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PG&E Letter DCL-22-085

U.S. Nuclear Regulatory Commission
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10 CFR 50.12
10 CFR 54.15

Diablo Canyon Power Plant, Units 1 and 2
Docket No. 50-275, OL-DPR-80
Docket No. 50-323, OL-DPR-82

Request to Resume Review of the Diablo Canyon Power Plant License Renewal Application or, Alternatively, for an Exemption from 10 CFR 2.109(b), Concerning a Timely Renewal Application

References:

1. PG&E Letter DCL-09-079, "License Renewal Application," dated November 23, 2009 (ML093340086, ML093340116, and ML093340123)
2. PG&E Letter DCL-18-015, "Request to Withdraw the Diablo Canyon Power Plant License Renewal Application," dated March 7, 2018 (ML18066A937)
3. NRC Letter, "Pacific Gas and Electric Company Diablo Canyon Power Plant, Unit Nos. 1 and 2 Withdrawal of License Renewal Application," dated April 17, 2018 (ML18093A117)

Dear Commissioners and NRC staff:

Pacific Gas and Electric Company (PG&E) is requesting the U.S. Nuclear Regulatory Commission (NRC) resume review of the license renewal application (LRA) for Diablo Canyon Power Plant (DCPP), Units 1 and 2. On November 23, 2009, PG&E submitted Letter DCL-09-079, "License Renewal Application," (Reference 1) which included an application to the NRC for the renewal of Facility Operating Licenses DPR-80 and DPR-82 for DCPP Units 1 and 2, respectively. On March 7, 2018, PG&E requested to withdraw the LRA for DCPP Units 1 and 2, and all associated correspondence and commitments (Reference 2). On April 17, 2018, the NRC granted PG&E's request to withdraw the LRA for DCPP, Units 1 and 2 (Reference 3).

Recently, the State of California has revisited its current and projected energy needs, including the role of DCPP in the State's energy future. The Governor signed Senate Bill No. 846 (Dodd) on September 2, 2022, which reversed the prior California Public Utilities Commission decision approving the retirement of DCPP

Units 1 and 2 by the expiration of the current operating licenses. The bill was declared to take effect immediately as an urgency statute in order to improve statewide energy system reliability. Based on the recent change of energy policy by the State of California to support its critical energy needs, PG&E is requesting that the NRC staff resume its review of the LRA for DCPD Units 1 and 2 to ensure an adequate energy supply for California. Enclosure 1 includes the details of the request for the NRC to resume its review of the LRA, including all associated correspondence and commitments. As explained therein, resuming the NRC's review of the LRA is the most prudent and efficient regulatory path to completing the NRC's license renewal review for DCPD, Units 1 and 2.

If PG&E's request to resume review of the previously submitted DCPD LRA is not granted, and the NRC instead requires PG&E to submit a new LRA altogether, PG&E requests an exemption from 10 CFR 2.109(b), "Effect of timely renewal application," for DCPD, Units 1 and 2 pursuant to 10 CFR 54.15 and 10 CFR 50.12, "Specific exemptions." In accordance with 10 CFR 2.109(b), if a nuclear power plant licensee files a sufficient LRA with the NRC at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.

Specifically, if the request to resume review of the previous LRA is not granted, PG&E requests approval to submit a new LRA for DCPD Units 1 and 2 by December 31, 2023, and still receive timely renewal protection under 10 CFR 2.109(b).

Enclosure 2 to this letter provides the rationale and justification for the exemption request, if needed. PG&E is requesting the exemption from 10 CFR 2.109(b) after concluding it is permissible under 10 CFR 54.15 and 10 CFR 50.12 because it is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and because special circumstances are present.

In summary, PG&E is requesting the NRC staff to resume its review of the LRA for DCPD Units 1 and 2 as described in Enclosure 1. If the NRC decides not to resume its review of the LRA, PG&E is requesting, in the alternative, an exemption from 10 CFR 2.109(b) as described in Enclosure 2. The NRC decision on this matter is requested as soon as possible to support the next steps for PG&E in extending the operation of DCPD Units 1 and 2 beyond the expiration of the current operating licenses to serve California's urgent energy needs and help ensure grid reliability.

PG&E makes no new or revised regulatory commitments (as defined by NEI 99-04, Guidelines for Managing NRC Commitment Changes) in this letter.

Please contact Philippe Soenen, at (805) 459-3701, with any questions about this letter.

Executed on October 31, 2022.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paula Gerfen".

Paula Gerfen
Senior Vice President and Chief Nuclear Officer

Enclosures

cc: Diablo Distribution
cc/enc: Mahdi O. Hayes, NRC Senior Resident Inspector
Samson S. Lee, NRC Project Manager
Scott A. Morris, NRC Region IV Administrator
Lauren Gibson, License Renewal Branch Chief

**Request for Resumption of Review of the License Renewal Application for
Diablo Canyon Power Plant, Units 1 and 2**

Request to Resume Review of the Diablo Canyon Power Plant
License Renewal Application

1. Purpose

The operating licenses for Diablo Canyon Power Plant (DCPP) Units 1 and 2 expire November 2, 2024, and August 26, 2025, respectively. In 2009, Pacific Gas & Electric Company (PG&E) submitted a license renewal application (LRA) to the U.S. Nuclear Regulatory Commission (NRC) seeking 20-year extensions of the DCPP operating licenses. Pursuant to direction from the California Public Utilities Commission (CPUC), PG&E withdrew the LRA on March 7, 2018. On April 17, 2018, the NRC granted PG&E's request to withdraw the LRA for DCPP, Units 1 and 2 (Reference 7.4). By this submission, PG&E requests that the NRC staff resume its review of the LRA, including all associated correspondence and commitments, and confirm that, under 10 CFR 2.109, "Effect of timely renewal application," the NRC will not deem the existing licenses to have expired until the LRA has been finally determined. As described further below, this request is being submitted pursuant to the direction in Senate Bill No. (SB) 846 (Dodd), which was signed into law by the Governor.

