

September 20, 2001

Mr. Mark Reddemann  
Site Vice President  
Kewaunee and Point Beach Nuclear Plants  
Nuclear Management Company, LLC  
6610 Nuclear Road  
Two Rivers, WI 54241

SUBJECT: KEWAUNEE NUCLEAR POWER PLANT - ORDER APPROVING THE  
TRANSFER OF FACILITY OPERATING LICENSE TO THE EXTENT HELD BY  
MADISON GAS & ELECTRIC COMPANY TO WISCONSIN PUBLIC SERVICE  
CORPORATION AND APPROVING A CONFORMING AMENDMENT (TAC NO.  
MB1877)

Dear Mr. Reddemann:

The U.S. Nuclear Regulatory Commission (NRC) staff has completed its review of your application dated April 30, 2001, as supplemented June 27 and August 3, 2001, requesting approval of the transfer of Facility Operating License No. DPR-43 for the Kewaunee Nuclear Power Plant (KNPP) to the extent held by Madison Gas & Electric Company (MG&E) to Wisconsin Public Service Corporation (WPSC) and approval of a conforming amendment pursuant to 10 CFR 50.80 and 10 CFR 50.90. NMC filed the application pursuant to its authority to act as agent for MG&E and WPSC.

MG&E currently owns 17.8 percent of KNPP and WPSC owns 41.2 percent. Specifically, the application requests consent to the transfer of the KNPP license in connection with the transfer of MG&E's ownership interest in KNPP to WPSC such that WPSC would have a 59-percent ownership interest in KNPP. There would be no change in the current partial ownership by Wisconsin Power & Light Company of KNPP under the proposed transfer. There would also be no change in NMC's operating authority for KNPP under the proposed transfer.

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The enclosed Order (Enclosure 1) approves the proposed transfer, subject to the conditions described therein. The Order also approves a conforming license amendment (Enclosure 2), which will be issued and made effective at the time the transfer is completed. The NRC staff's safety evaluation supporting the Order and the conforming amendment is also enclosed (Enclosure 3).

Sincerely,

**/RA/**

John G. Lamb, Project Manager, Section 1  
Project Directorate III  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

Docket No. 50-305

Enclosures: 1. Order  
2. Conforming Amendment  
3. Safety Evaluation

cc w/encls: See next page

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Kewaunee Nuclear Power Plant

cc:

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UNITED STATES OF AMERICANUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
WISCONSIN PUBLIC SERVICE	)	Docket No. 50-305
CORPORATION, ET AL.	)	
	)	License No. DPR-43
(Kewaunee Nuclear Power Plant)	)	

ORDER APPROVING TRANSFER OF LICENSE  
AND CONFORMING AMENDMENT

I.

Wisconsin Public Service Corporation (WPSC), Madison Gas & Electric Company (MG&E), and Wisconsin Power & Light Company (WP&L) are the licensed owners and Nuclear Management Company, LLC (NMC), is the exclusive licensed operator of the Kewaunee Nuclear Power Plant (KNPP), and in regard thereto, hold Facility Operating License No. DPR-43. KNPP (the facility) is located in Kewaunee County, Wisconsin.

II.

By application dated April 30, 2001, as supplemented June 27 and August 3, 2001, NMC, on behalf of WPSC, MG&E, and WP&L, requested the consent of the U. S. Nuclear Regulatory Commission (NRC or Commission) to a proposed transfer of the license for KNPP, to the extent held by MG&E, to WPSC. The application and supplements are collectively herein referred to as "the application," unless otherwise indicated. The application also requested the approval of a conforming license amendment to reflect the transfer of the license.

In connection with the transfer, WPSC, presently the holder of a 41.2-percent ownership interest in KNPP, would assume the 17.2-percent ownership interest in KNPP currently held by MG&E, resulting in WPSC holding a 59-percent ownership interest in KNPP. WP&L is not involved in the transfer of MG&E's interest and will remain a licensee with respect to its 41-percent ownership interest in KNPP. NMC will maintain its responsibility for the operation of KNPP. The application states that WPSC would assume the decommissioning funding assurance obligation that is currently the responsibility of MG&E, in addition to remaining responsible for such costs associated with WPSC's current ownership interest in KNPP.

The proposed conforming license amendment would delete references to MG&E in the license, as appropriate, to reflect the proposed transfer.

