

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of  
PACIFIC GAS & ELECTRIC COMPANY

(Diablo Canyon Nuclear Power Plant,  
Unit 1)

Docket No. 50-275

**ORDER**

The San Luis Obispo Mothers for Peace and Friends of the Earth (together, Petitioners) have requested that the Commission hold a hearing on the NRC Staff's approval of a revision to the reactor vessel material surveillance capsule withdrawal schedule for the Diablo Canyon Nuclear Power Plant, Unit 1.<sup>1</sup> The Petitioners also request that the Commission "exercise [its] discretionary supervisory jurisdiction to order the immediate closure of Diablo Canyon" pending certain actions, including testing and inspection of the reactor; release of test results to the NRC, the Advisory Committee on Reactor Safeguards, and the public; and a public hearing.<sup>2</sup>

---

<sup>1</sup> *Request to the NRC Commissioners by San Luis Obispo Mothers for Peace and Friends of the Earth for a Hearing on NRC Staff Decision Effectively Amending Diablo Canyon Unit 1 Operating License to Extend the Schedule for Surveillance of the Unit 1 Pressure Vessel and Request for Emergency Order Requiring Immediate Shutdown of Unit 1 Pending Completion of Tests and Inspections of Pressure Vessel, Public Disclosure of Results, Public Hearing, and Determination by the Commission That Unit 1 Can Safely Resume Operation* (Sept. 14, 2023) (Petition); see Letter from Jennifer L. Dixon-Herrity, Branch Chief, NRC, to Paula Gerfen, Senior Vice President and Chief Nuclear Officer, Pacific Gas & Electric Company (July 20, 2023) (ADAMS Accession No. ML23199A312) (Extension Approval).

<sup>2</sup> Petition at 3; see *id.* at 4.

The Staff and Pacific Gas and Electric Company (PG&E) have filed responses to the Petitioners' request.<sup>3</sup> And the Petitioners have filed a reply to the Staff's and PG&E's responses.<sup>4</sup>

The Petitioners argue that they are entitled to a hearing because the Extension Approval constitutes a license amendment.<sup>5</sup> But the Extension Approval, by its own terms, does not amend or otherwise affect Diablo Canyon's current license. The Extension Approval does not "grant the licensee any 'greater operating authority,' or otherwise 'alter the original terms of the license,'" the relevant factors in determining whether a Staff action constitutes a license amendment.<sup>6</sup> In its evaluation of the schedule revision, the Staff specifically notes that

additional capsules are not needed to satisfy the requirements of Appendix H to 10 CFR Part 50 and ASTM E 185-70 for the current operating license period ... the licensee's compliance with Appendix H to 10 CFR Part 50 and ASTM E 185-70 with respect to the current operating license period for Diablo Canyon, Unit 1 forms no part of the NRC staff's evaluation of the licensee's proposed revision to the withdrawal schedule for supplemental surveillance ....<sup>7</sup>

---

<sup>3</sup> *NRC Staff Unopposed Motion Requesting Leave to Respond to the San Luis Obispo Mothers for Peace and Friends of the Earth Hearing Request and Request to Suspend Operations* (Sept. 25, 2023) (Staff Request to Respond); *NRC Staff Answer to San Luis Obispo Mothers for Peace and Friends of the Earth Request for Emergency Order Requiring Immediate Shutdown* (Sept. 25, 2023) (Staff Answer); *Pacific Gas and Electric Company Response to the Request of San Luis Obispo Mothers for Peace and Friends of the Earth for an Emergency Order Requiring Immediate Shutdown of Diablo Canyon Nuclear Power Plant, Unit 1* (Sept. 25, 2023) (PG&E Answer).

<sup>4</sup> *Motion by San Luis Obispo Mothers for Peace and Friends of the Earth for Leave to Reply to Oppositions to Request for Emergency Order Requiring Immediate Shutdown of Unit 1 Pending Completion of Tests and Inspections of Pressure Vessel, Public Disclosure of Results, Public Hearing, and Determination by the Commission That Unit 1 Can Safely Resume Operation* (Sept. 29, 2023); *Reply by San Luis Obispo Mothers for Peace and Friends of the Earth to Oppositions to Request for Emergency Order Requiring Immediate Shutdown of Unit 1 Pending Completion of Tests and Inspections of Pressure Vessel, Public Disclosure of Results, Public Hearing, and Determination by the Commission That Unit 1 Can Safely Resume Operation* (Sept. 29, 2023) (Petitioners' Reply).

<sup>5</sup> Petition at 20-21; see also *id.* at 3.

