

May 22, 2000

Mr. John Paul Cowan
Vice President, Nuclear Operations
Florida Power Corporation
ATTN: Manager, Nuclear Licensing (NA1B)
Crystal River Energy Complex
15760 W. Power Line Street
Crystal River, Florida 34428-6708

SUBJECT: ORDER APPROVING APPLICATION REGARDING PROPOSED ACQUISITION
BY CP&L HOLDINGS, INC. OF FLORIDA PROGRESS CORPORATION -
(TAC NO. MA8088)

Dear Mr. Cowan:

The enclosed Order responds to the application dated January 31, 2000 from Florida Power Corporation (FPC) requesting approval (pursuant to Title 10, *Code of Federal Regulations*, Section 50.80) of the proposed indirect transfer of Crystal River Unit 3, Facility Operating License No. DPR-72, to the extent held by FPC, to CP&L Holdings, Inc., in connection with a proposed acquisition by CP&L Holdings, Inc. of the outstanding shares of Florida Progress Corporation, the parent of FPC. The Safety Evaluation in support of the Order is also enclosed. This Order has been forwarded to the Office of the Federal Register for publication.

If you have any questions regarding this matter, please contact me at (301) 415-1495.

Sincerely,

/RA/

L. A. Wiens, Senior Project Manager, Section 2
Project Directorate II
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-302

Enclosures: 1. Order
2. Safety Evaluation

cc w/encls: See next page

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
FLORIDA POWER CORPORATION)	Docket No. 50-302
)	
(Crystal River Unit No. 3))	
)	
)	
)	

ORDER APPROVING APPLICATION REGARDING PROPOSED ACQUISITION BY CP&L HOLDINGS, INC. OF FLORIDA PROGRESS CORPORATION

I.

Florida Power Corporation (FPC) is the majority owner and a holder of Facility Operating License No. DPR-72 for Crystal River Unit 3 (CR-3), which was issued December 3, 1976. FPC owns a 91.7806% interest in CR-3, with the remaining interest held by nine minority owners. FPC is the licensed operator of CR-3.

II.

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR §50.80, FPC filed an application dated January 31, 2000, requesting approval of the indirect transfer of control of FPC's interest in the CR-3 operating license that will occur under a proposed share exchange transaction between Florida Progress Corporation (Progress), the parent of FPC, and CP&L Holdings, Inc. (Holdings). Holdings is being formed by Carolina Power and Light Company (CP&L) as part of an internal CP&L reorganization. Upon consummation of the share exchange transaction, under which Holdings will acquire all of the outstanding shares of Progress, Progress will become a wholly owned subsidiary of Holdings. FPC, which will remain a wholly owned subsidiary of Progress, will also become an indirect subsidiary of Holdings upon completion of the acquisition of Progress by Holdings.

FPC will retain its existing ownership interest in and the license for CR-3 and remain the licensed operator of CR-3 after the share exchange transaction. No physical changes to the facility or operational changes are being proposed in the application. Additional information concerning this indirect transfer is contained in a letter from CP&L to the U.S. Nuclear Regulatory Commission (Commission) dated February 14, 2000, and in a letter from FPC to the Commission dated March 28, 2000. Notice of the application and an opportunity for hearing was published in the FEDERAL REGISTER on March 17, 2000 (65 FR 14631). No hearing requests were filed.

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted by FPC in its application, and the other information before the Commission, the NRC staff has determined that the proposed acquisition of Progress by Holdings through the proposed share exchange transaction will not affect the qualifications of FPC as a holder of the license referenced above, and that the indirect transfer of the license, to the extent effected by the acquisition, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission subject to the conditions set forth herein. These findings are supported by a Safety Evaluation dated May 22, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o) and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the subject acquisition is approved, subject to the following conditions:

(a) FPC shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens)

from FPC to its existing or proposed direct or indirect parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of FPC's consolidated net utility plant, as recorded on FPC's book of accounts,

(b) Should the acquisition of Progress by Holdings not be completed by June 1, 2001, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated January 31, 2000, additional information contained in a letter from CP&L to the Commission dated February 14, 2000, a letter from FPC to the Commission dated March 28, 2000, and the Safety Evaluation dated May 22, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Roy P. Zimmerman, Acting Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this 22nd day of May 2000.

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FOR THE NUCLEAR REGULATORY COMMISSION
/RA/
Roy P. Zimmerman, Acting Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,
this 22nd day of May 2000.

