UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the matter of: PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2)	Docket Nos. 50-275 and 50-373 January 20, 2023

PACIFIC GAS AND ELECTRIC COMPANY RESPONSE TO THE JANUARY 10, 2023 EXTRAPROCEDURAL FILING BY SAN LUIS OBISPO MOTHERS FOR PEACE, FRIENDS OF THE EARTH, AND ENVIRONMENTAL WORKING GROUP

Timothy P. Matthews, Esq.
Paul M. Bessette, Esq.
Ryan K. Lighty, Esq.
MORGAN, LEWIS & BOCKIUS LLP

Counsel for Pacific Gas and Electric Company

TABLE OF CONTENTS

TABLE OF AUTHORITIES

NRC Cases

Federal Court Cases

Statutes

Regulations

Federal Register Notices

Acts of Congress

Other Authorities

I. INTRODUCTION

Pacific Gas and Electric Company ("PG&E") hereby submits this response to the document styled as a "Petition" (referred to herein as the "Filing"[1]) and emailed to the Secretary of the U.S. Nuclear Regulatory Commission ("NRC") on January 10, 2023, by San Luis Obispo Mothers for Peace ("SLOMFP"), Friends of the Earth ("FOE"), and Environmental Working Group ("EWG") (collectively, the "Filers").[2] The Filing asks the Commission to exercise its "supervisory authority" to deny PG&E's October 31, 2022, requests to resume review of the Diablo Canyon Power Plant ("DCPP") license renewal application ("LRA") (the "Resumption Request") or, alternatively, for a regulatory exemption (the "Exemption Request").[3]

As a general matter, the Resumption Request and Exemption Request are currently under consideration by the NRC Staff pursuant to the NRC's established and longstanding regulatory process. The Filing requests that the Commissioners exercise their "supervisory authority" to intercede in the Staff's review and summarily deny both requests. However, there is no procedural basis in the NRC's Rules of Practice and Procedure that authorizes a request of this type—and the Filing itself does not claim otherwise. In fact, the Commission has long held that such requests are "procedurally improper."[4] In essence, the Filing is simply an unsolicited

---

1 "Petition" is an established and defined term in the NRC's Rules of Practice and Procedure. *See, e.g.*, 10 C.F.R. §§ 2.309 (petitions to intervene), 2.345 (petitions for reconsideration), 2.802 (petitions for rulemaking). Filers are represented by experienced NRC counsel. Because the Filers use the term in a manner that may lead to confusion, PG&E uses these neutral terms.

2 Petition by San Luis Obispo Mothers for Peace, Friends of the Earth and Environmental Working Group to Deny Pacific Gas & Electric Company's Request to Review Undocketed license Renewal Application for the Diablo Canyon Unit 1 and Unit 2 Reactors and Petition to Deny Pacific Gas & Electric Company's Request to Extend the Diablo Canyon Reactors' License Terms Without Renewing the Licenses (Jan. 10, 2023).

3 Letter from P. Gerfen, PG&E, to NRC Document Control Desk, "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" (Oct. 31, 2022) (ML22304A691) ("Gerfen Letter") (Enclosure 1 is the "Resumption Request" and Enclosure 2 is the "Exemption Request").

4 *See, e.g.*, *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), CLI-19-7, 90 NRC 1, 10 (2019).

comment letter and should be regarded as such by the agency.[5] Regardless, as explained below, Filers fail to identify any compelling reason for the Commission to jettison its longstanding established regulatory process. The Filing should be rejected or disregarded for that reason alone.

Furthermore, even if the Commission considers the Filing in an extraordinary exercise of its discretion (a result that is not warranted here), it should conclude that Filers fail to identify any legitimate basis to "deny" either the Resumption Request or the Exemption Request. The Filing contains a number of complaints and assertions that are individually and collectively baseless, legally erroneous, and factually inaccurate. Ultimately, the Filing identifies no reason that either request should not be granted, and the Commission should allow the NRC Staff to continue its process in the normal course.

II. BACKGROUND

A. The Original LRA

On November 23, 2009, PG&E submitted the LRA seeking the renewal of Facility Operating Licenses DPR-80 and DPR-82 for DCPP Units 1 and 2, respectively. The NRC Staff determined that the LRA was complete and acceptable for docketing and published a notice of hearing opportunity in the *Federal Register*.[6] At various points thereafter, SLOMFP and FOE

---

[5] Filers were parties to two prior unsolicited comment letters submitted to the NRC discussing topics similar to those raised in the Filing. *See* Letter from J. Swanson, *et al*. to NRC Commissioners, "Objection to PG&E's Requests Related to Withdrawn License Renewal Application for Diablo Canyon Nuclear Power Plant" (Nov. 17, 2022); Letter from J. Swanson, *et al*. to NRC Commissioners, "PG&E Must be Required to Submit a New License Renewal Application for Diablo Canyon Units 1 and 2 and NRC Must Comply With All Safety and Environmental Requirements in Conducting its Review" (Dec. 6, 2022) (ML22342B239) (collectively "Comment Letters").

[6] 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. 3,493 (Jan. 21, 2010) ("Docketing Notice").

(but not EWG) petitioned to intervene in the proceeding and proposed various contentions. The contested adjudicatory proceeding continued for several years and was finally terminated by the Atomic Safety and Licensing Board ("ASLB") in October 2015.[7] The Commission's final adjudicatory order in the proceeding, denying petitions for review of certain ASLB orders, was issued in June 2016.[8] FOE petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review the Commission's adjudicatory order denying its hearing request and petition to intervene.[9] SLOMFP did not seek judicial review of any NRC adjudicatory decisions.

The NRC Staff conducted its safety and environmental reviews in parallel with the adjudicatory proceeding. This included reviews of various supplements and revisions to the LRA, multiple public meetings on licensing and environmental matters, and multiple audits on safety and environmental issues.[10] The Staff ultimately issued a safety evaluation report on June 2, 2011, documenting its safety review, but did not issue a draft or final supplemental environmental impact statement ("EIS").[11]

On June 21, 2016, PG&E requested that the NRC suspend activity on the LRA.[12] On March 7, 2018, PG&E requested to withdraw the LRA and all associated correspondence and commitments.[13] The decision to withdraw the LRA was based on the determination that

---

7 *Pac. Gas & Elec. Co* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), LBP-15-29, 82 NRC 246 (2015).

8 *Pac. Gas & Elec. Co* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-16-11, 83 NRC 524 (2016).

9 Petition for Review, Friends of the Earth v. U.S. Nuclear Regulatory Commission and United States of America, No. 16-1004 (D.C. Cir. Jan. 8, 2016), Document No. 1593061.