2. Background

On November 23, 2009, PG&E submitted Letter DCL-09-079, "License Renewal Application," (Reference 7.1) which included an application to the NRC for the renewal of Facility Operating Licenses DPR-80 and DPR-82 for DCPP Units 1 and 2, respectively. The NRC staff issued a safety evaluation report on June 2, 2011, that documented the technical safety review of DCPP, Units 1 and 2 (Reference 7.2). On June 21, 2016, PG&E requested that the NRC suspend activity on the DCPP LRA (Reference 7.8). On March 7, 2018, PG&E requested to withdraw the LRA for DCPP Units 1 and 2, and all associated correspondence and commitments (Reference 7.3). The decision to withdraw the LRA was based on the determination that continued baseload operation of the two DCPP units beyond their licensed operating periods was not necessary to meet California's projected energy demand requirements and the potential costs to bundled customers in light of changes in electricity supply in the State. This resource planning decision was approved by the CPUC in Decision 18-01-022, dated January 11, 2018. On April 17, 2018, the NRC granted PG&E's request to withdraw the LRA for DCPP, Units 1 and 2 (Reference 7.4).

Subsequently, PG&E has been working on decommissioning planning efforts to support the transition to active decommissioning upon shutdown of DCPP Units 1 and 2 at the expiration of the operating licenses. Recently, the Office of the Governor of California raised concerns regarding the current and future energy needs of California given the planned retirement of DCPP. The California Energy Commission issued a Notice of Joint-Agency Remote-Access Workshop (Reference 7.5) which included the following summary of the current energy situation in California:

“...California risks greater supply shortfalls in the coming years and beyond due to delays in online dates for procurement that has been authorized to backfill significant planned retirements in 2024 and 2025, including the Diablo Canyon Power Plant. California is seeing greater than anticipated load growth and will need to plan for a continued load growth as a result of increasing electrification of transportation and other sectors.

To ensure that all Californians have access to a supply of reliable and resilient energy resources during extreme weather events, Governor Newsom has expressed that all options need to be considered, including the option of extending the operating license of the Diablo Canyon Power Plant beyond its current planned closure date of 2024 (Unit 1) and 2025 (Unit 2). Preserving this option would require legislative action as well as subsequent legislation and substantive review and approval by multiple state, local, and federal regulatory entities that have jurisdiction over safety, operations, environmental impact, and funding for the facility.”

On September 2, 2022, the Governor of California signed SB 846 (Dodd) (Reference 7.6), which reversed the prior CPUC decision approving the retirement of DCPP Units 1 and 2 by the expiration of the operating licenses. To support the energy and reliability needs of California, and keep the option of continuing operation of DCPP beyond the expiration of the current operating licenses, PG&E requests that the NRC staff resume its review of the LRA and confirm that, under 10 CFR 2.109, “Effect of timely renewal, application,” the NRC will not deem the existing licenses to have expired until the NRC has completed their final determination on the LRA.

3. NRC Authority and Precedent

As a general matter, the NRC staff’s decision to docket and review a licensing application is a discretionary act. The Atomic Energy Act of 1954, as amended (AEA), leaves this decision to the discretion of the NRC and does not authorize challenges to such decisions.¹ On January 21, 2010, a notice of the NRC staff’s docketing decision and finding that the DCPP LRA was sufficient for review was published in the Federal Register.² As the NRC staff noted, “[t]he determination to accept the LRA for docketing does not constitute a determination that the renewed licenses should be issued, and

¹ See, e.g., Oklo Power, LLC (Aurora Reactor), CLI-20-17, 9 NRC 521, 524 (2020) (unanimous decision discussing this “well settled” principle).

² Notice of Acceptance for Docketing of the Application, Notice of Opportunity for Hearing for Facility Operating License Nos. DPR–80 and DPR–82 for an Additional 20-Year Period; Pacific Gas & Electric Company, Diablo Canyon Nuclear Power Plant, Units 1 and 2; and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation, 75 Fed. Reg. 3493 (Jan. 21, 2010).

does not preclude the NRC staff from requesting additional information as the review proceeds.”³

As relevant here, there is abundant precedent for the NRC resuming review of previously docketed applications after they have been suspended, withdrawn, voided, and even denied. As a primary example, the reactor license renewal proceeding for the Aerotest Radiography and Research Reactor is particularly instructive here.

In the Aerotest proceeding, the applicant submitted its LRA in 2005. After several years of review, the NRC formally denied that application in 2013. But, in the years that followed, the applicant supplied additional information to the NRC which, in 2017, ultimately led the NRC staff to withdraw its earlier denial and “resume its review of the license renewal application as it existed” before the review was terminated.⁴

By the time the NRC staff resumed review of the Aerotest application, the timely renewal deadline specified in 10 CFR 2.109, “Effect of timely renewal application,” had expired. However, the NRC staff confirmed that, for purposes of 10 CFR 2.109, the application is deemed filed on the date of the original submission—not the date the NRC staff resumed its review—and affirmatively stated that it would “not deem the existing license to have expired until the license renewal application has been finally determined.”⁵

Upon resuming its review of the Aerotest application, the NRC staff performed an analysis—given the passage of approximately four years between the termination and resumption of the review—to identify additional information needed to continue the review. Accordingly, the NRC staff submitted a request for additional information (RAI) to the applicant and noted that the review would continue upon receipt of that additional information.⁶

In PG&E’s view, the Aerotest precedent provides a relevant template for resuming review of the DCPD LRA.