The application requested approval of the transfer of the license and the conforming license amendment pursuant to 10 CFR 50.80 and 10 CFR 50.90. The NRC staff published a notice of the request for approval of the transfer of the license and conforming amendment, and an opportunity for a hearing in the *Federal Register* on July 27, 2001 (66 FR 39214). The Commission received no requests for hearing or written comments pursuant to the notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that WPSC is qualified to hold the license to the extent proposed in the application, and that the transfer of the license, to the extent held by MG&E, to WPSC, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment 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; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by a safety evaluation dated September 20, 2001.

### 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 transfer of the license, as described herein, to WPSC is approved, subject to the following conditions:

- (1) WPSC shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the license transfer application regarding the transfer of MG&E's ownership interest in KNPP to WPSC and the requirements of this Order approving the transfer, and consistent with the safety evaluation supporting this Order. Additionally, if the MG&E Nonqualified Fund is not transferred to WPSC, WPSC, or NMC acting on WPSC's behalf, shall explicitly include the status of the MG&E Nonqualified Fund in all future decommissioning

funding status reports that WPSC, or NMC, submit in accordance with 10 CFR 50.75(f)(1).

- (2) On the closing date of the transfer of MG&E's interest in KNPP to WPSC, MG&E shall transfer to WPSC all of MG&E's accumulated qualified decommissioning trust funds for KNPP. Immediately following such transfer, the amounts for radiological decommissioning of KNPP in WPSC's decommissioning trusts must, with respect to the interests in KNPP that WPSC would then hold, be at a level no less than the formula amounts under 10 CFR 50.75.
- (3) After receipt of all required regulatory approvals of the transfer of MG&E's interest in KNPP to WPSC, WPSC or NMC shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of the closing.
- (4) If the transfer of the license is not completed by September 30, 2002, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated April 30, 2001, the supplemental submittals dated June 27 and August 3, 2001, and the safety evaluation dated September 20, 2001, which are available for public inspection at the



Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland this 20th day of September 2001.

FOR THE NUCLEAR REGULATORY COMMISSION

*/RA/*

Samuel J. Collins, Director  
Office of Nuclear Reactor Regulation

NUCLEAR MANAGEMENT COMPANY, LLC

DOCKET NO. 50-305

KEWAUNEE NUCLEAR POWER PLANT

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.  
License No. DPR-43

1. The Nuclear Regulatory Commission (the Commission) has found that:
  - A. The application for amendment by Nuclear Management Company, LLC (NMC), dated April 30, 2001, as supplemented June 27 and August 3, 2001, 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 hereby amended as indicated in the attachment to this license amendment.
3. This license amendment is effective as of its date of issuance and shall be implemented within 60 days.

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Collins, Director  
Office of Nuclear Reactor Regulation

Attachment: Changes to the Operating License and Technical Specifications

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. \_\_\_\_\_

TO FACILITY OPERATING LICENSE NO. DPR-43

DOCKET NO. 50-305

Replace the following pages of Operating License DPR-43 with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

REMOVE

1  
2  
3  
4  
5

INSERT

1  
2  
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Replace the following page of the Technical Specifications with the attached revised page. The revised page is identified by amendment number and contains marginal lines indicating the areas of change.

REMOVE

TS 5.1-1

INSERT

TS 5.1-1

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

TRANSFER OF FACILITY OPERATING LICENSE

TO THE EXTENT HELD BY

MADISON GAS & ELECTRIC COMPANY

TO WISCONSIN PUBLIC SERVICE CORPORATION

KEWAUNEE NUCLEAR POWER PLANT

DOCKET NO. 50-305

1.0 INTRODUCTION

By application dated April 30, 2001, as supplemented June 27 and August 3, 2001 (collectively, hereafter referred to as the application, unless otherwise noted), Nuclear Management Company, LLC (NMC), requested approval of the transfer of Facility Operating License No. DPR-43 for the Kewaunee Nuclear Power Plant (KNPP) to the extent held by Madison Gas & Electric Company (MG&E) to Wisconsin Public Service Corporation (WPSC) and approval of a conforming amendment pursuant to 10 CFR 50.80 and 10 CFR 50.90. In the August 3, 2001, supplemental letter, NMC confirmed that it has the authority to act as agent for the owners of KNPP in requesting NRC's consent to the transfer of MG&E's interest in the license for KNPP.

