Canyon LLC and Electric Generation LLC be fully responsible for all costs associated with the possession, use, operation, maintenance, and decommissioning of DCNPP (including costs associated with the receipt, possession, and use of byproduct, source,

and special nuclear material), except for decommissioning costs covered by the decommissioning trust funds transferred to Diablo Canyon LLC at the time of the license transfers. Diablo Canyon LLC shall be responsible for the payment of decommissioning costs for DCNPP at least to the extent of the accumulated decommissioning trust funds transferred to Diablo Canyon LLC and earnings associated with such funds.

- (6) Electric Generation LLC shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Electric Generation LLC to its direct or indirect parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of Electric Generation LLC's consolidated net utility plant, as recorded on Electric Generation LLC's books of account.
- (7) After receipt of all required regulatory and judicial approvals of the transfer of DCNPP, PG&E shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the closing date of the transfer of DCNPP no later than 7 business days prior to the date of closing. If the transfer of the licenses is not completed by May 31, 2004, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may be extended in writing.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated November 30, 2001, and supplements thereto dated January 18 and May 1, 2002, and the safety evaluation dated May 27, 2003, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 27th day of May 2003.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

R. William Borchardt, Acting Director
Office of Nuclear Reactor Regulation