

December 29, 2005

Mr. Robert M. Andersen
Leboeuf, Lamb, Greene & MacRae LLP
1875 Connecticut Ave., N.W.
Suite 1200
Washington, D.C. 20009-5728

SUBJECT: ORDER APPROVING PACIFICORP APPLICATION FOR CONSENT TO
INDIRECT TRANSFER OF MATERIALS LICENSE SNM-2509 [TROJAN
INDEPENDENT SPENT FUEL STORAGE INSTALLATION] (TAC NO. L23865)

Dear Mr. Andersen:

The U.S. Nuclear Regulatory Commission (NRC) staff has completed its review of the application filed by PacifiCorp, PacifiCorp Holdings, Inc., and MidAmerican Energy Holdings Company (MEHC) dated June 30, 2005, and supplemented on August 12, 2005, which requested approval of the indirect transfer of control of Materials License No. SNM-2509 for the Trojan Independent Spent Fuel Storage Installation (ISFSI), to the extent held by PacifiCorp in regard to PacifiCorp's 2.5 percent interest in the Trojan ISFSI, to MEHC. PacifiCorp is a non-operating licensee of the Trojan ISFSI, and will continue to hold its license. The request is in connection with the sale of PacifiCorp, which will become an indirect wholly owned subsidiary of MEHC.

The enclosed Order approves the proposed indirect license transfer, subject to the conditions described therein. The Order will be placed in the NRC public document room (PDR), added to the Agencywide Documents Access and Management System Publicly Available Records System (ADAMS PARS) Library and has been forwarded to the Office of the Federal Register for publication.

Enclosure 2 is the NRC staff's safety evaluation report (SER) related to the preceding action, and will be placed in the NRC PDR and added to the ADAMS PARS Library.

Sincerely,

/RA/
Christopher M. Regan, Senior Project Manager
Licensing Section
Spent Fuel Project Office
Office of Nuclear Material Safety
and Safeguards

Docket No. 72-17
TAC No. L23865

Enclosures: (1) Order
(2) Safety Evaluation Report

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
PACIFICORP)	Docket No. 72-17
)	
)	
(Trojan Nuclear Plant)	License No. SNM-2509
Independent Spent Fuel Storage)	
Installation))	

ORDER APPROVING APPLICATION REGARDING PROPOSED ACQUISITION
INDIRECT TRANSFER OF MATERIALS LICENSE SNM-2509

I.

By application dated June 30, 2005, and supplemented on August 12, 2005, PacifiCorp, together with PacifiCorp Holdings, Inc., and MidAmerican Energy Holdings Company (MEHC), requested approval of the indirect transfer of control of Materials License No. SNM-2509 for the Trojan Independent Spent Fuel Storage Installation (ISFSI), with regard to PacifiCorp's 2.5 percent interest in the Trojan ISFSI, to MEHC. PacifiCorp is a non-operating licensee of the Trojan ISFSI, and will continue to hold the license. The request was in connection with the sale of PacifiCorp, which will become an indirect wholly-owned subsidiary of MEHC. The supplemental letter cited above did not expand the scope of the application beyond that noticed in the *Federal Register* on July 27, 2005 [70 FR 43461].

The U.S. Nuclear Regulatory Commission (NRC) 10 CFR Part 50 license for the Trojan Nuclear Plant (License No. NPF-1) was terminated on May 23, 2005, after completion of the radiological decommissioning of the nuclear plant. The Trojan ISFSI holds spent fuel from the former Trojan Nuclear Plant.

PacifiCorp is a wholly owned subsidiary of PacifiCorp Holdings, Inc. (PHI), which in turn is an indirect, wholly-owned subsidiary of Scottish Power, plc. PacifiCorp will be sold to PPW, LLC, a Delaware limited liability corporation and a wholly-owned subsidiary of MEHC. The name of the MEHC subsidiary that will acquire PacifiCorp was changed from NWQ Holdings, LLC to PPW Holdings, LLC. PacifiCorp operates an electric utility in six western states of the United States, serving approximately 1.6 million retail customers with annual revenues of approximately \$3 billion per year. PacifiCorp will remain an electric utility after the sale to MEHC.

