

December 23, 2005

Mr. Michael B. Sellman
President and Chief Executive Officer
Nuclear Management Company, LLC
700 First Street
Hudson, WI 54016

and

Mr. J. A. Stall
Senior Vice President
Nuclear and FPL Energy Duane Arnold LLC
PO Box 14000
Juno Beach, FL 33408-0420

SUBJECT: ORDER APPROVING TRANSFER OF LICENSE AND CONFORMING
AMENDMENT RELATING TO DUANE ARNOLD ENERGY CENTER
(TAC NO. MC8026)

Dear Mr. Sellman and Mr. Stall:

By letter to the Nuclear Regulatory Commission (NRC) dated August 1, 2005, as supplemented by letters dated October 11, November 1, November 2, and November 28, 2005, in accordance with Section 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations*, you submitted an application requesting (1) approval of the transfer of the Facility Operating License for Duane Arnold Energy Center (DAEC) to the extent held by Interstate Power and Light Company (IPL) as owner, and Nuclear Management Company, LLC (NMC) as licensed operator of DAEC, to FPL Energy Duane Arnold, LLC (FPLE Duane Arnold), a subsidiary of FPL Energy, LLC, and (2) approval of the conforming amendment to the license.

Notice of the application was published in the *Federal Register* on September 20, 2005, (70 FR 55175). The October 11, November 1, November 2, and November 28, 2005, supplements contained clarifying information and did not expand the application beyond the scope of the notice, and did not affect the applicability of the generic no significant hazards consideration determination.

NOTE: THIS DOCUMENT CONTAINS PROPRIETARY INFORMATION. THIS DOCUMENT
BECOMES NON-PROPRIETARY UPON REMOVAL OF ENCLOSURE 4.

The NRC staff has completed its review of the application. Enclosure 1 is the Order which approves the proposed license transfer, subject to the conditions described therein, and the conforming amendment. Enclosure 2 provides the conforming amendment pages for DAEC. The conforming amendment will be issued and become effective at the time the transfer is consummated. Enclosures 3 and 4 contain the non-proprietary and proprietary versions, respectively, of the NRC staff's safety evaluation (SE) related to the preceding actions. The non-proprietary version of the SE will be placed in the NRC public document room and added to the Agencywide Documents Access and Management System's Publicly Available Records System Library.

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

Sincerely,

/RA/

Deirdre W. Spaulding, Project Manager
Plant Licensing Branch III-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-331

Enclosures: 1. Order
2. Conforming Amendment to DPR-49
3. Safety Evaluation (Non-proprietary)
4. Safety Evaluation (Proprietary)

cc w/o Enclosure 4: See next page

NOTE: THIS DOCUMENT CONTAINS PROPRIETARY INFORMATION. THIS DOCUMENT
BECOMES NON-PROPRIETARY UPON REMOVAL OF ENCLOSURE 4.

The NRC staff has completed its review of the application. Enclosure 1 is the Order which approves the proposed license transfer, subject to the conditions described therein, and the conforming amendment. Enclosure 2 provides the conforming amendment pages for DAEC. The conforming amendment will be issued and become effective at the time the transfer is consummated. Enclosures 3 and 4 contain the non-proprietary and proprietary versions, respectively, of the NRC staff's safety evaluation (SE) related to the preceding actions. The non-proprietary version of the SE will be placed in the NRC public document room and added to the Agencywide Documents Access and Management System's Publicly Available Records System Library.

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

Sincerely,
/RA/
 Deirdre W. Spaulding, Project Manager
 Plant Licensing Branch III-1
 Division of Operating Reactor Licensing
 Office of Nuclear Reactor Regulation

Docket No. 50-331

- Enclosures: 1. Order
 2. Conforming Amendment to DPR-49
 3. Safety Evaluation (Non-proprietary)
 4. Safety Evaluation (Proprietary)

cc w/o Enclosure 4: See next page

DISTRIBUTION: (w/o Enclosure 4)

| | | |
|-------------------------------|-----------------------------|------------|
| PUBLIC | RidsNrrDorlDpr | EMcKenna |
| LPLIII-1 R/F | RidsOgcRp | EWeiss |
| GHill (8) | RidsNrrDorlLple (LRaghavan) | RUleck |
| RidsNrrOd (JDyer/BBorchardt) | RidsNrrPMDSpaulding | AMcKeigney |
| RidsNrrAdro (BBoger) | RidsNrrLATHarris | RPelton |
| RidsNrrDorl (CHaney/EHackett) | RidsRgn3MailCenter | DGuha |
| RidsAcrsAcnwMailCenter | RidsRgn2MailCenter | |