The August 3, 2001, supplement to the initial application that was not specifically referenced in the *Federal Register* notice of the transfer and amendment request did not expand the application beyond the scope of the notice.

In its application, NMC specifically requested that the Commission issue an Order consenting to the transfer of Facility Operating License No. DPR-43 for KNPP to the extent held by MG&E to WPSC. MG&E currently owns 17.8-percent, WPSC owns 41.2-percent, and WP&L owns 41-percent of the ownership in KNPP, respectively. Therefore, upon the proposed transfer of MG&E's ownership interest in KNPP and corresponding transfer of MG&E's interest in the license, WPSC would own 59-percent of KNPP. WP&L is not affected by this transfer and will retain its 41-percent ownership of KNPP. NMC currently has operating authority for KNPP and that will not change. KNPP is a single-unit, 1650-megawatts thermal (MWt) nuclear power plant consisting of a Westinghouse two-loop, pressurized-water reactor (PWR), a tandem-compound steam turbine, and other associated equipment located on the shore of Lake Michigan, in Kewaunee County, approximately 27 miles southwest of Green Bay, Wisconsin. The operating license for KNPP will expire on December 21, 2013.

NMC also requested the approval of a conforming license amendment to reflect the proposed license transfer.

## 2.0 BACKGROUND

NMC submitted the application on behalf of the facility's owners, MG&E, WPSC, and WP&L. In the supplemental letter dated August 3, 2001, NMC provided an affidavit by MG&E and WPSC confirming that NMC has the legally binding authority to represent MG&E and WPSC in the matter of the application for consent to the license transfer associated with the proposed transfer of MG&E's nonoperating ownership interest in KNPP and the request for a conforming amendment to the operating license and the plant's technical specifications.

WPSC is a corporation organized and existing under the laws of the State of Wisconsin. Its purpose is to engage principally in the generation, transmission, distribution, and sale of electricity to residential, commercial, and industrial customers for their own use and to wholesale customers for resale. The application states that, after the transfer, WPSC will continue to be an electric utility with rates set by the Wisconsin Public Service Commission (PSC).

NMC, the nonowner operator of KNPP, operates the plant under the terms of an Operating Services Agreement between NMC and the owners of KNPP. The NRC's approval of NMC becoming the nonowner operator of KNPP was issued by Order dated May 15, 2000; the associated conforming amendment (Amendment No. 149 to license number DPR-43) was approved by the Order dated May 15, 2000, and issued on August 7, 2000.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Such action is contingent upon the Commission's determination that the transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

## 3.0 TECHNICAL QUALIFICATIONS

The subject license transfer does not affect NMC, which is the sole operator of KNPP and is authorized to use and operate KNPP in accordance with the terms and conditions of the operating license. No transfer of operating authority is being proposed.

The application states in part:

"The proposed transfer will not alter day-to-day management by NMC."

"The transaction will not adversely affect either the NMC organization or its technical qualifications. NMC will continue to have clear and direct lines of responsibility and authority to use and operate KNPP, and the technical and administrative abilities of the staff will remain undiminished."

Based on the above statements, the transfer of MG&E's ownership interest to WPSC will have no effect on management, operation or maintenance of KNPP. Furthermore, the transfer will not involve any change to the management or technical organization or staff tasked with

operating KNPP, nor will it require any change in the number and qualifications of personnel who operate KNPP.

The NRC staff therefore concludes that the proposed license transfer will not affect the technical qualifications of NMC.

#### 4.0 FINANCIAL QUALIFICATIONS ANALYSIS

Pursuant to 10 CFR 50.33(f), an electric utility is exempt from demonstrating its financial qualifications. The regulation at 10 CFR 50.2 states that an electric utility is "any entity that generates or distributes electricity and recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority." Applicants that do not qualify as electric utilities in accordance with 10 CFR 50.2 are required to provide "information sufficient to demonstrate to the Commission the financial qualifications of the applicant to carry out . . . the activities for which the permit or license is sought."

