

No. 23-852

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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SAN LUIS OBISPO MOTHERS FOR PEACE, FRIENDS OF  
THE EARTH, AND ENVIRONMENTAL WORKING GROUP,  
*Petitioners,*

v.

UNITED STATES NUCLEAR REGULATORY  
COMMISSION, AND THE UNITED STATES OF AMERICA,  
*Respondents,*

and

PACIFIC GAS & ELECTRIC COMPANY,  
*Intervenor.*

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On Petition for Review of an Order of the  
U.S. Nuclear Regulatory Commission

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**FEDERAL RESPONDENTS' ANSWERING BRIEF**

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## **GLOSSARY**

APA	Administrative Procedure Act
ER	Petitioners' Excerpts of Record
NEPA	National Environmental Policy Act
NRC	Nuclear Regulation Commission
PG&E	Pacific Gas & Electric Company
SER	Respondents' Supplemental Excerpts of Record

## INTRODUCTION

Pacific Gas & Electric Company (PG&E) operates two nuclear power reactor units at the Diablo Canyon Power Plant pursuant to licenses issued by the Nuclear Regulatory Commission (NRC), which are valid until November 2024 and August 2025. In 2009, PG&E submitted to the NRC an application to renew these licenses. PG&E later withdrew that application pursuant to a state-approved decision that operation of the reactors beyond those dates was no longer necessary to meet California's energy needs. But just four years later, the State of California reversed course and enacted legislation expressing the urgent need to preserve their operation to ensure the near-term reliability of the State's electricity grid.

Having been directed to again resume license renewal, PG&E submitted a request to the NRC seeking two alternative paths for restoring its prior "timely renewal" status, which is a benefit derived from the Administrative Procedure Act (APA). Per that statute, when a license holder submits a "timely and sufficient" renewal application in accordance with agency rules, the license being renewed does not expire until the agency takes final action on the application. When the NRC established its current regulations governing power reactor license renewal, the agency chose five years prior to expiration as a reasonable timely renewal deadline. But given that this five-year window had already closed by the time of California's reversal, PG&E asked whether the NRC could turn back the clock and

resume review of its previously withdrawn application. Alternatively, PG&E requested an exemption from the five-year deadline, in accordance with established NRC regulations governing such requests.

The NRC denied the former request but ultimately granted the latter (the Exemption Decision). The NRC reached this decision after determining that it had the authority to alter the timely renewal deadline it had chosen in its regulations via the grant of an individualized exemption. The NRC also determined that doing so would be consistent with public health and safety and justified by these compelling and unforeseen circumstances. The Exemption Decision provides that if PG&E submits a new and sufficient license renewal application by December 31, 2023, the current reactor licenses will not be deemed to have expired until the NRC takes final action on the application.

San Luis Obispo Mothers for Peace, Friends of the Earth, and Environmental Working Group (Petitioners) challenge the Exemption Decision, arguing that any continued operation of the Diablo Canyon reactors beyond their expiration dates would violate the Atomic Energy Act and National Environmental Policy Act (NEPA). But as an initial matter, multiple subject-matter jurisdiction and Article III roadblocks to this Court's review warrant dismissal of the Petition. And while a district court would have subject-matter jurisdiction over a challenge to the Exemption Decision, standing and ripeness issues exist regardless of forum.

Should the Court consider the Petitioners' merits arguments, they are uniformly unpersuasive because they directly conflict with the plain language of the APA's timely renewal provision, which Congress has made clear applies to all licenses issued by the NRC. Petitioners' arguments are also premised upon a fundamental misinterpretation of the Exemption Decision as a renewal or amendment of PG&E's licenses, which it expressly is not. Rather, the Exemption Decision is procedural in nature and does nothing more than create a time-limited window for PG&E to submit a future license renewal application for NRC consideration.

The NRC has not yet received, much less acted upon, a request to renew PG&E's licenses. If and when the NRC receives and accepts a sufficient renewal application, Petitioners will then have the opportunity to participate in the agency's NEPA process, as well as exercise their statutory right to seek an NRC hearing regarding any safety or environmental concerns stemming from that application. And in the event PG&E continues to operate the reactors beyond their existing expiration dates during the pendency of the NRC's review of the application, the agency would likewise continue to oversee, inspect, and enforce all applicable health and safety requirements during such operation, as it has done for decades.

Contrary to Petitioners' suggestions, there has been no manipulation or shortcutting of the regulatory process. Both PG&E and the NRC have been

responding to changing circumstances of significant public interest beyond their respective controls. Thus, even if the Court were to find that the Petition overcomes multiple justiciability hurdles, it should sustain the NRC's reasonable exercise of its discretion.

### **JURISDICTIONAL STATEMENT**

Petitioners assert this Court has subject-matter jurisdiction pursuant to the Administrative Orders Review Act (also known as the "Hobbs Act"), 28 U.S.C. § 2342. For the reasons explained below, the NRC's exemption decision is not covered by the Hobbs Act, so this Court lacks subject-matter jurisdiction. If the Court has subject-matter jurisdiction under the Hobbs Act, the Petition for Review is timely because it was filed within 60 days of the March 2, 2023 Exemption Decision, which is final agency action. 28 U.S.C. § 2344.

### **STATEMENT OF ISSUES**

1. Does the Hobbs Act enable this Court to review an NRC decision to grant an exemption, when that agency action is not one of the licensing proceedings identified in that statute's grant of jurisdiction?
2. Have Petitioners suffered an injury-in-fact that is attributable to the action the agency actually took—creating an alternative, time-limited window for the operator of an existing power plant to submit a timely license renewal application, which the NRC has not yet received?

3. Did the NRC reasonably interpret and apply its regulations governing exemptions when, as a matter of discretion and applying its expertise, the agency determined that granting the request was (a) lawful under the APA and Atomic Energy Act; (b) consistent with public health and safety; (c) justified by special circumstances; and (d) eligible for a categorical exclusion from further NEPA review?

### **PERTINENT STATUTES AND REGULATIONS**

Pertinent statutes and regulations are included in an addendum filed with this brief.

## STATEMENT OF THE CASE

### I. Statutory and Regulatory Background

#### A. Licensing and Regulation of Nuclear Power Reactors

The NRC<sup>1</sup> is an independent health and safety regulatory commission, tasked by Congress to license and regulate the civilian use of radioactive materials. *See* 42 U.S.C. §§ 2201(b), 5841(a)(1), (f). This includes the licensing and regulation of commercial nuclear power reactors, referred to in the statute as “utilization facilities.” *Id.* § 2133.

The Atomic Energy Act requires that, when granting a license for a nuclear power reactor, the NRC make a finding that its operation “will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public.” *Id.* § 2232. Once the NRC grants a license, a reactor may only be operated in accordance with the license’s terms and all agency rules. *Id.* §§ 2133, 2233. The NRC maintains continuous oversight of licensed reactors and verifies compliance through inspection and enforcement activities, and it continually assesses licensee performance to provide the public with reasonable assurance of adequate protection of health and safety. *See, e.g.*, 10

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<sup>1</sup> As used herein, the term “NRC” refers generically to the agency, while the term “Commission” refers specifically to the collegial body of Presidential appointees, currently comprised of four members, that oversees the agency.

C.F.R. §§ 1.43, 1.47 (describing generally the authority and responsibility of the Office of Nuclear Reactor Regulation and NRC Regional Offices that implement the agency’s licensing, inspection, and enforcement programs); 10 C.F.R. § 50.70 (providing NRC inspectors with “unfettered access” to licensee records, premises, and activities). The NRC also remains empowered to revoke, suspend, or modify a license at any time for failure to operate in accordance with NRC requirements, including issuing orders with immediate effectiveness when necessary to protect public health and safety. 42 U.S.C. § 2236; 10 C.F.R. §§ 2.202(a)(5), 50.100.

## **B. License Renewal**

The Atomic Energy Act authorizes the NRC to issue a license to operate a nuclear power reactor for an initial term up to forty years. 42 U.S.C. § 2133(c). A license can then be renewed upon expiration for subsequent terms not to exceed twenty years beyond expiration of the prior license. 10 C.F.R. § 54.31. To obtain a renewed license, the licensee must submit an application for NRC review and approval that conforms with the criteria described in 10 C.F.R. Part 54.

NRC’s regulations at Part 54 were promulgated following extensive notice-and-comment rulemaking. *See Nuclear Power Plant License Renewal*, 56 Fed. Reg. 64,943 (Dec. 13, 1991) (2-ER-030); *Nuclear Power Plant License Renewal; Revisions*, 60 Fed. Reg. 22,461 (May 8, 1995). These regulations focus the scope of the NRC’s technical review on the management of the adverse effects



of aging to ensure an acceptable level of safety will be maintained during the facility's proposed period of extended operation. 10 C.F.R. § 54.29. In brief, license renewal applicants are required to identify all "systems, structures, and components" that are relied upon either directly or indirectly for certain safety functions and thus fall "within the scope" of license renewal. *Id.* § 54.4. They then must sufficiently demonstrate to the NRC that they have programs in place to manage the effects of aging on those structures and components for the duration of the proposed new license term. *Id.* § 54.21 (requiring the applicant to prepare an "integrated plant assessment" identifying how the effects of aging will be adequately managed to ensure such structures and components will continue perform their intended functions).

As required by the Atomic Energy Act, any person whose interest may be affected by an NRC license renewal proceeding has an opportunity to seek an agency hearing. 42 U.S.C. § 2239(a)(1)(A); 10 C.F.R. § 54.27. Any such affected person who submits at least one admissible "contention" (i.e., a specific statement that raises a genuine dispute with the application on a material issue of law or fact) is made a party to the licensing proceeding and a hearing is held *See* 10 C.F.R. § 2.309. A person whose hearing request is denied, or a person who is made a party to the proceeding but is dissatisfied with the end result, may appeal an adverse adjudicatory decision to the Commission. *See* 10 C.F.R. §§ 2.311, 2.341. The

“final order” of an NRC licensing proceeding is then judicially reviewable in the courts of appeals. 28 U.S.C. § 2342; 42 U.S.C. § 2239(b).

### **C. Timely Renewal**

Congress specifically mandated that the provisions of the APA “apply to all agency action” taken pursuant to the Atomic Energy Act, including licensing. 42 U.S.C. § 2231. Among other things, the APA provides the holders of federal licenses with timely renewal protection. 5 U.S.C. § 558(c). That is, when a license holder has made a “timely and sufficient application” for renewal “in accordance with agency rules,” a license authorizing “activity of a continuing nature does not expire until the application has been finally determined by the agency.” *Id.*

The NRC has implemented the APA’s timely renewal provision in 10 C.F.R. § 2.109. With respect to the renewal of a nuclear power reactor license, NRC regulations provide that if an applicant files a sufficient application at least five years prior to the expiration of the existing license, that applicant will receive the benefit of timely renewal protection. *Id.* §§ 2.109(b), 54.17(a).

### **D. Exemptions**

NRC regulations permit license holders to apply for exemptions which, if granted, excuse the licensee from an otherwise applicable regulatory requirement. For nuclear power reactor licensees, the criteria governing the issuance of an exemption are found in 10 C.F.R. § 50.12. To issue an exemption pursuant to that

provision, the NRC must determine, first, that the exemption is “authorized by law,” that it “will not present an undue risk to the public health and safety,” and that it is “consistent with the common defense and security.” *Id.* § 50.12(a)(1). Additionally, the NRC will only grant an exemption where “special circumstances are present.” *Id.* § 50.12(a)(2). Examples of “special circumstances” are listed in the regulation, including (among others) any “material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant the exemption.” *Id.* § 50.12(a)(2)(vi). Exemptions from regulations governing license renewal are determined by these same criteria. *Id.* § 54.15.

## **II. Factual Background**

PG&E is an electric utility and holder of two licenses to operate two nuclear power reactor units at the Diablo Canyon Power Plant, located in a coastal area of San Luis Obispo, California. The operating license for Unit 1 was issued in November 1984, and the operating license for Unit 2 was issued in August 1985. 2-ER-121. These licenses currently expire on November 2, 2024, and August 26, 2025, respectively. 1-ER-4.

### **A. Prior License Renewal Activities (2009-2018)**

In November 2009, PG&E submitted an application to renew both licenses. 2-ER-80. The NRC accepted the application for docketing and began its review in January 2010, which placed the licenses in timely renewal status. 2-ER-84.

However, in April 2011, PG&E requested that the NRC delay its review so that PG&E could first complete certain seismic studies that were part of its efforts to obtain a necessary certification from local authorities. 2-ER-99. Shortly thereafter, the NRC published a “safety evaluation report,” documenting its technical review of the license renewal application up to that point. 2-ER-101.

