March 12, 2010

Ms. Kimberly Green
Project Manager – Diablo Canyon License Renewal
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001


Dear Ms. Green:

We are writing to clarify an information requirement for the above-referenced federal consistency certification. We understand the NRC is determining whether PG&E must conduct several seismic studies as part of PG&E’s requested license renewal.1 Please note that the Coastal Commission staff has already informed PG&E that results from updated seismic studies are necessary to complete its federal consistency review for the proposed license renewal.

As you know, renewal of PG&E’s NRC operating license for the Diablo Canyon Power Plant is subject to federal consistency review by the Coastal Commission, pursuant to the requirements of the California Coastal Management Program (CCMP) and the associated federal regulations at 15 CFR 930 et seq. PG&E submitted a consistency certification to the Commission in December 2009; however, as detailed in the attached December 29, 2009 letter from Commission staff to PG&E, that certification is incomplete, in part due to the need for results from updated seismic studies. As stated in that letter, PG&E must provide the following information to allow the Commission to determine whether the project conforms to the CCMP:

“...all data and interpretive summaries, such as those conducted by PG&E and USGS under their CRADA agreement and the Long Term Seismic Program of PG&E, characterizing the seismicity and tectonic structure in the vicinity of the plant...”,

“characterization of the Hogri and Shoreline Faults, including fault geometry, seismicity, and sense of movement; estimates of maximum credible earthquake (from a deterministic perspective) on these and all other faults; the ground shaking expected at the site from such earthquakes; and the deep crustal structure beneath the plant (in particular an evaluation of the "Namson model" of thrust ramps beneath the plant)...”,

and “as recommended by the Technical Advisory Team established pursuant to AB 1632, the three-dimensional seismic data... collected and interpreted as part of this evaluation.”

1 As reported in the March 16, 2010 San Luis Obispo Tribune, at:
The Coastal Commission will also need this information to review PG&E’s upcoming application for a coastal development permit, which is also required of the project. We anticipate conducting the necessary federal consistency review concurrent with review of the permit application.

Thank you for your attention to this issue. Please feel free to contact Tom Luster of my staff at (415) 904-5248 or tluster@coastal.ca.gov if you have any questions.

Sincerely,

Alison J. Dettmer
Deputy Director
Energy, Ocean Resources, and Federal Consistency Division

Cc (via email):  PG&E – Mr. Mark Krausse  
California Energy Commission – Barbara Byron 
San Luis Obispo County Board of Supervisors

Attachment:  December 29, 2009 letter to PG&E regarding information needed to complete consistency certification.
December 29, 2009

Mr. James Becker
Pacific Gas & Electric Company
Diablo Canyon Power Plant
Mail Code 104/6/601
P.O. Box 3
Avila Beach, CA 93424

RE: Consistency Certification for Pacific Gas & Electric Company’s Requested Nuclear Regulatory Commission License Renewal for Diablo Canyon Power Plant, San Luis Obispo County

Dear Mr. Becker:

Thank you for your submittal of the above-referenced consistency certification for the Diablo Canyon nuclear power plant license renewal that you are seeking from the Nuclear Regulatory Commission. The California Coastal Commission (Commission) received your consistency certification here in our headquarters office on December 1, 2009.

Our review shows the certification is not yet complete, for the reasons provided below. Accordingly, the Commission’s six-month review period under the Coastal Zone Management Act (CZMA), see 16 U.S.C. §§ 1456(c)(3)(A), has not commenced and will not commence until we receive the missing necessary data and information, pursuant to CZMA implementing regulations. 15 C.F.R. § 930.60(a). Additionally, as we discussed at our December 17, 2009 meeting, the project will require a coastal development permit (CDP) from the Commission. Because the Commission’s CDP review and approval would also be sufficient (or purposes of confirming the project’s consistency with the California Coastal Management Program (CCMP), and thus establishing the Commission’s concurrence with your federal consistency certification, we recommend you submit a CDP application instead of completing the consistency certification. This will allow for a single and more efficient review process.

Nonetheless, pursuant to requirements of the CZMA, we have identified below the information that would be needed to complete the consistency certification. Please note that much of the requested information will also need to be submitted as part of PG&E’s permit application. We are happy to assist and answer any questions you may have about the needed information and the review process.

REQUIRED ADDITIONAL INFORMATION AND ANALYSES

As we discussed at the December 17, 2009 meeting, the Commission did not receive some of the necessary data and information as described in the CZMA implementing regulation at 15 C.F.R. section 940.58(a), and, accordingly, we will need several additional informational items to allow
us to adequately evaluate this proposal and to complete consistency review. These include two general elements that apply to several sections of the consistency certification as well as a number of specific information needs.