<sup>6</sup> *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 326 (1996).

<sup>7</sup> Extension Approval, encl., "Safety Evaluation by the Office of Nuclear Reactor Regulation Request for Revision to Reactor Vessel Material Surveillance Program Withdrawal Schedule" at 3.

The Staff further clarifies that it “does not make any conclusion regarding the future use of the subject capsule in any potential future licensing applications or license periods.”<sup>8</sup>

Because the current license for Diablo Canyon, Unit 1, has not been amended, the Extension Approval does not trigger an opportunity to request a hearing.<sup>9</sup> Therefore, pursuant to my authority under 10 C.F.R. § 2.346(h), I *deny* the Petitioners’ request for a hearing.

With respect to the Petitioners’ request for immediate closure of Diablo Canyon, Unit 1, pursuant to my authority under 10 C.F.R. § 2.346(j), I *refer* Petitioners’ underlying concerns to the Executive Director for Operations for consideration under 10 C.F.R. § 2.206.<sup>10</sup> I likewise *refer* the Staff Answer and the PG&E Answer to the Staff for consideration with the Petitioners’ concerns to the extent the answers relate to the request for immediate closure.

The Staff also filed an unopposed motion seeking leave to respond to the Petition, and PG&E states that it intends to respond separately to Petitioners’ hearing request.<sup>11</sup> This denial of the hearing request and the referral above moot the need for any further adjudicatory filings on these matters. Therefore, pursuant to my authority under 10 C.F.R. § 2.346(j), I *deny* the

---

<sup>8</sup> Extension Approval at 1.

<sup>9</sup> See 42 U.S.C. § 2238a.(1)(A).

<sup>10</sup> This referral includes the Petition and Petitioners’ Reply.

<sup>11</sup> See Staff Request to Respond; PG&E Answer at 1 n.3.

Staff's request (made on behalf of itself and PG&E) to file answers to Petitioners' request for a hearing.

IT IS SO ORDERED.

For the Commission



---

Brooke P. Clark  
Secretary of the Commission

Dated at Rockville, Maryland,  
This 2<sup>nd</sup> day of October 2023.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )

PACIFIC GAS AND ELECTRIC COMPANY )

(Diablo Canyon Nuclear Power Plant, Unit 1) )  
)  
)  
)

Docket No. 50-275

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Denying Hearing Request and Referring Request for Immediate Action to the Executive Director for Operations for Consideration Under 10 C.F.R. § 2.206)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission  
Office of Commission Appellate Adjudication  
Mail Stop: O-16B33  
Washington, DC 20555-0001  
E-mail: [ocaamail.resource@nrc.gov](mailto:ocaamail.resource@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of the Secretary of the Commission  
Mail Stop: O-16B33  
Washington, DC 20555-0001  
E-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3F23  
Washington, DC 20555-0001  
E. Roy Hawkens, Chief Administrative  
Judge  
E-mail: [roy.hawkens@nrc.gov](mailto:roy.hawkens@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop - O-14A44  
Washington, DC 20555-0001  
David Roth  
Reuben I. Siegman  
Susan H. Vrahoretis  
Jeremy L. Wachutka  
E-mail: [david.roth@nrc.gov](mailto:david.roth@nrc.gov)  
[reuben.siegman@nrc.gov](mailto:reuben.siegman@nrc.gov)  
[susan.vrahoretis@nrc.gov](mailto:susan.vrahoretis@nrc.gov)  
[jeremy.wachutka@nrc.gov](mailto:jeremy.wachutka@nrc.gov)

Counsel for Pacific Gas and Electric  
Company  
Morgan, Lewis & Bockius, LLC  
1111 Pennsylvania Ave NW  
Washington, DC 20004  
Ryan K. Lighty  
Paul Bessette  
Timothy Matthews  
E-mail: [ryan.lighty@morganlewis.com](mailto:ryan.lighty@morganlewis.com)  
[paul.bessette@morganlewis.com](mailto:paul.bessette@morganlewis.com)  
[timothy.matthews@morganlewis.com](mailto:timothy.matthews@morganlewis.com)

**Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Unit 1,  
Docket No. 50-275)  
ORDER (Denying Hearing Request and Referring Request for Immediate Action to the  
Executive Director for Operations for Consideration Under 10 C.F.R. § 2.206)**

Counsel for San Luis Obispo Mothers for Peace  
Harmon, Curran, Spielberg, & Eisenberg, LLP  
1725 DeSales Street, N.W.  
Suite 500  
Washington, DC 20036  
Diane Curran  
E-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

---

Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 2<sup>nd</sup> day of October 2023