Five years later, in June 2016, PG&E requested that the NRC suspend its review of the license renewal application. 2-ER-123. In its request letter, PG&E stated that it had reached an agreement with various stakeholders to not proceed with license renewal for Diablo Canyon Power Plant, based on “the state’s policy preference to meet California’s future electricity need with renewable generation resources, energy efficiency, or storage.” 2-ER-123. After this agreement was approved by the California Public Utilities Commission in January 2018 (2-ER-125), PG&E requested that the NRC accept the withdrawal of its license renewal application “based on the determination that continued baseload operation of [the reactors] beyond their currently approved operating periods is not necessary to meet California’s projected energy demand requirements.” 2-ER-206. The NRC granted PG&E’s request and formally closed its review of the license renewal application in April 2018. 2-ER-208.

## **B. California Legislation and PG&E Request to Resume License Renewal**

Four years later, in September 2022, the State of California enacted Senate Bill No. 846. 2-ER-240. This legislation invalidated the 2018 decision to retire Diablo Canyon and instead declared it to be “the policy of the Legislature that seeking to extend the Diablo Canyon powerplant’s operations for a renewed license term is prudent, cost effective, and in the best interests of all California electricity customers.” 2-ER-247-248. The California Legislature explained that extending operation of the reactors was necessary “to protect the state against significant uncertainty” in future electricity demand due to the state’s greenhouse gas reduction efforts and “climate-related weather phenomenon.” 2-ER-267; *see also* 2-ER-270 (designating the bill as an “urgency statute necessary for the immediate preservation of the public peace, health, or safety ... thereby ensuring electrical reliability in the California electrical system”). The legislation directed the California Public Utilities Commission and PG&E to “take all actions that would be necessary to operate the powerplant beyond the current expiration dates” and to “preserve the option of extended operations” of both reactor units, contingent on NRC approval, through new specified retirement dates in 2029 and 2030. 2-ER-261.

In October 2022, PG&E informed the NRC that, based on California’s recent legislative change in energy policy, it would again be seeking to extend Diablo Canyon’s licenses “to serve California’s urgent energy needs and help ensure grid reliability.” 2-ER-271-272. PG&E asked the NRC to consider two alternative requests: (1) resume review of the license renewal application that PG&E had withdrawn in 2018, and confirm that doing so would place the licenses back in timely renewal status; or (2) grant PG&E an exemption from the NRC’s five-year timely renewal application deadline, so long as the company submitted a new license renewal application no later than December 31, 2023. 2-ER-272.

While these requests were pending before the agency, a group of environmental organizations including all three Petitioners submitted to the Commission multiple rounds of correspondence, urging the rejection of both requests. 3-ER-394, 3-ER-401. In January 2023, Petitioners submitted a “petition” in the style of a legal pleading requesting that the Commission exercise its “supervisory authority” over the NRC staff evaluating PG&E’s requests and reject both as unlawful. 3-ER-438. Counsel for PG&E responded and requested that the Commission reject the filing on both procedural and substantive grounds. SER-4.

### **C. NRC Consideration of PG&E’s Requests, and the Exemption Decision**

In January 2023, the NRC informed PG&E that it would not resume review of its previously withdrawn license renewal application. 3-ER-494. The NRC explained that doing so would be inconsistent with its regulations and policy because additional information would be needed to bring the withdrawn application up to date, and it was incumbent on PG&E to do so. 3-ER-495. The NRC also found lack of any “compelling precedent” to support the request. 3-ER-496. But the NRC informed PG&E that it was still evaluating the alternative request for a timely renewal exemption.<sup>2</sup> 3-ER-496.

On March 2, 2023, the NRC issued the Exemption Decision, which was published in the *Federal Register* six days later. 1-ER-3. The Exemption Decision provided that, so long as PG&E submits an application to renew the Diablo Canyon reactor licenses by December 31, 2023, and the NRC determines the application is sufficient for docketing, the existing licenses will be in timely renewal status and will not be deemed to have expired until the NRC takes final action on the application. 1-ER-3. The Exemption Decision included the NRC’s

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<sup>2</sup> In February 2023, while its decision on the exemption request was still pending, Petitioners submitted another letter to the NRC renewing their objection to the exemption request (3-ER-499), which PG&E’s counsel again opposed (SER-54). The NRC also received three letters in February 2023 from other interested stakeholders supporting PG&E’s request (SER-38-53).

analyses of the relevant exemption factors necessary to grant the request, specifically the agency's findings that:

- Granting the exemption was “authorized by law” (10 C.F.R. § 50.12(a)(1)), because the five-year renewal application deadline codified in NRC regulations was discretionary and not an inflexible statutory requirement (1-ER-4-5);
- The exemption presented no “undue risk to public health and safety,” and was “consistent with the common defense and security” (10 C.F.R. § 50.12(a)(1)), because it had no effect on the manner in which the reactors would be operated nor the NRC’s continuous regulatory oversight during any temporary period of continued operation during timely renewal (1-ER-5);
- “Special circumstances” were present (10 C.F.R. § 50.12(a)(2)), given the state of California’s recent policy reversal on the retirement of Diablo Canyon in light of “climate change impacts and serious electricity reliability challenges” (1-ER-5-6); and
- The action was eligible for an NRC categorical exclusion (10 C.F.R. § 51.22(c)(25)), which excludes from further NEPA review the granting of an exemption relating to “scheduling requirements” if the action also



satisfies a number of other safety and environmental-based criteria  
(1-ER-6).

The Petitioners sought this Court’s review of the NRC’s decision on April 28, 2023.

### **SUMMARY OF ARGUMENT**

1. The Court lacks subject-matter jurisdiction and should dismiss the Petition for Review. The Hobbs Act grants the courts of appeals direct and exclusive jurisdiction to review final orders in certain NRC licensing proceedings identified in Section 189(a) of the Atomic Energy Act. However, the NRC’s issuance of an exemption is not the result of a proceeding within the plain text of Section 189(a) and thus falls outside the ambit of the Hobbs Act. Petitioners reference case law interpreting the scope of the Hobbs Act as broadly extending to other NRC orders that are “preliminary or incidental” to the final order in a Section 189(a) proceeding. Respondents do not dispute this expansive reading of the Hobbs Act when the NRC takes agency action within the context of a *licensing* proceeding. But an NRC decision to issue an exemption from a rule of general applicability is not a licensing proceeding. Thus, as the Second Circuit has held, an order issuing an exemption is excluded from the Hobbs Act’s reach and must be challenged in federal district court.

2. The Petition for Review suffers from another jurisdictional defect because Petitioners have not attempted, much less met their burden, to demonstrate standing. The Exemption Decision does no more than provide PG&E with additional time to submit a license renewal application that the NRC may accept as timely under its procedural rules. The decision has no practical effect unless and until the NRC receives and accepts such an application, which has not yet occurred. Insofar as Petitioners object to the possibility created by the Exemption Decision that the Diablo Canyon reactors may, beginning in November 2024, operate for an indeterminate amount of time beyond their current expiration dates, such a challenge is not ripe. Petitioners have also failed to allege what imminent injury-in-fact they have suffered or will suffer that is attributable to the Exemption Decision. Any temporary continued operation of the reactors during a period of timely renewal would remain subject to the NRC's health and safety oversight, and the NRC would continue to inspect and enforce the terms of PG&E's existing licenses. The record only includes generalized and probabilistic assertions of harms that could result in the event of a natural disaster or accident, which are too speculative to support Article III standing.

3. If the Court reaches the merits of the Petition for Review, the record shows that the NRC acted lawfully and rationally. In granting the exemption, the

NRC adhered to its regulations and made a rational decision supported by law and the facts before the agency.

First, the NRC determined that issuing the exemption would be “authorized by law,” since the five-year application deadline in its rules was not an immovable statutory requirement but rather was established as a matter of agency discretion, which could likewise be further revised as a matter of discretion via an individualized exemption. In reaching this conclusion, the agency considered the history of the regulatory provision and the plain language of the APA. Section 558(c) of the APA delegates to agencies the authority to establish their own rules governing timely renewal (including the authority to issue narrowly tailored exemptions to the schedules they create). Petitioners’ arguments that timely renewal cannot be utilized to permit temporary, continued operation of a reactor beyond its license expiration date are inconsistent with the statutory text of the APA and the NRC’s timely renewal regulation.

Second, the NRC determined the exemption would result in “no undue risk to public health and safety.” The NRC rationally explained that during any period of continued operation under timely renewal, the reactors would remain subject to the NRC’s continuous health and safety oversight, and the agency would remain statutorily empowered to take any and all actions necessary to preserve public safety. Petitioners argue that the Exemption Decision ignores the safety risks of

continued operation that must be addressed prior to issuing a renewed license. But the Exemption Decision is not a substitute for license renewal. Should PG&E submit a renewal application, the NRC will make all required safety findings before issuing any renewed license authorizing PG&E to continue to operate the reactors for a set term of years. The NRC reasonably concluded that, in the interim during a period of timely renewal, the adequacy of its ongoing regulatory oversight, inspection, and enforcement activities meant that the exemption created no undue public health and safety risk. The NRC's expert judgment on this safety issue is entitled to deference.

The NRC also determined, as required by its regulations, that "special circumstances" were present, relying on the recently enacted legislation precipitating PG&E's request. California found that preserving the option to continue operating the reactors beyond their current expiration dates was an urgent matter of public interest prompted by climate change and near-term concerns with the reliability of the electricity grid. On this point Petitioners largely state their disagreement with California's policy and question the continued necessity of the electricity produced at Diablo Canyon. But the NRC certainly did not act arbitrarily or capriciously by taking seriously these concerns from the highest levels of state government.

Lastly, the NRC reasonably determined that the Exemption Decision was eligible for a categorical exclusion codified in its regulations implementing NEPA. This regulation excludes from further NEPA review an exemption that relates to scheduling requirements if it also satisfies other specific guardrails relating to safety hazards and environmental disturbance. Petitioners argue the NRC is required to prepare an environmental impact statement before the reactors can operate beyond their original expiration dates, but here too Petitioners rely on a legally incorrect characterization of the action taken by the NRC. The NRC will prepare an environmental impact statement before making any decision to renew PG&E's licenses for a new term, which the Exemption Decision does not do. And in the event PG&E is able to temporarily continue operating the reactors past their current expiration dates while in timely renewal, permitting such operation to occur under the terms of the existing licenses would not be a new "major Federal action significantly affecting the quality of the human environment." The possibility of such continued operation inheres in every license granted by the NRC, by nature of the APA and its incorporation into the Atomic Energy Act. The NRC reasonably concluded that the Exemption Decision, which on its face does no more than alter the schedule for PG&E to submit a future renewal application for NRC consideration, fit within the plain terms of its categorical exclusion regulation.

4. While the record demonstrates the reasonableness of the NRC’s decision, Respondents respectfully request that, should the Court determine remand is necessary for any rectifiable reason, it do so without vacatur. The equities here strongly favor providing the NRC with an opportunity to supplement its analysis or correct any errors the Court may identify. Vacatur may have potentially disruptive consequences, given the unique and extraordinary concerns that prompted the exemption request. The NRC has in good-faith responded to changed circumstances spurred by unanticipated actions beyond the control of the agency or the applicant, which the Court should consider in any remand decision.

### **STANDARD OF REVIEW**

Judicial review of agency action challenged under the Hobbs Act is governed by the familiar standards articulated in the APA—whether the decision is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” 5 U.S.C. § 706(2)(A); *Wide Voice, LLC v. FCC*, 61 F.4th 1018, 1024 (9th Cir. 2023). This is a narrow standard in which the “court is not to substitute its judgment for that of the agency,” but rather is to consider whether the decision was “based on a consideration of the relevant factors and whether there has been a clear error of judgment.” *Id.* (citing *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). A reviewing court “is at its most deferential” when scientific and technical expertise is involved, especially in the context of

predictions made “at the frontiers of science.” *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 103 (1983); *Nat’l Wildlife Fed’n v. U.S. Army Corps of Eng’rs*, 384 F.3d 1163, 1174 (9th Cir. 2004).

With respect to an agency’s interpretation of its own regulations, a court may give controlling weight to the agency’s interpretation so long as it is not “plainly erroneous or inconsistent with the regulation,” though such deference is only appropriate where the regulation is “genuinely ambiguous” and the other factors described by the Supreme Court in *Kisor v. Wilkie* are present. 139 S. Ct. 2400, 2414-2418 (2019). Even when this substantial deference is inapplicable, courts still may defer to an agency’s reading of its own rules to the extent the agency’s reasoning has the “power to persuade.” *Id.* at 2414.

