



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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

PROPOSED ORGANIZATIONAL AND FINANCIAL RESTRUCTURING

PACIFIC GAS AND ELECTRIC COMPANY

DOCKET NOS. 50-133, 50-275 AND 50-323

HUMBOLDT BAY POWER PLANT, UNIT 3

DIABLO CANYON POWER PLANT, UNITS 1 AND 2

1.0 INTRODUCTION

By letter dated November 1, 1995, Pacific Gas and Electric Company (PG&E or the licensee) submitted an application pursuant to 10 CFR 50.80 for approval of a corporate restructuring and establishment of a holding company, under the temporary name "PG&E Parent Co., Inc.," (Parent Company) of which PG&E would become a wholly owned subsidiary. PG&E is the holder of Facility Operating License Nos. DPR-80 and DPR-82 for the Diablo Canyon Nuclear Power Plant, Units 1 and 2, and DPR-7 for the Humboldt Bay Power Plant, Unit 3. Attached to the licensee's application was the October 20, 1995, application filed before the Public Utilities Commission of the State of California (CPUC) from Harry W. Long, Jr. and Pilar Garcia, attorneys for Pacific Gas and Electric Company, and Testimony of Kent M. Harvey (Exhibit PG&E-1) and Keith O. Fukui (Exhibit PG&E-2). The October 20, 1995, application contains all "general information" required by 10 CFR 50.33 which is not contained in the November 1, 1995, letter. Under the restructuring, the holders of PG&E common stock will become holders of the parent company stock on a share-by-share basis. After the restructuring, PG&E will continue to be the licensee of the Diablo Canyon Nuclear Power Plant (DCNPP) and the Humboldt Bay Power Plant (HBPP), and no direct transfer of the operating licenses or interests in the units will result from the restructuring.

Pursuant to 10 CFR 50.80, no license for a production or utilization facility, or any right thereunder, shall be transferred, assigned, or in any manner disposed of either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. The Commission may approve the transfer of control of a license, after notice to interested persons (61 FR 55174). Such action is contingent upon the Commission's determination that the proposed transferee is qualified to be the holder of the license and the transfer of such control is otherwise consistent with the applicable provisions of law, regulations, and orders of the Commission.

## 2.0 ANTITRUST REVIEW

The corporate restructuring outlined by PG&E in its letter dated November 1, 1995, does not appear to present any opportunity for the new indirect owner of the Diablo Canyon Nuclear Power Plant to exert any undue market power over other power systems in the geographic area served by the Diablo Canyon Nuclear Power Plant. The new indirect owner will be a holding company, with the temporary name, "PG&E Parent Company", owned and controlled by the existing PG&E shareholders. It does not appear that the restructuring, as proposed, would affect the operation of the Diablo Canyon Nuclear Power Plant nor the bulk power services market(s) served by the Diablo Canyon Nuclear Power Plant. The Commission's antitrust review responsibility applies only to the Diablo Canyon Nuclear Power Plant per the antitrust license conditions agreed upon by PG&E during its Stanislaus licensing review. The Humboldt Bay Power Plant is licensed pursuant to Section 104b of the Atomic Energy Act, as amended, and thus is not subject to NRC antitrust review.

## 3.0 MANAGEMENT OF PG&E UTILITY OPERATION

PG&E stated in its letter that the proposed reorganization will have no effect on the management of PG&E's utility operations. The holding company structure retains the utility as a discrete and wholly separate entity that will function in the same fashion as it did prior to restructuring. PG&E's management will continue to make its own decisions with regard to utility planning, operation, financial requirements, purchasing, and sales. The application states that no PG&E management positions in its nuclear power generation business unit will be changed by the restructuring.

Based upon the continuity of management described above, the staff finds that the proposed restructuring will not adversely affect PG&E's management of its nuclear plants.

## 4.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

The licensee stated in its November 1, 1995, letter that on the date of the restructuring, Parent Company will become the sole holder of PG&E outstanding common stock, and the current holders of PG&E common stock will become holders of the common stock of Parent Company on a share-for-share basis. Therefore, following the restructuring, the common stock of Parent Company will be owned by the previous holders of PG&E common stock in the same proportion in which they held PG&E common stock. Based upon information available to PG&E as of December 31, 1994, shares of PG&E's common stock held by foreign accounts represent less than one percent (1%) of the total outstanding shares of PG&E.

Based on the above discussion, the staff finds that the proposed restructuring will not result in PG&E being owned, controlled, or dominated by a foreign government.

## 5.0 FINANCIAL QUALIFICATION ANALYSIS

PG&E proposes to restructure itself by establishing a holding company, temporarily called PG&E Parent Co., Inc., which would become the parent corporation to PG&E. PG&E would continue to remain the owner/operator licensee of the two unit Diablo Canyon Nuclear Power Plant and the owner/possession-only licensee of the shut-down Humboldt Bay Power Plant. PG&E would remain an "electric utility" as defined in 10 CFR 50.2, engaged in the generation, transmission, and distribution of electric energy for wholesale and retail sale. Upon consummation of the restructuring, current common stockholders of PG&E would receive shares in the Parent Company.