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

11 *See generally id.*

12 Letter from E. Halpin, PG&E, to NRC Document Control Desk, "Request to Suspend NRC Review of Diablo Canyon Power Plant License Renewal Application" (June 21, 2016) (ML16173A454).

13 Letter from J. Welsch, PG&E, to NRC Document Control Desk, "Request to Withdraw the Diablo Canyon Power Plant License Renewal Application" (Mar. 7, 2018) (ML18066A937).

continued baseload operation of the two DCPP units beyond their licensed operating periods was not necessary to meet California's projected energy demand requirements in light of changes in electricity supply in the state. This resource planning decision was approved by the California Public Utilities Commission ("CPUC") on January 11, 2018.[14] On April 16, 2018, the NRC granted PG&E's request to withdraw the LRA.[15] On September 25, 2018, the U.S. Court of Appeals for the District of Columbia Circuit granted a motion by PG&E and the NRC to dismiss FOE's petition for review *in absentia*.[16]

B. Post-Withdrawal Developments

After withdrawal of the LRA, PG&E began 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 in 2024 and 2025, respectively. 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 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

---

[14] Public Utilities Commission of the State of California, Decision Approving Retirement of Diablo Canyon Nuclear Power Plant, Decision 18-01-022 (Jan. 11, 2018), *available at* https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M205/K423/205423920.PDF. That order approved a settlement authorizing PG&E to recover certain NRC license renewal "costs," but did not otherwise address the withdrawal of the LRA.

[15] Pacific Gas & Electric Company; Diablo Canyon Power Plant, Unit Nos. 1 and 2; Withdrawal of License Renewal Application, 83 Fed. Reg. 17,688 (Apr. 23, 2018).

[16] Friends of the Earth v. U.S. Nuclear Regulatory Commission and United States of America, No. 16-1004, slip op. (D.C. Cir. Sept. 25, 2018), Document No. 1752493 ("Upon consideration of the joint motion to dismiss filed by the respondents and intervenor, and the lack of any response by the petitioner, it is ORDERED that the motion be granted and this case be dismissed.").

> 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.[17]

On September 2, 2022, the Governor of California signed Senate Bill No. 846, which invalidated the prior CPUC decision approving the retirement of DCPP Units 1 and 2 by the expiration of the operating licenses, directed PG&E to seek renewal of those licenses, and authorized a loan in the amount of up to $1.4B for that purpose.[18] Shortly thereafter, the U.S. Department of Energy certified both units to participate in the Civil Nuclear Credit program and conditionally awarded funding to support the continued operation of DCPP.[19]

Consistent with the direction of the Governor of California to preserve the option of continuing operation of DCPP beyond the expiration of the current operating licenses, PG&E submitted the Resumption Request to the NRC on October 31, 2022, requesting the NRC Staff to resume its review of the LRA and confirm that, under 10 C.F.R. § 2.109, "Effect of timely renewal, application," the NRC will not deem the existing licenses to have expired until the NRC has made a final determination on the LRA. Alternatively, in the event that the NRC decides not

---

[17] California Energy Commission, Docket No. 21-ESR-01, "Notice of Joint-Agency Remote-Access Workshop, RE: Diablo Canyon Power Plant," (Aug. 5, 2022, Revised Aug. 11, 2022), *available at* https://efiling.energy.ca.gov/GetDocument.aspx?tn=244536.

[18] California Senate Bill No. 846, "Diablo Canyon powerplant: extension of operations," (approved by Governor Sept. 2, 2022) ("SB 846"), *text available at* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB846.

[19] *Biden-Harris Administration Announces Major Investment to Preserve America's Clean Nuclear Energy Infrastructure*, ENERGY.GOV (Nov. 21, 2022), https://www.energy.gov/articles/biden-harris-administration-announces-major-investment-preserve-americas-clean-nuclear.

to resume its review of the LRA and instead requires PG&E to submit a new LRA (which PG&E would aim to do by December 31, 2023), PG&E also submitted the Exemption Request, seeking an exemption from the five-year time limit specified in the NRC timely renewal regulation in 10 C.F.R. § 2.109(b). The NRC Staff held a public meeting on December 8, 2022, to discuss the Resumption Request and the Exemption Request.[20] During that meeting, the NRC confirmed (in response to a question from counsel for SLOMFP) that the NRC Staff has the requisite delegated authority to act on those requests, but had not yet decided whether the matter involved a significant policy issue that must be presented to the Commission.[21]

Meanwhile, on November 17, 2022, and December 6, 2022, Filers (along with a fourth entity that did not join the Filing) submitted two unsolicited comment letters with the NRC asserting that the Resumption Request and Exemption Request were "unlawful" and "demanding," among other things, that the Commission deny both.[22] On January 10, 2023, apparently frustrated[23] by the Commission's failure to promptly respond to their "demands," Filers submitted the instant Filing to the Secretary of the NRC via email. Essentially, the Filing repeats certain arguments from the Comment Letters and repackages them with an adjudicatory caption.[24] Tellingly, the Filing identified no procedural basis.

---

20 Letter from B. Harris, NRC to P. Gerfen, PG&E, "Diablo Canyon Power Plant, Units 1 and 2 - Public Meeting Summary of Pre-Submittal Meeting" (Jan. 6, 2023) (ML23004A149).

21 *See* Filing, Attach. 1.

22 Letter from J. Swanson, *et al*. to NRC Commissioners, "Objection to PG&E's Requests Related to Withdrawn License Renewal Application for Diablo Canyon Nuclear Power Plant" (Nov. 17, 2022); Letter from J. Swanson, *et al*. to NRC Commissioners, "PG&E Must be Required to Submit a New License Renewal Application for Diablo Canyon Units 1 and 2 and NRC Must Comply With All Safety and Environmental Requirements in Conducting its Review" (Dec. 6, 2022) (ML22342B239).

23 *See* Filing at 1 n.2 ("Petitioners have received no response to their letters from the NRC.").

24 Filers also purport to "adopt and incorporate by reference" those comment letters into the Filing. Filing at 1 n.2. But that is not permissible in a pleading. *Pub. Serv. Co. of N.H.* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41 (1989) ("[W]holesale incorporation by reference does not serve the purposes of a pleading. . . . The Commission expects parties to bear their burden and to clearly identify the matters on which they intended to rely with reference to a specific point.")

In the absence of any direction to date from the NRC Secretary as to how the Filing should be treated, and in an abundance of caution, PG&E hereby submits this response within the 10-day period specified in 10 C.F.R. § 2.323 for answers to general motions.