## ARGUMENT

### **I. This Court lacks subject-matter jurisdiction to review the Exemption Decision.**

Petitioners invoke the Hobbs Act, 28 U.S.C. § 2342, as the basis for this Court’s jurisdiction. Brief at 1. However, the NRC’s issuance of an exemption does not fall within the enumerated categories of agency actions that are reviewable under the Hobbs Act, and thus the Court should dismiss the Petition for lack of subject-matter jurisdiction.

The Hobbs Act vests exclusive jurisdiction in the federal courts of appeals to review and determine the validity of certain agency actions. With respect to the NRC,<sup>3</sup> this includes any “final order” entered in a proceeding described in Section 189(a) of the Atomic Energy Act. 28 U.S.C. § 2342(4); 42 U.S.C. § 2239(a), (b). This includes, as relevant here, “any proceeding ... for the granting, suspending, revoking, or amending of any license[.]” 42 U.S.C. § 2239(a)(1)(A).

Petitioners identify this provision as the jurisdictional hook, arguing that the NRC’s issuance of the exemption is reviewable in this Court because it is “preliminary or incidental to licensing.” Brief at 2 (citing *Gen. Atomics v. NRC*, 75 F.3d 536 (9th Cir. 1996)). To be sure, Respondents agree with Petitioners that jurisdiction pursuant to the Hobbs Act is to be construed “broadly to encompass not only all final NRC actions *in licensing proceedings*, but also all decisions that are preliminary, ancillary, or incidental *to those licensing proceedings*.” *Pub. Watchdogs v. So. Cal. Edison Co.*, 984 F.3d 744, 757-58 (9th Cir. 2020) (citing *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 737 (1985) (emphases added)). This expansive reading of the statute derives from the Supreme Court’s decision in

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<sup>3</sup> The Hobbs Act still refers to final orders of the “Atomic Energy Commission,” the NRC’s predecessor. The Energy Reorganization Act of 1974 abolished the Atomic Energy Commission and transferred all “licensing and related regulatory functions” to the newly created NRC. 42 U.S.C. § 5841(a), (f).



*Lorion*, in which the Court confirmed that Congress intended the long reach of the Hobbs Act to include orders “preliminary or ancillary” to the “final order resolving the core issue” in a licensing proceeding.<sup>4</sup> 470 U.S. at 743.

Consistent with *Lorion*, this Court has properly construed the jurisdiction of the Hobbs Act in prior cases to encompass final orders that are “preliminary, ancillary, or incidental” to NRC licensing proceedings. *See e.g. Public Watchdogs*, 984 F.3d at 761 (affirming that the district court lacked subject-matter jurisdiction over claims challenging amendments to an NRC license, as well as a slew of other “incidental or ancillary” claims related to actions taken by the licensee under the authority of those amendments); *Sierra Club v. NRC*, 862 F.2d 222, 224-25 (9th Cir. 1988) (reviewing NRC final order denying intervention by a prospective party in a license amendment proceeding).

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<sup>4</sup> More specifically, the question presented in *Lorion* was whether an NRC denial of a petition to institute a proceeding to “modify, suspend, or revoke a license” (*see* 10 C.F.R. § 2.206) was properly reviewable under the Hobbs Act, notwithstanding that such petitions were not expressly mentioned in 42 U.S.C. § 2239(a)(1). The Court held that jurisdiction was proper, in part because “[t]he § 2.206 petition is but the first step in a process that will, if not terminated for any reason, culminate in a full formal proceeding under 42 U.S.C. § 2239(a)(1).” 470 U.S. at 745, n.11. In other words, because the NRC was declining to *initiate* a licensing proceeding described in section 2239(a), that declination was equally reviewable under the Hobbs Act. *Id.* at 743.

But the Petitioners’ jurisdictional theory fails in this case for the simple reason, which the Second Circuit explained in *Brodsky v. NRC*, that the NRC’s issuance of an exemption is *not* a licensing proceeding. 578 F.3d 175, 177 (2d Cir. 2009). In *Brodsky*, the petitioners sought review of an NRC decision exempting a nuclear power plant operator from certain fire safety regulations, after determining that the operator continued to satisfy the underlying purpose of those regulations through alternative measures. *Id.* at 178-79. But the Second Circuit, noting that 42 U.S.C. § 2239(a) “does not mention exemptions,” expressly held that it lacked jurisdiction under the Hobbs Act to review one. *Id.* at 180-82. This was based on both the plain text of the statute as well as deference to the NRC’s reasonable distinction between issuing licenses and issuing exemptions from regulatory obligations. *See id.* at 181 (“We cannot read exemptions into the plain text of [42 U.S.C.] § 2239(a), particularly when the NRC itself (to which deference is owed) is urging that exemptions are different from amending a license and the other orders mentioned in that section.”) (cleaned up).

Petitioners urge that the Exemption Decision should be deemed a decision “preliminary and incidental” to licensing, and thus reviewable under the Hobbs Act. Brief at 2-3. According to Petitioners, the exemption “impacts” the Diablo Canyon licenses by enabling the reactors to continue operating beyond their current expiration dates. Brief at 2-3. But this argument, if accepted, would create

an exception that swallows the rule—all NRC-regulated activity is conducted pursuant to a license. If any NRC action that created an “impact” on licensed activity was “incidental” enough to create jurisdiction under the Hobbs Act, then, contrary to the plain text of section 2239(a), *all* exemptions would be reviewable under the Hobbs Act. *Cf. Honeywell, Int’l v. NRC*, 628 F.3d 568, 575-76 (D.C. Cir. 2010) (distinguishing, for Hobbs Act purposes, exemptions that the Commission actually treats as license amendments and memorializes through license conditions). And while the Exemption Decision may be “preliminary” to a future, yet-to-be-initiated license renewal proceeding from a purely *chronological* standpoint, the Court’s use of this term in *Lorion* makes clear that it was referring to a “preliminary” order *within the proceeding* itself. *See* 470 U.S. at 743 (describing “preliminary orders denying requests for intervention or a hearing” in a licensing proceeding, or “orders resolving issues preliminary or ancillary to the core issue *in a proceeding*”) (emphasis added).

Moreover, Petitioners’ framing hitches jurisdiction to their primary argument on the merits, which is that the exemption improperly extends the Diablo Canyon licenses beyond the forty-year limitation in the Atomic Energy Act. As explained in more detail, *infra* pp. 34-39, that merits argument is incorrect. By its own terms, the Exemption Decision does not renew, extend, or amend PG&E’s existing licenses. Rather, the Exemption Decision changes only the date by which

PG&E can submit a future, timely license renewal application. Should PG&E do so within the time-limited window created by the exemption, the existing licenses would then be deemed to have not expired “by operation of law,” not “affirmative agency action” to renew or extend them. *Nat. Res. Def. Council v. EPA*, 859 F.2d 156, 214 (D.C. Cir. 1988) (citing 5 U.S.C. § 558(c)). Conversely, if PG&E does not submit a sufficient license renewal application by the end of this calendar year, the exemption has no legal effect. The Exemption Decision itself thus does not impact PG&E’s licenses in the manner Petitioners allege.

The primary case relied on by Petitioners for their jurisdictional argument, *General Atomics v. NRC*, provides no support for their position. That case involved a challenge by the parent company of an NRC licensee to an order holding that company jointly and severally liable for the cleanup costs of a decommissioning nuclear facility. 75 F.3d at 537-38. This Court affirmed that jurisdiction over the claim was proper under the Hobbs Act, not in district court where the case was initially brought, because the order triggered the opportunity for a hearing under 42 U.S.C. § 2239(a), which could have directly resulted in the issuance of a new license to the parent company or amendment of the subsidiary’s license. *Id.* at 539. *General Atomics* did not involve an exemption and is much more akin than the present case to an order “preliminary or incidental to licensing” described in

*Lorion*, since the challenged order in *General Atomics* actually created the right to a licensing hearing which was in fact exercised.

While the exemption undoubtedly relates to licensed activity, that is not enough to bring it within the ambit of the Hobbs Act. The NRC still maintains, as it did in *Brodsky*, that an exemption from a rule of general applicability is a distinct tool in its regulatory toolkit from a proceeding described in 42 U.S.C. § 2239(a) for the “granting, suspending, revoking, or amending” of a license. That is the statutory predicate both to the availability of a hearing under the NRC’s procedures and to this Court’s jurisdiction.<sup>5</sup> To the extent the plain text of this statutory provision is at all ambiguous, the Court should defer to the NRC’s reasonable, longstanding interpretation of its organic statute.

While the Exemption Decision is not directly challengeable under the Hobbs Act, Petitioners are not entirely without recourse. Petitioners could directly challenge the Exemption Decision in federal district court under 5 U.S.C. § 704, (although as explained below, such a challenge at this time is premature in any forum). Or, should the NRC accept a future renewal application that actually

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<sup>5</sup> See, e.g., *Entergy Nuclear Operations, Inc.* (Palisades Nuclear Plant), CLI-22-8, 96 NRC 1, 14 (2022) (2022 WL 2866636) (“A request for an exemption is not among the listed actions subject to a hearing opportunity under [42 U.S.C. § 2239(a)].”)

places the licenses in timely renewal status, Petitioners could at that time file a petition under 10 C.F.R. § 2.206 raising these same arguments about the legality or safety of operation during timely renewal.<sup>6</sup> This would in essence be a request for NRC enforcement action—seeking to compel the agency to enforce closure of the reactors on their existing expiration dates—which is precisely the purpose of section 2.206. And the outcome of that citizen petition process would be reviewable under the Hobbs Act, as it was in *Lorion*.

The Exemption Decision does nothing more than provide PG&E with an alternative deadline to file a future license renewal application. It is not a final order in a licensing proceeding, nor is it “preliminary or incidental” to such a final order as that phrase was used in *Lorion*. As such, the Court should dismiss the Petition for Review for lack of subject-matter jurisdiction.

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<sup>6</sup> Petitioners undoubtedly chose to directly challenge the Exemption Decision, rather than wait to see if timely renewal actually manifests, because of the 60-day statute of limitations in the Hobbs Act. 28 U.S.C. § 2344. However, given Respondents’ position that the Exemption Decision is not reviewable under the Hobbs Act, Respondents would not seek to dismiss a future challenge concerning the operation of Diablo Canyon during timely renewal, should that occur, solely on the grounds that such challenge should have been brought within 60 days of the issuance of the Exemption Decision.

**II. The Petitioners have failed to show an Article III injury-in-fact caused by the Exemption Decision.**

Even if this Court determines it has subject-matter jurisdiction, the Petition still suffers Article III defects. The Court should dismiss the petition for lack of standing, or because the controversy is not currently ripe, infirmities that both “originate from the same Article III limitation” on the exercise of judicial power. *Mont. Env’t Info. Center v. Stone-Manning*, 766 F.3d 1184, 1188-89 (9th Cir. 2014) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 n.5 (2014)).

The irreducible constitutional minimum for standing is (1) an injury-in-fact that is concrete and particularized and not conjectural or hypothetical; (2) that is fairly traceable to the challenged conduct; and (3) that is likely to be redressed by a favorable judicial decision. *Unified Data Servs., LLC, v. FTC*, 39 F.4th 1200, 1209-10 (9th Cir. 2022) (cleaned up). A threatened *future* injury must be “certainly impending” to constitute injury-in-fact, or there must be a “substantial risk” that the harm will occur. *Phillips v. U.S. Customs and Border Protection*, 74 F.4th 986, 991 (9th Cir. 2023) (citing *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013)); *Susan B. Anthony List*, 573 U.S. at 158. Furthermore, when determining the sufficiency of an assertion of future harm, the Court also considers the ripeness of the case, which “can be characterized as standing on a timeline.” *See Coons v. Lew*, 762 F.3d 891, 897 (9th Cir. 2014).

The party invoking federal jurisdiction bears the burden of establishing standing by providing facts showing that the defendant’s “actual action” has caused harm, *Clapper*, 568 U.S. at 411-12, 414 n.5, as well as the burden of establishing the ripeness of their claim. *Colwell v. DHHS*, 558 F.3d 1112, 1121 (9th Cir. 2009). Yet nowhere in their brief do Petitioners address standing or explain how their organizations’ members have been, or will be, injured by the Exemption Decision.

Insofar as Petitioners may assert that certain risks to their members will increase if the reactors are permitted to operate beyond their current expiration dates during a period of timely renewal, the Exemption Decision *does not authorize* such operation. Any future operation of the reactors beyond their respective expiration dates in November 2024 and August 2025 is still contingent on the occurrence of two events that have not yet occurred—PG&E submitting an application by the end of this calendar year, and the NRC accepting that application as sufficient for docketing. Only then will PG&E’s timely renewal status crystallize from a possibility to the new state of affairs. Standing is determined by the facts “as they exist when the complaint is filed,” *Langer v. Kiser*, 57 F.4th 1085, 1092 (9th Cir. 2023) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 569 n.4 (1992)), and the current facts on the ground are that PG&E does



not, at this time, possess any legal authority to operate the Diablo Canyon reactors beyond their current expiration dates.

