

detailed technical information that supports the described solution for meeting the identified requirements. Because of the large scope of the proposed modifications and upgrades, significant engineering analysis, design, and planning are required to ensure system effectiveness upon completion of the four projects. In addition to project-specific tasks and procurement details, the TVA has also identified a variety of site-specific considerations that will impact the final completion date, such as refueling outages, manpower resources, engineering/design changes during construction, and/or weather conditions that may impact completion milestones. As with all construction activities, the licensee must also account for site-specific safety and construction methods regarding the areas in which work is to be performed, the location of existing infrastructure such as buried power lines, and/or unanticipated delays that could significantly impact the project schedules. These site-specific safety and construction methods must be accounted for in the proposed schedule that, in turn, impacts the final compliance date requested. The TVA has contracted a common provider to perform design work at two other TVA sites concurrently with work required at the WBN, Units 1 and 2. The licensee has provided a coordinated/combined schedule for all four projects at WBN, Units 1 and 2 that outlines the sequence in which work must be conducted to ensure effective system connectivity. The required tasks/changes must be completed in sequence at each site to support all program upgrades being performed and to ensure effective connectivity of each project.

The upgrades that the licensee identified within their exemption request support their solution for meeting the three specified requirements, and the proposed schedule is supported by the complexity and scope of the projects described to include tasks and sub-tasks, timing issues, and potential delays.

The proposed implementation schedule depicts the critical activity milestones of the security system upgrades; is consistent with the licensee's solution for meeting the requirements; is consistent with the scope of the modifications and the issues and challenges identified; and is consistent with the licensee's requested compliance date.

Notwithstanding the schedular 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 September 24, 2012, WBN, Units 1 and 2 will be in full compliance with all 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 September 24, 2012, with regard to three specified requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," 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 security system upgrades are complete justify exceeding the full compliance date and the proposed implementation schedule is consistent with the scope of the modifications in the case of this particular licensee. The security measures WBN, Units 1 and 2 needs additional time to implement 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 staff 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, implementation deadline for the three items specified in Enclosure 1 of the TVA letter dated November 6, 2009, as supplemented by letter dated January 11, 2010, the licensee is required to be in full compliance by September 24, 2012. 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 3945, dated January 25, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 9th day of March 2010.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 72-26; NRC-2009-0569]

### Pacific Gas and Electric Company; Diablo Canyon Independent Spent Fuel Storage Installation; Notice of Issuance of Amendment to Materials License No. SNM-2511

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Issuance of Amendment to Materials License No. SNM-2511.

**DATES:** A request for a hearing must be filed by May 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** John Goshen, Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, Mail Stop EBB-3D-02M, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001. Telephone: (301) 492-3325; e-mail: [john.goshen@nrc.gov](mailto:john.goshen@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

On March 22, 2004, the U.S. Nuclear Regulatory Commission (NRC) issued NRC Materials License No. SNM-2511 to the Pacific Gas and Electric Company (PG&E) for the Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI), located at the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 site in San Luis Obispo County, California. The license authorizes PG&E to receive, possess, store, and transfer spent nuclear fuel and associated radioactive materials resulting from the operation of the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 in an ISFSI at the power plant site for a term of 20 years. The NRC staff published a Notice of Issuance of Environmental Assessment and Finding of No Significant Impact (EA/FONSI) for the approval of the Diablo Canyon ISFSI license in the **Federal Register** on October 30, 2003 (68 FR 61838), in

accordance with the National Environmental Policy Act, and in conformance with the applicable requirements of 10 CFR Part 51. Additionally, the NRC published a supplement to this EA/FONSI on September 10, 2007 (72 FR 51687), in response to the decision of the United States Court of Appeals for the Ninth Circuit in *San Luis Obispo Mothers for Peace v. NRC*, 493 F.3d 1016 (9th Cir. 2006), and a related addendum to this supplement on November 15, 2007 (72 FR 64252).

