

June 10, 2004

Mr. Thomas Coutu
Site Vice President
Kewaunee Nuclear Power Plant
Nuclear Management Company, LLC
N490 Highway 42
Kewaunee, WI 54216-9511

Mr. David A. Christian
Senior Vice President - Nuclear Operations
and Chief Nuclear Officer
Dominion Energy Kewaunee, Inc.
Innsbrook Technical Center
5000 Dominion Boulevard
Glen Allen, VA 23060

SUBJECT: KEWAUNEE NUCLEAR POWER PLANT - ORDER APPROVING THE
TRANSFER OF THE FACILITY OPERATING LICENSE FROM NUCLEAR
MANAGEMENT COMPANY, LLC, WISCONSIN PUBLIC SERVICE
CORPORATION, AND WISCONSIN POWER AND LIGHT COMPANY TO
DOMINION ENERGY KEWAUNEE, INC. (TAC NO. MC1595)

Dear Mr. Coutu and Mr. Christian:

The U.S. Nuclear Regulatory Commission (NRC) staff has completed its review of your application dated December 19, 2003, as supplemented February 18 and March 17, 2004. The application requested approval of the transfer of Facility Operating License No. DPR-43, held by Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Nuclear Management Company, LLC, for the Kewaunee Nuclear Power Plant, to Dominion Energy Kewaunee, Inc., and approval of a conforming amendment, pursuant to Title 10 of the *Code of Federal Regulations*, Sections 50.80 and 50.90. The enclosed Order approves the proposed transfer, subject to the conditions described therein. The Order also approves a conforming license amendment, which will be issued and made effective at the time the transfer is completed, with the changes indicated in Enclosure 2.

Enclosures 3 and 4 are the nonproprietary and proprietary versions, respectively, of the NRC's safety evaluation (SE) related to the preceding action. Proprietary information is contained on page 7 of Enclosure 4. The nonproprietary version of the SE will be placed in the NRC

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Public Document Room and added to the Agencywide Documents Access and Management System's Publicly Available Records System library. This Order is being forwarded to the Office of the *Federal Register* for publication.

Sincerely,

/RA/

Carl F. Lyon, 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 (nonproprietary)
4. Safety Evaluation (proprietary)

cc w/encls: See next page

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Kewaunee Nuclear Power Plant

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Kewaunee Nuclear Power Plant

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

| | | |
|--|---|--------------------|
| In the Matter of |) | Docket No. 50-305 |
| |) | |
| WISCONSIN PUBLIC SERVICE CORPORATION, |) | License No. DPR-43 |
| WISCONSIN POWER AND LIGHT COMPANY, AND |) | |
| NUCLEAR MANAGEMENT COMPANY, LLC |) | |
| |) | |
| (Kewaunee Nuclear Power Plant, Unit No. 1) |) | |

ORDER APPROVING TRANSFER OF OPERATING AUTHORITY
AND CONFORMING AMENDMENT

I.

Wisconsin Public Service Corporation (WPSC), Wisconsin Power and Light Company (WPL), and Nuclear Management Company, LLC (NMC) (the licensees), are the holders of Facility Operating License No. DPR-43, which authorizes operation of Kewaunee Nuclear Power Plant, Unit No. 1 (Kewaunee or the facility). The facility is located at the licensees' site in Kewaunee County, Wisconsin. The license authorizes WPSC and WPL to possess, and NMC to use and operate, Kewaunee.

II.

By application dated December 19, 2003, as supplemented February 18 and March 17, 2004, NMC, acting on behalf of itself and WPSC and WPL, requested approval of the transfer of Facility Operating License No. DPR-43 for Kewaunee from NMC, WPSC, and WPL to Dominion Energy Kewaunee, Inc. (Dominion Energy Kewaunee). NMC also requested approval of a conforming license amendment to reflect the transfer. The initial application and the supplements are hereinafter referred to as "the application" unless otherwise indicated. The

