

April 2, 2004

Mr. David A. Christian
Sr. Vice President and Chief Nuclear Officer
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SUBJECT: ORDER APPROVING INDIRECT TRANSFER OF CONTROL OF LICENSES
RE: MILLSTONE POWER STATION, UNIT NOS. 1, 2 AND 3
(TAC NOS. MC0999, MC1000, AND MC1001)

Dear Mr. Christian:

The U.S. Nuclear Regulatory Commission (NRC) staff has completed its review of your application dated October 8, 2003, as supplemented on November 7, 2003, filed pursuant to Title 10 of the *Code of Federal Regulations*, Part 50.80, requesting approval, to the extent necessary, for the indirect transfer of control of the licenses held by Dominion Nuclear Connecticut, Inc. (DNC) (Facility Operating License Nos. DPR-21, DPR-65, and NPF-49 for the Millstone Power Station, Unit Nos. 1, 2, and 3, respectively). The indirect transfer would change certain intermediate subsidiaries of Dominion Resources, Inc. (DRI), affecting the chain of ownership between DNC and DRI through corporate restructuring. Subsequent to the corporate restructuring, DNC will continue to exist as a wholly-owned subsidiary of DRI. The enclosed Order approves the proposed indirect transfer, subject to the conditions described therein. The Order and the associated Safety Evaluation will be placed in the NRC public document room and added to the Agencywide Documents Access and Management System Publicly Available Records System (ADAMS PARS) Library.

The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Victor Nerses, Senior Project Manager, Section 2
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-245, 50-336, and 50-423

Enclosures: 1. Order
2. Safety Evaluation

cc w/encls: See next page

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Millstone Power Station, Unit Nos. 1, 2 and 3

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
DOMINION NUCLEAR CONNECTICUT, INC.)	Docket Nos. 50-245, 50-336,
)	and 50-423
)	
Millstone Power Station, Unit Nos. 1, 2, and 3)	License Nos. DPR-21, DPR-65
)	and NPF-49

ORDER APPROVING INDIRECT TRANSFER OF
CONTROL OF LICENSES

I.

Dominion Nuclear Connecticut, Inc. (DNC or the licensee) is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to possess and maintain, but not operate, Millstone Power Station, Unit No. 1, and possess, maintain, and operate (in conjunction with certain unaffiliated owners of Millstone, Unit No. 3) Millstone Power Station, Unit Nos. 2 and 3 (Millstone Units or the facilities) under Facility Operating License Nos. DPR-21, DPR-65, and NPF-49, issued by the Commission on October 7, 1970, September 26, 1975, and January 31, 1986, respectively. The Millstone Units are located at the licensee's site in New London County, Connecticut.

II.

By application dated October 8, 2003, as supplemented November 7, 2003, DNC requested that the Commission consent, to the extent that proposed corporate restructuring results in an indirect transfer, to the indirect transfer of control of these facility operating licenses for the Millstone Units. The indirect transfer would result from the planned corporate

restructuring involving certain intermediate subsidiaries of DNC's parent company, Dominion Resources, Inc. (DRI). DNC is a wholly-owned, indirect subsidiary of DRI.

DRI directly owns Virginia Electric & Power Company (VEPCO), Dominion Energy, Inc. (DEI), and Consolidated Natural Gas Company (CNG). DEI owns 100% of Dominion Nuclear, Inc. (DNI), and CNG owns 100% of Dominion Retail, Inc. (Retail). DNI is the parent company of Dominion Nuclear Holdings, Inc. (DNH), Dominion Nuclear Marketing I, Inc. (DNMI), Dominion Nuclear Marketing II, Inc. (DNMII), and Dominion Nuclear Marketing III, LLC (DNMIII). DNH and Retail also have part ownership of DNMIII. DNMI, DNMII, and DNMIII are the direct parent companies of DNC, the holder of the licenses of the Millstone Units. This corporate structure can be graphically seen as Exhibit B, "Current Corporate Ownership of Dominion Nuclear Connecticut," in the October 8, 2003, Application.

The proposed corporate restructuring will have DRI continue to own VEPCO, DEI and CNG. Dominion Energy Marketing, Inc. (DEM) will be formed by merging DNMI and DNMII, and will be the direct subsidiary of DEI and a parent company of DNC. DNI will be eliminated and, therefore, will no longer be a subsidiary of DEI, and DNH will become a direct subsidiary of DEI. CNG will continue to be the direct parent company of Retail, and Retail will continue to be a direct parent company of DNMIII. Thus, only DEM and DNMIII will be the direct parent companies of DNC. This proposed corporate restructuring can be graphically seen as Exhibit C, "Corporate Ownership of Dominion Nuclear Connecticut, After Proposed Realignment," in the October 8, 2003, Application.