III. THE FILING IS PROCEDURALLY IMPROPER AND IDENTIFIES NO COMPELLING REASON TO DEVIATE FROM THE NRC'S ESTABLISHED PROCESSES

As an initial matter, the Filing is remarkable for its lack of any supporting legal or procedural basis. It is generically mis-styled as a "Petition."[25] However, there is no reference, anywhere in the document, to any regulation that purportedly authorizes the submission of the Filing. Nor does any such regulation exist.

Moreover, affirmative requests for exercise of "supervisory authority" (such as the instant Filing) are disfavored and improper. Although the Commission has occasionally exercised its discretionary authority to consider such filings, the Commission has squarely held—including in a recent unanimous decision—that such filings are "procedurally improper."[26] Indeed, the Commission has admonished that interested parties "should limit their requests for our review to those set forth in our rules."[27] Filers identify no such rule here, perhaps in an attempt to avoid the timeliness and consultation requirements governing motions.[28]

Additionally, the Commission exercises its supervisory authority "sparingly."[29] Indeed, most of the cases cited by Filers are plainly distinguishable from the instant scenario because

---

25 *See supra* note 1.

26 *Seabrook*, CLI-19-7, 90 NRC at 10.

27 *Entergy Nuclear Operations, Inc.* (Indian Point, Units 2 and 3), CLI-11-14, 74 NRC 801, 813 n.67 (2011).

28 The most proximate procedural analog to the Filing is a "Motion." *See Motion*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("A written [] application requesting [] a specified ruling or order."). Here, the NRC's rule governing general motions, 10 C.F.R. § 2.323, would compel rejection of the Filing because it fails to satisfy the timeliness requirement in § 2.323(a)(2) and because Filers failed to consult prior to filing, as required by § 2.323(b), among other procedural defects related to filing and service.

29 *Yankee Atomic Elec. Co.* (Yankee Rowe Nuclear Power Station), CLI-91-11, 34 NRC 3, 6 (1991).

those cases involved allegations of an imminent safety or security concern.[30] That is not, at all, the case here. The Filing asks the Commission to intervene in decisions regarding (i) which *regulatory process* (i.e., resumption vs. new application) will be used to review a licensing application, and (ii) the chronological threshold for when a renewal application is considered "*timely*." These process and schedule issues do not raise imminent safety or security concerns.

The Commission, of course, may exercise its discretion over any matter if it finds a "compelling reason" to address a "novel or important issue."[31] However, the Staff is already obligated to "[p]resent all significant questions of policy to the Commission for resolution."[32] Thus, if the Staff identifies a significant policy question related to the Resumption Request or the Exemption Request, there is an existing process for obtaining Commission input. Furthermore, and contrary to numerous assertions in the Filing, Filers and other members of the public will have a full and fair opportunity to participate in subsequent licensing activities—at the appropriate time, and regardless of whether Staff resumes review of the original application or begins review of a new application—to the full extent required by law. PG&E has never indicated or implied otherwise.[33] Ultimately, Filers identify no "compelling reason" to circumvent the agency's established process.

---

30 *See Seabrook*, 90 NRC at 8 (allegation regarding "significant hazards"); *Union Elec. Co.* (Callaway Plant, Unit 2), CLI-11-5, 74 NRC 141, 146 (2011) (pertaining to the Fukushima accident); *Yankee Rowe*, CLI-91-11, 34 NRC at 6 (alleging an imminent problem with "pressure vessel integrity").

31 *Seabrook*, 90 NRC at 10.

32 Management Directive 9.17, "Organization and Functions, Office of the Executive Director for Operations" at 4 (May 26, 2015) (ML18073A263).

33 *See* Resumption Request at 4-5 (PG&E noting its expectation that, "if the NRC staff resumes its review of the LRA, the public will again have 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").

As explained below, even if Filers had articulated some compelling need for Commission intervention in the Staff's ordinary process (they have not), the Filing certainly does not provide a colorable basis for the Commission to "deny" either the Resumption Request or the Exemption Request.

IV. THE FILING IDENTIFIES NO BASIS TO DENY THE RESUMPTION REQUEST

The Filing purports to identify various alleged "legal and policy" grounds to deny the Resumption Request. More specifically, Filers argue that the previous withdrawal of the LRA permanently forecloses the possibility of resumption, that the LRA is incomplete, and that resumption would "prejudice" Filers. As explained below, none of these claims have merit.

A. Resuming Review of a Previously Docketed Application Is Lawful and Consistent with Longstanding NRC Policy and Precedent

First, Filers assert that, "as a matter of law," the previous withdrawal of the LRA "eliminates the possibility of a resumed review."[34] Noticeably, Filers fail to cite any "law" to support this conclusory assertion. Nor do they identify any other basis for the NRC to depart from decades of precedent by declaring PG&E's withdrawal of the LRA to be permanent and irreversible—a result that has been described as a "severe sanction" that is "particularly harsh and punitive."[35] Filers' sole basis for claiming that "law" somehow prohibits resumption of the review is their complaint that the Resumption Request "cites only one" precedential example in which the NRC resumed review of a suspended, withdrawn, voided, or denied licensing application.[36] However, that observation provides no basis to deny the Resumption Request.

---

[34] Filing at 22.

[35] *Puerto Rico Elec. Power Auth.* (North Coast Nuclear Plant, Unit 1), ALAB-662, 14 NRC 1125, 1132-33 (1981).

[36] Filing at 22.

As explained in the Resumption Request, there is precedent for the NRC ceasing and subsequently resuming review of previously docketed applications.[37] The Resumption Request did not purport to provide an exhaustive list of such precedent, but instead cited one particularly relevant "example," in which the NRC resumed review of a reactor license renewal application even after the application had been *denied* four years earlier. Filers argue that this precedent (the *Aerotest* case) is inapt because it involved "no deviation" from standard agency licensing reviews and claim that the Staff characterized this proceeding as entirely "normal."[38] That is inaccurate. The Staff did not characterize its withdrawal of the denial as standard agency practice. What the Staff, in fact, said was that, following resumption of its review of the previously docketed application "as it existed" on the date of denial, the Staff would then continue forward with the "normal process" of requesting additional information, as necessary, and making a final determination on the application. That is the same result PG&E seeks in the Resumption Request.

Furthermore, the NRC has resumed review of previously docketed applications in many different contexts across many decades. For example, in 1995, an applicant "withdrew" a license amendment request, but later rescinded that withdrawal (which is also what PG&E has requested in the Resumption Request).[39] In that matter, the NRC permitted the rescission of the withdrawal, resumed its review, and ultimately granted the amendment.[40] In another case, the

---

37 Resumption Request at 3.

38 Filing at 23 (citing Letter from B. Holian, NRC, to D. Slaughter, Aerotest, "Aerotest Radiography and Research Reactor – Withdrawal of Denial of License Renewal Application (CAC No. MF7221)" at 2-4 (Aug. 8, 2017) (ML17138A309)).

