



# FACT SHEET

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## Reactor License Transfers

### Background

The deregulation of the electric utility industry has led to increased competition in energy markets and an increase in the number of requests filed with the NRC for transferring nuclear power reactor operating licenses. Electric utilities traditionally have been granted monopoly status in the geographic areas they serve because it was reasoned that it would be economically inefficient to have two or more electric utilities, each with its own generation, transmission and distribution systems, competing for the same customer. While this continues to be generally true of the transmission and distribution segments of the electric utility business, almost half of the states have allowed, or are considering having customers choose their electricity provider. In theory, these initiatives have been designed to increase economic efficiency and lower electric prices to customers.

The NRC reviews different types of license transfer requests that reflect the different corporate strategies of its licensees, or different state approaches to deregulating electric utilities. Some licensees choose, or are being required by their states, to get out of the electric generating business entirely. Other licensees may decide that they are too small to compete effectively in a market environment and seek merger partners. Still other licensees form parent holding companies that will allow them to diversify into other areas or markets. Finally, some companies form nuclear operating company subsidiaries to increase their technical focus or take advantage of economies of scale that can result when an operating company runs several nuclear power plants.

Over the past 10 years, the NRC has reviewed about 90 license transfer applications, including about 10 in 2009. The first NRC approval for the sale of an entire nuclear power unit from one owner to another unrelated owner was the sale of Three Mile Island, Unit 1 on April 12, 1999, followed by Pilgrim Station on April 29, 1999, Fitzpatrick and Indian Point Unit 3 on Nov. 9, 2000, and Seabrook Unit 1 on Nov. 1, 2002. The most recent NRC approved license transfers were include South Texas Project, Unit 1 & 2 on Feb. 24, 2009 and Calvert Cliffs Unit 1 & 2 on Nov. 2, 2009.

### License Transfer Regulations

- 10 CFR Part 2, Subpart M (e.g., 10 CFR 2.1301) - Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Application
- 10 CFR 50.33 - Contents of applications; general information
- 10 CFR 50.38 - Ineligibility of certain applicants
- 10 CFR 50.40 - Common standard
- 10 CFR 50.75 - Reporting and recordkeeping for decommissioning planning
- 10 CFR 50.80 - Transfer of licenses
- 10 CFR 140 - Financial Protection Requirements and Indemnity Agreements

The provisions of Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and the NRC's regulations at Title 10 of the Code of Federal Regulations (CFR), Part 50.80, stipulate that no transfer can occur unless the NRC gives its consent in writing. These provisions apply to both direct and indirect transfers. Direct transfers are generally those that involve transfer of ownership or operating authority of the plant itself from one entity to another – for example, the sale of a plant. Indirect transfers generally involve transfers of ownership of the licensee rather than just the facility – for example, the formation of a new parent holding company above a licensee.

### Technical Qualifications

The NRC reviews the technical qualifications of a proposed owner based on agency regulations (10 CFR 50.40, Common standards), the NRC Standard Review Plan for “Management and Technical Support Organization,” and the American National Standards Institute standard on Selection and Training of Nuclear Power Plant Personnel. The NRC focuses its license transfer application reviews on determining whether the proposed new owner has the technical expertise to continue to run the plant safely. For indirect transfers, where the licensee itself remains the same, technical qualifications are generally not an issue in the NRC's review. For direct transfers, particularly with respect to sales where the operator changes, the scope of the review will depend on the degree to which the existing plant personnel and organization will change.

### Financial Qualifications

The NRC evaluates the financial qualifications of a proposed owner to both operate and decommission the nuclear plant(s) whose license is to be transferred. The NRC uses the provisions of 10 CFR Part 50.33(f) to review the proposed owner's financial qualifications for operating the plant. If the proposed owner is an “electric utility” as defined in the NRC's regulations, no further review of financial qualifications for operations is generally required. If the proposed owner is not an “electric utility,” the NRC evaluates revenue sources and projected 5-year operating costs with respect to the plant to determine whether the proposed owner has reasonable assurance of obtaining the funds necessary to operate the plant safely.