DNC would continue to own (in the case of Millstone, Unit No. 3, along with certain unaffiliated co-owners) the Millstone Units following approval of the proposed indirect transfer of the license, and would continue to be exclusively responsible for the operation (except for Millstone Power Station, Unit No. 1), maintenance and eventual decommissioning of the

facilities. No physical changes to the facilities or operational changes were proposed in the application.

Approval of the indirect transfer of the operating licenses was requested by DNC pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.80. Notice of the request for approval and an opportunity for a hearing was published in the Federal Register on November 12, 2003 (68 FR 64132). No hearing requests or written comments were received.

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 gives its consent in writing. After reviewing the information in the application from DNC and other information before the Commission, the NRC staff has determined that the corporate restructuring involving certain intermediate subsidiaries of DRI will not affect the qualifications of DNC as the holder of the licenses and that the indirect transfer of control of the licenses, to the extent effected by the foregoing transaction, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The foregoing findings are supported by a Safety Evaluation (SE) dated April 2, 2004.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the indirect transfer of the control of Facility Operating License Nos. DPR-21, DPR-65 and NPF-49 referenced above is approved, subject to the following condition:

Should the planned restructuring by DRI not be completed by December 31, 2004, this Order shall become null and void, provided that upon written 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 action, see the application dated October 8, 2003, as supplemented on November 7, 2003, and the SE dated April 2, 2004, 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 from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>.

Dated at Rockville, Maryland, this 2 day of April, 2004.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Herbert N. Berkow, Acting Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
REGARDING INDIRECT TRANSFER OF CONTROL OF LICENSES RELATED TO
CORPORATE RESTRUCTURING OF PARENT COMPANIES OF
DOMINION NUCLEAR CONNECTICUT, INC.
MILLSTONE POWER STATION, UNIT NOS. 1, 2 AND 3
DOCKET NOS. 50-245, 50-336 AND 50-423

1.0 INTRODUCTION

By application dated October 8, 2003, as supplemented by letter dated November 7, 2003, Dominion Nuclear Connecticut, Inc. (DNC or the licensee) requested that the U.S. Nuclear Regulatory Commission (NRC or the Commission) consent to the indirect transfer of control of the licenses held by DNC [Facility Operating License Nos. DPR-21, DPR-65 and NPF-49 for the Millstone Power Station, Unit Nos. 1, 2 and 3 (Millstone Units), respectively] to the extent that this internal corporate realignment might be considered an indirect transfer of control of the licenses held by DNC. DNC is a 100% owner of Millstone, Unit No. 2; a 93.47% owner of Millstone, Unit No. 3; and an 81% owner of Millstone, Unit No. 1. The requested approval relates to proposed changes to certain intermediate subsidiaries of Dominion Resources, Inc. (DRI) affecting the chain of ownership between DRI and DNC, through a corporate restructuring, which is detailed below. The supplement dated November 7, 2003, provided additional information that clarified the application, and did not expand the scope of the application as originally noticed.

The proposed changes reflect an internal realignment and consolidation of energy market functions within the Dominion companies. The proposed corporate restructuring involves the dissolution and creation of certain intermediate subsidiaries of DRI affecting the chain of ownership of DNC. DNC will remain an indirect, wholly owned subsidiary of DRI.

2.0 BACKGROUND

An earlier application, dated August 31, 2000, requested NRC consent under Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, to the direct transfer of the Millstone Units from Northeast Nuclear Energy Company, et al., to DNC.

CONTAINS NON-PROPRIETARY INFORMATION

An Order Approving the Transfer of Licences from Northeast Nuclear Energy Company, et al., to DNC and Approving Conforming Amendments, dated March 9, 2001, approved the current corporate structure.

DRI directly owns Virginia Electric & Power Company (VEPCO), Dominion Energy, Inc. (DEI), and Consolidated Natural Gas Company (CNG). DEI owns 100% of Dominion Nuclear, Inc. (DNI), and CNG owns 100% of Dominion Retail, Inc. (Retail). DNI is the parent company of Dominion Nuclear Holdings, Inc. (DNH), Dominion Nuclear Marketing I, Inc. (DNMI), Dominion Nuclear Marketing II, Inc. (DNMII), and Dominion Nuclear Marketing III, LLC (DNMIII). DNH and Retail also have part ownership of DNMIII. DNMI, DNMII, and DNMIII are the direct parent companies of DNC, the holder of the licenses of the Millstone Units. This corporate structure can be graphically seen as Exhibit B, "Current Corporate Ownership of Dominion Nuclear Connecticut," in the October 8, 2003, Application.