PACKAGE NO.: **ML053420510** LICENSE PAGES NO.: **ML062910044**
 ORDER NO.: **ML053420246**
 PROPRIETARY SE: **ML053420497** *SE dated 12/5/05 **SE dated 12/07/05 ***email dated 12/20/05

| | | | | | | |
|--------|---------------|---------------|----------|-----------|------------|-----------|
| OFFICE | NRR/LPL3-1/PM | NRR/LPL3-1/LA | Tech Ed | IOLB/DIRS | PFPB | EPD |
| NAME | DSpaulding | THarris | PKleene | DTrimble* | EMcKenna** | EWeiss*** |
| DATE | 12/16/05 | 12/16/05 | 12/21/05 | 12/5/05 | 12/6/05 | 12/20/05 |

| | | | | | |
|--------|----------|---------------|------------|------------------------------|---------------|
| OFFICE | OGC | NRR/LPL3-1/BC | NRR/DORL/D | NRR/D | NRR/LPL3-1/PM |
| NAME | SUttal | LRaghavan | CHaney | JDyer (RBorchardt for) | DSpaulding |
| DATE | 12/16/05 | 12/16/05 | 12/20/05 | 12/23/05 | 12/23/05 |

OFFICIAL RECORD COPY

NOTE: THIS DOCUMENT CONTAINS PROPRIETARY INFORMATION. THIS DOCUMENT BECOMES NON-PROPRIETARY UPON REMOVAL OF ENCLOSURE 4.

Duane Arnold Energy Center

cc:

Michael B. Sellman
President and Chief Executive Officer
Nuclear Management Company, LLC
700 First Street
Hudson, WI 54016

Chairman, Linn County
Board of Supervisors
930 1st Street SW
Cedar Rapids, IA 52404

John Bjorseth
Plant Manager
Duane Arnold Energy Center
3277 DAEC Road
Palo, IA 52324

Craig G. Anderson
Senior Vice President, Group Operations
700 First Street
Hudson, WI 54016

Steven R. Catron
Manager, Regulatory Affairs
Duane Arnold Energy Center
3277 DAEC Road
Palo, IA 52324

U. S. Nuclear Regulatory Commission
Resident Inspector's Office
Rural Route #1
Palo, IA 52324

Regional Administrator
U. S. NRC, Region III
801 Warrenville Road
Lisle, IL 60532-4531

Jonathan Rogoff
Vice President, Counsel & Secretary
Nuclear Management Company, LLC
700 First Street
Hudson, WI 54016

Bruce Lacy
Nuclear Asset Manager
Alliant Energy/Interstate Power
and Light Company
3277 DAEC Road
Palo, IA 52324

Daniel McGhee
Utilities Division
Iowa Department of Commerce
Lucas Office Buildings, 5th floor
Des Moines, IA 50319

Supplemental information was provided by letters dated October 11, November 1, November 2, and November 28, (hereinafter, the August 1, 2005, and supplemental information will be referred to collectively as the “application,” unless otherwise noted). NMC also requested approval of a conforming license amendment that would reflect the proposed transfer of ownership of IPL’s 70-percent interest in DAEC to FPLE Duane Arnold; and reflect the proposed transfer of operating authority to FPLE Duane Arnold. The amendment would delete the references to IPL and NMC in the license as appropriate, and replace them with references to FPLE Duane Arnold. No physical changes to the facility or operational changes were proposed in the application. After completion of the proposed transfers, FPLE Duane Arnold would be an owner (70-percent interest) and the operator of DAEC. The 30-percent ownership interest in DAEC, collectively held by Central Iowa Power Cooperative (CIPCO) and the Corn Belt Power Cooperative (Corn Belt), would be unchanged.

Approval of the transfer of the facility operating license and conforming license amendment is requested by NMC pursuant to Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations* (10 CFR). Notices of the request for approval and opportunity for a hearing were published in the *Federal Register* on September 20, 2005, (70 FR 55175). No comments were received. No requests for hearing or petitions for leave to intervene 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. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that FPLE Duane Arnold is qualified to hold the license for DAEC to the extent previously held by IPL regarding its ownership interest, and is qualified to hold the operating authority under the license, and that the transfer of the license as

proposed in the application 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 also found that the application for the proposed license amendment 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; 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 to 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 findings set forth above are supported by an NRC safety evaluation dated December 23, 2005.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o and 184 of the Act, 42 U.S.C. §§ 2201(b), 2201(i), 2201(o) and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the transfer of the license, as described herein, to FPLE Duane Arnold is approved, subject to the following conditions:

- (1) Prior to completion of the transfer of the license, FPLE Duane Arnold 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.
- (2) At the time of the closing of the transfer of the license from Interstate Power and

Light Company (IPL) to FPLE Duane Arnold, IPL shall transfer to FPLE Duane Arnold IPL's decommissioning funds accumulated as of such time, with an aggregate minimum value of at least \$186 million, and FPLE Duane Arnold shall deposit such funds in an external decommissioning trust fund established by FPLE Duane Arnold for DAEC. FPLE Duane Arnold shall take all necessary steps to ensure that this external trust fund is maintained in accordance with the requirements of this order approving the license transfer, NRC regulations, and consistent with the safety evaluation supporting this order. The trust agreement shall be in a form acceptable to the NRC.

