

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50-275 and 50-323

Pacific Gas and Electric Company

Diablo Canyon Power Plant, Units 1 and 2

Exemption

I. Background.

Pacific Gas and Electric Company (the licensee, PG&E) is the holder of Facility Operating License Nos. DPR-80 and DPR-82, which authorize operation of Diablo Canyon Power Plant (DCPP), Units 1 and 2, respectively. These units are pressurized water reactors located in San Luis Obispo, California. The operating licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. The current operating licenses for DCPP Units 1 and 2, expire on November 2, 2024, and August 26, 2025, respectively.

In November 2009, PG&E submitted a license renewal application for DCPP, Units 1 and 2 (ADAMS Accession No. ML093340086). The NRC conducted a docketing acceptance review of the application, accepted it for docketing, and began the necessary safety and environmental reviews (75 FR 3493; January 21, 2010). This license renewal application had timely renewal protection under 10 CFR 2.109(b) because it was submitted more than 5 years before the expiration dates of the operating licenses for the units. In April 2011, PG&E requested that the NRC delay its decision on the DCPP Units 1 and 2 license renewal application (ML111010592). On June 2, 2011, the NRC staff published a safety evaluation documenting its safety review of the application to that point (ML11153A103). In 2016, PG&E requested that the NRC suspend its review of the DCPP Units 1 and 2 license renewal application (ML16173A454). By letter dated March 7, 2018 (ML18066A937), PG&E requested to withdraw the license renewal application based on projected energy demands and other

economic factors in the State of California. The California Public Utilities Commission approved PG&E's resource planning decision to terminate the license renewal application review in Decision 18-01-022, dated January 11, 2018.¹ On April 16, 2018 (ML18093A115), the NRC granted the withdrawal (83 FR 17688; April 23, 2018), terminated its review, and closed the docket. PG&E states that subsequent to the withdrawal of its license renewal application in 2018, it "has been working on decommissioning planning efforts to support the transition to active decommissioning upon shutdown of DCPD Units 1 and 2 at the expiration of the operating licenses." (ML22304A691).

On September 2, 2022, the State of California enacted Senate Bill No. 846, which invalidated and reversed the 2018 California Public Utilities Commission decision to approve termination of PG&E's license renewal application and retirement of DCPD Units 1 and 2.² As a result, by letter dated October 31, 2022, PG&E requested that the NRC resume its review of the previously submitted and subsequently withdrawn DCPD Units 1 and 2 license renewal application; PG&E also requested that the NRC confirm that PG&E was (and is again) in timely renewal under 10 CFR 2.109(b) (ML22304A691). In support of its request, PG&E stated that its previous decision to withdraw the license renewal application was based on "the determination that continued baseload operation of the two DCPD units beyond their licensed operating periods was not necessary to meet California's projected energy demand requirements and the potential costs to bundled customers in light of changes in electricity supply in the State." In the alternative, PG&E requested an exemption from 10 CFR 2.109(b) and timely renewal protection that would allow PG&E to submit a license renewal application for DCPD Units 1 and 2 by December 31, 2023.

¹ Decision Approving Retirement of Diablo Canyon Nuclear Power Plant, Application 16-8-006, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M205/K423/205423920.PDF>

² California Senate Bill No. 846, Diablo Canyon powerplant: extension of operations (Sept. 2, 2022) https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB846 (SB 846).

The NRC staff responded to this request on January 24, 2023 (ML22343A179). In its response, the NRC staff explained it would not resume the review of PG&E's withdrawn application and stated that its response to PG&E's exemption request would be provided separately. As described more fully below, the staff has completed its evaluation of PG&E's exemption request and has determined that pursuant to 10 CFR 54.15 and 10 CFR 50.12, 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. The staff has also determined that special circumstances, as defined in 10 CFR 50.12(a)(2), are present.

II. Request/Action.

As an alternative to its request that the NRC staff resume its review of the withdrawn DCPD Units 1 and 2 license renewal application, PG&E requested 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, PG&E requested timely renewal protection under 10 CFR 2.109(b) if it submits a license renewal application for DCPD Units 1 and 2 by December 31, 2023.

In its October 31, 2022, letter, the licensee stated that two special circumstances apply to its exemption request. The special circumstances that the licensee identified are:

- 1) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.
- 2) There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.