As noted above, the application states that WPSC is, and will continue to be after the transfer, an electric utility as defined by 10 CFR 50.2, with its rates regulated by the Wisconsin PSC. In its June 27, 2001, supplemental letter responding to an NRC staff request for additional information (RAI), NMC, answering on behalf of WPSC, stated that "WPSC is an electric utility as defined in Wisconsin Statute § 196.01 and is engaged in the generation, transmission, distribution, and sale of electricity. WPSC has no plan to alter its business structure in a manner that would cause it to cease to be a rate regulated utility." The RAI response further stated that "WPSC knows of no legislative initiative by the Wisconsin State legislature to provide open access to the existing electrical power generation or to change the State regulatory oversight of existing generation. The [Wisconsin Public Service Commission] has no active docket for electric industry restructuring or regulatory rulemaking that would change State regulatory oversight of existing generation."

The application also states that WPSC provides electric service to a portion of Michigan's upper peninsula. In sworn testimony before the Michigan PSC on February 20, 2001, WPSC stated that its revenue from electric retail customers in Michigan represented only 2.4 percent of its total electric utility operating revenues in 1999. Although the Michigan PSC does have an active docket for electric industry restructuring, the NRC staff considers that the small amount of revenue that WPSC receives from its Michigan customers is under the *de minimis* threshold specified in NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," dated March 1999 (SRP). Thus, WPSC is still considered to be subject to traditional cost-of-service rate regulation, and is still considered to be an electric utility as defined by 10 CFR 50.2.

Therefore, based upon the information provided in the application and in accordance with 10 CFR 50.33(f), the NRC staff finds that no further showing or review of WPSC's financial qualifications is required and that WPSC is financially qualified to own KNPP to the extent proposed in the application.

## 5.0 DECOMMISSIONING FUNDING ASSURANCE

The NRC has determined that the requirements to provide an adequate amount of decommissioning funding and assurance thereof are necessary to ensure adequate protection of public health and safety. The Commission's regulations at 10 CFR 50.33(k) require information showing "reasonable assurance . . . that funds will be available to decommission the facility." Additionally, pursuant to 10 CFR 50.75(b), each power reactor licensee must certify that it will provide decommissioning funding assurance in an amount that may be more, but not less, than the amount determined under the formulas in 10 CFR 50.75(c)(1) and (2). These formulas are based on the size and type of the reactor and on cost escalation factors for labor, energy, and low-level waste (LLW) disposal costs. The labor and energy cost escalation factors are to be taken from regional data of the U.S. Department of Labor, Bureau of Labor Statistics (BLS). The LLW escalation factor is to be derived from the latest version of NUREG-1307, "Report on Waste Burial Charges" (currently Revision 9), which allows licensees a variety of methods by which they may estimate the costs of LLW disposal, including disposition by waste vendors.

MG&E currently maintains two decommissioning trusts for KNPP: a trust qualified for tax treatment under Section 468A of the *Internal Revenue Code* (qualified decommissioning trust); and a decommissioning trust that is not qualified under Section 468A of the *Internal Revenue Code* (nonqualified decommissioning trust). The application states that MG&E will (a) transfer the net assets of the qualified decommissioning trust to WPSC at closing, (b) commit to dedicate funds available in the nonqualified trust to decommission KNPP, and (c) commit to make annual decommissioning contributions of \$8,091,000 through the year 2002.

Pursuant to the Settlement and Ownership Transfer Agreement (SOTA) between WPSC and MG&E, MG&E's obligation for decommissioning funding for KNPP shall be the amount of funds available in the MG&E qualified decommissioning trust and nonqualified decommissioning trust as of the closing date, plus annual contributions of \$8,091,000 through the year 2002. The SOTA also contains provisions that MG&E and WPSC will "exercise their commercially reasonable best efforts to effect the transfer of the MG&E nonqualified fund or rights with respect thereto so as to avoid material adverse tax consequences to either party . . . ." However, in anticipation that transfer of the MG&E nonqualified decommissioning trust to WPSC will result in adverse tax consequences, the application proposes that MG&E will retain the nonqualified decommissioning trust and MG&E will commit to dedicate the funds in the nonqualified trust to the decommissioning of KNPP. Section 17.e(i) of the SOTA also states "the parties acknowledge and agree that the MG&E nonqualified fund is irrevocably devoted to decommissioning the Nuclear Plant notwithstanding the transfer by MG&E of its interest in the Nuclear Plant to WPSC." Section 17.e(iii) of the SOTA further stipulates that, "in the event that MG&E retains the nonqualified fund, the first monies expended for decommissioning will be expended from MG&E's nonqualified fund before WPSC's funds are expended."<sup>1</sup>

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<sup>1</sup>Under the terms of the SOTA, MG&E will continue to bear financial responsibility for its prorated share of spent fuel disposal costs for spent fuel generated during the period when MG&E held an ownership interest in KNPP. However, whether MG&E retains this responsibility is not material to the NRC staff's conclusion reached herein on decommissioning funding since spent fuel disposal costs are not considered to be decommissioning expenses under NRC regulations at 10 CFR 50.75.



