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November 17, 2022

Christopher T. Hanson, Chairman
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David A. Wright, Commissioner
Annie Caputo, Commissioner
Bradley R. Crowell, Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
By email to Brooke P. Clark, NRC Secretary (NRCExecSec@nrc.gov)

SUBJECT: *Objections to PG&E's Requests Related to Withdrawn License
Renewal Application for Diablo Canyon Nuclear Power Plant*

Dear Commissioners of the U.S. Nuclear Regulatory Commission (“NRC”):

We write to you as representatives of environmental and civic organizations concerned about the significant risks to public health and safety and the environment posed by the operation of the Diablo Canyon nuclear reactors.

Introduction

The procedural path to license renewal requested by Pacific Gas and Electric Company (“PG&E”) in its October 31, 2022 letter to you¹ would make a mockery of your actions to fulfill PG&E’s previous intention to close Diablo Canyon in 2024 and 2025, when the operating licenses for Units 1 and 2 expire. It would also gravely undermine key aspects of the license renewal review process that are crucial for safety, compromising the NRC’s license renewal

¹ Letter from Paula Gerfen, Senior Vice President and Chief Nuclear Officer, PG&E, to NRC, re: 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) (“Gerfen Letter”).

We note that while the recipient’s address in the Gerfen Letter is “U.S. Nuclear Regulatory Commission ATTN: Document Control Desk, Washington, D.C. 2055-0001,” the letter’s salutation is addressed to “Dear Commissioners and NRC staff.”

review. Finally, it would prevent effective public involvement by the many groups and citizens concerned about extending the life of the Diablo Canyon units.

PG&E proposes, in essence, that NRC recommence the license renewal proceeding from the point at which the NRC stopped reviewing it in 2016, as if the proceeding had just been recessed for a short period of time. However, the Diablo Canyon units that seek license renewal today are no longer the same as six years ago, when PG&E entered into a settlement agreement to close the reactors and requested the NRC to suspend review of its license renewal application. Various tests, surveillance practices and equipment replacement requirements described later in this letter were terminated. Levels of nuclear plant safety and environmental protection assumed to be in place for the years after 2025 were no longer required, so they were dropped. They are not currently part of the Diablo Canyon nuclear plants, nor can their timely restoration be assumed.

Similarly, relying on the NRC's own public announcement that the Diablo Canyon reactors would close in 2024 and 2025, the public interest community ceased the monitoring activities which the NRC has long recognized are an essential part of the regulatory processes for protecting public safety and environmental protection. And these organizations no longer have in place the organizational focus, the consultants, the studies, or the funding to pick the renewal process again as if everyone had just gone on a short vacation. Their involvement -- and the protection that comes with it -- cannot be assured unless the NRC's license renewal review process commences in a manner that recognizes that this is in many ways a new application.

PG&E improperly calls on the NRC to ignore or repudiate the legal and practical significance of the NRC's approval of PG&E's request to withdraw its license renewal application.

Given our ongoing concerns about the safety and environmental risks posed by operating Diablo Canyon, we were pleased by steps taken by the NRC between 2016 and 2018, at the behest of Pacific Gas and Electric Co. ("PG&E"), to suspend and then terminate the Diablo Canyon license renewal proceeding. And we relied on your 2018 Federal Register notice approving the withdrawal of PG&E's 2009 license renewal application and "all associated correspondence and commitments"² as confirmation that it was no longer necessary to monitor and evaluate PG&E's actions related to license renewal.

Even recently, when the California State Legislature passed S.B.846 requiring PG&E to apply to the NRC for approval of a five-year license renewal term, we were pleased that nothing in that statute encouraged PG&E to cut corners on safety or environmental protection or to seek special treatment by the NRC. In fact, the legislation assumes a thorough NRC license renewal review,

² Notice, 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).

even going so far as to anticipate that safety upgrades ordered by the NRC may make Diablo Canyon too expensive to warrant operation for another five years beyond 2024 and 2025.³

Therefore, we are now outraged by PG&E's October 31, 2022 request -- made directly to you, the NRC Commissioners -- to reinstate the abandoned license renewal proceeding as if your approval of PG&E's withdrawal of the license application had no legal or practical significance. In fact, PG&E does not even acknowledge the existence of the Federal Register notice on which we have relied.

Having withdrawn its 2009 license renewal application with NRC's publicly noticed approval, PG&E has no lawful grounds to request the NRC to resume consideration of that application as if it had not been withdrawn. Because the license renewal docket for Diablo Canyon no longer exists, the NRC must require PG&E to submit a new license renewal application that is current and complete. And the NRC must abide by its regulations for reviewing license application, including waiting to docket the application until the NRC Staff is satisfied it is "complete" as required by 10 C.F.R. § 2.101(a)(3). PG&E concedes it may be as much as another year before it can provide the NRC with the significant amount of information that must be provided.⁴

The NRC actions requested by PG&E would undermine the integrity of the NRC's regulatory review process and prevent effective public participation.

By the same token, the Commission should reject -- for its patent absurdity -- PG&E's suggestion that the NRC should resume its review of the 2009 license renewal application "as it existed" in 2016 when the NRC suspended the license renewal proceeding at PG&E's request, and "submit" to PG&E a Request for Additional Information on "what information [the Staff]

³ Cal. Pub. Resources Code § 25548.3(c)(13), for example, requires PG&E to "conduct an updated seismic assessment" as a loan condition. Section 25548.3(c)(9) foresees that the NRC may order "seismic safety upgrades" that are too expensive to justify the loan. Section 712.8(c)(2)(B) also allows the California Public Utilities Commission ("CPUC") to disallow extended operation if seismic upgrades or "deferred maintenance" are too expensive.

⁴ *Id.*, Enclosure 1 at 6 (stating that PG&E will submit additional information, including updates to the Final Safety Analysis Report, new and material information about safety and environmental issues, and information related to guidance updates "no later than the end of calendar year 2023."). PG&E's broad-brush assertion raises questions about what information may be missing, such as identification of post-Fukushima or other upgrades that PG&E may have declined to install due to perceived cost-ineffectiveness for the remaining few years of operation until 2024 and 2025. PG&E also fails to mention whether or how it intends to satisfy changes in industry guidance for license renewal that have taken effect since 2016.

needs to continue to review.”⁵ The primary responsibility for determining what information to “submit” to the NRC after a six-year hiatus lies with the license applicant, not the regulator. The purpose of requests for additional information is to clarify and fill information gaps, not to restore the fundamental elements of an abandoned license application. To ask the NRC to effectively stand in for PG&E as the license applicant and at the same time act as regulator would undermine the integrity of the NRC’s review process.

Equally important, the NRC should reject PG&E’s grievously unfair proposal to keep the date of docketing the license renewal application at the year 2010, when the NRC published its original hearing notice.⁶ If the NRC were to accept that proposal, all members of the public with an interest in the outcome of the license renewal proceeding would be placed in the position of seeking to participate after passage of the initial 2010 deadline for submitting hearing requests – thereby requiring them to meet a “good cause” standard for late intervention that is subject to discretion of the NRC rather than the statutory right to a hearing under the Atomic Energy Act.⁷ And if PG&E is allowed to dribble information into the NRC rather than submitting a complete and updated license renewal application all at once, interested members of the public will have no way to understand how the new pieces fit together until it is too late to timely request a hearing. Nor will they have a way to prioritize their concerns for purposes of retaining experts or focusing their resources. In short, PG&E’s requested approach would make a mockery of the NRC’s hearing process.

The gross unfairness of PG&E’s proposal is compounded by the fact that in 2016 at least one organization – Friends of the Earth – dropped a federal court lawsuit challenging the NRC’s refusal to grant a hearing on its concerns about seismic risks, in explicit reliance on PG&E’s

⁵ *Id.*, Enclosure 1 at 6.

⁶ *Id.*, Enclosure 1 at 2-3. *See also* 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, Etc., 75 Fed. Reg. 3,493 (Jan. 21, 2010).

⁷ Pursuant to 10 C.F.R. § 2.309(c), any party seeking a hearing after the NRC’s initial deadline for hearing requests must submit a motion demonstrating “good cause” for the untimely filing, *i.e.*, that it was not possible to request a hearing or raise contentions earlier due to the unavailability of relevant information. In judging the timeliness of hearing requests filed after the initial deadline, the Presiding Officer has a “degree of latitude.” *Crow Butte Resources, Inc.* (Marshall Expansion Area), LBP-18-3, 88 N.R.C. 13, 26 (2018) (citing *Strata Energy, Inc.* (Ross In Situ Recovery Uranium Project), LBP-13-10, 78 N.R.C. 117, 130 (2013)).

formal agreement to close the reactors when their operating licenses expired.⁸ Other groups, like San Luis Obispo Mothers for Peace, relaxed their previous vigilance over license renewal-related issues in reliance on the NRC's Federal Register notice that PG&E had withdrawn its license renewal application and committed to closing the reactors in 2024 and 2025. Therefore, to legally characterize any concerns arising after 2010 as late and therefore not subject to any statutory hearing right would be unfair in the extreme. PG&E's proposal seeks the polar opposite of "Principles of Good Regulation" and "Openness" that it disingenuously claims its proposal will fulfill.⁹

There are no relevant precedents for the actions PG&E requests the NRC to take.

