

January 10, 2002

Mr. Gregory M. Rueger  
Senior Vice President, Generation and  
Chief Nuclear Officer  
Pacific Gas and Electric Company  
Diablo Canyon Nuclear Power Plant  
P.O. Box 3  
Avila Beach, CA 94177

SUBJECT: DIABLO CANYON NUCLEAR POWER PLANT, UNIT NOS. 1 AND 2 -  
NOTICE OF CONSIDERATION OF APPROVAL OF TRANSFER OF FACILITY  
OPERATING LICENSES AND CONFORMING AMENDMENTS, AND  
OPPORTUNITY FOR A HEARING (TAC NOS. MB3523 AND MB3524)

Dear Mr. Rueger:

Enclosed is a copy of a "Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing" related to the application dated November 30, 2001, filed by Pacific Gas and Electric Company (PG&E). The application (pursuant to 10 CFR 50.80) seeks approval of the proposed transfer of the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, Facility Operating Licenses No. DPR-80 and DPR-82, from the current holder of the licenses, PG&E, to a new generating company named Electric Generation LLC (Gen), which would possess and operate the facility, and to a new wholly-owned subsidiary of Gen named Diablo Canyon LLC (Nuclear), which would have title to the facility and lease it to Gen. PG&E has requested these license transfers in connection with a comprehensive Plan of Reorganization (Plan) for PG&E filed under Chapter 11 of the United States Bankruptcy Code. The application also seeks (pursuant to 10 CFR 50.90) the issuance of conforming amendments to the licenses to reflect the transfer.

This notice is being forwarded to the Office of the Federal Register for publication.

Sincerely,

*/RA/*

Girija S. Shukla, Project Manager, Section 2  
Project Directorate IV  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

Docket Nos. 50-275  
and 50-323

Enclosure: Notice of Consideration

cc w/encl: See next page

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**ACCESSION NO.: ML013520259**

NRR-041

OFFICE	PDIV-2/PM	PDIV-2/LA	OGC	PDIV-2/SC
NAME	GShukla:lf	EPeyton	SHom*	SDembek
DATE	12/28/01	12/28/01	1/10/02	1/10/2002

OFFICIAL RECORD COPY

Diablo Canyon Power Plant, Units 1 and 2

cc:

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Diablo Canyon Nuclear Power Plant  
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Supervisors  
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Mr. Robert Kinoshian  
California Public Utilities Commission  
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Mr. Steve Hsu  
Radiologic Health Branch  
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Diablo Canyon Independent Safety  
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State Department of Health Services  
P.O. Box 942732 (MS 178)  
Sacramento, CA 94327-7320

Mr. Robert A. Laurie, Commissioner  
California Energy Commission  
1516 Ninth Street (MS 31)  
Sacramento, CA 95814

UNITED STATES NUCLEAR REGULATORY COMMISSION  
PACIFIC GAS AND ELECTRIC COMPANY  
DIABLO CANYON NUCLEAR POWER PLANT, UNIT NOS. 1 AND 2  
DOCKET NOS. 50-275 AND 50-323  
NOTICE OF CONSIDERATION OF APPROVAL OF TRANSFER  
OF FACILITY OPERATING LICENSES AND CONFORMING AMENDMENTS  
AND OPPORTUNITY FOR A HEARING

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating Licenses Nos. DPR-80 and DPR-82, for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 (Diablo Canyon) currently held by Pacific Gas and Electric Company (PG&E), as owner and licensed operator of Diablo Canyon. The Commission is also considering amending the licenses for administrative purposes to reflect the proposed transfer, and amending the antitrust conditions in licenses as discussed below.

According to an application for approval filed by PG&E, the transfer of the licenses would be to a new generating company named Electric Generation LLC (Gen), which would operate the facility, and to a new wholly-owned subsidiary of Gen named Diablo Canyon LLC (Nuclear), which would hold title to Diablo Canyon and lease it to Gen. PG&E is requesting approval of these transfers in connection with a comprehensive Plan of Reorganization (Plan) for PG&E filed under Chapter 11 of the United States Bankruptcy Code.

No physical changes to Diablo Canyon or operational changes are being proposed in the application.

The proposed conforming administrative amendments generally would replace references to PG&E in the licenses with references to Gen and Nuclear, as appropriate, to reflect the proposed transfer. With specific regard to the antitrust conditions in the licenses, the application proposes changes such that Gen will be inserted in the conditions and thus become subject to complying with them, and E Trans LLC, a new company that will be affiliated with Gen upon implementation of the Plan and that will acquire the electric transmission assets of PG&E but not have any interest in Diablo Canyon, will be also be inserted in the conditions and thus become subject to complying with them. In addition, the application proposes that PG&E will remain designated in the conditions for the limited purpose of compliance with the conditions, notwithstanding the divesting of its interest in Diablo Canyon, while Nuclear will not be named in the conditions.

Notwithstanding the proposed changes to the antitrust conditions proffered as part of the amendments to conform the licenses to reflect their transfer from PG&E to Gen and Nuclear, the Commission is considering specifically whether to approve either all of the proposed changes to the conditions, or only some, but not all, of the proposed changes, as may be appropriate and consistent with the Commission's decision in *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441, 466 (1999). In particular, the Commission is considering approving only those changes that would accurately reflect Gen and Nuclear as the only proposed entities to operate and own Diablo Canyon.

Pursuant to 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 shall give

its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 6, 2002, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer

Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon Richard F. Locke, Esq., Pacific Gas and Electric Company, 77 Beale Street, B30A, San Francisco, California 94105 (e-mail address [rfl6@pge.com](mailto:rfl6@pge.com)), and to David A. Repka, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005 (e-mail address [drepka@winston.com](mailto:drepka@winston.com)); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: [OGCLT@NRC.gov](mailto:OGCLT@NRC.gov)); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the FEDERAL REGISTER and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by February 19, 2002, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part

of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this FEDERAL REGISTER notice.

Further details with respect to this action, see the application dated November 30, 2001, available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/ADAMS/index.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1-800-397-4209, 301-415-4737 or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland this 10<sup>th</sup> day of January 2002.

FOR THE NUCLEAR REGULATORY COMMISSION

**/RA/**

Girija S. Shukla, Project Manager, Section 2  
Project Directorate IV  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation