

Dated at Rockville, Maryland, this 28th day of May 2003.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-275 and 50-323]

Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments

Pacific Gas and Electric Company (PG&E or the licensee) is the holder of Facility Operating Licenses Nos. DPR-80 and DPR-82, which authorize the operation of the Diablo Canyon Nuclear Power Plant, Units 1 and 2 (DCNPP or the facility) at steady-state power levels not in excess of 3411 megawatts thermal. The facility is located at the licensee's site in San Luis Obispo County, California. The licenses authorize PG&E to possess, use, and operate the facility.

Under cover of a letter dated November 30, 2001, PG&E submitted an application requesting approval of the transfer of Facility Operating Licenses Nos. DPR-80 and DPR-82 for DCNPP from PG&E to Electric Generation LLC and Diablo Canyon LLC. The licensee also requested approval of conforming license amendments to reflect the transfer. The application was supplemented by submittals dated January 18 and May 1, 2002, collectively referred to as the "application" herein unless otherwise indicated.

Diablo Canyon LLC, a California limited liability company, is a wholly-owned subsidiary of Electric Generation LLC, also a California limited liability company. Electric Generation LLC is an indirect wholly-owned subsidiary of PG&E Corporation, the current parent of the licensee. According to the application, Diablo Canyon LLC will become the owner of the facility, while Electric Generation LLC will operate and maintain DCNPP under the terms of a lease that will make Electric Generation LLC responsible for all costs of operation. Diablo Canyon LLC will be responsible for providing decommissioning funding assurance for DCNPP. With respect to authority to possess, use, and operate the facility, the conforming license amendments

would remove references to PG&E from the licenses and add references to Electric Generation LLC and Diablo Canyon LLC, as appropriate, and make other administrative changes to reflect the proposed transfer. The application also proposed certain changes to the antitrust conditions attached to the licenses, which are discussed in more detail below.

PG&E requested approval of the transfer of the licenses and conforming license amendments pursuant to 10 CFR 50.80 and 50.90. Notice of the request for approval and an opportunity to request a hearing or submit written comments was published in the **Federal Register** on January 17, 2002 (67 FR 2455). The Commission received petitions to intervene and requests for hearing from the following: the Northern California Power Agency (NCPA); the Official Committee of Unsecured Creditors of Pacific Gas and Electric Company (Committee); the California Public Utilities Commission (CPUC); the Transmission Agency of Northern California, M-S-R Public Power Agency, Modesto Irrigation District, the California Cities of Santa Clara, Redding, and Palo Alto, and the Trinity Public Utility District, in a joint filing (collectively, TANC); and the County of San Luis Obispo (County). In a Memorandum and Order, dated June 25, 2002 (CLI-02-16), the Commission denied several of the petitioners' requests for intervention and referred the petitions of the County and CPUC to the NRC staff as comments for appropriate consideration. On February 14, 2003, the Commission denied the remaining petitioners' requests for hearing and terminated the proceeding. Pacific Gas and Elec. Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-03-02, 57 NRC 19 (2003).

In CLI-03-02, the Commission addressed, among other things, the changes proposed in the application to the antitrust conditions appended to the licenses, which PG&E assumed would be carried forward if the licenses were transferred. These proposed changes would have retained PG&E as a licensee in the antitrust conditions, would have added a new transmission company (ETrans LLC) to the antitrust conditions, and would have added Electric Generation LLC (but not Diablo Canyon LLC) to the conditions, for the purpose of implementing the conditions. The Commission ruled that if the proposed license transfers are approved, the antitrust license conditions should not be included in (*i.e.*, not remain part of) the transferred licenses. 57 NRC at 36. Accordingly, the conforming license amendments approved by this Order

reflect the Commission's ruling in this regard.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. After reviewing the information submitted in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Electric Generation LLC and Diablo Canyon LLC are qualified to be the holders of the licenses to the extent proposed in the application, and that the transfer of the licenses to Electric Generation LLC and Diablo Canyon LLC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments that reflect the transfer of authority to possess, use, and operate the facility and the transfer of authority concerning the receipt, possession, or use of nuclear material from PG&E to Electric Generation LLC and Diablo Canyon LLC complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed license amendments concerning the possession, use, and operation of the facility and concerning the receipt, possession, or use of nuclear material will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above

are supported by the NRC staff's safety evaluation dated May 27, 2003.

