



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

January 24, 2023

Ms. Paula Gerfen
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 POWER PLANT, UNITS 1 AND 2 – STAFF DECISION TO
NOT RESUME REVIEW OF WITHDRAWN LICENSE RENEWAL APPLICATION

Dear Ms. Gerfen:

The NRC staff is responding to your letter dated October 31, 2022, in which you request that the NRC resume its review of a license renewal application you voluntarily withdrew and terminated in 2018 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML22304A691). In November 2009, Pacific Gas and Electric Company (PG&E) submitted a license renewal application for Diablo Canyon Power Plant (DCPP), Units 1 and 2, and was in timely renewal under 10 CFR 2.109(b) because the application was submitted more than five years before the expiration dates of the operating licenses for the units (ML093340086). In 2011, PG&E requested that the NRC delay its decision on the DCPP license renewal application (ML111010592), and in 2016, PG&E requested that the NRC suspend its review of the DCPP license renewal application (ML16173A454). By letter dated March 7, 2018 (ML18066A937), PG&E requested to withdraw the license renewal application “based on the determination that continued baseload operation of the two DCPP units beyond their currently approved operating periods is not necessary to meet California’s projected energy demand requirements.” On April 16, 2018 (ML18093A115), the NRC granted the withdrawal (83 FR 17688), terminated its review, and closed the docket.

In your October 31, 2022, letter, you state that “the State of California has revisited its current and projected energy needs, including the role of DCPP in the State’s energy future” and request that the NRC confirm that you were (and are again) in timely renewal under 10 CFR 2.109(b), and you request that the NRC resume its review of the previously submitted and subsequently withdrawn license renewal application (ML22304A691). You propose “that the NRC staff ‘resume its review of the application as it existed’ when the review ceased in 2016, including all associated correspondence and commitments.” As part of your request to resume the review of the withdrawn application, you propose that the “NRC staff would determine what information it needs to continue its review and, eventually, submit an RAI [request for additional information]” to you. In parallel, you state you would “develop and submit an amendment” to the previously withdrawn license renewal application that identifies changes to the current licensing basis that materially affect the contents of the withdrawn application. In addition, you state that you would submit “supplemental information relevant to both the safety and environmental reviews to account for any material new information and guidance updates” since the cessation

of the review, and that you would update the licensing commitments related to the license renewal application.

In the alternative, you request an exemption from 10 CFR 2.109(b), which provides that if a nuclear power plant licensee files a sufficient license renewal application “at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.” Specifically, you request timely renewal protection under 10 CFR 2.109(b) if you submit a new license renewal application for DCCP, Units 1 and 2 by December 31, 2023. The current operating licenses for DCCP, Units 1 and 2 expire on November 2, 2024, and August 26, 2025, respectively.

The purpose of this letter is to respond to your request that the NRC resume the review of the withdrawn DCCP license renewal application. After review of your request that the NRC resume the review of the withdrawn application, the NRC staff has determined that resuming this review would not be consistent with our regulations or the Principles of Good Regulation and that there is no compelling precedent to support your request to resume the review of your withdrawn application. The NRC staff is evaluating your alternative request for an exemption from 10 CFR 2.109(b) and will respond to that request in a separate letter.

NRC regulations require an applicant or licensee to provide sufficient information in its application to support the requested action. As you acknowledge in your October 31, 2022, letter requesting that the NRC staff “resume its review of the application as it existed” in 2016, “including all associated correspondence and commitments,” additional information is needed to bring the withdrawn application up to date. That information includes new information that would have been required in annual updates in accordance with 10 CFR 54.21(b) if the application had not been withdrawn and remained under NRC staff review. The last such update was submitted in December 2015 (ML16004A149). The additional information that is needed also includes addressing material new information and guidance updates since the cessation of the staff’s review for both the safety and environmental reviews. In parallel, you request that the “NRC staff would determine what information it needs to continue its review and, eventually, submit an RAI” to you. But, as the applicant, it is necessary for you to identify the specific correspondence and commitments you intend to include in your application and conform with the requirement for the submission of a sufficient license renewal application under oath or affirmation for the staff to conduct its review.