But even if the Court were to determine that the possibility of timely renewal created by the Exemption Decision is enough to satisfy ripeness, Petitioners still have not described with any specificity an imminent harm to their members' interests created by that action. The existing record demonstrates that two Petitioner organizations represent members who "live, work, and own property within 50 miles of the Diablo Canyon reactors" and that "[t]heir health and safety, and the health of their environment, could be catastrophically damaged by an accident." 3-ER-453-454; *see also* 3-ER-486-492 (declarations of members expressing concern that "continued operation of the Diablo Canyon reactors poses an unacceptable risk" to their health, safety and the environment, based on "knowledge of seismic risks "and "historical experience of nuclear power stations"). These probabilistic assertions of harm—that there could be a future natural disaster, or there could be an operational accident at the facility—are speculative and hardly "imminent" for purposes of standing. *See e.g. South Carolina v. U.S.*, 912 F.3d 720, 727 (4th Cir. 2019) (holding that alleged injuries of increased risk to radiation exposure, nuclear-related accidents, or threats from malevolent actors arising from a mothballed nuclear facility, were too speculative to support standing).

And while a future injury need not be “literally certain” for purposes of standing, Petitioners have not attempted to explain how the Exemption Decision at minimum creates a “substantial risk” or a “credible threat” that these probabilistic harms will materialize. *Munns v. Kerry*, 782 F.3d 402, 409 (9th Cir. 2015); *Nat. Res. Def. Council v EPA*, 735 F.3d 873, 878 (9th Cir. 2013). Nor could they, since the Exemption Decision itself does not “change the manner in which the plants operate” or “result in a change to the facility or the current operating license.”

1-ER-5. Even if a temporary period of continued operation during timely renewal occurs, the NRC would continue to inspect and enforce the terms of PG&E’s existing licenses and would maintain its continuous health and safety oversight of the facility. 1-ER-5. In other words, the Exemption Decision creates the possibility (but not certainty) that the status quo may continue at Diablo Canyon beyond November 2024 for an indeterminate period of time, and Petitioners have not explained how this possibility creates a new and substantial risk of future harm to their interests.

No one doubts that Petitioners are organizations with a demonstrated interest in the safety and oversight of Diablo Canyon. But stakeholder interest by itself does not create Article III standing. Petitioners have not attempted, much less carried their burden, to demonstrate how the Exemption Decision has created an imminent, concrete and particularized injury to them or their members.

### **III. The NRC’s decision to grant the exemption was reasonable.**

Should the Court reach the merits of the petition, the record amply demonstrates that the NRC exercised sound judgment and reasoned decisionmaking when granting the exemption.

#### **A. The NRC correctly determined that the exemption was “authorized by law.”**

Under 10 C.F.R. § 50.12, the NRC is authorized to grant exemptions from regulatory requirements upon making a number of findings. First, the agency must confirm the requested exemption is “authorized by law.” *Id.* § 50.12(a)(1). Here, the NRC had to find that it possessed the legal authority to shorten the five-year timely renewal application deadline codified in 10 C.F.R. § 2.109(b).

The agency correctly concluded that the exemption was authorized by law. 1-ER-4-5. In reaching this determination, the NRC reviewed the regulatory history of section 2.109(b) and explained that the five-year time period was the result of a discretionary agency rulemaking, not any immovable statutory requirement. 1-ER-4-5. This is because the timely renewal provision of the APA, which is expressly incorporated into the Atomic Energy Act, 42 U.S.C. § 2231, directs each individual licensing agency to craft its own rules governing when a renewal application is deemed “timely” and “sufficient.” 1-ER-5 (citing 5 U.S.C. 558(c)). Indeed, prior to 1992, NRC regulations afforded timely renewal protection to all

licensees so long as a renewal application was submitted at least thirty *days* before expiration. 1-ER-5. In 1990 the NRC proposed increasing the timely renewal deadline for power reactor applicants to three years, a period of time the agency reasonably expected to be sufficient to complete its technical review and any necessary hearing. 1-ER-5. After no specific comments on the proposal were received, the Commission ultimately landed on five years. 1-ER-5. This date was chosen so that the timely renewal deadline would coincide with other NRC regulations requiring power reactor licensees to submit certain information to the NRC at least five years prior to license expiration. 1-ER-5.

Ultimately, when granting the exemption the NRC reasonably concluded that—in light of this regulatory history and the APA’s general delegation of authority to agencies to issue their own procedural rules governing license renewal—the NRC possessed legal authority to grant an exemption from its own five-year timely renewal deadline. 1-ER-5. Petitioners dispute this conclusion in a number of ways, none of which are persuasive or correct.

**i. The NRC may permit continued operation of a nuclear power reactor during its review of a timely and sufficient license renewal application, consistent with the APA.**

Petitioners’ primary legal argument against the Exemption Decision is that the Atomic Energy Act “unambiguously” limits the term for any commercial reactor license to forty years, and that the NRC has no discretion to permit

operation beyond this date unless and until it approves a renewal application. Brief at 23 (citing 42 U.S.C. § 2133(c)); *see also* Brief at 21 (“[I]f the NRC fails to reach a decision on license renewal in the period before the expiration of the licenses for the Diablo reactors, PG&E is bound to shut down the reactors on their operating license expiration dates and wait for agency action.”). This argument—which effectively asserts that *any* operation during a timely renewal period is illegal—ignores the plain language of the APA and directly contravenes applicable Supreme Court precedent.

The APA unambiguously states that a license authorizing “an activity of a continuing nature *does not expire*” until the agency takes final action on a “timely and sufficient application for a renewal.” 5 U.S.C. § 558(c) (emphasis added). Petitioners’ interpretation would do violence to the statutory text, in essence rewriting the provision to read “the license does not expire, unless it expires.” *See e.g. Miami MDS Co. v. FCC*, 14 F.3d 658, 659 (D.C. Cir. 1994) (timely renewal provision of the APA “plainly assumes” the continuation of a license that otherwise naturally would have lapsed, and would be a “nullity” if inapplicable to a license with an expiration date). But the statute is clear—an applicant who makes a “timely and sufficient application” for license renewal, in accordance with the regulations prescribed by the licensing agency, receives the benefit of timely renewal protection. Here, the exemption was requested and granted in accordance

with NRC regulations and effectively creates a new timely renewal deadline for PG&E that, if achieved, would render its application timely under NRC rules.

The Supreme Court has also confirmed Section 558(c)’s plain meaning. In *Pan-Atlantic Steamship Corp. v. Atlantic Coast Line Railroad Co.*, the Court held that the APA’s timely renewal provision supplemented an agency statute limiting certain authorizations to a specified number of days. 353 U.S. at 436, 439-40 (1957). That case concerned a statute providing the Interstate Commerce Commission with the power to grant “temporary authority” to certain common carriers to operate in times of necessity but expressly limited such authority to no more than 180 days. *Id.* at 437. One carrier who received a temporary authorization from the agency was permitted to continue operating beyond 180 days while the agency reviewed its application for a permanent authorization. *Id.* at 437-38. The Court sustained the agency’s authority to allow continued operation during the pendency of its review, since a “harmonious” reading of the two statutes necessitated that the general APA provision “supplement[ed]” the specific agency statute. *Id.* at 440. The result in this case should be no different.

Indeed, Petitioners undermine their own argument for strict fidelity to the Atomic Energy Act’s forty-year license term limit when they themselves acknowledge that the NRC previously permitted, via timely renewal, the Indian Point nuclear power plant to continue operating beyond its initial license expiration

dates. Brief at 27.<sup>7</sup> Petitioners attempt to distinguish this example of continued operation from the case at hand because in Indian Point the renewal application was filed more than five years in advance and the delay was, in Petitioners' view, attributable to the agency and not the applicant. Brief at 27. But this cannot be squared with Petitioners' adamant position that forty years means forty years, and that the Atomic Energy Act requires the shutdown of a reactor if the NRC has not acted on a renewal application by its license expiration date.

Petitioners also allege that by interpreting the APA in this way the Exemption Decision "repeal[s] by implication" the Atomic Energy Act's statutory limitation on the term of a commercial reactor license (Brief at 25-26). But the cases Petitioners rely on for this argument demonstrate its unsuitability here. First there is *Watt v. Alaska*, to which Petitioners cite for the general proposition that "repeals by implication are disfavored." 451 U.S. 259, 267 (1981). This case concerns interpretation of two potentially conflicting *statutory* provisions and how best to ascertain the intent of *Congress* in such circumstances. *Id.* at 266-270. The

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<sup>7</sup> *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 342 n.2 (2015) (2015 WL 5904781) ("The operating license for Unit 2 expired on September 28, 2013 ... Because the license renewal application was filed at least 5 years before the scheduled expiration date of the Indian Point 2 operating license, Unit 2 is in timely renewal; the existing license will not be deemed to have expired until the license renewal application has been finally determined.").

case has no bearing on action taken by an agency pursuant to its own regulations (which, of course, may not “repeal” a statutory command, either implicitly or explicitly). Petitioners also cite to decisions describing the appropriate standard of review when an agency changes course and rescinds a regulation promulgated by notice and comment with a new regulation (Brief at 43-44, citing *State Farm*, 463 U.S. at 29), or where an agency’s final decision in an adjudication departs from findings made by an initial hearing examiner (*Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970)). Neither situation is implicated by the facts here, in which the NRC granted an exemption from a rule of general applicability to an individual applicant based on, among other things, the special circumstances presented. Under *State Farm*, agencies must rationally explain their decisionmaking process and demonstrate that the relevant factors were considered, and the NRC has done that here. 1-ER-3-7.

In short, Petitioners’ argument that timely renewal cannot be interpreted to contravene the forty-year license term in the Atomic Energy Act plainly is in error. The APA is expressly incorporated into all NRC action (42 U.S.C. § 2231); those who submit a timely and sufficient license renewal application receive its timely renewal protection (10 C.F.R. § 2.109(b)); and by obtaining a duly issued exemption from the otherwise applicable five-year deadline, PG&E would be “in accordance with agency rules” (5 U.S.C. § 558(c)) if it meets the Exemption



Decision's alternative deadline. The NRC's conclusion that such a path to timely renewal is lawful is rational and amply supported.

**ii. The NRC has not renewed the Diablo Canyon licenses in violation of the Atomic Energy Act.**

Petitioners allege that the Exemption Decision unlawfully extends the Diablo Canyon licenses through an action other than license renewal, which the Atomic Energy Act prohibits. Brief at 23-24, 29-30 (citing 42 U.S.C. §§ 2133, 2232). Petitioners argue that the NRC is required to make the statutory findings described in these Atomic Energy Act provisions prior to issuing a renewed reactor license, and thus the Exemption Decision is deficient because it provides no assurance that such findings will be made before PG&E's existing licenses expire. Brief at 30.

As with the above, these arguments ignore the plain language of the APA's timely renewal provision and misconstrue the action actually taken by the agency. The Exemption Decision does not renew PG&E's licenses, nor is it a substitute for license renewal. Rather, the Exemption Decision provides a time-limited window for PG&E to submit a future renewal application to the NRC on a schedule that differs from the agency's ordinary procedural rules. If and when the NRC receives a sufficient license renewal application, it will at that time "review the application using its normal license renewal review processes and standards to determine

whether the application meets all applicable regulatory requirements.” 1-ER-7.

Any continued operation of the reactors during the pendency of the NRC’s review of that application would be the product of the APA’s timely renewal protection, not affirmative action by the NRC to extend or renew PG&E’s licenses. 5 U.S.C. § 558(c); *NRDC*, 859 F.2d at 214 (under timely renewal, an “expired” license is continued “not by affirmative agency action but by operation of law”).

Petitioners’ also assert that the NRC must provide assurance that it will complete its review of a license renewal application prior to the expiration of the license being renewed (including completion of any requested hearings). This too directly conflicts with the plain text of 5 U.S.C. § 558(c). The statute expressly contemplates that an agency’s review of a license renewal application may extend beyond the expiration date of the license being renewed, and those who submit timely and sufficient renewal applications may continue to engage in licensed activity beyond an otherwise applicable expiration date until the agency completes its review. *Pan-Atlantic Steamship*, 353 U.S. at 439-40. If Petitioners were correct on this point, the APA’s timely renewal provision would be meaningless.

**iii. The NRC was not required by Section 189 of the Atomic Energy Act to provide an opportunity for a hearing.**

Petitioners also argue that (1) by not offering a hearing prior to granting the exemption, and (2) by making no guarantee that a hearing can or will be completed

on a future license renewal application prior to the expiration dates of the existing licenses, the exemption violates Section 189(a) of the Atomic Energy Act (42 U.S.C. § 2239(a)), which mandates that the NRC offer an opportunity for a hearing in any proceeding for the “granting, suspending, revoking, or amending of any license.” Brief at 30-32, 42.