application is in connection with the sale of the respective ownership interests in Kewaunee currently held by WPSC (59 percent) and WPL (41 percent) to Dominion Energy Kewaunee and the related transfer of operating authority for the facility from NMC to Dominion Energy Kewaunee. The application also requested a conforming amendment to reflect the transfer. The proposed amendment would reflect the proposed transfer of ownership and operating authority for Kewaunee to Dominion Energy Kewaunee; delete references to NMC, WPSC, and WPL in the license; change the name of Kewaunee Nuclear Power Plant to Kewaunee Power Station to reflect the name under which Dominion Energy Kewaunee plans to operate the facility, consistent with other nuclear plants owned by Dominion companies; and authorize Dominion Energy Kewaunee to possess, use, and operate Kewaunee, and to possess and use related licensed materials, under the same conditions and authorizations as in the current license.

Approval of the transfer of operating authority under the facility operating license and conforming license amendment was requested by NMC pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the *Federal Register* on January 20, 2004 (69 FR 2734). 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 shall give its consent in writing. After reviewing the information in NMC's application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Dominion Energy Kewaunee is qualified to hold the license and that the transfer of the license to Dominion Energy Kewaunee 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, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; 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 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 foregoing findings are supported by a safety evaluation dated June 10, 2004.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), and 2234, and 10 CFR 50.80, IT IS HEREBY ORDERED that the transfer of the license as described herein to Dominion Energy Kewaunee, Inc., is approved, subject to the following conditions:

- (1) After receipt of all required regulatory approvals of the license transfer to Dominion Energy Kewaunee, NMC and Dominion Energy Kewaunee shall inform the Director, 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 before the date of closing. If the transfer is not completed by June 30, 2005, this Order shall become null and void, with the provision that, upon written application and for good cause shown, such date may in writing be extended.

- (2) Dominion Energy Kewaunee shall take no action to cause Dominion Resources, Inc., or its successors and assigns, to void, cancel, or diminish their \$60 million contingency commitment to Dominion Energy Kewaunee, the existence of which is represented in a Support Agreement in a letter to the NRC dated February 18, 2004, or cause them to fail to perform or impair their performance under the commitment, or remove or interfere with Dominion Energy Kewaunee's ability to draw upon the commitment. Also, Dominion Energy Kewaunee shall inform the NRC in writing any time that it draws upon the \$60 million commitment.
- (3) Dominion Energy Kewaunee is required to provide qualified decommissioning funds with a net (after tax) cash value of no less than \$391.9 million for radiological decommissioning purposes. The funds will be deposited in an external trust fund to be segregated from Dominion Energy Kewaunee's other assets and outside its administrative control, as required by NRC regulations, and Dominion Energy Kewaunee shall take all necessary steps to ensure that this external trust fund is maintained in accordance with the requirements of the Order approving the transfer of the Kewaunee operating license and with the safety evaluation supporting the Order.
- (4) Prior to completion of the transfer of the Kewaunee operating license, Dominion Energy Kewaunee shall provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

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 transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated December 19, 2003, and supplements dated February 18 and March 17, 2004, and the safety evaluation dated June 10, 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 are accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 10th day of June 2004.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

J. Dyer, 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 December 19, 2003, as supplemented February 18 and March 17, 2004, 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

J. Dyer, 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

INSERT

1
2
3
4

Replace the following pages of the Technical Specifications with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

REMOVE

Appendix A (Cover page)
TS 5.1-1
Appendix B (Cover page)

INSERT

Appendix A (Cover page)
TS 5.1-1
Appendix B (Cover page)

The following Technical Specification Bases pages are provided for information only.

TS B4.2-1
TS B4.2-2
TS B4.5-1

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

TRANSFER OF FACILITY OPERATING LICENSE

TO DOMINION ENERGY KEWAUNEE, INC.