III. Discussion.

Under 10 CFR 54.17(a), an application for a renewed license must be filed in accordance with subpart A of 10 CFR Part 2, which includes 10 CFR 2.109(b), "Effect of timely

renewal application.” Section 2.109(b) states that “[i]f the licensee of a nuclear power plant licensed under 10 CFR 50.21(b) or 50.22 files a sufficient application for renewal of either an operating license or a combined license 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.”

As provided in 10 CFR 54.15, exemptions from the requirements of Part 54 are governed by 10 CFR 50.12. Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present, as defined in 10 CFR 50.12(a)(2).

A. The Exemption is Authorized by Law

This exemption would allow the licensee to update its previous license renewal application and submit a sufficient license renewal application for DCPD Units 1 and 2, by December 31, 2023, and, if it does so, receive timely renewal protection under 10 CFR 2.109(b). This means that if the licensee submits an updated license renewal application by December 31, 2023, and the staff finds it acceptable for docketing, the existing licenses for DCPD Units 1 and 2 will not be deemed to have expired until the NRC has made a final determination on whether to approve the license renewal application.

The staff has determined that even though less than 5 years remain in the terms of each of the licenses for DCPD Units 1 and 2, granting this limited, one-time exemption is authorized by law. The 5-year time period specified in 10 CFR 2.109(b) is not required by the Atomic Energy Act of 1954, as amended, or the Administrative Procedure Act. It is the result of a discretionary agency rulemaking under Sections 161 and 181 of the Atomic Energy Act of 1954, as amended (56 FR 64943; December 13, 1991) that was designed to provide the NRC with a reasonable amount of time to review a license renewal application and decide whether to

approve it. Section 103c. of the Atomic Energy Act of 1954, as amended, permits the Commission to issue operating licenses, including renewed licenses. Section 2.109 implements Section 9(b) of the Administrative Procedure Act, 5 USC 558(c), which states, in part:

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The time period in 10 CFR 2.109(b) is designed to provide a reasonable amount of time for the NRC to review a license renewal application and reach a decision on whether to approve it. Prior to 1992, the rules provided that licensees would have received timely renewal protection when they submitted their license renewal applications 30 days before the expiration of the current license. (56 FR 64943; December 13, 1991). In 1990, the NRC proposed modifying 10 CFR 2.109 to provide that applications must be submitted 3 years before expiration of the current license to be afforded timely renewal protection. (55 FR 29043; July 17, 1990). There is nothing in the preamble supporting the proposed rule or final rule revising 10 CFR 2.109(b) that suggests that applying the timely renewal doctrine to license renewal applications submitted 30 days before the expiration of the license was not authorized by law. Instead, it appears the Commission proposed to revise 10 CFR 2.109(b) from 30 days to 3 years before the expiration of the license so that the final determination on a license renewal application would typically be made before the current operating license expired. In the proposed rule, the Commission explained that it did not believe 30 days would provide “a reasonable time to review an application for a renewed operating license” and estimated that the technical review of a license renewal application would take approximately 2 years. (55 FR 29043; July 17, 1990). In the final rule, the Commission stated that the technical review of the application would take approximately 2 years due to the review of many complex technical issues and that “any necessary hearing could likely add an additional year or more” (56 FR 64943; December 13, 1991). Ultimately, the Commission concluded in the final rule that timely

renewal protection would be provided for license renewal applications filed 5 years before the operating license expired to promote consistency with the requirement that licensees submit decommissioning plans and related financial assurance information on or about 5 years prior to the expiration of their current operating licenses. Thus, in promulgating 10 CFR 2.109(b), the Commission considered that the time period needed to reach a final determination may be less than 5 years in some cases, but the rule also provides timely renewal protection for timely-filed applications to account for situations where the resolution of complex technical issues may take more time.

The exemption constitutes a change to the schedule by which the licensee must submit its application for license renewal and is administrative in nature; it does not involve any change to the current operating license. Under 10 CFR 54.17(a), an application for a renewed license must be filed in accordance with subpart A of 10 CFR Part 2, which includes 10 CFR 2.109(b). However, the NRC may grant exemptions from the requirements of 10 CFR Part 54 pursuant to 10 CFR 54.15. For the reasons stated above, the NRC has determined that granting this one-time exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, the Administrative Procedure Act, or the NRC's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents no Undue Risk to Public Health and Safety

The requested exemption does not change the manner in which the plants operate and maintains public health and safety because the exemption from 10 CFR 2.109 does not result in a change to the facility or the current operating license, but allows DCCP Units 1 and 2 to continue operating under its existing licenses in the event the NRC has not reached a final determination of the license renewal application prior the expiration of the current operating licenses. Pending final action on the license renewal application, the NRC will continue to conduct all regulatory activities associated with licensing, inspection, and oversight, and will continue to take whatever action may be necessary to ensure adequate protection of the public

health and safety. The existence of this exemption does not affect NRC's authority, applicable to all licenses, to modify, suspend, or revoke a license for cause, such as a serious safety concern.