MEHC, a global electric and natural gas utility operating in the United States, the United Kingdom, and the Philippines, serves approximately 4.4 million electric customers and 680,000 natural gas customers. Its annual operating revenue is approximately \$6.5 billion.

MEHC will purchase all the outstanding shares of PacifiCorp from PHI for a value of approximately \$9.4 billion, consisting of approximately \$5.1 billion in cash and approximately \$4.3 billion in net debt and preferred stock which will remain outstanding at PacifiCorp.

The Trojan ISFSI is jointly owned by three licensees: Portland General Electric Company (PGE) (67.5%); Eugene Water & Electric Board (30%); and PacifiCorp (2.5%). PGE has always been the sole operator of the Trojan ISFSI and will remain the sole operator. The Eugene Water & Electric Board and PacifiCorp are non-operating licensees. PacifiCorp has no right of access to the ISFSI. No physical changes will occur to the Trojan ISFSI as a result of the change in ownership of PacifiCorp. Thus, both the management and operation of the ISFSI will remain unchanged.

II.

The applicant requested approval of the indirect transfer of the Trojan ISFSI license, to the extent held by PacifiCorp, to MEHC, pursuant to 10 CFR 72.50(a) which states:

No license or any part included in a license issued under this part for an ISFSI [Independent Spent Fuel Storage Installation] or MRS [Monitored Retrievable Storage Installation] 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 gives its consent in writing.

The Commission will approve an application for the indirect transfer of a license, if, after appropriate notice and observance of required procedures, the Commission determines that:

(1) the underlying transaction effecting the indirect transfer will not affect the qualifications of the holder of the license; and (2) the indirect transfer of the license is consistent with applicable provisions of the law, and the regulations and orders issued by the Commission.

Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that MEHC's proposed purchase of all the outstanding shares of PacifiCorp from PHI will not affect the qualifications of PacifiCorp as holder of Materials License No. SNM-2509, and that the indirect transfer of the license, to the extent effected by the proposed acquisition, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by "Safety Evaluation by the Office of Nuclear Materials Safety and Safeguards, PacifiCorp, Trojan Independent Spent Fuel Storage Installation, Docket No. 72-17," dated October 27, 2005.

III.

In view of the foregoing, the Commission finds that the acquisition of PacifiCorp by MEHC will not affect the qualifications of PacifiCorp to hold the Trojan ISFSI Materials License to the extent now held by PacifiCorp, and the indirect transfer of control of the license to MEHC is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 72.50, IT IS HEREBY ORDERED that the application regarding the indirect license transfer related to the proposed acquisition is approved, subject to the following conditions:

- (1) PacifiCorp shall provide the Director of the Office of Nuclear Material Safety and Safeguards a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from PacifiCorp to its direct or indirect parent, or to any affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of PacifiCorp's net utility plant, as recorded on its books of account.
- (2) Should the proposed indirect license transfer not be completed by December 31, 2006, this Order shall become null and void, provided, however, upon application and for good cause shown, such a date may be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated June 30, 2005, and supplement dated August 12, 2005, and the safety evaluation report dated October 27, 2005, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (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 29th day of December 2005.

FOR THE NUCLEAR REGULATORY COMMISSION
/RA/

Robert C. Pierson, Acting Director
Office of Nuclear Material Safety
and Safeguards

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 72.50, IT IS HEREBY ORDERED that the application regarding the indirect license transfer related to the proposed acquisition is approved, subject to the following conditions:

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Dated at Rockville, Maryland this 29th day of December 2005.

