



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

March 14, 2019

Mr. John A. Franke, Vice President Safety,
Health and Chief Safety Officer
Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105

SUBJECT: RESPONSE TO LETTER DATED FEBRUARY 26, 2019, REQUESTING NRC
OPINION ON POTENTIAL IMPACTS DUE TO PACIFIC GAS AND ELECTRIC
COMPANY'S BANKRUPTCY FILING

Dear Mr. Franke:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated February 26, 2019, requesting the NRC's opinion on questions posed to Pacific Gas and Electric Company by the California Public Utilities Commission (CPUC) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19057A625). Your letter requested the NRC's response to three questions posed by a CPUC administrative law judge and two additional questions posed by the president of the CPUC. Responses to the posed questions are enclosed.

In accordance with Title 10 of the *Code of Federal Regulations* Section 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from ADAMS. ADAMS is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Morris for".

Scott A. Morris, Regional Administrator
Region IV

Docket Nos. 50-275, 50-323 (DC 1&2)
50-133 (HB)
72-26 (DC ISFSI)
72-27 (HB ISFSI)

License Nos. DPR-80, DPR-82, DPR-7,
SNM-2511, and SNM-2514

Enclosure:
As stated

**Responses to Questions
Pacific Gas & Electric Company
Letter Dated February 26, 2019**

NRC response to the questions posed by the California Public Utilities Commission (CPUC) administrative law judge assigned to review Pacific Gas & Electric Company's request to establish the Diablo Canyon Decommissioning Planning Memorandum Account:

1. Will the bankruptcy have any safety impacts at Diablo Canyon Power Plant (DCPP) for operations or decommissioning (will there be sufficient funding to maintain required safety levels at the facility)?

The U. S. Nuclear Regulatory Commission (NRC) staff does not anticipate that the Pacific Gas and Electric Company's (PG&E) bankruptcy filing, including that of its parent company, will have any adverse safety impacts at DCPP. Additionally, the NRC staff's view is that sufficient funding remains available to maintain required safety levels at these facilities for operations and decommissioning. Based on recent inspection activities, the NRC has not identified any current concerns that PG&E's financial challenges are adversely impacting the safe operations or decommissioning of the facilities at DCPP.

The NRC's inspection and oversight responsibilities for DCPP will not change now that PG&E has filed for bankruptcy protection. The NRC staff will continue to inspect and assess whether DCPP is being safely operated and decommissioned. Additionally, consistent with NRC actions taken at other sites during bankruptcy, and using the flexibilities of the Reactor Oversight Program, NRC Region IV is implementing inspection activities to assess whether the licensee's financial challenges are adversely impacting safe operation and decommissioning of the plants. If the NRC identifies deficiencies in the licensee's performance of these activities, the NRC would use the enforcement processes available under the NRC's Enforcement Policy (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18138A138), including the issuance of orders to the licensee.

The NRC has a comprehensive regulatory framework that provides oversight of a licensee's decommissioning funding during operations and through decommissioning, until the licenses are terminated. During operations, licensees must biennially submit decommissioning funding status reports by March 31. Licensees must submit annual decommissioning funding status reports by March 31 of each year, beginning five years prior to the projected permanent shutdown of its reactors until license termination. Additionally, at intervals not to exceed three years, a licensee must update and submit a decommissioning funding plan for its independent spent fuel storage installation (ISFSI) to account for any changes in costs.

Under this framework, the NRC continues to monitor PG&E's decommissioning financial assurance for DCPP, including its associated independent spent fuel storage installation (ISFSI), to monitor PG&E's continued compliance with NRC's decommissioning funding requirements. PG&E last reported the status of decommissioning funds for DCPP in a letter dated March 31, 2017 (ADAMS Accession No. ML17102B069). The NRC staff concluded on May 8, 2018, that the licensee met the minimum funding requirements for radiological decommissioning of the DCPP Units 1 and 2 through the December 2017 reporting cycle (ADAMS Accession No. ML18122A001). PG&E must submit its next decommissioning funding status report for DCPP no later than March 31, 2019. In December 2015, PG&E submitted its

Enclosure

triennial decommissioning funding plans for the ISFSIs at DCP (ADAMS Accession No. ML15351A502); the NRC staff concluded that PG&E met the funding requirements for decommissioning the ISFSIs at DCP (ADAMS Accession No. ML18324A593). In December 2018, PG&E submitted its updated triennial decommissioning funding plans for the ISFSIs at DCP (ADAMS Accession Nos. ML18351A368), which are currently under review by the NRC staff.

