

December 2, 2005

Mr. Gary Taylor
Chief Executive Officer
Entergy Operations, Inc.
P. O. Box 31995
Jackson, MS 39286-1995

SUBJECT: WATERFORD STEAM ELECTRIC STATION, UNIT 3 - ORDER APPROVING
THE TRANSFER OF THE FACILITY OPERATING LICENSE AND MATERIALS
LICENSE NO. NPF-38 FROM ENTERGY LOUISIANA, INC. TO ENTERGY
LOUISIANA, LLC (TAC NO. MC7974)

Dear Mr. Taylor:

The U.S. Nuclear Regulatory Commission (NRC) staff has completed its review of your application dated July 20, 2005, as supplemented by letter dated September 14, 2005. Your application requested approval of the transfer of Facility Operating License and Materials License No. NPF-38 for the Waterford Steam Electric Station, Unit 3 (Waterford 3), held by Entergy Louisiana, Inc. (ELI) and Entergy Operations, Inc. (EOI), and approval of a conforming amendment, pursuant to Title 10 of the *Code of Federal Regulations*, Sections 50.80 and 50.90. The transfer is associated with the restructuring of ELI from a Louisiana corporation to a Texas limited liability company, Entergy Louisiana, LLC (ELL). EOI will continue to operate Waterford 3, and the proposed restructuring will not affect the technical or financial qualifications of ELL or EOI.

The enclosed Order (Enclosure 1) 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 the conforming amendment (Enclosure 2).

Enclosure 3 is the NRC's safety evaluation related to the preceding action, which will be placed in the NRC Public Document Room and added to the Agencywide Documents Access and Management System's (ADAMS) Publicly Available Records System library. This Order is being forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Mel B. Fields, Project Manager
Plant Licensing Branch IV
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-382

Enclosures: 1. Order
2. Conforming Amendment
3. Safety Evaluation

cc w/encls: See next page

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cc w/encls: See next page

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***No significant changes to SE**
**** see Prior concurrence**
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	Docket No. 50-382
)	
ENERGY LOUISIANA, INC.)	
ENERGY OPERATIONS, INC.)	License No. NPF-38
)	
(Waterford Steam Electric Station, Unit 3))	

ORDER APPROVING TRANSFER OF LICENSE AND CONFORMING AMENDMENT

I.

Entergy Louisiana, Inc. (ELI) is the owner of Waterford Steam Electric Station, Unit 3 (Waterford 3), located in St. Charles Parish, Louisiana. Entergy Operations, Inc. (EOI), is the licensed operator of Waterford 3. They are the holders of Facility Operating License No. NPF-38, which authorizes operation of Waterford 3, issued by the Nuclear Regulatory Commission (NRC or the Commission). The license authorizes ELI to possess, and EOI to use and operate, Waterford 3.

II.

By application dated July 20, 2005, as supplemented September 14, 2005, EOI, acting on behalf of itself and ELI, requested approval by the NRC of the transfer of Facility Operating License No. NPF-38 for Waterford 3 from ELI to Entergy Louisiana, LLC (ELL). The initial application and the supplement are hereinafter referred to as “the application” unless otherwise indicated. EOI also requested approval of a conforming license amendment to reflect the transfer. The conforming license amendment would replace references to ELI with ELL. The

application requested approval of the transfer of Facility Operating License and Materials License No. NPF-38 for Waterford 3, held by ELI and EOI, and approval of a conforming amendment, pursuant to Title 10 of the *Code of Federal Regulations*, Sections 50.80 and 50.90. The transfer is associated with the restructuring of ELI from a Louisiana corporation to a Texas limited liability company, ELL. EOI will continue to operate Waterford 3, and the proposed restructuring will not affect the technical or financial qualifications of ELL or EOI.

Notice of consideration of approval and an opportunity for a hearing was published in the *Federal Register* on October 17, 2005 (70 FR 60374). No hearing requests or written comments were received. The supplemental letter dated September 14, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not affect the applicability of the generic no significant hazards consideration determination.