KEWAUNEE NUCLEAR POWER PLANT

DOCKET NO. 50-305

1.0 INTRODUCTION

By application dated December 19, 2003, and supplemented by letters dated February 18, 2004, and March 17, 2004, Dominion Energy Kewaunee, Inc. (Dominion Energy Kewaunee) and Nuclear Management Company, LLC (NMC), with NMC acting on behalf of Wisconsin Public Service Corporation (WPSC) and Wisconsin Power and Light Company (WPL), (collectively referred to as the Applicants), requested that the U.S. Nuclear Regulatory Commission (NRC) approve the direct transfer of Facility Operating License No. DPR-43 for the Kewaunee Nuclear Power Plant (Kewaunee) to Dominion Energy Kewaunee. This request is in connection with the sale of the respective ownership interests in Kewaunee currently held by WPSC (59 percent) and WPL (41 percent) to Dominion Energy Kewaunee and the related transfer of operating responsibility for Kewaunee from NMC to Dominion Energy Kewaunee.

The application also requested a conforming amendment to reflect the transfer. The proposed amendment would reflect the proposed transfer of ownership and operating authority for Kewaunee to Dominion Energy Kewaunee; delete references to NMC, WPSC, and WPL in the license; change the name of Kewaunee Nuclear Power Plant to Kewaunee Power Station to reflect the name under which Dominion Energy Kewaunee plans to operate the facility, consistent with other nuclear plants owned by Dominion companies; and authorize Dominion Energy Kewaunee to possess, use, and operate Kewaunee, and to possess and use related licensed materials, under the same conditions and authorizations included in the current license.

The supplemental information did not expand the scope of the application as originally noticed in the *Federal Register* on January 20, 2004 (69 FR 2734).

2.0 BACKGROUND

Kewaunee is a 590 megawatt (electric) nuclear power plant, located in the Town of Carlton, Kewaunee County, Wisconsin. WPSC and WPL, the licensed owners of Kewaunee, entered into an Asset Sale Agreement, dated November 7, 2003, to sell and transfer their respective

ownership interests in Kewaunee, as well as to transfer the operating responsibility for the plant, to Dominion Energy Kewaunee. NMC currently operates Kewaunee on behalf of WPSC and WPL under the terms of an operating services agreement among NMC and WPSC, the plant's operating owner.

Dominion Energy Kewaunee is a newly-formed corporation established to own and operate the Kewaunee Nuclear Power Plant and is established as a corporation in the State of Wisconsin, which will be the corporation's principal place of business. Dominion Energy Kewaunee is a direct, wholly-owned subsidiary of Dominion Nuclear Projects, Inc., which itself is a direct, wholly-owned subsidiary of Dominion Energy, Inc. (DEI). DEI is a wholly-owned subsidiary of Dominion Resources, Inc. (DRI). The shares of common stock of DRI are publicly traded on the New York Stock Exchange and are widely held. DRI is one of the nation's largest providers of energy with over \$37 billion in assets and over \$10 billion in annual operating revenues.

Upon closing of the Asset Sale Agreement, subject to the NRC's consent and approval of the conforming license amendment, Dominion Energy Kewaunee will assume title to Kewaunee with all of its property that is necessary for its operation and maintenance, to all spent nuclear fuel and other licensed materials at the unit, and to all nuclear fuel procured for Kewaunee. Also, Dominion Energy Kewaunee will assume all responsibility for the operation, maintenance, and eventual decommissioning of Kewaunee. Dominion Energy Kewaunee does not request any physical changes in the plant, and states that it will continue to operate Kewaunee under its current licensing basis.

Substantially all the electrical output from Kewaunee will be sold to WPSC and WPL through the term of the current NRC license (through December 21, 2013) under Power Purchase Agreements (PPAs) which become effective upon closing of the sale.

The qualified decommissioning funds for Kewaunee held by WPSC and WPL will be transferred at closing of the sale to a qualified decommissioning trust fund established by Dominion Energy Kewaunee, which will then assume responsibility for all Kewaunee decommissioning costs and activities. The non-qualified decommissioning funds will be retained by WPSC and WPL, and use of these funds will be determined by the appropriate rate regulatory commissions.

3.0 REGULATORY EVALUATION

The applicants request the approval of the direct transfer of Kewaunee to Dominion Energy Kewaunee, pursuant to 10 CFR 50.80. 10 CFR 50.80(a) 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 the transfer of the 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. 10 CFR 50.80(b) states that an applicant for a license transfer shall include as much of the information described in 10 CFR 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. . . ." 10 CFR 50.80(c) states that "the Commission will

approve the 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 laws, regulations, and orders issued by the Commission pursuant thereto.”