Following PG&E's announcement in 2016 that it did not intend to pursue license renewal for DCP and would permanently cease operations at the end of the 40-year licenses for Units 1 and 2, the NRC's resident inspectors augmented inspections to assess 1) PG&E's employee engagement, 2) potential adverse impacts on the station's safety culture, and 3) the potential for the licensee to defer maintenance and corrective action activities. These inspections have not identified any adverse effects as the facilities prepare for the expected permanent cessation of operations for Unit 1 in 2024 and Unit 2 in 2025.

The NRC has implemented an additional inspection plan which supplements the existing baseline inspections at DCP to identify any adverse impacts on safe plant operation related to the licensee's financial challenges. The general areas for review under this plan include:

- a. impacts on regulatory required plant staffing (Operations, Emergency Preparedness, Security, etc.)
- b. corrective maintenance backlog
- c. corrective action system backlogs
- d. substantial changes to the planned maintenance schedule
- e. reductions in outage scope, including risk significant modifications
- f. availability of emergency facilities and operability of emergency sirens

This enhanced inspection plan is consistent with the monitoring approach taken by the NRC following previous bankruptcy filings associated with the Diablo Canyon, Comanche Peak, Beaver Valley, Perry, and Davis-Besse facilities.

2. Will the bankruptcy result in any delay or hinder the proposed schedule for moving forward with identified decommissioning planning tasks now or after decommissioning?

The NRC does not have information to suggest that the PG&E bankruptcy will delay or hinder the proposed decommissioning schedules. The NRC will continue to conduct inspections of PG&E's facilities to monitor PG&E's compliance with the NRC's requirements for safe operation and decommissioning of its licensed facilities.

3. Could the bankruptcy allow for use or access to the DCP nuclear decommissioning trust fund (NDF) for a purpose other than decommissioning DCP (is there a risk that the funds could be used for any purpose other than decommissioning)?

NRC regulations at Title 10 of the Code of Federal Regulations (CFR) 50.82(a)(8)(i)(A) restrict withdrawals from decommissioning trust funds to expenses for legitimate decommissioning activities consistent with the definition of decommission in 10 CFR 50.2. The regulation in 10 CFR 50.2 states, in part:

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

- (1) Release of the property for unrestricted use and termination of the license; or
- (2) Release of the property under restricted conditions and termination of the license.

This definition does not include activities associated with irradiated fuel management and site restoration activities. In addition, 10 CFR 50.75(h)(1)(iv) restricts the use of decommissioning trust fund disbursements (other than for ordinary administrative costs and other incidental expenses of the fund in connection with the operation of the fund) to decommissioning expenses until final radiological decommissioning is completed. For these reasons, PG&E is prohibited from withdrawing funds from the DCPD NDTF for purposes other than decommissioning DCPD, unless PG&E requests and the NRC approves, a specific exemption from the NRC's decommissioning funding regulations under 10 CFR 50.12.

PG&E submitted a request for a specific exemption from the NRC's decommissioning funding regulations at 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.82(a)(8)(ii), by letter dated December 13, 2018 (ADAMS Accession No. ML18347B552). Specifically, PG&E requests authorization to withdraw funds from the DCPD NDTF for planning purposes for spent fuel management and site restoration activities at the DCPD site. In addition, PG&E requests approval to withdraw funds from the DCPD NDTF for decommissioning planning activities in an amount that is greater than the three percent generic amount permitted under NRC regulations. PG&E's exemption request is currently under review by the NRC staff.

NRC Response to the questions posed by the president of the CPUC:

1. Does the NRC have any concerns regarding PG&E's ability to meet safety requirements and financial assurances at DCPD and/or Humboldt Bay Power Plant (HBPP)?