FOR THE NUCLEAR REGULATORY COMMISSION
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Robert C. Pierson, Acting Director
Office of Nuclear Material Safety
and Safeguards

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SAFETY EVALUATION BY THE
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
PACIFICORP
TROJAN INDEPENDENT SPENT FUEL STORAGE INSTALLATION
DOCKET NO. 72-17

1.0 INTRODUCTION

By application dated June 30, 2005, and supplemented on August 12, 2005, PacifiCorp, PacifiCorp Holdings, Inc., and MidAmerican Energy Holdings Company (MEHC), requested that the U.S. Nuclear Regulatory Commission (NRC or Commission) approve an indirect transfer of control of Materials License No. SNM-2509 for the Trojan Independent Spent Fuel Storage Installation (ISFSI), with regard to PacifiCorp's 2.5 percent interest in the Trojan ISFSI, to MEHC. PacifiCorp is a non-operating licensee of the Trojan ISFSI, and will continue to hold the license. The request is in connection with the sale of PacifiCorp, which will become an indirect wholly-owned subsidiary of MEHC. The supplemental letter cited above did not expand the scope of the application beyond that noticed in the *Federal Register*.

2.0 BACKGROUND

The U.S. Nuclear Regulatory Commission (NRC) 10 CFR Part 50 license for the Trojan Nuclear Plant (License No. NPF-1) was terminated on May 23, 2005, after completion of the radiological decommissioning of the nuclear plant. The Trojan ISFSI holds spent fuel from the former Trojan Nuclear Plant.

PacifiCorp is a wholly owned subsidiary of PacifiCorp Holdings, Inc. (PHI), which in turn is an indirect, wholly-owned subsidiary of Scottish Power, plc. PacifiCorp will be sold to PPW, LLC, a Delaware limited liability corporation and a wholly-owned subsidiary of MEHC. PacifiCorp operates an electric utility in six western states of the United States, serving approximately 1.6 million retail customers with annual revenues of approximately \$3 billion per year. PacifiCorp will remain an electric utility after the sale to MEHC.

MEHC, a global electric and natural gas utility operating in the United States, the United Kingdom, and the Philippines, serves approximately 4.4 million electric customers and 680,000 natural gas customers. Its annual operating revenue is approximately \$6.5 billion.

The registered office address of MEHC as indirect transferee is:

MidAmerican Energy Holdings Company
666 Grand Avenue
Des Moines, Iowa 50303-0657

MEHC will purchase all the outstanding shares of PacifiCorp from PHI for a value of approximately \$9.4 billion, consisting of approximately \$5.1 billion in cash and approximately \$4.3 billion in net debt and preferred stock which will remain outstanding at PacifiCorp.

The Trojan ISFSI is jointly owned by three licensees: Portland General Electric Company (PGE) (67.5%); Eugene Water & Electric Board (30%); and PacifiCorp (2.5%). PGE has always been the sole operator of the Trojan ISFSI and will remain the sole operator. The Eugene Water & Electric Board and PacifiCorp are non-operating licensees. PacifiCorp has no right of access to the ISFSI. No physical changes will occur to the Trojan ISFSI as a result of the change in ownership of PacifiCorp. Thus, both the management and operation of the ISFSI will remain unchanged.

3.0 REGULATORY REQUIREMENTS

The applicant requested approval of an indirect transfer of the Trojan ISFSI license to MEHC, pursuant to 10 CFR 72.50(a), which states:

No license or any part included in a license issued under this part for an ISFSI or MRS 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 gives its consent in writing.

The Commission will approve an application for the indirect transfer of a license, if, after appropriate notice and observance of required procedures, the Commission determines that:

- (1) the underlying transaction effecting the indirect transfer will not affect the qualifications of the holder of the license; and
- (2) the indirect transfer of the license is consistent with applicable provisions of the law, and the regulations and orders issued by the Commission.

4.0 EVALUATIONS

4.1 Financial Qualifications and Decommissioning Funding Assurance

To demonstrate financial qualification, 10 CFR 72.22(e) provides that the applicant must submit information that shows that the applicant either possesses the necessary funds, or has reasonable assurance of obtaining the necessary funds to cover construction, operating, and decommissioning costs. Construction of the ISFSI is complete, therefore, only operating and decommissioning costs must be covered at this time.

