

August 2, 2002

Mr. A. Christopher Bakken III, Senior Vice President  
and Chief Nuclear Officer  
Indiana Michigan Power Company  
Nuclear Generation Group  
500 Circle Drive  
Buchanan, MI 49107

SUBJECT: DONALD C. COOK NUCLEAR PLANT, UNITS 1 AND 2 - ORDER APPROVING  
APPLICATION REGARDING PROPOSED CORPORATE RESTRUCTURING  
(TAC NOS. MB4734 AND MB4735)

Dear Mr. Bakken:

The enclosed Order and supporting safety evaluation are in response to your letter and application dated March 28, 2002, pursuant to Section 50.80 of Title 10 of the *Code of Federal Regulations*. Indiana Michigan Power Company (I&M) seeks approval of the indirect transfer of the Donald C. Cook Nuclear Plant, Units 1 and 2, Facility Operating Licenses Nos. DPR-58 and DPR-74, to the extent such would be effected by a change in the structure of the corporate organization of which I&M is a part. Specifically, Central and South West Corporation, currently an affiliate of I&M, will become the direct parent company of I&M. The Order approving the indirect transfer is being forwarded to the Office of the Federal Register for publication.

If you have any questions regarding this matter, please contact me at 301-415-1345.

Sincerely,

*/RA/*

John F. Stang, Senior Project Manager, Section 1  
Project Directorate III  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

Docket Nos. 50-315 and 50-316

Enclosures: 1. Order  
2. Safety Evaluation

cc w/encls: See next page

Donald C. Cook Nuclear Plant, Units 1 and 2

cc:

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**/RA/**

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Project Directorate III  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

Docket Nos. 50-315 and 50-316

Enclosures: 1. Order  
2. Safety Evaluation

cc w/encls: See next page

DISTRIBUTION: See attached page

\*Concurred via e-mail  
\*\*Provided SE input by memo  
\*\*\*No legal objection w/changes

ADAMS Accession No. ML021420133

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ORDER APPROVING APPLICATION REGARDING PROPOSED CORPORATE  
RESTRUCTURING - DONALD C. COOK NUCLEAR PLANT, UNITS 1 AND 2  
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UNITED STATES OF AMERICANUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
INDIANA MICHIGAN POWER COMPANY	)	
	)	Docket Nos. 50-315 and 50-316
(Donald C. Cook Nuclear Plant,	)	
Units 1 and 2)	)	

ORDER APPROVING APPLICATION REGARDING  
PROPOSED CORPORATE RESTRUCTURING

I.

Indiana Michigan Power Company (I&M or the licensee) owns 100 percent of the Donald C. Cook Nuclear Plant (D. C. Cook), Units 1 and 2, located in Berrien County, Michigan. I&M exclusively operates the facility.

I&M is a wholly owned, direct subsidiary of American Electric Power Corporation (AEP). I&M is the sole holder of Facility Operating Licenses Nos. DPR-58 for D. C. Cook Unit 1, and DPR-71 for D. C. Cook Unit 2, issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50) on October 25, 1974, and December 23, 1977, respectively.

II.

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80, I&M filed an application dated March 28, 2002, requesting the Commission's consent to the indirect transfer of the D. C. Cook Units 1 and 2 licenses. The indirect transfer would occur as a result of a proposed corporate restructuring, under which an affiliate company, Central and South West Corporation (CSW), would become the direct parent

company of I&M. I&M and CSW are currently wholly owned, direct subsidiaries of AEP. AEP is a registered holding company under the Public Utility Holding Company Act of 1935, as amended. Upon the completion of the restructuring, CSW will remain a wholly owned, direct subsidiary of AEP, while I&M will be a wholly owned, direct subsidiary of CSW. Thus, I&M will become an indirect subsidiary of AEP.

No physical changes to the D. C. Cook facility or operational changes are proposed in the application. I&M, which is authorized under the licenses to operate and maintain the facility, will continue to do so following the restructuring. No direct transfer of the licenses will result from the planned restructuring. Notice of this request for approval was published in the Federal Register on May 8, 2002 (67 FR 30980). No hearing requests or written comments were received.

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 in the application and other information before the Commission, the NRC staff has determined that the proposed restructuring of I&M's parent organization described above will not affect the qualifications of I&M as the holder of the D. C. Cook Units 1 and 2 licenses, and that the indirect transfer of the licenses, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of laws, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated August 2, 2002.

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 indirect license transfers referenced above is approved, subject to the following conditions:

- (1) Following the completion of the subject indirect license transfers, I&M 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 I&M to its 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 I&M's consolidated net utility plant, as recorded on its book of account.
- (2) Should the corporate restructuring described above not be completed by July 31, 2003, this Order shall become null and void, provided, however, upon application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

IV.

For further details with respect to this Order, see the application dated March 28, 2002, and the safety evaluation dated August 2, 2002, which are available for inspection at the Commission's Public Document Room, U.S. Nuclear Regulatory Commission, One White Flint

North, Room O-1 F21, 11555 Rockville Pike, Rockville, MD 20852-2738, 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 2nd day of August 2002.