- (3) By the date of closing of the transfer of the 70 percent ownership interest in DAEC from IPL to FPLE Duane Arnold, FPLE Duane Arnold shall obtain a parent company guarantee from FPL Group Capital in an initial amount of at least \$75 million (in 2005 dollars) to provide additional decommissioning funding assurance regarding such ownership interest, which guarantee must be in accordance with NRC regulations regarding such documents. Required funding levels shall be recalculated annually and, as necessary, FPLE Duane Arnold shall either obtain appropriate adjustments to the parent guarantee or otherwise provide any additional decommissioning funding assurance necessary for FPLE Duane Arnold to meet NRC requirements under 10 CFR 50.75.
- (4) FPLE Duane Arnold shall take no action to cause FPL Group Capital, or its successors and assigns, to void, cancel, or modify its \$50 million contingency commitment to FPLE Duane Arnold, as represented in the application, or cause it to fail to perform or impair its performance under the commitment, without the prior written consent from the NRC. An executed copy of the Support Agreement shall be submitted to the NRC no later than 30 days after completion of the

license transfer. Also, FPLE Duane Arnold shall inform the NRC in writing any time that it draws upon the \$50 million commitment.

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 license transfer is completed.

IT IS FURTHER ORDERED that FPLE Duane Arnold shall inform the Director of the Office of Nuclear Reactor Regulation in writing of the date of closing of the transfer of the IPL 70-percent interest in DAEC no later than 5 business days prior to closing. Should the transfer of the license not be completed by December 31, 2006, this Order shall become null and void, provided however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated August 1, 2005, and supplemental letters dated October 11, November 1, November 2, and November 28, 2005, and the non-proprietary safety evaluation dated December 15, 2005, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC 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 documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland this 23rd day of December 2005.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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

INTERSTATE POWER AND LIGHT COMPANY
CENTRAL IOWA POWER COOPERATIVE
CORN BELT POWER COOPERATIVE
NUCLEAR MANAGEMENT COMPANY, LLC
DOCKET NO. 50-331
DUANE ARNOLD ENERGY CENTER
AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. DPR-49

1. The U.S. Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by Nuclear Management Company, LLC (the licensee) dated August 1, 2005, as supplemented by letters dated October 11, November 1, November 2, and November 28, 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 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 of the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

Attachment: Changes to the Facility Operating License DPR-49

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. _____

FACILITY OPERATING LICENSE NO. DPR-49

DOCKET NO. 50-331

Replace the following pages of the Facility Operating License and Appendix B Additional Conditions with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

Remove

License Page 1
License Page 2
License Page 3
License Page 4
License Page 4a
Appendix B Page 1

- - -

Insert

License Page 1
License Page 2
License Page 3
License Page 4
License Page 4a
Appendix B Page 1
Page 2

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

REGARDING LICENSE TRANSFER

FROM INTERSTATE POWER AND LIGHT COMPANY

TO FPL ENERGY DUANE ARNOLD, LLC

DUANE ARNOLD ENERGY CENTER

FACILITY OPERATING LICENSE NO. DPR-49

DOCKET NO. 50-331

1.0 INTRODUCTION

By application dated August 1, 2005, Nuclear Management Company, LLC (NMC), Interstate Power and Light Company (IPL), and FPL Energy Duane Arnold, LLC (FPLE Duane Arnold) (collectively, the applicants) requested the approval of the U.S. Nuclear Regulatory Commission (NRC) under 10 CFR 50.80 for the proposed direct transfer of the operating license for the Duane Arnold Energy Center (DAEC), to the extent held by IPL (70 percent ownership share), to FPLE Duane Arnold, and the transfer by NMC of its operating authority to FPLE Duane Arnold. Transfer of the license will result in FPLE Duane Arnold being authorized pursuant to the general license in 10 CFR 72.210 to store spent fuel in the Independent Spent Fuel Storage Installation (ISFSI) at DAEC. FPLE Duane Arnold will assume all of NMC's obligations and commitments under the license for DAEC and all NRC orders pertaining thereto. The application further seeks NRC approval of conforming license amendments, pursuant to 10 CFR 50.90 to reflect the proposed license transfer. A notice of consideration of approval of the subject license transfer and opportunity for a hearing was published in the *Federal Register* on September 20, 2005 (70 FR 55175).

The application was supplemented by letters dated October 11 and November 2, 2005, from NMC, a letter dated November 1, 2005, from FPL Energy, LLC (this company is referenced below), and a letter dated November 28, 2005, from FPLE Duane Arnold. The supplements did not expand the scope of the original application as noticed on September 20, 2005. No hearing requests or written comments were received in response to the notice.