³ *Id.*

⁴ Letter from B. Holian, NRC, to D. Slaughter, Aerotest, “Aerotest Radiography and Research Reactor—Withdrawal of Denial of License Renewal Application (CAC No. MF7221)” (Aug. 8, 2017) (ML17138A309).

⁵ *Id.*

⁶ Letter from E. Helvenston, NRC, to D. Slaughter, Aerotest, “Aerotest Radiography and Research Reactor—Request for Additional Information Regarding the Renewal of Facility Operating License No. R-98 (CAC/DOCKET/EPID NO. 000955/05000228/L-2017-RNW-0027)” at 1 (Oct. 24, 2017) (ML17277B261).

4. Resuming Review Is Appropriate Under These Circumstances

PG&E offers that resuming review of the LRA, as opposed to requiring submission of a new application, is consistent with the NRC's Principles of Good Regulation.

First, the principle of "Efficiency" is served by leveraging the extensive LRA activities that already have been conducted in this proceeding. As the Commission has recognized, "[t]he American taxpayer, the rate-paying consumer, and licensees are all entitled to the best possible management and administration of regulatory activities."⁷ Accordingly, the Commission has directed that, "[w]here several effective alternatives are available, the option which minimizes the use of resources should be adopted."⁸

Pursuant to 10 CFR 54.29, "Standards for issuance of a renewed license," a renewed license may be issued only upon a finding by the NRC that, for matters within the scope of license renewal, there is "reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the [current licensing basis], and that any changes made to the plant's [current licensing basis] ... are in accord with the [AEA] and the Commission's regulations." These requirements will apply regardless of whether the NRC requires a new application or resumes its review of the LRA. However, between those two alternatives, resuming review of the LRA is clearly the "option which minimizes the use of resources." At the time the NRC ceased its review of the LRA, the NRC Staff had nearly completed its technical safety review and, in fact, had issued a safety evaluation report (Reference 7.2). The NRC had also held the Advisory Committee on Reactor Safeguards subcommittee meeting and completed the environmental scoping and audit process.⁹ In PG&E's view, rather than discarding the entirety of the NRC's extensive prior review, analysis, and work product, the goal of prudent and efficient use of agency resources is best served by continuing the review where it left off and leveraging the existing evaluations to the fullest extent possible.

Second, resuming review would be fully consistent with the NRC's "Openness" principle. As the Commission has recognized, "[n]uclear regulation is the public's business, and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory processes as required by law."¹⁰ The public was provided a full and fair opportunity—and in fact did participate—in the regulatory process associated with the LRA prior to cessation of the NRC staff's review. And, if the NRC staff resumes its review of the LRA, the public will again have

⁷ Values, NRC.gov, <https://www.nrc.gov/about-nrc/values.html>.

⁸ *Id.*

⁹ See *Diablo Canyon - License Renewal Application*, NRC.gov, <https://www.nrc.gov/reactors/operating/licensing/renewal/applications/diablo-canyon.html>.

¹⁰ *Id.*

the opportunity to participate in the regulatory process to the extent required by law. These participatory opportunities may include attendance at anticipated public meetings, submission of comments on a future draft supplemental environmental impact statement, and the ability to challenge materially new information in an adjudicatory forum.¹¹ In other words, resuming review would not limit public participation in the DCPD license renewal process.

Third, the NRC will continue to have an onsite presence during the review period, even if it extends beyond the expiration dates in the current DCPD operating licenses and the units continue to operate under "timely renewal." Pending final action on the LRA, the NRC will retain its authority to conduct all regulatory activities associated with licensing, inspection, and oversight and to take whatever actions may be necessary to ensure adequate protection of public health and safety. Further, DCPD must continue to comply with its current licensing basis (CLB), including safeguards and security programs, pending NRC review of the LRA. Thus, in PG&E's view resuming review of the LRA would not present any undue risk to public health and safety and is consistent with the common defense and security. Indeed, there is precedent for power reactors continuing to operate beyond the expiration dates in their original licenses. More specifically, Indian Point Nuclear Generating Units 2 and 3 continued to operate under "timely renewal" until the NRC made a final determination on the LRA. (Reference 7.7)

Fourth, it is important to emphasize that PG&E has not intentionally postponed the decision to seek renewal of the operating licenses for DCPD Units 1 and 2. State policy evolved between 2016 and present, in a way that did not permit the uninterrupted review of the LRA. As mentioned above, PG&E did, in fact, submit an LRA many years in advance of the DCPD Units 1 and 2 operating license expiration dates. However, after that LRA was withdrawn, significant factors related to the energy needs in California have driven the State to direct PG&E to keep the option of continuing DCPD operations beyond the current license expirations.