As explained above in Respondents’ subject-matter jurisdiction argument, the NRC has long maintained that decisions on whether to grant an exemption are outside the scope of this statutory hearing provision. *See, e.g., Commonwealth Edison Co.* (Zion Nuclear Power Station), CLI-00-05, 51 NRC 90, 98 (2000) (2000 WL 343072) (explaining “there is no right to request a hearing” where “the action involves an exemption from NRC regulations and not one of those actions for which [42 U.S.C. § 2239(a)] provides a right to request a hearing.”). Rather, the opportunity for a hearing is part of the license renewal process, which will not begin until the NRC receives and docketed a license renewal application. *See* 10 C.F.R. §§ 54.27, 2.105 (providing that a notice of opportunity for hearing be published in the *Federal Register*); 1-ER-7 (“Should the application be docketed, the NRC will provide an opportunity for the public to seek a hearing[.]”). Simply put, the statutory requirement for the NRC to offer the opportunity for a hearing attaches to decisions to “grant, suspend, revoke, or amend a license,” none of

which are implicated by the Exemption Decision, and thus the NRC has not offended this requirement.<sup>8</sup>

**iv. Granting an exemption from a rule of general applicability does not repeal the rule.**

Lastly, Petitioners argue that by granting the exemption the NRC has unlawfully revoked its regulation governing timely renewal without an opportunity for public notice and comment in violation of the APA. Brief at 43-45. This argument lacks merit because the Exemption Decision is the result of an informal “adjudication” within the meaning of the APA, not a “rule” of general or particular applicability and future effect subject to the APA’s notice and comment requirements. 5 U.S.C. §§ 551(4), (7), 553.

To be sure, this Court has previously held that an agency adjudication *may* require notice and comment if it constitutes a “de facto” rulemaking that “affects the rights of broad classes of unspecified individuals.” *MacLean v. DHS*, 543 F.3d 1145, 1151 (9th Cir. 2008) (cleaned up). But the Exemption Decision does no such thing. Contrary to Petitioner’s assertions (Brief at 45), nothing in the Exemption Decision “qualifies” any future applicant to obtain a timely renewal exemption of

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<sup>8</sup> Indeed, one of the NRC’s stated reasons for denying PG&E’s October 2022 request to resume review of its previously withdrawn application was that relying on the original notice of hearing published in 2010 would be inconsistent with the NRC’s processes for public participation in its licensing decisions. 3-ER-495-496.

their own. Rather, the Exemption Decision plainly relies—as do *all* NRC exemptions evaluated under 10 C.F.R. § 50.12—on whether “special circumstances” were present in the individual case, among other factors. Nor does anything in the Exemption Decision bind the NRC, either implicitly or explicitly, to automatically grant future exemption requests to any applicant who misses the five-year timely renewal deadline. *See, e.g., Azurin v. Von Raab*, 803 F.2d 993, 997 (9th Cir. 1986) (“Absent an explicit statutory or regulatory mandate, past agency behavior does not necessarily bind the agency to the same procedures, especially when it is faced with an extraordinary and unique situation.”).

Respondents do not dispute that the general purpose of the deadline codified in 10 C.F.R. § 2.109(b) is to provide the NRC with “reasonable time to review an application for a renewed license,” with the *goal* (but not the guarantee) of completing that review prior to the expiration of the existing license. Brief at 38. That is the underlying reason why the agency established a five-year deadline as the general rule. But just as the NRC possesses the authority to promulgate rules of general application, it is well-established that so too does the agency possess the “concomitant authority to provide exemption” to those regulations where “special circumstances” are present. *U.S. v. Allegheny-Ludlum Steel Corp.*, 406 U.S. 742, 755 (1972). The Exemption Decision is a rational exercise of this inherent authority, in which the NRC determined via its established exemption framework

(10 C.F.R. § 50.12) that its generally applicable rule could permissibly be relaxed in this individual case.

In sum, the NRC correctly found that it *could* lawfully grant an exemption altering its own timely renewal deadline. But the NRC did not stop there. It also devoted substantial analysis to whether it *should* do so, weighing its decision against the relevant criteria as discussed in the next sections.

**B. The NRC reasonably explained that the exemption would not present an “undue risk to the public health and safety.”**

In addition to finding that a requested exemption would be “authorized by law,” 10 C.F.R. § 50.12(a)(1) also requires that the NRC determine that an exemption “will not present an undue risk to the public health and safety.”<sup>9</sup>

The NRC made this finding. 1-ER-5. The Exemption Decision explains that nothing in the exemption would alter the facility or the terms under which it operates. 1-ER-5. Rather, the exemption could result, should PG&E submit a sufficient renewal application by its deadline, in temporary continued operation of the reactors under the terms of their existing licenses until the NRC makes a final decision on that application. 1-ER-5. The NRC explained that in the event this does

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<sup>9</sup> The NRC also determined, consistent with 10 C.F.R. § 50.12(a)(1), that the exemption was “consistent with the common defense and security” (1-ER-5), a finding that Petitioners do not challenge.

occur, the NRC would “continue to conduct all regulatory activities associated with licensing, inspection, and oversight” and would still be empowered to “take whatever action may be necessary to ensure adequate protection of the public health and safety.” 1-ER-5. The exemption would not affect the NRC’s ability to “modify, suspend, or revoke a license for cause, such as a serious safety concern.” 1-ER-5; *see* 42 U.S.C. § 2236. Any continued operation during a period of timely renewal would effectively be a continuation of the status quo.

When disputing the NRC’s health and safety finding, Petitioners argue that by crediting its continuous oversight of Diablo Canyon, the NRC is disregarding the “unique safety issues posed by extended operation” that the agency itself has recognized through its own reactor license renewal framework. Brief at 41-42. However, as explained below, this is incorrect because it conflates the purpose of an NRC license renewal proceeding with that of the NRC’s separate, ongoing obligation to provide reasonable assurance of adequate protection of public health and safety. It is the latter on which the Exemption Decision’s health and safety finding is based, and it is not intended to be a substitute for the more targeted safety review that the NRC will undertake if and when PG&E submits a license renewal application.

When the NRC initially licenses a nuclear reactor, it makes a judgment that the applicant “will provide adequate protection to the health and safety of the

public.” 42 U.S.C. § 2232. But after making this finding the agency does not then walk away—during operation of the reactor the NRC continually monitors and inspects licensee activities, and it regularly evaluates licensee reports and other objective performance data to assess the licensee’s performance. *See, e.g.*, 10 C.F.R. §§ 50.70 (providing for inspections); 50.72, 50.73 (providing for the immediate notification of certain events and timely notification of certain non-emergency events or deviation from specified requirements). This oversight remains in place for the life of the reactor.

When a licensee seeks to renew a reactor license, the NRC has determined it need not engage in a top-to-bottom, *de novo* safety evaluation as if it were a new applicant. Rather, as the NRC has explained when promulgating its power reactor license renewal framework, license renewal is focused on “whether the detrimental effects of aging, which could adversely affect the functionality of systems, structures, and components that the Commission determines require review for the period of extended operation, are adequately managed.” 60 Fed. Reg. at 22,464. These rules—which the NRC has issued pursuant to notice and comment and which reflect the core of the agency’s regulatory experience and technical expertise—are deliberately limited in scope, meant to ensure the detrimental effects of aging on certain long-lived, passive components will be effectively



managed by the applicant for the duration of the proposed new license term.<sup>10</sup> This is because, as the Commission has explained, “license renewal review is not intended to duplicate the NRC’s ongoing oversight of operating reactors.” *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-15-6, 81 NRC 340, 347 (2015) (2015 WL 5904781); *see also* 60 Fed. Reg. at 22,463-64 (explaining that under the NRC’s license renewal framework, “issues relevant to current plant operation” are to be addressed by the NRC’s “existing regulatory process within the present license term rather than deferred until the time of license renewal,” and that such ongoing regulatory oversight “is adequate to ensure that the licensing bases of all currently operating plants provides and maintains an acceptable level of safety”).

Petitioners are thus mistaken when they assert (Brief at 41-42) that the NRC can only ensure adequate protection of public health and safety through completion of the license renewal process. Ongoing agency oversight, inspection, and

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<sup>10</sup> Specifically, only those structures and components that perform or support an intended safety function “without moving parts or without a change in configuration or properties,” or those that are “not subject to replacement based on a qualified life or specified time period,” are within the scope of license renewal. 10 C.F.R. § 54.21(a)(1). Only such “passive” structures or equipment are subject to an aging management review at the license renewal stage because all components that perform active safety functions, or that are required to be replaced after a specified time period, are already required by NRC regulations to be regularly monitored by the licensee and maintained throughout plant operation. *Id.* § 50.65.

enforcement is the vehicle (not license renewal) by which the NRC provides reasonable assurance of the continuation of an adequate level of safety during the present license term. The NRC remains at all times empowered—indeed, obligated—to take any and all actions required to maintain reasonable assurance of public health and safety, which is what the Exemption Decision explains (1-ER-5). This obligation exists regardless of whether a reactor is operating during its initial license term, a renewed license term, or a period of timely renewal in between.

Adding more support to its health and safety determination, the NRC explained that, if PG&E submitted its renewal application by December 31, 2023, there would still be about 11 and 20 months before each respective license expired. 1-ER-5. During that period, the NRC would review the application and determine if “any immediate actions need to be taken prior to the licensee entering the period of timely renewal.” 1-ER-5. Although Petitioners criticize this approach (Brief at 30), it too is consistent with the NRC’s ordinary license renewal process. *See* 10 C.F.R. § 54.30 (requiring that, where information submitted during license renewal creates a lack of reasonable assurance that the plant is operating in accordance with its current licensing basis, the licensee take remedial measures under the current license and not defer to the conclusion of license renewal).

In sum, by determining that the exemption presents no undue risk to public health and safety, the NRC has effectively made a technical judgment concerning

the adequacy of its ongoing health and safety oversight activities, based on its relevant expertise and years of experience overseeing the safety of nuclear reactors, including the Diablo Canyon Power Plant. The Court should not disturb this judgment. *See National Wildlife Federation*, 384 F.3d at 1174 (reviewing court “must be highly deferential to the judgment of the agency” where “scientific and technical expertise is necessarily involved,” “especially in the context of prediction” (citing *Baltimore Gas*, 462 U.S. at 103)). Before approving any application to *renew* the Diablo Canyon licenses and establish a new license term, the NRC must make the findings in 10 C.F.R. § 54.29 relating to the management of the effects of aging on the functionality of important structures and components.<sup>11</sup> But the NRC is not required by its license renewal regulations to make such findings in advance of a potential period of continued operation via timely renewal that would occur under the terms of the existing licenses already being overseen by the NRC.

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<sup>11</sup> On this point Petitioners argue that the NRC has ignored information they submitted to the agency on “the significant amount of information and issues that must be reviewed before the NRC can make a decision regarding renewal.” Brief at 48. Any such arguments can of course be raised by Petitioners before the agency if and when an application is received and a license renewal proceeding is actually initiated.

**C. The NRC reasonably found that special circumstances justified the exemption.**

Under 10 C.F.R. § 50.12(a)(2), the NRC will not grant an exemption request unless “special circumstances are present,” examples of which are included in the regulation. Consistent with that requirement, the NRC found that PG&E’s request presented a “material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.” *Id.* § 50.12(a)(2)(vi); 1-ER-6.

Specifically, the NRC cited to the recent California legislation which served as the impetus for PG&E’s exemption request. 1-ER-6, 2-ER-276. The NRC explained that “climate change impacts and serious electricity reliability challenges” identified by the State of California “constitute[d] material circumstances that were not specifically considered” when the NRC promulgated its timely renewal regulation in 1991. 1-ER-6. The NRC relied on the California legislature’s statement of purpose, which was to “protect the state against significant uncertainty” in future electricity supply and demand “resulting from the state’s greenhouse-gas-reduction efforts ... and regional climate-related weather phenomenon.” 1-ER-6. And the NRC also considered the signing statement from the California Governor, who explained that “climate change is causing unprecedented stress on California’s energy system” and that “Senate Bill 846

facilitates the actions necessary to keep the option of [Diablo Canyon Power Plant] as a statewide reliability asset beyond the current 2024-2025 retirement dates of the plant's two units.” 1-ER-6. The NRC reasonably concluded that California's reasons for directing PG&E to seek the timely renewal exemption were compelling and—inasmuch as they reflected California's evolving views of the need for Diablo Canyon to serve as a source of baseload energy—granting would be in the public interest.

Petitioners unpersuasively challenge the NRC's “special circumstances” determination by criticizing the California law as a “hastily” passed statute that does not actually mean what it says. Brief at 10. For example, notwithstanding that the legislation specifically directs PG&E as the plant's operator to “take all actions that would be necessary to operate the powerplant beyond the current expiration dates” (2-ER-261), Petitioners imply the State would not support granting the requested exemption because the enacted bill also contemplates the possibility that the results of the NRC's license renewal review *may* result in upgrades that are too expensive for PG&E to pursue. Brief at 49. Or, they argue, because the enacted bill recognizes that the NRC *could* deny the renewal application, that means the State does not actually need Diablo Canyon to extend its operations. Brief at 50. Petitioners also assert their disagreement with “the assumption that California's projected energy demands have changed,” stating that the California Public

Utilities Commission “has not made any change to its 2018 acceptance of the retirement of the Diablo Canyon reactors” based on PG&E’s assertion of significantly reduced demand at the time. Brief at 50. But this is nothing other than a policy disagreement with California’s legislation, which expressly invalidated the 2018 decision to which Petitioners refer. 2-ER-261.

At bottom, the NRC acted reasonably when it determined that special circumstances were present. The NRC relied on representations made and enacted into law by the highest levels of California’s government that “the expeditious relicensing of [Diablo Canyon Power Plant] to allow for the continued operations beyond [their] expirations dates” was an urgent matter of public interest.

2-ER-270. Petitioners may disagree with these facts, but the NRC did not err by taking seriously the articulated and evolving concerns of California’s duly-elected representatives.

**D. The NRC reasonably interpreted its own categorical exclusion regulation.**

Lastly, the Exemption Decision includes the NRC’s determination that the action meets the provisions of the categorical exclusion codified in the agency’s regulations implementing NEPA, and thus no additional environmental review was required before granting the exemption. 1-ER-6. Specifically, the NRC determined that the exemption was an action described in 10 C.F.R. § 51.22(c)(25). That

regulation excludes from further NEPA review the “granting of an exemption” from an NRC requirement if it also satisfies additional criteria. The Exemption Decision evaluated those additional criteria and explained why they were met.

First, the NRC confirmed that the exemption request involved “no significant hazards determination” (10 C.F.R. § 51.22(c)(25)(i)).<sup>12</sup> 1-ER-6. Relatedly, the NRC confirmed the exemption would not (1) involve any “significant change in the types or significant increase in the amounts of effluents” that could be released offsite; (2) result in any “significant increase in individual or cumulative public or occupational radiation exposure”; (3) involve any “significant construction impact”; or (4) create any “significant increase in the potential for or consequences from radiological accidents” (*id.* § 51.22(c)(25)(ii)-(v)). 1-ER-6. These were all reasonable findings, given that a request to change the date by which a future license renewal application is considered timely under the agency’s rules would not result in such operational impacts.

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<sup>12</sup> “No significant hazards determination” is a well-established regulatory term in NRC practice. The Atomic Energy Act enables the NRC to grant certain license amendments with immediate effectiveness, notwithstanding the pendency of a hearing request, if the amendment involves “no significant hazards consideration” as determined by implementing NRC regulations. 42 U.S.C. § 2239(a)(2)(A), (C); 10 C.F.R. § 50.92.

Lastly, the NRC’s categorical exclusion for exemptions specifies that the exemption must pertain to specified subject matters in order to be eligible, one of which is “scheduling requirements.” *Id.* § 51.22(c)(25)(vi)(G). Here too the NRC reasonably applied the plain language of the regulation and determined that the exemption request related to a scheduling requirement because it would revise the date by which PG&E could submit a future license renewal application. 1-ER-6-7.

Petitioners argue that use of the categorical exclusion was inappropriate, and that the NRC must instead complete the environmental impact statement required by its regulations before issuing a renewed license. Brief at 33 (citing 10 C.F.R. § 51.95(c)). They advance three arguments, none of which provide reason to disturb the NRC’s reasonable interpretation of its own regulation.

First, Petitioners argue that, as a matter of law, “the only way the NRC may extend an operating license past its expiration date is to renew it,” and thus any “NRC decision to renew the Diablo Canyon licenses must be supported by an [environmental impact statement].” Brief at 35-36. But as previously explained, the Exemption Decision is not a renewal of PG&E’s licenses. And to the extent Petitioners argue that an environmental impact statement is necessary before the reactors can continue to operate past their existing expiration dates (a possibility the Exemption Decision creates but does not itself authorize), such operation would be the result of timely renewal protection afforded to PG&E by the APA,



not any affirmative NRC decision. *NRDC*, 859 F.2d at 214 (under timely renewal, an “expired” license is continued “not by affirmative agency action but by operation of law”). Said another way, the possibility that a nuclear power reactor *could* operate beyond its initial forty-year license term during a period of timely renewal inheres in *every* NRC license, due to 5 U.S.C. § 558(c) and its incorporation into the Atomic Energy Act. The NRC does not undertake a new “major federal action significantly affecting the quality of the human environment” within the meaning of NEPA (42 U.S.C. § 4332) by permitting an existing licensee to operate “within the range originally available to it.” *Idaho Conservation League v. Bonneville Power Admin.*, 826 F.3d 1173, 1175 (9th Cir. 2016). Because the NRC is not renewing the Diablo Canyon licenses at this time, no additional NEPA review is required beyond an examination of the impacts of the exemption itself, which the categorical exclusion provides.

Second, Petitioners argue that the NRC is ignoring the “unique” safety and environmental risks associated with license renewal and that the NRC’s license renewal regulations preclude the agency “from declaring that the environmental impacts of extended operation remain the same after 40 years as before.” Brief at 36. This too repackages an already-addressed and refuted argument concerning safety and the NRC’s license renewal framework. The NRC’s companion comprehensive NEPA framework for evaluating the environmental impacts of

license renewal is similarly initiated when the NRC actually receives an application for its review.<sup>13</sup> That NEPA review includes the preparation of a site-specific environmental impact statement that supplements the findings from the NRC’s generic environmental impact statement for license renewal of nuclear plants. *See generally* 10 C.F.R. § 51.95(c); 10 C.F.R. Part 51, Appendix B. The NRC reasonably determined that it was not required to initiate this framework when it receives a request in advance of the actual application, concerning the schedule by which that request for future major federal action will be submitted. 1-ER-6-7.

Third, Petitioners point to the regulatory history of the categorical exclusion to assert that it was intended to only apply to “truly minor actions of an administrative nature.” Brief at 36-37. Although the regulatory history provides examples of administrative types of actions that could qualify for the categorical exclusion, these examples are illustrative and not exhaustive. 2-ER-77. And while Petitioners argue (Brief at 36) that the NRC could not have intended minor changes involving scheduling to encompass the exemption request here, they ignore all the

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<sup>13</sup> Petitioners will be afforded the opportunity to challenge the NRC’s assessment of impacts caused by renewal of the license, if and when an application is submitted and docketed for review. 10 C.F.R. § 2.309(f)(2) (permitting contentions in NRC licensing hearings arising under NEPA).

other prescriptive guardrails built into the categorical exclusion. 10 C.F.R.

§ 51.22(c)(25)(i)-(v) (e.g., “no significant hazards consideration,” no significant construction impacts or types/amounts of effluents, no significant increase in the potential for radiological accidents, etc.). Those guardrails, which the NRC considered here, are meant to ensure that the categorical exclusion does not sweep up administrative exemptions with the potential for significant effects on the human environment.

In the end, Petitioners fail to recognize that *all* the Exemption Decision does, by its own terms, is alter the schedule within which PG&E must submit a license application to secure the benefit of timely renewal. The record demonstrates the NRC reasonably interpreted the plain language of its own categorical exclusion by confirming that the exclusion’s prescriptive guardrails were in place before making its finding, which the Court should not disturb. *See Mountain Cmty. for Fire Safety v. Elliott*, 25 F.4th 667, 680 (9th Cir. 2022) (agency decision to invoke a categorical exclusion will satisfy arbitrary and capricious standard if “the agency reasonably determined that a particular activity is encompassed within the scope” of the cited exclusion); *Safari Club Int’l v. Haaland*, 31 F.4th 1157, 1178-79 (9th Cir. 2022) (agency satisfies NEPA so long as application of a categorical exclusion to the facts of the particular action is not arbitrary and capricious).

**IV. If the Court determines that remand is necessary, it should do so without vacatur.**

Finally, if the Court were to find that it has jurisdiction over the Petition for Review and that a remand is necessary, it should exercise its discretion by remanding without vacatur. In determining whether such an equitable remedy is warranted, the Court considers (1) “how serious the agency’s errors are”; and (2) the “disruptive consequences of an interim change that may itself be changed.” *Nat’l Family Farm Coal. v. EPA*, 966 F.3d 893, 929 (9th Cir. 2020); *Cal. Cmty. Against Toxics v. EPA*, 688 F.3d 989, 992 (9th Cir. 2012). In determining the severity of any error the Court also considers the likelihood that the agency may offer better reasoning on remand or whether a “fundamental flaw” makes it unlikely the agency could adopt the same action. *Ctr. for Food Safety v. Regan*, 56 F.4th 648, 663-64 (9th Cir. 2022); *National Family Farm Coalition*, 966 F.3d at 929. In this case, all circumstances favor remand without vacatur.

With respect to any potential “fundamental flaw” that could preclude the NRC from adopting the same decision on remand, the sole argument raised by Petitioners that would rise to such a level is that the Atomic Energy Act’s forty-year license term limitation *precludes* the NRC from issuing this particular exemption. But as previously explained, Petitioners’ position is contradicted by

Section 558(c) of the APA, and Congress expressly directed that the APA “shall apply to all agency action” under the Atomic Energy Act, 42 U.S.C. § 2231.

If the Court determines that some element of the NRC’s decision necessitates further explanation (or that a hearing was required), the NRC should be provided the opportunity to provide that explanation or process, with attendant opportunities for appellate review by this Court, without the potentially disruptive consequences of vacatur. This is especially true here given that, even if PG&E were to enter into a period of continued operation through timely renewal, that would not occur until November 2024 at the earliest. The NRC would have ample time to supplement its findings or provide any other necessary explanation before the period of continued operation to which Petitioners object even begins.

With respect to potentially disruptive consequences, vacatur of the exemption would also vacate PG&E’s timely renewal protection, if the NRC has received and docketed its license renewal application by the time of the Court’s decision. This would create significant uncertainty as to whether PG&E will have to pivot once more and begin preparations for shutdown of Unit 1 in November 2024, unless and until the NRC can address any error the Court identifies before that date. This may also create substantial uncertainty for California in terms of whether Diablo Canyon will be an available source of baseload electricity in the near future or whether the State will have to rapidly make other plans to

compensate for its loss. These are the precise harms identified in the California legislation that prompted PG&E's exemption request. In a prior case, this Court has determined that avoiding unnecessary uncertainty over the reliability of the electric grid sufficiently constituted "disruptive consequences" warranting remand without vacatur, *Communities Against Toxics*, 688 F.3d at 994. This Court should likewise do so here in the event that it determines remand is warranted for any rectifiable reason.

Finally, Respondents emphasize that remand without vacatur is an available remedy "when equity demands." *Center for Food Safety*, 56 F.4th at 663. The record in this case fully demonstrates that PG&E's request for a timely renewal exemption was compelled by circumstances outside of its control (namely, a change of policy enacted into law by the political branches of the California government based on a recognition of a rapidly changing circumstances). In addition, the NRC acted promptly in response to the application and the urgency it represented, and it engaged in a transparent, good-faith effort to determine whether and how such a request would comport with agency policy and the available regulatory framework. Indeed, the NRC *declined* PG&E's request that it resume its consideration of the original license renewal application, a decision that would have instantly placed the licenses back in timely renewal status. Instead, the NRC required PG&E to submit an updated application in a prompt manner, consistent

with the applicable license renewal framework. The NRC is committed to acting expeditiously on the renewal application if PG&E timely submits it. To the extent any remedy is warranted in this case, the equities here fully support remand without vacatur.

## CONCLUSION

For the reasons stated herein, the Court should dismiss or deny the Petition for Review.

Respectfully submitted,

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FOR THE NINTH CIRCUIT**

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## ADDENDUM

### Administrative Orders Review Act (“Hobbs Act”)

28 U.S.C. § 2342.....	1a
28 U.S.C. § 2344.....	1a

### Administrative Procedure Act

5 U.S.C. § 551.....	1a
5 U.S.C. § 558.....	2a
5 U.S.C. § 704.....	3a
5 U.S.C. § 706.....	3a

### Atomic Energy Act of 1954, as amended

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## **28 U.S.C. § 2342 (Excerpted)**

### **Jurisdiction of court of appeals**

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of-

...