Further, PG&E provides no support whatsoever for its claim that "there is abundant precedent for the NRC resuming review of previously docketed applications after they have been suspended, withdrawn, voided, and even denied."¹⁰ The only abundance is in the verbiage PG&E throws at a single irrelevant case: the license renewal proceeding for the Aerotest Radiography and Research Reactor. While PG&E asserts that *Aerotest* provides a "relevant template" for Diablo Canyon,¹¹ *Aerotest* is simply a case in which the applicant obtained a hearing on NRC Staff decisions denying its license renewal application and related license transfer application and reached a successful resolution of the cases after four years.¹² While PG&E implies those four years constituted some kind of gap or hiatus like PG&E's six-year hiatus in pursuing its license renewal application,¹³ the correspondence shows that during all those years Aerostat was participating in a hearing and trying to cure the defects in its license transfer and license renewal applications – a quintessentially "normal" process for reaching a final decision on a license

⁸ See Joint Proposal by Pacific Gas and Electric Company, Friends of the Earth, Natural Resources Defense Council, *et al.* to Retire Diablo Canyon Nuclear Power Plant at Expiration of the current Operating Licenses and Replace it With a Portfolio of GHG Free Resources at 16 (filed before the CPUC June 20, 2016).

⁹ Gerfen Letter, Enclosure 1 at 4-6.

¹⁰ *Id.*, Enclosure 1 at 3.

¹¹ *Id.*, Enclosure 1 at 3.

¹² See letter from Eric J. Leeds, Director, NRC Office of Nuclear Reactor Regulation to Michael Anderson, President, Aerotest Operations, Inc., re: Aerotest Operations, Inc. – Denial of License Renewal, Denial of License Transfer, and Issuance of Order to Modify License, Etc. at 2 (July 24, 2013) (ML13120A598).

¹³ Gerfen Letter, Enclosure 1 at 3.

application.¹⁴ In contrast, there is nothing “normal” about PG&E’s proposal to reinstate a license renewal proceeding that was formally and completely abandoned years earlier, as if it had only been briefly suspended.

PG&E has failed to justify its alternative proposal to issue an exemption from the timely renewal rule.

In addition, PG&E has failed to justify its alternative proposal that if the NRC requires it to submit an up-to-date and complete license renewal application, the NRC should immediately exempt it from the timely renewal requirement to submit its license renewal application five years before the expiration date.¹⁵ While PG&E cites several other cases in which the NRC has granted exemptions to the timely renewal rule for license renewal or subsequent license renewal applications, none of them is comparable to the unique circumstances of Diablo Canyon, where the licensee is now seeking to reverse a six-year-old decision to abandon a previous application for license renewal; and where it has provided the NRC with virtually no information on how aging management risks and environmental risks may have changed since PG&E abandoned its 2009 license renewal application six years ago.

The missing information includes any discussion of the effects of exemptions granted by the NRC over the past six years in the expectation that the reactors would close in 2024 and 2025. For instance, in 2016, the NRC exempted PG&E from the requirement of 10 C.F.R. § 54.21(b) for annual updates regarding changes to the current licensing basis that materially affect the contents of the license renewal application.¹⁶ The NRC also exempted PG&E from limits on its withdrawals from the decommissioning fund.¹⁷ There may be other relevant exemptions or comparable regulatory actions, but PG&E has provided no accounting of them. And PG&E has failed to address the question of whether it will seek any exemptions based on the fact that the

¹⁴ See letter from Brian E. Holian, Acting Director, NRC Office of Nuclear Reactor Regulation, to David M. Slaughter, President, Aerotest Operations, Inc. re: Aerotest Radiography and Research Reactor – Withdrawal of Denial of License Renewal Application (CAC No. MF7221 at 2-4 (Aug. 8, 2017) (ML17138A309).