The California Governor signed SB 846 on September 2, 2022 (Reference 7.6). SB 846 reversed the prior CPUC decision approving the retirement of DCPD Units 1 and 2 by the expiration of the operating licenses. The bill was declared to take effect immediately as an urgency statute. SB 846, Section 5, Chapter 6.3 states in part:

Preserving the option of continued operations of the Diablo Canyon powerplant for an additional five years beyond 2025 may be necessary to improve statewide energy system reliability and to reduce the emissions of greenhouse gases while additional renewable energy and zero-carbon resources come online, until those new renewable energy and zero-carbon resources are adequate to meet demand. Accordingly, it is the policy of the Legislature that seeking to extend the Diablo Canyon powerplant's

¹¹ See 10 C.F.R. § 2.309(c).

operations for a renewed license term is prudent, cost effective, and in the best interests of all California electricity customers.

Finally, PG&E has found that it is in the public interest to resume review of the LRA and confirm the applicability of timely renewal because it would provide the State of California the option to keep DCCP online past the current expiration dates of the plant's licenses to meet its energy needs and support grid reliability. Otherwise, PG&E would be required to shut down the plant. This would result in an undue hardship, as the power provided by DCCP, Units 1 and 2 would no longer be available to meet the electricity demands of the residents of California.

DCCP is a zero carbon, base load generator that supplies approximately 8.5 percent of California's total electricity generation and provides capacity during the "net peak" evening hours. The State has projected a shortfall in energy supply versus demand at net peak. The State's recent efforts to keep the option for DCCP extended operations open demonstrates the urgency and necessity to keep the DCCP units online past the expiration dates of the operating licenses. SB 846 states, "... it is the policy of the Legislature that seeking to extend the Diablo Canyon powerplant's operations for a renewed license term is prudent, cost effective, and in the best interests of all California electricity customers."

For all of these reasons, PG&E has concluded that resuming review of the DCCP LRA and confirming the applicability of timely renewal is the rationale and pragmatic course of action.

5. Proposed Approach for Resuming Review

As with the Aerotest precedent, PG&E proposes that the NRC staff "resume its review of the application as it existed" when the review ceased in 2016, including all associated correspondence and commitments. Thereafter, the NRC staff would determine what information it needs to continue its review and, eventually, submit an RAI to PG&E.

In parallel, PG&E would develop and submit an amendment to the LRA that identifies changes to the units' CLB that materially affect the contents of the LRA, including the Final Safety Analysis Report supplement, consistent with 10 CFR 54.21(b). PG&E also plans to submit supplemental information relevant to both the safety and environmental reviews to account for any material new information and guidance updates since the cessation of the LRA review. These updates will also include updating the licensing commitments associated with the LRA. If acceptable to the NRC staff, PG&E plans to submit this information no later than the end of calendar year 2023, with a goal of submitting it by September 30, 2023.

Assuming, the NRC grants this request to resume review of the LRA, PG&E will coordinate with the NRC staff to develop a more refined schedule of submissions and an overall plan for completing the subject review.¹²

6. Conclusion

PG&E offers that resuming review of the LRA and confirming timely renewal protection for the existing DCPD operating licenses is lawful, precedented, prudent under these special circumstances, would not present any undue risk to public health and safety, and is consistent with the common defense and security. As such, PG&E requests that the NRC grant PG&E's request for NRC staff resumption of its review of the DCPD LRA and proceed accordingly.

7. References

- 7.1 PG&E Letter DCL-09-079, "License Renewal Application," dated November 23, 2009 (ML093340086, ML093340116, and ML093340123)
- 7.2 NRC Letter, "Safety Evaluation Report Related to the License Renewal of Diablo Canyon Nuclear Power Plant, Units 1 and 2," dated June 2, 2011 (ML11138A274 and ML11153A103)
- 7.3 PG&E Letter DCL-18-015, "Request to Withdraw the Diablo Canyon Power Plant License Renewal Application," dated March 7, 2018 (ML18066A937)
- 7.4 NRC Letter, "Pacific Gas and Electric Company Diablo Canyon Power Plant, Unit Nos. 1 and 2 Withdrawal of License Renewal Application," dated April 17, 2018 (ML18093A117)
- 7.5 California Energy Commission, Notice of Joint-Agency Remote-Access Workshop, RE: Diablo Canyon Power Plant, dated August 5, 2022
- 7.6 Senate Bill No. 846, Diablo Canyon power plant: extension of operations, Introduced by Senator Dodd, Principal coauthor Assembly Member Cunningham, accessed at [Bill Text – SB-846 Diablo Canyon powerplant: extension of operations.](#)

¹² See also generally H.R. Rep. No. 117-394 at 231 (2022) (House Appropriations Committee Report on the 2023 Energy and Water Development and Related Agencies Appropriations Bill recommending that the bill direct the NRC to provide to the Committee "a plan for the continued operation of Diablo Canyon Power Plant" within 180 days of enactment), available at <https://www.congress.gov/117/crpt/hrpt394/CRPT-117hrpt394.pdf>.

- 7.7 NRC Record of Decision, "License Renewal Application for Indian Point Nuclear Generating Unit Nos. 2 and 3," dated September 17, 2018 (ML18212A032)
- 7.8 PG&E Letter, DCL-16-066, "Request to Suspend NRC Review of Diablo Canyon Power Plant License Renewal Application," dated June 21, 2016 (ML16173A454)

**Request for Exemption from 10 CFR 2.109(b)
Concerning a Timely Renewal Application**

Request for Exemption from 10 CFR 2.109(b)

1. Purpose

Pursuant to 10 CFR 54.15 and 10 CFR 50.12, which allows specific exemption to U.S. Nuclear Regulatory Commission (NRC) regulations, Pacific Gas and Electric Company (PG&E) requests, if needed, an exemption from the five-year time limit specified in the NRC timely renewal regulation in 10 CFR 2.109(b).

