

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

REGARDING INDIRECT TRANSFER OF LICENSE,

PROPOSED FORMATION OF INTERMEDIATE PARENT COMPANY

CENTRAL AND SOUTH WEST CORPORATION,

DONALD C. COOK NUCLEAR PLANT

DOCKET NOS. 50-315 and 50-316

1.0 INTRODUCTION

By application dated March 28, 2002, Indiana Michigan Power Company (I&M) requested, 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 50.80), that the U.S. Nuclear Regulatory Commission (NRC or the Commission) consent to the indirect transfer of Facility Operating License Nos. DPR-58 and DPR-74 for the Donald C. Cook Nuclear Power Plant (CNP), Units 1 and 2, located in Berrien County, Michigan. The licenses are currently held by I&M, which owns and operates the facilities. The indirect transfer, more fully described below, would result from the planned internal reorganization of the corporate structure of the parent holding company of I&M.

2.0 BACKGROUND

Both Units 1 and 2 of CNP are Westinghouse four-loop pressurized-water reactors. Unit 1 is licensed at 3250 MW thermal and Unit 2 at 3411 MW thermal. Both units are owned and operated by I&M.

The licensee's application requests the consent of the NRC to the proposed indirect transfer of control of I&M. The proposed transfer involves an internal reorganization of the corporate structure of the parent holding company of I&M, which will result in an affiliate company, Central and South West Corporation (CSW), becoming an intermediate parent company of I&M. The licensee states that the proposed transfer will not involve any changes to I&M; will not involve any transfer of assets to or from I&M; will have no effect upon the management, organization, or day-to-day operations of CNP; and will not involve any amendments to the CNP licenses.

I&M and CSW are currently wholly-owned, direct subsidiaries of American Electric Power Company (AEP). AEP is a registered holding company under the Public Utility Holding Company Act of 1935, as amended, whose shares of common stock are widely-held and

publicly-traded on the New York Stock Exchange (Symbol AEP). Upon the completion of the reorganization, CSW will remain a wholly-owned, direct subsidiary of AEP; I&M will be a wholly-owned, direct subsidiary of CSW. Thus, I&M will become a wholly-owned indirect subsidiary of AEP.

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 with respect to indirect transfers that the underlying transaction effectuating the indirect transfer or transfer of control of the license will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

3.0 TECHNICAL QUALIFICATIONS

[This section to be developed by the LPM and NRC technical reviewers. RPRP is, however, providing the following draft language, consistent with other recent transfers, for use by the LPM.]

As stated above, I&M will continue to be the plant operator. The application states that the technical qualifications of I&M will not be affected by the proposed reorganization; there will be no physical changes to CNP in connection with the reorganization, no changes in the day-to-day operations of CNP, and no changes to the CNP licenses or technical specifications; the CNP nuclear organization will continue to have clear and direct lines of responsibility and authority, and the introduction of CSW as an intermediate parent company of I&M will have no impact on the management of I&M, and it will not result in any personnel changes in the I&M nuclear organization. The staff, therefore, concludes that the proposed reorganization creating CSW as an intermediate parent company of I&M will not affect the technical qualifications of I&M to hold the license.

4.0 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 reorganization, I&M will continue to generate and distribute electricity and recover the cost of this electricity through rates established by the Indiana Utility Regulatory Commission and the Michigan Public Service Commission, according to the application and supplemental information provided by the licensee. Based on this information, the NRC staff finds that I&M 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 corporate restructuring 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

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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:

I&M shall provide the Office of the Director 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 any 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 I&M's consolidated net utility plant, as recorded on I&M's books of account.

In consideration of the foregoing, the staff finds the proposed reorganization will not affect I&M's financial qualifications.

5.0 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.

The application states that I&M's current arrangements for the collection of decommissioning funding will remain in effect and will not be affected by the proposed indirect license transfer. 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 its ownership interests in CNP in accordance with the NRC's regulation through an external sinking fund in which deposits are made monthly. After the proposed indirect license transfer, I&M will remain responsible for the decommissioning liabilities associated with CNP and will continue to fund its decommissioning trusts for CNP in accordance with 10 CFR 50.75.

In conformance with 10 CFR 50.75(f)(1), the applicant submitted its decommissioning funding status report on March 27, 2001. The NRC staff has confirmed that, as of December 31, 2000, the decommissioning trust funds associated with I&M's ownership of CNP are 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 reorganization will affect I&M's decommissioning funding.

The NRC staff concludes that, given the considerations discussed herein, I&M's funding mechanism, notwithstanding the proposed reorganization, will continue to meet the requirements of 10 CFR 50.75(e) and not be affected.

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 CNP operating license, no antitrust review is required or authorized.

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7.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

The application lists the names of the members of the Board of Directors of CSW, a Delaware corporation, and its principal officers, all of whom are U.S. citizens. The application states that the proposed reorganization is entirely internal to the AEP hold company system. Shares of common stock of AEP are widely held and publicly traded and will remain so after the reorganization. The reorganization will not result in any change in the direct or indirect ownership or control of AEP, the ultimate parent company of the licensee. Following the proposed reorganization, CSW will remain a wholly-owned subsidiary of AEP. Neither AEP nor I&M is currently owned, controlled or dominated by an alien, a foreign corporation, or a foreign government. The staff does not know or have reason to believe otherwise.

8.0 ENVIRONMENTAL CONSIDERATION

[This section to be developed by the LPM and NRC technical reviewers.]

9.0 CONCLUSIONS

In view of the foregoing, the NRC staff concludes that the proposed restructuring that will result in CSW becoming an intermediate parent company of I&M will not affect the qualifications of I&M as the holder of the license, and that the indirect transfer of the license, to the extent effected by the proposed restructuring, 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.

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