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 EOI'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 ELL is qualified to hold the license for Waterford 3 and that the transfer of the license to ELL, as previously described herein, 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; and 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. The NRC staff finds 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 December 2, 2005.

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 Entergy Louisiana, LLC, is approved, subject to the following conditions:

- (1) After receipt of all required regulatory approvals of the license transfer to Entergy Louisiana, LLC, Entergy Louisiana, Inc. 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 January 1, 2006, this Order shall become null and void, with the provision that, upon written application and for good cause shown, such date may be extended.
- (2) At the time of the closing of the transfer of ownership of Waterford 3 and license from Entergy Louisiana, Inc. to Entergy Louisiana, LLC, the Waterford 3 decommissioning trust agreement(s) shall be amended to reflect Entergy Louisiana, LLC as the owner of all the decommissioning trust funds accumulated as of the date of the closing.
- (3) Prior to completion of the transfer of the Waterford 3 operating license, Entergy Louisiana, LLC 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, "Financial Protection Requirements and Indemnity Agreements," 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 July 20, 2005, the supplemental letter dated September 14, 2005, and the safety evaluation dated December 2, 2005, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet on the NRC's Web site <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the document located in ADAMS, should contact the NRR PDR Reference Staff by telephone at 1-800-397-4209, 301-415-4737, or by email to pdr@nrc.gov.

Dated at Rockville, Maryland, this 2nd day of December 2005.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

R. William Borchardt, Deputy Director
Office of Nuclear Reactor Regulation

ENERGY OPERATIONS, INC.

DOCKET NO. 50-382

WATERFORD STEAM ELECTRIC STATION, UNIT 3

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No. 203
License No. NPF-38

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by Entergy Operations, Inc. dated July 20, 2005, as supplemented by letter dated September 14, 2005, 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 30 days.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

R. William Borchardt, Deputy Director
Office of Nuclear Reactor Regulation

Attachment: Changes to the Operating License

Date of Issuance: December 2, 2005

ATTACHMENT TO LICENSE AMENDMENT NO. 203

TO FACILITY OPERATING LICENSE NO. NPF-38

DOCKET NO. 50-382

Replace the following pages of Operating License No. NPF-38 with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

REMOVE

1
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INSERT

1
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SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

TRANSFER OF FACILITY OPERATING LICENSE

TO ENTERGY LOUISIANA, LLC.

WATERFORD STEAM ELECTRIC STATION, UNIT 3

DOCKET NO. 50-382

1.0 INTRODUCTION

By application dated July 20, 2005, as supplemented by letter dated September 14, 2005 (collectively hereafter referred to as the application, unless otherwise noted), Entergy Louisiana, Inc. (ELI) and Entergy Operations, Inc. (EOI) requested approval of the transfer of Facility Operating License No. NPF-38 for the Waterford Steam Electric Station, Unit 3, (Waterford 3) from ELI to Entergy Louisiana, LLC (ELL), and approval of a conforming amendment pursuant to 10 CFR 50.80 and 10 CFR 50.90. The transfer involves 100 percent of ELI's undivided ownership interest in Waterford 3 to ELL. EOI will continue to operate Waterford 3.

The September 14, 2005, supplement to the initial application provided additional information that clarified the application, and did not expand the application beyond the scope of the *Federal Register* notice of the transfer (70 FR 60374, October 17, 2005) or affect the applicability of the generic no significant hazards consideration determination.

2.0 BACKGROUND

ELI is the current licensed owner of Waterford 3, a commercial nuclear power reactor that is operated by EOI. Both ELI and EOI are direct subsidiaries of Entergy Corporation. ELI is currently a Louisiana corporation. Under the proposed restructuring, ELI will become a Texas corporation (Holdings) and Holdings will form ELL, which will be a Texas limited liability company. Holdings will remain a subsidiary of Entergy Corporation and will own all the common membership interests in ELL. All of the common stock and preferred stock of ELI will continue to be outstanding and to be owned by the same stockholder(s) with the same ownership rights and interests (in Holdings) as those stockholder(s) had (in ELI) immediately before the proposed restructuring.