By application dated April 7, 2008, as supplemented September 1, November 23, December 31, 2009, and January 22, 2010, PG&E submitted an application to NRC, in accordance with 10 CFR Part 72, requesting an amendment to NRC Materials License No. SNM-2511. PG&E's application requested that the ISFSI Technical Specifications (TS) be revised as follows:

1. Revise TS 3.1.1, "Multi-Purpose Canister (MPC)," to clarify the required Helium leak rate condition and the leak rate testing requirements;

2. Delete TS 3.1.4, "Spent Fuel Storage Cask (SFSC) Time Limitation in Cask Transfer Facility (CTF)," based on analysis of the thermal performance of the Holtec HI-STORM 100 system which shows there is no need for a required time limitation in the CTF;

3. Revise TS 3.2.1, "Dissolved Boron Concentration," to modify the dissolved boron concentrations required for MPC-32 canisters and, to allow linear interpolation for some enrichments consistent with the Holtec International (Holtec) Certificate of Compliance (CoC) No.1014, Amendment 3, for the HI-STORM 100 system;

4. Add a note to both surveillance requirements of TS 3.2.1 to limit the monitoring requirement consistent with the Holtec CoC No.1014, Amendment 1, for the HI-STORM 100 system;

5. Revise TS 4.1.1.a, b, and c, "Design Features Significant to Safety," to allow use of Metamic Boron-10 as a neutron absorber for each of the specified MPC consistent with Holtec CoC No.1014, Amendment 2, for the HI-STORM 100 system, and add TS 4.1.2, "Design Features Important to Criticality Control," to define the material and testing requirements for the use of Metamic;

6. Change the title of TS 4.3.4.a, "Permanent Load Handling Equipment," to "Weldment and Reinforced Concrete," which more correctly reflect the subject of the TS subparagraphs;

7. Revise TS 4.3.4.b, "Mobile Load Handling Equipment," to replace the term "permanent load handling equipment" with the term "the cask

transporter," as the transporter is not considered a mobile load handling equipment within the context of TS 4.3.4.b; and

8. Revise item b of TS 5.1.3, "MPC and SFSC Loading, Unloading, and Preparation Program," to clarify the maintenance of the required conditions in the annular gap between the MPC and the transfer cask depending on which drying process is used and fuel heat load during MPC loading or unloading operations.

In accordance with 10 CFR 72.16, a Notice of Docketing was published in the **Federal Register** on December 28, 2009 (74 FR 68638). Pursuant to 10 CFR 72.46(b)(2), on February 10, 2010, the NRC approved and issued Amendment No. 1 to Materials License No. SNM-2511, held by PG&E for the receipt, possession, transfer, and storage of spent fuel at the Diablo Canyon ISFSI. Amendment No. 1 was effective as of the date of issuance.

Amendment No. 1 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. As required by the Act and the NRC's rules and regulations in 10 CFR Chapter I, the NRC has made appropriate findings, which are set forth in Amendment No. 1 Safety Evaluation Report (SER). The issuance of Amendment No. 1 satisfied the criteria specified in 10 CFR 51.22(c)(11) for a categorical exclusion. Thus, the preparation of an environmental assessment or an environmental impact statement is not required.

## II. Opportunity To Request a Hearing

In accordance with 10 CFR 72.46(b)(2), the staff determined that this license amendment did not present a genuine issue as to whether public health and safety would be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing was not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to

submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition

for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern

Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to

include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from March 15, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

**III. Further information**

The NRC has prepared a SER that documents the staff's review and evaluation of the amendment. In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," final NRC records and documents related to this action, including the application for amendment and supporting documentation and the SER, are available electronically at the NRC's Electronic Reading Room, at: <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS Accession Numbers for the applicable documents are:

Document	Date	ADAMS Accession No.
License Amendment Request .....	April 7, 2008 .....	ML081070073
Response to First Request for Additional Information .....	September 1, 2009 .....	ML092530178
Response to Second Request for Additional Information .....	November 23, 2009 .....	ML093270488
Response to Request for Supplemental Information .....	December 31, 2009 .....	ML100120650
Response to Request for Supplemental Information .....	January 22, 2010 .....	ML100280414
License Amendment No. 1 Issuance Package .....	February 10, 2010 .....	ML100360010
Safety Evaluation Report .....	February 10, 2010 .....	ML100360046

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact NRC's Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

These documents may also be viewed electronically on the public computers located at NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR

reproduction contractor will copy documents, for a fee.

Dated at Rockville, Maryland, this 8th day of March, 2010.

For the Nuclear Regulatory Commission.

**John Goshen,**

*P. E., Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.*

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