

January 22, 2007

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

DIRECT TRANSFER OF LICENSES

FROM CONSUMERS ENERGY COMPANY

TO ENTERGY NUCLEAR PALISADES, LLC & ENTERGY NUCLEAR OPERATIONS, INC.

BIG ROCK POINT FACILITY: DOCKET 50-155

BIG ROCK POINT ISFSI: DOCKET 72-043

1.0 INTRODUCTION

By application dated October 31, 2006, Consumers Energy Company (Consumers), Entergy Nuclear Palisades, LLC (ENP), and Entergy Nuclear Operations, Inc. (ENO), requested consent by the United States Nuclear Regulatory Commission (NRC), pursuant to 10 CFR 50.80, to the proposed direct transfer of the Big Rock Point Facility Operating License (Big Rock) DPR-06, and pursuant to 10 CFR 72.50, to the proposed direct transfer of the Big Rock Point Independent Spent Fuel Storage Installation license (Big Rock ISFSI) SFGL-16. The proposed direct transfers of the two licenses will be the result of the execution of the Asset Sales Agreement signed by Consumers and ENP on July 11, 2006. Upon closing of the sale, ownership, control and operation of Big Rock and the ISFSI would change from Consumers, to ENP and ENO. Closing of the sale cannot occur until all regulatory approvals are received.

This Safety Evaluation is to be conjoined with the Safety Evaluation dealing with the direct transfer of the license for Palisades Nuclear Plant, from Consumers Energy Company & Nuclear Management Company, LLC, to Entergy Nuclear Palisades, LLC & Entergy Nuclear Operations, Inc., based on an application dated August 31, 2006.

2.0 BACKGROUND

Big Rock was permanently shut down in August 1997. In 2006, Consumers completed decommissioning and decontamination of the majority of land on the site. On April 3, 2006, Consumers informed the Commission of its intent to release approximately 475 acres of land from the Operating License, in accordance with the Big Rock License Termination Plan. Consumers intends to file its Final Site Survey Summary Report regarding land to be released, in 2006.

When the release area is removed from the license, the only asset which will remain subject to the license will be a parcel of land of approximately 30 acres within which the ISFSI itself resides, and an additional parcel of approximately 75 acres adjacent to the ISFSI. Under the Asset Sale Agreement of July 11, 2006, Consumers will transfer all of these assets to ENP.

The staff notes that on September 30, 2005, the NRC approved the amendment of the Maine Yankee Atomic Power Station Facility Operating License No. DPR-36 (Docket No. 50-309) to allow the continued operation of an Independent Spent Fuel Storage Installation at that site after the decommissioning of the associated nuclear plant and release of the appropriate lands. The NRC allowed continued operation of the Independent Spent Fuel Storage Installation at that site under a general Independent Spent Fuel Storage Installation license, similar to the Big Rock ISFSI involved here, after the restoration and removal from the facility operating license of all land at the site except for the land associated with the Independent Spent Fuel Storage Installation and an additional 3.17 acres of land adjacent to the Independent Spent Fuel Storage Installation land. In this application, Consumers will transfer to ENP the Big Rock ISFSI and the land which is required for Big Rock ISFSI operation as part of the controlled area specified under 10 CFR 72.106.

The Big Rock site is located approximately four miles northeast of Charlevoix, Michigan. The Big Rock Point Power Plant was a 75 MW boiling water reactor designed by the General Electric Company, and operated from 1964 until 1997. All Big Rock spent nuclear fuel was transferred to the Big Rock ISFSI by March 26, 2003. The Big Rock ISFSI operates pursuant to General ISFSI License No. SFGL-16. (The NRC issued the Big Rock ISFSI license to Consumers in Docket No. 72-043, pursuant to 10 CFR 72.210).