10 CFR 2.109(b) reads as follows:

"If the licensee of a nuclear power plant licensed under 10 CFR 50.21(b) or 50.22 files a sufficient application for renewal of either an operating license or a combined license at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined."

The operating licenses for Diablo Canyon Power Plant (DCPP) Units 1 and 2 expire November 2, 2024, and August 26, 2025, respectively. Specifically, PG&E requests approval to submit, if needed, a new license renewal application (LRA) for DCPP, Units 1 and 2 no later than December 31, 2023, and still be granted the protections afforded by the timely renewal provision in 10 CFR 2.109(b).

2. Background

On November 23, 2009, PG&E submitted Letter DCL-09-079, "License Renewal Application," (Reference 8.1) which included an application to the NRC for the renewal of Facility Operating Licenses DPR-80 and DPR-82 for DCPP Units 1 and 2, respectively. The NRC staff issued a safety evaluation report on June 2, 2011, that documented the technical safety review of DCPP, Units 1 and 2 (Reference 8.2). On June 21, 2016, PG&E requested that the NRC suspend activity on the DCPP LRA (Reference 8.15). On March 7, 2018, PG&E requested to withdraw the LRA for DCPP Units 1 and 2, and all associated correspondence and commitments (Reference 8.3). The decision to withdraw the LRA was based on the determination that continued baseload operation of the two DCPP units beyond their licensed operating periods was not necessary to meet California's projected energy demand requirements and the potential costs to bundled customers in light of changes in electricity supply in the State. This resource planning decision was approved by the California Public Utilities Commission (CPUC) in Decision 18-01-022, dated January 11, 2018. On April 17, 2018, the NRC granted PG&E's request to withdraw the LRA for DCPP, Units 1 and 2 (Reference 8.4).

Subsequently, PG&E has been working on decommissioning planning efforts to support the transition to active decommissioning upon shutdown of DCPP Units 1 and 2 at the

expiration of the operating licenses. Recently, the Office of the Governor of California raised concerns regarding the current and future energy needs of California given the planned retirement of DCP. The California Energy Commission issued a Notice of Joint-Agency Remote-Access Workshop (Reference 8.5) which included the following summary of the current energy situation in California:

"...California risks greater supply shortfalls in the coming years and beyond due to delays in online dates for procurement that has been authorized to backfill significant planned retirements in 2024 and 2025, including the Diablo Canyon Power Plant. California is seeing greater than anticipated load growth and will need to plan for a continued load growth as a result of increasing electrification of transportation and other sectors.

To ensure that all Californians have access to a supply of reliable and resilient energy resources during extreme weather events, Governor Newsom has expressed that all options need to be considered, including the option of extending the operating license of the Diablo Canyon Power Plant beyond its current planned closure date of 2024 (Unit 1) and 2025 (Unit 2). Preserving this option would require legislative action as well as subsequent legislation and substantive review and approval by multiple state, local, and federal regulatory entities that have jurisdiction over safety, operations, environmental impact, and funding for the facility."

On September 2, 2022, the Governor of California signed Senate Bill No. (SB) 846 (Dodd) (Reference 8.6), which reversed the prior CPUC decision approving the retirement of DCP Units 1 and 2 by the expiration of the operating licenses. To support the energy and reliability needs of California and keep the option of continuing operation of DCP, Units 1 and 2 beyond the expiration of the current operating licenses, in Enclosure 1 PG&E has requested that the NRC staff resume its review of the LRA. If the NRC decides not to resume its review of the LRA, and instead requires PG&E to submit an entirely new LRA, PG&E anticipates doing so by December 31, 2023. In that circumstance, this request for an exemption from the five-year time limit specified in the NRC timely renewal regulation in 10 CFR 2.109(b) would be needed to afford PG&E sufficient time to prepare a new LRA and enable the NRC staff to complete its review of the subject LRA. As described below, in PG&E's view, the exemption request is reasonable given the special circumstances that have arisen with respect to the State of California's projected increased future energy needs and options to be able to meet those needs.

3. Justification for Exemption

Under 10 CFR 54.15, exemptions from the requirements in Part 54 are governed by 10 CFR 50.12. 10 CFR 50.12(a)(1) states that the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the

requirements of the regulations of Part 50 which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. As discussed below, this exemption satisfies the provisions of 10 CFR 50.12(a)(1).

3.1 The Exemption Is Authorized by Law

The NRC timely renewal regulation derives from Section 9(b) of the Administrative Procedure Act (APA). Section 9(b) of the APA states that “[w]hen the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.” (5 U.S. Code § 558(c)). The NRC has incorporated the APA’s timely renewal doctrine in its regulations at 10 CFR 2.109.

The five-year license renewal timeframe in 10 CFR 2.109(b) is the result of a discretionary agency rulemaking under Section 161 and 181 of the Atomic Energy Act of 1954, as amended (AEA), and is not mandated by statute.¹ No statute requires the NRC to specifically adopt any particular timing requirement for timely renewal.

