



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 11, 1998

50-305

Mr. M. L. Marchi
Manager - Nuclear Business Group
Wisconsin Public Service Corporation
Post Office Box 19002
Green Bay, WI 54307-9002

SUBJECT: SAFETY EVALUATION ASSOCIATED WITH WPS RESOURCES
CORPORATION'S PENDING MERGER WITH UPPER PENINSULA ENERGY
CORPORATION (TAC No. MA0520)

Dear Mr. Marchi:

In a letter dated December 15, 1997, you informed the NRC staff of a pending merger transaction between WPS Resources Corporation (WPSR) and Upper Peninsula Energy Corporation (UPEN). You stated that, pending shareholder and regulatory approvals, UPEN will be merged with and into WPSR. You noted that both UPEN and WPSR are holding companies, and that UPEN's operating subsidiary is Upper Peninsula Power Company (UPPCO) and WPSR's operating subsidiary is Wisconsin Public Service Corporation (WPSC). Also, you pointed out that WPSR will be the surviving holding company, that the existence of UPEN will cease, and that UPPCO will continue as a corporation as a subsidiary of WPSR. WPSC, Wisconsin Power and Light Company, and the Madison Gas and Electric Company are the license holders for the Kewaunee Nuclear Power Plant. After the transaction, WPSC will be unchanged in its corporate status as a subsidiary of WPSR and will continue to be a license holder and the operator of the Kewaunee Nuclear Power Plant, with no changes in WPSC's financial strength or obligations as a licensee after the merger.

Your letter stated that WPSC does not believe that it is required to notify or seek prior NRC approval for this merger transaction and cited several reasons for this opinion. However, the NRC staff's practice still is to perform a threshold review in consideration of 10 CFR 50.80, and in so doing, the staff has concluded that the proposed merger of WPSR and UPEN and WPSR's acquisition of UPPCO as a subsidiary company does not involve a transfer, direct or indirect, of the operating license for the Kewaunee Nuclear Power Plant. Furthermore, the staff has concluded that the merger will not adversely affect WPSC's financial or technical qualifications with respect to the operation and decommissioning of the Kewaunee plant. Also, there do not appear to be any problematic antitrust or foreign ownership issues related to this license that would result from WPSR's merger with UPEN and acquisition of UPPCO. Thus, the proposed transaction will not affect the qualifications of the licensee, and the transaction appears to be otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. Accordingly, the staff has no basis to object to the transaction.

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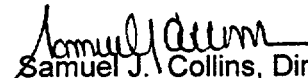


NRC FILE CENTER COPY

On Page 2 of your letter, you stated that there are no present plans to merge the two operating utilities, WPSC and UPPCO, but that such a merger may be required to maintain the WPSR exemption from registration pursuant to the Public Utility Holding Company Act of 1935. You noted that if WPSC and UPPCO are merged, WPSR does not believe that 10 CFR 50.80 would require NRC notification or approval but that WPSR would provide prior notice to the NRC if such a merger of WPSC and UPPCO is pursued.

Depending upon how it is structured, a merger of WPSC and UPPCO could, in fact, require prior NRC consent under 10 CFR 50.80, and furthermore could require a license amendment. If such a merger is pursued, please inform the NRC as soon as possible.

Sincerely,


Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Docket No. 50-305

Enclosure: Safety Evaluation

cc w/encl: See next page

M. L. Marchi
Wisconsin Public Service Corporation

Kewaunee Nuclear Power Plant

cc:

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Harold Reckelberg, Chairman
Kewaunee County Board
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James D. Loock, Chief Engineer
Public Service Commission
of Wisconsin
610 N. Whitney Way
Madison, WI 53707-7854

M. Marchi

-2-

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Original signed by
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Office of Nuclear Reactor Regulation

Docket No. 50-305

Enclosure: Safety Evaluation

cc w/encl: See next page

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NAME
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SHom*

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RSavio

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D:NRR

SCollins

3/11/98

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3/3/98

Handwritten notes and signatures, including "42" and "3/11/98".

