

9/23/87

Docket No. 50-412

September 23, 1987

Mr. J. J. Carey, Senior Vice President
Nuclear Group
Duquesne Light Company
Post Office Box 4
Shippingport, PA 15077

Dear Mr. Carey:

SUBJECT: ISSUANCE OF AMENDMENT (LICENSING ACTION TAC #65807)

The Commission has issued the enclosed Amendment No. 1 to Facility Operating License No. NPF-73 for the Beaver Valley Power Station, Unit 2. The amendment consists of changes to the license in response to your application dated July 14, 16, 22, 31, September 14 (3 letters) 17 and 18, 1987.

The amendment changes the license for Beaver Valley Unit No. 2 to allow sale and leaseback transactions by each of the four owners (Duquesne Light Company, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company).

A copy of the related Safety Evaluation is also enclosed. The Notice of Issuance will be included in the Commission's bi-weekly Federal Register notice.

Sincerely,

Peter S. Tam, Project Manager
Project Directorate I-4
Division of Reactor Projects I/II

Enclosures:

- 1. Amendment No. 1 to NPF-73
- 2. Safety Evaluation

cc w/enclosures:
See next page

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Mr. J. J. Carey
Duquesne Light Company

Beaver Valley 2 Power Station

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

DUQUESNE LIGHT COMPANY

OHIO EDISON COMPANY

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

THE TOLEDO EDISON COMPANY

DOCKET NO. 50-412

BEAVER VALLEY POWER STATION, UNIT 2

AMENDMENT TO FACILITY OPERATING LICENSE

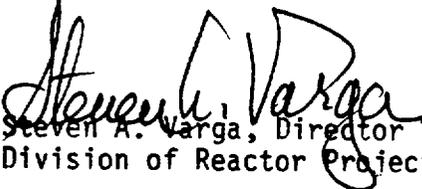
Amendment No. 1
License No. NPF-73

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by Duquesne Light Company*, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (the licensees) dated July 14, 16, 22, 31, September 14 (3 letters), 17 and 18, 1987, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.
2. Accordingly, the license is amended by the addition of paragraph 2.B.(7) as indicated in the attachment to this license amendment.

Duquesne Light Company (DLC) is authorized to act as agent for Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility.

3. This amendment is effective on issuance.

FOR THE NUCLEAR REGULATORY COMMISSION


Steven A. Varga, Director
Division of Reactor Projects I/II

Attachment:
Pages 3 and 3a of License

Date of Issuance: September 23, 1987

- (2) Pursuant to the Act and 10 CFR Part 50, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to possess the facility at the designated location in Beaver County, Pennsylvania, in accordance with the procedures and limitations set forth in the license;
- (3) Pursuant to the Act and 10 CFR Part 70, Duquesne Light Company to receive, possess, and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Final Safety Analysis Report, as supplemented and amended;
- (4) Pursuant to the Act and 10 CFR Parts 30, 40, and 70, Duquesne Light Company to receive, possess, and use at any time any byproduct, source, and special nuclear material such as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
- (5) Pursuant to the Act and 10 CFR Parts 30, 40, and 70, Duquesne Light Company to receive, possess, and use in amounts as required any byproduct, source, or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or other activity associated with radioactive apparatus or components;
- (6) Pursuant to the Act and 10 CFR Parts 30, 40, and 70, Duquesne Light Company to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility authorized herein.
- (7) (a) Duquesne Light Company, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company are authorized to transfer any portion of their respective 13.74%, 41.88%, 24.47% and 19.91% ownership interests in BVPS Unit 2 and a proportionate share of their ownership interests in the BVPS common facilities to certain potential investors identified in their submittals of July 14, 16, 22 and 31, and September 14, 17 and 18, 1987, and at the same time to lease back from such purchasers such interest transferred in the BVPS Unit 2 facility. The term of the lease is for approximately 29-1/2 years subject to a right of renewal. Such sale and leaseback transactions are subject to the representations and conditions set forth in the aforementioned submittals. Specifically, a lessor and anyone else who may acquire an interest under these transactions are prohibited from exercising directly or indirectly any control over the license of BVPS Unit 2. For purposes of this condition the limitations in 10 CFR 50.81, as now in effect and as may be subsequently amended, are fully applicable to the lessor and any successor in interest to that lessor as long as the license for BVPS Unit 2 remains in effect; these financial

transactions shall have no effect on the license for the BVPS Unit 2 facility throughout the term of the license.