4.0 TECHNICAL QUALIFICATIONS

4.1 Evaluation

The staff used the following regulations and guidance during the technical qualification evaluation: 10 CFR 50.40(b), “Common Standards”; 10 CFR 50.80, “Transfer of Licenses”; the Standard Review Plan (SRP) NUREG-0800, Section 13.1.1, “Management and Technical Support Organization,” and Sections 13.1.2 - 13.1.3, “Operating Organizations.”

4.2 Purpose of the Evaluation

The purpose of this evaluation is to ensure that the proposed corporate management is involved with, informed of, and dedicated to the safe operation of the plant and that sufficient, qualified technical resources will be provided to support safe plant operation and maintenance; and to evaluate proposed changes to the operating organization that may occur as a result of the license transfer.

4.3 Evaluation: Management and Technical Support Organization

The staff reviewed the applicants’ submittal to determine the acceptability of the proposed corporate management and technical support organization. The staff evaluated the submittal using the applicable acceptance criteria contained in SRP Section 13.1.1, “Management and Technical Support Organization.”

In their submittal dated December 19, 2003, the applicants stated “This alignment to, and integration with, Dominion’s other operations will improve the structure for the purposes of ongoing operation within the Dominion organization. Certain off-site support services currently being provided by NMC will be assumed by Dominion Energy Kewaunee. These services will be supplemented as necessary by drawing upon support services from other Dominion nuclear organizations, as appropriate, or will continue to be provided by NMC on an interim basis under a transition services agreement. The Site Vice President for Dominion Energy Kewaunee will report to the Senior Vice President - Nuclear Operations, who will report to the Senior Vice President and Chief Nuclear Officer, who in turn will report to the President and Chief Executive Officer - Generation. If Dominion Energy Kewaunee determines that any other senior management changes will be made contemporaneously with the transfer, it will ensure that any such new manager meets all existing qualification requirements and will inform the NRC and provide the NRC with a resume of any such new manager prior to the license transfer.”

“Because it is anticipated that the existing on-site nuclear organization will be transferred to Dominion Energy Kewaunee, the technical qualifications of the organization operating Kewaunee will be essentially unchanged. Resumes showing the nuclear operating experience

and qualifications of the officers of Dominion Energy Kewaunee who will be directly responsible for the safe operation of Kewaunee are provided . . . An organization chart showing the reporting relationship described above is attached . . . ”

“In addition, DRI's subsidiary, Virginia Electric and Power Company ("Dominion Virginia Power"), is the licensed owner and operator of Surry Power Station and the licensed majority owner and operator of North Anna Power Station. Dominion Nuclear Connecticut, Inc., an indirect, wholly- owned subsidiary of DEI and DRI, is the licensed majority owner and operator of the Millstone Power Station. Thus, Dominion Energy Kewaunee will also be able to draw upon the extensive experience and technical capabilities of Dominion Virginia Power and Dominion Nuclear Connecticut, Inc., if necessary. The nuclear operating experience and capabilities of these companies provide added assurance that Dominion Energy Kewaunee will have the technical qualifications necessary to conduct licensed activities at Kewaunee.”

Based on the applicants' submittal, Dominion Energy Kewaunee has shown and described its organization for managing and its means for providing technical support to the plant staff that will be essentially equivalent to the current qualifications of the WPSC, WPL, and NMC management and technical support organization, regarding which the staff is aware of no deficiencies. Accordingly, the staff concludes that the proposed Dominion Energy Kewaunee organization for managing and its means of providing technical support for the continued operation of Kewaunee under both normal and off-normal conditions are in accordance with SRP Section 13.1.1, “Management and Technical Organization.”

4.4 Evaluation - Operating Organization

The staff reviewed applicants' submittal to determine the acceptability of the Dominion Energy Kewaunee operating organization and to evaluate changes to the operating organization proposed as a result of the license transfer. The initial operating organization was determined to be acceptable by the initial licensing review. Subsequent safety-related changes to the operating organization were evaluated with an appropriate methodology. Therefore, the existing operating organization remains acceptable. The staff's review focused on evaluating any changes to the operating organization proposed as a result of the transfer. The staff evaluated the applicant's submittal using the applicable acceptance criteria contained in SRP Section 13.1.2-1.3, “Operating Organization.”