39 *See* Letter from A. Johnson, NRC, to R. Mecredy, Rochester Gas & Elec. Co., "Issuance of Amendment no. 61 to Facility Operating License No. DPR-18, R. E. Ginna Nuclear Power Plant" at 2 (Feb. 13, 1996) (ML010640012).

40 *Id*.

NRC "voided" a license amendment request, but noted that it would "reinstate" that request upon submission of additional information.[41]

Notably, in the new plant licensing context, the Commission has adopted a formal policy that *expressly* permits resumption of licensing reviews after an applicant defers or withdraws a construction permit and its associated operating license ("OL") application. More specifically, in 1987, the agency published a "Commission Policy Statement on Deferred Plants."[42] This policy permits holders of construction permits to "defer" or "terminate" construction of the facility and the NRC's review of the associated OL application, with an option to later "reactivate" those activities. Even though construction and licensing of a "terminated plant" is considered to be "permanently stopped," it "may be reactivated under the same provisions as a deferred plant."[43] If the OL application was under review at the time of deferral or termination, the policy does not require submission of an entirely new OL application in order to resume the licensing review; the policy permits, "[a]s necessary, an amendment to the OL application."[44] Moreover, the NRC and applicants have put this policy into practice in actual licensing proceedings.[45]

Ultimately, nothing in the Filing identifies any reason that either the Commission's published policy, past precedent regarding resumption of licensing reviews, or Resumption Request here are, in any way, prohibited "as a matter of law."

---

41 *See* Letter from R. Torres, NRC, to M. Kohn, Pa'ina Hawaii, LLC, "Void Letter Concerning Application for a License Amendment, Control Number 577283" (June 25, 2012) (ML12177A408).

42 Commission Policy Statement on Deferred Plants; Final Policy Statement, 52 Fed. Reg. 38,077 (Oct. 14, 1987).

43 *Id*. at 38,078, 38,080.

44 *Id*. at 38,079.

45 *See, e.g.*, *History of Watts Bar Unit 2 Reactivation*, NRC.GOV, https://www.nrc.gov/info-finder/reactors/wb/watts-bar/history.html (noting that the agency resumed review of the June 30, 1976 application in conjunction with an "update" submitted on March 4, 2009).

B. Supplementation of a Previously Docketed Application Does Not Invalidate the Original Docketing Decision *Post Hoc*

Second, Filers argue that the NRC cannot resume review of the LRA because, absent further supplementation, it is not "complete and acceptable," and therefore "PG&E would be required to file it again."[46] Filers also purport to identify various ways in which the LRA purportedly is insufficient or must be supplemented. However, these claims fail to identify any reason the NRC must deny the Resumption Request.

As a general matter, the NRC previously determined that the LRA was complete and acceptable for docketing.[47] The Atomic Energy Act of 1954, as amended ("AEA")[48] leaves this decision to the discretion of the NRC and does not authorize challenges to such decisions.[49] Thus, to the extent Filers are attempting to challenge the Staff's previous docketing determination, that challenge is impermissible here.

Additionally, Filers advocate that the withdrawal of the LRA effectively be treated as an *expungement* of the entire administrative record and that PG&E be required to submit a new application altogether. Filers argue that this result is required by the agency's docketing regulation at 10 C.F.R. § 2.101.[50] However, Filers cite no support for their reading of the regulation. On its face, that regulation identifies general requirements regarding application filing and notes that, if the NRC finds an application "complete and acceptable for docketing," it will notify the applicant. It says nothing about the effect of withdrawing an application or any

---

46 Filing at 23.

47 Docketing Notice, 75 Fed. Reg. 3,493.

48 Atomic Energy Act of 1954, Pub. L. No. 83-703, 68 Stat. 919 (codified as amended at 42 U.S.C. §§ 2011 *et seq*.).

49 *See, e.g., Oklo Power, LLC* (Aurora Reactor), CLI-20-17, 92 NRC 521, 524 (2020) (unanimous decision discussing this "well settled" principle).

50 Filing at 23-24.

requirement to re-file an application in its entirety if that withdrawal is subsequently rescinded. More importantly, Filers' interpretation of that regulation as imposing such a requirement would conflict with, and render unlawful, the Commission's Policy Statement on Deferred Plants. As noted above, that policy *explicitly allows* Staff to resume review of a previously withdrawn application *without* resubmission of the application in its entirety. Indeed, the NRC did not require submission of a "new" application in *any* of the examples discussed in Section IV.A, above. Simply put, Filers' flawed reading of NRC docketing regulations is not supported, not persuasive, and identifies no reason to deny the Resumption Request.

Likewise, Filers' substantive challenges to the LRA identify no reason the NRC must deny the Resumption Request. For example, Filers assert that the LRA "must account for exemptions granted by the NRC over the past six years," "failed to provide any information on maintenance activities that it may have stopped," "must report on operating experience over the past years," and "must also evaluate renewable energy alternatives."[51] If review of the LRA resumes, Filers will have a full and fair opportunity to raise these challenges at an appropriate time—but they are clearly premature now, before the NRC has even decided whether it will resume its review and before PG&E has even had an opportunity to supplement its LRA. Moreover, there is no dispute that certain portions of the LRA, including the environmental report, will need to be updated or supplemented. Indeed, in the Resumption Request, PG&E explicitly contemplates that, upon resumption, it will:

> 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

[51] *Id*. at 24-26. As to Filers' vague references to purported deferred maintenance or exemptions, they provide no support other than a reference to a decommissioning funding exemption, which is irrelevant here. As noted above, PG&E will continue to fully comply with the terms and conditions of its operating licenses for DCPP. PG&E has not deferred or exempted itself from anything that would interfere with continued safe operation.

> 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.[52]

Since the inception of the agency, significant NRC licensing actions have involved an iterative process in which applicants supplement applications or respond to NRC requests for additional information to account for evolving circumstances or to supply information not included in an application that is nevertheless needed to complete the licensing review.[53] Filers identify no precedent or authority for the notion that supplementation of the LRA here would somehow require, "as a matter of law," the *entire* LRA to be resubmitted. As a practical matter, resumption would be consistent with the NRC's "Principles of Good Regulation"[54] because, as noted above, the NRC has already conducted substantial safety and environmental reviews.[55] Although some of the previously reviewed information would be updated through supplemental filings that require additional review, this would not summarily invalidate the entirety of the Staff's prior review across several years.

