



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-133; NRC-2017-0117]

Pacific Gas and Electric Company;

Humboldt Bay Power Plant, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a partial exemption in response to a March 9, 2017, request from the Pacific Gas and Electric Company (PG&E or the licensee). The issuance of the exemption would grant the Humboldt Bay Power Plant, Unit 3 (HBPP-3), a partial exemption from regulations that require the retention of records for certain systems, structures, and components.

DATES: The exemption was issued on May 10, 2017.

ADDRESSES: Please refer to Docket ID **NRC-2017-0117** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2017-0117**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Hickman, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3017; e-mail: John.Hickman@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The HBPP-3 facility is a decommissioning power reactor located in Humboldt County, California. The PG&E is the holder of HBPP-3 Facility Operating License No. DPR-7. On July 2, 1976, HBPP 3 was shut down for annual refueling and to conduct seismic modifications. In 1983, updated economic analyses indicated that restarting HBPP- 3 probably would not be cost-effective, and on June 27, 1983, PG&E announced its intention to decommission the unit.

In 1984, PG&E submitted the HBPP-3 SAFSTOR¹ Decommissioning Plan in support of the application to amend the HBPP-3 operating license to a possession-only license. On July 16, 1985, the NRC issued Amendment No. 19 to the HBPP Unit 3 Operating License (ADAMS Legacy No. 8507260040) to change the status to possess-but-not-operate, and the plant was placed into a SAFSTOR status. On December 11, 2008, PG&E completed the transfer of spent fuel from the HBPP-3 spent fuel pool (SFP) into the Humboldt Bay Independent Spent Fuel Storage Installation. PG&E then began decontamination and dismantlement of HBPP-3.

II. Request/Action

By letter dated March 9, 2017 (ADAMS Accession No. ML17068A095), PG&E filed a request for NRC approval of an exemption from the record retention requirements of: 1) part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), appendix B, Criterion XVII, which requires certain records be retained consistent with other regulatory requirements; 2) 10 CFR 50.59(d)(3), which requires certain records be maintained until termination of a license issued pursuant to 10 CFR part 50; and 3) 10 CFR 50.71(c), which requires certain records be maintained consistent with various elements of the NRC's regulations, facility technical specifications, and other licensing basis documents.

The PG&E proposed to eliminate these records for the nuclear power unit and associated systems, structures, and components (SSCs) that no longer exist, including SSCs that were associated with the decommissioning and storage of spent fuel under the 10 CFR part 50 license for HBPP-3. The licensee cites record retention exemptions granted to San Onofre Nuclear Generating Station, Units 1, 2 and 3 (ADAMS Accession No. ML15355A055),

¹ "SAFSTOR" is a method of decommissioning in which a nuclear facility is placed and maintained in a condition that allows the facility to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use.

LaCrosse Boiling Water Reactor (ADAMS Accession No. ML15355A103), Vermont Yankee Nuclear Power Station (ADAMS Accession No. ML15344A243), and Zion Nuclear Power Station, Units 1 and 2 (ADAMS Accession No. ML111260266), as examples of the NRC granting similar requests.

Records associated with residual radiological activity and with programmatic controls necessary to support decommissioning, such as security and quality assurance, are not affected by the exemption request, and would be retained as decommissioning records until the termination of the HBPP-3 license. In addition, the licensee did not request an exemption from 10 CFR part 50, appendix A, Criterion 1, which requires certain records to be maintained “throughout the life of the unit,” because HBPP-3 is not a general design criteria facility. Nor did PG&E request an exemption associated with any record keeping requirements for storage of spent fuel at the HBPP-3 ISFSI under 10 CFR part 72, or for the other requirements of 10 CFR part 50 or Facility Operating License No. DPR-7 applicable to the decommissioning and dismantlement of the HBPP-3 plant.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security. However, the Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are described in 10 CFR 50.12(a)(2).

The March 9, 2017, exemption application states that the HBPP-3 is in an advanced state of decommissioning and that there are no HBPP-3 SSCs remaining at the site.

With all the SSCs removed from the site the need for the associated records is eliminated. Therefore, the licensee proposed that it be exempted from the records retention requirements for SSCs and historical activities associated with the HBPP-3 licensing basis requirements previously applicable to the nuclear power unit and storage of fuel in the SFP. The associated licensing bases are no longer effective, thereby eliminating the associated regulatory and economic burdens of creating alternative records storage locations, relocating records, and retaining irrelevant records.