Accordingly, pursuant to sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It is hereby ordered* that the transfer of the licenses as described herein to Electric Generation LLC and Diablo Canyon LLC is approved, subject to the following conditions:

(1) Before the completion of the transfer of DCNPP, Electric Generation LLC and Diablo Canyon LLC shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Electric Generation LLC and Diablo Canyon LLC have obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

(2) Prior to the closing of the license transfers, all necessary regulatory and/or judicial approvals of the bilateral power sales agreement (PSA) referenced in Enclosure 7 to the November 30, 2001, submittal must be obtained without any material changes to the PSA that would adversely impact the five-year financial projections proffered in the application such that indicated sources of funds would not be sufficient to cover projected costs of operation of the facility.

(3) On the closing date of the transfer of DCNPP, Diablo Canyon LLC shall obtain from PG&E all of the accumulated decommissioning trust funds associated with the facility, and ensure the deposit of the funds into a decommissioning trust(s) for DCNPP established by Diablo Canyon LLC. The amount of the funds must meet or exceed the minimum amount required for the facility pursuant to 10 CFR 50.75. In the event that the transfer of DCNPP occurs prior to December 24, 2003, the decommissioning trust agreement(s) shall be consistent with the provisions contained in 10 CFR 50.75(h)(1) (67 FR 78350, published December 24, 2002), as if such provisions are in effect at the time of transfer. Notwithstanding the date of the transfer, the decommissioning trust agreement(s) must be acceptable to the NRC.

(4) Diablo Canyon LLC shall take all necessary steps to ensure that the decommissioning trust(s) is maintained in accordance with the application and the requirements of this Order, and consistent with the safety evaluation supporting this Order.

(5) Notwithstanding the transfer of ownership of DCNPP to Diablo Canyon LLC, Electric Generation LLC shall at all

times following the transfer of the DCNPP licenses to Diablo Canyon LLC and Electric Generation LLC be fully responsible for all costs associated with the possession, use, operation, maintenance, and decommissioning of DCNPP (including costs associated with the receipt, possession, and use of byproduct, source, and special nuclear material), except for decommissioning costs covered by the decommissioning trust funds transferred to Diablo Canyon LLC at the time of the license transfers. Diablo Canyon LLC shall be responsible for the payment of decommissioning costs for DCNPP at least to the extent of the accumulated decommissioning trust funds transferred to Diablo Canyon LLC and earnings associated with such funds.

(6) Electric Generation LLC shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Electric Generation LLC to its direct or indirect parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of Electric Generation LLC's consolidated net utility plant, as recorded on Electric Generation LLC's books of account.

(7) After receipt of all required regulatory and judicial approvals of the transfer of DCNPP, PG&E shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the closing date of the transfer of DCNPP no later than 7 business days prior to the date of closing. If the transfer of the licenses is not completed by May 31, 2004, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may be extended in writing.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated November 30, 2001, and supplements thereto dated January 18 and May 1, 2002, and the safety evaluation dated May 27, 2003, which are available for public inspection at the Commission's Public Document Room, located at One

White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 27th day of May 2003.

For the Nuclear Regulatory Commission.

R. William Borchardt,

Acting Director, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

Notice of Intent To Prepare an Environmental Impact Statement for the License Renewal of Nuclear Power Plants and To Conduct Scoping Process

In 1996 and 1999, the Commission amended its environmental protection regulations in 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," to improve the efficiency of the environmental review process for applicants seeking to renew a nuclear power plant operating license for up to an additional 20 years. The final rules were published in the **Federal Register** on December 18, 1996 (61 FR 66546), and September 3, 1999 (64 FR 48507). The amendments are based on the analyses reported in NUREG-1437, "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants" (May 1996) and its Addendum 1 (August 1999).

The GEIS, prepared by the U.S. Nuclear Regulatory Commission (NRC) staff and its contractors, summarizes the findings of a systematic inquiry into the environmental impacts of refurbishment activities associated with license renewal and the environmental impacts of continued operation during the renewal period (up to 20 years for each licensing action). The significance of environmental impacts were analyzed for each of nearly 100 issues. Thereafter, the NRC categorized which of these analyses could be applied to all plants and whether additional mitigation measures would be warranted for each environmental issue. Of the 92 issues analyzed, 69 issues were resolved generically, 21 require a further site-specific analysis that applicants are required to address, and 2 require a site-specific assessment by the NRC. As part of its application to renew its operating license, an applicant submits a supplemental Environmental Report