In their December 19, 2003, submittal, the applicants indicated that, “The plant staff, including senior managers, will remain essentially unchanged by the transfer. Similarly, other than possible realignment of administrative and support services (such as accounting, business services, information technology), it is expected that the on-site organizational structure, including lines of authority and communication at and below the Site Vice President's position, will not be affected by the transfer, except the organizational structure will be modified to conform with Dominion's other nuclear operations. This alignment to, and integration with, Dominion's other operations will improve the structure for the purposes of ongoing operation within the Dominion organization . . . Because it is anticipated that the existing on-site nuclear organization will be transferred to Dominion Energy Kewaunee, the technical qualifications of the organization operating Kewaunee will be essentially unchanged.”

Since substantially all of the operating organizations and personnel now responsible for the operation and maintenance of Kewaunee will be transferred to Dominion Energy Kewaunee, the staff concludes that Dominion Energy Kewaunee's onsite organizations established to operate and maintain Kewaunee under both normal and off-normal conditions are in accordance with SRP Section 13.1.2 - 1.3, "Operating Organization."

4.5 Conclusions Regarding Technical Qualifications

The application has described the corporate level management and technical support organization and the onsite operating organization of Dominion Energy Kewaunee that will be responsible for the operation and maintenance of Kewaunee after the transfer of licensed operating authority to Dominion Energy Kewaunee. The staff concludes that Dominion Energy Kewaunee will have an acceptable corporate organization, onsite organization, and adequate resources to provide technical support for the safe operation of the plant under both normal and off-normal conditions after the transfer of licensed operating authority from WPSC, WPL, and NMC to Dominion Energy Kewaunee. The Dominion Energy Kewaunee, WPSC, WPL, and NMC submittal adequately addresses the relevant requirements of 10 CFR 50.40 (b) and 10 CFR 50.80.

Accordingly, in light of the foregoing evaluation, the staff concludes that Dominion Energy Kewaunee will be technically qualified to hold the operating authority under the Kewaunee license.

5.0 RADIOLOGICAL EMERGENCY PREPAREDNESS

The staff reviewed the proposed changes to the Facility Operating License and Technical Specifications, and Subsection I.5.b, "Emergency Preparedness," of the application. No proposed changes to the Kewaunee radiological emergency plan were noted. Therefore, the requested license transfer and license changes are acceptable in regard to the site radiological emergency preparedness at Kewaunee.

6.0 FINANCIAL QUALIFICATIONS ANALYSIS

6.1 Financial Qualifications

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

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

The NRC staff finds that Dominion Energy Kewaunee does not qualify as an “electric utility” because most or all of its electricity prices will not be set by rates established by a separate regulatory authority or by the entity itself. Thus, the staff has determined that Dominion Energy Kewaunee must meet the financial qualifications requirements for a non-electric utility pursuant to 10 CFR 50.33(f). Dominion Energy Kewaunee, a non-electric utility, is subject to a more detailed financial qualifications review than an electric utility and must provide the following: (1) information that demonstrates that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license; (2) estimates for total annual operating costs for each of the first five years of facility operation and the sources of funds to cover these costs; and (3) information showing (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 it has incurred or proposes to incur; and (c) and any other information considered necessary by the NRC to enable it to determine the applicant’s financial qualification. This information will show how Dominion Energy Kewaunee meets 10 CFR 50.33(f) requirements. Also, 10 CFR 50.33(k)(1) requires that Dominion Energy Kewaunee provide information described in 10 CFR 50.75 indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

In accordance with 10 CFR 50.33(f), the application provided a projected income statement for Dominion Energy Kewaunee with expected revenues and costs for the 5-year period from 2005 to 2009. The projected costs shown in the following summary income statement reflect a requested increase in Kewaunee’s licensed rated power of approximately 6 percent from 1,673 to 1,772 megawatts thermal and represent the expected costs at this higher power level. As of the application date, the NRC had not yet approved this requested uprate, but subsequently approved it on February 27, 2004. However, the fixed payments to be received from PPAs, which are reflected as revenue projections in the application, are not based upon receiving the power uprate; and therefore, both the revenue and net income projections are conservative because they are not dependent upon the uprate. Staff review of the financial documents regarding the proposed transfer of assets and the 5-year financial projections for Dominion Energy Kewaunee (e.g., the Asset Sale Agreement, the PPAs with WPSC and WPL, and other supporting documentation) confirmed the application’s description of the terms of sale of Kewaunee and the 5-year financial projections.