The licensee states that the radiological and other necessary programmatic controls (such as security and quality assurance) for the facility and decommissioning activities are and will continue to be appropriately addressed through the license and current plant documents such as the updated Final Safety Analysis Report and Technical Specifications. These programmatic elements and their associated records would be unaffected by the requested exemption.

The Exemption is Authorized by Law

The NRC has determined that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, other laws, or Commission regulations. Therefore, the exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) is authorized by law.

The Exemption Presents no Undue Risk to Public Health and Safety

Removal of the records for which PG&E has requested an exemption from record keeping requirements will not have an adverse public health and safety impact because the

SSCs have been removed from the site. Elimination of records associated with the removed SSCs, therefore, would not present an undue risk to public health and safety.

The requested partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for records associated with the HBPP-3 licensing basis requirements previously applicable to the nuclear power unit and associated systems, including SSCs that are no longer on site or part of the licensing basis, is administrative in nature and will have no impact on any remaining decommissioning activities or on radiological effluents. The exemption will only advance the schedule for disposition of the specified records, which would otherwise be retained until license termination and require the unnecessary expenditure of resources by the licensee.

The Exemption is Consistent with Common Defense and Security

The elimination of the record keeping requirements does not involve information or activities that could potentially impact the common defense and security of the United States. Upon dismantlement of the affected SSCs, the records have no functional purpose relative to maintaining the safe operation of the SSCs, maintaining conditions that would affect the ongoing health and safety of workers or the public, or informing decisions related to nuclear security.

Rather, the exemption requested is administrative in nature and would only advance the current schedule for disposition of the specified records, which would otherwise be retained until license termination. This allows the licensee to not expend resources maintaining records that have no benefit or security purpose. Therefore, the partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the types of records associated with the HBPP-3 licensing basis requirements previously applicable to the nuclear power unit, and safe storage of fuel in the SFP and

associated SSCs that no longer remain on site, is consistent with the common defense and security.

Special Circumstances

Section 50.12(a)(2) requires that special circumstances be present for the Commission to consider granting an exemption. Special circumstances include application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule, and compliance with the regulation would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted.

Criterion XVII of 10 CFR part 50, appendix B, requires that sufficient records shall be maintained to furnish evidence of activities affecting quality.

Section 50.59(d)(3) requires that the records of changes in the facility must be maintained until the termination of an operating license.

Section 50.71(c), mandates that records that are required by the regulations in part 50, by license condition, or by technical specifications must be retained for the period specified by the appropriate regulation, license condition, or technical specification. Additionally, if a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility license.

In the Statement of Considerations (SOC) for the final rulemaking, "Retention Periods for Records" (53 FR 19240; May 27, 1988), the NRC stated that records must be retained for the NRC to ensure compliance with the safety and health aspects of the nuclear environment and for the NRC to accomplish its mission to protect the public health and safety. Also in the SOC, the Commission explained that requiring licensees to maintain adequate records assists the

NRC in judging compliance and noncompliance, to act on possible noncompliance, and to examine facts as necessary following any incident.

These regulations apply to licensees in decommissioning despite the fact that, during the decommissioning process, safety-related SSCs are retired or disabled and subsequently removed from NRC licensing basis documents by appropriate change mechanisms.

Appropriate removal of an SSC from the licensing basis requires either a determination by the licensee or an approval from the NRC that the SSC no longer has the potential to cause an accident, event, or other problem, which would adversely impact public health and safety.

The records subject to removal under the requested exemption are those associated with SSCs that had been important to safety during power operation or operation of the SFP, but are no longer capable of causing an event, incident, or condition that would adversely impact public health and safety, given their appropriate removal from the licensing basis documents. If the SSCs no longer have the potential to cause these scenarios, then certain records associated with these SSCs would not be necessary to assist the NRC in determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident. Therefore, their retention would not serve the underlying purpose of the rule.

Retention of certain records associated with SSCs that are or will no longer be part of the facility serves no safety or regulatory purpose, nor does it serve the underlying purpose of the rule of maintaining compliance with the safety and health aspects of the nuclear environment in order to accomplish the NRC's mission. Accordingly, special circumstances are present which the NRC may consider, pursuant to 10 CFR 50.12(a)(2)(ii), to grant the requested exemption permitting the disposal of records associated with the HBPP-3 licensing basis

requirements previously applicable to the nuclear power unit, safe storage of fuel in the SFP, and associated SSCs that no longer remain on site.

Records that continue to serve the underlying purpose of the rule, that is, to maintain compliance and to protect public health and safety in support of the NRC's mission, will continue to be retained pursuant to the regulations in 10 CFR part 50 and 10 CFR part 72. The retained records not subject to the exemption include those associated with programmatic controls, such as those pertaining to residual radioactivity, which continue to be required for decommissioning; security, emergency planning and quality assurance programs which remain in effect; as well as records associated with the Independent Spent Fuel Storage Installation and spent fuel assemblies.