- (b) Further, the licensees are also required to notify the NRC in writing prior to any change in: (i) the term or conditions of any lease agreements executed as part of these transactions; (ii) the BVPS Operating Agreement, (iii) the existing property insurance coverage for BVPS Unit 2, and (iv) any action by a lessor or others that may have an adverse effect on the safe operation of the facility.
- C. This license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

(1) Maximum Power Level

DLCo is authorized to operate the facility at reactor core power levels not in excess of 2652 megawatts thermal (100 percent power) in accordance with the conditions specified herein.

(2) Technical Specifications and Environmental Protection Plan

The Technical Specifications contained in Appendix A and the Environmental Protection Plan contained in Appendix B, both of which are attached hereto, are hereby incorporated into this license. DLCo shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

SUPPORTING AMENDMENT NO. 1 TO FACILITY OPERATING LICENSE NO. NPF-73

DUQUESNE LIGHT COMPANY
THE OHIO EDISON COMPANY
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY
TOLEDO EDISON COMPANY
BEAVER VALLEY POWER STATION, UNIT 2

DOCKET NO. 50-412

1.0 INTRODUCTION

By letters dated July 14, 16, 22 and 31, 1987, September 14, (3 letters), 17 and 18, 1987, the licensees (named above) requested approval to sell and lease back parts or all of their ownership interests in Beaver Valley Power Station, Unit 2 (BVPS-2) and associated common facilities. The basic term of the leases is expected to be approximately 29 1/2 years and the licensees will have the option to renew each lease for at least two years.

2.0 DISCUSSION AND EVALUATION

Duquesne Light Company (DLC), one of the owners, is the only authorized agent to have exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

The sale and leaseback transactions described in these applications are similar in all significant respects to the transactions previously approved by the Commission with respect to various ownership interests in the Palo Verde Nuclear Generating Station (PVNGS). The first of these involved the sale and leaseback transactions by the Public Service Company of New Mexico relative to PVNGS Unit 1 which were authorized by an amendment to the PVNGS Unit 1 license on December 26, 1985 (see 51 FR 1883). Since then, additional similar transactions were authorized for PVNGS Unit 1 by license amendments issued on June 2, 1986, and December 1, 1986, and for PVNGS Unit 2 by license amendments issued on August 12, 1986, August 15, 1986, and December 11, 1986. These amendments all contain license conditions identical to those which were included in the aforementioned December 26, 1985 amendment pursuant to a Commission order of December 12, 1985.

Subsequent to the above amendments, the Commission issued a similar amendment to the Cleveland Electric Illuminating Company, part-owner of the Perry Nuclear Power Plant, Unit No. 1 on March 16, 1987.

The licensees proposed that the BVPS-2 license be amended in the same manner by adding the following new paragraph 2.B.(7):

- (7)(a) Duquesne Light Company, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company are authorized to transfer any portion of their respective 13.74%, 41.88%, 24.47% and 19.91% ownership interests in BVPS Unit 2 and a proportionate share of their ownership interests in the BVPS common facilities to certain potential equity investors identified in their submittals of July 14, 16, 22, 31, September 14, 17 and 18, 1987, and at the same time to lease back from such purchasers such interest transferred in the BVPS Unit 2 facility. The term of the lease is for approximately 29-1/2 years subject to a right of renewal. Such sale and leaseback transactions are subject to the representations and conditions set forth in the aforementioned submittals. Specifically, a lessor and anyone else who may acquire an interest under these transactions are prohibited from exercising directly or indirectly any control over the license of BVPS Unit 2. For purposes of this condition the limitations in 10 CFR 50.81, as now in effect and as may be subsequently amended, are fully applicable to the lessor and any successor in interest to that lessor as long as the license for BVPS Unit 2 remains in effect; these financial transactions shall have no effect on the license for the BVPS Unit 2 facility throughout the term of the license.
- (b) Further, the licensees are also required to notify the NRC in writing prior to any change in: (i) the term or conditions of any lease agreements executed as part of these transactions; (ii) the BVPS Operating Agreement, (iii) the existing property insurance coverage for BVPS, Unit 2, and (iv) any action by a lessor or others that may have an adverse effect on the safe operation of the facility.