The Nuclear Regulatory Commission's (NRC) recent inspection activities at the DCPD and HBPP facilities have not identified concerns that PG&E's financial challenges are adversely impacting the safe operations or decommissioning of the facilities at DCPD or HBPP.

The NRC's inspection and oversight responsibilities for the facilities will not change now that PG&E has filed for bankruptcy protection. The NRC staff continues to inspect and assess whether the DCPD and HBPP facilities are being safely operated and decommissioned. Additionally, consistent with NRC actions taken at other sites during bankruptcy, and using the flexibilities of the Reactor Oversight Program, NRC Region IV is implementing inspection activities to assess whether the licensee's financial challenges are adversely impacting safe operation and decommissioning of the plants. If the NRC identifies deficiencies in the licensee's operational and decommissioning activities, the NRC would use the enforcement processes available under the NRC's Enforcement Policy (ADAMS Accession No. ML18138A138), including the issuance of orders to the licensee.

Additionally, the NRC staff continues to monitor PG&E's decommissioning financial assurance for DCPD and HBPP, including the associated ISFSIs, to ensure PG&E's continued compliance with NRC's decommissioning funding requirements. PG&E last reported the status of decommissioning funds for DCPD in a letter dated March 31, 2017 (ADAMS Accession No. ML17102B069). The NRC staff concluded on May 8, 2018, that the licensee met the minimum funding requirements for radiological decommissioning of the DCPD Units 1 and 2 through the December 2017 reporting cycle (ADAMS Accession No. ML18122A001). The most recent

report for HBPP was received by the NRC in a letter from PG&E dated March 27, 2018 (ADAMS Accession No. ML18087A430). The report is currently under review by the NRC staff. PG&E is required to submit its next decommissioning funding status reports for DCPD and HBPP no later than March 31, 2019. In December 2015, PG&E submitted its triennial decommissioning funding plans for the ISFSIs at DCPD and HBPP (ADAMS Accession No. ML15351A502 and ML15351A510, respectively). The NRC staff concluded that PG&E met the funding requirements for decommissioning the ISFSIs at DCPD (ADAMS Accession No. ML18324A593), and the submittal for HBPP remains under review. In December 2018, PG&E submitted its updated triennial decommissioning funding plans for the ISFSIs at DCPD and HBPP (ADAMS Accession Nos. ML18351A368 and ML18351A380, respectively), which are currently under review by the NRC staff.

Following PG&E's announcement in 2016 that it did not intend to pursue license renewal for DCPD and would permanently cease operations at the end of the 40-year licenses for Units 1 and 2, the NRC's resident inspectors augmented inspections to assess 1) PG&E's employee engagement, 2) potential adverse impacts on the station's safety culture, and 3) the potential for the licensee to defer maintenance and corrective action activities. These inspections have not identified any adverse effects as the facilities prepare for the expected permanent cessation of operations for Unit 1 in 2024 and Unit 2 in 2025.

The NRC has implemented an additional inspection plan which supplements the existing baseline inspections at DCPD to identify any adverse impacts on safe plant operation related to the licensee's financial challenges. The general areas for review under this plan include:

- a. impacts on regulatory required plant staffing (Operations, Emergency Preparedness, Security, etc.)
- b. corrective maintenance backlog
- c. corrective action system backlogs
- d. substantial changes to the planned maintenance schedule
- e. reductions in outage scope, including risk significant modifications
- f. availability of emergency facilities and operability of emergency sirens

This enhanced inspection plan is consistent with the monitoring approach taken by the NRC following previous bankruptcy filings associated with the Diablo Canyon, Comanche Peak, Beaver Valley, Perry, and Davis-Besse nuclear facilities.

The general areas of inspection focus listed above for DCPD are also being reviewed during inspection activities at HBPP to assess whether there are any adverse impacts on the decommissioning activities at that facility resulting from the licensee's financial challenges.

2. Does the NRC have any concerns or opinions regarding whether PG&E's bankruptcy creates any risks as to the NDTF for DCPD and/or HBPP?