C. Resumption Would Not Prejudice Filers' Ability to Participate in the NRC Review Process Because It Would Return Them to the *Status Quo Ante*

Filers note that they "have a strong interest in participating in the NRC's decision-making process."[56] PG&E does not dispute that members of the public may have a strong interest in the

---

52 Resumption Request at 6. Filers claim, on the basis of this statement, that PG&E "admitted" that the LRA is "incomplete." Filing at 24. That is not accurate. The LRA was "complete and acceptable for docketing" when it was submitted; the subsequent need to update, supplement, or amend portions of the LRA does not retroactively make it "incomplete."

53 *See, e.g.*, *Private Fuel Storage, LLC* (Indep. Spent Fuel Storage Installation), LBP-05-29, 62 NRC 635, 709 (2005) (Attachment).

54 *Values*, NRC.GOV, https://www.nrc.gov/about-nrc/values.html ("[w]here several effective alternatives are available, the option which minimizes the use of resources should be adopted.").

55 *See supra* Section II.A.

56 Filing at 27.

renewal of the DCPP operating licenses. Filers also observe that "the NRC has recognized the value of public participation in licensing proceedings."[57] PG&E likewise values, and fully supports, public participation and transparent regulatory reviews. Indeed, in its Resumption Request, PG&E squarely called-out the importance of the NRC's principle of "Openness" as this process moves forward and agreed that it must be conducted "publicly and candidly."[58] PG&E also explicitly contemplates that, if and when the NRC's review of the LRA resumes, the public will have a full and fair "opportunity to participate in the regulatory process to the extent required by law," including through participation in public meetings, reviews of environmental documents, and adjudicatory challenges to the LRA.[59] These are the same opportunities—no more and no less—that Filers would have had if the LRA had never been withdrawn at all. In other words, Filers would be returned, in all material respects, to the same position they were in before the withdrawal—also known as the *status quo ante*.

Filers claim that resumption would "hamstring" their ability to meaningfully participate in the adjudicatory process because filing new contentions may require them to meet the "good cause" standard in 10 C.F.R. § 2.309(c).[60] However, they fail to explain why that would constitute "prejudice." After the NRC provided a full and fair opportunity for members of the public to challenge the LRA, and various parties submitted petitions and contentions that were fully considered and dispositioned, the contested adjudicatory proceeding was terminated in October 2015.[61] At that point—and for the subsequent two-and-a-half years before the LRA was

---

57 *Id*.

58 Resumption Request at 4.

59 *Id*. at 4-5.

60 Filing at 27-28.

61 *Diablo Canyon*, LBP-15-29, 82 NRC at 255.

withdrawn—new filings were subject to the "good cause" standard in 10 C.F.R. § 2.309(c). Thus, returning Filers to that exact same position would not place them in any better or worse position than they were before the LRA was withdrawn.

Contrary to Filers' claim, PG&E does not assert that "any concerns arising after 2010" are "not subject to any statutory hearing right."[62] As noted in the Resumption Request, PG&E explicitly contemplates that members of the public will have "the ability to challenge materially new information in an adjudicatory forum."[63] Moreover, the "good cause" standard for such challenges does not impose an insurmountable or unreasonable hurdle. It merely requires that any new filing be (1) timely, and (2) based on new information that could not have been challenged in the original adjudicatory proceeding.[64] Filers identify no reason that meeting these entirely reasonable and long-standing standards (e.g., as to the updated application information that PG&E contemplates submitting) would be difficult, much less impose some "prejudice" on Filers.

Filers appear to suggest that only a *de novo* hearing opportunity would avoid this unspecified "prejudice." But that assertion is baseless. Doing so would afford Filers *special*

---

62 Filing at 29.

63 Resumption Request at 5. To address Filers' concern that they may have "no idea" when or whether to submit new challenges, Filing at 28, PG&E is amenable to a resumption process that includes defined dates or triggers for new contentions under 10 C.F.R. § 2.309(c).

64 10 C.F.R. § 2.309(c)(1). New information means that which "was not previously available" and is "materially different" from previously available information. *Id.* PG&E recognizes that the NRC has the authority, and in the past has exercised that authority, to provide a fresh hearing opportunity based on new information upon resumption of a licensing action, and may do so in this case. *See, e.g.*, Tennessee Valley Authority; Notice of Receipt of Update to Application for Facility Operating License and Notice of Opportunity for Hearing for the Watts Bar Nuclear Plant, Unit 2 and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation, 74 Fed. Reg. 24,044 (May 22, 2009) (providing a second hearing opportunity upon resumption of the Watts Bar, Unit 2 OL proceeding); *Duke Energy Carolinas, LLC* (Oconee Nuclear Station, Units 1, 2, & 3), CLI-22-03, 95 NRC __, __ (Feb. 24, 2022) (slip op. at 4) (ordering issuance of a "new notice of opportunity for hearing" following resumption and completion of supplemental environmental reviews in certain subsequent license renewal proceedings). Either way, Filers are not without access to NRC's adjudicatory process.

treatment—namely a "second bite at the apple" to relitigate the LRA *in its entirety*, including as to challenges that were previously litigated and rejected before the LRA was withdrawn. That is plainly unnecessary to avoid "prejudice" to Filers. It would amount to a wholesale discarding—without any corresponding safety or environmental benefit—of the tremendous effort and resources that were expended by PG&E, the NRC Staff, the ASLB, and the Commission to disposition multiple previous challenges (all of which were found meritless) across *seven years* of adjudicatory proceedings at significant taxpayer and ratepayer expense. That outcome is not required as a matter of law.

Finally, Filers assert that the Resumption Request must be denied because Filers "relied" on the withdrawal of the LRA to "relax" their "vigilance over license-renewal-related issues"[65] and because FOE "dropped a federal court lawsuit" challenging the Commission's denial of its hearing request.[66] But Filers identify no reason that an NRC decision to resume review of the LRA would prevent resumption of these activities or otherwise cause some material prejudice.[67] Although Filers may *prefer* to *not* resume these activities, resumption would return them to the *status quo ante*.

* * *

Ultimately, Filers identify no legitimate basis to deny the Resumption Request.

V. THE FILING IDENTIFIES NO BASIS TO DENY THE EXEMPTION REQUEST

The Filing also purports to identify various alleged "legal and policy" grounds to deny the Exemption Request. But, as explained below, the relief PG&E has requested in the

---

65 Filing at 28. It is unclear what this "vigilance" activity entails, but it does not appear to pertain to any established NRC regulatory process. But, as a general matter, PG&E continues to fully comply with its operating licenses and CLB, and the NRC continues to fully oversee and enforce those requirements.