In fact, before the NRC first issued Part 54 in 1991, Section 2.109 contained a 30-day LRA filing deadline for all licenses issued for activities “of a continuing nature.” The NRC and stakeholders recognized that reactor LRA reviews would take considerably longer than 30 days. The proposed Part 54 rule would have modified Section 2.109 to require that nuclear power plant LRAs be submitted at least three years prior to license expiration to be eligible for timely renewal protection, which the Commission explained was “based upon a projected 3-year period for completing staff review of a renewal application and any necessary hearing.”² In the final rule, however, the Commission concluded that “for consistency [with requirements to submit decommissioning plans and related financial assurance information], the deadline for the submittal of a license renewal application should be 5 years prior to the expiration of the current operating license.”³ Notably, no statute requires that an LRA review must be able to be completed prior to expiration of the license in order to be “timely.”

¹ At the time the NRC issued its original license renewal rule, the NRC Staff noted that “[a]ny period determined as reasonable for NRC review of license renewal applications should ideally not be restrictive to licensees.” NUREG-1362, “Regulatory Analysis for Final Rule on Nuclear Power Plant License Renewal” (Dec. 1991) at 5-5.

² Nuclear Power Plant License Renewal; Proposed Rule, 55 Fed. Reg. 29,043, 29,051 (July 17, 1990).

³ Nuclear Power Plant License Renewal; Final Rule, 56 Fed. Reg. 64,943, 64,962 (Dec. 13, 1991).

Therefore, neither the AEA or APA requires a five-year period—or any other fixed period—for filing an LRA to comply with the timely renewal doctrine. The NRC may shorten the period at its discretion and in accordance with agency rules through a change to, or exemption from, the existing regulation. Accordingly, this exemption is authorized by law.

3.2 The Exemption Will Not Present an Undue Risk to Public Health and Safety

PG&E will need to satisfy applicable regulatory requirements in connection with the preparation and submittal of a sufficient LRA. As previously discussed, PG&E did submit a timely and sufficient LRA in 2009. The NRC's review of the technical and safety aspects of the LRA were documented in a safety evaluation report, in which the NRC staff "determine[d] that the requirements of 10 CFR 54.29(a) ha[d] been met." (Reference 8.2). If required by the NRC, PG&E will be submitting a new LRA to the NRC for review and approval by December 31, 2023. Because many NRC Staff resources were expended on the initial LRA review and PG&E will factor in lessons learned regarding the NRC LRA review process, the review time for the NRC is expected to be less than the review time for a typical initial LRA. The proposed exemption would allow PG&E to continue operating DCCP Units 1 and 2 while the LRA is under review.

Pursuant to 10 CFR 54.29, "Standards for issuance of a renewed license," a renewed license may be issued only upon a finding by the NRC that, for matters within the scope of license renewal, there is "reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the [current licensing basis], and that any changes made to the plant's [current licensing basis] ... are in accord with the [AEA] and the Commission's regulations." Nothing in this exemption request would obviate the NRC's required findings under Section 54.29, or limit public participation in the license renewal process.

Furthermore, in accordance with regulatory requirements the NRC will continue to have an onsite presence during the LRA review period. Pending final action on the LRA, the NRC will retain its authority to conduct all regulatory activities associated with licensing, inspection and oversight and to take whatever actions may be necessary to ensure adequate protection of public health and safety.

Therefore, the continued operation of DCCP during the review of the LRA will not present an undue risk to public health and safety.

3.3 The Exemption Is Consistent with the Common Defense and Security

The proposed exemption does not alter the design, function, or operation of any structures or plant equipment that is necessary to maintain the safe and secure status of the plant and will not adversely affect PG&E's ability to physically secure

the site or protect special nuclear material. DCP's safeguards and security programs will remain in full effect during any interim period permitted under the timely renewal doctrine. Further, licensee security programs are outside the scope of the license renewal review. Therefore, PG&E has concluded that the proposed exemption is consistent with the common defense and security.

4. Special Circumstances

10 CFR 50.12(a)(2) states that the Commission will not consider granting an exemption unless special circumstances are present and identifies in 10 CFR 50.12(a)(2)(i)-(vi) when special circumstances are present. Special circumstances are present as discussed below.

4.1 Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others who are similarly situated. (10 CFR 50.12(a)(2)(iii))

It is important to emphasize that PG&E has not intentionally postponed the decision to seek renewal of the operating licenses for DCP Units 1 and 2. As mentioned above, PG&E did, in fact, submit an LRA many years in advance of the DCP Units 1 and 2 operating license expiration dates. However, after that LRA was withdrawn, significant factors related to the energy needs in California have driven the State to direct PG&E to keep the option of continuing DCP operations beyond the current license expirations. State policy has evolved in an unanticipated manner that necessitates PG&E to request that the NRC either resume its review of the LRA (preferred approach) or begin its review of a new LRA submitted less than 5 years prior to the expiration date of the licenses for each DCP unit.

The NRC's timely renewal regulation did not contemplate the substantial impact that regulatory and legislative conditions could have on licensees' decisions to pursue license renewal, as comparable conditions did not exist at the time. The recent decisions of numerous licensees to prematurely close nuclear power plants and related State legislative actions intended to prevent further shutdowns are a testament to this fact.

The California Governor signed SB 846 on September 2, 2022. (Reference 8.6). SB 846 reversed the prior CPUC decision approving the retirement of DCP Units 1 and 2 by the expiration of the operating licenses. The bill was declared to take effect immediately as an urgency statute. SB 846, Section 5, Chapter 6.3 states in part:

Preserving the option of continued operations of the Diablo Canyon powerplant for an additional five years beyond 2025 may be necessary to improve statewide energy system reliability and to reduce the emissions of

greenhouse gases while additional renewable energy and zero-carbon resources come online, until those new renewable energy and zero-carbon resources are adequate to meet demand. Accordingly, it is the policy of the Legislature that seeking to extend the Diablo Canyon powerplant's operations for a renewed license term is prudent, cost effective, and in the best interests of all California electricity customers.

