



OFFICE OF THE
GENERAL COUNSEL

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 11, 2005

Cathy A. Catterson, Clerk
United States Court of Appeals for
the Ninth Circuit
95 Seventh Street
San Francisco, California 94103-1526

RE: *San Luis Obispo Mothers for Peace, et al. v. U.S. Nuclear Regulatory
Commission*, No. 03-74628

Dear Ms. Catterson:

Pursuant to FRAP 28(j), the Respondents file the following information:

In their brief, the Petitioners note that, as of the time of its filing, the NRC had not issued a security order to Pacific Gas & Electric (PG&E) with regard to the Independent Spent Fuel Storage Installation (ISFSI) that is at issue in this case. *See* Petitioners' Brief at 27-28, n. 13. The NRC issued a security order modifying the recently-issued license held by PG&E for the ISFSI on May 5, 2005. *See* 70 Fed. Reg. 25121 (May 12, 2005). A copy of the Federal Register Notice is enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Mullins", written over a horizontal line.

Charles E. Mullins
Senior Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission

Enclosure: As stated

cc: Service List

hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by PG&E or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), PG&E may, in addition to demanding a hearing at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations or error.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 5th day of May 2005.

For the Nuclear Regulatory Commission.
Margaret V. Federline,
*Acting Director, Office of Nuclear Material
Safety and Safeguards.*
[FR Doc. E5-2342 Filed 5-11-05; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-26; License No. SNM-2511;
EA-05-088]

**Pacific Gas and Electric, Diablo
Canyon Nuclear Power Plant,
Independent Spent Fuel Storage
Installation; Order Modifying License
(Effective Immediately)**

AGENCY: Nuclear Regulatory
Commission.

ACTION: Issuance of order for
implementation of interim safeguards
and security compensatory measures.

FOR FURTHER INFORMATION CONTACT:
Cynthia Barr, Project Manager,
Licensing and Inspection Directorate,
Spent Fuel Project Office, Office of

Nuclear Material Safety and Safeguards,
U.S. Nuclear Regulatory Commission,
Rockville, MD 20852. Telephone: (301)
415-4015; fax number: (301) 415-8555;
e-mail CSB2@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear
Regulatory Commission (NRC) is
providing notice in the matter of Diablo
Canyon Nuclear Power Plant
Independent Spent Fuel Storage
Installation Order Modifying License
(Effective Immediately).

II. Further Information

I. Pacific Gas and Electric (PG&E or
the Licensee) holds a site-specific
license issued by the U.S. Nuclear
Regulatory Commission (NRC or
Commission) authorizing storage of
spent fuel in an independent spent fuel
storage installation (ISFSI) in
accordance with the Atomic Energy Act
of 1954 and 10 CFR Part 72. This Order
is being issued to PG&E who has
identified near term plans to store spent
fuel in an ISFSI under the site specific
license provisions of 10 CFR Part 72.
The Commission regulations at 10 CFR
72.184(b) require the licensee to
maintain safeguards contingency plan
procedures in accordance with 10 CFR
Part 73, Appendix C. Specific
safeguards requirements are contained
in 10 CFR Part 73.

II. On September 11, 2001, terrorists
simultaneously attacked targets in New
York, N.Y., and Washington, DC,
utilizing large commercial aircraft as
weapons. In response to the attacks and
intelligence information subsequently
obtained, the Commission issued a
number of Safeguards and Threat
Advisories to its licensees in order to
strengthen licensees' capabilities and
readiness to respond to a potential
attack on a nuclear facility. The
Commission has also communicated
with other Federal, State, and local
government agencies and industry
representatives to discuss and evaluate
the current threat environment in order
to assess the adequacy of security
measures at licensed facilities. In
addition, the Commission has been
conducting a comprehensive review of
its safeguards and security programs
and requirements.

As a result of its consideration of
current safeguards and security plan
requirements, as well as a review of
information provided by the intelligence
community and other governmental
agencies, the Commission has
determined that certain compensatory
measures are required to be
implemented by the Licensee as

prudent, interim measures to address
the current threat environment in a
consistent manner throughout the
nuclear ISFSI community. Therefore,
the Commission is imposing
requirements, as set forth in Attachment
1¹ of this Order, on PG&E who has
indicated near term plans to store spent
fuel in an ISFSI under their site-specific
license issued under the provisions of
10 CFR Part 72. These interim
requirements, which supplement
existing regulatory requirements, will
provide the Commission with
reasonable assurance that the public
health and safety, and common defense
and security continue to be adequately
protected in the current threat
environment. These requirements will
remain in effect until the Commission
determines otherwise.

The Commission recognizes that some
measures may not be possible or
necessary, or may need to be tailored to
accommodate the specific
circumstances existing at PG&E's facility
to achieve the intended objectives and
avoid any unforeseen effect on the safe
storage of spent fuel.

In order to provide assurance that the
licensees are implementing prudent
measures to achieve a consistent level of
protection to address the current threat
environment, the Commission
concludes that security measures must
be embodied in an Order consistent
with the established regulatory
framework. PG&E's License No. SNM-
2511 shall be modified to include the
requirements identified in Attachment 1
to this Order. In addition, pursuant to
10 CFR 2.202, I find that in light of the
common defense and security matters
described above, the public health,
safety and interest require that this
Order be immediately effective.

III. Accordingly, pursuant to Sections
53, 103, 104, 161b, 161i, 161o, 182 and
186 of the Atomic Energy Act of 1954,
as amended, and the Commission's
regulations in 10 CFR 2.202 and 10 CFR
Parts 72 and 73, *it is hereby ordered*,
effective immediately, that the license
identified in this order is modified as
follows:

A. PG&E shall, notwithstanding the
provisions of any Commission
regulation or license to the contrary,
comply with the requirements described
in Attachment 1 to this Order except to
the extent that a more stringent
requirement is set forth in their security
plan. PG&E shall immediately start
implementation of the requirements in
Attachment 1 to the Order and shall

¹ Attachment 1 contains SAFEGUARDS
INFORMATION and will not be released to the
public.

complete implementation before October 31, 2005, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

B.1. PG&E shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide licensee's justification for seeking relief from or variation of any specific requirement.

2. If PG&E considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact safe storage of spent fuel, PG&E must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement in question or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the PG&E must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. PG&E shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. PG&E shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.186, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

PG&E's response to Conditions B.1, B.2, C.1, and C.2, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV. In accordance with 10 CFR 2.202, PG&E must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Director, Office of Enforcement at the same address, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region IV at 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011-4005, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to 301-415-1101, or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel, either by means of facsimile transmission to 301-415-3725, or by e-mail to OGCMailCenter@nrc.gov. If a person other than PG&E requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and

place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), PG&E may, in addition to demanding a hearing at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations or error.

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Dated this 5th day of May 2005.

For the Nuclear Regulatory Commission.
Margaret V. Federline,
Acting Director, Office of Nuclear Material Safety and Safeguards.
[FR Doc. E5-2344 Filed 5-11-05; 8:45 am]
BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-387 and 50-388]

Susquehanna Steam Electric Station, Units 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-14 and NPF-22, issued to PPL Susquehanna, LLC (PPL, the licensee), for operation of the Susquehanna Steam Electric Station, Units 1 and 2, located in Berwick, Pennsylvania.

The proposed amendment would revise the Technical Specification (TS) 3.8.4, "DC Sources—Operating," to address new required actions for the condition in which a 125 volt direct current (VDC) charger is taken out of service for the purposes of a special inspection and related activities. The proposed changes would be in effect