

NUCLEAR REGULATORY COMMISSION

PACIFIC GAS AND ELECTRIC COMPANY

DOCKET NOS. 50-275 AND 50-323

DIABLO CANYON POWER PLANT

EXEMPTION

[NRC-2010-0059]

1.0 BACKGROUND

Pacific Gas and Electric Company (PG&E, the licensee) is the holder of Facility Operating License Nos. DPR-80 and DPR-82, which authorize operation of the Diablo Canyon Power Plant, Units Nos. 1 and 2 (DCPP). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in San Luis Obispo County, California.

2.0 REQUEST/ACTION

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published in the *Federal Register* on March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks on

September 11, 2001, and implemented by the licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. It is from two of these additional requirements that PG&E now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated December 4, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Portions of the December 4, 2009, submittal contain security-related and safeguards information and, accordingly, a redacted version of the December 4, 2009, letter was submitted by the licensee on January 22, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML100270050). This non-proprietary version is available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that a number of issues will present a significant challenge to the timely completion of the projects related to certain specific requirements in 10 CFR 73. Specifically, the request is to extend the compliance date from the March 31, 2010, deadline to June 30, 2011. Granting this exemption for the two items would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet the noted regulatory requirements.

3.0 DISCUSSION OF PART 73 SCHEDULE EXEMPTIONS FROM THE MARCH 31, 2010, FULL IMPLEMENTATION DATE

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as

'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption, as noted above, would allow an extension from March 31, 2010, until June 30, 2011, of the implementation date for two specific requirements of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR Part 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date as documented in a letter from R. W. Borchardt, (NRC), to M. S. Fertel, (Nuclear Energy Institute) dated June 4,

2009. The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

DCPP Schedule Exemption Request

The licensee provided detailed information in Enclosure 1 to its application dated December 4, 2009, letter requesting an exemption. In that letter, the licensee describes a comprehensive plan to study, design, construct, test, and turn over the new equipment for the enhancement of the security capabilities at the DCPP site and provides a timeline for achieving full compliance with the new regulation. Enclosure 1 of the application dated December 4, 2009, contains security-related and safeguards information regarding the site security plan, details of the specific requirements of the regulation for which the site cannot achieve compliance by the March 31, 2010, deadline, justification for the extension request, a description of the required changes to the site's security configuration, and a timeline with critical path activities that would bring the licensee into full compliance by June 30, 2011. The timeline provides dates indicating when (1) construction will begin on various phases of the project (i.e., new roads, buildings, and fences), (2) outages are scheduled for each unit, and (3) critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the scheduler exemptions for these limited requirements, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC approved physical security program. By June 30, 2011, DCPP will be in full compliance with the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 CONCLUSION FOR PART 73 SCHEDULE EXEMPTION REQUEST

The staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to June 30, 2011 for two specified requirements.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized when the DCPP security modifications are complete justifies exceeding the full compliance date with regard to the specified requirements of 10 CFR 73.55. The significant security enhancements DCPP needs additional time to complete are new requirements imposed by March 27, 2009 amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the two items specified in Enclosure 1 of PG&E letter dated December 4, 2009, the licensee is required to be in full compliance by June 30, 2011. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (i.e., 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 8152; dated February 23, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of March 2010.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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