The NRC reviews funding plans for eventual decommissioning of the plant under the provisions of 10 CFR Part 50.75. The NRC determines whether the proposed owner has demonstrated reasonable assurance of obtaining decommissioning funds and whether the proposed owner is rate-regulated or has access to a non-by passable “wires” charge. These are charges that electricity customers must pay for the transmission and distribution of electric power, no matter what the source of generation, and that many States have imposed as a part of their deregulation initiatives. This arrangement allows licensees to accumulate decommissioning funds in external trust accounts over the remaining term of the license. In other cases, the proposed owner must ensure the entire amount of NRC-defined decommissioning costs, using one of the other assurance mechanisms provided in NRC regulations. These mechanisms include prepayment of the estimated decommissioning cost, guarantees of the estimated amount using surety bonds, letters of credit, parent or self-guarantees coupled with passage of financial tests specified in the NRC's regulations, or other methods providing the same degree of assurance as the other allowable mechanisms.

### Foreign Ownership

The NRC also reviews license transfer requests to determine whether a proposed licensee is owned, controlled, or dominated by a foreign individual or entity. Sections 103 and 104 of the Atomic Energy Act

(AEA), as well as NRC regulations under 10 CFR Part 50.38, prohibit foreign ownership, control, or domination. The NRC review process seeks to ensure that foreign individuals or entities do not control safety-related activities under the license, with an emphasis on protecting the common defense and security of the U.S. For example, in the 1999 license transfer of Three Mile Island Unit 1, AmerGen Energy Company, the buyer, was 50% indirectly owned by British Energy, plc, a foreign corporation. The NRC accepted AmerGen's "negation action plan," which required AmerGen's other 50% owner, PECO, Inc. (now a part of Exelon Generation Company), to have control over safety-related decisions and reserved such authority to U.S. citizens. Exelon has since become the sole owner of AmerGen.

### Antitrust

The Atomic Energy Act of 1954 as amended (AEA) does not require or authorize antitrust reviews of post-operating license transfer applications (*Kansas Gas and Electric Co., et al.*(Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999)). The application here postdates the issuance of the operating licenses for units under consideration, and therefore no antitrust review is required or authorized.

### Insurance

Finally, the NRC reviews license transfer applications to ensure that the proposed owner has the required insurance and indemnity for off-site liability claims of personal injury and property damage required under Section 170 of the AEA and 10 CFR Part 140. The NRC also ensures that proposed owners have on-site property damage insurance to help cover reactor cleanup costs after an accident, to the extent required by 10 CFR 50.54(w).

## **License Transfer Process Improvements**

Since 1995, the NRC has engaged in a comprehensive effort to address the implications of electric utility deregulation to ensure adequate protection of public health and safety. The NRC issued a final policy statement on the restructuring and economic deregulation of the electric utility industry on August 19, 1997. In part, this policy statement addressed topics that are relevant to the license transfer process.

Similarly, in September 1998, the NRC published a final rule on financial assurance requirements for decommissioning nuclear power reactors. Among other things, the rule (1) broadens allowable funding assurance mechanisms to include some decommissioning expenses that many states are imposing as part of their deregulation initiatives; (2) requires licensees to report biennially on the status of their decommissioning funds; and (3) allows a 2% annual rate of return credit for decommissioning fund earnings if a public utility commission has not allowed some other rate.

NRC's review of a license transfer application takes between 6 and 9 months, depending on the complexity. In December 1998, the NRC developed a rule to streamline the license transfer hearing process. It established a more informal, speedier hearing process and eliminated the need for case-specific Environmental Assessments and No Significant Hazards determinations.

In addition, the NRC has developed the following guidance:

- Antitrust Standard Review Plan (SRP), NUREG-1574, December 1997;

- Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance, NUREG-1577, Rev. 1, March 1999,
- Management and Technical Support SRP, NUREG-0800, November 1999,
- Integrated SRP on All Aspects of License Transfers, NUREG/BR-0276, April 2000,
- Changes Concerning Foreign Ownership, Control, or Domination of Nuclear Reactor Licensees, Regulatory Information Summary (RIS)-00-001, February 1, 2000, and
- Criteria for Triggering a Review Under 10 CFR 50.80 for Non-Owner Operator Service Companies, Regulatory Information Summary (RIS)-01-006, February 15, 2001.

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