PG&E indicates that the reason for the proposed restructuring is "to better prepare to implement changes resulting from electric utility restructuring, without diminishing the Commission's ability to regulate effectively PG&E's DCNPP and HBPP operations and without adversely affecting the public health or safety. In addition, the holding company structure will enhance the insulation of PG&E's California utility business, including the DCNPP and HBPP units, from any business risks associated with non-utility enterprises." (PG&E letter of November 1, 1995; p. 1)

PG&E indicates that it will remain an "electric utility" as defined in 10 CFR 50.2. That is, PG&E will continue to be engaged in the generation, transmission, and distribution of electricity and will remain subject to the rate regulatory authority of the California Public Utilities Commission. (PG&E letter of November 1, 1995, p. 2) Based on information provided in PG&E's application, the staff finds that there will be no change in PG&E's financial ability to operate and decommission its nuclear plants as a result of the proposed restructuring. Thus, pursuant to 10 CFR 50.33(f), PG&E is exempt from further financial qualifications review as an electric utility.

However, in view of the NRC's concern that restructurings can lead to a diminution of assets necessary for the safe operation and decommissioning of a licensee's nuclear power plants, the NRC has sought to obtain commitments from its licensees that initiate restructurings not to transfer significant assets from the licensee without notifying the NRC. PG&E has made such a commitment:

PG&E will 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 PG&E to its proposed parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding one percent (1%) of PG&E's consolidated net utility plant, as recorded on PG&E's books of account. (PG&E letter of November 1, 1995; p. 4)

Notwithstanding PG&E's commitment regarding the transfer of 1% of PG&E's consolidated net utility plant, the staff believes such a commitment at a 10% threshold as a condition to the NRC's consent to the proposed restructuring, will enable the NRC to ensure that PG&E will continue to maintain adequate resources to operate and decommission its Diablo Canyon Nuclear Power Plant, Units 1 and 2 and Humboldt Bay Power Plant Unit 3, safely.

In view of the foregoing, the staff concludes that PG&E's proposed restructuring will not adversely affect its financial qualifications with respect to the Diablo Canyon Nuclear Power Plant and Humboldt Bay Power Plant and that the proposed restructuring should be approved.

#### 6.0 PUBLIC COMMENTS

The NRC published notification of PG&E's restructuring request in the Federal Register on April 5, 1996 (61 FR 15314). While the Notice did not request comment, the NRC received comments dated April 29, 1996, on the competitive implications of the proposed restructuring from the Northern California Power Agency (NCPA), the Transmission Agency of Northern California (TANC) and the Modesto Irrigation District (MID). TANC and MID urged the NRC to conduct an antitrust review to determine whether the reorganized PG&E would be able to unfairly exercise its market power. TANC and MID also alleged that PG&E was in violation of its Diablo Canyon (Stanislaus) antitrust license conditions and that the proposed restructuring may make enforcement of the existing conditions more difficult. NCPA alleged that the proposed restructuring "may impair the effectiveness of the antitrust license conditions" and "hinder the Commission's ability to enforce and monitor those conditions." NCPA also expressed concern over reports that PG&E may be considering spinning off its transmission facilities and what effects such a spinoff may eventually have on the enforceability of existing antitrust license conditions. TANC and MID requested the NRC to condition its approval of the proposed restructuring upon PG&E's continued compliance with its antitrust license conditions. By letter dated May 23, 1996, the NRC received PG&E's response to the above comments. PG&E's response indicated, inter alia, that (1) commenters were alleging noncompliance with antitrust license conditions, and (2) any future restructuring by PG&E involving a spinoff of transmission assets would be subject to review by the California Public Utilities Commission (CPUC) and the FERC.

PG&E accountability, in terms of its obligations under the antitrust license conditions, will not change under the proposed PG&E restructuring. PG&E will still be obligated and bound by existing antitrust license conditions following the proposed restructuring. In its response to the commenters, PG&E acknowledges its continuing obligations under the license conditions:

After the restructuring, PG&E will remain obligated to comply with all the conditions of its licenses, including the antitrust license conditions, in the same fashion as it did prior to the restructuring. [PG&E response dated May 23, 1996, p.2]

The internal restructuring proposed by PG&E appears to be a response to changing conditions in the electric utility industry--enabling PG&E to structure its operations into regulated and non-regulated subsidiaries. There is no basis to believe PG&E will be any less diligent in adhering to its license conditions under the proposed restructuring plan than under its current corporate structure.