66 *Id*.

67 The dismissal of FOE's petition before the D.C. Circuit was without prejudice to re-file. *See supra* note 16.

Exemption Request is firmly within the NRC's discretion and justified in the instant circumstances. Filers' primary argument is that the AEA, on its face, nullifies the long-standing federal timely renewal doctrine. That is an extreme position not supported by any fact or law. Filers also claim that denial is required because granting the Exemption Request would violate The National Environmental Policy Act of 1969, as amended ("NEPA").[68] But the discussion below details why that argument is entirely meritless.

A. The NRC Has Discretion to Adopt the "Timeliness" Threshold Proposed in the Exemption Request

The NRC's timely renewal regulation at 10 C.F.R. § 2.109 derives from Section 9(b) of the Administrative Procedure Act ("APA") (5 U.S.C. § 558(c)), which 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." However, Congress did not specify any particular "timeliness" parameters. Nor did it require nor prohibit the establishment and codification of default "timeliness" thresholds. Rather, Congress left those determinations to the discretion of the respective agencies.

The Commission has long recognized that establishing *any* particular "timeliness" threshold is bound to be somewhat subjective because "there is not a strong basis for selecting a particular cutoff time."[69] Nevertheless, the NRC elected to codify certain default "timeliness" thresholds in its regulations. For power reactor licensees, the NRC's predecessor, the Atomic

---

[68] National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. § 4321 *et seq*.).

[69] Advance Notice of Proposed Rulemaking; Notice of Workshop: Nuclear Power Plant License Renewal; Public Workshop on Technical and Policy Consideration, 54 Fed. Reg. 41,980, 41,984 (Oct. 13, 1989).

Energy Commission, initially selected and codified a 30-day default "timeliness" threshold.[70] The NRC later exercised its discretion to amend that default threshold to be 5 years.[71]

During the process of changing the default "timeliness" threshold, the Commission opted to examine various practical considerations, from consistency with the timing of other regulatory submissions, to average application review durations.[72] The current default 5-year threshold is based on the former. And the NRC has approved case-specific departures from that default threshold in certain proceedings, pursuant to regulatory exemptions, based on the latter.[73] However, no law compels the NRC to consider (much less, mandate the satisfaction of) these—or any other—specific criteria in determining whether an application is "timely." Simply put, Congress placed no numerical or performance-based limits on an agency's determination of "timeliness."

Here, the Exemption Request asks the NRC to conclude, through issuance of a regulatory exemption from the default "timeliness" threshold in 10 C.F.R. § 2.109, that a new LRA for DCPP (if one is required) would be "timely" if submitted by December 31, 2023, approximately 10 months before the expiration of the DCPP Unit 1 license and 20 months before the expiration of the Unit 2 license. This case-specific departure from the default "timeliness" threshold is plainly within the NRC's discretion, given the broad latitude granted by Congress on this subject, and warranted here given important energy supply, reliability, and state policy matters. The NRC's original 30-day threshold, its current 5-year threshold, and the 10-month threshold

---

70 Atomic Energy Commission; Rules of Practice; Revision of Rules, 27 Fed. Reg. 377, 379 (Jan. 13, 1962).

71 Nuclear Power Plant License Renewal; Proposed Rule, 55 Fed. Reg. 29,043, 29,051 (July 17, 1990); Nuclear Power Plant License Renewal; Final Rule, 56 Fed. Reg. 64,943, 64,962 (Dec. 13, 1991).

72 *Id*.

73 *See* Clinton (ML19193A015); Perry (ML20171A292); Ginna (ML21063A015); Nine Mile Point (ML21061A068); Dresden (ML21305A018).

proposed in the Exemption Request (which falls between the two) all are within the broad grant of discretion that Congress gave to agencies to determine what constitutes a "timely" renewal application.

Finally, Filers claim that, to their knowledge, "the Commission has never before issued an exemption to the timely renewal rule where it was so clear that the NRC's safety and environmental review could not possibly be completed before the expiration dates of the operating licenses."[74] As a general matter, the *default* "timeliness" threshold in 10 C.F.R. § 2.309 for non-power reactors is still 30 days—a duration that is plainly insufficient for the NRC to "complete" a reactor license renewal review. And Filers need only look to PG&E's Exemption Request to find an example of the NRC granting a timely renewal exemption permitting submission of a non-power reactor license renewal application "less" than 30 days prior to the expiration of the license, where the review was expected to take 36 months (twice as long as the review for a power reactor),[75] and where the actual review was not "complete" for more than six years after the original license would have expired.[76] Again, the ability of the NRC Staff to "complete" its review of a license renewal application is not—and has never been—a statutory constraint on the timely renewal doctrine or the issuance of exemptions therefrom. To conclude otherwise would defeat the entire purpose of the APA's timely renewal provision, which is to permit ongoing activities *until* the agency completes its review.

---

74 Filing at 6.

75 *Compare Generic Milestone Schedules of Requested Activities of the Commission*, NRC.gov, https://www.nrc.gov/about-nrc/generic-schedules.html ("License Renewals," "Operating (LWR) and Combined (LWR) – Parts 50, 52, and 54," "18 months") *with id*. ("License Renewals," "Operating (NPUF and non-LWR) – Part 50" "36 months").

76 Exemption Request at 7 (citing 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); 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).

Moreover, there is no compelling safety reason to impose such a constraint. A licensee remains obligated to comply with all regulatory and safety requirements during the timely renewal period, and the agency retains oversight and enforcement authority to take any action, at any time, if necessary to protect public health and safety.[77] Simply put, Filers identify no reason that granting the "timeliness" threshold proposed by PG&E for this proceeding would exceed or abuse the Commission's discretion.

B. <u>The Exemption Is Justified Under the Instant Circumstances</u>

The Exemption Request is reasonable and justified under the unusual circumstances at hand. Those circumstances and justifications are detailed more fully in the Exemption Request.[78] However, it is worth highlighting a few of them here. Ultimately, the Filing offers no information that undercuts these bases for granting the Exemption Request.

First, PG&E did not intentionally postpone the decision to seek license renewal for DCPP. Indeed, PG&E originally filed the LRA in 2009, *many years* in advance of the DCPP license expiration dates. However, after that LRA was withdrawn in 2018, consistent with the CPUC's order approving the retirement of DCPP, significant evolving factors related to the energy needs in California drove the State to enact a statute revoking that CPUC order and *directing* PG&E to resume its efforts to renew the DCPP licenses.