General Information Requests and Additional Analyses

Applying the CCEMP definition of “development”:

The certification states in several sections that “[l]icense renewal is not a new development, but a continuation of existing development.”1 Several other sections state that a particular CCEMP policy is not applicable to the requested license renewal because the renewal does not include development that would be subject to those policies.2 However, it appears that in reaching these conclusions, the certification did not fully apply the CCEMP’s definition of “development”, resulting in the need for some of the additional information and analyses identified herein as necessary to complete the certification.

1 The CCEMP regulations at Section 930.58 state: “Necessary data and information. (a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following: (1) A detailed description of the proposed activity, its associated facilities, the coastal effects, and comprehensive data and information sufficient to support the applicant’s consistency certification. Maps, diagrams, technical data and other relevant material shall be submitted when a written description alone will not adequately describe the proposal (a copy of the federal application and all supporting material provided to the Federal agency should also be submitted to the State agency). ... and (3) An evaluation that includes a set of findings relating the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the management program. Applicants shall demonstrate that the activity will be consistent with the enforceable policies of the management program. Applicants shall demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal effects for which the management program does not contain enforceable or recommended policies.”

The CCEMP regulations also authorize the Commission to not start the review period if it has not received all the necessary data and information to analyze the proposed activity for consistency with the enforceable policies of the California Coastal Management Program (CCMP). Specifically, Section 930.60 of those regulations provides:

“Commencement of State agency review. (a) Except as provided in §930.54(e) and paragraph (a)(1) of this section, State agency review of an applicant’s consistency certification begins at the time the State agency receives a copy of the consistency certification, and the information and data required pursuant to §928.58. (f) If an applicant fails to submit a consistency certification in accordance with §930.57, or fails to submit necessary data and information required pursuant to §930.58, the State agency shall, within 30 days of receipt of the incomplete information, notify the applicant and the Federal agency of the missing certification or information, and that: (i) The State agency’s review has not yet begun, and that its review will commence once the necessary certification or information deficiencies have been corrected; or (ii) The State agency’s review has begun, and that the certification or information deficiencies must be cured by the applicant during the State’s review period.”

2 Including, for example, Sections 30200, 30212, 30251, 30252, and 30253.

3 These include Sections 30234.5, 30253, and 30260.

4 The CCEMP’s Section 30106 states, in relevant part: “ ‘Development’ means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading; removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66413 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the use of any structure, including any facility of any private, public, or municipal utility...”
The certification does not describe several forms of development that are part of the requested license renewal. The renewal would include new development in the form of "change in the intensity of use of water, or of access thereto," as it would result in twenty years of ocean water use for cooling purposes that would otherwise not occur. License renewal would also result in twenty years of restricted access to nearby ocean waters that would otherwise end or be phased out. Additionally, some of the studies PG&E is conducting to implement license renewal may result in other forms of development that would need to be evaluated for consistency with the CCMP. For example, studies needed to update the site's and facility's seismic characteristics may result in the need for license renewal to include modifying foundations, adding support structures, grading slopes, etc. — any of which would constitute "development" and require coastal development permit approval from either the Coastal Commission or San Luis Obispo County. Further, extending the life of the facility is likely to require an expansion of the Independent Spent Fuel Storage Installation (ISFSI), which was designed to hold spent fuel only until the end of the current licensed operations. Please therefore revise the relevant sections of the certification and needed analyses to incorporate the full CCMP definition of "development". Please also identify any project-related development known or anticipated to result from the studies being implemented as part of PG&E's license renewal.

The consistency certification includes several statements of consistency without supporting analyses or documentation: Several sections of the certification state that the proposed project is consistent with an applicable CCMP provision but provide little or none of the necessary documentation or analyses to support that statement. For example, the certification's review of conformity to Section 30220 states only that "License renewal is consistent with Section 30220 of the Coastal Act requiring the protection of water-oriented recreational activities because it will not interfere with the recreational water activities at the adjacent San Luis Obispo Harbor District and nearby Avila Beach community." It does not analyze the additional twenty years of restricted access mentioned above or the effects of that restricted access on water-oriented recreational activities in the area around Diablo Canyon. Therefore, pursuant to Section 930.58(a) of the CZMA regulations, please provide the comprehensive information and analyses necessary to support PG&E's consistency certification and its conclusions.

Specific Comments [Note: Page references are from PG&E's November 2009 Diablo Canyon Power Plant Federal Consistency Certification for Federal Permits and License Applications and License Renewal Application, Attachment E-1.]

- Filing fee: The Commission's filing fees are enforceable policies of the CCMP and constitute necessary data and information. Fees for consistency review are determined in the same manner.

5 Other sections of the certification with similar assertions and inadequate analyses include Sections 30210, 30211, 30221, 30224, 30230, 30231, and 30251.

6 In March 2008, the Coastal Commission amended Title 14, California Code of Regulations, Section 13055 to authorize filing fee increases for federal consistency certifications pursuant to 16 U.S.C. Sections 1356c(3)(A) or (B). On April 24, 2008, the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management approved the revised fee schedule as a routine program change to California's CCMP. The filing fees constitute necessary data and information within the meaning of 15 CFR Sections 930.58(a) and 930.76(a)(3).
as for coastal development permit applications. Based on your project description, please provide the fee based on project costs as described in the attached Coastal Commission Filing Fee Schedule, Section 13055(a)(5)(B).