If this exemption is not granted, PG&E will be required to shutdown DCPD if the LRA is not approved before the current licenses expire. This would result in an undue hardship, as the power provided by DCPD, Units 1 and 2 would no longer be available to meet the electricity demands of the residents of California or help ensure grid reliability. DCPD is a zero carbon, base load generator that supplies approximately 8.5 percent of California's total electricity generation and provides capacity during the "net peak" evening hours. The State has projected a shortfall in energy supply versus demand at net peak.

These special circumstances, clearly demonstrate an undue hardship that is significantly in excess of the circumstances and associated hardships that were anticipated when the regulation was adopted and as such, provide justification for the issuance of this exemption.

4.2 There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. (10 CFR 50.12(a)(2)(vi))

As described above, PG&E operates within a regulatory, and legislative environment that continues to evolve and that dynamic has factored heavily into the decision to seek license renewal for DCPD, Units 1 and 2. The recent efforts by the State of California to keep DCPD open based, in part, on climate change impacts and serious electricity reliability challenges constitutes material circumstances that were not specifically considered when the NRC revised 10 CFR 2.109(b) in 1991. In deciding on a five-year advance filing period for the timely renewal rule, the NRC did not consider these factors. Rather it adopted the five-year timeframe for administrative reasons; i.e., to provide consistency with other regulations requiring the filing of decommissioning plans and financial assurance information five years prior to license expiration.

PG&E has found that it is in the public interest to grant the exemption based on these new and material circumstances because it would provide PG&E the option to keep both DCPD units operating past the current expiration dates of the licenses to support the State of California. The State's recent efforts to keep the option open demonstrates the urgency and necessity to keep the DCPD units online past the expiration date of the operating licenses. SB 846 states, "... it is the policy of the Legislature that seeking to extend the Diablo Canyon powerplant's operations for a

renewed license term is prudent, cost effective, and in the best interests of all California electricity customers.” These material circumstances were not considered when the regulation was adopted and as such, in PG&E's view, it is in the public interest to grant this exemption.

5. Precedent

The NRC has previously approved several requests for exemptions from the timely renewal provision of 10 CFR 2.109, for other nuclear power plants. While the requested timing in the previous exemptions is different than that requested by PG&E, so is the unique situation currently evolving in the State of California. References 8.7 through 8.11 provide examples of previously approved exemptions related to the timely renewal provision of 10 CFR 2.109 for power reactor license renewals.

Notably, the NRC has not limited its approval of exemptions from 10 CFR 2.109 to only applications for which the review is anticipated to be “completed” prior to expiration of the licenses. For example, in 2005, the NRC approved a timely renewal exemption for the University of Utah Research Reactor, permitting the applicant to submit the application “less than 30 days prior to the expiration of the operating license.” (Reference 8.12). The NRC’s review of the associated application was not completed until more than six-years after the original license would have expired. (Reference 8.13)

Based on the proposed submittal date for a new DCPP LRA, and review time for the NRC to include potential public involvement in the process, the projected approval date for the LRA may not be until after the expiration of the Unit 1 and 2 operating licenses. However, there is precedent for power reactors continuing to operate beyond the expiration dates in their original licenses. More specifically, Indian Point Nuclear Generating Units 2 and 3 continued to operate under “timely renewal” until the NRC made a final determination on the LRA. (Reference 8.14)

6. Environmental Consideration

Pursuant to 10 CFR 51.22(c)(25), an exemption from NRC regulations is subject to a categorical exclusion from the preparation of an environmental assessment or an environmental impact statement if: (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve scheduling requirements which are administrative.

As demonstrated below, each of these provisions in 10 CFR 51.22(c)(25) is satisfied by this exemption request. Therefore, pursuant to 10 CFR 51.22(b), no environmental

impact statement or environmental assessment needs to be prepared in connection with the proposed exemption.

6.1 This exemption does not involve a significant hazards consideration.

As provided in 10 CFR 50.92, an action involves a significant hazards consideration if it would: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. As demonstrated below, none of these criteria apply to this exemption.

The proposed exemption would allow PG&E to submit an LRA for DCCP Units 1 and 2 less than five years before the expiration of the operating licenses, while still maintaining timely renewal protection under 10 CFR 2.109(b). The proposed exemption does not involve a significant increase in the probability or consequences of an accident previously evaluated because it does not involve a change to the design configuration or operation of the facility. The proposed exemption does not involve physical changes to the facility or in the procedures governing operation of the plant. Therefore, the exemption does not create the possibility of a new or different kind of accident. Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the radiological dose to the public and control room operators in the event of an accident. The proposed exemption has no impact on the margin of safety and robustness provided in the design and construction of the facility. In addition, the proposed exemption will not relax any of the criteria used to establish safety limits, nor will the proposed exemption relax safety system settings or limiting conditions of operation as defined in Technical Specifications. Therefore, the proposed exemption does not involve a significant reduction in a margin of safety.

6.2 This exemption does not involve a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

There are no expected changes in the types, characteristics, or quantities of effluents discharged to the environment associated with the proposed exemption. The exemption will not cause any materials or chemicals to be introduced into the plant that could affect the characteristics or types of effluents released offsite. In addition, the method of operation of waste processing systems will not be affected by the exemption. The proposed exemption will not result in changes to the design basis requirements of structures, systems and components (SSCs) that function to limit or monitor the release of effluents. All the SSCs associated with limiting the release of effluents will continue to be able to perform the necessary functions.