DOMINION ENERGY KEWAUNEE
(SUMMARY OF) PROJECTED INCOME STATEMENT
(In \$millions)
(PROPRIETARY INFORMATION)

| | <u>2005</u> | <u>2006</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> |
|--------------------|-------------|-------------|-------------|-------------|-------------|
| Total Revenue | | | | | |
| Operating Expenses | | | | | |
| Operating Income | | | | | |
| Interest and Taxes | | | | | |
| Net Income | | | | | |

Based upon the revenues and costs provided above, Dominion Energy Kewaunee expects to produce net income ranging from approximately **(PROPRIETARY INFORMATION)** during this 5 year period, and the primary source of most or all of the revenues is to be WPSC and WPL. The application states that substantially all of the electrical output from Kewaunee will be sold to WPSC and WPL under PPAs running through December 21, 2013, based on the receipt of certain fixed payments from WPSC and WPL to cover Kewaunee operation and maintenance (O&M) costs, and that these payments are to be made without regard to the actual electric generating production results of Kewaunee. The PPAs also establish payments for variable costs to Dominion Energy Kewaunee from WPSC and WPL. Both the fixed and the variable payments are reflected in the 5-year revenue figures shown above.

Dominion Energy Kewaunee will assume certain operating risks because it will have obligations to provide replacement power. These obligations are guaranteed by DRI up to a total of \$31 million, pursuant to a guarantee provided in connection with the PPAs. This guarantee is in addition to net income expected from the plant that could also be used to cover replacement power obligations, with these projected net income figures having been represented by the applicants as being conservative and potentially likely to be higher than the amounts stated. This guarantee of up to \$31 million for replacement power supports a finding that Dominion Energy Kewaunee is financially qualified to cover its operating costs, and as additional support, the payment of revenues to Dominion Energy Kewaunee by WPSC and WPL is further assured by their financial qualifications as electric utilities pursuant to 10 CFR 50.2.

To support the establishment of Dominion Energy Kewaunee's financial qualifications in what is referred to as "unanticipated circumstances," i.e., if Kewaunee were to be shut down for an extended period or were to fail to operate at anticipated levels, the application provides a Support Agreement under which DRI will make funding of up to \$54 million to Dominion Energy Kewaunee (referred to as "Subsidiary" in the Agreement) as deemed necessary by the Subsidiary to pay Kewaunee's operating expenses and to meet NRC requirements. This level

Nonproprietary Version

of funding covers the approximate fixed O&M costs that Kewaunee would expect to incur over a 6-month outage period, and provides additional assurance that the Subsidiary will have adequate funds available to pay its fixed O&M costs under such circumstances. Dominion Energy Kewaunee stated to the NRC that the initial \$54 million amount cited in the application had been increased to \$60 million in a February 18, 2004, revision to the Support Agreement. This revised Support Agreement also expanded the scope of the coverage from meeting operating expenses and NRC requirements to cover meeting any of the Subsidiary's expenses and NRC requirements, through such time as Kewaunee has been decommissioned and the Kewaunee site has been restored in accordance with applicable laws and orders. This could allow for additional funds to be made available for decommissioning funding if necessary. The only other condition regarding the time of termination of the agreement is that it shall terminate at such time as Dominion is no longer the direct or indirect owner of any of the shares or other ownership interests in the Subsidiary.