ELL will assume all of the regulated obligations of ELI, along with the property and other assets of ELI that are used to provide retail and wholesale electric service to ELI's customers. ELL's retail utility operations will be subject to the jurisdiction of the Louisiana Public Service Commission (LPSC) to the same extent that the LPSC currently possesses jurisdiction over ELI's retail utility operations.

EOI operates Waterford 3 pursuant to an Operating Agreement with ELI. EOI will continue to operate Waterford 3 (i.e., there is no proposed transfer of licensed operating authority) and the current Operating Agreement will be amended to reflect the proposed new owner of the plant, ELL. EOI will not be affected by the proposed transfer of possession authority to ELL.

The purpose of the proposed restructuring of ELI is to take advantage of more favorable franchise tax treatment for limited liability companies under Louisiana law. Pursuant to Louisiana Revised Statutes Section 47.601A, ELI currently is obligated to pay corporation franchise taxes in the State of Louisiana. (For example, ELI's 2005 Louisiana franchise tax was \$10.3 million.) According to the application, Louisiana law requires every Louisiana corporation (and every non-Louisiana corporation that qualifies to do business in Louisiana or is doing business in Louisiana) to pay this tax. However, Louisiana law does not subject limited liability companies to this tax.

The application states that in Docket No. U-20925 (RRF 2004), the LPSC Staff recommended that ELI undertake to review and study the feasibility of restructuring its business form into a limited liability company in order to eliminate ELI's obligation to pay franchise taxes. ELI agreed to this recommendation and agreed further to provide interim reports regarding the status of its restructuring efforts. The proposed restructuring implements the LPSC Staff's recommendation in Docket No. U-20925 (RRF 2004).

ELL will be a Texas limited liability company, subject to regulation by LPSC.

3.0 REGULATORY EVALUATION

EOI, in the application, requested the approval of the direct transfer of the license for the reactor unit (to the extent held by ELI regarding possession authority) from ELI to ELL, pursuant to 10 CFR 50.80. As stated in 10 CFR 50.80(a), "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 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. It states in 10 CFR 50.80(b) 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 ..." Pursuant to 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."

4.0 TECHNICAL QUALIFICATION EVALUATION NOT REQUIRED

EOI will continue to operate Waterford 3 as the licensed operator after the proposed restructuring of ELI, just as it did prior to the restructuring of ELI to ELL. According to the application, the proposed restructuring involves no change to either the management organization or technical personnel currently responsible for operating Waterford 3. The

technical support organization for the facility will also be unchanged as a result of the proposed restructuring. The personnel presently employed by EOI will not be affected by the proposed restructuring and it will have no impact on their ability to continue to safely operate Waterford 3. Since there is no proposed new operator, transfer of operating authority, or change of personnel, a technical operations review is not applicable in connection with this application.

5.0 EVALUATIONS

5.1 Financial Qualifications

Section 50.33(f) of 10 CFR 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 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 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."

ELI recovers the costs of operating and maintaining Waterford 3 through rates that are established by the LPSC. After the restructuring, ELL will continue to recover the costs of operating and maintaining Waterford 3 through rates established by the LPSC and will be an electric utility as defined in 10 CFR 50.2. As an electric utility, as defined in 10 CFR 50.2, ELL is exempt from financial qualifications review under 10 CFR 50.33(f).

The NRC staff finds, therefore, that no further financial qualifications review is required under 10 CFR 50.33(f).

5.2 Decommissioning Funding Assurance

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 regulations in 10 CFR 50.33(k) require 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.

There will be no changes to the existing mechanisms that provide financial assurance for decommissioning Waterford 3 as a result of the proposed restructuring. ELL will provide decommissioning funding assurance through an external sinking fund as ELI is doing now. Funds for decommissioning will continue to be collected through rates established by the LPSC, currently as provided in LPSC Order No. U-20925 RRF 2004, and held in an external trust established for the purpose of decommissioning Waterford 3. In addition, there will be no changes to the existing Trust Agreements other than an amendment to reflect the new owner.