Second, the NRC's review of a new DCPP LRA would be exceptionally unique. That is because a sizeable portion of a new DCPP LRA would, in fact, not be "new"; and a substantial portion of the NRC staff review would presumably not need to be repeated. For example, as noted above,[79] the NRC staff issued a safety evaluation report documenting the safety review

---

77 *See generally* 10 C.F.R. § 2.202(a).

78 *See, e.g.*, Exemption Request at 5-7 (explaining the special circumstances).

79 *See supra* Section II.A.

associated with the original LRA, and completed multiple rounds of environmental reviews, audits, and public meetings. The NRC would not need to "reinvent the wheel" for certain portions of the new application that are not materially different. Accordingly, it is expected that the NRC's review of a new DCPP LRA would be substantially more streamlined, and shorter in duration, than a typical proceeding with no prior review, which the NRC aims to complete within 18 months.[80]

Third, while the substance of the Exemption Request is not subject to public challenge before the NRC,[81] granting that request is nevertheless in the public interest. Indeed, the Governor and Legislature of the State of California have concluded that the continued and uninterrupted operation of DCPP is crucial to "statewide energy system reliability" and, more broadly, "in the best interests of all California electricity customers."[82]

Without timely renewal protection, PG&E may be required to shut down the plant, thereby jeopardizing system reliability. That result may in the interest of the three Filers, but is decidedly *not* in the public interest. In fact, it is precisely the type of unreasonable and unnecessary outcome that the APA's timely renewal provision is intended to prevent. The Supreme Court has explained that the purpose of timely renewal is to "protect a person with a license from the damage he would suffer by being compelled to discontinue a business of a continuing nature, only to start it anew after the administrative hearing is concluded."[83] Nothing

---

80 *See Generic Milestone Schedules of Requested Activities of the Commission*, NRC.gov, https://www.nrc.gov/about-nrc/generic-schedules.html ("License Renewals," "Operating (LWR) and Combined (LWR) – Parts 50, 52, and 54," "18 months").

81 *See* AEA § 189 (a) (allowing such opportunity only for proceedings involving the "granting, suspending, revoking, or amending of any license," but not for other proceedings such as exemption requests).

82 SB 846 § 5 (to be codified at Div. 15, ch. 6.3 § 25548(b) of the California Public Resources Code).

83 *Pan-Atl. Steamship Corp. v. Atl. Coast Line R.R. Co.*, 353 U.S. 436, 439 (1958). *See also Comm. for Open Media v. FCC*, 543 F.2d 861, 867 (D.C. Cir. 1976) (observing that timely renewal is intended "to protect licensees from harm") (citations omitted).

in the Filing provides a basis to conclude that PG&E—or California electricity customers—must be deprived of this important protection as a matter of law, particularly as PG&E must continue to comply fully with its original operating licenses during any timely renewal period.

C. Filers' Assertion that the AEA Nullifies the Timely Renewal Doctrine Is Extreme and Unsupported

As Filers observe, the AEA authorizes the NRC to issue renewable commercial licenses with specified terms not to exceed forty years, and the APA's "timely renewal" provision provides that, upon filing a timely and sufficient renewal application, a license does not expire until the application has been finally determined. According to Filers, these two statutes stand in irreconcilable conflict. More specifically, Filers claim that allowing an NRC license to "not expire" is "legally impossible" because it "effectively would amend" that license in violation of the AEA. However, Filers identify no support for this radical theory nor any basis for the Commission to adopt it here.

First, this theory directly contradicts Commission pronouncements stating the opposite. The Commission has long accepted that the timely renewal doctrine applies to NRC licenses. It has promulgated regulations implementing the timely renewal provisions of the APA.[84] It has issued case-specific regulatory exemptions related to timely renewal.[85] In fact, the Commission has expressly acknowledged that timely renewal protections have attached in past proceedings in which license renewal applications were not finally determined as of the expiration dates specified in the subject licenses.[86] The Commission's position is imminently clear that the AEA

---

84 *See* 10 C.F.R. § 2.109.

85 *See* Clinton (ML19193A015); Perry (ML20171A292); Ginna (ML21063A015); Nine Mile Point (ML21061A068); Dresden (ML21305A018).

86 *See, e.g.*, *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 & 3), CLI-15-6, 81 NRC 340, 343 n.2 (2015) ("Unit 2 is in timely renewal; the existing license will not be deemed to have expired until the license renewal application has been finally determined.").

does not preclude applicability of timely renewal protections to NRC licenses, yet Filers simply dismiss or ignore this directly applicable and abundantly clear regulatory history.

Second, Filers' theory does not offer a valid reading of the statutes. If Filers were correct, no federal license with an expiration date (which likely encompasses nearly all federal licenses)—whether issued by the NRC, the Environmental Protection Agency, the Food and Drug Administration, or any other federal agency—would ever be eligible for timely renewal protection. But that would *swallow-whole* the APA's timely renewal provision. In contrast, statutes enacted by Congress are entitled to a presumption of validity.[87]

Third, Filers' assertion that granting the Exemption Request would somehow "effectively amend" the DCPP licenses is illogical and unsupported. This argument may be an attempt to recycle baseless claims of "*de facto* license amendments" that have been raised and rejected in numerous other proceedings not involving license amendments. As relevant here, the Commission has squarely held that "issuance of an exemption from our *regulations* does not mean, as Petitioners suggest, that the Staff has approved an amendment to the license."[88] Practically speaking, granting the Exemption Request would not modify any term specified in the original licenses themselves. Upon submission of a timely application for renewal, the original license issued by any agency does not expire until the application is dispositioned—not because of some "amendment" of the license approved by such agency—rather, it is "deemed" *by operation of statute* to "not expire."

[8787] *See also, e.g., King v. Burwell*, 135 S. Ct. 2480, 2490 (2015); *Clinton v. City of New York,* 524 U.S. 417, 429 (1998) ("Acceptance of the Government's new-found reading of [the disputed statute] 'would produce an absurd and unjust result which Congress could not have intended.'") (quoting *Griffin v. Oceanic Contractors*, Inc., 458 U.S. 564, 574 (1982)).

[88] *Entergy Nuclear Vt. Yankee, LLC* (Vt. Yankee Nuclear Power Station), CLI-16-17, 84 NRC 99, 111 (2016) (emphasis in original) (citing *Mass. v. NRC*, 878 F.2d 1516, 1521 (1st Cir. 1989)).

D. The Exemption Request Fully Complies with Part 51 and NEPA

Finally, Filers claim that the Exemption Request asks the NRC to "issue an exemption that would extend the Diablo Canyon reactors' license terms *without* completing an environmental review."[89] However, as explained below, the Exemption Request complies with all requirements of Part 51 and NEPA, and Filers' unsupported arguments provide no grounds to deny it.