2.0 BACKGROUND

According to the application, as the licensed operator of DAEC after the license transfer, FPLE Duane Arnold will act for itself and on behalf of the other co-owners (Central Iowa Power Cooperative, 20 percent ownership share, and Corn Belt Power Cooperative, 10 percent ownership share). FPLE Duane Arnold is a direct, wholly-owned subsidiary of ESI Energy, LLC

ENCLOSURE 3

(ESI Energy), which is a direct, wholly-owned subsidiary of FPL Energy, LLC (FPL Energy).

Nonproprietary Version

FPL Energy is, in turn, a direct, wholly-owned subsidiary of FPL Group Capital, Inc. (FPL Group Capital), which is a direct, wholly-owned subsidiary of FPL Group, Inc. (FPL Group). FPL Group is a public utility holding company incorporated in 1984 under the laws of the State of Florida.

The application states that through its affiliates Florida Power & Light Company (FP&L) and FPL Energy LLC, FPL Group is a major producer of electric energy, with over 30,000 MWe of generation capacity in operation in the United States. FPL Group has been in business for more than 20 years and has developed its expertise in generation to build a rapidly growing independent power producer business with facilities in operation, construction, or advanced stages of development in 26 states. FPL Group is a publicly traded company with shares trading on the New York Stock Exchange.

3.0 REGULATORY EVALUATION

The applicants request the approval of the direct transfer of IPL's ownership interest in DAEC and NMC's operating authority for DAEC to FPLE Duane Arnold, pursuant to 10 CFR 50.80. Section 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 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. Section 50.80(b) states in part that "An application for transfer of a license shall include as much of the information described in Part 50.33 and Part 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, ..." Section 50.80(c) states in part that "... 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 QUALIFICATIONS

4.1 Financial Qualifications

The license transfer proposed in the application involves, in addition to a transfer of operating authority for DAEC, FPLE Duane Arnold acquiring ownership interests in DAEC. FPLE Duane Arnold must be found to be financially qualified to hold these interests and operate the facility before the license transfer can be approved.

FPLE Duane Arnold does not qualify as an electric utility under 10 CFR 50.2. In accordance with 10 CFR 50.33(f), a non-electric utility applicant must provide information sufficient to demonstrate its financial qualifications to carry out the activities for which the license is being sought. The information must show that the applicant possesses, or has reasonable assurance of obtaining, the funds necessary to cover estimated operating costs for the period of the license.

The applicant must submit estimated total annual operating costs for the first 5 years of facility operations and indicate the source of funds to cover these costs. For license transfers, the relevant 5 year period is that following the proposed license transfer.

Also, 10 CFR 50.33(k)(1) requires that FPLE Duane Arnold provide information as described in 10 CFR 50.75 demonstrating that there is reasonable assurance that funds will be available to decommission DAEC. The applicant's proposal for decommissioning funding assurance is discussed in Section 4.2 of this safety evaluation.

The staff evaluated the financial qualifications of the applicant in a manner that is consistent with the guidance provided in NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," dated March 1999 (hereinafter SRP). The staff reviewed the applicant's financial projections for reasonableness of estimated operating costs, reasonableness of financial projections and underlying assumptions, and sensitivity of revenue projections to plant capacity. The staff also evaluated the financial condition of the applicant's parent organizations as they relate to obligations to the applicant and reviewed the operating agreement between the co-owners of DAEC. All discussions in the evaluation below pertain to FPLE Duane Arnold's 70 percent ownership share, unless other specified. It should be noted that all information shown in the projected income statement and certain key assumptions and supporting data in Table 1 and in the text of this Safety Evaluation are proprietary, and such proprietary information is in **bold print**.

The staff compared the estimated operating costs provided in the application for DAEC against historical data on DAEC and other similar units contained in NUREG/CR-6577, Supp. 2, "U.S. Nuclear Power Plant Operating Cost and Experience Summaries," dated December 2003. Based on this review, the staff believes that the applicant's expense projections are consistent with historical trends, and are reasonable.

The staff evaluated the applicant's projected income statement for the period 2006 through 2010 (see Table 1), which is based on capacity and energy sales in the Duane Arnold Energy Center Power Purchase Agreement between FPL Energy Duane Arnold, LLC and Interstate Power and Light Company, dated July 2, 2005 (hereinafter PPA) and FPLE Duane Arnold's pro rata share of operating expenses for the DAEC. [

]

In addition, NMC, the current operator of the plant, confirmed that IPL's total revenue associated
Nonproprietary Version

with DAEC generation in 2004, was approximately []; this amount is not materially inconsistent with the applicant's projection, based on the PPA, of [] for 2006 in Table 1. Further, the Ownership Participation Agreement and Operating Agreement between IPL and Co-Owners reflects a pro rata cost reimbursement based on ownership shares. IPL's rights and responsibilities under this agreement would be assigned to FPLE Duane Arnold at closing. The staff finds this agreement and assignment acceptable. Based on the above information, the staff determined that the applicant's operating revenue projections, based on the effective prices of capacity and energy in the PPA, are reasonable.