On April 1, 2003, Consumers filed its License Termination Plan for Big Rock with the NRC. (Big Rock Point Plant, "Proposed License Amendment - License Termination Plan (LTP)," Dockets No. 50-155 & 72-043.) The LTP calls for Consumers to demolish and remove all major structures, to complete radiological remediation and to perform final radiological surveys in order to release a large portion of land for unrestricted use. The Commission approved the LTP on March 24, 2005, accompanied by an Environmental Report and a filing of No Significant Impact. Consumers submitted revision No. 2 to the LTP on September 27, 2005, updating the Commission as to the status of decommissioning.

The proposed transaction would transfer to ENP full ownership and control (through ENP's agent ENO) of approximately 75 acres of land adjacent to the ISFSI, as well as the ISFSI itself.

Under the terms of the Asset Sale Agreement (July 11, 2006), in addition to the activities involving Big Rock and the Big Rock ISFSI, Consumers will sell, and ENP will purchase, the Palisades Nuclear power Plant (Palisades), together with associated Palisades facilities and land. Palisades is an operating nuclear generating facility, currently owned by Consumers, and operated by Nuclear Management Company (NMC). On August 31, 2006, Consumers and NMC, together with ENP and ENO, pursuant to 10 CFR 50.80, applied for a transfer of the operating license for Palisades (Docket No. 50-255). There is a separate Safety Evaluation for the Palisades license transfer.

3.0 REGULATORY EVALUATION

3.1 Big Rock

The applicants' request for the approval of the direct transfer of the license for Big Rock discussed in this Safety Evaluation, is made pursuant to 10 CFR 50.80. Section 50.80(a) of 10 CFR states "No license for a production 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) & (c) apply. Section 50.80(b) states that an applicant for a license transfer shall include as much information described in 10 CFR 50.33 and 10 CFR 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 applicant were for an initial license. . . ." Section 50.80(c) states that "the Commission will approve the application for the transfer of a license, if the Commission determines: (1) That the proposed transferee is qualified to be the holder of the license; and (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto."

3.2 Big Rock ISFSI

The applicants' request for the approval of the direct transfer of the license for the ISFSI discussed in this Safety Evaluation, is made pursuant to 10 CFR 72.50. Section 72.50(a) of 10 CFR 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."

In addition, the requirements of 10 CFR 72.50(b) & (c) apply. Section 72.50(b) states that an applicant for a license transfer shall include as much information described in 10 CFR 72.22 and 10 CFR 72.28 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 applicant were for an initial license. . . ." Section 72.50(c) states that "the Commission will approve the application for the transfer of a license, if the Commission determines: (1) That the proposed transferee is qualified to be the holder of the license; and (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto."

4.0 EVALUATIONS

ENP will own and ENO will operate, both Big Rock and Palisades. As an operating nuclear facility, Palisades will produce revenue through power sales pursuant to its 15-year Power Purchase Agreement (PPA) with Consumers, in which Consumers commits to purchasing all of the output of Palisades. A copy of the PPA was submitted as part of this application for Big Rock and the Big Rock ISFSI.

In satisfaction of 10 CFR 50.33(f), the application contains a five year projected income statement for ENP. The five year projected income statement for Palisades is being submitted directly from ENP under separate cover, and is analyzed under the separate Palisades Safety Evaluation.

The revenues in the five year projected income statement for Palisades, are based on ENP's sale of its generation, at prices established under the PPA. The costs associated with the operation and maintenance of Big Rock and the Big Rock ISFSI are included in the five year projected income statement for Palisades. The projected income statement shows that ENP's anticipated revenues from sales of energy and capacity from Palisades provide reasonable assurance of an adequate source of funds to meet ENP's anticipated operating and maintenance expenses for the Big Rock ISFSI. ENP and ENO, through Entergy Corporation, Palisades will have access to a line of credit of \$25 million from Entergy Corporation or another affiliated company.

ENP is an indirect wholly owned subsidiary of Entergy Corporation and a direct wholly owned subsidiary of Entergy Nuclear Midwest Investment Company, LLC. ENO is an indirect wholly owned subsidiary of Entergy Corporation and a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2.