¹⁵ Gerfen Letter, Enclosure 2 at 1(citing 10 C.F.R. § 2.109(b)).

¹⁶ Notice of Exemption Issuance, Pacific Gas and Electric Company; Diablo Canyon Power Plant, Units 1 and 2; Annual Updates to License Renewal Application, 81 Fed. Reg. 57,942 (Aug. 24, 2016).

¹⁷ Notice of Exemption Issuance, Pacific Gas and Electric Company; Diablo Canyon Nuclear Power Plant Units 1 and 2, 84 Fed. Reg. 48,955 (Sept. 17, 2019).

Legislature foresees that Diablo Canyon operations will be permitted for only a five-year period, not twenty years as anticipated by NRC license renewal regulations.¹⁸

And PG&E has failed to provide any information on maintenance activities that it may have stopped or relaxed based on the imminent closure of the Diablo Canyon reactors. At meetings of the Diablo Canyon Independent Safety Committee (“DCISC”), for instance, significant concern has been raised about the number and nature of inspections and the amount of maintenance that PG&E has suspended due to the expectation that the two reactors would close in the near future.¹⁹

Further, the significant environmental impacts of Diablo Canyon’s once-through cooling system on marine organisms constitute a major environmental issue that previously was resolved by the decision to close Diablo Canyon in 2024 and 2025, and that has now arisen once more. The legal status of a 2010 California State Water Resources Control Board policy that would have required PG&E to install cooling towers or other significant measures to reduce marine impacts by at least 85% if the plant extends operation beyond 2025 is now uncertain.²⁰ PG&E should address this issue.

Of additional significant concern, PG&E has provided no update on seismic investigations of the fault-laced region where the Diablo Canyon reactors are sited, despite the relevance of any new information to the environmental impacts of renewing the operating license.²¹ Given the reliance of the California Legislature on NRC’s thorough review of safety and environmental risks, to rubber stamp PG&E’s regulatory exemption based on the categorical exclusion in 10 C.F.R. § 51.22(c)(25), as suggested by PG&E,²² is premature and unjustified. At this point, the NRC simply does not have enough information to determine whether it can grant an exemption without jeopardizing public health and safety or creating a significant environmental risk.

¹⁸ See page 1 above and 10 C.F.R. § 54.31(b).

¹⁹ See You-tube video of June 22, 2022 DCISC meeting to discuss May 18-19, 2022 Fact-Finding Report, <https://www.youtube.com/watch?v=g93Un6DnRuI&t=77s>.

²⁰ See https://www.pgecorp.com/corp_responsibility/reports/2021/pl04_water.html.

²¹ Indeed, these seismic safety concerns were a key issue raised by Friends of the Earth in the NRC’s proceeding for review of PG&E’s 2009 application to relicense Diablo Canyon. See page 4 and note 8 above. PG&E’s attempt to continue operating beyond the previously agreed-upon retirement date revives these concerns.

²² See Gerfen Letter, Enclosure 2 at 7.

Conclusion and Request for Opportunity to Comment on Exemption Request

In conclusion, in the interests of public health and safety, environmental protection, and the lawful, principled, fair and open administration of NRC's procedures and precedents, we ask you to soundly reject PG&E's utterly unjustified set of proposals to either restore the 2010 license renewal proceeding or to grant PG&E a regulatory exemption from the timely renewal regulations.

Because the NRC has no regulations for public participation in exemption proceedings pursuant to 10 C.F.R. § 50.12, we also ask you to establish procedures for consideration of public comments if you decide to give serious consideration to a regulatory exemption.

Sincerely,

/s/Jane Swanson, Board President
San Luis Obispo Mothers for Peace

/s/Ken Cook, President
Environmental Working Group

/s/Daniel Hirsch, President
Committee to Bridge the Gap

/s/Hallie Templeton, Legal Director
Friends of the Earth

Cc: Senator John Laird, California Legislature
Richard Stapler, Chief of Staff to Senator John Laird
Kara Woodruff, Senior Policy Advisor to Senator John Laird
California Governor Gavin Newsom
Jim Deboo, Executive Secretary to California Governor Newsom
Karen Douglas, Commissioner, California Energy Commission
Representative Salud Carbajal, U.S. Congressman (CA-24)
Jeremy Tittle, Chief of Staff to Congressman Carbajal
Paula Gerfen, Senior Vice President and Chief Nuclear Officer, PG&E
Lauren Gibson, NRC License Renewal Branch Chief