Further, the applicant projected that a reduction in capacity factor [] would lower projected operating revenues and net income of FPLE Duane Arnold. The staff determined, however, that the resultant net income would still be sufficient to pay for operation costs associated with FPLE Duane Arnold's ownership share.

The proprietary financial information [**In Bold Text**] in the following table shows the projected income statement for FPLE Duane Arnold from 2006 through 2010.

TABLE 1. FPLE DUANE ARNOLD LLC
PROJECTED INCOME STATEMENT (\$000)
(for 70% of plant)

| | 2006 | 2007 | 2008 | 2009 | 2010 |
|--------------------------|------|------|------|------|------|
| Operating Revenue (1)(2) | [] | [] | [] | [] | [] |
| Total Operating Expenses | [] | [] | [] | [] | [] |
| Operating Income | [] | [] | [] | [] | [] |
| Other (Income) Expense | [] | [] | [] | [] | [] |
| Income Before Taxes | [] | [] | [] | [] | [] |
| Income Taxes | [] | [] | [] | [] | [] |
| Net Income (Loss) | [] | [] | [] | [] | [] |

(1) Revenue projections based on power purchase agreement with IPL.

| | | | | | |
|---|-----|-----|-----|-----|-----|
| Generation (Gwh)(70% of Plant) | [] | [] | [] | [] | [] |
| Effective Capacity Price -\$/MWh | [] | [] | [] | [] | [] |
| Effective Energy Price - \$/MWh | [] | [] | [] | [] | [] |

(2) []

According to the application, FPL Group Capital will, at closing, enter into a support agreement between FPL Group Capital and FPLE Duane Arnold to make funding of up to \$50 million available to FPLE Duane Arnold. The support agreement is intended to provide FPLE Duane Arnold with cash equivalents that would be sufficient to pay fixed operating costs during a 6-month outage. The format of the agreement is consistent with other support agreements the staff has reviewed and found acceptable. FPLE Duane Arnold will have the right to obtain such

funds from FPL Group Capital to the extent FPLE Duane Arnold determines it is necessary to pay the expenses of safely operating and maintaining DAEC, protect the public health and safety, and meet NRC requirements. Further, as stated in the application, pursuant to an existing guaranty between FPL Group and FPL Group Capital, FPL Group “absolutely and unconditionally guarantees” certain obligations of FPL Group Capital, and these guaranteed obligations encompass both the support agreement with FPLE Duane Arnold and a decommissioning funding guaranty discussed below.

Additional information that indirectly supports the applicant’s financial qualifications, as stated in the application, is that FPL Group Capital has senior unsecured debt ratings of A- and A2 by Standard & Poor’s and Moody’s Investors Service, respectively. In addition, FPL Group Capital, as a wholly-owned subsidiary, benefits from the financial strength of FPL Group, which has a corporate credit rating of A by Standard & Poor’s. As of December 31, 2004, FPL Group reported assets exceeding \$28 billion and recorded annual revenues for its 2004 fiscal year greater than \$10.5 billion. Thus, according to the application, there is reasonable assurance that FPL Group Capital can meet its commitments to FPLE Duane Arnold.

Because of the significance of the commitment in the support agreement between FPL Group Capital and FPLE Duane Arnold in providing additional assurance for funding DAEC operations, the NRC staff believes that this commitment should be made a condition of the license and the order approving the proposed license transfer, as follows:

FPLE Duane Arnold shall take no action to cause FPL Group Capital, or its successors and assigns, to void, cancel, or modify its \$50 million contingency commitment to FPLE Duane Arnold, as represented in the application, or cause it to fail or perform or impair its performance under the commitment, or remove or interfere with FPLE Duane Arnold’s ability to draw upon the commitment, without the prior written consent from the NRC. An executed copy of the Support Agreement shall be submitted to the NRC no later than 30 days after completion of the license transfer. Also, FPLE Duane Arnold shall inform the NRC in writing any time that it draws upon the \$50 million commitment.