(4) all final orders of the Atomic Energy Commission made reviewable by section 2239 of title 42;

...

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

## **28 U.S.C. § 2344**

Review of orders; time; notice; contents of petition; service

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies. The action shall be against the United States. The petition shall contain a concise statement of-

(1) the nature of the proceedings as to which review is sought;

(2) the facts on which venue is based;

(3) the grounds on which relief is sought; and

(4) the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt.

## **5 U.S.C. § 551 (Excerpted)**

### **Definitions**

For the purpose of this subchapter-

...

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the

future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing

(5) "rule making" means agency process for formulating, amending, or repealing a rule;

(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) "adjudication" means agency process for the formulation of an order;

(8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

...

## **5 U.S.C. § 558 (Excerpted)**

### **Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses**

...

(c) When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given-

(1) notice by the agency in writing of the facts or conduct which may warrant the action; and

(2) opportunity to demonstrate or achieve compliance with all lawful requirements.

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.

## **5 U.S.C. § 704**

### **Actions reviewable**

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

## **5 U.S.C. § 706**

### **Scope of review**

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall-

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be-
  - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - (B) contrary to constitutional right, power, privilege, or immunity;
  - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
  - (D) without observance of procedure required by law;
  - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
  - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

## 42 U.S.C. § 2133

### Commercial licenses

**(a) Conditions.** The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 2153 of this title, utilization or production facilities for industrial or commercial purposes. Such licenses shall be issued in accordance with the provisions of subchapter XV and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this chapter.

**(b) Nonexclusive basis.** The Commission shall issue such licenses on a nonexclusive basis to persons applying therefor (1) whose proposed activities will serve a useful purpose proportionate to the quantities of special nuclear material or source material to be utilized; (2) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish; and (3) who agree to make available to the Commission such technical information and data concerning activities under such licenses as the Commission may determine necessary to promote the common defense and security and to protect the health and safety of the public. All such information may be used by the Commission only for the purposes of the common defense and security and to protect the health and safety of the public.

**(c) License period.** Each such license shall be issued for a specified period, as determined by the Commission, depending on the type of activity to be licensed, but not exceeding forty years from the authorization to commence operations, and may be renewed upon the expiration of such period.

**(d) Limitations.** No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 2153 of this title, or except under the provisions of section 2139 of this title. No license may be issued to an alien or any any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an

alien, a foreign corporation, or a foreign government. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

**(f) Accident notification condition; license revocation; license amendment to include condition.** Each license issued for a utilization facility under this section or section 2134(b) of this title shall require as a condition thereof that in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for normal operation established by the Commission, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may, in the Commission's discretion, constitute grounds for license revocation. In accordance with section 2237 of this title, the Commission shall promptly amend each license for a utilization facility issued under this section or section 2134(b) of this title which is in effect on June 30, 1980, to include the provisions required under this subsection.

## **42 U.S.C. § 2201 (Excerpted)**

### **General duties of Commission**

In the performance of its functions the Commission is authorized to-

...

#### **(b) Standards governing use and possession of material**

establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property; in addition, the Commission shall prescribe such regulations or orders as may be necessary or desirable to promote the Nation's common defense and security with regard to control, ownership, or possession of any equipment or device, or important component part especially designed for such equipment or device, capable of separating the isotopes of uranium or enriching uranium in the isotope 235;

...

## **42 U.S.C. § 2231 (Excerpted)**

### **Applicability of administrative procedure provisions; definitions**

The provisions of subchapter II of chapter 5, and chapter 7, of title 5 shall apply to all agency action taken under this chapter, and the terms "agency" and "agency action" shall have the meaning specified in section 551 of title 5;

...

## **42 U.S.C. § 2232 (Excerpted)**

### **License applications**

**(a) Contents and form.** Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license. In connection with applications for licenses to operate production or utilization facilities, the applicant shall state such technical specifications, including information of the amount, kind, and source of special nuclear material required, the place of the use, the specific characteristics of the facility, and such other information as the Commission may, by rule or regulation, deem necessary in order to enable it to find that the utilization or production of special nuclear material will be in accord with the common defense and security and will provide adequate protection to the health and safety of the public. Such technical specifications shall be a part of any license issued. The Commission may at any time after the filing of the original application, and before the expiration of the license, require further written statements in order to enable the Commission to determine whether the application should be granted or denied or whether a license should be modified or revoked. All applications and statements shall be signed by the applicant or licensee. Applications for, and statements made in connection with, licenses under sections 2133 and 2134 of this title shall be made under oath or affirmation. The Commission may require any other applications or statements to be made under oath or affirmation.

...



## 42 U.S.C. § 2233 (Excerpted)

### Terms of licenses

Each license shall be in such form and contain such terms and conditions as the Commission may, by rule or regulation, prescribe to effectuate the provisions of this chapter, including the following provisions:

...

(b) No right to the special nuclear material shall be conferred by the license except as defined by the license.

(c) Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of this chapter.

(d) Every license issued under this chapter shall be subject to the right of recapture or control reserved by section 2138 of this title, and to all of the other provisions of this chapter, now or hereafter in effect and to all valid rules and regulations of the Commission.

## 42 U.S.C. § 2236

### Revocation of licenses

**(a) False applications; failure of performance.** Any license may be revoked for any material false statement in the application or any statement of fact required under section 2232 of this title, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for failure to construct or operate a facility in accordance with the terms of the construction permit or license or the technical specifications in the application, or for violation of, or failure to observe any of the terms and provisions of this chapter or of any regulation of the Commission.

**(b) Procedure.** The Commission shall follow the provisions of section 558(c) of title 5 in revoking any license.

**(c) Repossession of material.** Upon revocation of the license, the Commission may immediately retake possession of all special nuclear material held by the licensee. In cases found by the Commission to be of extreme importance to the national defense and security or to the health and safety of the public, the Commission may recapture any special nuclear material held by the licensee or may enter upon and operate the facility prior to any of the procedures provided under subchapter II of chapter 5 and chapter 7 of title 5. Just compensation shall be paid for the use of the facility.

## **42 U.S.C. § 2239 (Excerpted)**

### **Hearings and judicial review**

(a)(1)(A) In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees ... the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. ...

...

(b) The following Commission actions shall be subject to judicial review in the manner prescribed in chapter 158 of title 28 and chapter 7 of title 5:

(1) Any final order entered in any proceeding of the kind specified in subsection (a). ...

...

## **42 U.S.C. §5841 (Excerpted)**

### **Establishment and transfers**

(a) Composition; Chairman; Acting Chairman; quorum; official spokesman; seal; functions of Chairman and Commission

(1) There is established an independent regulatory commission to be known as the Nuclear Regulatory Commission which shall be composed of five members, each of whom shall be a citizen of the United States.

...

(f) Transfer of licensing and regulatory functions of Atomic Energy Commission

There are hereby transferred to the Commission all the licensing and related regulatory functions of the Atomic Energy Commission, the Chairman and members of the Commission, the General Counsel, and other officers and components of the Commission-which functions officers, components, and personnel are excepted from the transfer to the Administrator by section 5814(c) of this title.

**42 U.S.C. § 4332 (Excerpted)**

**Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts**

The Congress authorizes and directs that, to the fullest extent possible:

- (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and
- (2) all agencies of the Federal Government shall-

...

(C) consistent with the provisions of this chapter and except where compliance would be inconsistent with other statutory requirements, include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on-

- (i) reasonably foreseeable environmental effects of the proposed agency action;
- (ii) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;
- (iii) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal;
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
- (v) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented.

...

## **10 C.F.R. § 1.43**

### **Office of Nuclear Reactor Regulation.**

The Office of Nuclear Reactor Regulation—

(a) Develops, promulgates and implements regulations and develops and implements policies, programs, and procedures for all aspects of licensing, inspection, and safeguarding of—

- (1) Manufacturing, production, and utilization facilities, except for those concerning fuel reprocessing plants and isotopic enrichment plants;
- (2) Receipt, possession, and ownership of source, byproduct, and special nuclear material used or produced at facilities licensed under 10 CFR parts 50, 52, and 54;
- (3) Operators of such facilities;
- (4) Emergency preparedness at such facilities; and
- (5) Contractors and suppliers of such facilities.

(b) Identifies and takes action regarding conditions and licensee performance that may adversely affect public health and safety, the environment, or the safeguarding of nuclear reactor facilities;

(c) Assesses and recommends or takes action regarding incidents or accidents;

(d) Provides special assistance as required in matters involving reactor facilities exempt from licensing;

(e) Provides guidance and implementation direction to Regional Offices on reactor licensing, inspection, and safeguards programs assigned to the Region, and appraises Regional program performance in terms of effectiveness and uniformity;

(f) Performs other functions required for implementation of the reactor licensing, inspection, and safeguard programs; and

(g) Performs review and evaluation related to regulated facilities insurance, indemnity, and antitrust matters.

## **10 C.F.R. § 1.47**

### **NRC Regional Offices.**

Each Regional Administrator executes established NRC policies and assigned programs relating to inspection, enforcement, licensing, State agreements, State liaison, and emergency response within Regional boundaries set out in § 1.5(b) of this part.

**10 C.F.R. § 2.109 (Excerpted)**

**Effect of timely renewal application.**

...

(b) If 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.

...

**10 C.F.R. § 2.202 (Excerpted)**

**Orders.**

(a) The Commission may institute a proceeding to modify, suspend, or revoke a license or to take such other action as may be proper by serving on the licensee or other person subject to the jurisdiction of the Commission an order that will:

(1) Allege the violations with which the licensee or other person subject to the Commission's jurisdiction is charged, or the potentially hazardous conditions or other facts deemed to be sufficient ground for the proposed action, and specify the action proposed;

(2) Provide that the licensee or other person must file a written answer to the order under oath or affirmation within twenty (20) days of its date, or such other time as may be specified in the order;

(3)(i) Inform the licensee or any other person to whom the order was issued of their right, within twenty (20) days of the date of the order, or within such other time as may be specified in the order, to demand a hearing on all or part of the order, except in a case where the licensee or other person to whom the order was issued has consented in writing to the order;

(3) (ii) State that a request for a hearing by any other person who may be adversely affected by the order must be made within twenty (20) days of the date of the order, or within such other time as may be specified in the order, and must meet the requirements of § 2.309;

(4) Specify the issues for hearing; and

(5) State the effective date of the order; if the Commission finds that the public health, safety, or interest so requires or that the violation or conduct causing the violation is willful, the order may provide, for stated reasons, that the proposed action be immediately effective pending further order.

...

**10 C.F.R. § 2.206 (Excerpted)****Requests for action under this subpart.**

(a) Any person may file a request to institute a proceeding pursuant to § 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper. ... The request must specify the action requested and set forth the facts that constitute the basis for the request. The Executive Director for Operations will refer the request to the Director of the NRC office with responsibility for the subject matter of the request for appropriate action in accordance with paragraph (b) of this section.

(b) Within a reasonable time after a request pursuant to paragraph (a) of this section has been received, the Director of the NRC office with responsibility for the subject matter of the request shall either institute the requested proceeding in accordance with this subpart or shall advise the person who made the request in writing that no proceeding will be instituted in whole or in part, with respect to the request, and the reasons for the decision.

(c) (1) Director's decisions under this section will be filed with the Office of the Secretary. Within twenty-five (25) days after the date of the Director's decision under this section that no proceeding will be instituted or other action taken in whole or in part, the Commission may on its own motion review that decision, in whole or in part, to determine if the Director has abused his discretion. This review power does not limit in any way either the Commission's supervisory power over delegated staff actions or the Commission's power to consult with the staff on a formal or informal basis regarding institution of proceedings under this section.

(2) No petition or other request for Commission review of a Director's decision under this section will be entertained by the Commission.

(3) The Secretary is authorized to extend the time for Commission review on its own motion of a Director's denial under paragraph (c) of this section.

**10 C.F.R. § 2.309 (Excerpted)****Hearing requests, petitions to intervene, requirements for standing, and contentions.**

(a) General requirements. Any person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing and a specification of the contentions which the person seeks to have litigated in the hearing. ... [E]xcept as provided in paragraph (e) of this section, the Commission, presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request for hearing and/or petition for leave to

intervene, will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section. ...

...

(d) Standing.

(1) General requirements. A request for hearing or petition for leave to intervene must state:

- (i) The name, address and telephone number of the requestor or petitioner;
- (ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
- (iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
- (iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

(2) Rulings. In ruling on a request for hearing or petition for leave to intervene, the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on such requests must determine, among other things, whether the petitioner has an interest affected by the proceeding considering the factors enumerated in paragraph (d)(1) of this section.

(3) Standing in enforcement proceedings. In enforcement proceedings, the licensee or other person against whom the action is taken shall have standing.

...

(f) Contentions.