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SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
INDIRECT TRANSFER OF LICENSE
PROPOSED ACQUISITION
OF FLORIDA PROGRESS CORPORATION
BY CP&L HOLDINGS, INC.
FLORIDA POWER CORPORATION
CRYSTAL RIVER, UNIT 3
DOCKET NO. 50-302

1.0 INTRODUCTION

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and Section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR), by application dated January 31, 2000 (hereinafter, the application), Florida Power Corporation (FPC) requested that the United States Nuclear Regulatory Commission (NRC) consent to the indirect transfer of control of FPC's interests in Operating License No. DPR-72 for Crystal River, Unit 3 Nuclear Plant (CR-3). Additional information concerning this indirect transfer is contained in a letter from Carolina Power & Light Company (CP&L) to the NRC dated February 14, 2000, and an FPC letter to the NRC dated March 28, 2000.

The indirect transfer will occur pursuant to the proposed share exchange transaction between Florida Progress Corporation (Progress), FPC's parent company which wholly owns FPC, and CP&L Holdings, Inc. (Holdings), the new parent company of CP&L that is being formed in connection with an internal reorganization of CP&L. On December 29, 1999, the NRC consented to the indirect transfer of control of CP&L's nuclear operating licenses DPR-23, DPR-71, DPR-62 and NPF-63, and Independent Spent Fuel Storage Installation (ISFSI) license SNM-2502, resulting from the formation of Holdings.

2.0 BACKGROUND

FPC is a holder of Facility Operating License No. DPR-72 dated December 3, 1976. Operating License DPR-72 authorizes FPC to hold and possess a 91.7806% undivided ownership interest in CR-3 and authorizes FPC to use and operate CR-3 in accordance with the procedures and limitations set forth in the operating license. Holdings will be an exempt interstate holding company under the Public Utility Holding Company Act of 1935 (PUHCA), which is being formed by CP&L as part of CP&L's internal reorganization. Upon consummating the share exchange transaction with Progress, Holdings will become a registered holding company under PUHCA. Pursuant to the terms of the transaction, Progress will become a wholly owned subsidiary of Holdings, which will own all the outstanding shares of Progress.

CP&L, which holds NRC operating licenses for Harris, Brunswick and Robinson nuclear power plants, and a Part 72 license for the Robinson Independent Spent Fuel Storage Installation, will become a wholly owned subsidiary of Holdings when the CP&L internal reorganization is completed. Harris, Brunswick and Robinson nuclear power plants and the Robinson ISFSI are not involved in this application. CP&L will remain a wholly owned subsidiary of Holdings after the share exchange transaction with Progress. FPC, which will remain a wholly owned subsidiary of Progress, will also become an indirect subsidiary of Holdings upon completion of the transaction. The proposed transaction will result in the indirect transfer of control of the interest held by FPC in the CR-3 operating license to Holdings.

3.0 FINANCIAL QUALIFICATIONS ANALYSIS

Pursuant to 10 CFR 50.33(f), an electric utility is not required to demonstrate its financial qualifications. Section 50.2 of 10 CFR states, in part, that an electric utility is "any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by separate regulatory authority." After the proposed share exchange, FPC will continue to generate and distribute electricity and recover the cost of this electricity through rates established by the Florida Public Service Commission and the Federal Energy Regulatory Commission, according to the application. Based on this information, the NRC staff finds that FPC will continue to meet the definition of "electric utility" set forth in 10 CFR 50.2 and, therefore, no specific demonstration of financial qualifications is required.

However, in view of the NRC's concern that certain corporate restructurings can lead to a diminution of assets necessary for the safe operation and decommissioning of a licensee's nuclear power plant, the NRC has conditioned license transfer approvals involving new parent companies upon a requirement that the licensee not transfer significant assets from the licensee without first notifying the NRC. This requirement assists the NRC in assuring that a licensee will continue to maintain adequate resources to contribute to the safe operation and decommissioning of its facility. Thus, the following should be a condition of approval of the application:

FPC shall provide the Office of the Director of the Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from FPC to existing or proposed direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of FPC's consolidated net utility plant, as recorded on FPC's book of accounts.

In its January 31, 2000, application, FPC indicated that it is willing to provide the above specified documentation.

In consideration of the foregoing, the staff finds the proposed acquisition will not affect FPC's financial qualifications.