Based on the evaluation above, the staff finds that FPLE Duane Arnold will have sources of funds to cover total annual operating costs for each of the first 5 years of operation of DAEC following the proposed transfer. Accordingly, the staff concludes that FPLE Duane Arnold possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license, and that FPLE Duane Arnold thus will be financially qualified to hold the license for DAEC to the extent described in the application.⁽¹⁾

4.2 Decommissioning Funding Assurance

The NRC has determined that the requirements to provide reasonable assurance of

(1)The staff finds that under the Operating Agreement, the other co-owners of DAEC are responsible for their pro rata shares of operating costs. These other co-owners, which are electric utility cooperatives, are presumed under 10 CFR 50.33 to be financially qualified to hold their interests in the license. Accordingly, their obligation to cover their pro rata costs under the Operating Agreement allows the staff to find FPLE Duane Arnold financially qualified as the licensed operator as well as a co-owner of DAEC.

decommissioning funding are necessary to ensure the adequate protection of public health and safety. The regulation at 10 CFR 50.33(k) requires that an application for an operating license for a utilization facility contain information to demonstrate how reasonable assurance will be provided that funds will be available to decommission the facility.

According to the application, all of IPL's qualified and non-qualified decommissioning funds (up to an aggregate value of \$188.3 million) will be transferred to FPLE Duane Arnold's decommissioning trust fund at closing. The staff reviewed the FPLE Duane Arnold proposed qualified and non-qualified decommissioning trust agreements as amended and found them acceptable.

The applicants estimated that the minimum value of the funds transferred at closing will be \$186 million. The NRC-calculated minimum decommissioning funding amount for DAEC, in accordance with 10 CFR 50.75(b) and (c), is \$416.6 million. FPLE Duane Arnold's 70 percent share of this amount is \$291.7 million. When the NRC's allowed 2 percent real rate of return earnings credit is applied to the \$186 million amount up to DAEC's expected permanent cessation of operations in 2014, pursuant to 10 CFR 50.75(e)(1)(i), the amount accumulated by 2014 would be \$226.7 million.

The difference between the estimated value of the decommissioning funds transferred at closing of \$186 million escalated through 2014 with the NRC's allowed 2 percent real earnings credit (or \$226.7 million), and FPLE Duane Arnold's share of the prepayment amount, \$291.7 million, will be provided by a parent guarantee of FPL Group Capital in the amount of \$75 million. This parent guarantee will continue through operation of the plant, and will be recalculated each year as required by 10 CFR 50.75(b)(2). The staff reviewed the parent guarantee and found it acceptable.

The staff analyzed the transfer application for the existing 70 percent IPL ownership share and the biennial decommissioning funding status report for DAEC submitted to the NRC on March, 31, 2005. Based on the information presented in those documents, the staff has determined that DAEC was on track to be fully funded by the time of permanent cessation of operations, taking into account the co-owners' annual amounts remaining to be collected for their respective decommissioning trust funds and using the allowed 2 percent earnings credit on fund balances. Reasonable assurance of decommissioning funding for DAEC would continue after the transfer, based on the transfer of the IPL funds balance of \$186 million and the provision of the parent guarantee of \$75 million, to FPLE Duane Arnold.

Because of this need for additional funding assurance provided by a parent guarantee, the following is to be made a condition of the license and of the order approving the direct license transfer:

By the date of closing of the transfer of the 70 percent ownership interest in DAEC from IPL to FPLE Duane Arnold, FPLE Duane Arnold shall obtain a parent company guarantee from FPL Group Capital in an initial amount of at least \$75 million (in 2005 dollars) to provide additional decommissioning funding assurance regarding such ownership interest, which guarantee must be in accordance with NRC regulations regarding such documents. Required funding levels shall be recalculated annually and, as necessary, FPLE Duane Arnold shall either obtain appropriate adjustments to the

parent guarantee or otherwise provide any additional decommissioning funding assurance necessary for FPLE Duane Arnold to meet NRC requirements under 10 CFR 50.75.

The staff finds that the arrangements discussed above adequately demonstrate that FPLE Duane Arnold will be able to provide reasonable assurance that funds will be available for decommissioning DAEC. Since this finding is based, among other things, on the applicant's representations that IPL will essentially transfer all of its accumulated decommissioning funds to FPLE Duane Arnold at closing, the following is to be made a condition of the order approving the direct license transfer regarding the above-noted unit to FPLE Duane Arnold and a corresponding license condition:

At the time of the closing of the transfer of the license from Interstate Power and Light Company (IPL) to FPLE Duane Arnold, IPL shall transfer to FPLE Duane Arnold IPL's decommissioning funds accumulated as of such time, with an aggregate minimum value of at least \$186 million, and FPLE Duane Arnold shall deposit such funds in an external decommissioning trust fund established by FPLE Duane Arnold for DAEC. FPLE Duane Arnold shall take all necessary steps to ensure that this external trust fund is maintained in accordance with the requirements of the order approving the license transfer, NRC regulations, and consistent with the safety evaluation supporting the order. The trust agreement shall be in a form acceptable to the NRC.

4.3 Antitrust Review

The Atomic Energy Act of 1954 as amended (hereinafter 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 here postdates the issuance of the DAEC operating license, and therefore no antitrust review is required or authorized. The staff notes that there are no existing antitrust license conditions in the subject license. Accordingly, there are no antitrust-related issues to resolve with respect to proposed conforming license amendments.

