



THIRD WAY

February 1, 2023

Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Subject: Third Way Comment on Pacific Gas and Electric's October 31, 2022 Letter Requesting an Exemption from 10 CFR 2.109(b).

Dear Ms. Andrea Veil:

Third Way is pleased to recognize that the Nuclear Regulatory Commission (NRC) has begun consideration of the requests made by Pacific Gas and Electric (PG&E) regarding the license renewal application for the Diablo Canyon Power Plant (DCPP) in a letter dated October 31, 2022. We write this comment letter to directly express our support for PG&E's request for an exemption from 10 CFR 2.109(b) regarding eligibility for "timely renewal" status in the event that the NRC's licensing review extends beyond the current expiration dates of the two licenses being considered for renewal. We recognize that circumstances predominantly beyond PG&E's control resulted in a late-stage, yet well-reasoned policy shift toward keeping DCPP open and thus placed DCPP's license status in its current position.

As you know, we've emphasized the NRC's growing role in the fight to stem climate change with innovation and healthy ambition. As key stakeholders, local, and national policymakers recognize the need to bring every tool available towards meeting state and federal climate goals, there will be more support for cases like DCPP's—and the NRC will have a critical role to play in promoting the health of the public and the environment. We appreciate that NRC leadership recognizes the climate imperative in the Agency's work and even further, the staff's commitment to supporting clean energy through good regulation of the country's existing nuclear reactors.

The DCPP license renewal is both essential to the energy future of California and a major opportunity for the NRC to show commitment to the health of the surrounding communities and local environment. An interruption in the operation of DCPP, solely to allow for completion of the NRC's review of the license renewal applications, would require the state to take steps to supplement DCPP's output through other generation sources which are overwhelmingly likely to be fossil fuel based. As such, a rejection of PG&E's exemption request and a subsequent delay of DCPP's license restoration would pose a negative impact to local health outcomes and to the environment for largely procedural reasons without any apparent safety benefit.

Recognizing the NRC's Principles of Good Regulation and a respect for the effective management of staff capacity, we also appreciate that there are unprecedented and novel characteristics to DCPP's circumstances that the staff are currently navigating. Nonetheless, we believe there is sufficient basis for the staff to grant PG&E's exemption request in a manner consistent with previous decisions regarding applications of similar conditions. We note that the NRC has granted exemptions in a number of instances (the Ginna, Clinton and Oyster Creek plants) in which the licensee requested an exemption to allow submission of the renewal application less than five years before license expiration. As in these earlier cases, DCPP has been affected by ongoing activities beyond the purview of the NRC, which obscured clarity around proper timing for such an application and affected the LRA for the plant. As such, it would be consistent and proper regulatory practice to consider PG&E's request with the same disposition and deference toward a reasonable accommodation.

Moreover, we see no legal compulsion to reject the exemption. The NRC originally proposed a three year period prior to license expiration for submission of renewal applications, but changed the term to five years in the final rule on license renewal. See 56 Fed. Reg. 64962 (Dec. 13, 1991). The timely renewal doctrine itself stems from the Administrative Procedure Act of 1946, sec. 9(b), 5 USC 558(c)(2), which established a 30 day period prior to license expiration for the submission of an application for renewal, an approach applied by the NRC to many other license renewal applications. The timely renewal doctrine is intended essentially to protect the rights of existing licensees that seek extensions of their licenses. The NRC's use of the longer period for prior application in license renewal was intended to allow a sufficient period to conclude its review prior to the original expiration date, a reasonable approach though one not compelled by law. In this context, we note that the timely renewal period has only been entered while the final resolution was pending for the renewal of the Indian Point Units 2 and 3 licenses.

The NRC's responsibility to the public in this matter is clear—PG&E must submit an LRA and any materials necessary to update the licensing basis for the plant that are complete and deemed sufficient to conduct a reasonable review. Provided that PG&E is able to meet this burden and, given the practicality of PG&E's request and the importance of DCPD to California, a refusal to grant the exemption would be a significant misstep without any benefit to public safety or needed assurance of compliance with the law.

Sincerely,

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