Resuming the review of the withdrawn application also would be inconsistent with the Efficiency Principle of Good Regulation. The staff’s substantive review cannot be conducted efficiently until you submit the additional information you identify in your October 31, 2022, letter, which you state you will provide no later than the end of the calendar year 2023. Based on your letter, this additional information is expected to include an amendment to the withdrawn application that identifies material changes to the current licensing basis and “supplemental information relevant to both the safety and environmental reviews to account for any material new information and guidance updates.” It would not be effective or efficient for the NRC staff to start the review without this new information. Any requests for information that the staff might develop based on the re-docketed withdrawn application between now and the submission of this additional information in late 2023 may become obsolete depending upon the additional information that is provided. Additionally, the staff notes that it does not have to resume the review of the withdrawn application in order to leverage previous review work.

Further, you suggest in your October 31, 2022, letter that the NRC resume the review of the withdrawn application without providing a new opportunity for a hearing. Consistent with current

practice, the NRC publishes a notice of opportunity for hearing for license renewal applications. The NRC values public participation and strives to make the process for public participation transparent and reliable. See the Principles of Good Regulation (Openness) and NUREG-1614, Volume 8, Strategic Plan, Goal 3 (ML22067A170). The NRC staff does not believe relying on the original notice for hearing (75 FR 3493; January 21, 2010) is consistent with these values.

Last, the NRC staff did not find any compelling precedent that supports your request for the staff to resume the review of your withdrawn application. In your October 31, 2022, letter, you state that there is abundant precedent supporting your request, citing the reactor license renewal review for the Aerotest Radiography and Research Reactor (Aerotest), which does not support your request. Aerotest involved an applicant's demand for hearing on the NRC's denial of a license renewal application and license transfer application with complex and important procedural history (ML13226A407, ML13226A412, ML15357A201). Unlike here, at no time did the Aerotest applicant withdraw its license renewal application; instead, the applicant resolved the deficiencies on which the denial of the applications for license renewal and license transfer were based. Once the applicant resolved the deficiencies in its application and eliminated the basis for the staff's denial of the license renewal application, the staff withdrew its denial and resumed its review of the Aerotest license renewal application (ML17138A309, ML17138A306, ML17303B111).

Although not cited in your letter, the staff also considered whether the principles supporting reinstatement of the Bellefonte construction permits (ML090490838) or the reactivation of the Watts Bar Unit 2 construction (ML072060688) might support your request to resume the review of the withdrawn DCPD license renewal application. The Commission considered those situations on a case-by-case basis and relied on the Policy Statement on Deferred Plants (52 FR 38077; October 14, 1987) to make its determinations regarding the reinstatement of the Bellefonte construction permits (ML090500374) and reactivation of the Watts Barr Unit 2 construction (ML072080173). The Commission's Policy Statement on Deferred Plants does not address PG&E's voluntary withdrawal and termination of its license renewal application and the staff identified no other support for your request.

Therefore, as described above, based on NRC regulations, NRC's Principles of Good Regulation, the lack of sufficient information to support your request that the staff resume its review of the withdrawn application, and the lack of relevant precedent to support that request, the NRC staff will not initiate or resume the review of the withdrawn DCPD application. This decision does not prohibit you from resubmitting your license renewal application under oath and affirmation, referencing information previously submitted, and providing any updated or new information to support the staff's review. The NRC staff has not made a determination on your request for an exemption from 10 CFR 2.109(b), which is included in your October 31, 2022, letter. The NRC staff is evaluating that exemption request and expects to provide a response in March 2023.

P. Gerfen

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If you have any questions, please contact Brian Harris at 301-415-2277 or via e-mail at Brian.Harris2@nrc.gov.

Sincerely,



Signed by Gibson, Lauren
on 01/24/23

Lauren K. Gibson, Chief
License Renewal Projects Branch
Division of New and Renewed Licenses
Office of Nuclear Reactor Regulation

Docket Nos. 50-275 and 50-323

cc: Listserv

SUBJECT: DIABLO CANYON POWER PLANT, UNITS 1 AND 2 – STAFF DECISION TO NOT RESUME REVIEW OF WITHDRAWN LICENSE RENEWAL APPLICATION DATED: JANUARY 24, 2023

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