If the licensee submits a license renewal application by December 31, 2023, there would be approximately 11 months prior to the expiration of the current license for Unit 1, and approximately 20 months prior to the expiration of the current license for Unit 2, for the staff to conduct a docketing acceptance review and, if the application is accepted for docketing, provide a hearing opportunity and conduct the required safety and environmental reviews. Although 11 months is less than the 18-month generic milestone schedule for the staff's review of a license renewal application,³ it is sufficient time for the NRC staff to determine if any immediate actions need to be taken prior to the licensee entering the period of timely renewal. Additionally, unlike a situation where an application for license renewal is being filed for the first time, here, the licensee previously submitted an application that the NRC staff docketed and reviewed, issuing a safety evaluation in June 2011 documenting its findings to that point. If PG&E submits an updated, sufficient license renewal application by December 31, 2023, the NRC staff will be able to leverage insights from its partial review of the previously submitted and subsequently withdrawn DCP Units 1 and 2 application to conduct a focused, efficient review of the application. Based on the discussion in this section, the NRC finds that the action does not cause undue risk to public health and safety.

C. The Exemption is Consistent with the Common Defense and Security

The requested exemption does not alter the design, function, or operation of any structures or plant equipment that is necessary to maintain safe and secure status of any site security matters. Therefore, the NRC finds that the action is consistent with the common defense and security.

³ Generic Milestone Schedules of Requested Activities of the Commission, <https://www.nrc.gov/about-nrc/generic-schedules.html> (last updated Sept. 10, 2021).

D. Special Circumstances

The Commission will not consider granting a specific exemption from the requirements in 10 CFR Part 50 unless special circumstances are present. 10 CFR 50.12(a)(2). “Special circumstances are present whenever ... there is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.”⁴ 10 CFR 50.12(a)(2)(vi). The NRC finds that PG&E has provided several factors in support of its exemption request that demonstrate that special circumstances not considered when the Commission promulgated 10 CFR 50.12(a)(2)(vi) are present and that it would be in the public interest to grant this limited, one-time exemption.

PG&E submitted an application for license renewal for DCPD Units 1 and 2 in 2009. PG&E subsequently requested to withdraw this application in 2018 based on the determination by the State of California and the California Public Utilities Commission that continued baseload operation of the two DCPD units beyond their currently approved operating periods would not be necessary to meet California’s projected energy demand requirements (ML18066A937). Since that time, however, California’s projected energy demands have changed. To respond to those changes, the State of California enacted Senate Bill No. 846 (SB 846), which invalidated and reversed the 2018 California Public Utilities Commission decision to approve termination of PG&E’s license renewal application and retirement of Diablo Canyon Power Plant, Units 1 and 2. SB 846 was signed by the Governor of California on September 2, 2022. In its October 31, 2022, letter, PG&E stated that it submitted its request to reinstate its previously withdrawn license renewal application or obtain an exemption from the 5-year time period specified in 10 CFR 2.109(b) so that it could file an updated application, “pursuant to the direction in [California] Senate Bill No. (SB) 846.” The recent efforts by the State of California to keep DCPD Units 1 and 2 operating based, in part, on climate change impacts and serious electricity

⁴ Consistent with 50.12(a)(2)(vi), the Executive Director for Operations consulted with the Commission.

reliability challenges, constitute material circumstances that were not specifically considered when the NRC revised 10 CFR 2.109(b) in 1991.⁵ The NRC finds that the factors PG&E have provided in support of its request are compelling and demonstrate that the special circumstances required by 10 CFR 50.12(a)(2)(vi) are present and that it would be in the public interest to grant this exemption.

E. Environmental Considerations

The NRC has determined that the issuance of the requested exemption meets the provisions of the categorical exclusion in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of chapter 10 qualifies as a categorical exclusion if (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involves one of several matters, including scheduling requirements (§ 51.22(c)(25)(iv)(G)). The basis for NRC's determination is provided in the following evaluation of the requirements in 10 CFR 51.22(c)(25)(i)-(vi).