4.4 Foreign Ownership, Control, or Domination

Sections 103d and 104d of the AEA prohibit 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 proposed transferee, FPLE Duane Arnold, is a Delaware limited liability company formed to acquire and operate DAEC, with its principal place of business in Iowa. As noted in the application, FPLE Duane Arnold, as an LLC, has no directors or management committee. All of its principal officers are U.S. citizens. The application states that FPLE Duane Arnold is not owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. The application further states that FPL Group, the transferee's ultimate parent company, is a publicly traded company with shares trading on the New York Stock Exchange, that all of its directors and officers are U.S. citizens, and that it is not owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. Similarly, the application states that all directors and officers of the transferee's intermediary organizations (FPL Group Capital, FPL

Energy, and ESI Energy) are U.S. citizens, and that none of those organizations is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In light of the above, the NRC staff does not know or have reason to believe that FPLE Duane Arnold will be owned, controlled or dominated by an alien, a foreign corporation, or a foreign government.

4.5 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 FPLE Duane Arnold as a new licensee of DAEC.

In accordance with the Price-Anderson Act, FPLE Duane Arnold 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 demonstrates that FPLE Duane Arnold 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 FPLE Duane Arnold 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 FPLE Duane Arnold as the operator and 70 percent share owner of DAEC. Because the issuance of the amended license is directly tied to completion of the proposed license transfer, the order approving the transfer will be conditioned as follows:

Prior to completion of the transfer of the license, FPLE Duane Arnold 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.

4.6 Technical Qualifications

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."

Management and Technical Support Organization

The NRC 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 August 1, 2005, the applicants stated, "FPLE Duane Arnold will make offers of employment to employees of NMC who are employed at DAEC, or whose work responsibilities are involved principally in the operation of DAEC assets. As part of this requirement, FPLE Duane Arnold will assume the two collective bargaining agreements covering represented members of NMC's workforce at DAEC. ...[O]ff-site employees involved

principally in DAEC operation, are expected to become FPLE Duane Arnold employees after the license transfer. Therefore, the technical qualifications of the organization operating DAEC will be essentially unaffected.”

In addition, as stated in the applicants’ submittal, FPLE Duane Arnold will join FPL Energy Seabrook, LLC as a direct, wholly-owned subsidiary of ESI Energy, LLC, which is a direct, wholly-owned subsidiary of FPL Energy, LLC. This transaction will enable FPLE Duane Arnold to leverage existing Florida Power & Light Company and FPL Energy Seabrook, LLC nuclear fleet resources and expertise in the operation of DAEC.

Based on the submittal, the applicants and FPLE Duane Arnold have described the organization for managing and the means for providing technical support to the Duane Arnold Energy Center staff that will be equivalent to the current qualifications of the management and technical support organization, regarding which the staff is aware of no deficiencies. Accordingly, the staff concludes that the proposed FPLE Duane Arnold organization for managing and its means of providing technical support for the continued operation of DAEC under both normal and off-normal conditions are in accordance with SRP Section 13.1.1, “Management and Technical Organization.”

Operations Organization

The staff reviewed the applicant’s submittal to determine the acceptability of the FPLE Duane Arnold operating organization and to evaluate changes to the operating organization proposed as a result of the license transfer. 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 its August 1, 2005, submittal, the applicants and FPLE Duane Arnold indicated that, “This application does not request approval of any physical changes in DAEC or any changes to the conduct of operations. After transfer of the license, DAEC will continue to be operated and maintained in accordance with DAEC’s current licensing bases.” It is further stated, “No physical changes will be made to DAEC, and there will be no changes in the day-to-day operation of the facility.

In addition, “The on-site organization and 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, and information technology), the organizational structure of the onsite organization, including lines of authority and communication, is not expected to be changed by the transfer. Certain offsite support services currently being performed by NMC will be assumed by FPLE Duane Arnold. If FPLE Duane Arnold determines that any other senior management changes will be made contemporaneously with the transfer, FPLE Duane Arnold will ensure that the new individuals meet all existing qualification requirements and will inform the NRC and provide the NRC with their resumes prior to the license transfer.”

NMC and IPL have described the corporate level management and technical support organizations and the onsite operating organization of FPLE Duane Arnold that will be

responsible for the operation and maintenance of DAEC after the transfer of licensed operating authority to FPLE Duane Arnold. The staff concludes that FPLE Duane Arnold has 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 to FPLE Duane Arnold. The FPLE Duane Arnold submittal adequately addresses the relevant requirements of 10 CFR 50.40 (b) and 10 CFR 50.80.