M. Marchi

-2-

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
RELATING TO PROPOSED MERGER BETWEEN UPPER PENINSULA ENERGY
CORPORATION AND WISCONSIN PUBLIC SERVICE RESOURCES CORPORATION

WISCONSIN PUBLIC SERVICE CORPORATION

WISCONSIN POWER AND LIGHT COMPANY

MADISON GAS AND ELECTRIC COMPANY

KEWAUNEE NUCLEAR POWER PLANT

DOCKET NO. 50-305

1.0 BACKGROUND

In a letter dated December 15, 1997, Wisconsin Public Service Corporation informed the staff of the pending WPS Resources Corporation (WPSR) merger transaction with Upper Peninsula Energy Corporation (UPEN). Pending shareholder and regulatory approvals, UPEN will be merged with and into WPSR. Both UPEN and WPSR are holding companies, and UPEN's operating subsidiary is Upper Peninsula Power Company (UPPCO) and WPSR's operating subsidiary is Wisconsin Public Service Corporation (WPSC). WPSR will be the surviving holding company as the existence of UPEN will cease, and UPPCO will continue as a corporation as a subsidiary of WPSR. WPSC, Wisconsin Power and Light Company, and the Madison Gas and Electric Company are the license holders for the Kewaunee Nuclear Power Plant. After the transaction, WPSC will be unchanged in its corporate status as a subsidiary of WPSR and will continue to be a license holder and the operator of the Kewaunee Nuclear Power Plant.

2.0 EVALUATION

The Nuclear Regulatory Commission (NRC) staff has performed a threshold review to determine whether the proposed merger will effect a license transfer requiring prior NRC approval pursuant to 10 CFR 50.80. On the basis of this review the NRC staff has concluded that WPSR's merger with UPEN will not result in a transfer, direct or indirect, of the operating license to the extent held by WPSC for the Kewaunee nuclear plant. Consequently, the staff believes that the license transfer provisions of 10 CFR 50.80 are not applicable to this situation. Nevertheless, the staff has reviewed several issues in light of the proposed merger as follows.

2.1 Financial Qualifications

Based on the information provided in WPSC's letter dated December 15, 1997, the staff finds that there will be no near-term substantive change in WPSC's financial ability to contribute appropriately to the operations and decommissioning of the Kewaunee nuclear plant as a result of the proposed merger. WPSC also would remain an "electric utility" as defined in 10 CFR 50.2, engaged in the generation, transmission, and distribution of electric energy for wholesale and retail sale, the cost of which is recovered through rates established by the Public Service Commission of Wisconsin and the Michigan Public Service Commission, and tariffs filed with the Federal Energy Regulatory Commission. Thus, pursuant to 10 CFR 50.33(f), WPSC would be exempt from further financial qualifications review as an electric utility if approval under 10 CFR 50.80 was required.

2.2 Management and Technical Qualifications

The WPSC letter states that there will be no changes in the senior executive officers of WPSC or WPSR and that only one executive of UPEN will join WPSC's executive group and be added to the WPSR Board of Directors, so there are no material changes in WPSR's or WPSC's management structure or processes planned as a result of the merger. Also, the letter states that WPSC personnel who are responsible for operating the plant will remain the same, and so NRC staff has no reason to believe that the merger will result in changes in the technical qualifications of WPSC. Based upon the expected continuity of WPSC's nuclear organization and management structure and processes, the staff finds that the proposed merger will not adversely affect WPSC's technical qualifications or the management of the Kewaunee plant.

2.3 Antitrust

The antitrust review provisions of Section 105c of the Atomic Energy Act apply to applications for a license to construct or operate a facility under Section 103 of the Act but do not apply to facilities licensed under Section 104b of the Act. Since the Kewaunee plant is licensed as a Section 104b facility, it is not subject to the antitrust review requirements in the Act.

2.4 Foreign Ownership

The WPSC letter states that WPSC will continue to be held by the same holding company, WPSR, and that only one UPEN executive will be added to the WPSR Board of Directors. The staff does not know or have reason to believe that, as a result of the merger, WPSC will be owned, controlled or dominated by a foreign person or entity.

3.0 CONCLUSIONS

In view of the foregoing, the staff concludes that the proposed merger between WPSR and UPEN will not involve a transfer, direct or indirect, of the operating license for the Kewaunee nuclear plant. Furthermore, the staff concludes that the merger will not adversely affect WPSC's financial or technical qualifications with respect to the operation and decommissioning of the Kewaunee plant. Also, there do not appear to be any problematic antitrust or foreign ownership issues related to this license that would result from WPSR's merger with UPEN.

Thus, the proposed transaction will not affect the qualifications of WPSC as holder of the license, and the proposed transaction otherwise appears to be consistent with applicable provisions of law, regulations, and orders issued by the Commission. Accordingly, the staff has no basis to object to the transaction.

Principal Contributor: Alex F. McKeigney

Date: March 11, 1998