Requirements in 10 CFR 51.22(c)(25)(i)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(i), the exemption must involve a no significant hazards consideration. The criteria for making a no significant hazards consideration determination are found in 10 CFR 50.92(c). The NRC has determined that the

⁵ See SB 846 § 9 (stating “the purpose of the extension of the Diablo Canyon powerplant operations is to protect the state against significant uncertainty in future demand resulting from the state’s greenhouse-gas-reduction efforts involving electrification of transportation and building energy end uses and regional climate-related weather phenomenon, and to address the risk that currently ordered procurement will be insufficient to meet this supply or that there may be delays in bringing the ordered resources online on schedule.”); Senate Bill 846 Signing Message (Sept. 2, 2022) <https://www.gov.ca.gov/wp-content/uploads/2022/09/SB-846-Signing-Message.pdf?emrc=9e526b> (stating “[c]limate change is causing unprecedented stress on California’s energy system”).

granting of the exemption request involves no significant hazards consideration because allowing the submittal of the license renewal application less than 5 years before the expiration of the existing license and deeming the license in timely renewal under 10 CFR 2.109(b) does 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.

Therefore, the requirements of 10 CFR 51.22(c)(25)(i) are met.

Requirements in 10 CFR 51.22(c)(25)(ii) and (iii)

The exemption constitutes a change to the schedule by which the licensee must submit its application for license renewal and still place the licenses in timely renewal, which is administrative in nature, and does not involve any change in the types or significant increase in the amounts of effluents that may be released offsite and does not contribute to any significant increase in occupational or public radiation exposure. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure. Therefore, the requirements of 10 CFR 51.22(c)(25)(ii) and (iii) are met.

Requirements in 10 CFR 51.22(c)(25)(iv)

The exempted regulation is not associated with construction, and the exemption does not propose any changes to the site, alter the site, or change the operation of the site. Therefore, the requirements of 10 CFR 51.22(c)(25)(iv) are met because there is no significant construction impact.

Requirements in 10 CFR 51.22(c)(25)(v)

The exemption constitutes a change to the schedule by which the licensee must submit its license renewal application and still place the licenses in timely renewal, which is administrative in nature, and does not impact the probability or consequences of accidents. Thus, there is no significant increase in the potential for, or consequences of, a radiological

accident. Therefore, the requirements of 10 CFR 51.22(c)(25)(v) are met.

Requirements in 10 CFR 51.22(c)(25)(vi)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(vi)(G), the exemption must involve scheduling requirements. The exemption involves scheduling requirements because it would allow the licensee to submit an application for license renewal for DCPD Units 1 and 2, less than 5 years prior to the expiration of the existing licenses, rather than the 5 years specified in 10 CFR 2.109(b), and still place the licenses in timely renewal under 10 CFR 2.109(b). Therefore, the requirements of 10 CFR 51.22(c)(25)(vi) are met.

Based on the above, the NRC concludes that the proposed exemption meets the eligibility criteria for a categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the granting of this exemption request.

IV. Conclusion

Accordingly, the NRC has determined that, pursuant to 10 CFR 54.15 and 10 CFR 50.12, 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. Also, special circumstances, as defined in 10 CFR 50.12(a)(2), are present. Therefore, the NRC hereby grants the licensee a one-time exemption for Diablo Canyon Power Plant, Units 1 and 2, from 10 CFR 2.109(b) to allow PG&E to submit a license renewal application for the Diablo Canyon Power Plant, Units 1 and 2, less than 5 years prior to expiration of the operating licenses, but no later than December 31, 2023.

The decision to issue PG&E an exemption from 10 CFR 2.109(b) does not constitute approval of the license renewal application PG&E intends to submit by December 31, 2023. Rather, this exemption provides that if PG&E submits an application by December 31, 2023, and the application is sufficient for docketing, the licensee will receive timely renewal protection under 10 CFR 2.109(b) while the NRC evaluates that application. Should the application be

docketed, the NRC will provide an opportunity for the public to seek a hearing and review the application using its normal license renewal review processes and standards to determine whether the application meets all applicable regulatory requirements.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of March 2023.

For the Nuclear Regulatory Commission.

Brian W. Smith, Director,
Division of New and Renewed Licenses,
Office of Nuclear Reactor Regulation.