On the basis of information in the application for the transfer of the Kewaunee operating license and other documents as cited above, the staff concludes that Dominion Energy Kewaunee has provided reasonable assurance of adequate financial qualifications for a non-electric utility pursuant to 10 CFR 50.33(f). In addition, pursuant to guidance in NUREG-1577, Rev. 1, Dominion Energy Kewaunee has provided reasonable assurance of adequate funds to pay operating expenses in the event of an extended outage through its Support Agreement with DRI. However, to ensure that adequate funds are available as might be necessary to fund the transition to a safe shutdown, the staff believes that the commitment stated in the Support Agreement to allow Dominion Energy Kewaunee to draw funds as it determines them to be necessary to pay its expenses and to meet NRC requirements for up to \$60 million from DRI should be made a condition of approval of the transfer of the operating license and the operating license itself, as follows:

Dominion Energy Kewaunee shall take no action to cause Dominion Resources, Inc., or its successors and assigns, to void, cancel, or diminish their \$60 million contingency commitment to Dominion Energy Kewaunee, the existence of which is represented in a Support Agreement in a letter to the NRC dated February 18, 2004, or cause them to fail to perform or impair their performance under the commitment, or remove or interfere with Dominion Energy Kewaunee's ability to draw upon the commitment. Also, Dominion Energy Kewaunee shall inform the NRC in writing any time that it draws upon the \$60 million commitment.

6.2 Decommissioning Funding Assurance

The NRC has determined that the requirement to provide reasonable assurance of decommissioning funding is 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 production or utilization facility contain information on how reasonable assurance will be provided that funds will be available to decommission the facility.

In early 2003, NMC filed its biennial decommissioning funding report for Kewaunee with the NRC in conformance with 10 CFR 50.75(f)(1) with Kewaunee's required and expected amounts

of decommissioning funding. The applicants also provided a revised calculation for the required amount based upon the NRC's formula amount in Exhibit J in their application (based upon the plant's 2003 thermal uprate to 1,673 megawatts thermal). In their February 18, 2004, letter, the applicants then provided their most recent revised formula amount calculation in Exhibit K based upon the request to the NRC dated May 22, 2003, to increase the plant's licensed rated power from 1,673 megawatts thermal to 1,772 megawatts thermal.

The application states that the qualified decommissioning funds of WPSC and WPL will be transferred to Dominion Energy Kewaunee at the time of closing. All of these funds will be available for the eventual radiological decommissioning of Kewaunee. Under the terms of the Asset Sale Agreement, these funds shall have an aggregate net cash value (after tax value) of at least \$391,900,000 at closing. These transferred funds then will be held in an external trust fund to be segregated from Dominion Energy Kewaunee's assets and outside its administrative control, as required by NRC regulations. The application states that the fund will be governed by a trust agreement with a trustee in compliance with 10 CFR 50.75(h)(1) and that the trustee will manage investments of the fund in accordance with applicable requirements.

The NRC staff has confirmed that the net cash value of the decommissioning funds to be transferred at closing to Dominion Energy Kewaunee exceeds the NRC decommissioning funding requirements in accordance with 10 CFR 50.75(c). The most recent calculation of the required NRC amount (for 1,772 megawatts thermal) is \$317,074,807, which is exceeded by more than \$74 million by the qualified decommissioning funds to be received by Dominion Energy Kewaunee at closing. This surplus amount does not take into account the additional allowed real annual rate of return that the NRC allows to be credited to these funds through the remaining term of the current Kewaunee license, pursuant to 10 CFR 50.75(e)(1)(ii).

Under terms of the Asset Sale Agreement, the non-qualified decommissioning funds currently held by WPSC and WPL will not be transferred to Dominion Energy Kewaunee, but will be retained by them and use of these funds will be directed by the appropriate rate regulatory authorities that have jurisdiction over such non-qualified funds.

