

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Alex S. Karlin, Chairman
Nicholas G. Trikouros
Dr. Paul B. Abramson

In the Matter of

PACIFIC GAS & ELECTRIC COMPANY

(Diablo Canyon Nuclear Power Plant, Units 1
and 2)

Docket Nos. 50-275-LR and 50-323-LR

ASLBP No. 10-900-01-LR-BD01

June 7, 2011

NOTICE OF 52-MONTH DELAY
AND ORDER REQUIRING STATUS REPORTS

On April 10, 2011, Pacific Gas & Electric Company (PG&E) submitted a letter to the Nuclear Regulatory Commission (NRC) requesting that the NRC delay the processing of PG&E's application to renew the operating licenses for the Diablo Canyon Nuclear Power Plant (DCNPP).¹ PG&E noted that NRC's review includes consideration of whether the license would be consistent with the Coastal Zone Management Act (CZMA) and stated that "PG&E has decided it is most prudent to have completed certain seismic studies at DCNPP prior to issuance of the coastal consistency certification." Id. at 1. The additional studies contemplated by PG&E consist of certain "seismic studies approved and funded by the California Public

¹ See Letter from David A. Repka, Counsel for PG&E, to Board (Apr. 12, 2011) (Repka Letter), attach. Letter from John T. Conway, Senior Vice President, PG&E, to NRC Commissioners and Staff, entitled "Request for Deferral of Issuance of Diablo Canyon Power Plant Renewed Operating Licenses" (Apr. 10, 2011) at 1-2 (PG&E Letter).

Utilities Commission (CPUC), including 3-D seismic studies recommended by the California Energy Commission” (3-D Seismic Studies). Id. PG&E stated that it expects to complete the 3-D Seismic Studies and issue its report no later than December 2015. Id. at 2. In short, PG&E asked NRC to defer issuance of the renewed DCNPP license until after December 2015. Id. at 2.

On May 31, 2011, the NRC responded to PG&E’s letter.² The NRC stated:

Prior to finalizing a decision regarding license renewal, the staff will supplement the SER, as necessary, considering any relevant new information from the seismic studies, operating experience, and annual updates to the LRA. The schedule for subsequent environmental and safety review milestones and any SER supplements will be determined at a later date, and will be based on a timeline appropriately coordinated with the expected completion of the 3-D seismic studies and your receipt of a coastal consistency certification. The staff will update the review schedule as milestone dates are determined.

NRC Letter at 1. NRC Staff went on to say that “based on anticipated delays in obtaining your costal [sic] consistency certification, [NRC’s] schedule has been updated to reflect the delay of future milestones.” Id. However, NRC’s updated schedule fails to provide any anticipated dates, by which we might develop a schedule, simply stating that the dates for all future NRC Staff actions are “TBD.” See NRC Letter, encl. at 1. Meanwhile, the NRC Staff requested that PG&E “keep the NRC updated on the progress and schedule of the completion of the 3-D seismic studies and estimated receipt of a coastal consistency certification.” NRC Letter at 1.

On June 1, 2011, counsel for the NRC Staff submitted a letter to the Board referring us

² Letter from Brian E. Holian, NRC Director, Division of License Renewal, Office of Nuclear Reactor Regulation, to John Conway, Senior Vice President, Generation and Chief Nuclear Officer, PG&E, entitled “Response to Request for Deferral of Issuance of Renewed Operating Licenses and Revision of Schedule for the Review of the Diablo Canyon Nuclear Power Plant, Units 1 and 2, License Renewal Application” (May 31, 2011) (NRC Letter).

to the aforementioned “schedule,”³ stating “this letter informs the Board of the NRC Staff’s current milestone schedule for the [DCNPP] license renewal safety evaluation and environmental review.” Id.

The Board notes that the foregoing events will significantly delay the adjudicatory hearing schedule in this proceeding. Our Initial Scheduling Order (ISO), consistent with 10 C.F.R. § 2.332(d), specifies that the completion of the Staff’s safety and environmental reviews are the “trigger dates” for the filing of evidence and testimony that must precede the evidentiary hearing and the issuance of the Board’s initial decision. See ISO (Sept. 15, 2010) sec. II.J (unpublished). By delaying the trigger dates until December 2015 or later, the evidentiary hearing and initial decision will likewise be delayed.

Notice to Commission

In light of the foregoing, the Board hereby notifies the Commission that, due to the actions of the Applicant and the Staff, the schedule in this adjudication and the “completion of the record or the issuance of the initial decision will be delayed more than sixty (60) days.” 10 C.F.R. § 2.334(c). As we estimate, in the period since September 15, 2010, when we first issued the ISO, PG&E and Staff actions have delayed the adjudication by a total of approximately 52 months.⁴

³ Letter from Lloyd B. Subin, Counsel for NRC Staff, to Board, entitled “Projected Schedule for Completion of the Safety and Environmental Evaluations” (June 1, 2011) at 1 (Subin Letter).

⁴ The Staff originally estimated that the ACRS final letter and the Staff’s FSEIS (the trigger dates) would be completed in August 2011. See Staff Monthly Update Letter (Sept. 16, 2010). Since that time, the Staff has delayed its schedule and the trigger dates have been delayed. Now, PG&E estimates that the 3-D Seismic Study report (the pre-requisite to the trigger dates) will be in December 2015. See PG&E Letter. This represents a 52-month delay.

Order

The schedule submitted by the Staff on June 1, 2011, fails—probably because of uncertainties in the PG&E schedule—to provide this Board with necessary information to permit establishment of a meaningful adjudicatory schedule pursuant to 10 C.F.R. § 2.332(c).

Accordingly, PG&E is ordered to submit a monthly report to this Board and the Parties to this adjudication, specifying its current best estimate of the dates when it expects:

1. To complete the 3-D Seismic Studies;
2. To issue the reports addressing the results of the 3-D Seismic Studies;
3. To obtain the CZMA or coastal consistency certification(s); and
4. The dates of the significant interim milestones on the critical path(s) to the completion of the 3-D Seismic Studies, the CZMA certifications, and issuance of the reports concerning same.⁵

PG&E shall submit such monthly reports and updates on the second Tuesday of each month, commencing on July 12, 2011. The reports shall be signed and subscribed, in accordance with 10 C.F.R. § 2.304(d). If there has been no change in the estimated schedule since the prior month, the monthly report will be filed and will so state.

Finally, we note that PG&E's monthly reports should be used by the Staff to provide content in its monthly status reports. For example, the Staff may condition its monthly report by issuing a "floating" schedule that indicates that it expects to issue any needed supplemental SER or EIS within X months after the Applicant issues its final report on the 3-D Seismic Studies. Staff may provide this information as an estimate, but definitive "estimated" dates are

⁵ Such interim milestones might include events (and estimated dates) such as PG&E's submission of applications for, and issuance of, any State of California, CPUC, CEC or other permits or approvals associated with the 3-D Seismic Studies.

required and may thereafter be modified as more accurate information becomes available. See
ISO sec. II.D.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND LICENSING
BOARD

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 7, 2011

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Licensing Board **NOTICE OF 52-MONTH DELAY AND ORDER REQUIRING STATUS REPORTS**, have been served upon the following persons by the Electronic Information Exchange.

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[Original signed by Linda D. Lewis]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 7th day of June 2011