The retention of records required by 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) provides assurance that records associated with SSCs will be captured, indexed, and stored in an environmentally suitable and retrievable condition. Given the volume of records associated with the SSCs, compliance with the records retention rule results in a considerable cost to the licensee. Retention of the volume of records associated with the SSCs during the operational phase is appropriate to serve the underlying purpose of determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident, as discussed previously in this notice.

However, the cost of retaining operational phase records beyond the operations phase until the termination of the license may not have been fully considered when the records retention rule was put in place. As such, compliance with the record keeping requirements would result in an undue cost in excess of that contemplated when the regulation was adopted.

Accordingly, special circumstances are present which the NRC may consider, pursuant to 10 CFR 50.12(a)(2)(iii), to grant the requested exemption.

Environmental Considerations

Pursuant to 10 CFR 51.22(b) and (c)(25), the granting of an exemption from the requirements of any regulation in Chapter I of 10 CFR is a categorical exclusion provided that 1) there is no significant hazards consideration; 2) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; 3) there is no significant increase in individual or cumulative public or occupational radiation exposure; 4) there is no significant construction impact; 5) there is no significant increase in the potential for or consequences from radiological accidents; and 6) the requirements from which an exemption is sought are among those identified in 10 CFR 51.22(c)(25)(vi).

The NRC has determined that approval of the exemption request involves no significant hazards consideration because allowing the licensee exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) at the decommissioning HBPP-3 does not 1) involve a significant increase in the probability or consequences of an accident previously evaluated; 2) create the possibility of a new or different kind of accident from any accident previously evaluated; or 3) involve a significant reduction in a margin of safety (10 CFR 50.92(c)). Likewise, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure.

The exempted regulations are not associated with construction, so there is no significant construction impact. The exempted regulations do not concern the source term (i.e., potential amount of radiation involved in an accident) or accident mitigation; therefore, there is no

significant increase in the potential for, or consequences from, radiological accidents. Allowing the licensee partial exemption from the record retention requirements for which the exemption is sought involves record keeping requirements (10 CFR 51.22(c)(35)(vi)(A), as well as reporting requirements (10 CFR 51.22(c)(35)(vi)(B)).

Therefore, pursuant to 10 CFR 51.22(b) and (c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

The NRC has determined that the requested partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) will not present an undue risk to the public health and safety. The destruction of the identified records will not impact remaining decommissioning activities; plant operations, configuration, and/or radiological effluents; or nuclear security. The NRC has determined that the destruction of the identified records does not involve information or activities that could potentially impact the common defense and security of the United States.

The purpose for the record keeping regulations is to assist the NRC in carrying out its mission to protect the public health and safety by ensuring that the licensing and design basis of the facility is understood, documented, preserved and retrievable in such a way that will aid the NRC in determining compliance and noncompliance, taking action on possible noncompliance, and examining facts following an incident. Since the HBPP-3 SSCs that were safety-related or important to safety during operations have been removed from the licensing basis and removed from the plant, the staff finds that the records associated with the HBPP-3 licensing basis requirements previously applicable to the nuclear power unit, safe storage of fuel in the SFP

and associated SSCs that no longer remain on site will no longer be required to achieve the underlying purpose of the records retention rule.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and that special circumstances are present. Therefore, the Commission hereby grants Pacific Gas and Electric Company a one-time partial exemption from the record keeping requirements of 10 CFR 50.71(c); 10 CFR part 50, appendix B, Criterion XVII; and 10 CFR 50.59(d)(3) for the Humboldt Bay Power Plant, Unit 3, to allow removal of records associated with the HBPP-3 licensing basis requirements previously applicable to the nuclear power unit, safe storage of fuel in the SFP and associated SSCs that no longer remain on site.

Records associated with residual radiological activity and with programmatic controls necessary to support decommissioning, such as security, emergency planning, spent fuel management and quality assurance are not affected by the exemption request and are required to be retained consistent with existing requirements as decommissioning records until the termination of the HBPP-3 license.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 10th day of May 2017

For the Nuclear Regulatory Commission.

John R. Tappert, Director,
Division of Decommissioning, Uranium Recovery
and Waste Programs,
Office of Nuclear Material Safety
and Safeguards.

[FR Doc. 2017-10071 Filed: 5/17/2017 8:45 am; Publication Date: 5/18/2017]