4.0 DECOMMISSIONING FUNDING ASSURANCE

The NRC has determined that the requirements to provide reasonable assurance of decommissioning funding are necessary to ensure the adequate protection of public health and safety. Section 50.33(k) of 10 CFR requires that an application for an operating license for a utilization facility contain information indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

FPC has filed its decommissioning funding reports with the NRC under 10 CFR 50.75(b) and 10 CFR 50.75(f)(1) and is providing financial assurance for decommissioning its respective ownership interest in CR-3 in accordance with the NRC's regulation through an external sinking fund in which deposits are made at least annually. After the share exchange transaction, FPC will remain responsible for the decommissioning liabilities associated with its ownership interest in CR-3 and will continue to fund its decommissioning trust for CR-3 in accordance with 10 CFR 50.75.

In conformance with 10 CFR 50.75(f)(1), which states that "plants involved in mergers or acquisitions shall submit this report annually," the applicant submitted its decommissioning funding report on March 28, 2000. The NRC staff has confirmed that, as of December 31, 1999, the decommissioning trust funds associated with the FPC 91.7806% ownership share of CR-3 is funded in accordance with the NRC's regulations. Based on the discussion above, the staff concludes that the applicant has complied with the requirements of 10 CFR 50.75(b) with respect to the amount of decommissioning funding that it must provide. Nothing in the application indicates that the proposed acquisition of Progress by Holdings will affect FPC's decommissioning funding.

The NRC staff concludes that, given the considerations discussed herein, FPC's funding mechanism, notwithstanding the proposed acquisition, will continue to meet the requirements of 10 CFR 50.75(e).

5.0 TECHNICAL QUALIFICATIONS

In the application, FPC stated that: "The technical qualifications of the plant operator, FPC, will not be adversely affected by the share exchange transaction. The nuclear organization will continue to have clear and direct lines of responsibility and authority. While specific individuals may join or leave the nuclear staff, and titles or responsibilities may change, the technical and administrative abilities will remain essentially unchanged. The transaction will not require any change in the licensing basis for CR-3 and will not require any amendments to the CR-3 operating license or technical specifications. Therefore, the technical qualifications of FPC to carry out its responsibilities under the CR-3 operating license will not be adversely affected by the proposed transaction."

The proposed acquisition involves no change to either the management organization or technical personnel of FPC responsible for operating and maintaining the CR-3 facility. Essentially the same staff will be responsible for the operation and maintenance of CR-3 both before and after the acquisition. Therefore, the staff concludes that the proposed acquisition will not affect the technical qualifications of FPC to hold the subject license and perform activities authorized or required under the license.

6.0 ANTITRUST REVIEW

The Atomic Energy Act 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). Therefore, since the transfer application postdates the issuance of the Crystal River Unit 3 Nuclear Plant operating license, no antitrust review is required or authorized.

7.0 FOREIGN OWNERSHIP, CONTROL OR DOMINATION

FPC and Progress are, and will remain after the share exchange transaction, corporations organized and existing under the laws of the State of Florida. All of FPC's and Progress' directors and principal officers are now and will be, at the time of the share exchange transaction, citizens of the United States. Holdings will be a North Carolina corporation, with its board of directors comprising all U.S. citizens. Its stock will be widely held and publicly traded.

The common stock of Progress is currently widely held and publicly traded. Following the proposed share exchange transaction, Progress will become a direct, wholly owned subsidiary of Holdings and FPC will become an indirect subsidiary of Holdings. According to the application, Holdings, FPC and Progress will not be owned, controlled or dominated by an alien, foreign corporation or foreign government. The staff has no reason to believe otherwise.

8.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the indirect transfer of a license issued by the NRC. Accordingly, the action involved meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

9.0 CONCLUSION

In view of the foregoing information provided in the application, and letters dated February 14, and March 28, 2000, which did not expand the scope of the application as noticed in the *Federal Register*, the NRC staff concludes that the proposed share exchange transaction will not reduce funds available to FPC to carry out activities under its operating license, will not impact decommissioning funding, and will not adversely affect the management of, or the technical qualifications of, FPC utility operations. In addition, FPC will not become owned, controlled or dominated by an alien, foreign corporation, or foreign government, and there are no problematic antitrust considerations. Therefore, the NRC staff finds that the proposed acquisition of Progress by Holdings will not affect the qualifications of FPC as a holder of the license, and that the indirect transfer of the license, to the extent effected by the proposed acquisition, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the condition regarding significant asset transfers discussed earlier in this safety evaluation.

Principal Contributor: M. A. Dusaniwskyj

Dated: May 22, 2000

Mr. John Paul Cowan
Florida Power Corporation

CRYSTAL RIVER UNIT NO. 3

cc:

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