FOR THE NUCLEAR REGULATORY COMMISSION

*/RA/*

John A. Zwolinski, Director  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation



SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

PROPOSED INDIRECT TRANSFER OF OPERATING LICENSES

ESTABLISHMENT OF INTERMEDIATE PARENT COMPANY

DONALD C. COOK NUCLEAR POWER PLANT, UNITS 1 AND 2

DOCKET NOS. 50-315 AND 50-316

1.0 INTRODUCTION

Indiana Michigan Power Company (I&M) owns 100 percent of the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan. Under the current operating licenses, DPR-58 for Unit 1, and DPR-71 for Unit 2, I&M is authorized to possess and operate the facility. By application dated March 28, 2002, I&M informed the Nuclear Regulatory Commission (NRC) of a proposed change to the internal corporate structure of American Electric Power Company (AEP), under which an I&M affiliate company, Central and South West Corporation (CSW), would become the direct parent company of I&M. I&M and CSW are currently wholly owned, direct subsidiaries of AEP. AEP is a registered holding company under the Public Utility Holding Company Act of 1935, as amended. Upon the completion of the restructuring, CSW will remain a wholly owned, direct subsidiary of AEP, while I&M will be a wholly owned, direct subsidiary of CSW. Thus, I&M will become an indirect subsidiary of AEP. The NRC staff has determined that this proposed change would effect indirect license transfers and is thus subject to the provisions of 10 CFR 50.80. More specifically, the staff has determined that the indirect transfer, the circumstances of which are more fully described below, will result by reason of the creation of a new direct parent of I&M, which could exercise control over I&M and thus indirectly control the operating licenses for the Donald C. Cook Nuclear Plant (D.C. Cook), Units 1 and 2. I&M requested NRC consent under 10 CFR 50.80 as necessary.

2.0 BACKGROUND

The March 28, 2002, application states that the proposed restructuring will enable AEP to better conduct its generation business and other businesses currently owned by AEP in a competitive and cost-effective manner. I&M anticipates that CSW will obtain investment-grade securities ratings on its senior unsecured debt, which will be used to the advantage of its various directly and indirectly owned subsidiaries, including I&M.

There would be no change to any of the general corporate information regarding I&M and AEP. The proposed reorganization would not result in any change in the name, address, business, organization, or management of I&M or AEP, or in any change in the directors or officers of I&M or AEP. Thus, the only additional corporate information relevant to this application relates to CSW. CSW is a State of Delaware corporation engaged in owning the shares of electric utility companies and other energy-related businesses.

### 3.0 FINANCIAL QUALIFICATIONS ANALYSIS

The March 28, 2002, application states that there will be no change to I&M's financial qualifications as a result of the proposed establishment of the new intermediate parent company. According to the application, I&M is and will remain after the planned restructuring an "electric utility" as defined in 10 CFR 50.2. As an electric utility, I&M is exempt from a financial qualifications review pursuant to 10 CFR 50.33(f). However, in view of the NRC's concern that certain corporate restructurings can facilitate the 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 to affiliates 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, essentially the following should be a condition of approval of the application:

Following the completion of the subject indirect license transfers, I&M 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 I&M to its 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 I&M's consolidated net utility plant, as recorded on its book of account.

In consideration of the foregoing, the NRC staff concludes that the proposed restructuring of I&M's parent organization will not affect the financial qualifications of I&M.

### 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. The regulation in 10 CFR 50.33(k) requires that an application for an operating license for a utilization facility contain information on how reasonable assurance will be provided that funds will be available to decommission the facility.

In conformance with 10 CFR 50.75(f)(1), the applicant previously submitted its decommissioning funding status report on March 27, 2001. The NRC staff has confirmed that as of December 31, 2000, the decommissioning trusts associated with I&M's ownership of D. C. Cook Units 1 and 2 are funded in accordance with NRC regulations and in particular, the requirements of 10 CFR 50.75(b) with respect to the amount of decommissioning funding that I&M must provide.

The March 28, 2002, application states that the establishment of CSW as I&M's direct parent will not result in any changes to I&M's existing decommissioning funding arrangements. I&M's current arrangements for the collection of decommissioning funds would remain in effect and would not be affected by the proposed indirect license transfers. As stated above, I&M 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 D. C. Cook in accordance with NRC's regulations through an external sinking fund in which deposits are made monthly. After implementation of the proposed restructuring, I&M will remain responsible

for the decommissioning liabilities associated with D. C. Cook and will continue to fund its decommissioning trusts for D. C. Cook in accordance with 10 CFR 50.75. The NRC staff concludes that the proposed restructuring will not affect the decommissioning funding arrangements of I&M.

#### 5.0 TECHNICAL QUALIFICATIONS

The March 28, 2002, application states that "I&M will continue to be the plant operator, and the technical qualifications of I&M will not be affected by the proposed indirect transfer." No physical changes to the plant, day-to-day operations onsite, or management or personnel at D. C. Cook will occur as part of the establishment of the new direct parent. Therefore, the NRC staff concludes that the proposed restructuring will not affect the technical qualifications of I&M as holder of authority under the licenses to maintain and operate the facility.

#### 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 operating licenses for D. C. Cook Units 1 and 2, no antitrust review is required or authorized.

#### 7.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

The March 28, 2002, application gives the names of the members of the Board of Directors and the principal officers of CSW and states that all are U.S. citizens. CSW is a Delaware corporation doing business in Columbus, Ohio. According to the application, the proposed action will not result in any change in the ownership or control of AEP, which will remain the ultimate parent of I&M. The application states that "neither AEP nor CSW is currently owned, controlled or dominated by an alien, a foreign corporation or a foreign government, and the reorganization resulting in CSW as an intermediate holding company will not have any impact on this status." The NRC staff does not know or have reason to believe that I&M will be owned, controlled, or dominated by foreign interests following the proposed restructuring.

#### 8.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the indirect transfer of licenses 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, the NRC staff concludes that the proposed restructuring of I&M's parent organization by the establishment of CSW as the new direct parent of I&M will not affect the qualifications of I&M as the holder of the operating licenses for D. C. Cook Units 1 and 2,

and that the indirect transfer of the licenses, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of laws, regulations, and orders issued by the Commission pursuant thereto, subject to the condition discussed above relating to the transfer of significant assets.

Principal Contributor: R. Uleck

Date: August 2, 2002