- p. E-12, Table E-2, Environmental Approvals for DCPP License Renewal: Please note that the requirement for a CDP is an additional authorization to be added to this table.

- pp. E-15-22, Table 3: Please note that CCMP review is likely to require more specific and detailed review than was conducted under the General EIS described in this table.

- p. E-28, CCMP Section 3020b: As noted above, this section does not fully evaluate project-related development as defined by the CCMP. This section may require additional information for completeness, based on subsequent submittals for other sections of this certification.

- pp. E-29-35, CCMP Sections 30210 – 30224 Public Access and Recreation: The certification states that the proposed license renewal does not constitute new development; however, as noted above, this is not a correct application of the CCMP’s definition of development. The certification also identifies use limitations on nearby shorelines and ocean waters due to the project’s security needs, but does not adequately analyze the effects of these use limitations on public access and recreation in those areas. Please provide a revised analysis of the project’s effects on recreation and public access to the shoreline and nearby coastal waters due to an additional twenty years of project-related access limitations.

- pp. E-35-41, CCMP Sections 30230 – 30233 Marine Environment: The certification does not identify how the proposed project will “maintain, enhance, and, where feasible, restore the marine environment”, or how it will result in special protection of nearby areas of special biological significance, as required pursuant to CCMP Section 30230. It also does not provide complete analyses from the various entrainment, impingement, and thermal effects studies done at Diablo Canyon and does not identify feasible mitigation measures to minimize the adverse effects of entrainment, as required pursuant to CCMP Section 30231. Please provide copies of these studies, including results of Empirical Transport Model studies, to document the necessary analyses.

- pp. E-40-41, CCMP Section 30235 Construction Altering Natural Shoreline: The certification states that no shoreline alterations are necessary. However, by extending plant operations until about 2045, license renewal would subject the facility to the effects of sea level rise (which could include direct effects on the facility’s intake and outfall as well as indirect effects due to coastal erosion, landslides, or other similar geomorphic changes). Please provide analyses of whether predicted sea level changes would result in the need for shoreline alterations during the term of the proposed renewed license (see also Section 30233(1) below).

- p. E-46, CCMP Section 30253(1) Minimize Risks to Life and Property in Areas of High Geologic, Flood, and Fire Hazard: Please provide all data and interpretive summaries, such as those conducted by PG&E and USGS under their CRADA agreement and the Long Term Seismic Program of PG&E, characterizing the seismicity and tectonic structure in the vicinity of the plant. These data should include characterization of the Hauti and Shoreline Faults, including fault geometry, seismicity, and sense of movement; estimates of maximum credible earthquake (from a deterministic perspective) on these and all other faults; the ground shaking expected at the site.
from such earthquakes; and the deep crustal structure beneath the plant (in particular an evaluation of the "Namson model" of thrust ramps beneath the plant). Additionally, and as recommended by the Technical Advisory Team established pursuant to AB 1632, please provide the three-dimensional seismic data should be collected and interpreted as part of this evaluation. Please confer with the Commission's staff geologist, Dr. Mark Johnsson, at 415-904-5200 for any necessary clarification.

- p. E-47, CCMP Sections 30255 and 30260 – Priority of Coastal-Dependent Developments and Industrial Development: The certification does not evaluate the project's "coastal-dependent" status or, as required by these CCMP Sections. Coastal Commission staff will likely address this issue as part of PG&E's permit application, but you may wish to provide additional information about the "coastal-dependent" nature of the project.

**CONCLUSION**

In conclusion, the Commission staff has determined PG&E's submittal does not contain the information necessary for a complete consistency certification. Therefore, pursuant to 15 C.F.R. section 930.60(a), the six-month time period for this submittal has not begun and will not begin until the Commission staff receives the information discussed above. However, as noted previously, we recommend PG&E instead submit a complete CDP application in lieu of completing this consistency certification to allow one, rather than two, review processes. Please feel free to contact me at (415) 904-5248 if you have any questions.

Sincerely,

[Signature]

Tom Luster
Energy, Ocean Resources, and Federal Consistency Division

Cc (via email): PG&E – Mr. Mark Krause
NRC – Kimberly Green
CEC – Barbara Byron

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1 Assembly Bill 1632 (2006) directs the California Energy Commission to assess the vulnerability of the state’s operating nuclear power plants to a major disruption due to a major seismic event or plant aging, the potential impacts of such a disruption, potential impacts from the accumulation of nuclear waste at the state's existing nuclear plants, and other key policy and planning issues regarding the future role of California's existing nuclear plants.

2 The CEMP, at Section 30101, defines a "coastal-dependent development or use" as "any development or use which requires a site on, or adjacent to, the sea or to be able to function at all."