The NRC has a comprehensive regulatory framework that provides oversight of a licensee's decommissioning funding during operations and while in decommissioning until its licenses are terminated. The NRC regulations at 10 CFR 50.75 establish requirements for providing decommissioning funding assurance. Specifically, the requirements address, among other things, the amount of decommissioning funding to be provided, the methods to be used for assuring sufficient funding, and the provisions contained in trust agreements for safeguarding decommissioning funds. The NRC regulations at 10 CFR 50.82(a) and 10 CFR 72.30 provide

additional decommissioning funding assurance requirements for 10 CFR Part 50 licensees for reactors in decommissioning and ISFSIs.

NRC regulations at 10 CFR 50.82(a)(8)(i)(A) restrict withdrawals from decommissioning trust funds to expenses for legitimate decommissioning activities consistent with the definition of decommission in 10 CFR 50.2. The regulation in 10 CFR 50.2 states, in part:

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

- (1) Release of the property for unrestricted use and termination of the license; or
- (2) Release of the property under restricted conditions and termination of the license.

This definition does not include activities associated with irradiated fuel management and site restoration activities. In addition, 10 CFR 50.75(h)(1)(iv) restricts the use of decommissioning trust fund disbursements (other than for ordinary administrative costs and other incidental expenses of the fund in connection with the operation of the fund) to decommissioning expenses until final radiological decommissioning is completed. For these reasons, PG&E is prohibited from withdrawing funds from the nuclear decommissioning trust funds for purposes other than decommissioning, unless PG&E requests and the NRC approves, a specific exemption from the NRC's decommissioning funding regulations under 10 CFR 50.12.

In addition, operating reactor licensees are required to report the status of their decommissioning funds every two years. The most recent report for DCPD was received by the NRC in a letter from PG&E dated March 31, 2017 (ADAMS Accession No. ML17102B069). The NRC staff concluded on May 8, 2018, that the licensee met the minimum funding requirements for radiological decommissioning of the DCPD Units 1 and 2 through the December 2017 reporting cycle (ADAMS Accession No. ML18122A001). The next decommissioning funding status reports for DCPD Units 1 and 2 are due no later than March 31, 2019.

Licensees of reactors that have permanently ceased operation are required to report the status of their decommissioning funds annually. The most recent report for HBPP was received by the NRC in a letter from PG&E dated March 27, 2018 (ADAMS Accession No. ML18087A430). The report is currently under review by the NRC staff. The next decommissioning funding status report for HBPP is due no later than March 31, 2019.

Licensees of ISFSIs must update their ISFSI decommissioning funding plans (DFP) to account for any changes in costs, at intervals not to exceed three years. In December 2015, PG&E submitted its triennial decommissioning funding plans for the ISFSIs at DCPD and HBPP (ADAMS Accession No. ML15351A502 and ML15351A510, respectively). The NRC staff concluded that PG&E met the funding requirements for decommissioning the ISFSIs at DCPD (ADAMS Accession No. ML18324A593), and the submittal for HBPP remains under review. The most recent ISFSI DFP updates for DCPD and HBPP were received by the NRC in letters dated December 17, 2018 (ADAMS Accession Nos. ML18351A368 and ML18351A380, respectively). The 2018 reports are currently under review by the NRC staff.

The bankruptcy filing does not relieve PG&E of its obligations to comply with NRC requirements. PG&E must continue to comply with all of its obligations under the Atomic Energy Act of 1954 (AEA), as amended, and the NRC's regulations, including the obligations relating to decommissioning financial assurance for DCPD, HBPP, and the associated ISFSIs. The NRC

continues to monitor PG&E's decommissioning financial assurance for its reactors and ISFSIs to ensure adequate funding and compliance with decommissioning funding requirements. Additionally, since PG&E has entered into Chapter 11 bankruptcy protection, the Department of Justice, working closely with the NRC's Office of the General Counsel, will represent the NRC's interests in the bankruptcy proceeding. The NRC's interests include protection and preservation of the decommissioning trust funds and continued compliance with the NRC's decommissioning funding requirements.