Based on the discussion above, the staff concludes that the applicants have complied with the requirements of 10 CFR 50.75(b) and (c) with respect to providing at least the minimum amount of decommissioning funding that is required (with substantially more than the minimum amount being committed to be provided in this case). Also, the staff concludes that use of the proposed external trust fund as its funding assurance method by Dominion Energy Kewaunee will meet the requirements of 10 CFR 50.75(e) regarding funding methods and that the applicants have provided reasonable assurance of decommissioning funding for Kewaunee. To reflect Dominion Energy Kewaunee's commitment to provide adequate decommissioning funds and in order to ensure that the proposed decommissioning trust is maintained, the following should be included as a condition of approval of transfer of the operating license and of the operating license itself, as follows:

Dominion Energy Kewaunee is required to provide qualified decommissioning funds with a net (after tax) cash value of no less than \$391.9 million for radiological decommissioning purposes. The funds will be deposited in an external trust fund to

be segregated from Dominion Energy Kewaunee's other assets and outside its administrative control, as required by NRC regulations, and Dominion Energy Kewaunee shall take all necessary steps to ensure that this external trust fund is maintained in accordance with the requirements of the Order approving the transfer of the Kewaunee operating license and with the safety evaluation supporting the Order.

6.3 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). The application postdates the issuance of the Kewaunee operating license, and therefore no antitrust review is required or authorized.

6.4 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 regulation, 10 CFR 50.38, contains language to implement this prohibition.

The applicants have stated that all of the directors and principal officers of Dominion Energy Kewaunee, Dominion Nuclear Projects, Inc., DEI, and DRI are United States citizens. All of these companies cited are U.S. corporations.

Section 13 of the Securities and Exchange Act of 1934, as amended, 15 U.S.C. § 78m(d), requires that a person or entity that owns or controls more than 5 percent of the stock of a company must file notice with the Securities and Exchange Commission (SEC). The applicants have stated that Dominion Energy Kewaunee, upon review of the relevant findings with the SEC, is not aware of any alien, foreign corporation, or foreign government which holds more than 5 percent of the common stock of DRI. The application states that Dominion Energy Kewaunee is not owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. The NRC staff does not know or have reason to believe otherwise.

6.5 Nuclear Insurance and Indemnity

The provisions of the Price-Anderson Act (Section 170 of the Act) and the Commission's regulations at 10 CFR Part 140 require that the current indemnity agreement be modified to reflect Dominion Energy Kewaunee as the new owner and operator of the Kewaunee unit.

In accordance with the Price-Anderson Act, Dominion Energy Kewaunee will be required to provide primary insurance and participate in the secondary retrospective insurance pool. It will also be required to maintain property insurance as specified in 10 CFR 50.54(w). Information provided in the application concerning financial qualifications demonstrates that Dominion Energy Kewaunee will be able to satisfy applicable insurance requirements of the NRC and the Price-Anderson Act.

Consistent with NRC practice, the NRC staff will require Dominion Energy Kewaunee to provide satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended license reflecting the new licensee. Because the issuance of the amended license is directly tied to completion of the proposed transfer, the order approving the transfer will be conditioned as follows:

Prior to completion of the transfer of the Kewaunee operating license, Dominion Energy Kewaunee shall provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

7.0 CONFORMING AMENDMENTS

The applicants have requested approval of a conforming amendment to the operating license for Kewaunee. The requested changes reflect the proposed transfer of ownership and operating authority for Kewaunee to Dominion Energy Kewaunee; delete references to NMC, WPSC, and WPL in the license; change the name of Kewaunee Nuclear Power Plant to Kewaunee Power Station to reflect the name under which Dominion Energy Kewaunee plans to operate the facility, consistent with other nuclear plants owned by Dominion companies; and authorize Dominion Energy Kewaunee to possess, use, and operate Kewaunee, and to possess and use related licensed materials, under the same conditions and authorizations included in the current license. No physical or operating changes to the facility are requested. 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.

7.1 Discussion

The changes to be made to the Kewaunee 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 is acceptable.

7.2 State Consultation

In accordance with the Commission's regulations, Wisconsin State official Mr. J. Kitsemel was notified of the proposed issuance of the amendment. The State official had no comments.

7.3 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.

8.0 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.

9.0 CONCLUSIONS

In view of the foregoing, and based upon the representations in the application and other relevant documents, the staff finds that, subject to the license conditions discussed herein, Dominion Energy Kewaunee is qualified to be the holder of the Kewaunee Operating License, and that the transfer of the license to Dominion Energy Kewaunee is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

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