With respect to WPSC's and WP&L's shares of the total decommissioning funding requirement, the application states that "WPSC and WP&L . . . are providing financial assurance for decommissioning their respective ownership interest in KNPP . . . through an external sinking trust fund. After the transaction, WPSC and WP&L will remain responsible for the decommissioning liabilities associated with their respective ownership interests in KNPP and will continue to fund the KNPP decommissioning trust in accordance with 10 CFR 50.75."

#### 5.1 Amount of Decommissioning Funds

On March 29, 2001, NMC submitted a decommissioning funding status report for KNPP on behalf of the owners. This report states that the minimum decommissioning funding requirement for KNPP per 10 CFR 50.75(b) and (c) is \$263 million. It further states that the owners have accumulated the following pre-tax amounts for the decommissioning liabilities for KNPP as of December 31, 2000: WPSC - \$231.7 million; MG&E - \$102.8 million; and WP&L - \$197.2 million, for a total pre-tax amount of \$537.1 million. The report, however, did not provide information regarding the amounts in the MG&E qualified decommissioning trust and nonqualified decommissioning trust. Thus, the NRC staff requested in its June 13, 2001, RAI that the applicants provide information regarding the amounts in each of these funds. In its June 27, 2001, response, NMC stated that as of April 30, 2001, the market value of the MG&E qualified fund was nearly \$65.8 million, and the market value of the MG&E nonqualified fund was nearly \$36.1 million.

The NRC staff independently calculated the minimum decommissioning funding requirement for KNPP per 10 CFR 50.75(b) and (c) to be \$273.14 million, using BLS data for first quarter 2001. Assuming pro rata responsibility, MG&E's proportionate share of this liability is \$48.62 million. Notwithstanding the applicants' incorrect determination of the minimum required funding amount per 10 CFR 50.75, the amount in MG&E's qualified decommissioning trust to be transferred to WPSC is adequate to cover MG&E's portion of the KNPP decommissioning liabilities, assuming pro rata responsibility.

Based on its review of the application, the March 29, 2001, decommissioning funding status report, and independent confirmatory calculations, the NRC staff concludes that the transfer of MG&E's qualified decommissioning trust will satisfy the requirements of 10 CFR 50.75(b) with respect to MG&E's share of the funding required for decommissioning KNPP under the generic formulas in 10 CFR 50.75(c). The funds available in the nonqualified trust, and the remaining \$8,091,000 annual payments provide appropriate additional assurance that funds will be available to decommission the facility.

#### 5.2 Decommissioning Funding Assurance Mechanism

Pursuant to 10 CFR 50.75(b), a reactor licensee is required to provide decommissioning funding assurance by one or more of the methods described in 10 CFR 50.75(e), which is determined to be acceptable by the NRC. As previously noted, the application states that MG&E will: (a) transfer the net assets of the qualified decommissioning trust to WPSC at closing, (b) commit to dedicate funds available in the nonqualified trust to decommissioning of KNPP, and (c) commit to make annual decommissioning contributions of \$8,091,000 through the year 2002. The application further states that WPSC and WP&L will continue to fund their proportionate shares of KNPP's decommissioning costs through the mechanisms they have already established in accordance with 10 CFR 50.75.

Because the transfer of MG&E's qualified fund, along with the dedication of funds in the nonqualified trust and annual payments of \$8,091,000, will adequately satisfy the requirements of 10 CFR 50.75, because WPSC and WP&L will be responsible for providing decommissioning funding assurance for KNPP pursuant to NRC regulations, and because the status of both WPSC and WP&L as electric utilities per 10 CFR 50.2 will not be affected by this transfer, the NRC staff concludes that no changes will be required to the funding mechanisms that WPSC and WP&L already have in place.

### 5.3 NRC Staff's Conclusion on the Decommissioning Funding

The NRC staff finds that WPSC's proposed decommissioning funding amounts associated with the transfer of MG&E's interest in KNPP to WPSC, and the proposed decommissioning funding assurance mechanisms meet the requirements of 10 CFR 50.75.