As detailed in Sections V.A and V.B above, the Exemption Request asks the NRC to conclude that a new LRA for DCPP would be "timely" if submitted by December 31, 2023; it does not *and cannot* seek to avoid any environmental review. Rather, a new LRA would entail a full environmental review, including preparation of an EIS, in compliance with 10 C.F.R. Part 51 and NEPA.

Moreover, the Exemption Request itself does not disregard NEPA, as Filers imply. Multiple pages of the Exemption Request address environmental considerations to the full extent required by Part 51 and NEPA.[90] PG&E concluded that the requested action satisfies all of the criteria for a "categorical exclusion" pursuant to the NRC's NEPA regulations at 10 C.F.R. § 51.22(c)(25). More specifically, PG&E demonstrated that:

> (1) the exemption would involve no "significant hazards" consideration;
>
> (2) the exemption would involve no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;
>
> (3) the exemption would involve no significant increase in individual or cumulative public or occupational radiation exposure;
>
> (4) the exemption would involve no significant construction impact;

---

89 Filing at 33 (emphasis in original).

90 Exemption Request at 7-9.

(5) the exemption would involve no significant increase in the potential for or consequences from radiological accidents; and

(6) the LRA "timeliness" threshold from which the exemption is sought involves scheduling requirements which are administrative.[91]

Because the requested action satisfies all of the criteria for a "categorical exclusion," no formal environmental impact statement or environmental assessment needs to be prepared in connection with the proposed exemption. As the Commission has explained, "a categorical exclusion does not indicate the *absence* of an environmental review, but rather, that the agency has established a sufficient administrative record to show that the subject actions do not, either individually or cumulatively, have a significant effect on the human environment."[92]

In a footnote, Filers suggest that exemptions from the "timeliness" threshold in the NRC's timely renewal regulation can *never* qualify for a "categorical exclusion" because, under the timely renewal doctrine, plants might operate for a brief period beyond the expiration dates specified in their licenses.[93] Filers reason that a categorical exclusion is prohibited because this brief period of operation somehow involves "*significant* environmental impacts."[94] Filers identify no support for this assertion. But that is not surprising because the substantial and multi-decadal history of the operating fleet supports the opposite conclusion—that a brief period of operation beyond the original license term (but fully in accordance with the substantive terms of the original license) is *not* likely to involve any "significant" environmental impacts.[95]

---

91 *Id*. (addressing the criteria in 10 C.F.R. § 51.22(c)(25)).

92 Categorical Exclusions from Environmental Review; Final Rule, 75 Fed. Reg. 20,248, 20,251 (Apr. 19, 2010) (emphasis added).

93 Filing at 34-35 n.114.

94 *Id*. (emphasis added).

95 *See, e.g.*, SECY-21-0001, "Rulemaking Plan – Transforming the NRC's Environmental Review Process" at 4 (Dec. 31, 2020) (ML20212L393) (noting that "over 40 years of NRC regulatory experience" generically suggests that license renewals for the current fleet of nuclear power plants involve no significant impact even for an additional *20 years* of operation).

Lastly, Filers' rely on a strained reading of the Statement of Considerations for the NRC's categorical exclusion rule to claim that the Commission intended to preclude the use of categorical exclusions to satisfy environmental review requirements for timely renewal exemptions. But Filers provide no authority or basis to support that claim. And, more importantly, it flies in the face of substantial precedent. The NRC has granted timely renewal exemptions to power reactor license renewal applicants on several prior occasions—and, in each and every case, has concluded that issuance of the exemption is categorically excluded from the need to prepare an EIS or EA pursuant to 10 C.F.R. § 51.22(c)(25).[96] Filers identify no legal basis requiring a departure from that precedent. Moreover, even if the NRC decides to depart from this precedent, the appropriate path forward is to prepare an EA—not to *deny* the Exemption Request, as Filers demand.[97]

* * *

In sum, Filers identify no legitimate basis to deny the Exemption Request.

VI. CONCLUSION

The Commission should summarily reject the Filing because it is "procedurally improper." If the Commission nevertheless considers the Filing, it should conclude that Filers identify no basis requiring preemptive denial or other deviation from the NRC's normal process for reviewing the Resumption Request or the Exemption Request.

---

[96] *See* Clinton (ML19193A015); Perry (ML20171A292); Ginna (ML21063A015); Nine Mile Point (ML21061A068); Dresden (ML21305A018).

[97] *See* 10 C.F.R. § 51.21 (noting that an EA is required for all actions that do not require an EIS and do not qualify for a categorical exclusion).

Respectfully submitted,

s/ Ryan K. Lighty[+]
RYAN K. LIGHTY, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-5274
Ryan.Lighty@morganlewis.com

s/ Timothy P. Matthews[+]
s/ Paul M. Bessette[+]
TIMOTHY P. MATTHEWS, Esq.
PAUL M. BESSETTE, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-5527
(202) 739-5796
Timothy.Matthews@morganlewis.com
Paul.Bessette@morganlewis.com

Counsel for Pacific Gas and Electric Company

Dated in Washington, D.C.
This 20th day of January 2023

[+] Signers represent that this document has been subscribed in the capacity specified with full authority, that signers have read it and know the contents, that to the best of signers' knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the matter of: PACIFIC GAS AND ELECTRIC COMPANY (Diablo Canyon Nuclear Power Plant, Units 1 and 2)	Docket Nos. 50-275 and 50-373 January 20, 2023

CERTIFICATE OF SERVICE

I certify that, on this date, a copy of the foregoing "PACIFIC GAS AND ELECTRIC COMPANY RESPONSE TO THE JANUARY 10, 2023 EXTRAPROCEDURAL FILING BY SAN LUIS OBISPO MOTHERS FOR PEACE, FRIENDS OF THE EARTH, AND ENVIRONMENTAL WORKING GROUP" was served upon the following via electronic mail, consistent with the original manner of service of the Filing:

U.S. Nuclear Regulatory Commission (NRCExecSec@nrc.gov; Hearing.Docket@nrc.gov)

Diane Curran, Counsel for San Luis Obispo Mothers for Peace (dcurran@harmoncurran.com)

Caroline Leary, Counsel for Environmental Working Group (cleary@ewg.org)

Hallie Templeton, Counsel for Friends of the Earth (htempleton@foe.org)

cc: U.S. Nuclear Regulatory Commission Staff (RidsOgcMailCenter.Resource@nrc.gov)

s/ Ryan K. Lighty
RYAN K. LIGHTY, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 739-5274
Ryan.Lighty@morganlewis.com

Counsel for Pacific Gas and Electric Company