In a September 14, 2005, supplement to the July 20, 2005, initial application, ELI and EOI, confirmed that the balance in the decommissioning trusts will not change as a result of the license transfer from ELI to ELL. As of December 31, 2004, Waterford 3 had \$176 million in the decommissioning trust.

In consideration of the above, the NRC staff finds that ELL will provide adequate decommissioning funding assurance in accordance with 10 CFR 50.75, conditioned upon the following:

At the time of the closing of the transfer of ownership of Waterford 3 and license from Entergy Louisiana, Inc. to Entergy Louisiana, LLC, the Waterford 3 decommissioning trust agreement(s) shall be amended to reflect Entergy Louisiana, LLC as the owner of all the decommissioning trust funds accumulated as of the date of the closing.

5.3 Antitrust Review

The Atomic Energy Act of 1957, as amended (AEA), does not require or authorize antitrust reviews of post-operating license transfer applications. See Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI-99, 49 NRC 441 (1999). Therefore, because the transfer application postdates the issuance of the Waterford 3 operating license, no antitrust review is required or authorized.

ELI is currently subject to antitrust license conditions. The application includes proposed administrative changes to substitute ELL for ELI in the antitrust conditions. No substantive changes to the conditions are being proposed. The staff finds the administrative changes consistent with the proposed license transfer, and thus acceptable.

5.4 Foreign Ownership, Control, or Domination

The AEA prohibits 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.

Holdings will be a Texas corporation. The directors and principal officers of Holdings will be citizens of the United States. The shareholder(s) of Holdings will be the same as those of ELI currently. The application states that Holdings will not be owned, controlled, or dominated by an alien, foreign corporation, or foreign government.

ELL will be a Texas limited liability company and wholly-owned subsidiary of Holdings. All of the directors and principal officers of ELL will be citizens of the United States. The application states that ELL will not be owned, controlled or dominated by an alien, foreign corporation, or foreign government. The NRC staff does not know or have reason to believe otherwise.

5.5 Nuclear Insurance and Indemnity

The provisions of the Price-Anderson Act (Section 170 of the AEA) and the Commission’s regulations at 10 CFR Part 140 require that the current indemnity agreement be modified to reflect ELL as the new owner of Waterford 3.

In accordance with the Price-Anderson Act, ELL 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). ELL, as an electric utility, is presumed to be able to satisfy applicable insurance requirements of the NRC and the Price-Anderson Act, consistent with the underlying basis of the NRC's financial qualifications regulation at 10 CFR 50.33.

Consistent with NRC practice, the NRC staff will require ELL to provide satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of the licensee 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 license transfer, the order approving the transfer will be conditioned as follows:

Prior to completion of the transfer of the license, ELL shall provide the Director of the 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.

5.6 Summary

In view of the foregoing, the staff finds that, subject to the conditions discussed herein, Entergy Louisiana, LLC, is qualified to be the holder of the license for Waterford Steam Electric Station, Unit 3, to the extent proposed in the application, and that the transfer of the license to Entergy Louisiana, LLC, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

6.0 CONFORMING AMENDMENT

The applicants have requested approval of a conforming amendment to the operating license for Waterford 3. The requested changes reflect the proposed transfer of ownership for Waterford 3 to Entergy Louisiana, LLC; delete references to Entergy Louisiana, Inc. in the license; and authorize Entergy Louisiana, LLC to possess Waterford 3 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.

6.1 Discussion

The changes to be made to the Waterford 3 Operating License 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.

6.2 State Consultation

In accordance with the Commission's regulations, Louisiana State official Ms. Nan Calhoun was notified of the proposed issuance of the amendment. The State official had no comments.

6.3 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.

7.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the transfer of a license issued by 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.

8.0 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, the transfer of Facility Operating License and Materials License No. NPF-38 for Waterford 3, held by Entergy Louisiana, Inc., a Louisiana corporation, to a Texas limited liability company, Entergy Louisiana, LLC and Entergy Operations, Inc. and approval of a conforming amendment is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. EOI will continue to operate Waterford 3.

Principal Contributors: R. Pelton, M. Dusaniwskyj

Date: December 2, 2005

Waterford Steam Electric Station, Unit 3

cc:

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May 2005