The proposed corporate restructuring will have DRI continue to own VEPCO, DEI and CNG. Dominion Energy Marketing, Inc. (DEM) will be formed by merging DNMI and DNMII, and will be the direct subsidiary of DEI and a parent company of DNC. DNI will be eliminated and, therefore, will no longer be a subsidiary of DEI, and DNH will become a direct subsidiary of DEI. CNG will continue to be the direct parent company of Retail, and Retail will continue to be a direct parent company of DNMIII. Thus, only DEM and DNMIII will be the direct parent companies of DNC. This proposed corporate restructuring can be graphically seen as Exhibit C, "Corporate Ownership of Dominion Nuclear Connecticut, After Proposed Realignment," in the October 8, 2003, Application.

3.0 REGULATORY FRAMEWORK

The licensee requests the NRC's consent pursuant to the general provisions of 10 CFR 50.80, "Transfer of licenses," to the extent that this internal corporate realignment is considered an indirect transfer of the licenses held by DNC. In part, 10 CFR 50.80 states, "No license for a production or utilization facility, or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall give its consent in writing."

In addition, the requirements of 10 CFR 50.80(b) and (c) apply. As stated in 10 CFR 50.80(b), "An application for transfer of a license shall include as much of the information described in §§ 50.33 and 50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 construction permit or initial operating license, the information required by § 50.33(a) . . ." As stated in 10 CFR 50.80(c), ". . . the Commission will approve an application for the transfer of a license, if the Commission determines: (1) That the proposed transferee is qualified to be the holder of the license; and (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto."

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The NRC staff finds that the licensee, in its application, identified the applicable regulatory requirements.

4.0 EVALUATIONS

4.1 Financial Qualifications

Section 50.33(f) of 10 CFR states: "Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22, [each application shall state] information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought . . ."

Section 50.2 of 10 CFR states 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 a separate regulatory authority."

The NRC staff finds that DNC does not qualify as an "electric utility" as defined in 10 CFR 50.2 because most of its electricity prices will not be set by a separate regulatory authority or by the entity itself. Thus, the staff has determined that DNC must meet the financial qualifications requirements for a non-utility pursuant to 10 CFR 50.33(f).

Because DNC is not an electric utility and subject to a more detailed review, DNC was required to provide the following information: (1) information that demonstrates that it possesses, or has reasonable assurance of obtaining, the necessary funds to cover estimated operating costs for the first five years of facility operation and indicate the source(s) of funds to cover these costs, and (2) information that shows (a) the legal and financial relationship it has, or proposes to have with its stockholders or owners; (b) its financial ability to meet any contractual obligations to any entity which they have incurred, or propose to incur; and (c) any other information considered necessary by the NRC to enable it to determine the applicant's financial qualification. This information demonstrates how DNC meets the requirements of 10 CFR 50.33(f).

Additionally, 10 CFR 50.33(k)(1) requires that DNC provide information described in 10 CFR 50.75 indicating reasonable assurance that funds will be available to decommission the facilities. DNC's proposals for decommissioning funding assurances are discussed in Section 4.2 of this Safety Evaluation (SE).

In accordance with 10 CFR 50.33(f) and the Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance (NUREG-1577, Rev. 1), projected income statements for the full five-year period from 2004 to 2008 were provided in the November 7, 2003 supplement to the application.

DNC's
(SUMMARY OF) PROJECTED INCOME STATEMENT
(In \$ millions)

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>
Total Revenue:	\$ [REDACTED]				
Total Operating Expenses:	\$ [REDACTED]				
Income Before Taxes & Interest:	\$ [REDACTED]				
Total Taxes & Interest:	\$ [REDACTED]				
Net Income:	\$ [REDACTED]				

The NRC staff has chosen to test the sensitivity of the financial information in the above Projected Income Statement by analyzing two scenarios that change the assumptions for revenue. The staff notes that if prices per megawatt hour were to drop by an average of 10.0%, the average net effect on the five years of Net Income, is a drop from the projected \$ [REDACTED] million to a possible \$ [REDACTED] million. Similarly, if an average historical capacity factor of 87% is assumed instead of the projected average capacity factor of 91%, then the average net effect on the five years of Net Income is a drop to a possible \$ [REDACTED] million. The NRC staff considers that the Net Income under each of the two scenarios is still sufficiently high to provide reasonable assurance of adequate funding.