Therefore, the proposed exemption will not result in a significant change in the types or significant increases in the amounts of any effluents that may be released offsite.

6.3 This exemption does not involve a significant increase in individual or cumulative public or occupational radiation exposure.

The exemption does not involve any physical change to the facility or in the procedures governing operation of the plant. Therefore, the exemption does not involve a significant increase in individual or cumulative public or occupational radiation exposure.

6.4 This exemption does not involve a significant construction impact.

The exemption does not involve any physical change to the facility or the manner in which the plant will be constructed. Therefore, the exemption does not involve a significant construction impact.

6.5 This exemption does not involve a significant increase in the potential for or consequences from radiological accidents.

Refer to the discussion included in Section 6.1.

6.6 The requirements from which this exemption is sought involve 10 CFR 51.22(c)(25)(vi)(G) (Scheduling requirements), and 10 CFR 51.22(c)(25)(vi)(I) (Other requirements of an administrative, managerial, or organizational nature).

The underlying purpose of the timely renewal requirement in 10 CFR 2.109(b) from which this exemption is sought is to protect a licensee who is engaged in an ongoing licensed activity who has complied with agency rules in applying for a renewed or new license from facing license expiration as the result of delays in the administrative process. The requested exemption if granted, would allow PG&E to submit the LRA for DCPD Units 1 and 2 with less than five years remaining before expiration of the units' operating licenses while maintaining the protections of the timely renewal provision in 10 CFR 2.109(b).

7. Conclusion

Pursuant to the provisions of 10 CFR 54.15 and 10 CFR 50.12, PG&E is requesting an exemption, if the request included in Enclosure 1 is not granted, from the five-year time limit specified in the NRC timely renewal regulation in 10 CFR 2.109(b). Based on the considerations discussed above, PG&E proposes that the requested exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and special circumstances are present as set forth in 10 CFR 50.12.

8. References

- 8.1 PG&E Letter DCL-09-079, "License Renewal Application," dated November 23, 2009 (ML093340086, ML093340116, and ML093340123)
- 8.2 NRC Letter, "Safety Evaluation Report Related to the License Renewal of Diablo Canyon Nuclear Power Plant, Units 1 and 2," dated June 2, 2011 (ML11138A274 and ML11153A103)
- 8.3 PG&E Letter DCL-18-015, "Request to Withdraw the Diablo Canyon Power Plant License Renewal Application," dated March 7, 2018 (ML18066A937)
- 8.4 NRC Letter, "Pacific Gas and Electric Company Diablo Canyon Power Plant, Unit Nos. 1 and 2 Withdrawal of License Renewal Application," dated April 17, 2018 (ML18093A117)
- 8.5 California Energy Commission, Notice of Joint-Agency Remote-Access Workshop, RE: Diablo Canyon Power Plant, dated August 5, 2022
- 8.6 Senate Bill No. 846, Diablo Canyon power plant: extension of operations, Introduced by Senator Dodd, Principal coauthor Assembly Member Cunningham, accessed at [Bill Text - SB-846 Diablo Canyon powerplant: extension of operations.](#)
- 8.7 NRC Letter, "Oyster Creek Nuclear Generating Station – Exemption from the Requirements of Section 109(b) of 10 CFR Part 2, Regarding the Effect of Timely License Renewal Application (TAC No. MC3967)," dated December 22, 2004 (ML042960164)
- 8.8 NRC Letter, "Clinton Power Station, Unit 1, Exemption from the Requirements of 10 CFR 54.17(A) (EPID L-2018-LLE-0018)," dated July 11, 2019 (ML19092A258).
- 8.9 NRC Letter, "Nine Mile Point Nuclear Station, Unit 1 – Exemption from the Requirements of 10 CFR Part 2, Section 2.109(b) Related to Submission of Subsequent License Renewal Application (EPID L-2020-LLE-0146)," dated April 9, 2021 (ML21061A050).

- 8.10 NRC Letter, "R.E. Ginna Nuclear Plant - Exemption from the Requirements of 10 CFR 2.109(b) Related to Submission of Subsequent License Renewal Application (EPID L-2020-LLE-0144)," dated April 14, 2021 (ML21063A004)
- 8.11 NRC Letter, "Dresden Nuclear Power Station, Units 2 and 3 – Exemption from the Requirements Related to Submission of Subsequent License Renewal Application (EPID L-2021-LLE-0048)," dated March 15, 2022 (ML21305A016)
- 8.12 NRC Letter, "University of Utah Research Reactor – Exemption from the Requirements of Section 109(A) of 10 CFR Part 2, Regarding the Effect of Timely License Renewal Application (TAC No. MC6715)," dated April 15, 2005 (ML051040323)
- 8.13 NRC Letter, "University of Utah – Issuance of Renewed Facility Operating License No. R-126 for the University of Utah Nuclear Research Reactor (TAC No. ME1599)," dated October 31, 2011 (ML112500321)
- 8.14 NRC Record of Decision, "License Renewal Application for Indian Point Nuclear Generating Unit Nos. 2 and 3," dated September 17, 2018 (ML18212A032)
- 8.15 PG&E Letter, DCL-16-066, "Request to Suspend NRC Review of Diablo Canyon Power Plant License Renewal Application, " dated June 21, 2016 (ML16173A454)