TANC and MID have also alleged that restructured PG&E will be better able to abuse its market power yet neither has shown how restructured PG&E will exercise its market power any differently than prior to the restructuring. MID states in its comments that,

The failure of PG&E to adhere to its NRC antitrust licensing conditions will be exacerbated by the corporate restructuring that PG&E seeks the NRC to approve.

MID fails to explain how restructured PG&E will exacerbate its alleged non-compliance. MID continues by stating that

the Commission's review [of the restructuring] must include a determination that the licensee is in compliance with the terms of its license.

TANC requests the NRC to condition its approval of PG&E's reorganization request to PG&E's

adherence to and reaffirmation of its intent to the Stanislaus Commitments, and order such procedures to ensure PG&E's continued compliance with the Stanislaus Commitments.

The review of the restructuring request has not revealed evidence that the proposed restructuring of PG&E would lead to or increase an abuse of market power or that PG&E is engaging in anticompetitive activities not addressed by the existing antitrust license conditions. PG&E's restructuring notwithstanding alleged noncompliance with the antitrust license conditions, provides no basis for the NRC to make a finding of "significant changes" under Section 105 of the Atomic Energy Act, triggering a full antitrust review.

NCPA is primarily concerned with the effects of PG&E's anticipated involvement with a proposed Independent System Operator (ISO) and the possible spinoff of PG&E transmission assets. NCPA indicates in its comments that in conjunction with increasing competition and the restructuring taking place in the California electric power market, PG&E has publicly discussed turning over control of its transmission facilities to the ISO. As a result, NCPA asked the NRC to require PG&E to "provide assurances that the Commitments insofar as they relate to transmission will still be applicable and enforceable after it turns control over to the ISO." It is clear that the proposed restructuring in no way diminishes PG&E's responsibilities under the license conditions.<sup>1</sup> PG&E has not hidden behind any newly-formed corporate veil. Moreover, as

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<sup>1</sup>The Stanislaus Commitments represent an agreement between the Department of Justice and PG&E. The Commitments were imposed as license conditions to the Stanislaus plant and ultimately the Diablo Canyon plant by the NRC staff. The NRC has jurisdictional control over the license conditions.

indicated supra, PG&E has acknowledged its continued obligations to comply with the antitrust license conditions subsequent to its restructuring.

NCPA also expressed concern over the possibility of PG&E spinning off its transmission assets into a new entity which will no longer be affiliated with PG&E or regulated by the NRC, thereby creating a regulatory vacuum in terms of the NRC's ability to enforce the Diablo Canyon antitrust license conditions. In a footnote to its response to the comments to its proposed restructuring, PG&E states that no such change in transmission ownership "is proposed at this time" and that any such transfer would be "subject to review by the California Public Utilities Commission and/or the Federal Energy Regulatory Commission". PG&E continues by stating that such a proposal is "hypothetical" and "speculative" and therefore "premature and too attenuated to be addressed at this time". Portions of the arguments of both PG&E and NCPA are plausible. NCPA's concerns over the enforceability of the Diablo Canyon license conditions in the event of a PG&E spinoff are justified. The NRC is the regulatory body charged with monitoring and enforcing license conditions which are a part of its nuclear licenses. Any change in PG&E's corporate structure that could affect the enforceability of the Diablo Canyon antitrust license conditions will be reviewed by the NRC. The NRC requires PG&E to notify the NRC in advance of any such proposal. However, PG&E is correct in that such a proposal is not the subject of the instant restructuring request and as a result is premature.

In sum, although the comments from MID, TANC and NCPA addressed allegations of violations of antitrust license conditions and questions concerning the enforceability of license conditions in the future, areas of concern to the NRC, the comments did not provide any evidence warranting a change in the original conclusion that the proposed restructuring will not adversely affect competition in the relevant bulk power markets served by the Diablo Canyon facility.<sup>2</sup>

## 7.0 ENVIRONMENTAL CONSIDERATION

Pursuant to 10 CFR 51.21 and 51.35, an environmental assessment and finding of no significant impact was published in the Federal Register on June 18, 1996 (61 FR 30924).

## 8.0 CONCLUSION

Based on the above determinations, the staff concludes that the proposed corporate restructuring and establishment of a holding company:

- (1) will not reduce funds available to PG&E to conduct activities under its licenses;

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<sup>2</sup>Apart from the staff's analysis here, these allegations are being addressed as a separate matter.

- (2) will not adversely affect the management of the PG&E utility operations or the bulk power services market served by the Diablo Canyon or Humboldt Bay facility;
- (3) will not result in PG&E becoming owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government;
- (4) will not affect the qualifications of PG&E as holder of the Diablo Canyon Nuclear Power Plant, Units 1 and 2 and Humboldt Bay Power Plant Unit 3 licenses; and
- (5) is otherwise consistent with the applicable provisions of the law, regulations, and orders issued by the Commission pursuant thereto.

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