PacifiCorp's share of the operating and decommissioning costs is approximately \$5.6 million. As noted above, PacifiCorp is an electric utility with an annual revenue of approximately \$3 billion per year. The public utility commissions of the six states in which PacifiCorp operates have authorized the applicant to recover ISFSI related costs in its retail rates. The application states that the sale of PacifiCorp to MEHC will not adversely affect PacifiCorp's status as an electric utility nor its authorization to collect funds for the Trojan ISFSI.

However, in view of the NRC's concern that corporate restructuring (involving either a direct or an indirect transfer of control) can lead to diminution of assets necessary for the safe operation

and decommissioning of the licensee's ISFSI, the NRC's practice has been to condition the corresponding license transfer approvals upon a requirement that the licensee not transfer significant assets from the licensee to a parent or an affiliate without first notifying the NRC. This requirement assists the NRC in assuring that a licensee will continue to maintain adequate resources to contribute to the safe operation and decommissioning of its facilities. Thus, the following will be made a condition of the approval of the application regarding the proposed sale:

PacifiCorp shall provide the Director of the Office of Nuclear Material Safety and Safeguards a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from PacifiCorp to its direct or indirect parent, or to any affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of PacifiCorp's net utility plant, as recorded on its books of account.

The supplemental letter dated August 12, 2005, submitted by LeBoeuf, Lamb, Greene & McRae, LLP, as attorneys for PacifiCorp, stated that the investor group that owns MEHC will change the relative voting interests of the current owners of MEHC. However, there will be no new owners of MEHC, the original group of investors will remain the same, and no operational changes will be made to MEHC. The letter also noted that the name of the MEHC subsidiary that will acquire PacifiCorp was changed from NWQ Holdings, LLC to PPW Holdings, LLC.

In consideration of the foregoing, the Commission finds that MEHC's acquisition of PacifiCorp's outstanding stock will not adversely affect PacifiCorp's financial qualifications to hold the Trojan ISFSI license.

4.2 Technical Qualifications

The technical qualifications which an application must address are specified in 10 CFR 72.28. However, PacifiCorp is a non-operating licensee. The operation and management of the ISFSI will remain with PGE, and will not change as a result of the sale of PacifiCorp. In consideration of these facts, the Commission finds that MEHC's acquisition of PacifiCorp's outstanding stock will not adversely affect PacifiCorp's technical qualifications to hold the Trojan ISFSI license.

4.3 Foreign Ownership, Control, and Domination

Section 57c of the Atomic Energy Act of 1954, as amended, requires the Commission to find that issuance of a license to possess special nuclear material will not be inimical to the common defense and security or constitute an unreasonable risk to the health and safety of the public.¹ As part of that determination, the NRC considers foreign ownership, control, and domination of

¹ 10 CFR Part 72 was issued on November 12, 1980 under the Atomic Energy Act of 1954, secs. 51, 53, and 57, as amended, among others. (45 FR 74693, 74699)

the licensee.² The application states that the purchasing corporation, MEHC, has only one foreign shareholder, who owns less than 1% of the corporation. He also holds options that would enable him to increase his share to approximately 1.4% of the corporation, on a fully diluted basis, after the change in relative ownership of the current owners discussed above. All of the officers and directors of MEHC are United States citizens, with the exception of the single foreign shareholder noted previously, who is president of MEHC and a member of the board of directors. In view of these facts, the staff concludes that the indirect transfer of control will not result in foreign ownership, control, or domination.

5.0 Conclusion

In view of the foregoing, the Commission finds that, subject to the condition discussed herein, the acquisition of PacifiCorp by MEHC will not affect the qualifications of PacifiCorp to hold the Trojan ISFSI Materials License to the extent now held by PacifiCorp, and that the indirect transfer of control of the license to MEHC is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Date: October 27, 2005

² NUREG-1556, Vol. 15, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses," p. 5-2, November 2000.