The NRC staff further concludes that, in order to ensure that the decommissioning trust is maintained consistent with the staff's action on the application, and to reflect WPSC's and MG&E's commitment for decommissioning funds as stated in the application, the following should be included as conditions of the transfer approval and as conditions in the license:

- (1) WPSC shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the license transfer application regarding the transfer of MG&E's ownership interest in KNPP to WPSC and the requirements of the Order approving the transfer, and consistent with the safety evaluation supporting the Order. Additionally, if the MG&E nonqualified fund is not transferred to WPSC, WPSC, or NMC acting on WPSC's behalf, shall explicitly include the status of the MG&E nonqualified fund in all future decommissioning funding status reports that WPSC, or NMC, submit in accordance with 10 CFR 50.75(f)(1).
- (2) On the closing date of the transfer of MG&E's interest in KNPP to WPSC, MG&E shall transfer to WPSC all of MG&E's accumulated qualified decommissioning trust funds for KNPP. Immediately following such transfer, the amounts for radiological decommissioning of KNPP in WPSC's decommissioning trusts must, with respect to the interests in KNPP that WPSC would then hold, be at a level no less than the formula amounts under 10 CFR 50.75.

### 6.0 INSURANCE

Since WPSC is already a licensee for KNPP and has insurance coverage required by the Price-Anderson Act (Section 170 of the Atomic Energy Act (AEA)) and the Commission's regulations at 10 CFR Part 140, the only necessary change with respect to these requirements is that the current indemnity agreements be updated to reflect the transfer of MG&E's ownership interest and corresponding license transfer. In accordance with 10 CFR Part 140, this change must be effective on the effective date of the amended license reflecting the transfer. Accordingly, in order to ensure that the updated agreements and conforming license amendments are issued in a timely manner, the NRC staff has determined that the following condition should be included in the Order approving the transfer:

- (3) After receipt of all required regulatory approvals of the transfer of MG&E's interest in KNPP to WPSC, WPSC or NMC shall inform the Director of the Office of Nuclear Reactor Regulation, in writing, of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of the closing.

## 7.0 ANTITRUST REVIEW

The 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). Therefore, since the transfer application postdates the issuance of the KNPP operating license, no antitrust review is required or authorized.

## 8.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

The application states that WPSC is a corporation organized and existing under the laws of the State of Wisconsin, with headquarters located in Green Bay, Wisconsin. WPS Resources Corporation (WPSR), the parent holding company of WPSC, is a publicly traded U.S. company whose shares of common stock are widely traded. The application further states that, at the time of the transaction, all of the WPSR and WPSC boards and their principal officers will be U.S. citizens. In addition, the application states that neither WPSR nor WPSC is owned, controlled, or dominated by an alien, foreign corporation, or a foreign government. The NRC staff does not know or have reason to believe otherwise.

## 9.0 CONFORMING AMENDMENTS

The applicants have requested approval of a conforming amendment to the operating license for KNPP. The requested changes to reflect the proposed license transfer simply delete references to MG&E in the operating license (and in the technical specifications which are part of the operating license). No physical or operating changes to the facility are requested. The proposed amendment also included minor administrative changes not specifically related to the transfer, which are not being accepted by the NRC staff at this time for that reason. Supplemental information received that was not specifically referenced in the *Federal Register* notice did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

### 9.1 Discussion

The changes to be made to the KNPP Operating License and Technical Specifications do no more than accurately reflect the approved transfer action, which is subject to certain conditions set forth in the Order approving the transfer that were identified and discussed earlier in this safety evaluation. The amendment involves no safety questions and is administrative in nature. Accordingly, the proposed amendment, except as noted above, is acceptable.

### 9.2 State Consultation

In accordance with the Commission's regulations, Wisconsin State official Ms. S. Jenkins was notified of the proposed issuance of the amendment. The State official had no comments.

#### 9.4 Conclusion With Respect to the Conforming Amendments

The Commission 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, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

#### 10.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the transfer of a license issued by the NRC and approval of a conforming amendment. Accordingly, the actions involved meet 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.

#### 11.0 CONCLUSIONS

In view of the foregoing, the NRC staff concludes that WPSC is qualified to hold the KNPP license to the extent proposed, and that the transfer of the license, to the extent associated with the transfer of MG&E's ownership interest to WPSC, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions discussed in this safety evaluation.

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