5.0 DECOMMISSIONING

5.1 Big Rock

The Big Rock Point Plant was shut down permanently in August, 1997. In 2006, Consumers completed decommissioning and decontamination of the majority of land on the site. Any and all additional decommissioning expenses with this site shall be born by the licensee, through revenues derived from, but not limited to, the sale of electricity and capacity from Palisades.

5.2 Big Rock ISFSI

The cost of decommissioning the Big Rock ISFSI is estimated at \$2.8 million. (Big Rock Point, "Proposed License Amendment- License Termination Plan, Revision 2," Section 7-2-2.) It is anticipated that revenues from the sale of electricity from Palisades will be sufficient to fund the cost of decommissioning the Big Rock ISFSI. The application states that ENP will ensure adequate decommissioning funding for this portion of the land and facilities to be transferred, through a parent company guarantee that meets the requirements of 10 CFR 50.75(e)(1)(iii) or 10 CFR 72.30(c), as applicable.

Upon closing of the proposed sale, ENP will assume title to and financial responsibility for the spent fuel stored at the Big Rock ISFSI to the same extent as presently held by Consumers. The proposed transaction will result in ENP and ENO being authorized pursuant to 10 CFR 72 to store spent fuel at the Big Rock ISFSI.

As stated in the application as pursuant to the ASA, Consumers will assign or convey and ENP will assume Consumers' rights and obligations under the Standard Contract with the Department of Energy and all other rights of Consumers against DOE with respect to, arising

out of, or in connection with the assets to be transferred, excluding any claims of Consumers related to or pertaining to Department of Energy defaults under the Standard Contract relating to periods prior to the closing date, and with respect to the payment from Consumers to ENP contemplated by the ASA. Consumers will retain all liabilities and rights applicable to the Pre-1983 Fee paid to the Department of Energy under the Standard Contract.

6.0 ANTITRUST REVIEW

The Atomic Energy Act of 1954 as amended (AEA) does not require or authorize antitrust reviews of post-operating license transfer applications. *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999). The application here postdates the issuance of the operating licenses for units under consideration, 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.

7.0 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.

As stated in the application, ENP and ENO are not directly or indirectly owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. In seeking to become the licensed owner and operator of Big Rock and Big Rock ISFSI, ENP and ENO are not acting as agents or representatives of another entity.

All of the directors of Entergy, ENO, and ENP are United States citizens, and are expected to remain so after the proposed sale. The appointed officers of the Entergy, ENO, and ENP are expected to be limited to the current pool of officers and directors of the purchasing companies, all of whom are United States citizens.

In light of the above, the NRC staff does not know or have reason to believe that Entergy, ENO, and ENP will be owned, controlled or dominated by an alien, a foreign corporation, or a foreign government.

8.0 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 Entergy as a new parent company licensee of Palisades.

In accordance with the Price-Anderson Act, Entergy 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 Entergy 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 Entergy to provide satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of a licensee under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended license. Because the issuance of the amended licenses are directly tied to completion of the proposed direct license transfer, the order approving the transfer will be conditioned as follows:

Prior to completion of the transfer of the license, Entergy 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 a licensee under 10 CFR Part 140 of the Commission's regulations.

9.0 INTERVENERS

During the preparation of this safety Evaluation, staff became aware of two petitions, requesting leave to intervene. The petitioners are Van Buren County et. al., and Michigan Environmental Council et. al. The staff has made a preliminary review of these petitions as they relate to the financial qualifications of ENP and ENO, and has found no additional information nor any contradictions to the information submitted by ENP and ENO in support of their request for direct transfer of license. If in the course of further actions on the part of the interveners should prove to provide information not included in the request for direct transfer of license, then staff reserves the right to review this Safety Evaluation again.

10.0 CONCLUSION

In view of the foregoing, the NRC staff finds that, subject to the conditions discussed herein, ENP and ENO are qualified to be the holder and operator of the Big Rock Facility and Big Rock ISFSI to the extent proposed in the application, and that the direct transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

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