The NRC staff finds that DNC's Projected Income Statement shows that the anticipated revenues from sales of energy and capacity from the Millstone Units provide reasonable assurance of an adequate source of funds to meet DNC's anticipated expenses during the five-year period covered by the projections. The NRC staff finds that no further financial qualifications analysis or review is necessary.

Therefore, on the basis of the above information, the NRC staff has determined that DNC has met the financial qualifications requirements for a non-utility, pursuant to 10 CFR 50.33(f).

The NRC staff additionally notes that under the August 31, 2000, application Retail entered into an agreement with DNC to make funding of up to \$150 million available to DNC to provide added assurance that DNC will have sufficient funds available to meet its operating expenses for the Millstone Units. Under the terms of the agreement, DNC has the right to obtain such funds from Retail as DNC determines are necessary to protect public health and safety, meet NRC requirements, meet ongoing operational expenses, or to maintain the Millstone Units

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safely. This agreement will not terminate until all the Millstone Units permanently terminate operations, and may not be modified or amended without 30 days prior written notice to the NRC.

4.2 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 regulations in 10 CFR 50.33(k) require 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 to NRC standards.

In the application, DNC states “ the [proposed corporate] restructuring will not affect or alter the decommissioning funding, including the parent company guaranties currently issued by Dominion Retail, Inc. for decommissioning funding of Millstone Units 1 and 2.”

DNC has filed its decommissioning funding reports with the NRC under 10 CFR 50.75(f)(1) and is providing financial assurance for decommissioning the Millstone Units in accordance with the NRC’s regulations allowing a demonstration of adequate funding based on pre-payments to each unit’s external trust fund. The application stated that no changes in DNC’s decommissioning funding assurance are being proposed in connection with the proposed corporate restructuring from that which was previously declared in the August 31, 2000, direct transfer application of the Millstone Units from Northeast Nuclear Energy Company, et al., to DNC and approved by the NRC. After the proposed corporate restructuring, DNC will remain responsible for the decommissioning liabilities associated with the Millstone Units, in accordance with 10 CFR 50.75.

In conformance with 10 CFR 50.75(f)(1), DNC submitted its biennial decommissioning funding status report by the March 31, 2003, required date. The NRC staff has confirmed that, as of December 31, 2002, the decommissioning trust funds associated with DNC’s ownership of the Millstone Units are funded in accordance with NRC’s regulations. The staff finds that the applicant has complied with the requirements of 10 CFR 50.75(b) with respect to the minimum amount of decommissioning funding that must be provided.

The NRC staff concludes that DNC’s funding mechanism for the Millstone Units will continue to meet the requirements of 10 CFR 50.75(e) and will not be affected by the proposed indirect transfer.

4.3 Antitrust Review

The Atomic Energy Act of 1954, as amended (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 application postdates the issuance of the Millstone Units operating licenses, no antitrust review is required or authorized.

4.4 Foreign Ownership, Control or Domination

Section 103d of the AEA prohibits the NRC from issuing a license for a nuclear power plant to "any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government." The NRC's regulations in 10 CFR 50.38 contain similar language to implement this prohibition.

The proposed corporate restructuring will not alter DNC's organization, staff, officers, or directors, or any of DNC's programs, procedures, or conduct of operations. DNC's directors and principal officers are, and will all remain, United States citizens. DNC states in its application, "DNC is not now and will not after restructuring be owned, controlled, or dominated by an alien, foreign corporation, or foreign government." Therefore, the NRC staff considers the licensee's representation regarding foreign ownership, control and domination to be acceptable.

4.5 Nuclear Insurance and Indemnity

The licensee for the Millstone Units will continue to possess the proper insurance and indemnity required under Section 170 of the AEA, 10 CFR 140, and 10 CFR 50.54(w). These conditions were demonstrated to be met in the August 31, 2000, application and the NRC staff considered them adequate in the SE. The NRC staff considers continued compliance with these conditions to be acceptable.

5.0 CONCLUSION

In view of the foregoing, the NRC staff concludes that the proposed corporate restructuring of DNC's intermediate parent companies, will not affect the qualifications of DNC as holder of the Millstone Units (1, 2 and 3) licenses, and that the indirect transfer of the licenses, to the extent effected by the proposed corporate restructuring, is otherwise consistent with the applicable provisions of laws, regulations, and orders issued by the NRC. Therefore, in accordance with 10 CFR 50.80, the Commission consents to the proposed indirect transfer of control of the Millstone licenses.

Principal Contributor: M. Dusaniwskyj

Date: April 2, 2004