Since the operating organizations and personnel now responsible for the operation and maintenance of DAEC will be essentially unaffected by the transfer to FPLE Duane Arnold, the staff concludes that FPLE Duane Arnold's onsite organizations established to operate and maintain DAEC under both normal and off-normal conditions are in accordance with SRP Section 13.1.2 -13.1.3, "Operating Organization."

5.0 CONFORMING AMENDMENT

5.1 Introduction

NMC, IPL, and FPLE Duane Arnold requested approval of the proposed conforming amendment to Facility Operating License No. DPR-49, DAEC. No physical or operating changes to the facilities are requested. Supplemental information received that was not specifically referenced in the initial 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.

5.2 Discussion

The changes to be made to the license are indicated in the conforming amendment in Enclosure 2 to the cover letter forwarding the NRC staff's order regarding the subject transfer. The changes do no more than accurately reflect the approved transfer action. The amendments involve no safety questions and are administrative in nature. Accordingly, the proposed amendments are acceptable.

5.3 State Consultation

In accordance with the Commission's regulations, the Iowa State official was notified of the proposed issuance of the amendments. The state officials had no comments.

5.4 Conclusion With Respect to the Conforming Amendment

The Commission has concluded, based on the consideration 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 amendments will not be inimical to the common defense and security or to the health and safety of the public.

6.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of a transfer of licenses issued by the NRC and approval of conforming amendments. 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.

7.0 CONCLUSION

In view of the foregoing, the NRC staff finds that, subject to the conditions discussed herein, FPLE Duane Arnold is qualified to own the 70 percent interest in DAEC currently held by IPL and operate the facility, and is thus qualified to be the holder of the license for DAEC to the extent proposed in the application, and that the transfer of the license to FPLE Duane Arnold is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Principal Contributors: R. Uleck
A. McKeigney
R. Pelton
D. Guha

Date: December 23, 2005

APPENDIX B

ADDITIONAL CONDITIONS

OPERATING LICENSE NO. DPR-49

FPL Energy Duane Arnold, LLC (the term licensee in Appendix B refers to FPL Energy Duane Arnold, LLC) shall comply with the following conditions on the schedule noted below:

| <u>Amendment Number</u> | <u>Additional Conditions</u> | <u>Implementation Date</u> |
|-------------------------|---|---|
| 223 | FPL Energy Duane Arnold, LLC is authorized to relocate certain requirements included in Appendix A to licensee-controlled documents. Implementation of this amendment shall include the relocation of these requirements to the appropriate documents, as described in the licensee's application dated October 30, 1996, as supplemented and consolidated in its March 31, 1998, submittal. These relocations were evaluated in the NRC staff's Safety Evaluation enclosed with this amendment. | This amendment is effective immediately and shall be implemented within 180 days of the date of this amendment. |
| (1) | At the time of the closing of the transfer of the license from Interstate Power and Light Company (IPL) to FPLE Duane Arnold, IPL shall transfer to FPLE Duane Arnold IPL's decommissioning funds accumulated as of such time, with a aggregate minimum value of at least \$186 million, and FPLE Duane Arnold shall deposit such funds in an external decommissioning trust fund established by FPLE Duane Arnold for DAEC. FPLE Duane Arnold shall take all necessary steps to ensure that this external trust fund is maintained in accordance with the requirements of the order approving the license transfer, NRC regulations, and consistent with the safety evaluation supporting the order. The trust agreement shall be in a form acceptable to the NRC. | This amendment is effective immediately and shall be implemented within 30 days of the date of this amendment. |

Amendment No.

Amendment
Number

Additional Conditions

Implementation Date

(2)

By the date of closing of the transfer of the 70 percent ownership interest in DAEC from IPL to FPLE Duane Arnold, FPLE Duane Arnold shall obtain a parent company guarantee from FPL Group Capital in an initial amount of at least \$75 million (in 2005 dollars) to provide additional decommissioning funding assurance regarding such ownership interest, which guarantee must be in accordance with NRC regulations regarding such documents. Required funding levels shall be recalculated annually and, as necessary, FPLE Duane Arnold shall either obtain appropriate adjustments to the parent guarantee or otherwise provide any additional decommissioning funding assurance necessary for FPLE Duane Arnold to meet NRC requirements under 10 CFR 50.75.

This amendment is effective immediately and shall be implemented within 30 days of the date of this amendment.

(3)

FPLE Duane Arnold shall take no action to cause FPL Group Capital, or its successors and assigns, to void, cancel, or modify its \$50 million contingency commitment to FPLE Duane Arnold, as represented in the license transfer application, or cause it to fail or perform or impair its performance under the commitment, or remove or interfere with FPLE Duane Arnold's ability to draw upon the commitment, without the prior written consent from the NRC. An executed copy of the Support Agreement shall be submitted to the NRC no later than 30 days after completion of the license transfer. Also, FPLE Duane Arnold shall inform the NRC in writing any time that it draws upon the \$50 million commitment.

Amendment No.