(1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

- (i) Provide a specific statement of the issue of law or fact to be raised or controverted ... ;
- (ii) Provide a brief explanation of the basis for the contention;
- (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
- (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the



petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue;

(vi) In a proceeding other than one under 10 CFR 52.103, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief; ...

...

(2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, participants shall file contentions based on the applicant's environmental report. Participants may file new or amended environmental contentions after the deadline in paragraph (b) of this section (e.g., based on a draft or final NRC environmental impact statement, environmental assessment, or any supplements to these documents) if the contention complies with the requirements in paragraph (c) of this section.

...

## **10 C.F.R. § 50.12**

### **Specific Exemptions**

(a) The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—

(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

(2) The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever—

(i) Application of the regulation in the particular circumstances conflicts with other rules or requirements of the Commission; or

(ii) 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



- (iii) 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; or
  - (iv) The exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption; or
  - (v) The exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation; or
  - (vi) 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. If such condition is relied on exclusively for satisfying paragraph (a)(2) of this section, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.
- (b) Any person may request an exemption permitting the conduct of activities prior to the issuance of a construction permit prohibited by § 50.10. The Commission may grant such an exemption upon considering and balancing the following factors:
- (1) Whether conduct of the proposed activities will give rise to a significant adverse impact on the environment and the nature and extent of such impact, if any;
  - (2) Whether redress of any adverse environment impact from conduct of the proposed activities can reasonably be effected should such redress be necessary;
  - (3) Whether conduct of the proposed activities would foreclose subsequent adoption of alternatives; and
  - (4) The effect of delay in conducting such activities on the public interest, including the power needs to be used by the proposed facility, the availability of alternative sources, if any, to meet those needs on a timely basis and delay costs to the applicant and to consumers.

Issuance of such an exemption shall not be deemed to constitute a commitment to issue a construction permit. During the period of any exemption granted pursuant to this paragraph (b), any activities conducted shall be carried out in such a manner as will minimize or reduce their environmental impact.

**10 C.F.R. § 50.100****Revocation, suspension, modification of licenses, permits, and approvals for cause.**

A license, permit, or standard design approval under parts 50 or 52 of this chapter may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or in the supplemental or other statement of fact required of the applicant; or because of conditions revealed by the application or statement of fact of any report, record, inspection, or other means which would warrant the Commission to refuse to grant a license, permit, or approval on an original application (other than those relating to §§ 50.51, 50.42(a), and 50.43(b)); or for failure to manufacture a reactor, or construct or operate a facility in accordance with the terms of the permit or license, provided, however, that failure to make timely completion of the proposed construction or alteration of a facility under a construction permit under part 50 of this chapter or a combined license under part 52 of this chapter shall be governed by the provisions of § 50.55(b); or for violation of, or failure to observe, any of the terms and provisions of the act, regulations, license, permit, approval, or order of the Commission.

**10 C.F.R. § 51.22 (Excerpted)****Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.**

(a) Licensing, regulatory, and administrative actions eligible for categorical exclusion shall meet the following criterion: The action belongs to a category of actions which the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment.

(b) Except in special circumstances, as determined by the Commission upon its own initiative or upon request of any interested person, an environmental assessment or an environmental impact statement is not required for any action within a category of actions included in the list of categorical exclusions set out in paragraph (c) of this section. Special circumstances include the circumstance where the proposed action involves unresolved conflicts concerning alternative uses of available resources within the meaning of section 102(2)(E) of NEPA.

(c) The following categories of actions are categorical exclusions:

...

(25) Granting of an exemption from the requirements of any regulation of this chapter, provided that—

- (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 involve:
  - (A) Recordkeeping requirements;
  - (B) Reporting requirements;
  - (C) Inspection or surveillance requirements;
  - (D) Equipment servicing or maintenance scheduling requirements;
  - (E) Education, training, experience, qualification, requalification or other employment suitability requirements;
  - (F) Safeguard plans, and materials control and accounting inventory scheduling requirements;
  - (G) Scheduling requirements;
  - (H) Surety, insurance or indemnity requirements; or
  - (I) Other requirements of an administrative, managerial, or organizational nature.

**10 C.F.R. § 51.95 (Excerpted)**

**Postconstruction environmental impact statements.**

...

(c) Operating license renewal stage. In connection with the renewal of an operating license or combined license for a nuclear power plant under 10 CFR parts 52 or 54 of this chapter, the Commission shall prepare an environmental impact statement, which is a supplement to the Commission's NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (June 2013), which is available in the NRC's Public Document Room, 11555 Rockville Pike, Rockville, Maryland 20852.

(1) The supplemental environmental impact statement for the operating license renewal stage shall address those issues as required by § 51.71. In addition, the NRC staff must comply with 40 CFR 1506.6(b)(3) in conducting the additional scoping process as required by § 51.71(a).

(2) The supplemental environmental impact statement for license renewal is not required to include discussion of need for power or the economic costs and economic benefits of the proposed action or of alternatives to the proposed action except insofar as such benefits and costs are either essential

for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, the supplemental environmental impact statement prepared at the license renewal stage need not discuss other issues not related to the environmental effects of the proposed action and the alternatives. The analysis of alternatives in the supplemental environmental impact statement should be limited to the environmental impacts of such alternatives and should otherwise be prepared in accordance with § 51.71 and appendix A to subpart A of this part. As stated in § 51.23, the generic impact determinations regarding the continued storage of spent fuel in NUREG–2157 shall be deemed incorporated into the supplemental environmental impact statement.

(3) The supplemental environmental impact statement shall be issued as a final impact statement in accordance with §§ 51.91 and 51.93 after considering any significant new information relevant to the proposed action contained in the supplement or incorporated by reference.

(4) The supplemental environmental impact statement must contain the NRC staff's recommendation regarding the environmental acceptability of the license renewal action. In order to make recommendations and reach a final decision on the proposed action, the NRC staff, adjudicatory officers, and Commission shall integrate the conclusions in the generic environmental impact statement for issues designated as Category 1 with information developed for those Category 2 issues applicable to the plant under § 51.53(c)(3)(ii) and any new and significant information. Given this information, the NRC staff, adjudicatory officers, and Commission shall determine whether or not the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

## **10 C.F.R. § 54.4**

### **Scope**

- (a) Plant systems, structures, and components within the scope of this part are—
  - (1) Safety-related systems, structures, and components which are those relied upon to remain functional during and following design-basis events (as defined in 10 CFR 50.49 (b)(1)) to ensure the following functions—
    - (i) The integrity of the reactor coolant pressure boundary;
    - (ii) The capability to shut down the reactor and maintain it in a safe shutdown condition; or
    - (iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those

- referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.
- (2) All nonsafety-related systems, structures, and components whose failure could prevent satisfactory accomplishment of any of the functions identified in paragraphs (a)(1) (i), (ii), or (iii) of this section.
- (3) All systems, structures, and components relied on in safety analyses or plant evaluations to perform a function that demonstrates compliance with the Commission's regulations for fire protection (10 CFR 50.48), environmental qualification (10 CFR 50.49), pressurized thermal shock (10 CFR 50.61), anticipated transients without scram (10 CFR 50.62), and station blackout (10 CFR 50.63).
- (b) The intended functions that these systems, structures, and components must be shown to fulfill in § 54.21 are those functions that are the bases for including them within the scope of license renewal as specified in paragraphs (a) (1)–(3) of this section.

## **10 C.F.R. § 54.15**

### **Specific exemptions.**

Exemptions from the requirements of this part may be granted by the Commission in accordance with 10 CFR 50.12.

## **10 C.F.R. § 54.17 (Excerpted)**

### **Filing of application.**

(a) The filing of an application for a renewed license must be in accordance with subpart A of 10 CFR part 2 and 10 CFR 50.4 and 50.30.

...

## **10 C.F.R. § 54.21**

### **Contents of application—technical information.**

Each application must contain the following information:

- (a) An integrated plant assessment (IPA). The IPA must—
- (1) For those systems, structures, and components within the scope of this part, as delineated in § 54.4, identify and list those structures and components subject to an aging management review. Structures and components subject to an aging management review shall encompass those structures and components—
- (i) That perform an intended function, as described in § 54.4, without moving parts or without a change in configuration or properties. These structures and components include, but are not limited to, the reactor vessel, the reactor coolant system pressure boundary, steam

generators, the pressurizer, piping, pump casings, valve bodies, the core shroud, component supports, pressure retaining boundaries, heat exchangers, ventilation ducts, the containment, the containment liner, electrical and mechanical penetrations, equipment hatches, seismic Category I structures, electrical cables and connections, cable trays, and electrical cabinets, excluding, but not limited to, pumps (except casing), valves (except body), motors, diesel generators, air compressors, snubbers, the control rod drive, ventilation dampers, pressure transmitters, pressure indicators, water level indicators, switchgears, cooling fans, transistors, batteries, breakers, relays, switches, power inverters, circuit boards, battery chargers, and power supplies; and

(ii) That are not subject to replacement based on a qualified life or specified time period.

(2) Describe and justify the methods used in paragraph (a)(1) of this section.

(3) For each structure and component identified in paragraph (a)(1) of this section, demonstrate that the effects of aging will be adequately managed so that the intended function(s) will be maintained consistent with the CLB for the period of extended operation.

(b) CLB changes during NRC review of the application. Each year following submittal of the license renewal application and at least 3 months before scheduled completion of the NRC review, an amendment to the renewal application must be submitted that identifies any change to the CLB of the facility that materially affects the contents of the license renewal application, including the FSAR supplement.

(c) An evaluation of time-limited aging analyses.

(1) A list of time-limited aging analyses, as defined in § 54.3, must be provided. The applicant shall demonstrate that—

(i) The analyses remain valid for the period of extended operation;

(ii) The analyses have been projected to the end of the period of extended operation; or

(iii) The effects of aging on the intended function(s) will be adequately managed for the period of extended operation.

(2) A list must be provided of plant-specific exemptions granted pursuant to 10 CFR 50.12 and in effect that are based on time-limited aging analyses as defined in § 54.3. The applicant shall provide an evaluation that justifies the continuation of these exemptions for the period of extended operation.



(d) An FSAR supplement. The FSAR supplement for the facility must contain a summary description of the programs and activities for managing the effects of aging and the evaluation of time-limited aging analyses for the period of extended operation determined by paragraphs (a) and (c) of this section, respectively.

## **10 C.F.R. § 54.27**

### **Hearings.**

A notice of an opportunity for a hearing will be published in the Federal Register in accordance with 10 CFR 2.105 and 2.309. In the absence of a request for a hearing filed within 60 days by a person whose interest may be affected, the Commission may issue a renewed operating license or renewed combined license without a hearing upon a 30-day notice and publication in the Federal Register of its intent to do so.

## **10 C.F.R. § 54.29**

### **Standards for issuance of a renewed license.**

A renewed license may be issued by the Commission up to the full term authorized by § 54.31 if the Commission finds that:

(a) Actions have been identified and have been or will be taken with respect to the matters identified in paragraphs (a)(1) and (a)(2) of this section, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the CLB, and that any changes made to the plant's CLB in order to comply with this paragraph are in accord with the Act and the Commission's regulations.

These matters are:

- (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require review under § 54.21(a)(1); and
- (2) time-limited aging analyses that have been identified to require review under § 54.21(c).
- (b) Any applicable requirements of subpart A of 10 CFR part 51 have been satisfied.
- (c) Any matters raised under § 2.335 have been addressed.

## **10 C.F.R. § 54.30**

### **Matters not subject to a renewal review.**

(a) If the reviews required by § 54.21 (a) or (c) show that there is not reasonable assurance during the current license term that licensed activities will be conducted in accordance with the CLB, then the licensee shall take measures

under its current license, as appropriate, to ensure that the intended function of those systems, structures or components will be maintained in accordance with the CLB throughout the term of its current license.

(b) The licensee's compliance with the obligation under Paragraph (a) of this section to take measures under its current license is not within the scope of the license renewal review.

## **10 C.F.R. § 54.31**

### **Issuance of a renewed license.**

(a) A renewed license will be of the class for which the operating license or combined license currently in effect was issued.

(b) A renewed license will be issued for a fixed period of time, which is the sum of the additional amount of time beyond the expiration of the operating license or combined license (not to exceed 20 years) that is requested in a renewal application plus the remaining number of years on the operating license or combined license currently in effect. The term of any renewed license may not exceed 40 years.

(c) A renewed license will become effective immediately upon its issuance, thereby superseding the operating license or combined license previously in effect. If a renewed license is subsequently set aside upon further administrative or judicial appeal, the operating license or combined license previously in effect will be reinstated unless its term has expired and the renewal application was not filed in a timely manner.

(d) A renewed license may be subsequently renewed in accordance with all applicable requirements.