Consistent with the above condition 2.B.(7), the licensees' various submittals stated that: "Neither the owner trustee nor any of the equity investors will have (i) any ability to restrict or inhibit compliance with the security, safety, or other regulations of the Commission, (ii) any capacity to control the use or disposal of BVPS Unit 2 nuclear fuel, or (iii) any right to use or direct the use of BVPS Unit 2 or any other part of BVPS Unit 2. The current regime of control, supervision, and responsibility will be unaltered by the proposed transactions. DLC is and will remain responsible to the Commission for the proper operation and maintenance of Unit 2."

Our review of the application materials reveals no information that reflects negatively on the licensees' financial qualifications under the license. Indeed, the source of funds for unit operating and maintenance expenses will be unaffected by the transactions. That source is the utility revenues derived from the regulated rates charged to utility customers. The utility licensees will continue to be responsible for their pro-rata shares of all nuclear unit costs under provisions of the Beaver Valley Power Station Operating Agreement. Any needed capital improvements or additions to the nuclear unit would be financed by the

utility licensees as at present through a combination of internally generated funds (derived from customer revenues) and security issues. The equity investor-lessors, through agreement with the utility licensees, may opt to provide capital for such improvements or additions. The proposed sale/leaseback is a capital refinancing mechanism that does not impair the licensees' financial capability to comply with NRC requirements.

The licensees' submittals of September 14 and 18, 1987, identified who the potential investors might be but discussions with these investors are continuing. The licensees, however, stated that some investors may be affiliates and subsidiaries of electric utilities, thus raising the question of antitrust possibilities. The staff determined that where the investor owners do not acquire the right to electric power generation at the facility, and such electricity will continue to be distributed in the same manner as is now set forth in the operating agreement, "the transaction does not present any antitrust considerations not previously considered at the time of the license." (SECY-85-367 at 9). The potential sale to investors who are affiliates and subsidiaries of electric utilities described above would be fully consistent with the policy stated above in SECY-85-367. None of the potential investors identified in the licensees' letters are foreign corporations.

3.0 CONTACT WITH STATE OFFICIAL

The Commonwealth of Pennsylvania has been advised of the proposed determination of no significant hazards considerations with regard to the amendment (Phone call with Mr. R. Janati, August 24, 1987). No comments were received.

4.0 ENVIRONMENTAL CONSIDERATIONS

This amendment only involves the administration of the credit and financial arrangements for BVPS, Unit 2. The parties will enter into agreements which provide for the sale and lease back of ownership shares by the licensees under terms requiring continued full control and responsibility over these ownership shares by the licensees. The lessors and anyone else who may acquire an interest under these transactions are prohibited from exercising directly or indirectly, any control of the license. The amendment also includes a reporting requirement that the NRC must be notified in writing prior to any change in the executed lease agreements, the BVPS, Unit 2 participation agreement, the existing insurance policies or any action by a lessor or others that may have an adverse effect on the safe operation of the facility. Accordingly this amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22 (c)(10). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of this amendment.

5.0 CONCLUSION

The staff has concluded, based on the considerations discussed above, that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, and

(2) such activities will be conducted in compliance with the Commission's regulations and (3) the issuance of amendments will not be inimical to the common defense and security or to the health and safety of the public. We, therefore, conclude that the requested authorization is acceptable.

Dated: September 23, 1987

Principal Contributors:

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Peter S. Tam, Project Manager

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Benjamin Vogler, Legal Counsel